

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

G.R. No. L-25885. November 16, 1978

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court denies appellant Maritime Building Co. Inc.'s (Maritime) Second Motion for Reconsideration of October 7, 1972 on the following grounds and considerations:

1. A party litigant is entitled to only one Supreme Court to adjudicate his suit and should not be permitted to keep a case pending by repetitious reiterations of the same contentions (already repeatedly and lengthily discussed by appellant and extensively dealt with and rejected by the Court in its decision of January 21, 1972 and extended resolution of August 18, 1972) in the expectation that his claim may eventually gain acceptance from vital changes in the Court's composition with the passage of time.
2. The second motion for reconsideration raises no new grounds but is merely a reiteration of the self-same arguments already found to be unmeritorious and rejected for the reasons and considerations extensively discussed in the Court's decision of January 31, 1972 (6 years and 8 months ago) and in the Resolution of August 18, 1972 denying the first motion for reconsideration. Such second motions for reconsideration are patently pro forma and serve no apparent purpose but to gain time and therewith vital changes in the Court's composition. Such dilatory motions should have long been denied in consonance with public interest and public policy which demand that judgments of courts determining controversies should not be left hanging but should become final at some definite time fixed by law or by a rule of practice recognized by law and that the Court's time and attention should not be inordinately diverted to this case which is of no special significance but is a "mere adjudication of adversary rights between two litigants" (although they may be of "some substantial financial standing"[1] to the prejudice of other cases in its full docket which are still awaiting the Court's determination and judgment.
3. In the 81 volumes of Supreme Court Reports Annotated, there appears the preface written by now Chief Justice Castro wherein he stresses the importance of precedents and the governing principle of stare decisis which have "given consistency and stability to the law." The whole thrust of appellant's stand since the filing of the case on June 17, 1961 up to its pending second motion for reconsideration (seventeen years later) has been to ask the Court to disregard the rule of stare decisis and to overturn the long-standing doctrine of 39 years upholding the promisor's contractual right, as stipulated in contracts to sell, to declare the contract cancelled upon breach thereof and the putative buyer's failure to pay the stipulated installments "which is simply an event that prevent(s) the obligation of the vendor to convey title from acquiring binding force"[2] and ruling that Article 1592 (formerly Article 1504) of the New Civil Code[3] (which grants the vendee of immovable property the right to pay even after the expiration of the period for payment despite a stipulation to the contrary, as long as no demand by suit or notarial act has been made upon him but further provides that "after the demand, the Court may not

grant him a new term") does not apply to a contract to sell.

The Court has seen no valid reason for yielding to the appellant's insistent importunings to cast aside the precedents (as an exception in its case) and to disregard the contractual stipulations, freely entered into by it with the assistance of counsel and with full awareness of the import of the covenanted terms and conditions and of the legal consequence of breach thereof in accordance with past precedents, as the binding law between the parties.

4. The governing law and precedents which demand denial of the second motion for reconsideration as stated and reiterated in the decision and resolution denying reconsideration may briefly be summarized thus:

(a) The contract between the parties was a contract to sell or conditional sale with title expressly reserved in the vendor Myers Building Co., Inc. (Myers) until the suspensive condition of full and punctual payment of the full price shall have been met on pain of automatic cancellation of the contract upon failure to pay any of the monthly installments when due and retention of the sums theretofore paid as rentals. When the vendee, appellant Maritime, willfully and in bad faith failed since March, 1961 to pay the P5,000. -monthly installments notwithstanding that it was punctually collecting P10,000. - monthly rentals from the lessee Luzon Brokerage Co., Myers was entitled, as it did in law and fact, to enforce the terms of the contract to sell and to declare the same terminated and cancelled.

(b) Article 1592 (formerly Article 1504) of the new Civil Code is not applicable to such contracts to sell or conditional sales and no error was committed by the trial court in refusing to extend the periods for payment.

(c) As stressed in the Court's decision, "it is irrelevant whether appellant Maritime's infringement of its contract was casual or serious" for as pointed out in *Manuel vs. Rodriguez*[4] "(I)n 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 x x ."[5]

(d) It should be noted, however, that Maritime's breach was far from casual but a most serious breach of contract: since the execution of the contract to sell on April 30, 1949, Maritime, after paying the P50,000. - down payment, was merely paying for the balance of the purchase price in the sum of P950,000.00 with the property's own rental earnings of P13,000.00, later P10,000.00, a month from the lessee Luzon Brokerage Co. Maritime had as of the time of its willful refusal and failure to pay the stipulated installments of P5,000.00 a month collected a total of P1,500,000.00 in rentals from the property, out of which it had paid Myers P973,000.00 on account of both the principal and stipulated 5% interest per annum,[6] leaving still a substantial unpaid balance of P319,300.65 on the principal with a net gain of P527,000.00 out of the collected rentals alone for Maritime. Yet, Maritime had deliberately defaulted on the monthly installments due after its request for a suspension of payments until the close of 1961 had been expressly rejected "under any condition" by Myers and then nevertheless withheld the payments and gave Myers notice that it would "withhold any further payments" unless the heirs of the late F.H. Myers honored a totally unconnected alleged personal promise of the F.H. Myers to indemnify it for a possible liability of about P396,000.00 to a labor union in connection with a completely different transaction (which alleged liability was already barred against the estate of F.H. Myers and with which appellee Myers corporation had nothing whatsoever to do).

(e) Even if the contract were considered an unconditional sale so that Article 1592 of the Civil Code could be deemed applicable, Myers' answer to the complaint for interpleader in the court below constituted a judicial demand for rescission of the contract and by the very provision of the cited codal article,[7] "after the demand, the court may not grant him a new term" for payment; and

(f) Assuming further that Article 1191 of the new Civil Code governing rescission of reciprocal obligations could be applied (although Article 1592 of the same Code is controlling since it deals specifically with sales of real property", said article provides that "(T)he court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period" and there exists no "just cause" as shown above, for the fixing of a further period. Assuming further that Article 1234 of the Civil Code which provides that "(I)f the obligation has been substantially performed in good faith, the obligor may recover as though there had been a strict and complete fulfillment, less damages suffered by the obligee" could be applied, Maritime cannot invoke its benefits because as shown above there has not been substantial performance on its part and it has been guilty of bad faith in defaulting on and withholding payment of the stipulated installments.

