

**SPS. NONILON (MANOY) AND IRENE MONTECALVO, PETITIONERS,
VS. HEIRS (SUBSTITUTES) OF EUGENIA T. PRIMERO, REPRESENTED
BY THEIR ATTORNEY-IN-FACT, ALFREDO T. PRIMERO, JR.,
RESPONDENTS.**

G.R. No. 165168. July 09, 2010

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

Jurisprudence is replete with rulings that in civil cases, the party who alleges a fact has the burden of proving it. Burden of proof is the duty of a party to present evidence on the facts in issue necessary to prove the truth of his claim or defense by the amount of evidence required by law.[1] In this case, the petitioners awfully failed to discharge their burden to prove by preponderance of evidence that the Agreement they entered into with respondents' predecessor-in-interest is a contract of sale and not a mere contract to sell, or that said Agreement was novated after the latter subsequently entered into an oral contract of sale with them over a determinate portion of the subject property more than a decade ago.

Petitioners filed this appeal from the Decision of the Court of Appeals (CA) affirming the Regional Trial Court's (RTC's) dismissal of their action for specific performance where they sought to compel the respondents to convey the property subject of their purported oral contract of sale.

Factual Antecedents

The property involved in this case is a portion of a parcel of land known as Lot No. 263 located at Sabayle Street, Iligan City. Lot No. 263 has an area of 860 square meters covered by Original Certificate of Title (OCT) No. 0-271[2] registered in the name of Eugenia Primero (Eugenia), married to Alfredo Primero, Sr. (Alfredo).

In the early 1980s, Eugenia leased the lot to petitioner Irene Montecalvo (Irene) for a monthly rental of P500.00. On January 13, 1985, Eugenia entered into an un-notarized Agreement[3] with Irene, where the former offered to sell the property to the latter for P1,000.00 per square meter. They agreed that Irene would deposit the amount of P40,000.00 which shall form part of the down payment equivalent to 50% of the purchase price. They also stipulated that during the term of negotiation of 30 to 45 days from receipt of said deposit, Irene would pay the balance of P410,000.00 on the down payment. In case Irene defaulted in the payment of the down payment, the deposit would be returned within 10 days from the lapse of said negotiation period and the Agreement deemed terminated. However, if the negotiations pushed through, the balance of the full value of P860,000.00 or the net amount of P410,000.00 would be paid in 10 equal monthly installments from receipt of the down payment, with interest at the prevailing rate.

Irene failed to pay the full down payment within the stipulated 30-45-day negotiation period. Nonetheless, she continued to stay on the disputed property, and still made several payments with an aggregate amount of P293,000.00. On the other hand, Eugenia did not return the P40,000.00 deposit to Irene, and refused to accept

further payments only in 1992.

Thereafter, Irene caused a survey of Lot No. 263 and the segregation of a portion equivalent to 293 square meters in her favor. However, Eugenia opposed her claim and asked her to vacate the property. Then on May 13, 1996, Eugenia and the heirs of her deceased husband Alfredo filed a complaint for unlawful detainer against Irene and her husband, herein petitioner Nonilon Montecalvo (Nonilon) before the Municipal Trial Court (MTC) of Iligan City. During the preliminary conference, the parties stipulated that the issue to be resolved was whether their Agreement had been rescinded and novated. Hence, the MTC dismissed the case for lack of jurisdiction since the issue is not susceptible of pecuniary estimation. The MTC's Decision dismissing the ejectment case became final as Eugenia and her children did not appeal therefrom.[4]

On June 18, 1996, Irene and Nonilon retaliated by instituting CM Case No. 11-3588 with the RTC of Lanao del Norte for specific performance, to compel Eugenia to convey the 293-square meter portion of Lot No. 263.[5]

Proceedings before the Regional Trial Court

Trial on the merits ensued and the contending parties adduced their respective testimonial and documentary evidence before the trial court.

