

## THIRD DIVISION

[ G.R. No. 157806, November 22, 2007 ]

**SPOUSES SHEIKDING BOOC AND BILY BOOC, PETITIONERS, VS.  
FIVE STAR MARKETING CO., INC., RESPONDENT.**

### DECISION

**AUSTRIA-MARTINEZ, J.:**

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision<sup>[1]</sup> of the Court of Appeals (CA) dated September 30, 2002 and its Resolution of March 17, 2003 in CA-G.R. SP No. 64960.

On August 17, 1999, Five Star Marketing Co., Inc. (respondent) filed with the Municipal Trial Court in Cities (MTCC) of Iligan City a Complaint for unlawful detainer against the spouses Sheikding and Bily Booc (petitioners), pertinent portions of which read as follows:

x x x x

2. That plaintiff is the owner of the land and building situated in Quezon Avenue, Iligan City;
3. That defendants are the present occupants of the 3<sup>rd</sup> floor premises of the building, who were allowed to live temporarily in the premises for free;
4. That on March 15, 1999 the plaintiff notified all building occupants that it had withdrawn the privilege granted (rental free) to them coupled with a notice of rental rates in each premises concerned, and further required to any interested occupants to negotiate and sign a lease agreement with plaintiff;
5. That the defendants were notified that the rental for the 3<sup>rd</sup> floor premises is P40,000.00 per month effective April 1, 1999, and if he desires to lease, he should enter a lease contract before such date;
6. That plaintiff has given more than enough time for the defendants either to vacate or lease the said premises, but the latter still ignored the demand, so that on June 28, 1999, a letter of demand to vacate the premises was sent to the defendants;
7. That the defendants have failed and refused, and still fails and refuses, to vacate the premises up to the present time despite repeated demands;

x x x x<sup>[2]</sup>

In their Answer,<sup>[3]</sup> petitioners contended that Five Star has no cause of action against them as they are actually the owners of the portion of the building that they are occupying; that the said property is owned in common by petitioner Sheikding and his brother, Rufino Booc; that the complaint for unlawful detainer is a mere offshoot of two complaints earlier filed before the Securities and Exchange Commission (SEC) in Cagayan de Oro City by Sheikding and his son James, the first of which is against the board of directors of Five Star, questioning, among others, the validity of the election of the members of the said board; and second, a criminal complaint for falsification of public documents against Salvador Booc, in his capacity as the President of Five Star. The spouses Booc filed a counterclaim for damages.

Thereafter, the parties filed their respective Position Papers.

On September 20, 2000, the MTCC of Iligan City, Branch II rendered a Decision, the dispositive portion of which reads as follows:

WHEREFORE, judgment is hereby rendered in favor of the defendants [herein petitioners] and against the plaintiff [herein respondent], dismissing the above-entitled case and ordering the plaintiff to pay the defendants the following sum of money:

- a) P40,000.00 – As moral damages
- b) 25,000.00 – As attorney's fee; and
- c) 1,000.00 – As appearance fee.

The counterclaim for exemplary damages is denied for lack of merit.

SO ORDERED.<sup>[4]</sup>

Petitioners appealed to the Regional Trial Court (RTC) of Lanao del Norte. In its Decision dated April 6, 2001, the RTC of Lanao del Norte, Branch 5 affirmed with modification the assailed Decision of the MTCC. The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered, the following reliefs are granted:

- a.) The Court declares that plaintiff [herein respondent] has no cause of action against defendants [herein petitioners], hence the instant action is ordered dismissed. The same is true with the claim of plaintiff for damages registered in its pleading.
- b) The moral damages and attorney's fees asserted by defendants are granted for this is sustained by the evidence on record, and in addition therefor exemplary damages is also awarded in favor of defendants and against the plaintiff in the conservative sum of Ten Thousand Pesos (P10,000.00).

SO ORDERED.<sup>[5]</sup>

Aggrieved by the judgment of the RTC, respondent filed a petition for review with the CA. On September 30, 2002, the CA promulgated the presently assailed Decision, disposing as follows:

WHEREFORE, the instant petition is hereby GRANTED. The assailed decision of the Regional Trial Court, Branch V, Iligan City dated April 6, 2001 is hereby ANNULLED and SET ASIDE. It is therefore ORDERED that:

1. respondents [herein petitioners] and other persons claiming rights under them vacate the premises in question, and return the possession thereof to petitioner [herein respondent]; and
2. respondents pay the petitioner the amount of P40,000.00 for every month that they occupied the premises, beginning April 1999 until the same is surrendered to the petitioner.

SO ORDERED.<sup>[6]</sup>

The petitioners filed a Motion for Reconsideration but the same was denied by the CA in its Resolution of March 17, 2003.<sup>[7]</sup>

Hence, the instant petition with the following assignment of errors:

- [1] The Court of Appeals erred in not dismissing the Petition filed before it as the herein respondent failed to attach to its petition pleadings and other material portions of the records to support the allegations in the petition.
- [2] The Court of Appeals erroneously relied on evidence that were not presented by herein respondent at the MTCC but were only presented for the first time on appeal at the RTC.
- [3] The Court of Appeals erred in holding that there is no evidence to prove the existence of the implied trust; and
- [4] The Court of Appeals erred in directing the petitioners to pay rental at the exorbitant amount of P40,000.00 per month.<sup>[8]</sup>

Parties filed their respective Memoranda.<sup>[9]</sup>

The Court finds the petition partly meritorious.

