

GEORGE TIU AND ROSALINA TIU, PETITIONERS, VS. THE HON. COURT OF APPEALS, JUAN GO, SPS. JUANITO LIM AND LIM YEE SHOW FONG, RESPONDENTS.

G.R. No. 107481. November 18, 1993

Ponente: MELO, J.

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MELO, J.:

Before us is a petition seeking the review and the consequent reversal of the decision of the Court of Appeals in CA-G.R. CV No. 249671 entitled, "George T. Tiu and Rosalina Tiu vs. Juan Go and Sps. Juanito Lim and Lim Lee Show Fong", promulgated on September 30, 1992, which affirmed the summary judgment dated August 21, 1989 and the Order dated October 30, 1989 of the Regional Trial Court of Manila Branch 35 in its Civil Case No. 88-43782.

The facts of the case are as follows:

Petitioner George T. Tiu and his mother, Rosalina Tiu, filed an action for reformation of contract, delivery of personal property, and damages before the regional trial court against Juan Go and the Spouses Juanito Lim and Lim Lee Show Fong.

Among the allegations of the complaint, as quoted by the Court of Appeals, are the following:

4. That plaintiff George Tiu is the registered owner of Two (2) CONDOMINIUM UNITS identified and described as follows ?

"UNIT 9-A of the Condominium located on the ninth floor, with an area of 133.48 sq. mts., more or less, with 3 rooms and 3 comfort rooms, of the Blue Diamond Tower Condominium Project,

"UNIT 9-B of the Condominium located on the ninth floor, with an area of 98.26 sq. mts., more or less, with 3 rooms and 3 comfort rooms, of the Blue Diamond Tower Condominium Project,"

covered by CONDOMINIUM CERTIFICATE OF TITLE NOS. 4583 and 4584, respectively, of the REGISTER OF DEEDS FOR THE CITY OF MANILA, copies of which are hereto attached as Annexes "A" and "B", respectively;

5. That sometime in March, 1986, plaintiff GEORGE TIU and plaintiff ROSALINA TIU, his mother, negotiated a loan of P300,000.00 with defendant JUAN GO who then asked for a mortgage of the aforesaid CONDOMINIUM UNITS of plaintiff GEORGE TIU as security for the payment therefor and in addition thereto, a pledge of jewelries and checks from plaintiff ROSALINA TIU;

6. That in that transaction, defendant JUAN GO agreed to extend the loan without any fixed period of re-payment and with the further condition that the plaintiffs shall have ample time to pay when demanded and that they can remain in possession of the said CONDOMINIUM UNITS of plaintiff GEORGE TIU in the event of mortgage;

7. That with that agreement, defendant JUAN GO then prepared, based on copies of the CONDOMINIUM CERTIFICATE OF TITLE NOS. 4583 and 4584 of plaintiff GEORGE TIU earlier given to him, a document denominated as "DEED OF SALE OF A CONDOMINIUM WITH RIGHT TO REPURCHASE" and another as "CONTRACT OF LEASE", the former was prepared in favor of defendant spouses JUANITO LIM AND LIM LEE SHOW, FONG, while the latter was prepared in favor of plaintiff GEORGE TIU;

8. That when the said documents were presented to the plaintiffs by defendant JUAN GO, plaintiff GEORGE TIU asked him why the documents had to be drawn in that form and why was there a need to involve the defendant spouses JUANITO LIM and LIM LEE SHOW FONG, both total strangers to the plaintiffs, when the transaction of loan was purely between GEORGE TIU, plaintiff ROSALINA TIU, his mother, and defendant JUAN GO, but defendant JUAN GO then said that he can not carry a real estate property in his own name, as he is a Chinese National, and that there was no harm in having the covering instruments made that way and in that form, as their agreement of mortgage intended to secure the loan will always prevail, stand and govern over the said instruments, for which reason plaintiff GEORGE TIU agreed to sign the said DEED OF SALE OF A CONDOMINIUM WITH RIGHT TO REPURCHASE and CONTRACT OF LEASE and after signing them, plaintiff ROSALINA TIU handed to defendant JUAN GO jewelries with a value of P200,000.00 and PCIB Check No. 51405, drawn to the sum of P200,000.00, signed by plaintiff ROSALINA TIU but undated, and another PCIB Check No. 51428, signed by plaintiff ROSALINA TIU but without any stated amount and date, as additional collateral for the loan just received and which the defendant JUAN GO then required in their agreement;

