

**ONG CHUA, PLAINTIFF AND APPELLEE, VS. EDWARD CARR ET AL.,
DEFENDANTS AND APPELLANTS.***G.R. No. 29512. January 17, 1929*

Ponente: OSTRAND, J.

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This is an appeal by the defendants from a decision of Court of First Instance of Zamboanga ordering the reformation of the deed of sale executed by the plaintiff in favor of Edward Carr for lots Nos. 135, 136, and 137 of cadastral case No. 8695, West Extension, and for a house of strong materials constructed on another parcel of land, lot No. 132 of the same case. A copy of the deed is attached to the record and is marked Exhibit A.

Lots Nos. 136 and 137 and the house on lot No. 132 originally belonged to one Henry E. Teck, and lot No. 135 the property of Teck's wife, Magdalena Lim. Sometime prior to June 20, 1923, it seems that the spouses sold property in question to the plaintiff, Ong Chua, and on June 17, 1923, the latter executed a public document granting to Magdalena Lim the right to repurchase lot 135 for sum of P6,500 within four years from that date, and on 20th of the same month, he executed another public document in which he agreed to sell lots Nos. 136, 137, the house on lot 132 to Henry E. Teck for the sum of P13,500 at any time within four years from date. Neither one of the documents was placed on record with the register of deeds.

In the month of July, 1925, Edward Carr came to Zamboanga, bringing with him letters of introduction addressed to P. J. Moore, a practising attorney in that town. With said letters Carr went to the office of Moore and sought the advice and assistance of the latter in regard to purchasing coconut lands. After various interviews, Moore called Carr's attention to the lots above-mentioned and told him that he could buy the lots for P20,000, the amount which Ong Chua paid for them to Henry E. Teck and Magdalena Lim. Carr entered into negotiations with Ong Chua and Moore, and many conversations took; place in which Moore, among other things, informed Carr that Teck and his wife had the right to repurchase the property in question from Ong Chua and that such rights would expire in June, 1927.

On December 14, 1925, Ong Chua and Carr went to the office of Moore, to whom they delivered copies of the documents under which Teck and Lim acquired their rights to repurchase the property involved, and requested him to draw the deed of sale of the property from Ong Chua to Carr. Before the drafting of the deed, Ong Chua stated to Moore that he consented to sell the properties to Carr on the condition that the sale should be subject to the rights of Teck and Lim to have the property reconveyed to them and that said rights were to be respected by the vendee. According to Moore's own testimony, Carr was fully aware of those rights even before the execution of the deed, December 14, 1925, and that he consented to embody stipulations to that effect in said deed.

The purchase price of the property stipulated between vendor and vendee was P20,000. When the deed of sale was about to be drafted, Carr informed Moore that he had only P13,500 on hand and that he desired to obtain a loan of P6,500 from the Zamboanga Mutual Building and Loan Association of which Moore was the secretary. Moore told him in effect that the loan could not be made upon property the titles to which were not clear and that

the right of Teck and Lim to repurchase were not entered upon the certificates title to the property. Moore also told Carr that the deed of sale could be made in such a form that Carr's title to the property purchased would appear to be absolute; that Carr was to bear in mind that the rights of Teck and Lim still existed and that the deed and other documents must be left in his, Moore's, possession until the expiration of the term for the right of repurchase and that, if the deed re made in that form, the loan of P6,500 could be obtained.

Moore thereupon instructed his clerk, C. E. Darlucio, to prepare and typewrite the deed of sale without including rein the condition that the sale was subject to Teck's and Lim's rights to repurchase. The deed was signed by Ong Chua in the presence of Darlucio and duly acknowledged ore Moore as notary public. It may be noted that Ong Chua did not understand English and was therefore ignorant of the arrangement arrived at between Moore and Carr connection with the loan, but he asked Moore if the document contained the conditions in reference to Teck's right to repurchase the property and was told that the document was sufficient.

