

LEA O. CAMUS, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, CONRADO S. DAVID AND DAVID MOTORS AND MARKETING CORPORATION, RESPONDENTS.

G.R. No. 102314. May 26, 1993

Ponente: MELO, J.

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MELO, J.:

Both the trial and appellate courts construed the transaction effected between herein petitioner and private respondent on May 20, 1986 as an absolute sale of a piece of realty, but petitioner thinks otherwise, saying that it was a mere equitable mortgage. Hence, the petition at bar.

Respondent court briefly narrated the background of the case which petitioner did not bother to assail in her pleadings before this Court, thus:

On May 20, 1986, the parties, with plaintiff-appellant as vendor and defendant-appellee David Motors and Marketing Corporation (DMMC, for brevity) through its representative, defendant-appellee David, executed by and between themselves a "Deed of Absolute Sale of Real Property" over a parcel of land (Lot 7-B of the Subd. plan (LRC) psd-324403, approved as a non-subd. proj. being a portion of Lot 7 (LRC) Pcs-16468 LRC Rec. No. 5941), including all improvements thereon, situated in the barrio of Hen. T. de Leon, Municipality of Valenzuela, Metro Manila, containing an area of Six Hundred Thirty One (631) square meters, more or less, covered by Transfer Certificate of Title No. 119038 of the Registry of Deeds of Caloocan City, and for and in consideration of One Hundred Fifty Thousand (P150,000.00) Pesos (Exhibit "B" also Exhibit "2").

On November 27, 1987, plaintiff-appellant filed the instant complaint, praying for the annulment of the subject deed of absolute sale and consequent cancellation of the certificate of title obtained by defendants-appellees by virtue thereof; the interpretation and declaration of the subject deed of absolute sale as an equitable mortgage; and for a writ of preliminary injunction (Record, pp. 1-38).

In their answer, defendants-appellees contended that the subject encumbrance was one of absolute sale (Record, pp. 51-70).

After trial on the merits, the lower court rendered the impugned decision ... (p. 62, Rollo.)

In her memorandum, petitioner hastened to add a few more details on how the so-called sale in favor of private respondent evolved. According to petitioner, she previously mortgaged the same parcel of land on July 23, 1985 to Mrs. Macaria Dimafelis. Before the mortgage matured, she had to look for other sources from whom she can borrow money to liquidate the mortgage and this financial constraint led to her being introduced to Conrado S. David, herein private respondent, through one Natividad de Gula. It was in the office of private respondent where petitioner impressed the idea of utilizing the mortgaged lot as collateral for the loan which she wanted to obtain from private respondent.

In response to the request, private respondent allegedly agreed to extend the loan subject to the following terms:

- a) the gross principal amount of the indebtedness shall be P150,000.00;
- b) repayment period will be two years with an automatic grace period of one month;
- c) interest shall be ten percent a month payable monthly;
- d) the transaction shall be denominated as an absolute sale instead of a real estate mortgage; and that
- e) out of the proceeds of the loan, P40,000.00 will be retained by private respondent as payment for two months advance interest (P30,000.00 at P15,000.00 interest a month) and the remaining sum of P10,000.00 will be for documentation expense.

Petitioner claims that she was initially reluctant to express her conformity but she nonetheless agreed to the conditions after she was supposedly assured by private respondent that the nomenclature attached to their transaction was a mere formality and that petitioner had no reason to be apprehensive inasmuch as private respondent will register the deed of conveyance only if petitioner does not pay the monthly interest. Petitioner signed the "Deed of Absolute Sale" and surrendered the owner's duplicate copy of the certificate of title after private respondent issued a check in the amount of P109,000.00 to Mrs. Dimafelis as full settlement of petitioner's previous indebtedness. For her part, petitioner received P1,000.00 in cash and was made to sign a cash voucher to show that she received P150,000.00. Further, payment of the interest for four months was allegedly made to private respondent, who did not issue any receipt therefor, until petitioner discovered, to her dismay, that the instrument was registered which triggered the issuance of a new certificate of title in the name of respondent corporation.

