

TOMASITA BUCOY, PLAINTIFF-APPELLANT VS. REYNALDO PAULINO, ET AL., DEFENDANTS, REYNALDO PAULINO AND EUFEMIA BERNARDO CRAMER, DEFENDANTS-APPELLANTS, LEOPOLDO PAULINO, INTERVENOR-A...*G.R. No. L-25775. April 26, 1968*

Ponente: SANCHEZ, J.

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Plaintiff Tomasita Bucoy and defendant Reynaldo Paulino were married on October 29, 1936. The husband occupied himself with the business of buying and selling PX goods, second hand cars and household appliances with the help of his wife. With their savings, they acquired seven parcels of land in Angeles, Pam-panga: six lots, Lots 11, 12, 13, 14, 15 and 16, in 1960; and one lot, Lot 10, in 1962 — all from Severina Realty Corporation, on installment basis.

In 1961, the spouses commenced the construction of Pauline's Motel on the six lots. This motel was opened for business in July of 1962, was in full operation with 33 equipped rooms by August of the same year. As funds were not sufficient, some materials in the construction as well as the motel furnishings were obtained on credit. Amongst the creditors was intervenor Tinio Lumber Company, Inc. The couple, too, had to draw additional funds from intervenor Leopoldo Paulino, father of Reynaldo. Reynaldo also had to borrow from his co-defendant Eufemia Bernardo.

On the seventh lot (Lot 10) beside the motel, intervenor Leopoldo Paulino put up a bar, Pauline's Cavern, with his own money. Pauline's Cavern opened for business in January of 1963.

In the latter part of 1957, defendant Reynaldo Paulino was following up his father's loan with the GSIS in Malacañang. There, he met defendant Eufemia Bernardo, heretofore mentioned, single, who was a college student taking the foreign service course in the University of the Philippines, at the time social secretary to the First Lady. Soon, relations between Reynaldo and Eufemia became intimate. Eufemia and Reynaldo even went to Hongkong, brought back articles which were disposed of at a profit. Eufemia ingratiated herself to the parents and relatives of Reynaldo, who obtained favors from her. As early as 1958, Eufemia knew that Reynaldo was a married man. She did not mind playing second fiddle to the legitimate wife. In February of 1963, she, however, did stop the tracks of another woman who appeared to show interest in Reynaldo.

Back to the spouses Tomasita Bucoy and Reynaldo Paulino. Following their marriage, they took up residence in Cavite City. Apparently by reason of their buy-and-sell business, Reynaldo frequented Angeles City, while Tomasita remained in Cavite City.

Reynaldo had varied interests. He was an actor in the movies, became a lawyer in 1957, at one time a BIR investigator, and in late 1962 entered movie production through Pauline's Productions, Inc. It was only in 1959 that Tomasita started staying in Angeles City, although she made trips to Cavite City.

Through remarks made by friends of Reynaldo, Tomasita became aware of the extra-legal relationship between her husband and Eufemia Bernardo. She, too, came upon a letter dated May 1, 1961, addressed by Eufemia to Reynaldo with a complimentary close, "I love you — Femy".

On August 23, 1962, the Torrens title (TCT 30215-R) to the six lots (Lots 11, 12, 13, 14, 15 and 16) was obtained in the name of Reynaldo Paulino, following registration of the deed of sale of the same date executed in his favor by Severina Realty Corporation.

With the help of Eufemia Bernardo who is known to the Philippine Commercial and Industrial Bank (PCIB), Reynaldo Paulino obtained from said bank two real estate mortgage loans with the six lots (TCT 30215-R) as collateral: The first for P200,000 on December 12, 1962; and the second on January 2, 1963 for P50,000. On May 3, 1963, a third mortgage for P50,000 was executed on the seventh lot (Lot 10) covered by TCT 32919-R issued to Reynaldo Paulino on April 4, 1963.

Upon the release of this third loan on May 6, 1963, the entire amount thereof was credited by PCIB to the account of Eufemia Bernardo. Reason for this is that for the construction of the motel, Reynaldo borrowed from Eufemia a total of P105,000. And, the amount of P50,000 (proceeds of the third loan) was added to the P55,000 theretofore paid by Reynaldo To Eufemia, to liquidate the said P105,000-loan.

Tomasita Bucoy took part in the management of Pauline's Motel. She kept tab of the daily receipts since the motel opened for business in July, 1962 until February, 1963.

It was in this month — February, 1963 — that Tomasita Bucoy saw Eufemia Bernardo inside Pauline's Motel^[1] and learned that she was occupying a room therein with the consent of her husband, Reynaldo Paulino. Tomasita left for Cavite City and resided with her parents.

From here on, events happened in rapid succession. Reynaldo Paulino was beset by troubles. He had to pay numerous creditors. There was the quarrel with his wife to cope with. He decided to dispose of the properties. He turned to Eufemia Bernardo to look for buyers. A power of attorney in her favor was drafted in May, 1963. This remained unsigned. Because Eufemia decided to purchase the properties herself. Meanwhile, Eufemia stayed in the motel, received its income when Reynaldo was not around.

So it is, that on June 18, 1963, two deeds of absolute sale were executed by Reynaldo Paulino in favor of Eufemia Bernardo; one, covering the six lots, recites a consideration of P470,000; and the other, the seventh lot, for P25,000, both including the improvements thereon. In these two conveyances, a common provision appears.

"That the vendee do(es) hereby accept this Deed of Absolute Sale, and agree to all the conditions provided herein, and further, binds herself to assume any and all existing obligations which herein vendor has at the time of the execution of this deed pertaining to the property subject matter of this instrument." ^[2]

Upon the execution of these two documents, Eufemia Bernardo issued two checks purportedly as partial payment: one for P50,000 in favor of Reynaldo Paulino; and another for P48,500 payable to Leopoldo Paulino for the latter's advances in the construction of Pauline's Motel. To be noted is that at the back of both checks, Eufemia Bernardo wrote the following condition: "This checks shall be due upon the counter-signature below of the maker." Both checks were never countersigned, never cashed.

On July 1, 1963, Eufemia Bernardo executed a real estate mortgage on all the seven lots in favor of PCIB to guarantee a principal obligation of P195,000. Parenthetically, this mortgage was confirmed in a "Confirmation of Real Estate Mortgage" executed by Eufemia Bernardo in favor of PCIB on March 23, 1964, long after the present suit was started.

