

MARIO J. MENDEZONA AND TERESITA M. MENDEZONA, LUIS J. MENDEZONA AND MARICAR L. MENDEZONA AND TERESITA ADAD VDA. DE MENDEZONA, PETITIONERS, VS. JULIO H. OZAMIZ, ROBERTO J. MONTAL...

G.R. No. 143370. February 06, 2002

Ponente: DE LEON, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-143370/>

DE LEON, JR., J.:

Before us is a petition for review on certiorari of the Decision[1] and the Resolution[2] of the Court of Appeals dated July 27, 1998 and May 19, 2000, respectively, in CA-G.R. CV No. 39752 which reversed and set aside the Decision[3] dated September 23, 1992 rendered in favor of the petitioners by the Regional Trial Court (RTC) of Cebu City, Branch 6 in Civil Case No. CEB-10766.

Civil Case No. CEB-10766 is a suit for quieting of title. It was instituted on September 25, 1991 by petitioner spouses Mario J. Mendezona and Teresita M. Mendezona as initial plaintiffs,[4] and in the amended complaint filed on October 7, 1991, herein co-petitioner spouses Luis J. Mendezona and Maricar L. Mendezona and Teresita Adad Vda. de Mendezona joined as co-plaintiffs.[5]

In their complaint, the petitioners, as plaintiffs therein, alleged that petitioner spouses Mario J. Mendezona and Teresita M. Mendezona, petitioner spouses Luis J. Mendezona and Maricar L. Mendezona, and petitioner Teresita Adad Vda. de Mendezona own a parcel of land each in the Banilad Estate, Lahug, Cebu City with almost similar areas of 3,462 square meters, 3,466 square meters and 3,468 square meters, covered and described in Transfer Certificate of Title (TCT) Nos. 116834, 116835, and 116836 respectively, of the Registry of Deeds of Cebu City.[6]

The petitioners ultimately traced their titles of ownership over their respective properties from a notarized Deed of Absolute Sale[7] dated April 28, 1989 executed in their favor by Carmen Ozamiz for and in consideration of the sum of One Million Forty Thousand Pesos (P1,040,000.00).

The petitioners initiated the suit to remove a cloud on their said respective titles caused by the inscription thereon of a notice of lis pendens, which came about as a result of an incident in Special Proceeding No. 1250 of the RTC of Oroquieta City. Special Proceeding No. 1250 is a proceeding for guardianship over the person and properties of Carmen Ozamiz initiated by the respondents Julio H. Ozamiz, Jose Ma. Ozamiz, Carmen H. Ozamiz,[8] Paz O. Montalvan, Ma. Teresa O.F. Zarraga, Carlos O. Fortich, Jose Luis O. Ros, Paulita O. Rodriguez and Lourdes O. Lon.[9]

It appears that on January 15, 1991, the respondents instituted the petition for guardianship with the Regional Trial Court of Oroquieta City, alleging therein that Carmen Ozamiz, then 86 years old, after an illness in July 1987, had become disoriented and could not recognize most of her friends; that she could no longer take care of herself nor manage her properties by reason of her failing health, weak mind and absent-mindedness. Mario

Mendezona and Luis Mendezona, herein petitioners who are nephews of Carmen Ozamiz, and Pilar Mendezona, a sister of Carmen Ozamiz, filed an opposition to the guardianship petition.

In the course of the guardianship proceeding, the petitioners and the oppositors thereto agreed that Carmen Ozamiz needed a guardian over her person and her properties, and thus respondent Paz O. Montalvan was designated as guardian over the person of Carmen Ozamiz while petitioner Mario J. Mendezona, respondents Roberto J. Montalvan and Julio H. Ozamiz were designated as joint guardians over the properties of the said ward.

As guardians, respondents Roberto J. Montalvan and Julio H. Ozamiz filed on August 6, 1991 with the guardianship court their “inventories and Accounts”,^[10] listing therein Carmen Ozamiz’s properties, cash, shares of stock, vehicles and fixed assets, including a 10,396 square meter property known as the Lahug property. Said Lahug property is the same property covered by the Deed of Absolute Sale dated April 28, 1989 executed by Carmen Ozamiz in favor of the petitioners. Respondents Roberto J. Montalvan and Julio H. Ozamiz caused the inscription on the titles of petitioners a notice of lis pendens,^[11] regarding Special Proceeding No. 1250, thus giving rise to the suit for quieting of title, Civil Case No. CEB-10766, filed by herein petitioners.

