

## FIRST DIVISION

[ G.R. No. 154339, October 15, 2007 ]

**ROMUALDO ANSELMO FOR HIMSELF AND IN REPRESENTATION  
OF HIS DECEASED WIFE, EMERLINDA MERCADO-ANSELMO,  
PETITIONER, VS. SPOUSES WILLIAM HERNANDEZ & ROSEMARIE  
HERNANDEZ, RESPONDENTS.**

### DECISION

**AZCUNA, J.:**

This is a petition for review<sup>[1]</sup> of the Decision and Resolution of the Court of Appeals (CA), dated April 3, 2002 and July 11, 2002, respectively, in CA-G.R. CV No. 49437, entitled "Spouses William G. Hernandez and Rosemarie Z. Hernandez v. Spouses Romualdo Anselmo and Emerlinda Mercado-Anselmo."

The facts appear as follows:<sup>[2]</sup>

Petitioner and his wife and the spouses Manuel San Diego and Azucena Anselmo San Diego were the registered owners of a 712-square meter lot covered by Transfer Certificate of Title No. 95064, located in San Francisco del Monte, Quezon City where petitioner and his wife likewise maintained their residence and place of business.

On April 24, 1991, the parcel of land and the improvements erected thereon, namely, petitioner's house and garments factory, were allegedly sold by petitioner and his wife and the San Diegos to respondents for the sum of P2,500,000 as evidenced by a deed of absolute sale. The sale was registered and on April 29, 1991, the Register of Deeds issued Transfer Certificate of Title No. 36791 in the name of respondents.

The sale allegedly came with an understanding that petitioner and his wife, while searching for a place to transfer, will be permitted to stay on the property temporarily or until April 30, 1991. Petitioner and his wife, however, did not move out on April 30, 1991. Respondents sent a letter to them on May 13, 1991 ordering them to vacate the premises. Another demand letter was sent on August 21, 1991, giving petitioner and his wife fifteen (15) days from receipt to leave the property. Despite the demands, they remained on the property.

Consequently, on February 13, 1992, respondents filed against petitioner and his wife a Complaint for Specific Performance and Damages with the Regional Trial Court (RTC) of Quezon City<sup>[3]</sup> praying that they deliver the physical possession of the property to them.

In their Answer with Counterclaim, petitioner and his wife contended: 1) that they did not sell the subject property to respondents, and that the deed of sale and other

documents were obtained fraudulently; 2) that the sale is void for want of consideration because their supposed transaction with respondents was for a loan of money in the amount of P2,500,000; 3) that the house and lot served as collateral for the loan; 4) that they have received P300,000 from respondents; 5) that they paid the corresponding interest on the loan; 6) that contrary to respondents' assertion, they did not have any business transaction with or indebtedness to Boston Equity Resources, Inc. (hereafter, Boston Equity); and 7) that respondents use Boston Equity, with intent to gain, in their dealings with unsuspecting borrowers.

On February 23, 1995, the RTC of Quezon City rendered a Decision upholding the validity of the sale and ordering petitioners to deliver the physical possession of the property to respondents, thus:

At the outset, it must be pointed out that the defendants have the burden of proof ... to present evidence on the facts in issue necessary to establish their defense ... by preponderance of evidence. [T]here is a disputable presumption that private transactions have been fair and regular, that the ordinary course of business has been followed, and that there is sufficient consideration for a contract (Sec. 3, Rule 131, Rules of Court)...

A simple scrutiny of defendant's evidence will readily reveal that they have miserably failed to discharge or fulfill their burden of proof. Defendant Emerlinda Mercado-Anselmo, in her own testimony under cross-examination, admitted that plaintiff William Hernandez paid her P350,000.00 in cash and assumed and actually paid her obligation to a certain Mr. Choa. It is not true, therefore, that the Deed of Absolute Sale was not supported by a sufficient consideration. Mrs. Anselmo herself acknowledge[d] that Mr. Hernandez paid a total of P2,250,000.00 in connection with the Deed of Absolute Sale. The fact that the latter state[d] [that] the consideration [was] P2.5 Million is of little moment. The difference is so minute as to command an overpowering importance. Besides, Mr. Hernandez testified that the obligation of the defendant which he settled amounted to more than P2.2 Million.

