SPOUSES ANICETO AND THELMA CIRELOS, PETITIONERS, VS. SPOUSES WILLIAM G. HERNANDEZ, AND ROSEMARIE ZAFE AND THE HON. COURT OF APPEALS, RESPONDENTS.

G.R. NO. 146523. June 15, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before this Court is a petition for review seeking the reversal of the Decision of the Court of Appeals (CA) in CA-G.R. CV No. 55835 promulgated on December 18, 2000,[1] which affirmed the Decision[2] dated May 8, 1996 of the Regional Trial Court (RTC) of Quezon City, Branch 92 in Civil Case No. Q-93-15226.

On March 10, 1993, spouses Aniceto and Thelma Cirelos (petitioners) filed a complaint for Breach of Contract, Annulment of Sale and Damages before the RTC, against spouses William G. Hernandez and Rosemarie Zafe (private respondents) alleging that: they are the registered owners of a house and lot located at No. 10 Kennedy Drive, Tandang Sora, Quezon City, consisting of 302 square meters and covered by TCT No. 244566; on March 5, 1991, petitioner Thelma Cirelos (Cirelos) obtained a loan from respondent William Hernandez (Hernandez), a money lender, in the amount of P450,000.00 and as security therefor, executed a Deed of Real Estate Mortgage in favor of Hernandez covering the said property; in order to effect the immediate release of the loan, Hernandez asked Cirelos to sign a blank bond paper containing nothing but her name which Hernandez said will be converted into promissory note; on February 15, 1993, petitioners received a letter from respondents asking them to vacate the property because respondents already own the same; Cirelos went to the Register of Deeds and learned that there was already a Deed of Sale in favor of respondents annotated at the back of the title as Entry No. PE-2060/T-244566, PR-24978, and a Release of Real Estate Mortgage annotated as Entry No. PE-2059/TCT-244566, PR-23978; Cirelos also discovered that the blank paper she signed, which Hernandez said will only be used as promissory note, was converted into a Deed of Absolute Sale;[3] moreover, the Deed did not have the consent of Aniceto, husband of Cirelos, and the Release of Real Estate Mortgage is fictitious as petitioners have not yet paid their loan.[4]

Respondents in their Answer countered that: Thelma did not sign any blank paper neither did they require her to do so; the execution of the Release of Real Estate Mortgage and Deed of Absolute Sale was out of the free will and volition of petitioners who could no longer pay the loan plus interest;[5] in the execution of the promissory note, Real Estate Mortgage and Deed of Absolute Sale, Thelma was authorized by her husband, Aniceto, through a power of attorney executed way back on January 27, 1990;[6] and it is not true that petitioners learned of the sale only after receiving a letter from respondents' lawyer dated February 15, 1993 and thereafter verifying with the Register of Deeds, because as early as September 5, 1991, respondents' counsel had been writing petitioners asking them to vacate the property.[7]

Trial ensued and on May 8, 1996, the RTC dismissed petitioners' complaint, based on the following findings:

> After a careful study of the evidence of both parties, the Court finds that the Deed of Absolute Sale covering

> the subject property is not fabricated by the defendants. First of all, plaintiff Thelma Cirelos alleges that defendant made her sign a blank paper from which the latter later on made on [sic] Deed of Absolute Sale. However, plaintiff admitted during trial that it was not her habit of signing blank papers although in this particular case, she claimed she signed a blank paper to effect the immediate release of the loan. Furthermore, the paper used, the type of their contents, the signature of the parties, their subscribing witnesses and of the notary public, as well as the spacing and the wordings thereof, the entry number in the notarial register, all these are incontestable evidence that the document is what it purports to be. Second, Atty. Campos testified under oath in Court that both plaintiff and defendant appeared and signed the deed of sale before him. In this case, the presumption of regularity applies. Also, Atty. Campos is a disinterested third party who will not risk his name as well as his professional license for the benefit of his retaining client. Third, plaintiff admitted that defendant never made a demand on her to pay nor did she ever offered [sic] to pay the debt. This may be premised on the fact that plaintiff already knew that she had executed a Deed of Absolute Sale over the lot in question in favor of defendant Hernandez due to her inability to pay the debt. Another is the fact that plaintiffs never made any effort of reconstituting the original TCT which was burned during the fire that occurred in the Quezon City Hall where it was kept. Such omission only shows that plaintiffs are no longer interested in the land. Finally, the letter of plaintiffs asking for an extension of time to vacate the premises is an admission and recognition of the right of the defendants over the subject property.[8]

