

PATERNO J. OUANO, PETITIONER, VS. COURT OF APPEALS AND FRANCISCO B. ECHAVEZ, RESPONDENTS.

G.R. No. L-40203. August 21, 1990

Ponente: NARVASA, J.

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NARVASA, J.:

The appellate proceedings at bar treat of a parcel of land with an area of about 3,710 square meters, situated in Mandawe, Cebu, identified as Philippine Railway Lot No. 3-A-1. It was covered by Torrens Title No. 7618 in the name of the registered owner, Rehabilitation Finance Corporation (RFC), now the Development Bank of the Philippines (DBP). Adjoining Lot 3-A-1 are lands belonging to Francisco Echavez, private respondent herein, and petitioner Paterno J. Ouano. What will have to be resolved are the conflicting claims over this lot by the vendee thereof, Echavez, and Ouano.

The property was offered for sale by public bidding by the RFC on April 1, 1958.[1] Actually this was the second public bidding scheduled for the property. The first[2] -- in which both Ouano and Echavez participated, together with others -- was nullified on account of a protest by Ouano.[3]

Now, it appears that prior to the second bidding, Ouano and Echavez orally agreed that only Echavez would make a bid, and that if it was accepted, they would divide the property in proportion to their adjoining properties. To ensure success of their enterprise, they also agreed to induce the only other party known to be interested in the property -- a group headed by a Mrs. Bonsucan -- to desist from presenting a bid.[4] They broached the matter to Mrs. Bonsucan's group. The latter agreed to withdraw, as it did in fact withdraw from the sale; and Ouano's wife paid it P2,000 as reimbursement for its expenses.[5]

As expected, the highest bid submitted, and thus accepted by the RFC, was that of Francisco Echavez, who offered P27,826.00 for the land.[6] Echavez paid the sum of P5,565.00 representing 20% deposit of the proffered price.[7]

A week later, Echavez sent a letter to Ouano regarding the P2,000.00 paid by the latter's wife to the Bonsucan group.[8] It said:

“Because the owner of the money which I deposited for your share has stipulated that today is the last day for the return of his money ** I would like to request you that for the P2,000.00 which you have advanced to Mrs. Bonsucan and company, I will just give you 250 sq. meters right in front of your house at P8.05 per sq. meter **.” (N.B. 250 x P8.05 equals P2,012.50.)

Still later, or two weeks after Echavez won the bid, a document simply entitled “Agreement,” was signed by him and Ouano.[9] That document, prepared by Echavez in his own handwriting, reads as follows:[10]

“KNOW ALL MEN BY THESE PRESENTS:

Inasmuch as it was Francisco B. Echavez who won in the public bidding held at the RFC office for Lot 3-A-1 last April, 1958, it is hereby agreed between us, Francisco B. Echavez and Paterno J. Ouano, that we share the said lot between us according to the herein sketch:

(Sketch omitted **)

That each of us takes care in paying direct to the RFC office Cebu Branch, the installments, interests and amortizations on a ten-year plan in our respective names, such that we would request the RFC to have the said Lot 3-A-1 subdivided into two portions: A portion of Lot 3-A-1 for Francisco B. Echavez to contain 1882.5 sq. m. more or less depending on the actual survey based on the above sketch, and another portion of Lot 3-A-1 for Paterno J. Ouano to contain 1827.5 sq. m. more or less also based on the above sketch.

That they have agreed to share proportionately all legal expenses that may be assessed and incurred in connection with the acquisition of the said lot in case such expenses are levied as a whole against Francisco B. Echavez, but if such expenses are levied separately after the RFC consents to the subdivision and registration in our respective names our share of the said lot, then we take care individually of paying such expenses if there be any.

In witness whereof, we hereby set our hand and sign this agreement this 15th day of April, 1958 at Mandawe, Cebu, Philippines, subject to the approval of the RFC, Cebu Branch and Manila.”

