

ELIZA CORTADO, PLAINTIFF-APPELLEE, VS. SPS. ERNESTO AND ZENAIDA ASUNCION, DEFENDANTS-APPELLANTS.

Ponente: COSICO, J.

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COSICO, J.:

This is an appeal from the Decision dated November 27, 2003[1] rendered by the Regional Trial Court [RTC], Branch 121 of Caloocan City in the case entitled, “Eliza Cortado herein Represented by her Attorney-in-Fact, Meriam Cortado v. Spouses Ernesto V. Asuncion and Zenaida Neri Asuncion” docketed as Civil Case No. C-19297 which is an action for annulment of deed of sale with damages wherein the trial court ruled in favor of the plaintiff-appellee Eliza Cortado. The dispositive portion of the assailed November 27, 2003 Decision reads:

“WHEREFORE, premises considered, judgment is accordingly rendered in favor of plaintiff Eliza Cortado and against the defendants Sps. Ernesto and Zenaida Asuncion as follows:

- Declaring the Deed of Sale executed between Bibiano Cortado and the defendants Sps. Ernesto and Zenaida Asuncion as null and void and of no legal effect;
- Ordering defendants to vacate the subject premises and to remove whatever structures they may have built thereon upon plaintiff’s refund of the amount of Php 100,000.00;
- Ordering defendants to pay attorney’s fees in the amount of Php30,000.00 representing acceptance fee plus P2,000.00 per appearance fee; and
- Ordering defendants to pay the costs of the suit.

SO ORDERED.” [Decision, pp. 8-9]

The Facts

The real property which is the subject matter of the instant case is a 25 square meter parcel of land [subject property] designated as Lot No. B-2, Block 44, Area IV, of the National Housing Authority [NHA] situated at Bagong Barrio, Caloocan City with address at 229 Ipil Alley, Bagong Barrio, Caloocan City. The subject property is among the lots awarded by the NHA as part of its housing program to qualified applicants thereto.

Previously, the right over Lot No. B-2, Block 44, Area IV with an area of eighty (80) square meters was awarded to spouses Ponciano and Rosita Garcia by the NHA. On February 22, 1988, Rosita Garcia, who was then a widow, sold the rights and structure over the said property to the appellants-spouses Ernesto and Zenaida Asuncion [“appellant-spouses”] and to spouses Bibiano and Eliza Cortado[2]. In the deed of sale thereon, the spouses Asuncion became owners of the rights and the structure built on the 30 square meter portion of the property which they occupied and at the same time, the spouses Bibiano and Eliza Cortado became owners of the rights and the structure built on the 50 square meter portion of the property which they occupied. This sale was subsequently approved by the NHA.

On August 14, 1997 and while Eliza Cortado was away in Greece, the spouses Asuncion and Bibiano Cortado

entered into a contract of sale over the one half portion of the 50 square meter property owned by the spouses Cortado on Lot No. B-2, Block 44, Area IV. From then on, the contending parties presented two different versions of the story.

In her Amended Complaint[3], appellee Cortado who is represented by her attorney-in-fact, Meriam Cortado alleged that it was only on March 15, 2000 that she discovered the August 14, 1997 sale between her husband and the spouses Asuncion; that upon learning of the said sale, she immediately demanded from the spouses Asuncion to vacate the property and demolish the structures they had built thereon considering that the said sale made in their favor was void as it was made without her knowledge, consent and authority. Meanwhile, in their Amended Answer with Counterclaim[4] the spouses Asuncion refused to vacate the property contending that the August 14, 1997 sale was valid as it was made with the knowledge and consent of Eliza Cortado.

During the pre-trial[5], the parties raised the following issues for resolution:

- (1) Whether or not the Deed of Sale executed on August 14, 1997 by and between Bibiano Cortado and defendant[s]-spouses is valid;
- (2) Whether or not the plaintiff is guilty of estoppel in questioning the Deed of Sale; and
- (3) Whether or not damages could be recovered by the contending parties.

Thereafter, trial on the merits ensued.

