

CARMELA CUIZON Y MONTALBAN, PETITIONER, VS. COURT OF APPEALS AND SPOUSES GERARDO AND MARIA PARAY, RESPONDENTS.

G.R. No. 102096. August 22, 1996

Ponente: TORRES, JR., J.

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TORRES, JR., J.:

In contractual relations, the law allows the parties much leeway and considers their agreement to be the law between them. This is because "courts cannot follow one every step of his life and extricate him from bad bargains x x x relieve him from one-sided contracts, or annul the effects of foolish acts.[1]

This is an aspect to be resolved in this case.

Petitioner seeks to review and set aside the Decision[2] of the respondent Court of Appeals dated September 27, 1991 (CA-GR. NO. 17228) which reversed and annulled the January 20, 1988 decision of the Regional Trial Court of Cebu City (Civil Case No. CEB-3835), and the Resolution promulgated on September 27, 1991 which denied her Motion for Reconsideration.

The following antecedent facts, as found by the trial court are culled from the testimony of, and the documents presented by petitioner:

"Plaintiff is a businesswoman engaged in general merchandising under the trademark Tropic Philippines Food. In 1983, she was introduced to defendants spouses Gerardo and Maria Paray, who are in the real estate business, by a certain Romy Verano, a mutual friend. When the friendship between the two parties developed, Maria Paray proposed to Carmela Kuizon that the spouses Paray would execute Special Power of Attorney in favor of plaintiff for five parcels of land with an aggregate area of 3,803 square meters, owned by defendants, which the plaintiff is to mortgage in her name using those same parcels of land as collaterals. The defendants at that time were in dire need of money to pay off their bank obligations. Plaintiff acceded to the plans after much persuasion on the agreement that Carmela Kuizon pay for the amortization of the loans and that for whatever amounts covered by the loans released from time to time, turned over to the defendants by plaintiff, the defendants will immediately convey to the plaintiff, each lot within the amount received by them computed at a mutually agreed price of P170.00 per square meter. As an inducement to the proposal and in partial compliance with their agreement, defendants executed in favor of plaintiff a Deed of Sale of Real Property over Lot No. 800-A-1-B under TD No. 34504 (Exhibit M-Deed of Sale dated June 6, 1983-for P25,000.00 over TCT No. 84791, Lot No. 800-A-1-B, 314 sq. m.). Defendants also executed Special Power of Attorney, notarized June 30, 1983 over TCT Nos. 84793, 84792 and 84794 covering Lots Nos. 800-A-3, 800-A-2 and 800-A-4 (Exhibit C), and registered with the Register of Deeds). After said SPA (Exhibit C) was executed, plaintiff secured loan from the Rural Bank of Compostela for P50,000 with maturity dated on April 22, 1984 covering Lot No. 800-A-4 as collateral (Exhibit D and D-1 Discount and Disclosure Statement of Loan Transaction issued to Carmela Montalban by the Rural Bank of Compostela (Cebu) for P50,000.00 with net proceeds of P43,459.50; and Real Estate Mortgage executed by Carmela and Antonio Montalban in favor of Rural Bank of Compostela (Ceb) [sic]. Subsequently, plaintiff secured an IBRD loan from the same Rural

Bank of Compostela for P183,910.00 maturing on October 19, 1983 with Lots No. [sic] 800-A-3, 800-A-2 and 800-A-4, part of the proceeds of which she used to pay the previous loan of P50,000.00 with the same bank (Exhibits F, F-1 and F-2 - Discount and Disclosure Statement on Loan Transaction issued to plaintiff by Rural Bank of Compostela for IBRD loan of P188,910.00 dated November 25, 1983 with net proceeds of P183,242.70; Promissory Note for P188,910.00 executed by plaintiff; and Real Estate Mortgage executed by Carmela and Antonio Montalban over Lots Nos. [sic] 800-A-4, 800-A-2 and 800-A-3). Later, defendants executed another Special Power of Attorney notarized August 19, 1983 for Tax Declaration No. 01-03242 under TCT No. 74735 covering Lot No. 720-A (Exhibit B) and registered with the Register of Deeds (Exhibit B-3), with said SPA (Exhibit B) plaintiff was able to secure a loan from Isla Bank in the amount of P60,000.00 to mature on February 27, 1984 (Exhibit E-Certified true copy of Discount Statement by Isla Bank for loan of P60,000.00 by plaintiff of net proceeds of P52,256.64; and Exhibit E-1-certified true copy of the Real Estate Mortgage executed by plaintiff in favor of Isla Bank over Lot No. 720-A to guarantee loan of P60,000.00). Defendants again issued another Special Power of Attorney (Exhibit A) notarized on May 23, 1984 over Lot No. 800-A-1 covered by TD No. 01-34503 in favor of plaintiff and duly notarized by the Register of Deeds (Exhibit A-3). Plaintiff, with said SPA, secured a loan from J. Finance in the amount of P44,941.75 with maturity date on November 30, 1985 (Exhibit A-2-letter and transmittal dated May 30, 1984 from J. Finance Corporation for loan of P44,941.75 with net proceeds of P35,000.00; and Exhibit N-1 Deed of Real Estate Mortgage executed by Carmela and Antonio Montalban in favor of J. Finance over Lot No. 800-A-I-4). For Lot No. 800-A-1B which was earlier conveyed by defendants to plaintiff in a Deed of Sale (Exhibit M), defendants pressured plaintiff to secure a housing loan with DBP in the amount of P201,000.00 (Exhibits G and G-1-certified true copy of Promissory Note for P103,200.00 and P97,800.00, respectively, dated February 8, 1984) using the same lots as collateral, with defendants promising to convey to plaintiff the adjacent Lot No. 800-A-1-A to serve as lawn for the house erected: pictures of the house were presented as Exhibits L, L-1, L-2, L-3.

