



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ARTURO A. DACQUEL,
Petitioner,

G.R. No. 203946

Present:

versus

PERLAS-BERNABE, *SAJ.*,
Chairperson,

HERNANDO,
INTING,
GAERLAN, and
ROSARIO,* *JJ.*

SPOUSES ERNESTO SOTELO
and FLORA DACQUEL-
SOTELO, represented by their
Attorney-in-Fact, IMELDA
SOTELO,

Promulgated:

Respondents.

AUG 04 2021

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DECISION

HERNANDO, J.:

This Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assails the July 12, 2012 Decision² and the October 10, 2012 Resolution³ of the Court of Appeals (CA) in CA-G.R. CV No. 93939.

The Antecedents:

Subject of the case is a parcel of land located in Malabon City formerly covered by Transfer Certificate of Title (TCT) No. 738⁴ in the names of respondents-spouses Ernesto and Flora Sotelo (the Sotelos), later registered under TCT No. M-10649⁵ under the name of petitioner Arturo Dacquel

* Designated as additional Member per S.O. No. 2835 dated July 15, 2021.

¹ *Rollo*, pp. 12-46.

² *Id.* at 51-68; penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Hakim S. Abdulwahid and Edwyn D. Sorongon.

³ *Id.* at 48-49.

⁴ *Id.* at 75.

⁵ *Id.* at 77.

(Dacquel). Established facts show that in 1994, the Sotelos began the construction of a 7-door apartment on the subject land. Due to budget constraints, the Sotelos had to borrow the amount of ₱140,000.00 from Dacquel, who was Flora Sotelo's (Flora) brother. The construction of the apartment was completed in 1997.⁶

The parties hereafter part versions.

The Sotelos claimed that the debt of ₱140,000.00 was agreed to be payable in double the said amount or ₱280,000.00, to be collected from the rental income of four out of the seven apartment units. There was no agreed period within which to pay the loan and the interests. Dacquel also required the Sotelos to cede to him the subject land as security for the loan.

Consequently, on September 1, 1994, the parties executed a Deed of Sale⁷ in consideration of the amount of ₱140,000.00. TCT No. 738 in the names of the Sotelos was thereafter cancelled and TCT No. M-10649 was issued, constituting Dacquel as the new registered owner of the subject land. In March 2000, when Dacquel had collected the full amount of ₱280,000.00 in rental income from the four apartment units, the Sotelos asked for the return of the subject lot. Dacquel, however, allegedly held on to the title and refused to yield the subject lot to the Sotelos.⁸

Thus, on May 29, 2000, the Sotelos filed a Complaint⁹ for annulment of title and reconveyance against Dacquel before the Regional Trial Court (RTC), Branch 74 of Malabon City. The Sotelos alleged in their Complaint that Dacquel held the title to the subject land only as security for the loan and in trust for the Sotelos, who remained the beneficial owners of the subject lot. Upon Dacquel's receipt of more than the amount he had loaned to the Sotelos, the former was legally obligated to reconvey the property to the latter. The building permits for the 7-door apartment, as well as the original registration of the electric and water meters of all seven units, were issued in Ernesto Sotelo's (Ernesto) name and that the construction expenses were paid for by Ernesto's checks.

Anent the September 1, 1994 Deed of Sale, Ernesto claimed that he could not remember having signed the document as he was too sick at the time, and that Flora's signature thereon was forged. The market value of the subject property in 1994 was ₱1,750,000.00 and not just ₱140,000.00. Also, in order to fund the apartment construction expenses, Ernesto had even mortgaged the subject property to a bank for ₱500,000.00 and the mortgage had been annotated to the title. The title to the subject property should not and could not have been transferred to Dacquel's name since the latter was a foreigner

⁶ Id. at 52.

⁷ Id. at 75.

⁸ Id. at 52-55.