5. The enactment on September 14, 1972 by Congress of Republic Act No. 6552 entitled "An Act to Provide Protection to Buyers of Real Estate on Installment Payments" (known also as the Maceda law) has now placed the 39-year old jurisprudence of this Court (recognizing the right of cancellation of the contract of conditional sale of real estate or on installments upon failure to pay the stipulated installments and retention or forfeiture as rentals of the installments previously paid) into the category of a law (insofar as industrial lots and commercial buildings as is the case at bar are concerned) which is now beyond over-turning even by this Court. The Court cannot now deny or refuse to honor Myer's contractual right of cancellation, which is now reaffirmed and recognized by the law itself and is no longer a matter of precedents or doctrinal jurisprudence.

6. The plea for equitable considerations on behalf of Maritime has no basis in law and in fact. As shown above, it acted with dolo or bad faith and must bear the consequences of its deliberate withholding of, and refusal to make, the monthly payments, notwithstanding Myers' rejection of its request for suspension of payments, by asserting against Myers corporation (as if it had a right of offset) a totally unconnected alleged personal liability to it of the late F.H. Myers and seeking to burden Myers corporation for such liability which it could no longer collect from F.H. Myers. Maritime still came out of the cancelled contract with a net profit of P527,000.00 derived totally from the rental-earnings of the property. On the other hand, Myers acted but in consonance with law and equity and established precedents of 39 years standing in asserting its right of cancellation pursuant to the express provisions of the contract which constitutes the law between the parties, and the mandate of Article 1159 of the Civil Code that "Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith. As the Court stressed in *Garcia vs. Rita Legarda, Inc.*[8] "when the contract is thus cancelled, the agreement of the parties is in reality being fulfilled. Indeed, the power thus granted can not be said to be immoral, much less unlawful, for it could be exercised -- not arbitrarily -- but only upon the other contracting party committing the breach of contract of non-payment of the installments agreed upon. Obviously, all that said party had to do to prevent the other from exercising the power to cancel the contract was for him to comply with his part of the contract". This is aside from the fact that what is involved here is a pure business contract between two big real estate corporations and to paraphrase Justice Fernando[9] such a plea for equity would not elicit, especially from the higher tribunals, an affirmative response since considering their economic status they are "very likely.. to be able to protect themselves in the clinches."

What follows now is an amplification of the above grounds and considerations which were stated in precis form or by way of a brief summary of the essential points for denying Maritime second and pro forma motion for reconsideration which somehow remained pending in this Court for six (6) years now.

- A party is entitled to only one Supreme Court; vital changes in the Court's composition since 1972; Justice Barredo's dissent never gathered sufficient votes to reverse.

A party litigant is entitled to only one Supreme Court to adjudicate his suit, but here over six years after this Court (the Concepcion Court 1966-April 17, 1973) had rendered the decision of January 31, 1972 affirming on appeal the trial court's decision and the resolution of August 18, 1972 denying reconsideration, the composition of the Court has so radically changed that out of the present membership of twelve, only four members of the Court who took part in the original decision and resolution of January 31, and August 18, 1972 remain and this Court (the Castro Court, December 22, 1975) may truly be said to be in effect another Supreme Court. The very *raison d'être* of courts, more so the Supreme Court, is to put an end to controversy and public policy and sound practice demand that no second motion for reconsideration be kept pending this long as to allow the litigant to speculate on changes in the membership of the Court and to have another Supreme Court review his lost case once more.

(a) The original decision at bar of January 31, 1972[10] (penned by Justice J.B.L. Reyes, retired on August 19, 1972) affirming on direct appeal (prior to the effectivity of Republic Act 5440) the judgment of the Court of First Instance of Manila of November 26, 1965, was unanimously concurred in by nine members of its ten-member composition then namely, (Concepcion, C.J., Reyes, Makalintal (A.C.J. April 17, 1973, C.J. October 24, 1973 to Dec. 22, 1975), Zaldivar, Castro, (now C.J.), Teehankee, Barredo, Villamor and Makasiar, JJ. with Justice Fernando having inhibited himself and not taking part.

(b) This same Court with a full membership of eleven denied appellant's motion for reconsideration of March 27, 1972 in its extended and signed 8-page Resolution of August 18, 1972[11] (penned by Justice J.B.L. Reyes on the eve of his retirement in consonance with the Court's tradition of the ponente disposing with the Court of pending motions for reconsideration before his retirement). A majority of six of the original nine Justices, namely Concepcion, C.J., Reyes, Makalintal (in the result), Castro, Teehankee and Makasiar, JJ. concurred in the resolution. Justice Barredo, however, dissented with an 86-page opinion and was joined by Justice Zaldivar and a new member Justice Antonio (appointed on April 10, 1972). Justice Fernando maintained his inhibition and took no part, while the eleventh member Justice Esguerra (a new member appointed on June 21, 1972 to fill the vacancy left by Justice Villamor who retired on April 12, 1972) likewise inhibited himself and did not take part.

(c) It is readily seen that during the pendency for six (6) years of appellant's second motion for reconsideration of October 7, 1972 the Court's composition has seen vital changes. Only four of the original 10-member Court that rendered the decision of January 31, 1972 are still members, namely, now Chief Justice Castro, and Justices Teehankee, Barredo and Makasiar. As noted above, Justice Fernando had inhibited himself and did not take part in the case.

(d) In the six-year interval, the Court's membership was increased to fifteen and the retirement age of new appointees reduced to 65 years under the 1973 Constitution. Ten (10) new members joined the Supreme Court in this interval (all after the 1973 Constitution except the first two named), as follows: Antonio, Esguerra (retired on June 19, 1976), Estanislao Fernandez (retired on March 28, 1975), Muñoz Palma, Aquino, Concepcion, Jr., Martin (retired on January 12, 1978), Santos, Ramon Fernandez and Guerrero, JJ., so that in effect this is another Supreme Court. There is no call for such special treatment for a simple private case -- of no public import at all -- of cancellation of a conditional sale effected in accordance with the contract between the parties which has the binding force of law between them and which is backed up by the 39-year standing jurisprudence of this Code now confirmed and given statutory force by the Maceda law.

