

EMILIANO G. LIZARES, JR., PETITIONER, VS. COURT OF APPEALS AND SPOUSES JULIO C. LOPEZ AND CRISTINA ORLANDA LOPEZ, RESPONDENTS.

G.R. No. 98282. September 06, 1993

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This Petition for Review on Certiorari assails the Decision of 28 February 1991[1] of the Court of Appeals holding that the contract between the parties was not a sale with right to repurchase but an equitable mortgage, and its Resolution of 5 April 1991[2] denying reconsideration.

On 30 September 1983, petitioner Emiliano G. Lizares, Jr., loaned the amount of P545,000.00 to respondent spouses Julio and Cristina Orlanda Lopez. The loan was secured by a real estate mortgage[3] constituted over a parcel of land situated at 114 San Francisco Street, Mandaluyong, Metro Manila, with an aggregate area of 450 square meters, more or less.

Respondent spouses failed to tender any payment on the loan when it fell due on 30 December 1983. Hence, on 29 January 1985, petitioner asked the Provincial Sheriff of Rizal to extrajudicially foreclose the mortgaged property.

The auction sale was thereafter set for 4 March 1985.[4] However, it was temporarily enjoined by the Regional Trial Court of Pasig, Branch 167,[5] based on the complaint for injunction instituted by respondent spouses, docketed as Civil Case No. 52087. Since the parties appeared open to an amicable settlement, the trial court deferred the hearing for the issuance of a writ of preliminary injunction.

On 26 October 1985, the parties executed a Deed of Sale with Right to Repurchase,[6] the validity of which is now being put at issue, and terminated the proceedings in the injunction case. Under the terms and conditions of the said contract, respondent spouses were to cede ownership of the San Francisco property to petitioner in consideration of their outstanding debt to the latter which, as of 4 March 1984, was computed to be P2,005,647.78. But, respondent spouses were allowed to retain possession of the property. They were also given the right to repurchase the property for only P1,600,000.00 within a period of six (6) months commencing 1 November 1985. However, respondent spouses failed to exercise their option within the stipulated period.

Thus on 13 February 1989, petitioner commenced an action to consolidate his title over the property before the Regional Trial Court of Pasig,[7] docketed as Civil Case No. 56983.

On 19 September 1989, the trial court ordered the consolidation of title to the San Francisco property in favor of petitioner Emiliano G. Lizares, Jr.[8] Respondent spouses Julio and Cristina Orlanda Lopez appealed.

On 28 February 1991, respondent Court of Appeals rendered its assailed decision which reversed that of the trial court and declared the disputed contract to be an equitable mortgage. On 5 April 1991, the appellate court denied reconsideration. Hence, the instant petition.

Petitioner begs this Court to consider the peculiar circumstances obtaining in the case at bar. He avers that the mortgaged property was already at the point of being extrajudicially foreclosed when respondent spouses came to him and proposed that the Deed of Sale with Right to Repurchase be executed instead, and that he merely acquiesced to their proposal to the extent that he had to agree to reducing their debt to only P1,600,000.00. Consequently, the transaction in question must be viewed as a conditional sale with right to repurchase only, nothing more.

We are not persuaded. The disputed contract specifically provides that "during the effectivity of his (respondent Julio C. Lopez) right to repurchase, the VENDOR (respondent spouses) shall continue with the occupancy of the property/ies covered by this contract." [9] Otherwise stated, respondent spouses were to retain physical possession of the thing sold

It is well-settled that the presence of even one of the circumstances enumerated in Art. 1602 [10] of the New Civil Code is sufficient to declare a contract of sale with right to repurchase an equitable mortgage. [11] Considering that respondent spouses, as vendors, retained physical possession of the thing sold, a circumstance specifically mentioned in par. (2) of Art. 1602, it must be conclusively presumed that the transaction the parties actually entered into is an equitable mortgage, not a sale with right to repurchase.