⁹ Records, pp. 2-6.

despite having misrepresented his nationality as a Filipino in the disputed Deed of Sale. The Sotelos likewise prayed for moral damages and attorney's fees.¹⁰

The Sotelos presented the following pertinent documents: official receipts issued by Ernesto acknowledging rental payments made to him by the lessees of the three apartment units; building and electrical permits intended for the construction of the apartment, Meralco service deposit receipts, and Maynilad Water billings, all in the name of Ernesto; checks issued by Ernesto, which constituted as payments to the professionals who worked on the apartment construction; and copies of contracts of lease executed between Ernesto and the lessees of the three apartment units. Testifying for the Sotelos were Ernesto and Imelda Sotelo, the Sotelos' daughter and attorney-in-fact.¹¹

Dacquel, on the other hand, asserted that the Sotelos's debts to him totaled ₱1,000,000.00, which he had recorded in a black diary. As payment for their debts, the Sotelos had actually offered to sell to him the subject land and he had accepted their offer. They reduced the said agreement into writing as a Deed of Sale on September 1, 1994 for the true consideration of ₱1,000,000.00, and the amount of ₱140,000.00 was indicated on the Deed of Sale only for the purpose of reducing the tax liabilities for the transaction.

The Sotelos were allegedly estopped from questioning the validity of the Deed of Sale because of their acquiescence to the subject property's transfer unto Dacquel's name. Also, Dacquel caused the construction of the apartment using the sum he inherited from one Richmond Lloyd Wilcox. He did not authorize the Sotelos to lease and collect rental payments from the three apartment units. By way of counterclaim, Dacquel sought moral and exemplary damages against the Sotelos, as well as reimbursement of attorney's fees.¹²

Dacquel offered the following as proof, among others: copy of the Deed of Sale dated September 1, 1994; copy of TCT No. M-10649 registered in Dacquel's name; last will and testament of one Richmond Lloyd Wilcox; the black diary; a *Dacion en Pago* undertaken but unsigned by Dacquel; and contracts of lease executed between Dacquel and different lessees over the apartment units.¹³ Dacquel took the witness stand, as well as Carmencita Balajadia (Carmencita), who was Dacquel and Flora's niece. Carmencita narrated that the Sotelos signed the Deed of Sale voluntarily as she allegedly facilitated the execution of the Deed of Sale.¹⁴

¹⁰ Id.

¹¹ Id. at 161-170.

¹² Id. at 12-17.

¹³ Id. at 308-315.

¹⁴ Id. at 23-26.

Ruling of the Regional Trial Court:

The RTC ruled in favor of Dacquel. It held that there was no evidence that Dacquel was of foreign citizenship who was disqualified to own lands in the Philippines as of the date of sale. It also discounted the checks issued and presented by Ernesto, since there was nothing on the face of the said checks to show that these were intended to finance the construction of the apartment, more so that these were issued to pay to the order of "Cash". The RTC also ruled that the registration of property in one's name for billing purposes, when in reality the same property is owned by another, is common practice in the country. In its May 27, 2009 Decision,¹⁵ the RTC dismissed the Sotelos' Complaint as follows:

WHEREFORE, premises considered, judgment is hereby rendered in favor of defendant Arturo A. Dacquel and against plaintiffs spouses Ernesto and Flora Sotelo. The complaint for Annulment of Title and Reconveyance of Instrument is **DENIED** for lack of sufficient evidence.

SO ORDERED.¹⁶

The Sotelos appealed to the CA.

Ruling of the Court of Appeals:

The CA reversed the RTC and decided in favor of the Sotelos. Applying the provisions of Articles 1602 and 1604 of the Civil Code, the CA declared the September 1, 1994 Deed of Sale to be one of equitable mortgage. It found two badges of fraud: gross inadequacy of the price and the continued possession by the Sotelos of the subject property.¹⁷

According to the CA, the first badge of fraud was extant as the undisputed market value of the 350-square meter subject property in 1994 was ₱1,750,000.00 at ₱5,000.00 per square meter, but was sold in the Deed of Sale for only ₱140,000.00. Dacquel failed to substantiate the Sotelos' indebtedness of ₱1,000,000.00 to justify the allegation that the Deed of Sale was subjected to a dation in payment.