Petitioners appealed to the CA which denied their appeal, finding that: Cirelos's testimony that she was made to sign a blank paper which will be converted into a promissory note is not worthy of belief as there was already a promissory note at the time the Real Estate Mortgage was executed; petitioners failed to impeach the credibility of Atty. Danilo Campos (Atty. Campos), the notary public before whom the Deed of Absolute Sale was acknowledged and they were not able to overthrow the presumption that official duty has been regularly performed; respondents were able to present the questioned deed of sale which appeared to be genuine and untampered and petitioners were not able to present proof to the contrary other than Cirelos's testimony; the RTC correctly noted the failure of Cirelos to pay their debt despite the lapse of reasonable length of time and her failure to take steps towards the reconstitution of the burned title; gross inadequacy of the price does not affect a contract of sale and there was no sufficient evidence to show defect in consent or show an intent other than a contract of sale.[9]

Petitioners now come before this Court claiming that:

> "[T]he judgment of the Honorable Court of Appeals is not in accord with law; committed grave abuse of discretion in the appreciation of the evidence on record; and the failure to apply or the misapplication of the aforecited provisions of the Civil Code and the Rules of Court."[10]

Petitioners argue that: the true agreement between the parties is mortgage and not sale;[11] there was lack of written demand on petitioners to comply with the mortgage agreement, thus the mortgage agreement subsists; the amount of the loan secured by the real estate mortgage is the same amount stated in the deed of absolute sale; the CA failed to apply Art. 1602 of the Civil Code which provides that the contract shall be presumed to be an equitable mortgage when the price is inadequate, when the vendor remains in possession of the property or when it can be inferred that the real intention of the parties is to make the transaction secure the payment of a debt or the performance of any other obligation; in this case, the market value of the house and lot is P1.2 Million while the amount of the sale is only P450,000.00; petitioners remain in possession of the property despite the execution of the assailed deed of absolute sale, and it was only in February 1993 or a year and a half after the date of the purported sale that the respondents demanded in writing that the petitioners vacate the premises.[12]

Petitioners also claim that: the Deed of Absolute Sale is void as there was no cause or consideration;[13] the consent of Cirelos was obtained through fraud as she was made to sign a blank bond paper in the pretext that it will be converted into a promissory note in favor of Hernandez in his personal capacity;[14] the sale also did not

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have the consent of Cirelos's husband, as the Special Power of Attorney (SPA) relied upon by respondents were merely tampered with, i.e., the words "sell", "absolute sale" and "sale" were written with another typewriter;[15] Atty. Campos, who notarized the Real Estate Mortgage, the release thereof and the Deed of Absolute Sale is a biased witness since he is a retained counsel of respondents for eight years.[16]

Petitioners pray that the entire records of the case be reviewed by this Court; that the decisions of the RTC and the CA be reversed and set aside; that the Deed of Absolute Sale and Release of Real Estate Mortgage be declared null and void; that respondents be ordered to comply with the terms and conditions of the Real Estate Mortgage; and that damages be awarded to petitioners, plus costs.[17]

Respondents filed an Answer[18] to the petition asserting that the Deed of Absolute Sale is complete in all details as the object, subject matter and consideration therefor are specified therein and the notary public before whom the document was signed even testified to its regularity;[19] that the failure of petitioners to act on their alleged discovery of the transfer of title to respondents makes their claim hard to believe;[20] that the decision of the trial court as affirmed by the CA has already settled the validity of the deed of sale on the basis of the credibility of the witnesses presented during trial;[21] that the contents of the petition are evidentiary in nature and no error of law was raised in this petition for review; and that the argument that the true agreement between the parties is mortgage and not sale was raised for the first time in this Court.[22]

Petitioners filed a Reply[23] and both parties filed their respective Memoranda[24] which reiterated their arguments on the matter.

