

**LUZON BROKERAGE CO., INC., PLAINTIFF AND APPELLEE, VS.
MARITIME BUILDING CO., INC., AND MYERS BUILDING CO., INC.,
DEFENDANTS, MARITIME BUILDING CO., INC., DEFENDANT AND
APPELLANT.**

G.R. No. L-25885. January 31, 1972

Ponente: REYES, J. B. L., J.

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REYES, J. B. L., J.:

Direct appeal (prior to the effectivity of Republic Act 5440) by Maritime Building Co., Inc. from a decision of the Court of First Instance of Manila (in its Civil Case No. 47319), the dispositive part of which provides as follows:

"FOR ALL THE FOREGOING CONSIDERATIONS, judgment is hereby rendered declaring that the Myers Building Co., Inc. is entitled to receive the rentals which the plaintiff has been paying, including those already deposited in Court, thereby relieving the plaintiff of any obligation to pay the same to any other party, and ordering the Maritime Building Co., Inc. to pay the commission fees paid by the Myers Building Co., Inc. to the Clerk of this Court, plus the sum of P3,000.00 as and for attorney's fees."

"On the cross-claim by the Myers Building Co., Inc., the Maritime Building Co., Inc. is hereby ordered to pay the Myers Building Co., Inc. the sum of P10,000.00 damages, plus the sum of P30,000.00 representing rentals wrongfully collected by it from the plaintiff corresponding to the months of March, April and May, 1961 and the costs hereof."

The antecedents of the litigation are summarized in the appealed judgment thus:

"This is an action for interpleading.

'It appears that on April 30, 1949, in the City of Manila, the defendant Myers Building Co., Inc., owner of three parcels of land in the City of Manila, together with the improvements thereon, entered into a contract entitled 'Deed of Conditional Sale' in favor of Bary Building Co., Inc., later known as Maritime Building Co., Inc., whereby the former sold the same to the latter for P1,000,000.00, Philippine currency. P50,000.00 of this price was paid upon the execution of the said contract, and the parties agreed that the balance of P950,000.00 was to be paid in monthly installments at the rate of P10,000.00 with interest of 5% per annum until the same was fully paid.

'In Par. (o), they agreed that in case of failure on the part of the vendee to pay any of the installments due and payable, the contract shall be annulled at the option of the vendor and all payments already made by vendee shall be forfeited and the vendor shall have right to reenter the property and take possession thereof.

'Later, the monthly installment of P10,000.00 above-stipulated with 5% interest per annum was amended or decreased to P5,000.00 per month and the interest was raised to 5-1/2% per annum. The monthly installments under the contract was regularly paid by the Bary Building Co., Inc. and/or the Maritime Building Co., Inc. until the end of February, 1961. It failed to pay the monthly installment corresponding to the month of March, 1961, for which the Vice-President, George Schedler, of the Maritime Building Co., Inc., wrote a letter to the

President of Myers, Mr. C. Parsons, requesting for a moratorium on the monthly payment of the installments until the end of the year 1961, for the reason that the said company was encountering difficulties in connection with the operation of the warehouse business. However, Mr. C. Parsons, in behalf of the Myers Estate, answered that the monthly payments due were not payable to the Myers Estate but to the Myers Building Co., Inc., and that the Board of Directors of the Myers Co., Inc. refused to grant the request for moratorium for suspension of payments under any condition.

'Notwithstanding the denial of this request for moratorium by the Myers Board of Directors the Maritime Building Co., Inc. failed to pay the monthly installments corresponding to the months of March, April and May, 1961. Whereupon, on May 16, 1961, the Myers Building Co., Inc. made a demand upon the Maritime Building Co., Inc., for the payment of the installments that had become due and payable, which later, however, was returned unclaimed.

'Then, on June 5, 1961, the Myers Building Co., Inc. wrote the Maritime Building Co., Inc. another letter advising it of the cancellation of the Deed of Conditional Sale entered into between them and demanding the return of the possession of the properties and holding the Maritime Building Co., Inc. liable for use and occupation of the said properties at P10,000.00 monthly.

