

DOMINGO R. ENRILE, JR., OMEGA ENRILE, SAMUEL A. ENRILE, EDGARDO A. ENRILE, ANTONIO A. ENRILE JR., EXEQUIL A. ENRILE, EUGENIO A. ENRILE, ELEIZAR A. ENRILE, ANTONIO E. YORONG, MAR...

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

This is an appeal from the Decision[1] dated January 22, 2013 of the Regional Trial Court of Negros Oriental, 7[th] Judicial Region, Branch 34, Dumaguete City in Civil Case No. 2009-14379 for Declaration of Inexistence of Instruments and Damages.

The Facts

Lot No. 4351 with an area of 7,883 square meters and Lot No. 4354 with an area of 65,225 square meters, located at San Antonio, Sibulan, Negros Oriental is registered as Original Certificate of Title No. OV-9241 in the names of Eleonora Rendal married to Domingo Enrile; Pilar Rendal married to Regino Laingo; Antonio Rendal married to Grace Tully; Gervasio Rendal; Patricio Rendal and Hilario Rendal married to Petra Seit.[2]

Eleonora Rendal Enrile [Eleonora] died intestate on January 14, 1958.[3] Gervasio Rendal during his lifetime executed a deed of sale relinquishing all his rights, shares, interest and participation to his inheritance in favor of Eleonora.[4]

Patricio Rendal died intestate sometime in 1943 and is survived by his children namely: Alexander, Elizabeth and Patricio, Jr., all surnamed Rendal.[5]

That in an Extra-Judicial Settlement of Estate and Quitclaim Deed[6] all co-owners absolutely conveyed Lot Nos. 4351 and 4354 registered as OCT No. OV-9241 in favor of Domingo Enrile, Sr. [Domingo, Sr.], the husband of the late Eleonora together with their children: Esther Enrile-Yorong; Domingo Enrile, Jr.; Omega Enrile; Antonio Enrile and Daniel Enrile.[7] After the conveyance, Domingo, Sr. tolerated the relatives of Eleonora to stay on the said lots as overseers while some were hired to harvest the fruits thereon.[8]

On June 11, 1973, Domingo, Sr., Domingo Enrile, Jr. [Domingo, Jr.], Omega Enrile [Omega] obtained a loan from Diego Nochefranca, Sr. [Diego, Sr.] married to Leonora Rendal in the amount of Four Thousand Pesos [P4,000.00]. They used as collateral the lots covered in OCT No. OV-9241, the pertinent portion of the deed, reads:

“That for and in consideration of the sum of FOUR THOUSAND PESOS (P4,000.00), Philippine Currency, in hand paid by the MORTGAGEE to the MORGAGORS, the receipt of the full amount being acknowledged by (the) MORTGAGORS to their complete satisfaction, said MORTGAGORS do by these presents transfer and convey by way of Simple Mortgage in favor of the MORTGAGEE, his heirs and assigns five ninths (5/9) of the above parcels of land, particularly that portion of the land which contains the coconut trees numbering about three hundred trees more or less, and warrants unto the said MORTGAGEE, his heirs and assigns the peaceful possession of the property herein mortgaged.

That the condition of this mortgage is that during the lifetime of the mortgage and until the same is fully paid and redeemed, the MORTGAGORS AND MORTGAGEE shall share the produce of the land in proportion of one-fifth (1/5) share to the Mortgagors and the remaining (4/5) shares to the Mortgagee.

That the parties hereto agree that this mortgage shall be for a period of five (5) years from the date of execution of this mortgage and in case the same is not redeemed within the said period, this mortgage continue(s) to remain in force and effect until the mortgage is redeemed.”[9]

Subsequently, on July 26, 1978, Domingo, Sr., Domingo, Jr. and Omega again obtained a loan from Diego in the amount of Five Thousand Pesos [P5,000.00] and used as mortgage OCT No. OV-9241 in a Deed of Simple Mortgage,[10] the pertinent portion thereof reads:

“That for and in consideration of the sum of FIVE THOUSAND PESOS (P5,000.00), Philippine Currency, in hand paid by the mortgagee to the MORTGAGORS, the receipt of the full amount being acknowledged by the MORTGAGORS to their complete satisfaction, said MORTGAGORS do by these presents transfer and convey by way of Simple Mortgage in favor of the MORTGAGEE, his heirs and assigns the above parcels of land, and warrants unto the said MORTGAGEE, his heirs and assigns the peaceful possession of the property herein mortgaged.