All of the foregoing statements were derived by petitioner from her open court declarations when she sat on the witness stand in order to develop the theory that the entire scheme was a simple loan accommodation.

But the trial court was far from convinced by petitioner's disquisition and neither was respondent court which concurred with the factual observation of the court of origin that gross inadequacy of price had not been sufficiently demonstrated. In interpreting the covenant as an absolute transmission of dominion in favor of private respondent, Justices Aldecoa, Jr., Campos, and Felimon Mendoza were in unison when they declared that none of the badges of an equitable mortgage under Article 1602 of the Civil Code can be appreciated in favor of herein petitioner (p. 68, Rollo).

Of particular significance to the resolution of the question on the true character of the disputed transaction are the contemporaneous and subsequent acts of the contracting parties which have been translated into testimonial evidence in the course of the trial on the merits. Indeed, this specie of evidentiary proof, known as the Parol Evidence Rule, may well be the acknowledged adjective norm that can spell the difference between success or failure of the instant petition (*Macapinlac vs. Gutierrez Repide*, 43 Phil. 770 [1922]; *Cuyugan vs. Santos*, 34 Phil. 100 [1916]). For there can be a better appreciation of the problem at hand only if we resort to what the parties had already emphasized below to buttress their respective contentions and in this respect, the decision of respondent court seems a bit deficient considering that it relied more on the alleged sufficiency of the purchase price (p. 66, Rollo) and the bare fact that petitioner, who was accompanied by her "businesswoman daughter", could not have been duped into accepting private respondent's offer to purchase the property (p. 67, Rollo).

We concede that on these two aspects, we do not occupy a superior position to brush aside what respondent court arrived at but the so-called adequacy of the consideration, pegged at P150,000.00 by private respondent himself (p. 33, Rollo) for a 631 square meter lot, and the impression of petitioner's willingness to absolutely part with her possession, do not necessarily diminish the existence of other circumstances under Article 1602 of the Civil Code.

Verily, petitioner endeavored to demonstrate her financial constraint and the need to pay off the mortgage in favor of Mrs. Dimafelis, which she was able to rectify by approaching Conrado S. David who offered to help thus:

ATTY. MABBAYAD, JR.:

Q. Mrs. Camus, are you the same Lea O. Camus who is the plaintiff in this case:

A. Yes, sir.

Q. Do you know the defendant Conrado S. David in this case?

A. Yes, sir.

Q. Since when have you known him?

A. When I was introduced to him by an old woman, sir.

Q. When was that?

A. The 1st week of May, 1986, sir.

Q. And what is the name of the lady who introduced you to him?

A. Natividad de Gula, sir.

COURT:

By the way, is she connected with this case?

ATTY. MABBAYAD, JR.:

I think so, your Honor.

Q. And why were you so introduced by Madam Natividad de Gula to the defendant Conrado S. David?

A. Because Natividad de Gula learned that I am in need of a loan.

Q. And when for the first time did you come to know and become acquainted with Mrs. Natividad de Gula?

A. Later part of April, 1986, sir.

Q. How did you came to meet her?

A. She went to our house, sir.

Q. That was on the last week of April?

A. Yes, sir.

Q. And when she went to your house, were you there?

A. Yes, sir, I was.

Q. Were you able to talk to each other?

A. Yes, sir.

Q. How did the conversation start and finish?

A. I am in need of a loan and she told me that she can help me and she knows somebody and that is Conrado David who can extend the loan to me, sir.

Q. Did she tell you how she came to know that you needed to borrow money?

A. She learned from another person, sir.

Q. And on the same occasion when you first met and talked to Ms. de Gula and she told you that she could help you obtain a loan from Mr. Conrado David, did she tell you her official or personal relationship with Mr. David?

