

**SPOUSES UY TONG & KHO PO GIOK, PETITIONERS, VS.
HONORABLE COURT OF APPEALS, HONORABLE BIENVENIDO C.
EJERCITO, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA,
BRANCH XXXVII AND B...**

G.R. No. 77465. May 21, 1988

Ponente: CORTES, J.

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CORTES, J.:

In the present petition, petitioners assail the validity of a deed of assignment over an apartment unit and the leasehold rights over the land on which the building housing the said apartment stands for allegedly being in the nature of a pactum commissorium.

The facts are not disputed.

Petitioners Uy Tong (also known as Henry Uy) and Kho Po Giok (SPOUSES) used to be the owners of Apartment No. 307 of the Ligaya Building, together with the leasehold right for ninety-nine (99) years over the land on which the building stands. The land is registered in the name of Ligaya Investments, Inc. as evidenced by Transfer Certificate of Title No. 79420 of the Registry of Deeds of the City of Manila. It appears that Ligaya Investments, Inc. owned the building which houses the apartment units but sold Apartment No. 307 and leased a portion of the land in which the building stands to the SPOUSES.

In February, 1969, the SPOUSES purchased from private respondent Bayanihan Automotive, Inc. (BAYANIHAN) seven (7) units of motor vehicles for a total amount of P47,700.00 payable in three (3) installments. The transaction was evidenced by a written "Agreement" wherein the terms of payment had been specified as follows:

That immediately upon signing of this Agreement, the VENDEE shall pay unto the VENDOR the amount of Seven Thousand Seven Hundred (P7,700.00) Pesos, Philippine Currency, and the amount of Fifteen Thousand (P15,000.00) Pesos shall be paid on or before March 30, 1969 and the balance of Twenty Five Thousand (P25,000.00) Pesos shall be paid on or before April 30, 1969, the said amount again to be secured by another postdated check with maturity on April 30, 1969 to be drawn by the VENDEE;

That it is fully understood that should the two (2) aforementioned checks be not honored on their respective maturity dates, herein VENDOR will give VENDEE another sixty (60) days from maturity dates, within which to pay or redeem the value of the said checks'.

That if for any reason the VENDEE should fail to pay her aforementioned obligation to the VENDOR, the latter shall become automatically the owner of the former's apartment which is located at No. 307, Ligaya Building, Alvarado St., Binondo, Manila, with the only obligation on its part to pay unto the VENDEE the amount of Three Thousand Five Hundred Thirty Five (P3,536 00) Pesos, Philippine Currency; and in such event the VENDEE shall execute the corresponding Deed of Absolute Sale in favor of the VENDOR and/or Assignment of Leasehold

Rights. [Italics supplied]. (Quoted in Decision in Civil Case No. 80420. Exhibit "A" of Civil Case No. 131532),

After making a downpayment of P7,700.00, the SPOUSES failed to pay the balance of P40,000.00. Due to these unpaid balances, BAYANIHAN filed an action for specific performance against the SPOUSES docketed as Civil Case No. 80420 with the Court of First Instance of Manila.

On October 28, 1978, after hearing, judgment was rendered in favor of BAYANIHAN in a decision the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered, ordering the defendants, jointly and severally, to pay the plaintiffs, the sum of P40,000.00, with interest at the legal rate from July 1, 1970 until full payment. In the event of their failure to do so within thirty (30) days from notice of this judgment, they are hereby ordered to execute the corresponding deed of absolute sale in favor of the plaintiff and/or the assignment of leasehold rights over the defendants' apartment located at 307 Ligaya Building, Alvarado Street, Binondo, Manila, upon the payment by the plaintiff to the defendants of the sum of P3,535.00. [Italics supplied].

Pursuant to said judgment, an order for execution pending appeal was issued by the trial court and a deed of assignment dated May 27, 1972, was executed by the SPOUSES [Exhibit "B", CFI Records, p. 127] over Apartment No. 307 of the Ligaya Building together with the leasehold right over the land on which the building stands. The SPOUSES acknowledged receipt of the sum of P3,000.00 more or less, paid by BAYANIHAN pursuant to the said judgment.

Notwithstanding the execution of the deed of assignment, the SPOUSES remained in possession of the premises. Subsequently, they were allowed to remain in the premises as lessees for a stipulated monthly rental until November 30, 1972.

Despite the expiration of the said period, the SPOUSES failed to surrender possession of the premises in favor of BAYANIHAN. This prompted BAYANIHAN to file an ejectment case against them in the City Court of Manila docketed as Civil Case No. 240019. This action was however dismissed on the ground that BAYANIHAN was not the real party in interest, not being the owner of the building.

