

**VIEWMASTER CONSTRUCTION CORPORATION, PETITIONER, VS.
ALLEN C. ROXAS, STATE INVESTMENT TRUST, INC., NORTHEAST
LAND DEVELOPMENT, INC., AND STATE PROPERTIES
CORPORATION, RESPONDENTS.**

G.R. No. 133576. July 13, 2000

Ponente: BUENA, J.

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BUENA, J.:

This is a petition for review of the decision of the Court of Appeals in CA-GR SP No. 44000 entitled "Allen C. Roxas, State Investment Trust, Inc., Northeast Land Development, Inc., and State Properties Corporation, petitioners, versus Hon. Jesus Bersamira and Viewmaster Construction Corporation, respondents."

The facts of the case are as follows:

On September 8, 1995 Viewmaster Construction Corporation (Viewmaster, for brevity) filed with the Regional Trial Court at Pasig City, Branch 166, Civil Case No. 65277, a complaint for specific performance, enforcement of implied trust and damages against State Investment Trust, Inc., Northeast Land Development, Inc., State Properties Corporation and Allen C. Roxas.

It was alleged that Allen Roxas, one of the stockholders of State Investment Trust, Inc. applied for a loan with First Metro Investments, Inc. (FMIC, in short) in order to obtain funds to be used by him or his agents/privies to bid for the control and ownership of State Investment Trust, Inc. (State Investment, for brevity) which will be held among the members of the Chiong/Roxas family, as he had no funds of his own at the time to satisfy the required bid deposit and/or down payment.

FMIC agreed to grant Allen Roxas the loan he requested without any collateral, i.e., a clean loan, provided that he procures a guarantor/surety/solidary co-debtor to secure the payment for the said loan.

Viewmaster agreed to act as guarantor for the loan conditioned upon the following:

- a) Allen Roxas shall sell and Viewmaster shall purchase fifty percent (50%) of the total eventual acquisitions of Roxas of the shares of stock in State Investment and that the purchase price to be paid by Viewmaster for the said shares shall be equivalent to the successful bid price per share plus an additional ten percent (10%) per share.
- b) Viewmaster shall undertake to develop the parcels of land in Balintawak, Quezon City and Las Piñas consisting of twenty thousand (20,000) square meters and seven hundred eighty-six thousand one hundred sixty-seven (786,167) square meters, respectively, for the property owners.

In consideration of the guaranty of Viewmaster, FMIC delivered to Allen Roxas the aggregate principal amount of thirty-six million five hundred thousand pesos (P36,500,000.00).

On July 2, 1992, Viewmaster executed a Continuing Guaranty with FMIC to secure the payment of the said loans.

As a result of the loans granted by FMIC in consideration of, and upon the guaranty of Viewmaster, Allen Roxas eventually gained control and ownership of State Investment.

Despite demand, Allen Roxas failed and refused to sell 50% of his shareholdings in State Investment and to enter into a joint venture project with Viewmaster for the purpose of developing the two aforementioned real properties, resulting in the institution by Viewmaster of Civil Case No. 65277[1] with the RTC at Pasig City.

On October 25, 1995, the defendants namely, State Investment Trust, Inc., Northeast Land Development, Inc., State Properties Corporation and Allen C. Roxas filed a motion to dismiss[2] the complaint on the following grounds:

- a) the claim on which the action is founded is unenforceable under the provisions of the Statute of Frauds; and
- b) the complaint states no cause of action.

Thereafter, or on November 24, 1995, an Opposition[3] (to Defendants' "Motion to Dismiss" dated 25 October 1995) was filed by Viewmaster.

The trial court conducted a hearing of Viewmaster's application for the issuance of a temporary restraining order/writ of preliminary injunction.

On May 15, 1996, an order[4] was issued dismissing the complaint and denying Viewmaster's application for a temporary restraining order/writ of preliminary injunction.

A motion for reconsideration dated May 29, 1996[5] was filed by Viewmaster to which an opposition was filed.

In its order dated July 10, 1996,[6] the trial court reconsidered and set aside the order of May 15, 1996 and accordingly, reinstated the complaint and granted Viewmaster's application for a writ of preliminary injunction on a One Million (P1,000,000.00) Pesos injunction bond.

