

**SPS. DOMINADOR R. NARVAEZ AND LILIA W. NARVAEZ,
PETITIONERS, VS. SPS. ROSE OGAS ALCISO AND ANTONIO ALCISO,
RESPONDENTS.**

G.R. No. 165907. July 27, 2009

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition[1] for review on certiorari under Rule 45 of the Rules of Court. The petition challenges the 29 October 2004 Decision[2] of the Court of Appeals in CA-G.R. CV No. 63757. The Court of Appeals affirmed with modification the 6 April 1998 Decision[3] of the Regional Trial Court (RTC), Judicial Region 1, Branch 8, La Trinidad, Benguet, in Civil Case No. 84-CV-0094.

The Facts

Larry A. Ogas (Ogas) owned a 1,329-square meter parcel of land situated in Pico, La Trinidad, Benguet. The property was covered by Transfer Certificate of Title (TCT) No. T-1068, and a portion was subject to a 30-year lease agreement[4] with Esso Standard Eastern, Inc. Ogas sold the property to his daughter Rose O. Alciso (Alciso). TCT No. T-1068 was cancelled and TCT No. T-12422[5] was issued in the name of Alciso.

On 25 August 1979, Alciso entered into a Deed of Sale with Right to Repurchase,[6] selling the property to Jaime Sansano (Sansano) for P10,000. Alciso later repurchased the property from Sansano and, on 28 March 1980, she entered into another Deed of Absolute Sale,[7] this time selling the property to Celso S. Bate (Bate) for P50,000. The Deed stated that:

The SELLER warrants that her title to and ownership of the property herein conveyed are free from all liens and encumbrances except those as appear on the face of the title, specifically, that lease over the said property in favor of ESSO STANDARD EASTERN, INC., the rights over which as a lessor the SELLER likewise hereby transfers in full to the buyer.[8]

TCT No. T-12422 was cancelled and TCT No. T-16066[9] was issued in the name of Bate. On 14 August 1981, Bate entered into a Deed of Sale of Realty,[10] selling the property to the spouses Dominador R. Narvaez and Lilia W. Narvaez (Spouses Narvaez) for P80,000. TCT No. T-16066 was cancelled and TCT No. T-16528[11] was issued in the name of the Spouses Narvaez. In 1982, the Spouses Narvaez built a commercial building on the property amounting to P300,000.

Alciso demanded that a stipulation be included in the 14 August 1981 Deed of Sale of Realty allowing her to repurchase the property from the Spouses Narvaez. In compliance with Alciso's demand, the Deed stated that, "The SELLER (Bate) carries over the manifested intent of the original SELLER of the property (Alciso) to buy back the same at a price under such conditions as the present BUYERS (Spouses Narvaez) may impose." The Spouses Narvaez furnished Alciso with a copy of the Deed.

Alciso alleged that she informed the Spouses Narvaez that she wanted to repurchase the property. The Spouses Narvaez demanded P300,000, but Alciso was willing to pay only P150,000. Alciso and the Spouses Narvaez failed to reach an agreement on the repurchase price.

In a Complaint[12] dated 15 June 1984 and filed with the RTC, Alciso prayed that (1) the 25 August 1979 Deed of Sale with Right to Repurchase, the 28 March 1980 Deed of Absolute Sale, and the 14 August 1981 Deed of Sale of Realty be annulled; (2) the Register of Deeds be ordered to cancel TCT Nos. T-16066 and T-16528; (3) the Spouses Narvaez be ordered to reconvey the property; and (4) Sansano, Bate, and the Spouses Narvaez be ordered to pay damages, attorney's fees and expenses of litigation. Alciso claimed that the intention of the parties was to enter into a contract of real estate mortgage and not a contract of sale with right of repurchase. She stated that:

[C]ontrary to the clear intention and agreement of the parties, particularly the plaintiffs herein, defendant JAIME SANSANO, taking advantage of the good faith and financial predicament and difficulties of plaintiffs at the time, caused to be prepared and induced with insidious [sic] words and machinations, prevailed upon plaintiff to sign a contract denominated as "Sale With Right to Repurchase", instead of Deed of Real Estate Mortgage as was the clear intention and agreement of the parties.

x x x x

Defendant JAIME SANSANO caused to be prepared a contract denominated as DEED OF ABSOLUTE SALE, covering the lot in question, contrary to the clear intention and understanding of plaintiff who was inveigled into signing said contract under the impression that what she was executing was a real estate mortgage.[13]