Irene testified that after their Agreement for the purpose of negotiating the sale of Lot No. 263 failed to materialize, she and Eugenia entered into an oral contract of sale and agreed that the amount of P40,000.00 she earlier paid shall be considered as down payment. Irene claimed that she made several payments amounting to P293,000.00 which prompted Eugenia's daughters Corazon Calacat (Corazon) and Sylvia Primero (Sylvia) to ask Engr. Antonio Ravacio (Engr. Ravacio) to conduct a segregation survey on the subject property. Thereafter, Irene requested Eugenia to execute the deed of sale, but the latter refused to do so because her son, Arty. Alfredo Primero, Jr. (Atty. Primero), would not agree.

On March 22, 1999, herein respondents filed with the court a quo a "Notice of Death of the Defendant"[6] manifesting that Eugenia passed away on February 28, 1999 and that the decedent's surviving legal heirs agreed to appoint their co-heir Atty. Primero, to act as their representative in said case, In an Order[7] dated April 8, 1999, the trial court substituted the deceased defendant with Atty. Primero.

Respondents, on the other hand, presented the testimony of Atty. Primero to establish that Eugenia could not have sold the disputed portion of Lot No. 263 to the petitioners. According to Atty. Primero, at the time of the signing of the Agreement on January 13, 1985, Eugenia's husband, Alfredo, was already dead. Eugenia merely managed or administered the subject property and had no authority to dispose of the same since it was a conjugal property. In addition, respondents asserted that the deposit of P40,000.00 was retained as rental for the subject property.

Respondents likewise presented Sylvia, who testified that "the receipts issued to petitioners were for the lot rentals.[8] Another sister of Atty. Primero, Corazon, testified that petitioners were their tenants in subject land, which she co-owns with her mother Eugenia.[9] She denied having sold the purported 293-square meter portion of Lot No. 263 to the petitioners.[10]

As rebuttal witness, petitioners presented Engr. Ravacio, a surveyor who undertook the segregation of the 293-square meter portion out of fee subject property.[11]

On October 22, 2001, the RTC rendered a Decision:[12] (1) dismissing the complaint and the counterclaim for lack of legal and factual bases; (2) ordering petitioners to pay respondents P2,500.00 representing rentals due, applying therefrom the amount deposited and paid; and (3) ordering petitioner to pay 12% legal interest from finality of decision until full payment of the amount due.[13]

Aggrieved, petitioners appealed the Decision of the trial court to the CA.

Proceedings before the Court of Appeals

Both parties filed their respective briefs before the appellate court.[14] Thereafter, on November 28, 2003, the CA rendered a Decision[15] affirming the RTC Decision.[16]

Petitioners timely filed a Motion for Reconsideration.[17] However, in a Resolution[18] dated June 27, 2004, the CA resolved to deny the same for lack of merit.[19]

Issues

Petitioners thus filed this Petition for Review on Certiorari anchored on the following grounds.

- WHETHER AN ORAL CONTRACT OF SALE OF A PORTION OF [A] LOT IS BINDING [UPON] THE SELLER.
- WHETHER A SELLER IN AN ORAL CONTRACT OF SALE OF A PORTION OF [A] LOT CAN BE COMPELLED TO EXECUTE THE REQUIRED DEED OF SALE AFTER THE AGREED CONSIDERATION WAS PAID AND POSSESSION THEREOF DELIVERED TO AND ENJOYED BY THE BUYER.
- WHETHER THE BUYER HAS A RIGHT TO ENFORCE AN ORAL CONTRACT OF SALE AFTER THE PORTION SOLD IS SEGREGATED BY AGREEMENT OF THE PARTIES.
- WHETHER THE SELLER IS BOUND BY THE HANDWRITTEN RECEIPTS PREPARED AND SIGNED BY HER EXPRESSLY INDICATING PAYMENTS OF LOTS.
- WHETHER THE TRIAL COURT COULD RENDER A JUDGMENT ON ISSUES NOT DEFINED IN THE PRE-TRIAL ORDER.

Our Ruling

The petition lacks merit.

The Agreement dated January 13, 1985 is a contract to sell. Hence, with petitioners' non-compliance with its terms and conditions, the obligation of the respondents to deliver and execute the corresponding deed of sale never arose.