9. That the said DEED OF SALE OF A CONDOMINIUM WITH RIGHT TO REPURCHASE and CONTRACT OF LEASE were later verified before a notary public and then later registered by the defendants' agent with the REGISTER OF DEEDS FOR THE CITY OF MANILA and subsequently annotated at the back of CONDOMINIUM CERTIFICATE OF TITLE NOS. 4583 and 4584, as now evidenced by certified true copies hereto attached as Annexes "C" and "D", respectively;

10. That, from the date of execution of said documents, Annexes "C" and "D", to this time of filing, plaintiff GEORGE TIU, with plaintiff ROSALINA TIU, has remained and continue to remain in possession of the said Condominium Units as lessee;

11. That plaintiff GEORGE TIU, in executing the said DEED OF SALE OF A CONDOMINIUM WITH RIGHT TO REPURCHASE, has merely agreed to a mortgage of the properties, for which reason reformation is proper, pursuant to the provisions of the Civil Code which state, thus ?

"ART. 1365. If two parties agree upon the mortgage or pledge of real or personal property, but the instrument states that the property is absolutely sold or with a right to repurchase, reformation is proper."

12. That the said DEED OF SALE OF A CONDOMINIUM WITH RIGHT TO REPURCHASE executed by plaintiff GEORGE TIU is in law an equitable mortgage at the same time on two of the specified grounds, for which reformation is also proper on either one, in accordance with the provisions of the Civil Code, thus -

"Art. 1602. The contract shall be presumed to be an equitable mortgage, in any of the following cases:

xxx xxx xxx

(2) When the vendor remains in possession as lessee or otherwise;

xxx xxx xxx

(6) In any other case where it may fairly be inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation."

13. That the real intention of the parties on the transaction covered by the DEED OF SALE OF A CONDOMINIUM WITH RIGHT TO REPURCHASE being a mortgage, and not a sale, plaintiff GEORGE TIU is entitled to the redemption of the property as sanctioned by Article 1601 of the Civil Code;
14. That, after the lapse of the unlawful period of repurchase stated in the DEED OF SALE OF A CONDOMINIUM WITH RIGHT TO REPURCHASE, plaintiff GEORGE TIU tried to redeem the mortgaged condominium units, but the defendants refused redemption;
15. That when plaintiff GEORGE TIU tried to redeem the said properties, plaintiff ROSALINA TIU also attempted to get back the jewelries and checks given as additional collateral, but defendant JUAN GO who refused redemption of the mortgaged properties also refused to return the said jewelries and checks to plaintiff ROSALINA TIU;
16. That, after the redemption offer was made by plaintiff GEORGE TIU and the return of the personal properties were asked by plaintiff ROSALINA TIU, defendant JUAN GO, after filing the blanks in PCIB Check No. 51405 and PCIB Check No. 51428, presented them to the bank for encashment, but were returned, for which there is now a demand made upon plaintiff ROSALINA TIU for her to pay for the value thereof;
17. That defendant JUAN GO and JUANITO LIM have acted with evident bad faith, unlawfully and contrary to the agreement, and in violation of the plaintiffs' rights;
18. That by reason of the unlawful acts of the said defendants, the plaintiffs suffered sleepless nights, anxiety, besmirched reputation and social humiliation, for which they now seek the sum of not less than P100,000.00 as payment for moral damages, plus litigation expenses;
19. That the plaintiffs were forced to litigate in this action and in so doing, they were compelled to engage the services of the undersigned counsel for an attorney's fee of P50,000.00;
20. That as corrective measure to those who unlawfully act contrary to their agreements and in violation of the rights of others, an exemplary damage to be determined by the Honorable Court is also sought.

(pp. 25-29, Rollo.)

The Spouses Lim filed a separate answer with counterclaim, denying the material allegations of the complaint and, as special and affirmative defenses, claimed that by virtue of George Tiu's failure, as vendor a retro, to exercise his right to repurchase the condominium units within the period expressly stipulated in the contract, the spouses thereupon irrevocably acquired the absolute ownership of said condominium units; that absolute ownership thereof has been consolidated in their names; that the deed of sale is clear, without any ambiguity, mistake, or imperfection and the deed is and should be the only repository of the truth of the contractual relations of the parties and no parol evidence is admissible to alter the stipulations, terms, and conditions of the contract (See CA Decision, p. 29, Rollo).