In their Answer^[12] in Civil Case No. CEB-10766 the respondents opposed the petitioners’ claim of ownership of the Lahug property and alleged that the titles issued in the petitioners names are defective and illegal, and the ownership of the said property was acquired in bad faith and without value inasmuch as the consideration for the sale is grossly inadequate and unconscionable. Respondents further alleged that at the time of the sale on April 28, 1989 Carmen Ozamiz was already ailing and not in full possession of her mental faculties; and that her properties having been placed in administration, she was in effect incapacitated to contract with petitioners.

The issues for resolution were delimited in the pre-trial to: (a) the propriety of recourse to quieting of title; (b) the validity or nullity of the Deed of Absolute Sale dated April 28, 1989 executed by Carmen Ozamiz in favor of herein petitioners; (c) whether the titles over the subject parcel of land in plaintiffs’ names be maintained or should they be cancelled and the subject parcels of land reconveyed; and (d) damages and attorney’s fees.^[13]

Trial on the merits ensued with the parties presenting evidence to prove their respective allegations. Petitioners Mario Mendezona, Teresita Adad Vda. de Mendezona and Luis Mendezona, as plaintiffs therein, testified on the circumstances surrounding the sale. Carmencita Cedenio and Martin Yungco, instrumental witnesses to the Deed of Absolute Sale dated April 28, 1989, and, Atty. Asuncion Bernades, the notary public who notarized the said document, testified that on the day of execution of the said contract that Carmen Ozamiz was of sound mind and that she voluntarily and knowingly executed the said deed of sale.

For the defendants, the testimonies of respondent Paz O. Montalvan, a sister of Carmen Ozamiz; Concepcion Agac-ac, an assistant of Carmen Ozamiz; respondent Julio Ozamiz; Carolina Lagura, a househelper of Carmen Ozamiz; Joselito Gunio, an appraiser of land; Nelfa Perdido, a part-time bookkeeper of Carmen Ozamiz, and the deposition of Dr. Faith Go, physician of Carmen Ozamiz, were offered in evidence.

The petitioners presented as rebuttal witnesses petitioners Mario Mendezona and Luis Mendezona, to rebut the testimony of respondent Julio H. Ozamiz; and, Dr. William Buot, a doctor of neurology to rebut aspects of the deposition of Dr. Faith Go on the mental capacity of Carmen Ozamiz at the time of the sale.

During the trial, the trial court found that the following facts have been duly established:^[14]

- (1) On April 28, 1989, Carmen Ozamiz sold to her nephews, Mario, Antonio and Luis, all surnamed Mendezona, three (3) parcels of residential land in Cebu City, per a Deed of Absolute Sale (Exh. D) for a consideration of P1,040,000.00, in which deed the usufructuary rights were reserved during her lifetime.

(2) The three parcels of land were subsequently transferred to the names of the three vendees per TCTs Nos. 108729, 108730 and 108731 (Exhs. J, K & L, respectively). A partition agreement was entered into by the three vendees (Exh. 3) and the parcels of land are now titled in the names of the plaintiffs.

Mario Mendezona — TCT No. 116834 (Exh. A);

Luis Mendezona — TCT No. 116835 (Exh. B);

Antonio Mendezona — TCT No. 116836 (Exh. C);

(3) The reservation of the usufructuary rights to the vendor Carmen Ozamiz during her lifetime was confirmed by the plaintiffs-spouses Mario Mendezona and Teresita Moraza and plaintiffs spouses Luis Mendezona and Maricar Longa in a sworn statement (Exh. I) executed on October 15, 1990, which was duly annotated on the titles of the property;

(4) The capital gains tax was paid (Exh. H) on May 5, 1989 and a certificate (Exh. H-1) was issued by the Bureau of Internal Revenue authorizing the Register of Deeds to transfer the property to the vendees;

(5) A petition for guardianship over the person and properties of Carmen Ozamiz (Exh. E) was filed by all the defendants, (except the defendant Roberto Montalvan) on January 15, 1991 with the Regional Trial Court of Oroquieta City, denominated as Spec. Proc. No. 1250 and subsequently, an “Inventories and Accounts” (Exh. F) was filed by court-appointed guardians Roberto Montalvan and Julio Ozamiz, in which the property was listed (Exh. F-1) and a Notice of Lis Pendens was filed with the Register of Deeds of Cebu City on August 13, 1991 by said joint guardians. Plaintiff Mario Mendezona, as another joint guardian over Carmen Ozamiz, filed his opposition (Exh. R) to the “Inventories and Accounts”, with the Oroquieta Court as to the inclusion of the property (Exh. R-1).