After the July 1 mortgage for P195,000 was executed by defendant Bernardo, PCIB noted that both documents of sale of June 18 aforesaid stipulated an assumption by Eufemia Bernardo of obligations in favor of third parties and that the obligation in favor of PCIB was not clearly stated. Another deed, with the bank's specifications, was thereupon prepared. The deeds of June 18, 1963 were not registered.

Accordingly, a new deed of sale with assumption of the PCIB mortgages over the same seven lots described in the two June 13, 1963 conveyances, was executed by Reynaldo Paulino in favor of Eufemia Bernardo on July 15, 1963, stipulating:

“Now, therefore, for and in consideration of the total amount of Four Hundred Ninety Five Thousand Pesos (P495,000), Philippine Currency, of which the One Hundred Ninety Five Thousand Pesos (P195,000), Philippine Currency, is hereby acknowledged to have been received in cash by the Vendor and the remaining balance of Three Hundred Thousand Pesos (P300,000.00), Philippine Currency, to be in the form of Assumption of the Mortgages above-mentioned, the Vendor by these presents, hereby sells, transfers and conveys unto and in favor of the Vendee, [her] successors and assigns, the afore-described parcels of land together with the improvements thereon, free from all liens and encumbrances, except, [that] the Real Estate Mortgages which are annotated on the back are assumed herein.”[3]

Both the real estate mortgage of July 1, 1963- executed by Eufemia Bernardo in favor of PCIB and the July 5, 1963 deed of sale with assumption of mortgages executed by Reynaldo Paulino and Eufemia Bernardo were recorded in the Office of the Register of Deeds on July 8 following. And, new transfer certificates of title (No. 33899-R for the six lots, and No. 33900-R for the seventh) were issued to Eufemia Bernardo. Recorded on these two titles, in addition to the three previous mortgages, is the mortgage of July 1, 1963 for P195,000.

On the same day — July 5, 1963 — Eufemia Bernardo married Richard Cramer, a serviceman in the American armed forces. Elated at learning this, Tomasita Bucoy made a trip in August to Angeles City. There, Tomasita learned- of the sale of the properties.

All these events culminated in the filing by Tomasita Bucoy of a complaint with the Court of First Instance of Pampanga[4] on September 19, 1963 seeking annulment of the deed of sale with assumption of mortgages of July 5, 1963 and the cancellation of the titles issued in favor of Eufemia Bernardo. Plaintiff predicated her action upon Article 173 of the New Civil Code. Eufemia Bernardo and Reynaldo Paulino were made party defendants.

Traversing the complaint, Eufemia Bernardo avers that she is a purchaser for value in good faith who relied on the titles of Reynaldo Paulino; and that even on the assumption that the allegations of the complaint were true, plaintiff, by availing herself of the proceeds of the contract, has ratified the transaction between said defendant and her co-defendant Reynaldo Paulino.

Reynaldo Paulino, upon the other hand, filed a cross-claim against Eufemia Bernardo, his co-defendant. He charges his co-defendant's refusal to pay the consideration, and fraud and misrepresentation, and seeks rescission of the two deeds of sale of June 18, 1963, and the annulment of the deed of sale with assumption of mortgages of July 5, 1963.

The following parties intervened: Leopoldo Paulino (and his wife, Virginia D. Paulino), alleging ownership of “Pauline's Cavern” and part ownership of “Pauline's Motel”; Tinio Lumber Co., Inc., upon a prior money judgment in its favor against Reynaldo Paulino; and PCIB, praying that defendant Reynaldo Paulino be made to pay the loans secured by the four mortgages heretofore mentioned in the total sum of P495,000, plus interests due, should the court “finally render judgment in favor of plaintiff.”

On June 28, 1965, after trial, the lower court rendered judgment, viz:

“WHEREFORE, the Court orders:

(1) Plaintiff's complaint for annulment dismissed;

(2) Defendant Reynaldo Paulino's cross-claim for P182,000.00 against Eufemia Bernardo granted. The latter shall pay the spouses Reynaldo Paulino and Tomasita Bucoy the said amount within thirty (30) days after the decision becomes final;

(3) Failure on the part of defendant Bernardo to pay the spouses Reynaldo Paulino and Tomasita Bucoy and the intervenor Tinio Lumber Company Incorporated within the period of thirty (30) days, the court orders the contract of sale dated July 5, 1963, Exhibit 6-Bernardo, rescinded; the parties shall be restored to their status quo prior to July 5, 1963, without prejudice [to] the above-mentioned real estate mortgages in favor of the Philippine Commercial and Industrial Bank;

(4) That defendant Bernardo shall pay Tinio Lumber Company Incorporated the sum of P13,568.00 with twelve (12%) per cent interest per annum and twenty-five (25%) per cent of the unpaid amount as atorney's fees within the same period of thirty (30) days;

(5) That the real estate mortgages of these properties in favor of the Philippine Commercial and Industrial Bank to secure the amount of P495,000.00 loan extended to Reynaldo Paulino and Eufemia Bernardo are considered valid and subsisting on said properties;

(6) That Reynaldo Paulino shall pay Leopoldo Paulino the sum of P95,000.00 out of the unpaid purchase price of P182,000.00 due from Eufemia Bernardo;

No pronouncement as to costs.”[5]

Upon motions for reconsideration filed by Tomasita Bucoy, Reynaldo Paulino, and Eufemia Bernardo, the court, on September 29, 1965, issued a supplemental decision, the dispositive part which reads:

“Conformably to the foregoing considerations, the dispositive part of the decision dated June 28, 1965, is hereby supplemented to read as follows:

1. That defendant, Eufemia Bernardo, shall pay an interest of 6% per annum [on] the sum of P182,000.00 from the date of the decision, June 28, 1965, until full payment to the spouses Tomasita Bucoy and Reynaldo Paulino.

