

**AMELIA S. ROBERTS, PETITIONER, VS. MARTIN B. PAPIO,  
RESPONDENT.***G.R. NO. 166714. February 09, 2007*

Ponente: CALLEJO, SR., J.

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Assailed in this petition for review on certiorari is the Decision[1] of the Court of Appeals (CA), in CA-G.R. CV No. 69034 which reversed and set aside the Decision [2] of the Regional Trial Court (RTC), Branch 150, Makati City, in Civil Case No. 01-431. The RTC ruling had affirmed with modification the Decision[3] of the Metropolitan Trial Court (MeTC), Branch 64, Makati City in Civil Case No. 66847. The petition likewise assails the Resolution of the CA denying the motion for reconsideration of its decision.

**The Antecedents**

The spouses Martin and Lucina Papio were the owners of a 274-square-meter residential lot located in Makati (now Makati City) and covered by Transfer Certificate of Title (TCT) No. S-44980.[4] In order to secure a P59,000.00 loan from the Amparo Investments Corporation, they executed a real estate mortgage on the property. Upon Papio's failure to pay the loan, the corporation filed a petition for the extrajudicial foreclosure of the mortgage.

Since the couple needed money to redeem the property and to prevent the foreclosure of the real estate mortgage, they executed a Deed of Absolute Sale over the property on April 13, 1982 in favor of Martin Papio's cousin, Amelia Roberts. Of the P85,000.00 purchase price, P59,000.00 was paid to the Amparo Investments Corporation, while the P26,000.00 difference was retained by the spouses.[5] As soon as the spouses had settled their obligation, the corporation returned the owner's duplicate of TCT No. S-44980, which was then delivered to Amelia Roberts.

Thereafter, the parties (Amelia Roberts as lessor and Martin Papio as lessee) executed a two-year contract of lease dated April 15, 1982, effective May 1, 1982. The contract was subject to renewal or extension for a like period at the option of the lessor, the lessee waiving thereby the benefits of an implied new lease. The lessee was obliged to pay monthly rentals of P800.00 to be deposited in the lessor's account at the Bank of America, Makati City branch.[6]

On July 6, 1982, TCT No. S-44980 was cancelled, and TCT No. 114478 was issued in the name of Amelia Roberts as owner.[7]

Martin Papio paid the rentals from May 1, 1982 to May 1, 1984, and thereafter, for another year.[8] He then failed to pay rentals, but he and his family nevertheless remained in possession of the property for a period of almost thirteen (13) years.

In a letter dated June 3, 1998, Amelia Roberts, through counsel, reminded Papio that he failed to pay the monthly rental of P2,500.00 from January 1, 1986 to December 31, 1997, and P10,000.00 from January 1, 1998 to May 31,

1998; thus, his total liability was P410,000.00. She demanded that Papio vacate the property within 15 days from receipt of the letter in case he failed to settle the amount.[9] Because he refused to pay, Papio received another letter from Roberts on April 22, 1999, demanding, for the last time, that he and his family vacate the property.[10] Again, Papio refused to leave the premises.

On June 28, 1999, Amelia Roberts, through her attorney-in-fact, Matilde Aguilar, filed a Complaint[11] for unlawful detainer and damages against Martin Papio before the MeTC, Branch 64, Makati City. She alleged the following in her complaint:

Sometime in 1982 she purchased from defendant a 274-sq-m residential house and lot situated at No. 1046 Teresa St., Brgy. Valenzuela, Makati City.[12] Upon Papio's pleas to continue staying in the property, they executed a two-year lease contract[13] which commenced on May 1, 1982. The monthly rental was P800.00. Thereafter, TCT No. 114478[14] was issued in her favor and she paid all the realty taxes due on the property. When the term of the lease expired, she still allowed Papio and his family to continue leasing the property. However, he took advantage of her absence and stopped payment beginning January 1986, and refused to pay despite repeated demands. In June 1998, she sent a demand letter[15] through counsel requiring Papio to pay rentals from January 1986 up to May 1998 and to vacate the leased property. The accumulated arrears in rental are as follows: (a) P360,000.00 from January 1, 1986 to December 31, 1997 at P2,500.00 per month; and (b) P50,000.00, from January 1, 1998 to May 31, 1998 at P10,000.00 per month.[16] She came to the Philippines but all efforts at an amicable settlement proved futile. Thus, in April 1999, she sent the final demand letter to defendant directing him and his family to pay and immediately vacate the leased premises.[17]

Roberts appended to her complaint copies of the April 13, 1982 Deed of Absolute Sale, the April 15, 1982 Contract of Lease, and TCT No. 114478.

