

**MARIANO M. LAZATIN, REPRESENTED BY HIS ADMINISTRATOR
BERNARDO DE LEON, JR., PETITIONER, VS. THE HON. COURT OF
APPEALS, ONOFRE UMALI, SUBSTITUTED BY RODRIGO, VIRGILIO
AND SANDRA ...**

G.R. No. 96054. July 03, 1992

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari of the decision[1] of the Court of Appeals dated September 18, 1990 in CA-GR-CV No. 13800 entitled “ONOFRE UMALI, et al., plaintiffs-appellants versus MARIANO M. LAZATIN, defendant-appellee” reversing the decision[2] of the Regional Trial Court of Olongapo City, Third Judicial Region, Branch LXXIV dated July 14, 1986 in Civil Case Nos. 494-0 and 729-0 entitled “Onofre Umali and Josefina Redondo versus Mariano Lazatin” and “Mariano Lazatin versus Onofre Umali and Josefina Redondo” declaring the transaction involved therein are forthrightly equitable mortgages, dismissing Civil Case No. 729-0 for want of cause of action and ordering the annulment of the corresponding certificates of title and tax declarations issued in favor of petitioner Lazatin pursuant to the questioned deeds of sale.

The undisputed facts are as follows:

This controversy arose when the spouses Onofre Umali and Josefina Redondo (hereinafter referred to as the Umalis) executed two (2) deeds of sale in favor of Mariano Lazatin. The first deed of sale (Exhibit G), executed on March 10, 1967, pertains to a parcel of land situated in the barrio of Balintawak, Municipality of Caloocan (now Kaloocan), consisting of two hundred sixty-four (264) square meters and covered by Transfer Certificate of Title No. 95583 and another parcel of land, Lot 12, Block 6 of the subdivision plan Psd-32780 also located in the Municipality of Caloocan, Province of Rizal containing an area of two hundred sixty-four (264) square meters and covered by Transfer Certificate of Title No. 55789 together with the building and improvement thereon, executed by the Umalis in favor of Lazatin for the alleged consideration of Forty Thousand Pesos (P40,000.00) (Exhibit G). This Deed of Sale was registered in the Registry of Deeds of Caloocan such that on March 14, 1967 Transfer Certificate of Title No. 24962 covering Lot 12, Block 6 was issued in the name of Mariano Lazatin (Exhibit 9) and Transfer of Title No. 24964 covering Lot 17, Block 12 of the subdivision plan Psd--23780 was also issued in the name of Mariano M. Lazatin (Exhibit 9-A). By virtue of the aforementioned sale and by reason of the issuance of the aforementioned Transfer Certificates of Title in favor of Mariano M. Lazatin Tax Declaration No. 27566 covering Lot 12 Block 16 of the aforesaid subdivision plan with a house of strong materials was cancelled and Tax Declaration No. 38665 was issued in the name of Mariano Lazatin (Exhibit 10). Likewise, Tax Declaration No. 27769 in the name of Josefina Redondo covering Lot 17, Block 12 of the subdivision plan was also cancelled and Tax Declaration No. 38666 was issued in the name of Mariano Lazatin (Exhibit 10-A). The second Deed of Sale (Exhibit F) executed by the Umalis in favor of Lazatin refers to the sale of a piece of residential land, Cadastral Lot No. 2996, Ts-308, situated at 610-A Magsaysay Drive, Olongapo, Zambales, with the following boundaries:

On the North by Magsaysay Drive

On the East by Lot 580-B Rizal Avenue

On the South by Lot No. 610 Rizal Avenue

On the West by Lot No. 630-A Rizal Avenue

of which land the Umalis are the owners by virtue of Sales Application and which lot consists of three hundred eighty three (383) square meters as well as a three-storey commercial building of concrete materials devoted to restaurant and hotel purposes which allegedly was sold for one hundred fifty thousand (P150,000.00) Pesos and which Deed of Sale was notarized by Notary Public Julian L. Sison on October 3, 1967 (Exhibit F). The aforementioned Deed of Sale was duly registered with the Register of Deeds and in the Office of the Assessor's so much so that Tax Declaration No. 19115 in the name of Josefina Redondo which covers the three-storey building and Tax Declaration No. 16376 also in the name of Josefina S. Redondo covering the parcel of land Lot 2996 were cancelled and Tax Declaration No. 20182 was issued in the name of Mariano M. Lazatin which tax declaration would commence in the year 1968 (Exhibits A-6, A-7 and 11).