A. According to her, she knows Mr. David and she used to bring borrowers to Mr. David, sir.

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ATTY. MABBAYAD, JR.:

Q. On that same occasion did Mrs. de Gula explain to you the terms and conditions that Mr. David, the lender to whom she brought many borrowers previously on the loan that he normally extends?

A. Yes, sir.

Q. What were those terms and conditions of the loan that was extended to you?

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WITNESS:

A. She asked me how much money do I need, if I have a title and complete papers, tax declarations, tax receipts.

ATTY. MABBAYAD, JR.:

Q. And what did you tell her?

A. She told me that Mr. David can give what I need, sir.

Q. And what did you tell her after she asked you whether you have a title or any supporting papers that you have in support of the loan?

A. That if it is necessary that she introduce me to Mr. David, sir.

Q. Now, why did you have to borrow money?

A. I badly needed money because I have an obligation.

Q. What kind of obligation?

A. I have a property mortgaged with Mrs. Macaria Dimafelis, sir.

Q. The same property now subject of this case?

A. Yes, sir.

Q. Now, did you in fact go and see Mr. David as suggested to you by Mrs. Natividad de Gula?

A. Yes, sir.

Q. When did you go and see Mr. David?

A. On May 9, 1986, sir.

Q. And were you able to see Mr. David?

A. Yes, sir.

Q. Whereat?

A. At their factory office at Dalandanan, sir.

Q. In what municipality or city?

A. Valenzuela, Metro Manila, sir.

Q. And who were your companions when you went to see Mr. David at the said factory?

A. One of my daughters, sir.

Q. How about Mrs. de Gula, was she with you then?

A. Yes, sir.

Q. What is the name of your daughter?

A. Ms. Paz Camus, sir.

Q. Now, when you were already in the office of Mr. David and saw him, what happened?

A. Mrs. de Gula introduced me to Mr. David and she told Mr. David what I needed, sir.

Q. What specifically did Mrs. de Gula tell Mr. David about your so-called "pangangailangan" or need?

A. Mrs. de Gula told Mr. David that I needed a "sangla".

COURT:

Q. What do you mean by that?

A. That I needed a collateral to borrow money, ma'am.

ATTY. MABBAYAD, JR.:

Q. Did you need a collateral to borrow money or you needed money to be collateralized by a collateral?

A. That I needed to put up a collateral to get the money, sir.

Q. In short you already have the collateral that you needed in order .. interrupted..

ATTY. FIDELINO:

Q. Objection, your Honor, very leading.

COURT:

Reform the question.

ATTY. MABBAYAD, JR.:

Q. After Mrs. de Gula explained to Mr. David your purpose in going to Mr. David, what did Mr. David say or comment?

A. He will first look into the property, sir.

Q. Did Mr. David ask you what kind of collateral you are willing to offer him to secure the loan you intended to obtain from him?

A. Yes, sir.

Q. And what did you tell him?

A. I told him that the property is a house and lot located at No. 11 Gumamela St., Marulas, Valenzuela, Metro Manila.

Q. And after you told Mr. David that, that was the time he said that he will first inspect the property being offered as collateral?

A. Yes, sir.

Q. Did he ask you how much money you wanted to borrow from him?

A. He asked me, sir.

Q. And what did you tell him?

A. I told him P150,000.00, sir.

Q. Why do you need to borrow the amount of P150,000.00 from anybody?

A. For the payment of my obligation, sir.

COURT:

Q. The one you are mentioning, your obligation to Mrs. Dimafelis?

A. Yes, your Honor.

ATTY. MABBAYAD, JR.:

Q. How much is your obligation to Mrs. Dimafelis?

A. P109,000.00, sir.

Q. Since you needed only P109,000.00 and yet you borrowed P150,000.00, what do you intend to do with the remaining amount of at least P41,000.00?