That the condition of this mortgage is that during the lifetime of the mortgage and until the same is fully paid and redeemed, the MORTGAGORS AND MORTGAGEE shall share the produce of the land in the proportion of One Forth ($\frac{1}{4}$) share to the Mortgagors and the remaining Three Fourths ($\frac{3}{4}$) shares to the MORTGAGEE.

That the parties hereto agree that this mortgage shall be for a period of three (3) years from the date of execution of this mortgage and in case the same is not redeemed within the said period, this mortgage continues to remain in force and effect until the mortgage is redeemed.”[11]

On May 22, 1993, Domingo, Jr., Esther, and Omega executed a Deed of Quitclaim and Waiver of Rights[12] of their $\frac{3}{4}$ undivided share of Lot Nos. 4351 and 4354 in favor of Thelma Nochefranca, Fe Annabel Nochefranca married to Medino Yebron, Gloria Nochefranca married to Harold Whittington, Luz Nochefranca, Diego Nochefranca, Jr. married to Erlinda Herrero, Rebecca Nochefranca married to Bernard Leduc, and Cristina Nochefranca married to Reynaldo Santos.

Domingo, Jr., testified that when he signed the Deed of Quitclaim and Waiver of Rights, he was no longer able to read because Mrs. Leonora Rendal-Nochefranca at the time was in a hurry.[13] He affixed his signature on the said document believing that the contents thereof was an agreement that they were not to receive their share of the products of the land until they fully settle their debt.[14]

On May 3, 2002, Carmen Enrile, the wife of the deceased Antonio Enrile signed a Deed of Quitclaim and Waiver of Rights[15] in favor of Thelma Nochefranca, Fe Annabel Nochefranca married to Medino Yebron, Gloria Nochefranca married to Harold Whittington, Luz Nochefranca married to Patrick Sole, Diego Nochefranca married to Erlinda Herrero, Rebecca Nochefranca married to Bernard Leduc, and Cristina Nochefranca married to Reynaldo Santos.

Carmen testified that at the time she signed the said deed, she did not know about the existence of the subject lands because during the lifetime of her husband, the latter did not mention these lots to her.[16] Diego, Jr. who prepared the said document[17] showed the document to Carmen informing her that she should affix her signature thereon so she could give to him all the products of Lot Nos. 4351 and 4354.[18]

Plaintiffs-appellees now wanted to pay their obligation to defendants-appellants but the latter claim ownership over the lots embraced in OCT No. OV-9241 because of the deeds of quitclaim they executed thus, on April 24, 2009, plaintiffs-appellees instituted the instant suit before the RTC.[19]

In answer, defendants-appellants assert that Domingo, Jr. who was an elementary teacher knew fully well the nature and consequences of his act of signing the quitclaim. On the other hand, Carmen voluntarily signed the said deed. Thus, the documents duly notarized is valid legally binding on the parties. In addition, the said action should be dismissed because the same was already barred by prescription it being a hornbook rule that actions based upon a written contract prescribes in ten (10) years. With respect to the simple mortgage 30 years passed until its execution while the quitclaim executed in 1993, more than 16 years have elapsed, clearly prescription already set in.[20]

After the presentation of their testimonial evidence, plaintiffs-appellees offered Exhibits "A" to "O"[21] which were all duly admitted by the RTC[22] over the objection of defendants-appellants.[23] On the other hand, defendants-appellants formally offered Exhibits "1" to "8".[24]