On February 7, 1979, after demands to vacate the subject apartment made by BAYANIHAN's counsel was again ignored by the SPOUSES, an action for recovery of possession with damages was filed with the Court of First Instance of Manila, docketed as Civil Case No. 121532 against the SPOUSES and impleading Ligaya Investments, Inc. as party defendant. On March 17, 1981, decision in said case was rendered in favor of BAYANIHAN ordering the following:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants spouses UY TONG and KHO PC GIOK and defendant Ligaya Investment, Inc., dismissing defendants' counterclaim and ordering:

- The defendants spouses UY TONG and KHO PO GIOK and any and or persons claiming right under them, to vacate, surrender and deliver possession of Apartment 307, Ligaya Building, located at 64 Alvarado Street, Binondo, Manila to the plaintiff;
- Ordering defendant Ligaya Investment, Inc. to recognize the right of ownership and possession of the plaintiff over Apartment No. 307, Ligaya Building;
- Ordering Ligaya Investment, Inc. to acknowledge plaintiff as assignee-lessee in lieu of defendants spouses Uy Tong and Kho Po Giok over the lot on which the building was constructed;
- Ordering the defendants spouses Uy Tong and Kho Po Giok to pay to the plaintiff the sum of P200.00

commencing from June, 1971 to November 30, 1972, or a total amount of P3,400.00 as rental for the apartment, and the sum of P200.00 from December 1, 1972 until the premises are finally vacated and surrendered to the plaintiff, as reasonable compensation for the use of the apartment; and

- Ordering the defendants spouses Uy Tong and Kho Po Giok to pay P3,000.00 as and for attorney's fees to the plaintiff, and the costs of this suit.

Not satisfied with this decision, the SPOUSES appealed to the Court of Appeals. On October 2, 1984, the respondent Court of Appeals affirmed in toto the decision appealed from [Petition, Annex "A", Rollo, pp. 15-20]. A motion for reconsideration of the said decision was denied by the respondent Court in a resolution dated February 11, 1987 [Petition, Annex "C", Rollo, pp. 31-34].

Petitioners-SPOUSES in seeking a reversal of the decision of the Court of Appeals rely on the following reasons:

- The deed of assignment is null and void because it is in the nature of a pactum commissorium and/or was borne out of the same.
- The genuineness and due execution of the deed of assignment was not deemed admitted by petitioner.
- The deed of assignment is unenforceable because the condition for its execution was not complied with.
- The refusal of petitioners to vacate and surrender the premises in question to private respondent is justified and warranted by the circumstances obtaining in the instant case.

I. In support of the first argument, petitioners bring to the fore the contract entered into by the parties whereby petitioner Kho Po Giok agreed that the apartment in question will automatically become the property of private respondent BAYANIHAN upon her mere failure to pay her obligation. This agreement, according to the petitioners is in the nature of a pactum commissorium which is null and void, hence, the deed of assignment which was borne out of the same agreement suffers the same fate.

The prohibition on pactum commissorium stipulations is provided for by Article 2088 of the Civil Code:

Art. 2088. The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of the same. Any stipulation to the contrary is null and void.

The aforequoted provision furnishes the two elements for pactum commissorium to exist: (1) that there should be a pledge or mortgage wherein a property is pledged or mortgaged by way of security for the payment of the principal obligation; and (2) that there should be a stipulation for an automatic appropriation by the creditor of the thing pledged or mortgaged in the event of non-payment of the principal obligation within the stipulated period.

A perusal of the terms of the questioned agreement evinces no basis for the application of the pactum commissorium provision. First, there is no indication of any contract of mortgage entered into by the parties. It is a fact that the parties agreed on the sale and purchase of trucks.

Second, there is no case of automatic appropriation of the property by BAYANIHAN. When the SPOUSES defaulted in their payments of the second and third installments of the trucks they purchased, BAYANIHAN filed an action in court for specific performance. The trial court rendered favorable judgment for BAYANIHAN and ordered the SPOUSES to pay the balance of their obligation and in case of failure to do so, to execute a deed of assignment over the property involved in this case. The SPOUSES elected to execute the deed of assignment pursuant to said judgment.

