

MYRNA RAMOS, PETITIONER, VS. SUSANA S. SARAO AND JONAS RAMOS, RESPONDENTS.

G.R. NO. 149756. February 11, 2005

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Although the parties in the instant case denominated their contract as a “DEED OF SALE UNDER PACTO DE RETRO,” the “sellers” have continued to possess and to reside at the subject house and lot up to the present. This evident factual circumstance was plainly overlooked by the trial and the appellate courts, thereby justifying a review of this case. This overlooked fact clearly shows that the petitioner intended merely to secure a loan, not to sell the property. Thus, the contract should be deemed an equitable mortgage.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, assailing the August 31, 2001 Decision[2] of the Court of Appeals (CA) in CA-GR CV No. 50095, which disposed as follows:

“WHEREFORE, the instant appeal is DISMISSED for lack of merit. The decision dated January 19, 1995 of the Regional Trial Court, Branch 145, Makati City is AFFIRMED in toto.”[3]

The Facts

On February 21, 1991, Spouses Jonas Ramos and Myrna Ramos executed a contract over their conjugal house and lot in favor of Susana S. Sarao for and in consideration of P1,310,430.[4] Entitled “DEED OF SALE UNDER PACTO DE RETRO,” the contract, inter alia, granted the Ramos spouses the option to repurchase the property within six months from February 21, 1991, for P1,310,430 plus an interest of 4.5 percent a month.[5] It was further agreed that should the spouses fail to pay the monthly interest or to exercise the right to repurchase within the stipulated period, the conveyance would be deemed an absolute sale.[6]

On July 30, 1991, Myrna Ramos tendered to Sarao the amount of P1,633,034.20 in the form of two manager’s checks, which the latter refused to accept for being allegedly insufficient.[7] On August 8, 1991, Myrna filed a Complaint for the redemption of the property and moral damages plus attorney’s fees.[8] The suit was docketed as Civil Case No. 91-2188 and raffled to Branch 145 of the Regional Trial Court (RTC) of Makati City. On August 13, 1991, she deposited with the RTC two checks that Sarao refused to accept.[9]

On December 21, 1991, Sarao filed against the Ramos spouses a Petition “for consolidation of ownership in pacto de retro sale” docketed as Civil Case No. 91-3434 and raffled to Branch 61 of the RTC of Makati City.[10] Civil Case Nos. 91-2188 and 91-3434 were later consolidated and jointly tried before Branch 145 of the said Makati RTC.[11]

The two lower courts narrated the trial in this manner:

“x x x Myrna [Ramos] testified as follows: On February 21, 1991, she and her husband borrowed from Sarao

the amount of P1,234,000.00, payable within six (6) months, with an interest thereon at 4.5% compounded monthly from said date until August 21, 1991, in order for them to pay [the] mortgage on their house. For and in consideration of the said amount, they executed a deed of sale under a [pacto de retro] in favor of Sarao over their conjugal house and lot registered under TCT No. 151784 of the Registry of Deeds of Makati (Exhibit A). She further claimed that Sarao will keep the torrens title until the lapse of the 6-month period, in which case she will redeem [the] subject property and the torrens title covering it. When asked why it was the amount of P1,310,430 instead of the aforestated amount which appeared in the deed, she explained that upon signing of the deed in question, the sum of P20,000.00 representing attorney's fees was added, and its total amount was multiplied with 4.5% interest rate, so that they could pay in advance the compounded interest. She also stated that although the market value of the subject property as of February 1991 [was] calculated to [be] more or less P10 million, it was offered [for] only P1,310,430.00 for the reason that they intended nothing but to redeem the same. In May 1991, she wrote a letter to Atty. Mario Aguinaldo requesting him to give a computation of the loan obligation, and [expressed] her intention to redeem the subject property, but she received no reply to her letter. Instead, she, through her husband, secured directly from Sarao a handwritten computation of their loan obligation, the total of which amount[ed] to P1,562,712.14. Later, she sent several letters to Sarao, [furnishing] Atty. Aguinaldo with copies, asking them for the updated computation of their loan obligation as of July 1991, but [no reply was again received]. During the hearing of February 17, 1992, she admitted receiving a letter dated July 23, 1991 from Atty. Aguinaldo which show[ed] the computation of their loan obligation [totaling] to P2,911,579.22 (Exhs. 6, 6-A). On July 30, 1991, she claimed that she offered the redemption price in the form of two (2) manager's checks amounting to P1,633,034.20 (Exhs. H-1 & H-2) to Atty. Aguinaldo, but the latter refused to accept them because they [were] not enough to pay the loan obligation. Having refused acceptance of the said checks covering the redemption price, on August 13, 1991 she came to Court to consign the checks (Exhs. L-4 and L-5). Subsequently, she proceeded to the Register of Deeds to cause the annotation of lis pendens on TCT No. 151784 (Exh. B-1-A). Hence, she filed the x x x civil case against Sarao.