2. That the appointment of a receiver is hereby denied.

3. That status quo continues — Bernardo continues the possession of the motel; Leopoldo Paulino of the Cavern, until the latter shall receive the sum of P50,000.00 out of the P182,000.00, above-mentioned when he vacates the Cavern in favor of Eufemia Bernardo, who will be placed in possession of said Cavern;

4. That the defendant Eufemia Bernardo's bond shall expressly assume to pay the sum of P182,000.00 together with the 6% interest if the decision is affirmed; defendant Bernardo shall file said bond of P200,000.00[6] with sufficient and good surety to be approved by the Court within ten (10) days from receipt of this supplemental decision.”[7]

From the foregoing decisions, plaintiff Tomasita Bucoy, defendant Reynaldo Paulino, and defendant Eufemia Bernardo appealed,

1. The lower court properly found that the properties involved in this litigation are conjugal. The lands were acquired and the improvements thereon were constructed during the marriage of Tomasita Bucoy and Reynaldo Paulino. By Article 160 of the Civil Code, all the property of the marriage is presumed to belong to the conjugal partnership, “unless it be proved that it pertains exclusively to the husband or to the wife.” Defendant Eufemia

Bernardo, who broached the question regarding the nature of the properties in litigation in her answer to the wife's complaint, failed to offer any evidence that would rebut the presumption that the properties are conjugal. Registration alone of the properties in the name of the husband does not destroy the conjugal nature of the properties.[8]

This brings us to the question: Why were Torrens titles No. 30215-R covering the six lots and No. 32919-R for the seventh lot all in the name of Reynaldo Paulino alone as "single"?

It is to be recalled that during the time that Eufemia Bernardo and Reynaldo Paulino were having their extramarital relations, the former advanced to the latter sums of money totalling P105,000. This is admitted by both defendants. To protect the loan of P105,000 given by Eufemia Bernardo, and fad with a threat that she would not help Reynaldo Paulino procure loans with PCIB if in the deed of sale dated August 23, 1962 executed by Severina Realty Corporation in favor of Reynaldo Paulino the typewritten word "married" is not cancelled and substituted with "single", Reynaldo's resistance broke down. He was prevailed upon to take out titles in his name as "single". Although, of course, Eufemia Bernardo all along knew that Reynaldo Paulino was married to Tomasita Bucoy.

It is well to remember that in the contracts to sell with the Severina Realty Corporation, -the documents were in the name of Reynaldo Paulino, married to Tomasita B. Paulino.

But, Reynaldo had to yield. Thus it is, that in the deed of sale executed by Severina Realty Corporation on August 23, 1962 covering the first six lots, the typewritten word "married" after Reynaldo Paulino had to be crossed out and substituted in ink with the word "single". Similarly, in the second deed of sale covering the seventh lot executed by the same corporation on the 4th of April, 1963, Reynaldo Paulino was there mentioned as single, in spite of the fact that the contract to sell covering the same lot recited that he was married to Tomasita Paulino." And finally, when the mortgages in favor of PCIB and the deeds of sale in favor of Eufemia Bernardo were executed by Reynaldo Paulino, he appeared as "single".

2. It is on the issue of estoppel that we next address ourselves. Specifically, we are asked to reverse the ruling below that plaintiff is in estoppel to assail the deed of sale with assumption of mortgages dated July 5, 1963 as against Eufemia Bernardo.

The trial court lined up against Tomasita Bucoy the alleged fact that "plaintiff tolerated the husband's name to remain in the titles" and "never lifted a finger to correct such titles." [9]

Of course, plaintiff knew of the initial acquisition of the lands upon the two contracts to sell from Severina Realty Corporation. But did she really have knowledge that the titles were taken out in the name of her husband Reynaldo Paulino as "single"? It would seem unnatural for a wife who already was aware of her husband's infidelity to give her assent to the Torrens titles to the properties being taken in his name as "single". That is quite of-fensive to her intelligence; she is a Bachelor of Music graduate.

One thing, of course, is for a wife to suffer in silence the marital indiscretions of the husband. As we weigh this behaviour of the wife in the scales of domestic relations values, we perceive nothing wrong with it. But to say that she would permit her husband to take the titles to their properties as single is another thing. She must either be stupid, which She is not; or, she must be in collusion with her husband, which is not the case.

The truth of the matter is that it was quite impossible for Tomasita to know the exact wording in the titles taken in the name of her husband, because after the deeds of sale of August 23, 1962 and April 4, 1963 were executed and the titles taken out, those titles were immediately presented to and deposited with PCIB, for purposes of securing the required loans. They were never shown to the wife.

Nor is it proper to charge plaintiff with knowledge of the sale of the properties by Reynaldo Paulino to his co-defendant Eufemia Bernardo. At that time, the relations between husband and wife were already strained. Precisely, on the dates of the two documents of sale of June 18, 1963 and that of July 5, 1963, plaintiff was already living with her parents in Cavite. We have no difficulty in saying that no wife would consent to the sale of property worth a big fortune to her husband's paramour. Tomasita's un rebutted evidence, we should add, is that she was only informed of the sale when she went to Angeles City in August of 1963 after which she lost no time in verifying the information resulting in the present suit.

The familiar elements of estoppel in pais are: (1) there must have been a representation or concealment of material facts; (2) the representation must have been made with knowledge of the facts; (3) the party to whom it was made must have been ignorant of the truth of the matter; and (4) it must have been made with the intention that the other party would act upon it.[10] Appropriately to be considered here is Article 1437 of the Civil Code, which reads:

"ART. 1437. When in a contract between third persons concerning immovable property, one of them is misled by a person with respect to the ownership or real right over the real estate, the latter is precluded from asserting his legal title or interest therein, provided all these requisites are present:

- (1) There must be fraudulent representation or wrongful concealment of facts known to the party estopped;
- (2) The party precluded must intend that the other should act upon the facts as misrepresented;
- (3) The party misled must have been unaware of the true facts; and
- (4) The party defrauded must have acted in accordance with the presentation."

