

AQUILINO NIETES, PETITIONER, VS. HON. COURT OF APPEALS & DR. PABLO C. GARCIA, RESPONDENTS.

G.R. No. L-32873. August 18, 1972

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Petitioner Aquilino Nietes seeks a review on certiorari of a decision of the Court of Appeals.

It appears that, on October 19, 1959, said petitioner and respondent Dr. Pablo C. Garcia entered into a "Contract of Lease with Option to Buy," pursuant to the terms and conditions set forth in the deed Exhibits A and A-1, (also marked as Exhibit 2) namely:

"That the LESSOR is an owner of the ANGELES EDUCATIONAL INSTITUTE situated at Angeles, Pampanga, a school which is duly recognized by the Government;

"That the lessor agrees to lease the above stated school to the LESSEE under the following terms and conditions:

"1. That the term will be for a period of five (5) years;

"2. That the price of the rent is FIVE THOUSAND PESOS (P5,000) per year payable in the following manners:

a. That the amount of FIVE THOUSAND FIVE HUNDRED PESOS (P5,500) will be paid upon the execution of this Contract of Lease;

b. That the amount of FOUR THOUSAND FIVE HUNDRED PESOS (P4,500) is payable on or before the 30th of October, 1959;

c. That the remaining balance of FIFTEEN THOUSAND PESOS (P15,000) will be paid on or before March 30, 1960;

"3. That all improvements made during the lease by the LESSEE will be owned by the LESSOR after the expiration of the term of this Contract of Lease;

"4. That the LESSOR agrees to give the LESSEE an option to buy the land and the school building, for a price of ONE HUNDRED THOUSAND PESOS (P100,000) within the period of the Contract of Lease;

"5. That should the LESSEE buy the lot, land and the school building within the stipulated period; the unused payment for the Contract of Lease will be considered as part payment for the sale of the land and school;

"6. That an inventory of all properties in the school will be made on March 31, 1960;

"6A. That the term of this contract will commence in June 1960 and will terminate in June 1965;

"7. That the LESSEE will be given full control and responsibilities over all the properties of the school and over

all the supervisions and administrations of the school;

"8. That the LESSEE agrees to help the LESSOR to collect the back accounts of students incurred before the execution of this contract."

Instead of paying the lessor in the manner set forth in paragraph 2 of said contract, Nietes had, as of August 4, 1961, made payments as follows:

October 6, 1960

.....

P18,957.00 (Exh. D)

November 23, 1960

.....

300.00 (Exh. E)

December 21, 1960

.....

200.00 (Exh. F)

January 14, 1961

.....

500.00 (Exh. G)

February 16, 1961

.....

3,000.00 (Exh. H)

March 12, 1961

.....

1,000.00 (Exh. I)

March 13, 1961

.....

700.00 (Exh. J)

August 4, 1961

.....

100.00 (Exh. K)

TOTAL

.....

P24,757.00

Moreover, Nietes maintains that, on September 4, 1961, and December 13, 1962, he paid Garcia the additional sums of P3,000 and P2,200, respectively, for which Garcia issued the receipts Exhibits B and C, reading:

"Received the amount of (P3,000.00) Three Thousand Pesos from Mrs. Nietes as per advance pay for the school, the contract of lease being paid.

(Sgd.) PABLO GARCIA"

(Exh. B)

"To Whom it May Concern:

"This is to certify that I received the sum of Two Thousand Two Hundred Pesos, Philippine Currency, from Mrs. Catherine R. Nietes as the partial payment on the purchase of the property as specified on the original contract of 'Contract of Lease with the First Option to Buy' originally contracted and duly signed.

(Sgd.) DR. PABLO GARCIA"

(Exh. C)

On or about July 31, 1964, Dr. Garcia's counsel wrote to Nietes the letter Exhibit 1 (also Exhibit V) stating:

"The Director
Philippine Institute of Electronics
Angeles, Pampanga

Sir:

"I regret to inform you that our client, Dr. Pablo Garcia, desires to rescind your contract, dated 19 October 1959 because of the following:

"1. That you had not maintained the building, subject of the lease contract in good condition.