"On the other hand, Sarao testified as follows: On February 21, 1991, spouses Ramos together with a certain Linda Tolentino and her husband, Nestor Tolentino approached her and offered transaction involv[ing a] sale of property[. S]he consulted her lawyer, Atty. Aguinaldo, and on the same date a corresponding deed of sale under pacto de retro was executed and signed (Exh. 1). Later on, she sent, through her lawyer, a demand letter dated June 10, 1991 (Exh. 6) in view of Myrna's failure to pay the monthly interest of 4.5% as agreed upon under the deed[. O]n June 14, 1991 Jonas replied to said demand letter (Exh. 8); in the reply Jonas admitted that he no longer ha[d] the capacity to redeem the property and to pay the interest. In view of the said reply of Jonas, [Sarao] filed the corresponding consolidation proceedings. She [further claimed] that before filing said action she incurred expenses including payment of real estate taxes in arrears, x x x transfer tax and capital [gains] tax, and [expenses] for [the] consolidated proceedings, for which these expenses were accordingly receipted (Exhs. 6, 6-1 to 6-0). She also presented a modified computation of the expenses she had incurred in connection with the execution of the subject deed (Exh. 9). She also testified that Myrna did not tender payment of the correct and sufficient price for said real property within the 6-month period as stipulated in the contract, despite her having been shown the computation of the loan obligation, inclusive of capital gains tax, real estate tax, transfer tax and other expenses. She admitted though that Myrna has tendered payment amounting to P1,633,034.20 in the form of two manager's checks, but these were refused acceptance for being insufficient. She also claimed that several letters (Exhs. 2, 4 and 5) were sent to Myrna and her lawyer, informing them of the computation of the loan obligation inclusive of said expenses. Finally, she denied the allegations made in the complaint that she allied herself with Jonas, and claimed that she ha[d] no knowledge about said allegation." [12]

After trial, the RTC dismissed the Complaint and granted the prayer of Sarao to consolidate the title of the property in her favor.[13] Aggrieved, Myrna elevated the case to the CA.

Ruling of the Court of Appeals

The appellate court sustained the RTC's finding that the disputed contract was a bonafide pacto de retro sale, not a mortgage to secure a loan.[14] It ruled that Myrna Ramos had failed to exercise the right of repurchase, as the consignment of the two manager's checks was deemed invalid. She allegedly failed (1) to deposit the correct repurchase price and (2) to comply with the required notice of consignment.[15]

Hence, this Petition.[16]

The Issues

Petitioner raises the following issues for our consideration:

"1. Whether or not the honorable appellate court erred in ruling the subject Deed of Sale under Pacto de Retro was, and is in reality and under the law an equitable mortgage;

"2. Whether or not the honorable appellate court erred in affirming the ruling of the court a quo that there was no valid tender of payment of the redemption price neither [sic] a valid consignment in the instant case; and

"3. Whether or not [the] honorable appellate court erred in affirming the ruling of the court a quo denying the claim of petitioner for damages and attorney's fees."[17]

The Court's Ruling

The Petition is meritorious in regard to Issues 1 and 2.

