

THIRD DIVISION

[G.R. No. 222957. March 29, 2023]

ATTY. ROGELIO B. DE GUZMAN, PETITIONER, VS. SPOUSES BARTOLOME AND SUSAN SANTOS, RESPONDENTS.

DECISION

GAERLAN, J.:

For resolution is a Petition for Review on *Certiorari*^[1] seeking to reverse and set aside the Decision^[2] dated December 18, 2014 and the Resolution^[3] dated February 18, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 100706. The CA in its assailed rulings affirmed the Order^[4] dated January 31, 2013 of the Regional Trial Court (RTC) of Antipolo City, Branch 73, in Civil Case No. 01-6204.

Petitioner Rogelio B. De Guzman (De Guzman) owned a house and lot located at Lot 1, Block II, New York Street, Cresdaville II Subdivision, Bangiad, San Juan, Taytay, Rizal (Subject Property). The lot was covered by Transfer Certificate of Title (TCT) No. 5788.^[5]

In November 2000, De Guzman accepted the offer of respondents Bartolome and Susan Santos (collectively, spouses Santos) to purchase the Subject Property. They executed a Contract to Sell which stipulated the purchase price of P1,500,000.00. The terms of payment included a down payment of P250,000.00 upon signing of the contract, and succeeding monthly installments of P15,000.00 until full payment. The unpaid balance of the principal would earn interest at the rate of 9% *per annum*. In return, the spouses Santos were given permission to take immediate possession of the Subject Property and use it as their residence.^[6]

The spouses Santos paid De Guzman the down payment on November 15, 2000 and moved in. They lived there but did not pay the monthly installments agreed upon. In February 2001, they unilaterally decided to vacate the Subject Property and return to their old residence at Angono, Rizal.^[7]

On June 21, 2001, the spouses Santos filed a complaint for rescission of the Contract to Sell, recovery of down payment, and damages against De Guzman. They deducted a reasonable

rental rate of P10,000.00 per month for the period they lived there and demanded the return of the balance of their down payment in the total amount of P208,500.00.^[8]

The RTC initially rendered its Decision dated June 10, 2008 which dismissed the spouses Santos' complaint and ordered them to pay the balance of the purchase price to De Guzman.^[9] The dispositive portion reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the Defendant and against the Plaintiffs as follows:

1. The instant case is hereby dismissed for lack of cause of action; and
2. Ordering plaintiffs to pay P1,250,000.00 representing the balance on the house and lot with 9% interest thereon from January, 2001 until fully paid.

SO ORDERED.^[10]

The spouses Santos timely filed a Motion for New Trial on the basis of their discovery that De Guzman sold the Subject Property to a certain Elizabeth Algozo (Algozo) during the pendency of the case on August 17, 2005.^[11] De Guzman filed an Opposition arguing that a Motion for New Trial was not the correct remedy because there was no newly discovered evidence as contemplated under the Rules of Court.^[12]

The RTC granted the spouses Santos' Motion for New Trial and set the case for hearing. After trial, it eventually issued its Order setting aside its earlier Decision and declaring the Contract to Sell as rescinded. It likewise ordered De Guzman to return the balance of the spouses Santos' down payment:

WHEREFORE, premises considered, the Decision of this Court dated June 10, 2008, is hereby set aside. The Contract to Sell between the plaintiffs and the defendant is deemed rescinded. Defendant is ordered to return to plaintiffs the balance of the downpayment amounting to P208,500.00 with interest of 6% per annum from the time of the finality of this Decision until fully paid.

SO ORDERED.^[13]

The RTC ruled that De Guzman's act of selling the Subject Property without notifying it or the other litigants was indicative of bad faith and made the disposition of the case moot. Hence, there was no more sale to speak of which necessitated the return of any amounts received. It elucidated:

It should be remembered that this present case originated from an action for the rescission of contract, recovery of downpayment plus damages. The Court ruled that plaintiffs had no cause of action against the defendant because they cannot raise as a defense for not fulfilling their obligation the alleged hidden defects on the property subject of this case. Thus, the Court finding no reason to rescind the contract ordered the plaintiffs to fulfill their obligation to pay the balance on the house and lot with 9% interest from January 2001, until fully paid.

This Court proceeded with the trial **on the premise that the parties maintained the status quo on the property**, i.e.[,] that however the court will decide the case, the property is free from encumbrance.

The Court agrees with the argument of the defendant that since the instrument between the parties is a Contract to Sell, he has no obligation to the plaintiffs to transfer ownership over the property until and unless substantial payment [has] been effected. In the same manner, and as [e]nunciated in Garcia vs. CA, supra, plaintiff's failure to tender their payment is 'not a breach, casual or serious.'

However, the fact that the defendant even raised in his Answer that plaintiffs should 'be adjudged to pay P1,250,000.00 to defendant as unpaid balance of the latter's house and lot with 9% interest thereon from January 2001 until actually fully paid,' and proceeded to [defend] the contract as if [it was] still binding and worse, **made this Court believe that the property is free from encumbrance**, he cannot now argue that he has no obligation to transfer the property to plaintiffs or even to inform them of his intention to sell the same during the pendency of his case.

When a thing is the subject of a judicial controversy, it should ultimately be bound by whatever disposition the court shall render. The parties to the case are therefore expected, in deference to the court's exercise of jurisdiction over the case, to refrain from doing acts, which would dissipate or debase the thing subject of the litigation or otherwise render the impending decision therein

ineffectual. Further, **any disposition of the thing subject of litigation or any act which tends to render inutile the court's impending disposition in such case, sans the knowledge and approval of the litigants or of the court, is unmistakably and irrefutably indicative of bad faith.** Such acts undermine the authority of the court to lay down the respective rights of the parties in a case relative to the thing subject of litigation and bind them to such determination. (Baylon v. Baylon, G.R. No. 182435, Aug. 13, 2012)

Article 1381(4) of the Civil Code requires that any contract entered into by a party in a case which refers to a property under litigation should be with the knowledge and approval of the litigants or of a competent judicial authority, thus

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Article 1381(4) - The following contracts are rescissible:

x x x x

(4) Those which refer to things under litigation if they have been entered into by the defendants without the knowledge and approval of the litigants or of competent judicial authority.