The RTC's Ruling

In its 6 April 1998 Decision, the RTC held that (1) the 25 August 1979 Deed of Sale with Right to Repurchase became functus officio when Alciso repurchased the property; (2) the action to annul the 28 March 1980 Deed of Absolute Sale had prescribed; (3) Alciso had no legal personality to annul the 14 August 1981 Deed of Sale of Realty; (4) the 14 August 1981 Deed of Sale of Realty contained a stipulation pour autrui in favor of Alciso -- Alciso could repurchase the property; (5) Alciso communicated to the Spouses Narvaez her acceptance of the favor contained in the stipulation pour autrui; (6) the repurchase price was P80,000; (7) Alciso could either appropriate the commercial building after payment of the indemnity equivalent to one-half of its market value when constructed or sell the land to the Spouses Narvaez; and (8) Alciso was entitled to P100,000 attorney's fees and P20,000 nominal damages.

The Spouses Narvaez appealed to the Court of Appeals. In their Appellants Brief[14] dated 21 November 2000, the Spouses Narvaez claimed that (1) the 14 August 1981 Deed of Sale of Realty did not contain a stipulation pour autrui -- not all requisites were present; (2) the RTC erred in setting the repurchase price at P80,000; (3) they were purchasers for value and in good faith; and (4) they were builders in good faith.

The Court of Appeals' Ruling

In its 29 October 2004 Decision, the Court of Appeals held that (1) the 14 August 1981 Deed of Sale of Realty contained a stipulation pour autrui; (2) Alciso accepted the favor contained in the stipulation pour autrui; (3) the RTC erred in setting the repurchase price at P80,000; (4) the 14 August 1981 Deed of Sale of Realty involved a contract of sale with right of repurchase and not real estate mortgage; (5) the Spouses Narvaez were builders in good faith; and (6) Alciso could either appropriate the commercial building after payment of the indemnity or oblige the Spouses Narvaez to pay the price of the land, unless the price was considerably more than that of the building. The Court of Appeals remanded the case to the RTC for determination of the property's reasonable

repurchase price.

The Issue

The Spouses Narvaez elevated the case to the Court. In their Petition dated 15 December 2004, the Spouses Narvaez claimed that Alciso did not communicate her acceptance of the favor contained in the stipulation pour autrui; thus, she could not repurchase the property.

The Court's Ruling

The petition is unmeritorious.

Article 1311, paragraph 2, of the Civil Code states the rule on stipulations pour autrui:

If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person.

In *Limitless Potentials, Inc. v. Quilala*,^[15] the Court laid down the requisites of a stipulation pour autrui: (1) there is a stipulation in favor of a third person; (2) the stipulation is a part, not the whole, of the contract; (3) the contracting parties clearly and deliberately conferred a favor to the third person -- the favor is not an incidental benefit; (4) the favor is unconditional and uncompensated; (5) the third person communicated his or her acceptance of the favor before its revocation; and (6) the contracting parties do not represent, or are not authorized by, the third party.

All the requisites are present in the instant case: (1) there is a stipulation in favor of Alciso; (2) the stipulation is a part, not the whole, of the contract; (3) Bate and the Spouses Narvaez clearly and deliberately conferred a favor to Alciso; (4) the favor is unconditional and uncompensated; (5) Alciso communicated her acceptance of the favor before its revocation -- she demanded that a stipulation be included in the 14 August 1981 Deed of Sale of Realty allowing her to repurchase the property from the Spouses Narvaez, and she informed the Spouses Narvaez that she wanted to repurchase the property; and (6) Bate and the Spouses Narvaez did not represent, and were not authorized by, Alciso.

The Spouses Narvaez claim that Alciso did not communicate her acceptance of the favor. They state that:

A perusal of the provision of the Deed of Sale of Realty between Celso Bate and the spouses Dominador R. Narvaez and Lilia W. Narvaez (Annex "B") which clearly provides that "the third person" (Rose O. Alciso) must have communicated her acceptance to the obligors (spouses Dominador R. Narvaez and Lilia W. Narvaez) before its revocation was not complied with. The acceptance is at best by mere inference.

x x x x

Petitioner Narvaez clearly stated that while the contract (Deed of Sale of Realty, Annex "D") contained an [sic] stipulation in favor of a third person (Rose O. Alciso), she did not demand its fulfillment and communicate her acceptance to the obligors before its revocation.