First Issue:

A Pacto de Retro Sale
or an Equitable Mortgage?

Respondent Sarao avers that the herein Petition should have been dismissed outright, because petitioner (1) failed to show proof that she had served a copy of it to the Court of Appeals and (2) raised questions of fact that were not proper issues in a petition under Rule 45 of the Rules of Court.[18] This Court, however, disregarded the first ground; otherwise, substantial injustice would have been inflicted on petitioner. Since the Court of Appeals is not a party here, failure to serve it a copy of the Petition would not violate any right of respondent. Service to the CA is indeed mentioned in the Rules, but only to inform it of the pendency of the appeal before this Court.

As regards Item 2, there are exceptions to the general rule barring a review of questions of fact.[19] The Court reviewed the factual findings in the present case, because the CA had manifestly overlooked certain relevant and undisputed facts which, after being considered, justified a different conclusion.[20]

Pacto de Retro Sale Distinguished
from Equitable Mortgage

The pivotal issue in the instant case is whether the parties intended the contract to be a bona fide pacto de retro sale or an equitable mortgage.

In a pacto de retro, ownership of the property sold is immediately transferred to the vendee a retro, subject only to the repurchase by the vendor a retro within the stipulated period.[21] The vendor a retro's failure to exercise the right of repurchase within the agreed time vests upon the vendee a retro, by operation of law, absolute title to the property.[22] Such title is not impaired even if the vendee a retro fails to consolidate title under Article 1607 of the Civil Code.[23]

On the other hand, an equitable mortgage 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 or

pieces of real property as security for a debt.[24] The essential requisites of such a contract are as follows: (1) the parties enter into what appears to be a contract of sale, but (2) their intention is to secure an existing debt by way of a mortgage.[25] The nonpayment of the debt when due gives the mortgagee the right to foreclose the mortgage, sell the property, and apply the proceeds of the sale to the satisfaction of the loan obligation.[26]

This Court has consistently decreed that the nomenclature used by the contracting parties to describe a contract does not determine its nature.[27] The decisive factor is their intention -- as shown by their conduct, words, actions and deeds -- prior to, during, and after executing the agreement.[28] This juristic principle is supported by the following provision of law:

Article 1371. In order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered.[29]

Even if a contract is denominated as a pacto de retro, the owner of the property may still disprove it by means of parol evidence,[30] provided that the nature of the agreement is placed in issue by the pleadings filed with the trial court.[31]

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.[32] However, the law enumerates several instances that show when a contract is presumed to be an equitable mortgage, as follows:

Article 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.[33]

Furthermore, a contract purporting to be a pacto de retro is construed as an equitable mortgage when the terms of the document and the surrounding circumstances so require.[34] The law discourages the use of a pacto de retro, because this scheme is frequently used to circumvent a contract known as a pactum commissorium. The Court has frequently noted that a pacto de retro is used to conceal a contract of loan secured by a mortgage.[35] Such construction is consistent with the doctrine that the law favors the least transmission of rights.[36]

Equitable Mortgage Presumed to be Favored by Law

Jurisprudence has consistently declared that the presence of even just one of the circumstances set forth in the forgoing Civil Code provision suffices to convert a contract to an equitable mortgage.[37] Article 1602 specifically states that the equitable presumption applies to any of the cases therein enumerated.

