

RODRIGO A. SILVERIO PLAINTIFF-APPELLEE, VS. MARUJA T. CAVESTANY, WASH N' WEAR, REPRESENTED BY ITS PRESIDENT, MA. VICTORIA G. AQUINO, CITY ENGINEER OR BUILDING OFFICIAL OF QUEZON...

Ponente: SADANG, J.

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SADANG, J.:

This is an ordinary appeal from the Decision dated December 2, 2008^[1] of the Regional Trial Court of Quezon City, Branch 104, in Civil Case No. Q-97-30332.

Records show that on February 21, 1997, plaintiff-appellee Rodrigo A. Silverio (hereafter, plaintiff) filed a Complaint^[2] with the court a quo, for annulment of sale and annulment of title with damages, with prayer for temporary restraining order and writ of preliminary injunction, docketed as Civil Case No. Q-97-30332, against defendant-appellant Maruja Cavestany and Wash N' Wear, represented by its President, Ma. Victoria G. Aquino. Also impleaded were the City Engineer or Building Official of Quezon City and the Register of Deeds of Quezon City.

Plaintiff alleged that: defendant Cavestany sold to him a parcel of land^[3] located in San Mateo (now Quezon City) and covered by TCT No. RT-18413 (289785) for a total price of P2,608,200.00; under the Deed of Conditional Sale, plaintiff shall 1) pay a down payment of P770,000.00, 2) pay the balance of P1,838,200.00, by assuming Cavestany's P673,168.88 mortgage obligation with the Bangko Silangan (the bank) and by settling the rest of the obligation (P1,165,031.12) on or before November 30, 1995; upon payment of the P1,165,031.12, Cavestany shall execute a deed of absolute sale with assumption of mortgage in favor of plaintiff provided that the bank agrees to said assumption; in case plaintiff fails to pay the balance on the stipulated date, Cavestany has the right to rescind the sale and all payments made shall be automatically forfeited in favor of Cavestany; plaintiff was unable to pay the balance; sometime before July 15, 1996, Cavestany demanded of plaintiff to execute a Deed of Undertaking whereby the purchase price would be increased from P2,700.00 to P3,500.00 per square meter, or an adjusted price of P3,381,000.00; plaintiff refused to sign the deed, thus, Cavestany and her lawyer informed him by letter, dated August 7, 1996, that the Deed of Conditional Sale is deemed rescinded and the payments made by plaintiff would be applied to Cavestany's bank obligation; on September 9, 1996, plaintiff sent a letter-offer to pay the balance of P1,055,031.12 in cash and to assume the mortgage obligation of Cavestany in the amount of P673,168.88.

Plaintiff further alleged that: the notice of rescission is null and void and was committed in bad faith; because he had paid the substantial amount of P880,000.00 and had made the aforesaid offer, Cavestany is obliged to accept the remaining balance of the price and to convey the land to him; in spite of the annotation of an adverse claim on the TCT (Entry No. PE-8846/RT-18413) Cavestany still executed a Deed of Absolute Sale ceding the land to defendant Wash N' Wear for P1,750,000.00; TCT No. RT-18413 (289785) was cancelled and TCT No. N-165948 was issued in the name of Wash N' Wear; Wash N' Wear is a buyer in bad faith because it bought the land in spite of notice of defect in Cavestany's title; the Deed of Absolute Sale is null and void; and the building official should

be enjoined from issuing a building permit for the construction of improvements on the land.

Plaintiff prayed for the declaration of the nullity of the notice of rescission of the conditional sale and the deed of sale in favor of Wash N' Wear, the nullification of TCT No. N-165948, the reinstatement of TCT No. RT-18413 (289785), and the conveyance of the land to him upon payment of the unpaid balance of P1,165,031.12. He also prayed for moral and exemplary damages, attorney's fees and litigation expenses.