Thereafter, the RTC in its Decision[25] dated January 22, 2013 ruled for plaintiffs-appellees and declared the two [2] quitclaims as null and void because the intention of the parties was only to modify the sharing agreement of the fruits on the parcel of land by giving all the shares to the mortgagee to cover for the payment of the accrued interest and principal of the loan which have remained outstanding. It was thus clear that plaintiffs-appellees were misled when they affixed their signatures on the two deeds of quitclaim and waiver of rights, which if given effect would constitute pactum commissorium which is illegal.[26] Thus, the fallo of the decision, reads:

"WHEREFORE, premises considered, as prayed for by plaintiffs, the Deed of Quitclaim and Waiver of Rights, dated May 22, 1993 and the Deed of Quitclaim and Waiver of Rights, dated May 3, 2002, which they executed are hereby declared null and void.

However, plaintiffs are hereby directed to pay defendants the unpaid loan of Five Thousand Pesos (P5,000.00) plus legal interest, from the time it was incurred on July 26, 1978 until fully paid.

No pronouncement as to costs.

SO ORDERED."[27]

Defendants-appellants on appeal, raised the following assignment of errors, to wit:

"I. THE HONORABLE COURT ERRED IN RULING THAT THERE WAS PACTUM COMMISSORIUM IN THE CASE AT BAR;

II. THE HONORABLE COURT LIKEWISE ERRED IN NOT UPHOLDING THE VOLUNTARINESS AND DUE EXECUTION OF THE NOTARIZED DEED OF QUITCLAIM AND WAIVER OF RIGHTS DATED MAY 22, 1993 AND THE DEED OF QUITCLAIM AND WAIVER OF RIGHTS DATED MAY 3, 2002 WHICH, BEING PUBLIC DOCUMENTS, WERE PRESUMED TO BE REGULAR AND VALID UNDER EXISTING LAWS; AND

III. THE HONORABLE COURT COMMITTED REVERSIBLE ERROR WHEN IT DID NOT APPLY LACHES AND PRESCRIPTION TO DENY THE PLAINTIFFS' CLAIM."[28]

Our Ruling

The correct characterization of the Deed of Quitclaim and Waiver of Rights dated May 22, 1993 executed by Domingo Enrile, Jr., Esther Yurong and Omega Enrile and the Deed of Quitclaim and Waiver of Rights dated May 3, 2002 executed by Carmen Enrile are determinative of the present controversy hence, We shall first proceed to discuss the same.[29]

Defendants-appellants argue that those deeds were freely and voluntarily executed by Domingo, Jr., Esther, Omega and Carmen they were not misled into signing them contrary to the findings of the RTC. More importantly

since the said documents bear the notarial seal, hence its due execution and validity are presumed.

We do not agree.

An examination of the testimonies of the quitclaimants reveal that they were led to believe that what they were waiving is their share from the fruits of OCT No. OV-9241 and not the ownership thereof. As revealed in the testimony of Domingo, Jr., thus:

“Q: During the lifetime of your mother, who was in possession of this land?

A: My mother.

Q: Where is your mother now?

A: She is already dead.

Q: After the death of your mother, who succeeded in possessing the land, if any?

A: My father and us.

Q: After you and your father, who succeeded in possessing the land, if any?

A: Mrs. Leonora Randel-Nochefranca.

Q: Can you tell us the reason why Mrs. Leonora R. Nochefranca succeeded in possessing the land?

A: Because we mortgaged the land in her favor.

Q: What was your agreement with respect to the products of the land with Leonora Rendal-Nochefranca?

A: Our agreement as to the products of the land is that she would give us a share.

Q: When you say we mortgaged the land to Lenora Rendal-Nochefranca, who are these persons you referred to as “we”?

A: Myself, my younger brother, and my father also. We borrowed money from Mrs. Nochefranca.

Q: What happen(ed) to that agreement with Mrs. Leonora R. Nochefranca?

A: She gave us our share of the products of the land.

Q: Up to when?

A: I cannot remember anymore as to the year.

Q: Do you know the reason why Leonora R. Nochefranca stopped giving the share to you?

A: She stopped giving the share of the products of the land from the time we were made to sign a Deed of Quitclaim.

Q: Who initiated in letting you sign the Deed of Quitclaim?