In the present factual milieu, the vendor retained possession of the property allegedly sold.[38] Petitioner and her

children continued to use it as their residence, even after Jonas Ramos had abandoned them.[39] In fact, it remained as her address for the service of court orders and copies of Respondent Sarao's pleadings.[40]

The presumption of equitable mortgage imposes a burden on Sarao to present clear evidence to rebut it. Corollary to this principle, the favored party need not introduce proof to establish such presumption; the party challenging it must overthrow it, lest it persist.[41] To overturn that prima facie fact that operated against her, Sarao needed to adduce substantial and credible evidence to prove that the contract was a bona fide pacto de retro. This evidentiary burden she miserably failed to discharge.

Contrary to Sarao's bare assertions, a meticulous review of the evidence reveals that the alleged contract was executed merely as security for a loan.

The July 23, 1991 letter of Respondent Sarao's lawyer had required petitioner to pay a computed amount -- under the heading "House and Lot Loan"[42] -- to enable the latter to repurchase the property. In effect, respondent would resell the property to petitioner, once the latter's loan obligation would have been paid. This explicit requirement was a clear indication that the property was to be used as security for a loan.

The loan obligation was clear from Sarao's evidence as found by the trial court, which we quote:

"x x x [Sarao] also testified that Myrna did not tender payment of the correct and sufficient price for said real property within the 6-month period as stipulated in the contract, despite her having been shown the computation of the loan obligation, inclusive of capital gains tax, real estate tax, transfer tax and other expenses. She admitted though that Myrna has tendered payment amounting to P1,633,034.20 in the form of two manager's checks, but these were refused acceptance for being insufficient. She also claimed that several letters (Exhs. 2, 4 and 5) were sent to Myrna and her lawyer, informing them of the computation of the loan obligation inclusive of said expenses. x x x."[43]

Respondent herself stressed that the pacto de retro had been entered into on the very same day that the property was to be foreclosed by a commercial bank.[44] Such circumstance proves that the spouses direly needed funds to avert a foreclosure sale. Had they intended to sell the property just to realize some profit, as Sarao suggests,[45] they would not have retained possession of the house and continued to live there. Clearly, the spouses had entered into the alleged pacto de retro sale to secure a loan obligation, not to transfer ownership of the property.

Sarao contends that Jonas Ramos admitted in his June 14, 1991 letter to her lawyer that the contract was a pacto de retro.[46] That letter, however, cannot override the finding that the pacto de retro was executed merely as security for a loan obligation. Moreover, on May 17, 1991, prior to the transmittal of the letter, petitioner had already sent a letter to Sarao's lawyer expressing the former's desire to settle the mortgage on the property.[47] Considering that she had already denominated the transaction with Sarao as a mortgage, petitioner cannot be prejudiced by her husband's alleged admission, especially at a time when they were already estranged.[48]

Inasmuch as the contract between the parties was an equitable mortgage, Respondent Sarao's remedy was to recover the loan amount from petitioner by filing an action for the amount due or by foreclosing the property.[49]

Second Issue:

Propriety of Tender of

Payment and Consignation

Tender of payment is the manifestation by debtors of their desire to comply with or to pay their obligation.[50] If the creditor refuses the tender of payment without just cause, the debtors are discharged from the obligation by the consignation of the sum due.[51] Consignation is made by depositing the proper amount to the judicial authority, before whom the tender of payment and the announcement of the consignation shall be proved.[52] All interested

parties are to be notified of the consignment.[53] Compliance with these requisites is mandatory.[54]

The trial and the appellate courts held that there was no valid consignment, because petitioner had failed to offer the correct amount and to provide ample consignment notice to Sarao.[55] This conclusion is incorrect.

Note that the principal loan was P1,310,430 plus 4.5 per cent monthly interest compounded for six months. Expressing her desire to pay in the fifth month, petitioner averred that the total amount due was P1,633,034.19, based on the computation of Sarao herself.[56] The amount of P2,911,579.22 that the latter demanded from her to settle the loan obligation was plainly exorbitant, since this sum included other items not covered by the agreement. The property had been used solely as security for the P1,310,430 loan; it was therefore improper to include in that amount payments for gasoline and miscellaneous expenses, taxes, attorney's fees, and other alleged loans. When Sarao unjustly refused the tender of payment in the amount of P1,633,034.20, petitioner correctly filed suit and consigned the amount in order to be released from the latter's obligation.