Even if the amount is so proven, the Deed of Sale did not show that the subject property was being conveyed for a consideration other than the amount of ₱140,000.00. There was also no proof that the parties consented to the supposed dation in payment in the amount of ₱1,000,000.00. From these, the CA concluded that there was gross inadequacy of the purchase price as indicated in the Deed of Sale and the actual price of the subject property.¹⁸

¹⁵ *Rollo*, pp. 70-73.

¹⁶ *Id.* at 74.

¹⁷ *Id.* at 58-59.

¹⁸ *Id.* at 59-60.

The CA likewise found the Sotelos to have continued their actual possession over the subject property, taking into consideration their supervision of the apartment's construction, their execution of lease contracts over the units, and Dacquel's failure to prove that he had instructed the Sotelos to act in his stead. Having remained a mortgagee in the transaction, the issuance of a TCT in favor of Dacquel did not vest upon him ownership of the property and does not preclude its cancellation. The CA granted attorney's fees to the Sotelos while denying their prayer for moral damages.¹⁹ The July 12, 2012 CA Decision²⁰ disposed of the Sotelos' appeal in the following manner:

WHEREFORE, premises considered, the appeal is **GRANTED**. The Decision of the Regional Trial Court, Branch 74, Malabon City in Civil Case No. 3099-MN is hereby **ANNUL[L]ED and SET ASIDE**. Judgment is hereby rendered declaring that the Deed of Sale executed between the parties is an equitable mortgage rather than one of absolute sale over the subject property, and that the obligation for which it has been constituted has been extinguished. Appellee Arturo Dacquel is hereby ordered to reconvey the subject property to appellants, and to cease and desist from collecting rentals thereon. The Register of Deeds of Malabon City is hereby ordered to cancel TCT No. M-10649 issued to appellee and to issue a new TCT in the name of appellants, while the City Assessor of Malabon is hereby ordered to cancel the Tax Declarations in the name of appellee Arturo Dacquel. Finally, appellee Arturo Dacquel is hereby ordered to pay appellants attorney's fees in the amount of Php100,000.00.

SO ORDERED.²¹

Finding a reiteration of the issues raised in the appeal, the CA likewise denied²² Dacquel's Motion for Reconsideration.²³ Thus, this Petition.

Petitioner Dacquel's Arguments:

Dacquel insists on the validity of the September 1, 1994 Deed of Sale. He asserts his lawful ownership over the subject property, and that the Decision declaring the nullity of his title and ordering the reconveyance of the subject property to the Sotelos is grave error on the part of the CA. The parties clearly intended to be bound by the Deed of Sale and what was concealed was only the actual price of the subject property. Dacquel puts premium on the notarial seal on the Deed of Sale, which gave the document the presumption of regularity.

The price of ₱140,000.00 was not a grossly inadequate price for the sale of the subject property as there were no improvements at the time of the transaction. All the requisites of *dacion en pago* attended their contract.

¹⁹ Id. at 60-66.

²⁰ Id. at 52-67.

²¹ Id. at 67.

²² Id. at 48-49.

²³ CA rollo, pp. 175-194.

Moreover, the absence of his authorization empowering Ernesto to construct and manage the apartment was on account of their relationship, being brothers-in-law. Dacquel remained in constructive possession of the subject property as he collected in his name the rental for four apartment units and even claimed the other three units in the same manner. He also asserts that the permits, billings, and checks in the name of Ernesto likewise did not prove the Sotelos' ownership of the subject property. As regards the award of attorney's fees, Dacquel disputes the same as he was not guilty of bad faith in litigating his case against the Sotelos.²⁴

Respondents-Spouses Sotelo's Position.

The Sotelos maintain that the transaction was an equitable mortgage. They rest their claim with the findings by the CA that gross inadequacy of the price and the continued possession by the Sotelos of the subject property constituted as badges of fraud under Articles 1602 and 1604 of the Civil Code against Dacquel, negating the veracity of the September 1, 1994 Deed of Sale.²⁵

Issues:

The main issues to be resolved are (1) whether or not the September 1, 1994 Deed of Sale between petitioner and respondents-spouses constituted an equitable mortgage; and (2) whether petitioner's title to the subject property should be nullified and reconveyed to respondents-spouses, and (3) whether or not respondents-spouses are entitled to attorney's fees.