On the same day that the “Agreement” was executed, Echavez set down in writing a computation of the sharing of expenses of his joint venture with Ouano, viz.: [11]

1 827.5 - No. of sq. meters for Paterno Ouano

7.50

91375

1-27925

P 13706.25

.20

P 2741.25

- 1016.55 - Share of Echavez for the P2,000.00 given to Mrs. Bonsucan & Companions

P 1,724.70 - Balance payable by Mr. Ouano to F. B. Echavez for the deposit made by the latter at the RFC. This is subject to the approval of the RFC, Cebu Branch.

Mandawe, April 15, 1958.

(Sgd.) F. B. ECHAVEZ.

Thereafter, on various dates, Ouano and/or his wife delivered sums of money to Echavez aggregating P1,725.00, obviously in payment of the balance indicated in Echavez’s computation just mentioned, viz.: P500.00 on April 19, 1958, another P500.00 on April 20, and P725.00 on April 27, 1958. Receipts therefor were given by Echavez, all similarly worded to the effect that the money was being received “as part of their reimbursement for the deposit (of P5,565.00) I have made with the RFC for Lot 3-A-1 which I won in the bidding and which lot I have consented to share with Mr. Paterno J. Ouano, subject to the approval of the RFC.” [12]

However, the RFC never approved the sharing agreement between Echavez and Ouano concerning Lot 3-A-1. It

approved the sale of the lot to Echavez only, on May 9, 1958, on the condition that the purchase price of P27,825.00 be paid in cash. Apparently Echavez found great initial difficulty in complying with this condition. It took all of four years, and patient negotiation and diligent effort on his part, for him ultimately to acquire title to the property, which came about in December, 1963. His travails are succinctly narrated by the Trial Court as follows:[13]

“ * * Apparently, the successful bidder was caught flatfooted, for he was not able to comply with this condition, notwithstanding the fact that he has been making efforts to acquire the property (See Exhibit 21, letter of March 29, 1958; also Exhibit 22). So, he exerted much effort to change the terms of the sale from cash to monthly amortization plan (Exhs. 24 and 10). But the Rehabilitation Finance Corporation was adamant. The terms of the bid giving the option to pay the balance of the purchase price either in cash or within ten years on monthly amortization plan at 6% interest notwithstanding, said Corporation denied defendant's request in a letter dated September 18, 1958 signed by Chairman Romualdez (Exh. 11). This went on for more than 4-1/2 years, with none of the parties herein having secured the conformity of the RFC or DBP to a novation of the original terms of the sale. Thus, the said sale was finally cancelled, and the deposit of P5,549.72 made by the defendant to the RFC forfeited as of April 4, 1962 (Exh. 12). However, on July 18, 1962, upon request of the defendant, this cancellation was reconsidered under the condition, among others, that the price of the sale of P27,825.00 be payable 20% down and the balance in 5 years at 8% interest per annum on the monthly amortization plan, commencing retroactively on June 9, 1958, and that a payment of P2,000.00 be applied to the total arrearages of P25,799.00, which had to be paid within 90 days. The defendant paid on August 28, 1962 a further amount of P2,000.00. On September 3, 1962, the deed of conditional sale, covering the property in question, was entered into by the DBP and the defendant (Exh. D, same as Exh. 4), culminating in the signing of the corresponding promissory note dated September 7, 1962 (Exh. E, same as Exh. 5). It is admitted that the defendant is now the registered owner of the property, after having fully paid P29,3218.87 on account of the price to the Development Bank of the Philippines, as per Deed of Absolute Sale dated December 9, 1963 (Exhs. 14 and 34).”