Indeed, the terms of the contract appear to be contrary to the evident intention of the parties, in which case, the latter should prevail over the former. [12] The transaction is supposedly a sale with right to repurchase. However, respondent spouses continue to retain physical possession as if they are still the absolute owners. There is no provision for maintenance and expenses, much less, for payment of rent for the premises. Instead, what can clearly be inferred therefrom is that there is merely an extension of the period of the mortgage contract, with some modifications thereon such as allowing respondent spouses to substitute another property of sufficient value as security if the partial payments made on the repurchase price reaches P1,000,000.00. Thus -

"4. x x x x Should the said partial payments of the VENDOR reach the amount of ONE MILLION PESOS (P1,000,000.00), the VENDEE agrees to allow the VENDOR to substitute another property of sufficient value acceptable to the VENDEE to secure the payment of the balance of VENDOR's repurchase obligation in lieu of the parcel of land, building and improvements covered by this contract; Provided, however, That the repurchase period of the substituted property shall remain as provided in this contract (underscoring supplied)" [13]

More than anything else, the above provision belies the claim that the transaction is a sale with right to repurchase. For, in a consummated sale, ownership of the thing sold is transferred to the vendee. As such, there is no need to offer security for the payment of the balance of the repurchase price. Since the true intention of the parties is that the transaction in question shall secure the payment of the debt, now deemed as the repurchase price, it shall be presumed an equitable mortgage. [14]

Moreover, it is also undisputed that the Deed of Sale with Right to Repurchase was executed by reason of the failure of respondent spouses to pay the original loan. The purchase price stated in the contract is also the amount of the loan itself, including interests, albeit already reduced to P1,600,000.00. These factors further support the finding that the purported Deed of Sale with Right to Repurchase is in actuality an equitable mortgage. [15]

The execution of the disputed contract also extended the original period of the mortgage by another six (6) months from 1 November 1985. Again, this extension must be construed as indicative of an equitable mortgage, [16] being expressly enumerated in par. (3) of Art. 1602 of the New Civil Code.

Petitioner may argue that it was respondent spouses, as mortgagors, who first broached the proposal of converting the mortgage, which was about to be foreclosed, into a pacto de retro sale. But the record shows that petitioner

himself, as mortgagee, agreed to the proposal on his own volition. Hence, it can be said that, evidently, he was more interested in getting his money back than in the ownership and possession of the San Francisco property.

Respondent spouses, on the other hand, needed more time to raise the amount to liquidate their loan. They were desperately trying to hold on to their property despite financial difficulties. They had originally borrowed P545,000.00 which, with interests, had ballooned to over P2,000,000.00. There was therefore compelling need for additional money that impelled respondent spouses to enter into the transaction. Thus, on this score, the sale with right to repurchase should be deemed an equitable mortgage.[17]

In fine, vital circumstances in the instant case lead us to conclude that the transaction entered into is an equitable mortgage. The vendors retain possession of the property; the contract of sale was executed in consideration of the loan, the price of the sale being the value of the loan itself; and, the vendor is allowed to substitute another property of sufficient value as security in case payments reach P1,000,000.00.

WHEREFORE, the Petition for Review on Certiorari is DENIED for lack of merit. The Decision of 28 February 1991 of the Court of Appeals is AFFIRMED en toto.

Costs against petitioner.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, Davide, Jr., and Quason, JJ., concur.

[1] Penned by Justice Vicente V. Mendoza, concurred in by Justices Segundino G. Chua and Luis L. Victor; Annex "A", Petition; Rollo, pp. 21-33.

[2] Annex "A-1", Petition; Rollo, pp. 34-35.

[3] Annex "B", Petition; Rollo, pp. 36-38.

[4] Annex "C", Petition; Rollo, p. 39.

[5] RTC Order, 1 March 1985; Rollo, p. 40.

[6] Annex "H", Petition; Rollo, pp. 45-47.

[7] Ruffled to Branch 165.

[8] RTC Decision, 19 March 1989, p. 3.

[9] Rollo, p. 46.

[10] Art. 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 to 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 (underscoring supplied).

[11] Santos v. Court of Appeals, G.R. No. 83664, 13 November 1989, 179 SCRA 363.

[12] Art. 1370, New Civil Code.

[13] Rollo, p. 46.

[14] Ramos v. Court of Appeals, No. L-42108, 29 December 1989, 180 SCRA 635.

[15] Id.

[16] Clavarall v. Court of Appeals, No. L-47120, 15 October 1990, 190 SCRA 439.

[17] Id.

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