"2. That you had not been using the original name of the school Angeles Institute, thereby extinguishing its existence in the eyes of the public and injuring its prestige.

"3. That through your fault, no inventory has been made of all properties of the school.

"4. That up to this time, you had not collected or much less helped in the collection of back accounts of former students.

"This is to remind you that the foregoing obligations had been one, if not, the principal moving factors which had induced the lessor in agreeing with the terms embodied in your contract of lease, without which fulfillment, said contract could not have come into existence. It is not simply one of those reminders that we make mention, that our client under the circumstances, is not only entitled to a rescission of the contract. He is likewise entitled to damages - actual, compensatory and exemplary.

"In view of the serious nature of the breach which warrant and sanction drastic legal remedies against you, we earnestly request you to please see the undersigned at the abovenamed address two days from receipt hereof. Otherwise, if we shall not hear from you, the foregoing will serve notice on your part to vacate the premises within five (5) days to be counted from date of notice.

Very truly yours,

(Sgd.) VICTOR T. LLAMAS, JR."

to which counsel for Nietes replied in the following language:

"Atty. Victor T. Llamas, Jr.
Victor Llamas Law Office
Corner Rivera-Zamora Streets
Dagupan City

"Dear Sir:

"Your letter dated July 31, 1964 addressed to my client, the Director of the Philippine Institute of Electronics, Angeles City, has been referred to me and in reply, please, be informed that my client has not violated any provision of the CONTRACT OF LEASE WITH OPTION TO BUY, executed by him as LESSEE and Dr. Pablo Garcia as LESSOR. For this reason, there is no basis for rescission of the contract nor of the demands contained in your letter.

"In this connection, I am also serving this formal notice upon your client Dr. Pablo Garcia, thru you, that my client Mr. AQUILINO T. NIETES will exercise his OPTION to buy the land and building subject matter of the lease and that my said client is ready to pay the balance of the purchase price in accordance with the contract. Please, inform Dr. Pablo Garcia to make available the land title and execute the corresponding Deed of Sale pursuant to this notice, and that if he fails to do so within fifteen (15) days from the receipt of this letter, we shall take the corresponding action to enforce the agreement.

Truly yours,

(Sgd.) CONRADO V. DEL ROSARIO
Counsel for Mr. Aquilino T. Nietes
Angeles City"

On July 26, 1965, Nietes deposited with the branch office of the Agro-Industrial Bank in Angeles City checks amounting to P84,860.50, as balance of the purchase price of the property, but he withdrew said sum of P84,860.50 on August 12, 1965, after the checks had been cleared. On August 2, 1965, he commenced the present action, in the Court of First Instance of Pampanga, for specific performance of Dr. Garcia's alleged obligation to execute in his (Nietes') favor a deed of absolute sale of the leased property, free from any lien or encumbrance whatsoever, he having meanwhile mortgaged it to the People's Bank and Trust Company, and to compel him (Garcia) to accept whatever balance of the purchase price is due him, as well as to recover from him the aggregate sum of P90,000 by way of damages, apart from attorney's fees and the costs.

Dr. Garcia filed an answer admitting some allegations of the complaint and denying other allegations thereof, as well as setting up a counterclaim for damages in the sum of P150,000.

After due trial, said court rendered its decision, the dispositive part of which reads:

"WHEREFORE, in view of the preponderance of evidence in favor of the plaintiff and against the defendant, judgment is hereby rendered ordering the latter to execute the Deed of Absolute Sale of the property originally leased together with the school building and other improvements thereon which are covered by the contract, Annex 'A', upon payment of the former of the balance (whatever be the amount) of the stipulated purchase price; to free the said property from any mortgage or encumbrance and deliver the title thereto to the plaintiff free from any lien or encumbrance, and should said defendant fail to do so, the proceeds from the purchase price be applied to the payment of the encumbrance so that the title may be conveyed to the plaintiff; to pay the plaintiff the sum of P1,000.00 as attorney's fees, and the cost of this suit."

