

LEONIDES C. DIÑO, PETITIONER, VS. LINA JARDINES, RESPONDENT.

G.R. NO. 145871. January 31, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

This resolves the petition for review on certiorari seeking to set aside the Decision[1] of the Court of Appeals (CA) dated June 9, 2000 dismissing the appeal in CA-G.R. CV No. 56118 and the Resolution dated October 25, 2000 denying the motion for reconsideration.

The antecedent facts are as follows.

On December 14, 1992, Leonides C. Diño (petitioner) filed a Petition for Consolidation of Ownership with the Regional Trial Court of Baguio City, Branch 7 (RTC). She alleged that: on January 31, 1987, Lina Jardines (respondent) executed in her favor a Deed of Sale with Pacto de Retro over a parcel of land with improvements thereon covered by Tax Declaration No. 44250, the consideration for which amounted to P165,000.00; it was stipulated in the deed that the period for redemption would expire in six months or on July 29, 1987; such period expired but neither respondent nor any of her legal representatives were able to redeem or repurchase the subject property; as a consequence, absolute ownership over the property has been consolidated in favor of petitioner.[2]

Respondent countered in her Answer that: the Deed of Sale with Pacto de Retro did not embody the real intention of the parties; the transaction actually entered into by the parties was one of simple loan and the Deed of Sale with Pacto de Retro was executed just as a security for the loan; the amount borrowed by respondent during the first week of January 1987 was only P50,000.00 with monthly interest of 9% to be paid within a period of six months, but since said amount was insufficient to buy construction materials for the house she was then building, she again borrowed an additional amount of P30,000.00; it was never the intention of respondent to sell her property to petitioner; the value of respondent's residential house alone is over a million pesos and if the value of the lot is added, it would be around one and a half million pesos; it is unthinkable that respondent would sell her property worth one and a half million pesos for only P165,000.00; respondent has even paid a total of P55,000.00 out of the amount borrowed and she is willing to settle the unpaid amount, but petitioner insisted on appropriating the property of respondent which she put up as collateral for the loan; respondent has been the one paying for the realty taxes on the subject property; and due to the malicious suit filed by petitioner, respondent suffered moral damages.

On September 14, 1993, petitioner filed an Amended Complaint adding allegations that she suffered actual and moral damages. Thus, she prayed that she be declared the absolute owner of the property and/or that respondent be ordered to pay her P165,000.00 plus the agreed monthly interest of 10%; moral and exemplary damages, attorney's fees and expenses of litigation.

Respondent then filed her Answer to the Amended Complaint reiterating the allegations in her Answer but increasing the alleged valuation of the subject property to more than two million pesos.

After trial, the RTC rendered its Decision dated November 20, 1996, the dispositive portion of which reads as

follows:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered as follows:

- a) Declaring the contract (Exh. A) entered into by the contending parties as one of deed of sale with right to repurchase or pacto de retro sale;
- b) Declaring the plaintiff Diño to have acquired whatever rights Jardines has over the parcel of land involved it being that Jardines has no torrens title yet over said land;
- c) Declaring the plaintiff Diño the owner of the residential house and other improvements standing on the parcel of land in question;
- d) Ordering the consolidation of ownership of Diño over the residential house and other improvements, and over the rights, she (Diño) acquired over the parcel of land in question; and ordering the corresponding government official (The City Assessor) of Baguio City to undertake the consolidation by putting in the name of plaintiff Diño the ownership and/or rights which she acquired from the defendant Jardines in the corresponding document (Tax Declarations) on file in his/her office; after the plaintiff has complied with all the requirements and has paid the fees necessary or incident to the issuance of a new tax declaration as required by law;
- e) Ordering the cancellation of Tax Declaration 44250;
- f) Ordering defendant Jardines to pay actual and/or compensatory damages to the plaintiff as follows:
 - 1) P3,000.00 representing expenses in going to and from Jardines' place to collect the redemption money;
 - 2) P1,000.00 times the number of times Diño came to Baguio to attend the hearing of the case as evidenced by the signatures of Diño appearing on the minutes of the proceedings found in the Rollo of the case;
 - 3) P10,000.00 attorney's fee.

Costs against defendant Jardines.

