

**RONALDO P. ABILLA AND GERALDA A. DIZON, PETITIONERS, VS.
CARLOS ANG GOBONSENG, JR. AND THERESITA MIMIE ONG,
RESPONDENTS.**

G.R. No. 146651. August 06, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This resolves the Motion for Reconsideration filed by respondents of our Decision dated January 17, 2002 which granted the instant petition and reversed the

Order dated January 14, 2001 of the Regional Trial Court of Dumaguete City, Branch 41 in Civil Case No. 8148.

The Motion for Reconsideration raises the following grounds:

A. WITH DUE RESPECT, THIS HONORABLE HIGHEST COURT ERRED IN NOT AFFIRMING THE ORDER OF THE REGIONAL TRIAL COURT, BRANCH 41, DUMAGUETE CITY, IN CIVIL CASE NO. 8148 WHICH GRANTED RESPONDENT SPOUSES GOBONSENG THE RIGHT TO REPURCHASE THE SEVENTEEN (17) LOTS SUBJECT OF THE PACTO DE RETRO SALE WITHIN THIRTY (30) DAYS FROM THE FINALITY OF THE ORDER.

B. WITH DUE RESPECT, THIS HONORABLE HIGHEST COURT ERRED IN NOT APPLYING TO THE INSTANT CASE THE THIRD PARAGRAPH OF ARTICLE 1606 OF THE NEW CIVIL CODE, HENCE, THE PERIOD TO REPURCHASE ON THE PART OF RESPONDENTS HAS NOT YET EXPIRED.

C. WITH DUE RESPECT, THIS HONORABLE HIGHEST COURT ERRED IN APPLYING TO THE CASE AT BAR THE CASE OF VDA. DE MACOY VS. COURT OF APPEALS (206 SCRA 244) CITING THE CASE OF FELICEN, SR. VS. ORIAS (156 SCRA 586).[1]

In compliance with our resolution,[2] petitioners filed their Comment to the motion for reconsideration, arguing that respondents failed to seasonably exercise their right of redemption; and that this Court was correct in its application of the case of Vda. de Macoy v. Court of Appeals, which held that Article 1606, third paragraph, of the Civil Code does not apply to cases where the parties intended their contract of sale not as an equitable mortgage but a true sale involving transfer of ownership.[3]

It may be helpful to restate the undisputed facts. Respondent contracted a loan from petitioner in the sum of P550,000.00, secured by a real estate mortgage over two parcels of land, covered by TCT Nos. 13607 and 13535. Respondent defaulted in the payment of the loan, which had reached the amount of P700,000.00. He sought a renewal of the loan and issued two postdated checks, one for P10,000.00 and the other for P690,000.00, representing the full amount of his obligation.

The second check was dishonored by the drawee bank. Respondent promised to pay petitioner the sum of P690,000.00 upon approval of his pending loan application with the State Investment House, Inc. However, the

said lending institution required a collateral before approving and releasing the loan, for which reason respondent borrowed from petitioner the two titles, TCT Nos. 13607 and 13535, so he can mortgage the same. Thus, petitioner cancelled the mortgage in his favor and delivered the two titles to respondent.

Despite approval of the loan, respondent failed to make good on his promise to pay his outstanding obligation to petitioner. Hence, the latter threatened to sue him for Estafa. Respondent thus executed a deed of absolute sale over his seventeen lots in Dumaguete City in favor of petitioner. On the same day, the parties executed an Option to Buy whereby respondent was allowed to repurchase the lots within a period of six months.

Respondent failed to repurchase the seventeen lots within the stipulated period of six months. Consequently, petitioners instituted an action for specific performance, praying that respondent be made to pay the capital gains tax and registration expenses for the transfer of title to the said lots, pursuant to the deed of absolute sale. In his answer, respondent interposed the defense that the transaction was in reality an equitable mortgage.

On October 29, 1990, the Regional Trial Court of Dumaguete City, Branch 42, rendered judgment in favor of petitioner and ruled that the Option to Buy was rendered null and void by respondent's failure to exercise the option within the period of six months.[4] On appeal, the Court of Appeals affirmed the decision of the trial court, but further declared that "the deed of sale and option to buy actually constitute a pacto de retro sale." [5] Respondent's motion for reconsideration was denied,[6] and the petition filed with this Court was dismissed.[7] Hence, the decision became final on February 8, 1999 and was duly entered in the Book of Entries of Judgments.[8]

On February 27, 1999, respondent filed with the court of origin a motion to repurchase the lots with tender of payment, which was denied.[9] Subsequently, the trial court issued an Order granting respondent's motion for reconsideration and allowing him to repurchase the lots within thirty days from finality thereof.[10]

Thus, petitioner brought the instant petition for review.

On January 17, 2002, we rendered the assailed Decision reversing the Order of the Regional Trial Court of Dumaguete City, in effect denying respondent the right to repurchase the subject lots.

Respondent's claim of the right to repurchase the lots is anchored on the third paragraph of Article 1606 of the Civil Code, which states:

However, the vendor may still exercise the right to repurchase within thirty days from the time final judgment was rendered in a civil action on the basis that the contract was a true sale with right to repurchase.

The above-quoted provision applies only where the nature and character of the transaction – whether as a pacto de retro sale or as an equitable mortgage – was put in issue before the court.[11] In other words, it applies in a situation where, in a case, one of the contending parties claims that the transaction was a sale with right to repurchase and the other counters that the same was an equitable mortgage, and the court declares in a final judgment that the transaction was really a sale with pacto de retro.

