

## SEVENTH DIVISION

[ CA-G.R. CV NO. 81994, August 14, 2006 ]

**ELIZA CORTADO, PLAINTIFF-APPELLEE, VS. SPS. ERNESTO AND  
ZENAIDA ASUNCION, DEFENDANTS-APPELLANTS.**

### D E C I S I O N

**COSICO, J.:**

This is an appeal from the Decision dated November 27, 2003<sup>[1]</sup> rendered by the Regional Trial Court [RTC], Branch 121 of Caloocan City in the case entitled, "*Eliza Cortado herein Represented by her Attorney-in-Fact, Meriam Cortado v. Spouses Ernesto V. Asuncion and Zenaida Neri Asuncion*" docketed as Civil Case No. C-19297 which is an action for annulment of deed of sale with damages wherein the trial court ruled in favor of the plaintiff-appellee Eliza Cortado. The dispositive portion of the assailed November 27, 2003 Decision reads:

"WHEREFORE, premises considered, judgment is accordingly rendered in favor of plaintiff Eliza Cortado and against the defendants Sps. Ernesto and Zenaida Asuncion as follows:

1. Declaring the Deed of Sale executed between Bibiano Cortado and the defendants Sps. Ernesto and Zenaida Asuncion as null and void and of no legal effect;
2. Ordering defendants to vacate the subject premises and to remove whatever structures they may have built thereon upon plaintiff's refund of the amount of Php 100,000.00;
3. Ordering defendants to pay attorney's fees in the amount of Php30,000.00 representing acceptance fee plus P2,000.00 per appearance fee; and
4. Ordering defendants to pay the costs of the suit.

SO ORDERED." [Decision, pp. 8-9]

### **The Facts**

The real property which is the subject matter of the instant case is a 25 square meter parcel of land [subject property] designated as Lot No. B-2, Block 44, Area IV, of the National Housing Authority [NHA] situated at Bagong Barrio, Caloocan City with address at 229 Ipil Alley, Bagong Barrio, Caloocan City. The subject property is among the lots awarded by the NHA as part of its housing program to qualified applicants thereto.

Previously, the right over Lot No. B-2, Block 44, Area IV with an area of eighty (80)

square meters was awarded to spouses Ponciano and Rosita Garcia by the NHA. On February 22, 1988, Rosita Garcia, who was then a widow, sold the rights and structure over the said property to the appellants-spouses Ernesto and Zenaida Asuncion ["appellant-spouses"] and to spouses Bibiano and Eliza Cortado<sup>[2]</sup>. In the deed of sale thereon, the spouses Asuncion became owners of the rights and the structure built on the 30 square meter portion of the property which they occupied and at the same time, the spouses Bibiano and Eliza Cortado became owners of the rights and the structure built on the 50 square meter portion of the property which they occupied. This sale was subsequently approved by the NHA.

On August 14, 1997 and while Eliza Cortado was away in Greece, the spouses Asuncion and Bibiano Cortado entered into a contract of sale over the one half portion of the 50 square meter property owned by the spouses Cortado on Lot No. B-2, Block 44, Area IV. From then on, the contending parties presented two different versions of the story.

In her Amended Complaint<sup>[3]</sup>, appellee Cortado who is represented by her attorney-in-fact, Meriam Cortado alleged that it was only on March 15, 2000 that she discovered the August 14, 1997 sale between her husband and the spouses Asuncion; that upon learning of the said sale, she immediately demanded from the spouses Asuncion to vacate the property and demolish the structures they had built thereon considering that the said sale made in their favor was void as it was made without her knowledge, consent and authority. Meanwhile, in their Amended Answer with Counterclaim<sup>[4]</sup> the spouses Asuncion refused to vacate the property contending that the August 14, 1997 sale was valid as it was made with the knowledge and consent of Eliza Cortado.

During the pre-trial<sup>[5]</sup>, the parties raised the following issues for resolution:

- (1) Whether or not the Deed of Sale executed on August 14, 1997 by and between Bibiano Cortado and defendant[s]-spouses is valid;
- (2) Whether or not the plaintiff is guilty of estoppel in questioning the Deed of Sale; and
- (3) Whether or not damages could be recovered by the contending parties.

