

**ANTONIO S. LIM, JR., REPRESENTED BY HIS ATTORNEY-IN-FACT,
PAZ S. LIM, PETITIONER VS. VICTOR K. SAN AND ELINDO LO,
RESPONDENTS.**

G.R. No. 159723. September 09, 2004

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is a petition for review on certiorari of the decision[1] and the resolution[2] of the Court of Appeals in CA-G.R. CV No. 61948 promulgated on May 7, 2003 and August 13, 2003, respectively, which affirmed the July 27, 2003 decision[3] of the Regional Trial Court of Davao City, Branch 12 dismissing the complaint filed by petitioner.

Petitioner Antonio S. Lim, Jr., represented by his mother, Paz S. Lim, as attorney-in-fact, filed a complaint[4] before the Regional Trial Court of Davao City seeking the annulment of a Deed of Absolute Sale[5] involving a parcel of land purportedly executed by Paz S. Lim in favor of her brother, respondent Victor K. San.

In the second amended complaint dated May 27, 1993, petitioner alleged the following:

x x x x x x x x

4. That plaintiff is an owner of a parcel of land situated at Bajada, Davao City, containing an area of 1,763 square meters, more or less, covered by Transfer Certificate of Title No. T-11072 of the Registry of Deeds of Davao City, x x x;

4.A. That constructed on the afore-cited parcel of land is a fourteen (14) doors commercial building, and that defendant is paying an annual lease of ONE HUNDRED THOUSAND (P100,000.00) PESOS to the herein plaintiff.

5. On May 29, 1991, the herein defendant taking undue advantage of the depressed mental state of plaintiff's Attorney-in-Fact, brought about by the demise of her late husband, Dr. Antonio A. Lim Sr., caused some papers for her to sign, which later turn (sic) out to be an Absolute Deed of Sale, x x x;

6. That the signature of the Attorney-in-Fact in the aforecited Deed of Absolute Sale was obtained through fraud and trickery employed by the herein defendant and that she never appeared before the Notary Public, who notarized the said deed;

7. That no consideration was ever paid, much less received by the plaintiff or by his Attorney-in-Fact. Simply put, the Deed of Absolute Sale was void ab initio for "lack of consideration" and for "lack of a valid consent";

8. After the signing of the aforecited Deed of Sale with its attendant legal flaws and infirmities, plaintiff's Title was transferred in the name of the defendant, Victor K. San, x x x;

9. Knowing that he is holding an infirmed Title, defendant, Victor K. San is now in the process of selling the aforecited property including the commercial building erected thereon to any third person; and that the

defendant had already caused the cancellation of the Mother Title No. T-165010 by subdividing the same into eight (8) lots with eight (8) different titles, as follows:

TCT NO. T-191255, T-191256, T-191257, T-191258, T-191259, T-191260, T-191261, T-191262,

x x x x x x x x.[6]

Respondent Victor K. San denied all the allegations of the petitioner. He alleged that the parcel of land covered by TCT No. T-165010 of the Registry of Deeds of Davao City and registered in his name was validly and regularly issued. He further claimed that he does not have any lease contract with the petitioner with respect to the contested property and does not pay any monthly rental over the same. Moreover, respondent claimed that there was full payment of the consideration of P264,450.00 for the subject property.

Respondent Elindo Lo was impleaded as a co-defendant on account of his purchase of one lot covered by TCT No. T-191262,[7] notwithstanding the Notice of Adverse Claim and Lis Pendens annotated on the title of the said parcel of land.

On July 27, 1998, after trial on the merits, the Regional Trial Court of Davao City rendered a decision dismissing the complaint.[8]

Petitioner appealed to the Court of Appeals which affirmed the judgment of the trial court in toto. Petitioner's motion for reconsideration[9] was denied in a Resolution[10] dated August 13, 2003.

Hence the present petition based on the following grounds:

a)

that the Court of Appeals erred in affirming the trial court's judgment declaring that the petitioner failed to prove by clear and convincing evidence that the signature of his attorney-in-fact was obtained through fraud and trickery and that no consideration was ever paid.

b)

that the Court of Appeals erred in declaring that the medical certificates issued by foreign medical institutions to prove Paz S. Lim (sic) severe mental state of depression cannot be given evidentiary weight considering that its due execution and authenticity were not properly established.[11]

Petitioner contends that the deed of sale should be declared void because his consent to the same was vitiated by intimidation and that no consideration was paid for the subject property. Respondents, on the other hand, maintain that the parties to the deed of sale validly entered into the same; that Paz S. Lim freely and voluntarily gave her consent to the sale; and that she received the consideration agreed upon by the parties.

After a careful review of the records of this case, we find no cogent reason to deviate from the rulings of the court a quo and the Court of Appeals.

A contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service.[12] It has three essential elements, or those without which there can be no contract – consent, subject matter and cause.[13] A knowledge of these essential elements is material because the perfection stage or the birth of the contract only occurs when the parties to a contract agree upon the essential elements of the same.[14]

A contract of sale is consensual,[15] as such it is perfected by mere consent.[16] Consent is essential for the

existence of a contract, and where it is wanting, the contract is non-existent.[17] Consent in contracts presupposes the following requisites: (1) it should be intelligent or with an exact notion of the matter to which it refers; (2) it should be free; and (3) it should be spontaneous. Intelligence in consent is vitiated by error; freedom by violence, intimidation or undue influence; and spontaneity by fraud.[18] Thus, a contract where consent is given through mistake, violence, intimidation, undue influence or fraud is voidable.[19]

Contrary to the allegations of the petitioner that the consent of his attorney-in-fact to the deed of sale was vitiated, a perusal of the records of this case showed that the petitioner failed to establish that violence, intimidation and undue influence vitiated the consent of Paz S. Lim to the deed of sale pertaining to the subject property. In determining whether consent is vitiated by the circumstances provided for in Article 1330 of the Civil Code of the Philippines, courts are given a wide latitude in weighing the facts or circumstances in a given case and in deciding in favor of what they believe to have actually occurred, considering the age, physical infirmity, intelligence, relationship and the conduct of the parties at the time of making the contract and subsequent thereto, irrespective of whether the contract is in a public or private writing.[20]

While it is true that upon the death of her husband, Dr. Antonio T. Lim, Sr., on May 18, 1990,[21] Paz S. Lim returned to the Philippines and subsequently stayed at the house of the respondent, such fact per se is not sufficient to establish that the latter employed intimidation, violence or undue influence upon the former. Defect or lack of valid consent, in order to make the contract voidable, must be established by full, clear and convincing evidence, and not merely by a preponderance thereof.[22] Petitioner's mere allegations that respondent threatened his mother with harm if she will not sign the contract failed to measure up to the yardstick of evidence required, not only to prove vitiation of consent, but also to overturn the presumption that private transactions have been fair and regular.[23]

Paz S. Lim's behavior belies the allegation that respondent threatened to harm her. The following testimony is enlightening:

Q

You claim that your brother, the defendant Victor K. San threatened to kill you if you will not cooperate you recall having mentioned that on direct?

A

When?

Q

Is it not that you mentioned on the direct that you were threatened by your brother Victor San?

A

Yes, many times he will not let me leave.

Q

That was at the time you were then staying with your brother, the defendant in this case?

A

Yes, sir.

Q

When did you leave your brother in his residence?

A

One day when he was out I think in 1991, I sneaked out of the gate and I saw my cousin Lucila, she said that we live near each other and that I did not know that from then on my relatives just lived across the fence.

Q

Let me be clarified, you left your brother's house in late 1991?

A

Yes, sir.

Q

After leaving your brother's house late in 1991, where did you live?

A

With my nephew William.

Q

What is the complete name of this William?

A

William Tom.

Q

Up to the present you are staying with him?

A

Yes, Marlene Babao was living downstairs.

Q

After leaving your brother's house, did you ever report this incident wherein you were threatened by your brother to the police?

A

No, I just told my cousin and my nephew, I am afraid to stay there longer.

Q

Did you ever file a criminal case against your brother for grave threats, he having allegedly threatened to kill you?

A

I am the big sister, how can I do that to my own brother, I am a Christian.

Q

In other words, you did not report this treatment by your brother to the police nor filed any criminal case against him in Court even up to the present?

A

Yes, sir.[24]

Well-settled is the rule that the findings of facts and assessment of credibility of witnesses is a matter best left to the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses deportment on the stand while testifying, which opportunity is denied to the appellate courts. Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh or the scant or full realization of an oath – all of which are useful for an accurate determination of a witness' honesty and sincerity.[25]

WHEREFORE, based on the foregoing, the petition is DENIED. The Decision dated May 7, 2003 and the Resolution dated August 13, 2003 of the Court of Appeals affirming the dismissal of Civil Case No. 21,924-93 before the Regional Trial Court of Davao City, Branch 12, is AFFIRMED in toto.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing and Carpio, JJ., concur.
Azcuna, J., on leave.

[1] Penned by Court of Appeals Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Eugenio S. Labitoria and Regalado E. Maambong; Rollo, pp. 30-40.

[2] Id., p. 42.

[3] Penned by Judge Paul T. Arcangel; Rollo, pp. 43-52.

[4] Docketed as Civil Case No. 21,924-93.

[5] Annex C of Petitioner's Complaint filed with the Regional Trial Court of Davao City; Original Records, p. 10.

[6] Original Records, pp. 70-71.

[7] See Supplemental Complaint dated December 29, 1994; Original Records, pp. 177-183.

[8] Supra, note 3, pp. 51-52

[9] Motion for Reconsideration dated May 21, 2003; Rollo, pp. 65-70.

[10] Supra, note 2.

[11] Rollo, p. 9.

[12] Article 1305, Civil Code of the Philippines.

[13] Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Volume IV, 1991 ed., p. 410, applying Article 1318 of the Civil Code of the Philippines.

[14] The Insular Life Assurance Company, Ltd. v. Asset Builders Corporation, G.R. No. 147410, 5 February 2004.

[15] Aurora Alcantara-Daus v. Spouses De Leon, G.R. No. 149750, 16 June 2003, 404 SCRA 74.

[16] Article 1315 of the Civil Code of the Philippines.

[17] Salonga v. Farrales, et al., G.R. No. L-47088, 10 July 1981, 105 SCRA 359.

[18] Supra, note 13, pp. 474-475.

[19] Article 1330, Civil Code of the Philippines.

[20] Rivero v. Court of Appeals, et al., G.R. No. L-37159, 29 November 1977, 80 SCRA 411.

[21] TSN, June 16, 1997, p. 19.

[22] Centenera v. Palicio, 29 Phil. 470 (1915).

[23] Rules of Court, Rule 131, Section 3, paragraph p.

[24] TSN, April 16, 1998, pp. 9-11.

[25] People v. Danilo Cueto, G.R. No. 147764, 16 January 2003, 395 SCRA 344.

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