'In the meantime, the Myers Building Co., Inc. demanded upon the Luzon Brokerage Co., Inc. to whom the Maritime Building Co., Inc. leased the properties, the payment of monthly rentals of P10,000.00 and the surrender of the same to it. As a consequence, the Luzon Brokerage Co., Inc. found itself in a dilemma and in order not to take any chances of making a payment to the wrong party, filed this action for interpleader against the Maritime Building Co., Inc.

'After the filing of this action, the Myers Building Co., Inc. in its answer filed a cross-claim against the Maritime Building Co., Inc. praying for the confirmation of its right to cancel the said contract. In the meantime, the contract between the Maritime Building Co., Inc. and the Luzon Brokerage Co., Inc. was extended by mutual agreement for a period of four (4) more years, from April, 1964 to March 31, 1968.

'The Maritime Building Co., Inc. now contends (1) that the Myers Building Co., Inc. cannot cancel the contract entered into by them for the conditional sale of the properties in question extrajudicially and (2) that it had not failed to pay the monthly installments due under the contract and, therefore, is not guilty of having violated the same.'"

It should be further elucidated that the suspension by the appellant Maritime Building Co., Inc. (hereinafter called Maritime) of the payment of installments due from it to appellee Myers Building Co., Inc. (hereinafter designated as Myers Corporation) arose from an award of backwages made by the Court of Industrial Relations in favor of members of Luzon Labor Union who served the Fil-American forces in Bataan in early 1942 at the instance of the employer Luzon Brokerage Co. and for which F. H. Myers, former majority stockholder of the Luzon Brokerage Co., had allegedly promised to indemnify E. M. Schedler (who controlled Maritime) when the latter purchased Myers' stock in the Brokerage Company. Schedler contended that he was being sued for the backpay award of some P325,000, when it was a liability of Myers, or of the latter's estate upon his death. In his letter to Myers Corporation (Exhibit "11", Maritime) dated 7 April 1961 (two months and ten days before the initial complaint in the case at bar), Schedler claimed the following:

"At all time when the F. H. Myers Estate was open in the Philippine Islands and open in San Francisco, the Myers Estate or heirs assumed the defense of the Labor Union claims and led us to believe that they would indemnify us therefrom.

'Recently, however, for the first time, and after both the Philippine and San Francisco F. H. Myers Estates were closed, we have been notified that the F. H. Myers indemnity on the Labor Union case will not be honored, and in fact Mrs. Schedler and I have been sued in the Philippines by my successor in interest, Mr. Wentholt, and

have been put to considerable expense.

'You are advised that my wife and I, as the owners of the Maritime Building Company, intend to withhold any further payments to Myers Building Company or Estate, in order that we can preserve those funds and assets to set off against the potential liability to which I am now exposed by the failure of the Myers heirs to honor the indemnity agreement pertaining to the Labor claims.'

The trial court found the position of Schedler indefensible, and that Maritime, by its failure to pay, committed a breach of the sale contract; that Myers Company, from and after the breach, became entitled to terminate the contract, to forfeit the installments paid, as well as to repossess, and collect the rentals of, the building from its lessee, Luzon Brokerage Co., in view of the terms of the conditional contract of sale stipulating that:

''(d) It is hereby agreed, covenanted and stipulated by and between the parties hereto that the Vendor will execute and deliver to the Vendee a definite or absolute deed of sale upon the full payment by the vendee of the unpaid balance of the purchase price hereinabove stipulated; that should the Vendee fail to pay any of the monthly installments, when due, or otherwise fail to comply with any of the terms and conditions herein stipulated, then this Deed of Conditional Sale shall automatically and without any further formality, become null and void, and all sums so paid by the Vendee by reason thereof, shall be considered as rentals and the Vendor shall then and there be free to enter into the premises, take possession thereof or sell the properties to any other party.'