Our Ruling

The Petition is meritorious in part.

The transaction between petitioner and respondents-spouses was an equitable mortgage.

The relevant provisions of the Civil Code read:

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 a right to repurchase is unusually inadequate;
2. When the vendor remains in possession as lessee or otherwise;

²⁴ *Rollo*, pp. 24-42.

²⁵ *Id.* at 194-209.

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.

Art. 1604. The provisions of Article 1602 shall also apply to a contract purporting to be an absolute sale.

The CA correctly declared the subject transaction between petitioner and respondents-spouses as an equitable mortgage.

Decisive for the proper determination of the true nature of the transaction between the parties is their intent, shown not merely by the contract's terminology but by the totality of the surrounding circumstances, such as the relative situations of the parties at that time; the attitudes, acts, conduct, and declarations of the parties; the negotiations between them leading to the deed; and generally, all pertinent facts having a tendency to fix and determine the real nature of their design and understanding.²⁶ When in doubt, courts are generally inclined to construe a transaction purporting to be a sale as an equitable mortgage, which involves a lesser transmission of rights and interests over the property in controversy.²⁷

Here, the CA applied these principles and aptly found two badges of fraud against petitioner – gross inadequacy of price in the Deed of Sale and continued possession of the subject property by respondents-spouses as debtors of petitioner. The court *a quo* discussed its own findings of fact at length, which this Court deems already sufficient and persuasive, *viz.*:

First, there was gross inadequacy in the purchase price. The Deed of Absolute Sale shows that the consideration for the subject property was only Php140,000.00. While no evidence definitely establishes this as the market value of the property for 1994, both parties agree that the proper consideration for the same should be in the amount of at least Php 1 Million: [respondents-spouses] averred that the price per square meter of the 350 square meter was Php5,000.00, while [petitioner] stressed that the property was transferred to him in satisfaction of [respondents-spouses] debts to him amounting to more that Php 1 Million. It is also noteworthy that the property was mortgaged for the

²⁶ *Legaspi v. Spouses Ong*, 498 Phil. 167, 182 (2005).

²⁷ *Id.*

amount of Php500,000.00, which [petitioner] did not contest, and for which an annotation has been made on [respondents-spouses'] title. Furthermore, We observed that the stated Php140,000.00 included the improvements already constructed at the time. Thus, in light of these, that only Php140,000.00 was the agreed upon consideration for the subject property strikes Us as suspect and grossly inadequate.

Relevantly, [petitioner's] version that the [respondents-spouses] owed him debts amounting to more than Php1 Million, with the amount only being stated in the Deed of Sale as a tax evasion device, fails to inspire belief. The alleged debts have not been duly proved. [Petitioner's] only evidence of such obligations were statements in a diary which he himself made. There are several reasons why We find such statements inadequate to prove the supposed indebtedness. First, there exists no proof that these amounts were actually sent to and received by [respondents-spouses]. Second, [petitioner] never even detailed how he transmitted these to [respondents-spouses], which could have lent his testimony some credibility. Third, there is also no proof that these diary entries were even indeed made on the dates these loans were purportedly contracted, so as to show that these diary entries were not merely fabricated or made at a later date to conform to [petitioner's] position. Without such crucial proof, these entries are thus merely self-serving, and consequently, have no probative value to show that [respondents-spouses] were indeed indebted to [petitioner] in those amounts.

As a consequence, [petitioner's] failure to prove [respondents-spouses] indebtedness of more than Php1 Million eliminates the construction that the Deed of Sale was one of dacion en pago for such a substantial obligation x x x. However, it bears stressing that the non-existence of the debt does not prevent Us from noting that [petitioner] likewise agreed that the P140,000.00 expressed in the Deed was too low to correspond to the actual market value of the property.