A. To meet other needs and also to give commission to the person who helped me.

Q. And did Mr. David or any of his agents or employees in fact inspect the proffered collateral as he said to you?

A. Yes, sir.

Q. When was that?

A. May 11 or 12, 1986, sir.

Q. And who made the inspection of the proffered collateral?

A. Mr. David himself, sir.

Q. But in that first meeting of yours with Mr. David, did he require you to present to him or show to him any paper?

A. Yes, sir.

Q. What papers or documents did Mr. Conrado David require you to present or show to him?

A. Like the xerox copy of the title, tax declaration, tax receipts, plan or building permit.

Q. Building or construction plan of what?

A. Of the house which I had constructed, sir.

Q. Where is this house so constructed?

A. At No. 11 Gumamela St., Marulas, Valenzuela, Metro Manila.

Q. You told the Court that you offered as collateral or security to the intended loan you are trying to obtain from Mr. David your house and lot located at No. 11 Gumamela St., do you have proof to show that you are the owner of that property?

A. Yes, sir, I have a xerox copy of my own title.

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ATTY. MABBAYAD, JR.:

Q. Were you there in your residence when Mr. David inspected the property which you offered as collateral?

A. Yes, sir, I was there.

Q. And after Mr. David inspected the property, the proffered collateral, what did he say or do?

A. He told me to meet him in his office, sir.

Q. Did you in fact go to his office after Mr. David inspected the proffered collateral?

A. Yes, sir, at Dalandanan.

Q. When was that?

A. May 15, 1986, sir.

Q. And did you have any companion when you went there?

A. I have, sir.

Q. Who?

A. Mrs. de Gula and my daughter, Ma. Paz, sir.

Q. Were you able to see Mr. David on that date?

A. Yes, sir.

Q. And did you talk about this loan with him?

A. Yes, sir.

Q. What happened when you talked about the loan you were trying to obtain from him?

A. HE TOLD ME THAT HE CAN GIVE ME THE MONEY PROVIDED I EXECUTE A DEED OF SALE.

COURT:

For how much?

A. For P150,000.00, ma'am.

Q. AND WHAT DID YOU TELL HIM?

A. I FELT SAD BECAUSE WHAT HE WANTED ME TO EXECUTE WAS A DEED OF SALE AND I SUGGESTED IF THE DOCUMENT THAT I WOULD EXECUTE WOULD BE AN ORDINARY LOAN DOCUMENT.

Q. WAIT, BEFORE HE SUGGESTED THAT YOU EXECUTE A DEED OF SALE, YOU SAID YOU WERE BORROWING. DID YOU NOT TALK ABOUT ANY INTEREST THAT YOU ARE GOING TO PAY?

A. WE TALKED ABOUT THE INTEREST, MA'AM.

Q. Before he asked you to execute a deed of sale?

A. Yes, ma'am.

Q. HOW MUCH?

A. 10% INTEREST, MA'AM.

ATTY. MABBAYAD, JR.:

Q. WHAT OTHER TERMS AND CONDITIONS DID MR. DAVID TALK WITH YOU ON THAT PARTICULAR SECOND OCCASION THAT YOU WENT TO HIM?

A. WE TALKED ABOUT THE LOAN, THAT HE IS AGREEABLE TO EXTEND THE LOAN WITH 10% INTEREST PROVIDED THAT THE DOCUMENT WOULD BE A DEED OF SALE. I TOLD HIM THAT WHY IS IT THAT IT IS A DEED OF SALE, AND HE TOLD ME THAT THAT IS HIS POLICY.

Q. Now did you not talk about the repayment period for this loan?

A. We talked about the repayment, we agreed on a loan term payment of 2 years, and provided that 10% interest monthly be made.