* * * * *

'(o) In case the Vendee fails to make payment or payments, or any part thereof, as herein provided, or fails to perform any of the covenants or agreements hereof, this contract shall, at the option of the Vendor, be annulled and, in such event, all payments made by the Vendee to the Vendor by virtue of this contract shall be forfeited and retained by the Vendor in full satisfaction of the liquidated damages by said Vendor sustained; and the said Vendor shall have the right to forthwith reenter, and take possession of, the premises subject-matter of this contract.

'The remedy of forfeiture stated in the next-preceding paragraph shall not be exclusive of any other remedy, but the Vendor shall have every other remedy granted it by virtue of this contract, by law, and by equity.'

From the judgment of the court below, the dispositive portion whereof has been transcribed at the start of this opinion, Myers duly appealed to this Court.

The main issue posed by appellant is that there has been no breach of contract by Maritime; and assuming that there was one, that the appellee Myers was not entitled to rescind or resolve the contract without recouring to judicial process.

It is difficult to understand how appellant Maritime can seriously content that its failure or refusal to pay the P5,000 monthly installments corresponding to the months of March, April and May, 1961 did not constitute a breach of contract with Myers, when said agreement (transcribed in the Record on Appeal, pages 59-71) expressly stipulated that the balance of the purchase price (P950,000)

"shall be paid at the rate of Ten Thousand Pesos (P10,000) monthly on or before the 10th day of each month with interest at 5% per annum, this amount to be first applied on the interest, and the balance paid to the principal thereof; and the failure to pay any installment or interest when due shall ipso facto cause the whole unpaid balance of the principal and interest to be and become immediately due and payable." (Contract, paragraph b; Record on Appeal, page 63)

Contrary to appellant Maritime's averments, the default was not made in good faith. The text of the letter to Myers (Exhibit "11", Maritime), heretofore quoted, leaves no doubt that the non-payment of the installments was the

result of a deliberate course of action on the part of appellant, designed to coerce the appellee Myers Corporation into answering for an alleged promise of the late F. H. Myers to indemnify E.W. Schedler, the controlling stockholder of appellant, for any payments to be made to the members of the Luzon Labor Union. This is apparent also from appellant's letter to his counsel (Exhibit "12", Maritime):

" * * * I do not wish to deposit pesos representing the months of March, April and May, since the Myers refusal to honor the indemnity concerning the labor claims has caused me to disburse (sic) roughly \$10,000.00 to date in fees, cost and travel expenses. However, if the Myers people will deposit in trust with Mr. C. Parsons, 25,000 pesos to cover my costs to date, I will then deposit with Mr. Parson's, in trust, 15,000 pesos for March, April and May and will also post a monthly deposit of 5,000 pesos until the dispute is settled. The dispute won't be settled in my mind, unless and until:

- a) The Myers people indemnify me fully the labor cases;
- b) The labor cases are terminated favorably to Luzon Brokerage and no liability exists;
- c) The Myers people pay any judgment entered on the labor cases thereby releasing me; or
- d) It is finally determined either in San Francisco or in the Philippines by a court that the Myers heirs must honor the indemnity which Mr. F. H. Myers promised when I purchased Luzon Brokerage Company.' "

Yet appellant Maritime (assuming that it had validly acquired the claims of its president and controlling stockholder, E. M. Schedler) could not ignore the fact that whatever obligation F. H. Myers or his estate had assumed in favor of Schedler with respect to the Luzon Brokerage labor case was not, and could not have been, an obligation of appellee corporation (Myers Building Company). No proof exists that the board of directors of the Myers Corporation had agreed to assume responsibility for the debts (if any) that the late Myers or his heirs had incurred in favor of Schedler. Not only this, but it is apparent from the letters quoted heretofore that Schedler had allowed the estate proceedings of the late F. M. Myers to close without providing for any contingent liability in Schedler's favor; so that by offsetting the alleged debt of Myers to him, against the balance of the price due under the "Deed of Conditional Sale," appellant Maritime was in fact attempting to burden the Myers Building Company with an uncollectible debt, since enforcement thereof against the estate of F. H. Myers was already barred.