Defendant Cavestany filed an Answer^{^[4]} alleging that: plaintiff did not pay the balance of P1,165,031.12 on or before July 15, 1996, forcing her to sell the property to Wash N' Wear for P1,750,000.00 only in order to save it from imminent foreclosure, besides, the bank agreed to reduce its receivable to P1,250,000.00; contrary to his allegation, plaintiff signed the Deed of Undertaking; in view of plaintiff's default, Cavestany has the right to rescind the sale; when the Deed of Absolute Sale was about to be registered with the Register of Deeds of Quezon City (RD) after September 2, 1996, it was discovered that plaintiff had filed an adverse claim on the title. Defendant Cavestany prayed for payment of the amount of P1,347,831.00 as actual and/or compensatory damages for the lost income in the sale of the property, as well as moral, exemplary and nominal damages and attorney's fees.

In its Answer (with Compulsory Counterclaim and Crossclaim)^{^[5]} defendant Wash N' Wear alleged that: on August 22, 1996, Cavestany sold the subject land to it and the title did not contain a notice of adverse claim; on October 8, 1996, the RD issued TCT No. N-165948, transferring title in the name of Wash N'Wear; Wash N' Wear was unaware of the notice of adverse claim and merely relied on the face of the title, hence, it is an innocent purchaser for value; plaintiff admits that the transaction between him and Cavestany was merely a conditional sale and plaintiff failed to pay the balance on November 30, 1995, thus, Cavestany had a right to rescind the contract and deem all payments as forfeited; Cavestany was not obliged to accept plaintiff's offer because the contract had already been rescinded.

Defendant Wash N' Wear prayed that the Complaint be dismissed. It also prayed for payment of attorney's fees, exemplary damages, litigation expenses and costs. On its crossclaim, it prayed that in case judgment is rendered in favor of plaintiff, Cavestany be ordered to reimburse the price it paid for the land and to pay attorney's fees and cost of litigation.

On motion of defendant Wash N'Wear, the RTC issued an Order on January 21, 1998 cancelling plaintiff's notice of lis pendens. Plaintiff filed a Motion for Reconsideration.

Meanwhile, pre-trial proceeded on May 21, 1998, and plaintiff and defendants stipulated thus:

- That plaintiff has never been in possession of the property in question;
- That defendant Wash and Wear is the present occupant of the property in question;
- That attached to plaintiff's affidavit of adverse claim filed with the Register of Deeds on September 2, 1996 is a Deed of Undertaking bearing the marking "original signed";
- That plaintiff failed to settle the obligation of Cavestany (assumed under the deed of conditional sale) in favor of Bangko Silangan, now Orient Bank;
- That defendant Cavestany received plaintiff's letter dated September 9, 1996 offering to make the full payment of the balance under the deed of conditional sale after the execution of the Deed of Sale (in favor of defendant Wash and Wear (sic) on August 22, 1996.^{^[6]}

Thereafter, the parties filed separate motions for summary judgment.

On January 28, 1999, the RTC issued an Order,^[7] the decretal portion of which reads:

WHEREFORE, the Court denies the motion of plaintiff for reconsideration of the Order dated January 21, 1998 for the cancellation of his notice of lis pendens, and pursuant to Rule 35 of the 1997 Rules of Civil Procedure, renders summary judgment declaring the validity of the sale by defendant Cavestany of the subject property, and the corresponding title consequently issued, in favor of defendant Wash N' Wear.

Let this case be (sic) for trial on the controverted facts.

SO ORDERED.

The controverted facts referred to in the January 28, 1999 Order are stated therein thus:

The controverted facts boil down to whether plaintiff is entitled to the return of his down payment given under the contract to sell or whether it was rightfully forfeited in favor of defendant Cavestany and whether or not the parties are entitled to their respective claims against one another for damages and attorney's fees.

The January 28, 1999 Order was questioned in the Court of Appeals (CA) in a petition for certiorari,^[8] however, the petition was dismissed in a Resolution^[9] dated June 17, 1999. Plaintiff went to the Supreme Court by way of petition for review on certiorari.^[10] The petition was denied in a Resolution^[11] dated February 14, 2000.

