

BA FINANCE CORPORATION, PETITIONER, VS. HON. INTERMEDIATE APPELLATE COURT, RENE TAN, RESPONDENT.

G.R. No. 76497. January 20, 1993

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition for review on certiorari seeks the reversal of the decision of the former Intermediate Appellate Court in CA-G.R. No. CV-00878 dated December 19, 1985 which affirmed with Modification the judgment of the then Court of First Instance of Cebu, Branch 8. The trial court's decision has the following dispositive portion:

"THE FOREGOING CONSIDERED, judgment is hereby rendered in favor of the plaintiff and against the defendant, BA Finance Corporation, directing the latter to: reform the contract of lease to one of simple loan with the car being posted by way of chattel mortgage; declaring as null and void the Deed of Sale, Exhibit "M" (equivalent to Exhibit "6"); directing said defendant to pay the plaintiff the amount of P50.00 per day starting June 9, 1977; to pay the plaintiff Ten Thousand (P10,000.00) Pesos by way of attorney's fees and litigation expense in the amount of Three Thousand (P3,000.00) Pesos; the dismissal of this case with respect to co-defendants, O.S. 'Bud' Simon and Edmundo S. Bacay; with costs against aforementioned defendant.

SO ORDERED." (Record on Appeal, p. 80)

The petitioner is a domestic corporation engaged in financing facilitated, among others, by the so-called lease-purchase agreements the essence of which is to lend money to a customer in need of cash on the condition that the latter executes a deed of sale in favor of the petitioner covering some personal property and thereafter the petitioner leases back the said property to the same customer for his own use. (Rollo, p. 1)

The private respondent is the proprietor - manager of the Martina Industries (Cebu Branch), an entity engaged in handicraft business (Record on Appeal, p. 1; Rollo, p. 1).

The subject matter of the instant case is a 1975 Model of a yellow Volkswagen Sedan bearing Motor No. BH-814634 and Serial No. FS-002598 (Exhibit "B") which the private respondent purchased for P32,000.00 from one Darryl G. Dela Cruz as evidenced by a Deed of Absolute Sale executed on September 23, 1976 (Exhibit "A").

The controversy in the instant petition which was assigned to this ponente on August 17, 1992 sprang from the contract entered into between the petitioner and the private respondent sometime in October 1976.

In his complaint for fraud and damages with prayer for a writ of preliminary injunction captioned "Rene Tan v. BA Finance Corporation, O.S. 'Bud' Simon and Edmundo S. Bacay," the private respondent alleged, among others, that in October 1976, he applied for a loan from the petitioner using his 1975 Volkswagen Sedan as collateral; that after the loan application was approved, he received from the petitioner the sum of P15,913.06; that as of June 9, 1977, he had paid the petitioner the amount of P5,951.64 leaving a balance of P9,961.42, exclusive of interests; that in a letter dated June 7, 1977, Edmundo S. Bacay, then assistant vice-president of the

petitioner corporation demanded payment of P2,009.34 as rentals due for the private respondent's use of the car in question, otherwise, the private respondent had to relinquish possession of the same in favor of the petitioner; that on June 7, 1977, O.S. "Bud" Simon, presenting himself as vice-president of the petitioner corporation at the office of Martina Industries, demanded payment of the sum of P2,009.34 or the relinquishment unto the petitioner of the possession of the subject car; that the said Simon apprised him of the registration of the subject car in the name of the petitioner and threatened him that if he resisted the taking of the automobile by Simon, he would be charged for "theft" with the Traffic Control Division of the Philippine Constabulary; that the said Simon unlawfully took possession of the subject car thus disrupting the business operations of Martina Industries since the subject car was the ready means of transportation of Martina Industries to follow up orders, purchases, collections and other business transactions; and that in view of the petitioner's unlawful act of depriving him of his property without due process of law, nominal, moral and exemplary damages are sought to be recovered by the private respondent (Record on Appeal, pp. 1-5).