Respondents herein filed a motion for reconsideration to which Viewmaster filed its opposition. However, the motion was denied for lack of sufficient merit in the order dated January 30, 1997.[7]

On March 5, 1997, the respondents filed a motion for inhibition[8] of the presiding judge but the same was denied for lack of sufficient merit in the order of April 11, 1997.[9]

Thereafter, CA-GR SP No. 44000,[10] a petition for certiorari and prohibition with application for a temporary restraining order and/or writ of preliminary injunction was filed with the Court of Appeals.

On November 28, 1997, a decision was rendered by the Court of Appeals, the dispositive portion of which reads as follows:

"WHEREFORE, the petition is hereby GIVEN DUE COURSE and is GRANTED. The challenged orders dated July 10, 1996 and January 30, 1997 denying petitioners' motion to dismiss the complaint in Civil Case No. 65277; and order dated April 11, 1997 denying their motion for inhibition are all SET ASIDE. The complaint is ordered dismissed. Costs against private respondent Viewmaster.

"SO ORDERED." [11]

A motion for reconsideration was filed by Viewmaster but it was denied in the resolution dated April 21, 1998.[12]

Hence, this petition.

The grounds adduced for the allowance of the petition are:

A

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE COMPLAINT IN CIVIL CASE NO. 65277 DOES NOT STATE A CAUSE OF ACTION.

B

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE AGREEMENT SOUGHT TO BE ENFORCED BY PETITIONER IS SUPPOSEDLY UNENFORCEABLE.

C

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE PRESIDING JUDGE OF THE COURT A QUO SHOULD HAVE INHIBITED HIMSELF FROM HEARING CIVIL CASE NO. 65277.

The petition is without merit.

The test of determining the sufficiency of the statements in a complaint as setting forth a cause of action is enunciated in the case of *Fil-Estate Golf and Development, Inc. vs. Court of Appeals*,^[13] to wit:

"In determining whether or not a complaint states a cause of action, only the allegations in the complaint must be considered. Thus, in the recent case of *Navoa v. Court of Appeals* (251 SCRA 545), we held as follows:

`A cause of action is the fact or combination of facts which affords a party a right to judicial interference in his behalf. The requisites for a cause of action are: (a) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created, (b) an obligation on the part of the defendant to respect and not to violate such right; and (c) an act or omission on the part of the defendant constituting a violation of the plaintiff's right or breach of the obligation of the defendant to the plaintiff. Briefly stated, it is the reason why the litigation has come about; it is the act or omission of the defendant resulting in the violation of someone's right.

`In determining the existence of a cause of action, only the statements in the complaint may properly be considered. Lack of cause of action must appear on the face of the complaint and its existence may be determined only by the allegations of the complaint, consideration of other facts being proscribed and any attempt to prove extraneous circumstances not being allowed.

`If a defendant moves to dismiss the complaint on the ground of lack of cause of action, such as what petitioners did in the case at bar, he is regarded as having hypothetically admitted all the averments thereof. The test of sufficiency of the facts found in a complaint as constituting a cause of action is whether or not admitting the facts alleged the court can render a valid judgment upon the same in accordance with the prayer thereof. The hypothetical admission extends to the relevant and material facts well pleaded in the complaint and inferences fairly deducible therefrom. Hence, if the allegations in the complaint furnish sufficient basis by which the complaint can be maintained, the same should not be dismissed regardless of the defense that may be assessed by the defendants.'" (Emphasis Ours)

Based on the above, one question need be answered: Was there a cause of action?

We reply in the negative.

Let us consider the following facts: Petitioner Viewmaster agreed to act as the guarantor of Allen Roxas for the loan that the latter needs from FMIC if herein respondent Allen Roxas shall sell fifty percent (50%) of his shareholdings in State Investment and shall undertake a joint venture project with Plaintiff Viewmaster to co-develop the two real estate properties in Quezon City and Las Piñas, and if Roxas shall sell and petitioner Viewmaster shall purchase fifty percent (50%) of the latter's total eventual acquisitions of shares of stock in State Investment. These were not put into writing.

The court a quo did not err in finding that the Statute of Frauds covers the foregoing agreements.