Article 1381(4) seeks to remedy the presence of **bad faith** among the parties to a case and/or any fraudulent act, which they may commit with respect to the thing [in] litigation. When a thing is the subject of a judicial controversy, it should ultimately be bound by whatever disposition the court shall render. (Baylon, supra)

Defendant is a lawyer and is an officer of this Court. In fact, he represented himself in the proceedings before this Court. Rule 10.01 of the Code of Professional Responsibility states that a lawyer shall not do any falsehood, nor consent to the doing of any in Court; **nor shall he mislead or allow the Court to be misled by any artifice.**

Being his own lawyer, **he could have easily informed the Court of his intentions and actions that he has sold the property**, which could have saved the Court's time, considering that the property was sold even before a decision was issued by this Court. The actions of defendant [were] contemptible

to say the least.

The act of defendant in selling the property had rendered the disposition of this case ineffective. Thus, plaintiffs have the right, if they would want to, to seek the [rescission] of the sale of the property to Elizabeth Algosgo. Obviously, this is not the intention of the plaintiffs in asking for new trial. On the contrary, they do not want to have anything to do with the property subject of this litigation, and are probably just glad that the same [has] been sold.

There is[,] however, the sum of money, which was given to the defendant by the plaintiffs which the latter sought to be returned to them. The Court in its original decision, finding no reason to rescind the contract, regarded the sum of money as part of the consideration of the sale. **Now that there is no sale between the plaintiffs and the defendant to speak of due to the fault, almost fraudulent act of defendant, then the sum of money should be returned to plaintiffs less the amount for the use of the property which shall be considered as rental payment.**^[14] (Emphases and underscoring supplied)

De Guzman appealed to the CA questioning the propriety of the remedy of a Motion for New Trial and the legality of the RTC Order.

The CA rendered its assailed Decision^[15] denying the appeal and affirming the RTC Order:

WHEREFORE, the instant appeal is **DENIED**. The Decision dated January 31, 2013 of the Regional Trial Court of Antipolo City, Branch 73 in Civil Case No. 01-6204 is hereby **AFFIRMED**.

SO ORDERED.^[16] (Emphases in the original)

The CA concurred with the RTC that De Guzman's act of selling the Subject Property while the case was pending without any notice or authority constituted bad faith, deception, and fraud. The transfer of the property to a third party rendered the enforcement of the Contract to Sell moot and academic. It thus upheld the grant of a new trial by the RTC to prevent the failure of justice, and to address the irregularities brought about by De Guzman's actions which prejudiced the spouses Santos' substantive rights. Ultimately, it held that the RTC Order was justified in the broader interest of justice and equity.^[17]

De Guzman sought reconsideration^[18] of the Decision but was denied by the CA in its Resolution.^[19]

Hence, the instant petition.^[20]

De Guzman in his petition maintained that the assailed rulings of the CA were contrary to law since the remedy of rescission does not apply to a Contract to Sell.^[21] It was spouses Santos' own failure to comply with their obligations which rendered the contract ineffective. Further, there was no basis for them to seek reimbursement of their down payment.^[22] On the contrary, their Contract to Sell explicitly provides that the spouses Santos' failure to pay the monthly installments shall result in the automatic cancellation of the contract and forfeiture of all the payments made.^[23]

The spouses Santos in response filed a Comment-Opposition to the Petition^[24] to the petition. They insisted that the CA Decision was correct and emphasized that reimbursement of their down payment was necessary to prevent De Guzman's unjust enrichment.^[25] They also reiterated how the act of selling the Subject Property during the pendency of the case was done in bad faith and rendered the Contract to Sell rescissible.^[26]

De Guzman filed a Reply^[27] to the Comment-Opposition. He thereafter filed a Memorandum,^[28] to which the spouses Santos filed a Comment/ Opposition.^[29]

The Issues

The issues in this case are:

1. Whether or not the CA correctly affirmed the rescission of the Contract to Sell.
2. Whether or not De Guzman is liable to reimburse the spouses Santos their down payment.

The Ruling of this Court

After a judicious review, the petition is granted.

A Contract to Sell is defined as "a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds himself to sell the said property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, that is, full payment of the purchase price."^[30]

The peculiar characteristic of a Contract to Sell is that the seller retains legal title to the property to be sold until the buyer fully pays the purchase price. The full payment of the purchase price is a positive suspensive condition, the non-fulfillment of which does not constitute a breach of contract, but merely an event that prevents the seller from conveying title to the buyer.^[31]

Considering that non-payment of the full purchase price does not amount to a breach of contract, the remedy of specific performance cannot be availed of. The remedy of rescission is also unavailable since it is impossible to rescind an obligation that is non-existing, the suspensive condition not having happened yet.^[32] The buyer's non-payment thus only renders the contract to sell ineffective and without force and effect.^[33] This Court has even pronounced that the failure to make full payment of the purchase price in a contract to sell is not really a breach, serious or otherwise, and therefore not a sufficient ground to award damages.^[34]

On the other hand, the seller has no obligation to transfer ownership over the property to the intending buyer until they execute a contract of sale after full payment of the purchase price, even if they already entered into a contract to sell.^[35] It was thus recognized in *Spouses Roque v. Aguado*^[36] (*Spouses Roque*) that the seller retains the freedom and legal right to sell the property to a third party before the intending buyer's full payment of the purchase price. It was explained in *Coronel v. CA*^[37] (*Coronel*) that such sale to third party is legal because prior to full payment of the purchase price, there is no defect in the seller's title *per se*. In such an event, the intending buyer under the contract to sell is not even entitled to reconveyance of the property sold to the third party and can at most seek damages against the seller. The Court in *Coronel* pertinently held:

In a contract to sell, upon the fulfillment of the suspensive condition which is the full payment of the purchase price, ownership will not automatically transfer to the buyer although the property may have been previously delivered to him. The prospective seller still has to convey title to the prospective buyer by entering into a contract of absolute sale.

