

**FRANCISCO S. PE AND ANITA MONASTERIO PE, PETITIONERS, VS.  
HON. INTERMEDIATE APPELLATE COURT, DOMINGA SY, LILIA ONG,  
JOSE JUAN TONG, LILY LIM, ONG SEE FU ALIAS ONG TO AN AND  
LUIS...**

*G.R. No. 74781. March 13, 1991*

Ponente: MEDIALDEA, J.

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**MEDIALDEA, J.:**

This is a petition for review on certiorari seeking the reversal of the decision of the respondent Intermediate Appellate Court (now Court of Appeals) dated December 27, 1985 which affirmed the decision of the Court of First Instance of Iloilo City, Branch I dismissing the case; and its resolution dated May 7, 1986 denying the motion for reconsideration for lack of merit.

The antecedent facts giving rise to the controversy at bar are as follows:

Plaintiff spouses Francisco and Anita Monasterio Pe were the registered owners of several parcels of land, designated as Lots Nos. 40, 41, 42, 45 and 47 of the Cadastral Survey of Iloilo and two buildings on Lot 40 and 41, all situated in the City of Iloilo, Philippines.

The above-mentioned parcels of land were mortgaged with different banking institutions. Lots Nos. 40 and 41 were mortgaged to the Philippine Veterans Bank for P351,162.59; Lots Nos. 42 and 45 were mortgaged to the Development Bank of the Philippines for P189,322.49; and Lot No. 47 to Philippine Commercial and Industrial Bank for P57,000.00. Also mortgaged with the same bank were a tractor and one set of "Ransomed Model II, Offset Discharrow Category II-18-24 diameter" for P118,242.00.

Sometime in September 1976, the Pe spouses and the spouses Ong Su Fu alias Ong To An and Luisa Yu negotiated for the purchase of the five (5) parcels of land.

On September 14, 1976, Ong Su Fu issued in favor of Francisco Pe a check for P30,000.00 as earnest money and as partial payment for the price of the lots.

Thereafter, on September 20, 1976 the Pe spouses as First Party, executed a contract to sell, but it was in favor of defendant Domingo Sy (son-in-law of Ong Su Fu). Said contract was prepared by the Ong Su Fu's counsel. The pertinent portions of the said contract are quoted hereunder:

"WITNESSETH

"That the FIRST PARTY is the registered owner of five (5) parcels of land, more particularly described as follows:

"x x x x x x x x.

"That the FIRST PARTY intends to sell the above-described parcels of land and the SECOND PARTY is

likewise desirous of buying the same for the total consideration of SIX HUNDRED TWENTY THOUSAND (P620,000.00) PESOS, Philippine Currency, under the following terms and conditions, to with (sic):

"1. That the SECOND PARTY shall pay to the FIRST PARTY the sum of THIRTY THOUSAND (P30,000.00) PESOS, upon the signing of the agreement which shall serve as partial payment of the total consideration, receipt of which is hereby acknowledged by the FIRST PARTY as shown by his signature appearing herein below;

"2. That since the above-described parcels of land are presently incumbered (sic) with different banking institutions it is the agreement of the parties that as soon as the incumbrance (sic) appertaining to the respective lots is paid and the mortgage herein released, the FIRST PARTY shall execute the corresponding final deed of sale for said lots in favor of the SECOND PARTY, it being understood that the SECOND PARTY shall procure the payment of the said bank obligation which payment shall be considered payment of that particular lots; that this procedure shall be followed with respect to the other lots herein involved;

"x x x x x x x x." (Rollo of Exhibits, pp. 1 and 2)

Thereafter, Domingo Sy transferred his rights under the contract to sell to Jose Juan Tong with respect to Lots Nos. 40 and 41.

On October 4, 1976, after payment by Jose Juan Tong of the Pe spouses' account with the Philippine Veterans Bank in the amount of P351,162.59, pursuant to the contract, the latter executed in favor of the former a deed of sale covering Lots Nos. 40 and 41 and the two buildings thereon.

However, the deed of sale stated that the consideration was P95,000.00. The titles to the two parcels of land were subsequently transferred to spouses Jose Juan Tong and Lily Lim.

On the same date, the Pe spouses executed in favor of Domingo Sy a deed of sale over Lots Nos. 42 and 45, after payment by the latter of the former's account with the Development Bank of the Philippines in the amount of P189,322.49.

Again, the deed of sale stated a different consideration which is P30,000.00 and thereafter, the respective titles were issued in favor of Domingo Sy and his spouse.

Consequently, a contract to sell and a corresponding deed of sale covering Lot No. 47 were prepared for Dionisio Sy (brother of Domingo Sy), but the deed did not materialize as the former's offer of P49,454.92, as payment for the remaining parcel of land (Lot No. 47) was rejected by the Pe spouses, the latter insisting on the full payment of their obligation with the Philippine Commercial and Industrial Bank (PCIB) in the amount of P383,615.97 and P620,000.00 as the alleged consideration stipulated in the Contract to Sell.