Q. Did you agree to those terms and conditions that Mr. David told you?

Q. AT FIRST, I DO NOT WANT TO ACCEPT THE CONDITIONS BUT LATER ON, I AGREED BECAUSE I BADLY NEEDED THE MONEY.

Q. IN OTHER WORDS, YOU AGREED TO THE FOLLOWING: THAT THE DEED OF SALE COVERING THE PROFFERED COLLATERAL BE EXECUTED INSTEAD OF AN ORDINARY DEED OF REAL ESTATE MORTGAGE?

A. Yes, sir.

Q. YOU ALSO AGREED TO THE PAYMENT OF 10% MONTHLY INTEREST?

A. Yes, sir.

Q. AND YOU FINALLY AGREED TO A REPAYMENT PERIOD OF 2 YEARS?

A. Yes, sir.

Q. NO OTHER CONDITION?

A. HE ALSO TOLD ME THAT HE WILL NOT HAVE THE DOCUMENT REGISTERED IN HIS NAME UNLESS OR IN CASE I WILL NOT BE ABLE TO PAY OR REDEEM THE PROPERTY AFTER THE LAPSE OF THE PERIOD, sir."

(pp. 3-18, TSN, January 26, 1988; Underscoring supplied.)

Petitioner continued to testify regarding her acquiescence to the terms and the disposition of the proceeds in this manner:

ATTY. MABBAYAD, JR.:

Q. In the last hearing of this case Madam Witness, you said that Mr. David and you agreed on the amount of the loan and the terms and conditions thereof. After you so agreed with Mr. David, the amount, terms and conditions thereof, what transpired?

A. He told me that he will have the documents prepared and will send them over to me, sir. He will cause the preparation of the deed of sale and requested me to bring more documents.

Q. What documents did Mr. David ask you to bring with you?

A. The copy of the title, tax declarations, tax receipts, the plan, the plan of the house and the building permit, sir.

Q. And after he told you, that, did he tell you when you are going to meet again?

ATTY. FIDELINO:

Leading, your Honor, and no basis.

ATTY. MABBAYAD:

I will reform the question.

Q. Was the deed of sale indeed prepared?

A. Yes, sir.

Q. And were you able to bring the documents you just mentioned to Mr. David?

A. Yes, sir.

Q. And where did you bring those documents to him?

A. 2 days after we talked, sir.

Q. You agreed on the terms and conditions?

A. Yes, sir.

Q. And what happened when you submitted the documents required of you by Mr. David?

A. He took hold of the document but we will return to sign the deed of sale.

Q. And did you go back to see him as he told you to do?

A. Yes, sir.

Q. And did you sign the deed of sale that he caused to be prepared?

A. I signed the document, sir.

Q. After signing the deed of sale caused to be prepared by defendant Conrado David, were you given a copy thereof?

A. No, sir.

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Q. Since you already signed the document and submitted the documents already requested of you, did he give you the amount?

A. Not yet, sir.

Q. Why?

A. Because I fetched first the person to whom I have an obligation.

Q. What is the name of that person?

A. Mrs. Macaria Demafelis, sir.

Q. Were you able to fetch Mrs. Macaria Dimafelis?

A. Yes, sir.

Q. Where did you bring her?

A. To the office of Mr. David, sir.

Q. When was that in relation to the deed of sale which you signed, Exhibits A and A-1?

A. May 19, 1986, sir.

Q. And when you and Mrs. Dimafelis went to the office of Mr. David were you able to see him?

A. Yes, sir.

Q. Who were with you when you went to the office of Mr. David on May 19, 1986?

A. My daughter Josefina and also Ma. Paz.

Q. Nobody else?

A. And Mrs. Natividad de Gula and also the agent.

Q. What happened when you and your other companions met in the office of Mr. David on that particular date?

A. Mr. David asked for the title in possession of Mrs. Dimafelis, sir.

Q. Did Mrs. Dimafelis give the title to Mr. David as he requested?

A. Yes, sir, it is complete.

Q. And after Mrs. Dimafelis handed over the title to Mr. David, what also happened?

A. Mr. David prepared the check for Mrs. Dimafelis, sir.

COURT:

Q. How much?

A. P109,000.00, ma'am.

ATTY. MABBAYAD:

Q. Now, you said earlier Madam, that you and Mr. David agreed on a preferred amount of loan of

P150,000.00. My question to you is, was the said amount of P150,000.00 given to you by Mr. David?