(6) Prior to his death, the deceased husband of plaintiff Teresita Adad Mendezona was granted a General Power of Attorney (Exh. 1) by Carmen Ozamiz on March 23, 1988 and after his demise, Carmen Ozamiz granted Mario Mendezona a General Power of Attorney (Exh. 2.) on August 11, 1990. Both powers of attorney relate to the administration of the property, subject of this action, in Cebu City.

On September 23, 1992 the trial court rendered its decision in favor of the petitioners, the dispositive portion of which reads, to wit:

Wherefore, premises considered, the Court is of the opinion and so declares that:

- The property described in the complaint was sold, with reservation of usufructuary rights by Carmen Ozamiz to the plaintiffs under a valid contract, voluntarily and deliberately entered into while she was of sound mind, for sufficient and good consideration, and without fraud, force, undue influence or intimidation having been exercised upon her, and consequently, the Court orders the defendants herein to acknowledge and recognize the plaintiffs' title to the aforecited property and to refrain from further clouding the same;
- That the one-third (1/3) share erroneously titled to Antonio Mendezona should be titled in the name of Teresita Adad vda. de Mendezona as her paraphernal property and the Register of Deeds of Cebu City is hereby ordered to do so;
- The Notice of Lis Pendens affecting the property should be eliminated from the record and the Register of Deeds of Cebu City is ordered to expunge the same.

No pronouncement as to costs.

SO ORDERED.

On appeal to the Court of Appeals, the appellate court reversed the factual findings of the trial court and ruled that

the Deed of Absolute Sale dated April 28, 1989 was a simulated contract since the petitioners failed to prove that the consideration was actually paid, and, furthermore, that at the time of the execution of the contract the mental faculties of Carmen Ozamiz were already seriously impaired. Thus, the appellate court declared that the Deed of Absolute Sale of April 28, 1989 is null and void. It ordered the cancellation of the certificates of title issued in the petitioners' names and directed the issuance of new certificates of title in favor of Carmen Ozamiz or her estate.

Petitioners filed a motion for reconsideration of the decision of the appellate court. Subsequent thereto, the petitioners filed a motion for a new trial and/or for reception of evidence. They contended, among other things, that the appellate court totally ignored the testimony of Judge Teodorico Durias regarding the mental condition of Carmen Ozamiz a month before the execution of the Deed of Absolute Sale in question. The said testimony was taken in the Special Proceeding No. 1250 in the Regional Trial Court of Oroquieta City. However, Judge Durias was not presented as a witness in Civil Case No. CEB-10766 in the Regional Trial Court of Cebu City. Petitioners alleged that Judge Durias's testimony is a newly-discovered evidence which could not have been discovered prior to the trial in the court below by the exercise of due diligence.

The appellate court denied both motions in its Resolution dated May 19, 2000. Hence, the instant petition anchored on the following grounds:[15]

I.

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE APRIL 28, 1989 DEED OF ABSOLUTE SALE WAS A SIMULATED CONTRACT.

A.

THE COURT OF APPEALS GRAVELY ERRED IN IGNORING THE STATUTORY PRESUMPTIONS OF ACTUAL AND SUFFICIENT CONSIDERATION FOR, AND OF THE REGULARITY AND TRUTHFULNESS OF, THE NOTARIZED DEED OF ABSOLUTE SALE.

B.

THE COURT OF APPEALS GRAVELY ERRED IN IMPOSING ON THE PETITIONERS THE BURDEN OF PROVING PAYMENT, AND IN REFUSING TO RECOGNIZE AND RULE THAT IT WAS THE RESPONDENTS - AS THE PARTIES ASSAILING THE DEED OF ABSOLUTE SALE - WHO HAD FAILED TO DISCHARGE THEIR BURDEN OF PROVING THAT THERE WAS NO CONSIDERATION FOR THE TRANSACTION.

C.

