

**FLORENCIA CRONICO, SUBSTITUTED BY LUCILLE E. VENTURANZA,
PETITIONER-APPELLANT, VS. J. M. TUASON & CO., INC., AND
CLAUDIO R. RAMIREZ, RESPONDENTS-APPELLEE.**

G.R. No. L-35272. August 26, 1977

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

In Civil Case No. Q-6363 entitled "Florescia Cronico, substituted by Lucille E. Venturanza, plaintiff, versus J. M. Tuason & Co., Inc., represented by Gregorio Araneta, Inc., and Claudio Ramirez, defendants," the Court of First Instance of Rizal, Branch IV, Quezon City, rendered its decision dated January 25, 1969, the dispositive part of which reads:

"IN VIEW OF THE FOREGOING, judgment is hereby rendered in favor of the plaintiff and against the defend-ants, as follows:

- a) Declaring the Contract to Sell No. 10879 Exhibit 3-company, executed by defendant corporation in favor of its co-defendant Ramirez on April 2, 1962, as NULL and VOID;
- b) Ordering the defendant-corporations to execute a Contract to sell in favor of the substituted plaintiff Dr. Lucille E. Venturanza over Lot 22, Block 461 of the Sta. Mesa Heights Subdivision, under the same terms and conditions of their offer to the plaintiff as contained in the letter of Gregorion Araneta, Inc., representative of J. M. Tuason & Co., to Florescia Cronico of March 20, 1962 (Exh. H) or under the same terms given to defendant Ramirez;
- c) Declaring as cancelled any and all transfer certificates of title that might have been issued in favor of defendant Ramirez over said Lot No. 22;
- d) Ordering the defendants, jointly and severally, to pay the plaintiff (Dr. Lucille E. Venturanza) the sum of P160,000.00, as damages representing the rents derived from the property in question up to December 2, 1968, plus the sum of P2,000.00 every month thereafter until the lot in question is sold and delivered to plaintiff (Dr. Venturanza);
- e) Ordering defendants, jointly and severally, to pay plaintiff (Dr. Lucille E. Venturanza) the sum of P10,000.00, as attorney's fees;
- f) To pay the costs.

IT IS SO ORDERED.

Quezon City, Philippines, January 25, 1969.

s/t WALFRIDO DE LOS ANGELES

J u d g e"

(Rollo, p. 69, Joint Record on Appeal, pp. 49-50)

The defendants. J. M. Tuason & Co., Inc. and Claudio R. Ramirez appealed to the Court of Appeals which promulgated its decision on April 21, 1972 reversing the judgment appealed from and dis-missing the complaint with costs against the plaintiff-appellee. (Rollo, p. 31, Decision in CA-G. R. No. 44479-R, p. 19)

The plaintiff, Florencia Cronico, substituted by Lucille E. Venturanza, filed with this Court a petition for certiorari to review the decision of the Court of Appeals* assigning the following errors:

"I

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT FLORENCIA CRONICO OBTAINED THE DEFENDANT COMPANY'S LETTER-OFFER TO HER DATED MARCH 20, 1962 BY MEANS OF IR-REGULAR AND PREMATURE DELIVERY.

II

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE RECORDS DO NOT SHOW THAT DEFENDANT COMPANY'S LETTER-OFFER OR UNILATERAL PROMISE TO SELL WAS SUPPORTED BY A CONSIDERATION OTHER THAN THE SELLING PRICE.

III

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT PLAINTIFF CRONICO IS NOT PRINCIPALLY NOR SUBSIDIARILY OBLIGED UNDER THE CONTRACT TO SELL (EXH. 3-Company) AND HENCE MAY NOT BRING SUIT TO ANNUL THE SAME.

IV

THE HONORABLE COURT OF APPEALS ERRED IN REVERSING THE TRIAL COURT AND DISMISSING THE COMPLAINT."

(Rollo, p. 74, Petitioner's Brief, pp. 1-2)

The facts, as found by the Court of Appeals, are:

"Appellant J. M. Tuason & Co. Inc. hereinafter referred to as appellant company was the registered owner of Lot No. 22, Block 461, Sta. Mesa Heights Subdivision, located at the Northwestern corner of Quezon Boulevard and Gregorio Araneta, Quezon City and embraced by Transfer Certificate of Title No. 49235 of the Registry of Deeds of said city. In March, 1962, plaintiff Florencia Cronico offered to buy the lot from the appellant company with the help of Mary E. Venturanza. They personally talked to Benjamin F. Bautista, Manager of the Real Estate Department of Gregorio Araneta, Inc. the appellant company's attorney-in-fact, proposing to buy Lot No. 22. She was required to present proofs to show her rights to the lot. On March 8, 1962, Florencia Cronico exhibited certain documents showing her priority rights to buy the lot.

