# JOCELYN B. DOLES, PETITIONER, VS. MA. AURA TINA ANGELES, RESPONDENT.

*G.R. NO. 149353. June 26, 2006*

Ponente: AUSTRIA-MARTINEZ, J.

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**AUSTRIA-MARTINEZ, J.:**

This refers to the Petition for Review on Certiorari under Rule 45 of the Rules of Court questioning the Decision[1] dated April 30, 2001 of the Court of Appeals (CA) in C.A.-G.R. CV No. 66985, which reversed the Decision dated July 29, 1998 of the Regional Trial Court (RTC), Branch 21, City of Manila; and the CA Resolution[2] dated August 6, 2001 which denied petitioner's Motion for Reconsideration.

The antecedents of the case follow:

On April 1, 1997, Ma. Aura Tina Angeles (respondent) filed with the RTC a complaint for Specific Performance with Damages against Jocelyn B. Doles (petitioner), docketed as Civil Case No. 97-82716. Respondent alleged that petitioner was indebted to the former in the concept of a personal loan amounting to P405,430.00 representing the principal amount and interest; that on October 5, 1996, by virtue of a "Deed of Absolute Sale",[3] petitioner, as seller, ceded to respondent, as buyer, a parcel of land, as well as the improvements thereon, with an area of 42 square meters, covered by Transfer Certificate of Title No. 382532,[4] and located at a subdivision project known as Camella Townhomes Sorrente in Bacoor, Cavite, in order to satisfy her personal loan with respondent; that this property was mortgaged to National Home Mortgage Finance Corporation (NHMFC) to secure petitioner's loan in the sum of P337,050.00 with that entity; that as a condition for the foregoing sale, respondent shall assume the undue balance of the mortgage and pay the monthly amortization of P4,748.11 for the remainder of the 25 years which began on September 3, 1994; that the property was at that time being occupied by a tenant paying a monthly rent of P3,000.00; that upon verification with the NHMFC, respondent learned that petitioner had incurred arrearages amounting to P26,744.09, inclusive of penalties and interest; that upon informing the petitioner of her arrears, petitioner denied that she incurred them and refused to pay the same; that despite repeated demand, petitioner refused to cooperate with respondent to execute the necessary documents and other formalities required by the NHMFC to effect the transfer of the title over the property; that petitioner collected rent over the property for the month of January 1997 and refused to remit the proceeds to respondent; and that respondent suffered damages as a result and was forced to litigate.

Petitioner, then defendant, while admitting some allegations in the Complaint, denied that she borrowed money from respondent, and averred that from June to September 1995, she referred her friends to respondent whom she knew to be engaged in the business of lending money in exchange for personal checks through her capitalist Arsenio Pua. She alleged that her friends, namely, Zenaida Romulo, Theresa Moratin, Julia Inocencio, Virginia Jacob, and Elizabeth Tomelden, borrowed money from respondent and issued personal checks in payment of the loan; that the checks bounced for insufficiency of funds; that despite her efforts to assist respondent to collect from the borrowers, she could no longer locate them; that, because of this, respondent became furious and threatened petitioner that if the accounts were not settled, a criminal case will be filed against her; that she was

forced to issue eight checks amounting to P350,000 to answer for the bounced checks of the borrowers she referred; that prior to the issuance of the checks she informed respondent that they were not sufficiently funded but the latter nonetheless deposited the checks and for which reason they were subsequently dishonored; that respondent then threatened to initiate a criminal case against her for violation of Batas Pambansa Blg. 22; that she was forced by respondent to execute an "Absolute Deed of Sale" over her property in Bacoor, Cavite, to avoid criminal prosecution; that the said deed had no valid consideration; that she did not appear before a notary public; that the Community Tax Certificate number on the deed was not hers and for which respondent may be prosecuted for falsification and perjury; and that she suffered damages and lost rental as a result.

The RTC identified the issues as follows: first, whether the Deed of Absolute Sale is valid; second; if valid, whether petitioner is obliged to sign and execute the necessary documents to effect the transfer of her rights over the property to the respondent; and third, whether petitioner is liable for damages.

On July 29, 1998, the RTC rendered a decision the dispositive portion of which states:

> WHEREFORE, premises considered, the Court hereby orders the dismissal of the complaint for insufficiency of evidence. With costs against plaintiff.
>
> SO ORDERED.