Clearly, there was no automatic vesting of title on BAYANIHAN because it took the intervention of the trial court to exact fulfillment of the obligation, which, by its very nature is "... anathema to the concept of pacto

commissorio" [Northern Motors, Inc. v. Herrera, G.R. No. L-32674, February 22, 1973, 49 SCRA 392]. And even granting that the original agreement between the parties had the badges of pactum commissorium, the deed of assignment does not suffer the same fate as this was executed pursuant to a valid judgment in Civil Case No. 80420 as can be gleaned from its very terms and conditions:

DEED OF ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS:

This deed made and entered into by Uy Tiong also known as Henry Uy and Kho Po Giok, both of legal age, husband and wife, respectively, and presently residing at 307 Ligaya Bldg., Alvarado St., Binondo, Manila, and hereinafter to be known and called as the ASSIGNORS, in favor of Bayanihan Automotiv Corporation, an entity duly organized and existing under the laws of the Philippines, with principal business address at 1690 Otis St., Paco, Manila and hereinafter to be known and called the ASSIGNEE:

— w i t n e s s e t h —

WHEREAS, the ASSIGNEE has filed a civil complaint for "Specific-Performance with Damages" against the ASSIGNORS in the Court of First Instance of Manila, Branch V, said case having been docketed as Civil Case No. 80420;

WHEREAS, the ASSIGNEE was able to obtain a judgment against the ASSIGNOR wherein the latter was ordered by the court as follows, to wit:

WHEREFORE, judgment is hereby rendered ordering the defendants, jointly and severally to pay the plaintiff the sum of P40,000.00, with interest at the legal rate from July 31, 1970 until full payment. In the event of their failure to do so within thirty (30) days from notice of this judgment, they are hereby ordered to execute the corresponding deed of absolute sale in favor of the plaintiff and/or the assignment of leasehold, rights over the defendants' apartment located at No. 307 Ligaya Building, Alvarado Street, Binondo, Manila, upon the payment by the plaintiff to the defendants the sum of P3,535.00.

The defendants shall pay the costs.

WHEREAS, the court, upon petition by herein ASSIGNEE and its deposit of sufficient bond, has ordered for the immediate execution of the said decision even pending appeal of the aforesaid decision;

WHEREAS, the ASSIGNORS have elected to just execute the necessary deed of sale and/or assignment of leasehold rights over the apartment mentioned in the decision in favor of the herein ASSIGNEE:

NOW, THEREFORE, for and in consideration of the foregoing premises, the ASSIGNORS have transferred assigned and ceded, and by these presents do hereby transfer, assign and cede all their rights and interests over that place known as Apartment No. 307 at the Ligaya Building which is located at No. 864 Alvarado St., Binondo, Manila, together with the corresponding leasehold rights over the lot on which the said building is constructed, in favor of the herein ASSIGNEE, its heirs or assigns.

IN WITNESS WHEREOF, We have hereunto signed our names this 27th day of May, 1971 at Manila, Philippines.

UY TONG/HENRY UY KHO PO GIOK

Assignor Assignor

ACR-2151166 Manila 1/13/51 ACR-C-001620 Manila

March 3, 1965.

This being the case, there is no reason to impugn the validity of the said deed of assignment.

II. The SPOUSES take exception to the ruling of the Court of Appeals that their failure to deny the genuineness and due execution of the deed of assignment was deemed an admission thereof. The basis for this exception is the SPOUSES' insistence that the deed of assignment having been borne out of pactum commissorium is not subject to ratification and its invalidity cannot be waived.

There is no compelling reason to reverse the abovementioned ruling of the appellate court. Considering this Court's above conclusion that the deed of assignment is not invalid, it follows that when an action founded on this written instrument is filed, the rule on contesting its genuineness and due execution must

be followed.

That facts reveal that the action in Civil Case No. 121532 was founded on the deed of assignment. However, the SPOUSES, in their answer to the complaint, failed to deny under oath and specifically the genuineness and due execution of the said deed. Perforce, under Section 8, Rule 8 of the Revised Rules of Court, the SPOUSES are deemed to have admitted the deed's genuineness and due execution. Besides, they themselves admit that ". . . the contract was duly executed and that the same is genuine" [Sur-Rejoinder, Rollo, p. 67]. They cannot now claim otherwise.

III. The SPOUSES also question the enforceability of the deed of assignment. They contend that the deed is unenforceable because the condition for its execution was not complied with. What petitioners SPOUSES refer to is that portion of the disposition in Civil Case No. 80420 requiring BAYANIHAN to pay the former the sum of P3,535.00. To buttress their claim of non-compliance, they invoke the following receipt issued by the SPOUSES to show that BAYANIHAN was P535.00 short of the complete payment:

RECEIPT

This is to acknowledge the fact that the amount of THREE THOUSAND (P3,000.00) PESOS, more or less as indicated in the judgment of the Hon. Conrado Vasquez/. Presiding Judge of the Court of First Instance of Manila, Branch V, in Civil Case entitled "Bayanihan Automotive Corp. v. Pho (sic) Po Giok, etc." and docketed as Civil Case No. 80420 has been applied for the payment of the previous rentals of the property which is the subject matter of the aforesaid judgment. [Emphasis supplied.]