In his Answer with counterclaim, Papio alleged the following:

He executed the April 13, 1982 deed of absolute sale and the contract of lease. Roberts, his cousin who is a resident of California, United States of America (USA), arrived in the Philippines and offered to redeem the property. Believing that she had made the offer for the purpose of retaining his ownership over the property, he accepted. She then remitted P59,000.00 to the mortgagor for his account, after which the mortgagee cancelled the real estate mortgage. However, he was alarmed when the plaintiff had a deed of absolute sale over the property prepared (for P83,000.00 as consideration) and asked him to sign the same. She also demanded that the defendant turn over the owner's duplicate of TCT No. S-44980. The defendant was in a quandary. He then believed that if he signed the deed of absolute sale, Roberts would acquire ownership over the property. He asked her to allow him to redeem or reacquire the property at any time for a reasonable amount.[18] When Roberts agreed, Papio signed the deed of absolute sale.

Pursuant to the right to redeem/repurchase given him by Roberts, Papio purchased the property for P250,000.00. In July 1985, since Roberts was by then already in the USA, he remitted to her authorized representative, Perlita Ventura, the amount of P150,000.00 as partial payment for the property.[19] On June 16, 1986, she again remitted P100,000.00, through Ventura. Both payments were evidenced by receipts signed by Ventura.[20] Roberts then declared that she would execute a deed of absolute sale and surrender the title to the property. However, Ventura had apparently misappropriated P39,000.00 out of the P250,000.00 that she had received; Roberts then demanded that she pay the amount misappropriated before executing the deed of absolute sale. Thus, the sole reason why Roberts refused to abide by her promise was the failure of her authorized representative to remit the full amount of P250,000.00. Despite Papio's demands, Roberts refused to execute a deed of absolute sale. Accordingly, defendant posited that plaintiff had no cause of action to demand payment of rental and eject him from the

property.

Papio appended to his Answer the following: (1) the letter dated July 18, 1986 of Perlita Ventura to the plaintiff wherein the former admitted having used the money of the plaintiff to defray the plane fares of Perlita's parents to the USA, and pleaded that she be allowed to repay the amount within one year; (b) the letter of Eugene Roberts (plaintiff's husband) to Perlita Ventura dated July 25, 1986 where he accused Ventura of stealing the money of plaintiff Amelia (thus preventing the latter from paying her loan on her house and effect the cancellation of the mortgage), and demanded that she deposit the balance;<sup>[21]</sup> and (c) plaintiff's letter to defendant Papio dated July 25, 1986 requesting the latter to convince Ventura to remit the balance of P39,000.00 so that the plaintiff could transfer the title of the property to the defendant.<sup>[22]</sup>

Papio asserted that the letters of Roberts and her husband are in themselves admissions or declarations against interest, hence, admissible to prove that he had reacquired the property although the title was still in her possession.

In her Affidavit and Position Paper,<sup>[23]</sup> Roberts averred that she had paid the real estate taxes on the property after she had purchased it; Papio's initial right to occupy the property was terminated when the original lease period expired; and his continued possession was only by mere tolerance. She further alleged that the Deed of Sale states on its face that the conveyance of the property was absolute and unconditional. She also claimed that any right to repurchase the property must appear in a public document pursuant to Article 1358, Paragraph 1, of the Civil Code of the Philippines.<sup>[24]</sup> Since no such document exists, defendant's supposed real interest over the property could not be enforced without violating the Statute of Frauds.<sup>[25]</sup> She stressed that her Torrens title to the property was an "absolute and indefeasible evidence of her ownership of the property which is binding and conclusive upon the whole world."

Roberts admitted that she demanded P39,000.00 from the defendant in her letter dated July 25, 1986. However, she averred that the amount represented his back rentals on the property.<sup>[26]</sup> She declared that she neither authorized Ventura to sell the property nor to receive the purchase price therefor. She merely authorized her to receive the rentals from defendant and to deposit them in her account. She did not know that Ventura had received P250,000.00 from Papio in July 1985 and on June 16, 1986, and had signed receipts therefor. It was only on February 11, 1998 that she became aware of the receipts when she received defendant Papio's letter to which were appended the said receipts. She and her husband offered to sell the property to the defendant in 1984 for US\$15,000.00 on a "take it or leave it" basis when they arrived in the Philippines in May 1984.<sup>[27]</sup> However, defendant refused to accept the offer. The spouses then offered to sell the property anew on December 20, 1997, for P670,000.00 inclusive of back rentals.<sup>[28]</sup> However, defendant offered to settle his account with the spouses.<sup>[29]</sup> Again, the offer came on January 11, 1998, but it was rejected. The defendant insisted that he had already purchased the property in July 1985 for P250,000.00.

Roberts insisted that Papio's claim of the right to repurchase the property, as well as his claim of payment therefor, is belied by his own letter in which he offered to settle plaintiff's claim for back rentals. Even assuming that the purchase price of the property had been paid through Ventura, Papio did not adduce any proof to show that Ventura had been authorized to sell the property or to accept any payment thereon. Any payment to Ventura could have no binding effect on her since she was not privy to the transaction; if at all, such agreement would be binding only on Papio and Ventura.

She further alleged that defendant's own inaction belies his claim of ownership over the property: first, he failed to cause any notice or annotation to be made on the Register of Deed's copy of TCT No. 114478 in order to protect his supposed adverse claim; second, he did not institute any action against Roberts to compel the execution of the

necessary deed of transfer of title in his favor; and third, the defense of ownership over the property was raised only after Roberts demanded him to vacate the property.