The two lower courts cited Article 1257 of the Civil Code to justify their ruling that petitioner had failed to notify Respondent Sarao of the consignment. This provision of law states that the obligor may be released, provided the consignment is first announced to the parties interested in the fulfillment of the obligation.

The facts show that the notice requirement was complied with. In her August 1, 1991 letter, petitioner said that should the respondent fail to accept payment, the former would consign the amount.[57] This statement was an unequivocal announcement of consignment. Concededly, sending to the creditor a tender of payment and notice of consignment -- which was precisely what petitioner did -- may be done in the same act.[58]

Because petitioners' consignment of the amount of P1,633,034.20 was valid, it produced the effect of payment.[59] "The consignment, however, has a retroactive effect, and the payment is deemed to have been made at the time of the deposit of the thing in court or when it was placed at the disposal of the judicial authority." [60] "The rationale for consignment is to avoid making the performance of an obligation more onerous to the debtor by reason of causes not imputable to him." [61]

Third Issue:

Moral Damages and Attorney's Fees

Petitioner seeks moral damages in the amount of P500,000 for alleged sleepless nights and anxiety over being homeless.[62] Her bare assertions are insufficient to prove the legal basis for granting any award under Article 2219 of the Civil Code.[63] Verily, an award of moral damages is uncalled for, considering that it was Respondent Sarao's accommodation that settled the earlier obligation of the spouses with the commercial bank and allowed them to retain ownership of the property.

Neither have attorney's fees been shown to be proper.[64] As a general rule, in the absence of a contractual or statutory liability therefor, sound public policy frowns on penalizing the right to litigate.[65] This policy applies especially to the present case, because there is a need to determine whether the disputed contract was a pacto de retro sale or an equitable mortgage.

Other Matters

In a belated Manifestation filed on October 19, 2004, Sarao declared that she was the "owner of the one-half share of Jonas Ramos in the conjugal property," because of his alleged failure to file a timely appeal with the CA.[66] Such declaration of ownership has no basis in law, considering that the present suit being pursued by petitioner pertains to a mortgage covering the whole property.

Besides, it is basic that defenses and issues not raised below cannot be considered on appeal.[67]

The Court, however, observes that Respondent Sarao paid real property taxes amounting to P67,567.10 to halt the auction sale scheduled for October 8, 2004, by the City of Muntinlupa.[68] Her payment was made in good faith and benefited petitioner. Accordingly, Sarao should be reimbursed; otherwise, petitioner would be unjustly enriched,[69] under Article 2175 of the Civil Code which provides:

Art. 2175. Any person who is constrained to pay the taxes of another shall be entitled to reimbursement from the latter.

WHEREFORE, the Petition is partly GRANTED and the assailed Decision SET ASIDE. Judgment is hereby rendered:

(1) DECLARING (a) the disputed contract as an equitable mortgage, (b) petitioner's loan to Respondent Sarao to be in the amount of P1,633,034.19 as of July 30, 1991; and (c) the mortgage on the property -- covered by TCT No. 151784 in the name of the Ramos spouses and issued by the Register of Deeds of Makati City --as discharged

(2) ORDERING the RTC to release to Sarao the consigned amount of P1,633,034.19

(3) COMMANDING Respondent Sarao to return to petitioner the owner's copy of TCT No. 151784 in the name of the Ramos spouses and issued by the Register of Deeds of Makati City

(4) DIRECTING the Register of Deeds of Makati City to cancel Entry No. 24057, the annotation appearing on TCT No. 151784

(5) ORDERING petitioner to pay Sarao in the amount of P67,567.10 as reimbursement for real property taxes

No pronouncement as to costs.

SO ORDERED.