Plaintiff has concealed no material facts. She made no representation at all. And, even on the assumption that plaintiff really knew that the titles were taken out by Reynaldo Paulino as single and that the latter, as such, conveyed the properties to Eufemia Bernardo, no proper legal conclusion may be drawn against her as one in estoppel. For; clearly there was no necessity on her part to disclose or assert facts or rights to defendant Eufemia Bernardo. Because, said defendant was not a trusting victim; she was not misled; she knew all along that her lover, Reynaldo Paulino, was married to plaintiff. Her knowledge was not merely constructive; it was actual. And if Reynaldo Paulino appears in the titles and deeds as single, this fact came about because this defendant, who now claims estoppel, precisely wanted it to be that way for the purpose of insuring payment of the loans — totalling P105,000 — she granted to her co-defendant. In truth, with Reynaldo Paulino appearing as "single" in the titles, his wife was written off from the transactions in connection therewith; it was quite an easy matter for Reynaldo alone to execute — as he did — contracts on the properties to insulate Eufemia Bernardo from loss on her loans, without the wife's intervention and to the latter's prejudice. In fact, after the third mortgage of May 3, 1963 was executed by Reynaldo Paulino, the entire amount of that loan — P50,000 — was credited by PCIB to the account of Eufemia Bernardo, in final payment of the total amount of P105,000 borrowed by Reynaldo from her. There was no bad faith on plaintiff's part.

The net result is that as against defendant Eufemia Bernardo, plaintiff Tomasita Bucoy is not in estoppel. On the contrary, this case is a prime example of a third party — defendant Bernardo — who was not misled into dealing with an apparent owner.[11] She acquired the properties in question in bad faith.

3. Adverted to elsewhere in this opinion is that plaintiff's suit against defendants is to enforce her right upon the provisions of Article 173 of the Civil Code, thus:

"ART. 173. The wife may, during the marriage, and within ten years from the transaction questioned, ask the courts for the annulment of any contract of the husband entered into without her consent, when such consent is required, or any act or contract of the husband which tends to defraud her or impair her interest in the conjugal

partnership property. Should the wife fail to exercise this right, she or her heirs, after the dissolution of the marriage, may demand the value of the property fraudulently alienated by the husband.”

As we go into the legal history of Article 173 of the Civil Code, we find a marked difference between the same and its predecessor, Article 1413, paragraph 2, of the Spanish Civil Code, which provides that:

“Nevertheless, no alienation or agreement which the husband may make with respect to such [conjugal] property in contravention of this code or in fraud of the wife shall prejudice her or her heirs.”

Where the old codal precept (Article 1413, par. 2, just quoted) speaks of prejudice to the wife or her heirs in an alienation “in contravention of this code,” such prejudice to the wife is eliminated in Article 173 of the new Civil Code when it comes to a contract “entered into without her consent.” The obvious reason is that such consent is now required under Article 166 of the new Civil Code; whereas, under the provisions of the first paragraph of Article 1413 of the Spanish Civil Code, the husband, in addition to his power as manager, “may for a valuable consideration alienate and encumber the property of the conjugal partnership without the consent of the wife.” As the statute now stands, the right of the wife is directed at “the annulment of any contract,” referring to real property of the conjugal partnership^[12] entered into by the husband “without her consent.”

The plain meaning attached to the plain language of the law is that the contract, in its entirety, executed by the husband without the wife's consent, may be annulled by the wife. Had Congress intended to limit such annulment in so far as the contract shall “prejudice” the wife, such limitation should have been spelled out in the statute. It is not the legitimate concern of this Court to recast the law. As Mr. Justice Jose B. L. Reyes of this Court and Judge Ricardo C. Puno of the Court of First Instance correctly stated, “[t]he rule (in the first sentence of Article 173) revokes *Baello vs. Villanueva*, 54 Phil. 213 and *Coque vs. Navas Sioca*, 45 Phil. 430,” in which cases annulment was held to refer only to the extent of the one-half interest of the wife.^[13] The two deeds of sale of June 18, 1963 and the deed of sale of July 5, 1963 are null and void in toto^[14] — as against Eufemia Bernardo.

The necessity to strike down the contract of July 5, 1963 as a whole, not merely as to the share of the wife, is not without its basis in the common-sense rule. To be underscored here is that upon the provisions of Articles 161, 162 and 163 of the Civil Code, the conjugal partnership is liable for many obligations while the conjugal partnership exists. Not only that. The conjugal property is even subject to the payment of debts contracted by either spouse before the marriage, as those for the payment of fines and indemnities imposed upon them after the responsibilities in Article 161 have been covered (Article 163, par. 3), if it turns out that the spouse who is bound thereby, “should have no exclusive property or if it should be insufficient.” These are considerations that go beyond the mere equitable share of the wife in the property. These are reasons enough for the husband to be stopped from disposing of the conjugal property without the consent of the wife. Even more fundamental is the fact that the nullity is decreed by the Code not on the basis of prejudice but lack of consent of an indispensable party to the contract under Article 166.

Plaintiff's right to the annulment of the July 5, 1963 deed, as against Eufemia Bernardo, is on two grounds: First. There is the fact that the sale was entered into by the husband without the wife's consent. Second. That contract also “tends to defraud her” and “impair her interest in the conjugal partnership property.” Right from the time Eufemia Bernardo prevailed upon her co-defendant Reynaldo Paulino to place the titles to the conjugal property in the name of the latter as “single,” through the three mortgages in favor of PCIB in which Eufemia Bernardo intervened and the two sales of June 18, 1963, to the last sale of July 5, 1963, there was the deliberate intent to oust plaintiff from her interest in the conjugal property.

It is true that defendant Bernardo asserted in her answer that even granting that the averments of the complaint are true, plaintiff is not entitled to an annulment of the sale in question upon the claim that plaintiff availed herself of

the proceeds or benefits of the contract. But, there is no evidence that plaintiff Tomasita Bucoy benefited in any way from that transaction.

Accordingly, we rule that plaintiff is entitled to annul in their entirety the sales in all the deeds of sale executed by Reynaldo Paulino in favor of his co-defendant Eufemia Bernardo.

4. The argument that the two deeds of sale of June 18, 1963, as well as the deed of sale of July 5, 1963, are all tainted with fraud and were executed without the payment of the consideration due Reynaldo Paulino, to our mind, deserves careful scrutiny. For, written documents offer no shield against the true and real intent and agreement of the parties. It ill behooves defendant Bernardo to justify non-liability by reliance on the wording of the deed of July 5. Her argument collapses from the ineluctable logic of the circumstances hereinafter to be recited.

It is conceded in all quarters that at the time the two deeds of sale for a total of P495,000 were signed on June 18, 1963, no money crossed hands from vendee to vendor. The record discloses that all along it was the intention of the parties that Eufemia Bernardo would procure an additional loan of P195,000 from PCIB and turn over the proceeds thereof to Reynaldo Paulino, and to intervenor Leopoldo Paulino who also had given out money for the motel project.