Based solely on the parties' pleadings, the MeTC rendered its January 18, 2001 Decision[30] in favor of Roberts. The fallo of the decision reads:

WHEREFORE, premises considered, finding this case for the plaintiff, the defendant is hereby ordered to:

- Vacate the leased premises known as 1046 Teresa St., Valenzuela, Makati City;
- Pay plaintiff the reasonable rentals accrual for the period January 1, 1996 to December 13, 1997 at the rate equivalent to Php2,500.00 per month and thereafter, Php10,000.00 from January 1998 until he actually vacates the premises;
- Pay the plaintiff attorney's fees as Php20,000.00; and
- Pay the costs

SO ORDERED.[31]

The MeTC held that Roberts merely tolerated the stay of Papio in the property after the expiration of the contract of lease on May 1, 1984; hence, she had a cause of action against him since the only elements in an unlawful detainer action are the fact of lease and the expiration of its term. The defendant as tenant cannot controvert the title of the plaintiff or assert any right adverse thereto or set up any inconsistent right to change the existing relation between them. The plaintiff need not prove her ownership over the property inasmuch as evidence of ownership can be admitted only for the purpose of determining the character and extent of possession, and the amount of damages arising from the detention.

The court further ruled that Papio made no denials as to the existence and authenticity of Roberts' title to the property. It declared that "the certificate of title is indefeasible in favor of the person whose name appears therein and incontrovertible upon the expiration of the one-year period from the date of issue," and that a Torrens title, "which enjoys a strong presumption of regularity and validity, is generally a conclusive evidence of ownership of the land referred to therein."

As to Papio's claim that the transfer of the property was one with right of repurchase, the MeTC held it to be bereft of merit since the Deed of Sale is termed as "absolute and unconditional." The court ruled that the right to repurchase is not a right granted to the seller by the buyer in a subsequent instrument but rather, a right reserved in the same contract of sale. Once the deed of absolute sale is executed, the seller can no longer reserve the right to repurchase; any right thereafter granted in a separate document cannot be a right of repurchase but some other right.

As to the receipts of payment signed by Ventura, the court gave credence to Roberts's declaration in her Affidavit that she authorized Ventura only to collect rentals from Papio, and not to receive the repurchase price. Papio's letter of January 31, 1998, which called her attention to the fact that she had been sending people without written authority to collect money since 1985, bolstered the court's finding that the payment, if at all intended for the supposed repurchase, never redounded to the benefit of the spouses Roberts.

Papio appealed the decision to the RTC, alleging the following:

I.

THE LOWER COURT GRAVELY ERRED IN NOT DISMISSING THE CASE FOR EJECTMENT OUTRIGHT ON THE GROUND OF LACK OF CAUSE OF ACTION.

II.

THE LOWER COURT GRAVELY ERRED IN NOT CONSIDERING THE DOCUMENTARY EVIDENCE ADDUCED BY DEFENDANT-APPELLANT WHICH ESTABLISHED THAT A REPURCHASE TRANSACTION EXISTED BETWEEN THE PARTIES ONLY THAT PLAINTIFF-APPELLEE WITHHELD THE EXECUTION OF THE ABSOLUTE DEED OF SALE AND THE TRANSFER OF TITLE OF THE SAME IN DEFENDANT-APPELLANT'S NAME.

III.

THE LOWER COURT GRAVELY ERRED IN NOT CONSIDERING THAT THE LETTERS OF PLAINTIFF-[APPELLEE] AND OF HER HUSBAND ADDRESSED TO DEFENDANT-APPELLANT AND HIS WIFE ARE IN THEMSELVES ADMISSION AND/OR DECLARATION OF THE FACT THAT DEFENDANT-APPELLANT HAD DULY PAID PLAINTIFF-APPELLEE OF THE PURCHASE AMOUNT COVERING THE SUBJECT PROPERTY.

IV.

THE LOWER COURT GRAVELY ERRED IN NOT DISMISSING THE CASE FOR EJECTMENT OUTRIGHT CONSIDERING THAT PLAINTIFF-APPELLEE WHO IS [AN] AMERICAN CITIZEN AND RESIDENT THEREIN HAD NOT APPEARED IN COURT ONCE, NEITHER WAS HER ALLEGED ATTORNEY-IN-FACT, MATILDE AGUILAR NOR [DID] THE LATTER EVER [FURNISH] THE LOWER COURT A SPECIAL POWER OF ATTORNEY AUTHORIZING HER TO APPEAR IN COURT IN BEHALF OF HER PRINCIPAL.[32]

Papio maintained that Roberts had no cause of action for eviction because she had already ceded her right thereto when she allowed him to redeem and reacquire the property upon payment of P250,000.00 to Ventura, her duly authorized representative. He also contended that Roberts's claim that the authority of Ventura is limited only to the collection of the rentals and not of the purchase price was a mere afterthought, since her appended Affidavit was executed sometime in October 1999 when the proceedings in the MeTC had already started.