Moreover, even granting that the [respondents-spouses] were indeed indebted to [petitioner] in the amount insisted by the latter, a reading of the Deed shows that the subject property was clearly conveyed to [petitioner] for only Php140,000.00. Nothing in the Deed shows that the property was conveyed for a consideration other than the amount appearing thereon. x x x

x x x x

Second, the [respondents-spouses], as vendors of the subject property, remained in possession of the same. Since the Deed was signed in 1994, [respondents-spouses] possessed the property by actual possession thereof, as when they had supervised the construction of the apartment, and subsequently, as lessors, when they entered into lease contracts with tenants and received payment [therefor].

x x x [Petitioner] averred that he had authorized [Ernesto] to supervise the construction and the management of the apartment. Again, however, [petitioner] presented no proof of such authorization, or details as to the date, time, and place when he made such authorization, which he should have recalled x x x as this was a matter of utmost importance. [Petitioner] never even demanded an accounting of the expenses for the construction. x x x We note that the building and electricity permits for the property were in [Ernesto's] name, and that when the apartment was finished, [Ernesto] first managed the same. The inevitable

conclusion that emerges is that [Ernesto] independently carried out his plan to build and finish the apartment, with [petitioner] only as a creditor who lent him some funds for the projects.

In addition, [respondents-spouses] have proved, and [petitioner] even confirmed, that when the apartment was constructed, [respondents-spouses] collected payment, and only from three doors, which is in accord with the arrangement between the parties. It is a glaring inconsistency that [petitioner] vehemently alleges ownership of the subject property and the apartment and yet allowed [respondents-spouses] for years to collect from three doors of the apartment, and even enter into lease contracts with tenants. Such details only persuade Us that it was [petitioner's right to collect which has been authorized by [respondents-spouses], and which has now been extinguished, with the debt of Php280,000.00 (Php140,000.00 with 100% interest) having been completely paid.²⁸

Even after the supposed execution of the Deed of Sale, respondents-spouses persisted in exercising the foregoing acts assertive of their ownership over the subject property. In *Sps. Raymundo v. Sps. Bandong*,²⁹ it was observed that it is contrary to human experience that a person would easily part with his property after incurring a debt.³⁰ Rather, he would first find means to settle his obligation, and the selling of a property on which the house that shelters him and his family stands, would only be his last resort.³¹

The actuations of respondents-spouses persuade that they were preserving their hold on the subject property and had no intent at all to relinquish their ownership over the same by sale. Moreover, petitioner cannot simply claim that respondent Ernesto had been acting only in representative capacity on the sole premise that they are brothers-in-law. Close-knit familial relationships, whether by consanguinity or by affinity, are not presumptive evidence of a contract of agency on their lonesome.

Also, petitioner cannot correctly argue that his agreement with respondents-spouses constituted dation in payment or *dacion en pago*. The case of *Filinvest Credit Corporation v. Philippine Acetylene Co. Inc.*³² defined this contract, viz.:

Dacion en pago, according to Manresa, is the transmission of the ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of obligation. **In *dacion en pago*, as a special mode of payment, the debtor offers another thing to the creditor who accepts it as equivalent of payment of an outstanding debt.** The undertaking really partakes in one sense of the nature of sale, that is, the creditor is really buying the thing or property of the debtor, payment for which is to be charged against the debtor's debt. **As such, the essential elements of a contract of sale, namely, consent, object certain, and cause or**

²⁸ *Rollo*, pp. 59-61.

²⁹ *Sps. Solitarios v. Sps. Jaque*, 746 Phil. 852, 876 (2014).

³⁰ *Id.*

³¹ *Id.*

³² 197 Phil. 394-406 (1982).

consideration must be present. In its modern concept, what actually takes place in *dacion en pago* is an objective novation of the obligation where the thing offered as an accepted equivalent of the performance of an obligation is considered as the object of the contract of sale, while the debt is considered as the purchase price.³³ (Emphasis supplied.)

Glaring legal and factual reasons debunk petitioner's claim of *dacion en pago*.