Paragraph 6 of the answer in intervention of PCIB stoutly lends support to this view. Says the bank:

“6. It denies the allegations of par. 9 for the reasons stated in par. 4 hereof; answering Intervenor further alleges that defendant Bernardo assumed the outstanding obligation of defendant Paulino in the total sum of P300,000.00 in favor of answering Intervenor and has obtained a further loan of P195,000.00 from answering Intervenor, likewise secured by the properties subject matter of the complaint, the proceeds of which loan was to pay the balance of the purchase price of the properties under the Deed of Sale with Assumption of Mortgage.”[15]

And yet, the said documents of June 18, 1963 speak of the money “receipt of which in full is hereby acknowledged and confessed to my entire satisfaction.”

Likewise, in pursuance of defendant Reynaldo Paulino’s desire to extricate himself from the pressure of his creditor, it was specifically stipulated in the deeds of June 18, 1963 that the vendee (Bernardo) was to assume all existing obligations of Reynaldo Paulino pertaining to the property sold.

Eufemia Bernardo got the loan on July 1, 1963. But, the two deeds of sale of June 18 were not registered. Because, as aforesaid, PCIB objected to the assumption by Eufemia Bernardo, this time its mortgagor, of other obligations, and the obligation in favor of the bank was not clearly stated. Eufemia Bernardo asked the notary to destroy the June 18 documents. She went back to see Reynaldo Paulino at the latter’s office, Aurea Bldg., Rizal Avenue, Manila, in the afternoon of July 5, 1963. After kissing Reynaldo, she told him to sign the new deed of sale (July 5, 1963) upon the excuse that she wanted to save on insurance premium. She misrepresented to Reynaldo that the document of July 5 is substantially similar in terms to the two previous documents of June 18.[16] Reynaldo was then busy paying his employees. He did not have the chance to examine the document carefully. He signed it on the strength of Eufemia’s word.

The deed of sale of July 5, 1963 paved the way for the subsequent acts of Eufemia Bernardo. On July 8, 1963, she assured herself by recording that deed of July 5 and the July 1 mortgage, and procuring titles in her name; then married Cramer on the same day — July 8. Thereafter, in answer to Reynaldo’s letter of September 4, 1963 demanding payment of the balance of the purchase price and reformation of the deed, Eufemia for the first time adopted a stiff attitude and wanted to pin Reynaldo down to the terms of the deed of July 5, 1963, when she said:

“... I have no desire to change the terms of our deed of sale because to do so would be injecting conditions not previously agreed upon by us into the document. In the second place the sale has been consummated with the delivery of the property to me and the registration of the instrument of sale with the Register of Deeds of Pampanga and the corresponding transfer of the titles to the property in my name. Therefore, there is nothing more that could or should be done.”[17]

“I am not a lawyer. I do not profess to know the law. But, will you not agree with me that when an agreement is reduced in writing, the writing is the best evidence of that agreement? Do you not agree that in this jurisdiction the document is always the best evidence of all terms, conditions and stipulations precedent to or contemporaneous with the execution of the document?”[18]

When confronted, in the cross-claim of Reynaldo Paulino, with the transactions of June 18, 1963, Eufemia Bernardo asserted in paragraphs 2, 3 and 4 of her answer to the said cross-claim[19] that what was prepared on June 18 was merely the “draft” of the contract of sale with assumption of mortgage; that what was signed by the parties as the deed of sale of July 5, 1963 was the same draft prepared on June 18, 1963; and that that deed of sale signed on July 5, 1963 was the “only one (1) contract of sale with assumption of mortgage entered into between the cross-claimant and cross-defendant.”[20] In court, Eufemia Bernardo at first declared that “there was no definite deed of sale before July 5, except that one.”[21] Apparently confident that the deeds of June 18, 1963 were destroyed by the notary, she denied in court that there was ever any understanding between her and Reynaldo about her assumption of the obligations to third persons. But when one of the two deeds of sale of June 18, 1963 — the deed covering the six parcels — was shown her, she repeated that it was but a draft. It was, however, signed by her; it was notarized. And, she admitted her signature thereon.

Other circumstances there are which would clearly indicate that Reynaldo Paulino would not have parted with that property unless his obligations in reference to the same were all assumed by Eufemia Bernardo. Before the deeds of June 18 were executed, Eufemia knew all along who were Reynaldo’s creditors. Her checks, Exhibits 20, 20-A to 20:D (Bernardo), issued by her in payment of the obligations of Reynaldo to those creditors are sufficient evidence of that fact. The land and building were assessed at more than P500,000. The loan value given by the bank is P495,000. Surely enough, the sales price must have included not only the P495,000 but also the obligations aforesaid.

It is clear then that the foregoing acts of Eufemia Bernardo were calculated to enable her to escape from her liability under the arrangement to pay the third parties. She really wanted the deed of sale of July 5, 1963 to cloak such intent with a mantle of legality.

Upon the execution of the deed of sale of July 5, 1963, neither was the consideration of P195,000 paid by Eufemia Bernardo to Reynaldo Paulino. Says the court below on this point:

“Considering the established facts on record, the Court opines that defendant Bernardo has not fully paid the remaining purchase price of P182,000.00 to her co-defendant Reynaldo Paulino. These circumstances are the basis of such conclusion, to wit:

First, — While Bernardo was issuing checks right and left in favor of Reynaldo Paulino, she could not produce proof that she issued checks covering such remaining amount of the purchase price in the sum of P182,000.00 in favor of Reynaldo Paulino;

Second, — The records of the Philippine Commercial and Industrial Bank could have been produced to show whatever checks were issued by Eufemia Bernardo in favor of Reynaldo Paulino if the former made efforts to bolster her contention. She did not make such move.

Third, — Reynaldo Paulino signed that deed of sale (Exhs. 3-Paulino) over the same properties on June 18,

1963, without receiving the cash purchase price of P195,000.00. Is it not also true that he signed the deed of sale, July 5, 1965, Exhibit 6-Bernardo, because of the agreement that the P195,000.00 cash should be paid by Bernardo when she obtained the same from the PCIB? This was the agreement between Paulino and Bernardo at the time Exhibit 3-Paulino was executed on June 18, 1963.