On November 17, 1968, petitioner Mariano M. Lazatin filed an Unlawful Detainer Case against private respondents Onofre Umali and Josefina Redondo docketed as Civil Case No. 758 with the City Court of Olongapo City. This case was however dismissed by the City Court on the ground that it has no jurisdiction to try the same because the validity of the deeds of sale has been raised by the Umalis.

On August 20, 1969, the Umalis filed a complaint for annulment of documents, reconveyance of property and damages against Lazatin with the then Court of First Instance of Olongapo City, Branch I docketed as Civil Case No. 494-0. The complaint alleged among others: That on two separate occasions, the Umalis secured two separate loans from Lazatin. On March 10, 1967 for P40,000.00 offering their Caloocan properties as collaterals and the other on October 3, 1967 for P150,000.00 offering as collateral a 383 square meter Cadastral Lot No. 2996, Ts-308 covered by Sales Application with a three-storey concrete building used as hotel and restaurant situated at Magsaysay Drive, Olongapo City; That the Umalis received only P25,000.00 in checks out of the P40,00.00 loan while out of the P150,000.00 loan only P75,000.00 in checks was received both after deducting the advance usurious interest, character loan, kick back, registration fees and other sundry expenses incident to registration; That the deeds of sale (Exhibits G & F) were procured through fraud, trickery, deceit and/or misrepresentation; That the alleged deeds of sale are not expressive of the true intention of the parties; and that the alleged consideration is inadequate and unconscionable.

Lazatin in his answer denied the averments of the complaint and claimed among others: That the Umalis executed two (2) deeds of absolute sale in his favor. One on March 10, 1967 covering two parcels of land located at Balintawak, Caloocan City with one parcel of land containing improvements thereon for a consideration of P40,000.00 which instrument has been registered with the office of the Register of Deeds for Caloocan. The other on October 3, 1967 covering a residential land situated at 610-A Magsaysay Drive, Olongapo City together with the three-storey commercial building of concrete materials for a consideration of P150,000.00 which instrument has been registered with the Register of Deeds for Zambales; That the Umalis executed the Deed of Sale voluntarily, knowing fully well that said instruments were deeds of sale and not deeds of mortgage; That no advance usurious interest, kick back, registration fees and other sundry expenses incident to registration were collected from the Umalis; That said instruments were not procured through fraud, trickery, deceit and/or misrepresentation; and that the said instruments expressed the true intention of the parties.

On March 2, 1971, Lazatin filed a complaint for recovery of possession with prayer for receivership against the Umalis with the then Court of First Instance of Zambales, Branch I and docketed as Civil Case No. 729-0. The

complaint alleged among others: That the Umalis sold to Lazatin a parcel of land Cadastral Lot No. 2996, Ts-308 situated at 610-A Magsaysay Drive, Olongapo City together with the three-storey commercial building of concrete materials devoted for restaurant and hotel; That the sale was covered by a Deed of Absolute Sale; That Lazatin verbally leased the premises to the Umalis; That on September 6, 1968, Lazatin demanded from the Umalis the P7,000.00 a month rental but the Umalis refused to comply with the demand for which reason Lazatin filed an unlawful detainer case (Civil Case No. 758) against the Umalis with the Olongapo City Court; That during the pendency of the unlawful detainer case, the Umalis made partial payments of their rental arrearages; That the Umalis succeeded in their unauthorized stay in the premises through the filing of Civil Case No. 494-0; and that for the preservation of the usufructuary income from the premises, Lazatin prayed that a receiver be appointed, and that after hearing, the Umalis be ordered to vacate the premises and to turn over all the income which may have been realized on the property during the pendency of the cases.

In its answer the Umalis denied the allegations and asserted by way of affirmative defense practically all the allegations in their complaint docketed as Civil Case No. 494-0.

