

**FLORA LIMCACO-TOLENTINO, LOENOR T. LIMCACO-ESTEBAN,
ADORACION LIMCACO-CHONG, ANGELINA SILVA-LIMCACO AND
MARIFLOR LIMCACO-FLORENDIA, REPRESENTED BY NORDY P.
DIPLOMA BARRIOS, IN HI...**

Ponente: BARRIOS, J.

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BARRIOS, J.:

In an accion publiciana filed by the appellants and kins Flora Limcaco-Tolentino, et al. (or the Limcacos for brevity) against the appellee Ernesto Sario (or Sario), Branch 49 of the Regional Trial Court of Manila disposed that:

WHEREFORE, the Court hereby accordingly orders the plaintiffs to execute the necessary documents of sale and, in turn, the defendant is ordered to pay the balance of PHP 510,000.00 to said plaintiffs.

The Court hereby fixes the period for the execution by the parties of their respective obligations, and grants them six (6) months from receipt of a copy hereof, to comply with this Decision. The plaintiffs are first ones to perform their obligations pursuant to the law on reciprocal obligation and the defendant, in turn, after receiving all copies of the documents necessary to transfer title, shall pay the corresponding balance of the purchase price pursuant to the provision of the contract on that point (p. 277, record).

Their subject of contention is an apartment with an area of more or less 150 square meters at 1762 San Lazaro corner Kalimbas Streets, Sta. Cruz, Manila, owned by the Limcacos and titled under Transfer Certificate of Title No. 214272, formerly TCT No. 93670.

On November 11, 1989, the parties entered into a Deed of Conditional Sale (Exh. "B", pp. 8-11, record) over this lot for the consideration of P1,000,000.00. As stipulated, Sario made an initial payment of P400,000.00, and for the payment of the balance of the purchase price it was agreed that:

B. That the VENDEES shall pay the balance of SIX HUNDRED THOUSAND PESOS (P600,000.00) on or before March 1, 1990 unto the Vendors by means of a Cashier's Check and FLORA L. TOLENTINO is hereby authorized by the VENDORS to receive this payment for or in their behalf. (ibid)

After the execution of the deed and initial payment, possession of the property was turned over to Sario.

On March 16, 1990, Sario paid an additional P90,000.00 (Exh. "7", p. 65, record). But not having received the rest of the purchase price, the Limcacos through their counsel sent a letter to Sario dated January 23, 1998 (Exh. "8", pp. 112-114, record) containing in part that:

Without waiving or prejudice to the above demand to vacate, we further demand that you pay your unpaid and outstanding rental due to our client in the amount of P630,000.00, for your use and occupation of the said property starting from June 14, 1989 up to the present, plus 20% attorney's fees thereof x x x (ibid)

In their final demand dated January 30, 1999 (Exh. "D", p. 15, record), the Limcacos were already demanding the amount of P913,800.00 to include rentals but exclusive of the attorney's fees.

Since Sario has not complied with the demand to pay, the Limcacos filed the instant suit.

In justifying his non-payment of the balance of the purchase price, Sario countered that on July 27, 1989 before the execution of the Conditional Deed of Sale, he had an approved loan with the Asian Savings Bank in the amount of P420,000.00 and which loan was to be secured by the subject property. He requested the Limcacos to produce the documents required by the bank for the release of the loan but this was not complied for the reason that TCT No. 93670 covering the property had encumbrances. Sario averred that another document denominated as Supplementary Agreement (Exh. "C", pp. 12-14, record) was entered into between them also in November, which was in the same month when the deed was executed. One of the stipulations in the said deed is that:

That LIMCACO shall make best effort to locate Aniceta Casidsid in order to secure her signature to the Deed of Conditional Sale and to compel her to secure the approval of the proper court for her right to sell the interest of her minor children in the property, subject of the sale; That LIMCACO shall hold in trust, the nets proceeds of the sale allocated to the heirs of her deceased brother, Fernando T. Limcaco until all the documents required for the transfer of his interest to his heirs have been completed. (ibid)

Sario asserted that the Limcacos were not able to perform this stated stipulation until the minor children Vanessa Limcaco and Fernaline Limcaco finally reached the age of majority, and TCT No. 93670 had been cancelled in lieu of which TCT No. 214272 was issued where they were already entered as one of the registered owners. Since the Limcacos did not comply with the condition that they deliver the title, Sario asserted that he was then not under any obligation to pay the balance. On January 19, 1994 when the Limcacos were able to clear the title of the property and TCT No. 214272 was issued, Sario was ready to pay the balance of P510,000.00, but this was refused acceptance by the Limcacos who instead demanded that he return the property to them.