If it were true that Bernardo paid in full the purchase price of P195,000.00 in cash on or before July 5, 1963, when the deed of sale with assumption of mortgage was signed by Reynaldo Paulino, why did she not demand for the return of those two checks in the amount of P98,500.00 from Paulino? Those checks are still in the possession of Reynaldo Paulino, because the amount P98,500.00 stated in those checks has not been delivered to him.

Fourth, — Leopoldo Paulino is still in the possession, enjoyment and use of the Cavern. If it were true that the total amount of P195,000.00 was already paid, then Leopoldo Paulino should have already received the sum of [P95,000.00] out of the purchase price as admitted by his son, Reynaldo. The fact that Leopoldo is still in operation of the Cavern built in one of the seven lots sold to Bernardo is a stubborn fact that the total purchase price of P195,000.00 in cash has not been paid by Bernardo until now.

Fifth, — No other credible witnesses were presented by Bernardo during the trial to corroborate that the payment of P195,000.00 in cash was already received by Reynaldo Paulino. Instead the Philippine Commercial and Industrial Bank's records disclosed that an amount of P194,500.00 was credited in her favor only beginning July 9, 1963, until October 24, 1963. These figures corroborated Reynaldo Paulino's testimony that Bernardo had really no money when he signed the deed of sale, but they made it appear in the deed of sale that the full amount of P195,000 in cash was received by the vendor Reynaldo Paulino to enable Bernardo, the vendee, to obtain that loan of same amount from the PCIB. If it were true that Bernardo obtained his loan of P195,000.00 to pay her creditors who advanced the cash to her [to] pay Reynaldo Paulino, she could present those creditors from whom she obtained the money or produced those checks she paid to them. She did not present any witness to corroborate her testimony on this point and no checks were presented during the trial.

The foregoing circumstances are cogent reasons to warrant the conclusion that the P195,000.00 purchase price in cash was not fully paid by Eufemia G. Bernardo, the vendee, to Reynaldo Paulino, the vendor until now.”[22]

In reality, on the question as to whether the P195,000 as stated in the July 5 deed was paid in cash, Eufemia Bernardo was blowing hot and cold. First, her claim was that upon that deed the consideration of P195,000 was “acknowledged to have been received in cash.” She told the court that after the July 5 deed of sale was executed, the P195,000 “was received by him [Reynaldo Paulino] in cash”; “[h]e received the P195,000 in cash.”[23] Her theory was that that cash was obtained by her from “friends and relatives.” Asked if she could give the names of the persons from whom she received the cash, her answer was: “I cannot give you the exact names; I do not remember, because there are so many persons from whom I obtained the loans.”[24] Then, she amended her testimony to state that on July 5, 1963, she only paid him “around P150,000.00, sir”;[25] afterwards, to say that she gave P35,000.00 in advance and P160,000.00 “[a]round that date, around that month.”[26] Queried as to where she gave Reynaldo Paulino P160,000, she first declared “[s]ome of it in our house, some of it in the bank.”[27] But even as to this P160,000, she gave conflicting answers. When asked where she got the P160,000, her answer was, “some of it from my credit line in the bank.”[28] And notice this answer of defendant:

“Q. You mean to say, Mrs. Cramer, that all this P195,000.00, which you allegedly paid on or before July 5, 1963, was borrowed from friends and relatives?

A. Oh, yes.”[29]

To cap these all, her answer to the complaint reads:

“9. That the cross-defendant specifically denies the truth of the allegations of paragraph ‘9’, the truth being

that as the document (Annex 'A') states the amount of P195,000.000 was paid by her in cash to the cross-claimant and therefore she could not have assumed to pay any obligation in favor of the cross-claimant's father, Leopoldo Paulino.'[30]

The evidence — clear, convincing and more than merely preponderant — thus demonstrated that all the money that was received by defendant Reynaldo Paulino from his co-defendant Eufemia Bernardo after the July 5 sale of the properties — as found by the court below — was a total sum of P13,000 “for the purchase of a car.”[31]

The pattern of conduct observed by defendant Bernardo in connection with the transactions reveals unquestionably the intention to defraud. She saw to it that the title to the six lots be in the name of Reynaldo Paulino as “single”. On the strength of that title, she got herself paid with a mortgage thereon. She got the deeds of June 18 from Reynaldo alone — without payment. Except of course the two checks totaling P98,500 — which could not be as they were not cashed — for she had to countersign them, which she did not. These two checks obviously were but a deceitful palaver. She told the notary to destroy the documents of June 18. Then, she repudiated her covenant of June 18 to pay Reynaldo Paulino's obligations to third persons. She procured from him the deed of sale of July 5, 1963. She sought refuge in that document of sale to throw overboard her obligation to pay in full P195,000. When Reynaldo affixed his signature to this last document of July 5, 1963, there was great probability that she had already made up her mind to junk him. For, three days thereafter (on July 8), she did two things: (1) she assured herself of Torrens titles in her name; and (2) married her present husband, Richard Cramer. Had Reynaldo on July 5 known that Eufemia was soon to get married, unquestionably, he would not have trusted her with the future payment of the P195,000 to be taken from the proceeds of a loan to be obtained from the bank. A quondam lover, he could not have done so if only out of pride. The hurt of it all came with the release by PCIB to Bernardo of the total sum of P195,000. Even with this money, Bernardo did not bother — she refused — to pay. That refusal was coupled with her adamant attitude that, by the wording of the deed of July 5, she could not be held to pay; so she did not. Certainly, she cannot have the property and fraudulently refuse payment to the vendor. *Fraus et jus nunquam cohabitant*.

5. Flowing from the foregoing facts is the right accorded defendant Reynaldo Paulino by Article 1390 (2) of the Civil Code, to annul the two deeds of sale of June 18, 1963 and the deed of sale of July 5, 1963. For, his consent to those documents is vitiated by “undue influence or fraud.” There was no ratification of said contracts.[32] On the contrary, Reynaldo Paulino wants them stricken out.

6. On the assumption that there was no fraud, nonetheless, there is failure to pay the price agreed upon. The deeds adverted to recite reciprocal obligations. The property sold was turned over to defendant. Upon the broad principles set forth in the law of obligations, the right of Reynaldo Paulino to rescind the contracts is implied. This he has chosen to seek in his cross-claim.[33]

But, the lower court's decision gave defendant Eufemia Bernardo thirty (30) days, after the decision becomes final, to pay the P182,000, failing which, the contract of sale of July 5, 1963 shall be rescinded. The court implicitly applied the third paragraph of Article 1191 of the Civil Code, which says that “[t]he court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.” The record, however, is bereft of a just cause.