SO ORDERED.[3]

Respondent then appealed to the CA which reversed the RTC judgment. The CA held that the true nature of the contract between herein parties is one of equitable mortgage, as shown by the fact that (a) respondent is still in actual physical possession of the property; (b) respondent is the one paying the real property taxes on the property; and (c) the amount of the supposed sale price, P165,000.00, earns monthly interest. The dispositive portion of the CA Decision promulgated on June 9, 2000 reads:

WHEREFORE, foregoing premises considered, we find that the Regional Trial Court, First Judicial Region, Branch 07, Baguio City, committed reversible errors in rendering its decision dated 20 November 1996 in Civil Case No. 2669-R, entitled Leonides G. Diño, etc. vs. Lina Jardines'. The appeal at bar is hereby GRANTED and the assailed decision is hereby REVERSED and SET ASIDE. Let a new judgment be entered as follows:

- Declaring that the true nature of the contract entered into by the contending parties as one of equitable mortgage and not a pacto de retro sale;
- Ordering the defendant-appellant to pay plaintiff-appellee legal interest on the amount of P165,000.00 from July 29, 1987, the time the said interest fell due, until fully paid;
- No pronouncement as to cost.

SO ORDERED.[4]

Petitioner moved for reconsideration of said decision, but the same was denied per Resolution dated October 25, 2000.

Hence, herein petition for review on certiorari alleging that:

- THE LOWER COURT COMMITTED AN ERROR IN DECLARING THAT THE TRUE NATURE OF THE CONTRACT ENTERED INTO BY THE PARTIES AS ONE EQUITABLE MORTGAGE AND NOT A PACTO DE RETRO SALE;
- THE LOWER COURT COMMITTED AN ERROR IN ORDERING THE RESPONDENT TO PAY PETITIONER LEGAL INTEREST DESPITE THE CONFLICTING ADMISSIONS OF THE PARTIES THAT THE AGREED INTERESTS WAS EITHER 9% OR 10%;
- THE FINDINGS OF FACTS OF THE LOWER COURT ARE CONTRARY TO EVIDENCE AND THE ADMISSIONS OF THE PARTIES;
- THE LOWER COURT COMMITTED AN ERROR IN GOING BEYOND THE ISSUES OF THE CASE BY DELETING THE AWARD FOR DAMAGES DESPITE THE FACT THAT THE SAME WAS NOT RAISED AS AN ISSUE IN THE APPEAL; [5]

The petition lacks merit.

The Court finds the allegations of petitioner that the findings of fact of the CA are contrary to evidence and admissions of the parties and that it erred in declaring the contract between the parties as an equitable mortgage to be absolutely unfounded.

A close examination of the records of this case reveals that the findings of fact of the CA are all based on documentary evidence and on admissions and stipulation of facts made by the parties. The CA's finding that there was no gross inadequacy of the price of respondent's residential house as stated in the contract, was based on respondent's own evidence, Tax Declaration No. 44250, which stated that the actual market value of subject residential house in 1986 was only P93,080.00. The fact that respondent has remained in actual physical possession of the property in question, and that respondent has been the one paying the real property taxes on the subject property was established by the admission made by petitioner during the pre-trial conference and embodied in the Pre-Trial Order[6] dated May 25, 1994. The finding that the purchase price in the amount of P165,000.00 earns monthly interest was based on petitioner's own testimony and admission in her appellee's brief that the amount of P165,000.00, if not paid on July 29, 1987, shall bear an interest of 10% per month.

The Court sees no reversible error with the foregoing findings of fact made by the CA. The CA correctly ruled that the true nature of the contract entered into by herein parties was one of equitable mortgage.

Article 1602 of the Civil Code enumerates the instances when a purported pacto de retro sale may be considered an equitable mortgage, to wit:

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

(1)

When the price of a sale with right to repurchase is unusually inadequate;

(2)

When the vendor remains in possession as lessee or otherwise;

(3)

When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;

(4)

When the purchaser retains for himself a part of the purchase price;

(5)

When the vendor binds himself to pay the taxes on the thing sold;

(6)

In any other case where it may be fairly 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.

