

ENRICO S. EULOGIO, PETITIONER, VS. SPOUSES CLEMENTE APELES AND LUZ APELES, RESPONDENTS.*G.R. No. 167884. January 20, 2009*

Ponente: CHICO-NAZARIO, J.

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Petitioner Enrico S. Eulogio (Enrico) filed this instant Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court assailing the Decision[2] dated 20 December 2004 of the Court of Appeals in CA-G.R. CV No. 76933 which reversed the Decision[3] dated 8 October 2002 of the Regional Trial Court (RTC) of Quezon City, Branch 215, in Civil Case No. Q-99-36834. The RTC directed respondents, spouses Clemente and Luz Apeles (spouses Apeles) to execute a Deed of Sale over a piece of real property in favor of Enrico after the latter's payment of full consideration therefor.

The factual and procedural antecedents of the present case are as follows:

The real property in question consists of a house and lot situated at No. 87 Timog Avenue, Quezon City (subject property). The lot has an area of 360.60 square meters, covered by Transfer Certificate of Title No. 253990 issued by the Registry of Deeds of Quezon City in the names of the spouses Apeles.[4]

In 1979, the spouses Apeles leased the subject property to Arturo Eulogio (Arturo), Enrico's father. Upon Arturo's death, his son Enrico succeeded as lessor of the subject property. Enrico used the subject property as his residence and place of business. Enrico was engaged in the business of buying and selling imported cars.[5]

On 6 January 1987, the spouses Apeles and Enrico allegedly entered into a Contract of Lease[6] with Option to Purchase involving the subject property. According to the said lease contract, Luz Apeles was authorized to enter into the same as the attorney-in-fact of her husband, Clemente, pursuant to a Special Power of Attorney executed by the latter in favor of the former on 24 January 1979. The contract purportedly afforded Enrico, before the expiration of the three-year lease period, the option to purchase the subject property for a price not exceeding P1.5 Million. The pertinent provisions of the Contract of Lease are reproduced below:

3. That this Contract shall be effective commencing from January 26, 1987 and shall remain valid and binding for THREE (3) YEARS from the said date. The LESSOR hereby gives the LESSEE under this Contract of Lease the right and option to buy the subject house and lot within the said 3-year lease period.

4. That the purchase price or total consideration of the house and lot subject of this Contract of Lease shall, should the LESSEE exercise his option to buy it on or before the expiration of the 3-year lease period, be fixed or agreed upon by the LESSOR and the LESSEE, Provided, that the said purchase price, as it is hereby agreed, shall not be more than ONE MILLION FIVE HUNDRED THOUSAND PESOS (P1,500,000.00) and, provided further, that the monthly rentals paid by the LESSEE to the LESSOR during the 3-year lease period shall form part of or be deducted from the purchase price or total consideration as may hereafter be mutually fixed or agreed upon by the LESSOR and the LESSEE.

5. That if the LESSEE shall give oral or written notice to the LESSOR on or before the expiry date of the

3-year lease period stipulated herein of his desire to exercise his option to buy or purchase the house and lot herein leased, the LESSOR upon receipt of the purchase price/total consideration as fixed or agreed upon less the total amount of monthly rentals paid the LESSEE during the 3-year lease period shall execute the appropriate Deed to SELL, TRANSFER and CONVEY the house and lot subject of this Contract in favor of the LESSEE, his heirs, successors and assigns, together with all the fixtures and accessories therein, free from all liens and encumbrances.

Before the expiration of the three-year lease period provided in the lease contract, Enrico exercised his option to purchase the subject property by communicating verbally and in writing to Luz his willingness to pay the agreed purchase price, but the spouses Apeles supposedly ignored Enrico's manifestation. This prompted Enrico to seek recourse from the barangay for the enforcement of his right to purchase the subject property, but despite several notices, the spouses Apeles failed to appear before the barangay for settlement proceedings. Hence, the barangay issued to Enrico a Certificate to File Action.[7]

In a letter dated 26 January 1997 to Enrico, the spouses Apeles demanded that he pay his rental arrears from January 1991 to December 1996 and he vacate the subject property since it would be needed by the spouses Apeles themselves.