A: Mrs. Leonora R. Nochefranca.

Q: And what was the reason why you signed the Deed of Quitclaim?

A: Because what I understood to (sic) the Quitclaim was that we would not ask for our share of the products of the land until we have paid our debt.

Q: How many times did you sign a Quitclaim?

A: Only once.

Q: Can you tell us when did you sign this Deed of Quitclaim?

A: I cannot remember anymore as to the year when I signed the quitclaim.

Q: Can you remember where did you sign that Quitclaim?

A: At the house of my younger brother Omega Enrile in Sibulan, Negros Oriental.

Q: Who were present when you signed that Quitclaim?

A: Also present were my younger sister Ester, my younger brother Omega and myself.

Q: Where was Leonora Nochefranca situated at that time when you signed that Quitclaim?

A: She was also present at the house of Omega Enrile.

Q: Aside from Leonora Nochefranca and the siblings you mentioned earlier, who were the other persons present, if any?

A: There were no other persons aside from the ones that I mentioned.

Q: If you will be shown of that Deed of Quitclaim you signed, can you identify it?

A: Yes, I can identify it if I can find my signature there.

Q: Part of the records in this case is a Deed of Quitclaim. Please go over the same and tell us if this is the Quitclaim you mentioned?

A: This is my signature.

Q: So, is this the Quitclaim you mentioned earlier?

A: Yes, this is the one.

Atty. Dicos: For the record, Your Honor, the Deed of Quitclaim was already marked as Exhibit "F". The authenticity and existence of this document was already admitted by counsel for the defendants, Your Honor.

Q: You said that there was a loan executed by you and your siblings. Do you have any evidence of such loan?

A: It was covered by the Deed of Mortgage.

Q: And who signed in that mortgage?

A: My younger brother Omega Enrile, myself and my father Domingo Enrile, Sr.

Q: How many times did you incur (a) loan from Leonora R. Nochefranca?

A: About two (2) times.

Q: You said that the loan was covered by (a) mortgage. Do you have a copy of that mortgage?

A: Yes, we signed a document of mortgage.

Q: If you will be shown of that document of mortgage, will you be able to identify the same?

A: Yes, I can identify it if my signature is there.

Q: Part of the records is a Deed of Simple Mortgage found on page 15. Please tell us if this is the Deed of Simple Mortgage evidencing your loan with Leonora R. Nochefranca?

A: This is the one.

Atty. Dicos: For the record, Your Honor, the document just identified by the witness was already marked as our Exhibit "E" Your Honor.

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Q: When you signed that Deed of Quitclaim, why did you not redeem the property?

A: Because we had no money yet at that time.

Q: What happen(ed) to that loan with Leonora R. Nochefranca, if you know?

A: We were not able to pay the said loan.

Q: Mr. Enrile, can you tell us who is the owner of that land in question now?

A: We are still the owners because we never sold that land.³⁰

xxxxx

Q: Mr. Enrile, you are a retired Public School Teacher, is that correct?

A: That's right.

Q: So, you understand the English language?

A: I understand it. Q: Last time, you testified that you signed a Deed of Quitclaim, is that correct?

A: During Mrs. Nochefranca's time, I signed a Quitclaim.

Q: Now, in your testimony, you said that you understood that Quitclaim to have meant that you will not ask for a share of the products of the land until you have paid your debt, do you not remember having testified to that effect?

A: Yes, that is my understanding.

xxxxx

Q: Did you read this document before you signed it?

A: I was not able to read it.

Q: Will you kindly tell us why you were not able to read it?

A: There was no time. Mrs. Nochefranca was in a hurry.

Q: Were you forced to sign this document?

A: It was mutually understood that I had to sign.

Q: You were not threatened, of course?

A: I was not.

Q: Were you given money so that you will sign this document?

A: No.

xxxxx

Q: Was it your practice before, to sign a document without reading it?

A: I was just confident that Mrs. Nochefranca was telling the truth. Mrs. Nochefranca was my first cousin.

Q: You said that Mrs. Nochefranca was in a hurry, you did not tell her to wait because you want to see what kind of document you were signing?