(e) Maritime's second motion for reconsideration violates the warning given by the Court in *Zarate vs. Director of Lands*[12] that litigants should not be "allowed to speculate on changes in the personnel of the Court" and to keep importuning the Court for "reagitation, re-examination and reformulation." Although stated in support of

the principle of the "law of the case" this warning is equally and specially applicable to motions for reconsideration, particularly a second motion for reconsideration, when vital changes have taken place in the Court's membership as has happened:

"x x x 'Without the rule there would be no end to criticism, re-agitation, re-examination, and reformulation. In short, there would be endless litigation. It would be intolerable if parties litigant were allowed to speculate on changes in the personnel of a court, or on the chance of our rewriting propositions once gravely ruled on solemn argument and handed down as the law of a given case. An itch to reopen questions foreclosed on a first appeal would result in the foolishness of the inquisitive youth who pulled up his corn to see how it grew, Courts are allowed, if they so choose, to act like ordinary sensible persons. The administration of justice is a practical affair. The rule is a practical and a good one of frequent and beneficial use.' (Mangold v. Bacon, 237 Mo. 496). ."

(f) Withal, let it be noted that during this period of six years as vital changes in its membership were taking place, periodic tentative votes were taken on the pending second motion for reconsideration and on no occasion were there ever mustered the required eight votes to support Justice Barredo's dissent and to reverse the original decision. (Of the writer's own knowledge, even Justice Zaldivar who had joined Justice Barredo's dissent in the August 18, 1972 resolution denying reconsideration had expressed second thoughts about such dissent and was ready to rejoin the original majority when he compulsorily retired from the Court on September 13, 1974).

2. Second motion for reconsideration is pro forma - "a mere dilatory strategy" which should have been given short shrift long ago.

(a) Maritime's second motion for reconsideration has raised no new grounds or special circumstances not available at the time of the filing of the first motion for reconsideration but is merely a reiteration of reasons and arguments or amplification thereof which have already been considered, weighed and resolved adversely and which serve no apparent purpose but to gain time and therewith possible changes in the Court's composition. As invariably held by the Court, such second motions which are based on grounds already existing at the time of the first motion are clearly pro forma.[13]

As such pro forma motion for reconsideration (although with leave) such second motion deserves no further consideration and should be denied in consonance with the Court's consistent stand against multiplicity of motions (Rule 52, sec. 1) in the interest of avoiding further delay in the remand of a case already decided and to avoid needless slowdowns in the Court's disposition of other cases in its full docket which are more deserving of its study and attention. Cases entitled to preferential attention under the law have incurred in delay because of the inordinate time and attention this case has received, including the preparation and submittal intra-Court of extensive research papers and memoranda.

(b) As has ever been stressed since the early case of *Arnedo vs. Llorente* (18 Phil. 257, 263 [1911]) "controlling and irresistible reasons of public policy and of sound practice in the courts demand that at the risk of occasional error, judgments of courts determining controversies submitted to them should become final at some definite time fixed by law, or by a rule of practice recognized by law, so as to be thereafter beyond the control even of the court which rendered them for the purpose of correcting errors of fact or of law, into which, in the opinion of the court it may have fallen. The very purpose for which the courts are organized is to put an end to controversy, to decide the questions submitted to the litigants, and to determine the respective rights of the parties."

(c) Now Chief Justice Castro succinctly restated the pro forma doctrine in *Dacanay vs. Alvendia* thus: "Mere

citation and/or amplification of authorities not previously brought to the court's attention on the same argument does not remove the pleading from the ambit of the pro forma doctrine. The Rules of Court, looking with disfavor on piecemeal argumentation, have provided the omnibus motion rule, whereunder '(A) motion attacking a pleading or proceeding shall include all objections then available, and all objections not so included shall be deemed waived.' The salutary purpose of the rule is to obviate multiplicity of motions as well as discourage dilatory pleadings. As we said in *Medran vs. Court of Appeals*, 'litigants should not be allowed to reiterate identical motions, speculating on the possible change of opinion of the Court or of the judges thereof'. The mere citation of additional authorities by the petitioner in his last motion for reconsideration reiterating his thrice-rejected identical arguments as to the sufficiency of his amended complaints did not salvage the said motion from the proper application thereto of the pro forma doctrine."^[14]

(d) Justice Barredo in *Lucas vs. Mariano*^[15] emphasized that "it is in the public interest and consistent with the public policy, that controversial rights in property be settled as soon as possible in order to promote stability in all matters affected thereby" and that a second motion for reconsideration which contains "mere iterations and reiterations of the same points and arguments over and over again . . . becomes, in effect, a mere dilatory strategy and consequently nothing more than pro forma." The pertinent excerpts from said case are fully applicable, *mutatis mutandis*, to the case at bar:

"Looking at this case from other angles, however, the Court is inclined to agree with private respondents that the order of dismissal of September 16, 1965 has already become final and executory. Taking all relevant matters into consideration, We are loathe to let this litigation to protract further. Involving as it does the ownership and possession of a rather large piece of residential land, it is in the public interest and consistent with the public policy, that controversial rights in property be settled as soon as possible, in order to promote stability in all matters affected thereby that this case is terminated right here in this proceeding, it being within the authority of this Court to do so in the premises.

"Not only have petitioners had enough occasions and opportunities to present their main contentions and to be heard amply on them, but, more than that, We see no possibility that their pretensions, whether factual or legal, can prosper. In their complaint in the court below, as well as in their various motions for reconsideration in relation to as many of its orders and their oppositions to the motions for reconsideration also on the part of private respondents, petitioners have as often lengthily discussed and explained repeatedly their position as to all aspects of their claim of title. We have gone over all these representations and We find them to be mere iterations and reiterations of the same points and arguments over and over again. Thus both the first and second motions for reconsideration of petitioners respectively dated November 5, 1965 and January 25, 1966 raised exactly the same issues as their opposition to the motions to dismiss separately filed by private respondents. When the opportunity to appeal to a higher court is open to a party aggrieved by an order of an inferior court, tribunal, commission or body, our procedural rules allow the filing of only one motion for reconsideration of its final order and judgment, and a second motion may be filed only when there is need to raise new points or matters not touched upon in the first motion, since otherwise, litigations will unnecessarily drag in the trial courts to the obvious detriment of the interests of justice not only in the particular case on hand but more so in the other cases pending in the court which cannot be attended to. As earlier noted, a second motion for reconsideration is actually a motion for reconsideration only of the order of denial of the first motion, and if it does not raise any new issue relative to the first order, naturally, it cannot affect the legality and validity thereof, and becomes, in effect, a mere dilatory strategy and consequently, nothing more than pro forma. An attempt to have a reconsideration of the denial of a previous plea for reconsideration is not conducive to a speedy administration of justice. After all, the party aggrieved has a more effective recourse by appealing

immediately to the appropriate appellate tribunal."

