

**EUGENIO JIMENEZ, ZOSIMA JIMENEZ, AND NENELYN NICOLAS,
PLAINTIFFS-APPELLEES, VS. CRISOSTOMO L. SAN PEDRO AND
SUSAN D. SAN PEDRO, DEFENDANTS-APPELLANTS.**

Ponente: CORALES, J.

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This is an appeal[1] from the November 4, 2011 Decision[2] of the Regional Trial Court (RTC), Branch 82, Malolos City, Bulacan in Civil Case No. 177-M-2008 for cancellation of deed of sale and title and recovery of ownership with damages (cancellation of deed case). The assailed Decision nullified the November 7, 2003 and August 6, 2004 Kasulatan ng Bilihang Tuluyan between plaintiff-appellee Nenelyn Nicolas (Nicolas) and defendants-appellants Spouses Crisostomo and Susan San Pedro (individually referred by their first name and collectively as Spouses San Pedro) as well as the Transfer Certificate of Title (TCT) No. T-437412 (M) issued pursuant thereto; ordering the Register of Deeds (RD) of Bulacan to cancel said title and reinstate TCT No. T-136542 (M) in the name of Nicolas; and ordering Spouses San Pedro to pay moral damages and attorney's fees.

The Antecedents

The subject property was previously registered in the name of Nicolas under TCT No. T-136542 (M). Her parents, plaintiffs-appellees Spouses Eugenio and Zosima Jimenez (Spouses Jimenez) built a house thereon and occupy the premises.

On November 7, 2003, Nicolas and Spouses San Pedro executed a Kasulatan ng Bilihang Tuluyan[3] (November 7, 2003 Kasulatan) with the following stipulations:

x x x

Na dahil at alang-alang sa halagang TATLONG DAAN AT LIMAMPUNG LIBONG PISO (P350,000.00), Salaping Pilipino, na aking/aming tinanggap ng buong kasiyahang loob mula kay CRISOSTOMO SAN PEDRO, kasal kay Susan D. San Pedro(.) Pilipino, may sapat na gulang, at naninirahan sa Lolomboy, Bocaue, Bulacan, ay aking/aming INILILIPAT, ISINASALIN at IPINAGBIBILI ng ganap at patuluyan sa naulit na si CRISOSTOMO SAN PEDRO, sa kanyang/kanilang kahalili o tagapagmana ang lupang binabanggit sa itaas, kasama ang lahat ng mehoras na nakatayo dito, ng ligtas sa lahat ng pananagutan, kanginoman at saan man.

x x x

Six (6) months later, Spouses San Pedro advised Nicolas and her parents to vacate the property because they failed to repurchase the same as supposedly agreed upon. However, after some negotiations, Nicolas and Spouses San Pedro executed another Kasulatan ng Bilihang Tuluyan[4] dated August 6, 2004 (August 6, 2004 Kasulatan) which largely reproduced the provisions of the November 7, 2003 Kasulatan.

On August 24, 2004, the RD of Meycauayan, Bulacan cancelled Nicolas' TCT No. T-136542 (M) and issued in Crisostomo's name TCT No. T-437412 (M) pursuant to the August 6, 2004 Kasulatan.[5]

Invoking better title to the property as the new registered owners, Spouses San Pedro demanded Nicolas and Spouses Jimenez to vacate the premises. When Spouses San Pedro's demands went unheeded, they instituted an

unlawful detainer suit against Nicolas and her parents before the Municipal Trial Court (MTC), Bocaue, Bulacan. After separate trials, the MTC rendered unfavorable judgments against Spouses Jimenez and Nicolas through its November 28, 2011 and July 10, 2009 Decisions,[6] respectively. These judgments were affirmed by the RTC on appeal.[7]

During the pendency of the unlawful detainer suit, Nicolas and Spouses Jimenez filed before the RTC the cancellation of deed case claiming that Nicolas' consent to the two (2) Kasulatan was vitiated by fraud and undue influence and the real agreement between her and Spouses San Pedro was an equitable mortgage because the two (2) Kasulatan were intended as securities to an existing debt, the P350,000.00 consideration for the supposed sale was unusually inadequate for a property worth P1,500,000.00; and Nicolas, the purported vendor, remained in possession of the premises. They further averred that the alleged sale of the house is void ab initio because Spouses Jimenez were not privy to the two (2) Kasulatan.[8]