It is essential to distinguish between a contract to sell and a conditional contract of sale specially in cases where the subject property is sold by the owner not to the party the seller contracted with, but to a third person, as in the case at bench. In a contract to sell, there being no previous sale of the property, a third

person buying such property despite the fulfillment of the suspensive condition such as the full payment of the purchase price, for instance, cannot be deemed a buyer in bad faith and the prospective buyer cannot seek the relief of reconveyance of the property. There is no double sale in such case. **Title to the property will transfer to the buyer after registration because there is no defect in the owner-seller's title *per se*, but the latter, of course, may be used for damages by the intending buyer.**^[38] (Emphasis and underscoring supplied)

Based on the foregoing, the assailed CA Decision and Resolution in this case must be reversed for being contrary to prevailing law and jurisprudence.

To recall, the RTC rescinded the Contract to Sell because of De Guzman's act of selling the Subject Property in bad faith during the trial stage. He was then ordered to reimburse the down payment since there was allegedly no longer any existing sale between the parties. This was affirmed by the CA ruling that the sale to a third party rendered the enforcement of the Contract to Sell moot and academic. It additionally ruled that this was necessary in the broader interest of justice and equity.^[39]

This Court rules that the CA erred in affirming the rescission of the Contract to Sell and the order for De Guzman to reimburse the down payment. Although his act of selling the Subject Property to Algozo during the trial stage constituted bad faith, it was not a legal ground for rescission pursuant to Article 1381(4) of the New Civil Code. This was likewise not a sufficient ground to nullify it under any existing laws.

Following the doctrines in *Spouses Roque* and *Coronel*, De Guzman's sale to Algozo was legal and valid because there was still no defect in his title to the Subject Property at the time. It is undisputed that the spouses Santos did not fully pay the purchase price to obligate the sale of the Subject Property exclusively to them.

The spouses Santos were not entitled to seek the rescission of the Contract to Sell as the RTC erroneously granted in its Order. Necessarily, its order directing De Guzman to reimburse the down payment on the ground that there was no longer any sale between the parties was also erroneous. At most, the spouses Santos could only demand the payment of damages from De Guzman for selling the Subject Property prior to their full payment of the purchase price.

Having established the foregoing, the remaining ground to possibly justify the order for De Guzman to reimburse the down payment is the CA's finding that it was necessary in the broader interest of justice and equity.

In this regard, an analysis of the circumstances of this case warrants a reversal of the CA rulings. The determination of this issue involves factual matters which are generally beyond the scope of petitions filed under Rule 45 of the Rules of Court. However, this case falls under an exception when the assailed judgment is based on a misapprehension of facts.^[40]

It is clear from the evidence on record that the spouses Santos were the parties first in bad faith in complying with their obligations under the Contract to Sell. They readily admitted in their complaint that they stayed on the Subject Property for four months but deliberately did not pay even a single installment agreed upon. They also never had any intention of complying with their obligations as evidenced by the fact that they unilaterally abandoned the Subject Property. This blatant disregard for their contractual obligations prior to the filing of their complaint reeked of bad faith and must be considered in determining what is just and equitable.

However, it is also undeniable that De Guzman committed a grave fault and was guilty of bad faith when he sold the Subject Property to Algozo during the trial stage without any judicial authorization. This made the enforcement of the Contract to Sell moot and academic, and constituted a violation of his duties to the court.

Consequently, the spouses Santos are not entitled to seek protection from the courts because they themselves were guilty of grossly violating the Contract to Sell. It is settled that parties who come to court with unclean hands must not be allowed to profit from their own wrongdoings. The parties seeking equity must be free from fault.^[41] The fact that they violated the Contract to Sell and then filed the instant case to try and escape the consequences cannot be countenanced by this Court.

In the same vein, De Guzman cannot be granted any judicial relief in the form of damages since he was guilty of bad faith in selling the Subject Property to Algozo without any judicial authorization.

It is apparent from the foregoing that the parties in this case are *in pari delicto*, or "in equal fault." In such cases, the parties shall have no action against each other and the courts shall leave them where it finds them.^[42] The CA therefore gravely erred in ordering De Guzman to reimburse the down payment in the interest of justice and equity for lack of legal and

factual basis.

Lastly, this Court stresses that its non-intervention with the parties leaves the Contract to Sell to govern the adjudication of their rights. Significantly, paragraph 1 of the Contract to Sell states that the dishonor of three checks covering payments of the installments due shall result in the automatic cancellation of the contract and the forfeiture of all payments made:

1 The purchase price of the house and lot is ONE MILLION FIVE HUNDRED THOUSAND PESOS (P1,500,000.00), Philippine Currency, payable by the Vendees as follows:

a Two Hundred Fifty Thousand Pesos (P250,000.00) upon the signing of this Contract;

b The balance of One Million Two Hundred Fifty Thousand Pesos (P1,250,000.00) shall be paid in equal installment of FIFTEEN THOUSAND PESOS (P15,000.00) Philippine Currency, every month with an interest of Nine Percent (9%) per annum the total amount of which shall be computed and paid after full payment of the principal amount hereof;

c The Vendees shall issue upon signing hereof twelve (12) checks as payment for every year installment of twelve (12) months encashable every last day of the month and every year thereafter until the total amount hereof is actually and fully paid;

d The Vendees shall avoid [dishonor] of any of the checks they will issue in payment of the house and lot of the Vendor, otherwise, **any three (3) successive dishonor of the said checks shall be a ground for automatic cancellation of this Contract and forfeiture of all payment[s] made to the Vendor.**^[43] (Emphasis and underscoring supplied)

By applying the clear provisions of the Contract to Sell, the spouses Santos' admission of default for the four months they stayed on the Subject Property should have resulted in the automatic cancellation of the contract and the forfeiture of all their payments made.