To prove that the August 14, 1997 sale is void for having been made without her knowledge and consent, Eliza Cortado[6] testified in her behalf and presented the testimony of Meriam Cortado[7] to corroborate her story. She likewise presented documentary evidence consisting of the following, namely: (1) Certification of Marriage Contract between Bibiano and Eliza Cortado by the Local Civil Registrar of Candon, Ilocos Sur (Exhibit "A"); (2) Deed of Sale of Structure with Tag No. 77-04582-84 (Exhibit "B"); (3) Joint Affidavit of Co-Owners executed by the spouses Bibiano and Eliza Cortado and spouses Ernesto and Zenaida Asuncion (Exhibit "C"); (4) Certified photocopy of TCT No. C-47616 over Lot No. B-2, Block 44, Area IV, Bagong Barrio, Caloocan City (Exhibit "D"); (5) Deed of Sale with Mortgage between the National Housing Authority and Ponciano Garcia (Exhibit "E"); (6) Receipt dated November 26, 1986 of Rosita Garcia from spouses Cortados of the amount representing the purchase price for the sale of house and rights over the portion of the 50 square meters of Lot No. B-2, Block 44, Area IV, Bagong Barrio, Caloocan City (Exhibit "F"); (7) Deed of Sale dated August 14, 1997 (Exhibit "G"); (8) Special Power of Attorney executed by Eliza Cortado designating Meriam Cortado as her attorney-in-fact (Exhibit "H"); (9) Bus Fare Receipts or travel expenses of Meriam Cortado (Exhibit "I"); (10) Photocopy of round-trip plane ticket of Eliza Cortado from Greece to the Philippines (Exhibit "J"); and (11) Photocopy of Official Receipt No. 1726372 dated October 11, 2001 issued by the NHA to Eliza Cortado as payment of the latter's mortgage with the said agency.

In turn, to prove that Eliza Cortado had knowledge of the said sale, and that she, together with Bibiano and their children had previously offered the entire 50 square meters of the property located at Bagong Barrio, Caloocan City, the spouses Asuncion presented the testimonial evidence of Zenaida Asuncion[8], Susan Llorca[9] who testified on the contract of mortgage executed between her and Bibiano over the property and Ma. Teresa Oblipias, an employee of the NHA. For their documentary evidence, the spouses Asuncion presented the following documents: (1) Deed of Sale of Structure with Tag No. 77-04582-84 (Exhibit "1"); (2) Deed of Sale dated August 14, 1997; (3) Acknowledgement Receipt dated March 25, 1997 of Bibiano Cortado and Michelle Cortado of the purchase price (Exhibit "3"); (4) Deed of Sale for the 50 square meter lot located at 229 Ipil Alley, Bagong Barrio, Caloocan City (Exhibit "4"); (5) Copy of Official Receipt No. 1111165 issued by the NHA to "E. Asuncion/B. Cortado" (Exhibit "5"); (6) Copy of Official Receipt No. 486789 issued by the NHA to "B.

Cortado/E. Asuncion” (Exhibit “6”); (7) TCT No. 216479 which is a derivative title that originated from TCT No. C-47616 (Exhibit “7”); (8) Contract of Mortgage between Susan Llorca and Bibiano Cortado (Exhibit “8”); and (9) Chattel Mortgage between Susan Llorca and Bibiano Cortado and Michelle Cortado (Exhibit “9”).

The Ruling of the Regional Trial Court

Finding that the evidence presented by Eliza Cortado is more superior than the evidence presented by the appellants-spouses, the trial court ruled that the August 14, 1997 Deed of Sale is void and made the following pronouncements, to wit:

“A scrutiny of the assailed Deed of Sale readily discloses on its face that it does not bear the written conformity or consent of the wife, herein plaintiff Eliza Cortado. It is admitted by both parties that plaintiff was in Greece during the execution of the document. No Special Power of Attorney was executed by plaintiff in favor of her husband.

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Given the foregoing, this Court finds the evidence of plaintiff superior to that of the defendants. The assailed deed of sale eloquently speaks of what is missing. This necessarily prevails over the bare assertions of defendants that the plaintiff had verbally authorized the sale. The law explicitly provides that the consent of the other spouse must be in writing. This Court could not therefore deviate from a crystal-clear requirements of the law.