A: In the first place, I did not see Thelma, and in the second place, Mrs. Nochefranca did not mention the name Thelma.

Q: But you were certain and you will confirm that what you signed was a Quitclaim?

A: I signed without reading the document.

Atty. Orillana: Just answer my question.

A: I have not seen the name Thelma, and I have not seen her during the signing.

Q: Last hearing, you testified that you signed a Deed of Quitclaim, my question is, would you confirm that it was a Deed of Quitclaim that you signed?

A: I was without understanding that I will not anymore ask for proceeds of the land because we have not yet paid our outstanding (debt)."[31]

On the other hand, Carmen Enrile testified that she signed the Quitclaim and Waiver of Rights dated May 3, 2002 with the understanding that she was merely waiving the fruits or the produce on the lots covered by OCT No. OV-9241, hence:

"Q: When you met this Diego Nochefranca, Jr. at Sibulan, what did he let you do?

xxxxx

A: He let me sign a document written on a piece of paper.

Q: In what particular place did he let you sign a document?

A: He brought me to the office of a lawyer, named Atty. Eltanal.

Q: Can you tell us what time did he bring you to the office of Atty. Eltanal?

A: It was almost 9:00 o'clock in the evening.

Q: What was the document all about?

A: At first, I did not read it. I did not know what the contents of the said document was.

Q: What did Diego Nochefranca, Jr. say to you about that document?

A: He just told me to sign it and he mentioned something about a quitclaim.

Q: What was the subject matter of that thing to be quitclaimed by you?

A: As I understood it, the quitclaim was all about me giving to him all the products only of the land.

Q: You mentioned about the products of the land, are you referring to the land in question?

A: The products of the land there.

Q: By the way, Mrs. Enrile, what is your educational attainment?

A: I only finished elementary school, I got into first year high school but I was not able to finish.

Q: In that document, you are relinquishing the products of the land, did you let your children be notified of this fact?

A: No, I did not notify my children about it.

xxxxx

Q: While you were there, you said that this Diego Nochefranca, Jr. made you sign something, and you said that it was a paper?

A: He let me sign a document, not in the house where we went but in the office of a certain lawyer.

Q: When you were still at the house of his aunt, did he tell you what document he was going to let you sign?

A: He did not tell me at the house of his aunt.

Q: You did not ask him what kind of document you were to sign or you did not bother to go to a lawyer?

A: No, I did not ask.

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Q: From the house of the aunt of Diego, and in going to the office of the lawyer, he did not mention or discuss anything about this document?

A: No, we did not talk about it but I knew that he was already carrying with him the paper.

xxxxx

Q: And are you not going to change your testimony even if the lawyer who notarized the document will testify that you indeed signed and understood the document you executed?

A: As to fact of my signing, I attest that I really signed the document, but as to whether I understood the contents of the said document, I cannot say that.

Q: You said that it was Diego Nochefranca, Jr., who requested you to sign, did he threaten you so that you will sign?

A: No, he did not threaten me.

Q: So he just requested you to sign?

A: Yes.

Q: Even if you have not read or you do not understand what you have signed?

A: I only understood that it was a Quitclaim.

Q: Do you know the meaning of Quitclaim?

A: It is a waiver of rights.

Q: So you know what you are waiving?

xxxx

A: No, because I did not know what I was waiving at that time because at that time, I did not know that there was a piece of land involved, and that piece of land had products.

Q: So nobody explained to you when you met Diego for the first time, who merely requested and not even threaten you to sign something that you did not understand what the contents of the said document, and yet you signed the same?

A: Yes, because I did not know that my husband had some lands.

xxxxx

Q: So at the time you signed the Quitclaim, you did not know what you are quitclaiming?

A: No, I did not know.”[32]

From the foregoing testimonies, it is readily apparent that in signing the deeds, the parties' consent were lacking because they were made to believe that what they were waiving in favor of the Nochefrancas was only their right to receive a share in the produce of the lots covered under OCT No. OV-9241 and not the ownership thereof. Absent their consent thereto, the said deeds are therefore void pursuant to Article 1318 of the Civil Code which provides:

“Art. 1318. There is no contract unless the following requisites concur:

- (1) Consent of the contracting parties;
- (2) Object certain which is the subject matter of the contract;
- (3) Cause of the obligation which is established.”