And then, considering the fact that the sale involves real property, the specific provision in Article 1592 of the Civil Code governs. Says Article 1592:

“ART. 1592. In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made

upon him either judicially or by a notarial act. After the demand, the court may not grant him a new term.”

There was a judicial demand; hence, “the court may not grant him a new term.” Article 1592 is an exception to the general rule set forth in the third paragraph of Article 1191. Where then, as here, the sale involves immovable property, “it is not within the scope of article 1191, but is subordinated to the stipulation made by the contacting parties and to the provisions of this article” (1592).[34]

7. We now come to the answer in intervention filed by PCIB.

Nothing in the record would show that when the bank gave out money on the security of the three mortgages amounting to P300,000, said bank had knowledge of the fact that the mortgagor, Reynaldo Paulino, was married instead of single, the civil status which appeared in the titles given as collateral. By accepting the mortgage of July 1, 1963 for the additional P195,000 executed by Eufemia Bernardo in its favor, the bank is not to be tagged with bad faith. At that time, the bank had before it the two deeds of June 18, 1963 executed by Reynaldo Paulino in favor of Eufemia Bernardo covering all the seven lots then mortgaged to the bank. If later on those two deeds became unacceptable to the bank resulting in the deed of sale of July 5, 1963 executed by the same Reynaldo Paulino in favor Eufemia Bernardo, this circumstance alone would not amount to bad faith. For, as in the previous deeds, there was no change in the status of Reynaldo Paulino, as appearing in his Torrens titles. In fact, the bank was careful enough not to release the amount until after both the additional mortgage of July 1, 1963 and the deed of July 5, 1963 were recorded in the Register of Deeds and annotated on the titles.

Correctly then did the trial court, in its decision, state that those mortgages amounting to P495,000 in all are “considered valid and subsisting on said properties.”

No pronouncement may be made on the bank’s prayer that Reynaldo Paulino be made to pay the loans in favor of the bank. There is no evidence on the amount due. At any rate, the bank itself, in its brief, merely seeks affirmance of the judgment.

8. This leads us to the claim of the two sets of intervenors, Leopoldo Paulino and his wife and Tinio Lumber Co., Inc. Having reached the conclusion that the two deeds of sale of June 18, 1963 as well as the deed of sale of July 5, 1963 are null and void, it necessarily follows that defendant Eufemia Bernardo is not liable for any claim by third parties on the properties covered thereby. Both intervenors should then seek relief from Reynaldo Paulino.[35]

9. Since the sales are annulled, the parties thereto are to be governed by Article 1398 of the Civil Code where under they “shall restore to each other the things which have been the subject matter of the contract, with their fruits, and the price with interest, except in cases provided by law.” The same precept is substantially embodied in Article 1385 in reference to rescission of contracts.

Accordingly, defendant Eufemia Bernardo shall return to her co-defendant Reynaldo Paulino and his wife the seven parcels of land and the spouses’ improvements thereon, in consequence of which her titles thereto shall be cancelled and new titles issued in the name of said spouses, Reynaldo Paulino and Tomasita Bucoy. Eufemia Bernardo, too, must restore the fruits of the property. In turn, Reynaldo Paulino is under obligation to pay back to Eufemia Bernardo P13,000 with interest.

In addition, Eufemia Bernardo shall pay PCIB the sum of P195,000 subject to the terms and conditions of the mortgage she executed in favor of said bank on July 1, 1963.

10. Last to be considered is the indemnity equivalent to the value of the fruits under Articles 1385 and 1398 of the Civil Code. The fruits consist of the income of Pauline’s Motel, now Diamond Apartments. On this point, both cross-plaintiff Reynaldo Paulino and cross-defendant Eufemia Bernardo are in agreement. Thus, paragraph 19 of

Reynaldo Paulino's cross-claim reads::

"19. That the cross-claimant will suffer damages in the amount of P8,000.00 a month in the form of income of said motel during all the time that the cross-defendant is in possession thereof and until the properties in litigation are returned to the cross-claimant"[36] And cross-defendant Eufemia Bernardo in her answer thereto confirms:

"18. That the cross-defendant specifically admits the allegations of paragraphs '18' and '19'."[37]

Eufemia Bernardo, therefore, should restore to Reynaldo Paulino and his wife the fruits of the properties from June 18, 1963, when she took possession, until said properties are returned.

Upon the record as it stands, the judgment of the Court of First Instance of Pampanga of June 28, 1965 and its supplemental decision of September 29, 1965 are hereby modified; and another

JUDGMENT is hereby rendered:

(1) declaring null and void the two deeds of sale of June 18, 1963 and the deed of sale of July 5, 1963 executed by defendant Reynaldo Paulino in favor of his co-defendant Eufemia Bernardo (now Eufemia B. Cramer);

(2) ordering said defendant Eufemia Bernardo (now Eufemia B. Cramer) to return to her co-defendant Reynaldo Paulino and the latter's wife, plaintiff Tomasita Bucoy, the possession of the six lots (Lots 11, 12, 13, 14, 15 and 16) covered by Transfer Certificate of Title No. 33899-R, now in the name of Eufemia G. Bernardo, and the seventh lot (Lot 10) covered by Transfer Certificate of Title No. 33900-R, also in the name of Eufemia G. Bernardo, together with the improvements thereon, except Pauline's Cavern, which is in the possession of Leopoldo Paulino;

(3) declaring valid and binding the following mortgages executed by defendant Reynaldo Paulino in favor of the Philippine Commercial and Industrial Bank, bearing dates of —

- (a) December 12, 1962;
- (b) January 2, 1963; and
- (c) May 3, 1963;

And likewise declaring valid and binding the mortgage executed by Eufemia Bernardo (now Eufemia B. Cramer) in favor of the said bank dated July 1, 1963;