A. No, sir.

Q. Why?

A. WHAT WAS GIVEN BY MR. DAVID WAS ONLY P109,000.00 IN FACT WHICH WAS RECEIVED AND SIGNED BY MRS. DIMAFELIS AND ANOTHER P1,000.00 IN CASH.

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ATTY. MABBAYAD:

Q. Now, you said earlier that you and Mr. David agreed on a loan in the amount of P150,000.00 and you said just now that what actually was given by Mr. David was P109,000.00 in the form of check issued and delivered to Macaria Dimafelis in the amount of P109,000.00 and P1,000.00 cash which he gave you. WHAT HAPPENED TO THE BALANCE OF P40,000.00?

A. MR. DAVID SAID THAT IT WOULD BE USED FOR DOCUMENTATION AND FOR 2 MONTHS ADVANCE INTEREST.

Q. DID HE TELL YOU THE BREAKDOWN OF THE APPLICATION OF THE AMOUNT OF P40,000.00?

A. NO MORE, sir.

(pp. 3-5, 7-10, 12, TSN, April 7, 1989; Underscoring supplied.)

To the question of whether petitioner agreed to an outright sale, she emphasized a vehement denial on June 15, 1989:

ATTY. MABBAYAD:

Q. Mrs. Camus, when Mr. Conrado S. David testified as the first and only witness for the defendants, he said that although initially the transaction you approached (?) to him was one of a loan, eventually and finally it became an outright sale and that you sold the property to him for and in consideration of the price of P150,000.00. What can you say about this testimony of Mr. Conrado David?

A. OUR TRANSACTION WITH HIM IS A LOAN FOR THE AMOUNT OF P150,000.00, SIR, WHEN WE APPROACHED HIM, WE REALLY INTENDED TO HAVE A LOAN WITH MORTGAGE AND THEN WHEN I ASKED HIM FOR THE AMOUNT OF P150,000.00 FOR A LOAN, HE SAID WHY IS IT BIG AND ASKED ME HOW MUCH IS THE PRICE PER SQ. METER AND I ANSWERED P500.00.

COURT:

Q. YOU AGREED TO A SALE?

A. I DID NOT AGREE TO A SALE AND OUR AGREEMENT IS ONLY FOR A LOAN WITH MORTGAGE AND HE SAID IF HE IS GOING TO PREPARE A DEED OF SALE, IT IS ONLY FOR PURPOSES OF FORMALITY, MA'AM.

(pp. 2-3, TSN, June 15, 1989; Underscoring supplied.)

The foregoing narration was corroborated by petitioner's daughter who declared:

ATTY. MABBAYAD:

A. And before leaving what did Mr. David tell your mother, if any, after inspecting your property?

A. He told us to go to his office again so that we could talk, sir.

Q. Did your mother go to Mr. David's office as he instructed?

A. Yes, sir.

COURT:

Q. Alone?

A. Together with Aling Naty and me, ma'am.

Q. When?

A. The following day, ma'am.

ATTY. MABBAYAD:

Q. That could be about May 10, 1986?

A. Yes, sir.

Q. And were you and your mother and the other members of your group able to talk to Mr. David when he instructed your mother to see him in his office?

A. Yes, sir.

Q. Who talked to Mr. David on that particular occasion?

A. My mother, sir.

Q. Were you present?

A. Yes, sir.

Q. What about Natividad de Gula?

A. She was also there but she is outside the office, sir.

Q. And what did Mr. David and your mother talk about?

A. He said he is AMENABLE IN GRANTING THE P150,000.00 LOAN TO MY MOTHER BUT MY MOTHER WILL ONLY GET P110,000.00 BECAUSE THE REST WILL BE FOR THE DOCUMENTATIONS AND FOR THE ADVANCE INTEREST.