Both parties appealed to the Court of Appeals, Dr. Garcia insofar as the trial court had neither dismissed the

complaint nor upheld his counterclaim and failed to order Nietes to vacate the property in question, and Nietes insofar as the trial court had granted him no more than nominal damages in the sum of P1,000, as attorney's fees.

After appropriate proceedings, a special division of the Court of Appeals rendered its decision, on October 18, 1969, affirming, in effect, that of the trial court, except as regards said attorney's fees, which were eliminated. The dispositive part of said decision of the Court of Appeals reads:

"WHEREFORE, with the modification that the attorney's fees awarded by the trial court in favor of the plaintiff is eliminated, the appealed judgment is hereby affirmed in all other respects, and the defendant is ordered to execute the corresponding deed of sale for the school building and lot in question in favor of the plaintiff upon the latter's full payment of the balance of the purchase price. The costs of this proceedings shall be taxed against the defendant-appellant."

On motion for reconsideration of defendant Garcia, said special division set aside its aforementioned decision and rendered another one, promulgated on March 10, 1970, reversing the appealed decision of the court of first instance, and dismissing the complaint of Nietes, with costs against him. Hence, the present petition of Nietes for review on certiorari of the second decision of the Court of Appeals, dated March 10, 1970, to which petition We gave due course.

Said decision of the Court of Appeals, reversing that of the Court of First Instance, is mainly predicated upon the theory that, under the contract between the parties, "the full purchase price must be paid before the option could be exercised, " because "there was no need nor sense in providing that 'the unused payment for the Contract of Lease will be considered as part payment for sale of the land and school,'" inasmuch as "otherwise there is no substantial amount from which such unused rental could be deducted"; that the statement in the letter, Exhibit L, of Nietes, dated August 7, 1964, to the effect that he "will exercise his OPTION to buy the land and building," indicates that he did not consider the receipts, Exhibits B and C, for P3,000 the checks for P84,860.50 deposited by Nietes with the Agro-Industrial Development Bank, did not constitute a proper tender of payment, which, at any rate, was "made beyond the stipulated 5-year period"; that such deposit "was not seriously made, because on August 12, 1965, the same was withdrawn from the Bank and ostensibly remains in the lessee's hand"; and that "the fact that such deposit was made by the lessee shows that he himself believed that he should have paid the entire amount of the purchase price before he could avail of the option to buy, otherwise, the deposit was a senseless gesture * * *."

Dr. Garcia, in turn, maintained in his answer "that the sums paid" to him "were part of the price of the contract of lease between the parties which were paid late and not within the periods and/or schedules fixed by the contract (Annex A)." What is more, on the witness stand, Garcia claimed that he did "not know" whether the signatures on Exhibits B and C - the receipt for P3,000 and P2,200, respectively - were his, and even said that he was "doubtful" about it.

This testimony is manifestly incredible, for a man of his intelligence - a Doctor of Medicine and the owner of an educational institution - could not possibly "not know" or entertain doubts as to whether or not the aforementioned signatures are his and the payments therein acknowledged had been received by him. His dubious veracity becomes even more apparent when we consider the allegations in paragraph (4) of his answer - referring to paragraphs 5 and 6 of the complaint alleging, inter alia, the aforementioned partial payments of P3,000 and P2,200, on account of the stipulated sale price - to the effect that said sums "paid to the herein defendant were part of the price of the contract of lease." In other words, payment of said sums of P3,000 and P2,200 is admitted in said answer. Besides, the rentals for the whole period of the lease aggregated P25,000 only, whereas said sums of P3,000 and P2,200, when added to the payments previously made by Nietes, give a grand total of P29,957.00, or P4,957 in excess of the agreed rentals for the entire period of five years. Thus, Dr. Garcia was less than truthful

when he tried to cast doubt upon the fact of payment of said sums of P3,000 and P2,200, as well as when he claimed that the same were part of the rentals collectible by him.

