

## **NEWTON JISON AND SALVACION I. JISON, PETITIONERS, VS. COURT OF APPEALS AND ROBERT O. PHILLIPS & SONS, INC., RESPONDENTS.**

*G.R. No. L-45349. August 15, 1988*

Ponente: CORTES, J.

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### **CORTES, J.:**

The instant petition for review of the decision of the Court of Appeals posed the issue of the validity of the rescission of a contract to sell a subdivision lot due to the failure of the lot buyer to pay monthly installments on their due dates and the forfeiture of the amounts already paid.

The case is not one of first impression, and neither is it exceptional. On the contrary, it typifies the common plight of countless subdivision lot buyers.

Petitioners, the spouses Newton and Salvacion Jison, entered into a Contract to Sell with private respondent, Robert O. Phillips & Sons, Inc., whereby the latter agreed to sell to the former a lot at the Victoria Valley Subdivision in Antipolo, Rizal for the agreed price of P55,000.00, with interest at 8% per annum, payable on an installment basis.

Pursuant to the contract, petitioners paid private respondents a down payment of P11,000.00 on October 20, 1961 and from October 27, 1961 to May 8, 1965 a monthly installment of P533.85.

Thereafter, due to the failure of petitioners to build a house as provided in the contract, the stipulated penalty of P5.00 per square meter was imposed to the effect that the monthly amortization was increased to P707.24.

On January 1, 1966, February 1, 1966 and March 1, 1966, petitioners failed to pay the monthly installments due on said dates although petitioners subsequently paid the amounts due and these were accepted by private respondent.

Again on October 1, 1966, November 1, 1966, December 1, 1966 and January 1, 1967, petitioners failed to pay. On January 11, 1967, private respondent sent a letter (Exh. "2") to petitioners calling their attention to the fact that their account was four months overdue. This letter was followed up by another letter dated February 27, 1967 (Exh. "3") where private respondent reminded petitioner of the automatic rescission clause of the contract. Petitioners eventually paid on March 1, 1967.

Petitioners again failed to pay the monthly installments due on February 1, 1967, March 1, 1967 and April 1, 1967. Thus, in a letter dated April 6, 1967 (Exh. "D"), private respondent returned petitioners' check and informed them that the contract was cancelled when on April 1, 1967 petitioners failed to pay the monthly installment due, thereby making their account delinquent for three months.

On April 19, 1967, petitioners tendered payment for all the installments already due but the tender was refused. Thus, petitioners countered by filing a complaint for specific performance with the Court of First Instance of Rizal

on May 4, 1967 and consigning the monthly installments due with the court.

Following the hearing of the case, wherein the parties entered into a stipulation of facts, the trial court on January 9, 1969 rendered judgment in favor of private respondent, dismissing the complaint and declaring the contract cancelled and all payments already made by petitioner forfeited; ordering petitioners to pay P1,000.00 as and for attorney's fees; and declaring the consignment and tender of payment made by petitioners as not amounting to payment of the corresponding monthly installments.

Not satisfied with the decision of the trial court, petitioners appealed to the Court of Appeals. Agreeing with the findings and conclusions of the trial court, the Court of Appeals on November 4, 1976 affirmed the former's decision.

Thus, the instant petition for review.

In assailing the decision of the Court of Appeals, petitioners attributed the following errors:

I

THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT PETITIONERS HAVE SUBSTANTIALLY COMPLIED WITH THE TERMS OF THEIR AGREEMENT WITH PRIVATE RESPONDENTS.

II

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE CONTRACT TO SELL MAY BE AUTOMATICALLY RESCINDED AND PRIVATE RESPONDENT MAY UNILATERALLY RESCIND SAID CONTRACT AND REJECT THE CONSIGNATION OF PAYMENTS MADE BY PETITIONERS, WHICH ACTIONS OF PRIVATE RESPONDENT ARE HIGHLY INIQUITOUS AND UNCONSCIONABLE.

III

THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT PRIVATE RESPONDENT'S ACT OF FORFEITING ALL PREVIOUS PAYMENTS MADE BY PETITIONERS IS CONTRARY TO LAW, HIGHLY INIQUITOUS AND UNCONSCIONABLE. [Petitioners' Brief, pp. 13-27.]

As stated at the outset, the principal issue in this case is the legality of the rescission of the contract and the forfeiture of the payments already made by petitioners.

To support the rescission and forfeiture private respondent falls back on paragraph 3 of the contract which reads:

This contract shall be considered automatically rescinded and cancelled and of no further force and effect, upon the failure of the Vendee to pay when due Three (3) or more consecutive monthly installments mentioned

in Paragraph 2 of this Contract, or to comply with any of the terms and conditions hereof, in which case the Vendor shall have the right to resell the said parcel of land to any Vendee and any amount derived from the sale on account hereof shall be forfeited in favor of the Vendor as liquidated damages for the breach of the Contract by the Vendee, the latter hereby renouncing and reconveying absolutely and forever in favor of the Vendor all rights and claims to and for all the amount paid by the Vendee on account of the Contract, as well as to and for all compensation of any kind, hereby also agreeing in this connection, to forthwith vacate the said property or properties peacefully without further advise of any kind.

Since the contract was executed and cancelled prior to the effectivity of Republic Act No. 6552 (the Realty Installment Buyers' Protection Act) and Presidential Decree No. 957 (the Subdivision and Condominium Buyers' Protective Decree), it becomes necessary to resort to jurisprudence and the general provisions of law to resolve the controversy.