On the other hand, the petitioner together with its vice-president O.S. "Bud" Simon and assistant vice-president Edmundo S. Bacay, in its answer with counter-claim alleged, among others, that the contract entered into between the corporation and one Reinaldo Tan was one of lease covering the subject car which had been registered under its name as per Registration Certificate No. 927086 and Official Receipt No. 0061832 (Exhibits "3" and "3-A"); that there was no unlawful taking of the subject car since it was the private respondent's driver who voluntarily surrendered possession of the said car after the private respondent failed and refused to pay the monthly rental of P991.94 for the months of April, May and June 1977; that the surrender of the possession of the subject car by the private respondent to the petitioner as the legal owner thereof was pursuant to the provisions of the Contract of Lease executed on October 25, 1976 between the petitioner corporation as lessor and the spouses Tan as lessees; that as of June 22, 1977, the private respondent owed the petitioner the amount of P3,012.46 covering the accrued rentals for the months of April, May and June plus interest thereof; and that on account of the private respondent's wilful breach of the lease contract aforementioned the resulting damages, if any, should be borne by the private respondent alone (Record on Appeal, pp. 6-9).

After trial, the lower court, on December 19, 1980, rendered judgment in favor of the private respondent. Consequently, the petitioner filed a motion for reconsideration which was denied by the trial judge in an Order dated July 31, 1981.

On appeal, the appellate court affirmed the lower court's decision with the modification as follows:

"WHEREFORE, the judgment is hereby amended expunging therefrom the rental of P50.00 and reducing the attorney's fees to P5,000.00. Costs against appellants." (Rollo, p. 22)

The subsequent motion for reconsideration of the petitioner was denied for lack of merit in the appellate court's resolution dated July 29, 1986.

Hence, the instant petition which submits before us the following assignment of errors, to wit:

"FIRST ASSIGNMENT OF ERROR

The respondent Honorable Intermediate Appellate Court erred in affirming the trial court's holding that the intent of private respondent was one of loan in that:

1. The documents presented unmistakably indicated in BOLD LETTERS that the transaction was a Lease Contract and therefore impossible to have escaped the attention of the private respondent when he signed said documents.
2. The denial by private respondent and his wife that they did not appear before petitioners counsel in Cebu for acknowledgment of their Lease Contract with petitioner was not sufficiently proven.

3. The fact that the insurance policy for the subject vehicle for the period 14 March 1977 to 14 March 1978 mentions private respondent as the insured is not sufficient indication that ownership of said vehicle was not transferred to petitioner.

4. The filing by private respondent of Criminal Complaint with the Fiscal's Office against petitioner's officer and its legal counsel did not necessarily mean that said individuals committed the crime charged, nor was it an indication that the contract intended by the parties was one of loan and not lease purchase agreement. (Rollo, pp. 3-4)

SECOND ASSIGNMENT OF ERROR

The trial court gravely erred in granting monetary awards to private respondent in that:

Granting that the contract was a Chattel Mortgage, the alleged taking of the car would still be lawful and justified private respondent having defaulted in the payment thereof. (Rollo, p. 12)

The propriety of the appellate court's order to reform the contract of lease entered into between the petitioner and the private respondent to one of loan is the crucial issue in the instant case.

The petitioner strongly argues that the document in question cannot be mistaken for any agreement other than a lease contract inasmuch as its provisions clearly expressed the terms previously discussed by the petitioner and the private respondent; that the contract of lease under consideration which was duly notarized bore the signatures of the private respondent and his spouse Lourdes Arnoco Tan as Lessees; and that the repossession of the subject car by the petitioner was lawful inasmuch as it was made pursuant to the provisions of the lease contract entered into between the petitioner and the private respondent.