Stated simply, the arguments of petitioners are as follows: Cirelos's signature in the Deed of Absolute Sale was obtained through fraud; there was no consent from Cirelos's husband; and the sale had no cause or consideration. Petitioners also argue that at most, the sale must be considered only as equitable mortgage as the amount stated in the deed of sale is inadequate, petitioners remain in possession of the property, and it took a year and a half after the date of the purported sale before respondents demanded that petitioners leave the premises.

The Court finds the petition devoid of merit.

As a rule, only questions of law are entertained by this Court in petitions for review on certiorari under Rule 45 of the Rules of Court.[25] It is not our function to analyze or weigh all over again the evidence presented.[26] Indeed, the findings of fact of the trial court, especially when affirmed by the CA are binding and conclusive on us, unless: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to the findings of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[27]

In the present petition, the Court finds no cogent reason to depart from the general rule. The CA did not commit any reversible error in affirming the RTC.

The Deed of Absolute Sale being impugned by petitioners is a public document having been notarized by Atty. Campos. As a public document, the deed has in its favor the presumption of regularity, and carries the evidentiary weight conferred upon it with respect to its due execution, i.e., it is admissible in evidence without further proof of its authenticity and is entitled to full faith and credit upon its face.[28] To rebut the same, there must be

evidence that is clear, convincing and more than merely preponderant; otherwise the document shall be upheld.[29]

In this case, all petitioners could offer by way of evidence was Cirelos's bare denial that she signed the subject deed of sale and her claim that what was given her to sign was a blank piece of paper which Hernandez later turned into said deed. Such denial is insufficient to overcome the positive value of the deed of sale which is a notarized document.[30]

As held in Veloso v. Court of Appeals,[31]

> Documents acknowledged before a notary public have the evidentiary weight with respect to their due execution. The questioned x x x deed of sale, [was] notarized and therefore, presumed to be valid and duly executed.[32]

One who denies the due execution of a notarized document, has the burden of proving that contrary to the recital in the Acknowledgment, he has never appeared before the notary public and acknowledged the deed to be his voluntary act.[33]

Cirelos testified that she has never seen Atty. Campos neither has she signed any deed of sale in his presence. Atty. Campos however testified that Cirelos appeared before him and signed the deed of sale in his presence.[34]

Petitioners claim that since Atty. Campos is a retained counsel of Hernandez, his (Atty. Campos's) testimony is biased and not worthy of belief. Petitioners also claim that Cirelos's testimony is more credible than that of Atty. Campos and that therefore, her testimony that her signature in the deed of sale was obtained through fraud must be given credence.

On this point, it is well to remind petitioners that:

> The oft-repeated principle is that where the credibility of a witness is an issue, the established rule is that great respect is accorded to the evaluation of the credibility of witnesses by the trial court. The trial court is in the best position to assess the credibility of witnesses and their testimonies because of its unique opportunity to observe the witnesses firsthand and note their demeanor, conduct and attitude under grilling examination.[35]

Indeed, the assessment by the RTC of the credibility of witnesses is entitled to great respect and weight for having had the opportunity of observing the conduct and demeanor of the witnesses while testifying.[36] The RTC found it unbelievable that Cirelos, who admitted that it is not her habit to sign blank papers, should sign a blank bond paper which Hernandez purportedly later turned into an Absolute Deed of Sale. This was correctly affirmed by the CA which also noted that Cirelos's story that Hernandez told her that the blank paper she signed will be turned into a promissory note, is not worthy of belief as there was already a promissory note (Exhibit "F") signed at the time the Real Estate Mortgage was executed.

Apart from the allegations of petitioners no other proof was presented to justify a reversal or modification in the findings of the trial court which had the occasion to see the deportment of the witnesses as they testified in court.