Sandoval-Gutierrez, Corona, Carpio-Morales, and Garcia, JJ., concur.

[1] Rollo, pp. 13-28.

[2] Id., pp. 60-72. Seventh Division. Penned by Justice Bernardo P. Abesamis, with the concurrence of Justices Godardo A. Jacinto (Division chairman) and Eliezer R. de los Santos (member).

[3] Assailed Decision, p. 13; rollo, p. 72.

[4] Id., pp. 2 & 61.

[5] Deed of Sale under Pacto de Retro, p. 2; rollo, p. 110.

[6] Ibid.

[7] Assailed Decision, p. 3; rollo, p. 62.

[8] Petition, p. 5; rollo, p. 17.

Myrna Ramos impleaded her husband, Jonas Ramos, as co-defendant of Sarao. She alleged that they were already estranged, and that her husband was unwilling to sue as co-plaintiff, notwithstanding that the subject matter of the suit was conjugal property. Petitioner's Complaint, p. 1; rollo, p. 270.

[9] Ibid.

The trial court issued an order authorizing the clerk of court to receive by way of consignment the amount of

P1,633,034.20 from Myrna Ramos. RTC Order, dated August 9, 1991; rollo, p. 327.

[10] Respondent's Memorandum, p. 3; rollo, p. 216.

[11] Petition, *ibid*.

[12] Assailed Decision, pp. 2-6; rollo, pp. 61-64.

[13] *Id.*, pp. 6 & 65.

[14] *Id.*, pp. 7 & 66.

[15] *Id.*, pp. 11 & 70.

[16] The case was deemed submitted for decision on March 14, 2003, upon this Court's receipt of petitioner's Memorandum, signed by Atty. Tito Abuda Oneza. Respondent Sarao's Memorandum, signed by Attys. Mario A. Aguinaldo and Ma. Esmeralda C. Aguinaldo, was received by this Court on March 3, 2003.

Respondent Jonas Ramos submitted a Memorandum on April 22, 2004, signed by Atty. Dante S. David, in which he joined the prayer of petitioner.

In a Notice of Withdrawal of Appearance filed earlier on November 12, 2003, Atty. Dante S. David averred that Myrna and Jonas Ramos had already reconciled and "settled their differences." Rollo, p. 337.

[17] Petitioners' Memorandum, p. 6; rollo, p. 260.

[18] Sarao's Memorandum, p. 20; rollo, p. 233.

[19] *Fuentes v. CA*, 268 SCRA 703, February 26, 1997; *Mighty Corporation v. E & J Gallo Winery*, GR No. 154342, July 14, 2004; *CIR v. Embroidery and Garments Industries (Phil.) Inc.*, 364 Phil. 541, 546, March 22, 1999; *Asia Brewery, Inc. v. Court of Appeals*, 224 SCRA 437, 443, July 5, 1993.

[20] *Carolina Industries, Inc. v. CMS Stock Brokerage, Inc.*, 97 SCRA 734, 755, May 17, 1980; *Abellana v. Dosdos*, 121 Phil. 241, 244, February 26, 1965.

[21] *Cruz v. Leis*, 384 Phil. 303, March 9, 2000; *Solid Homes Inc. v. Court of Appeals*, 341 Phil. 261, 280, July 8, 1997; *De Guzman v. Court of Appeals*, 156 SCRA 701, 711, December 21, 1987; *Manalansan v. Manalang*, 108 Phil. 1041, 1045, July 26, 1960.

[22] *Cruz v. Leis*, *supra*; *De Guzman v. Court of Appeals*, *supra*;

[23] Article 1607 of the Civil Code provides: "In case of real property, the consolidation of ownership in the vendee by virtue of the failure of the vendor to comply with the provisions of Article 1616 shall not be recorded in the Registry of Property without a judicial order, after the vendor has been duly heard."