Under the circumstances, the action of Maritime in suspending payments to Myers Corporation was a breach of contract tainted with fraud or malice (*dolo*), as distinguished from mere negligence (*culpa*), "*dolo*" being succinctly defined as a "conscious and intentional design to evade the normal fulfillment of existing obligations" (Capistrano, Civil Code of the Philippines, Vol. 3, page 38), and therefore incompatible with good faith (Castan, Derecho Civil, 7th Ed., Vol. 3, page 129; Diaz Pairo, Teoria de Obligaciones, Vol. 1, page 116).

Maritime having acted in bad faith, it was not entitled to ask the court to give it further time to make payment and thereby erase the default or breach that it had deliberately incurred. Thus the lower court committed no error in refusing to extend the periods for payment. To do otherwise would be to sanction a deliberate and reiterated infringement of the contractual obligations incurred by Maritime, an attitude repugnant to the stability and obligatory force of contracts.

From another point of view, it is irrelevant whether appellant Maritime's infringement of its contract was casual or serious, for as pointed out by this Court in *Manuel vs. Rodriguez*, 109 Phil. 1, at page 10 –

"The contention of plaintiff-appellant that Payatas Subdivision Inc. had no right to cancel the contract as there was only a "casual breach" is likewise untenable. In contracts to sell, where ownership is retained by the seller and is not to pass until the full payment of the price, such payment, as we said, is a positive suspensive

condition, the failure of which is not a breach, casual or serious, but simply an event that prevented the obligation of the vendor to convey title from acquiring binding force, in accordance with Article 1117 of the Old Civil Code. To argue that there was only a casual breach is to proceed from the assumption that the contract is one of absolute sale, where non-payment is a resolutive condition, which is not the case."

But it is argued for Maritime that even if it had really violated the Contract of Conditional Sale with Myers, the latter could not extrajudicially rescind or resolve the contract, but must first recourse to the courts. While recognizing that paragraph (d) of the deed of conditional sale expressly provides *inter alia* –

"that should the Vendee fail to pay any of the monthly installments, when due or otherwise fail to comply with any of the terms and conditions herein stipulated, then this Deed of Conditional Sale shall automatically and without any further formality, become null and void, and all sums so paid by the Vendee by reason thereof shall be considered as rentals * * *." (Italics supplied)

herein appellant Maritime avers that paragraph (e) of the deed contemplates that a suit should be brought in court for a judicial declaration of rescission. The paragraph relied upon by Maritime is couched in the following terms:

"(e) It is also hereby agreed, covenanted and stipulated by and between the parties hereto that should the Vendor rescind this Deed of Conditional Sale, for any of the reasons stipulated in the preceding paragraph, the Vendee by these presents obligates itself to peacefully deliver the properties subject of this contract to the Vendor, and in the event that the Vendee refuses to peacefully deliver the possession of the properties subject of this contract to the Vendor in case of rescission, and a suit should be brought in court by the Vendor to seek judicial declaration of rescission, and take possession of the properties subject of this contract, the Vendee hereby obligates itself to pay all the expenses to be incurred by reason of such suit and in addition obligates itself to pay the sum of P10,000.00, in concept of damages, penalty and attorney's fees."

Correlation of this paragraph (e) with the preceding paragraph (d) of the Deed of Conditional Sale (quoted in page 5 of this opinion) reveals no incompatibility between the two; and the suit "be brought in Court by the Vendor to seek judicial declaration of rescission" is provided for by paragraph (e) only in the eventuality that, notwithstanding the automatic annulment of the deed under paragraph (d), the Vendee "refuses to peacefully deliver the possession of the properties subject of this contract." The step contemplated is logical since the Vendor can not, by himself, dispossess the Vendee *manu militari*, if the latter should refuse to vacate despite the violation of the contract, since no party can take the law in his own hands. But the bringing of such an action in no way contradicts or restricts the automatic termination of the contract in case the Vendee (i.e., appellant Maritime) should not comply with the agreement.