It is only fair, just, and equitable to apply the provisions of the Contract to Sell which both parties voluntarily and intelligently agreed upon. This is in line with the fundamental principle that obligations arising from contracts have the force of law between the parties and should be complied with in good faith.^[44]

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is granted. The

Decision dated December 18, 2014 and the Resolution dated February 18, 2016 of the Court of Appeals in CA-G.R. CV No. 100706 are **REVERSED** and **SET ASIDE**.

SO ORDERED.

Inting, Dimaampao, and Singh, JJ., concur.

Caguioa (Chairperson), J., see separate opinion.

^[1] *Rollo*, pp. 8-33.

^[2] *Id.* at 38-49; penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela, concurring.

^[3] *Id.* at 57-58; penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Amy C. Lazaro-Javier (now a member of this Court) and Nina G. Antonio-Valenzuela, concurring.

^[4] *Id.* at 38.

^[5] *Id.* at 14.

^[6] *Id.* at 14-15.

^[7] *Id.* at 16.

^[8] *Id.* at 16-17.

^[9] *Id.* at 38.

^[10] *Id.* at 39.

^[11] *Id.* at 48.

^[12] *Id.* at 39-41.

^[13] *Id.* at 38.

^[14] *Id.* at 41-43.

^[15] *Id.* at 38-49.

^[16] *Id.* at 47.

^[17] *Id.* at 48-49.

^[18] *Id.* at 50-55.

^[19] *Id.* at 57-58.

^[20] *Id.* at 8-33.

^[21] *Id.* at 18-20.

^[22] *Id.* at 20-21.

^[23] *Id.* at 21-24.

^[24] *Id.* at 63-72.

^[25] *Id.* at 67-69.

^[26] *Id.* at 64-66.

^[27] *Id.* at 76-82.

^[28] *Id.* at 87-117.

^[29] *Id.* at 119-127.

^[30] **Spouses Tumibay v. Spouses Lopez**, 710 Phil. 19, 31 (2013).

^[31] **Cordero v. F.S. Management & Development Corp.**, 536 Phil. 1151, 1160 (2006).

^[32] **Rillo v. Court of Appeals**, 340 Phil. 570, 577 (1997).

^[33] **Ayala Life Assurance, Inc. v. Ray Burton Development Corporation**, 515 Phil. 431, 439 (2006).

^[34] *Supra* note 31, at 1162.

^[35] **Ursal v. CA**, 509 Phil. 628, 645 (2005).

^[36] 731 Phil. 516 (2014).

^[37] **G.R. No. 103577**, 7 October 331 Phil. 294 (1996).

^[38] *Id.* at 310-311.

^[39] *Rollo*, p. 49.

^[40] **Pascual v. Burgos**, 776 Phil. 167, 182 (2016).

^[41] **Department of Public Works and Highways v. Quiwa**, 681 Phil. 485, 489-490 (2012).

^[42] **Ranara, Jr. v. De Los Angeles, Jr.**, 792 Phil. 571, 577-576 (2016), *citing Constantino v. Heirs of Pedro Constantino, Jr.*, 718 Phil. 575, 584-587 (2013).

^[43] *Rollo*, pp. 22-23.

^[44] CIVIL CODE OF THE PHILIPPINES, Article 1159.

SEPARATE OPINION

CAGUIOA, J.:

The *ponencia* in the above-captioned case grants the Petition^[1] and reverses and sets aside the assailed Decision^[2] dated December 18, 2014 and Resolution^[3] dated February 18, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 100706 finding that the Contract between the parties is a contract to sell and cannot be rescinded. While I agree with the grant of the Petition, I arrive at a different conclusion on the nature of the contract in this case.

To recall, respondents-spouses Bartolome and Susan Santos (respondents) agreed to purchase the property covered by Transfer Certificate of Title (TCT) No. 5788 registered under the name of petitioner Atty. Rogelio B. De Guzman (petitioner) for the price of P1,500,000.00 with a downpayment of P250,000.00 and monthly installment of P15,000.00.^[4] Thus, they entered into a Contract to Sell dated November 2000. However, after paying the downpayment, respondents changed their mind and sought the refund of P208,500.00 deducting therefrom what they considered as the reasonable amount of rent for their stay in the property as well as commission paid to the agent.^[5] Respondents filed a complaint for rescission, recovery of down payment plus damages against petitioner.^[6]

The Regional Trial Court (RTC) initially dismissed respondents' complaint for lack of cause of action and ordered them to pay the balance of the house and lot with 9% interest.^[7] Respondents then filed a motion for new trial on the basis of their discovery that petitioner had sold the property to another person while the case was pending before the court.^[8] The RTC granted the motion. After trial, it issued an Order dated January 31, 2013 setting aside its earlier decision and declared the Contract to Sell as rescinded. Petitioner was ordered to return the downpayment of respondents, less reasonable rent.^[9]

On appeal, the CA affirmed the RTC's Order. The CA found that petitioner was guilty of bad faith, deception, and fraud when it sold the property to a third person during the pendency of the case without notifying the court and respondents.^[10] Such transfer rendered the enforcement of the Contract to Sell between the parties moot and academic.^[11] The CA upheld the RTC's grant of new trial and held that its order of rescission and refund against petitioner was justified in the broader interest of justice and equity.^[12]

Petitioner filed the instant Petition before the Court arguing that the remedy of rescission is not applicable to a contract to sell. Respondents' failure to pay the monthly installments rendered the contract ineffective.^[13] Moreover, the Contract to Sell provides for the automatic cancellation of the contract and forfeiture of all payments made upon default in three monthly installment payments.^[14]

The *ponencia* grants the Petition and makes the following findings:

1. The contract between the parties is a contract to sell. Prevailing jurisprudence defines a contract to sell as a bilateral contract whereby a prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds himself or herself to sell the said property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, that is, full payment of the purchase price.^[15] In a contract to sell, full payment is a positive suspensive condition, the non-fulfillment of which does not constitute a breach of contract, but merely an event which prevents the seller from conveying title to the buyer. Thus, the remedies of specific performance or rescission is not available. The buyer's non-payment only renders the contract to sell ineffective and without force and effect.^[16]
2. In a contract to sell, the seller has no obligation to transfer ownership over the property to the intending buyer until they execute a contract of sale after full payment of the purchase price, even if they have already entered into a contract to sell. The

seller retains freedom and legal right to sell the property to a third person before the intending buyer's full payment of the purchase price. In such a situation, there is no defect in the seller's title *per se*.^[17]

3. Based on the foregoing, the CA erred in affirming the rescission of the Contract to Sell and ordering petitioner to reimburse respondents. Petitioner's sale to a third party was legal because there was still no defect in his title at the time since respondents failed to pay the purchase price. Although petitioner may have acted in bad faith when he sold the property to another pending litigation, this was not a legal ground for rescission under Article 1381 of the New Civil Code (Code). Necessarily, the order of reimbursement is also erroneous.^[18]
4. The parties first in bad faith were respondents as they failed to comply with the Contract to Sell when they occupied the property for four months and deliberately did not pay a single installment agreed upon. They then abandoned the property. Meanwhile, petitioner was similarly at fault when he sold the property to another buyer during the trial stage without any judicial authorization making the enforcement of the contract moot and academic. Since petitioner was also a lawyer, the unauthorized sale likewise constituted a violation of his duties to the court. Consequently, the parties are not entitled to seek protection from the courts as parties who come to court with unclean hands must not be allowed to profit from their own wrongdoings.^[19]
5. The Contract to Sell provides that the dishonor of three checks covering payments of the installments due shall result in the automatic cancellation of the contract and forfeiture of all payments made. By clear provision of the contract and respondents' admission of default for four months, the Contract to Sell was automatically cancelled and the downpayment made by them was forfeited.^[20]

Again, while I agree with the application of the cancellation provision in the Contract, I believe the parties herein did not enter into a contract to sell. Contrary to the *ponencia's* finding, the contract herein is one of sale.

The contract between the parties is a contract of sale not a contract to sell.

The contract denominated as a "Contract to Sell" provides the following stipulations:

"WHEREAS, the Vendee is willing to purchase the afore-cited house and lot in installment in view of the flooding of their house and the consequential financial difficulties encountered therefrom.

WHEREAS, the Vendor took into consideration the reasons and immediate need of the Vendees."

NOW, THEREFORE, for and in consideration of the foregoing premises, the Vendor hereby agrees to sell to the Vendees the above-described parcel of land, with all the improvements thereon, under the following terms and conditions:

1. The purchase price of the house and lot is ONE MILLION FIVE HUNDRED THOUSAND PESOS (P1,500,000.00), Philippine Currency, payable by the Vendees as follows:

a. Two Hundred Fifty Thousand Pesos (P250,000.00) upon the signing of this Contract;

b. The balance of One Million Two Hundred Fifty Thousand Pesos (P1,250,000.00) shall be paid in equal installment of FIFTEEN THOUSAND PESOS (P15,000.00) Philippine Currency, every month with an interest of Nine Percent (9%) per annum the total amount of which shall be computed and paid after full payment of the principal amount hereof;

c. The Vendees shall issue upon signing hereof twelve (12) checks as payment for every year installment of twelve (12) months encashable every last day of the month and every year thereafter until the total amount hereof is actually and fully paid;

d. The Vendees shall avoid dishonor of any of the checks they will issue in payment of the house and lot of the Vendor, otherwise, any three (3) successive dishonor of the said checks shall be a ground for automatic cancellation of this Contract and forfeiture of all payment made to the Vendor[;]

2. The Vendees can take immediate physical and peaceful possession of the property subject hereof upon signing of this Contract[;]

3. The Vendor warrants that the property subject hereof is free from any lien or encumbrance;
4. The Vendees shall comply with all laws and Municipal ordinances and all regulations of the Homeowner's Association of the subdivision;
5. Upon full payment of the agreed considerations hereof, the Vendor hereby warrants to transfer and convey title in fee simple over the property subject hereof in the name of the Vendees." x x x^[21] (Emphasis and citation omitted)

The *ponencia* is accurate in describing current jurisprudence as defining a contract to sell as a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite its delivery to the prospective buyer, commits to sell the property exclusively to the prospective buyer upon full payment of the purchase price.^[22] Full payment is deemed a positive suspensive condition.^[23] In *Coronel v. CA*,^[24] the Court provides an extensive discussion of the nature of a contract to sell as follows:

A contract to sell may thus be defined as a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds himself to sell the said property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, that is, full payment of the purchase price.

A contract to sell as defined hereinabove, may not even be considered as a conditional contract of sale where the seller may likewise reserve title to the property subject of the sale until the fulfillment of a suspensive condition, because in a conditional contract of sale, the first element of consent is present, although it is conditioned upon the happening of a contingent event which may or may not occur. If the suspensive condition is not fulfilled, the perfection of the contract of sale is completely abated (cf. *Homesite and Housing Corp. vs. Court of Appeals*, 133 SCRA 777 [1984]). However, if the suspensive condition is fulfilled, the contract of sale is thereby perfected, such that if there had already been previous delivery of the property subject of the sale to the buyer, ownership thereto automatically transfers to the buyer by operation of law without any further act having to be performed by the seller.