In the lower courts, the pro forma motion does not stop the period for appeal from slipping away - and results in the judgment sought to be appealed becoming final and executory. In this Court, the pro forma first and/or second motion for reconsideration (although with leave of Court) - which merely reiterate the same grounds already considered and resolved in its decision or resolution denying due course (as the case may be) - have similarly been treated and the decision or resolution sought to be reconsidered have invariably been denied with a declaration of finality and entry of judgment, by virtue of "controlling and irresistible reasons of public policy and of sound practice in the courts" which demand an end to litigation at some definite point of time as a "fundamental concept in the organization of civil society." *Interest republicae ut sit finis litium*. [15-a]

3. The governing principle of stare decisis.

In each volume of Supreme Court Reports Annotated, Chief Justice Castro's preface cites the governing principle of precedents and stare decisis "which has given consistency and stability to the law" by which lawyers and litigants may know the law in concrete controverted cases, thus:

"In his famous essay, the Path of the Law, Justice Oliver Wendell Holmes defined law as a prediction of what the court will do.

"The prediction is based on precedents. The governing principle, which has given consistency and stability to the law, is stare decisis et non quita movere (follow past precedents and do not disturb what has been settled).

"The officials enforcing statutory law and regulations, the lawyers and litigants seeking to know the law in concrete controverted cases, and the judges in adversary litigations, should be well posted on precedents."

Such precedents and jurisprudence of this Court form part of our legal system by force of the provision of Article 8 of the new Civil Code that "Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines" and may not be lightly treated.

Reconsideration may not be granted without doing violence to this cardinal principle and overturning well established principles and provisions of law such as freedom of contract which is the law between the parties as provided by Article 1306 of the Civil Code[16] the right of a vendor in contracts to sell or conditional sales with reserved title to cancel the sale upon failure of the vendee to pay the stipulated installments and retain the sums already paid (which has now been elevated into the category of a law in the case of industrial and commercial real properties as in this case by the Maceda law, and which not even this Court can now overturn) and that he who pleads for equity must come to court with clean hands.

4. The governing law and precedents.

The governing law and established precedents which demand peremptory denial of the second motion for reconsideration have been hereinabove stated, *supra*. [17] Suffice it to herein underscore the following:

(a) As stated in the Court's decision, the vendor's right in contracts to sell with reserved title to extrajudicially cancel the sale upon failure of the vendee to pay the stipulated installments and retain the sums or installments already received has long been recognized by the well-established doctrine of 39 years standing: "(T)he distinction between contracts of sale and contracts to sell with reserved title has been recognized by this Court in

repeated decisions (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 O.G. 6372) 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." [18]

(b) In the Resolution of August 18, 1972, Justice J.B.L. Reyes further stressed for the Court that: "(M)ovant Maritime's insistence upon the application to the present case of Art. 1191 of the Civil Code of the Philippines (tacit resolutive condition in reciprocal obligations) studiously ignores the fact that Myers' obligation to convey the property was expressly made subject to a suspensive (precedent) condition of the punctual and full payment of the balance of the purchase price."

He cited the express stipulations of the contract of conditional sale thus:

"(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.

xxx xxx xxx

"(i) Title to the properties subject of this contract remains with the Vendor and shall pass to, and be transferred in the name of the Vendee only upon complete payment of the full price above agreed upon. (Italics supplied)."

He had previously cited in the decision the acceleration clause in the contract that: "x x 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." [19]

He thus articulated the inescapable conclusion that the express contractual stipulations "make it crystal clear that the full payment of the price (through the punctual performance of the monthly payments) was a condition precedent to the execution of the final sale and to the transfer of the property from Myers to Maritime; so that there was to be no actual sale until and unless full payment was made. It is uncontroverted that none was here made. The upshot of all these stipulations is that in seeking the ouster of Maritime for failure to pay the price as agreed upon, Myers was not rescinding (or more properly, resolving) the contract, but precisely enforcing it according to its express terms," citing from the well known Spanish commentators, Castan and Puig Peña.

(c) The Resolution of August 18, 1972 likewise clearly disposed of Maritime's contention that its breach of contract was casual thus: "there is no point in discussing whether or not Maritime's breach of contract was casual or serious, since the issue here is whether the suspensive condition (of paying P5,000.00 monthly until full price is paid) was or was not fulfilled, and it is not open to dispute that the stipulated suspensive condition was left unaccomplished through the deliberate actions of movant Maritime. The stubborn fact is that there can be no

rescission or resolution of an obligation as yet non-existent, because the suspensive condition did not happen.

"Resolving identical arguments, as those of Maritime, this Court ruled in *Manuel vs. Rodriguez*, 109 Phil. 9-10, as follows:

'x x x Plaintiff-appellant, however, argues (Errors I-IV; VI; VIII) that the Payatas Subdivision had no right to cancel the contract, as there was no demand by suit or notarial act, as provided by Article 1504 of the Old Code (Art. 1592, N.C.C.). This is without merit, because Article 1504 requiring demand by suit or notarial act in case the vendor or realty wants to rescind, does not apply to a contract to sell or promise to sell, where title remains with the vendor until fulfillment to a positive suspensive condition, such as full payment of the price (*Caridad Estates vs. Santero*, 71 Phil. 114, 121; *Albea vs. Inquimboy*, 86 Phil. 476; 47 OFF, Gaz. Supp. 12, p. 131; *Jocson vs. Capitol Subdivision Inc. et al.*, L-6573, February 28, 1955; *Miranda vs. Caridad Estates*, L-2077 and *Aspuria vs. Caridad Estates*, L-2121, October 23, 1950).

'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.'

(d) It should also be appreciated that Maritime's breach of contract, far from being casual, was of the gravest character. As stated above, this was pure business contract between two real estate corporations where Maritime as conditional vendee got the most liberal terms and was purchasing the property out of the property's rental earnings with plenty to spare for its own gains. Thus, it was receiving the rentals from the property of P10,000.00 a month (or P120,000.00 per annum) and had only to pay punctually the stipulated monthly installments of only P5,000.00 a month (or P60,000.00 per annum leaving it with a clear superavit of P60,000.00 every year). Under these circumstances, the only condition demanded by Myers as vendee was that Maritime pay religiously the monthly installments when due under pain of automatic voiding of the contract for non-fulfillment of the suspensive (precedent) condition of punctual and full payment of the balance of the purchase price.