On March 26, 2001, Roberts filed a Motion for Issuance of Writ of Execution.[33] The court granted the motion in an Order [34] dated June 19, 2001. Subsequently, a Writ of Execution[35] pending appeal was issued on September 28, 2001. On October 29, 2001, Sheriff Melvin M. Alidon enforced the writ and placed Roberts in possession of the property.

Meanwhile, Papio filed a complaint with the RTC of Makati City, for specific performance with damages against Roberts. Papio, as plaintiff, claimed that he entered into a contract of sale with pacto de retro with Roberts, and prayed that the latter be ordered to execute a Deed of Sale over the property in his favor and transfer the title over the property to and in his name. The case was docketed as Civil Case No. 01-851.

On October 24, 2001, the RTC rendered judgment affirming the appealed decision of the MeTC. The fallo of the decision reads:[36]

Being in accordance with law and the circumstances attendant to the instant case, the court finds merit in plaintiff-appellee's claim. Wherefore, the challenged decision dated January 18, 2001 is hereby affirmed in toto.

SO ORDERED.[37]

Both parties filed their respective motions for reconsideration.[38] In an Order[39] dated February 26, 2002, the court denied the motion of Papio but modified its decision declaring that the computation of the accrued rentals should commence from January 1986, not January 1996. The decretal portion of the decision reads:

Wherefore, the challenged decision dated January 18, 2001 is hereby affirmed with modification that defendant pay plaintiff the reasonable rentals accrued for the period January 1, 1986 to December [31, 1997] per month and thereafter and P10,000.00 [per month] from January 1998 to October 28, 2001 when defendant-appellant actually vacated the subject leased premises.

SO ORDERED.[40]

On February 28, 2002, Papio filed a petition for review[41] in the CA, alleging that the RTC erred in not finding that he had reacquired the property from Roberts for P250,000.00, but the latter refused to execute a deed of absolute sale and transfer the title in his favor. He insisted that the MeTC and the RTC erred in giving credence to petitioner's claim that she did not authorize Ventura to receive his payments for the purchase price of the property, citing Roberts' letter dated July 25, 1986 and the letter of Eugene Roberts to Ventura of even date. He also averred that the MeTC and the RTC erred in not considering his documentary evidence in deciding the case.

On August 31, 2004, the CA rendered judgment granting the petition. The appellate court set aside the decision of the RTC and ordered the RTC to dismiss the complaint. The decretal portion of the Decision[42] reads:

WHEREFORE, the judgment appealed from is hereby REVERSED and SET ASIDE and a new one entered: (1) rendering an initial determination that the "Deed of Absolute Sale" dated April 13, 1982 is in fact an equitable mortgage under Article 1603 of the New Civil Code; and (2) resolving therefore that petitioner Martin B. Papio is entitled to possession of the property subject of this action; (3) But such determination of ownership and equitable mortgage are not clothed with finality and will not constitute a binding and conclusive adjudication on the merits with respect to the issue of ownership and such judgment shall not bar an action between the same parties respecting title to the land, nor shall it be held conclusive of the facts therein found in the case between the same parties upon a different cause of action not involving possession. All other counterclaims for damages are hereby dismissed. Cost against the respondent.

SO ORDERED.[43]

According to the appellate court, although the MeTC and RTC were correct in holding that the MeTC had jurisdiction over the complaint for unlawful detainer, they erred in ignoring Papio's defense of equitable mortgage, and in not finding that the transaction covered by the deed of absolute sale by and between the parties was one of equitable mortgage under Article 1602 of the New Civil Code. The appellate court ruled that Papio retained the ownership of the property and its peaceful possession; hence, the MeTC should have dismissed the complaint without prejudice to the outcome of Civil Case No. 01-851 relative to his claim of ownership over the property.

Roberts filed a motion for reconsideration of the decision on the following grounds:

- Petitioner did not allege in his Answer the defense of equitable mortgage; hence, the lower courts [should] not have discussed the same;
- Even assuming that Petitioner alleged the defense of equitable mortgage, the MeTC could not have ruled upon the said defense,
- The M[e]TC and the RTC were not remiss in the exercise of their jurisdiction.[44]

The CA denied the motion.

In this petition for review, Amelia Salvador-Roberts, as petitioner, avers that:

- THE HONORABLE COURT OF APPEALS GRIEVOUSLY (SIC) ERRED IN DECLARING THAT THE M[e]TC AN(D) THE RTC WERE REMISS IN THE EXERCISE OF THAT JURISDICTION ACQUIRED BECAUSE IT DID NOT CONSIDER ALL PETITIONER'S DEFENSE OF EQUITABLE MORTGAGE.