The Tius filed a reply and answer to the counterclaim of the Spouses Lim.

On the other hand, Go, in his answer with counterclaim, alleged that while indeed, the Tius had incurred various amounts of loans on different dates, the totality is much greater than the sum of P200,00.00 alleged in the complaint, and which remained unpaid; that the two checks mentioned in Paragraph 8 of the complaint issued in partial payment on the Tius' various loans were dishonored when presented by Go for encashment; and that the Tius had not offered or given any other security to answer for the payment of their overdue loans and obligations to Go; that he (Go) is merely one of the instrumental witnesses to, and has nothing to do with, the Tius' transactions with the Spouses Lim, which should thus be treated separately and distinctly from the various loan

transactions between the Tius and Go; that Go never committed the supposed acts of misrepresentation in the execution of the deeds as alleged in the complaint.

As compulsory counterclaim, Go alleged that Rosalina Tiu had secured, on different dates, loan advances in the total amount of P1,060,000.00, which has remained unpaid despite demands.

The Tius filed a reply and answer to the counterclaim of Go, admitting receipt by Rosalina Tiu of the money stated in respondent Go's counterclaim, but alleging that the loans had already been paid for by tobacco delivered to Go.

Go subsequently filed a motion for leave to admit third party-complaint for a sum of money and damages against Joaquin Tiu, alleging that on different dates, the latter had, for himself and in behalf of the Tius, received the money as loan or advances in connection with the latter's tobacco business, in the total amount of P700,000.00, for which amount Joaquin Tiu should be held jointly and severally liable with the Tius.

Over the opposition of the Tius, the motion for leave to admit third-party complaint was granted by the trial court on June 22, 1988.

Pre-trial was conducted on May 13 and November 14, 1988.

On August 21, 1989, the trial court rendered summary judgment, disposing as follows:

WHEREFORE, judgment is hereby rendered as follows:

1. The complaint of the plaintiffs is DISMISSED;
2. Plaintiff Rosalina Tiu is ordered to pay defendant Juan Go the sum of P1,060,000.00;
3. The third party complaint of Juan Go against Joaquin Tiu is DISMISSED;
4. The respective counterclaim of the two groups of defendants in their separate answers for moral and exemplary damages, and for attorney's fees are DENIED and DISMISSED;
5. Plaintiffs George Tiu and Rosalina Tiu are ordered to pay the costs of the present action.

SO ORDERED.

(p. 30, Rollo.)

The Tius and Joaquin Tiu (third-party defendant) appealed while the Lims filed a "Motion for Supplemental/Additional Relief or Decision".

Go filed a motion for reconsideration of the summary judgment.

On October 30, 1989, the trial court issued an order resolving the respective motions of the Lims and Go, thus:

ACCORDINGLY, the motion of defendants-spouses Juanito Lim and Lim Lee Show Fong is hereby GRANTED, and the Register of Deeds of the City of Manila is hereby ordered to make the corresponding note of consolidation and cancel the Condominium Certificates of Title Nos. 4583 and 4584 in the name of George Tiu, and, in lieu thereof, issue a new Condominium Certificate of Title in the name of Juanito Lim and Lim Lee Show Fong.

The motion for reconsideration filed by defendant and third party plaintiff is Denied for lack of merit.

The Tius, including Joaquin, appealed, arguing that the trial court erred when it (1) accepted the Deed of Sale of Condominium Units with Right of Repurchase as the true agreement of the contracting parties; and (2) held Rosalina Tiu liable for the total amount of P1,060,000.00 claimed by Go.

Go, who also appealed, on the other hand, lamented the failure of the trial court to hold George Tiu and Joaquin Tiu jointly and solidarily liable with Rosalina Tiu on the amount of P1,060,000.00, and for dismissing both his third-party complaint and counterclaim for moral and exemplary damages, and for attorney's fees.

The Court of Appeals (Paras[P], Ordonez-Benitez, Montenegro, JJ.) upheld and affirmed the summary judgment rendered by the trial court. Hence, the instant petition anchored on the general assertion that the decision of respondent Court of Appeals is not in accord with law.

We vote to sustain the appellate court. The summary judgment of the trial court was properly rendered.