Q. Did Mr. David tell your mother how much is for documentation?

A. P10,000.00, sir.

Q. And did Mr. David tell your mother how much would be deducted from the agreed gross amount of the loan for the advance interest?

A. P30,000.00, sir.

Q. How much interest was finally agreed upon between Mr. David and your mother?

A. 10% per month, sir.

Q. And aside from the amount of the loan and the rate of interest agreed upon by your mother and Mr. David, were there other terms and conditions imposed on by Mr. David?

COURT:

Is there no written agreement?

ATTY. MABBAYAD:

None, your Honor.

COURT:

Alright.

WITNESS:

A. He told my mother that the DOCUMENT TO BE EXECUTED IS A DEED OF SALE, INSTEAD OF A DEED OF REAL ESTATE MORTGAGE, sir.

ATTY. MABBAYAD:

Q. What about other terms of payment or period of payment of the loan that was agreed upon between him and your mother?

A. To be paid in 2 years, sir.

Q. WHEN MR. DAVID TOLD YOUR MOTHER THAT THE TRANSACTION WOULD BE DOCUMENTED AS A DEED OF SALE NOT AN ORDINARY COLLATERALIZED DOCUMENT AS A DEED OF REAL ESTATE MORTGAGE, WHAT DID YOUR MOTHER TELL HIM?

A. MY MOTHER TOLD HIM THAT COULD IT BE POSSIBLE THAT INSTEAD OF A DEED OF SALE A DEED OF REAL ESTATE MORTGAGE WOULD BE EXECUTED BECAUSE IF THE DOCUMENT WOULD BE A DEED OF SALE, IT IS DANGEROUS.

Q. AND WHAT DID MR. DAVID REPLY TO YOUR MOTHER?

A. HE SAID THAT THAT IS HIS POLICY.

Q. And what did your mother finally decide?

A. My mother told him that we will first talk about it, sir.

Q. When you used the word "namin", to whom in particular was your mother referring?

A. We, sir: my mother, myself and my sister?

Q. You are referring to your other sister Josefina?

A. Yes, sir.

Q. Going back to the rate of interest, when Mr. David told your mother that the rate of interest would be 10% per month, did your mother accept that condition of Mr. David?

ATTY. FIDELINO:

Already answered, your Honor. The answer is "We would talk about the matter".

ATTY. MABBAYAD:

Referring to the documentation, this is a different matter, your Honor.

COURT:

Answer.

WITNESS:

A. She did not readily agree because she said we would talk about it first, your Honor.

ATTY. MABBAYAD:

Q. You would like to tell the Honorable Court that in that second meeting that you and your group had with Mr. David nothing definite yet was arrived at or agreed upon?

A. None, sir, because of that deed of sale.

Q. And since there was no meeting of the minds on that particular second meeting, was there another meeting between you and your group and Mr. David?

A. Yes, sir.

Q. When was that?

A. That was about May 19, I am not so sure about the date, sir.

Q. And when you returned, using the word "you" in the plural form, to Mr. David, regarding this transaction, were you able to talk to Mr. David, using the word "you" in plural form?

A. Yes, sir.

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Q. On that particular third time what did Mr. David and your mother talk about?

A. MY MOTHER THEN REQUESTED MR. DAVID IF IT COULD BE POSSIBLE THAT INSTEAD OF A DEED OF SALE A DEED OF REAL ESTATE DOCUMENT WOULD BE EXECUTED BUT HE SAID HE CANNOT DO ANYTHING AND HE ALSO TOLD US NOT TO WORRY BECAUSE AS LONG AS WE CAN PAY THE MONTHLY INTEREST, HE WOULD NOT HAVE THE DEED OF SALE REGISTERED, sir.