The private respondent failed to file his comment on this petition, hence, we dispensed with it, gave due course to the petition, and for failure of the private respondent's counsel to file his withdrawal of appearance as required despite the repeated directive to comply therewith, the Court resolved to order the arrest and commitment of the said counsel. (Rollo, pp. 43, 47, 54, 61, 68, 72, 77 and 84). Likewise, for failure of the private respondent to comment on the manifestation of his counsel dated October 24, 1990 regarding the latter's withdrawal from the case, a similar order of arrest and commitment directed to the National Bureau of Investigation was given in the same resolution dated May 27, 1991. (Rollo, pp. 58, 61, 68, 72, 77 and 84)

After a careful examination of the records of the instant case, we find merit in the petitioner's stance.

First of all, there is no doubt that both the spouses Tan affixed their signatures on a document with its caption "Contract of Lease" printed in bold letters and that the date of execution thereof read "October 25, 1976" (Exhibit "1"). In open court, the private respondent himself admitted that their signatures on the said document whereby they signed as "lessees" were authentic (TSN, August 29, 1978, pp. 12-13). The private respondent further identified as his the signature "R. Tan" on a Deed of Absolute Sale dated October 22, 1976 (Exhibit "6") by virtue of which the subject Volkswagen Sedan was sold by him to the petitioner for a consideration of P20,000.00.

The private respondent impressed both the lower court and the appellate court that at the time the signatures on the contract of lease were affixed, he and his wife were in a hurry to go to Manila where they were scheduled then to attend a Lions International Forum so that what they signed were blank papers.

On the contrary, we are convinced that the appellate court, in affirming the lower court's finding regarding the signing of the contract of lease, overlooked a vital fact -- that the private respondent is a seasoned businessman who enters into contracts as regular practise. As such, it strains credulity to picture the private respondent signing totally blank papers when he had been engaged in business for ten years before the agreement between him and

the petitioner was formalized. (Ibid, pp. 23-24)

The following testimony of the private respondent on cross-examination readily discloses that he could not have signed both the contract of lease and the deed of absolute sale without having been aware of their true nature. Thus:

xxx xxx xxx

“ATTY. DEEN:

“Q.

So therefore Mr. Tan, it is clear that you signed this document without reading and understanding the same?

A.

As I said before, these were all blanks (sic) when I signed them. It was the BA Finance Corporation to (sic) fill them up.

Q.

On top of Exhibit ‘1’ Mr. Tan are bold letters ‘Contract of Lease’ printed. This was not blank when you signed it?

A.

That was blank when I signed it.

Q.

The term Contract of Lease was already there?

A.

That was blank.

Q.

Are you trying to tell this Honorable Court that this phrase ‘Contract of Lease’ was not printed in this Exhibit ‘1’ when you signed it?

A.

No, sir, this form was already as ease (sic) because this is the form of the BA Finance, the printed form.

Q

So, Mr. Tan, the phrase ‘Contract of Lease’ on top of Exhibit ‘1’ was already there when you signed it?

A.

It is there because it is a printed form.

Q.

And likewise in Exhibit ‘6’, on top of the phrase ‘Deed of Absolute Sale’, when you signed this, was this phrase already here in Exhibit ‘6’?

A.

Yes, sir.

Q.

What you are therefore saying, Mr. Tan, is that, you signed Exhibit '1' with the phrase 'Contract of Lease' already there and Exhibit '6' with the phrase 'Deed of Absolute Sale' there, not in blank?

A.

As I said, on the very top of it, there was a bunch of paper. On the very top of that there was an application for a loan in which case that was the very thing I was interested. I am not interested in the supporting papers. My interest was focused to the application form so I could secure a loan. It seems that BA Finance had fooled me into getting that funds (sic), thinking all the time that what I was getting was a (sic) proceeds of the loan." (TSN, August 29, 1978, pp. 20-23)