- THE HONORABLE COURT OF APPEALS GRIEVEOUSLY (SIC) ERRED IN REQUIRING THE M[e]TC AND RTC TO RULE ON A DEFENSE WHICH WAS NEVER AWAILED OF BY RESPONDENT.[45]

Petitioner argues that respondent is barred from raising the issue of equitable mortgage because his defense in the MeTC and RTC was that he had repurchased the property from the petitioner; by such representation, he had impliedly admitted the existence and validity of the deed of absolute sale whereby ownership of the property was transferred to petitioner but reverted to him upon the exercise of said right. The respondent even filed a complaint for specific performance with damages, which is now pending in the RTC of Makati City, docketed as Civil Case No. 01-851 entitled "Martin B. Papio vs. Amelia Salvador-Roberts." In that case, respondent claimed that his transaction with the petitioner was a sale with pacto de retro. Petitioner posits that Article 1602 of the Civil Code applies only when the defendant specifically alleges this defense. Consequently, the appellate court was proscribed from finding that petitioner and respondent had entered into an equitable mortgage under the deed of absolute sale.

Petitioner further avers that respondent was ably represented by counsel and was aware of the difference between a pacto de retro sale and an equitable mortgage; thus, he could not have been mistaken in declaring that he repurchased the property from her.

As to whether a sale is in fact an equitable mortgage, petitioner claims that the issue should be properly addressed and resolved by the RTC in an action to enforce ownership, not in an ejectment case before the MeTC where the main issue involved is possession de facto. According to her, the obvious import of the CA Decision is that, in resolving an ejectment case, the lower court must pass upon the issue of ownership (in this case, by applying the presumptions under Art. 1602) which, in effect, would use the same yardstick as though it is the main action. The procedure will not only promote multiplicity of suits but also place the new owner in the absurd position of having to first seek the declaration of ownership before filing an ejectment suit.

Respondent counters that the defense of equitable mortgage need not be particularly stated to apprise petitioner of the nature and character of the repurchase agreement. He contends that he had amply discussed in his pleadings before the trial and appellate courts all the surrounding circumstances of the case, such as the relative situation of the parties at the time; their attitude, acts, conduct, and declarations; and the negotiations between them that led to the repurchase agreement. Thus, he argues that the CA correctly ruled that the contract was one of equitable mortgage. He insists that petitioner allowed him to redeem and reacquire the property, and accepted his full payment of the property through Ventura, the authorized representative, as shown by the signed receipts.

The threshold issues are the following: (1) whether the MeTC had jurisdiction in an action for unlawful detainer to resolve the issue of who between petitioner and respondent is the owner of the property and entitled to the de facto possession thereof; (2) whether the transaction entered into between the parties under the Deed of Absolute Sale and the Contract of Lease is an equitable mortgage over the property; and (3) whether the petitioner is entitled to the material or de facto possession of the property.

#### The Ruling of the Court

On the first issue, the CA ruling (which upheld the jurisdiction of the MeTC to resolve the issue of who between petitioner or respondent is the lawful owner of the property, and is thus entitled to the material or de facto possession thereof) is correct. Section 18, Rule 70 of the Rules of Court provides that when the defendant raises the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession. The judgment rendered in an action for unlawful detainer shall be conclusive with respect to the possession only and

shall in no wise bind the title or affect the ownership of the land or building. Such judgment would not bar an action between the same parties respecting title to the land or building.[46]

The summary nature of the action is not changed by the claim of ownership of the property of the defendant.[47] The MeTC is not divested of its jurisdiction over the unlawful detainer action simply because the defendant asserts ownership over the property.

The sole issue for resolution in an action for unlawful detainer is material or de facto possession of the property. Even if the defendant claims juridical possession or ownership over the property based on a claim that his transaction with the plaintiff relative to the property is merely an equitable mortgage, or that he had repurchased the property from the plaintiff, the MeTC may still delve into and take cognizance of the case and make an initial or provisional determination of who between the plaintiff and the defendant is the owner and, in the process, resolve the issue of who is entitled to the possession. The MeTC, in unlawful detainer case, decides the question of ownership only if it is intertwined with and necessary to resolve the issue of possession.[48] The resolution of the MeTC on the ownership of the property is merely provisional or interlocutory. Any question involving the issue of ownership should be raised and resolved in a separate action brought specifically to settle the question with finality, in this case, Civil Case No. 01-851 which respondent filed before the RTC.

The ruling of the CA, that the contract between petitioner and respondent was an equitable mortgage, is incorrect. The fact of the matter is that the respondent intransigently alleged in his answer, and even in his affidavit and position paper, that petitioner had granted him the right to redeem or repurchase the property at any time and for a reasonable amount; and that, he had, in fact, repurchased the property in July 1985 for P250,000.00 which he remitted to petitioner through an authorized representative who signed receipts therefor; he had reacquired ownership and juridical possession of the property after his repurchase thereof in 1985; and consequently, petitioner was obliged to execute a deed of absolute sale over the property in his favor.