It was pursuant to the absolute sale of December 9, 1963 just mentioned, that a Torrens title (TCT No. 10776) was issued in Echavez's name.[14]

Ouano, in his turn, tried to have DBP either accept and implement his sharing agreement with Echavez, or allow him to pay the full price of the lot in Echavez's behalf. By his own account, he sent a letter dated June 3, 1963 to the DBP, “handcarried by his wife,” “requesting among others, that he be permitted to pay immediately either for his share in the aforesaid lot comprising 1,828 sq. meters at the bid price of P7.50 per sq. meter including charges, or for the whole lot;” and that he in fact tried to make such payment but the Bank turned down his request.[15]

Shortly after his representations with the DBP were rebuffed -- more precisely on June 24, 1963, months before the deed of absolute sale was executed by the DBP in Echavez's favor -- Paterno J. Ouano filed suit for “specific performance and reconveyance” in the Court of First Instance of Cebu against Francisco Echavez and the Development Bank of the Philippines (DBP).[16]

In his complaint,[17] Ouano recited substantially the facts just related, and further alleged that -

“ ** on June 3, 1963 plaintiff's wife and his attorney conferred with defendant ** Echavez for the purpose of again requesting said defendant to sign a document which would be notarized and to permit plaintiff to pay for his share direct to the defendant DBP, but said defendant refused and instead informed them that there had been no agreement regarding joint bidding and joint ownership of Lot 3-A-1.”

The complaint was amended a few weeks later, chiefly to allege that DBP was on the point of rescinding its contract with Echavez; and that Ouano's offer to the DBP to pay in Echavez's behalf the price of the lot in full (P28,206.61), had been rejected; and that consequently, and “to show his good faith,” he had consigned the

amount with the Court, “for and in behalf of defendant ** Echavez.”[18] The amended complaint specifically prayed that -

- 1) pending trial, and upon such bond as may be fixed by the Court, a writ of preliminary injunction issue to restrain Echavez and RFC “from rescinding, cancelling or in any way terminating the conditional sale contract with respect to Lot 3-A-1, TCT 7618;”
- 2) after trial, Echavez be ordered “to sign an agreement in accordance with Annex A and the foregoing allegations which should be notarized;”
- 3) by virtue of aforesaid agreement and his deposit in Court of P28,206.61, Ouano be declared as “legally subrogated to the rights, interest and participation of defendant ** Echavez in Lot 3-A-1 to the extent of 1,828.5 sq. m.,”
- 4) Echavez be ordered to reimburse Ouano “P14,358.37 corresponding to defendant ** Echavez’ share of 1,882.5 sq. m.,”
- 5) should Echavez be unable to pay said amount within 15 days, Ouano be declared “legally subrogated to the rights, interest and participation of ** Echavez in Lot 3-A-1 to the extent of 1,882.5 sq. m.,”
- 6) DBP be ordered to consider the deposit made by Ouano for and in behalf of Echavez as “complete and valid payment of Lot 3-A-1 and to execute the necessary documents of sale in (the former’s) favor ** for 1,827.5 sq. m. and in favor of ** Echavez for 1,882.5 sq. m.,”
- 7) DBP be ordered to hold the deed of sale in favor of Echavez for 1,882 sq. m. in abeyance until the latter has reimbursed Ouano “the amount of P14,385.37 corresponding to ** Echavez’ share of 1,882.5 sq. m.,” and should Echavez be unable to do so within 15 days, DBP be ordered to “execute said deed of sale in favor of plaintiff;” and
- 8) Echavez be ordered to pay Ouano P1,000.00 as attorney’s fees, P5,000.00 as moral damages, and P5,000.00 as exemplary damages, as well as the costs of suit.”

The DBP moved to dismiss the amended complaint, alleging that no cause of action was therein stated against it.[19] The Court found the motion to be well taken, overruled Ouano’s opposition thereto, dismissed the amended complaint and dissolved the writ of preliminary injunction, by Order dated August 27, 1963.[20] It subsequently denied Ouano’s motion for reconsideration.[21] Ouano appealed but on learning of the absolute sale of Lot 3-A-1 executed by DBP in Echavez’s favor on December 9, 1963 -- which according to him rendered moot the case for legal subrogation and injunction as far as DBP was concerned -- he withdrew the appeal and moved instead for admission of a second amended complaint,[22] which the Court admitted in the absence of opposition thereto. In the second amended complaint, dated January 4, 1964,[23] the DBP was no longer included as a party. Echavez was the sole defendant. The second amended complaint adverted to the dismissal of the case as against the DBP and additionally alleged that Echavez, “in gross and evident bad faith, mortgaged the whole of Lot 3-A-1 to one Dr. Serafica.” It prayed particularly that Echavez be commanded:

1. To execute a public document embodying and confirming the oral contract of joint ownership of Lot 3-A-1, TCT 7618, of April 1, 1958 between plaintiff and defendant **;
2. To execute a deed of reconveyance of 1,827.5 sq. m. of Lot 3-A-1 ** after reimbursement of the sum of P14,821.24 by the plaintiff;
3. To pay plaintiff P1,000 as attorney’s fees, P5,000.00 as moral damages, P5,000.00 as exemplary damages and the expenses of litigation; and
4. To pay the costs.”

Trial ensued after which the Trial Court rendered judgment on June 29, 1968. It found that the sharing agreement between Ouano and Echavez could not be enforced in view of the absence of consent of the RFC (DBP) which the latter never gave; apart from this, the agreement had an unlawful cause and hence could “produce no effect whatever” in accordance with Article 1352 of the Civil Code, because involving a felony defined in Article 185 of the Revised Penal Code, to wit:

“ART. 185. Machinations in public auctions. -- Any person who shall solicit any gift or promise as a consideration for refraining from taking part in any public auction, and any person who shall attempt to cause bidders to stay away from an auction by threats, gifts, promises, or any other artifice, with intent to cause the reduction of the price of the thing auctioned, shall suffer the penalty of prision correccional in its minimum period and a fine ranging from 10 to 50 per centum of the value of the thing auctioned.”

The decision accordingly dismissed the Second Amended Complaint, ordered Ouano “to vacate the portion of Lot No. 3-A-1 he occupied pursuant to Exhibit C,” and also dismissed Echavez’s counterclaim.

Ouano appealed to the Court of Appeals. Here he fared no better. He enjoyed initial success, to be sure. Judgment was promulgated on February 28, 1974[24] setting aside the Trial Court’s judgment, and directing: (a) Echavez “to execute a deed of conveyance in favor of plaintiff for 1827.5 square meters as the latter’s share in the property in controversy,” and (b) Ouano “to pay defendant the amount of P14,821.24 representing the cost of his share.” However, on a second motion for reconsideration presented by Echavez, the Appellate Court, on November 21, 1974, reconsidered its decision of February 28, 1974 and entered another “affirming in toto the decision appealed from without costs.”[25] This second decision found that the documentary evidence[26] preponderantly established that “the parties have manifested their intention to subordinate their agreement to the approval of the RFC.” “Consequently,” the decision stated,

“ * * had the plaintiff’s and defendant’s proposal been accepted by the RFC (DBP) two separate contracts, covering the two segregated lots according to the sketch would have come into existence, to be executed by the RFC separately in favor of the plaintiff and the defendant. But unfortunately, the RFC disapproved the proposal as the sale was to be for cash. As a result, the obligatory force of the ‘agreement’ or the consent of the parties, which was subordinated to the taking effect of the suspensive condition that the agreement be subject to the approval of the RFC never happened. This being the case, the agreement never became effective. The rule is settled that:

‘When the consent of a party to a contract is given subject to the fulfillment of a suspensive condition, the contract is not perfected unless the condition is first complied with’ (Ruperto vs. Cosca, 26 Phil. 227).

And when the obligation assumed by a party to a contract is expressly subjected to a condition, the obligation cannot be enforced against him unless the condition is complied with” (Wise & Co. vs. Kelly, 37 Phil. 696; Philippine National Bank vs. Philippine Trust Co., 68 Phil. 48).

At best, the non-fulfillment of the suspensive condition has the effect of negating the conditional obligation. It has been held that what characterizes a conditional obligation is the fact that its efficacy or obligatory force is subordinated to the happening of a future and uncertain event, so that if the suspensive condition does not take place, the parties would stand as if the conditional obligation had never existed (Gaite vs. Fonacier, L-11827, July 31, 1961, 2 SCRA 831).”