The explanation purportedly advanced by the private respondent to support his act of signing haphazardly is flimsy and unacceptable. An experienced businessman who signs important legal papers cannot disclaim the consequent liabilities therefor after being a signatory thereon. (See *People's Financing Corporation v. Court of Appeals*, 192 SCRA 34, 38-39 [1990]) Besides, there is evidence on record that the private respondent was notified in writing by the petitioner of the monthly rental of P991.94 under the leasing arrangement agreed upon by the contracting parties - the petitioner as lessor and the private respondent and his wife as lessees. (Exhibit "5"; TSN, April 4, 1979, pp. 7-9)

Hence, what is more plausible under the circumstances is the fact that the private respondent was fully cognizant of the nature of the financing scheme to be adopted by the petitioner to keep his business going so that he signed the necessary papers without much ado.

Secondly, there is a clear indication that the transaction between the petitioner and the private respondent is what is more popularly known as a "financing lease" under the Financing Company Act (Republic Act No. 5980, as amended). In the case of *Rafael S. Beltran and Ma. Violeta Beltran v. PAIC Finance Corporation, Service Equipment Specialists Co., Inc., Rodrigo Reyes and Iraida Reyes* (G.R. Nos. 83113 and 83256, May 19, 1992), we expounded on the nature of a financing lease, to wit:

"A financing lease may be seen to be a contract sui generis, possessing some but not necessarily all of the elements of an ordinary or civil law lease. Thus, legal title to the equipment leased is lodged in the financial lessor. The financial lessee is entitled to the possession and use of the leased equipment. At the same time, the financial lessee is obligated to make periodic payments denominated as lease rentals, which enable the financial lessor to recover the purchase price of the equipment which had been paid to the supplier thereof x x x. (At pp. 17-18)

As part of the private respondent's rebuttal evidence, Edmundo Bacay, then manager of the petitioner, testifying on the features of the credit application of the spouses Tan, declared on direct examination, that:

"ATTY. ALFAFARA

(TO WITNESS):

Q.

Will you please tell the Honorable Court, Mr. Bacay, what credit facilities would the plaintiff or his wife would (sic) like to avail of from your corporation?

A.

Under this application they were applying for a financing of a Volkswagen car.

Q.

Will you please explain on that words (sic), 'financing of Volkswagen car'?

A.

Well, financing is a general term used in the financing industry. It may apply for a direct loan for a lease transaction or for the acquisition of a unit, like a vehicle, heavy equipment or car or appliance.

Q.

But in a direct loan transaction, the applicant must be the owner already of the vehicle which he wants to use as a collateral?

A.

Yes.

Q.

And by which collateral your corporation might be willing to extend a loan to him?

A.

No, a direct loan is a transaction between two (2) parties. It's between a borrower and the financing company in our case. This is where a collateral is offered by the borrower and we gave (sic) in turn a specific amount for that loan.

Q.

I notice in the lower right hand corner of Exhibit "L", there is a typewritten statement 'financing of Volkswagen car Model 1975 to pay off balance of purchase 2-Sedan No. 1975 price' (sic), do you mean to tell the Honorable Court, Mr. Witness, that the applicant bought a Volkswagen car and he has a pending balance for which he requested your company to finance said purchase balance?

A.

Mr. Attorney, the application, if I remember correctly, was given to our previous Assistant Manager, Mr. Calixto, and he was the one who entered (sic) with the applicant. Now, if you want, I can advance my own interpretation if it is alright with you. This is what happened. I think the plaintiffs were purchasing a Volkswagen car at that time and they had a balance to be paid for the purchase of the car and they wanted us to finance that balance or I think what they did was they instituted a Deed of Sale between the seller of the car and themselves at that point in time when they approached us and since a financing company normally does not go into direct loan, it's not one of our normal services because the primary purpose there is the direct loan rates are limited to 12 to 14%, so what we proposed (sic) to them was to sell the car to us and lease it back from us retaining possession of the car, they will institute a Deed of Sale in our favor, for the company, use the car and pay us monthly rentals, after which time or after the term of the transaction which is 24 months in this case, we will in turn make a Deed of Sale in their favor for the amount of the residual value.

