

SPECIAL FIRST DIVISION

[G.R. No. 146651, August 06, 2002]

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

R E S O L U T I O N

YNARES-SANTIAGO, J.:

This resolves the Motion for Reconsideration filed by respondents of our Decision dated January 17, 2002 which granted the instant petition and reversed the

Order dated January 14, 2001 of the Regional Trial Court of Dumaguete City, Branch 41 in Civil Case No. 8148.

The Motion for Reconsideration raises the following grounds:

A. WITH DUE RESPECT, THIS HONORABLE HIGHEST COURT ERRED IN NOT AFFIRMING THE ORDER OF THE REGIONAL TRIAL COURT, BRANCH 41, DUMAGUETE CITY, IN CIVIL CASE NO. 8148 WHICH GRANTED RESPONDENT SPOUSES GOBONSENG THE RIGHT TO REPURCHASE THE SEVENTEEN (17) LOTS SUBJECT OF THE PACTO DE RETRO SALE WITHIN THIRTY (30) DAYS FROM THE FINALITY OF THE ORDER.

B. WITH DUE RESPECT, THIS HONORABLE HIGHEST COURT ERRED IN NOT APPLYING TO THE INSTANT CASE THE THIRD PARAGRAPH OF ARTICLE 1606 OF THE NEW CIVIL CODE, HENCE, THE PERIOD TO REPURCHASE ON THE PART OF RESPONDENTS HAS NOT YET EXPIRED.

C. WITH DUE RESPECT, THIS HONORABLE HIGHEST COURT ERRED IN APPLYING TO THE CASE AT BAR THE CASE OF VDA. DE MACOY VS. COURT OF APPEALS (206 SCRA 244) CITING THE CASE OF FELICEN, SR. VS. ORIAS (156 SCRA 586).^[1]

In compliance with our resolution,^[2] petitioners filed their Comment to the motion for reconsideration, arguing that respondents failed to seasonably exercise their right of redemption; and that this Court was correct in its application of the case of *Vda. de Macoy v. Court of Appeals*, which held that Article 1606, third paragraph, of the Civil Code does not apply to cases where the parties intended their contract of sale not as an equitable mortgage but a true sale involving transfer of ownership.^[3]

It may be helpful to restate the undisputed facts. Respondent contracted a loan from petitioner in the sum of P550,000.00, secured by a real estate mortgage over two parcels of land, covered by TCT Nos. 13607 and 13535. Respondent defaulted in the payment of the loan, which had reached the amount of P700,000.00. He sought a renewal of the loan and issued two postdated checks, one for P10,000.00 and the other for P690,000.00, representing the full amount of his obligation.

The second check was dishonored by the drawee bank. Respondent promised to pay petitioner the sum of P690,000.00 upon approval of his pending loan application with the State Investment House, Inc. However, the said lending institution required a collateral before approving and releasing the loan, for which reason respondent borrowed from petitioner the two titles, TCT Nos. 13607 and 13535, so he can mortgage the same. Thus, petitioner cancelled the mortgage in his favor and delivered the two titles to respondent.

Despite approval of the loan, respondent failed to make good on his promise to pay his outstanding obligation to petitioner. Hence, the latter threatened to sue him for Estafa. Respondent thus executed a deed of absolute sale over his seventeen lots in Dumaguete City in favor of petitioner. On the same day, the parties executed an Option to Buy whereby respondent was allowed to repurchase the lots within a period of six months.

Respondent failed to repurchase the seventeen lots within the stipulated period of six months. Consequently, petitioners instituted an action for specific performance, praying that respondent be made to pay the capital gains tax and registration expenses for the transfer of title to the said lots, pursuant to the deed of absolute sale. In his answer, respondent interposed the defense that the transaction was in reality an equitable mortgage.

On October 29, 1990, the Regional Trial Court of Dumaguete City, Branch 42, rendered judgment in favor of petitioner and ruled that the Option to Buy was rendered null and void by respondent's failure to exercise the option within the period of six months.^[4] On appeal, the Court of Appeals affirmed the decision of the trial court, but further declared that "the deed of sale and option to buy actually constitute a *pacto de retro* sale."^[5] Respondent's motion for reconsideration was denied,^[6] and the petition filed with this Court was dismissed.^[7] Hence, the decision became final on February 8, 1999 and was duly entered in the Book of Entries of Judgments.^[8]

On February 27, 1999, respondent filed with the court of origin a motion to repurchase the lots with tender of payment, which was denied.^[9] Subsequently, the trial court issued an Order granting respondent's motion for reconsideration and allowing him to repurchase the lots within thirty days from finality thereof.^[10] Thus, petitioner brought the instant petition for review.

On January 17, 2002, we rendered the assailed Decision reversing the Order of the Regional Trial Court of Dumaguete City, in effect denying respondent the right to repurchase the subject lots.

Respondent's claim of the right to repurchase the lots is anchored on the third paragraph of Article 1606 of the Civil Code, which states:

However, the vendor may still exercise the right to repurchase within thirty days from the time final judgment was rendered in a civil action on the basis that the contract was a true sale with right to repurchase.

The above-quoted provision applies only where the nature and character of the transaction – whether as a *pacto de retro* sale or as an equitable mortgage – was put in issue before the court.^[11] In other words, it applies in a situation where, in a case, one of the contending parties claims that the transaction was a sale with right