Without heeding the demand of the spouses Apeles, Enrico instituted on 23 February 1999 a Complaint for Specific Performance with Damages against the spouses Apeles before the RTC, docketed as Civil Case No. Q-99-36834. Enrico's cause of action is founded on paragraph 5 of the Contract of Lease with Option to Purchase vesting him with the right to acquire ownership of the subject property after paying the agreed amount of consideration.

Following the pre-trial conference, trial on the merits ensued before the RTC.

Enrico himself testified as the sole witness for his side. He narrated that he and Luz entered into the Contract of Lease with Option to Purchase on 26 January 1987, with Luz signing the said Contract at Enrico's office in Timog Avenue, Quezon City. The Contract was notarized on the same day as evidenced by the Certification on the Notary Public's Report issued by the Clerk of Court of the RTC of Manila.[8]

On the other hand, the spouses Apeles denied that Luz signed the Contract of Lease with Option to Purchase, and posited that Luz's signature thereon was a forgery. To buttress their contention, the spouses Apeles offered as evidence Luz's Philippine Passport which showed that on 26 January 1987, the date when Luz allegedly signed the said Contract, she was in the United States of America. The spouses Apeles likewise presented several official documents bearing her genuine signatures to reveal their remarkable discrepancy from the signature appearing in the disputed lease contract. The spouses Apeles maintained that they did not intend to sell the subject property.[9]

After the spouses Apeles established by documentary evidence that Luz was not in the country at the time the Contract of Lease with Option to Purchase was executed, Enrico, in rebuttal, retracted his prior declaration that the said Contract was signed by Luz on 26 January 1996. Instead, Enrico averred that Luz signed the Contract after she arrived in the Philippines on 30 May 1987. Enrico further related that after Luz signed the lease contract, she took it with her for notarization, and by the time the document was returned to him, it was already notarized.[10]

On 8 October 2002, the RTC rendered a Decision in Civil Case No. Q-99-36834 in favor of Enrico. Since none of the parties presented a handwriting expert, the RTC relied on its own examination of the specimen signatures submitted to resolve the issue of forgery. The RTC found striking similarity between Luz's genuine signatures in the documents presented by the spouses Apeles themselves and her purportedly forged signature in the Contract of Lease with Option to Purchase. Absent any finding of forgery, the RTC bound the parties to the clear and

unequivocal stipulations they made in the lease contract. Accordingly, the RTC ordered the spouses Apeles to execute a Deed of Sale in favor of Enrico upon the latter's payment of the agreed amount of consideration. The fallo of the RTC Decision reads:

WHEREFORE, this Court finds [Enrico's] complaint to be substantiated by preponderance of evidence and accordingly orders -

(1) [The spouses Apeles] to comply with the provisions of the Contract of Lease with Option to Purchase; and upon payment of total consideration as stipulated in the said CONTRACT for [the spouses Apeles] to execute a Deed of Absolute Sale in favor of [Enrico], over the parcel of land and the improvements existing thereon located at No. 87 Timog Avenue, Quezon City.

(2) [The spouses Apeles] to pay [Enrico] moral and exemplary damages in the respective amounts of P100,000.00 and P50,000.00.

(3) [The spouses Apeles] to pay attorney's fees of P50,000.00 and costs of the suit.[11]

The spouses Apeles challenged the adverse RTC Decision before the Court of Appeals and urged the appellate court to nullify the assailed Contract of Lease with Option to Purchase since Luz's signature thereon was clearly a forgery. The spouses Apeles argued that it was physically impossible for Luz to sign the said Contract on 26 January 1987 since she was not in the Philippines on that date and returned five months thereafter. The spouses Apeles called attention to Enrico's inconsistent declarations as to material details involving the execution of the lease contract, thereby casting doubt on Enrico's credibility, as well as on the presumed regularity of the contract as a notarized document.

