

LOMISES ALUDOS, DECEASED, SUBSTITUTED BY FLORA ALUDOS, PETITIONER, VS. JOHNNY M. SUERTE, Respondent.

G.R. No. 165285. June 18, 2012

Ponente: BRION, J.

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BRION, J.:

Before the Court is a petition for review on certiorari filed under Rule 45 of the Rules of Court by Lomises Aludos, through his wife Flora Aludos (Lomises).[1] Lomises seeks the reversal of the decision[2] dated August 29, 2002 of the Court of Appeals (CA) in CA-G.R. CV No. 63113, as well as the resolution[3] dated August 17, 2004.

THE FACTS

Sometime in January 1969, Lomises acquired from the Baguio City Government the right to occupy two stalls in the Hangar Market in Baguio City, as evidenced by a permit issued by the City Treasurer.[4]

On September 8, 1984, Lomises entered into an agreement with respondent Johnny M. Suerte for the transfer of all improvements and rights over the two market stalls (Stall Nos. 9 and 10) for the amount of P260,000.00. Johnny gave a down payment of P45,000.00 to Lomises, who acknowledged receipt of the amount in a document[5] executed on the same date as the agreement:

RECEIPT

P45,000.00 September 8, 1984

Received the Sum of Forty Five Thousand Pesos (P45,000.00) from JOHNNY M. SUERTE, with postal address at Kamog, Sablan, Benguet Province, Philippine Currency as an advance or partial downpayment of Improvements and Rights over Stall Nos. 9 and 10, situated at Refreshment Section, Hangar Market Compound, Baguio City, and the said amount will be deducted from the agreed proceeds of the transaction in the amount of Two Hundred Sixty Thousand Pesos (P260,000.00), Philippine Currency and payable starting from September 1984 up to December 1985, and/or (16) months.

This receipt will be formalise (sic) later, and the Deed of Absolute Transfer of Improvements and Rights over the said Stall be executed immediately upon full payment of the balance stated in the above.

Right hand thumbmark:

[Thumbmark affixed]

LOMISES F. ALUDOS

(Registered Stall Holder)

With the Consent of the Wife:

[Signature affixed]

FLORA MENES

(Wife)

Witness to Thumbmark and/or
Paid in the presence of:

[Signature affixed]

Domes M. Suerte
(witness)

[Signature affixed]

Agnes M. Boras
(witness)

[Signature affixed]

Ana Comnad
(witness)

[Signature affixed]

Dolores Aludos (with
her consent/witness)

Johnny made a subsequent payment of P23,000.00; hence, a total of P68,000.00 of the P260,000.00 purchase price had been made as of 1984. Before full payment could be made, however, Lomises backed out of the agreement and returned the P68,000.00 to Domes and Jaime Suerte, the mother and the father of Johnny, respectively. The return of the P68,000.00 down payment was embodied in a handwritten receipt[6] dated October 9, 1985:

RECEIPT

P68,000.00

Received from Mr. Lomises Aludos the sum of Sixty-eight thousand (P68,000.00) Pesos as reimbursement of my money.

Baguio City, October 9, 1985.

[Signature affixed]

JAIME SUERTE

[Signature affixed]

DOMES SUERTE

Witnesses

[Illegible signature]

[Illegible signature]

Through a letter dated October 15, 1985, Johnny protested the return of his money, and insisted on the continuation and enforcement of his agreement with Lomises. When Lomises refused Johnny's protest, Johnny filed a complaint against Lomises before the Regional Trial Court (RTC), Branch 7, Baguio City, for specific performance with damages, docketed as Civil Case No. 720-R. Johnny prayed that, after due proceedings, judgment be rendered ordering Lomises to (1) accept the payment of the balance of P192,000.00; and (2) execute a final deed of sale and/or transfer the improvements and rights over the two market stalls in his favor.

In a decision dated November 24, 1998,[7] the RTC nullified the agreement between Johnny and Lomises for failure to secure the consent of the Baguio City Government to the agreement. The RTC found that Lomises was a mere lessee of the market stalls, and the Baguio City Government was the owner-lessor of the stalls. Under Article 1649 of the Civil Code, “[t]he lessee cannot assign the lease without the consent of the lessor, unless there is a stipulation to the contrary.” As the permit issued to Lomises did not contain any provision that the lease of the market stalls could further be assigned, and in the absence of the consent of the Baguio City Government to the agreement, the RTC declared the agreement between Lomises and Johnny null and void. The nullification of the agreement required the parties to return what had been received under the agreement; thus, the RTC ordered Lomises to return the down payment made by Johnny, with interest of 12% per annum, computed from the time the complaint was filed until the amount is fully paid. It dismissed the parties’ claims for damages.