Q.

When you say therefore, Mr. Witness, that by virtue of the transaction entered into by the plaintiff in this case with your financing corporation that (sic) you also executed a document wherein that undertaking to sell back the car to the plaintiff herein after the expiration of the 24-month term is also embodied in writing (sic)?

WITNESS:

A.

No, it is not. This is a verbal commitment made by the company and this is normal in all finance companies, leasing companies, that if a lease transaction is pursued, the borrower in this case, Martina Industries of the Tan spouses, will have the first option to purchase or acquire the unit at the end of the term for the amount of residual value which in this case I think is One Thousand (P1,000.00) Pesos and when we made the Deed of Sale since they have a guaranty deposit at the start of the transaction, we just applied the amount of the guaranty deposit to the selling price so that they will not have to shell out extra cash after paying the last rental.

ATTY. ALFAFARA:

At this juncture, your Honor, may we request that "financing of a Volkswagen car Model 1975 to pay off balance purchase price-2 door Sedan" be duly bracketed and marked as Exhibit "L-2". (TSN, December 13, 1979, pp. 5-7)

If it were true that what the private respondent intended was a contract of loan with the petitioner whereby his two-door Volkswagen Sedan Model 1975 would serve as a collateral, there is no logical explanation for the fact that the private respondent had been paying monthly rentals based on the subject contract of lease (Exhibit "1") signed by the petitioner and the private respondent. From the date of execution of the said lease contract on October 25, 1976, the private respondent dutifully paid the monthly rentals as stated in the lease contract as evidenced by the official receipts issued by the petitioner. It was only in April 1977 that the private respondent defaulted for the first time in his payment of the monthly rental as agreed upon in the lease contract. Subsequently, the succeeding defaults in the payment of the agreed lease rentals resulted in the application of paragraph 15 of the lease contract and the private respondent was duly notified thereof in a demand letter dated June 7, 1977 (Exhibit "7") which we reproduce below:

"June 7, 1977

Mr. Reinaldo Tan
General Manager
MARTINA INDUSTRIES
304 Mango Ave., Cebu City

Re: Lease Account #10001-013-2

Dear Mr. Tan:

In October, 1976, BA Finance Corporation purchased a 1975 Volkswagen Sedan, Motor No. BH-814634, Serial No. FS-002598 from Reinaldo Tan. Also in October 1976, BA Finance Corporation agreed to lease our automobile to Reinaldo and Lourdes Tan. The terms of the Contract of Lease call for 24 monthly rental payment of P991.94 each, due in the office of BA Finance Corp. on or before the 22nd of every month. The terms of the Contract of Lease are not being observed! As of this date, the April and May monthly rental payments, plus delinquent interest, are past due.

Please refer to Paragraph 15 of the Contract of Lease covering default. Please consider this official demand to remit P2,009.34 which is broken down as follows, by June 9, 1977.

P1,983.88 April & May rental payments

25.46 Past due interest

P2,009.34 Total Past Due

We shall expect your remittance of P2,009.34, or the return of our 1975 Volkswagen Sedan, by 5:00 p.m., Thursday, June 9, 1977 at the office of BA Finance Corp., Osmeña Blvd., Cebu City.

Very truly yours,

EDMUNDO S. BACAY
Assistant Vice President”

(Exhibit “7”, p. 7)

Paragraph 15 of the subject contract of lease provides that the lessor (petitioner) is given the option to cancel the contract before the expiration of its term if the lessee (private respondent) fails to pay any rental when it falls due and such option shall be exercised by serving a written notice upon the lessee at his last known address. It further contains a stipulation that upon cancellation of the contract, the lessee is obligated to return the equipment leased at his own expense. Otherwise, the lessor shall take away and repossess the said equipment without necessity of any court order or any other legal processes and without incurring any liability whatsoever. (Exhibit “1”)

The petitioner in this case complied with the requisite notice stated in the aforementioned provision of the lease contract and was able to recover possession of the subject car after the private respondent voluntarily surrendered the subject car. We find baseless and dubious the private respondent’s claim that the taking of the subject car by the petitioner was attended by force and intimidation inasmuch as the return of the subject car was made by him pursuant to the default provisions of the lease contract in question.