The defendants insist that their indebtedness (which Mr. Hernandez paid) was not to BOSTON but to a certain Mr. Chua. However, said person was not presented to corroborate defendant's bare assertion. Worse, said claim is belied by the documents admittedly signed by defendant Emerlinda Anselmo ... which either refer to BOSTON or are written on its stationery. As such, this court is more inclined to believe Mr. Hernandez' testimony that defendants' creditor was BOSTON... But whether it was to Mr. Chua or to BOSTON that the defendants were indebted matters little, if at all. The fact remains that Mr. Hernandez assumed the obligation and paid it as part of the consideration for the Deed of Absolute Sale. That the defendants were consequently relieved from their obligation is not denied by them, but is in effect admitted.

In [the] light of the foregoing findings of fact, there is no way by which the questioned Deed of Absolute Sale can be categorized as void for want of consideration. Let us now examine if defendant's contention that it is

invalid for being simulated and having been secured through fraud and false representation has any factual and legal basis.

... In this case, the defendants claim that the real agreement between them and the plaintiffs was one of equitable mortgage but they were induced by the latter to sign a Deed of Absolute Sale instead over the property intended to secure the loan on the pretext (albeit false or fraudulent) that Mr. Hernandez needed such instrument to obtain from his Chinese friends the money he was going to lend to them (the defendants). This is of course strongly controverted and denied by the plaintiffs. But granting *arguendo* that the said allegation of the defendants were true, the resulting contract would not be simulated or fictitious but only fraudulent (*Pangadil v. CFI of Cotabato*, 116 SCRA 347), pursuant to Article 1338 of the Civil Code of the Philippines, which thus renders the said Deed of Absolute Sale merely voidable at the most (Arts. 1334 and 1390, Civil Code of the Philippines). As such, said Deed is valid until it is set aside, and its validity may be assailed only in action for that purpose (*Llacer v. Muñoz*, 12 Phil. 328), which shall be brought within four years from the time of the discovery of the fraud (Art. 1591, *ibid.*).

In other words, the attack against its validity must be directly made in an action or in a counterclaim for that purpose.... In their "Answer with Compulsory Counterclaim," the defendants patently failed to allege and pray for the annulment of the said Deed of Absolute Sale as a counterclaim, but limited their allegations and prayer to actual, moral and exemplary damages.

To emphasize, the fraud and false representation alleged by the defendants would not have rendered the questioned Deed of Absolute Sale simulated and void, but only voidable, and only if they had successfully proven the existence of the [said] fraud or false representation, which they actually have not. While defendant Emerlinda Anselmo testified on this matter, the probative value of her testimony does not outweigh the contrary declaration of plaintiff Mr. Hernandez. Not only is the latter more consistent with human behavior and ordinary experience, it [plaintiff's declaration] is more importantly supported by the documentary evidence admittedly signed or executed by Mrs. Anselmo. In contrast, we only have her naked assertion shot through and through with glaring inconsistencies. The weak and puerile corroborative testimony of her sister-in-law miserably failed to bolster Mrs. Anselmo's case, proceeding as it was from a biased and polluted source.

Because of the foregoing considerations and conclusions, the first issue in this case is hereby resolved in favor of the validity and legality of the Deed of Absolute Sale executed by the parties herein on April 24, 1991... The second issue is likewise resolved in the affirmative, that is, that the defendants had transacted with Boston Equity Resources, Inc. as clearly borne [out] by the documentary evidence admittedly signed and executed by the defendants.