First, the March 1999 *Dacion en Pago*³⁴ submitted by petitioner apparently pertains to another debt that was not proven to have transpired. The relevant stipulations in the *Dacion en Pago* are hereafter reproduced:

WHEREAS, I, ARTURO A. DACQUEL xxx am the registered owner of the parcel of residential lot with improvement situated in Malabon, Metro Manila, more particularly described [under TCT No. M-10649];

WHEREAS, I acquired by purchase, the above parcel of land from the spouses ERNESTO SOTELO and FLORA DACQUEL for a consideration of ONE MILLION FOUR HUNDRED FIFTY THOUSAND PESOS (P1,450,000.00), of which amount of FIVE HUNDRED THOUSAND PESOS (P500,000.00) remains as balance which I have not yet paid to the spouses;

WHEREAS, I have constructed a seven-door apartment building on the said parcel of land, each door or unit designated as "37-A", "37-B", "37-C", "37-D", "37-E", "37-F", and "37-G" xxx;

WHEREAS, in full payment of the purchase price of the aforesaid lot from the Sotelo-spouses, I, as the Vendee of the said Sotelo spouses, as the Vendors thereof, have agreed that three (3) of the apartment units designated as 37-A, 37-B and 37-C which are all successive and adjoining apartments xxx shall be ceded, conveyed, and transferred unto the said spouses xxx, together with land on which the said apartment doors are erected;

NOW THEREFORE, for and in consideration of the foregoing premises, and by way of my full payment of the unpaid balance for the lot equivalent to the amount of FIVE HUNDRED THOUSAND PESOS (P500,000.00), I, ARTURO F. DACQUEL, hereby cede, convey, transfer by way of DACION EN PAGO, in favor of the spouses ERNESTO SOTELO and FLORA DACQUEL, their heirs, assigns, and successors-in-interest, THREE (3) apartment units designated as 37-A, 37-B, and 37-C xxx, together with land on which the said apartment doors are erected thereon, including the ground space surrounding the 3-door apartments, in full liquidation of any indebtedness to said spouses by way of the unpaid purchase price of the above-described land.

x x x x³⁵

³³ Id. at 402-403.

³⁴ Records, pp. 291-292.

³⁵ Id.

This *Dacion en Pago* constituted petitioner Dacquel as the buyer of the subject lot and the respondents-spouses Sotelo as the vendors, whereby Dacquel allegedly owed to the Sotelos the remaining amount of ₱500,000.00 out of the purported ₱1,450,000.00 purchase price. These stipulations were not at all shown to actually exist, or to be the same, or at least connected to the parties' original transaction. While petitioner claims that this dation in payment stemmed from the ₱140,000.00 he had loaned to respondents-spouses, no reference to the said established debt was made in petitioner's *Dacion en Pago*. If anything, the existence of the *Dacion en Pago* relied on the truth of the September 1, 1994 Deed of Sale, which, unfortunately for petitioner, turned out to be not a sale but only an equitable mortgage. Petitioner failed to adduce acceptable evidence that this sale actually transpired, more so as respondents-spouses consistently denied that they sold the subject property to petitioner.

Second, even if the truth of this second transaction would be sustained, both parties still must be shown to have mutually agreed to the dation in payment. Records, however, fail to disclose any such consent on the part of respondents-spouses. Instead of an agreement, the said *Dacion en Pago* appears to be a mere unilateral affidavit executed by petitioner. That both petitioner and respondents-spouses left this document unsigned and unnotarized does not help the present appeal. No witnesses even attested to the alleged *Dacion En Pago*. This *Dacion En Pago* rests on claims that are too self-serving to be considered, and bare allegations have no probative value in court.

Title may be nullified and real property may be reconveyed in case of equitable mortgage.

As the transaction between the parties herein was demonstrated to be one of equitable mortgage, petitioner did not become owner of the subject property but a mere mortgagee thereof. As such, petitioner was bound by the prohibition against *pactum commissorium* as embodied in Article 2088 of the Civil Code:

Art. 2088. The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and void.

The mortgagee's consolidation of ownership over the mortgaged property upon the mortgagor's mere failure to pay the obligation is the essence of *pactum commissorium*.³⁶ The mortgagor's default does not operate to automatically vest on the mortgagee the ownership of the encumbered property. This Court has repeatedly declared such arrangements as contrary to morals and public policy and thus void. If a mortgagee in equity desires to

³⁶ *Sps. Solitarios v. Sps. Jaque*, supra note 29.

obtain title to a mortgaged property, the mortgagee's proper remedy is to cause the foreclosure of the mortgage in equity and buy it at a foreclosure sale.