Moreover, a perusal of the testimonial evidence offered by Edmundo Bacay leads us to conclude that the same reinforced, rather than debunked, the petitioner’s theory that the private respondent perfectly understood the transaction he entered into with the petitioner. Hence, for emphasis, we further quote our enunciation in the Beltran case, *supra*, that:

“x x x Generally speaking, a financing company is not a buyer or seller of goods; it is not a trading company. Neither is it an ordinary leasing company; it does not make its profit by buying equipment and repeatedly leasing out such equipment to different users thereof. But a financial lease must be preceded by a purchase and sale contract covering the equipment which becomes the subject matter of the financial lease. The financial lessor takes the role of the buyer of the equipment leased. And so the formal or documentary tie between the seller and the real buyer of the equipment, i.e., the financial lessee, is apparently severed. In economic reality, however, that relationship remains. The sale of the equipment by the supplier thereof to the financial lessor and the latter’s legal ownership thereof are intended to secure the repayment over time of the purchase price of the equipment, plus financing charges, through the payment of lease rentals; that legal title is the upfront security held by the financial lessor, a security probably superior in some instances to a chattel mortgagee’s lien” (At p. 17)

Thirdly, the appellate court found merit in the private respondent’s contention that the contract of lease in question was not duly notarized since on the date of the said acknowledgment, November 17, 1976, both the private respondent and his wife were in Manila. In this respect, the appellate court committed reversible error. The evidence offered by the private respondent in support of his contention (Exhibits “I” - “I-23”) merely succeeded in proving that the private respondent left Cebu for Manila on the 7th of November 1976 via Sulpicio Lines. (Exhibits “I”, “I-1”, and “I-2”) The other occasion that the private respondent sailed via Sulpicio Lines (from Manila to Cebu) was on November 28, 1976 (Exhibits “I--17”, “I-18”, “I-19” and “I-19-A”)

According to the private respondent, as earlier mentioned, he and his wife, at the time of the signing of the contract were in a hurry to attend a Lions International Forum so they signed blank papers before they left for Manila and he and his wife were actually in Manila on November 17, 1976 when the subject lease contract was apparently acknowledged before a notary public. From the Certificate of Attendance (Exhibit “I-12”) issued by the Lions International in the name of the private respondent, it is shown that the forum was held on November

25-28, 1976 at the Philippine International Convention Center in Manila. Nowhere from the receipts and telegrams submitted by the private respondent as documentary evidence can we definitely conclude that the private respondent and his wife were in Manila on the date the subject lease contract was acknowledged. We agree with the petitioner's submission that the private respondent utterly failed to establish that it was physically impossible for him to shuttle between Cebu and Manila on a moment's notice considering the nature of his occupation. Suffice it to state that in the absence of strong, complete and conclusive proof of its falsity or nullity, the evidentiary nature of public documents must be sustained (see *Legaspi v. Court of Appeals*, 142 SCRA 82, 89 [1986]). The notarization of a private document such as the contract of lease in this case converts such document into a public one. (See *Joson v. Baltazar*, 194 SCRA 114, 119 [1991] citing *Aspacio v. Inciong*, 161 SCRA 181 [1988] and *Bermejo v. Barrios*, 31 SCRA 764 [1970]) The private respondent's evidence cannot overturn the presumption that official duty has been regularly performed. (Rule 131, Section 36, subparagraph (m), Revised Rules on Evidence)

Coming now to the main issue of whether or not the appellate court correctly ordered the reformation of the subject lease contract to one of simple loan with the car being posted by way of chattel mortgage, we find the private respondent's allegation that their true intention was not reflected in the subject lease contract unsupported by the evidence on record.