x x x x

We maintain that the stipulation aforequoted is not a stipulation pour autrui. Let the following be emphasized:

- While the contract contained a stipulation in favor of a third person (Rose Alciso) she did not demand its fulfillment and she never communicated her acceptance to the obligors (Spouses Narvaez) before its revocation (*Uy Tam vs. Leonard*, 30 Phil. 471; *Coquia vs. Fieldmen's Insurance Co., Inc.*, 26 SCRA 178)

- Granting arguendo that the stipulation is a pour autrui yet in the three meetings Rose Alciso had with Mrs. Narvaez she never demanded fulfillment of the alleged stipulation pour autrui and, what is worse, she did not communicate her acceptance to the obligors before it is revoked.[16]

A petition for review on certiorari under Rule 45 of the Rules of Court should include only questions of law -- questions of fact are not reviewable. A question of law exists when the doubt centers on what the law is on a certain set of facts, while a question of fact exists when the doubt centers on the truth or falsity of the alleged facts. There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. Once the issue invites a review of the evidence, the question is one of fact.[17]

Whether Alciso communicated to the Spouses Narvaez her acceptance of the favor contained in the stipulation pour autrui is a question of fact. It is not reviewable.

The factual findings of the trial court, especially when affirmed by the Court of Appeals, are binding on the Court.[18] In its 6 April 1998 Decision, the RTC found that Alciso communicated to the Spouses Narvaez her acceptance of the favor contained in the stipulation pour autrui. The RTC stated that:

Rose Alciso communicated her acceptance of such favorable stipulation when she went to see defendant Lillia [sic] Narvaez in their house. Under the foregoing circumstances, there is no question that plaintiff Rose Alciso can maintain her instant action for the enforcement and/or fulfillment of the aforestated stipulation in her favor to by [sic] back the property in question.[19] (Emphasis supplied)

In *Florentino v. Encarnacion, Sr.*, [20] the Court held that the acceptance may be made at any time before the favorable stipulation is revoked and that the acceptance may be in any form -- it does not have to be formal or express but may be implied. During the trial, Alciso testified that she informed the Spouses Narvaez that she wanted to repurchase the property:

q - What was your proposal to Mrs. Narvaez by way of settlement?

a - I tried to go to her and asked her if I could redeem the property and Mrs. Narvaez told me why not, you could redeem the property but not our price.

x x x x

q - Now, when you went back to her, what if any did you propose to her or tell her, Madam witness?

a - I just asked for the redemption for the property, sir and she just told me wa [sic] the price that I could only redeem the property.

q - Three Hundred thousand pesos?

a - Yes, sir.

q - Did you make any counter proposal?

a - Yes, for the third time I want [sic] back again your Honor...[21]

The exceptions to the rule that the factual findings of the trial court are binding on the Court are (1) when there is grave abuse of discretion; (2) when the findings are grounded on speculations; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on a misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of the parties; (7) when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion; (8) when the findings of the Court of Appeals are contrary to those of the trial court; (9) when the facts set forth by the petitioners are not disputed by the

respondents; and (10) when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.[22] The Spouses Narvaez did not show that the instant case falls under any of the exceptions.

In its 29 October 2004 Decision, the Court of Appeals held that Bate and the Spouses Narvaez entered into a sale with right of repurchase and that, applying Article 448 of the Civil Code, Alciso could either appropriate the commercial building after payment of the indemnity or oblige the Spouses Narvaez to pay the price of the land, unless the price was considerably more than that of the building. Article 448 states:

Art. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or the trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

The Court of Appeals stated that:

[T]he contract between defendants-appellants Bate and Narvaez spouses is a contract of sale with a stipulation granting plaintiffs-appellees the right to repurchase the property at a reasonable price. Being the absolute owners of the property in question, defendants-appellants Narvaez spouses have the undisputed right to use, enjoy and build thereon.

Having built the improvement on the land they own and registered in their names, they are likened to builders in good faith and their rights over the improvement shall be governed by Article 448 of the Civil Code which provides:

ART. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or tress. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

Applying said Article, plaintiffs-appellees, after repurchasing the land, will have the following options:

- (1) to appropriate for themselves the building upon payment of its value to defendants-appellants Narvaez spouses; OR
- (2) to compel the defendants-appellants Narvaez spouses to buy the land, unless the value of thereof [sic] be considerably more than that of the building, in which case, said spouses may lease the land instead. The parties shall agree upon the terms of the lease and in case of disagreement, the courts shall fix the terms thereof.[23]

The Court disagrees.