Yet, Maritime willfully and deliberately defaulted on the payments due since March, 1961 notwithstanding that its request for a suspension of payments until the end of 1961 had been expressly rejected "under any condition" by Myers and notwithstanding that it was collecting from the lessee Luzon Brokerage Co. the corresponding rentals of P10,000.00 monthly for March, April and May, 1961 or a total of P30,000.00 (double the amount of the stipulated monthly installments due from it). Worse, it injected a totally unconnected alleged personal promise of the late F.H. Myers to indemnify it for a possible liability to a labor union of some P396,000.00 in connection with a completely separate transaction totally unrelated to their contract to sell and gave notice that it was "withholding any further payments" unless the heirs of the deceased honored his claim, notwithstanding that it was already barred against the deceased's estate which had already been closed.

As further noted in the Court's Resolution of August 18, 1972, "(M)aritime's bad faith is further confirmed by Schedler's letter to his counsel informing the latter that the attorneys in the United States were trying to reopen the closed Myers' estate to be able to file a contingent claim therein. And yet he was already seeking to burden Myers' Corporation with that very obligation."

(e) Maritime's breach of contract therefore was most serious:

1. It refused to pay the monthly installments from March to May, 1961 totalling P15,000.00 notwithstanding that it had the money and had collected the corresponding rentals in double the amount of P30,000.00 for said months. (The trial court's judgment as affirmed by this Court consequently sentenced Maritime inter alia to pay Myers "the sum of P30,000.00 representing rentals wrongfully collected by (Maritime) from the plaintiff in interpleader corresponding to the months of March, April and May, 1961";

2. Its unpaid balance on account of the purchase price amounted to almost one-third of the stipulated price in the sum of P319,300.65 which besides the stipulated interest became immediately due and payable under the contract's acceleration clause;

3. Having breached the contract, Maritime completely foiled Myers' plans for investment and utilization of the monthly installments as due. Worse, Maritime did not honor either its obligation extrajudicially to return the property, so much so that since March, 1961 Myers could not avail of the fruits and rentals of its reserved title which had then reverted absolutely to it with the cancellation of the contract, so much so that the lessee Luzon Brokerage Co. had to file the interpleader below and all the rentals which properly belong to Myers as owner since then have been tied up in Court for seventeen (17) long years to the present.

4. And it is the height of irony for Maritime to plead now that the accumulated rentals on the property - which it had prevented Myers from rightfully making use of as the lawful owner all these seventeen (17) long years come up to seven figures - to contend that after all it had willfully failed only to pay the three months' installments in March to May, 1961. This is not all Maritime failed to pay. It also failed to pay the whole unpaid balance of P319,300.65 besides the stipulated interests which under the acceleration clause became immediately due and payable upon default. The rentals that Luzon Brokerage Co. as plaintiff in interpleader deposited monthly with the trial court beginning June, 1961 were not sufficient at the time of default in March 1961 to pay this unpaid balance. But the whole irony of it is that these rentals belonged no longer to Maritime but solely and wholly to Myers as the lawful owner in whom its reserved title had reverted by virtue of the cancellation of the contract due to Maritime's willful and deliberate default with dolo.

5. As the Court pointed out in *Garcia vs. Rita Legarda, Inc.*[20] the buyer on installments has only himself to blame - for the power of cancellation "could be exercised - not arbitrarily - but only upon the other party committing the breach of contract of non-payment of the installments agreed upon" and that to avoid the stipulated and foreseen consequences of cancellation and forfeiture of all previous payments" all that (the buyer) had to do . . . was to comply with (its) part of the bargain. Having failed to do so, (it) really has no valid reason to complain". Parenthetically, due to the most liberal terms of the contract, Maritime here, despite cancellation and forfeiture of all previous installments in the concept of rentals, still came out of the transaction with a gain of P527,000.00 and a net gain of P514,000.00 after deducting the P13,000.00 in stipulated damages and attorneys' fees granted by the trial court's decision as affirmed by this Court due to Myers having had to avail of judicial recourse to enforce its right of cancellation and regain possession of its property.

(f) Finally, no case can be cited where this Court has denied the vendor on installments the stipulated right of cancellation of the contract to sell or of sale on installments of industrial or commercial real estate with forfeiture of all previous payments upon breach of the contract by failure to pay the stipulated installments when due in line with the long line of precedents above cited. As discussed in the next following part, this right of cancellation in the case of industrial and commercial properties is now expressly recognized in the Maceda law.

(g) The agitation by Maritime for reexamination of the Court's 39-year old doctrine of the vendor's right of extrajudicial cancellation with forfeiture of previous payments (assuming that it is not barred by the enactment of

RA 6522) cannot be properly done in this case which was decided more than six (6) years ago (on January 31, 1972 with reconsideration denied in the extended Resolution of August 18, 1972) and been frequently cited authoritatively in law books and treatises, including Maritime's counsel, former Senator Ambrosio Padilla's extensive Annotations on the Civil Code and the Philippine Law Journal's Survey of Philippine Law and Jurisprudence[21] citing anew the "important distinction" drawn by this Court between a contract of sale and a contract to sell, to which latter contract Article 1592 of the Civil Code has always been held to be inapplicable. The bench and bar would needlessly be subjected to confusion if now this case which has been cited for over 6 years as maintaining the 39-year old doctrine re cancellation of contracts to sell should all of a sudden no longer be a valid authority.

The Court itself has rejected pleas for reexamination of the doctrine in petitions filed after this Court's decision and Resolution of August 18, 1972 at bar citing Justice Barredo's dissent in support thereof, as in the petition in L-44593 entitled *Lim Hu vs. Court of Appeals*, wherein the Court denied the petition per its Resolution of March 18, 1977[22] and denied reconsideration per its Resolution of June 6, 1977.[23]

5. RA 6552 (Maceda Law) expressly recognizes vendor's right of cancellation of sale on installments of industrial and commercial properties with full retention of previous payments.