Motions for reconsideration and for oral argument filed by Ouano were denied by Resolutions dated February 6, February 11, and February 21, 1975, the last containing a suggestion “that appellant go to the Higher Court for relief.”[27]

Ouano is now before this Court, on appeal by certiorari, to seek the relief that both the Trial Court and the Court

of Appeals have declined to concede to him. In this Court, he attempts to make the following points, to wit:

1. The verbal agreement between the parties to acquire and share the land in proportion to their respective abutting properties, and executed by the immediate occupation by the parties of their respective shares in the land, is a perfected consensual contract and not “a mere promise to deliver something subject to a suspensive condition” (as ruled in the second decision of the Court of Appeal); hence the petitioner is entitled to compel private respondent to execute a public document for the registration in his name of the petitioner’s share in the land in question pursuant to Art. 1315 of the Civil Code (as held in the first decision of the Court of Appeals).
2. The agreement to acquire and share the land was not subject to a suspensive condition.
3. Assuming in gratia argumenti the agreement to be subject to a suspensive condition, since the condition consisted in obtaining the approval of the RFC -- a third party who could not in any way be compelled to give such approval -- the condition is deemed constructively fulfilled because petitioner had done all in his power to comply with the condition, and private respondent, who also had the duty to get such approval, in effect prevented the fulfillment of the condition by doing nothing to secure the approval.
4. The circumstances show that Echavez clearly acted in bad faith, and it is unjust to allow him to benefit from his bad faith and ingenious scheme.

Two material facts, however, about which Ouano and Echavez are in agreement, render these questions of academic interest only, said facts being determinative of this dispute on an altogether different ground. These facts are:

- 1) that they had both orally agreed that only Echavez would make a bid at the second bidding called by the RFC, and that if it was accepted, they would divide the property in proportion to their adjoining properties; and
- 2) that to ensure success of their scheme, they had also agreed to induce the only other party known to be interested in the property -- a group headed by a Mrs. Bonsucan -- to desist from presenting a bid,[28] as they did succeed in inducing Mrs. Bonsucan’s group to withdraw from the sale, paying said group P2,000 as reimbursement for its expenses.[29]

These acts constitute a crime, as the Trial Court has stressed. Ouano and Echavez had promised to share in the property in question as a consideration for Ouano’s refraining from taking part in the public auction, and they had attempted to cause and in fact succeeded in causing another bidder to stay away from the auction in order to cause reduction of the price of the property auctioned. In so doing, they committed the felony of machinations in public auctions defined and penalized in Article 185 of the Revised Penal Code, *supra*.

That both Ouano and Echavez did these acts is a matter of record, as is the fact that thereby only one bid -- that of Echavez -- was entered for the land in consequence of which Echavez eventually acquired it. The agreement therefore being criminal in character, the parties not only have no action against each other but are both liable to prosecution and the things and price of their agreement subject to disposal according to the provisions of the criminal code. This, in accordance with the so-called *pari delicto* principle set out in the Civil Code.

Article 1409 of said Code declares as “inexistent and void from the beginning” those contracts, among others, “whose cause, object or purpose is contrary law, morals, good customs, public order or public policy,” or “expressly prohibited ** by law.” Such contracts “cannot be ratified;” “the right to set up the defense of illegality (cannot) be waived;” and, Article 1410 adds, the “action or defense for the declaration of the inexistence ** (thereof) does not prescribe.” Furthermore, according to Article 1411 of the same Code[30] -

“ * *. When the nullity proceeds from the illegality of the cause or object of the contract, and the act

constitutes a criminal offense, both parties being in *pari delicto*, they shall have no action against each other, and both shall be prosecuted. Moreover, the provisions of the Penal Code relative to the disposal of effects or instruments of a crime shall be applicable to the things or the price of the contract.