Thereafter, the Pe spouses failed to settle their account with the PCIB, hence, the mortgages on Lot No. 47, the tractor and the "Offset Discharrow" were foreclosed and the properties were sold at public auction. After the foreclosure and sale of the properties, the Pe spouses were asked to pay the deficiency in the amount of P110,095.08 as of April 5, 1979, and the overdue balance in several promissory notes.

On November 25, 1976, the Pe spouses commenced a complaint for specific performance and/or rescission of contract and reconveyance of property with damages, with the Court of First Instance of Iloilo.

After a careful perusal of the facts and circumstances of the case, the trial court reached the conclusion that the questioned stipulation in the contract "is clear and could not be construed otherwise." (Record on Appeal, p. 109) In addition, the court found that there was partial novation through the substitution of spouses Jose Juan Tong and his wife for Domingo Sy in the purchase of Lots 40 and 41 and the two buildings thereon. Accordingly, the trial

court rendered a decision on August 3, 1981, the dispositive portion is hereunder quoted as follows:

"WHEREFORE, the above-entitled case is dismissed. With costs against the plaintiffs.

"SO ORDERED." (Record on Appeal, p. 111)

From said decision, the Pe spouses interposed an appeal before the respondent Intermediate Appellate Court (now Court of Appeals). The respondent court affirmed the trial court's decision and rendered judgment on December 27, 1985, to wit:

"WHEREFORE, the decision appealed from is hereby AFFIRMED. With costs.

"SO ORDERED." (Rollo, p. 24)

On March 1, 1986, the Pe spouses filed a motion for reconsideration of the aforementioned Intermediate Appellate Court's (now Court of Appeals) decision. However, respondent court in a resolution dated May 7, 1986 denied the motion for lack of merit.

Hence, this present petition raising this lone issue:

WHETHER THE ENTIRE CONSIDERATION OF THE CONTRACT TO SELL IS P620,000.00 OR P1,544,161.05 (Rollo, p. 8)

However, the petitioners raised four (4) assignment of errors, which are as follows:

I

THE LOWER COURT ERRED IN GIVING THE DEFENDANTS THE BENEFITS OF NOVATION AS A DEFENSE NOTWITHSTANDING THAT NO SUCH SPECIAL OR AFFIRMATIVE DEFENSE HAS EVER BEEN INTERPOSED IN THEIR ANSWER AND THUS DEEMED WAIVED BY THEM.

II

THE LOWER COURT ERRED IN DEALING WITH ISSUES THAT WERE NEITHER RAISED IN THE PLEADINGS NOR INCIDENTAL TO THE ISSUE JOINED THEREBY WHICH HAD BEEN AGREED UPON BY THE PARTIES IN THE PRE-TRIAL CONFERENCE AS THE ONLY ONE TO BE RESOLVED BY THE COURT.

III

THE LOWER COURT ERRED IN NOT FINDING THAT THE PREPONDERANCE OF EVIDENCE IS IN FAVOR OF THE PLAINTIFFS.

IV

THE LOWER COURT ERRED IN DISMISSING THE COMPLAINT.

Petitioners allege that the consideration of the Contract to Sell is P1,544,161.05 and thereby submit the following grounds as the basis for its allegation, to wit:

"1. The wordings of the Contract itself point to the consideration of P1,544,161.05. x x x. (Rollo, p. 9)

" x x x

The petitioners insist that the questioned stipulations of the contract mean

"that 'Second Party' (private respondents) shall first pay the total bank obligations of the five (5) lots to the three (3) banks (Development Bank of the Philippines, Philippine Veterans Bank and Philippine Commercial

and Industrial Bank) and thereafter, pay the amount of P620,000.00 to the first party (petitioners). Since the total obligations to the three (3) banks is P924,161.05, the total consideration is that amount plus P620,000.00 which is P1,544,161.05." (Rollo, pp. 9-10)

"2. x x x

"To limit the consideration to only P620,000.00 is senseless and absurd because the bank obligations alone amounted to P924,161.05 - very much more than P620,000.00." (Rollo, p. 10)

"3. x x x

"To insist on P620,000.00 is to make ineffective the terms and conditions providing for the payment of the bank obligations - an interpretation which would contradict the clear and positive stipulation of the contract. (Rollo, p. 10)

" x x x

"4. The logic and common sense of the contract point to P1,544,161.05 as the consideration. (Rollo, p. 11)

" x x x

"5. x x x

"If the consideration is only P620,000.00, why did the two private respondents pay the obligations covering Lots Nos. 40, 41, 42 and 45 with the banks? They had no business doing that because they would eventually be paying more - P924,161.05 (the total bank obligations)." (Rollo, p. 11)

"6. x x x.

The market value of the lots in 1976 must be twice its value in 1967, hence,

"it is very far from the version of the private respondents which is P620,000.00." (Rollo, p. 11)

On petitioners' first assignment of error, they contend that "novation was never raised in the pleadings nor in the pre-trial conference," hence, the lower court erred in giving the defendants the benefit of novation as a defense.