In the first week of March, 1962, defendant-appellant Claudio Ramirez also learned that the lot in question was being sold by the appellant company. The occupants thereof who also had priority rights to buy the land informed Claudio Ramirez about the intended sale. Juanita Semilla and Pedro Fernandez, who were the occupants of the said Lot No. 22 expressed their willingness to waive their rights although Pedro Fernandez reserved a condition that a small portion of the land whereon his house stands be sold to him. In the same month, March, 1962, plaintiff Cronico and defendant-appellant Ramirez sent separate individual letters to appellant company wherein they expressed their desire to purchase the land and requested information concerning the area, the price and other terms and conditions of the contract to sell. Two others intimated their

desire to buying the lot. They were Bonifacio Chung and Angeles Henson. Both, however, subsequently lost their interest in said lot. On March 20, 1962, the appellant company sent separate reply letters to prospective buyers including plaintiff Cronico and defendant-appellant Ramirez. They were dropped in the Manila Post Office at 11:00 in the morning of March 21, 1962 by registered mail. It so happened that plaintiff Cronico went to the appellant company's office on March 21, 1962, and she was informed that the reply letter of the appellant company to prospective buyers of the same lot had been mailed. With this information, plaintiff Cronico and Mary E. Venturanza went to the post office in Manila and she was able to get the letter at about 3:30 in the afternoon of the same date. After she got the letter, plaintiff Cronico and Mary E. Venturanza went directly to the office of Gregorio Araneta Inc., Escolta, Manila, and presented the letter to Benjamin Bautista, Head of the Real Estate Department of said company. Since she had no money, plaintiff Cronico requested Mary E. Venturanza to issue a check in the amount of P33,572.00 to cover the down payment for the lot. However, Benjamin Bautista did not accept the check. He advised plaintiff Cronico that it is Gregorio Araneta II who would decide whose offer to buy may be accepted after the appellant company receives the registry return cards attached to the registered letters sent to the offerors.

On March 22, 1962, between 10:00 and 11:00 a.m., appellant Ramirez received from the post office at San Francisco del Monte, Quezon City, the reply letter of the appellant company dated March 20, 1962, wherein it stated that Lot 22, Block 461, Sta. Mesa Heights Subdivision, was available for sale under the conditions therein set forth and that the said lot was being offered for sale on a first come first serve basis. Appellant Ramirez proceeded to the office of Benjamin Bautista in the same morning stating that he accepted the conditions stated in the appellant company's letter. Benjamin Bautista advised appellant Ramirez to wait for the decision of Gregorio Araneta II. The next day, March 23, 1962, appellant Ramirez presented his letter to the appellant company confirming his verbal acceptance of the terms and conditions in connection with the sale. On March 31, 1962, Atty. Jose E. Patangpo in behalf of appellant Ramirez wrote the appellant company requesting the early execution of the proper contract to sell over Lot No. 22. A check in the amount of P33,572 was enclosed in the letter to cover the down payment for said lot. The request was favorably considered.

On April 2, 1962, the J. M. Tuason & Co. Inc., and Claudio R. Ramirez executed contract to sell whereby the appellant company agreed to sell to appellant Ramirez the lot in question for a total price of P167,869.00 subject to the terms and conditions therein set forth.

Meanwhile, on March 27, 1962, the appellant company received a letter from Atty. Godofredo Asuncion in behalf of Florencia Cronico requesting that the lot subject of litigation be sold to her. She tendered a check to cover the down payment which was, however, returned. On April 4, 1962, the appellant company sent a letter to the plaintiff-appellee informing her that it had decided to sell the lot in question to appellant Ramirez. This triggered the instant suit.