Though finding that the accion publiciana filed by the Limcacos was inappropriate, the court a quo however went on to resolve the issues based on the gathered facts and evidence presented, and eventually found in favor of Sario and against the Limcacos.

Assailing this decision, the Limcacos brought this appeal assigning that these reversible errors were committed:

I. THE TRIAL COURT ERRED IN RULING THAT THERE WAS A PERFECTED CONTRACT OF SALE BETWEEN THE PARTIES.

II. THE TRIAL COURT ERRED IN RULING THAT PLAINTIFFS-APPELLANTS AS SELLERS DID NOT AVAIL OF THEIR RIGHT TO RESCIND THE CONTRACT.

III. THE TRIAL COURT ERRED IN RULING THAT DEFENDANT-APPELLEE IS NOT OBLIGATED TO PAY RENTALS.

IV. THE TRIAL COURT ERRED IN MAKING A NEW CONTRACT FOR THE PARTIES. (p. 26, rollo)

We rule against the appeal.

A distinction must be made between a contract of sale in which title passes to the buyer upon delivery of the thing sold and a contract to sell . . . where by agreement the ownership is reserved in the seller and is not to pass until the full payment of the purchase price is made. In the first case, non-payment of the price is a negative resolatory condition; in the second case, full payment is a positive suspensive condition. Being contraries, their effect in law cannot be identical. In the first case, the vendor has lost and cannot recover the ownership of the land sold until and unless the contract of sale is itself resolved and set aside. In the second case, however, the title remains in the vendor if the vendee does not comply with the condition precedent of making payment at the time specified in the contract (Bowe vs. Court of Appeals, G. R. No. 95771, March 19, 1993).

In the Deed of Conditional Sale it was notably stipulated that:

C. That the VENDEES agree not to register this Deed of Conditional Sale and the owner's copy of title shall remain in the custody of the VENDORS or their attorney-in-fact, until the provisions of their Conditional Sale have been fully complied.

x x x

E. In case of rescission for non-payment of the balance, the VENDORS shall, upon receiving the possession of the property from the VENDEES, return the downpayment made by the latter deducting therefrom the reasonable rental for the possession of the property which shall be *** P10,000.00 *** per month from June 14, 1989.

F. That upon receipt from the VENDEES of the full payments agreed upon, the VENDORS, shall execute a Deed of Absolute Sale of the property in favor of the VENDEES and deliver unto the VENDEES, the owner's copy of the Transfer Certificate of Title, together with all the documents necessary to effect a transfer and issuance of title in the name of the VENDEES.

x x x

H. That should the VENDEES fail to make the payment of balance due mentioned herein, or fail to comply with the other terms and obligations imposed upon them, and the VENDOR has exercised their right to rescind or cancel the sale, the VENDEES shall immediately return possession of the property back to the VENDORS. (Exh. "B", p. 10, record)

Also, in their Supplementary Agreement (common Exhibit, pp. 12-13, record) the parties acquiesced to the following:

D. That SARIO agrees to give the heirs of Fernando T. Limcaco, sufficient time to secure these documents and shall not withhold the full payment from the VENDORS for this reason; PROVIDED that VENDORS shall execute a Deed of Absolute Sale and deliver all other documents already in their possession, upon VENDEES completion of the full payments agreed upon.

But nowhere in all of these, is there a provision that the other and more basic rights of a buyer were withheld from Sario.

On the other hand Sario has held the property from the time the conditional deed of sale was executed. It is a provision of the law that the ownership of the thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof (Art. 1477, Civil Code). Sario thus became its owner. Though he did not pay then the balance, it was in the exercise of his right to withhold payment until the Limcacos shall have performed the conditionalities they agreed to do. And when they did, Sario was ready and willing to pay the balance. In fact he has since then deposited the P510,000.00 balance of the purchase price (vide: pp. 187-188, record) as required by the court a quo (Order of November 5, 2003, p. 183, record).

As for the Limcacos, nothing in the record indicates that they have sought the resolution or rescission of the sale. In fact in their Complaint their prayer was only for Sario to vacate the premises and surrender peaceful possession. It is now too late in the day for them to take such a move against Sario.

WHEREFORE, the appeal is DISMISSED and the appealed Decision is AFFIRMED.

SO ORDERED.

Guariña, III and Tagle, JJ., concur.

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