All these elements must be present to constitute a valid contract. Consent is essential to the existence of a contract; and where it is wanting, the contract is non-existent.[33] The essence of consent is the agreement of the parties on the terms of the contract, the acceptance by one of the offer made by the other. It is the concurrence of the minds of the parties on the object and the cause which constitutes the contract. The area of agreement must extend to all points that the parties deem material or there is no consent at all. To be valid, consent must meet the following requisites: (a) it should be intelligent, or with an exact notion of the matter to which it refers; (b) it should be free and (c) it should be spontaneous. Intelligence in consent is vitiated by error; freedom by violence, intimidation or undue influence; and spontaneity by fraud.[34] Here, it could not be said that the consent was made intelligently or that the parties had an exact notion that the content of the quitclaims are their waivers of ownership or shares over OCT No. OV-9241.

It is of no moment that those deeds were notarized because the fact that a deed is notarized is not a guarantee of the validity of its contents. The presumption of regularity of notarized documents is not absolute and may be rebutted by clear and convincing evidence to the contrary. Irregularities in the notarization of the document may be established by oral evidence of persons present in said proceeding. [35] In the instant case it was established

that when Diego, Jr. and Carmen signed the two [2] respective waivers, the lawyers who notarized the documents were not present which fact alone overcomes the presumption of regularity of notarized deeds.

A document should not be notarized unless the persons who are executing it are the very same ones who are personally appearing before the notary public. The affiants should be present to attest to the truth of the contents of the document and to enable the notary to verify the genuineness of their signature. Notaries public are enjoined from notarizing a fictitious or spurious document. In fact, it is their duty to demand that the document presented to them for notarization be signed in their presence. Their function is, among others, to guard against illegal deeds. Notarization is not an empty, meaningless and routinary act. It converts a private document into a public instrument, making it admissible in evidence without the necessity of preliminary proof of its authenticity and due execution.[36]

Being an absolute nullity, both the deeds of quitclaim and waiver of rights are subject to attack at any time, in accordance with the rule in Article 1410 of the Civil Code that an action to declare the inexistence of a void contract does not prescribe.[37]

During appeal, defendants-appellants raise for the first time regarding laches. They claim that laches is different from prescription in that the prescription is concerned with the fact of delay while laches is concerned with the effect of delay. The May 22, 1993 was only questioned 16 years later while the May 3, 2002 deed was only questioned 7 years later and without any reasonable explanation for the delay then plaintiffs-appellees herein are guilty of laches. Defendants-appellants likewise raised for the first time on appeal that the contract entered into by them is not a pactum commissorium but really payment by cession under Article 1255 of the Civil Code, which reads:

“Art. 1255. The debtor may cede or assign his property to his creditors in payment of his debts. This cession, unless there is stipulation to the contrary, shall only release the debtor from responsibility for the net proceeds of the thing assigned. The agreements which, on the effect of the cession, are made between the debtor and his creditors shall be governed by special laws.”

The inconsistent postures taken by the defendants-appellants breach the basic procedural tenet that a party cannot change his theory on appeal as expressly adopted in Rule 44, Section 15 of the Rules of Court, which reads:

“Sec. 15. Questions that may be raised on appeal. Whether or not the appellant has filed a motion for new trial in the court below, he may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties.”

