FIFTH DIVISION

[CA-G.R. CV NO. 68400, September 11, 2006]

ALFREDO FERNANDO, PLAINTIFF-APPELLANT, VS. EUSTACIO DELOS SANTOS, DEFENDANT-APPELLEE.

D E C I S I O N

DIMAAMPAO, J.:

On *Appeal* before this Court is the *Decision*[1] dated 20 June 2000 of the Regional Trial Court, Second Judicial Region, Santiago City, Branch 35, in Civil Case No. 35-2284 dismissing plaintiff-appellant's complaint for *Nullity of Contracts and/or Reformation, Damages and Injunction.*

The facts of the case are uncomplicated.

Plaintiff Alfredo Fernando ("Alfredo") is the registered owner of a parcel of land described as Lot No. 548-B-1 with an area of 112 square meters located in Barrio Dubinan East, Santiago, Isabela and covered by Transfer Certificate of Title No. T-200241.[2] Pursuant to a Contract of Lease dated 19 January 1993, Alfredo leased to defendant Eustacio delos Santos ("Eustacio") a portion of the said parcel of land consisting of 16.62 square meters with a monthly rental of P1,000 for a period of twenty (20) years from 1 April 1993 to 30 April 2013.[3]

On 21 August 1996, Alfredo filed a *Complaint*[4] seeking for the rescission and/or reformation of the said contract of lease on the ground that the said contract did not contain the true intention of the parties. During the preparation of the subject contract of lease, Alfredo and Eustacio verbally agreed that the latter, as lessee, would construct a simple concrete building on the property being leased by him in consideration of the duration of the lease. Likewise, they agreed not to include such verbal agreement in the said contract of lease due to the promise of Eustacio to comply the same within a reasonable period of time. Despite demands, however, Eustacio failed to comply with his obligation.

In his *Answer*,[5] Eustacio denied the material allegations of the complaint and averred as an affirmative defense that there was no such verbal agreement for him to construct a building on the property leased. The subject contract of lease contained their true intention, thus the same was valid and binding. Neither did he violate any of the terms and conditions of the subject contract of lease. In fact, he occupied the subject property in April 1993 and religiously paid the monthly rentals thereof. Due to the refusal of Alfredo to receive the subsequent monthly rentals, he deposited and consigned the same payments to the Office of the Clerk of Court of Honorable Presiding Judge Ruben Plata of Santiago City.

After trial on the merits, the court *a quo* rendered the assailed Decision, the dispositive portion of which reads, as follows:

> WHEREFORE, premises considered, judgment is rendered as follows:
>
> 1. Dismissal of the above-entitled case;
>
> 2. Declaring the contract of lease as valid and binding between the plaintiff and the defendant having contained the true intentions of the parties, the contract of lease being valid, the defendant should stay and occupy the lease premises in accordance with the terms and conditions of the contract of lease;
>
> 3. Ordering the plaintiff to pay the sum of P100,000.00 as moral damages, exemplary damages in the amount of P50,000.00 as a deterrent for others who are proned to do the same acts as the plaintiff did to the defendant;
>
> 4. Ordering the plaintiff to pay defendant the sum of P720,000.00 as consequential damages;
> 5. Ordering the plaintiff to pay the attorney's fee in the amount of P50,000.00 and P35,000.00 for ten (10) sessions; and
>
> 6. The cost of the suit.
>
> SO ORDERED."[6]

Aggrieved, Alfredo (now appellant) interposed this appeal ascribing to the court *a quo* the following errors:

> **I**
>
> **THE COURT *A QUO* ERRED IN NOT ORDERING THE RESCISSION AND/OR REFORMATION OF THE IM-PUGNED CONTRACT OF LEASE AS IT DID NOT CONTAIN THE TRUE INTENTION OF THE PLAINTIFF-APPELLANT AND THE DEFENDANT-APPELLEE.**
>
> **II**
>
> **THE COURT A QUO ERRED IN ORDERING THE PLAINTIFF-APPELLANT TO PAY MORAL DAMAGES, EXEMPLARY DAMAGES, CONSEQUENTIAL DAMAGES AND ATTORNEY'S FEES IN FAVOR OF THE DEFENDANT-APPELLEE DESPITE WANT OF FACTUAL AND LEGAL BASIS.**
>
> **III**
>
> **THE COURT *A QUO* ERRED IN DISMISSING THE COMPLAINT DESPITE THE FACT THAT PREPON-DERANCE OF EVIDENCE HEAVILY TILTED IN FAVOR OF THE PLAINTIFF-APELLANT.**

At the outset, it should be stressed that the theory advanced by appellant from the very beginning is that there was a verbal agreement between him and appellee to the effect that the latter would construct a simple concrete building on the leased property, but such agreement was not embodied in the subject contract of lease on the ground that appellee promised to abide thereby. However, in the present appeal

appellant changes his theory and raises the following issues: (1) the contract of lease is null and void on the ground that it does not contain the signature and conformity of his wife; (2) there was a subsequent written agreement amending their contract of lease; and (3) there was an agreement that appellee would lend to appellant the sum of P20,000.00 as advance rental but the same was not indicated in the subject contract of lease.

Appellant cannot change his theory on appeal by presenting another theory that is inconsistent with his allegations during the proceedings before the court *a quo*. When a party adopts a certain theory in the trial court, he will not be permitted to change his theory on appeal, for to permit him to do so would not only be unfair to the other party but it would also be offensive to the basic rules of fair play, justice and due process.[7]

Notwithstanding the foregoing, the appeal is still dismissible. Article 1359 of the Civil Code provides:

> "When, there having been a meeting of the minds of the parties to a contract, their true intention is not expressed in the instrument purporting to embody the agreement, by reason of mistake, fraud, inequitable conduct or accident, one of the parties may ask for the reformation of the instrument to the end that such true intention may be expressed.
>
> If mistake, fraud inequitable conduct, or accident has prevented a meeting of the minds of the parties, the proper remedy is not reformation of the instrument but annulment of the contract."

An action for reformation of instrument under this provision of law may prosper only upon the concurrence of the following requisites: (1) there must have been a meeting of the minds of the parties to the contract; (2) the instrument does not express the true intention of the parties; and (3) the failure of the instrument to express the true intention of the parties is due to mistake, fraud, inequitable conduct or accident.[8]

In the case at bench, reformation cannot be resorted to as the subject contract of lease was not assailed by appellant on the grounds of mutual mistake, fraud, inequitable conduct or accident, but on the basis of alleged verbal agreement of the parties. *When a party sues on a written contract and no attempt is made to show any vice therein, he cannot be allowed to lay claim for more than what its clear stipulations accord. His omission cannot be arbitrarily supplied by the courts by what their own notions of justice or equity may dictate.*[9] *Further, in actions for reformation of contract, the onus probandi is upon the party who insists that the contract should be reformed.*[10]

Moreso, other than appellant's claim that there was a verbal agreement for appellee to construct a building on the leased premises, no other evidence was adduced to prove his claim. Appellant having failed to discharge that burden of proving that the true intention of the parties had not been accurately expressed in the lease contract sought to be reformed, the court *a quo* correctly ruled that the reformation holds no water.