On April 28, 1962, plaintiff Florencia Cronico lodged in the Court of First instance of Rizal (Quezon City Branch) a complaint against the defendants-appellants J. M. Tuason & Co., Inc. and Claudio Ramirez. The main purpose of the said suit is to annul and set aside the contract to sell executed by and between appellant company and appellant Ramirez. On May 30, 1962, Gregorio Araneta, representing J. M. Tuason & Co. Inc., filed its answer to the complaint with cross claim against its co-defendant Claudio Ramirez and Luisa Patangco. On the part of defendant Claudio Ramirez, he filed a motion to dismiss on the ground that the complaint states no cause of action against him. He contends that the action for the annulment of contract may only be instituted by those who are parties thereto or those who are thereby obliged principally or subsidiarily. According to Claudio Ramirez such action to annul a deed of sale can not prosper against third persons as they are not principally or subsidiarily obligated thereby. The motion to dismiss was denied. So Claudio Ramirez filed his answer reiterating in his affirmative defenses that since the plaintiff-appellee is not a party to the contract to sell executed by him and the defendant company, plaintiff Florencia Cronico has no right whatsoever to demand the annulment of said contract.

On November 19, 1968, plaintiff, together with Dr. Lucille E. Venturanza filed a motion for substitution for

party plaintiff whereby plaintiff Florencia Cronico expressed her willingness to be substituted by Dr. Lucille E. Venturanza as the former had transferred to the latter whatever rights and interests which she may have over Lot 22, Block 261, Sta. Mesa Heights Subdivision by virtue of a deed of assignment she executed on July 5, 1968. The court granted the substitution of the party plaintiff by Dr. Lucille E. Venturanza."

(Rollo, p. 31, Decision of Court of Appeals, pp. 1-7)

Anent the first error assigned, the petitioner contends that "No less than the chief of the general service section of the Manila post office, Gaspar Bautista, speaking on the regularity of plaintiff Cronico's receipt of the letter, testified before the trial court that the means by which plaintiff Cronico received her letter is very regular." (Rollo, p. 74, Petitioner's Brief, p. 18). And that "Anyway, the manner by which the offerees were to receive their letters was not announced by the offeror to the contestant such that they could not be bound thereby. Hence, the rule of the fittest and without lawlessness should govern, and that was Cronico who proved her diligence and resourcefulness over Claudio Ramirez." (Rollo, p. 74, Petitioner's Brief, p. 21)

The petitioner also averred that the capability of the plaintiff, Florencia Cronico, to chase the land in question was not raised as an issue in the answer of the defendant company and was developed as an afterthought during the trial.

It is a fact that the petitioner, Florencia Cronico, upon being tipped by Benjamin Bautista, head of the Real Estate Department of Gregorio Araneta Inc., that the reply letters of the appellant company were already placed in the mails on March 21, 1962 at 11:00 o'clock in the morning, immediately went to the Manila post office and claimed the registered letter addressed to her without waiting for the ordinary course for registered mails to be delivered. The petitioner took delivery of the registered letter addressed to her at the entry section of the Manila post office. While this procedure may be tolerated by the postal authorities, the act of the petitioner in taking delivery of her letter at the entry section of the Manila post office without waiting for said letter to be delivered to her in due course of mail is a violation of the "first come first served" condition imposed by the respondent J. M. Tuason & Co. Inc., acting through Gregorio Araneta Inc..

The respondent, Claudio R. Ramirez, received on March 22, 1962 in the morning the reply letter of the respondent company dated March 20, 1962 stating that Lot 22, Block 461, Sta. Mesa Heights Subdivision was available for sale under the conditions set forth on the basis of "first come first served". The respondent, Claudio R. Ramirez, proceeded to the office of Benjamin Bautista on the same date and manifested that he was accepting the conditions stated in the respondent company's letter. On March 23, 1962, respondent Ramirez presented his letter to the respondent company confirming his verbal acceptance of the terms and conditions in connection with the sale.

It was only on March 27, 1962 that the respondent company received a letter from Atty. Godofredo Asuncion in behalf of petitioner, Florencia Cronico, requesting that the lot subject of litigation be sold to her. The enclosed check to cover the down payment was returned to petitioner Cronico and on April 4, 1962, the respondent company wrote said petitioner that it had decided to sell the lot in question to the respondent Ramirez.

In view of the foregoing circumstances, we con-cur in the finding of the Court of Appeals that "Viewing the case from the standpoint of regularity of notice, plaintiff-appellee falls short of the yardstick." (Rollo, p. 42, Decision of the Court of Appeals, p. 12)

The Court of Appeals entertained serious doubts as to the financial capability of petitioner Florencia Cronico to purchase the property because she was receiving only the amount of P150.00 a month as her salary from her employment and there was no showing that she had sources of income other than her job. In fact, when petitioner Cronico tried to pay the down payment for the purchase of the land, it was Mary E. Venturanza who drew the

check in the amount of P33,572.00 which was rejected by the respondent company. It is also to be noted that in the trial court, Florencia Cronico was substituted by her assignee Lucille E. Venturanza, daughter of Mary E. Venturanza. It is apparent that petitioner, Florencia Cronico, did not have the capability to pay and that she acted only as a mere front of the Venturanzas. As correctly pointed out by the Court of Appeals, realtors are given the right to choose their buyers so as to avoid delinquent payments of monthly installments which may result in costly court litigations.