For the several loans entered into by plaintiff a total amount of P492,002.04 was actually received by plaintiff as against the total loan of P544,851.75 summarized as follows:

- a) P50,000.00 -loan from R. B. of Compostela, net of P43,859.50
- b) P60,000.00 -from Isla Bank, net proceeds of P52,326.24
- c) P188,910.00 -IBRD loan, net proceeds of P183,242.70
- d) P201,000.00 -DBP loan, net proceeds of P177,573.60
- e) P44,941.75 -from J. Finance, net proceeds of P35,000.00

P544,851.75 -P492,902.04
(total loan) (total net)

From the net proceeds of P492,002.04, plaintiff remitted to defendants P198,000.00 which was duly receipted XXX."

XXX. "The receipted amount of P198,000.00 is broken down as follows:

- a. Exhibit I -handwritten receipt issued by Maria Paray for P20,000.00 dated May 25, 1983. This was considered the down payment for the consideration of P25,000.00 for Lot No. 800-A-1-B conveyed by defendants to plaintiff under Deed of Sale (Exhibit M).
 - b. Exhibit J -handwritten receipt issued by Maria Paray for P78,000.00 dated November 28, 1983. The balance of P5,000.00 for Lot No. 800-A-1-B was paid from this payment of P78,000.00 (Exhibit J).
 - C. Exhibit K -handwritten receipt of Maria Paray for P100,000.00 dated February 14, 1984.
- xxx

After plaintiff remitted the P20,000.00 (Exhibit I of defendant), Mrs. Paray borrowed plaintiff's title to a lot in Ozamis City, under TCT No. 8648 (Exhibit N dated May 28, 1983), and in turn Mrs. Paray handed to plaintiff

the Deed of Sale for Lot No. 800-A-1-B, together with two documents, a Deed of Agreement (Annex A of Answer) and a Supplemental Agreement (Annex B of Answer) for plaintiff to sign. The Supplemental Agreement in effect prohibited plaintiff from selling the land unless with consent of defendant spouses. Plaintiff initially refused to sign the Deed of Agreement as the purchase price indicated P25,170.00 with a down payment of P20,000.00 but the balance reflected was P33,380.00 instead of only P5,000.00, but upon defendants plea, she affixed her signature and issued a post-dated check for P33,380.00 to accommodate defendants with the understanding that those will be deducted from the loan releases and her assurance that these documents won't be notarized. xxx."[3]

Petitioner admitted that out of the P492,002.04 net proceeds of the loans, P194,002.04 were used in the building of her house on Lot No. 800-A-1-B,[4] the land which was then subject to the DBP housing loan, and P100,000.00 were allegedly given to the bank fixers as grease money for the release of the loans.[5] From 1983 to 1984, she also paid P2,342.63 of realty taxes[6] on the collaterals and complied with her obligation of paying loan amortization in the amount of P109,916.28.[7] When she demanded that a deed of sale be executed over Lot No. 800-A-1-A,[8] the lot which was adjacent to Lot No. 800-A-1-B, private respondents refused to convey said lot claiming that an accounting or liquidation of the loans and the lands she used as collaterals must first be made.[9]

On May 5, 1985, petitioner filed a complaint[10] for specific performance with damages against private respondents. She alleged, inter alia, that in compliance with their agreement, she turned over to private respondents P198,000.00 of loan proceeds,[11] deducting the purchase price of P25,120.00 for Lot No. 800-A-1-B from P198,000.00, private respondents were still obligated to convey to petitioner a total of no less than 1,017 square meters of land[12] representing the amount of P172,880.00 (P198,000.00 minus P25,120.00) computed at a mutually agreed price of P170.00 per square meter. She asked specifically for the conveyance of the 250 square meter Lot No. 800-A-1-A to provide a spacious lawn to the house built on Lot No. 800-A-1-B[13] and to pay back the amount of P130,380.00 (P172,880.00 minus the price of P42,500.00 for Lot No. 800-A-1-A), or in the alternative to pay back the amount of P172,880.00 plus interest.[14]

In their Answer,[15] private respondents claim that petitioner undertook to buy their six parcels of land with a total area of 4,117 square meters for P699,890.00 at a price of P170.00 per square meter.[16] In violation of their agreement that the purchase price would be paid out of the loans secured from various financial institutions, petitioner remitted to private respondents the amount of P198,000.00 only out of the total loan of P544,851.75.[17] As to Lot No. 800-A-1-B, they denied that its purchase price was P25,120.00 as claimed by petitioner. They insisted that with the down payment of P20,000.00, petitioner still had a balance of P33,380.00. So petitioner had to issue a postdated check of P33,380.00 and execute a Deed of Agreement offering her real property (TCT No. 8648) as a security for the balance of P33,380.00.[18] They also alleged that petitioner incurred loans and advances from them in the amount of P76,200.00 which were used by petitioner in the construction of her house on Lot No. 800-A-1-B.[19]