The RTC held that the sale was void for lack of cause or consideration:[5]

> Plaintiff Angeles' admission that the borrowers are the friends of defendant Doles and further admission that the checks issued by these borrowers in payment of the loan obligation negates [sic] the cause or consideration of the contract of sale executed by and between plaintiff and defendant. Moreover, the property is not solely owned by defendant as appearing in Entry No. 9055 of Transfer Certificate of Title No. 382532 (Annex A, Complaint), thus:
>
> "Entry No. 9055. Special Power of Attorney in favor of Jocelyn Doles covering the share of Teodorico Doles on the parcel of land described in this certificate of title by virtue of the special power of attorney to mortgage, executed before the notary public, etc."
>
> The rule under the Civil Code is that contracts without a cause or consideration produce no effect whatsoever. (Art. 1352, Civil Code).

Respondent appealed to the CA. In her appeal brief, respondent interposed her sole assignment of error:

> THE TRIAL COURT ERRED IN DISMISSING THE CASE AT BAR ON THE GROUND OF [sic] THE DEED OF SALE BETWEEN THE PARTIES HAS NO CONSIDERATION OR INSUFFICIENCY OF EVIDENCE.[6]

On April 30, 2001, the CA promulgated its Decision, the dispositive portion of which reads:

> WHEREFORE, IN VIEW OF THE FOREGOING, this appeal is hereby GRANTED. The Decision of the lower court dated July 29, 1998 is REVERSED and SET ASIDE. A new one is entered ordering defendant-appellee to execute all necessary documents to effect transfer of subject property to plaintiff-appellant with the arrearages of the former's loan with the NHMFC, at the latter's expense. No costs.
>
> SO ORDERED.

The CA concluded that petitioner was the borrower and, in turn, would "re-lend" the amount borrowed from the respondent to her friends. Hence, the Deed of Absolute Sale was supported by a valid consideration, which is the sum of money petitioner owed respondent amounting to P405,430.00, representing both principal and interest.


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The CA took into account the following circumstances in their entirety: the supposed friends of petitioner never presented themselves to respondent and that all transactions were made by and between petitioner and respondent;[7] that the money borrowed was deposited with the bank account of the petitioner, while payments made for the loan were deposited by the latter to respondent's bank account;[8] that petitioner herself admitted in open court that she was "re-lending" the money loaned from respondent to other individuals for profit;[9] and that the documentary evidence shows that the actual borrowers, the friends of petitioner, consider her as their creditor and not the respondent.[10]

Furthermore, the CA held that the alleged threat or intimidation by respondent did not vitiate consent, since the same is considered just or legal if made to enforce one's claim through competent authority under Article 1335[11] of the Civil Code;[12] that with respect to the arrearages of petitioner on her monthly amortization with the NHMFC in the sum of P26,744.09, the same shall be deemed part of the balance of petitioner's loan with the NHMFC which respondent agreed to assume; and that the amount of P3,000.00 representing the rental for January 1997 supposedly collected by petitioner, as well as the claim for damages and attorney's fees, is denied for insufficiency of evidence.[13]

On May 29, 2001, petitioner filed her Motion for Reconsideration with the CA, arguing that respondent categorically admitted in open court that she acted only as agent or representative of Arsenio Pua, the principal financier and, hence, she had no legal capacity to sue petitioner; and that the CA failed to consider the fact that petitioner's father, who co-owned the subject property, was not impleaded as a defendant nor was he indebted to the respondent and, hence, she cannot be made to sign the documents to effect the transfer of ownership over the entire property.

On August 6, 2001, the CA issued its Resolution denying the motion on the ground that the foregoing matters had already been passed upon.

On August 13, 2001, petitioner received a copy of the CA Resolution. On August 28, 2001, petitioner filed the present Petition and raised the following issues:

> I.
>
> WHETHER OR NOT THE PETITIONER CAN BE CONSIDERED AS A DEBTOR OF THE RESPONDENT.
>
> II.
>
> WHETHER OR NOT AN AGENT WHO WAS NOT AUTHORIZED BY THE PRINCIPAL TO COLLECT DEBT IN HIS BEHALF COULD DIRECTLY COLLECT PAYMENT FROM THE DEBTOR.
>
> III.
>
> WHETHER OR NOT THE CONTRACT OF SALE WAS EXECUTED FOR A CAUSE.[14]

Although, as a rule, it is not the business of this Court to review the findings of fact made by the lower courts, jurisprudence has recognized several exceptions, at least three of which are present in the instant case, namely: when the judgment is based on a misapprehension of facts; when the findings of facts of the courts a quo are conflicting; and when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, could justify a different conclusion.[15] To arrive at a proper judgment, therefore, the Court finds it necessary to re-examine the evidence presented by the contending parties during the trial of the case.