A judicial order is required merely for the recording of the consolidation of ownership with the Registry of Property. *Cruz v. Leis*, *supra*; *De Guzman v. Court of Appeals*, *supra*; *Rosario v. Rosario*, 110 Phil. 394, 395, December 29, 1960.

[24] *Ceballos v. Mercado*, GR No. 155856, May 28, 2004; *Matanguihan v. Court of Appeals*, 341 Phil. 379, 389, July 11, 1997; *Santos v. Court of Appeals*, 179 SCRA 363, 367, November 13, 1989.

[25] *San Pedro v. Lee*, GR No. 156522, May 28, 2004; *Matanguihan v. Court of Appeals*, *supra*.

[26] Article 2087 of the Civil Code provides: "It is also of the essence of [contracts of pledge or mortgage] that when the principal obligation becomes due, the things in which the pledge or mortgage consists may be alienated

for the payment to the creditor.” See also *BPI Family Savings Bank v. Antonio*, GR No. 141974, August 9, 2004.

[27] *Ching Sen Ben v. Court of Appeals*, 373 Phil. 544, 551, September 21, 1999; *Lao v. Court of Appeals*, 341 Phil. 230, 244, July 8, 1997; *Zamora v. Court of Appeals*, 328 Phil. 1106, 1115, July 30, 1996.

[28] *Ibid.*

[29] Civil Code.

[30] *Ching Sen Ben v. Court of Appeals*, *supra*; *Lapat v. Rosario*, 371 Phil. 456, 465, August 17, 1999;

[31] §9, Rule 130, Rules of Court.

[32] *Lorbes v. Court of Appeals*, 351 SCRA 716, 725, February 15, 2001; *Reyes v. Court of Appeals*, 393 Phil. 479, 489, August 25, 2000.

[33] Civil Code.

[34] Art. 1603, Civil Code. See also *Olea v. Court of Appeals*, 317 Phil. 328, 338, August 14, 1995.

[35] *Ching Sen Ben v. Court of Appeals*, *supra* at p. 552; *Matanguihan v. Court of Appeals*, *supra* at p. 390.

[36] *San Pedro v. Lee*, *supra*; *Lorbes v. Court of Appeals*, *supra* at p. 726.

[37] *Ibid.*; *Olea v. Court of Appeals*, 317 Phil. 328, 338, August 14, 1995; *Lustan v. Court of Appeals*, 334 Phil. 609, 616, January 27, 1997; *Lizares v. Court of Appeals*, 226 SCRA 112, 115, September 6, 1993.

[38] Par. (2), Art. 1602, Civil Code.

[39] See Petition, p. 3; rollo, p. 15.

[40] *Id.*, pp. 2 & 14.

[41] See *Tison v. Court of Appeals*, 342 Phil. 550, 560, July 31, 1997.

[42] Computation attached to Atty. Mario Aguinaldo’s letter, dated July 23, 1991; rollo, p. 124.

[43] RTC Decision, p. 3 (CA rollo, p. 75); Assailed Decision, p. 5 (rollo, p. 64). Emphasis supplied.

[44] Sarao’s Brief to the CA, p. 15; CA rollo, p. 144.

[45] *Ibid.*

[46] Sarao referred to the June 14, 1991 letter of Jonas Ramos to her lawyer, Atty. Mario Aguinaldo. It stated: “[M]y wife [Myrna Ramos] and I have at present no financial capacity to repurchase the property purchased by your client, Mrs. Susana Sarao, to pay the interests and charges. We are giving you therefore the privilege to exercise the right of your client under the Deed of Sale under Pacto de Retro dated February 21, 1991.” Sarao’s Memorandum, p. 23; rollo, p. 236.

[47] Petitioner’s letter dated May 17, 1991; rollo, p. 117.

[48] Petitioner’s Memorandum, p. 3; rollo, p. 257.