Plaintiff filed a Motion to Amend Complaint but it was denied in an Order^[12] dated June 27, 2001. Said order was the subject of another petition for certiorari^[13] but it was denied by the CA (Fifth Division) in a Decision^[14] dated October 21, 2002. The Supreme Court also denied the petition^[15] brought before it on February 3, 2003.^[16] Thereafter, trial ensued.

On December 2, 2008, the RTC rendered the assailed Decision,^[17] the fallo of which reads:

WHEREFORE, judgment is hereby rendered ordering defendant Maruja Cavestany to return or reimburse to plaintiff the amount of Eight Hundred Eighty Thousand (P880,000.00) Pesos representing the partial payment made for the purchase of the property sold to defendant Wash 'n Wear.

SO ORDERED.

Defendant Cavestany's ^[18] Notice of Appeal was given due course in the Order dated April 7, 2009.^[19]

In her appeal, defendant Cavestany (hereafter, appellant) raises this sole assignment of error:

THE COURT A QUO GRAVELY ERRED IN HOLDING THAT "THE PAYMENTS MADE BY THE PLAINTIFF SHOULD BE REFUNDED, LEST DEFENDANT CAVESTANY UNJUSTLY ENRICH HERSELF AT HIS EXPENSE."

Ruling

The issue in this appeal is simply whether the RTC correctly ruled that appellee must be reimbursed the amounts that he had already paid as down payment.

Appellant contends that the contract provides that in case of default on the part of appellee, the down payment

would be automatically forfeited in her favor.

Plaintiff (hereafter, appellee) counters that the RTC correctly ruled that he did not benefit from the transaction and that forfeiture of the payments made is tantamount to unjust enrichment.

We rule for appellant.

A contract is the law between the parties. Thus, “from the moment the contract is perfected, the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all consequences which, according to their nature, may be in keeping with good faith, usage and law.” Also, “the stipulations of the contract being the law between the parties, courts have no alternative but to enforce them as they were agreed [upon] and written, there being no law or public policy against the stipulated forfeiture of payments already made.”^[20]

Perusal of the contract entered into by appellant and appellee shows that it is a contract to sell whereby appellant agreed to sell to appellee a parcel of land upon full payment of the purchase price. Pertinent provisions of the contract read:

NOW, THEREFORE, for and in consideration of the foregoing premises, the VENDOR hereby sells, transfers, and conveys CONDITIONALLY unto the VENDEE, his heirs and assigns, subject to the following terms and conditions:

1. The balance to be paid by the VENDEE to the VENDOR is ONE MILLION ONE HUNDRED SIXTY FIVE THOUSAND THIRTY ONE PESOS AND 12/100 (P1,165,031.12), payable on or before November 30, 1995;
2. In addition to said monetary consideration, the VENDEE shall assume in FULL the obligation of the VENDOR to BANGKO SILANGAN whatever is the amount now due and payable to Bangko Silangan;
3. Upon full payment of the balance, the VENDOR shall execute an absolute deed of sale with assumption of mortgage in favor of the VENDEE provided BANGKO SILANGAN gives its conformity to said assumption of obligation;

xxxxxx xxxxxxxx xxxxxx

5. Failure of the VENDEE to pay the balance on the date stipulated herein shall entitle the VENDOR to RESCIND this CONTRACT and all payments previously made by the VENDOR, are deemed automatically FORFEITED in favor of the VENDOR and said VENDOR shall be free to sell the property to some other person or entity.