Petitioners further claim that the Deed of Absolute Sale is void since it did not have the consent of Cirelos's husband. It is true that in the sale of conjugal properties, the consent of both the husband and the wife is required and the absence of the consent of one renders the entire sale null and void including the portion of the conjugal property pertaining to the spouse who contracted the sale.[37]

In this case, while the Deed of Absolute Sale mentioned that Thelma Cirelos is "married to Aniceto Cirelos",[38] and the Acknowledgment thereof stated that it is "signed by the vendor (Cirelos) with the marital consent of her spouse,"[39] the Deed however does not actually contain any signature of Aniceto showing his consent.

In asserting that the Deed of Absolute Sale was executed by Cirelos with the consent of her husband, respondents formally offered said SPA as Exhibit "7," pertinent portions of which read:

> SPECIAL POWER OF ATTORNEY
>
> KNOW ALL MEN BY THESE PRESENTS:
>
> That I, ANECITO[40] CIRELOS, of legal age, Filipino, married to Thelma Morcilla Cirelos, and a resident of 19 Kennedy Drive, Pleasant View Subdivision, Tandang Sora, Quezon City, have this day, named, appointed and constituted and by these presents do hereby NAME, APPOINT and CONSITUTE as my true and lawful ATTORNEY-IN-FACT, my wife, THELMA MORCILLA Cirelos, of legal age, Filipino, and a resident of 19 Kennedy Drive, Pleasant View Subdivision, Tandang Sora, Quezon City, for me and my name, place and stead, to do and perform any or all of the following acts or things, with the same force and legal effect as if I were personally present and could lawfully do the same, to wit:
>
> sell, aBC
>
> 1. To /secure, negotiate or obtain a loan from any private individual, banking or financial institution, using as collateral a parcel of land situated in the District of Banlat, Quezon City, covered by Transfer Certificate of Title No. 244566 issued by the Register of Deeds of Quezon City, and more particularly bounded and described as follows:
>
> TRANSFER CERTIFICATE OF TITLE
> NO. 244566xxx
>
> which parcel of land is our conjugal property but is registered in the name of my wife, Thelma Morcilla Cirelos;
>
> absolute sale aBC
>
> 2. To sign, execute and deliver any deed of /mortgage or instrument in favor of the lender encumbering the above-described parcel of land to any private individual, banking or financial institution with whom my said ATTORNEY-IN-FACT may obtain the loan, under such terms and conditions as she may deem just and reasonable;
>
> aBC
>
> 3. To receive, sign for, acknowledge the proceeds of the sale loan obtained by virtue of this POWER OF ATTORNEY and to endorse and encash any check or warrant that may be issued in lieu of cash for the loan so obtained; and
>
> HEREBY GIVING AND GRANTING unto my said ATTORNEY-IN-FACT full power and authority to do and perform any act or thing requisite or necessary to be done in or about the premises with the same force and legal effect as if I were personally present and could lawfully do the same and hereby CONFIRMING and RATIFYING all that my said ATTORNEY-IN-FACT may do or cause to be done by virtue of these presents.
>
> IN WITNESS WHEREOF, I have hereunto signed my name this 7[th] day of ___Jan.____, 1990, at _____.
>
> ACCEPTED:
>
> (sgd.)
>
> ANECITO[41] CIRELOS
>
> Principal

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(sgd.)

THELMA MORCILLA CIRELOS

Attorney-In -Fact[42]

Aniceto testified that the words "sell," "absolute sale" and "sale" were not in the SPA when he signed it and that his intention was only to authorize his wife to mortgage and not to sell the property;[43] he also said that while his initials are ABC, he was not the one who placed the same in the SPA.[44]

Cirelos testified that she gave her only copy of the SPA to Hernandez when she mortgaged their property;[45] and that when she gave the said SPA to Hernandez the words "sell", "absolute sale", and "sale" were not yet inserted in the said document.[46]

Hernandez on the other hand testified that when Cirelos gave him the SPA, there were already insertions and when he asked Cirelos about them, Cirelos countered that it was made before the Notary Public when she had it notarized.[47]