In any of the foregoing cases, any money, fruits, or other benefit to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject to the usury laws. (Emphasis supplied)

In *Legaspi vs. Ong*,^[7] the Court further explained that:

The presence of even one of the above-mentioned circumstances as enumerated in Article 1602 is sufficient basis to declare a contract of sale with right to repurchase as one of equitable mortgage. As stated by the Code Commission which drafted the new Civil Code, in practically all of the so-called contracts of sale with right of repurchase, the real intention of the parties is that the pretended purchase price is money loaned and in order to secure the payment of the loan, a contract purporting to be a sale with pacto de retro is drawn up.^[8]

In the same case, the Court cited Article 1603 of the Civil Code, which provides that in case of doubt, a contract purporting to be a sale with right to repurchase shall be construed as an equitable mortgage.^[9]

In the instant case, the presence of the circumstances provided for under paragraphs (2) and (5) of Article 1602 of the Civil Code, and the fact that petitioner herself demands payment of interests on the purported purchase price of the subject property, clearly show that the intention of the parties was merely for the property to stand as security for a loan. The transaction between herein parties was then correctly construed by the CA as an equitable mortgage.

The allegation that the appellate court should not have deleted the award for actual and/or compensatory damages is likewise unmeritorious.

Section 8, Rule 51 of the Rules of Court provides as follows:

Sec. 8. Questions that may be decided. – No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors.

Clearly, the appellate court may pass upon plain errors even if they are not stated in the assignment of errors. In *Villegas vs. Court of Appeals*,^[10] the Court held:

[T]he Court is clothed with ample authority to review matters, even if they are not assigned as errors in the appeal, if it finds that their consideration is necessary in arriving at a just decision of the case.[11]

In the present case, the RTC's award for actual damages is a plain error because a reading of said trial court's Decision readily discloses that there is no sufficient evidence on record to prove that petitioner is entitled to the same. Petitioner's only evidence to prove her claim for actual damages is her testimony that she has spent P3,000.00 in going to and from respondent's place to try to collect payment and that she spent P1,000.00 every time she travels from Bulacan, where she resides, to Baguio in order to attend the hearings.

In *People vs. Sara*, [12] the Court held that a witness' testimony cannot be "considered as competent proof and cannot replace the probative value of official receipts to justify the award of actual damages, for jurisprudence instructs that the same must be duly substantiated by receipts." [13] Hence, there being no official receipts whatsoever to support petitioner's claim for actual or compensatory damages, said claim must be denied.

The appellate court was also correct in ordering respondent to pay "legal interest" on the amount of P165,000.00.

Both parties admit that they came to an agreement whereby respondent shall pay petitioner interest, at 9% (according to respondent) or 10% (according to petitioner) per month, if she is unable to pay the principal amount of P165,000.00 on July 29, 1987.

In the Pre-Trial Order [14] dated May 25, 1994, one of the issues for resolution of the trial court was "whether or not the interest to be paid under the agreement is 10% or 9% or whether or not this amount of interest shall be reduced equitably pursuant to law." [15]

The factual milieu of *Carpo vs. Chua* [16] is closely analogous to the present case. In the *Carpo* case, petitioners therein contracted a loan in the amount of P175,000.00 from respondents therein, payable within six months with an interest rate of 6% per month. The loan was not paid upon demand. Therein petitioners claimed that following the Court's ruling in *Medel vs. Court of Appeals*, [17] the rate of interest of 6% per month or 72% per annum as stipulated in the principal loan agreement is null and void for being excessive, iniquitous, unconscionable and exorbitant. The Court then held thus:

In a long line of cases, this Court has invalidated similar stipulations on interest rates for being excessive, iniquitous, unconscionable and exorbitant. In *Solangan v. Salazar*, we annulled the stipulation of 6% per month or 72% per annum interest on a P60,000.00 loan. In *Imperial v. Jaucian*, we reduced the interest rate from 16% to 1.167% per month or 14% per annum. In *Ruiz v. Court of Appeals*, we equitably reduced the agreed 3% per month or 36% per annum interest to 1% per month or 12% per annum interest. The 10% and 8% interest rates per month on a P1,000,000.00 loan were reduced to 12% per annum in *Cuaton v. Salud*. Recently, this Court, in *Arrofo v. Quino*, reduced the 7% interest per month on a P15,000.00 loan amounting to 84% interest per annum to 18% per annum.