In support of the complaint, Nicolas testified that she obtained a one (1)-year P200,000.00 loan from Spouses San Pedro sometime in January 2002 but she only received P152,000.00 after deducting the 2% advance interest. She signed an unnotarized Real Estate Mortgage (REM) and gave her copy of TCT No. T-136542 (M) to Spouses San Pedro. She was also asked to sign the November 7, 2003 Kasulatan as her purported assurance of repayment. Spouses San Pedro did not give her copy of the aforesaid documents but assured her that the same would not be notarized. She failed to settle her loan within the agreed one (1)-year period, but Spouses San Pedro extended the period of payment subject to another 5% interest. Thereafter, she paid P50,000.00 as interest and another P50,000.00 for the principal loan, which was allegedly an overpayment as evidenced by the June 22, 2006 promissory note[9] of Crisostomo wherein he promised to return the same amount on or before May 2007. She further claimed to have paid P200,000.00 to Crisostomo as shown by a June 24, 2003 acknowledgment receipt.[10] Despite full payment, Spouses San Pedro neither returned her TCT No. T-136542 (M) nor cancelled the documents she previously signed; they merely told her that the lawyer would “process” the same and asked for her cedula. In August 2004, she followed up the release of her TCT No. T-136542 (M), but again, Spouses San Pedro requested her to provide them a cedula. In the meantime, she and her parents continue to reside in the premises until Spouses San Pedro asked them to vacate showing photocopies of the two (2) Kasulatan properly filled in and the latter's TCT No. T-437412 (M) to the land. Nicolas denied receiving the P350,000.00 supposed consideration set forth in the Kasulatan.[11]

In defense, Spouses San Pedro alleged in their Answer with Compulsory Counterclaim[12] that they purchased the property from Nicolas by virtue of the November 7, 2003 Kasulatan, with the option to repurchase the same within six (6) months, otherwise, the latter would vacate the premises. They insisted that Nicolas and her parents have no cause of action against them because they are the absolute and lawful owners of the property and the validity of the November 7, 2003 Kasulatan had been acknowledged by Spouses Jimenez in a November 2, 2007 letter. They interposed counterclaims for moral and exemplary damages and attorney's fees.

Crisostomo testified that he paid Nicolas P350,000.00 in cash as consideration for the November 7, 2003 Kasulatan and neither of them owe each other any sum of money. He denied engaging in the buy-and-sell of real estate and claimed that the P800,000.00-loan, evidenced by a January 31, 2002 Katunayan, was a distinct transaction which preceded the sale of the property. He and Nicolas executed the August 6, 2004 Kasulatan to provide a six (6)-month extension period for the repurchase, but the latter still failed to do so; thus, his counsel sent the September 26, 2007 demand letter to vacate.[13] Nicolas and Spouses Jimenez responded through the November 2, 2007 letter,[14] which, according to Crisostomo, was an acknowledgment of the sale of the land. He further testified that the property had been declared in his name with a market value of P217,360.00.[15]

The Ruling of the RTC

In its November 4, 2011 Decision,[16] the RTC held that the transaction between the parties was an equitable mortgage considering the following circumstances: the extension of the redemption period in favor of Nicolas; her continued residence on the property; and the real intention of the parties to secure payment of a debt. It took note of Nicolas' June 24, 2003 acknowledgment receipt of payment of loan in contrast to Crisostomo's failure to produce proof of payment of the supposed consideration for the sale. It thus declared the deed of sale void ab initio for lack of consideration and disposed the case as follows:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiffs:

- Declaring the “Kasulatan ng Bilihang Tuluyan” dated November 7, 2003 and August 6, 2004 between plaintiff Nenelyn Nicolas and defendant Crisostomo San Pedro as null and void;
- Declaring the Transfer Certificate of Title No. T-437412 (M) in the name of defendant Crisostomo San Pedro married to Susan San Pedro as null and void;
- Ordering the Office of the Register of Deeds of Province of Bulacan to cancel Transfer Certificate of Title No. T-437412 (M) in the name of defendant Crisostomo San Pedro married to Susan San Pedro and to reinstate TCT No. T-136542 (M) in the name of plaintiff Nenelyn Nicolas;
- Ordering defendants-spouses Crisostomo San Pedro and Susan San Pedro to pay plaintiffs the Moral damages in the sum of Thirty Thousand Pesos (Php 30,000.00) and Attorney's fees in the sum of Twenty Thousand Pesos (P20,000.00)[.]