Under Rule 132, Section 31 of the Rules of Court, the party producing a document as genuine which has been altered, in a part material to the question in dispute must account for the alteration. Said provision reads:

> Sec. 31. Alterations in document, how to explain. --- The party producing a document as genuine which has been altered and appears to have been altered after its execution, in a part material to the question in dispute, must account for the alteration. He may show that the alteration was made by another, without his concurrence, or was made with the consent of the parties affected by it, or was otherwise properly or innocently made, or that the alteration did not change the meaning or language of the instrument. If he fails to do that, the document shall not be admissible in evidence.

In this case, since it is the respondents who presented the SPA, the burden is on them to account for the alterations.

On this score, Atty. Campos, testifying for the respondents stated that while the Deed of Absolute Sale which he notarized involved a property registered in the names of the spouses, and the deed was signed only by Cirelos, he allowed the same, as an SPA (Exhibit "7") was shown to him with the words "sell", "absolute sale", and "sale" with the initials ABC;[48] and that said SPA was already annotated at the back of the title[49] as Entry No. 9115 and marked as Exhibits "1-B" and "1-B-1."[50]

Entry No. 9115 reads:

> Entry No. 9115/ T244566 x x x POWER OF ATTORNEY
> In favor of THELMA M. CIRELOS_____
> With power to SELL, MORTGAGE_____
> in behalf of ANECETO CIRELOS_____
> Other conditions set forth in Doc. No. 131_____
> Page No. 38_____Book No. 3_____of the Not. Public
> of QUIRINO D. CARPIO_____
>
> Date of Instrument _____1/27/90_____
>
> Date of Inscription _____7/10/90_____[51]
>
> (Emphasis supplied)

As respondents were able to show that there was already an annotation on the title anent the SPA dated January

27, 1990 executed by Aniceto in favor of Cirelos, with power to sell as well as mortgage, which was inscribed on July 10, 1990 or before Cirelos started transacting with Hernandez, we find that respondents were able to comply with the requirements of Rule 132, Section 31 and were able to show, by convincing evidence that the insertions in the SPA were already existing when it was given to them by Cirelos.

The claim of petitioners that the contract is void for lack of cause or consideration also does not persuade the Court. As explained by respondents, the parties changed their agreement from that of loan to an absolute sale when petitioners could no longer pay their obligation. The P450,000.00 loan was therefore converted to a purchase price when the parties modified the agreement between them.

Petitioners further argue that even if a contract is an absolute sale on its face, applying Art. 1602 of the Civil Code, still the agreement between them and respondents should be considered as equitable mortgage and not that of sale.

This argument is raised for the first time by petitioners in view of the ruling of the CA, to wit:

> In the instant case, no sufficient evidence to show defect in consent or to show an intent other than a contract of sale was presented by appellants.[52]

While the issue that the real contract between the parties is that of an equitable mortgage may not be raised for the first time on appeal,[53] considering that said issue was triggered by the pronouncement of the CA, the Court will proceed to resolve the same to settle once and for all the controversy between the parties involving the subject property.

Petitioners' claim is not meritorious.

Equitable mortgage, defined, is a contract that - although lacking the formality, the form or words or other requisites demanded by a statute - nevertheless reveals the intention of the parties to burden a piece of real property as security for a debt. Its essential requisites are: (1) the parties enter into what appears to be a contract of sale; and (2) their intention, however, is to secure an existing debt by way of a mortgage.[54]

While there is no single conclusive test to determine whether a deed absolute on its face is really a simple loan accommodation secured by a mortgage,[55] the Civil Code enumerates several instances when a contract is presumed to be an equitable mortgage, thus:

> Art. 1602. The contract shall be presumed to be an equitable mortgage, in any of the following cases:
>
> - When the price of a sale with right to repurchase is unusually inadequate;
>
> - When the vendor remains in possession as lessee or otherwise;
>
> - 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;
>
> - When the purchaser retains for himself a part of the purchase price;
>
> - When the vendor binds himself to pay the taxes on the thing sold;
>
> - 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.