Lomises appealed the RTC decision to the CA, arguing that the real agreement between the parties was merely one of loan, and not of sale; he further claimed that the loan had been extinguished upon the return of the P68,000.00 to Johnny’s mother, Domes.

In a decision dated August 29, 2002,[8] the CA rejected Lomises’ claim that the true agreement was one of loan. The CA found that there were two agreements entered into between Johnny and Lomises: one was for the assignment of leasehold rights and the other was for the sale of the improvements on the market stalls. The CA agreed with the RTC that the assignment of the leasehold rights was void for lack of consent of the lessor, the Baguio City Government. The sale of the improvements, however, was valid because these were Lomises’ private properties. For this reason, the CA remanded the case to the RTC to determine the value of the improvements on the two market stalls, existing at the time of the execution of the agreement.

Lomises moved for the reconsideration of the CA ruling, contending that no valid sale of the improvements could be made because the lease contract, dated May 1, 1985, between Lomises and the Baguio City Government, supposedly marked as Exh. “A,” provided that “[a]ll improvements [introduced shall] ipso facto become properties of the City of Baguio.”[9]

In a resolution dated August 17, 2004,[10] the CA denied the motion after finding that Lomises’ lawyer, Atty. Rodolfo Lockey, misrepresented Exh. “A” as the governing lease contract between Lomises and the Baguio City Government; the records reveal that Exh. “A” was merely a permit issued by the City Treasurer in favor of Lomises. The contract of lease dated May 1, 1985 was never formally offered in evidence before the RTC and could thus not be considered pursuant to the rules of evidence.

Lomises now appeals the CA rulings through the present petition for review on certiorari.

THE PARTIES’ ARGUMENTS

Lomises insists that the agreement was merely one of loan, not of sale of improvements and leasehold rights. Johnny could not afford to purchase from Lomises the two market stalls for P260,000.00 because the former was a mere college student when the agreement was entered into in 1984 and was dependent on his parents for support. The actual lender of the amount was Johnny’s mother, Domes; Johnny’s name was placed on the receipt dated September 8, 1984 so that in case the loan was not paid, the rights over the market stalls would be transferred to Johnny’s name, not to Domes who already had a market stall and was thus disqualified from acquiring another. The receipt dated September 8, 1984, Lomises pointed out, bears the signature of Domes, not of Johnny.

Even assuming that Johnny was the real creditor, Lomises alleges that the loan had been fully paid when he turned over the amount of P68,000.00 to Johnny’s parents, as evidenced by the receipt dated October 9, 1985. Domes’

claim – that she was pressured to accept the amount – is an implied admission that payment had nonetheless been received. When Johnny died during the pendency of the case before the RTC, his parents became his successors and inherited all his rights. For having received the full amount of the loan, Johnny’s parents can no longer enforce payment of the loan.

Lomises contends that there were no improvements made on the market stalls other than the stalls themselves, and these belong to the Baguio City Government as the lessor. A transfer of the stalls cannot be made without a transfer of the leasehold rights, in which case, there would be an indirect violation of the lease contract with the Baguio City Government. Lomises further alleges that, at present, the market stalls are leased by Flora and her daughter who both obtained the lease in their own right and not as Lomises’ successors.

Johnny, through his remaining successor Domes (Johnny’s mother), opposed Lomises’ claim. The receipt dated September 8, 1984 clearly referred to a contract of sale of the market stalls and not a contract of loan that Lomises alleges. Although Johnny conceded that the sale of leasehold rights to the market stalls were void for lack of consent of the Baguio City Government, he alleged that the sale of the improvements should be upheld as valid, as the CA did.

THE COURT’S RULING

The Court does not find the petition meritorious.

The Nature of the Agreement between the Parties

Lomises questions the nature of the agreement between him and Johnny, insisting that it was a contract of loan, not an assignment of leasehold rights and sale of improvements. In other words, what existed was an equitable mortgage, as contemplated in Article 1602, in relation with Article 1604, of the Civil Code. “An equitable mortgage has been defined ‘as one which although lacking in some formality, or form or words, or other requisites demanded by a statute, nevertheless reveals the intention of the parties to charge real property as security for a debt, there being no impossibility nor anything contrary to law in this intent.’”[11] Article 1602 of the Civil Code lists down the circumstances that may indicate that a contract is an equitable mortgage:

Art. 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. [Emphases ours.]