Moreover, it is very important to emphasize that the plaintiff never expressed her acceptance of the contract. On the contrary, she categorically expressed her repudiation of the same when she offered to return the purchase price upon her return to the country.

The subject deed of sale is therefore null and void in view of the above-mentioned omission. As such, it is as if no such sale ever took place and the situation of the parties before the transaction should be maintained.” [November 27, 2003 Decision at 8].

Hence, this appeal. Previously, the instant case was referred by this Court for mediation under A.M. No. 04-3-15 SC PHILJA dated March 23, 2004. However, both parties refused to have the case mediated and for this reason, the merits of the appeal shall now be resolved.

The Present Appeal

Appellants-spouses ascribe the following errors allegedly committed by the trial court, to wit:

- (1) THE RTC ERRED IN DECLARING THAT THE DEED OF SALE EXECUTED BETWEEN BIBIANO CORTADO AND THE DEFENDANTS SPOUSES ERNESTO AND ZENaida ASUNCION IS NULL AND VOID.
- (2) THE RTC ERRED IN ORDERING THE DEFENDANTS TO VACATE THE SUBJECT PREMISES AND TO REMOVE WHATEVER STRUCTURES THEY MAY HAVE BUILT THEREON UPON PLAINTIFF’S REFUND OF THE AMOUNT OF PHP 100,000.00; AND
- (3) THE RTC ERRED IN ORDERING THE DEFENDANTS TO PAY ATTORNEY’S FEES AS WELL AS THE COSTS OF SUIT TO COMPLAINANT.

This Court’s Ruling

The appeal is without merit for the following reasons:

August 14, 1997 Deed Of Sale is Void

Article 124 of the Family Code in relation to Article 1409 of the New Civil Code is explicit in stating that a disposition or encumbrance on the conjugal property without authority of the court or the written consent of the other spouse is void:

"ART. 124. The administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision. In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include the powers of disposition or encumbrance which must have the authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.

Meanwhile, Article 1409 of the New Civil Code states:

"Art. 1409. The following contracts are inexistent and void from the beginning:

- (1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;
- (2) Those which are absolutely simulated or fictitious;
- (3) Those whose cause or object did not exist at the time of the transaction;
- (4) Those whose object is outside the commerce of men;
- (5) Those which contemplate an impossible service;
- (6) Those where the intention of the parties relative to the principal object of the contract cannot be ascertained;
- (7) Those expressly prohibited or declared void by law."

It is clear from the aforesaid provisions that without the written consent of the spouse, an encumbrance or disposition, like a sale, of a property belonging to the conjugal partnership by the other spouse is void and inexistent. Verily, in the instant case, an examination of the August 14, 1997 Deed of Sale executed between the appellants-spouses and appellee's husband, Bibiano would readily reveal the absence or lack of written consent by appellee herein. Hence, applying Article 124 of the Family Code and Article 1409 of the New Civil Code, the Deed of Sale executed by the appellants-spouses and Bibiano Cortado over the 1/2 portion of the property previously awarded to the spouses Cortados by the NHA is null and void.

On this note, appellants-spouses advance that the written consent of the appellee is not necessary as the property subject of the August 14, 1997 Deed of Sale is not owned by the spouses Cortado but owned by the NHA, thus, it cannot be considered as part of their conjugal property.

We disagree.

First, Article 153 of the New Civil Code which is the governing law at the time Bibiano Cortado and appellee were married[10] in 1973 provides:

"Art. 153. The following are conjugal partnership property:

- (1) That which is acquired by onerous title during the marriage at the expense of the common fund, whether the acquisition be for the partnership, or for only one of the spouses;
- (2) That which is obtained by the industry, or work, or as salary of the spouses, or of either of them;

(3) The fruits, rents or interests received or due during the marriage, coming from the common property or from the exclusive property of each spouse”

As borne by the records, appellants-spouses together with the spouses Cortado in 1988 acquired the 30 square meters and 50 square meters, respectively, of the structure and rights in the parcel of land with Tag. No. 77-04582 situated at 229 Ipil Alley, Bagong Barrio, Caloocan City from one Rosita M. Vda. de Garcia by way of sale as embodied in the document with the title, “Deed of Sale of Structure with Tag No. 77-04582-84.[11] Therefore, it cannot be gainsaid that the said property or rights over the same were acquired by onerous title by the spouses Cortado during their marriage and therefore making it part and parcel of the spouse’s conjugal property.