Article 1359 of the Civil Code provides, in part, that:

“ART. 1359. When, there having been a meeting of the minds of the parties to a contract, their true intention is not expressed in the instrument purporting to embody the agreement, by reason of mistake, fraud, inequitable conduct or accident, one of the parties may ask for the reformation of the instrument to the end that such true intention may be expressed.”

In the case at bar, there is no dispute that there was a meeting of the minds with respect to the arrangement whereby the private respondent borrows money from the petitioner and the subject car serves as security for the payment of the loaned amount. The private respondent had insisted that what he merely intended in contracting with the petitioner was to secure a loan with his Volkswagen Sedan as collateral. On the other hand, the petitioner, by virtue of the private respondent's loan application, prepared the necessary papers which included a Deed of Absolute Sale of the subject car in its favor in order that its legal ownership shall serve as the security for the repayment of the amount being loaned by the private respondent through the payment of monthly rentals under a Contract of Lease which the latter duly signed as earlier discussed.

As we have opined in the case of *Ignacio v. Philippine National Railways* (G.R. No. 89309, July 31, 1989, 86 OG 7409 (October 1990):

“x x x In order that an action for reformation may prosper, there must be a meeting of the minds of the parties to a contract, but their true intention is not expressed therein by reason of mistake, fraud, inequitable conduct or accident.”

The private respondent has not succeeded in proving the above circumstances to avail of the remedy of reformation. In attempting to prove his allegation that a contract of simple loan was intended, the private respondent pointed out the discrepancy between the purchase price of P20,000.00 as indicated in the Deed of Absolute Sale (Exhibit “6”) and the amount of P15,913.06 actually received by him as evidenced by a check dated October 22, 1976 (Exhibit “9”) issued to Martina Industries by the petitioner with regard to the financing arrangement agreed upon by them. Such discrepancy, the private respondent had argued, dismisses the petitioner's position that he had agreed to sell his car to the petitioner, hence, the basis for the lease contract as claimed by the petitioner is not existent.

The explanation given by witness Edmundo Bacay as regards the said variance is sufficient. He testified as follows:

xxx xxx xxx

“ATTY. ALFAFARA

(TO WITNESS):

Q.

Now, Mr. Witness, please tell the Honorable Court how the parties intended that the amount which is (sic) indicated in Exhibit “M” which is P20,000.00 when only P15,913 was actually received by him when (sic) Exhibit “M” explicitly states here that the amount, the full amount of P20,000.00 was acknowledged to have been received by the plaintiff.

A.

This is how a leasing transaction goes. We have a purchase price, in this case, this is leasing -- before I go on, we have two kinds of leasing -- one is a purchase lease-back arrangement and another is a straight lease. A straight lease is where somebody will buy or would like to acquire something which has not yet been transferred to him in ownership or possession. And in the finance company, we buy the unit for that particular person and lease the vehicle or the unit to that borrower. A purchase lease-back is where a borrower already owns or has already acquired possession of the unit and would like to have it re-financed; in his case, I am using re-finance as a general term as applied to the finance industry. And what we do in this kind of transaction is we purchase this unit from that borrower and we lease it back to him. And in leasing, there is always (sic) normally the guaranty deposit and residual value plus first month rental which is paid in advance. And in this particular transaction, we purchased the car for P20,000.00 but we already considered in that purchase price the guaranty deposit which normally should be paid in advance by the borrower plus the first month rental. What we did in this transaction was we added up these two (2) amounts to the purchase price so that they will get a net of P15,000.00 plus.

ATTY. ALFAFARA:

Q.

In other words, Mr. Witness, the amount indicated in Exhibit “6” and Exhibit “M” of P20,000.00 is not really very accurate?

A.

It is.

Q.