Based on Lomises’ allegations in his pleadings, we consider three circumstances to determine whether his claim is well-supported. First, Johnny was a mere college student dependent on his parents for support when the

agreement was executed, and it was Johnny's mother, Domes, who was the party actually interested in acquiring the market stalls. Second, Lomises received only P48,000.00 of the P68,000.00 that Johnny claimed he gave as down payment; Lomises said that the P20,000.00 represented interests on the loan. Third, Lomises retained possession of the market stalls even after the execution of the agreement.

Whether separately or taken together, these circumstances do not support a conclusion that the parties only intended to enter into a contract of loan.

That Johnny was a mere student when the agreement was executed does not indicate that he had no financial capacity to pay the purchase price of P260,000.00. At that time, Johnny was a 26-year old third year engineering student who operated as a businessman as a sideline activity and who helped his family sell goods in the Hangar Market.[12] During trial, Johnny was asked where he was to get the funds to pay the P260,000.00 purchase price, and he said he would get a loan from his grandfather.[13] That he did not have the full amount at the time the agreement was executed does not necessarily negate his capacity to pay the purchase price, since he had 16 months to complete the payment. Apart from Lomises' bare claim that it was Johnny's mother, Domes, who was interested in acquiring his market stalls, we find no other evidence supporting the claim that Johnny was merely acting as a dummy for his mother.

Lomises contends that of the P68,000.00 given by Johnny, he only received P48,000.00, with the remaining P20,000.00 retained by Johnny as interest on the loan. However, the testimonies of the witnesses presented during trial, including Lomises himself, negate this claim. Judge Rodolfo Rodrigo (RTC of Baguio City, Branch VII) asked Lomises' lawyer, Atty. Lockey, if they deny receipt of the P68,000.00; Atty. Lockey said that they were not denying receipt, and added that they had in fact returned the same amount.[14] Judge Rodrigo accurately summarized their point by stating that "there is no need to dispute whether the P68,000.00 was given, because if [Lomises] tried to return that x x x he had received that." [15] Witness Atty. Albert Umaming said he counted the money before he drafted the October 9, 1985 receipt evidencing the return; he said that Lomises returned P68,000.00 in total.[16] Thus, if the transaction was indeed a loan and the P20,000.00 interest was already prepaid by Lomises, the return of the full amount of P68,000.00 by Lomises to Johnny (through his mother, Domes) would not make sense.

That Lomises retained possession of the market stalls even after the execution of his agreement with Johnny is also not an indication that the true transaction between them was one of loan. Johnny had yet to complete his payment and, until Lomises decided to forego with their agreement, had four more months to pay; until then, Lomises retained ownership and possession of the market stalls.[17]

Lomises cannot feign ignorance of the import of the terms of the receipt of September 8, 1984 by claiming that he was an illiterate old man. A witness (Ana Comnad) testified not only of the fact of the sale, but also that Lomises' daughter, Dolores, translated the terms of the agreement from English to Ilocano for Lomises' benefit; [18] Lomises himself admitted this fact.[19] If Lomises believed that the receipt of September 8, 1984 did not express the parties' true intent, he could have refused to sign it or subsequently requested for a reformation of its terms. Lomises rejected the agreement only after Johnny sought to enforce it.

Hence, the CA was correct in characterizing the agreement between Johnny and Lomises as a sale of improvements and assignment of leasehold rights.

The Validity of the Agreement

Both the RTC and the CA correctly declared that the assignment of the leasehold rights over the two market stalls was void since it was made without the consent of the lessor, the Baguio City Government, as required under

Article 1649 of the Civil Code.[20] Neither party appears to have contested this ruling.

Lomises, however, objects to the CA ruling upholding the validity of the agreement insofar as it involved the sale of improvements on the stalls. Lomises alleges that the sale of the improvements should similarly be voided because it was made without the consent of the Baguio City Government, the owner of the improvements, pursuant to the May 1, 1985 lease contract.[21] Lomises further claims that the stalls themselves are the only improvements on the property and a transfer of the stalls cannot be made without transferring the leasehold rights. Hence, both the assignment of leasehold rights and the sale of improvements should be voided.

The CA has already rejected the evidentiary value of the May 1, 1985 lease contract between the Baguio City Government and Lomises, as it was not formally offered in evidence before the RTC; in fact, the CA admonished Lomises' lawyer, Atty. Lockey, for making it appear that it was part of the records of the case. Under Section 34, Rule 132 of the Rules of Court, the court shall consider no evidence which has not been formally offered. "The offer of evidence is necessary because it is the duty of the court to rest its findings of fact and its judgment only and strictly upon the evidence offered by the parties. Unless and until admitted by the court in evidence for the purpose or purposes for which such document is offered, the same is merely a scrap of paper barren of probative weight." [22] Although the contract was referred to in Lomises' answer to Johnny's complaint [23] and marked as Exhibit "2" in his pre-trial brief, [24] a copy of it was never attached. In fact, a copy of the May 1, 1985 lease contract "surfaced" only after Lomises filed a motion for reconsideration of the CA decision. What was formally offered was the 1969 permit, which only stated that Lomises was permitted to occupy a stall in the Baguio City market and nothing else. [25] In other words, no evidence was presented and formally offered showing that any and all improvements in the market stalls shall be owned by the Baguio City Government.