Fortifying the rule, the Supreme Court had repeatedly emphasized that defenses not pleaded in the answer may not be raised for the first time on appeal. When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party. The Court had likewise, in numerous times, affirmed that points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. Basic considerations of due process underlie this rule. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court.[38]

However, even if We are to entertain the defense of laches by the defendants-appellants the same would still not be meritorious following the explanation by the Supreme Court in *Heirs of Ingjug-Tiro, et al. v. Casals, et al.*[39] wherein it ruled that “[n]either could laches be invoked in the case at bar. Laches is a doctrine in equity and our courts are basically courts of law and not courts of equity. Equity, which has been aptly described as “justice

outside legality," should be applied only in the absence of, and never against, statutory law. *Aequetas nunguam contravenit legis*. The positive mandate of Art. 1410 of the New Civil Code conferring imprescriptibility to actions for declaration of the inexistence of a contract should pre-empt and prevail over all abstract arguments based only on equity. Certainly, laches cannot be set up to resist the enforcement of an imprescriptible legal right, and petitioners can validly vindicate their inheritance despite the lapse of time."

On the defense that there was a payment by cession under Article 1255 of the Civil Code. In order for the said provision to be applicable, the following requisites must concur, thus:

- "a) more than one debt;
 - b) more than one creditor;
 - c) complete or partial insolvency of debtor;
 - d) abandonment of all debtor's property not exempt from execution (unless exemption is validly waived by the debtor) in favor of creditors;
 - e) acceptance or consent on the part of the creditors."
- [40]

In the instant case, no such requisites were present because there is only one debt; there is only one creditor; there was no proof that the debtor is completely or partially insolvent and that there was no abandonment of the debtor's properties so that defendants-appellants could not validly claim that there was cession. More importantly, upon perusal of the testimonies of the contracting parties, cession was not their common intention.

Indeed, We agree with the RTC that to sustain the subject deeds would be tantamount to a pactum commissorium under Article 2088 of the Civil Code. In order for said article to apply, the following requisites must be present, thus:

- "(1) There should be a property mortgaged by way of security for the payment of the principal obligation; and
 - (2) There should be a stipulation for automatic appropriation by the creditor of the thing mortgaged in case of non-payment of the principal obligation within the stipulated period."
- [41]

The said requisites are present because the obligation of the Enriles remained unpaid and that the thing mortgaged because of the non-payment of the loan was automatically appropriated in favor of the creditor. As revealed by the testimony of Diego Rendal Nochefranca, Jr., thus:

Q: You mentioned of two (2) simple mortgages?

A: Yes, sir.

Q: The first mortgage, was it executed by your mother and the plaintiffs?

A: It was executed by Domingo Enrile, Sr., Domingo Enrile, Jr. and Omega Enrile. My mother was the one who negotiated but she did not execute and sign.

Q: But you are aware of these two (2) simple mortgages?

A: Yes, sir.

Q: In fact the reason why you let Carmen Enrile signed the quitclaim because of these two (2) simple mortgages?

A: I consulted my lawyer. I showed all my documents.

Q: Just answer my question.

The Quitclaim was executed because of the two (2) simple mortgages? A: Yes."

[42]

Considering that there was an admission by the plaintiffs-appellees that the P5,000.00 Domingo, Jr. and Omega loaned from Leonona Rendal Nochefranca remained unpaid, We are of the same view by the RTC that the same

should be paid. However, with respect to the interest the same should not be reckoned from July 26, 1978 for lack of basis. There was no testimony and the records are bereft of any evidence that would show that Leonora Randal Nochefranca during her lifetime demanded from Diego, Sr, Diego Jr. and Omega Enrile for the payment of loan and there was likewise no testimony that Leonora Randal Nochefranca instituted an action for collection of sum of money. Thus, said persons have not incurred a delay absent the demand. Thus, We find that the imposition of interest reckoned from July 26, 1978 is not warranted.

The award of interest is however proper when the same shall be reckoned from the date of the finality of this decision until the same shall be paid by the plaintiffs-appellants. The rate of legal interest shall be 6% percent per annum until fully paid pursuant to the ruling of the Supreme Court in *Nacar v. Gallery Frames*, et al.,[43]

WHEREFORE, in view of the foregoing, the Decision dated January 22, 2013 of the Regional Trial Court of Negros Oriental, 7th Judicial Region, Branch 34, Dumaguete City in Civil Case No. 2009-14379 for Declaration of Inexistence of Instruments and Damages is hereby **AFFIRMED** with **MODIFICATION** that the interest of 6% shall be reckoned from the finality of this judgment until fully satisfied.