A summary judgment is one granted by the court, upon motion by either party, for an expeditious settlement of the case, there appearing from the pleadings, depositions, admissions, and affidavits that there are no genuine questions or issues of fact involved (except as to the amount of damages) -- and that, therefore, the moving party is entitled to a judgment as a matter of law (Sections 1, 2, and 3, Rule 34; Justice E.L. Paras, Revised Rules of Court, Ann., Vol. I, 1989 Ed., p. 632.)

In the present case, the Tius maintain that there are as yet unresolved questions of fact that preclude summary judgment, such as whether there was indeed a loan contract between the Tius and Go, which was secured by a mortgage on the condominium units owned by George Tiu and a pledge by Rosalina Tiu of her pieces of jewelry and checks; and, assuming the existence of a loan, whether reformation is feasible in order that the true agreement of the parties on an equitable mortgage may be reflected in the deed of sale.

In the instant petition, the Tius narrate a series of events and loan transactions between Rosalina Tiu and Juan Go that would negate, in their opinion, the sale transaction between the Tius and the Spouses Lim, and would thus necessitate trial on the merits to determine the true agreement or intention of the parties. The appellate court, however, brushed aside this argument thusly:

Under Rule 34 of the Rules of Court, summary judgment may be rendered by the court upon application of a party when there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. By genuine issue is meant an issue of fact which calls for the presentation of evidence as distinguished from an issue which is sham, fictitious, contrived, set up in bad faith and patently unsubstantial so as not to constitute a genuine issue for trial. The court can determine this on the basis of the pleadings, admissions, documents, affidavits and/or counter affidavits submitted by the parties to the Court. Where the facts pleaded by the parties are disputed or contested, proceedings for a summary judgment cannot take the place of a trial. (Paz vs. CA, 181 SCRA 26).

(p. 32, Rollo)

The appellate court then continued:

The lower court correctly rendered the summary judgment on the basis of the pleadings, admissions, documents and affidavits submitted by the parties.

Appellants Tiu admitted not only the due execution, genuineness and authenticity of the Deed of Sale of Condominium with Right to Repurchase and Contract of Lease (Exhs. C & D). They also admitted that they read and understood the contents of said deeds before they signed the said documents (tsn., May 13, 1988, p. 26) which deeds were later annotated at the back of Condominium Certificate of Title Nos. 4583 and 4584. They failed to offer any counter-affidavit to controvert the statement of the Notary Public, Florante C. de la Cruz before whom the parties acknowledged and ratified their agreement that he (de la Cruz) ascertained the agreement of the parties before preparing the document. In his affidavit, Notary Public Florante C. de la Cruz swore:

"That on March 25, 1986 George Tiu, together with Sps. JUANITO LIM and LIM LEE SHOW FONG requested me to prepare a DEED OF SALE of Condominium Units with a Right to Repurchase and a CONTRACT OF LEASE over the same CONDOMINIUM Units which I notarized as Doc. No. 412; Page No. 64; Book No. 83; Series of 1986 and Doc. 413; Page No. 64; Book No. 83; Series of 1986 respectively, both documents signed by the parties therein and their instrumental witnesses, copies of said Deed of Sale and Contract of Lease is hereto attached and marked as Annex A & B respectively;

"That prior to March 25, 1986 George Tiu accompanied by Juan Go came to my office and requested me to prepare a Contract of which they would sell the two (2) Condominium Units in favor of Sps. JUANITO LIM and LIM LEE SHOW FONG with a reservation for Vendor to Repurchase the same within one (1) year for the amount of FOUR HUNDRED THOUSAND PESOS (P400,000.00), and that Tiu shall remain in possession for one (1) year from March 1986 but since Sps. Vendees Juanito Lim and Lim Lee Show Fong were not around, I instructed George Tiu to return with said Sps. Vendees;

"That it was on March 25, 1986, that all the parties mentioned in the documents above mentioned were present and after determining and ascertaining what they have agreed I prepared said documents after explaining to them both in Tagalog and in Ilocano; that there is no other Contract of Agreement written or verbal regarding the subject matter of sale or lease that I prepared except the two (2) aforementioned DEED OF SALE of a Condominium Units with a Right To Repurchase and the CONTRACT OF LEASE as aforementioned."