THE COURT OF APPEALS GRAVELY ERRED IN REFUSING TO RECEIVE IN EVIDENCE THE THREE (3) CHECKS, WHICH PROVED BEYOND ANY DOUBT THAT THE PURCHASE PRICE FOR THE LAHUG PROPERTY HAD BEEN PAID TO CARMEN OZAMIZ, AFTER ASKING FOR THEM AND HAVING THEM PRESENTED TO IT IN OPEN COURT, THUS COOPERATING WITH RESPONDENTS' EFFORTS TO SUPPRESS THE CHECKS (WHICH THE COURT ITSELF AND RESPONDENTS CHALLENGED PETITIONERS TO PRODUCE).

II.

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT CARMEN OZAMIZ'S MENTAL FACULTIES WERE SERIOUSLY IMPAIRED WHEN SHE EXECUTED THE DEED OF ABSOLUTE SALE ON APRIL 28, 1989.

A.

THE COURT OF APPEALS GRAVELY ERRED IN IGNORING THE STATUTORY PRESUMPTION THAT CARMEN OZAMIZ WAS OF SOUND MIND AND HAD THE REQUISITE CAPACITY TO CONTRACT WHEN SHE EXECUTED THE DEED OF ABSOLUTE SALE, AND IN REFUSING TO RULE THAT IT WAS THE RESPONDENTS - AS THE PARTIES ALLEGING MENTAL INCAPACITY- WHO HAD FAILED TO DISCHARGE THEIR BURDEN OF REBUTTING THAT PRESUMPTION.

B.

THE COURT OF APPEALS GRAVELY ERRED IN REFUSING TO ACCEPT AND GIVE DUE AND PREPONDERANT WEIGHT TO UNREFUTED EVIDENCE, INCLUDING THE UNREFUTED TESTIMONIES OF THE INSTRUMENTAL WITNESSES AND OF THE NOTARY PUBLIC, THAT CARMEN OZAMIZ EXECUTED THE DEED OF ABSOLUTE SALE FREELY, VOLUNTARILY, KNOWINGLY, AND INTELLIGENTLY.

C.

THE COURT OF APPEALS GRAVELY ERRED IN GIVING WEIGHT TO THE HEARSAY TESTIMONY OF DR. FAITH GO ON THE MENTAL CONDITION OF CARMEN OZAMIZ ON THE DATE SHE EXECUTED THE DEED OF ABSOLUTE SALE.

D.

THE COURT OF APPEALS GRAVELY ERRED IN IGNORING, AND IN REFUSING TO RECEIVE IN EVIDENCE, JUDGE TEODORICO DURIAS'S TESTIMONY (THAT CARMEN OZAMIZ WAS OF SOUND MIND WHEN SHE EXECUTED ANOTHER CONTRACT BARELY A MONTH BEFORE SHE EXECUTED THE DEED OF ABSOLUTE SALE) ON THE GROUND THAT THAT TESTIMONY WAS FORGOTTEN EVIDENCE.

We shall first rule on the issue of whether to consider the testimony of Judge Durias as newly discovered evidence. A motion for new trial upon the ground of newly discovered evidence is properly granted only where there is concurrence of the following requisites, namely: (a) the evidence had been discovered after trial; (b) the evidence could not have been discovered and produced during trial even with the exercise of reasonable diligence; and (c) the evidence is material and not merely corroborative, cumulative or impeaching and is of such weight that if admitted, would probably alter the result. All three (3) requisites must characterize the evidence sought to be introduced at the new trial.

We find that the requirement of reasonable diligence has not been met by the petitioners. As early as the pre-trial of the case at bar, the name of Judge Durias has already cropped up as a possible witness for the defendants, herein respondents. That the respondents chose not to present him is not an indicia per se of suppression of evidence, since a party in a civil case is free to choose who to present as his witness. Neither can Judge Durias' testimony in another case be considered as newly discovered evidence since the facts to be testified to by Judge Durias which were existing before and during the trial, could have been presented by the petitioners at the trial below.[16] The testimony of Judge Durias has been in existence waiting only to be elicited from him by questioning.[17]

It has been held that a lack of diligence is exhibited where the newly discovered evidence was necessary or proper under the pleadings, and its existence must have occurred to the party in the course of the preparation of the case, but no effort was made to secure it; there is a failure to make inquiry of persons who were likely to know the facts in question, especially where information was not sought from co-parties; there is a failure to seek evidence available through public records; there is a failure to discover evidence that is within the control of the complaining party; there is a failure to follow leads contained in other evidence; and, there is a failure to utilize

available discovery procedures.[18] Thus, the testimony of Judge Durias cannot be considered as newly discovered evidence to warrant a new trial.