On 20 December 2004, the Court of Appeals rendered a Decision in CA-G.R. CV No. 76933 granting the appeal of the spouses Apeles and overturning the judgment of the RTC. In arriving at its assailed decision, the appellate court noted that the Notary Public did not observe utmost care in certifying the due execution of the Contract of Lease with Option to Purchase. The Court of Appeals chose not to accord the disputed Contract full faith and credence. The Court of Appeals held, thus:

WHEREFORE, the foregoing premises considered, the appealed decision dated October 8, 2002 of the Regional Trial Court of Quezon City, Branch 215 in Civil Case No. Q-99-36834 for specific performance with damages is hereby REVERSED and a new is one entered dismissing [Enrico's] complaint.[12]

Enrico's Motion for Reconsideration was denied by the Court of Appeals in a Resolution[13] dated 25 April 2005.

Enrico is presently before this Court seeking the reversal of the unfavorable judgment of the Court of Appeals, assigning the following errors thereto:

I.

THE COURT OF APPEALS COMMITTED (sic) REVERSIBLE ERROR WHEN IT BRUSHED ASIDE THE RULING OF THE COURT A QUO UPHOLDING THE VALIDITY OF THE CONTRACT OF LEASE WITH OPTION TO PURCHASE AND IN LIEU THEREOF RULED THAT THE SAID CONTRACT OF LEASE WAS A FORGERY AND THUS, NULL AND VOID.

II.

THE COURT OF APPEALS COMMITTED (sic) REVERSIBLE ERROR WHEN CONTRARY TO THE FINDINGS OF THE COURT A QUO IT RULED THAT THE DEFENSE OF FORGERY WAS SUBSTANTIALLY AND CONVINCINGLY PROVEN BY COMPETENT EVIDENCE.

Simply, Enrico faults the Court of Appeals for disturbing the factual findings of the RTC in disregard of the legal

aphorism that the factual findings of the trial court should be accorded great weight and respect on appeal.

We do not agree.

Enrico's insistence on the infallibility of the findings of the RTC seriously impairs the discretion of the appellate tribunal to make independent determination of the merits of the case appealed before it. Certainly, the Court of Appeals cannot swallow hook, line, and sinker the factual conclusions of the trial court without crippling the very office of review. Although we have indeed held that the factual findings of the trial courts are to be accorded great weight and respect, they are not absolutely conclusive upon the appellate court.[14]

The reliance of appellate tribunals on the factual findings of the trial court is based on the postulate that the latter had firsthand opportunity to hear the witnesses and to observe their conduct and demeanor during the proceedings. However, when such findings are not anchored on their credibility and their testimonies, but on the assessment of documents that are available to appellate magistrates and subject to their scrutiny, reliance on the trial court finds no application.[15]

Moreover, appeal by writ of error to the Court of Appeals under Rule 41 of the Revised Rules of Court, the parties may raise both questions of fact and/or of law. In fact, it is imperative for the Court of Appeals to review the findings of fact made by the trial court. The Court of Appeals even has the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction.[16]

Enrico assiduously prays before this Court to sustain the validity of the Contract of Lease with Option to Purchase. Enrico asserts that the said Contract was voluntarily entered into and signed by Luz who had it notarized herself. The spouses Apeles should be obliged to respect the terms of the agreement, and not be allowed to renege on their commitment thereunder and frustrate the sanctity of contracts.

Again, we are not persuaded. We agree with the Court of Appeals that in ruling out forgery, the RTC heavily relied on the testimony proffered by Enrico during the trial, ignoring blatant contradictions that destroy his credibility and the veracity of his claims. On direct examination, Enrico testified that Luz signed the Contract of Lease with Option to Purchase on 26 January 1987 in his presence,[17] but he recanted his testimony on the matter after the spouses Apeles established by clear and convincing evidence that Luz was not in the Philippines on that date.[18] In rebuttal, Enrico made a complete turnabout and claimed that Luz signed the Contract in question on 30 May 1987 after her arrival in the country.[19] The inconsistencies in Enrico's version of events have seriously impaired the probative value of his testimony and cast serious doubt on his credibility. His contradictory statements on important details simply eroded the integrity of his testimony.