In addition thereto, appellants Tiu admitted that they have updated the real estate taxes due on the condominium only up to the time of the transaction after which they had never paid anymore the taxes thereon belying their claim that they continued paying the taxes even after the execution of the deeds (tsn., Nov. 24, 1988, pp. 15 & 16). Also the said appellants admitted that they did not file an opposition to the petition for consolidation of ownership and that they filed the present complaint for reformation six (6) days after receipt of a copy of the said petition (tsn, Nov. 24, 1988, pp. 23 & 26). If it were true that their agreement was one of mortgage, then, they could have filed at least an opposition to the said petition.

(pp. 32-34, Rollo.)

The Court of Appeals also disregarded the claim of the Tius that a deed of sale with right of repurchase was drawn up in favor of the Spouses Lim instead of a mortgage with Go as creditor-mortgagee because Go can not own real estate being a Chinese citizen, re-echoing, in the process, the conclusion of the trial court that aliens or non-Filipino citizens are not disqualified from being mortgagees of real estate property.

Upon the foregoing premises, we agree with the Court of Appeals that summary judgment was properly rendered by the trial court as there was no genuine issue of fact that would necessitate formal trial.

On the feasibility of reformation of the deed of sale with right of repurchase, we also agree with the appellate court, that the Tius' complaint did not aver ultimate facts that would constitute a cause of action for reformation of instrument despite the Tius' insistence that paragraphs 11, 12, 13, 14, and 15 of their complaint contain allegations of fraud and inequitable conduct, upon which reformation may be premised.

A perusal of these paragraphs (reproduced earlier) would show that indeed, as pointed out by the Court of Appeals, the allegations therein are mere conclusions of law or opinion; hence, reformation is not feasible. Section 5 of Rule 8 of the Revised Rules of Court directs a party averring fraud or mistake to state with particularity the circumstances constituting such fraud or mistake, which particularity is conspicuously absent in the complaint.

Further, in view of Rosalina Tiu's failure to controvert the allegations of the Mario Obar Trading Center denying

any trading partnership with Go, (and in effect, debunking Rosalina Tiu's claim that payments to the trading firm were payments to Juan Go), summary judgment holding Rosalina Tiu liable was proper.

We shall also not disturb the ruling of the Court of Appeals that George and Joaquin Tiu are not solidary liable with Rosalina Tiu on the amount of P1,060,000.00, for apt and correct are the findings of the appellate court on this point:

The various receipts (Exhs. 1-15-Go) clearly show that the appellant George Tiu never signed the receipts nor received any money from appellant Go while appellant Joaquin Tiu signed and received the money for and in behalf of Rosalina. Consequently, they are not liable solidarity for the said amounts even if the money were used for their tobacco business. And even if they admitted that they received the money, both are not liable in solidum because there was no express provision in said receipts that appellants George and Joaquin Tiu should be liable in solidum. There is solidary obligation only when the obligation expressly so states or when the law or nature of the obligation requires solidarity (Article 1207, NCC).

And there is no truth to the allegation that appellants George and Joaquin Tiu admitted that they are jointly and solidarily liable for said amount. What they admitted was that they received said money. Appellants' failure to deny the allegations in pars. 8, 9, 10 of appellant Go's third party complaint does not amount to an admission that they are solidarily liable. Be it noted that appellants Tiu, in their reply and answer to the counterclaim of appellant Go, admitted that only appellant Rosalina Tiu received the monies. The allegations in appellant Go's third party complaint is essentially the same with the allegations in the counterclaim of appellant Go. Thus, it was not necessary for them to deny the allegations in the third party complaint.

Assuming arguendo that they admitted their solidary liability, still they are not liable. As aptly held by the lower court:

At any rate, the doctrine laid down on the case of *Un Fak Leang vs. Nigurra*, 9 Phil. 381, falls squarely on the point wherein the Supreme Court ruled that an admission of two debtors in their brief that their liability in the contract is a solidary one does not convert the joint character of their obligation as appearing in their contract, for what determines the nature of the obligation is the tenor of their contract itself, not the admission of the parties.

(pp. 56-57, Rollo)

On Go's prayer for attorney's fees, moral and exemplary damages, all that has to be said perhaps is that simply because the Tius did not prevail in their suit against Go would it necessarily follow that they should be made liable for attorney's fees and damages. An adverse result of a suit in law does not mean that the same is wrongful as to justify assessment of damages against the actor (*Rubio vs. Court of Appeals*, 141 SCRA 488 [1986]).

WHEREFORE, the decision appealed from is **AFFIRMED** in toto. No special pronouncement is made as to costs.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Vitug, JJ., concur.

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