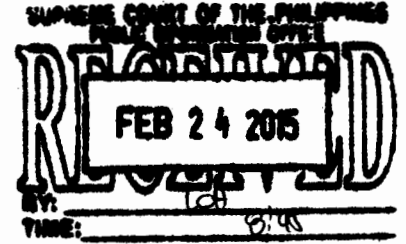




REPUBLIC OF THE PHILIPPINES
 SUPREME COURT
 Manila
 SECOND DIVISION



NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **21 January 2015** which reads as follows:

G.R. No. 204610: EDDIE S. CRESCINI v. PURITA M. LEE

X-----X

This court resolves the Petition for Review¹ under Rule 45 of the 1997 Rules of Civil Procedure assailing the Resolution of the Court of Appeals Thirteenth Division.

In the Resolution² dated July 20, 2012, the Court of Appeals reversed the Decision³ of the Regional Trial Court of Iriga City, Branch 60, dated October 24, 2008, and ruled that the transaction between the parties is an equitable mortgage and not a *pacto de retro* sale.⁴ Consequently, the Court of Appeals ordered the following:

- (1) The Deed of Absolute Sale be declared **VOID**; and
- (2) The Registrar of Deeds of the Province of Camarines Sur is ordered to cancel Transfer Certificate of Title No. 1521 in the name of Eddie S. Crescini married to Elizabeth L. Crescini, and to issue a new one in the name of Purita M. Lee, subject to the equitable mortgage rights of Eddie S. Crescini, under the Memorandum of Agreement.⁵

This case arose from an equitable mortgage under Article 1602 of the Civil Code executed as a *pacto de retro* sale between petitioner Eddie S. Crescini (Crescini) and respondent Purita M. Lee (Lee).

Lee, along with other persons, obtained a loan from the Bank of Philippine Islands (BPI), Naga City Branch.⁶ Part of the security was a 225-square-meter parcel of land located in Poblacion, Iriga City, covered by Transfer Certificate of Title (TCT) No. 7747.⁷ Upon failure of the debtors to pay the loan, BPI initiated foreclosure proceedings.⁸ To prevent foreclosure, Lee entered into an agreement with Crescini whereby the latter would give

¹ *Rollo*, p. 3.
² *Id.* at 30.
³ *Id.* at 66.
⁴ *Id.* at 47.
⁵ *Id.*
⁶ *Id.* at 31.
⁷ *Id.* at 59.
⁸ *Id.* at 31.

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her ₱7,000,000.00 to pay BPI.⁹ The terms contained in the Memorandum of Agreement¹⁰ executed between the parties on September 29, 1998 are as follows:

- (a) The FIRST PARTY [Lee] shall sell in favor of the SECOND PARTY [Crescini] the property covered by . . . TCT No. 7747 of the Register of Deed[s] for Iriga City for the sum of SEVEN MILLION PESOS (₱7,000,000.00). Upon the execution hereof, the FIRST PARTY shall execute a Deed of Absolute Sale over the said property in favor of the SECOND PARTY[;] [and]
- (b) The FIRST PARTY is here allowed to redeem the said property for a period of five (5) years from the execution of this Agreement. The FIRST PARTY shall however pay the interest on the SEVEN MILLION PESOS at the rate of twenty five (25) percent per annum, payable at the last day of each month; provided however that if the FIRST PARTY defaults in the payment of the monthly interest, the same shall be compounded and shall automatically form part of the principal and shall thereby earn the same rate of interest. . . . [I]f the FIRST PARTY fails to pay the monthly interest for a period of three (3) years, then the right of redemption is deemed waived and abandoned. . . . [D]emand is not necessary.¹¹

On September 3, 2001, Lee filed a Complaint¹² against Crescini for reformation of instrument, annulment of deed of absolute sale and memorandum of agreement, reconveyance of property, injunction, and damages. Lee argued that the agreement was one of loan with 25% annual interest, with the parcel of land covered by TCT No. 7747 as collateral. She further argued that she never agreed: a) to sell the property, and/or b) for the unpaid interest to be compounded to form part of the principal.¹³ She claimed that she was duped into hastily signing both the memorandum of agreement and deed of absolute sale.¹⁴ Crescini countered that the agreement was one of sale with the right to repurchase (*pacto de retro*), subject to 25% annual interest. Furthermore, the notarized memorandum of agreement had been signed by both parties in the presence of witnesses, including Lee's "lawyer-nephew," Prosecutor Raul Contreras.¹⁵ Crescini filed a counterclaim for three (3) years' worth of compounded interest.