Thereafter, trial on the merits ensued.

To prove that the August 14, 1997 sale is void for having been made without her knowledge and consent, Eliza Cortado<sup>[6]</sup> testified in her behalf and presented the testimony of Meriam Cortado<sup>[7]</sup> to corroborate her story. She likewise presented documentary evidence consisting of the following, namely: 1) Certification of Marriage Contract between Bibiano and Eliza Cortado by the Local Civil Registrar of Candon, Ilocos Sur (Exhibit "A"); (2) Deed of Sale of Structure with Tag No. 77-04582-84 (Exhibit "B"); (3) Joint Affidavit of Co-Owners executed by the spouses Bibiano and Eliza Cortado and spouses Ernesto and Zenaida Asuncion (Exhibit "C"); (4) Certified photocopy of TCT No. C-47616 over Lot No. B-2, Block 44, Area IV, Bagong Barrio, Caloocan City (Exhibit "D"); (5) Deed of Sale with Mortgage between the National Housing Authority and Ponciano Garcia (Exhibit "E"); (6) Receipt dated

November 26, 1986 of Rosita Garcia from spouses Cortados of the amount representing the purchase price for the sale of house and rights over the portion of the 50 square meters of Lot No. B-2, Block 44, Area IV, Bagong Barrio, Caloocan City (Exhibit "F"); (7) Deed of Sale dated August 14, 1997 (Exhibit "G"); (8) Special Power of Attorney executed by Eliza Cortado designating Meriam Cortado as her attorney-in-fact (Exhibit "H"); (9) Bus Fare Receipts or travel expenses of Meriam Cortado (Exhibit "I"); (10) Photocopy of round-trip plane ticket of Eliza Cortado from Greece to the Philippines (Exhibit "J"); and (11) Photocopy of Official Receipt No. 1726372 dated October 11, 2001 issued by the NHA to Eliza Cortado as payment of the latter's mortgage with the said agency.

In turn, to prove that Eliza Cortado had knowledge of the said sale, and that she, together with Bibiano and their children had previously offered the entire 50 square meters of the property located at Bagong Barrio, Caloocan City, the spouses Asuncion presented the testimonial evidence of Zenaida Asuncion<sup>[8]</sup>, Susan Llorca<sup>[9]</sup> who testified on the contract of mortgage executed between her and Bibiano over the property and Ma. Teresa Oblipias, an employee of the NHA. For their documentary evidence, the spouses Asuncion presented the following documents: (1) Deed of Sale of Structure with Tag No. 77-04582-84 (Exhibit "1"); (2) Deed of Sale dated August 14, 1997; (3) Acknowledgement Receipt dated March 25, 1997 of Bibiano Cortado and Michelle Cortado of the purchase price (Exhibit "3"); (4) Deed of Sale for the 50 square meter lot located at 229 Ipil Alley, Bagong Barrio. Caloocan City (Exhibit "4"); (5) Copy of Official Receipt No. 1111165 issued by the NHA to "E. Asuncion/B. Cortado" (Exhibit "5"); (6) Copy of Official Receipt No. 486789 issued by the NHA to "B. Cortado/E. Asuncion" (Exhibit "6"); (7) TCT No. 216479 which is a derivative title that originated from TCT No. C-47616 (Exhibit "7"); (8) Contract of Mortgage between Susan Llorca and Bibiano Cortado (Exhibit "8"); and (9) Chattel Mortgage between Susan Llorca and Bibiano Cortado and Michelle Cortado (Exhibit "9").

### **The Ruling of the Regional Trial Court**

Finding that the evidence presented by Eliza Cortado is more superior than the evidence presented by the appellants-spouses, the trial court ruled that the August 14, 1997 Deed of Sale is void and made the following pronouncements, to wit:

"A scrutiny of the assailed Deed of Sale readily discloses on its face that it does not bear the written conformity or consent of the wife, herein plaintiff Eliza Cortado. It is admitted by both parties that plaintiff was in Greece during the execution of the document. No Special Power of Attorney was executed by plaintiff in favor of her husband.