After the deed was prepared and signed, Ong Chua told Carr and Moore that lot No. 137 was mortgaged by him to the Bank of the Philippine Islands for P6,500, the rate of interest being 10 per cent per annum. Moore stated that the Zamboanga Building and Loan Association could lend money at less than 13 per cent per annum. Ong Chua then stated that he was willing to let the mortgage on the lot given to the bank stand until the expiration the term for the repurchases. As this arrangement would save Carr a considerable sum of money, he agreed to the proposition and paid only P13,500 in cash and promised, in writing, to pay to the vendor the balance of the chase price, P6,500, with interest at 10 per cent per annum, on or before July 1, 1927. The loan from the Building and Loan Association thus became unnecessary, but instead of redrafting the deed, it was agreed that Moore would keep the deed and the other documents in his custody and would not deliver them to any one until the expiration of the period for repurchase.

In September, 1926, Moore was taken critically ill, and while he was under medical treatment in the Zamboanga Hospital, Carr came to him on various occasions and demanded that the documents be delivered to him. At first Moore refused to make the delivery on the ground that it was contrary to their agreement and might result to the prejudice of the rights of Teck and Lim, but Carr continued to molest Moore with his demand for the delivery of the papers, and finally, in order to escape further annoyances and insinuations of Carr, he surrendered the deed to the latter, who almost immediately presented it to the register of deeds for registration.

In July, 1926, Teck offered to repurchase the property in question from Ong Chua who thereupon demanded of Carr the reconveyance of the property to the spouses, Teck and Lim, but Carr refused to do so, claiming that he had an absolute title to said property, and Ong Chua then learned, for the first time, that the deed in question contained no reference to the rights of Teck and Lim to repurchase the property. On July 23, 1926, this action was brought, the plaintiff alleging in substance the principal facts hereinbefore stated and demanding that the deed in question be reformed in accordance therewith. The defendant demurred, but the demurrer was overruled. The defendant thereupon filed an answer pleading the general issue and setting up as special defenses that the deed in question contained no stipulation as to rights of repurchase and that if there was any agreement or promise on the part of the defendant to convey the property to Henry E. Teck and Magdalena Lim or to the plaintiff, as alleged in the complaint, such agreement and promise was for the sale of real property, or an interest therein, and that her said agreement or promise, nor any note or memorandum was made in writing or subscribed by the defendant or by any authorized person for him. Subsequent le filing of the answer, Carr died, and the administrator is estate, Manuel Igual, was substituted as defendant.

At the trial of the case, no evidence was offered by the defendant, and, consequently, the facts hereinbefore stated stand uncontradicted. Upon such facts the court below ordered the reformation of the deed, Exhibit A, in accordance with the plaintiff's demand.

On appeal to this court the defendant-appellant presents six assignments of error, which may conveniently be reduced two propositions, namely (1) that the court erred in permitting the plaintiff, Ong Chua, to testify, over the defendant's objections, to facts occurring prior to the death of the defendant Carr, and (2) that the facts proven do not notify the reformation of the deed in question.

The first proposition rests on subsection 7 of section 383 of the Code of Civil Procedure, which bars parties to an action or proceeding against an executor or administrator or other representative of a deceased person upon a claim or demand against the estate of such deceased person from testifying as to any matter of fact occurring before the death of such deceased person.

Similar provisions are to be found in the statutes of practically all of the states of the Union, and the rule thus laid down is now unquestioned. But it has generally been given a liberal construction to promote justice, and it is that it never was intended to serve as a shield for fraud. As stated in *Jones on Evidence*, 2d ed., sec. 774:

"The evidence of an adverse party is absolutely excluded by an independent, affirmative enactment making him incompetent as to transactions or communications with a deceased or incompetent person. These statutes, however, do not render the adverse party incompetent to testify to fraudulent transactions of the deceased, as the statutes are designed to shield wrongdoers but the courts compel the adverse party to clearly establish the alleged fraudulent acts before admitting such testimony."