SO ORDERED.

Hernando, J., Chairperson, and Azcarraga-Jacob, JJ., concur.

[1] Records, pp. 129-134, penned by the Honorable Judge Rosendo B. Bandal, Jr.

[2] Records, p. 7

[3] Records, p. 9

[4] Records, p. 9

[5] Records, p. 3

[6] Records, pp. 8-14

[7] Records, pp. 11-12

[8] Records, p. 3

[9] Exhibits Folder for the Defendants, Exhibit “5”

[10] Records, pp. 15-16

[11] Records, p. 15

[12] Records, p. 17

[13] TSN, January 31, 2011, p. 2

[14] November 30, 2010, p. 4

[15] Records, pp. 19-20

[16] TSN, March 17, 2010, p. 16

[17] TSN, July 11, 2011, p. 6

[18] March 17, 2010, p. 8

[19] Records, pp. 2-6

[20] Records, pp. 23-25

[21] Exhibits Folder

- “A”- OCT No. (OV)-9241;
- “B”- Extra-Judicial Settlement of Estate and Quitclaim Deed dated January 22, 1975;
- “C”- TDN-99-17-013-1145;
- “D”- TDN-99-17-014-0411;
- “E”- Deed of Simple Mortgage dated July 26, 1978;
- “F”- Deed of Quitclaim and Waiver of Rights dated May 22, 1993;
- “G”- Deed of Quitclaim and Waiver of Rights dated May 03, 2002;
- “H”- Special Power of Attorney dated July 2, 2009;
- “I”- Special Power of Attorney dated September 9, 2009;
- “J”- Special Power of Attorney dated May 12, 2009;
- “K”- Deed of Simple Mortgage dated July 11, 1973
- “L”- Certified True Copy of OCT No. OV-9241;
- “M”- Official Receipt No. 0224721;
- “N”- Official Receipt No. 0325580; and
- “O”- Official Receipt No. 0405117

[22] Records, p. 105

[23] Records, p. 103

[24] Exhibits Folder

- “1”- Special Power of Attorney executed by Annabel Ybran;
- “2”- Special Power of Attorney of Luz Nochefranca;
- “3”- Special Power of Attorney of Thelma Nochefranca;
- “4”- Special Power of Attorney of Christina Nochefranca, et al.;
- “5”- Deed of Simple Mortgage dated July 11, 1973;
- “6”- Deed of Simple Mortgage dated July 26, 1978;
- “7”- Deed of Quitclaim and Waiver of Rights dated May 22, 1993; and
- “8”- Deed of Quitclaim and Waiver of Rights dated May 3, 2002.

[25] Records, pp. 129-133

[26] Records, p. 133

[27] Records, p. 133

[28] Rollo, p. 15

[29] Sumipat, et al. v. Banga, et al., G.R. No. 155810, August 13, 2004

[30] TSN, November 30, 2010, pp. 3-7

[31] TSN, January 13, 2011, pp. 1-4

[32] TSN, March 17, 2010, pp. 7-16

[33] First Philippine Holdings Corporation v. Trans Middle East (Phils.) Equities, Inc., G.R. No. 179505, December 4, 2009

- [34] Leonardo v. CA, et al., G.R. No. 125485, September 13, 2004
- [35] Manzano, Jr. v. Garcia, G.R. No. 179323, November 28, 2011
- [36] Spouses Domingo, et al. v. Reed, G.R. No. 157701, December 9, 2005
- [37] Sumipat, et al. v. Banga, et al., G.R. No. 155810, August 13, 2004
- [38] Figuracion, et al. v. Gerilla, G.R. No. 151334, February 13, 2013
- [39] G.R. No. 134718, August 20, 2001
- [40] p. 416, Civil Code of the Philippines Annotated by Edgardo L. Paras (+), Volume Four, 17th Ed. 2012, Rex Book Store
- [41] Garcia v. Villar, G.R. No. 158891, June 27, 2012
- [42] TSN, July 11, 2011, p. 9
- [43] G.R. No. 189871, August 13, 2013

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