(a) The enactment on September 14, 1972 by Congress of Republic Act No. 6552 entitled "An Act to Provide Protection to Buyer of Real Estate on installment Payments" which inter alia compels the seller of real estate on installments (but excluding industrial lots, commercial buildings among others from the Act's coverage) to grant one month's grace period for every one year of installments made before the contract to sell may be cancelled for non-payment of the installments due forecloses any overturning of this Court's long-established jurisprudence. Republic Act 6552 recognizes in conditional sales of all kinds of real estate (industrial and commercial as well as residential) the non-applicability of Article 1592 (1504) Civil Code to such contracts to sell on installments and the right of the seller to cancel the contract (in accordance with the established doctrine of this Court) upon non-payment "which is simply an event that prevents the obligation of the vendor to convey title from acquiring binding force." (*Manuel vs. Rodriguez*, 109 Phil. 1, 10, per Reyes, J.B.L.). The Act in modifying the terms and application of Art. 1592 Civil Code reaffirms the vendor's right to cancel unqualifiedly in the case of industrial lots and commercial buildings (as in the case at bar) and requires a grace period in other cases, particularly residential lots, with a refund of certain percentages of payments made on account of the cancelled contract. *Luzon Brokerage Co., Inc. vs. Maritime Building Co., Inc.* [24]

(b) Since Congress has through RA 6552 adopted into law the 39-year jurisprudence of the Court and recognized that in the sale of industrial lots and commercial buildings (as in the case at bar), non-payment of installments is simply an event that prevents the conditional obligation of the vendor to convey title from acquiring binding force and entitles the vendor to cancel the conditional contract, the Court can no longer overturn the doctrine long enunciated by it for 39 years since it would be in effect overturning the law itself. Certainly, the Court cannot deny Myers' right of cancellation recognized by the law itself.

(c) Justice Barredo explained and premised his extensive 86-page dissent, as follows:

"Considering that Our decision in this case is a unanimous one penned by no less than Justice J.B.L. Reyes whose views on the legal issues We have resolved are admittedly authoritative, ordinarily, my concurrence in a denial resolution should be practically a matter of course. After going over the motion for reconsideration, however, my curiosity was aroused by it principally on two points, namely, (1) the unhappy and helpless plight

of thousands upon thousands of subdivision buyers who under the ruling We laid down are bound to suffer the loss of their life earnings only because of an oversight or difficulty in paying one or two installments, unless We firmed up the doctrine laid down by the Chief Justice in Javier or We made clearer their right to avail of Article 1592 of the New Civil Code under so-called contracts or promises to sell which are in vogue in subdivision sales; and (2) the clarification once and for all of the juridical concepts We have been adopting in Our decisions concerning promises or contracts to sell with reservation of title, lest We perpetuate a posture in doctrinal law which may be questioned later." [25]

(1) Congress in enacting in September 1972 Republic Act 6552 (the Maceda law), has by law which is its proper and exclusive province (and not that of this Court which is not supposed to legislate judicially) has taken care of Justice Barredo's concern over "the unhappy and helpless plight of thousands upon thousands of subdivision buyers" of residential lots.

The Act even in residential properties recognizes and reaffirms the vendor's right to cancel the contract to sell upon breach and non-payment of the stipulated installments but requires a grace period after at least two years of regular installment payments (of one month for every one year of installment payments made, but to be exercised by the buyer only once in every five years of the life of the contract) with a refund of certain percentages of payments made on account of the cancelled contract (starting with fifty percent with gradually increasing percentages after five years of installments). In case of industrial and commercial properties, as in the case at bar, the Act recognizes and reaffirms the Vendor's right unqualifiedly to cancel the sale upon the buyer's default.

(2) As to the clarification of "juridical concepts", the decision and resolution penned by Justice J.B.L. Reyes are quite clear that in cases of contracts to sell with reserved title, non-payment of the stipulated installment is simply the failure of a positive suspensive condition - an event that prevents the conditional obligation of the vendor to convey title from acquiring binding force and entitles the vendor to cancel the conditional contract. Justice Barredo's premise that there was no such thing as a promise to sell under the Spanish Civil Code and that Article 1478 of the Philippine Civil Code (1950) providing that "ART. 1478. The parties may stipulate that ownership in the thing shall not pass to the purchaser until he has fully paid the price" is an entirely new concept not recognized in the Spanish Civil Code is with all due respect a misconception and error, for said Article 1478 merely incorporated in the Philippine Civil Code a principle long recognized in Spanish and Philippine jurisprudence. The Court's decision and Resolution of August 18, 1972 cited Castan, Derecho Civil, Vol. 3, 7th Ed. page 129 and Pairo's Teoria de Obligaciones, the line of Philippine decisions prior to the effectivity in 1950 of the Philippine Civil Code, as well as decisions of the Supreme Court of Spain, all holding to the same effect that:

"El repetido convenio de no quedar transferido al comprador el dominio completo de la cosa hasta el completo pago del precio envuelve sustancialmente una verdadera condition suspensiva (TS Sent. 11 March 1929) (Italics supplied).

"El vendedor por razon de esta reserva solo transmite el disfrute de la cosa entregada mientras el precio no sea totalmente entregado (TS. sent. 7 March 1906)." [26]

(d) Justice Barredo's reply re the enactment of RA 6552 (the Maceda law) on September 14, 1972 is that it "need not be considered because it is based on the new Civil Code" (1950) and not on the old Code which was in force at the time that the parties executed their contract in 1949. This is not quite the case.

The point is that Congress thru RA 6552 adopted and elevated into law the 39-year old jurisprudence and now reaffirms as law the doctrine held by the Court since 1939 (when it first ruled that Article 1504 [now Article

1592] of the Civil Code is not applicable to contracts to sell or conditional sales). In other words, Congress could have overturned the doctrine by providing nevertheless that there can no longer be an automatic cancellation upon the buyer's default and failure to pay the stipulated installments, i.e. by outlawing this standard provision in tens, if not hundreds, of thousands of such installments contracts. Since such standard right of cancellation of the sale upon the buyer's default with the seller's retention of all previous payments (sustains Myers' cancellation of the sale, as has always been upheld by this Court) has now been expressly recognized and ratified by the law, it is now beyond this Court's power to reexamine and overturn its said doctrine (with the end of denying Myers' right of cancellation) since such right is now recognized and reaffirmed by the law itself and not even this Court can overturn and go against the law itself. (In sensu contrario, and this is where Justice Barredo's reply would have relevance, if RA 6552 had outlawed the seller's right of cancellation. Since it was enacted only in September, 1972, it certainly would be open to the grave question of whether it could retroact and negate buyer's right of cancellation of the sale as recognized under the Court's established doctrine).

6. No basis for plea for equitable considerations; on balance, Maritime comes off the cancellation with a net gain of over P500,000.00 from the property's rental earnings; contract is pure business contract between two big real estate corporations and their contract is the law between them; corporations are not people and their business is simply business.