On December 4, 1985, a third party complaint[20] was filed by private respondents against Antonio Montalban (Montalban, for brevity). It appears that the real estate mortgage contracts entered into by petitioner with the banks showed that Montalban signed with petitioner as mortgagors and appeared on these documents as the husband of petitioner. Private respondents alleged that since their properties had been encumbered pursuant to the obligations entered into by Montalban and petitioner,[21] Montalban should be held solidarily liable with petitioner for their claims adverted to in the complaint.[22]

Montalban denied any marital relationship with petitioner contending in his Answer to Third Party Complaint[23] that it was private respondents who insisted the he should appear as husband of petitioner to facilitate the release of the loans sought by private respondents. He acceded only by way of an accommodation to the request of the private respondents because they (private respondents) could not be granted the subject loans in their names as

they had outstanding obligations with other financial institutions.[24]

After trial on the merits, the trial court rendered a decision[25] in favor of petitioner. The dispositive portion of which reads:

"WHEREFORE, this Court finds in favor of plaintiff and against defendants. Defendants are hereby ordered to:

1. Immediately return to plaintiff Owner's duplicate copy of TCT No. T-8648 covering the latter's Ozamis lot free from all liens and encumbrances;
2. Convey to plaintiff Lot Nos. 800-A-1-A under Tax Declaration No. 03242, 800-A-4 under Tax Declaration No. 0133513, 800-A-3 under Tax Declaration No. 33515, Lot 800-A-2 under Tax Declaration No. 33516. If said loads [sic] have been transferred to third parties, defendants shall pay plaintiff the price of said lot or lots which have been transferred to third parties, which is hereby fixed at P170.00 per square meter with interest at the legal rate from date of transfer to third parties;
3. Reimburse plaintiff with the taxes paid on the lands which is P2,343.63 with interest at the legal rate;
4. Pay plaintiff moral damages of P100,000.00; exemplary damages of P50,000.00; attorney's fees of P25,000.00; litigation expenses of P10,000.00 plus costs.

Third Party Complaint is hereby dismissed with costs against defendants-third party plaintiffs.

SO ORDERED."

Dissatisfied with the decision of the trial court, private respondents filed an appeal with the Court of Appeals. After due consideration of the parties' respective Briefs,[26] respondent court promulgated the questioned decision[27] on June 25, 1991, the dispositive portion of which reads:

"WHEREFORE, the decision dated January 20, 1988 is hereby annulled and set aside and another one is rendered, as follows:

1. Sustaining the validity and effectiveness of the sale of Lot 800-A-1-B in favor of appellee;
2. Ordering appellants to return to appellee the owner's duplicate of TCT T-8648;
3. Ordering appellants to execute a Deed Of Absolute Sale in favor of appellee over Lot 800-A-1-A at P300.00/sq. m., within thirty (30) days from the finality of this decision;
4. Ordering appellee to cause the discharge and free lots 800-A-2, 800-A-3 and 800-A-4 from mortgages, liens and encumbrances within thirty (30) days from the finality of this decision;
5. If appellee fails to discharge said lots from the mortgages, liens and encumbrances, then appellee is ordered to pay their value at P300/sq. m. within thirty (30) days from the finality of this decision; and,
6. Without pronouncement as to costs.

SO ORDERED."

The Motion for Reconsideration[28] filed by petitioner was denied by the respondent court for lack of merit, by virtue of a Resolution[29] dated September 27, 1991. Petitioner, impugns said decision and resolution of the Court of Appeals and, filed this petition for certiorari[30] on October 19, 1991. The comment[31] thereto was filed by private respondents on December 19, 1991. Petitioner filed a reply[32] dated November 28, 1991. By the Resolution[33] of this Court dated January 15, 1992, the parties were required to submit their respective memoranda. A manifestation[34] was submitted by petitioner stating that she is adopting the petition dated October 17, 1991 and her reply as her memorandum, which manifestation was noted by Resolution[35] of

October 28, 1992. Private respondents filed their memorandum[36] on February 24, 1992 while petitioner submitted her memorandum on February 15, 1993.[37]

In her Memorandum, petitioner submitted the following arguments:

1. The respondent court illegally made a contract between the parties in rendering the questioned decision which is diametrically opposed to the evidence presented by the parties in the court a quo.
2. The issues raised in the instant petition are purely legal and, therefore, cognizable by this Honorable Court.

The petition is meritorious.

While it has always been the policy of this Court to review only errors of law from decisions elevated to it from the Court of Appeals in a petition for certiorari under Rule 45 of the Revised Rules of Court, this rule is not absolute. Thus, in *Floro vs. Llenado*,[38] we stated:

"In a petition to review the decision of the Court of Appeals under the Rule 45 of the Rules of Court, the jurisdiction of the Court is ordinarily confined to reviewing errors of law committed by the Court of Appeals, its findings of fact being conclusive on the Court. There are however exceptional circumstances that would compel the Court to review the findings of fact of the Court of Appeals, summarized in *Remalante vs. Tibe* and subsequent cases as follows: 1) when the inference made is manifestly mistaken, absurd or impossible; 2) when there is grave abuse of discretion; 3) when the finding is grounded entirely on speculations, surmises or conjectures; 4) when the judgment of the Court of Appeals are based on misapprehension of facts; 5) when the findings of facts are conflicting; 6) When the Court of Appeals in making its findings went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; 7) when the findings of the Court of Appeals are contrary to those of the trial court; 8) when the findings of facts are conclusions without citations of specific evidence on which they are based; 9) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which if properly considered would justify a different conclusion; and 10) when the findings of fact by the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record."