We, likewise, find ourselves unable to share the view taken by the Court of Appeals. Neither the tenor of the contract Exhibits A and A-1 (also Exhibit 2) nor the behaviour of Dr. Garcia - as reflected in the receipt Exhibits B and C - justifies such view. The contract does not say that Nietes had to pay the stipulated price of P100,000 before exercising his option to buy the property in question. Accordingly, said option is governed by the general principles on obligations, pursuant to which:

"In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins." [1]

In the case of an option to buy, the creditor may validly and effectively exercise his right by merely advising the debtor of the former's decision to buy and expressing his readiness to pay the stipulated price, provided that the same is available and actually delivered to the debtor upon execution and delivery by him of the corresponding deed of sale. Unless and until the debtor shall have done this, the creditor is not and cannot be in default in the discharge of his obligation to pay. [2] In other words, notice of the creditor's decision to exercise his option to buy need not be coupled with actual payment of the price, so long as this is delivered to the owner of the property upon performance of his part of the agreement. Nietes need not have deposited, therefore, with the Agro-Industrial Bank checks amounting altogether to P84,860.50 on July 26, 1965, and the withdrawal thereof soon after does not and cannot affect his cause of action in the present case. In making such deposit, he may have had the intent to show his ability to pay the balance of the sum due to Dr. Garcia as the sale price of his property. In short, said deposit and its subsequent withdrawal cannot affect the result of the present case.

Nietes was entitled to exercise his option to buy "within the period of the Contract of Lease," which - pursuant to paragraph 6-A of said contract - commenced "in June 1960" and was to "terminate in June 1965." As early as September 4, 1961, or well "within the period of the Contract of Lease," Nietes had paid Dr. Garcia the following sums:

October 6, 1960

.....

P18,957.00 (Exh. D)

November 23, 1960

.....

300.00 (Exh. E)

December 21, 1960

.....

200.00 (Exh. F)

January 14, 1961

.....

500.00 (Exh. G)

February 16, 1961

.....

3,000.00 (Exh. H)

March 12, 1961

.....

1,000.00 (Exh. I)

March 13, 1961

.....

1,000.00 (Exh. J)

August 4, 1961

.....

100.00 (Exh. K)

September 4, 1961

.....

3,000.00 (Exh. B)

Total

.....

P27,757.00

It is true that Nietes was bound, under the contract, to pay P5,500 on October 19, 1959, P4,500 on or before October 30, 1959, and P15,000 on or before March 30, 1960, or the total sum of P25,000, from October 19, 1959 to March 30, 1960, whereas his first payment was not made until October 10, 1960, when he delivered the sum of P18,957 to Dr. Garcia, and the latter had by August 4, 1961, received from the former the aggregate sum of P24,757. This is, however, P243.00 only less than the P25,000 due as of March 30, 1960, so that Nietes may be considered as having complied substantially with the terms agreed upon. Indeed, Dr. Garcia seems to have either agreed thereto or not considered that Nietes had thereby violated the contract, because the letter of the former, dated July 31, 1964, demanding rescission of the contract, did not mention said acts or omissions of Nietes among his alleged violations thereof enumerated in said communication. In fact, when, on September 4, 1961, Mrs. Nietes turned over the sum of P3,000 to Dr. Garcia, he issued the receipt Exhibit B, stating that said payment had been made "as per advance pay for the school, the Contract of Lease being paid" - in other words, in accordance or conformity with said contract. Besides, when, on December 13, 1962, Mrs. Nietes delivered the additional sum of P2,200, Dr. Garcia issued a receipt accepting said amount "as the partial payment on the purchase price of the property as specified on the original contract," thus further indicating that the payment, in his opinion, conformed with said contract, and that, accordingly, the same was in full force and effect.