Of the series of cases filed by the parties, Civil Case No. 494-0 and Civil Case No. 729-0 remained unresolved. These two cases were jointly tried. In the course of the joint trial, Onofre Umali died and his children Rodrigo, Virgilio and Sandra, all surnamed Umali, were substituted as parties. Mariano Lazatin also died, he was substituted by his son-in-law Bernardo de Leon, Jr., the administrator of his estate.

On July 14, 1986, the trial court rendered its decision, the dispositive portion of which reads as follows:

“WHEREFORE, premised on all the foregoing findings and consideration, the court hereby dismisses Civil Case No. 494-0 which is the case filed by the Umalis against Lazatin, with costs against the plaintiffs-Umalis.

“Judgment is hereby rendered in favor of Lazatin and against the Umalis in Civil Case No. 729-0 and the Court hereby declares the plaintiff Mariano Lazatin as the lawful owner and judicial possessor of Cadastral Lot No. 2996 Ts-308 situated at 610-A Magsaysay Drive, Olongapo City as well as the three-storey commercial building made of concrete materials devoted for restaurant and hotel (Rovisa Hotel) and the Court hereby orders the defendant Josefina Redondo and the substituted parties (Rodrigo, Virgilio and Sandra all surnamed Umali) and all persons claiming under them to completely leave and vacate the aforesaid premises and turn over the same to the substituted plaintiff Bernardo de Leon, the administrator of the estate of Mariano Lazatin. The court further orders the defendants Rodrigo, Virgilio and Sandra Umali to pay the substituted plaintiff Bernardo de Leon the sum of Two Thousand (P2,000.00) pesos for April, 1968 and the amount of Seven Thousand (P7,000.00) Pesos a month from May 1968 until they finally vacate the premises. The Court finally orders the defendants to pay plaintiffs the sum of Fifteen Thousand (P15,000.00) Pesos by way of reasonable attorney’s fees and pay the cost of the suit.

“SO ORDERED.” (Records, p. 244).

Not content with the trial court’s ruling, the Umalis appealed to the Court of Appeals. On September 18, 1990, the respondent Court of Appeals rendered its decision reversing the trial court’s decision. The dispositive portion of which reads as follows:

“WHEREFORE, in the light of the attending covenants, We find the decision appealed from as inconsistent with law and equity, for the transactions involved herein are forthrightly equitable mortgages. Conformably, the disputed decision is hereby REVERSED, dismissing Civil Case No. 729-0 for want of cause of action, and ordering the annulment of the questioned Deeds of Sale (Exhibits G and F) and the cancellation of the corresponding certificates of title and tax declarations issued in favor of Lazatin pursuant to the questioned Deeds of Sale. Consequently, Transfer Certificates of Title Nos. 95583 and 55789 of the Registry of Caloocan are hereby ordered reinstated. However, the loan in the amount of P25,000.00 for the Caloocan properties and

P75,000.00 for the Olongapo property shall be paid within ninety (90) days from receipt of a copy of this decision, considering that plaintiffs-appellants had already paid the rentals (interest) for the pretended lease since the beginning of the transaction. In case of default on the part of plaintiffs-appellants to redeem the property within the period set forth herein, the property shall be sold to realize the mortgage debt and costs.

“Cost against appellee Mariano M. Lazatin.

“SO ORDERED.” (Rollo, p. 100)

Petitioner's motion for reconsideration was denied on November 2, 1990 (Rollo p. 102).

Hence, this petition.

In a resolution dated July 15, 1991, the Second Division of this Court resolved to give due course to the petition (Rollo, p. 208).

The main issue to be resolved is whether or not the transactions entered into by the parties are one of sale or equitable mortgage.

Petitioner contends that the transactions entered into by the parties are deeds of absolute sale. On the other hand, private respondent alleges that the questioned deeds of sale are not what they appear to be but that the same are equitable mortgages because the evidence shows that it was merely resorted to by the parties in circumvention of the usury law then in force.