It appears that the instant case is within the purview of the seventh exception. The respondent court's findings and conclusions are clearly contrary to those of the trial court.

The first issue to be resolved is the determination of the real agreement of the parties. Petitioner claims that their verbal agreement was for her to secure loans from financial institutions using private respondents' real properties as collaterals. Though petitioner would pay the loan amortization, the proceeds of the loan would be shared by them and whatever amount actually received by private respondents would then be treated as purchase price of the lot covered by the loan releases at an agreed price of P170.00 per square meter,[39] hence, the number of lots that would be conveyed depends on the amount of loan proceeds actually received by private respondents. Denying these assertions, private respondents alleged that petitioner orally agreed to buy the six subject lots for P699,890.00 at a rate of P170.00 per square meter,[40] the purchase price of which would be paid by the loan proceeds that would be secured by petitioner using the same lots as securities. They alleged that the transfer of the lots would be made only upon completion of payment.[41]

Upon a painstaking review of the records, this Court is persuaded to affirm petitioner's claim.

In arriving at a sensible meaning of the agreement of the parties, the first thrust of the Court is to discover and ascertain the intention of the contracting parties. And in order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered.[42]

Private respondents admitted to have conveyed to petitioner Lot No. 800-A-1-B as an initial step to consummate

the agreement[43] although petitioner gave a partial amount only of the total purchase price of P699,890.00. Where the parties to a contract have given a practical construction by their conduct, as by acts in partial performance, such construction may be considered by the court in determining its meaning and ascertaining the mutual intention of the parties at the time of the contracting.[44] If it were true as private respondents claim that their agreement was for the transfer of the subject lots only upon payment of the full consideration of P699,890.00, why then did private respondents execute a deed of sale over Lot No. 800-A-1-B although they knew too well that a partial amount only of the purchase price was paid. No credible explanation was given by private respondents. The act of executing the Deed of Sale of Real Property (Exhibit M) by the private respondents obviously destroys their claim that their agreement was for the conveyance of the parcels of land only upon full payment of the purchase price. This circumstance is decisive and we are convinced that their intention was that every lot covered by the loan proceeds given from time to time by petitioner to private respondents, are to be transferred to the petitioner.

Respecting Lot No. 800-A-1-B, petitioner claims that the consideration for the same is only P25,120.00 as reflected in the Deed of Sale of Real Property while private respondents aver that it should be P53,380.00 as can be gleaned from the Deed of Agreement. The relevant portions of the Deed of Sale of Real Property,[45] Deed of Agreement[46] and Supplemental Agreement to the Deed of Agreement Dated June 6, 1983,[47] which are the three contracts involved in the sale of the subject lot, are reproduced as follows for clarity:

DEED OF SALE OF REAL PROPERTY

"xxx xxx xxx.

That we, GERARDO PARAY and MARIA S. PARAY, x x x in consideration of the sum of TWENTY FIVE THOUSAND ONE HUNDRED TWENTY (P25,120.00) PESOS Philippine Currency, to us in hand paid by CARMELA R. KUIZON, x x x do hereby SELL, CEDE, TRANSFER, AND CONVEY unto CARMELA R. KUIZON x x x that certain portion of land x x x particularly described as follows:

TRANSFER CERTIFICATE OF TITLE

NO. 84791TAX DECLARATION NO. 01-33512

Property Index No. 152-1-14-0004

xxx xxx xxxTECHNICAL DESCRIPTION

Lot 800-A-1-B, Psd-07-01-008471

A parcel of land (Lot 800-A-1-B of the subdivision plan Psd-07-008401 xxx) xxx; containing an area of THREE HUNDRED FOURTEEN (314) SQUARE METERS xxx."

xxx xxx xxx."

DEED OF AGREEMENT

"xxx xxx xxx.

That we, GERARDO PARAY and MARIA S. PARAY, x x x; and CARMELA R. KUIZON, x x x, due to the Deed of Sale of Lot 800-A-1-B, Psd-07-008401, x x x, executed by GERARDO PARAY and MARIA S. PARAY in favor of CARMELA R. KUIZON, do hereby agree x x x:

1. xxx.

2. That the consideration of the Deed of Sale is TWENTY FIVE THOUSAND ONE HUNDRED TWENTY (P25,120.00) Philippine Currency, the down payment in the amount of TWENTY THOUSAND (P20,000.00) PESOS, Philippine Currency; and the remaining balance is THIRTY THREE THOUSAND THREE HUNDRED EIGHTY (P33,380.00) Pesos, Philippine Currency;

3. That as security and collateral of the said deed of sale, the vendee, CARMELA R. KUIZON offered as her collateral to the balance of THIRTY THREE THOUSAND THREE HUNDRED PESOS Lot No. 5284 x x x, covered by TRANSFER CERTIFICATE OF TITLE NO. T-8648; in an area of THIRTY THOUSAND NINE HUNDRED ELEVEN x x x.

xxx xxx xxx."

SUPPLEMENTAL AGREEMENT TO THE DEED OF AGREEMENT DATED JUNE 6, 1983

"xxx xxx xxx.