In any event, it is undisputed that, as of September 4, 1961, Dr. Garcia had received the total sum of P27,757, or P2,757 in excess of the P25,000 representing the rentals for the entire period of the lease, and over P21,200 in excess of the rentals for the unexpired portion of the lease, from September 4, 1961 to June 1965. This

circumstance indicates clearly that Nietes had, on September 4, 1961, chosen to exercise and did exercise then his option to buy. What is more, this is borne out by the receipt issued by Dr. Garcia for the payment of P2,200, on December 13, 1962, to which he referred therein as a "partial payment on the purchase of the property as specified on the original contract of 'Contract of Lease with the First Option to Buy' * * *."

Further confirmation is furnished by the letter of Nietes, Exhibit L, of August 1964 - also, within the period of the lease - stating that he "will exercise his OPTION to buy the land and building subject matter of the lease." It is not correct to construe this expression - as did the appealed decision - as implying that the option had not been or was not yet being exercised, or as a mere announcement of the intent to avail of it at some future time. This interpretation takes said expression out of the context of Exhibit L, which positively states, also, that Nietes "is ready to pay the balance of the purchase price in accordance with the contract," and requests counsel for Dr. Garcia to inform or advise him "to make available the land title and execute the corresponding Deed of Sale pursuant to this notice, and that if he fails to do so within fifteen (15) days * * * we shall take the corresponding action to enforce the agreement." Such demand and said readiness to pay the balance of the purchase price leave no room for doubt that, as stated in Exhibit L, the same is "a formal notice" that Nietes had exercised his option, and expected Dr. Garcia to comply, within fifteen (15) days, with his part of the bargain. Surely, there would have been no point for said demand and readiness to pay, if Nietes had not yet exercised his option to buy.

The provision in paragraph 5 of the Contract, to the effect that "should the LESSEE" choose to make use of his option to buy "the unused payment for the Contract of Lease will be considered as payment for the sale of the land and school," simply means that the rental paid for the unused portion of the lease shall be applied to and deducted from the sale price of P100,000 to be paid by Nietes at the proper time - in other words, simultaneously with the delivery to him of the corresponding deed of sale, duly executed by Dr. Garcia.

It is, consequently, Our considered opinion that Nietes had validly and effectively exercised his option to buy the property of Dr. Garcia, at least, on December 13, 1962, when he acknowledged receipt from Mrs. Nietes of the sum of P2,200 then delivered by her "in partial payment on the purchase of the property" described in the "Contract of Lease with Option to Buy"; that from the aggregate sum of P29,957.00 paid to him up to that time, the sum of P12,708.33 should be deducted as rental for the period from June 1960 to December 13, 1962, or roughly thirty (30) months and a half, thereby leaving a balance of P17,248.67, consisting of P12,291.67, representing the rentals for the unused period of the lease, plus P4,957.00 paid in excess of said rental and advanced solely on account of the purchase price; that deducting said sum of P17,248.67 from the agreed price of P100,000.00, there results a balance of P82,751.33 which should be paid by Nietes to Dr. Garcia, upon execution by the latter of the corresponding deed of absolute sale of the property in question, free from any lien or encumbrance whatsoever, in favor of Nietes, and the delivery to him of said deed of sale, as well as of the owner's duplicate of the certificate of title to said property; and that Dr. Garcia should indemnify Nietes in the sum of P2,500 as and for attorney's fees.

Thus modified, the decision of the Court of First Instance of Pampanga is hereby affirmed in all other respects, and that of the Court of Appeals reversed, with costs against respondent herein, Dr. Pablo C. Garcia.

IT IS SO ORDERED.

Reyes, J.B.L., Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Makasiar, Antonio, and Esguerra, JJ., concur.
Castro, J., took no part.

[1] Last Paragraph of Art. 1167, New Civil Code.

[2] Abesamis vs. Woodcraft Works, Ltd., L-18916, Nov. 28, 1969; Causing vs. Bencer, 37 Phil. 417, 419-420.

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