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Q. IN SHORT, WHEN MR. DAVID REFUSED TO GRANT THE REQUEST OF YOUR MOTHER WITH RESPECT TO THE MANNER OF DOCUMENTATION OF THE TRANSACTION AND THE RATE OF INTEREST, WHAT HAPPENED?

A. MY MOTHER FINALLY AGREED BECAUSE WE ARE REALLY IN NEED OF MONEY, sir.

(pp. 14-22, TSN, December 8, 1988; Underscoring supplied.)

On the other end of this controversy is private respondent's indifference throughout his comment (p. 81, Rollo) and memorandum as well (p. 200, Rollo) vis-a-vis the clarification made by petitioner herself and petitioner's daughter which unconcerned and nonchalant attitude inevitably leads to the conclusion that petitioner had established her onus probandi by a preponderance of evidence and that private respondent had failed to prove his positive allegations in support of his stance (Section 1, Rule 131, Revised Rules on Evidence). Apart from this procedural axiom is our belief that private respondent's demeanor in retaining a portion of the alleged purchase price, as advance interest for two months, is akin to, if not precisely the very circumstance mentioned by Article 1602(4) of the Civil Code that will warrant the legal presumption of an equitable mortgage. Besides, it was erroneous for respondent court to have made a sweeping insinuation that it was petitioner as vendor who

suggested the "purchase price" and is thus precluded from assailing the sufficiency thereof (p. 66, Rollo), on account of the admission in judicio of private respondent that it was he who "placed the value of P150,000.00" as consideration on the document (p. 33, Rollo; TSN, April 6, 1989, pp. 8-11). The fact that petitioner was accompanied by her "businesswoman daughter" to the office of private respondent is of no practical bearing because even persons of average intelligence invariably find themselves in no position whatsoever when bargaining with their creditor (Cabigao vs. Sales, et al., (C.A.) 51 O.G. 5265; 5 Tolentino, Commentaries and Jurisprudence on the Civil Code, 1959 edition, p. 137) such as private respondent's corporation whose primary business concern includes giving loans (TSN, March 30, 1989, pp. 8-10; p. 32, Rollo). Moreover, it may be recalled that petitioner only received the sum of P1,000.00 out of the P150,000.00 alleged as consideration for the "sale" (p. 18, supra). Such a measly sum is certainly another circumstance that reinforces our belief that the entire transaction was but a loan accommodation since no seller in her right senses will part with her treasured possession via a tedious process only to end up with a small sum of money in her pocket as consideration therefor.

At any rate, substantive law mandates that a contract purporting to be *venta con pacto de retro* or an outright sale shall be construed as an equitable mortgage for it involves a smaller transmission of rights (Olino vs. Molina, 13 Phil. 379 (1909); Villa vs. Santiago, 38 Phil. 157 (1918); 5 Tolentino, supra, at p. 15). Moreover, there is no doubt that petitioner agreed to the execution of the so-called sale in favor of private respondent because of the urgent necessity for money of the apparent vendor to liquidate her indebtedness to Mrs. Dimafelis (Claravall vs. Court of Appeals, 190 SCRA 439 (1990); Labasan vs. Lacuesta, 86 SCRA 16 (1978)). This is another circumstance where it may be fairly inferred that the real intention of the parties is for the transaction to secure the payment of a debt or the performance of any other obligation (Article 1602(6), New Civil Code).

WHEREFORE, the decision of respondent court dated October 10, 1991 is hereby SET ASIDE. The deed of absolute sale executed by Lea O. Camus in favor of Conrado S. David is hereby declared as an equitable mortgage and, petitioner is declared entitled to redeem the property. Private respondent is hereby ordered to execute the necessary deed of conveyance upon full payment of the total amount of P110,000.00 with legal interest from May 20, 1986, the time the loan matured until it is fully satisfied.

SO ORDERED.

Feliciano, (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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