Article 1602 in relation to Article 1604 of the Civil Code provides:

“Article 1602. The contract shall be presumed to be an equitable mortgage, in any of the following cases:

‘(1) When the price of a sale with right to repurchase is unusually inadequate;

‘(2) When the vendor remains in possession as lessee or otherwise;

‘(3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;

‘(4) When the purchaser retains for himself a part of the purchase price;

‘(5) When the vendor binds himself pay the taxes on the thing sold;

‘(6) In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.’

“In any of the foregoing cases, any money, fruits, or other benefit to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject to the usury laws.

“Article 1604. The provisions of Article 1602 shall also apply to a contract purporting to be an absolute sale.”

As correctly ruled by the respondent Court of Appeals the facts and evidence show that the transactions are indubitably equitable mortgages. Article 1602 in relation to Article 1604 of the Civil Code finds strong application in the case at bar in the light of the following attendant circumstances:

First: the purchase prices for the alleged sales were unusually inadequate. As found by the respondent Court of Appeals, the petitioner paid only P75,000.00 instead of the purchase price of P150,000.00 for a three-storey concrete building with the fourth floor undergoing construction at the time of the sale and carrying a business (hotel and restaurant) at Magsaysay Drive, Olongapo City on a 383 square meter lot. Likewise the private respondents were paid only P25,000.00 instead of P40,000.00 for the parcels of land with one of the lots

consisting of a two storey building made of strong materials situated in the Barrio of Balintawak, Municipality of Caloocan.

Granting without conceding that petitioner did pay the amounts of P150,000.00 and P40,000.00 as stated in the two deeds of sale, it is evident that the purchase price is inadequate. Anastacio Bernal, an architect who supervised the construction of the Rovisa Hotel and prepared the estimate of the proposed building testified that the total construction cost of the building alone was approximately P400,000.00 to P450,000.00 (TSN, p. 21; Hearing on August 18, 1970) while the market value of the lot along Magsaysay Drive varied from P200,000.00 to P300,000.00 at that time (TSN, p. 22; *ibid*). On the other hand, having previously sold a parcel of land near the two questioned lots situated in Balintawak, Caloocan City to a certain Enriquez for P60,000.00 (TSN, p. 14; Hearing on September 2, 1971), private respondents could not have sold the two questioned lots for a measly sum of P115,000.00.

Second: the apparent vendor, private respondent herein, remained in possession of the properties “sold”. Record show that from 1967 when the alleged deeds of sale were executed up to the present, private respondents remained in possession of the properties subject of the two deeds of sale. On the other hand, petitioner admitted having been to the Rovisa Hotel only twice. Once when he was invited by the Umalis for lunch (TSN, p. 75; Deposition on February 7, 1973) and the other after the construction of the fourth floor (TSN, p. 78; *ibid*). This only shows that Lazatin had little or no interest at all in the property but more so the same is inconsistent with his claim of ownership over the Rovisa Hotel. On the other hand, no evidence was presented to show that petitioner has ever taken possession of the Caloocan properties.

Third: the apparent vendor, private respondent herein, continued to pay taxes on the properties “sold”. Respondent Court of Appeals found that both petitioner and private respondent paid for the real estate taxes due on the properties yet private respondent, the alleged vendor, remained in physical possession of the questioned properties. As is well known, it is only where payment of taxes is accompanied by actual possession of the land covered by the tax declaration that such circumstance may be material in supporting a claim of ownership (*Amarante Heirs v. Court of Appeals*, G.R. No. 76386, May 21, 1990; 185 SCRA 585).

Fourth: the alleged vendor paid interest on the supposed consideration of the “sale”. As stated earlier, only P25,000.00 out of the P40,000.00 consideration was paid for the Caloocan properties while only P75,000.00 instead of P150,000.00 was paid for the Olongapo property.

Accordingly there appears to be no need to disturb the findings of the respondent Court of Appeals. Even if no usury was involved in these transactions, there are enough evidences in the records to create the presumption enunciated by Article 1602.

PREMISES CONSIDERED, the decision of the respondent Court of Appeals dated September 18, 1990 is AFFIRMED.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Nocon, JJ., concur.

[1] Penned by Justice Abelardo M. Dayrit and concurred in by Justices Nathanael P. De Pano, Jr. and Celso M. Magsino.

[2] Penned by Judge Nicias O. Mendoza.

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