Notably, respondent alleged that, as stated in his letter to petitioner, he was given the right to reacquire the property in 1982 within two years upon the payment of P53,000.00, plus petitioner's airfare for her trip to the Philippines from the USA and back; petitioner promised to sign the deed of absolute sale. He even filed a complaint against the petitioner in the RTC, docketed as Civil Case No. 01-851, for specific performance with damages to compel petitioner to execute the said deed of absolute sale over the property presumably on the strength of Articles 1357 and 1358 of the New Civil Code. Certainly then, his claim that petitioner had given him the right to repurchase the property is antithetical to an equitable mortgage.

An equitable mortgage is one that, although lacking in some formality, form or words, or other requisites demanded by a statute, nevertheless reveals the intention of the parties to change a real property as security for a debt and contain nothing impossible or contrary to law.[49] A contract between the parties is an equitable mortgage if the following requisites are present: (a) the parties entered into a contract denominated as a contract of sale; and (b) the intention was to secure an existing debt by way of mortgage.[50] The decisive factor is the intention of the parties.

In an equitable mortgage, the mortgagor retains ownership over the property but subject to foreclosure and sale at public auction upon failure of the mortgagor to pay his obligation.[51] In contrast, in a pacto de retro sale, ownership of the property sold is immediately transferred to the vendee a retro subject only to the right of the vendor a retro to repurchase the property upon compliance with legal requirements for the repurchase. The failure of the vendor a retro to exercise the right to repurchase within the agreed time vests upon the vendee a retro, by operation of law, absolute title over the property.[52]

One repurchases only what one has previously sold. The right to repurchase presupposes a valid contract of sale

between the same parties.[53] By insisting that he had repurchased the property, respondent thereby admitted that the deed of absolute sale executed by him and petitioner on April 13, 1982 was, in fact and in law, a deed of absolute sale and not an equitable mortgage; hence, he had acquired ownership over the property based on said deed. Respondent is, thus, estopped from asserting that the contract under the deed of absolute sale is an equitable mortgage unless there is allegation and evidence of palpable mistake on the part of respondent;[54] or a fraud on the part of petitioner. Respondent made no such allegation in his pleadings and affidavit. On the contrary, he maintained that petitioner had sold the property to him in July 1985 and acknowledged receipt of the purchase price thereof except the amount of P39,000.00 retained by Perlita Ventura. Respondent is thus bound by his admission of petitioner's ownership of the property and is barred from claiming otherwise.[55]

Respondent's admission that petitioner acquired ownership over the property under the April 13, 1982 deed of absolute sale is buttressed by his admission in the Contract of Lease dated April 15, 1982 that petitioner was the owner of the property, and that he had paid the rentals for the duration of the contract of lease and even until 1985 upon its extension. Respondent was obliged to prove his defense that petitioner had given him the right to repurchase, and that petitioner obliged herself to resell the property for P250,000.00 when they executed the April 13, 1982 deed of absolute sale.

We have carefully reviewed the case and find that respondent failed to adduce competent and credible evidence to prove his claim.

As gleaned from the April 13, 1982 deed, the right of respondent to repurchase the property is not incorporated therein. The contract is one of absolute sale and not one with right to repurchase. The law states that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.[56] When the language of the contract is explicit, leaving no doubt as to the intention of the drafters, the courts may not read into it any other intention that would contradict its plain import.[57] The clear terms of the contract should never be the subject matter of interpretation. Neither abstract justice nor the rule of liberal interpretation justifies the creation of a contract for the parties which they did not make themselves, or the imposition upon one party to a contract or obligation to assume simply or merely to avoid seeming hardships.[58] Their true meaning must be enforced, as it is to be presumed that the contracting parties know their scope and effects.[59] As the Court held in *Villarica, et al. v. Court of Appeals*: [60]

The right of repurchase is not a right granted the vendor by the vendee in a subsequent instrument, but is a right reserved by the vendor in the same instrument of sale as one of the stipulations of the contract. Once the instrument of absolute sale is executed, the vendor can no longer reserve the right to repurchase, and any right thereafter granted the vendor by the vendee in a separate instrument cannot be a right of repurchase but some other right like the option to buy in the instant case.[61]

In *Ramos v. Icasiano*, [62] we also held that an agreement to repurchase becomes a promise to sell when made after the sale because when the sale is made without such agreement the purchaser acquires the thing sold absolutely; and, if he afterwards grants the vendor the right to repurchase, it is a new contract entered into by the purchaser as absolute owner. An option to buy or a promise to sell is different and distinct from the right of repurchase that must be reserved by means of stipulations to that effect in the contract of sale.[63]

There is no evidence on record that, on or before July 1985, petitioner agreed to sell her property to the respondent for P250,000.00. Neither is there any documentary evidence showing that Ventura was authorized to offer for sale or sell the property for and in behalf of petitioner for P250,000.00, or to receive the said amount from respondent as purchase price of the property. The rule is that when a sale of a piece of land or any interest therein is through an agent, the authority of the latter shall be in writing; otherwise, the sale shall be void [64] and cannot produce any legal effect as to transfer the property from its lawful owner.[65] Being inexistent and void

from the very beginning, said contract cannot be ratified.[66] Any contract entered into by Ventura for and in behalf of petitioner relative to the sale of the property is void and cannot be ratified by the latter. A void contract produces no effect either against or in favor of anyone.[67]