No costs.

SO ORDERED. (Emphasis and italics appear in the original text of the Decision.)

Aggrieved, Spouses San Pedro filed the instant appeal with the following assignment of errors:[17]

I

THE LOWER COURT ERRED IN FINDING THAT THE CONTRACT ENTERED INTO BY THE PARTIES WAS ONE FOR EQUITABLE MORTGAGE AND NOT OF SALE;

II

THE LOWER COURT ERRED IN DECLARING THE “KASULATAN NG BILIHANG TULUYAN” dated NOVEMBER 7, 2003 AND AUGUST 6, 2004, BETWEEN PLAINTIFF NENELYN NICOLAS AND DEFENDANT CRISOSTOMO SAN PEDRO AS NULL AND VOID BY MERE PREPONDERANCE OF EVIDENCE;

III

THE LOWER COURT ERRED IN AWARDING MORAL DAMAGES AND ATTORNEY'S FEES IN FAVOR OF PLAINTIFFS-APPELLEES.

Spouses San Pedro insist that the August 6, 2004 Kasulatan was a deed of absolute sale, not an equitable mortgage, which merely affirmed or ratified the November 7, 2003 Kasulatan and did not in any way extend the redemption period or grant a new period. They invoke the presumption of regularity and due execution of a notarized document and argue that a mere denial or bare allegation is not a clear and convincing evidence which could rebut the presumption. They add that Spouses Jimenez admitted the validity and due execution of the sale in their November 2, 2007 letter. They further fault the RTC for requiring them to present receipt for the purchase price despite the acknowledgment of payment embodied in the two (2) Kasulatan. Lastly, they deny exerting undue influence on Nicolas and claim that the purchase price is adequate, in fact, it exceeds the market value of

the property indicated in the corresponding tax declaration.[18]

Nicolas and Spouses Jimenez echo the findings of the RTC as to the circumstances showing equitable mortgage. They argue that the November 2, 2007 letter showed Nicolas' lack of intent to sell the subject property to Spouses San Pedro and quote the pertinent portion thereof where they stated that the transaction merely masked the loan extended to their daughter. They argue that the purported deed of sale is a simulated contract with false consideration, thus, void under Article 1353 of the New Civil Code (NCC).[19]

Spouses San Pedro counter that the 14-month unreasonable delay between Nicolas' supposed payment of her loan and the discovery of the transfer of title to the property run counter to the normal mind-set of someone who allegedly paid her loan but the collateral is still withheld by the creditor. They belabor on the absence of express stipulation in the two (2) Kasulatan as to existence of prior debt and argue that Nicolas and her parents remain in the property because they disregarded repeated demands for them to vacate.[20]

This Court's Ruling

The appeal lacks merit.

Contract: An Equitable Mortgage

An equitable mortgage is “one which although lacking in some formality, or form or words, or other requisites demanded by a statute, nevertheless reveals the intention of the parties to charge real property as security for a debt, there being no impossibility nor anything contrary to law in this intent”.[21] Under Article 1602 of the NCC, the contract shall be presumed to be an equitable mortgage in any of the following cases:

- (1) When the price of the sale with right to repurchase is unusually inadequate;
- (2) When the vendor remains in possession as lessee or otherwise;
- (3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;
- (4) When the purchaser retains for himself a part of the purchase price;
- (5) When the vendor binds himself to pay the taxes on the thing sold;
- (6) In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.

Elucidating thereon, the Supreme Court held in *Muñoz v. Ramirez*[22] that the presumption under Article 1602 of the NCC arises when these two (2) requisites concur: (a) the parties entered into a contract denominated as a contract of sale; and (b) their intention was to secure an existing debt by way of a mortgage. The Supreme Court further stressed that “any of the circumstances laid out in Article 1602 of the [NCC], not the concurrence nor an overwhelming number of the enumerated circumstances, is sufficient to support the conclusion that a contract of sale is in fact an equitable mortgage”.