The rule is that only errors specifically assigned and properly argued in the appellant's brief will be considered, except jurisdictional and clerical errors.[24] However, the Court is clothed with ample authority to review matters not assigned as errors if their consideration is necessary in arriving at a just decision.[25]

Article 448 is inapplicable in cases involving contracts of sale with right of repurchase -- it is inapplicable when the owner of the land is the builder, sower, or planter. In *Pecson v. Court of Appeals*,[26] the Court held that:

Article 448 does not apply to a case where the owner of the land is the builder, sower, or planter who then later loses ownership of the land by sale or donation. This Court said so in *Coleongco v. Regalado*:

Article 361 of the old Civil Code is not applicable in this case, for Regalado constructed the house on his own land before he sold said land to Coleongco. Article 361 applies only in cases where a person constructs a building on the land of another in good or in bad faith, as the case may be. It does not apply to a case where a person constructs a building on his own land, for then there can be no question as to good or bad faith on the part of the builder.

Elsewise stated, where the true owner himself is the builder of the works on his own land, the issue of good faith or bad faith is entirely irrelevant. (Emphasis supplied)

Article 448 is inapplicable in the present case because the Spouses Narvaez built the commercial building on the land that they own. Besides, to compel them to buy the land, which they own, would be absurd.

As the Court of Appeals correctly observed, the terms of the 14 August 1981 Deed of Sale of Realty show that Bate and the Spouses Narvaez entered into a sale with right of repurchase, where Bate transferred his right of repurchase to Alciso. The Deed states that, "The SELLER (Bate) carries over the manifested intent of the original SELLER of the property (Alciso) to buy back the same at a price under such conditions as the present BUYERS (Spouses Narvaez) may impose." Article 1601 of the Civil Code states that, "Conventional redemption shall take place when the vendor reserves the right to repurchase the thing sold, with the obligation to comply with the provisions of Article 1616 and other stipulations which may have been agreed upon." In *Gallar v. Husain*,^[27] the Court held that "the right of repurchase may be exercised only by the vendor in whom the right is recognized by contract or by any person to whom the right may have been transferred."

In a sale with right of repurchase, the applicable provisions are Articles 1606 and 1616 of the Civil Code, not Article 448. Articles 1606 and 1616 state:

Art. 1606. The right referred to in Article 1601, in the absence of an express agreement, shall last four years from the date of the contract.

Should there be an agreement, the period cannot exceed ten years.

However, the vendor may still exercise the right to repurchase within thirty days from the time final judgment was rendered in a civil action on the basis that the contract was a true sale with right to repurchase.

Art. 1616. The vendor cannot avail himself of the right of repurchase without returning to the vendee the price of the sale, and in addition:

- (1) The expenses of the contract, and any other legitimate payments made by reason of the sale;
- (2) The necessary and useful expenses made on the thing sold.

Under Article 1616, Alciso may exercise her right of redemption by paying the Spouses Narvaez (1) the price of the sale, (2) the expenses of the contract, (3) legitimate payments made by reason of the sale, and (4) the necessary and useful expenses made on the thing sold. In the present case, the cost of the building constitutes a useful expense. Useful expenses include improvements which augment the value of the land.^[28]

Under the first paragraph of Article 1606, Alciso had four years from 14 August 1981 to repurchase the property since there was no express agreement as to the period when the right can be exercised. Tender of payment of the repurchase price is necessary in the exercise of the right of redemption. Tender of payment is the seller's manifestation of his or her desire to repurchase the property with the offer of immediate performance.^[29]

Alciso's intimation to the Spouses Narvaez that she wanted to repurchase the property was insufficient. To have effectively exercised her right of repurchase, Alciso should have tendered payment. In *Lee v. Court of Appeals*,^[30] the Court held that:

The rule that tender of payment of the repurchase price is necessary to exercise the right of redemption finds support in civil law. Article 1616 of the Civil Code of the Philippines x x x furnishes the guide, to wit: "The vendor cannot avail himself of the right of repurchase without returning to the vendee the price of the sale..."