Respondent also failed to prove that the negotiations between him and petitioner has culminated in his offer to buy the property for P250,000.00, and that they later on agreed to the sale of the property for the same amount. He likewise failed to prove that he purchased and reacquired the property in July 1985. The evidence on record shows that petitioner had offered to sell the property for US\$15,000 on a "take it or leave it" basis in May 1984 upon the expiration of the Contract of Lease[68] -an offer that was rejected by respondent-which is why on December 30, 1997, petitioner and her husband offered again to sell the property to respondent for P670,000.00 inclusive of back rentals and the purchase price of the property under the April 13, 1982 Deed of absolute Sale.[69]The offer was again rejected by respondent. The final offer appears to have been made on January 11, 1998[70]but again, like the previous negotiations, no contract was perfected between the parties.

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.[71] Under Article 1318 of the New Civil Code, there is no contract unless the following requisites concur:

- (1) Consent of the contracting parties;
- (2) Object certain which is the subject matter of the contract;
- (3) Cause of the obligation which is established.

Contracts are perfected by mere consent manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract.[72] Once perfected, they bind the contracting parties and the obligations arising therefrom have the form of law between the parties which must be complied with in good faith. The parties are bound not only to the fulfillment of what has been expressly stipulated but also to the consequences which, according to their nature, may be in keeping with good faith, usage and law.[73]

There was no contract of sale entered into by the parties based on the Receipts dated July 1985 and June 16, 1986, signed by Perlita Ventura and the letter of petitioner to respondent dated July 25, 1986.

By the contract of sale, one of the contracting parties obligates himself to transfer the ownership of and deliver a determinate thing and the other, to pay therefor a price certain in money or its equivalent.[74] The absence of any of the essential elements will negate the existence of a perfected contract of sale. As the Court ruled in *Boston Bank of the Philippines v. Manalo*: [75]

A definite agreement as to the price is an essential element of a binding agreement to sell personal or real property because it seriously affects the rights and obligations of the parties. Price is an essential element in the formation of a binding and enforceable contract of sale. The fixing of the price can never be left to the decision of one of the contracting parties. But a price fixed by one of the contracting parties, if accepted by the other, gives rise to a perfected sale.[76]

A contract of sale is consensual in nature and is perfected upon mere meeting of the minds. When there is merely an offer by one party without acceptance of the other, there is no contract.[77] When the contract of sale is not perfected, it cannot, as an independent source of obligation, serve as a binding juridical relation between the parties.[78]

Respondent's reliance on petitioner's letter to him dated July 25, 1986 is misplaced. The letter reads in full:

7-25-86

Dear Martin & Ising,

Enclosed for your information is the letter written by my husband to Perlita. I hope that you will be able to convince your cousin that it's to her best interest to deposit the balance of your payment to me of P39,000.00 in my bank acct. per our agreement and send me my bank book right away so that we can transfer the title of the property.

Regards,  
Amie [79]

We have carefully considered the letter of Perlita Ventura, dated July 18, 1986, and the letter of Eugene Roberts, dated July 25, 1986, where Ventura admitted having used the money of petitioner amounting to P39,000.00 without the latter's knowledge for the plane fare of Ventura's parents. Ventura promised to refund the amount of P39,000.00, inclusive of interests, within one year.[80] Eugene Roberts berated Ventura and called her a thief for stealing his and petitioner's money and that of respondent's wife, Ising, who allegedly told petitioner that she, Ising, loaned the money to her parents for their plane fare to the USA. Neither Ventura nor Eugene Roberts declared in their letters that Ventura had used the P250,000.00 which respondent gave to her.

Petitioner in her letter to respondent did not admit, either expressly or impliedly, having received P211,000.00 from Ventura. Moreover, in her letter to petitioner, only a week earlier, or on July 18, 1986, Ventura admitted having spent the P39,000.00 and pleaded that she be allowed to refund the amount within one (1) year, including interests.

Naririto ang total ng pera mo sa bankbook mo, P55,000.00 pati na yong deposit na sarili mo at bale ang nagalaw ko diyan ay P39,000.00. Huwag kang mag-alala ibabalik ko rin sa iyo sa loob ng isang taon pati interest.

Ate Per[81]

It is incredible that Ventura was able to remit to petitioner P211,000.00 before July 25, 1986 when only a week earlier, she was pleading to petitioner for a period of one year within which to refund the P39,000.00 to petitioner.

It would have bolstered his cause if respondent had submitted an affidavit of Ventura stating that she had remitted P211,000.00 out of the P250,000.00 she received from respondent in July 1985 and June 20, 1986.

IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The assailed Decision of the Court of Appeals in CA-G.R. CV No. 69034 is REVERSED and SET ASIDE. The Decision of the Metropolitan Trial Court, affirmed with modification by the Regional Trial Court, is AFFIRMED.

**SO ORDERED.**

Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ., concur.

