

**ORTIGAS & COMPANY, LIMITED PARTNERSHIP, PETITIONER,
VS. JUDGE JOSE B. HERRERA, CITY COURT OF MANILA, BRANCH II,
AND EMILIANO SAMSON, RESPONDENTS.**

G.R. No. L-36098. January 21, 1983

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PER CURIAM:

On August 14, 1969, petitioner and private respondent entered into an agreement whereby for and in consideration of P55,430.00, the former agreed to sell to the latter a parcel of land with a special condition that should private respondent as purchaser complete the construction including the painting of his residential house on said lot within two (2) years from August 14, 1969, petitioner, as owner, has agreed to refund to private respondent the amount of P10.00 per square meter. When the aforesaid special condition was fulfilled, private respondent on May 17, 1971 accordingly notified in writing the petitioner of the same and requested for his refund amounting to P4,820.00.

Upon failure of petitioner to pay his obligation, private respondent on May 6, 1972 filed a complaint for sum of money and damages with the City Court of Manila, Branch II, against petitioner docketed as Civil Case No. 211673. A motion to dismiss was filed by petitioner on grounds of lack of jurisdiction, failure of the complaint to state a cause of action and improper venue. City Court Judge Jose B. Herrera in his order dated June 27, 1972 held in abeyance the resolution on the motion until after the trial of the case on the merits.

A reconsideration of the said order having been denied, petitioner on October 12, 1972 filed with the Court of First Instance of Manila, Branch XXVII, a special civil action for certiorari and prohibition with preliminary injunction docketed as Civil Case No. 88510. A motion to dismiss was filed by private respondent, and on November 17, 1972, the petition was dismissed on the ground that the claim of private respondent in his complaint, being less than P10,000.00, is within the exclusive jurisdiction of the city court.

Petitioner thus filed the present petition and argues among others that: (a) as determined from the allegations of the complaint, the action is for specific performance of contract; and (b) actions in which the subject of litigation is not capable of pecuniary estimation such as complaints for specific performance of contract are exclusively cognizable by the Court of First Instance. Hence, the decisive question to be resolved in this present petition is whether or not the City Court of Manila, Branch II, has jurisdiction over the complaint.

The action involved in this case is one for specific performance and not for a sum of money and therefore incapable of pecuniary estimation because what private respondent seeks is the performance of petitioner's obligation under a written contract to make a refund but under certain specific conditions still to be proven or established. In a case for the recovery of a sum of money, as the collection of a debt, the claim is considered capable of pecuniary estimation (*Lapitan vs. Scandia, Inc.*, 24 SCRA 479) because the obligation to pay the debt is not conditioned upon any specific fact or matter. But when a party to a contract has agreed to refund to the other party a sum of money upon compliance by the latter of certain conditions and only upon compliance therewith may what is legally due him under the written contract be demanded, the action is one not capable of

pecuniary estimation. The payment of a sum of money is only incidental which can only be ordered after a determination of certain acts the performance of which being the more basic issue to be inquired into.

Although private respondent's complaint in the court a quo is designated as one for a sum of money and damages, an analysis of all the factual allegations of the complaint patently shows that what private respondent seeks is the performance of petitioner's obligation under the written contract to make the refund of the rate of P10.00 per square meter or in the total amount of P4,820.00, but only after proof of having himself fulfilled the conditions that will give rise to petitioner's obligation, a matter clearly incapable of pecuniary estimation.

In view of the foregoing, the Court RESOLVED to reverse the order appealed from and the complaint filed with the City Court of Manila, Branch II, docketed as Civil Case No. 211673 is hereby ordered dismissed for lack of jurisdiction.

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