Article 1403 of the New Civil Code provides:

"Art. 1403. The following contracts are unenforceable, unless they are ratified:

xxx

"(2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:

"(a) An agreement that by its terms is not to be performed within a year from the making thereof;

xxx

"(d) An agreement for the sale of goods, chattels or things in action, at a price not less than five hundred pesos, unless the buyer accept and receive part of such goods and chattels, or the evidences, or some of them, of such things in action, or pay at the time some part of the purchase money; but when a sale is made by auction and entry is made by the auctioneer in his sales book, at the time of the sale, of the amount and kind of property sold, terms of sale, price, names of the purchasers and person on whose account the sale is made, it is a sufficient memorandum;"

The verbal agreement entered into between petitioner Viewmaster and respondent Allen Roxas was an agreement that by its terms is not to be performed within a year from the making thereof.

To be taken out of the operation of the Statute of Frauds, the agreement must be fully performed on one side within one year from the making thereof.

"Contracts which by their terms are not to be performed within one year may be taken out of the Statute of Frauds through performance by one party thereto. In order, however, that a partial performance of the contract may take the case out of the operation of the statute, it must appear clear that the full performance has been made by one party within one year, as otherwise the statute would apply." [14]

In the case at bar, since neither of the parties has fully performed their obligations within the one-year period, i.e., Allen Roxas has not sold fifty percent (50%) of his shareholdings in State Investment to Viewmaster and Viewmaster has not paid the purchase price for the aforesaid shares of stock, nor began the co-development of the two subject real properties, then it behooves this Court to declare that the case falls within the coverage of the Statute of Frauds.

It will not take a mathematical genius to figure out that the sale of fifty percent (50%) of Allen Roxas's shareholdings in State Investment would amount to more than five hundred pesos (P500.00). Thus, to be enforceable, the contract must be in writing.

It is contended that an implied trust exists between petitioner and Allen Roxas. The implied trust was allegedly created by operation of law in accordance with Article 1448 of the New Civil Code.

Quoted below is the provision referred to:

"Art. 1448. There is an implied trust when property is sold, and the legal estate is granted to one party but the price is paid by another for the purpose of having the beneficial interest of the property. The former is the trustee, while the latter is the beneficiary. However, if the person to whom the title is conveyed is a child, legitimate or illegitimate, of the one paying the price of the sale, no trust is implied by law, it being disputably presumed that there is a gift in favor of the child." (Emphasis Ours)

From the above, it is quite clear that in order for the provisions of Article 1448 to apply in the case at bar "the price is paid by another for the purpose of having the beneficial interest of the property."

It bears stressing that respondent Allen Roxas obtained a loan from First Metro Investments, Inc. not from petitioner Viewmaster. It was FMIC that provided the funds with which Allen Roxas acquired the controlling interest in State Investment Trust, Inc. FMIC lent the money to Roxas because the latter needed the money and not to obtain any beneficial interest in the shares of stock in State Investment. Viewmaster merely facilitated the loan by acting as guarantor of the loan and nothing more.

We quote with approval the finding of the court a quo:

"In the case at bench, the money which Allen Roxas used to bid for the purchase of the shares of stock in State Investment does not belong to Viewmaster. In fact, the complaint clearly states that the funds were borrowed by Allen Roxas from FMIC (which were already fully paid). Thus, we cannot conclude that Allen Roxas holds in trust for Viewmaster 50% of his controlling interest in State Investment and the two parcels of land owned by State Investment's subsidiaries.

"As correctly pointed out by petitioners, an implied trust cannot arise if the funds used by the alleged trustee in acquiring the alleged trust property originated from a loan. The following citations contained in the petition are well-taken:

`Another exception is that in which an actual contrary intention is proved. Thus, where a transfer of property is made to one person and the purchase price is advanced by another as a loan to the transferee, a resulting trust does not arise. xxx' (IV Tolentino, Civil Code of the Philippines [1991], p. 679)

`The general rule is that the use of borrowed money in making a purchase does not raise a resulting trust in favor of the lender, even where the money is loaned to enable the borrower to purchase the property in question and the borrower promises, but fails, to execute a mortgage on the property after it is purchased, to secure the loan. Nor does the use of money given to one for the purchase of the property raises a resulting trust in the property in favor of the donor' (76 AmJur 2d. pp. 440-441).