(Sgd.) Pho (sic) Po Giok

(Sgd.) Henry Uy

August 21, 1971

The issue presented involves a question of fact which is not within this Court's competence to look into. Suffice it to say that this Court is of the view that findings and conclusion of the trial court and the Court of Appeals on the question of whether there was compliance by BAYANIHAN of its obligation

under the decision in Civil Case No. 80420 to pay the SPOUSES the sum of P3,535.00 is borne by the evidence on record. The Court finds merit in the following findings of the trial court:

". . . Defendants' contention that the P3,535.00 required in the decision in Civil Case No. 80420 as a condition for the execution of the deed of assignment was not paid by the plaintiff to the defendants is belied by the fact that the defendants acknowledged payment of P3,000.00, more or less, in a receipt dated August 21, 1971. This amount was expressly mentioned in this receipt as indicated in the judgment of the Honorable Conrado Vasquez, presiding Judge of the CFI of Manila, Branch V, in Civil Case entitled Bayanihan Automotive Corp. versus Kho Po Giok, docketed as Civil Case No. 80420, and also expressly mentioned as having been applied

for the payment of the previous rentals of the property subject matter of the said judgment. Nothing could be more explicit. The contention that there is still a difference of P-535.00 is hard to believe because the spouses Kho Po Giok and Uy Tong executed the deed of assignment without first demanding from the plaintiff the payment of P535.00. Indeed, as contended by the plaintiff, for it to refuse to pay this small amount and thus gave defendants a reason not to execute the Deed of Assignment, is hard to believe. Defendants further confirm by the joint manifestation of plaintiff and defendants, duly assisted by counsel, Puerto and Associates, dated September, 1971, Exhibit "O", wherein it was stated that plaintiff has fully complied with its obligation to the defendants caused upon it (sic) by the pronouncement of the judgment as a condition for the execution of their (sic) leasehold rights of defendants, as evidenced by the receipt duly executed by the defendants, and which was already submitted in open court for the consideration of the sum of P3,535.00 *Italics supplied*).

[Decision, Civil Case No. 121532. pp. 3-4].

This Court agrees with private respondent BAYANIHAN's reasoning that inasmuch as the decision in Civil Case No. 80420 imposed upon the parties correlative obligations which were simultaneously demandable so much so that if private respondent refused to comply with its obligation under the judgment to pay the sum of P3,535.00 then it could not compel petitioners to comply with their own obligation to execute the deed of assignment over the subject premises. The fact that petitioners executed the deed of assignment with the assistance of their counsel leads to no other conclusion that private respondent itself had paid the full amount.

IV. Petitioners attempt to justify their continued refusal to vacate the premises subject of this litigation on the following grounds:

(a)

The deed of assignment is in the nature of a pactum commissorium and, therefore, null and void.

(b)

There was no full compliance by private respondent of the condition imposed in the deed of assignment.

(c)

Proof that petitioners have been allowed to stay in the premises, is the very admission of private respondent who declared that petitioners were allowed to stay in the premises until November 20, 1972. This admission is very significant. Private respondent merely stated that there was a term — until November 30, 1972 — in order to give a semblance of validity to its attempt to dispossess herein petitioners of the subject premises. In short, this is one way of rendering seemingly illegal petitioners' possession of the premises after November 30, 1972.

The first two classifications are mere reiterations of the arguments presented by the petitioners and which had been passed upon already in this decision. As regards the third ground, it is enough to state that the deed of assignment has vested in the private respondent the rights and interests of the SPOUSES over the apartment unit in question including the leasehold rights over the land on which the building stands. BAYANIHAN is therefore entitled to the possession thereof. These are the clear terms of the deed of assignment which cannot be superseded by bare allegations of fact that find no support in the record.

WHEREFORE, the petition is hereby DENIED for lack of merit and the decision of the Court of Appeals is AFFIRMED in toto.

SO ORDERED.

Fernan (Chairman), Guitierrez, Jr., and Feliciano, JJ., concur.

Bidin, J., no part. Appurtenanted in the appealed decision of respondent Court of Appeals.

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