The CA found that the Agreement dated January 13, 1985 is not a contract of sale but a mere contract to sell, the efficacy of which is dependent upon the resolutory condition that Irene pay at least 50% of the purchase price as down payment within 30-45 days from the day Eugenia received the P40,000.00 deposit.[20] Said court further found that such condition was admittedly not met.[21]

Petitioners admit that the Agreement dated January 13, 1985 is at most, "a preliminary agreement for an eventual contract." [22] However, they argue that contrary to the findings of the appellate court, it was not only the buyer, Irene, who failed to meet the condition of paying the balance of the 50% down payment.[23] They assert that the Agreement explicitly required Eugenia to return the deposit of P40,000.00 within 10 days, in case Irene failed to

pay the balance of the 50% down payment within the stipulated period.[24] Thus, petitioners posit that for the cancellation clause to operate, two conditions must concur, namely, (1) buyer fails to pay the balance of the 50% down payment within the agreed period and (2) seller should return the deposit of P40,000.00 within 10 days if the first condition was not complied with. Petitioners conclude that since both seller and buyer failed to discharge their reciprocal obligations, being in *pari delictu*, the seller could not repudiate their agreement to sell.

The petitioners' contention is without merit.

There is no dispute as to the due execution and existence of the Agreement. The issue thus presented is whether the said Agreement is a contract of sale or a contract to sell. For a better understanding and resolution of the issue at hand, it is apropos to reproduce herein the Agreement in *haec verba*:

A G R E E M E N T

This Agreement, made and executed by and between:

EUGENIA T. PRIMERO, a Filipino of legal age and residing in Camague, nigan City (hereinafter called the OWNER)

-and-

IRENE P. MONTECALVO, Filipino of legal age and presently residing at Sabayle St., Iligan City (hereinafter [called] the INTERESTED PARTY);

-and-

WITNESSETH:

That the OWNER is the true and absolute owner of a parcel of land located at Sabayle St. immediately fronting the St. Peter's College which is presently leased to the INTERESTED PARTY;

- That the property referred to contains an area of EIGHT HUNDRED SIXTY SQUARE METERS at the value of One Thousand Pesos (P1,000.00) per square meters;

- That this agreement is entered, into for the purpose of negotiating the, sale of the above referred property between the same parties herein under the following terms and conditions, to wit:

a) That the term of this negotiation is for a period of Thirty to Forty Five (30-45) days from receipt of a deposit;

b) That Forty Thousand Pesos (P40,000.00) shall be deposited to demonstrate the interest of the Interested Party to acquire the property referred to above, which deposit shall not earn any interest;

c) That should the contract or agreement push through the deposit shall form part of the down payment of Fifty percent (50%) of the total or full value. Otherwise the deposit shall be returned within TEN (10) days from the lapse of the period of negotiation;

- That should this push through, the balance of Four Hundred Ten Thousand on the down payment shall be made upon execution of the Agreement to Sell and Hie balance of the full value of Eight Hundred Sixty Thousand or Four Hundred Ten Thousand Pesos shall be paid in equal monthly installment within Ten (10) mouths from receipt of the down payment with [sic] according to prevailing interest.

IN WITNESS WHEREOF, the parties have signed these presents in the City of Digan this 13th day of January 1985.

(Signed)

IRENE PEPITO MONTECALVO

(Signed)

EUGENIA TORRES PRIMERO

SIGNED IN THE PRESENCE OF:

(Signed)

(Signed)

In *Salazar v. Court of Appeals*[25] we distinguished a contract of sale from a contract to sell in that in a contract of sale the title to the property passes to the buyer upon the delivery of the thing sold; in a contract to sell, ownership is agreement, reserved in the seller and is not to pass to the buyer until full payment of the purchase price[26]. Otherwise stated, in a contract of sale, the-seller loses ownership over the property and cannot: recover it until and unless the contract is resolved or rescinded; whereas, in a contract to sell, title is retained by the seller until full payment of the price.²⁶ In the latter contract, payment of the price is a positive suspensive condition, failure of which is not a breach but an event that prevents the obligation of the vendor to convey title from becoming effective.'^[27]