"If an implied trust cannot exist in favor of a lender, We cannot see our way clear how a mere guarantor, like Viewmaster, can claim a resulting implied trust when it issued to Allen Roxas a Continuing Guaranty.

"But Viewmaster insists that its having acted as guarantor of Allen Roxas is the equitable consideration of the transaction which is the foundation of the resulting trust, citing American Jurisprudence. For had Viewmaster not issued the Continuing Guaranty, FMIC would not have extended any loan to Allen Roxas. In fact, Viewmaster placed itself at risk in securing the loan and in `inducing' FMIC to grant the said loan to Allen Roxas.

"We cannot go along with Viewmaster's theory. The `consideration' referred to in its citation of American Jurisprudence, as well as the `price' specified in Article 1448 of the Civil Code, pertain to the funds, goods or services, in consideration of which the trust property is conveyed to the trustee. In the present case, the `consideration' or `price' refers to the money which came from a loan granted to Allen Roxas by FMIC, not to the Continuing Guaranty executed by Viewmaster. The Continuing Guaranty, therefore, is not the consideration which Allen Roxas used in acquiring said shares of stock. Consequently, no implied trust could have arisen in favor of Viewmaster over the shares of stock in State Investment or over the two subject lots.

"In the light of Our finding that the allegations in the complaint fail to show the existence of an implied trust, a `valid judgment' cannot be rendered thereon in accordance with the prayer in the complaint. Obviously, Viewmaster's demand for specific performance on the part of Allen Roxas or his compliance with his obligation as a supposed trustee has no legal basis." [15]

We have carefully scrutinized the allegations in the complaint and we arrived at one conclusion: the complaint

does not state a cause of action. The facts as given are not sufficient enough for the court to arrive at an equitable judgment.

Anent the third issue, we hold that it is no longer necessary to discuss the same for being moot and academic.

However, we deem it best to allude to the case of *Aleria, Jr. vs. Velez*[16] cited in the case of *Seveses vs. Court of Appeals*,[17] as these cases have discussed the issue when a judge must inhibit himself from a case.

"As to the prayer for inhibition, petitioner claims that the issuance of the questioned Orders shows that respondent Judge has already lost his impartiality or cold neutrality to administer justice, and that petitioner does not stand a chinaman's chance of ever getting justice before respondent Judge. Such sweeping conclusions here do not merit consideration. The questioned Orders, by themselves, do not sufficiently prove bias and prejudice to disqualify respondent Judge under Section 1, second paragraph of Rule 137 of the Rules of Court. For such bias and prejudice, to be a ground for disqualification, must be shown to have stemmed from an extrajudicial source, and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case. Opinions formed in the course of judicial proceedings, as long as they are based on the evidence presented and conduct observed by the judge, even if found later on as erroneous, do not prove personal bias or prejudice on the part of the judge. Extrinsic evidence is required to establish bias, bad faith, malice or corrupt purpose, in addition to palpable error which may be inferred from the decision or order itself. This, the petitioner herein did not sufficiently adduce to warrant respondent Judge's inhibition or disqualification."

WHEREFORE, IN VIEW OF THE FOREGOING, the petition is hereby DISMISSED and the decision of the Court of Appeals in CA GR SP No. 44000 is AFFIRMED. Costs against the petitioner.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and De Leon, Jr., JJ., concur.

[1] Annex "C," Rollo, pp. 74-88.

[2] Annex "D," Rollo, pp. 90-109.

[3] Annex "E," Rollo, pp. 111-119.

[4] Annex "F," Rollo, pp. 121-125.

[5] Annex "G," Rollo, pp. 127-163.

[6] Annex "H," Rollo, pp. 165-172.

[7] Annex "I," Rollo, pp. 174-175.

[8] Annex "J," Rollo, pp. 177-191.

[9] Annex "K," Rollo, pp. 193-195.

[10] Annex "L," Rollo, pp. 197-276.

[11] Rollo, p. 68.

[12] *Ibid.*, p. 72.

[13] 265 SCRA 614, 636-637.

[14] Babao vs. Perez, 102 Phil756.

[15] Rollo, pp. 63-65.

[16] 298 SCRA 611.

[17] G.R. No. 102675 promulgated on October 13, 1999.

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