Anyway, this Court has repeatedly held that –

"Well settled is, however, the rule that a judicial action for the rescission of a contract is not necessary where the contract provides that it may be revoked and cancelled for violation of any of its terms and conditions" (Lopez vs. Commissioner of Customs, L-28235, 30 January 1971, 37 SCRA, 327, 334, and cases cited therein)[1] (Italics supplied)

"Resort to judicial action for rescission is obviously not contemplated * * *. The validity of the stipulation can not be seriously disputed. It is in the nature of a facultative resolutive condition which in many cases has been upheld by this Court." (Ponce Enrile vs. Court of Appeals, L-27549 30 Sept. 1969; 29 SCRA 504).

The obvious remedy of the party opposing the rescission for any reason being to file the corresponding action to question the rescission and enforce the agreement, as indicated in our decision in *University of the Philippines vs. Walfrido de los Angeles*, L-28602, 29 September 1970, 35 SCRA 107.

"Of course, it must be understood that the act of a party in treating a contract as cancelled or resolved on

account of infractions by the other contracting party must be made known to the other and is always provisional, being ever subject to scrutiny and review by the proper court. If the other party denies that rescission is justified, it is free to resort to judicial action in its own behalf, and bring the matter to court. Then, should the court, after due hearing, decide that the resolution of the contract was not warranted, the responsible party will be sentenced to damages; in the contrary case, the resolution will be affirmed, and the consequent indemnity awarded to the party prejudiced.

"In other words, the party who deems the contract violated may consider it resolved or rescinded, and act accordingly, without previous court action, but it proceeds at its own risk. For it is only the final judgment of the corresponding court that will conclusively and finally settle whether the action taken was or was not correct in law. But the law definitely does not require that the contracting party who believes itself injured must first file suit and wait for a judgment before taking extrajudicial steps to protect its interest. Otherwise, the party injured by the other's breach will have to passively sit and watch its damages accumulate during the pendency of the suit until the final judgment of rescission is rendered when the law itself requires that he should exercise due diligence to minimize its own damages (Civil Code, Article 2203)."

Maritime likewise invokes Article 1592 of the Civil Code of the Philippines as entitling it to pay despite its defaults:

"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."

Assuming *arguendo* that Article 1592 inapplicable, the cross claim filed by Myers against Maritime in the court below constituted a judicial demand for rescission that satisfies the requirements of said article.

But even if it were not so, appellant overlooks that its contract with appellee Myers is not the ordinary sale envisaged by Article 1592, transferring ownership simultaneously with the delivery of the real property sold, but one in which the vendor retained ownership of the immovable object of the sale, merely undertaking to convey it provided the buyer strictly complied with the terms of the contract (see paragraph (d), ante, page 101). In suing to recover possession of the building from Maritime, appellee Myers is not after the resolution or setting aside of the contract and the restoration of the parties to the status quo ante, as contemplated by Article 1592, but precisely enforcing the provisions of the agreement that it is no longer obligated to part with the ownership or possession of the property because Maritime failed to comply with the specified condition precedent, which is to pay the installments as they fell due.

The distinction between contracts of sale and contracts to sell with reserved title has been recognized by this Court in repeated decisions^[2] upholding the power of promisors under contracts to sell in case of failure of the other party to complete payment, to extrajudicially terminate the operation of the contract, refuse conveyance and retain the sums or installments already received, where such rights are expressly provided for, as in the case at bar.