That I, CARMELA R. KUIZON, x x x do hereby agree, consent, accede to the spouses, GERARDO PARAY and MARIA S. PARAY x x x, THAT:

I cannot dispose by sale Lot 800-A-1-B containing an area of THREE HUNDRED FOURTEEN SQUARE METERS (314) more or less;

That if ever I wanted to dispose by SALE, I would secure the consent and approval of the spouses, GERARDO PARAY and MARIA S. PARAY.

xxx xxx xxx."

The Deed of Sale is duly notarized while the Deed of Agreement and the Supplemental Agreement are not notarized. All the three documents are dated June 6, 1983. Sustaining private respondents' view, the respondent court found that since the agreed price is P170.00 per square meter, the cost of the lot which has an area of 314 square meters would be P53,380.00.[48] With the down payment of P20,000.00, there would be an outstanding balance of P33,380.00.[49] This is the reason according to respondent court why the parties had to execute the Deed of Agreement to reflect the balance of P33,380.00 and why petitioner had to issue the UCPB check No. CBU-293316 for the same amount, payable to the order of Maria Paray, which however was not encashed due to unavailability of funds.[50]

It is well settled that in construing a written agreement, the reason behind and the circumstances surrounding its execution are of paramount importance to place the interpreter in the situation occupied by the parties concerned at the time the writing was executed.[51] Admittedly, the intention of the contracting parties should always prevail because their will has the force of the law between them.[52] The respondent court apparently failed to consider certain relevant facts and circumstances surrounding the execution of the documents involved which, if appreciated, would clearly determine the intention of the parties and would result to a different conclusion. First, the sale of Lot No. 800-A-1-B was an incentive given to petitioner who acquiesced to the proposal of private respondents of securing loans for them by using their lands as collaterals. As compared to the other five lots which had a price of P170.00 per square meter, Lot No. 800-A-1-B had a lower cost of P25,120.00 precisely to serve as an inducement of private respondents for petitioner to agree to their transaction. As testified to by petitioner:

"Atty. Fernandez:

Did you agree to the proposal which you narrated?

Kuizon:

Well, at first I was hesitant firstly because I have no experience in borrowing money especially as much as P50,000.00, secondly, although I was looking for a bigger space I did not have the need for five parcels of land, however Mrs. Paray kept coming back to me to get the money from the bank to induce me to agree to that proposal, Mrs. Paray assured she and her husband would immediately execute a Deed of Absolute Sale, upon downpayment of P20,000.00 on Lot-800-A-1-B under Tax Declaration No. 34504 consisting of 314 square

meters and that they would sell it to me at the price of only P25,000.00 as a further incentive to my applying for the loan and paying it myself.

xxx xxx xxx.

Atty. Fernandez:

xxx xxx xxx.

What prompted you to agree on the defendants' proposal?

Kuizon:

She told me that she will sell their lot for P25,000.00 and will accept a down payment of P20,000.00.

Atty. Fernandez:

What lot are you referring to?

Kuizon:

Lot 800-A-1-B."[53]

Second, petitioner and private respondents in executing the Deed of Agreement did not intend to be bound by the provisions thereof. The alleged balance of P33,380.00 was indicated in the Deed of Agreement because private respondents wanted petitioner to issue a postdated check for the same amount to pay the former's certain obligations. Thus, the UCPB check which was issued afterwards, was not intended for the payment of the alleged balance of P33,380.00 as appearing in the Deed of Agreement but was made by petitioner to enhance the standing of private respondents to their creditors. Petitioner's testimony in this regard is enlightening. Thus,

Atty. Fernandez:

"So after this receipt was signed or was made out by Mrs. Paray to you, what happened if any?

Kuizon:

On June 6, 1983 defendants returned to me with the Deed of Sale.

Atty. Fernandez:

Are you referring to this Exhibit M?

Kuizon:

Yes Sir. Together with the Deed of Sale, they handed the deed of agreement which is Annex A to their Answer and supplemental agreement which is Annex B to their Answer.

Atty. Fernandez:

When they returned to you with these documents what happened if any?

Kuizon:

They told me that they will give me this Deed of Sale but I have to sign these two documents. I told them that I could Sign the Supplemental Agreement because it prohibits me from selling the land unless the balance of P5,000.00 is being paid off. I told them I could sign this because I have no intention of selling this lot. But I told them I could not sign the Deed of Agreement because it did not tell the truth that the purchase price of Lot 800-A-1-B was only P25,000.00.

Atty. Fernandez:

When you told Mrs. Paray that you will not sign Annex A of their Answer what happened next, what did you do?

Kuizon:

When I told her I could not sign Annex A she said that the P33,380.00 was just indicated there because she wanted me to issue a postdated check, such amount to pay off certain obligation of the same amount, anyway she said that this will be charged against any loan releases, so because I trusted them I must issue a postdated check Annex C to the Answer, x x x.

Atty. Fernandez:

So when Mrs. Paray explained to you that P33,380.00 only represented certain obligation, what did you do if any?

Kuizon:

She told me that the P33,380.00 was just indicated there because she wanted to pay certain obligations in such amount that she wanted me to issue a postdated check from the P33,380.00 which is just to support the check."[54]

Third, private respondents did not deny any of these statements of petitioner. They gave no sensible explanation regarding the discrepancy in the consideration between the Deed of Sale and Deed of Agreement and no reason whatsoever was given as to why the Deed of Agreement, unlike the Deed of Sale, was not notarized, although both had the same date. Their allegation that upon request of petitioner the amount of P25,120.00 was placed in the Deed of Sale as the consideration of the sale so that petitioner would pay lesser taxes deserves scant consideration because as pointed out correctly by the trial court the liability to pay capital gains tax falls not on the buyer but on the seller, the private respondents in this case.

