

EMILIANO N. RAMIREZ, PETITIONER, VS. THE COURT OF APPEALS AND OLGA MULLER NEASE, ASSISTED BY HER HUSBAND DARIUS NEASE, RESPONDENTS.

G.R. No. L-6536. January 25, 1956

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Emiliano N. Ramirez, petitioner herein, and respondent Olga Muller Nease, were co-owners in equal shares of a motor boat named "Olga" of 32 gross (20 net) tons. By written contract dated February 19, 1947, Mullor Nease sold her undivided half-interest in the "Olga" to Ramirez, for the sum of P4,500, payable in three installments of P1,500 each, on the 19th of February, March, and April of the year 1947. Inter alia, the contract stipulated that:

"In the event of first default of payment, the buyers pay six per centum per annum of all the amounts due, and payable to the seller. On the second default of payments, the buyer hereby authorizes the seller to recover her half participation of ownership of the boat without obligation to reimburse the payments made by the buyer."

The first installment was duly paid. Only P750 was paid on account of the second, and nothing on the third. Later, the "Olga" was damaged by a typhoon. On March 19, 1948, the vendor Nease filed action in the Court of First Instance of Baguio (Case No. 108) where she resided, to recover the balance of P2,250, plus 6 per cent interest from default on March, 19, 1947. Defendant answered that he was unable to pay due to causes independent of his will, and had notified plaintiff (Nease) to take over her half-interest in the boat, which she refused to do.

The action was dismissed by the Court of First Instance, on the theory that—

"It is the defendant who has the option either to pay the purchase price in full or to return to her the has ownership of the boat he had purchased from the plaintiff. The paragraph of the contract above-quoted, in the opinion of the Court, clearly specifies that in the event of second default in payment the defendant must return to' the plaintiff the half ownership of the boat plus the penalty of losing what he had previously paid to her." (Rec. App., p. 15).

Upon resort to the Court of Appeals (G.R.—C.A. No. 4009-R),, the latter reversed the judgment of, the Court of First Instance, and expressly found that femirez was not relieved of the obligation to pay the balance of the purchase price, because it was plaintiff Nease who had the right to choose to collect full payment or recover her half participation of the boat, and "the evidence failed to .satisfactorily show that there was reconveyance of the half ownership of the said boat by the defendant in favor of said plaintiff."

Thereupon, defendant Ramirez sued out a writ of certiorari to review the decision of the Court of Appeals.

We find no warrant for disturbing, the decision of the Court of Appeals. The contract of sale gives rise to reciprocal obligations between seller and buyer, since each party assumes obligations conditioned upon those of the other, and the obligations of both are derived from a common origin, the perfected contract. It follows that, pursuant to Article 1124 of the Civil Code of 1889 (now 1191 of the new Civil Code), the breach by either party

of his obligation entitles the other to a choice of alternative remedies: specific performance or rescission, "with damages in either case." The seller in the present case chose to exact specific performance of the contract in view of the petitioner's defaults in the payment of the price, and demanded the balance thereof. She had the right to do so, unless she had waived such remedy, either in the contract or by subsequent choice on her part.

But it is axiomatic that waivers are not presumed, but must be clearly and convincingly shown, either by express stipulation or by acts admitting no other reasonable explanation but the intent to waive.^[1] Hence, the sole fact that the contract of sale between the parties only provides that in case of default, "the buyer authorizes the seller to recover her half participation—without obligation to reimburse the payments made by the buyer," and is silent on the seller's right to exact payment of the outstanding balance, there being no other stipulations incompatible therewith, does not import that the seller has thereby lost the alternative right to demand full payment (see *Cui vs. Sun Chuan*, 41 Phil., 523). This becomes more apparent from the circumstance that the contract as written merely confers upon the seller the right ("the buyer authorizes the seller") to rescind the sale and recover her half interest, but does not obligate her to do so.

Of course, the seller could renounce specific performance even after the contract was made. But the findings of fact of the Court of Appeals controvert such possibility, and we cannot alter the same. The Court of Appeals expressly declared in its decision that there was no satisfactory evidence of the reconveyance of the seller's half interest; and that the contention of Ramirez that he had authorized respondent Muller Nease to sell the boat, and that she took the specifications of the boat for the purpose of selling it, "was untenable". Such pronouncements conclusively settle that the seller did not agree to rescind the sale and become once more a part of the m/s "Olga".

Since the seller chose and now insists upon full payment, as she is entitled to do, the loss of the boat without fault of the buyer (petitioner herein) is irrelevant to the case. The generic obligation to pay money is not excused by fortuitous loss of any specific property of the debtor.

The decision of the Court of Appeals is affirmed. Costs against petitioner, Emiliano N. Ramirez. So ordered.

Parás, C. J., Montemayor, Reyes, A., Bautista Angelo, Labrador, and Concepcion, JJ., concur.

[1] *Fernandez vs. Sebido*, 70 Phil., 151; *Lang vs. Sheriff of Surigao*, 49 Off. Gaz., (8) 3328.

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