The Decision of the Regional Trial Court

⁹ Id.

¹⁰ Id. at 52-53.

¹¹ Id. at 52.

¹² Id. at 54.

¹³ Id. at 55.

¹⁴ Id. at 71.

¹⁵ Id. at 145-147.

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In the Decision¹⁶ dated October 24, 2008, the Regional Trial Court of Iriga City, Branch 60¹⁷ dismissed the Complaint, ruling that Lee's claim that she had been tricked into signing the disputed documents was a bare assertion not supported by evidence.¹⁸ The lower court noted that during trial, it was established that when she signed both the memorandum of agreement and the deed of absolute sale, she was accompanied by her nephew, a rural bank manager knowledgeable in commercial transactions, who agreed to check and review the documents.¹⁹ Furthermore, when one of the terms of the agreement (i.e., date of payment of interest) was corrected during the signing, she had countersigned the correction, which reflected a position that she understood the terms and conditions contained in the memorandum of agreement.²⁰

The dispositive portion of the trial court's Decision reads:

WHEREFORE, in light of the foregoing, the Complaint is hereby Dismissed.

The counterclaim of the defendants is Granted. Accordingly, the plaintiff is hereby ordered to:

1. Abide by and comply with the terms and conditions of the Memorandum of Agreement (Exh. C) making Transfer Certificate of Title #1521 [of] the Register of Deeds of Iriga City as valid and binding upon the plaintiff.
2. Indemnify the defendants the amount of ₱100,000.00 as moral damages and ₱50,000.00 as exemplary damages, and attorney[']s fees of ₱50,000.00.
3. Costs against the plaintiff.

SO ORDERED.²¹

The Decision of the Court of Appeals

In the Decision²² dated July 20, 2012, the Court of Appeals granted Lee's appeal. It held that the transaction between the parties was an equitable mortgage based on the following circumstances: (1) a deed purporting to be a sale with right to repurchase, providing for payment of interest on the alleged purchase price, is an equitable mortgage;²³ (2) Lee remained in possession of the hotel located on the second floor of the property;²⁴ and (3) the memorandum of agreement provided that Lee would

¹⁶ Id. at 66–78.

¹⁷ This decision was penned by Presiding Judge Timoteo A. Panga, Jr.

¹⁸ Id. at 71–72.

¹⁹ Id. at 73.

²⁰ Id. at 74.

²¹ Id. at 77.

²² Id. at 30–48.

²³ Id. at 44.

²⁴ Id. at 45.

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pay the capital gains, documentary stamp, and real property taxes; this shows that the intended transaction was really a secured loan, not a sale.²⁵ In *Labasan v. Lacuesta*,²⁶ it was held that a *pacto de retro* sale may be deemed an equitable mortgage when executed due to urgent necessity of the apparent vendor. The Court of Appeals believed Lee's claims that she was confused and flustered when she signed Crescini's documents because of the impending foreclosure on her bank loan.²⁷

The Court of Appeals declared void the Deed of Absolute Sale and ordered the cancellation of TCT No. 7747 in Crescini's name and the issuance of a new one in Lee's name, "subject to the equitable mortgage rights of [Crescini] under the [m]emorandum of [a]greement." It also voided certain provisions of the memorandum of agreement that allegedly provide for a *pactum commissorium*. The dispositive portion of the Court of Appeals' Decision reads:

WHEREFORE, the assailed Decision of the Regional Trial Court, Branch 60, Iriga City, is **REVERSED**. The transaction between the parties is declared an equitable mortgage and not a *pacto de retro* sale. Consequently, the Court rules as follows: 1) the Deed of Absolute Sale is declared **VOID**; 2) the Registrar of Deeds of the Province of Camarines Sur is ordered to cancel Transfer Certificate of Title No. 1521 in the name of Eddie L. Crescini married to Elizabeth L. Crescini, and to issue a new one in the name of Purita M. Lee, subject to the equitable mortgage rights of Eddie L. Crescini, under the Memorandum of Agreement.