While it is true that a notarized document carries the evidentiary weight conferred upon it with respect to its due execution, and has in its favor the presumption of regularity, this presumption, however, is not absolute. It may be rebutted by clear and convincing evidence to the contrary.[20] Enrico himself admitted that Luz took the document and had it notarized without his presence. Such fact alone overcomes the presumption of regularity since a notary public is enjoined not to notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before the said notary public to attest to the contents and truth of what are stated therein.

Although there is no direct evidence to prove forgery, preponderance of evidence inarguably favors the spouses Apeles. In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the

credible evidence." Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto.[21] In the case at bar, the spouses Apeles were able to overcome the burden of proof and prove by preponderant evidence in disputing the authenticity and due execution of the Contract of Lease with Option to Purchase. In contrast, Enrico seemed to rely only on his own self-serving declarations, without asserting any proof of corroborating testimony or circumstantial evidence to buttress his claim.

Even assuming for the sake of argument that we agree with Enrico that Luz voluntarily entered into the Contract of Lease with Option to Purchase and personally affixed her signature to the said document, the provision on the option to purchase the subject property incorporated in said Contract still remains unenforceable.

There is no dispute that what Enrico sought to enforce in Civil Case No. Q-99-36834 was his purported right to acquire ownership of the subject property in the exercise of his option to purchase the same under the Contract of Lease with Option to Purchase. He ultimately wants to compel the spouses Apeles to already execute the Deed of Sale over the subject property in his favor.

An option is a contract by which the owner of the property agrees with another person that the latter shall have the right to buy the former's property at a fixed price within a certain time. It is a condition offered or contract by which the owner stipulates with another that the latter shall have the right to buy the property at a fixed price within a certain time, or under, or in compliance with certain terms and conditions; or which gives to the owner of the property the right to sell or demand a sale.[22] An option is not of itself a purchase, but merely secures the privilege to buy. It is not a sale of property but a sale of the right to purchase. It is simply a contract by which the owner of the property agrees with another person that he shall have the right to buy his property at a fixed price within a certain time. He does not sell his land; he does not then agree to sell it; but he does sell something, i.e., the right or privilege to buy at the election or option of the other party. Its distinguishing characteristic is that it imposes no binding obligation on the person holding the option, aside from the consideration for the offer.[23]

It is also sometimes called an "unaccepted offer" and is sanctioned by Article 1479 of the Civil Code:

Art. 1479. A promise to buy and sell a determinate thing for a price certain is reciprocally demandable.

An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promisor if the promise is supported by a consideration distinct from the price.

The second paragraph of Article 1479 provides for the definition and consequent rights and obligations under an option contract. For an option contract to be valid and enforceable against the promisor, there must be a separate and distinct consideration that supports it.[24]

In the landmark case of *Southwestern Sugar and Molasses Company v. Atlantic Gulf and Pacific Co.*,[25] we declared that for an option contract to bind the promisor, it must be supported by consideration:

There is no question that under Article 1479 of the new Civil Code "an option to sell," or "a promise to buy or to sell," as used in said article, to be valid must be "supported by a consideration distinct from the price." This is clearly inferred from the context of said article that a unilateral promise to buy or to sell, even if accepted, is only binding if supported by a consideration. In other words, "an accepted unilateral promise" can only have a binding effect if supported by a consideration, which means that the option can still be withdrawn, even if accepted, if the same is not supported by any consideration. Here it is not disputed that the option is without consideration. It can therefore be withdrawn notwithstanding the acceptance made of it by appellee. (Emphasis supplied.)

The doctrine requiring the payment of consideration in an option contract enunciated in *Southwestern Sugar* is

resonated in subsequent cases and remains controlling to this day. Without consideration that is separate and distinct from the purchase price, an option contract cannot be enforced; that holds true even if the unilateral promise is already accepted by the optionee.