(a) There is no basis for the plea for equitable considerations and even Justice Barredo concedes in his memorandum to the Court of July 27, 1978 that "I am not aware that there is any such appeal [for equity] in the record." His thesis is that the Court's rulings in Tuason vs. Javier, 31 SCRA 829 and Legarda vs. Saldaña, 55 SCRA 324 which involved small residential subdivision lots be applied to this million-peso transaction between two big real estate corporations on the premise that "(T)o insist that the ruling applied in one case should also be applied in another where the facts are similar and to disregard the difference in the economic positions of the parties involved is not an appeal for equity but for plain legal justice." Javier's case involved a small residential subdivision lot with a price of P3,691.20 and the Court in the interest of justice and equity granted the buyer an additional period of sixty days since the buyer had substantially complied with the contract in good faith.[27] Saldaña's case in turn involved the purchase of two small residential lots and the Court found that "the appellate court's judgment finding that of the total sum of P3,582.06 (including interests of P1,889.78) already paid by respondent (which was more than the value of two lots), the sum applied by petitioners to the principal alone in the amount of P1,682.28 was already more than the value of one lot of P1,500.00 and hence one of the two lots as chosen by respondent would be considered as fully paid, is fair and just and in accordance with law and equity, " while the cancellation of the sale for the other lot due to failure to pay the installments was upheld.[28] It should be noted that the buyer Saldaña therein "adhered to the validity of the doctrine of the Caridad Estates cases (Caridad Estates vs. Santero, 71 Phil. 114; Miranda vs. Caridad Estates, L-2077, Oct. 3, 1950)" but disputed its applicability contending inter alia that the sellers "were equally in default as the lots were 'completely under water...'"[29]

It is patently seen that there is no parity nor justification for applying said cases to the one at bar. The said cases involved merely small residential subdivision lots where the price had been in fact substantially paid in good faith and the Court's ruling therein was the precursor to the enactment of RA 6522 which provided certain measures of protection for the buyers of residential lots but recognized and reaffirmed the vendor's right of cancellation of contracts to sell without refund of previous payments upon the buyer's default in sales of commercial and industrial properties, as in the case at bar.

(b) The Court expressly found no basis for the application of equity under the facts of the case at bar, thus:

"Maritime also pleads that as the stipulated forfeiture of the monthly payments already made is in fact a penalty, and the same should be equitably reduced. We find no justification for such reduction for the following reasons:

"a) Maritime intentionally risked the penalty by deliberately refusing to make the monthly payments for March to May, 1961, and trying to inject into its contract with Myers corporation the totally unconnected personal promise of F.H. Myers to indemnify its eventual liability to the Luzon Labor Union, allegedly made on the occasion of the sale of the Luzon (Stevedoring) to E. Schedler by F.H. Myers, and trying to extrajudicially force Myers corporation to assume responsibility for such liability.

"b. Under Article 1234 of the present Civil Code, an obligation must be substantially performed in good faith, for such performance to stand in lieu of payment; Maritime, on the contrary, acted with dolo or bad faith, and is not in a position to invoke the benefits of the article.

"c. Maritime's loss of the forfeited payments was more than balanced by the rentals it received from the Luzon Brokerage as lessee of the building for the corresponding periods, at a rate of double the monthly payments required of Maritime under its contract with Myers." [30]

In terms of pesos and centavos, Maritime received a total amount of some P1,500,000.00 from the property's own rental earnings. By virtue of its willful default and the resulting cancellation of the sale, the P973,000.00 previously paid by it to Myers out of the same rental earnings as installments on account of the principal and interests (with an unpaid balance of P319,000.65 representing still almost 1/3 of the principal agreed price) were retained by Myers as rentals in turn from Maritime under the express terms of their contract, since Maritime was the one collecting the rentals from the property's lessee at double the rate of its installments and continued to do so until May, 1961 despite its default three months earlier in May. Still, Maritime came out of the cancelled sale with excess earnings from the property's rentals of P527,000.00. Maritime really has no valid reason to complain of having lost the right to the property and the larger share of the rentals - for all that "(it) had to do . . . was to comply with its part of the bargain." [31]

(c) The injunction of now Chief Justice Castro in *Dy Pac Workers Union vs. Dy Pac & Co. Inc.* [32] that "equitable considerations . . . cannot offset the demands of public policy and public interest which are also responsive to the tenets of equity" is controlling here, viz: "(T)he equitable considerations that led the lower court to take the action complained of cannot offset the demands of public policy and public interest -which are also responsive to the tenets of equity -- requiring that all issues passed upon in decisions or final orders that have become executory, be deemed conclusively disposed of and definitely closed, for, otherwise, there would be no end to litigations, thus setting at naught the main role of courts of justice, which is to assist in the enforcement of the rule of law and the maintenance of peace and order, by settling justiciable controversies with finality."

(d) This is but a case involving two big real estate corporations which entered into the contract to sell with the assistance of counsel and with full awareness of the import of the covenants, terms and conditions expressly stipulated and of the legal consequences of non-compliance therewith. Their contract is the binding law between them and equity cannot be pleaded by one who has not come with clean hands nor complied therewith in good faith as mandated by Article 1159 of the Civil Code (*supra*, page 5) but instead willfully and deliberately breached the contract and refused to pay the stipulated installments despite prior rejection "under any condition" of its request for suspension of payments and its having collected the property's rentals out of which it could easily pay

the stipulated installments.

This suit represents a mere adjudication of private adversary rights between two litigants with no significance in terms of doctrinal value since Maritime only pleads that it be given special treatment and that the cancellation of its contract be somehow rejected notwithstanding Myers' clear and incontrovertible right under the contract and the law to do so and Maritime's wilful and deliberate breach of the contract in bad faith.

Justice Fernando's observation in *Chemplex vs. Pamatian*[33] that "struggles between prototypes of what was referred to by Roosevelt as economic royalists, do not automatically elicit, especially from the higher tribunals, an affirmative response to the plea that they be heard"; that "the morality of the business world is not the morality of institutions of rectitude like the pulpit and the academe"; and ". . . It is not the interest of the parties as such, but the significance it possesses in terms of its doctrinal value, that supplies the criterion. Chafee had occasion to refer to an opinion of Justice Frankfurter which implies that what is decisive is a question of import for public policy presented, not a mere adjudication of adversary rights between the two litigants. At any rate, such a mode of viewing the matter is not likely to be productive of injustice to the main protagonists before us who, considering their economic status, are very likely, to paraphrase that caustic but realistic critic of law and of life, Professor Rodell, to be able to protect themselves in the clinches," may well be heeded.