Thus, in the case of *Angao vs. Clavano*, 17 Phil. 152, it was held that "it is not sufficient for the vendor to intimate or to state to the vendee that the former desires to redeem the thing sold, but he must immediately thereupon offer to repay the price..." Likewise, in several other cases decided by the Supreme Court (*Fructo vs. Fuentes*, 15 Phil. 362; *Retes vs. Suelto*, 20 Phil. 394; *Rosales vs. Reyes, et al.*, 25 Phil. 495; *Canuto vs. Mariano*, 37 Phil. 840; *De la Cruz, et al. vs. Resurreccion, et al.*, 98 Phil. 975; and other cases) where the right to repurchase was held to have been properly exercised, there was a definite finding of tender of payment having been made by the vendor. (Emphasis supplied)

Nevertheless, under the third paragraph of Article 1606, Alciso has 30 days from the finality of this Decision to exercise her right of repurchase. In *Laserna v. Javier*,^[31] the Court held that:

The new Civil Code in Article 1606, thereof gives the vendors a retro "the right to repurchase within thirty days from the time final judgment was rendered in a civil action, on the basis that the contract was a true sale with the right to repurchase." This provision has been construed to mean that "after the courts have decided by a final or executory judgment that the contract was a pacto de retro and not a mortgage, the vendor (whose claim as mortgagor had definitely been rejected) may still have the privilege of repurchasing within 30 days." (*Perez, et al. vs. Zulueta*, 106 Phil., 264.)

The third paragraph of Article 1606 allows sellers, who considered the transaction they entered into as mortgage, to repurchase the property within 30 days from the time they are bound by the judgment finding the transaction to be one of sale with right of repurchase.

WHEREFORE, the Court DENIES the petition. The Court AFFIRMS the 29 October 2004 Decision of the Court of Appeals in CA-G.R. CV No. 63757 with MODIFICATION. Respondent Rose O. Alciso may exercise her right of redemption by paying the petitioners Spouses Dominador R. Narvaez and Lilia W. Narvaez (1) the price of the sale, (2) the expenses of the contract, (3) legitimate payments made by reason of the sale, and (4) the necessary and useful expenses made on the subject property. The Court DIRECTS the Regional Trial Court, Judicial Region 1, Branch 8, La Trinidad, Benguet, to determine the amounts of the expenses of the contract, the legitimate expenses made by reason of the sale, and the necessary and useful expenses made on the subject property.

After such determination, respondent Rose O. Alciso shall have 30 days to pay the amounts to petitioners Spouses Dominador R. Narvaez and Lilia W. Narvaez.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Leonardo-De Castro, and Bersamin, JJ., concur.

[1] Rollo, pp. 7-30.

[2] Id. at 32-43. Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Eugenio S. Labitoria and Bienvenido L. Reyes concurring.

[3] CA rollo, pp. 29-47. Penned by Judge Angel V. Colet.

- [4] Rollo, pp. 54-55.
- [5] Records, pp. 10-11.
- [6] Rollo, pp. 56-57.
- [7] Id. at 58-60.
- [8] Id. at 59.
- [9] Id. at 63.
- [10] Id. at 64-67.
- [11] Id. at 62.
- [12] Id. at 44-51.
- [13] Id. at 45-47.
- [14] CA rollo, pp. 95-140.
- [15] G.R. Nos. 157391, 160749 and 160816, 15 July 2005, 463 SCRA 586, 605.
- [16] Rollo, pp. 19, 22, and 25.
- [17] Pagsibigan v. People, G.R. No. 163868, 4 June 2009.
- [18] Id.
- [19] CA rollo, pp. 41-42.
- [20] 169 Phil. 195, 205 (1977).
- [21] TSN, 4 March 1988, pp. 10-12.
- [22] Ilagan-Mendoza v. Court of Appeals, G.R. No. 171374, 8 April 2008, 550 SCRA 635, 647.
- [23] Rollo, pp. 40-41.
- [24] Solid Homes, Inc. v. Court of Appeals, 341 Phil. 261, 278 (1997).
- [25] Poliand Industrial Limited v. National Development Company, G.R. No. 143866, 22 August 2005, 467 SCRA 500, 532-533.
- [26] 314 Phil. 313, 322-323 (1995).
- [27] 126 Phil. 606, 611 (1967).
- [28] Spouses Macasaet v. Spouses Macasaet, 482 Phil. 853, 873 (2004).
- [29] Legaspi v. Court of Appeals, 226 Phil. 24, 29 (1986).
- [30] 160-A Phil. 820, 829 (1975).
- [31] 110 Phil. 172, 175 (1960).

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