Likewise unsupported by evidence is Lomises' claim that the stalls themselves were the only improvements. Hence, the CA found it proper to order the remand of the case for the RTC to determine the value of the improvements on the market stalls existing as of September 8, 1984. [26] We agree with the CA's order of remand. We note, however, that Lomises had already returned the P68,000.00 and receipt of the amount has been duly acknowledged by Johnny's mother, Domes. Johnny testified on October 6, 1986 that the money was still with his mother. [27] Thus, upon determination by the RTC of the actual value of the improvements on the market stalls, the heirs of Johnny Suerte should pay the ascertained value of these improvements to Lomises, who shall thereafter be required to execute the deed of sale over the improvements in favor of the heirs of Johnny.

WHEREFORE, under these premises, the Court hereby AFFIRMS the ruling of the Court of Appeals for the remand of the case to the Regional Trial Court of Baguio City, Branch 7, for the determination of the value of the improvements on Stall Nos. 9 and 10 at the Refreshment Section of the Hangar Market Compound, Baguio City as of September 8, 1984. After this determination, the Court ORDERS the heirs of Johnny M. Suerte to pay the amount determined to the heirs of Lomises Aludos, who shall thereafter execute the deed of sale covering the improvements in favor of the heirs of Johnny M. Suerte and deliver the deed to them. Costs against the petitioner.

SO ORDERED.

Carpio, (Chairperson), Perez, Sereno, and Reyes, JJ., concur.

[*] Deceased, substituted by Domes Suerte.

[1] Lomises died in February 1991 during the pendency of the case before the Regional Trial Court, Branch 7, Baguio City, and was substituted by his wife Flora; rollo, p. 48.

[2] Penned by Associate Justice Hilarion L. Aquino, and concurred in by Associate Justices Edgardo P. Cruz and Regalado E. Maambong; id. at 46-52.

[3] Id. at 66-67.

[4] Id. at 46.

[5] Id. at 31.

[6] Id. at 33.

[7] Penned by Judge Clarence J. Villanueva; id. at 40-44.

[8] Supra note 2.

[9] Rollo, p. 60.

[10] Supra note 3.

[11] Rockville Excel International Exim Corporation v. Culla, G.R. No. 155716, October 2, 2009, 602 SCRA 128, 136, citing Go v. Bacaron, G.R. No. 159048, October 11, 2005, 472 SCRA 339.

[12] TSN, October 6, 1986, p. 17.

[13] Id. at 25.

[14] Id. at 31-32.

[15] Ibid.

[16] TSN, April 12, 1988, p. 6.

[17] TSN, October 6, 1986, p. 39.

[18] TSN, January 13, 1987, p. 6.

[19] TSN, November 23, 1987, pp. 15-16.

[20] Art. 1649. The lessee cannot assign the lease without the consent of the lessor, unless there is a stipulation to the contrary.

[21] Rollo, p. 60.

[22] Heirs of the Deceased Carmen Cruz-Zamora v. Multiwood International, Inc., G.R. No. 146428, January 19, 2009, 576 SCRA 137, 145. See also Land Bank of the Philippines v. Gallego, Jr., G.R. No. 173226, January 20, 2009, 576 SCRA 680.

[23] See RTC Records, p. 18.

[24] Id. at 32.

[25] Id. at 78.

[26] The dispositive portion of the CA decision dated August 29, 2002 reads in full:

WHEREFORE, premises considered, the Court VACATES the appealed Decision and REMANDS the case to the trial court to determine the value of the improvements on Stall Nos. 9 and 10 at the Refreshment Section of the Hangar Market Compound, Baguio City as of September 8, 1984 and render a judgment requiring the heirs of x x x Lomises Aludos to execute the necessary deed of sale covering said improvements in favor of

plaintiff-appellee Johnny M. Suerte x x x. If the value of the improvements is less than P68,000.00, then said court [RTC] should order the heirs of Lomises Aludos to return the excess to plaintiff-appellee Johnny M. Suerte, but if said value is more than P68,000.00, then the Court should order Johnny M. Suerte to pay the excess amount to the heirs of Lomises Aludos. (Rollo, pp. 51-52.)

[27] RTC Records, p. 42.

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