As regards the third issue, suffice it to state that plaintiffs' version of the

circumstances surrounding and leading to the execution of the Deed of Absolute Sale conforms to usual business practice much more than that of the defendants'. it is not uncommon for debtors in default to sell their mortgaged property, rather than have it foreclosed, so that they can fetch a higher price therefore. As Mrs. Anselmo herself testified, she received P350,000 from Mr. Hernandez aside from the latter's assumption of her obligation to a certain Mr. Chua. Obviously, the cash she received represented an additional amount over and above what would have been realized [had the property been] foreclosed and sold at public auction.

On the other hand, defendants' version is simply incredible. This Court cannot imagine how a businesswoman of Mrs. Anselmo's stature and standing would willingly sign a document she fully knew to be an Absolute Deed of Sale if her real agreement with Mr. Hernandez was only for a loan secured by a real estate mortgage. The ploy supposedly employed by Mr. Hernandez, that of using the instrument to obtain the money to be loaned to the defendants from his Chinese friends, is too pat and transparent as to deceive and mislead even an ordinary [man], much less an established businesswoman engaged in the manufacturing and export of garments like Mrs. Anselmo. If only on this score, the latter's version must perforce be rejected.

Accordingly, said third issue is resolved to the effect that the agreement between the parties was indeed a sale (of the property in question) and not merely an equitable mortgage. It necessarily follows [therefore] that the defendants are bound to deliver the possession of said property to the plaintiffs.... From all the above, it becomes obvious that the plaintiffs are the ones entitled to the reliefs prayed for in their Complaint... It goes without saying that the defendants wrongfully retained possession and use of subject property after the last demand of the plaintiffs, thereby entitling the latter to reasonable compensation for the deprivation of their right to the use and enjoyment thereof.

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs, and against the defendants, as follows:

- 1) Ordering the defendants to forthwith deliver the physical possession of the subject property to the plaintiffs;
- 2) Ordering the defendants to pay to the plaintiffs the following:
  - (i) Compensation at the rate of P2,000.00 a month, with legal interest, for the use and occupation of subject property, computed from 1 September 1991 until date of actual delivery thereof to the plaintiffs;
  - (ii) P50,000.00 as moral damages;
  - (iii) P30,000.00 as exemplary damages;
  - (iv) P30,000.00 as and by way of attorney's fees; and
  - (v) Costs of suit.

Defendants' counterclaims are DISMISSED.

SO ORDERED.[4]

The ruling of the RTC was affirmed by the CA in a Decision dated April 3, 2002. The dispositive portion thereof reads:

“WHEREFORE, premises considered, the Decision dated February 23, 1995 of the Regional Trial Court, Branch 82, Quezon City, in Civil Case No. Q92-11368, is hereby AFFIRMED. Costs against the appellants.

SO ORDERED.[5]

Petitioner’s motion for reconsideration was denied. Hence, this petition raising the following issues:[6]

I

WHETHER THE LOWER COURT AND THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THE DEED OF ABSOLUTE SALE AS NULL AND VOID FOR BEING FICTITIOUS AND SIMULATED;

II

WHETHER THE LOWER COURT AND THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THE DEED OF ABSOLUTE SALE AS AN EQUITABLE MORTGAGE;

III

WHETHER THE LOWER COURT AND THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THE TRANSACTION BETWEEN THE PETITIONERS AND RESPONDENTS AS A LOAN; AND

IV

WHETHER THE LOWER COURT AND THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THAT THE LOWER COURT DID NOT HAVE JURISDICTION OVER THE COMPLAINT FOR SPECIFIC PERFORMANCE WHICH, IN REALITY, IS A COMPLAINT FOR EJECTMENT.

Petitioner argues, as follows:

One, the transaction between the parties was principally a loan with equitable mortgage, and that the sale was merely a ruse to circumvent the prohibition against *pactum comissorium*;

Two, the deed of sale was executed on April 24, 1991. The loan vouchers of Boston Equity in the sum of P2,500,000 evidencing the indebtedness of petitioner’s deceased wife, Emerlinda, were executed on November 16, 1990. This shows that the sale was a convenient scheme of respondents to circumvent the legal requirement of foreclosure;

Three, notwithstanding the deed of absolute sale, petitioner and his wife and