The decision in the recent case of Palay, Inc. v. Clave (G.R. No. L-56076, September 21, 1983, 124 SCRA 692] facilitates the resolution of the controversy. In deciding whether the rescission of the contract to sell a subdivision lot after the lot buyer has failed to pay several installments was valid, the Court said:

Well settled is the rule, as held in previous jurisprudence [Torralba v. De los Angeles, 96 SCRA 69, Luzon Brokerage Co., Inc. v. Maritime Building Co., 43 SCRA 93 and 86 SCRA 305; Lopez v. Commissioner of Customs, 37 SCRA 327; U.P. v. De los Angeles, 35 SCRA 102; Ponce Enrile v. CA, 29 SCRA 504; Froilan v. Pan Oriental Shipping Co., 12 SCRA 276; Taylor v. Uy Tieng Piao, 43 Phil. 873], that judicial action for the rescission of a contract is not necessary where the contract provides that it may be cancelled for violation of any of its terms and conditions. However, even in the cited cases, there was at least a written notice sent to the defaulter informing him of the rescission. As stressed in University of the Philippines v. Walfrido de los Angeles [35 SCRA 102] the act of a party in treating a contract as cancelled should be made known to the other....

\* \* \*

In other words, resolution of reciprocal contracts may be made extrajudicially unless successfully impugned in Court. If the debtor impugns the declaration it shall be subject to judicial determination.

In this case, private respondent has denied that rescission is justified and has resorted to judicial action. It is now for the Court to determine whether resolution of the contract by petitioner was warranted.

We hold that resolution by petitioners of the contract was ineffective and inoperative against private respondent for lack of notice of resolution, as hold in the U.P. v. Angeles case, supra.

\* \* \*

The indispensability of notice of cancellation to the buyer was to be later underscored in Republic Act No. 6552 entitled "An Act to Provide Protection to Buyers of Real Estate on Installment Payments," which took

effect on September 14, 1972, when it specifically provided:

Sec. 3 (b) x x x the actual cancellation of the contract shall take place thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer.

There is no denying that in the instant case the resolution or rescission of the Contract to Sell was valid. Neither can it be said that the cancellation of the contract was ineffective for failure of private respondents to give petitioners notice thereof as petitioners were informed by private respondent that the contract was cancelled in the letter dated April 6, 1967 (Exh. "D"). As R.A. No. 6552 was not yet effective, the notice of cancellation need not be by notarial act, private respondent's letter being sufficient compliance with the legal requirement.

The facts of the instant case should be distinguished from those in the Palay, Inc. case, as such distinction will explain why the Court in said case invalidated the resolution of the contract. In said case, the subdivision developer, without informing the buyer of the cancellation of the contract, resold the lot to another person. The lot buyer in said case was only informed of the resolution of the contract some six years later after the developer rejected his request for authority to assign his rights under the contract. Such a situation does not obtain in the instant case. In fact, petitioners were informed of the cancellation of their contract in April 1967, when private respondent wrote them the letter dated April 6, 1967 (Exh. "D"), and within a month they were able to file a complaint against private respondent.

While the resolution of the contract and the forfeiture of the amounts already paid are valid and binding upon petitioners, the Court is convinced that the forfeiture of the amount of P47,312.64, although it includes the accumulated fines for petitioners' failure to construct a house as required by the contract, is clearly iniquitous considering that the contract price is only P55,000.00. The forfeiture of fifty percent (50%) of the amount already paid, or P23,656.32, appears to be a fair settlement. In arriving at this amount the Court gives weight to the fact that although petitioners have been delinquent in paying their amortizations several times to the prejudice of private respondent, with the cancellation of the contract the possession of the lot reverts to private respondent who is free to resell it to another party. Also, had R.A. No. 6552 been applicable to the instant case, the same percentage of the amount already paid would have been forfeited [Sec. 3(b).]

The Court's decision to reduce the amount forfeited finds support in the Civil Code. As stated in paragraph 3 of the contract, in case the contract is cancelled, the amount already paid shall be forfeited in favor of the vendor as liquidated damages. The Code provides that liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable [Art. 2227.]

Further, in obligation with a penal clause, the judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor [Art. 1228; *Hodges v. Javellana*, G.R. No. L-17247, April 28, 1962, 4 SCRA 1228]. In this connection, the Court said:

It follows that, in any case wherein there has been a partial or irregular compliance with the provisions in a contract for special indemnification in the event of failure to comply with its terms, courts will rigidly apply the doctrine of strict construction and against the enforcement in its entirety of the indemnification, where it is clear from the terms of the contract that the amount or character of the indemnity is fixed without regard to the probable damages which might be anticipated as a result of a breach of the terms of the contract; or, in other

words, where the indemnity provided for is essentially a mere penalty having for its principal object the enforcement of compliance with the contract. . . . [Laureano v. Kilayco, 32 Phil. 194 (1915).]

This principle was reiterated in *Makati Development Corp. v. Empire Insurance Co.* [G.R. No. L-21780, June 30, 1967, 20 SCRA 557] where the Court affirmed the judgment of the Court of First Instance reducing the subdivision lot buyer's liability from the stipulated P12,000.00 to P1,500.00 after finding that he had partially performed his obligation to complete at least fifty percent (50%) of his house within two (2) years from March 31, 1961, fifty percent (50%) of the house having been completed by the end of April 1961.

WHEREFORE, the Decision of the Court of Appeals is hereby MODIFIED as to the amount forfeited which is reduced to fifty percent (50%) of the amount already paid or P23,656.32 and AFFIRMED as to all other respects.

Private respondent is ordered to refund to petitioners the excess of P23,656.32 within thirty (30) days from the date of finality of this judgment.

**SO ORDERED.**

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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