For its second assignment of error, petitioners allege that "the respondent court has no jurisdiction to invent its own issues. It is not only the parties who are bound by the issues stated in the pre-trial order but the court is equally bound thereby." (Rollo, p. 14)

On the other hand, respondents argue that the questioned stipulations in the Contract to Sell are undoubtedly clear and unambiguous and insisted that only the petitioners injected doubtful interpretation to said stipulations.

In response to petitioners' first and second assignment of error, the respondents contend that "the records of the case will show that novation was pleaded in the answer; thus, having been properly pleaded the issued novation was unquestionably within the jurisdiction of the Honorable lower court to resolve." (Rollo, pp. 121-122)

The Court finds petitioners' first and second assignment of errors meritorious.

In the recent case of General Insurance and Surety Corporation v. Union Insurance Society of Canton (G.R. Nos. 30475-76, 22 November 1989, 179 SCRA 530), the Court citing Section 2, Rule 9 of the Revised Rules of Court ruled that "defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived, the only exceptions recognized under the rule being: (1) a failure to state a cause of action, and (2) lack of jurisdiction."

In contradiction to respondents' contention, We rule that novation was never pleaded in the respondents' answer,

hence, such defense is deemed waived.

Time and again, We stress that "courts of justice have no jurisdiction or power to decide a question not in issue." (Viajar v. Court of Appeals, G.R. No. 77294, 12 December 1988, 168 SCRA 405, 411 citing *Lim Toco v. Go Fay*, 80 Phil 166) A judgment going outside the issues and purporting to adjudicate something upon which the parties were not heard is not merely irregular, but extrajudicial and invalid. (Viajar v. Court of Appeals, supra citing *Salvante v. Cruz*, 88 Phil 236-244, *Lazo v. Republic Surety and Insurance Co., Inc.*, 31 SCRA 329, 334)

Thus, the lower court erred in discussing novation, an issue which is neither raised in the pleadings nor material to the controversy. The lower court is hereby admonished in dealing and discussing issues that were neither raised in the pleadings, incidental or material to the controversy at bar.

Notwithstanding such error, We still rule that the findings of facts of the lower court considering the fact that such were affirmed by the appellate court should be given full credit.

The Supreme Court is not a trier of facts. It leaves these matters to the lower court, which have more opportunity and facilities to examine these matters. The Supreme Court has no jurisdiction as a rule to reverse the lower court's findings. (*Korean Airlines Ltd. v. Court of Appeals*, G.R. No. 61418, 24 September 1987, 154 SCRA 211) As a rule, findings of fact of the Court of Appeals are final and conclusive and cannot be reviewed on appeal, provided, they are borne out by the record or are based on substantial evidence. However, this rule admits of certain exceptions, as when the findings of facts are conclusions without citation of specific evidence on which they are based; or the appellate court's findings are contrary to those of the trial court. (*Sese v. Intermediate Appellate Court*, G.R. No. 66168, 31 July 1987, 152 SCRA 585)

The findings of fact of both courts are conclusions based on substantial evidence and the appellate court's findings are not in any way contrary to that of the lower court, therefore, such factual findings are conclusive and should be given great weight.

The lower court's decision is based on the specific provisions of the contract. It ruled that "this particular stipulation is clear and could not be construed otherwise. Plaintiff Francisco Pe is a holder of the degree of Bachelor of Science in Commerce with twenty six years of experience as businessman. He could have realized the import of the document he signed." (Record on Appeal, p. 64)

Article 1370 of the New Civil Code provides 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 stipulation shall control.

"If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former."

After a thorough examination of the provisions of the Contract to Sell, the Court finds petitioners' contention devoid of merit. The words of the contract are clear and leave no doubt upon the true intention of the contracting parties. The condition laid down in paragraph (2) of the Contract to Sell does not provide for an additional consideration but only provides for the manner in which the consideration is to be applied. It clearly provides that the payment shall be applied to petitioners' obligations with the bank where the respective properties were mortgaged and upon their release, petitioners shall execute the final deed of sale. The subsequent acts of the parties conformed with this condition. Thus, the parties should be bound by such written contract.

It should also be noted that at the time of the execution of the Contract to Sell, the total obligation due to the PCIB as regards Lot No. 47 was only P99,374.89. The rise of the same obligation to P383,615.96 (Record on Appeal, p.

98) was brought about by subsequent loans the petitioners obtained with the same bank for which the tractor and an "Offset Discharrow" were given as additional security.

Contracts are respected as the law between the contracting parties. The parties may establish such stipulations, clauses, terms and conditions as they may want to include. As long as such agreements are not contrary to law, morals, good customs, public policy or public order they shall have the force of law between them. (Mercantile Insurance Co., Inc. v. Ysmael Jr. and Co., Inc. G.R. No. 43862, 13 January 1989, 169 SCRA 66)

All premises considered, this Court is convinced that the lower court did not commit any error in dismissing the complaint.

ACCORDINGLY, the appealed judgment and resolution of the respondent Intermediate Appellate Court (now Court of Appeals) affirming the lower court's decision are hereby **AFFIRMED** with costs against the petitioners.

**SO ORDERED.**

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

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