Considering these circumstances, we find that the Deed of Sale is the embodiment of the parties' true agreement. The consideration in the sale of Lot 800-A-1-B is P25,120.00 only which as appearing on record was fully paid by petitioner. The Deed of Agreement was executed merely to suit private respondents' nefarious motive of boosting their credit image with an understanding that it was not to become binding and operative between themselves. At most it was a simulated agreement[55] which is not really designed nor intended by the parties to produce legal effects. As a fictitious and simulated agreement it lacks valid consent so essential to a valid and enforceable contract.

In compliance with their agreement, petitioner remitted to private respondents the sum of P198,000.00 which represent the loan proceeds secured by her. Deducting the sum of P25,120.00 which was the price of Lot No. 800-A-1-B from the abovestated amount, there is still a remaining balance of P172,880.00 in the hands of private respondents. With this available amount she specifically asked in her Complaint for the conveyance of Lot No. 800-A-1-A to provide a lawn space to Lot No. 800-A-1-B which was just adjacent to it. Private respondents were also willing to sell Lot No. 800-A-1-A as can be deduced from the allegations in their Answer. These circumstances were amply taken into account by respondent court which properly considered and appreciated the foregoing manifestations of the parties when it ruled for the execution of a deed of sale over Lot No. 800-A-1-A. The respondent court stated:

"It is observed in appellee's first cause of action, in connection with her general quest that appellants be directed to execute deeds of absolute sale, that she specifically mentioned lot 800-A-1-A containing an area of 250 sq. m., alleging in paragraph 1.13 of her complaint, that when she offered lot 800-A-1-B to the prospective

buyers, they signified their intention to buy that lot "x x x only if adjacent Lot No. 800-A-1-A was included in the sale to provide a loan thereto". In connection with such specific quest, there is in appellant's answer, specifically paragraph 3-(j), that "when plaintiff negotiated to discontinue the agreement and offered to proceed only with the sale of lots nos. 800-A-1-B and 800-A-1-A with 314 and 250 square meters in area respectively, defendants demanded that they would return the excess minus the cost of the two lots x x x provided that all other properties be cleared of all the encumbrances, liabilities and mortgages since they were not benefited by the same. x x x."

"In the light of the above manifest submissions of the contending parties, in their respective prayer, most specially the underlined portion in appellants' answer, it is appropriate, fair and just to require appellants to execute a deed of sale in favor of appellee over Lot 800-A-1-A, containing an area of 250 sq. m., x x x."

While we agree with the foregoing observations of respondent court, we do not find it proper to use the fair market value of P300.00 per square meter as the price of Lot 800-A-1-A or for a total cost of P75,000.00. This is not in accord with the contract between the parties. It is not the province of the court to alter a contract by construction or to make a new contract for the parties; its duty is confined to the interpretation of the one which they have made for themselves without regard to its wisdom or folly as the court cannot supply material stipulations or read into the contract words which it does not contain.[56]

Their agreement is that every parcel of land covered by the loan releases would be conveyed at an agreed price of P170.00 per square meter. As testified to by private respondent Maria Paray, to wit:

Q "What transpired when Carmela Kuizon was introduced to you?

A Carmela Kuizon told me that she is going to buy my land.

Q Was there in effect an agreement to buy the land?

A There was.

Q For what price was the land to be purchased?

A At P170.00 per square meter."[57]

This price of P170.00 per square meter was confirmed by petitioner. She declared:

Atty. Fernandez:

"My question your honor is at what point did you agree to fix the price of P170.00?

xxx.

Kuizon:

Well, before the SPAs were executed the price we agreed was P130.00 but after the execution of the SPAs they increased the price from P130 to P170.00 per square meter."[58]

It is undisputed that the selling price of the real property involved as agreed upon by the parties is P170.00 per square meter. That which is agreed to in a contract is the law between the parties. Thus, obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.[59] This, notwithstanding the findings of the respondent court to the effect that-

xxx it is appropriate, fair and just to require appellants to execute a deed of sale in favor of appellee over lot 800-A-1-A, containing an area of 250 sq. m. at P300.00/sq. m. which is the present "fair market value" of the property x x x (Decision, p. 28).

We cannot make a new contract for the parties in the case at bar. Neither can "present market value" result to a novation, which cannot be presumed; neither can we disturb the consensuality of a contract of sale where the rights and obligations of the parties are determined at the time it was entered into, but above all, courts are not to play as decision - makers as to the terms of a business contract when it is not asked to play that role. The sanctity of contracts must be respected and delicately preserved.