(4) directing Eufemia Bernardo (now Eufemia B. Cramer) to pay the Philippine Commercial and Industrial Bank whatever remains unpaid on the loan secure by the mortgage of July 1, 1963 or the sum of P195,000; and, in the event said mortgage of July 1, 1963 on the properties subject of this action be foreclosed and said properties be made to answer for any amount due thereunder ordering Eufemia Bernardo (now Eufemia B. Cramer) to reimburse the spouses Reynaldo Paulino and Tomasita Bucoy any amount the latter may be required to pay the Philippine Commercial and Industrial Bank on the aforesaid mortgage of July 1, 1963; and in the event that by reason of the foreclosure of the mortgage of July 1, 1963, titles to the properties covered thereby be consolidated in the purchaser on foreclosure sale, the right is hereby reserved to said spouses Paulino to sue Eufemia Bernardo (now Eufemia B. Cramer) for the recovery of any and all damages which may result by reason thereof;

(5) directing the Register of Deeds of Pampanga to cancel Transfer Certificates of Title Nos. 33899-R and 33900-R aforesaid and to issue in the name of the spouses, Reynaldo Paulino and Tomasita Bucoy, new transfer certificates of title in lieu thereof, subject to all liens and encumbrances annotated on the memorandum of encumbrances of the titles to be cancelled, particularly the four mortgages aforesaid in favor of the Philippine Commercial and Industrial Bank;

(6) dismissing the complaints in intervention filed by Tinio Lumber Co., Inc. and Leopoldo F. Paulino and his wife, Virginia D. Paulino;

(7) ordering defendant Eufemia Bernardo (now Eufemia B. Cramer) to pay plaintiff Tomasita Bucoy and her husband Reynaldo Paulino damages at the rate of Eight Thousand (P8,000.00) per month from June 18, 1963 to the date the pro parties herein described are returned to the said spouses; and

(8) ordering defendant Reynaldo Paulino to pay to his co- defendant Eufemia Bernardo (now Eufemia B. Cramer) the sum of P13,000 with legal interest thereon from the date of the filing of the answer of Eufemia Bernardo to the cross-claim of Reynaldo Paulino.

Costs in both instances against defendant Eufemia Bernardo (now Eufemia B. Cramer).

SO ORDERED.

Reyes, J.B.L., (Acting C.J.) Dizon, Makalintal, Bengzon, J.P., Zaldivar, Ruiz Castro, Angeles, and Fernando, JJ., concur.

Judgment modified.

[1] Renamed Diamond Apartments.

[2] Italics supplied.

[3] R.A., pp. 153-154; italics supplied.

[4] Civil Case No. 2376, entitled "Tomasita Bucoy, Plaintiff, vs. Reynaldo Paulino, et al., defendants; Leopoldo Paulino, Intervenor; Philippine Commercial and Industrial Bank, Intervenor; Tinio Lumber Co., Inc., Intervenor."

[5] R.A., pp. 172-173.

[6] This bond for P200.000 was approved by the lower court on September 29, 1965. R.A., p. 318.

[7] R.A., pp. 306-307.

[8] SEC. 70 ... Nothing contained in this Act (The Land Registration Act) shall in any way be construed to relieve registered land or the owners thereof from any rights incident to the relation of husband and wife, . . ." See also: Marigsa vs. Macabuntoc, 17 Phil. 107, 109; Romero de Pratts vs. Menzi & Co., Inc., 53 Phil. 51, 54; Padilla vs. Padilla, 74 Phil. 377, 382-384; Vitug vs. Montemayor, 91 Phil. 286, 290, 291, citing Guinging vs. Abuton, 48 Phil. 144; Sideco vs. Aznar, 92 Phil. 952, 961-962, citing Flores vs. Flores, 48 Phil. 288; Guinoo vs. Court of Appeals, 97 Phil. 235, 238; Silos vs. Ramos, 97 Phil. 263, 270, citing Commonwealth vs. Sandiko, 72 Phil. 258, 260; and Alvarez vs. Espiritu, L-18833, August 14, 1965.

[9] R. A., pp. 159, 160.

[10] 6 Moran, Comments on the Rules of Court, 1963 ed., p. 14 citing Bigelow on Estoppel, p. 437.

[11] See: Carratala vs. Samson, 43 Phil., 751, 754; Hernaez vs. Hernaez, 32 Phil. 214, 215

[12] Article 166 of the Civil Code.

[13] Reyes and Puno, An Outline of Philippine Civil Law(1956), Vol. I, p. 191. See: op. cit. 54 Phil, at 214; 45 Phil.-455. See also: Simbre vs. Agustin, 104 Phil. 756, 758; Villocino vs. Doyon, L-19797, December 17, 1966.

[14] Tolentino vs. Cardenas, L-20510, April 29, 1966.

[15] R. A., pp. 136-137; underscoring supplied. The "further loan" refers to the loan obtained by Eufemia Bernardo on July 1, 1963.

[16] Misrepresentation confirmed. Par. 3 of Eufemia Bernardo's answer to the cross-claim of Reynaldo Paulino reads: ". . . that what was signed by the parties thereto (the cross-claimant as vendor and the cross-defendant as vendee) on July 5, 1963 was the same draft prepared on June 18, 1963 in the presence of the bank officials;" (R.A., p. 84).

[17] Letter of Eufemia Bernardo-Cramer to Reynaldo D. Paulino dated September 8, 1963, page 1.

[18] Id., after quoting the paragraph of the deed of sale of July 5, 1963 referring to the acknowledgment of receipt of P195,000 in cash.

[19] R.A., p. 84.

[20] Idem.

[21] Tr., p. 316.

[22] R.A., pp. 164-167.

[23] Exh. 6-A; See also; Tr. pp 213 and 237

[24] Tr. p 237.

[25] Tr. pp. 666,667

[26] Tr. pp. 256,264-265.

[27] Tr. p. 265.

[28] Tr. p. 267.

[29] Tr. p. 271.

[30] R.A., p. 86; italics supplied.

[31] R.A., p. 164.

[32] Article 1392 of the Civil Code.

[33] Article 1191 of the Civil Code.

[34] V Tolentino, Civil Code of the Philippines, 1959 ed., p. 122, citing 10 Manresa 286-287, and Villaruel vs. Tan King, 43 Phil. 251.

[35] See: Error II in the brief of defendant-appellant Eufemia Bernardo (Cramer), pp. 7-8, 14-17.

[36] R.A.. p. 70.

[37] R.A., p. 88.

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