The Petition is meritorious.

The principal issue is whether the Deed of Absolute Sale is supported by a valid consideration.

1. Petitioner argues that since she is merely the agent or representative of the alleged debtors, then she is not a party to the loan; and that the Deed of Sale executed between her and the respondent in their own names, which was predicated on that pre-existing debt, is void for lack of consideration.

Indeed, the Deed of Absolute Sale purports to be supported by a consideration in the form of a price certain in money[16] and that this sum indisputably pertains to the debt in issue. This Court has consistently held that a contract of sale is null and void and produces no effect whatsoever where the same is without cause or consideration.[17] The question that has to be resolved for the moment is whether this debt can be considered as a valid cause or consideration for the sale.

To restate, the CA cited four instances in the record to support its holding that petitioner "re-lends" the amount borrowed from respondent to her friends: first, the friends of petitioner never presented themselves to respondent and that all transactions were made by and between petitioner and respondent;[18] second; the money passed through the bank accounts of petitioner and respondent;[19] third, petitioner herself admitted that she was "re-lending" the money loaned to other individuals for profit;[20] and fourth, the documentary evidence shows that the actual borrowers, the friends of petitioner, consider her as their creditor and not the respondent.[21]

On the first, third, and fourth points, the CA cites the testimony of the petitioner, then defendant, during her cross-examination:[22]

Atty. Diza:

q. You also mentioned that you were not the one indebted to the plaintiff?

witness:

a. Yes, sir.

Atty. Diza:

q. And you mentioned the persons[,] namely, Elizabeth Tomelden, Teresa Moraquin, Maria Luisa Inocencio, Zenaida Romulo, they are your friends?

witness:

a. Inocencio and Moraquin are my friends while [as to] Jacob and Tomelden[,] they were just referred.

Atty. Diza:


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q. And you have transact[ed] with the plaintiff?

witness:

a. Yes, sir.

Atty. Diza:

q. What is that transaction?

witness:

a. To refer those persons to Aura and to refer again to Arsenio Pua, sir.

Atty. Diza:

q. Did the plaintiff personally see the transactions with your friends?

witness:

a. No, sir.

Atty. Diza:

q. Your friends and the plaintiff did not meet personally?

witness:

a. Yes, sir.

Atty. Diza:


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q. You are intermediaries?

witness:

a. We are both intermediaries. As evidenced by the checks of the debtors they were deposited to the name of Arsenio Pua because the money came from Arsenio Pua.

x x x x

Atty. Diza:

q. Did the plaintiff knew [sic] that you will lend the money to your friends specifically the one you mentioned [a] while ago?

witness:

a. Yes, she knows the money will go to those persons.

Atty. Diza:

q. You are re-lending the money?

witness:

a. Yes, sir.

Atty. Diza:

q. What profit do you have, do you have commission?

witness:

a. Yes, sir.

Atty. Diza:

q. How much?

witness:

a. Two percent to Tomelden, one percent to Jacob and then Inocencio and my friends none, sir.

Based on the foregoing, the CA concluded that petitioner is the real borrower, while the respondent, the real lender.

But as correctly noted by the RTC, respondent, then plaintiff, made the following admission during her cross examination:[23]

Atty. Villacorta:

q. Who is this Arsenio Pua?

witness:

a. Principal financier, sir.

Atty. Villacorta:

q. So the money came from Arsenio Pua?

witness:

a. Yes, because I am only representing him, sir.

Other portions of the testimony of respondent must likewise be considered:[24]

Atty. Villacorta:

q. So it is not actually your money but the money of Arsenio Pua?

witness:

a. Yes, sir.

Court:

q. It is not your money?

witness:

a. Yes, Your Honor.

Atty. Villacorta:

q. Is it not a fact Ms. Witness that the defendant borrowed from you to accommodate somebody, are you aware of that?

witness:

a. I am aware of that.