In *Guiang v. Court of Appeals*[12] the Supreme Court in adopting the findings of the trial court in the said case expounded on the meaning and extent of Article 124 of the Family Code and held:

“Comparing said law with its equivalent provision in the Civil Code, the trial court adroitly explained the amendatory effect of the above provision in this wise:

The legal provision is clear. The disposition or encumbrance is void. It becomes still clearer if we compare the same with the equivalent provision of the Civil Code of the Philippines. Under Article 166 of the Civil Code, the husband cannot generally alienate or encumber any real property of the conjugal partnership without the wife's consent. The alienation or encumbrance if so made however is not null and void. It is merely voidable. The offended wife may bring an action to annul the said alienation or encumbrance. Thus, the provision of Article 173 of the Civil Code of the Philippines, to wit:

'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 property fraudulently alienated by the husband.'

This particular provision giving the wife ten (10) years . . . during [the] marriage to annul the alienation or encumbrance was not carried over to the Family Code. It is thus clear that any alienation or encumbrance made after August 3, 1988 when the Family Code took effect by the husband of the conjugal partnership property without the consent of the wife is null and void." [Underscoring supplied]

Second, the rights of the spouses Cortado over the property subject of the August 14, 1997 Deed of Sale has been already admitted in several instances by appellants-spouses, to mention a few: (a) In their pre-trial brief[13], appellants-spouses stated that the, “plaintiff acquired the remaining Fifty (50) sq. meters thereof from the same awardee. The Sale of Rights and interest over the lot to both plaintiffs and defendants were indeed approved by the NHA”; (b) In their “Memorandum for the Defendants”[14], appellants-spouses declared that, “on February 22, 1988, plaintiff and defendants bought the rights of Rosita M. Garcia, as awardee over the NHA Lot x x x consisting of eighty (80) sq. meters, covered by TCT No. 216479 x x x at a ratio of 50 sq. meters to the plaintiff and 30 sq. meters to the defendants; and (c) Zenaida Asuncion’s testimony wherein she recognized the rights of the spouses Cortado over the property, as shown from the following excerpts of her testimony:

“Q During the pre-trial of this case, you conditionally marked in evidence TCT. No. 216479 consisting of 80 square meters where the house you and the plaintiff purchased from Rosita [Cortado][15] is situated, this TCT is not a certified copy, do you have now the certified copy of the said documents?

A Yes, sir.

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Q What is your objective in buying that house?

A We bought that house so that we will have possession on that lot given by the NHA. Furthermore, in order to become an awardee of the NHA.

Q Did you become an awardee of the said lot?

A Yes, sir.

Q And also the plaintiff?

A Yes, sir.

Q Why?

A Because the NHA approved our deed of structure.” [TSN June 14, 2002, pp. 2-3]

In the meantime, during the continuance of her testimony on July 5, 2002 she testified:

Q At the time of the sale, were you aware of the fact that the property was owned jointly by the husband and wife, Bibiano and Eliza Cortado?

A Only the right, sir.

Q At the time of the execution of the (sic) deed of sale, were you aware that the spouses Eliza and Bibiano Cortado have the rights and interests over the portion of land designated and described in the deed of sale dated August 14, 1997?

A Yes, your honor. [TSN July 5, 2002 pp. 22-23]

Therefore, being in the nature of judicial admissions, it may not be contradicted by appellants-spouses unless there is a showing that such admissions were made through palpable mistake, or that no such admission was in fact ever made.[16] A judicial admission is binding on the person who makes it, and absent any showing that it was made through palpable mistake, no amount of rationalization can offset such admission.[17] In this regard, it does not show that appellants-spouses made such admissions through palpable mistake nor does it appear that such admission was disputed as ever being made by the latter.