In this petition at bench, herein petitioners essentially take exception to two (2) main factual findings of the appellate court, namely, (a) that the notarized Deed of Absolute Sale dated April 28, 1989 was a simulated contract, and (b) that Carmen Ozamiz's mental faculties were seriously impaired when she executed the said contract on April 28, 1989. The petitioners allege that both conclusions are contrary or opposed to well-recognized statutory presumptions of regularity enjoyed by a notarized document and that a contracting party to a notarized contract is of sound and disposing mind when she executes the contract.

The respondents posit a different view. They contend that clear and convincing evidence refuted the presumptions on regularity of execution of the Deed of Absolute Sale and existence of consideration thereof. Relying upon the testimonies of Paz O. Montalvan, Concepcion Agac-ac, Carolina Lagura and Dr. Faith Go, they aver that they were able to show that Carmen Ozamiz was already physically and mentally incapacitated since the latter part of 1987 and could not have executed the said Deed of Absolute Sale on April 28, 1989 covering the disputed Lahug property. They also alleged that no error is ascribable to the appellate court for not considering the allegedly rehearsed testimonies of the instrumental witnesses and the notary public.

Factual findings of the appellate court are generally conclusive on this Court which is not a trier of facts. It is not the function of the Supreme Court to analyze or weigh evidence all over again. However, this rule is not without exception. If there is a showing that the appellate court's findings of facts complained of are totally devoid of support in the record or that they are so glaringly erroneous as to constitute grave abuse of discretion, this Court must discard such erroneous findings of facts.[19] We find that the exception applies in the case at bench.

Simulation is defined as "the declaration of a fictitious will, deliberately made by agreement of the parties, in order to produce, for the purposes of deception, the appearances of a juridical act which does not exist or is different from what that which was really executed." [20] The requisites of simulation are: (a) an outward declaration of will different from the will of the parties; (b) the false appearance must have been intended by mutual agreement; and (c) the purpose is to deceive third persons.[21] None of these were clearly shown to exist in the case at bar.

Contrary to the erroneous conclusions of the appellate court, a simulated contract cannot be inferred from the mere non-production of the checks. It was not the burden of the petitioners to prove so. It is significant to note that the Deed of Absolute Sale dated April 28, 1989 is a notarized document duly acknowledged before a notary public. As such, it has in its favor the presumption of regularity, and it carries the evidentiary weight conferred upon it with respect to its due execution. It is admissible in evidence without further proof of its authenticity and is entitled to full faith and credit upon its face.[22]

Payment is not merely presumed from the fact that the notarized Deed of Absolute Sale dated April 28, 1989 has gone through the regular procedure as evidenced by the transfer certificates of title issued in petitioners' names by the Register of Deeds. In other words, whosoever alleges the fraud or invalidity of a notarized document has the burden of proving the same by evidence that is clear, convincing, and more than merely preponderant.[23] Therefore, with this well-recognized statutory presumption, the burden fell upon the respondents to prove their allegations attacking the validity and due execution of the said Deed of Absolute Sale. Respondents failed to discharge that burden; hence, the presumption in favor of the said deed stands. But more importantly, that notarized deed shows on its face that the consideration of One Million Forty Thousand Pesos (P1,040,000.00) was acknowledged to have been received by Carmen Ozamiz.

Simulation cannot be inferred from the alleged absence of payment based on the testimonies of Concepcion

Agac-ac, assistant of Carmen Ozamiz, and Nelfa Perdido, part-time bookkeeper of Carmen Ozamiz. The testimonies of these two (2) witnesses are unreliable and inconsistent.

While Concepcion Agac-ac testified that she was aware of all the transactions of Carmen Ozamiz, she also admitted that not all income of Carmen Ozamiz passed through her since Antonio Mendezona, as appointed administrator, directly reported to Carmen Ozamiz.[24] With respect to Nelfa Perdido, she testified that most of the transactions that she recorded refer only to rental income and expenses, and the amounts thereof were reported to her by Concepcion Agac-ac only, not by Carmen Ozamiz. She does not record deposits or withdrawals in the bank accounts of Carmen Ozamiz.[25] Their testimonies hardly deserve any credit and, hence, the appellate court misplaced reliance thereon.