In a contract to sell, upon the fulfillment of the suspensive condition which is the full payment of the purchase price, ownership will not automatically transfer to the buyer although the property may have been previously delivered to him. The prospective seller still has to convey title to the prospective buyer by entering into a contract of absolute sale.^[25] (Italics in the original)

Applying the foregoing discussion, the contract between the parties herein indeed falls under the current jurisprudential definition of a contract to sell. However, I believe that it is high time for the Court to revisit the concept of a contract to sell as it is presently understood.

According to Article 1458 of the Code, “[b]y the contract of sale, one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent. A contract of sale may be absolute or conditional.” In determining the true nature of a contract, the denomination given by the parties is not controlling.^[26]

As to the perfection of a contract of sale, Article 1475 of the Code provides:

Art. 1475. The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.

From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts. (1450a)

Based on the above-mentioned provision of law, contracts of sale are perfected as soon as the parties agree upon the object of the contract and the price thereof. These two codal provisions find their root in the Spanish Civil Code provisions on Purchase and Sale. Specifically, Articles 1458 and 1475 of the Code were adopted from Articles 1445 and 1450 of the Spanish Civil Code, respectively, to wit:

ARTICLE 1445. By the contract of purchase and sale one of the contracting parties binds himself to deliver a determinate thing and the other to pay a certain price therefor in money or in something representing the same.

x x x x

ARTICLE 1450. The sale shall be perfected between vendor and purchaser and shall be binding upon both of them if they have agreed upon the thing which is the subject-matter of the contract and upon the price, even if neither has been delivered.

Thus, a contract of sale in both the Spanish Civil Code and the present Code is consensual in nature.^[27] It is perfected at the moment there is a meeting of the minds upon the thing which is the object of the contract and upon the price.^[28] The seller is not even required to have the right to transfer ownership of the object of the sale at the time of its perfection.^[29] What is required is that the owner must have a right to transfer the ownership thereof at the time it is delivered.^[30]

Applying Articles 1458 and 1475 of the Code to the present case, and mindful of their Spanish origins, all the elements of a perfected contract of sale are present. Here, the parties consented to the transfer of a house and lot under TCT No. 5788 registered in the name of petitioner for the purchase price of P1,500,000.00. Clearly, there is already a meeting of the minds of the parties as to the thing which is the object of the contract as well as the price thereof. The provision on transfer of ownership until full payment did not make the contract anything less than a sale. After all, Article 1478 of the Code allows parties in a contract of sale to stipulate that ownership shall not pass until the purchaser has fully paid the price, viz.:

Art. 1478. The parties may stipulate that ownership in the thing shall not pass to the purchaser until he has fully paid the price. (n)

Thus, the stipulation providing for transfer of title only after full payment did not make the contract anything other than a contract of sale as defined by the foregoing provisions. I therefore question the current understanding of a contract to sell. For one, as mentioned, perfection of a contract of sale does not require the transfer of ownership. Moreover, how can payment of the price be deemed a positive suspensive condition in the perfection of a contract of sale when it is the very prestation of the buyer?

The proposition pushed forth herein is not new as this was the very argument of Justice Antonio Barredo (Justice Barredo) in his Dissenting Opinion in *Luzon Brokerage Co., Inc. v. Maritime Building Co., Inc.*^[31] (*Luzon Brokerage*). In the said case, what was involved was a

contract, denominated as a “Deed of Conditional Sale,” for the sale of property paid in installment with reservation of title until full payment of the purchase price, and with automatic cancellation in case of non-payment of any installment. The Court therein, speaking through Justice Benedicto Luis L. “J.B.L.” Reyes, determined that the agreement between the parties was a contract to sell. However, contrary to the majority, Justice Barredo, with concurrence from Justice Calixto O. Zaldivar and Justice Felix Q. Antonio, believed that the contract was one of sale.^[32] Justice Barredo likewise put into issue the conceptualization of a contract to sell, viz.:

The stipulation providing for transfer of title only after full payment did not stamp the transaction with the character of a mere promise to sell — full payment was a suspensive condition for the execution of the final deed as the form of tradition of title while non-payment was a resolatory condition with confiscation as a penalty clause.

I must state at this juncture that what makes the case at bar difficult and seemingly complicated is the long line of decisions We have to reexamine if We must straighten out once and for all the juridical conceptualization We have attached to the nature of the agreement embodied in the “Deed” in question. At least inferentially, if not directly, We refer to it as “a promise to sell immovable property, where title remains with the vendor until fulfillment to a positive suspensive condition, such as the full payment of the price,” citing apparently in support of such conceptualization the cases of Santero and Inquimboy, supra, and Jocson vs. Capitol, G.R. No. L-6573, February 28, 1955; Miranda vs. Caridad, G.R. No. L-2077 and Aspuria vs. Caridad, G.R. No. L-2721, both of October 3, 1950.

As I have said, I have read and studied all these decisions, for no other reason than that I have always been intrigued by what is meant by a promise to sell an immovable with reservation of title and I naturally checked if the cited decisions have indeed formulated such a rather vague juridical concept which to my mind implies a juridically inconceivable notion. **What I mean is simply that when one talks of a promise to sell with reservation of title, it is as if it were**

possible to have a promise to sell with delivery of title. Unless I am gravely mistaken, I am afraid that juridically it is quite absurd to think of a promise to sell with the title of the property promised to be sold being delivered immediately. It is very common to come across promises to sell where possession is transferred simultaneously upon the perfection or execution of the agreement, but I have yet to know of a case where title itself is so transferred.