As was recently observed, "it's time to put an end to the fiction that corporations are people." [34] The business of big corporations such as the protagonists at bar is business. They are bound by the lawful contracts that they enter into and they do not ask for nor are they entitled to considerations of equity.

For a final note of the writer. While the vote of Justice Fernando to grant the second motion for reconsideration when heretofore he has inhibited himself and did not take part in the decision of January 31, 1972 and Resolution of August 18, 1972 has not proven to be decisive, the writer took exception and herein makes of record his objection to the participation of Justice Fernando. This is done in all objectivity and with all due respect. If he had inhibited himself before from taking part in the decision and resolution against Maritime presumably for valid reasons, the writer feels that we are entitled to know whether those reasons no longer exist and he feels uninhibited now to vote for Maritime and granting its second motion for reconsideration. The writer is all too aware of his views shared with some other member(s) of the Court that their inhibition or disqualification is a matter of their own personal decision and conscience notwithstanding the provisions of Rule 137 of the Rules of Court which they consider in a way as not applicable to members of the Supreme Court. This delicate question has heretofore not been addressed nor resolved by the Court x x [35] and should be determined once and for all for the guidance of the bench and bar and the litigants in court.

ACCORDINGLY, and for lack of the necessary votes (five votes for denying the second motion and seven votes for granting the same)[36], appellant Maritime's second motion for reconsideration is denied and this denial is final.

Makasiar, Muñoz Palma, and Guerrero, JJ., concur.

Castro, C.J., on the basis of the Court's decision of January 31, 1972 (43 SCRA 93) and the Court's resolution of August 18, 1972 (46 SCRA 381), I vote to deny the second motion for reconsideration.

Fernando, J., concurs in the dissent of Justice Barredo and, in addition, submits a brief opinion.

Barredo, J., voted to grant the second motion for reconsideration for the reasons stated in a separate opinion.

Antonio, Aquino, Concepcion, Jr., Santos, and Fernandez, JJ., vote to grant the second motion for reconsideration.

[1] Justice Barredo's dissenting opinion of Aug. 18, 1972, page 1.

[2] Manuel vs. Rodriguez, 109 Phil. 1, 10 (1960), per Reyes, J.B.L., J.

[3] The text reads: "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."

[4] 109 Phil. 1, at page 10.

[5] 43 SCRA 93, 101.

[6] Increased by agreement to 5-1/2 per annum when the amount of stipulated monthly installments was reduced from P10,000.00 to P5,000.00. On the basis of the balance of P950,000.00 (without taking into account the diminishing balances), the reduction of the installments by P5,000.00 a month amounted to a reduction of P60,000.00 per year for the benefit of Maritime, while its interest liability with the increase of 1/2% per annum amounted to a mere increase of P4,750.00 per year.

[7] For text, see supra, fn. 3.

[8] 21 SCRA 555, 560, per Dizon, J. (retired); emphasis supplied.

[9] Concurring opinion of Fernando, J. in Chemplex vs. Pamatian, 57 SCRA 408, 414-415 (1974).

[10] Reported in 43 SCRA 93.

[11] Reported in 46 SCRA 381.

[12] Zarate vs. Director of Lands, 39 Phil. 747.

[13] Lonaria vs. de Guzman, 21 SCRA 349 (1967), per Zaldivar, J. (retired).

[14] 30 SCRA 31, 41-42 (1969) emphasis furnished.

[15] 44 SCRA 501, 514-515, emphasis furnished.

[15-a] It is the interest of the State that there should be an end of litigation.

[16] The text reads: "Art. 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy."

[17] At pages 3 to 5 hereof.

[18] 43 SCRA at pages 104-105; emphasis furnished.

[19] 43 SCRA at page 99.

[20] 21 SCRA at pages 560-561.

[21] Vol. 48, Nos. 1 and 2, 1973, pages 65-67

[22] First Division, composed of Teehankee, Makasiar, Muñoz Palma, Concepcion Jr. (by designation), and Martin, JJ.

[23] First Division, composed of Teehankee, Makasiar, Antonio (by designation) Muñoz Palma and Martin, JJ.

[24] The pertinent sections of R.A. 6552 provide:

"SEC. 3. In all transactions or contracts involving the sale or financing of real estate on installment payments, including residential condominium apartments but excluding industrial lots, commercial buildings and sales to tenants under Republic Act Numbered Thirty-three hundred eighty-nine, where the buyer has paid at least two years of installments, the buyer is entitled to the following rights in case he defaults in the payment of succeeding installments:

"(a) To pay, without additional interest, the unpaid installments due within the total grace period earned by him, which is hereby fixed at the rate of one month grace period for every one year of installment payments made; Provided, That this right shall be exercised by the buyer only once in every five years of the life of the contract and its extensions, if any.

"(b) If the contract is cancelled, the seller shall refund to the buyer the cash surrender value of the payments on the property equivalent to fifty per cent of the total payments made and, after five years of installments, an additional five per cent every year but not to exceed ninety per cent of total payments made: Provided, That the actual cancellation of the contract shall take place after 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.

"Down payments, deposits or options on the contract shall be included in the computation of the total number of installments made.

"SEC. 4. In case where less than two years of installments were paid the seller shall give the buyer a grace period of not less than sixty days from the date the installment became due. If the buyer fails to pay the installments due at the expiration of the grace period, the seller may cancel the contract after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act.

[25] 46 SCRA at page 473.

[26] 46 SCRA at pp. 385-386; see also Santamaria, *Comentarios al Código Civil*, 1958 ed. Vol. II, pp. 484-485, Tomo IV, Oct-Diciembre 1943, *Jurisprudencia Civil, Segunda Serie (Doctrina)*, pp. 284-286.

[27] 31 SCRA at pp. 832-833.

[28] 55 SCRA at p. 328.

[29] *Idem* at p. 327.

[30] 46 SCRA at p. 389.

[31] *Garcia vs. Rita Legarda, Inc.* *supra*, fn. 20.

[32] 38 SCRA, 263, 269 (1971).

[33] Concurring opinion of Justice Fernando, 57 SCRA at pages 414-415; emphasis furnished.

[34] *American Bar Association Journal*, June, 1978 issue, page 814.

[35] See writer's dissenting opinion of April 27, 1973 in L-26112, Republic vs. de los Angeles and related incidents in 41 SCRA 422 and 44 SCRA 255.

[36] See Rule 56, section 11.

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