The presence of even just one of the circumstances set forth in this provision suffices to convert a contract to an

equitable mortgage.[56] No concurrence or an overwhelming number is needed.[57]

Article 1604 of the Civil Code provides:

> Art. 1604. The provisions of Article 1602 shall also apply to a contract purporting to be an absolute sale.

While there is a presumption in favor of equitable mortgage, such presumption, however, is not conclusive and may be rebutted by competent and satisfactory proof to the contrary.[58]

In this case, petitioners claim that the agreement between them is one of equitable mortgage for three reasons, i.e., there was inadequacy of the price, they remained in possession of the property, and, their intention was only that of mortgage and not sale.

Petitioners' claim that there was inadequacy of the price is not supported by the evidence on record. They did not present any proof that the fair market value of the real property in the area at the time of the transaction were much higher than the selling price of the lot in question. Mere allegation that the price paid is inadequate, without more, does not make a case favorable to petitioners.[59]

As held in San Pedro v. Lee[60]

> Absent any evidence of the market value of the locale as of the date of the contract, it cannot be concluded that the price at which the property was sold x x x was grossly inadequate. Mere inadequacy of price would not be sufficient. The price must be grossly inadequate, or purely shocking to the conscience.[61]

Cirelos, in her testimony, not only failed to present sufficient evidence, she even admitted her uncertainty as to the real value of the property at the time of the sale.[62]

Petitioners also claim that since they remained in possession of the property, the presumption of equitable mortgage should govern.

It is true, that where the vendor remains in physical possession of the land as lessee or otherwise, the contract should be treated as an equitable mortgage.[63]

Respondents presented proof however that as early as September 5, 1991, or more than a month from July 30, 1991, the date of the deed of sale, they already sent a letter to petitioners asking them to vacate the premises.[64] Reacting thereon, Cirelos went to Hernandez personally and requested for more time;[65] she then made a handwritten letter dated January 14, 1992 which reads:

> Sir,
>
> Kung maari po pag bigyan ninyo ako hanggan Feb. 15, 1992 at gumagawa po ako ng paraan. Sana po maunawaan ninyo ako. Salamat po.
>
> Lubos na gumagalang,
>
> Mrs. Cirelos Cirelos[66]

Respondents sent another demand letter by registered mail dated January 15, 1992[67] which petitioners still did not heed. Respondents then sent a third letter, dated February 15, 1993 again asking that petitioners vacate the premises.[68] It is only the third letter which petitioners claimed to have received.[69] However, respondents presented the first two letters to the trial court with their corresponding registry receipts and registry return cards, the authenticity of which respondents did not question.[70]

Thus, respondent had shown by preponderance of evidence that the possession of petitioners of the subject

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property after the date of the absolute sale is without the acquiescence of respondents.

The Court also notes that, as admitted by Cirelos in her testimony, petitioners have not been paying real estate taxes for the lot since 1990 up to the time of her testimony in 1993.[71] In Bernardo vs. Court of Appeals,[72] this Court noted that a party's nonpayment of realty taxes on the subject land from the time the document of sale was signed, was inconsistent with his claim of continued ownership.[73]

Thus, having no cogent reason to reverse the ruling of the CA, the Court is constrained not to grant the present petition.

WHEREFORE, the petition is DENIED for lack of merit.

Costs against petitioners.

SO ORDERED.