Because what was actually received as per the document, as per your statement, was only the amount of P15,913.09 and not P20,000.00 as stated in this Deed of Sale already marked as Exhibit “6” for the defendant and adopted as Exhibit “M” for the plaintiff?

A.

That is not correct, Mr. Attorney. Can I total this? Can I use a piece of paper? If I may refer you to the Statement of Transaction, where there are items showing notarial fee, guarantee deposit, advance rental and others, showing a total of P4,096.94 and if we add that figure to the net proceeds received by Martina Industries of P15,913.06 that will amount to P20,000.00. As I explained earlier, that is what we did.

ATTY. ALFAFARA:

At this Juncture, Your Honor, may we request that the figure read into the records by the witness is (sic) contained in the Statement of Transaction which we respectfully request that the same (sic) be marked as Exhibit "N".

COURT:

Mark it. (Deputy Clerk of Court marking)

ATTY. ALFAFARA

(TO WITNESS):

You may continue.

WITNESS

continues:

A.

So, as earlier stated, we bought the car for P20,000.00 and the P20,000.00 is broken down as follows: they get cash proceeds of P15,913.06 of which part and the balance was paid for the notarial fee, guaranty deposit and the advance rental and others which in this instance represents transfer fee of the LTC Registration Certificate, transfer of ownership. So that accounts for the P20,000.00. Now, this happened because this is a purchase lease-back transaction. If it were a straight lease transaction, the plaintiff would have paid us in cash these items -- guaranty deposit, notarial fee, advance rental and others and we would have given them P20,000.00 or we would have given the supplier of the unit P20,000.00."

xxx xxx xxx

In view of the above explanation, the presumption that an instrument sets out the true agreement of the parties thereto and that it was executed for valuable consideration remains. (See *Gatmaitan v. Court of Appeals*, 200 SCRA 37, 44 [1991]). The private respondent was not able to overturn the presumption of validity of the Absolute Deed of Sale dated October 22, 1976 on account of his failure to support his allegation that he did not intend to sell his car to the petitioner. Consequently, we are more inclined to rule that the evidence preponderates in favor of the petitioner.

We reiterate our ruling in the case of *Orcino v. Civil Service Commission*, 190 SCRA 815 [1990] that:

"As a rule, the Court respects the factual findings of the Court of Appeals x x x giving them a certain measure of finality. However, the rule is not without clearly defined exceptions. Findings of facts of the Court of Appeals x x x are not conclusive and may be set aside when:

'x x x x x x x x x

'x x x (1) the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the Court of Appeals went beyond the issues of the case and its findings are contrary to the admission of both appellant and appellees [*Roque v. Buan*, 21 SCRA 548 (1967)]; (6) the findings of facts of the Court of Appeals are contrary to those of the trial court; (7) said findings of facts are conclusions without citation of specific evidence on which they are based; (8) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent [*Garcia v. CA*, 33 SCRA 622 {1970}]; and (9) when the finding of fact of the Court of Appeals is premised on the absence of evidence and is contradicted by evidence on record [*Salazar v. Gutierrez*, 33 SCRA 243 {1970}].' (*Tolentino v. De*

Jesus, 56 SCRA 167, 172 [1974])” (At pp. 819-820; Underlining ours)

Finally, in order to eliminate the incidence of litigants and their counsel failing to comply with our resolutions despite repeated notices, both the private respondent and his former counsel are hereby reprimanded and the fine of P500.00 previously imposed by us remains in effect.

WHEREFORE, in view of the foregoing, the petition is GRANTED. The appealed decision dated December 19, 1985 as well as the judgment of the then Court of First Instance of Cebu, Branch 8 dated December 19, 1980 are hereby REVERSED and SET ASIDE. The Clerk of Court is further directed to notify the Integrated Bar of the Philippines and the Bar Confidant that Atty. Gilberto Alfafara has been reprimanded so that their records will reflect the same.

Bidin, Davide, Jr., Romero, and Melo, JJ., concur.

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