Maritime's appeal that it would be iniquitous that it should be compelled to forfeit the P973,000 already paid to Myers, as a result of its failure to make good a balance of only P319,300.65, payable at P5,000 monthly, becomes unimpressive when it is considered that while obligated to pay the price of one million pesos at P5,000 monthly, plus interest, Maritime, on the other hand, had leased the building to Luzon Brokerage, Inc. since 1949; and Luzon paid P13,000 a month rent, from September, 1951 to August 1956, and thereafter until 1961, at P10,000 a month, thus paying a total of around one and a half million pesos in rentals to Maritime. Even adding to Maritime's losses of P973,000 the P10,000 damages and P3,000 attorneys' fees awarded by the trial court, it is

undeniable that appellant Maritime has come out of the entire transaction still at a profit to itself.

There remains the procedural objection raised by appellant Maritime to this interpleader action filed by the Luzon Brokerage Co., the lessee of the building conditionally sold by Myers to Maritime. It should be recalled that when Maritime defaulted in its payments to Myers, and the latter notified the former that it was cancelling the contract of conditional sale, Myers also notified Luzon Brokerage, Maritime's lessee of the building, of the cancellation of the sale, and demanded that Luzon should pay to Myers the rentals of the building beginning from June, 1961, under penalty of ejectment (Record on Appeal, pages 14-15). In doubt as to who was entitled to the rentals, Luzon filed this action for interpleader against Myers and Maritime, and deposited the rentals in court as they fell due. The appellant Maritime moved to dismiss on the ground that (a) Luzon could not entertain doubts as to whom the rentals should be paid since Luzon had leased the building from Maritime since 1949, renewing the contract from time to time, and Myers had no right to cancel the lease; and (b) that Luzon was not a disinterested party, since it tended to favor appellee Myers. The court below overruled Maritime's objections and We see no plausible reason to overturn the order. While Myers was not a party to the lease, its cancellation of the conditional sale of the premises to Maritime, Luzon's lessor, could not but raise reasonable doubts as to the continuation of the lease, for the termination of the lessor's right of possession of the premises necessarily ended its right to the rentals falling due thereafter. The preceding portion of our opinion is conclusive that Luzon's doubts were grounded under the law and the jurisprudence of this Court.

No adequate proof exists that Luzon was favoring any one of the contending parties. It was interested in being protected against prejudice deriving from the result of the controversy, regardless of who should win. For that purpose it was simpler for Luzon to compel the disputants to litigate between themselves, rather than chance being sued by Myers, and later being compelled to proceed against Maritime to recoup its losses. In any event, Maritime ultimately confirmed the act of Luzon in suing for interpleader, by agreeing to renew Luzon's lease in 1963 during the pendency of the present action, and authorizing Luzon to continue depositing the rentals in court "until otherwise directed by a court of competent jurisdiction" (Exhibit "18-Maritime"). The procedural objection has thus become moot.

PREMISES CONSIDERED, the appealed decision should be, and hereby is, affirmed, and appellant Maritime Building Co., as well as appellee Luzon Brokerage Co., are further ordered to surrender the premises to the appellee Myers Building Co. Costs against appellant.

Concepcion, C.J., Makalintal, Zaldivar, Castro, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Fernando, J., took no part.

[1] Ponce Enrile vs. Court of Appeals, L-27549, 30 September 1969; Froilan vs. Pan Oriental Shipping Co., L-11897, 31 October 1964; "De la Rama Steamship Co., Inc. vs. Tan, L-8784, 21 May 1956; Taylor vs. Uy Teng Piao, 43 Phil. 873; University of the Philippines vs. Judge de los Angeles, L-28602, 29 September 1970.

[2] Manila Racing Club vs. Manila Jockey Club, 69 Phil. 57; Caridad Estates vs. Santero, 71 Phil. 114; Miranda vs. Caridad Estates, L-2077, 3 October 1950; Jocson vs. Capitol Subdivision, L-6573, 28 February 1955; Manuel vs. Rodriguez, 109 Phil. 1. See also Sing Yee Cuan, Inc. vs. Santos (C. App.) 47 OG 6372.

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