Having proceeded to cause the cancellation of respondents-spouses title to the mortgaged property and its transfer to his name without availing of the remedy of foreclosure, petitioner can be concluded to have dabbled in the prohibited practice of *pactum commissorium*. The transaction is consequently rendered void, and title to the subject property should be reverted to respondents-spouses.

Attorney's fees are awarded only on factual and legal grounds under Article 2208 of the Civil Code.

Article 2208 of the Civil Code provides the guidelines on recovery of attorney's fees:

Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

The Court explained the duality of attorney's fees in *Benedicto v. Villaflores*:³⁷

Attorney's fees, as part of damages, are not necessarily equated to the amount paid by a litigant to a lawyer. In the ordinary sense, attorney's fees

³⁷ 646 Phil. 733, 741-742 (2010); cited in *Philippine National Construction Corporation v. APAC Marketing Corporation*, 710 Phil. 389, 395-396 (2013)

represent the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter; while in its extraordinary concept, they may be awarded by the court as indemnity for damages to be paid by the losing party to the prevailing party. Attorney's fees as part of damages are awarded only in the instances specified in Article 2208 of the Civil Code. As such, it is necessary for the court to make findings of fact and law that would bring the case within the ambit of these enumerated instances to justify the grant of such award, and in all cases it must be reasonable.³⁸

The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate.³⁹ They are not to be awarded every time a party wins a suit.⁴⁰ Being the exception rather than the rule, an award of attorney's fees requires compelling reason before it may be granted. Parties still are allowed to stipulate on it beforehand. In the absence of any agreement, however, factual, legal, and equitable justification must be established to avoid speculation and conjecture surrounding the grant of attorney's fees by the courts.⁴¹

While the CA declared that petitioner's acts forced respondents-spouses to litigate, records show scant reason to consider the case within the said exception cited under Article 2208. Even when a claimant is compelled to bring his cause to court or incur expenses to protect his rights, attorney's fees still may not be awarded as part of damages where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.⁴²

No such bad faith was proven against petitioner. On the contrary, both parties were impelled by the honest belief that their respective actions were justified. The entire legal ruckus was sparked by a series of undocumented transactions over the subject property, driving both parties into deeper misunderstandings that ended up too complicated and far too late to be clarified. Yet, in the records, both petitioner and respondents-spouses appeared to be merely in pursuit of their own interests. Respondents-spouses' victory should not earn petitioner an automatic label of bad faith and a correlative award of attorney's fees.

WHEREFORE, the Petition is **GRANTED IN PART**. The July 12, 2012 Decision and the October 10, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 93939 are **AFFIRMED** with **MODIFICATION** in that the award for attorney's fees in favor of respondents-spouses Ernesto and Flora Sotelo is **DELETED**.

³⁸ *Benedicto v. Villaflares*, 646 Phil. 733, 741-742 (2010).

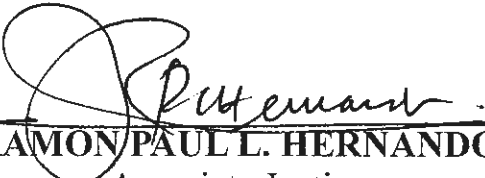
³⁹ *Philippine National Construction Corporation v. APAC Marketing Corporation*, supra note 34.

⁴⁰ *Id.*


⁴¹ *Sps. Timado v. Rural Bank of San Jose, Inc.*, 789 Phil. 453, 460 (2016).


⁴² *Id.*


SO ORDERED.


RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson



HENRI JEAN PAUL B. INTING
Associate Justice


SAMUEL H. GAERLAN
Associate Justice


RICARDO R. ROSARIO
Associate Justice

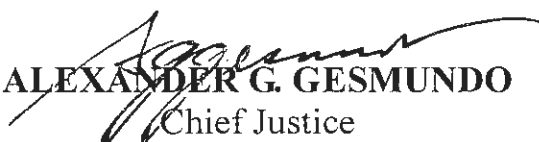
ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice