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SO ORDERED.

Panganiban, C.J. (Chairperson), Ynares-Santiago, Callejo, Sr., and *Chico-Nazario, JJ.,* concur.

FIRST DIVISION

[G.R. No. 154156. August 31, 2006]

JMA HOUSE INCORPORATED, *petitioner, vs.* **STA. MONICA INDUSTRIAL AND DEVELOPMENT CORPORATION and A. GUERRERO DEVELOPMENT CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; RATIONALE. — Section 1, Rule 45 of the Rules of Court provides that only questions of law may be raised in this Court. The rationale for the rule is that the Court is not a trier of facts; it is not to re-examine and calibrate the evidence on record, as such task is assigned to the trial court. The trial court's findings, as affirmed by the CA, are conclusive on this Court unless there is preponderant evidence that the lower court ignored, misconstrued or misinterpreted cogent and substantial facts and circumstances which, if considered, would modify or reverse the outcome of the case. The Court may look into and resolve factual issues in exceptional cases such as when the findings and conclusions of the trial court are contrary to evidence on record or tainted with grave abuse of discretion amounting to excess of jurisdiction.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; INTERPRETATION OF; WHEN THE LANGUAGE OF THE CONTRACT IS EXPLICIT, LEAVING NO DOUBT AS TO

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THE INTENTION OF THE DRAFTERS, THE COURTS MAY NOT READ INTO IT ANY OTHER INTENTION THAT WOULD CONTRADICT ITS PLAIN IMPORT; PARTIES' INTENTION ACCORDED PRIMODIAL CONSIDERATION. — The law is that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control. When the language of the contract is explicit, leaving no doubt as to the intention of the drafters, the courts may not read into it any other intention that would contradict its plain import. The clear terms of the contract should never be the subject matter of interpretation. Neither abstract justice nor the rule of liberal interpretation justifies the creation of a contract for the parties which they did not make themselves or the imposition upon one party to a contract or obligation not assumed simply or merely to avoid seeming hardships. Their true meaning must be enforced, as it is to be presumed that the contracting parties know their scope and effects. If the parties execute two or more separate writings covering a common transaction and subject matter, the writings should be read and interpreted together to render the parties' intention effective. On the other hand, if the contract is ambiguous or the contracting parties offer conflicting claims on their intent, the trial court, at the first instance, has to ascertain the true intent of the parties, taking into account the contemporaneous and subsequent conduct, actions and words of the parties material to the case, and pertinent facts having a tendency to fix and determine the real intent of the parties and undertaking shall be considered. It is the parties' intention which shall be accorded primordial consideration. The reasonableness of the result obtained, after analysis and construction of the contract/contracts, must also be carefully considered. The ascertained intention of the parties is deemed an integral part of the contract, as though it had been originally expressed in unequivocal terms. The Court will enforce the true agreement of the parties even if the property in question has already been registered and a new transfer certificate of title is issued in the name of the transferee.

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3. **ID.; ID.; ID.; ID.; HE WHO ALLEGES THAT A CONTRACT DOES NOT REFLECT THE TRUE INTENTION OF THE PARTIES THERETO MAY PROVE THE SAME BY DOCUMENTARY OR PAROL EVIDENCE.** — The rule is that he who alleges that a contract does not reflect the true intention of the parties thereto may prove the same by documentary or parol evidence. In this case, petitioner alleges that the Deed of Absolute Sale and Option to Buy do not reflect the true intention of the parties, which according to it is a loan with mortgage or an equitable mortgage. The petitioner is burdened to prove, by clear and convincing evidence, the terms of the writings. In the language of State Supreme Court of North Carolina in *O'briant v. Lee,* "the intention must be established, not by simple declarations of the parties, but by proof of facts and circumstances, inconsistent with the rule of absolute purchase, otherwise, the solemnity of deeds would always be exposed to the slippery memory of witnesses." The presumption is that the contract is what it purports to be; and, to establish its character as a mortgage, the evidence must be clear, unequivocal and convincing which reasons tending to show that the transaction was intended as a security for debt; and thus to be a mortgage must be sufficient to satisfy every reasonable mind without hesitation. A less rigorous rule would mean that no man is safe in taking a deed of property. It would be only necessary for the grantor to bring witnesses to an agreement that the deed was regarded as an equitable mortgage, to enable him, on payment of the purchase price and interest, to redeem, particularly if the value of the property had doubled or trebled in ratio. Unless the testimony is entirely plain and convincing beyond reasonable controversy, the writing will be held to express correctly the intention of the parties. If there is a doubt as to the fact whether the transaction is in the nature of a mortgage, the presumption, in order to avoid a forfeiture is always in favor of a position to redeem, to subserve abstract justice and avert injurious consequences.

4. **ID.; SPECIAL CONTRACTS; SALES; MORTGAGE; EQUITABLE MORTGAGE MAY BE CONSTITUTED BY ANY WRITING FROM WHICH THE INTENTION TO CREATE SUCH A LIEN MAY BE PATTERNED.** — An equitable

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mortgage is one which, although lacking in some formality, or form or words or other requisites deemed required by statutes nevertheless reveals the intention of the parties to charge a real property as security for a debt and contains nothing impossible or contrary to law. An equitable mortgage may be constituted by any writing from which the intention to create such a lien may be patterned.

5. **ID.; ID.; ID.; PRESUMPTION OF EQUITABLE MORTGAGE; REQUISITES.** — For the presumptions under Article 1602 of the New Civil Code to apply, two requisites must concur: (1) that the parties entered into a contract denominated as a sale; and (2) that their intention was to secure an existing debt by way of mortgage. In order for a deed to be declared a mortgage, the relation of debtor and creditor must exist between the grantor in such a deed and one who seeks to have it declared a mortgage. There must be a continuing binding debt; a debt in its fullest sense. *Where there is no debt, there can be no mortgage; for if there is nothing to secure, there can be no security.* If there is an indebtedness or liability between the parties, either a debt existing prior to the conveyance, or a debt arising from a loan made at the time of the conveyance, or from any other cause, and this debt is still left subsistent, not being discharged or satisfied by the conveyance, but the grantor is regarded as still owing and bound to pay at some future time, so that the payment stipulated for in the agreement to re-convey is in reality the payment of this existing debt, then the whole transaction amounts to a mortgage, whatever stipulation they may have inserted in the instruments. *If there is no relation of debtor-creditor, but by the terms of the contract one is merely given an option to buy real property for a fixed amount and for a fixed price, there is no equitable mortgage; the optionee is not bound to buy and to pay for said real property.*

6. **ID.; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; PETITIONER HAS THE BURDEN OF PROVING ITS CLAIM IN ITS COMPLAINT.** — The trial court failed to make any finding why petitioner sold the property to respondent Sta. Monica for ₱3,021,000.00, which is contrary to what appears on the face of the deed of absolute sale — ₱4,100,000.00

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which amount petitioner acknowledged to have received from said respondent. Although petitioner claimed in its complaint that the true purchase price of the property was ₱3,021,000.00 and that it borrowed from respondent Sta. Monica ₱1,079,000.00 as mortgage for one year (from June 30, 1986 to June 30, 1987), no testimonial and documentary evidence was adduced to prove the same. Petitioner was burdened to prove its claim in its complaint that it borrowed ₱3,021,000.00 from respondent Sta. Monica, failing which its claim will be defeated even if respondents failed to present any evidence to prove their side.

7. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; OPTION CONTRACT; EXPLAINED; DISTINCT ELEMENTS.** — It must be stressed that an option is a continuing offer or contract by which an owner stipulates with another that the latter shall have the right to buy the property at a fixed price with a certain time, or under, or in compliance with, certain terms and conditions; or which gives to the owner of the property the right to sell or demand a sale. It is, in fine, an unaccepted offer, governed by the second paragraph of Article 1479 of the New Civil Code which states that "*a promise to buy and sell a determinate thing for a price certain is reciprocally demandable.*" An option is not of itself a purchase, but merely secures the privilege to buy. An option is a privilege given by the owner of the property to another to buy the property at his election, and the owner does not sell the property but gives another the right to buy at his election. It imposes no binding obligation on the person holding the option, aside from the consideration for the offer. Without acceptance, it is not, properly speaking, treated as a contract, and does not vest, transfer or agree to transfer, any title to, or any interest or right in the subject property, but is merely a contract by which the owner of the property gives the optionee the right or privilege of accepting the offer and buying the property on certain terms. Thus, an option contract involves two distinct elements, that is: (1) the offer to sell, which does not become a contract until accepted; (2) the completed contract to lease the offer for a specified time. It is a separate and distinct contract from that which the parties may enter into, upon the consummation of the option.

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8. **ID.; ID.; ID.; MUST BE SUPPORTED BY A CONSIDERATION DISTINCT AND SEPARATE FROM THE PRICE.** — It bears stressing that an option must be supported by a consideration distinct and separate from the price. A consideration for an optional contract is just as important as the consideration for any other kind of contract. If there is no consideration for the optional contract, then it cannot be enforced anymore than any other contract where no consideration exists. However, case law is that although an option is not binding as a contract for want of consideration, yet if the offer contained therein is not withdrawn, its acceptance within the time limited gives rise to a contract of sale, binding on the vendor, which cannot be affected by any subsequent attempt to withdraw the offer.

9. **ID.; ID.; ID.; CONSIDERATION FOR THE OPTION IS NOT PRESUMED; CONSIDERATION WHEN CONSIDERED SUFFICIENT.** — The optionee or promisee is burdened to prove such consideration for the option. The consideration for the option is not presumed. In *Villamor v. Court of Appeals*, the Court ruled that consideration is "the why of the contract, the essential reason which moves the contracting parties to enter into the contract." The consideration for a contract, including an option, need not be money or anything of monetary value but may consist of either a benefit or a detriment to the promisor. There is sufficient consideration for a promise if there is any benefit to the promisee or any detriment to the promisor. A benefit should not necessarily accrue to the promisee if a detriment to the promisor is present; and there is consideration if the promisee does anything legal which he is not bound to do or refrain from doing anything which he has a right to do, whether or not there is any actual loan or detriment to him or actual benefit to the promisor. It is sufficient that something valuable flows from the person to whom it is made, or that he suffers some prejudice or inconvenience, and that the promise is the inducement to the transaction. Indeed, there is a consideration if the promisee, in return for the promise, does anything legal which he is not bound to do, or refrains from doing anything which he has a right to do,

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whether there is any actual loss or detriment to him or actual benefit to the promisor or not.

10. ID.; ID.; ID.; A MERE NOTICE OF AN INTENTION TO ACCEPT, OR OF AN ACCEPTANCE WITHOUT PAYMENT OR TENDER, DOES NOT CONSTITUTE A VALID COMPLIANCE. — The Option to Buy provides that acceptance must be accompanied by payment of liquidated damages; such payment is a condition precedent to the exercise of the right to buy, and the money must be tendered or offered. A mere notice of an intention to accept, or of an acceptance without such payment or tender, does not constitute a valid compliance. Respondent Sta. Monica's acceptance of the five checks in the total amount of ₱3,000,000.00 and the cash amount of ₱57,000.00 on June 30, 1988, as partial payment of petitioner's account did not resuscitate the right which petitioner had by then already lost, particularly since the property had already been sold and titled to AGCOR. The said partial payment was an exercise in futility, made worse by the fact that the five checks were dishonored by the drawee bank.

APPEARANCES OF COUNSEL

Lazaro Law Firm for petitioner.

Mariano Sarmiento and *Puno & Puno* for A. Guerrero Development Corporation.

Arturo Balbastro for Sta. Monica Industrial Development Corp.

D E C I S I O N

CALLEJO, SR., *J.*:

Before the Court is a Petition for Review on *Certiorari* of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV

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[1] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Oswaldo D. Agcaoili (retired) and Sergio L. Pestaño (deceased), concurring; *rollo*, pp. 51-66.

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No. 60085 affirming on appeal the Decision[2] of the Regional Trial Court (RTC), Quezon City, Branch 105, in Civil Case No. Q-91-10576.

JMA House Incorporated (JMA) applied for a ₱1,500,000.00 loan from the Pioneer Savings and Loan Association, Inc. (Pioneer). To secure payment thereof, JMA executed a real estate mortgage over a parcel of land identified as Lot No. 4, Block No. 13, Subdivision Plan No. Psd-35337 covered by Transfer Certificate of Title (TCT) No. 268126. The lot, which was located in Quezon City across Gate 1 of the Maryknoll College, had an area of 1,611.6 square meters.[3] There was likewise a three-storey commercial and residential building which was occupied by tenants.[4] Upon the failure of JMA to pay its loan, the real estate mortgage was foreclosed extrajudicially. Pioneer was the winning bidder at ₱2,000,000.00 during the sale at public auction held on August 26, 1985. The Sheriff executed a Certificate of Sale over the property in favor of Pioneer which was annotated at the dorsal portion of TCT No. 268126 on October 11, 1985.[5] JMA had one year or until October 11, 1986 to redeem the property.

JMA decided to redeem the property from Pioneer sometime in June 1986. It offered to borrow from Sta. Monica Industrial and Development Corporation (Sta. Monica) the amount of ₱2,300,000.00. During the negotiations between Rosita Alberto, the General Manager of JMA, and Sta. Monica's president Eugenio Trinidad, the parties agreed that the latter would purchase the property for ₱3,021,000.00.[6] Trinidad insisted that JMA execute a deed of absolute sale over the property for the price of ₱4,100,000.00. Rosita Alberto suggested that instead of a deed of absolute sale, a real estate mortgage be executed considering that the property was worth much more than

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[2] Penned by Judge Benedicto B. Ulep (retired); *id.* at 70-80.

[3] *Rollo*, p. 81.

[4] Exhibits "H" to "H-10".

[5] Exhibits "A" to "A-4".

[6] CA *rollo*, p. 89.

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₱4,100,000.00. Trinidad refused. By way of a compromise, Alberto suggested that a supplement deed giving JMA the option to repurchase the property within a period of two years be executed.[7] Trinidad agreed to this proposal. Thus, the lawyers of JMA and Sta. Monica prepared two deeds.[8] From the ₱3,021,000.00 it received from Sta. Monica, JMA remitted ₱2,300,000.00 to Pioneer.

On June 23, 1986, Pioneer and JMA executed a Deed of Legal Redemption and Absolute Sale in which Pioneer, for and consideration of ₱2,300,000.00, transferred to JMA all the rights over the property, including the improvements thereon, which Pioneer acquired under the Certificate of Sale.[9] The parties, likewise, declared therein that it was their intention that, with the execution of said deed, the loan of JMA amounting to ₱1,250,000.00, including all interests, penalties and charges thereon, were considered fully paid and legally extinguished.[10]

On June 30, 1986 JMA, represented by its General Manager Rosita Alberto, executed a *Deed of Absolute Sale* over the lot, including the buildings thereon, in favor of Sta. Monica, represented by Eugenio Trinidad. The receipt for ₱4,100,000.00 as purchase price was acknowledged by JMA from Sta. Monica.[11] As agreed upon by the parties, the parties likewise executed a contract denominated as Option to Buy, in which Sta. Monica gave JMA the option to buy the property for ₱4,100,000.00 within one (1) year from the execution of the Deed Of Absolute Sale on or before July 1, 1987, with a "grace period" of one year immediately upon the expiration thereof (until July 1, 1988). The parties agreed that, in case JMA availed of such extension, JMA would be obligated to pay an additional amount equivalent to 3.5% a month as liquidated damages, until the whole amount is fully paid and/or the option is finally exercised.[12]

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[7] TSN, September 4, 1992, pp. 4-5.

[8] TSN, September 11, 1992, p. 22.

[9] Exhibits "A", "A-1" to "A-4".

[10] Exhibit "A".

[11] Exhibit "B".

[12] Exhibit "C".

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Alberto turned over to Trinidad the owner's duplicate of TCT No. 268126. The Register of Deeds thereafter issued TCT No. 347638 in the name of Sta. Monica;[13] however, the Option to Buy was not annotated at the dorsal portion of the title.

As agreed upon between JMA and Sta. Monica, the latter thenceforth paid the realty taxes on the property.[14] JMA continued collecting the rentals from the tenants of the buildings with the knowledge and conformity of Sta. Monica. On November 17, 1986, Sta. Monica mortgaged the property to the PCI Capital Corporation as security for a ₱3,600,000.00 loan.[15]

In a letter dated January 26, 1988, Sta. Monica, through Eugenio Trinidad, informed Rosita Alberto and the tenants of the buildings in the property that due to the failure of JMA to "repurchase" the property, it had been sold to A. Guerrero Development Corporation (AGCOR) effective February 1, 1988, and, as the new owner, AGCOR would be collecting the rentals.[16] Rosita Alberto protested to Trinidad, insisting that the period given to JMA to buy back the property had not yet elapsed. Nevertheless, on February 2, 1988, Sta. Monica and AGCOR executed a Deed of Absolute Sale over the property for ₱5,700,000.00, receipt of which was acknowledged by Sta. Monica.[17] Part of the amount was used by Sta. Monica to redeem the property from PCI Capital Corporation which executed a Release of Real Estate Mortgage on February 16, 1988.[18] On February 17, 1988, the Register of Deeds issued TCT No. 376746 in the name of AGCOR.[19] It paid the realty taxes on the property starting 1988.[20]

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[13] Exhibit "P".

[14] TSN, October 29, 1992, p. 7.

[15] Exhibit 4.

[16] Exhibits "D" and "E".

[17] Exhibit "7".

[18] Exhibits "4", "4-D"; Exhibit "5".

[19] Exhibit "2".

[20] Exhibits "6" and "7".

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Despite the sale of the property to AGCOR, Trinidad received, on June 30, 1988, five checks from Rosita Alberto drawn against the account of JMA in the total amount of ₱3,000,000.00. He likewise received ₱57,000.00 from Atty. Rosalie Alberto, Rosita's sister and a member of the JMA Board of Directors "as partial payment of the account of JMA for the property located at No. 335, Katipunan Street, Quezon City."[21] However, the checks were dishonored by the drawee Bank.[22] Trinidad failed to return the cash amount of ₱57,000.00 to JMA.

On October 30, 1989, AGCOR mortgaged the property to Planter's Development Bank as security for a ₱7,000,000.00 loan.[23]

Almost two years thereafter, or on November 11, 1991, JMA filed a complaint against Sta. Monica and AGCOR, as defendants, in the RTC of Quezon City for specific performance, reconveyance and damages. It alleged that it mortgaged its property to Sta. Monica as security for a ₱3,021,000.00 loan and ₱1,079,000.00 as interest; however, upon the insistence of Trinidad, in lieu of a real estate mortgage, a deed of absolute sale was executed over the property for the price of ₱4,100,000.00; an Option to Buy was also executed in its favor, giving it the option to buy the property for ₱4,100,000.00 within a period of one (1) year from execution thereof, and in the meantime, it retained dominion over the property; on January 26, 1988, it received notice that beginning February 1, 1988, the tenants will pay their rentals to the new owner of the property, defendant AGCOR, to which it protested; defendant Sta. Monica assured the plaintiff that defendant AGCOR was aware of its option to buy the property.

JMA further alleged that it informed defendant Sta. Monica on June 30, 1988 that it was ready to repurchase the property for ₱5,822,000.00 with an initial payment of ₱3,057,000.00 to

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[21] Exhibit "G".

[22] TSN, September 11, 1992, p. 20.

[23] Records, p. 62.

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be immediately tendered on said date, and the remaining balance of ₱2,765,000.00 after one month. Sta. Monica assured JMA that the property would be delivered to it with AGCOR's conformity. JMA paid ₱3,057,000.00 on June 30, 1988, per redemption receipt issued by Trinidad, who however refused to receive the balance. Despite representations to defendant AGCOR to abide by the Option to Buy, AGCOR maintained its right to possess and own the property and even filed ejectment cases against it; worse, Sta. Monica never returned the downpayment given on June 30, 1988 and continues to benefit therefrom.

JMA averred that it had a right to repurchase the property under the terms of the Option to Buy Agreement dated June 30, 1986, considering that the transaction actually entered into is one of equitable mortgage and not a deed of sale with option to buy. Defendant Sta. Monica is mandated by law to abide by the said agreement and could not have sold the questioned property to defendant AGCOR, taking into account that it has accepted the amount of ₱3,057,000.00 as downpayment for the purchase price. Having sold the property to AGCOR, defendant Sta. Monica must be made to pay the plaintiff the amount of ₱15,000,000.00 which is the actual market value of the property, as well as the rental payments which it failed to collect.[24] The plaintiff prayed that judgment be rendered in its favor, thus:

WHEREFORE, it is most respectfully prayed of this Honorable Court that judgment be rendered in favor of the plaintiff ordering:

1) Defendants Sta. Monica and AGCOR to respect and acknowledge the right of JMA to repurchase and consequently own and possess the property free from liens and all encumbrances;

2) Defendants to solidarily pay the plaintiff the accrued rentals of ₱2,362,500.00 as of October 1991, with an additional ₱52,500.00 every month thereafter until defendant AGCOR ceases to collect the mentioned rentals from the tenants of the premises;

3) Ordering defendants to pay exemplary damages in the amount of ₱100,000.00, nominal damages in the amount of

[24] *Id.* at 7-8.

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₱100,000.00, attorney's fees in the sum of ₱200,000.00 and the costs of suit;

Just and equitable reliefs are, likewise, prayed for under the premises.[25]

For its part, Sta. Monica alleged in its Answer to the complaint the following special and affirmative defenses: (1) JMA has no cause of action against it; (2) the complaint is unfounded and malicious; (3) it acted in good faith; (4) the supposed "Option to Buy" is not supported by valuable consideration and, therefore, is unenforceable; (5) assuming *arguendo* that there was an extension to exercise the said "Option to Buy," it was not in writing, without consideration and, therefore, unenforceable; (6) the amount/s which JMA had given to it had been offset by the value of the property and the resulting damages sustained by it (Sta. Monica). Defendant claimed ₱1,000,000.00, ₱500,000.00, ₱200,000.00 and ₱100,000.00 compulsory counterclaim representing actual, moral and exemplary damages, including attorney's fees and the litigation expenses, respectively.

Defendant AGCOR alleged in its Answer with Cross-claim and Counterclaims that the physical possession of the subject property was voluntarily surrendered by Sta. Monica to it upon execution of the Deed of Absolute Sale. It came to know of the alleged "Option to Buy" only on September 30, 1988 when Trinidad made an offer to repurchase the subject property with an initial downpayment of ₱3,000,000.00, the balance to be paid on the following day. However, Trinidad never showed up or called as promised.

As special and affirmative defenses, it claimed that there was no cause of action against it, since even assuming that an option to buy was duly executed, it was not a party thereto. It pointed out that the option was not registered nor annotated in the title with the Register of Deeds for the purpose of giving notice to the whole world; JMA was estopped from claiming that its contract[26] with Sta. Monica was a sale with right to

[25] *Id.* at 9-10.

[26] Exhibit "B", *id.* at 17.

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repurchase, considering that there was no pre-existing condition or limitation whatsoever to serve as notice to third persons dealing with the said property; it was a purchaser in good faith without knowledge of any agreement between JMA and Sta. Monica or any fact that would vitiate consent in the acquisition of the property; it acquired legal title thru sale and in fact, TCT No. 376746 was issued in its name; and JMA is guilty of laches and it had not completely exercised its option to repurchase by paying the total amount and there is no proof that the option was extended by Sta. Monica for another year.

By way of cross-claim, AGCOR alleged that JMA and Sta. Monica should be the only parties in this case, since they executed the "Option to Buy," to its exclusion. Because of its inclusion as defendant, its goodwill was damaged and it was deprived of its right of full ownership; thus, cross-defendant Sta. Monica should be held liable for actual or compensatory damages in the amount of ₱1,000,000.00. It likewise asserted compulsory counterclaims in the amount of ₱500,000.00 as moral damages, ₱300,000.00 as exemplary damages, and ₱200,000.00 as attorney's fees.[27]

On January 10, 1992, Eugenio Trinidad died.[28] Victor Trinidad became the President of Sta. Monica.

During trial, JMA presented Rosita Alberto and her sister, Atty. Rosalie Alberto as witnesses. Rosita testified that she graduated from the University of the Philippines with a Bachelor of Arts degree in Economics.[29] It was Eugenio Trinidad who insisted that JMA execute a deed of absolute sale instead of a real estate mortgage to secure the ₱4,100,000.00 loan.[30] She, in turn, requested that an option to buy be executed by the plaintiff to supplement the deed of absolute sale to which Trinidad agreed.[31] JMA retained possession of the property and continued

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[27] Records, pp. 33-35.

[28] TSN, February 4. 1993, p. 8.

[29] TSN, September 11, 1992, p. 3.

[30] TSN, September 4, 1992, pp. 4-5.

[31] *Id.* at 5.

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collecting rentals from the tenants since the transaction between the parties was precisely a contract of mortgage.[32] When she protested to Trinidad's letter dated January 26, 1988 informing her and the tenants that the property had not been repurchased by JMA, Trinidad verbally assured her that JMA could repurchase the property and pay the price thereof within a reasonable time. Trinidad agreed to the repurchasing of the property for ₱5,822,000.00 payable in two installments, to wit: (a) ₱3,057,000.00 on June 30, 1988; and (b) the balance of ₱2,768,000.00 within a reasonable time. On June 30, 1988, ₱3,000,000.00 in checks and ₱57,000.00 cash was paid by JMA, through Atty. Rosalie Alberto and Atty. Rellosa to Trinidad, and for which the latter issued a redemption receipt. JMA was ready to pay the balance of the repurchase price (₱2,768,000.00) but Trinidad could not be located, and worse, failed to return the initial amount paid.[33]

On cross-examination, Rosita Alberto admitted that her agreement with Trinidad, that JMA can repurchase the property by paying the price within a reasonable time, was merely verbal because she trusted Trinidad.[34] JMA did not file any complaint for consignation of the amount for its repurchase of the property.[35] She admitted that the checks delivered to Trinidad had been dishonored.[36] The respective lawyers of Sta. Monica and JMA typed the deed of absolute sale and option to buy.[37]

Atty. Rosalie Alberto testified that JMA is a family corporation. She learned of the deed of absolute sale and option to buy only in February 1988.[38] She represented JMA in the negotiations with Trinidad for the repurchase of the property.

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[32] *Id.* at 7-8.

[33] *Id.* at 9-12.

[34] TSN, September 11, 1992, pp. 4-5.

[35] *Id.* at 10-11.

[36] *Id.* at 20.

[37] *Id.* at 22.

[38] TSN, February 4, 1993, pp. 3-7.

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Trinidad informed her that he had already informed defendant AGCOR of plaintiff's tender of ₱3,057,000.00. He, however, suggested that she personally inform AGCOR of said tender. When she did so, Guerrero informed her that AGCOR could no longer accept the offer.[39] She wanted to tell Trinidad about what Guerrero had said, but she could no longer locate him.[40]

Franco Marquez, President of the Philippine Appraisal Co., Inc., testified that the property was appraised on May 15, 1986, and its value was pegged at ₱11,080,000.00.[41]

Defendant Sta. Monica presented its president, Victor Trinidad, who testified on the damages sustained by it. On cross-examination, he admitted that, despite the deed of absolute sale, it never took possession of the property.[42] Neither did defendant collect rentals from the tenants of the building because of the option to buy.[43]

Alberto Guerrero, a doctor of medicine and a lawyer, testified that he was the president of AGCOR, also a family corporation. When the property was offered for sale by Sta. Monica, he examined the title in the Register of Deeds and discovered that it was mortgaged to PCI Capital Corporation.[44] He agreed to buy the property and paid Sta. Monica's loan on February 3 and 16, 1988, upon which a Release of Real Estate Mortgage was issued.[45] In due course, defendants AGCOR and Sta. Monica executed a Deed of Absolute Sale covering the property.[46] He further declared that AGCOR secured a ₱2,500,000.00 loan from Planter's Bank and used the money to pay Sta. Monica.

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[39] *Id.* at 16.

[40] *Id.* at 17.

[41] Exhibit "J".

[42] TSN, August 11, 1994, p. 12.

[43] *Id.* at 20-21.

[44] TSN, October 12, 1993, p. 5.

[45] Exhibit "4"- AGCOR.

[46] Exhibit "E".

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On October 30, 1989, Sta. Monica executed a real estate mortgage over the property in favor of Planter's Bank as security for a ₱7,000,000.00 loan. The deed was annotated at the dorsal portion of TCT No. 376746 on November 15, 1980.[47] The property was declared for taxation purposes after the property had been purchased.[48]

On January 26, 1996, JMA filed an Omnibus Motion to Admit Newly-Discovered Evidence, which included the Appraisal Report of the Philippine Appraisal Co., Inc.[49] to prove the fair market value of the property as of February 1, 1988. The RTC granted the motion and allowed Franco M. Marquez to testify on the Appraisal Report.[50] The plaintiff offered the Report as part of the motion and to prove that the appraisal value of the property in May 1986 was ₱11,080,000.00. The report was admitted as part of the testimony of Marquez.[51]

On December 8, 1997, the trial court rendered judgment in favor of the defendants. It ordered the dismissal of the complaint and ordered the plaintiff to pay ₱50,000.00 to each of the defendants. The *fallo* of the decision reads:

WHEREFORE, in light of the foregoing, the Court renders judgment as follows:

1. Plaintiff's complaint is dismissed and it is ordered on the counterclaim, to pay the amount of ₱50,000.00 each to defendant Sta. Monica Industrial & Development Corporation and defendant A. Guerrero Development Corporation as attorney's fees; and to pay the costs of suit;

2. The cross-claim of A. Guerrero Development Corporation against Sta. Monica Industrial and Development Corporation is dismissed.

SO ORDERED.[52]

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[47] Exhibit "2-A"- AGCOR.

[48] Exhibits "9", "10" & "11" – AGCOR.

[49] Records, pp. 243-263.

[50] Exhibits "J" to "J-18".

[51] Records, p. 364.

[52] *Id.* at 435-436.

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The trial court disbelieved the testimony of Atty. Alberto, holding that to declare the transaction between the plaintiff and defendant Sta. Monica as an equitable mortgage would be unjust to the latter.[53] The trial court noted that the plaintiff agreed to the execution of the deed of absolute sale and the option to buy; Rosita Alberto was an Economics graduate and was assisted by a lawyer. When the deed of absolute sale over the property was executed, JMA even offered to repurchase/buy the property instead of redeeming it, and waited up to June 30, 1988 to tender the repurchase price. The RTC concluded that the true intention of the parties was the property to be sold to Sta. Monica for profit, with JMA retaining the option to buy it back for ₱4,100,000.00 within a specific period of time. Moreover, considering that JMA failed to file an action for reformation of deed, it was estopped from claiming that the deed of absolute sale and option to buy failed to reflect the true intention of the parties.

The RTC ruled that the Appraisal Report had no probative weight because the property subject thereof was covered by TCT No. 20416, not the property covered by TCT No. 268216 which was the subject of the contract between the plaintiff and defendant Sta. Monica. Further, the remittances made to Trinidad by way of checks did not buttress the case for JMA because they were so remitted after the stipulated one-year period and was short of the agreed amount of ₱4,100,000.00. It was further pointed out that the checks bounced.

The RTC also declared that before AGCOR bought the property, it had no knowledge of the option to buy executed by JMA and Sta. Monica; and even if it had, JMA had failed to exercise its option and pay the purchase price of the property within the stipulated period. It was further stated that there is no evidence to prove the supposed obligation of Sta. Monica to return the amount of ₱57,000.00 received by Trinidad on June 30, 1988; there is no evidence that he was authorized by Sta. Monica to do so and that he received the amount for and in its behalf.[54]

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[53] *Id.* at 433.

[54] *Id.* at 426-436.

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JMA appealed the decision to the CA. On January 28, 2002, the appellate court dismissed the appeal and affirmed the decision of the RTC, holding that the contracts entered into by the parties are what they purport to be: a Deed of Absolute Sale and Option to Buy; the deeds were notarized, hence, are public documents, and have the presumption of regularity. Furthermore, there were no ambiguities in the deeds. It was further held that JMA was barred by laches to enforce its claim that the deed of absolute sale was in fact an equitable mortgage. It pointed out that the property was not repurchased within the timeline fixed in the Option to Buy.[55]

JMA filed a motion for the reconsideration of the decision which the CA denied on July 1, 2002.[56]

JMA, now petitioner, filed the instant petition for review on *certiorari*, seeking to reverse the ruling of the CA on the following grounds:

I

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT APPLYING ARTICLE 1602 OF THE CIVIL CODE AND NOT HOLDING THAT THE CONTRACT SUBJECT MATTER OF THE INSTANT PETITION IS THAT OF AN EQUITABLE MORTGAGE.

II

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT PETITIONER IS GUILTY OF LACHES IN ASSERTING ITS RIGHT OVER ITS PROPERTY.

III

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN UPHOLDING THE FINDING OF THE LOWER COURT THAT RESPONDENT AGCOR HAS NO KNOWLEDGE OF THE OPTION TO BUY.[57]

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[55] *Id.* at 127-142.

[56] *Id.* at 172-173.

[57] *Rollo*, p. 22.

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It maintains that the trial court and the CA failed to consider the testimony of its General Manager Rosita Alberto, to prove that the contract entered into between it and respondent Sta. Monica is, in reality, a real estate mortgage. Petitioner maintains that the trial court and the appellate court ignored the facts based on the following evidence: (1) petitioner was in dire need of money when it executed the Deed of Absolute Sale and Option to Buy on June 30, 1985; (2) it continued to possess the property after the execution of the Deed of Sale and Option to Buy, and even collected the rentals from the tenants of the commercial and residential buildings; (3) the purchase price of ₱4,100,000.00 is grossly inadequate as purchase price of the property compared to its market value (₱11,080,000.00) as found by the Philippine Appraisal Company.

On the other hand, respondents aver that the issues raised by the petitioner are factual, which the Court is proscribed from reviewing. Moreover, the findings of facts of the trial court were affirmed by the CA; hence, such findings are conclusive on this Court. They insist that the CA decision is in accord with the law and the evidence on record. Article 1602 of the New Civil Code does not apply in this case because petitioner failed to exercise its option and pay the agreed upon repurchase price; hence, the CA correctly ruled that it was barred by laches when it filed its complaint below only on November 11, 1991.

The threshold issues are the following: (1) whether the Court is proscribed from reviewing the factual issues raised by petitioner; (2) whether the transaction between the parties is an equitable mortgage; (3) whether the petitioner is barred by laches from filing the action against the respondent; and (4) whether respondent AGCOR was in good faith when it purchased the property from respondent Sta. Monica for ₱5,700,000.00.

The petition is denied for lack of merit.

Section 1, Rule 45 of the Rules of Court provides that only questions of law may be raised in this Court. Th e rationale for the rule is that the Court is not a trier of facts; it is not to re-examine and calibrate the evidence on record, as such task is assigned to the trial court. The trial court's findings, as

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affirmed by the CA, are conclusive on this Court unless there is preponderant evidence that the lower court ignored, misconstrued or misinterpreted cogent and substantial facts and circumstances which, if considered, would modify or reverse the outcome of the case.[58] The Court may look into and resolve factual issues in exceptional cases such as when the findings and conclusions of the trial court are contrary to evidence on record or tainted with grave abuse of discretion amounting to excess of jurisdiction.

On the second issue, the law is that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.[59] When the language of the contract is explicit, leaving no doubt as to the intention of the drafters, the courts may not read into it any other intention that would contradict its plain import.[60] The clear terms of the contract should never be the subject matter of interpretation. Neither abstract justice nor the rule of liberal interpretation justifies the creation of a contract for the parties which they did not make themselves or the imposition upon one party to a contract or obligation not assumed simply or merely to avoid seeming hardships.[61] Their true meaning must be enforced, as it is to be presumed that the contracting parties know their scope and effects.[62] If the parties execute two or more separate writings covering a common transaction and subject matter, the writings should be read and interpreted together to render the parties' intention effective.[63] On the

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[58] *Batingal v. Court of Appeals*, 403 Phil. 780, 788 (2001); *Go v. Court of Appeals*, 403 Phil. 883, 889 (2001); *International Corporate Bank v. Gueco*, G.R. No. 141968, February 12, 2001, 351 SCRA 516.

[59] Art. 1370, New Civil Code.

[60] *German Marine Agencies, Inc. v. National Labor Relations Commission*, 403 Phil. 572, 589 (2001).

[61] *The Insular Life Assurance Co., Ltd. v. Court of Appeals*, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 92.

[62] *Vicente v. Planters Development Bank*, 444 Phil. 309, 318 (2003).

[63] *Golden Diamond, Inc. v. Court of Appeals*, 388 Phil. 404, 415 (2000).

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other hand, if the contract is ambiguous or the contracting parties offer conflicting claims on their intent, the trial court, at the first instance, has to ascertain the true intent of the parties, taking into account the contemporaneous and subsequent conduct, actions and words of the parties material to the case,[64] and pertinent facts having a tendency to fix and determine the real intent of the parties and undertaking shall be considered. It is the parties' intention which shall be accorded primordial consideration. The reasonableness of the result obtained, after analysis and construction of the contract/contracts, must also be carefully considered.[65] The ascertained intention of the parties is deemed an integral part of the contract, as though it had been originally expressed in unequivocal terms. The Court will enforce the true agreement of the parties even if the property in question has already been registered and a new transfer certificate of title is issued in the name of the transferee.[66]

The rule is that he who alleges that a contract does not reflect the true intention of the parties thereto may prove the same by documentary or parol evidence.[67] In this case, petitioner alleges that the Deed of Absolute Sale and Option to Buy do not reflect the true intention of the parties, which according to it is a loan with mortgage or an equitable mortgage. The petitioner is burdened to prove, by clear and convincing evidence, the terms of the writings.[68] In the language of State Supreme Court of North Carolina in *O'briant v. Lee*,[69] "the intention must be established, not by simple declarations of the parties, but by proof of facts and circumstances, inconsistent with the rule of absolute purchase,

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[64] *Gonzales v. Court of Appeals*, G.R. No. 122611, March 8, 2001, 354 SCRA 8.

[65] *Republic v. David,* G.R. No. 155634, August 16, 2004, 436 SCRA 577, 583-584.

[66] *Lao v. Court of Appeals*, G.R. No. 115307, July 8, 1997, 275 SCRA 237.

[67] *Aquino v. Court of Appeals*, 380 Phil. 736, 741 (2000); *Olea v. Court of Appeals*, G.R. No. 109696, August 14, 1995, 247 SCRA 274, 281.

[68] *Newport v. Chandler*, 178 S.W. 2d 240; *Otts v. Avenry*, 173 S.O. 844.

[69] 200 S.E. 865.

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otherwise, the solemnity of deeds would always be exposed to the slippery memory of witnesses." The presumption is that the contract is what it purports to be; and, to establish its character as a mortgage, the evidence must be clear, unequivocal and convincing which reasons tending to show that the transaction was intended as a security for debt; and thus to be a mortgage must be sufficient to satisfy every reasonable mind without hesitation.[70] A less rigorous rule would mean that no man is safe in taking a deed of property. It would be only necessary for the grantor to bring witnesses to an agreement that the deed was regarded as an equitable mortgage, to enable him, on payment of the purchase price and interest, to redeem, particularly if the value of the property had doubled or trebled in ratio.[71] Unless the testimony is entirely plain and convincing beyond reasonable controversy, the writing will be held to express correctly the intention of the parties.[72] If there is a doubt as to the fact whether the transaction is in the nature of a mortgage, the presumption, in order to avoid a forfeiture is always in favor of a position to redeem, to subserve abstract justice and avert injurious consequences.[73]

An equitable mortgage is one which, although lacking in some formality, or form or words or other requisites deemed required by statutes nevertheless reveals the intention of the parties to charge a real property as security for a debt and contains nothing impossible or contrary to law. An equitable mortgage may be constituted by any writing from which the intention to create such a lien may be patterned.

Under Article 1602 of the New Civil Code, a contract shall be presumed to be an equitable mortgage in any of the following cases:

(1) When the price of a sale with right to repurchase is unusually inadequate;

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[70] *Newport v. Chandler*, 178 S.W. 2d 240.

[71] *Rubenstine v. Powers*, 184 N.W. 589.

[72] *Howland v. Blaks*, 97 U.A. 624, 626.

[73] *Cornell v. Hale*, 22 Mills 377.

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(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;

(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.

For the presumptions under the article to apply, two requisites must concur: (1) that the parties entered into a contract denominated as a sale; and (2) that their intention was to secure an existing debt by way of mortgage.[74] In order for a deed to be declared a mortgage, the relation of debtor and creditor must exist between the grantor in such a deed and one who seeks to have it declared a mortgage.[75] There must be a continuing binding debt; a debt in its fullest sense. *Where there is no debt, there can be no mortgage; for if there is nothing to secure, there can be no security.*[76] If there is an indebtedness or liability between the parties, either a debt existing prior to the conveyance, or a debt arising from a loan made at the time of the conveyance, or from any other cause, and this debt is still left subsistent, not being discharged or satisfied by the conveyance, but the grantor is regarded as still owing and bound to pay at some future time, so that the payment stipulated for in the agreement to re-convey is in reality the payment of this existing debt, then the whole transaction amounts to a mortgage, whatever stipulation they may have inserted in the instruments.

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[74] *San Pedro v. Lee*, G.R. No. 156522, May 28, 2004, 430 SCRA 338, 347; *Molina v. Court of Appeals*, 446 Phil. 133, 141 (2003).

[75] *Spicer v. Elmore*, 166 S.W. 2d 276.

[76] *Pollak v. Millsap*, 122 So. 16.

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If there is no relation of debtor-creditor, but by the terms of the contract one is merely given an option to buy real property for a fixed amount and for a fixed price, there is no equitable mortgage; the optionee is not bound to buy and to pay for said real property.[77]

In the present case, the trial and appellate courts declared that based on the evidence on record, petitioner sold the property to respondent Sta. Monica for ₱3,021,000.00; as stated in the Option to Buy, petitioner may opt to repurchase the property for ₱4,100,000.00. Respondent Sta. Monica agrees with the findings of the trial court and the appellate court.[78]

The trial court failed to make any finding why petitioner sold the property to respondent Sta. Monica for ₱3,021,000.00, which is contrary to what appears on the face of the deed of absolute sale — ₱4,100,000.00 which amount petitioner acknowledged to have received from said respondent. Although petitioner claimed in its complaint that the true purchase price of the property was ₱3,021,000.00 and that it borrowed from respondent Sta. Monica ₱1,079,000.00 as mortgage for one year (from June 30, 1986 to June 30, 1987), no testimonial and documentary evidence was adduced to prove the same. Petitioner was burdened to prove its claim in its complaint that it borrowed ₱3,021,000.00 from respondent Sta. Monica,[79] failing which its claim will be defeated even if respondents failed to present any evidence to prove their side.[80]

To reiterate, there is no evidence on record that petitioner borrowed ₱3,021,000.00 from respondent Sta. Monica in 1986 as alleged in its complaint. The only evidence on record is that petitioner decided in June 1986 to redeem the property from Pioneer much earlier than the one-year-period therefor and needed

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[77] *Id.*

[78] CA *rollo*, pp. 87-88.

[79] SECTION 1, RULE 131, REVISED RULES OF EVIDENCE.

[80] *San Pedro v. Lee*, *supra* note 73, at 348.

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₱2,300,000.00 for the purpose. Petitioner received the amount from respondent Sta. Monica and was able to redeem the property from Pioneer. The only evidence of petitioner that it received money from respondent Sta. Monica is the Deed of Absolute Sale, in which the petitioner acknowledged to have received ₱4,100,000.00.

The "Redemption Receipt" signed by Trinidad on June 30, 1988 for ₱3,000,000.00 in the form of checks and ₱57,000.00 in cash "as partial payment of the account of JMA for the property x x x" does not constitute evidence that petitioner secured a loan of ₱3,021,000.00 from respondent Sta. Monica in June 1986. The said amount was part of the ₱5,822,000.00 which petitioner was obliged to pay to respondent Sta. Monica, in case it opted to buy the property under the Option to Buy, representing the repurchase price, inclusive of liquidated damages. In fact, Rosita Alberto testified that petitioner expected respondent Sta. Monica to execute a deed of sale over the property upon its payment of ₱4,100,000.00. This is gleaned from the testimony of Atty. Alberto:

Atty. Balbastro:

Q Let me put it this way, under these documents, Exhibits B and C, more particularly Exhibit C, the Option to Buy, JMA House Incorporated was given up to June 30, 1988 within which to exercise her option to buy, is that correct?

A Yes, Sir.

Q And as of June 30, 1988, how much money did you tender to Sta. Monica Industrial Corporation?

A I tendered a total amount of three million fifty-seven thousand pesos, Sir.

Q And how much is the redemption price, if you know? If you know the repurchase price?

A Based on the papers that can be found on the deed of absolute sale, if JMA House Incorporated was to redeem the property during the first year, we were supposed to repurchase on time.

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COURT:

Q You are a lawyer, right?

A Yes, Your Honor.

WITNESS:

A *To repurchase the property within the first year, a total amount of four million one hundred thousand pesos, inclusive of interest, was supposed to be paid. If the repurchase was to be made on the second year, interests of 3.5 per cent per month was to be added on the face value which is one million one hundred thousand pesos.*

x x x x x x x x x

Atty. Balbastro:

Q Aside from Exhibit G, you do not have any other document concerning the payment you made to Sta. Monica Industrial Corporation?

A No other.

Q *Now, subsequent to the payments (sic) of Exhibits B and C, no other written document was executed between JMA House Incorporated and Sta. Monica Industrial and Development Corporation, is that correct?*

A *No other because we were expecting that the next document to be executed was a deed of absolute sale of Sta. Monica Industrial Corporation back to JMA House Incorporated covering the property.*[81]

If, as claimed by petitioner, the transaction between it and respondent Sta. Monica was an equitable mortgage, the latter would be obliged to execute a Cancellation of Real Estate Mortgage or Release of Mortgage over the property in favor of the petitioner. But, as admitted by Rosita Alberto, petitioner did not expect respondent Sta. Monica to execute any of these; petitioner expected that a deed of sale would be executed in its favor.

It bears stressing that petitioner and respondent Sta. Monica were assisted by their respective lawyers during the negotiations held between Rosita Alberto and Trinidad. While Trinidad insisted

[81] TSN, February 4, 1993, pp. 22-24. (Italics supplied)

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on a deed of absolute sale, Rosita Alberto suggested that a real estate mortgage be executed by the parties instead. Trinidad rejected this, upon which Rosita proposed that an option to buy be executed as a supplement to the deed of absolute sale, to which Trinidad readily agreed. Obviously, the parties had arrived at a compromise to execute two deeds: a deed of absolute sale for ₱4,100,000.00, and a deed of option to enable petitioner to buy the property for the same price. Rosita Alberto testified, thus:

Q *Now, you also made mention that you had mortgaged the property to Sta. Monica Industrial Corporation. Did you execute any document to prove that mortgage?*

A *Yes. Through the negotiation we were talking about a real estate mortgage but Mr. Trinidad insisted on a deed of sale in their favor. However, I requested for another document an option to buy/option to repurchase which is supplement to the deed of sale which would give us two years from the date of signing, to repurchase the property.*

ATTY. LAZARO:

Q Madam Witness, do you still recall the exact date when this deed of absolute sale was executed?

A It was June 30th 1986.

Q And how about the option to buy agreement that you are mentioning? When was it executed?

A *It was executed [simultaneously] on the same day, June 30, 1986.*

Q I am going to show you now a deed of absolute sale between JMA House Incorporated and Sta. Monica Industrial and Development Corporation which has been previously marked as Exhibit B and Exhibit B-1. What is the relation of this deed of absolute sale to the one that you are referring to?

A This is the same deed of absolute sale that we signed.

Q And I am calling your attention to Exhibit B-1 wherein the signature over and above the name Rosita Alberto [appears], whose signature is that?

A My signature, Sir.

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Q And I am also calling your attention to the signature over and above the name Eugenio E. Trinidad, President and General Manager. Whose signature is that?

A Mr. Trinidad['s].[82]

The respective lawyers of petitioner and respondent Sta. Monica thereafter prepared the deeds which were executed on June 30, 1986 before the same Notary Public, Atilano H. Lim. According to Rosita Alberto, the Option to Buy *supplemented* the Deed of Absolute Sale. The testimony of Rosita Alberto on the matter follows:

Q Alright, I will read to you your Exh. "C", under the second WHEREAS, and I quote: Whereas, the parties in the aforementioned Deed mutually agreed that the VENDOR JMA HOUSE INCORPORATED is given an option to buy back the properties subject thereto..." Do you recall this provision?

A Yes. This is the document.

Q And, in this second WHEREAS, the aforementioned Deed referred to here is the Deed referred to in the first WHEREAS, that is the Deed of Absolute Sale, marked as Exhibit "B", is that correct?

A Yes.

Q I am going back to my first question. In other words, the basis of the option to buy is the supposed mutual agreement between JMA House Incorporated and Sta. Monica Industrial and Development Corporation to give JMA House Incorporated the [option] to buy back the property as provided in the Deed of Absolute Sale marked here as Exhibit "B", is that correct?

A *They were supplementing each other, the option to buy and the deed of absolute sale.*[83]

The fact that petitioner sold the property to respondent Sta. Monica is evidenced by Rosita Alberto's admission that she delivered to respondent Sta. Monica the owner's duplicate of

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[82] TSN, September 4, 1992, pp. 4-5. (Italics supplied)

[83] TSN, September 11, 1992, p. 21.

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TCT No. 268126, after which the latter had the property registered in its name, conformably with their "pre-arrangement." This can be gleaned from her testimony, in answer to the questions of counsel of respondent AGCOR:

> ATTY. LUCAS:
>
> Q After June 30, 1986, Your Honor.
>
> WITNESS:
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> A After June 30, 1986, the taxes were paid by STA. MONICA. That was *the pre-arrangement*, Your Honor, with STA. MONICA. And it would be absurd for JMA to pay the taxes when the title was with STA. MONICA. And we believe that they would be using it for their purposes, the title; for STA. MONICA's purposes. So, they are more than willing to take up the taxes.[84]

Although Rosita Alberto did not specify the particulars of her "pre-arrangement" with Trinidad outside of the Deed of Absolute Sale and Option to Buy, it can safely be presumed that they agreed that petitioner would continue collecting rentals from the tenants, and respondent may mortgage the property as security for its ₱3,600,000.00 loan from the PCI Capital Corporation. Petitioner would then be able to generate funds for the purchase of the property on or before June 30, 1987 or 1988, partly from the rentals. On the other hand, respondent Sta. Monica was able to generate funds from its loan, with the property as collateral, for its business. Both parties benefited under the arrangement.

While it is true that per Appraisal Report of the Philippine Appraisal Corporation, the property of the petitioner had a value, as of 1986, of ₱11,080,000.00, despite which, Alberto agreed to sell the property for ₱4,100,000.00 under the Deed of Absolute Sale, nevertheless, Alberto cannot be faulted. After all, under the Option to Buy, petitioner was obliged to pay only ₱4,100,000.00.

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[84] TSN, October 29, 1992, pp. 6-7. (Italics supplied)

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It must be stressed that an option is a continuing offer or contract by which an owner stipulates with another that the latter shall have the right to buy the property at a fixed price with a certain time, or under, or in compliance with, certain terms and conditions; or which gives to the owner of the property the right to sell or demand a sale.[85] It is, in fine, an unaccepted offer, governed by the second paragraph of Article 1479 of the New Civil Code which states that "*a promise to buy and sell a determinate thing for a price certain is reciprocally demandable.*" An option is not of itself a purchase, but merely secures the privilege to buy. An option is a privilege given by the owner of the property to another to buy the property at his election, and the owner does not sell the property but gives another the right to buy at his election.[86] It imposes no binding obligation on the person holding the option, aside from the consideration for the offer. Without acceptance, it is not, properly speaking, treated as a contract, and does not vest, transfer or agree to transfer, any title to, or any interest or right in the subject property, but is merely a contract by which the owner of the property gives the optionee the right or privilege of accepting the offer and buying the property on certain terms.[87]

Thus, an option contract involves two distinct elements, that is: (1) the offer to sell, which does not become a contract until accepted; (2) the completed contract to lease the offer for a specified time.[88] It is a separate and distinct contract from that which the parties may enter into, upon the consummation of the option.

It bears stressing that an option must be supported by a consideration distinct and separate from the price. A consideration for an optional contract is just as important as the consideration

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[85] 77 *Corpus Juris Secundum*, 65 I; *Adelfa Properties, Inc. v. Court of Appeals*, G.R. No. 111238, January 25, 1995, 240 SCRA 565, 579.

[86] *Western Union Telegraph Company v. Brown*, 253 U.S. 408 S. Ct. 460.

[87] *Limson v. Court of Appeals*, G.R. No. 135929, April 20, 2001, 357 SCRA 209, 215; 77 *Corpus Juris Secundum*, p. 652.

[88] *Corpus Juris Secundum*, p. 652.

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for any other kind of contract.[89] If there is no consideration for the optional contract, then it cannot be enforced anymore than any other contract where no consideration exists.[90] However, case law is that although an option is not binding as a contract for want of consideration, yet if the offer contained therein is not withdrawn, its acceptance within the time limited gives rise to a contract of sale, binding on the vendor, which cannot be affected by any subsequent attempt to withdraw the offer.[91]

The optionee or promisee is burdened to prove such consideration for the option. The consideration for the option is not presumed. In *Villamor v. Court of Appeals*,[92] the Court ruled that consideration is "the why of the contract, the essential reason which moves the contracting parties to enter into the contract."[93] The consideration for a contract, including an option, need not be money or anything of monetary value but may consist of either a benefit or a detriment to the promisor.[94] There is sufficient consideration for a promise if there is any benefit to the promisee or any detriment to the promisor. A benefit should not necessarily accrue to the promisee if a detriment to the promisor is present; and there is consideration if the promisee does anything legal which he is not bound to do or refrain from doing anything which he has a right to do, whether or not there is any actual loan or detriment to him or actual benefit to the promisor.[95] It is sufficient that something

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[89] *Cavada v. Diaz*, 37 Phil. 982 (1917).

[90] *Id.* at 991.

[91] Pemeroy on Equity (2d Ed.) p. 4934; James on Option Contracts, p. 1217; Elliot on Contracts, p. 395; *Murphy, Thompson & Co. v. Reed*, 125 Ky. 585, 101 S. W. 964, 10 L. R. A. (N.S.) 195, 128 Am. St. Rep. 261; *Frank v. Statford-Handcock*, 13 Wyo. 37, 77 P. 134, 67 L. R. A. 571, 110 Am. St. Rep. 963.

[92] G.R. No. 97332, October 10, 1991, 202 SCRA 607.

[93] *Id.* at 615, citing *Gonzales v. Trinidad*, 67 Phil. 682 (1939).

[94] Wellistone on Contracts, Volume I, Section 102, ruled in *Dorman v. Public*, 184 So. 886.

[95] Contracts, 17 *Corpus Juris Secundum*, p. 425.

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valuable flows from the person to whom it is made, or that he suffers some prejudice or inconvenience, and that the promise is the inducement to the transaction. Indeed, there is a consideration if the promisee, in return for the promise, does anything legal which he is not bound to do, or refrains from doing anything which he has a right to do, whether there is any actual loss or detriment to him or actual benefit to the promisor or not.[96]

We agree with the rulings of the trial court and the CA that the option granted to the petitioner has a consideration distinct from the purchase price of the property for ₱4,100,000.00.

As gleaned from the Option to Buy itself, the agreement was executed by the parties because of the Deed of Absolute Sale they had executed on the same occasion. Instead of the parties executing a Real Estate Mortgage as suggested by petitioner, the parties, by way of compromise, agreed to execute a Deed of Absolute Sale, on the condition that they execute an Option to Buy, giving petitioner the privilege to repurchase the property within a period of one year, with a grace period of one year immediately upon the expiration of the original one year period. As admitted by Rosita Alberto, the two deeds complemented each other, the Option to Buy being a supplement to the Deed of Absolute Sale. In fine, petitioner would not have agreed to sell the property to respondent Sta. Monica unless petitioner was given the option to repurchase the property for the same amount.

However, we agree with the ruling of the CA that petitioner failed to exercise its option and notify respondent Sta. Monica of its acceptance of the latter's offer within the timeline under the Option to Buy. Under the said deed, petitioner had one year from June 30, 1986 or up to June 30, 1987 to exercise its option, and in case of failure to do so, it had a one year grace period (from July 1, 1987 to June 30, 1988), provided that, in the latter case, it would pay equitable damages of 3.5% a month

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[96] 13 *C.J.*, Contracts, Sec. 150, pp. 315, 316. See, also, *Henderson v. Kendrick,* 82 Fla. 110, 89 So. 635, *Bigelow v. Bigelow*, 95 Me. 17, 49 A.49.

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from July 1, 1987 to June 30, 1988 until full payment of the purchase price or until the option is finally exercised. The pertinent portion of the contract reads:

> NOW, THEREFORE, for and in consideration of the foregoing premises, stipulations and conditions, the JMA HOUSE INCORPORATED is hereby given an option to buy back the subject properties mentioned in the aforesaid Deed of Absolute Sale, and in like manner the STA. MONICA INDUSTRIAL AND DEVELOPMENT CORPORATION hereby undertakes and binds itself to resell the same unto the said JMA HOUSE INCORPORATED within a period of One (1) year from and after date of execution of the said Deed for a fixed consideration of FOUR MILLION ONE HUNDRED THOUSAND PESOS (₱4,100,000.00) Philippine Currency; PROVIDED, HOWEVER, should the said JMA HOUSE INCORPORATED failed (sic) to exercise the herein option to buy back within the above-stated period, the JMA HOUSE INCORPORATED be (sic) given a grace period of another One (1) year immediately thereafter. In case of such extension the JMA HOUSE INCORPORATED hereby undertakes and binds itself to pay an amount equivalent to Three and one-half percent (sic) month for and as liquidated damages until the whole amount is fully paid and/or the option is finally exercised.

It is clear that petitioner failed to exercise its option on or before June 30, 1987. Neither did petitioner exercise its option and pay the liquidated damages to respondent Sta. Monica from July 1, 1987 up to June 1988. This impelled respondent Sta. Monica to inform petitioner that because of its failure to exercise its option to purchase the property, it had to discontinue collecting the rentals from the tenants of the buildings. On February 2, 1988, respondent Sta. Monica sold the property to respondent AGCOR, which secured TCT No. 376746 on February 17, 1988.

The Option to Buy provides that acceptance must be accompanied by payment of liquidated damages; such payment is a condition precedent to the exercise of the right to buy, and the money must be tendered or offered. A mere notice of an intention to accept, or of an acceptance without such payment or tender, does not constitute a valid compliance.[97] Respondent

[97] 77 *C.J.S.* Sales, p. 654, citing *Floyd v. Morgan*, 4 S.E.2d 91; *Snead v. Wood*, 100 S.E. 714.

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Sta. Monica's acceptance of the five checks in the total amount of ₱3,000,000.00 and the cash amount of ₱57,000.00 on June 30, 1988, as partial payment of petitioner's account did not resuscitate the right which petitioner had by then already lost, particularly since the property had already been sold and titled to AGCOR. The said partial payment was an exercise in futility, made worse by the fact that the five checks were dishonored by the drawee bank.

IN LIGHT OF ALL THE FOREGOING, the petition is *DENIED.* Costs against the petitioner.

SO ORDERED.

Panganiban, C.J. (Chairperson), Ynares-Santiago, Austria-Martinez, and *Chico-Nazario, JJ.,* concur.

EN BANC

[G.R. No. 155088. August 31, 2006]

DR. MUSSOLINI C. BARILLO, EDGARDO C. HINOGUIN, otherwise known as EDGAR C. HINOGUIN, JOSE REY S. ROJAS, RAYMUNDO PLAZA and TERESITA ALLEGO, *petitioners, vs.* **HON. MARGARITO GERVACIO, in his Capacity as OIC Ombudsman, HON. PRIMO MIRO, in his capacity as Deputy Ombudsman for the Visayas, HON. VIRGINIA P. SANTIAGO, in her capacity as Director, Office of the Ombudsman (Visayas) and the COMMISSION ON AUDIT, Region VII,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; OFFICE OF THE OMBUDSMAN; AUTHORITY OF THE OMBUDSMAN TO RECOMMEND THE REMOVAL, SUSPENSION, DEMOTION,