[49] *Bank of America v. American Realty Corp.*, 378 Phil. 1279, 1291, December 29, 1999; *Danao v. Court of Appeals*, 154 SCRA 446, 457, September 30, 1987; *Bachrach Motor Co., Inc. v. Icarañgal*, 68 Phil. 287, 294, May 29, 1939.

[50] *Legaspi v. Court of Appeals*, 226 Phil. 24, 29, May 27, 1986. See Tolentino, Civil Code of the Philippines

(1992), Vol. V, p. 319.

[51] Art. 1256, Civil Code.

[52] Art. 1258, Civil Code. Under Article 1256 of the Civil Code, consignation is the proper remedy (1) when the creditor is absent or unknown or does not appear at the place of payment; (2) when the creditor is incapacitated to receive the payment at the time it is due; (3) when the creditor refuses to give a receipt without just cause; (4) when two or more persons claim the same right to collect; and (5) when the title of the obligation has been lost.

[53] Ibid.

[54] Manuel v. Court of Appeals, 199 SCRA 603, 609, July 25, 1991; Licuanan v. Diaz, 175 SCRA 530, 535, July 21, 1989; Soco v. Militante, 208 Phil. 151, 160, June 28, 1983.

[55] RTC Decision, p. 6; CA rollo, p. 78; Assailed Decision, p. 11; rollo, p. 70.

[56] Computation attached to Atty. Mario Aguinaldo's letter dated July 23, 1991, supra.

[57] Myrna Ramos letter, August 1, 1991, to Sarao, p. 2; rollo, p. 129.

[58] Tolentino, Civil Code of the Philippines (1992), Vol. IV, p. 326 (citing Perez Gonzales & Alguer: 2-I Enneccerus, Kipp & Wolf 322.)

[59] Eternal Gardens Memorial Park Corp. v. Court of Appeals, 282 SCRA 553, 580, December 9, 1997 (citing Tayag v. Court of Appeals, 219 SCRA 480, 487, March 3, 1993); Salaria v. Buenviaje, 81 SCRA 722, February 28, 1978; Limkako v. de Teodoro, 74 Phil. 313, August, 11, 1943.

[60] Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, (1991), Vol. IV, p. 330.

[61] Jespajo Realty Corporation v. Court of Appeals, 390 SCRA 27, 38, September 27, 2002, per Austria-Martinez, J. (citing Eternal Gardens Memorial Park Corp. v. Court of Appeals, supra).

[62] Petitioner's Memorandum, p. 11; rollo, p. 266.

Under Article 2217 of the Civil Code, moral damages include "physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury." Moral damages are recoverable if they are the proximate result of the defendant's wrongful act or omission.

[63] Under Article 2219 of the Civil Code, moral damages may be recovered in the following analogous cases: (1) a criminal offense resulting in physical injuries; (2) quasi-delicts causing physical injuries; (3) seduction, abduction, rape or other lascivious acts; (4) adultery or concubinage; (5) illegal or arbitrary detention or arrest; (6) illegal search; (7) libel, slander or any other form of defamation; (8) malicious prosecution; (9) acts mentioned in Article 309 of the Civil Code; and (10) acts of actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

[64] The pertinent provision in the Civil Code reads:

"Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered except:

(1) When exemplary damages are awarded;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable."

[65] Ibaan Rural Bank, Inc. v. Court of Appeals, 378 Phil. 707, 714, December 17, 1999; Philippine Airlines v. Miano, 312 Phil. 287, 294, March 8, 1995.

[66] Sarao's Manifestation dated October 19, 2004, p. 2.

[67] Del Rosario v. Bonga, 350 SCRA 101, January 23, 2001; De Rama v. Court of Appeals, 353 SCRA 94, February 28, 2001.

[68] Sarao's Motion for Early Resolution/Manifestation, p. 3. The Notice of Auction Sale and the Official Receipt were attached as Annexes "1" and "2."

[69] Article 2142 of the Civil Code provides: "Certain lawful, voluntary, and unilateral acts give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another."

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