The contention of petitioner, Florencia Cronico, that the promise to sell is supported by a consideration as to her because she had established her link as successor of Gregorio Venturanza who bought the lot from Juan Ramos who in turn acquired said lot from Pedro Deudor. The petitioner then argues that since Clause Seventh of the Compromise Agreement between the respondent company and the Deudors et al. obligated the respondent company to sell to the buyers of the Deudors listed in Annex B thereof, Exhibit R-1, and Juan Ramos was the purchaser of the lot from Pedro Deudor with such right to buy from the defendant company under a new contract with the latter, the said petitioner had established the onerous cause or consideration apart from the selling price of the lot. Granting, arguendo, that Clause Seventh of the Compromise Agreement constitutes a valid consideration of the promise to sell apart from the selling price, it appears that the Compromise Agreement upon which the petitioner Cronico predicates her right to buy the lot in question has been rescinded and set aside. (Deudor vs. J. M. Tuason & Co., Inc., 2 SCRA 129 and J. M. Tuason & Co., Inc. vs. Sanvictores 4 SCRA 123, 126) Hence, the promise of the respondent company to sell the lot in question to the petitioner, Florencia Cronico, has no consideration separate from the selling price of said lot.

In order that a unilateral promise may be binding upon the promisor, Article 1479, Civil Code of the Philippines, requires the concurrence of the condition that the promise be "supported by a consideration distinct froth the price." Accordingly, the Promisee can not compel the promisor to comply with the promise, unless the former establishes the existence of said distinct consideration. The promisee has the burden of proving such consideration. (Sanchez vs. Rigos, 45 SCRA 368, 372-373) The petitioner, Florencia Cronico, has not established the existence of a consideration distinct from the price of the lot in question.

The petitioner cannot claim that she had accepted the promise before it was withdrawn because, as stated above, she had violated the condition of "first come, first served". Moreover, it was only on March 27, 1962 that the respondent company received a letter from counsel of the petitioner requesting that the lot subject of this litigation be sold to her. The respondent, Claudio R. Ramirez, had on March 23, 1962, confirmed in writing his verbal acceptance of the terms and conditions of the sale of the lot in question.

The petitioner maintains that the contract to sell (Exhibit 3) executed by the respondent company in favor of the respondent, Claudio R. Ramirez, contains a stipulation for her benefit, which reads:

"b) that the buyer Claudio Ramirez has been fully informed by the company of all the circumstances relative to the offer of Florencia Cronico to buy said lot and that he agrees and binds himself to hold the company absolutely free and harmless from all claims and damages of said Forencia Cronico in connection with this sale of the lot to him."

(Rollo, p. 74, Petitioner's Brief, pp. 31-32)

The foregoing clause cannot by any stretch of the imagination be considered as a clause "pour autrui" or for the benefit of the petitioner. The stipulation does not confer any right arising from the contract that may be enforced by the petitioner against any of the parties thereto. Neither does it impose any obligation arising from the contract that may be enforced by any of the parties thereto against the petitioner. The petitioner is not "obliged principally or subsidiarily" by the contract to sell executed between the respondent company and the respondent Claudio R.

Ramirez. The said stipulation is for the benefit of the respondent company.

The contention of the petitioner that she has become the obligee or creditor of the respondent company because she was the first to comply with the terms of the letter-offer has no merit. Her so called acceptance has no effect because she violated the condition of "first come, first served" by taking delivery of the reply letter of the respondent company in the entry section of the Manila post office and of the fact that her formal letter of acceptance was only received by the respondent company on March 27, 1962.

In view of all the foregoing, we find that the Court of Appeals has not committed any of the errors assigned in the brief of the petitioner.

WHEREFORE, the decision of the Court of Appeals in CA-G. R. No. 44479-R is hereby affirmed, without pronouncement as to costs.

SO ORDERED.

Makasiar, Martin, and Guerrero, JJ., concur.

Teehankee, (Chairman), J., in the result.

Muñoz Palma, J., took no part.

* Special First Division composed of Presiding Justice Salvador Esguerra, Chairman, and Justice Edilberto Soriano and Mme. Justice Cecilia Muñoz Palma, members.

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