In *Rillo v. Court of Appeals*,^[21] it was held that in “a contract to sell real property on installments, the full payment of the purchase price is a positive suspensive condition, the failure of which is not considered a breach of contract, casual or serious, but simply an event which prevented the obligation of the vendor to convey title from acquiring any obligatory force. The transfer of ownership and title would occur after full payment of the purchase price.” The non-payment of the purchase price renders the contract to sell ineffective and without force and effect.^[22] Unlike a contract of sale, where the title to the property passes to the vendee upon the delivery of the thing sold, in a contract to sell, ownership is, by agreement, reserved to the vendor and is not to pass to the vendee until full payment of the purchase price.^[23]

A contract to sell cannot be rescinded under Article 1191^[24] of the Civil Code, the reason being that there can be no rescission of an obligation that is still non-existent or subject to a suspensive condition. The breach contemplated in Article 1191 is the obligor's failure

to comply with an obligation already extant, like a contract of sale, not a failure of a condition to render binding that obligation. Where the obligor in a contract to sell defaults on his obligation, the remedy is cancellation, not rescission.

Article 1592 of the Civil Code also does not apply to a contract to sell. As early as *Manuel v. Rodriguez, Sr., et al* it was held that “Article 1592 requiring demand by suit or notarial act in case the vendor of 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.”

In this case, the evidence shows that appellee failed to make full payment of the purchase price on the stipulated date. Such failure is an event that prevented the obligation of appellant to convey title from acquiring any obligatory force. It prompted appellant to send a letter, dated August 7, 1996, to appellee informing that the contract is deemed rescinded and payments made forfeited in appellant's favor. Although the letter uses the word “rescinded,” what it clearly conveys is that the contract is deemed cancelled. With its cancellation, the contract ceased to exist and equity demands that, in the absence of stipulation, the amount paid by the vendor shall be returned, the purpose for which it was given not having been attained.

In ruling that appellant should reimburse plaintiff the partial payment of P880,000.00, the RTC ratiocinated thus:

The Court is thus inclined to allow the reimbursement of the payments made in the light of the following circumstances: 1) plaintiff was never in possession of the property; 2) plaintiff made a partial payment of P880,000.00 which is a substantial amount, out of the total agreed purchase price of P2,608,200.00; 3) defendant Maruja Cavestany sold the property to defendant Wash 'n Wear (sic) for P1,750,000.00 compared to the original purchase price under the conditional deed of sale with plaintiff; 4) plaintiff has not derived any material benefit from the transaction; and 5) defendant Cavestany already netted at least P500,000.00 from the sale of the property in favor of defendant Wash 'n (sic) Wear. The payments made by plaintiff should be refunded, lest defendant Cavestany unjustly enrich herself at his expense.

The circumstances relied upon by the RTC are essentially anchored on equity. However, equity applies only in the absence of stipulation on the amounts already paid by the vendee. Here, paragraph 5 of the Deed of Conditional Sale clearly mandates that in case appellee fails to pay the balance of the price, all amounts paid shall be automatically forfeited in favor of appellant. Said provision is the law between the parties and this court has no choice but to enforce it so long as it is not contrary to law, morals, good customs or public policy, otherwise, this court would be interfering with the freedom of contract of the parties. Simply put, courts cannot stipulate for the parties or amend the latter's agreement, for to do so would be to alter the real intention of the contracting parties when the contrary function of courts is to give force and effect to the intention of the parties. There may be instances where parties to a contract may realize in hindsight that the terms thereof are financially disadvantageous or prove to be onerous to them but that does not relieve them of their obligation and it is not the function of courts to extricate them from their predicaments.

Appellee tried to prove by his testimony during the trial that he was given a concession regarding the forfeiture clause in paragraph 5. He averred that there was a verbal agreement that appellant would return the money already paid in case appellee is unable to pay the balance of the price. However, the counsel for appellant timely objected to such evidence on the ground that it would vary the terms and conditions of the contract. Consequently, the testimony of appellee has no probative value. The parole evidence rule states that “when the terms of an agreement have been reduced to writing, it is

considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.”^[32]

Moreover, parole evidence which modifies or varies the terms of a written agreement may be allowed only if the party puts in issue in his pleading the following: a) an intrinsic ambiguity, mistake or imperfection in the written agreement; b) the failure of the written agreement to express the true intent and agreement of the parties thereto; c) the validity of the written agreement; or d) the existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.^[33] Suffice it to state, that an examination of the complaint and other pleadings of appellee does not show that he ever put in issue any of the foregoing matters. Thus, he cannot offer parole evidence to prove the alleged verbal agreement on the return of amounts already paid.