The consideration is "the why of the contracts, the essential reason which moves the contracting parties to enter into the contract." This definition illustrates that the consideration contemplated to support an option contract need not be monetary. Actual cash need not be exchanged for the option. However, by the very nature of an option contract, as defined in Article 1479, the same is an onerous contract for which the consideration must be something of value, although its kind may vary.[26]

We have painstakingly examined the Contract of Lease with Option to Purchase, as well as the pleadings submitted by the parties, and their testimonies in open court, for any direct evidence or evidence aliunde to prove the existence of consideration for the option contract, but we have found none. The only consideration agreed upon by the parties in the said Contract is the supposed purchase price for the subject property in the amount not exceeding P1.5 Million, which could not be deemed to be the same consideration for the option contract since the law and jurisprudence explicitly dictate that for the option contract to be valid, it must be supported by a consideration separate and distinct from the price.

In *Bible Baptist Church v. Court of Appeals*,[27] we stressed that an option contract needs to be supported by a separate consideration. The consideration need not be monetary but could consist of other things or undertakings. However, if the consideration is not monetary, these must be things or undertakings of value, in view of the onerous nature of the option contract. Furthermore, when a consideration for an option contract is not monetary, said consideration must be clearly specified as such in the option contract or clause.

In the present case, it is indubitable that no consideration was given by Enrico to the spouses Apeles for the option contract. The absence of monetary or any material consideration keeps this Court from enforcing the rights of the parties under said option contract.

WHEREFORE, in view of the foregoing, the instant Petition is DENIED. The Decision dated 20 December 2004 and Resolution dated 25 April 2005 of the Court of Appeals in CA-G.R. CV No. 76933 are hereby AFFIRMED. No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Azcuna,[*] and Nachura, JJ., concur.

[1] Died during the pendency of this case before this Court. He is now represented by his surviving spouse and co-appellee, Luz Apeles.

[*] Associate Justice Adolfo S. Azcuna was designated to sit as additional member replacing Associate Justice Ruben T. Reyes per Raffle dated 16 January 2008.

[2] Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Ruben T. Reyes and Perlita J. Tria-Tirona, concurring; rollo, pp. 43-63.

[3] Penned by Judge Ma. Luisa Quijano-Padilla; rollo, pp. 33-41.

[4] Rollo, p. 34.

[5] It was not shown when Arturo Eulogio died, and when his son Eulogio assumed leasing the subject property.

[6] Rollo, pp. 31-32.

[7] Id. at 34-35.

[8] Id. at 34-36.

[9] Id. at 36-38.

[10] Id. at 37.

[11] Id. at 41.

[12] Id. at 62-63.

[13] Id. at 65.

[14] Generally, factual findings of the trial court, affirmed by the Court of Appeals, are final and conclusive and may not be reviewed on appeal. The established exceptions are: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the Court of Appeals is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings of fact are conclusions without citation of specific evidence on which they are based; (8) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (9) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record. (*Pilipinas Bank v. Glee Chemical Laboratories, Inc.*, G.R. No. 148320, 15 June 2006, 490 SCRA 663, 669-670.)

[15] *Jimenez v. Commission on Ecumenical Mission United Presbyterian Church, USA*, 432 Phil. 895, 906 (2002).

[16] *Pelayo v. Aarema Shipping and Trading Co., Inc.*, G.R. No. 155741, 31 March 2006, 486 SCRA 368, 373.

[17] TSN, 20 March 2000, p. 11.

[18] TSN, 6 February 2002,

[19] Id.

[20] *De Jesus v. Court of Appeals*, G.R. No. 127857, 20 June 2006, 491 SCRA 325, 334.

[21] *Go v. Court of Appeals*, 403 Phil. 883, 890-891 (2001).

[22] *Tayag v. Lacson*, G.R. No. 134971, 25 March 2004, 426 SCRA 282, 304.

[23] *Limson v. Court of Appeals*, 409 Phil. 221, 231 (2001).

[24] *Bible Baptist Church v. Court of Appeals*, G.R. No. 126454, 26 November 2004, 444 SCRA 399, 405.

[25] 97 Phil. 241, 251-252 (1955).

[26] *Villamor v. Court of Appeals*, G.R. No. 97332, 10 October 1991, 202 SCRA 607, 615.

[27] *Supra* note 24.

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