There is no need to unsettle the principle affirmed in *Medel* and like cases. From that perspective, it is apparent that the stipulated interest in the subject loan is excessive, iniquitous, unconscionable and exorbitant. Pursuant to the freedom of contract principle embodied in Article 1306 of the Civil Code, contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy. In the ordinary course, the codal provision may be invoked to annul the excessive stipulated interest.

In the case at bar, the stipulated interest rate is 6% per month, or 72% per annum. By the standards set in the above-cited cases, this stipulation is similarly invalid. x x x. [18]

Applying the afore-cited rulings to the instant case, the inescapable conclusion is that the agreed interest rate of 9% per month or 108% per annum, as claimed by respondent; or 10% per month or 120% per annum, as claimed

by petitioner, is clearly excessive, iniquitous, unconscionable and exorbitant. Although respondent admitted that she agreed to the interest rate of 9%, which she believed was exorbitant, she explained that she was constrained to do so as she was badly in need of money at that time. As declared in the *Medel* case[19] and *Imperial vs. Jaucian*,[20] "[i]niquitous and unconscionable stipulations on interest rates, penalties and attorney's fees are contrary to morals." Thus, in the present case, the rate of interest being charged on the principal loan of P165,000.00, be it 9% or 10% per month, is void. The CA correctly reduced the exorbitant rate to "legal interest."

In *Trade & Investment Development Corporation of the Philippines vs. Roblett Industrial Construction Corporation*,[21] the Court held that:

In *Eastern Shipping Lines, Inc. v. Court of Appeals*, this Court laid down the following rules with respect to the manner of computing legal interest:

- When an obligation, regardless of its source, i.e., law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on 'Damages' of the Civil Code govern in determining the measure of recoverable damages.
- With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
- When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code. [22] (Underscoring supplied)

Applied to the present case, since the agreed interest rate is void, the parties are considered to have no stipulation regarding the interest rate. Thus, the rate of interest should be 12% per annum to be computed from judicial or extrajudicial demand, subject to the provisions of Article 1169 of the Civil Code, to wit:

Art. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of the obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

- (1) When the obligation or the law expressly so declares; or
- (2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or
- (3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

x x x x

The records do not show any of the circumstances enumerated above. Consequently, the 12% interest should be reckoned from the date of extrajudicial demand.

Petitioner testified that she went to respondent's place several times to try to collect payment, but she (petitioner) failed to specify the dates on which she made such oral demand. The only evidence which clearly shows the date when petitioner made a demand on respondent is the demand letter dated March 19, 1989 (Exh. "C"), which was received by respondent or her agent on March 29, 1989 per the Registry Return Receipt (Exh. "C-1"). Hence, the interest of 12% per annum should only begin to run from March 29, 1989, the date respondent received the

demand letter from petitioner.

WHEREFORE, the petition is hereby DENIED. The Decision of the Court of Appeals dated June 9, 2000 is AFFIRMED with the MODIFICATION that the legal interest rate to be paid by respondent on the principal amount of P165,000.00 is twelve (12%) percent per annum from March 29, 1989 until fully paid.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Bernardo P. Abesamis, with Associate Justices Eugenio S. Labitoria and Wenceslao I. Agnir, Jr. concurring.

[2] Records, pp. 1-2.

[3] Records, pp. 241-242.

[4] CA Decision, CA rollo, pp. 103-104.

[5] Rollo, p. 6.

[6] Records, pp. 77-80.

[7] G.R. No. 141311, May 26, 2005, 459 SCRA 122.

[8] Id., p. 139.

[9] Id.

[10] G.R. No. 129977, February 1, 2001, 351 SCRA 69.

[11] Id., p. 74.

[12] G.R. No. 140618, December 10, 2003, 417 SCRA 431.

[13] Id., p. 446.

[14] Records, pp. 77-80.

[15] Id., p. 78.

[16] G.R. Nos. 150773 & 153599, September 30, 2005.

[17] 359 Phil. 820 (1998).

[18] *Carpo v. Chua*, supra.

[19] *Supra*, note 17.

[20] G.R. No. 149004, April 14, 2004, 427 SCRA 517, 519.

[21] G.R. No. 139290, November 11, 2005.

[22] Id.

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