WHEREFORE, the appeal is GRANTED. The Decision dated December 2, 2008 of the Regional Trial Court of Quezon City, Branch 104 in Civil Case No. Q-97-30332 is REVERSED and SET ASIDE.

SO ORDERED.

Librea-Leagogo, J., Chairperson, and ^{*}Valenzuela, JJ., concur.

^{*} Vice Associate Justice Amy C. Lazaro-Javier, per Office Order No. 38-15-RSF dated 2/3/15.

^[1] Rollo., pp. 43-74.

^[2] Records, pp. 1-15.

^[3] A parcel of land (Lot 2, Blk. 12 of the subd. plan (LRC) Psd-92251, being a portion of Lot 3 & 5 described on plan LRC Pcs-7568 Rec. No. 1037), situated in San Mateo (now Quezon City), Island of Luzon. Bounded on the NE., points 2 to 3 by Sapang Kamandag and points 3 to 4 by Lot 8 (LRC) pcs-7568; on the SE., points 4 to 6 by Road Lot 11; on the SW., points 6 to 7 by Lot 4; and on the NW., points 7 to 1 by Lot 3 and points 1 to 2 by Lot 1, all of Blk. 12 all of the subd. plan...containing an area of NINE HUNDRED SIXTY SIX (966) SQUARE METERS, more or less.

^[4] Id., pp. 36-41.

^[5] Id., pp. 48-57.

^[6] Pre-trial Order, Records pp. 191-192.

^[7] Records, pp. 307-312.

^[8] CA-GR. SP No. 52600 entitled, “Rodrigo A. Silverio v. Hon. Thelma A. Ponferrada, et. al.”, pp. 332-355.

^[9] Records, pp. 487-488.

^[10] GR No. 140629.

^[11] Records, p. 692.

^[12] Records, p. 694-701.

^[13] CA-GR. SP. No. 71424.

^[14] Records, pp. 816-825.

^[15] GR. No. 156576, Records, pp. 850-871.

^[16] Records, pp. 907.

^[17] Penned by Judge Thelma A. Ponferrada.

^[18] Records, p. 1251.

^[19] Id., p. 1253.

^[20] Valarao v. Court of Appeals, 363 Phil. 495 (1999).

^[21] 274 SCRA 461

^[22] Cordero v. F.S. Management and Development Corporation, G.R. No. 167213, October 31, 2006, 506 SCRA 451, 461-462; Ong v. Court of Appeals, 310 SCRA 1, 10 (1999) citing Agustin v. Court of Appeals, 186 SCRA 375 (1990).

^[23] Spouses Cornelio Joel I. Orden and Maria Nympha A. Orden, et al. v. Spouses Arturo and Melodia Aurea, et al., G.R. No. 172733, August 20, 2008.

^[24] Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law. (1124)

^[25] Sta. Lucia Realty & Development v. Romeo Uyecio, G.R. No. 176217, August 13, 2008, 562 SCRA 226.

^[26] G.R. No. L-13435, July 27, 1960, 109 Phil. 1

^[27] Record, Vol. I, p. 18

^[28] Manuel v. Rodriguez, 109 Phil. 1

^[29] Heirs of San Andres v. Rodriguez, 332 SCRA 769

^[30] Torres v. Court of Appeals, G.R. No. 134559, December 9, 1999; Sps. Florendo v. Court of Appeals, 265 SCRA 678

^[31] TSN March 23, 2000, pp. 30-33

^[32] Section 9, Rule 130, Revised Rules on Evidence

^[33] Id.

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