In the Agreement, Eugenia, as owner, did not convey her title to the disputed property to Irene since the Agreement was made for the purpose of negotiating the sale of the 860-square meter property.^[28]

On this basis, we are more inclined to characterize the agreement as a contract to sell rather than a contract of sale. Although not by itself controlling, the absence of a provision in the Agreement transferring title from the owner to the buyer is taken as a strong indication that the Agreement is a contract to sell.^[29]

In a contract to sell, the prospective seller explicitly reserves the transfer of title to the prospective buyer, meaning, the prospective seller does not as yet agree or consent to transfer ownership of the property subject of the contract to sell until the happening of an event, which for present purposes we shall take as the full payment of the purchase price,^[30] What the seller agrees or obliges himself to do is to fulfill his promise to sell the subject property when the entire amount of the purchase price is delivered to him.^[31] In other words, the full payment of the purchase price partakes of a suspensive condition, the non-fulfillment of which prevents the obligation to sell from arising and thus, ownership is retained by the prospective seller without further remedies by the prospective buyer.^[32] A contract to sell is commonly entered into in order to protect the seller against a buyer who intends to buy the property in installment by withholding ownership over the property until the buyer effects full payment therefor.^[33]

In this case, the Agreement expressly provided that it was "entered into for the purpose of negotiating the sale of the above referred property between the same parties herein x x x." The term of the negotiation shall be for a-period of 30-45 days from receipt of the P40,000.00 deposit and the buyer has to pay the balance of the 50% down payment amounting to P410,000.00 within the said period of negotiation. Thereafter, an Agreement to Sell shall be executed by the parties and the remainder of the purchase price amounting to another P410,000.00 shall be paid in 10 equal monthly installments from receipt of the down payment. The assumption of both parties that the purpose of the Agreement was for negotiating the sale of Lot No. 263, in its entirety, for a definite price, with a specific period for payment of a specified down payment, and the execution of a subsequent contract for the sale of (he same on installment payments leads to no other conclusion than that the predecessor-in-interest of the herein respondents and the herein petitioner Irene entered into a contract to sell.

As stated in the Agreement, the payment of the purchase price, in installments within the period stipulated, constituted a positive suspensive condition, the failure of which is not really a breach but an event that prevents the obligation of the seller to convey title in accordance with Article 1184 of the Civil Code.[34] Hence, for petitioners' failure to comply with the terms and conditions laid down in the Agreement, the obligation of the predecessor-in-interest of the respondents to deliver and execute the corresponding deed of sale never arose.

The fact that the predecessor-in-interest of the respondents failed to return the P40,000.00 deposit subsequent to the expiration of the period of negotiation did not prevent the respondents from repudiating the Agreement. The obligation of the respondent to convey the property never came to pass as the petitioners did not comply with the positive suspensive condition of full payment of the purchase price within the period as stipulated.

The alleged oral contract of sale for the 293-square meter portion of the property was not proved by preponderant evidence. Hence, petitioners cannot compel the successors-in-interest of the deceased Eugenia to execute a deed of absolute sale in their favor.

Petitioners alleged in their Complaint that in 1992, Eugenia refused to accept further payments and suggested that she will convey to petitioners 293 square meters of her 860-square meter property, in proportion to payments already made. Thus, Eugenia caused the segregation of the area where the petitioners' building now stands, consisting of 293 square meters.

In support of their contention, petitioners presented the testimony of Irene, who testified that Eugenia segregated for them an area of 293 square meters for the agreed price of P1,000.00 per square meter.[35] The total purchase price allegedly agreed upon by the parties, amounting to P293,000.00, corresponded to the amount of payments already made by Irene.[36] They likewise presented (1) 82 receipts covering the period October 13, 1986 to July 10, 1994;[37] (2) the testimony of the surveyor, Engr. Ravacio, to show that the segregation survey of the 293-square meter portion of the property was made with the knowledge and consent of Eugenia; and (3) the resulting subdivision plan.

On the other hand, respondents counter that the alleged contract of sale is contradicted by petitioners' own evidence.