Third, it is not amiss to note that if we follow the appellants-spouses’ line of reasoning that the spouses Cortado are not the owners and have no rights over the property but the NHA, why then did they deal with Bibiano Cortado as to the disposition of such property and eventually executed a deed of sale over the same? If it is indeed true that it is the NHA which exercises the rights of ownership over the property, why then did appellants-spouses not directly deal with the NHA? Thus, we find this argument by appellants-spouses too incredible to be believed. Significantly, the records show that even the NHA itself recognized the right of the spouses Cortado over the property. In this regard, Ma. Teresa Oblipias a representative of the NHA testified in court on May 16, 2003 as follows:

“Q – What particular lot was occupied by spouses Asuncion and the particular lot by the Cortados?

A – We are talking of one lot, Your honor, which has been awarded to them, Your Honor.

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Q – When was it segregated?

A – Your Honor, there was no lot survey segregation, the lot is x x x 80 sq. meters, but there was a legal instrument that indicates 50 sq. meters is allowable to spouses Cortado’s

Q - x x x Who awarded the lot measuring 30 sq. meters to spouses Asuncion, in other words was the allocation done with the consent of the NHA?

A – Yes, Your Honor.

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Q – x x x Was there a permission or conformity from the NHA because if there is, the law can be circumvented?

A – In this particular case, Your Honor, the transaction was assisted by the Estate Management Board of the NHA.

Q – So you are trying to say that the occupancy of the Cortado and Asuncion's were allowed and with knowledge and consent of the NHA?

A – Yes, Your Honor." [TSN, May 16, 2003, pp. 7-8]

In addition, when the witness was asked as to the status of the August 14, 1997 Deed of Sale with the NHA, Oblipias testified, thus:

"Q – In this Deed of Sale executed by [B]i[b]iano Cortado on August 14, 1997, consists of 25 sq. meters of the 50 sq. meter share of sps. Cortados, and sold to sps. Asuncion, do you remember if you have any approval of this Deed of Absolute Sale of the 25 sq. meters?

A – The office has not approved the Deed of Sale.

Q – What is the reason?

A – At the time of the submission of the copy of the Deed of Sale, the account was updated and there was no official request COMING from both parties for NHA to process the transfer. [Id. at 3-4]

Prescinding from the above-disquisition, we find that the spouses Cortado's right over the property subject of the August 14, 1997 Deed of Sale and that the status of the property being conjugal property has sufficiently been established by evidence not only coming from the evidence presented by the appellee but also from the appellants-spouses' very own admissions. As we have stated earlier, since the property or right to the same is part of the conjugal property of the spouses Bibiano and Eliza Cortado, the same cannot be encumbered or disposed of without a written consent of either spouse. Hence, following Article 124 of the Family Code, we agree with the trial court that the August 14, 1997 Deed of Sale executed between the spouses Asuncion and Bibiano Cortado is null and void. *Dura lex sed lex*.

Appellants-spouses are not Buyers in Good Faith

By way of analogy, Article 526 of the New Civil Code has defined the term "in good faith" as a person who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it. As borne by the records, appellants-spouses very well knew that there was a defect in the manner which they acquired the property subject of the August 14, 1997 Deed of Sale. This is clearly shown from the following portions of Zenaida Asuncion's testimony, to wit:

"Q Before going further, do you know why you asked the daughter of Eliza Cortado to send the letter [to] Greece? Do you know the purpose?

A For signing, sir.

Q Of course, you know the significance of the deed of sale for signing by Eliza Cortado?

A Yes, sir, so that it will be legal.[TSN, July 5, 2002, pp. 11-12]

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Q Do you agree with me that the second deed of sale does not contain the signature of Eliza Cortado?

A Yes, sir, because it was not signed.

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Q You still went on with the sale knowing fully well that the same will not be signed by Eliza Cortado?

A There was a letter instructing her family to sell that portion, sir.

xxx

Q In spite of your admission regarding the legality or significance of the signature of Eliza Cortado you still went on with the sale?