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Given the foregoing, this Court finds the evidence of plaintiff superior to that of the defendants. The assailed deed of sale eloquently speaks of what is missing. This necessarily prevails over the bare assertions of defendants that the plaintiff had verbally authorized the sale. The law explicitly provides that the consent of the other spouse must be in writing. This Court could not therefore deviate from a crystal-clear requirements of the law.

Moreover, it is very important to emphasize that the plaintiff never expressed her acceptance of the contract. On the contrary, she categorically expressed her repudiation of the same when she offered to return the purchase price upon her return to the country.

The subject deed of sale is therefore null and void in view of the above-mentioned omission. As such, it is as if no such sale ever took place and the situation of the parties before the transaction should be maintained.” [November 27, 2003 Decision at 8].

Hence, this appeal. Previously, the instant case was referred by this Court for mediation under A.M. No. 04-3-15 SC PHILJA dated March 23, 2004. However, both parties refused to have the case mediated and for this reason, the merits of the appeal shall now be resolved.

### **The Present Appeal**

Appellants-spouses ascribe the following errors allegedly committed by the trial court, to wit:

(1) THE RTC ERRED IN DECLARING THAT THE DEED OF SALE EXECUTED BETWEEN BIBIANO CORTADO AND THE DEFENDANTS SPOUSES ERNESTO AND ZENAIDA ASUNCION IS NULL AND VOID.

(2) THE RTC ERRED IN ORDERING THE DEFENDANTS TO VACATE THE SUBJECT PREMISES AND TO REMOVE WHATEVER STRUCTURES THEY MAY HAVE BUILT THEREON UPON PLAINTIFF’S REFUND OF THE AMOUNT OF PHP 100,000.00; AND

(3) THE RTC ERRED IN ORDERING THE DEFENDANTS TO PAY ATTORNEY’S FEES AS WELL AS THE COSTS OF SUIT TO COMPLAINANT.

### **This Court’s Ruling**

The appeal is without merit for the following reasons:

#### **August 14, 1997 Deed Of Sale is Void**

Article 124 of the Family Code in relation to Article 1409 of the New Civil Code is explicit in stating that a disposition or encumbrance on the conjugal property without authority of the court or the *written consent of the other spouse* is void:

"ART. 124. The administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision. In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include the powers of disposition or encumbrance which must have the authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the

transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.

Meanwhile, Article 1409 of the New Civil Code states:

"Art. 1409. The following contracts are inexistent and void from the beginning:

- (1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;
- (2) Those which are absolutely simulated or fictitious;
- (3) Those whose cause or object did not exist at the time of the transaction;
- (4) Those whose object is outside the commerce of men;
- (5) Those which contemplate an impossible service;
- (6) Those where the intention of the parties relative to the principal object of the contract cannot be ascertained;
- (7) Those expressly prohibited or declared void by law."

It is clear from the aforesaid provisions that without the *written consent* of the spouse, an encumbrance or disposition, like a sale, of a property belonging to the conjugal partnership by the other spouse is void and inexistent. Verily, in the instant case, an examination of the August 14, 1997 Deed of Sale executed between the appellants-spouses and appellee's husband, Bibiano would readily reveal the absence or lack of written consent by appellee herein. Hence, applying Article 124 of the Family Code and Article 1409 of the New Civil Code, the Deed of Sale executed by the appellants-spouses and Bibiano Cortado over the 1/2 portion of the property previously awarded to the spouses Cortados by the NHA is null and void.

On this note, appellants-spouses advance that the written consent of the appellee is not necessary as the property subject of the August 14, 1997 Deed of Sale is not owned by the spouses Cortado but owned by the NHA, thus, it cannot be considered as part of their conjugal property.

We disagree.

First, Article 153 of the New Civil Code which is the governing law at the time Bibiano Cortado and appellee were married<sup>[10]</sup> in 1973 provides:

"Art. 153. The following are conjugal partnership property:

- (1) That which is acquired by onerous title during the marriage at the expense of the common fund, whether the acquisition be for the partnership, or for only one of the spouses;
- (2) That which is obtained by the industry, or work, or as salary of the spouses, or of either of them;
- (3) The fruits, rents or interests received or due during the marriage,