Atty. Villacorta:

q. More or less she [accommodated] several friends of the defendant?

witness:

a. Yes, sir, I am aware of that.

x x x x

Atty. Villacorta:

q. And these friends of the defendant borrowed money from you with the assurance of the defendant?

witness:

a. They go direct to Jocelyn because I don't know them.

x x x x

Atty. Villacorta:

q. And is it not also a fact Madam witness that everytime that the defendant borrowed money from you her friends who [are] in need of money issued check[s] to you? There were checks issued to you?

witness:

a. Yes, there were checks issued.

Atty. Villacorta:

q. By the friends of the defendant, am I correct?

witness:

a. Yes, sir.

Atty. Villacorta:

q. And because of your assistance, the friends of the defendant who are in need of money were able to obtain loan to [sic] Arsenio Pua through your assistance?

witness:

a. Yes, sir.

Atty. Villacorta:

q. So that occasion lasted for more than a year?

witness:

a. Yes, sir.


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Atty. Villacorta:

q. And some of the checks that were issued by the friends of the defendant bounced, am I correct?

witness:

a. Yes, sir.

Atty. Villacorta:

q. And because of that Arsenio Pua got mad with you?

witness:

a. Yes, sir.

Respondent is estopped to deny that she herself acted as agent of a certain Arsenio Pua, her disclosed principal. She is also estopped to deny that petitioner acted as agent for the alleged debtors, the friends whom she (petitioner) referred.

This Court has affirmed that, under Article 1868 of the Civil Code, the basis of agency is representation.[25] The question of whether an agency has been created is ordinarily a question which may be established in the same way as any other fact, either by direct or circumstantial evidence. The question is ultimately one of intention.[26] Agency may even be implied from the words and conduct of the parties and the circumstances of the particular case.[27] Though the fact or extent of authority of the agents may not, as a general rule, be established from the declarations of the agents alone, if one professes to act as agent for another, she may be estopped to deny her agency both as against the asserted principal and the third persons interested in the transaction in which he or she is engaged.[28]

In this case, petitioner knew that the financier of respondent is Pua; and respondent knew that the borrowers are friends of petitioner.

The CA is incorrect when it considered the fact that the "supposed friends of [petitioner], the actual borrowers, did not present themselves to [respondent]" as evidence that negates the agency relationship—it is sufficient that petitioner disclosed to respondent that the former was acting in behalf of her principals, her friends whom she referred to respondent. For an agency to arise, it is not necessary that the principal personally encounter the third person with whom the agent interacts. The law in fact contemplates, and to a great degree, impersonal dealings where the principal need not personally know or meet the third person with whom her agent transacts: precisely, the purpose of agency is to extend the personality of the principal through the facility of the agent.[29]

In the case at bar, both petitioner and respondent have undeniably disclosed to each other that they are representing someone else, and so both of them are estopped to deny the same. It is evident from the record that petitioner merely refers actual borrowers and then collects and disburses the amounts of the loan upon which she received a commission; and that respondent transacts on behalf of her "principal financier", a certain Arsenio Pua. If their respective principals do not actually and personally know each other, such ignorance does not affect their juridical standing as agents, especially since the very purpose of agency is to extend the personality of the principal through the facility of the agent.

With respect to the admission of petitioner that she is "re-lending" the money loaned from respondent to other individuals for profit, it must be stressed that the manner in which the parties designate the relationship is not controlling. If an act done by one person in behalf of another is in its essential nature one of agency, the former is the agent of the latter notwithstanding he or she is not so called.[30] The question is to be determined by the fact

that one represents and is acting for another, and if relations exist which will constitute an agency, it will be an agency whether the parties understood the exact nature of the relation or not.[31]

That both parties acted as mere agents is shown by the undisputed fact that the friends of petitioner issued checks in payment of the loan in the name of Pua. If it is true that petitioner was "re-lending", then the checks should have been drawn in her name and not directly paid to Pua.

With respect to the second point, particularly, the finding of the CA that the disbursements and payments for the loan were made through the bank accounts of petitioner and respondent, suffice it to say that in the normal course of commercial dealings and for reasons of convenience and practical utility it can be reasonably expected that the facilities of the agent, such as a bank account, may be employed, and that a sub-agent be appointed, such as the bank itself, to carry out the task, especially where there is no stipulation to the contrary.[32]

In view of the two agency relationships, petitioner and respondent are not privy to the contract of loan between their principals. Since the sale is predicated on that loan, then the sale is void for lack of consideration.