A Yes, sir, because she had an instruction in her letter [Id. at 17-18]

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Q At the time of the execution of the (sic) deed of sale, were you aware that the spouses Eliza and Bibiano Cortado have the rights and interests over the portion of land designated and described in the deed of sale dated August 14, 1997?

A Yes, your honor.

Q And despite of that, you went on with the sale without the signature of Eliza Cortado?

A Yes, your honor. [TSN July 5, 2002 pp. 23]

As such, it is clear from the foregoing that the appellants-spouses knew of the significance of acquiring the written consent of appellee, so much so that previously, the former even sent a copy of the first deed of sale executed over the property to Eliza Cortado in Greece. Yet, knowing of the importance of obtaining appellee's consent thereto, appellants-spouses went on to ignore such requirement and proceeded with the execution of the second deed of sale on the basis of a mere letter which allegedly came from appellee. Unfortunately for appellants-spouses, such agreement by appellee, which was not proven, to the said sale is not sufficient compliance with the requirements under Article 124 of the Family Code.

Albeit, we are convinced on the basis of the evidence at hand that the appellants-spouses had prior knowledge of this requirement under Article 124 taking into consideration appellants-spouses' conduct in the execution of the first deed of sale and as confirmed by the testimony of appellant Zenaida Asuncion. Thus, appellants-spouses were not in good faith when they proceeded with the sale considering that they knew that the appellee's written consent is necessary for the sale to be considered "legal".

Nevertheless, even assuming that the appellants-spouses did not know that the consent of the other spouse is necessary for the validity or legality of the contract of sale, it must be emphasized that "ignorance of the law, excuses no one from compliance therewith"[18]. On this note, the meaning of Article 124 of the Family Code is plain and clear in that a disposition or encumbrance of the conjugal property without the written consent of the other spouse is void. As such, appellants-spouses are presumed to know this under the law and if they disregarded such provision of law and went on with the sale notwithstanding, appellants-spouses did so at their own peril.

Consequently, we find that appellants-spouses are possessors in bad faith of the property subject of the August 14, 1997 Deed of Sale. Under the law, any improvements made by a possessor in bad faith on the land belonging to another shall be governed by Articles 449, 450, 451 and 452 of the New Civil Code which state:

"Art. 449. He who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without right to indemnity.

Art. 450. The owner of the land on which anything has been built, planted or sown in bad faith may demand the demolition of the work, or that the planting or sowing be removed, in order to replace things in their former condition at the expense of the person who built, planted or sowed; or he may compel the builder or planter to pay the price of the land, and the sower the proper rent.

Art. 451. In cases of the two preceding articles, the landowner is entitled to damages from the builder, planter or sower.

Art. 452. The builder, planter or sower in bad faith is entitled to reimbursement for the necessary expenses for

the preservation of the land.”

Hence, being a possessor and builder in bad faith over the subject property, the appellants-spouses can only ask for reimbursement of the necessary expenses which they have incurred on the said property while they lose all other improvements they had made over the subject property without right of indemnity thereto.

Attorney’s Fees and Judicial Costs are Proper

Article 2208 of the New Civil Code enumerates the instances when an award of attorney’s fees as well as judicial costs may be recovered. On this note, we find that the circumstances of the instant case warrant the imposition of the said awards. The rule is settled that attorney’s fees may be awarded when the parties are compelled to litigate or to incur expenses to protect their interest by reason of an unjustified act of the opposing party.[19] The unjustified act of the appellants-spouses herein consisted in the fact that notwithstanding their knowledge that the consent of appellee is necessary to legalize the contract of sale over the subject property -- being part of the Cortado’s spouses conjugal property, the former proceeded with the execution of the August 14, 1997 Deed of Sale and thereafter took possession thereof without having first obtained the consent of appellee. What made matters worse is that appellants-spouses’ refusal to return the property to appellee even when the latter offered to refund the amount they had paid over the property and as a result of such refusal compelled appellee to litigate to enforce her right therein.