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[1] Penned by Associate Justice Vicente Q. Roxas, with Associate Justices Salvador J. Valdez, Jr. (retired) and Juan Q. Enriquez, Jr., concurring; rollo, pp. 24-35.

[2] Penned by Judge Zeus C. Abrogar.

[3] Penned by Judge Dina P. Teves.

[4] Records, p. 31.

[5] Id. at 6-9.

[6] Id. at 12-14.

[7] Id. at 10.

[8] Id. at 135.

[9] Id. at 15.

[10] Id. at 17.

[11] Id. at 1-5.

[12] Id. at 6-9.

[13] Id. at 12-14.

[14] Id. at 10.

[15] Id. at 15-16.

[16] Id. at 15.

[17] Id. at 17.

[18] Id at 24-25.

[19] Id. at 29, 124.

[20] Id. at 30, 125.

[21] Id. at 33-35.

[22] Id. at 126-133.

[23] CA rollo, pp. 99-110.

[24] Art. 1358 of the Civil Code provides:

Art. 1358. The following must appear in a public document:

(1.) Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property; sales of real property or of an interest therein are governed by Articles 1403, No. 2 and 1405; xxx

[25] Art. 1317 of the Civil Code states:

Art. 1317. No one may contract in the name of another without being authorized by the latter, or unless he has by law or right to represent him.

A contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers, shall be unenforceable, unless it is ratified, expressly or impliedly, by the person on whose behalf it has been executed, before it is revoked by the other contracting party.

[26] CA rollo, p. 110.

[27] Records, p. 176.

[28] Id. at 177-178.

[29] Id. at 179.

- [30] Id. at 241-251; CA rollo, pp. 131-141.
- [31] Id. at 251; id. at 141.
- [32] Records, pp. 339-340.
- [33] Id. at 286-299.
- [34] Id. at 318-321.
- [35] Id. at 381-382.
- [36] Id. at 369-378.
- [37] Id. at 378.
- [38] Id. at 386-399.
- [39] Id. at 426-428.
- [40] Id. at 428.
- [41] CA rollo, pp. 6-23.
- [42] Rollo, pp. 24-35.
- [43] Id. at 35.
- [44] CA rollo, p. 277.
- [45] Rollo, pp. 15-16.
- [46] RULES OF COURT, RULE 70, Sec. 18.
- [47] Ocampo v. Tirona, G.R. No. 147812, April 6, 2005, 455 SCRA 62, 74-75.
- [48] Arambulo v. Gungab, G.R. No. 156581, September 30, 2005, 471 SCRA 640, 649.
- [49] Ceballos v. Intestate Estate of Emigdio Mercado, G.R. No. 155856, May 28, 2004, 430 SCRA 323, 335.
- [50] Matanguihan v. Court of Appeals, G.R. No. 115033, July 11, 1997, 275 SCRA 380, 390.
- [51] Ramos v. Sarao, G.R. No. 149756, February 11, 2005, 451 SCRA 103, 113.
- [52] De Guzman, Jr. v. Court of Appeals, G.R. No. 46935, December 21, 1987, 156 SCRA 701, 711
- [53] Nool v. Court of Appeals, G.R. No. 116635, July 24, 1997, 276 SCRA 149, 159-160.
- [54] RULES OF COURT, RULE 129, Sec. 4.
- [55] Philippine Ports Authority v. City of Iloilo, 453 Phil. 927, 934 (2003).
- [56] CIVIL CODE, Art. 1370.
- [57] German Marine Agencies, Inc. v. National Labor Relations Commission, 403 Phil. 572, 589 (2001).
- [58] The Insular Life Assurance Co., Ltd. v. Court of Appeals, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 92
- [59] Vicente v. Planters Development Bank, 444 Phil. 309, 318 (2003).

[60] 135 Phil. 166 (1968).

[61] Id. at 193.

[62] 51 Phil. 343 (1927).

[63] Id. at 346.

[64] CIVIL CODE, Art. 1874.

[65] City-Lite Realty Corporation v. Court of Appeals, 382 Phil. 268, 276 (2000).

[66] San Juan Structural & Textile Fabrication, Inc. v. Court of Appeals, G.R. No. 129459, September 29, 1998, 296 SCRA 631, 648.

[67] Abalos v. Macatangay, Jr., G.R. No. 155043, September 30, 2004, 439 SCRA 649, 661.

[68] Records, p. 176.

[69] Id. at 177-178.

[70] Id. at 181.

[71] CIVIL CODE, Art. 1305.

[72] Gomez v. Court of Appeals, 395 Phil. 115, 125-126 (2000).

[73] CIVIL CODE, Art. 1315.

[74] CIVIL CODE, Art. 1458.

[75] G.R. No. 158149, February 9, 2006, 482 SCRA 108.

[76] Id. at 129.

[77] Palattao v. Court of Appeals, 431 Phil. 438, 450 (2002).

[78] Boston Bank of the Philippines v. Manalo, *supra* note 75, at 129.

[79] Records, p. 32.

[80] Id. at 131-133.

[81] Id. at 39.

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