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

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[1] Penned by Associate Justice Eloy R. Bello, Jr. and concurred in by Associate Justices Eugenio S. Labitoria and Eliezer R. De Los Santos; rollo, pp. 34-40.[2] CA rollo, pp. 47-51.[3] Dated July 30, 1991; Exhibits "D" and "4".[4] Records, pp. 1-7.[5] Id. at 41-42.[6] Id. at 48; Exhibit "7".[7] Id. at 43.[8] CA rollo, pp. 50-51.[9] Rollo, pp. 38-39.[10] Id. at 13.[11] Id.[12] Rollo, pp. 16-18.[13] Id. at 18.[14] Id. at 19.[15] Id. at 26.[16] Id. at 24.[17] Id. at 30.[18] Should be a "Comment."[19] Rollo, p. 85.[20] Id. at 86.[21] Id. at 90.[22] Id. at 89-90.[23] Id. at 93-109.[24] Id. at 125-186; 188-244.[25] Samala v. Court of Appeals, G.R. No. 130826, February 17, 2004, 423 SCRA 142, 145.[26] Potenciano v. Reynoso, 449 Phil. 396, 405 (2003).[27] Supra, note 25, at 146.[28] Mendezona v. Ozamiz, 426 Phil. 888, 903-904 (2002); Potenciano v. Reynoso, supra, at 406.[29] Ladignon v. Court of Appeals, 390 Phil. 1161, 1169 (2000).[30] Id. at 1170.[31] 329 Phil. 398 (1996).[32] Id. at 407.[33] Aznar Brothers Realty Co. v. Court of Appeals, 384 Phil. 95, 112 (2000).[34] TSN, August 28, 1995, pp. 14-15.[35] YHT Realty Corporation v. Court of Appeals, G.R. No. 126780, February 17, 2005, 451 SCRA 638, 654.[36] Lustan v. Court of Appeals, 334 Phil. 609, 616-617 (1997).[37] Homeowners Savings & Loan Bank v. Dailo, G.R. No. 153802, March 11, 2005, 453 SCRA 283, 289-290; FAMILY CODE, Art. 124 also provides:

> Art. 124. The administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.
>
> In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include the powers of disposition or encumbrance which must have the authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.

[38] Exhibit "D" and Exhibit "4", rollo, p. 12.[39] Exhibit "4-A", rollo, p. 13.[40] Spelled as "Aniceto" in the other parts of the records.[41] Id.[42] Records, p. 61.[43] TSN, January 19, 1994, pp. 9-10, 13.[44] Id. at 18-19.[45] TSN, November 19, 1993, pp. 59-62.[46] Id. at 64-66.[47] TSN, September 14, 1994, pp. 11-13.[48] TSN, August 28, 1995, pp. 18-21A.[49] Id. at 23-24, 35.[50] Id. at 40-41.[51] Exhibit "1-B-1"[52] Rollo, p. 39.[53] See Sawadjaan v. Court of Appeals, G.R. No. 141735, June 8, 2005.[54] Ramos v. Sarao, G.R. No.

149756, February 11, 2005, 451 SCRA 103, 113.[55] Id. at 114.[56] Id. at 115.[57] Aguirre v. Court of Appeals, 380 Phil. 736, 742 (2000).[58] Austria v. Sps. Gonzales, Jr., G.R. No. 147321, January 21, 2004, 420 SCRA 414, 422.[59] Id.[60] G.R. No. 156522, May 28, 2004, 430 SCRA 339.[61] Id. at 349.[62] TSN, November 19, 1993, pp. 75-83.[63] Legaspi v. Ong, G.R. No. 141311, May 26, 2005, 459 SCRA 122, 142.[64] TSN, William G. Hernandez, December 16, 1994, pp. 12-13; Records, p. 184, Exh. "8".[65] Id. at 14.[66] Records, p. 185, Exh. "9"; See also TSN, William G. Hernandez, December 16, 1994, pp. 14-15.[67] TSN, William G. Hernandez, December 16, 1994, pp. 16-17; Records, p. 185-a, Exh. "10".[68] Id. at 19; Folder of Plaintiffs' Formal Offer of Evidence, p. 14, Exh. "E" and Exh. "11."[69] TSN, Thelma Cirelos, October 22, 1993, p. 31.[70] Records, pp. 184-187, Exhs. "8", "8-A", "8-B", "10", "10-A", "10-B"; TSN, William G. Hernandez, December 16, 1994, pp. 12-18. [71] TSN, November 19, 1993, pp. 88-89.[72] 387 Phil. 736 (2000).[73] Id. at 749.

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