Verily, these facts may be inferred from the decision of the trial court, and to state the rationale for the award of attorney’s fees in categorical terms would only be superfluous.[20] Hence, we find that the basis for the award of attorney’s fees is aptly stated in the decision of the trial court. Notwithstanding, we deem to fix the award of attorney’s fees to P30,000 as the same is reasonable under the circumstances. As to the award of judicial costs, the same has basis under Article 2208 (11) which in effect states that expenses of litigation may be recovered under just and equitable circumstances.

Conclusion

On the basis of the evidence on hand and the study of the applicable laws and jurisprudence, it is clear that the August 14, 1997 Deed of Sale executed between the appellants-spouses Asuncion and Bibiano Cortado is void for lack of written consent of appellee Eliza Cortado as required under Article 124 of the Family Code. Considering that the sale is void, appellants-spouses are entitled to a refund of the amount of money they had paid in consideration for the property subject of the void sale. On this note, the evidence shows that Bibiano Cortado and his daughter Michelle Cortado as of June 15, 1997 received from appellants-spouses the amount of P110,000 as purchase price for the subject property .[21] Hence, the appellants-spouses are entitled to a refund of P110,000.

Meanwhile, since the records show that the appellants-spouses were possessors in bad faith over the property subject of the August 14, 1997 Deed of Sale, any improvements they had introduced over the subject property shall belong to appellee since the latter is the NHA awardee over the portion of the said lot and up until now, there is no evidence to prove that the NHA had revoked such award. In fact, as per testimony of Oblipias, the account for the said lot is already fully paid with the NHA.[22] Likewise the NHA representative even confirmed that the appellee paid the amortizations for the said property on October 11, 2001.[23] Such being the case, it appearing from a perusal of the prayer in the Amended Complaint that appellee has chosen to demolish the structure and improvements erected by appellant-spouses over the subject property, such demolition shall be undertaken at the expense of appellants-spouses as provided under Art. 450 of the New Civil Code. As to the other awards of attorney’s fees and judicial costs, the same are affirmed having factual and legal bases.

WHEREFORE, premises considered, the Decision dated November 27, 2003 of the Regional Trial Court, Branch

121 of Caloocan City in Civil Case No. C-19297 is AFFIRMED with MODIFICATION as follows:

- Declaring the Deed of Sale executed between Bibiano Cortado and the defendants-spouses Ernesto and Zenaida Asuncion as null and void and of no legal effect;
- Ordering defendants to vacate the subject premises without right to indemnity to whatever structures they may have built thereon considering that they are purchasers and possessors in bad faith;
- Ordering defendants to demolish, at their expense, whatever structures or improvements they had built or introduced over the subject property and to restore the said property to its original condition prior to the August 14, 1997 sale;
- Ordering defendants to pay attorney's fees in the amount of Php 30,000.00;
- Ordering defendants to pay the costs of the suit; and
- Plaintiff Eliza Cortado is hereby ordered to refund the amount of Php 110,000.00 to defendants Ernesto and Zenaida Asuncion representing the amount of the purchase price they had paid as consideration for the property subject of the void August 14, 1997 Deed of Sale.

SO ORDERED.

Sundiam and Dimaampao, JJ., concur.

[1] Records at 268-276.

[2] Id. at 5.

[3] Id. at 117-119.

[4] Id. at 27-32.

[5] Id. at 74-76.

[6] TSN, October 12, 2001.

[7] TSN, August 3, 2001.

[8] TSN, May 17, 2002 and TSN, July 5, 2002.

[9] TSN, January 17, 2003.

[10] Exhibit "A" for the Plaintiff.

[11] Records at 5-6.

[12] 291 SCRA 372, 382 [1998].

[13] Records at 56-61.

[14] Id. at 245.

[15] The surname should be "Garcia".

[16] Section 4, Rule 129 of the Revised Rules on Evidence.

[17] Seastar Marine Services Inc. v. Bul-an, Jr., 444 SCRA 140, 153 [2004]

[18] Article 3, New Civil Code.

[19] Philippine National Bank v. RBL Enterprises, Inc. 430 SCRA 299, 310 [2004].

[20] Philippine National Bank v. Court of Appeals, 324 SCRA 714, 726[2000].

[21] Records at 20-22.

[22] TSN, June 6, 2003 at 6.

[23] Id. at 7.

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