Consequently, from the amount of P198,000.00, the sums of P25,120.00 which is the consideration of the sale of Lot No. 800-A-1-B and, P42,500.00 which is the purchase price of Lot No. 800-A-1-A shall be deducted thereby leaving a balance of P130,380.00. In the Answer of private respondents, they demanded for the payment of P76,200.07 which represents the advances or loans extended to petitioner in finishing the construction of her house on Lot No. 800-A-1-B. On this, we agree with the findings of the respondent court upholding the validity of the loans in the amount of P67,326.07,[60] which shall be deducted from the balance of P130,380.00. We find the evidence for private respondents as adequate to establish their cause of action against the petitioner. As it is, the mere denial of petitioner cannot outweigh the strength of the documentary evidence presented by and the positive testimony of private respondents. As a jurist once said, "I would sooner trust the smallest slip of paper for truth than the strongest and most retentive memory ever bestowed on moral man." [61] In *De Gala vs. De Gala*, [62] this court stated, thus:

"x x x. It is a general rule of evidence, that all other things being equal, affirmative testimony is stronger than negative; in other words, that the testimony of a credible witness, that he saw or heard a particular thing at a particular time and place is more reliable than that of an equally reliable witness who, with the same opportunities, testifies that he did not hear or see the same thing at the same time and place."

Petitioner would like us to believe that the P100,000.00 allegedly given as grease money to bank fixers would be credited against the account of private respondents.[63] Petitioner claims that this amount was given to bank personnel to facilitate the approval of the loans. Admittedly, the sum of P100,000.00 as alleged by petitioner was part of the total net proceeds of the loan in the amount of P492,002.04. The respondent court seasonably denied this claim of petitioner. Bare allegations which are not supported by any evidence, documentary or otherwise, sufficient to support her claim fall short to satisfy the degree of proof needed. We likewise agree with the findings of the respondent court which reads in part, viz.:

"Appellee moreover claimed to have given P100,000.00 to appellants, which was handed every now and then in the amount of P20,000.00 or P30,000.00, and admittedly that the same was not receipted for. She has not explain why she did not demand a receipt, when, on the contrary, she demanded receipts for the P20,000.00, the P78,000.00, and the P100,000.00 when she delivered them on May 25, 1983; November 28, 1983; and February 14, 1984 (exhibits I, J and K). As appellee so expressed, that amount were given as "grease money" to facilitate the approval and release of the loans themselves. For this reason, that sum cannot be credited against the account of appellants, and unfair, unjust and uncalled for to consider the same as representative/part of the purchase price of appellants' properties. x x x." [64]

Petitioner also claims that she was forced by private respondents to construct the house on Lot No. 800-A-1-B, hence, the amount of P194,002.04 which were used in the building of the house should likewise be credited against the account of private respondents and be considered as part of the purchase price of the real properties involved. Simply stated, this allegation does not deserve any credence. We take note of the fact that petitioner was already the owner of Lot No. 800-A-1-B as early as June, 1983 when the Deed of Sale over said lot was executed and delivered to her by private respondents. By law, all works, sowing and planting are presumed made by the owner and at his expense, unless the contrary is proved.[65] No convincing and sufficient evidence whatsoever was presented by petitioner to rebut the presumption. On the contrary she admitted that she spent an additional amount of P100,000.00[66] in building the house. She also incurred loans from private respondents and used them

in the construction of the house. These circumstances clearly show that she of her own volition decided to build the house on Lot No. 800-A-1-B.

We are not, however, inclined to toe the line of the trial court's finding that private respondents are liable for fraud. Fraud is the deliberate or intentional evasion of the normal fulfillment of an obligation.[67] The mere failure of private respondents to execute a deed of sale because they demanded first an accounting of the lots used as collaterals by petitioner and the amount of loans secured[68] could not be considered as fraud. Fraud is never presumed. It must be alleged and proven[69] *Fraus est odiosa et non praesumenda*. Fraud is negated when private respondents have partially performed their obligation when they executed a deed of sale over Lot No. 800-A-1-B. Likewise, as appearing on record, private respondents intimated their willingness to execute a deed of sale over Lot No. 800-A-1-A. The testimony of private respondent Maria Paray confirms this, thus:*Fraus est odiosa et non praesumenda*. Fraud is negated when private respondents have partially performed their obligation when they executed a deed of sale over Lot No. 800-A-1-B. Likewise, as appearing on record, private respondents intimated their willingness to execute a deed of sale over Lot No. 800-A-1-A. The testimony of private respondent Maria Paray confirms this, thus:

"REDIRECT EXAMINATION
BY ATTY. VALENTINO LEGASPI

Now, you stated in your cross examination that you refused to transfer a part of the lands even though you have received already P198,000.00, my question is, what was the offer of Carmela Kuizon with respect to the land which were not covered by the payment which is the subject of the mortgage?

Mrs. Maria Paray:

What Carmela Kuizon suggested to me is that I would execute in her favor a Deed of Absolute Sale for the area of 250 sq. m. but what I can say is that the title covering this lot has been mortgage by her to J Finance so I think it would not be wise for me as yet to execute that Deed of Sale in her favor.

Atty. Valentino Legaspi:

In this connection did Carmela Kuizon agree to release other titles not covered by the payment?

xxx xxx xxx.

Mrs. Maria Paray:

What Carmela Kuizon told me is that, if I will execute a Deed of Sale in her favor for the area of 250 square meters she would pay off her other obligations, get the title and return the titles to me.

Atty. Valentino Legaspi:

And what was your answer?