Considering that Carmen Ozamiz acknowledged, on the face of the notarized deed, that she received the consideration at One Million Forty Thousand Pesos (P1,040,000.00), the appellate court should not have placed too much emphasis on the checks, the presentation of which is not really necessary. Besides, the burden to prove alleged non-payment of the consideration of the sale was on the respondents, not on the petitioners. Also, between its conclusion based on inconsistent oral testimonies and a duly notarized document that enjoys presumption of regularity, the appellate court should have given more weight to the latter. Spoken words could be notoriously unreliable as against a written document that speaks a uniform language.[26]

Furthermore, the appellate court erred in ruling that at the time of the execution of the Deed of Absolute Sale on April 28, 1989 the mental faculties of Carmen Ozamiz were already seriously impaired.[27] It placed too much reliance upon the testimonies of the respondents' witnesses. However, after a thorough scrutiny of the transcripts of the testimonies of the witnesses, we find that the respondents' core witnesses all made sweeping statements which failed to show the true state of mind of Carmen Ozamiz at the time of the execution of the disputed document. The testimonies of the respondents' witnesses on the mental capacity of Carmen Ozamiz are far from being clear and convincing, to say the least.

Carolina Lagura, a househelper of Carmen Ozamiz, testified that when Carmen Ozamiz was confronted by Paz O. Montalvan in January 1989 with the sale of the Lahug property, Carmen Ozamiz denied the same. She testified that Carmen Ozamiz understood the question then.[28] However, this declaration is inconsistent with her (Carolina's) statement that since 1988 Carmen Ozamiz could not fully understand the things around her, that she was physically fit but mentally could not carry a conversation or recognize persons who visited her.[29] Furthermore, the disputed sale occurred on April 28, 1989 or three (3) months after this alleged confrontation in January 1989. This inconsistency was not explained by the respondents.

The revelation of Dr. Faith Go did not also shed light on the mental capacity of Carmen Ozamiz on the relevant day - April 28, 1989 when the Deed of Absolute Sale was executed and notarized. At best, she merely revealed that Carmen Ozamiz was suffering from certain infirmities in her body and at times, she was forgetful, but there was no categorical statement that Carmen Ozamiz succumbed to what the respondents suggest as her alleged "second childhood" as early as 1987. The petitioners' rebuttal witness, Dr. William Buot, a doctor of neurology, testified that no conclusion of mental incapacity at the time the said deed was executed can be inferred from Dr. Faith Go's clinical notes nor can such fact be deduced from the mere prescription of a medication for episodic memory loss.

It has been held that a person is not incapacitated to contract merely because of advanced years or by reason of physical infirmities. Only when such age or infirmities impair her mental faculties to such extent as to prevent her from properly, intelligently, and fairly protecting her property rights, is she considered incapacitated.[30] The respondents utterly failed to show adequate proof that at the time of the sale on April 28, 1989 Carmen Ozamiz

had allegedly lost control of her mental faculties.

We note that the respondents sought to impugn only one document, namely, the Deed of Absolute Sale dated April 28, 1989, executed by Carmen Ozamiz. However, there are nine (9) other important documents that were, signed by Carmen Ozamiz either before or after April 28, 1989 which were not assailed by the respondents.[31] Such is contrary to their assertion of complete incapacity of Carmen Ozamiz to handle her affairs since 1987. We agree with the trial court's assessment that "it is unfair for the [respondents] to claim soundness of mind of Carmen Ozamiz when it benefits them and otherwise when it disadvantages them." [32] A person is presumed to be of sound mind at any particular time and the condition is presumed to continue to exist, in the absence of proof to the contrary.[33] Competency and freedom from undue influence, shown to have existed in the other acts done or contracts executed, are presumed to continue until the contrary is shown.[34]

All the foregoing considered, we find the instant petition to be meritorious and the same should be granted.

WHEREFORE, the instant petition is hereby GRANTED and the assailed Decision and Resolution of the Court of Appeals are hereby REVERSED and SET ASIDE. The Decision dated September 23, 1992 of the Regional Trial Court of Cebu City, Branch 6, in Civil Case No. CEB-10766 is REINSTATED. No pronouncement as to costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Penned by Associate Justice Emeterio C. Cui and concurred in by Associate Justices Eubulo G. Verzola and Artemio G. Tuquero, Second Division, Rollo, pp. 9-17.