“* * *

The dismissal of Ouano’s action by both the Trial Court and the Court of Appeals was thus correct, being plainly in accord with the Civil Code provisions just referred to.[31] Article 1411 also dictates the proper disposition of the land involved, i.e., “the forfeiture of the proceeds of the crime and the instruments or tools with which it was committed,” as mandated by the provisions of Article 45 of the Revised Penal Code, this being obviously the provision “of the Penal Code relative to the disposal of effects or instruments of a crime” that Article 1411 makes “applicable to the things or the price of the contract.”

WHEREFORE, the appealed decision of the Court of Appeals is MODIFIED, so that in addition to affirming the Trial Court’s judgment dismissing Ouano’s complaint and Echavez’s counterclaim in Civil Case No. R-8011, Lot No. 3-A-1 subject of said case is ordered FORFEITED in its entirety in favor of the Government of the Philippines. No pronouncement as to costs. Let copy of this Decision be furnished the Solicitor General.

SO ORDERED.

Cruz, Griño-Aquino, and Medialdea, JJ., concur.

Gancayco, J., no part.

[1] The bidding on this date was in fact the second for the same property. The first, in which petitioner herein, Ouano, and private respondent, Echavez, participated, was nullified on account of the former’s protest.

[2] Held on March 22, 1958

[3] Rollo, p. 79

[4] *Id.*, p. 80

[5] *Id.*, pp. 80, 160

[6] Ouano, it seems, also submitted a bid, but although the price offered by him, P27,826.00, was the same as that of Echavez, his bid was inferior in that, unlike Echavez’s offer, it was not accompanied by a deposit of P5,565.00. Rollo, p. 159

[7] Rollo, p. 80

[8] *Id.*, pp. 82-83; Exh. LL.

[9] This document was marked Exh. C for plaintiff Ouano, and Exh. 3 for defendant Echavez

[10] Rollo, pp. 82-83

[11] *Id.*, pp. 80-81, Exh. F (also, Exh. 6)

[12] *Id.*, p. 166

[13] *Id.*, p. 210: Record on Appeal [Annex R, petition], pp. 142-143

[14] *Id.*, p. 77

[15] Id., p. 290: Petitioner's brief, p. 34. He further avers [Rollo, p. 31] that "(t)o show his further interest in the settlement of defendant's obligation to the Bank, plaintiff deposited the amount of P28,206.61 with the clerk ** (of the Trial Court)."

[16] Docketed as Civil Case No. R-8011

[17] Rollo, p. 210; Record on appeal, pp. 1-10

[18] Id.: id., p. 14

[19] Id.: id., pp. 17-24

[20] Id.: id., pp. 43-46

[21] Id.: id., pp. 71

[22] Id.: id., pp. 71-72

[23] Id.: id., pp. 73-79

[24] Rollo, pp. 74-101. N.B. The decision was written for the Court (Fifth Division) by Martin, J., with whom concurred Gancayco and Serrano, JJ.

[25] Rollo, pp. 157-168. N.B. The second decision was also written by Martin, J., with whom again concurred Gancayco and Serrano, JJ.

[26] Exhs. F (or 6), G (or 7), H (or 8), and I (or 9)

[27] Rollo, p. 208

[28] Id., p. 80

[29] Id., pp. 80, 160

[30] Italics supplied

[31]SEE Paras, Civil Code of the Philippines Anno., 1989 ed., Vol. IV, pp. 736, 740 et seq., citing Cabauatan v. Uy Hoo, 88 Phil. 103; de Raquiza v. Castellvi, 77 SCRA 88; Teja Marketing, et al. v. Nale, et al., G.R. No. 65510, Mar. 9, 1987; Padilla, Civil Code Anno., 1974 ed., Vol. IV, pp. 993, citing Inson v. Belzunce, 32 Phil. 342; Liguez v. C.A., 102 Phil. 577;Rellosa v. Gaw Chee Hu, 93 Phil. 827, etc.; Tolentino, Civil Code, 1973 ed., Vol. IV, p 638-9 -- all cited in Compañia General de Tabacos de Filipinas v. C.A., et al., G.R. No. 59534, May 10, 1990

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