We cannot sustain the contention of the petitioners. The primal issue to be resolved is whether the parties subsequently entered into a contract of sale over the segregated 293-square meter portion of Lot No. 263. It is a fundamental principle that for a contract of sale to be valid, the following elements must be present: (a) consent or meeting of the minds; (b) determinate subject matter; and (3) price certain in money or its equivalent.[38] Until the contract of sale is perfected, it cannot, as an independent source of obligation, serve as a binding juridical relation between the parties.[39]

Contrary to petitioners' allegations that the 82 receipts indicated that they were issued "for payment of lot (at Sabayie)",[40] a cursory examination thereof shows that the receipts from 1986 to 1992 do not consistently indicate "Sabayle Lot" or "Sabayle Lot Deposit". More than half of the receipts presented merely indicated receipt of differing sums of money from the petitioners. In addition, the receipts for the years 1993 to 1994 do not establish installment payments for the purchase of the disputed portion of Lot No. 263. Rather, the receipts indicate that the same were issued as proof of "cash advance",[41] "cash for groceries, electric bill, water bill, telephone/long distance",[42] "cash",[43] "cash for mktg"[44] and "x x x cash to be paid a month after".[45] These

are not consistent with the allegation of the petitioners that they have paid the full amount of the purchase price for the 293-square meter portion of the lot by 1992.

Moreover, the testimony of petitioners' witness, surveyor Engr. Ravacio, shows that Eugenia was neither around when the survey was conducted nor gave her express consent to the conduct of the same.[46] On the other hand, respondents' witness, Sylvia, testified that the receipts issued to the petitioners were for the lot rentals.[47] In addition, respondents' third witness, Corazon, testified that petitioners were their tenants in subject land, which she co-owns with her mother Eugenia, and disclaimed any sale of any portion of their lot to the petitioners.[48]

Thirdly, since the surveyor himself, Engr. Ravacio, admitted that Eugenia did not give her express consent to the conduct of the segregation plan, the resulting subdivision plan, submitted by the petitioners to the trial court to prove that Eugenia caused the segregation of the 293-square meter area, cannot be appreciated.

Section 1 of Rule 133 of the Rules of Court provides that in civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. However, the evidence presented by the petitioners, as considered above, fails to convince this Court that Eugenia gave her consent to the purported oral deed of sale for the 293-square meter portion of her property. We are hence in agreement with the finding of the CA that there was no contract of sale between the parties. As a consequence, petitioners cannot rightfully compel the successors-in-interest of Eugenia to execute a deed of absolute sale in their favor.

The courts below correctly modified the rental award to P2,500.00 per month,

Lastly, petitioners argue that the courts below erred in imposing a P2,500.00 monthly rental from 1985 onwards, since said amount is far greater than the last agreed monthly rental (December 1984) of P500.00.

In its Decision, the CA affirmed the ruling of the RTC "that the trial court had authority to fix a reasonable value for the continued use and occupancy of the leased premises after the termination of the lease contract, and that it was not bound by the stipulated rental in the contract of lease since it is equally settled that upon termination or expiration of the contract of lease, the rental stipulated therein may no longer be the reasonable value for the use and occupation of the premises as a result of the change or rise in values. Moreover, the trial court can take judicial notice of the general increase in rentals of real estate especially of business establishments".[49] The appellate court likewise held that the petitioners failed to discharge their burden to show that the said price was exorbitant or unconscionable.[50] Hence, the CA found no reason to disturb the trial court's decision ordering the petitioners to pay P2,500.00 as monthly rentals.[51] The appellate court further held that "to deprive Eugenia of the rentals due her as the owner-lessor of the subject property would result to unjust enrichment on the part of Irene." [52]

The courts below correctly took judicial notice of the nature of the leased property subject of the case at bench based on its location and commercial viability. As described in the Agreement, the property is immediately in front of St. Peter's College.[53] More significantly, it is stated in the Declaration of Real Property submitted by the petitioners as evidence in the trial court, that the property is used predominantly for commercial purposes.[54] The assessment by the trial court of the area where the property is located is therefore fairly grounded.