The first assigned error is not plausible. The Court, in *Atillo v. Bombay*,<sup>[10]</sup> interpreted the provisions of Section 2(d), Rule 42 of the Rules of Court and ruled as follows:

The phrase "of the pleadings and other material portions of the record" in Section 2(d), Rule 42 is followed by the phrase "as would support the allegations of the petition" clearly contemplates the exercise of discretion on the part of the petitioner in the selection of documents that are

deemed to be relevant to the petition. However, while it is true that it is petitioner who initially exercises the discretion in selecting the relevant supporting documents that will be appended to the petition, it is the CA that will ultimately determine if the supporting documents are sufficient to even make out a *prima facie* case. It can be fairly assumed that the CA took pains in the case at bar to examine the documents attached to the petition so that it could discern whether on the basis of what have been submitted it could already judiciously determine the merits of the petition x x x<sup>[11]</sup>

Thus, in the present case, the Court finds no reversible error that can be attributed to the CA in choosing to proceed and decide the petition filed before it on the basis of what had been submitted by the parties.

The second assigned error is likewise untenable. Petitioners contend that the CA erred in relying on evidence that were presented by respondent for the first time when the case was appealed to the RTC. Petitioners refer to the Joint Affidavit,<sup>[12]</sup> dated December 1, 1999, executed by Teodora Abarca del Mar (Teodora) and Preciosa Abarca Talamera (Preciosa) repudiating their claim in their earlier Joint Affidavit,<sup>[13]</sup> dated November 18, 1999, that it was petitioner Sheikding and his brother Rufino who paid for the subject lot.

The Court agrees with petitioners that the Joint Affidavit of Teodora and Preciosa dated December 1, 1999 should not have been considered since the said document was only presented when the case was appealed to the RTC and was not previously filed with the MTCC in the original case.<sup>[14]</sup>

Nonetheless, the CA adequately explained in its presently assailed Resolution, denying petitioners' motion for reconsideration, that its Decision was arrived at not only on the basis of the above-mentioned Joint Affidavit but after a consideration of other factors, to wit:

- (a) that no evidence was adduced to prove that respondents purchased the lot, and constructed the building in question with their own money; and
- (b) the subject lot was titled in the name of petitioner, and that both land and building are declared in the latter's name for purposes of taxation.<sup>[15]</sup>

The resolution of the third assigned error boils down to a determination of who between petitioners and respondent is entitled to the physical possession of the subject properties.

Both parties anchor their right of material possession of the disputed lot and building on their respective claims of ownership.

In *Arambulo v. Gungab*<sup>[16]</sup>, this Court held:

The sole issue for resolution in an unlawful detainer case is physical or material possession. But even if there was a claim of juridical possession

or an assertion of ownership by the defendant, the MTCC may still take cognizance of the case. All that the trial court can do is to make an initial determination of who is the owner of the property so that it can resolve who is entitled to its possession absent other evidence to resolve ownership. Courts in ejectment cases decide questions of ownership only as it is necessary to decide the question of possession. The reason for this rule is to prevent the defendant from trifling with the summary nature of an ejectment suit by the simple expedient of asserting ownership over the disputed property.<sup>[17]</sup>

In addition, it is a basic rule in civil cases that the party having the burden of proof must establish his case by a preponderance of evidence.<sup>[18]</sup>

*Preponderance of evidence* simply means evidence which is of greater weight, or more convincing than that which is offered in opposition to it.<sup>[19]</sup>

In the present case, the Court finds no cogent reason to depart from the findings of the CA that respondent has proved, by preponderance of evidence, its claim that it is the owner of the disputed properties and, therefore, has the right of material possession over the same.

Petitioners' claim of co-ownership is anchored on their assertion that it was petitioner Sheikding together with Rufino who actually purchased the subject lot; that they were also the ones who financed the construction of the subject building; and that they paid the taxes due on the subject properties. Both the MTCC and the RTC gave credence to the allegations of petitioners.

In claiming that the subject lot and building were bought and constructed with the money of petitioner Sheikding and Rufino, petitioners, in effect, aver that respondent is merely holding the property in trust for them.

As a rule, the burden of proving the existence of a trust is on the party asserting its existence and such proof must be clear and satisfactorily show the existence of the trust and its elements.<sup>[20]</sup>

To prove that they are co-owners of the disputed lot, petitioners presented the Joint Affidavit<sup>[21]</sup> of Teodora and Preciosa, dated November 18, 1999, wherein they assert that petitioner Sheikding and Rufino paid for the subject lot. However, aside from the Joint Affidavit, no other competent evidence was presented to support petitioners' allegation of ownership of the lot in question.

The Affidavit of Flordeliza D. Villaver<sup>[22]</sup> and the letters of Rufino Booc to Sheikding's son, James Booc (James), dated September 3, 1998<sup>[23]</sup> and October 16, 1998,<sup>[24]</sup> submitted by petitioners, diluted whatever evidentiary weight could have been assigned to the Joint Affidavit of Teodora and Preciosa. The Affidavit of Flordeliza and the letters of Rufino purportedly show that it was Rufino, and not respondent company, who rented out the first floor of the said building to James and to the Shooters and Guns Ammo Corporation, formerly known as De Leon Gun Store, the company where Flordeliza served as the Officer-in-Charge. However, these pieces of evidence could not be given credence in light of the established fact