2. A further scrutiny of the record shows, however, that the sale might have been backed up by another consideration that is separate and distinct from the debt: respondent averred in her complaint and testified that the parties had agreed that as a condition for the conveyance of the property the respondent shall assume the balance of the mortgage loan which petitioner allegedly owed to the NHMFC.[33] This Court in the recent past has declared that an assumption of a mortgage debt may constitute a valid consideration for a sale.[34]

Although the record shows that petitioner admitted at the time of trial that she owned the property described in the TCT,[35] the Court must stress that the Transfer Certificate of Title No. 382532[36] on its face shows that the owner of the property which admittedly forms the subject matter of the Deed of Absolute Sale refers neither to the petitioner nor to her father, Teodorico Doles, the alleged co-owner. Rather, it states that the property is registered in the name of "Household Development Corporation." Although there is an entry to the effect that the petitioner had been granted a special power of attorney "covering the shares of Teodorico Doles on the parcel of land described in this certificate,"[37] it cannot be inferred from this bare notation, nor from any other evidence on the record, that the petitioner or her father held any direct interest on the property in question so as to validly constitute a mortgage thereon[38] and, with more reason, to effect the delivery of the object of the sale at the consummation stage.[39] What is worse, there is a notation that the TCT itself has been "cancelled."[40]

In view of these anomalies, the Court cannot entertain the possibility that respondent agreed to assume the balance of the mortgage loan which petitioner allegedly owed to the NHMFC, especially since the record is bereft of any factual finding that petitioner was, in the first place, endowed with any ownership rights to validly mortgage and convey the property. As the complainant who initiated the case, respondent bears the burden of proving the basis of her complaint. Having failed to discharge such burden, the Court has no choice but to declare the sale void for lack of cause. And since the sale is void, the Court finds it unnecessary to dwell on the issue of whether duress or intimidation had been foisted upon petitioner upon the execution of the sale.

Moreover, even assuming the mortgage validly exists, the Court notes respondent's allegation that the mortgage with the NHMFC was for 25 years which began September 3, 1994. Respondent filed her Complaint for Specific Performance in 1997. Since the 25 years had not lapsed, the prayer of respondent to compel petitioner to execute necessary documents to effect the transfer of title is premature.

WHEREFORE, the petition is granted. The Decision and Resolution of the Court of Appeals are REVERSED and SET ASIDE. The complaint of respondent in Civil Case No. 97-82716 is DISMISSED.


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**SO ORDERED.**

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

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[1] Penned by Associate Justice Fermin A. Martin (now retired), with Associate Justices Portia Aliño-Hormachuelos and Mercedes Gozo-Dadole, concurring.

[2] Penned by Associate Justice Mercedes Gozo-Dadole (vice retired Justice Fermin A. Martin, Jr.), with Associate Justices Portia Aliño-Hormachuelos and Marina L. Buzon (new Third Member).

[3] Exhibit "B", records, p. 9.

[4] Exhibit "A"; records, p 7.

[5] RTC Decision, at 7-8.

[6] CA records, p. 19.

[7] CA Decision, rollo, pp. 52-54.

[8] Id. at 54-55.

[9] Id. at 9.

[10] Id. at 9-10.

[11] Article 1335 of the Civil Code provides:

> Art. 1335. There is violence when in order to wrest consent, serious or irresistible force is employed.
>
> There is intimidation when one of the contracting parties is compelled by a reasonable and well-grounded fear of an imminent and grave evil upon his person or property, or upon the person or property of his spouse, descendants or ascendants, to give his consent.
>
> x x x x
>
> A threat to enforce one's claim through competent authority, if the claim is just or legal, does not vitiate consent. (emphasis supplied).

[12] CA Decision, at 10-12.

[13] Id. at 12.

[14] Rollo, p. 81.

[15] See Rivera v. Roman, G.R. No. 142402, September 20, 2005, 470 SCRA 276; The Insular Life Assurance Company, Ltd. v. Court of Appeals, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 86; Aguirre v. Court of Appeals, G.R. No. 122249, January 29, 2004, 421 SCRA 310, 319; C & S Fishfarm Corporation v. Court of Appeals, 442 Phil. 279 (2002).