Furthermore, the trial court also had factual basis in arriving at the said conclusion, the same being based on the un-rebutted testimony of a witness who is a real estate broker. With respect to the prevailing valuation of the property in litigation, witness Atty. Primero, a licensed real estate broker testified that:

xxx There is no fixed pricing for each year because it always depends on the environment so that if the price in

1986, as you were referring to 1986, it would have risen or increased from P1,000.00, then it would increase to P3,000.00, then it would increase to P7,000.00 and again increase to P15,000.00 and right now the current price of property in that area is P25,000.00 per square meter.[55]

The RTC rightly modified the rental award to P2,500.00 per month, considering that it is settled jurisprudence that courts may take judicial notice of the general increase in rentals, particularly in business establishments.

WHEREFORE, the petition is DENIED. The November 28, 2003 Decision of the Court of Appeals affirming the October 22, 2001 Decision of the Regional Trial Court of Lanao del Norte, Branch 2, is hereby AFFIRMED.

SO ORDERED.

Corona, C.J., (Chairperson), Brion,[*] Abad,**] and Perez, JJ., concur.

[*] Per Special Order No. 856 dated July 1, 2010.

[**] Per Special Order No. 869 dated July 5, 2010. 1

[1] RULES OF COURT, Rule 131, Section 1.

[2] Folder of Exhibits, p. 88.

[3] Id. at 1.

[4] CA rollo, pp. 55-56.

[5] Records, pp. 1-5.

[6] Id. at 208.

[7] Id. at 219; penned by Presiding Judge Maximo B. Ratunil.

[8] TSN, August 16, 2000, pp. 9-10.

[9] TSN, October 11, 2000, pp. 5-12,

[10] Id.

[11] TSN, January 30, 2001, pp. 19-21.

[12] Records, pp. 360-379; penned by Presiding Judge Maximo B. Ratunil.

[13] Rollo, p. 96.

[14] CA rollo, p. 46-170.

[15] Id. at 203-210; penned by Associate Justice Elvi John S. Asuncion and concurred in by Associate Justices Renato C. Dacudao and Lucas P. Bersamin (now a Member of this Court).

[16] Id. at 209. The dispositive portion of the said Decision reads:

WHEREFORE, the foregoing considered, Hie October 22, 2001 Decision of the Regional Trial Court of Lanao del Norte, Iligan City, Branch 02 is AFFIRMED.

[17] Id. at 211-224.

[18] Id. at 242.

[19] Id. The July 27, 2004 Resolution of the Court of Appeals reads:

Acting on the plaintiffs-appellants' "Motion for Reconsideration of our November 28, 2003 Decision, the Court finds no new matters which were not taken into consideration in arriving at the said decision and/or which would warrant a reversal or modification thereof.

Since there exists no plausible, factual or legal basis to grant the reconsideration sought, the above motion is hereby DENIED for lack of merit.

SO ORDERED.

[20] Rollo, p. 44.

[21] Id.

[22] Id. at 203.

[23] Id. at 20.

[24] Id.

[25] 327 Phil. 944, 955 (1996).

[26] Id.

[27] Id.

[28] Exhibit "A", Formal Offer of Evidence for the plaintiff, herein petitioners, p.1.

[29] Lacanilaov. Court of Appeals, 330 Phil. 1074, 1080(1996).

[30] Coronel v. Court of Appeals, 331 Phil. 294, 309 (1996)

[31] Id.

[32] Id.

[33] The City of Cebu v. Heirs of Rubi, 366 Phil. 70, 80 (1999).

[34] Art. 1184. The condition that some even! happen at a determinate time shall extinguish the obligation as soon as the time expires or if it has become indubitable that the event will not take place.

[35] TSN, April 3, 1997, p. 57.

[36] Id.

[37] Formal Offer of Evidence for the plaintiffs, herein petitioners, pp. 2-83.

[38] Del Prado v. Spouses Caballero, G.R. No. 148225, March 3, 2010.

[39] Abalos v. Dr. Macatangay, Jr., 482 Phil. 877, 885 (2004).

[40] Rollo, p. 25.