In our Decision, we ruled that Article 1606 of the Civil Code does not apply to the case at bar because the transaction between the parties was a pacto de retro sale, citing the case of *Vda. de Macoy v. Court of Appeals*. [12] However, upon a careful review and analysis of the antecedent facts, we are convinced that the right granted under the third paragraph of Article 1606 may be invoked by respondent.

In *Vda. de Macoy*, [13] citing the earlier ruling in *Felicen, Sr. v. Orias*, [14] we held:

The application of the third paragraph of Article 1606 is predicated upon the bona fides of the vendor a retro. It must appear that there was a belief on his part, founded on facts attendant upon the execution of the sale with

pacto de retro, honestly and sincerely entertained, that the agreement was in reality a mortgage, one not intended to affect the title to the property ostensibly sold, but merely to give it as security for a loan or other obligation. In that event, if the matter of the real nature of the contract is submitted for judicial resolution, the application of the rule is meet and proper; that the vendor a retro be allowed to repurchase the property sold within 30 days from rendition of final judgment declaring the contract to be a true sale with right to repurchase. Conversely, if it should appear that the parties' agreement was really one of sale — transferring ownership to the vendee, but accompanied by a reservation to the vendor of the right to repurchase the property — and there are no circumstances that may reasonably be accepted as generating some honest doubt as to the parties' intention, the proviso is inapplicable. The reason is quite obvious. If the rule were otherwise, it would be within the power of every vendor a retro to set at naught a pacto de retro, or resurrect an expired right of repurchase, by simply instituting an action to reform the contract — known to him to be in truth a sale with pacto de retro — into an equitable mortgage. xxx xxx xxx. (Underscoring ours)

Therefore, the applicability of Article 1606 rests on the bona fide intent of the vendor a retro, i.e., respondent in this case. If he honestly believed that the transaction was an equitable mortgage, the said article applies and he can still repurchase the property within thirty days from finality of the judgment declaring the transaction as a sale with pacto de retro. Parenthetically, it matters not what the vendee intended the transaction to be.

As we stated above, we analyzed the peculiar factual background of this case in order to determine the true intent of respondent. We noted that his contractual relations with petitioner commenced with a loan secured by a real estate mortgage over two parcels of registered land. Said mortgage was cancelled by petitioner when respondent borrowed the titles to the properties so that he can mortgage the same to the State Investment House, Inc. Respondent applied for a loan with the said lending institution precisely to settle his unpaid obligation to petitioner. However, respondent still failed to settle his obligation to petitioner.

When petitioner lent the two titles to respondent, the loan he extended to respondent became unsecured. Naturally, there was a need to secure respondent's obligation after he reneged on his promise to pay the same out of the loan proceeds from State Investment House. Thus, it may well be that the deed of sale, together with the option to buy executed on the same day, was meant to serve as security for the indebtedness of respondent which had become long overdue. Said obligation would have been satisfied had respondent exercised the option to buy within the stipulated period.

These circumstances, peculiar to the case at bar, make this case fall squarely within the situation contemplated in the above-quoted doctrine – that there was a belief on the part of the vendor a retro, founded on facts attendant upon the execution of the sale with pacto de retro, honestly and sincerely entertained, that the agreement was in reality a mortgage, one not intended to affect the title to the property ostensibly sold, but merely to give it as security for a loan or other obligation. Consistently therewith, respondent has maintained throughout the proceedings that transaction between him and petitioner was really an equitable mortgage. As such, respondent may avail of the third paragraph of Article 1606 of the Civil Code and repurchase the lots affected by the deed of absolute sale and option to buy.

The trial court, however, erred in holding that respondent shall be allowed to repurchase the subject lots within thirty days from finality of its Order dated January 14, 2001. Pursuant to Article 1606, third paragraph, of the Civil Code, the thirty-day period shall be counted from the date of finality of the decision declaring the transaction to be a pacto de retro sale, i.e., February 8, 1999.[15] Consequently, the urgent motion to repurchase the lots with tender of payment which respondent filed on February 27, 1999 was on time. Petitioners should, therefore, be ordered to accept the tendered payment for the lots and to execute the necessary deed of sale conveying the same to respondents.

WHEREFORE, in view of the foregoing, the Decision dated January 17, 2002 is SET ASIDE. The instant petition is DENIED. Petitioners are ORDERED to accept the payment tendered by respondents and to execute the necessary deed of sale conveying the subject lots to respondents.
SO ORDERED.

Puno, and Kapunan, JJ., concur.

Davide, Jr., C.J., (Chairman), I vote to deny the motion for reconsideration. Our decision of 17 January 2002 is correct.

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- [1] Rollo, pp. 181-182.
 - [2] Ibid., p. 195.
 - [3] Ibid., pp. 204-213.
 - [4] Ibid., pp. 33-47.
 - [5] Ibid., pp. 48-61, at 55.
 - [6] Ibid., p. 62.
 - [7] Ibid., pp. 63-69.
 - [8] Ibid., p. 70.
 - [9] Ibid., pp. 72-73.
 - [10] Ibid., pp. 28-31.
 - [11] V Tolentino, Civil Code of the Philippines, 166 1992.
 - [12] 206 SCRA 244 1992.
 - [13] Supra, at 254.
 - [14] 156 SCRA 586, at 589-590 1987.
 - [15] Rollo, p. 70.

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