We concur with the findings of the RTC that the instances enumerated in Article 1602 of the NCC are attendant in this case. Admittedly, Nicolas was given the right of redemption or repurchase over the subject property and the same was extended after its expiration. Crisostomo testified that the August 6, 2004 Kasulatan had been executed after Nicolas failed to repurchase the property despite the six (6)-month extension of the period. For clarity, quoted hereunder are the pertinent portions of Crisostomo's testimony, to wit:[23]

Q: Mr. Witness, after you executed the Kasulatan ng Bilihang Tuluyan which you have just identified, what happened to the property?

A: When we signed a Deed of Sale, she requested for an extension of time to vacate the place, Sir.

Q: How much time did plaintiff Nenelyn Nicolas asked from you to leave the premises after the execution of the Kasulatan ng Bilihang Tuluyan?

A: Six (6) months, Sir.

Q: And after the six-month period, did Nenelyn Nicolas leave or vacate the subject property.

x x x

Q: Mr. Witness, during the presentation of plaintiffs' evidence, another Kasulatan ng Bilihan was presented by plaintiff Nenelyn Nicolas, I am showing to you a copy of this Kasulatan ng Bilihan dated August 6, 2004, will you please go over the same and tell us if this was, indeed, executed in your knowledge?

A: Yes, Sir, this contract was executed for the second time around because the first one was not repurchased despite the six-month extension period given to her, Sir. (Emphasis supplied)

x x x

The extension of the right to repurchase was also mentioned in the September 26, 2007 demand letter to vacate which was offered as evidence by Spouses San Pedro, viz.:^[24]

x x x

Ako ay lumihang sa inyo para sa aking kliyente na Mag-asawang Crisostomo at Susan kaugnay sa liham sa inyo ni Abgda. Imelda E. David-Garcia, matapos ang anim na buwan palugit sa inyo upang bilhing muli ang lupang kanilang nabili sa inyo at pag-lisan dito matapos ang palugit na nabatid. (Emphasis supplied.)

x x x

In addition, Spouses San Pedro alleged in their Answer with Compulsory Counterclaim that the November 7, 2003 Kasulatan was subject to “the condition that defendants [Nicolas and Spouses Jimenez] may repurchase the said property for period of six (6) months from sale, or on or before May 08, 2004, and thereafter, defendants shall vacate the premises and surrender possession thereof”. This is an admission that the two (2) Kasulatan excluded certain key agreements between Nicolas and Spouses San Pedro, such as the right of repurchase. We cannot now permit Spouses San Pedro to change their theory on appeal and insist that only the stipulations in the two (2) Kasulatan should be considered. Well-entrenched is the rule that when a party adopts a particular theory and the case is tried and decided upon that theory in the court a quo, he will not be permitted to change his theory on appeal. The case will be reviewed and decided on that theory and not approach and resolve from a different point of view.^[25]

Further, the prohibition on admission of parol evidence accepts exception such as in this case where the parties

precisely put in issue from the outset the failure of the written contract to express their true intent and agreement.[26] The repeated admissions of Spouses San Pedro, in their pleadings and even during trial, of the existence and extension of the right to repurchase justify the admission of parol evidence.

It also bears stressing that Spouses San Pedro's judicial admissions of the extension of the repurchase period removed the admitted fact from the field of controversy and are conclusive upon them. All proofs contrary or inconsistent therewith should be ignored, whether objection is interposed by the party or not.[27] Accordingly, Spouses San Pedro's admissions as to the existence of key agreements not stated in the two (2) Kasulatan negate the presumption of regularity accorded to notarized instruments which they now invoke. Needless to state, the fact that a deed is notarized is not a guarantee of the validity of its contents.[28]

Spouses San Pedro's strained interpretation of the November 2, 2007 letter is also apparent. They overemphasized on Spouses Jimenez' supposed admission of the validity of the sale, but conveniently ignored the succeeding paragraph, to wit:[29]

x x x

Ibig rin ho naming ipaalam na hindi talaga bilihan ang nangyari kung kaya't ang pagsasagawa ng Deed of Sale ay inilihim sa amin ng inyong kliyente at ng aming anak na si Nenelyn. Ito'y dahil ang pagsasagawa ng bilihan ay isang madaliang pagtatakip lamang ng tunay na nangyari at ito nga ay ang pag-utang ng pera ng aming anak na si Nenelyn sa inyong kliyente na pinatubuan niya ng malaking halaga at nang hindi makabayad ay kanyang inilit ang kolateral para dito. (Emphasis supplied.)

x x x

The November 2, 2007 letter, read in its entirety, is ambiguous or self-contradictory and cannot by itself be given probative value, much less outweigh the clearly preponderant evidence on record favoring Nicolas and Spouses Jimenez' position.

All told, We find no reversible error on the part of the RTC when it rendered the assailed Decision. It need not be amiss to state that the decisive factor in evaluating an agreement is the intention of the parties, as shown, not necessarily by the terminology used in the contract, but by their conduct prior to, during, and immediately after executing the same.[30]

WHEREFORE, the appeal is DENIED. The assailed November 4, 2011 Decision of the Regional Trial Court, Branch 82, Malolos City in Civil Case No. 177-M-2008 is hereby AFFIRMED.

SO ORDERED.

Villon, J., Chairperson and Zalameda, JJ., concur.

[1] See Notice of Appeal in relation to the RTC's Order dated March 30, 2012 giving due course to said appeal, records, pages 165-166 and 168, respectively.

[2] Penned by Acting Presiding Judge Maria Concepcion A. Yumang, rollo, pages 58-68.

[3] Folder of Exhibits for the Plaintiff, page 8.

[4] Ibid., pages 6 and 7.

[5] See TCT No. T-437412 (M), Folder of Exhibits for the Defendants, page 4.

[6] See November 28, 2011 Decision in Civil Case No. 08-4280, penned by Presiding Judge Snooky Maria Ana.

B Sagaya, and July 10, 2009 Decision, penned by Judge Lauro G. Bernardo, rollo, pages 34-41 and 42-45, respectively.

[7] See July 9, 2012 in Civil Case No. 37-M-2012, penned by Judge Gregorio S. Sampaga, and and February 23, 2012 RTC Decision in Civil Case No. 609-M-2009, penned by Judge Guillermo P. Agloro, *ibid.*, pages 46-52 and 53-57 respectively.

[8] See Complaint, records, pages 3-8.

[9] Folder of Exhibits for the Plaintiff, page 5.

[10] *Ibid.*, page 4.

[11] See TSN, Nenelyn Nicolas, January 21 and August 19, 2009 and September 1, 2010.

[12] Records, pages 18-20

[13] Folder of Exhibits for the Defendants, page 6.

[14] *Ibid.*, pages 12-13.

[15] See TSN, Crisostomo L. San Pedro, February 23 and April 6, 2011.

[16] *Supra*, at note 2.

[17] See page 1 of Appellants' Brief, rollo, page 13.

[18] See pages 6 to 18 of Appellants' Brief, *ibid.*, pages 18-29.

[19] See Appellees' Brief, rollo, pages 87-94.

[20] See Reply Brief of Defendants-Appellants, *ibid.*, pages 103-107.

[21] See *Muñoz v. Ramirez*, G.R. No. 156125. August 26, 2010.

[22] *Ibid.*

[23] See TSN, Crisostomo San Pedro, February 23, 2011, pages 7 and 11.

[24] *Supra*, at note 13.

[25] See *Duty Free Philippines, Inc. v. Tria*, G.R. No. 174809. June 27, 2012; See also *Roxas v. Court of Appeals*, G.R. No. 138955. October 29, 2002 .

[26] See *ACI Philippines v. Coquia*, G.R. No. 174466. July 14, 2008. See also *Romulo v. Layug*, G.R. No. 151217. September 8, 2006.

[27] See *Republic v. De Guzman*, G.R. No. 175021. June 15, 2011, citing *Alfelor v. Halasan*, G.R. No. 165987. March 31, 2006.

[28] See *San Juan v. Ofril*, G.R. No. 154609. April 24, 2009.

[29] *Supra*, at note 14.

[30] See *Rockville Excel v. Culla*, G.R. No. 155716. October 2, 2009.

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