[41] Exhibit "B-73", Formal Offer of Evidence by the plaintiffs, herein petitioners, p. 75.

[42] Exhibit "B-74", id. at 76.

[43] Exhibit "B-75", id. at 77.

[44] Exhibit "B-76", id. at 78.

[45] Exhibit "B-77", id. at 79.

[46] TSN: January 30, 2001, pp. 19-21 reads:

x x x x

Q:

You never attempted to inform Mrs. Eugenia Primero with respect to the survey?

A:

No, Your Honor.

Q:

So, you mean to say that there was no knowledge that said Eugenia Primero was not around during the second survey?

A:

Yes, Your Honor.

Court:

Proceed.

Atty. Tampus:

Why was Atty. Primero present during the first schedule of your segregation?

A:

I think, that lie was there to witness this segregation survey but as I have said the segregation was aborted because there was no agreement about the area and the portions to be segregated.

Atty. Tampus:

Okay. Now who was represented by Atty. Primero?

A:

His Mother.

x x x x

Court:

Now do you know Eugenia Primero?

A:

Yes, Your Honor.

Q:

Personally you know her, Eugenia Primero?

A:

Yes, Your Honor.

xxxx

[47] TSN, August 16, 2000, pp. 9-10 reads:

x x x x

Atty. Marohombsar:

Q:

Will you go over these receipts again and tell the Honorable Court how did you come to prepare these receipts or why did you prepare these receipts?

A:

Oftentimes, my mother is not around so I am the one issuing the receipts.

Q:

And why did you issue these receipts?

A:

So that they can have the duplicate of the payments which we received.

Q:

Payment for what?

A:

For the lot rentals.

Q:

When you issued these receipts, [was] Mrs. Montecalvo present?

A:

Yes, sir.

Q:

And these receipts were issued in relation to the lot which was rented by your mother to them and which was located in Sabayle?

A:

Yes Sir.

x x x x

Q:

In what capacity [do] the Montecalvos [occupy or possess]?

A:

They are just renting/

x x x x

[48] TSN, October 11, 2000, pp. 542 reads:

x x x x

Q:

In other words, the properties are owned by all of you in common?

A:

Yes, sir. xxxx

Q:

What is this lot in Sabayle, who owns this lot in Sabayle?

A:

My parents and the children.

Q:

And were the Montecalvos able to rent this lot?

A:

Yes, sir.

Q:

When, if you know, more or less?

A:

If I can recall, it was [sometime] in 1979 or 1980. I cannot recall anymore it was between them.

x x x x

Q:

Who was, if you know, collecting this monthly rental? A: My sister, Sylvia.

x x x x

Q:

You said that plaintiffs are no longer paying rentals. Do you remember when they ceased to pay rentals?

A:

I think when they filed the case.

Q:

You are referring to this instant case?

A:

Yes.

Q:

When?

A:

1994.

x x x x

Q:

Do you know on your personal knowledge why they are no longer paying rentals?

A:

They considered themselves as the owner because the lot was sold to them.

Q:

Who sold the lot to them, if you know?

A:

Nobody. That was according to them that they already bought it.

Q:

Who sold it?

A:

According to them it was my mother.

Q:

In fact, the lot was sold to them by your mother?

A:

No.

Q:

Mrs. Montecalvo testified here that you and Sylvia engaged the services of Engineer Ravacio to undertake the survey of the Sabayle lot for the purpose of segregating a portion thereof in favor of Mrs. Montecalvo. Did you engage the services of Engineer Ravacio to undertake the survey?

A:

No, sir.

Q:

Did you know Engineer Ravacio?

A:

No.

x x x x

Q:

By the way, Madam Witness, did you agree for the sale of the lot to the Montecalvos?

A:

No, sir.

[49] Rollo, p. 47 citing Spouses Catungal v. Hao, 407 Phil. 309, 322-323 (2001).

[50] Id.

[51] Id.

[52] Id.

[53] Exhibit "A", Formal Offer of Evidence for the plaintiffs, herein petitioners, p. 1

[54] Exhibit "C", id at 84.

[55] TSN, March 13, 2000, p. 95.

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