[2] Penned by Associate Justice Eubulo G. Verzola and concurred in by Associate Justices Roberto A. Barrios and Elvi John S. Asuncion, Special Tenth Division, Rollo, pp. 18-23.

[3] Penned by Judge Ramon Am. Torres, Original Records, pp. 374-394; Rollo, pp. 300-320.

[4] Original Records, pp. 1-7.

[5] Original Records, pp. 28-35.

[6] Original Records, pp. 36-42.

[7] Original Records, p. 43.

[8] Carmen H. Ozamiz is a cousin of the Mendezonas and a niece of Carmen Ozamiz.

[9] Original Records, pp. 44-51

[10] Original Records, pp. 52-55.

[11] Original Records, pp. 56-57.

[12] Original Records, pp. 66-68.

[13] Original Records, p. 144.

[14] Original Records, pp. 377-378.

[15] Rollo, pp. 69-71.

[16] Arce, et al., v. Arce, et al. 106 Phil. 630, 636-637 [1959].

[17] *Boysaw v. Interphil Promotions, Inc.*, 148 SCRA 635, 647 [1987]. See Moran's Comments on the Rules of Court, p. 55, 1975 Ed., *Lim Tek Goan v. Azores*, 76 Phil. 363 [1946].

[18] 58 Am Jur 2d New Trial § 429.

[19] *Heirs of Cesario Velasquez v. Court of Appeals*, 325 SCRA 552, 565-566 [2000]; *Borlongan v. Madrideo*, 323 SCRA 248, 255 [2000].

[20] *Loyola v. Court of Appeals*, 326 SCRA 285, 293 [2000] citing A.M. Tolentino, IV Civil Code of the Philippines 1991 Ed., p.516.

[21] *Loyola v. Court of Appeals*, supra at 294 citing R.B. Rodriguez, Absolutely or Relatively Simulated Contracts, 159 SCRA 186, 187-188 [1998].

[22] *Lao v. Villones-Lao*, 306 SCRA 387, 396 [1999]; *Arrieta v. Llosa*, 282 SCRA 248, 252 [1997]; *Garrido v. Court of Appeals*, 236 SCRA 450, 457 [1994].

[23] *Caoili v. Court of Appeals*, 314 SCRA 345, 361 [1999]; *Salame v. Court of Appeals*, 239 SCRA 356, 359 [1994]; *Yturralde v. Azurin* 28 SCRA 407, 417 [1969].

[24] TSN, May 26, 1992, pp. 25-26.

[25] TSN, May 27, 1992, pp. 77, 82, 84, 87, 112-113, 126.

[26] *De Leon v. Court of Appeals*, 205 SCRA 612, 622 [1992]; *Abella v. Court of Appeals*, 257 SCRA 482, 487 [1996].

[27] Rollo, p. 41.

[28] TSN, May 26, 1992, pp. 7-10.

[29] TSN, May 26, 1992, pp. 7-10.

[30] *Loyola v. Court of Appeals*, see Note No. 20, supra at 295 citing *Alberts v. Dunlavey* (Coshocton Co), 54 Ohio App. 111, 7 Ohio Ops. 432, 6 NE 2d 26; *Monroe v. Shrivvers* (Morgan Co), 29 Ohio App. 109, 162 NE 780.

[31] These are:

- Special Power of Attorney in favor of Antonio Mendezona dated November 18, 1988 (Exh. "V");
- General Power of Attorney in favor of Antonio Mendezona dated March 23, 1988 (Exhs. "Z" and "1");
- General Power of Attorney in favor of Mario Mendezona on August 11, 1990 (Exhs. "AA" and "2");
- Marriage Contract between Julio Ozamiz and Marietta Figueroa dated March 11, 1989 (Exh. "CC");
- Letter of Antonio Mendezona, dated January 29, 1990 (Exh. "PP");
- Extrajudicial Settlement of Estate of Consuela Ozamiz dated April 15, 1988 (Exh. "II");
- Receipt for money dated June 24, 1989 (Exh. "JJ");
- Certification dated August 4, 1987 (Exh "KK"); and
- Residence Certificate issued on January 12, 1988 (Exh. "5").

[32] Rollo, pp. 374-375.

[33] 29 Am Jur 2d Evidence § 295; *Norwood v. Norwood*, 207 Ga 148, 60 SE2d 449.

[34] *Blochowitz v. Blochowitz*, 122 Neb 385, 240 NW 586, 82 ALR 949.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.