Mrs. Maria Paray:

I went to see her lawyer Atty. Fernandez and I told Atty. Fernandez to please call his client Carmela Kuizon to pay off to clear the titles so that the titles will be returned to me and that I will be ready to execute a Deed of Sale of the 250 sq. m."[70]

Lest we unnecessarily traverse the fact-finding role of the trial court, we echo once more what has been said in *Vales vs. Villa* (35 Phil. 76) thus:

"Men may do foolish things, make ridiculous contracts, use miserable judgment, and lose money by them - indeed, all they have in the world; but not for that alone can the law intervene and restore. There must be, in

addition, a violation of law, the commission of what the law knows as an actionable wrong, before the courts are authorize to lay hold of the situation and remedy it."

We have, as a final note, considered the remediable aspects of the instant case as far as the law and the circumstances would allow and permit.

IN VIEW OF THE FOREGOING PREMISES, the appealed decision is hereby AFFIRMED with modifications:

1. Ordering private respondents to execute A Deed of Absolute Sale over Lot No. 800-A-1-A at a price of P170.00 per square meter within thirty (30) days from finality of the decision;
2. Ordering private respondents to reimburse petitioner the amount of P63,053.93 with legal interest within 30 days from finality of the decision.

Without pronouncement as to costs.

SO ORDERED.

Regalado (Chairman), Romero, Puno, and Mendoza, JJ., concur.

[*] NOTE: In the verified petition filed with this Court and in the brief for plaintiff-appellee filed with the Court of Appeals, Cuizon is spelled as Cuizon. However, in the verified complaint filed with the RTC of Cebu City, Branch 6 and in the Deed of Sale of Real Property (Exhibit M) Cuizon is spelled as Kuizon.

[1] Vales vs. Villa, 35 Phil. 769.

[2] Penned by Justice Artemon D. Luna concurred in by Associate Justice Serafin E. Camilon and Celso L. Magsino.

[3] Original Records, pp. 187-191.

[4] TSN., pp. 44-47, Nov. 12, 1985.

[5] TSN., Nov. 11, 1985, pp. 71-76.

[6] TSN., Nov. 12, 1985, p. 118.

[7] TSN., Nov. 11, 1985, pp. 115-117.

[8] Exhibits O and P.

[9] TSN, April 24, 1986, pp. 21-22.

[10] Original Records, pp. 1-9.

[11] Ibid., par. 1.7, Complaint.

[12] Ibid., par. 1.9, Complaint.

[13] Ibid., par. 1.10, Complaint.

[14] Ibid., par. 7. 3, Complaint.

[15] Original Records, pp. 52-59.

[16] Ibid., par. 3b, Answer.

[17] Ibid., par. 3g, Answer.

- [18] Ibid., par. 3c, Answer.
- [19] Ibid., par. 3i, Answer.
- [20] Original Records, pp. 102-103.
- [21] Ibid., par. 4, Third-Party Complaint.
- [22] Ibid., Prayer, Third-Party Complaint.
- [23] Original Records, pp. 119-122.
- [24] Ibid., par. 3, Answer to Third-Party Complaint with counter claim.
- [25] Original Records, pp. 184-200.
- [26] Rollo, 103-190.
- [27] Rollo, pp. 29-58.
- [28] Rollo, pp. 191-202.
- [29] Rollo, p. 60.
- [30] Rollo, pp. 2-27.
- [31] Rollo, pp. 208-211.
- [32] Rollo, pp. 204-205.
- [33] Rollo, p. 213.
- [34] Rollo, p. 213-A.
- [35] Rollo, p. 226.
- [36] Rollo, pp. 227-236.
- [37] Rollo, pp. 244-267.
- [38] G.R. No. 75723, June 2, 1995.
- [39] Original Records, p.2; TSN November 12, 1985, pp. 68-69.
- [40] TSN., April 24, 1986, pp. 5-6.
- [41] TSN., April 25, 1986, p. 25.
- [42] Civil Code of the Philippines, Article 1371.
- [43] Original Records, pp. 53-54.
- [44] Javier vs. CA-G.R. No. 48194; 183 SCRA 171.
- [45] Exhibit M.
- [46] Exhibit 4.
- [47] Exhibit 3.
- [48] Rollo, p.49.

- [49] Ibid.
- [50] Rollo, pp. 49-50.
- [51] Vicente Gotamco Hermanos vs. Shotwell 38 SCRA 107
- [52] Kasilag vs. Rodriguez 69 Phil. 217, No. 46623.
- [53] TSN November 11, 1985, pp. 17-20.
- [54] Ibid., pp. 89-95.
- [55] Civil Code Articles 1345-1346.
- [56] Bacolod Murcia Milling Co. vs. Banco Nacional Filipino, 74 Phil. 675.
- [57] TSN., April 24, 1986, p. 6.
- [58] TSN November 11, 1985, pp. 27-28.
- [59] Article 1159, NCC.
- [60] Exhibits 10 to 10-U, except Exhibit 10-D; Rollo p. 56.
- [61] June Limpkin of Georgia in Miller vs. Cotten 5 Ga. 341, 349 (cited in R. J. Francisco, Evidence, 1993 Ed., Footnote 65, p. 563)
- [62] 42 Phil. 771.
- [63] Rollo, pp. 251-252.
- [64] Ibid., p. 252.
- [65] Civil Code of the Philippines, Article 446.
- [66] TSN., November 12, 1985, pp. 66-67.
- [67] 8 Manresa 72.
- [68] TSN., April 24, 1986.
- [69] ET. Atilano vs. Inclan, 45 Phil. 246.
- [70] TSN., April 25, 1986, pp. 36-38.

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