

## FIRST DIVISION

[ G.R. No. 146651, January 17, 2002 ]

**RONALDO P. ABILLA AND GERALDA A. DIZON, PETITIONERS, VS.  
CARLOS ANG GOBONSENG, JR. AND THERESITA MIMIE ONG,  
RESPONDENTS.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

May the vendors in a sale judicially declared as a *pacto de retro* exercise the right of repurchase under Article 1606, third paragraph, of the Civil Code, after they have taken the position that the same was an equitable mortgage?

This is the legal question raised in this petition for review assailing the January 14, 2001 Order<sup>[1]</sup> of the Regional Trial Court of Dumaguete City, Branch 41, in Civil Case No. 8148, which granted herein respondent spouses the right to repurchase the seventeen lots<sup>[2]</sup> subject of the *pacto de retro* sale within thirty (30) days from the finality of the order.

The undisputed facts are as follows:

Petitioner spouses instituted against respondents an action for specific performance, recovery of sum of money and damages, docketed as Civil Case No. 8148 of the Regional Trial Court of Dumaguete City, Branch XLII, seeking the reimbursement of the expenses they incurred in connection with the preparation and registration of two public instruments, namely a "Deed of Sale"<sup>[3]</sup> and an "Option to Buy."<sup>[4]</sup> In their answer, respondents raised the defense that the transaction covered by the "Deed of Sale" and "Option to Buy," which appears to be a Deed of Sale with Right of Repurchase, was in truth, in fact, in law, and in legal construction, a mortgage.<sup>[5]</sup>

On October 29, 1990, the trial court ruled in favor of petitioners and declared that the transaction between the parties was not an equitable mortgage. Citing *Villarica v. Court of Appeals*,<sup>[6]</sup> it ratiocinated that neither was the said transaction embodied in the "Deed of Sale" and "Option to Buy" a *pacto de retro* sale, but a sale giving respondents until August 31, 1983 within which to buy back the seventeen lots subject of the controversy. The dispositive portion thereof reads:

IN THE LIGHT OF THE FOREGOING, it is the considered opinion of this Court that plaintiffs have proven by preponderance of evidence their case and judgment is therefore rendered in their favor as follows:

1. Ordering defendants to pay plaintiffs the sum of P171,483.40 representing the total expenses incurred by plaintiffs in the preparation and registration of the Deed of Sale, amount paid to the Bank of Asia and America (IBAA) and capital gains tax with legal

rate of interest from the time the same was incurred by plaintiffs up to the time payment is made by defendants; P10,000.00 as attorney's fees; P15,000.00 moral damages; P10,000.00 expenses of litigation and to pay cost.

2. The Philippine National Bank, Dumaguete City Branch is directed to release in favor of plaintiffs, the spouses Ronaldo P. Abilla and Gerald A. Dizon all the money deposited with the said bank, representing the rentals of a residential house erected inside in one of the lots in question;
3. For insufficiency of evidence, defendants' counterclaim is ordered dismissed.

SO ORDERED.<sup>[7]</sup>

On appeal by respondents, the Court of Appeals ruled that the transaction between the parties was a *pacto de retro* sale, and not an equitable mortgage.<sup>[8]</sup> The decretal portion thereof states:

WHEREFORE, the decision appealed from is MODIFIED by deleting the award of attorney's fees. In other respects the decision of the lower court is AFFIRMED. Costs against defendant-appellants.

SO ORDERED.<sup>[9]</sup>

On November 10, 1997, the Court of Appeals denied the motion for reconsideration of the foregoing decision.

Respondents filed a petition for review with this Court which was docketed as G.R. No. 131358; however, the same was dismissed on February 11, 1998, for having been filed out of time.<sup>[10]</sup> The motion for reconsideration thereof was denied with finality on June 17, 1998.<sup>[11]</sup>

Undaunted, respondents filed a second motion for reconsideration, claiming that since the transaction subject of the controversy was declared a *pacto de retro* sale by the Court of Appeals, they can therefore repurchase the property pursuant to the third paragraph of Article 1606 of the Civil Code. The issue of the applicability of Article 1606 of the Civil Code was raised by the respondents only in their motion for clarification with the Court of Appeals, and not before the trial court and on appeal to the Court of Appeals. Thus, respondent's second motion for reconsideration was denied.<sup>[12]</sup> The denial became final and executory on February 8, 1999.<sup>[13]</sup>

On February 23, 1999, respondents filed with the trial court in Civil Case No. 8148 an urgent motion to repurchase the lots in question with tender of payment. The motion was, however, denied on November 10, 1999<sup>[14]</sup> by Judge Ibarra B. Jaculbe, Jr., who subsequently inhibited himself from the case.

On January 14, 2001, Branch 41 of the Regional Trial Court of Dumaguete City, to which the case was reraffled, set aside the November 10, 1999 order and granted respondents' motion to repurchase.