And in the case of *Tongco vs. Vianzon* (50 Phil., 698, 702) this court said:

"Counsel is eminently correct in emphasizing that the object and purpose of this statute is to guard against the temptation to give false testimony in regard to the transaction in question on the part of the surviving party. He has, however, neglected the equally important rule that the law was designed to aid in arriving at the truth and was not designed to suppress the truth."

In this case a number of credible witnesses testified to facts which conclusively showed that Carr's conduct was tainted with fraud. The plaintiff did not take the witness stand until after the existence of fraud on the part of Carr had been established beyond a doubt and not by a mere preponderance of evidence. In these circumstances, we cannot hold that the trial court erred in not excluding the plaintiff's testimony.

In regard to the second proposition above-mentioned, counsel for the appellant says:

"It is our belief which is supported by the very exhibits themselves that at this conference the parties decided to enter into two separate agreements. One in writing—Exhibit A—being an absolute conveyance of the property from Ong Chua to Edward Carr; the other a verbal agreement by which all the documents, titles, etc. were left with P. J. Moore in escrow until the time fixed in Exhibits B and C had lapsed. There was no mistake on the part of anyone in executing Exhibit A for while there has been a great deal of talk about the insertion of a clause no one has yet said what was to be said in that clause or condition. Again, Exhibit A not only said nothing about any right to redemption but contains a full warranty of title * * * "

It will be noted that counsel admits that the deed was left in escrow with Moore, and if it were true that there was no mistake on the part of the plaintiff at the time of the execution of the deed, a suit for reformation would hardly be appropriate. But that would not improve the appellant's position. It is well settled that the condition upon which a deed is delivered in escrow may be proved by parol evidence and that ordinarily the statute of frauds has no application to such an agreement, nor is it affected by the rule of evidence, which prohibits a written contract from being contradicted or varied by parol evidence (*Devlin on Real Estate*, 3d ed., par. 312-A and authorities there cited), is also well established that an escrow delivered without authority or obtained fraudulently passes no title (*Smith vs. South Royalton Bank*, 32 Vt., 341; 76 Am. Dec., 179). That is what occurred here; Moore had no authority whatever to deliver the deed in escrow to Carr before the expiration of the time for redemption. It

follows that the certifies of title issued to Carr were of no legal effect and that the suit for the rescission of the deed and the cancellation of the corresponding certificates of title would be in order (see the last two provisos in sec. 55 of Act No. 496). So much for the appellant's theory.

We think, however, that the evidence is conclusive that the plaintiff had no clear conception of the contents of the deed. That he was anxious to protect the rights of redemption held by the parties who sold the land to him, is very obvious; indeed, if he had failed to do so, he would have laid himself open to an action for damages. But the deed was written in the English language, with which the plaintiff was unfamiliar, and he had to rely on the statements of Moore as to the contents and effect of the deed and was told that the document was sufficient. He had confidence in Moore, with whom he had had previous business relations, and it was but natural for him to believe Moore's statement.

Carr, on the other hand, knew the contents of the deed and fully agreed to Moore's plan to place it in escrow until the expiration of the term for the repurchase or redemption of the land. He, nevertheless, in violation of his own agreement, harassed Moore, then a very sick man, into giving him possession of the deed prematurely. He took immediate advantage of that circumstance and hastened to have the document presented to the register of deeds for the issuance of certificates of title. It is elementary that such conduct constitutes fraud and was calculated to obtain an unfair advantage over the plaintiff.

Reformation will be given "where there is a mistake on one side and fraud or unfair dealing on the other" (Devlin on Real Estate, 3d ed., par. 1238). That is this case, and it follows that the suit for reformation may be maintained.

Certain minor points raised by appellant's counsel are so obviously without merit as to require no discussion; the sale of the property by the plaintiff to the defendant was subject to Teck's and Lim's rights of redemption, and it was perfectly proper for the court below, in its judgment, to define the extent of these rights. Neither was it error on the part of the court to hold that the pendency of the action tolled the term for the right of redemption; that is an old and well established rule.

The appealed judgment is affirmed with the costs against the appellant. So ordered.

Johnson, Street, Malcolm, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

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