What renders the idea of a promise to sell with reservation more perplexing to me is that in the Spanish law on sales, as contradistinguished from the concept of sales in American law, a contract of sale is purely consensual and does not necessarily involve the transfer of title except when it is so stipulated or when the sale is made in a public instrument, since the latter is in itself a form of delivery or tradition of title over immovable property. Very explicit in this respect are the provisions of Article 1450 of the Old Civil Code which says: “The sale shall be perfected between vendor and vendee and shall be binding on both of them if they have agreed upon the thing which is the subject matter of the contract and upon the price, *even if neither has been delivered.*” Perhaps, the Spanish text is even more emphatic as to non-delivery of the thing and the non-payment of the price, as it provides: “La venta se perfeccionara entre comprador y vendedor, y sera obligatoria para ambos, si hubieren convenido en la cosa objeto del contrato, y en el precio, aunque ni una ni el otro se hayan entregado.” And to bring out the point in bolder relief, I would add the pertinent comment of Manresa to the following effect:

“Expresamente dice el articulo que comentamos, que no es menester que se hayan entregado ni la cosa ni el precio para que el contrato de compra y venta se tenga por perfecto. Si alguno de esos requisitos fuese preciso, la compra y venta seria un contrato real en vez de consensual.

“Desde que se consiente, y sin necesidad de ninguna otra circunstancia, el contrato, repetimos, esta perfecto y nacen las obligaciones; pero la transmision de la propiedad no existe hasta que la cosa no ha sido entregada. La entrega de la cosa se refiere al periodo de consumacion; en el articulo que estudiamos se trata tan

solo de fijar el momento de la perfeccion.” (10 Manresa 56, id.)

x x x x^[33]

To fully comprehend the point under discussion, from a point of view which is not Manresa’s, We only have to read the pertinent portion of the Report of the Code Commission on the Proposed Civil Code of the Philippines:

“The name of Title VI has been simplified by calling it ‘sales’, and the name of the contract has been changed, for the same reason, to ‘contract of sale.’

“It is required in the proposed Code that the seller transfer the ownership of the thing sold (arts. 1478, 1479, 1515, 1567). In the present Code (art. 1445), his obligation is merely to deliver the thing, so that even if the seller is not the owner, he may validly sell, subject to the warranty (art. 1474) to maintain the buyer in the legal and peaceful possession of the thing sold. The Commission considers the theory of the present law unsatisfactory from the moral point of view.”
(*At p. 141*)

and consider that Article 1478, a new provision of the New Civil Code, specifically authorizes the parties to stipulate “that the ownership in the thing shall not pass to the purchaser until he has fully paid the price”, which makes the sale what Laurent calls a “venta a la romana”, and which precisely is the nature of the contract We have before us in this case. Thus, it is my humble view that, contrary to what seems to be implied from the portion of Manuel quoted in Our decision and resolution of denial in this case, **the reservation of the title does not strip or divest the agreement of its character as a sale and much less does it make it a promise to sell. I reiterate, the reservation of title is irrelevant in a promise to sell for the simple reason that it is in its very nature that transfer of title is not involved and cannot even be contemplated.**^[34] (Emphasis supplied; italics in the original)

Justice Barredo likewise argued that the suspensive condition (*i.e.*, full payment of the

purchase price) affecting the transfer of the sale does not affect the character of the contract as a perfected contract of sale.^[35] In fact, the delivery of possession of the property to the buyer in the *Luzon Brokerage* shows that it was a partially consummated sale.^[36] He also argued that it was only in the Second Division case of *Manuel v. Rodriguez*^[37] that the Court created the concept of a “contract to sell or promise to sell,” where title remains with the vendor until fulfillment of a positive suspensive condition, such as full payment of the price, viz.:

It was only in Manuel vs. Rodriguez, 109 Phil. 1, that this Court “created” the concept of a “a contract to sell or promise to sell”, where title remains with the vendor until fulfillment to a positive suspensive condition, such as full payment of the price.

I have taken pains to analyze all the decisions cited in Manuel, to verify whether or not there is really in the earlier jurisprudence such a concept of a promise to sell wherein title is reserved by the vendor. The result of the foregoing discussion, as can be seen, is that it was only in Manuel that this Court spoke first of such a concept, which it is suggested We should apply in the case at bar. I regret I cannot accede to the suggestion. The concept proposed does not conform with my studies of the juridical nature of a promise to sell as distinguished from a contract of sale. I insist that the so-called suspensive condition affecting the transfer of title only after full payment of the price, an admittedly licit one, does not detract from the character of the contract here in question as a perfected contract of sale — indeed, partially consummated by the delivery of possession of “the thing” (per Manresa), if We may borrow the characterization made by Justice Imperial of the contract in the Ah Sing case, supra. For that matter, neither does the condition that upon failure of Maritime to pay any installment, the contract would be cancelled, all past payments forfeited and Myers would be entitled to recover possession — vary a bit the real nature of the contract. In fact, it is my considered view that it is this condition as to breach that is determinative of the rights of the parties in this case, since what is in issue here, as I see it, is not the right of Maritime to compel delivery of title, but only whether or not the whole contract should be held to have been properly and legally cancelled by Myers, thus depriving Maritime of further opportunity to continue paying the

balance of the stipulated purchase price.

My understanding of the contract of sale, known before the New Civil Code as “Purchase and Sale”, is that it is a bilateral contract which is a composite of various obligations, depending on the terms agreed upon by the parties regarding the payment of the price, on the one hand, and the delivery of the thing sold and the title thereto, all of which are reciprocal, as distinguished from correlative ones. Thus, once the parties have agreed upon the thing and the price, the contract of sale comes juridically into being as fully as any other perfected contract, without prejudice to the parties laying down as they may agree the terms of payment, on the one hand, and the delivery of the thing and the title thereof, on the other. Of course, these conditions are reciprocally obligatory or binding; the sale is consummated upon fulfillment by both parties of their respective obligations; but, pending such consummation, in the event of breach by anyone of them, the corresponding rules established by law come into play, among them, Article 1234 (new), as applied in *Javier, supra*, and Article 1124, as applied to sales of movables, and, of course, Article 1504 which is the variant of Article 1124 applicable to sales of immovables (per Justice J.B.L. Reyes in *Gabuya vs. Cui*, 38 SCRA 85, at p. 97).^[38] (Italics in the original)

I believe there is merit in the comprehensive arguments of Justice Barredo. Thus, similar to his finding, the contract subject of the present case is a contract of sale as it has all the attributes of a perfected contract of sale under the Code. It appears too that petitioner, a lawyer, treated the contract as one of sale considering that in his Answer with Counterclaim, he prayed that respondents be adjudged to pay P1,250,000.00 to him as unpaid balance of the purchase price of the property with 9% interest as stipulated in the contract.^[39] In fact, the RTC had initially ruled in his favor ordering respondents to pay the remaining balance with interest. Later, when respondents’ motion for new trial was granted, and in order to escape liability for the subsequent sale of the property, he asserted that what he and respondents entered into was merely a contract to sell wherein he had no obligation to transfer ownership until full payment of the purchase price and for which reason, the remedy of rescission was unavailable.