SO ORDERED.²⁸

Crescini's Motion for Reconsideration was denied in the Resolution²⁹ dated November 15, 2012.

Hence, this Petition was filed.

This court's ruling

This Petition must be denied for lack of merit.

The main issue in this case is whether the agreement between the parties is an equitable mortgage as contemplated by Article 1602 of the New Civil Code:

ART.1602 The contract shall be presumed to be an equitable

²⁵ Id.

²⁶ 175 Phil. 216 (1978) [Per J. Muñoz Palma, First Division].

²⁷ *Rollo*, p. 45.

²⁸ Id. at 47.

²⁹ Id. at 49-51.

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mortgage, in any of the following cases:

- (1) When the price of a sale with right to repurchase is unusually inadequate;
- (2) When the vendor remains in possession as lessee or otherwise;
- (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; [and]
- (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. (n)

In *Deheza-Inamarga v. Alano*,³⁰ this court ruled that an equitable mortgage is an agreement that “although lacking in some formality, or form, or words, or other requisites demanded by a statute, nevertheless reveals the intention of the parties to charge real property as security for a debt, and contains nothing impossible or contrary to law.”³¹ The Court of Appeals correctly found that the intended arrangement between respondent and petitioner is for the parcel of land to serve merely as a security for the future payment of the ₱7,000,000.00 loaned to respondent, which in turn was to be used for payment of respondent’s indebtedness to BPI. This is clear in their Memorandum of Agreement, a provision of which provided:

4. That the FIRST PARTY [Lee] has proposed, and the SECOND PARTY [Crescini] had accepted, that the latter shall cause the payment of the FIRST PARTY’s mortgage indebtedness with the Bank of Philippine Islands, Naga City, under the following terms and conditions:

- (a) The FIRST PARTY [Lee] shall sell in favor of the SECOND PARTY [Crescini] the property covered by . . . TCT No. 7747 of the Register of Deed[s] for Iriga City for the sum of SEVEN MILLION PESOS (₱7,000,000.00). Upon the execution hereof, the FIRST PARTY shall execute a Deed of Absolute Sale over the said property in favor of the SECOND PARTY[;]
- (b) The FIRST PARTY is here allowed to redeem the property for a period of five (5) years from the execution of this Agreement. The FIRST PARTY shall however pay interest on the SEVEN MILLION PESOS at the rate of 25% per annum, payable at the last day of each month; provided however that if the FIRST PARTY defaults in the payment

³⁰ *Deheza-Inamarga v. Alano, et al.*, 595 Phil. 294 (2008) [Per J. Quisumbing, Second Division].

³¹ *Id.* at 302.

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of the monthly interest, the same shall be compounded and shall automatically form part of the principal and shall thereby earn the same rate of interest; provided finally, that if the FIRST PARTY fails to pay the monthly interest for a period of three (3) years, then the right to redemption is deemed waived and abandoned. It is here understood that demand is not necessary[;]

- (c) Payment of the capital gains, documentary stamps, and real property taxes shall be borne by the FIRST PARTY. . . [;]

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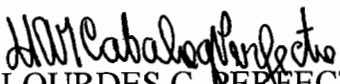
- (f) The hotel at the second floor shall remain to be possessed by the FIRST PARTY within the period of 5 years, without any rent[.]³²

These provisions fall squarely under (2), (5), and (6) of Article 1602. Clearly, the parties had intended an equitable mortgage, and not a *pacto de retro* as contended by petitioner. We find no reason to reverse or set aside the Decision of the Court of Appeals.

WHEREFORE, the Decision dated July 20, 2012, and the Resolution dated November 15, 2012, of the Court of Appeals in CA-G.R. CV No. 92719 are **AFFIRMED**. (*Brion, J. on leave; Velasco, Jr., J., designated acting member per S.O. No. 1910 dated January 12, 2015.*)

SO ORDERED.

Very truly yours,


MA. LOURDES C. PERFECTO
Division Clerk of Court

³² *Rollo*, pp. 52-53.

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HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 60
Iriga City
(Civil Case No. IR-3235)

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CA-G.R. CV No. 92719

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