

**SPOUSES CHARLES A. MAXELL, SR. AND OPHELIA LAGO MAXELL,
PLAINTIFFS-APPELLANTS, VS. ALFREDO LAGO, SR.,
DEFENDANT-APPELLEE.**

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

This is a motion of appellee, seeking partial reconsideration^[1] of this Court's Decision,^[2] promulgated on November 28, 2012, which set aside the February 27, 2008 Decision of the Regional Trial Court, 10th Judicial Region, Branch 21, Cagayan de Oro City in Civil Case No. 2003-088 and rendered a new one:

- 1) Declaring paragraph 6 of the Memorandum of Agreement dated August 24, 2000, which purports to be a contract of sale, void ab initio; and
- 2) Ordering the appellee Alfredo Lago Sr. to reimburse the appellants Sps. Charles and Ophelia Maxell the amount of P1,000,000.00 with 6% interest per annum from the finality of the Decision.

Appellee seeks reconsideration of the foregoing Decision in so far as it concerns the order directing him to pay the appellants the sum of P1,000,000.00 with 6% interest per annum from the finality of the Decision. Appellee argues that he only admitted the receipt of P572,770.00, which he thereafter spent for the filling of the lot, thus, he prays that a new Decision be rendered directing him to reimburse the appellants the sum of P572,770.00 only with 6% interest per annum. He further prays that he be given a one year grace period from the finality of the decision within which to pay appellants the sum awarded considering that he is an ailing 80 years old man, who is no longer engaged in any form of employment.

The motion will be denied.

Recall that in his Answer with Counterclaim, defendant-appellee averred as follows:

- That Defendant admits into signing a Memorandum of Agreement (Annex "B" of Complaint) but DENIES the provisions contained in paragraphs (3) thereof which states: x x x ; and (6) which further states: That after the task of filling the land is completed, the FIRST PARTY shall then effect the transfer of the said property to the SECOND PARTY; the truth being that the Defendant, an illiterate, only agreed to reimburse plaintiff with an equivalent portion of the land computed at P1,000.00 per square meter on whatever amount that might be spent by the plaintiff in developing the area;

xxx^[3]

PRAYER

WHEREFORE, premises considered, answering defendant respectfully prays to Honorable Court to render judgment as follows:

- by reducing the area covered by the Memorandum of Agreement to only one thousand square meters which is the only area to which plaintiffs are entitled by virtue of their true agreement and which is the equivalent area for P1,000,000.00 at P1,000.00 per square meter; [sic]

xxx[4]

The foregoing averments construed together, it can be gleaned that defendant-appellee admitted that plaintiffs-appellants spent P1,000,000.00 for the development of the area. Thus, this Court maintains its Decision ordering the appellee to reimburse the appellants the amount of P1,000,000.00 with 6% interest per annum from the finality of the Decision.

Moreover, this Court finds no reason to grant the grace period sought for since the law and the rules do not distinguish as far as age and employment are concerned. *Ubi lex non distinguit nec nos distinguere debemus*. [5]

WHEREFORE, premises considered, the Motion for Reconsideration is hereby DENIED.

SO ORDERED.

Camello, J., Chairperson and Badelles, JJ., concur.

[1] Rollo, pp. 124-128.

[2] Rollo, p. 106.

[3] Records, p. 23. Underlining supplied.

[4] *Id.*, p. 25. Underlining supplied.

[5] “Where the law does not distinguish, we must not distinguish.” *Tanada v. Yulo*, 61 Phil. 515.

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