Respondents are not entitled to rescind the Contract.

Since the contract herein is a one of sale, the remedy of rescission is available. Under

Articles 1191 and 1192 of the Code, the right of resolution of a party to an obligation is predicated on a breach of faith by the other party which violates the reciprocity between them, *viz.*:

Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with articles 1385 and 1388 and the Mortgage Law. (1124)

Art. 1192. In case both parties have committed a breach of the obligation, the liability of the first infractor shall be equitably tempered by the courts. If it cannot be determined which of the parties first violated the contract, the same shall be deemed extinguished, and each shall bear his own damages. (n)

It is also noted that Article 1592 expressly provides that even if it has been stipulated by the parties that rescission of the contract shall take place upon failure to pay the price at the time agreed upon, the vendee may still pay even after the expiration of the period as long as there is no judicial or notarial demand for rescission made by the vendor, *viz.*:

Art. 1592. In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by a notarial act. After the demand, the court may not grant him a new term. (1504a)

In the present case it is the vendees who first sought the rescission of the contract. Thus, Article 1592 cannot be applied as it is clear that they no longer wished to pay any of the installments and were in fact demanding the refund of their downpayment. Likewise, respondents are the first infractors in this case and cannot be deemed the injured party under Article 1191 to whom the choice of fulfillment or rescission of the contract is given. To be sure, respondents unilaterally abandoned the property and failed to pay any of the installment payments. Meanwhile, petitioner is equally at fault when he sold the property to a third person without informing the court or respondents while the case was pending litigation. To stress, petitioner prayed that the RTC order respondents to pay the balance of the purchase price in accordance with their agreement. Thus, he acted in bad faith in negotiating the sale of the property while the case was being litigated in court.

Considering that the contract between the parties provides for the automatic cancellation thereof and forfeiture of all payments made in case of three successive dishonors of the post-dated checks representing monthly installments, the *ponencia* correctly rules that the said stipulation shall apply to the parties. Since respondents themselves admitted that they failed to pay four monthly installments and have no intentions of pursuing the sale whatsoever, then the contract is deemed cancelled and all previous payments made are to be forfeited. In other words, by reason of respondents' default in three successive installment payments, the contract was *ipso facto* rescinded.^[40]

Based on the foregoing discussion, I **VOTE** to grant the Petition.

^[1] *Rollo*, pp. 8-36.

^[2] *Id.* at 38-49. Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela concurring.

^[3] *Id.* at 57-58. Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Amy C. Lazaro-Javier (now a member of this Court) and Nina G. Antonio-Valenzuela concurring.

^[4] *Id.* at 14-15, Petition.

^[5] *Id.* at 45, CA Decision.

^[6] *Id.*

^[7] *Ponencia*, pp. 2-3.

^[8] *Id.* at 3.

^[9] *Id.*

^[10] *Id.* at 5.

^[11] *Id.* at 5-6.

^[12] *Id.* at 6.

^[13] *Id.*

^[14] *Id.*

^[15] *Id.* at 7.

^[16] *Id.*

^[17] *Id.* at 8.

^[18] *Id.* at 9.

^[19] *Id.* at 9-10.

^[20] *Id.* at 10-11.

^[21] *Rollo*, pp. 22-23, Petition.

^[22] *Ponencia*, p. 7.

^[23] **Platinum Plans Phil. Inc. v. Cucueco**, 522 Phil. 133, 144 (2006).

^[24] 331 Phil. 294 (1996).

^[25] *Id.* at 310-311.

^[26] *Romero v. CA*, 320 Phil. 269, 280 (1995).

^[27] See **Heirs of Villeza v. Aliangan**, G.R. No. 244667-69 (formerly UDK 16373-75), December 2, 2020, accessed at

<<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67034>>; see also *J. Barredo*, Dissenting Opinion in **Luzon Brokerage Co., Inc. v. Maritime Building Co., Inc.**, 150-B Phil. 264, 349-350 (1972).

[28] **Heirs of Villeza v. Aliangan**, *id.*

[29] *Id.*

[30] NEW CIVIL CODE, Art. 1459.

[31] See *supra* note 27.

[32] Note that the case was later the subject of a second motion for reconsideration (2nd MR) under a 15-Member Court (with four remaining Members who originally voted on the case). The denial of the 2nd MR was penned by Justice Claudio O. Teehankee, but with a divided Court (seven voting to grant the 2nd MR, including Justice Barredo).

[33] The omitted portion from Justice Barredo's Dissenting Opinion cites José Maria Manresá's *Commentarios Al Codigo Civil Español* which is in the Spanish language and excluded for lack of official translation.

[34] *J. Barredo*, Dissenting Opinion in **Luzon Brokerage Co., Inc. v. Maritime Building Co., Inc.**, *supra* note 27, at 348-354.

[35] *Id.* at 358.

[36] *Id.*

[37] 109 Phil. 1, 9 (1960).

[38] *J. Barredo*, Dissenting Opinion in **Luzon Brokerage Co., Inc. v. Maritime Building Co., Inc.**, *supra* note 27, at 357-359.

[39] *Rollo*, p. 42, CA Decision citing RTC Order.

[40] See **Torralba v. De los Angeles**, 185 Phil. 40 (1980).

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