[16] The fourth paragraph of the Deed of Absolute Sale reads: "NOW THEREFORE, for and in consideration of the sum of FOUR HUNDRED FIVE THOUSAND FOUR HUNDRED THIRTY PESOS ONLY (P 405,430.00) Philippine Currency, the Seller hereby SELLS, TRANSFERS and CONVEYS to the Buyer, his heirs, successors or assigns, the above-described parcel of land together with all the improvements thereon." Exhibit "B".

[17] See Zulueta v. Wong, G.R. No. 153514, June 8, 2005, 459 SCRA 671; Buenaventura v. Court of Appeals,


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G.R. No. 126376, November 20, 2003, 416 SCRA 263; Montecillo v. Reynes, 434 Phil. 456 (2002); Cruz v. Bancom Finance Co., 429 Phil. 224 (2002); Rongavilla v. Court of Appeals, 355 Phil. 720 (1998); Bagnas v. Court of Appeals, G.R. No. 38498, August 10, 1989, 176 SCRA 159; CIVIL CODE (1950) Arts. 1352, 1458 & 1471.

[18] CA Decision, at 5-7; rollo, p. 48.

[19] Id. at 7-8.

[20] Id. at 9.

[21] Id. at 9-10.

[22] TSN, March 23, 1998, pp. 15-18, 20-21.

[23] TSN, January 29, 1998, p. 18.

[24] Id. at 19-23.

[25] See Amon Trading Co. v. Court of Appeals, G.R. No. 158585, December 13, 2005; Victorias Milling Co., Inc. v. Court of Appeals, 389 Phil. 184 (2000); CIVIL CODE (1950), Art. 1868.

[26] See Victorias Milling Co., Inc. v. Court of Appeals, id. citing Connell v. McLoughlin, 28 Or. 230, 42 P. 218; Halladay v. Underwood, 90 Ill. App. 130; Internal Trust Co. v. Bridges, 57 F. 753; HECTOR M. DE LEON & HECTOR M. DE LEON, JR. COMMENTS AND CASES ON PARTNERSHIP, AGENCY, AND TRUSTS, 356-57 (1999).

[27] CIVIL CODE (1950), Arts. 1869-72.

[28] DE LEON & DE LEON, JR., supra note 24, at 409.

[29] Id. at 349, citing Orient Air Services & Hotel Representatives v. Court of Appeals, 274 Phil. 926 (1991).

[30] Id. at 356, citing Cia v. Phil. Refining Co., 45 Phil. 556, December 20, 1923; 5 Arturo M. Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines 398 (1991).

[31] See Cia v. Phil. Refining Co., id. citing 3 Am. Jur. 2d., 430-31.

[32] CIVIL CODE (1950), Arts. 1892-93.

[33] Paragraph 6 of respondent's complaint reads:

> 6. On October 5. 1996 after defendant continuously failed to settle her personal obligation to plaintiff, defendant offered to pay plaintiff by way of ceding the above-described property on condition that plaintiff would assume the balance of the mortgage and pay the monthly amortization of P4,748.11 for the remainder of the 25 years to which the latter agreed; x x x
>
> Annex "D" of the Petition, Rollo, p. 39. Respondent testified as follows:

Q. At the time of the sale, can you tell to this Court whether the defendant [is] still indebted to the [NHMFC]?

A. I am aware that she is indebted.

Q. Is there any agreement with respect to the obligation of the defendant to the NHMFC?

A. We have a verbal agreement that I will be the one to assume the balance.

Q. When you speak of balance what are you talking to? [sic]

A. Undue [sic] balance, sir.

TSN, January 13, 1998, at 14 (emphasis supplied).

[34] See Bravo-Guerrero v. Bravo, G.R. No. 152658, July 29, 2005, 465 SCRA 244.

[35] TSN, February 26, 1998, pp. 5-6.

[36] Exhibit "A"; Rollo, p. 17.

[37] Id. Exhibit "A-1"; Rollo, p. 72.

[38] CIVIL CODE (1950), Art. 2085(3).

[39] See Gonzales v. Toledo, G.R. No. 149465, December 8, 2003, 417 SCRA 260; Tsai v. Court of Appeals, 418 Phil. 606 (2001); Philippine Bank of Communications v. Court of Appeals, et al., 418 Phil. 606 (2001); Noel v. Court of Appeals, 310 Phil. 89 (1995); Segura v. Segura, 165 SCRA 368, 375 (1988).

[40] Exhibit "A"; Rollo, p. 71.


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