

ANGEL T. LIMJOCO, PETITIONER, VS. THE COURT OF APPEALS AND ROBERT TAN, RESPONDENTS.*G.R. No. L-20656. February 27, 1971*

Ponente: FERNANDO, J.

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In this petition for the review of respondent Court of Appeal's decision sustaining the right of the other respondent, Robert Tan, plaintiff in the lower court, to recover the sum of P5,000.00 as earnest money for a projected sale of real estate that was not consummated as well as the liquidated damages agreed upon, the principal legal question raised and relied upon for the reversal sought is the alleged disregard of the last paragraph of Article 1169 of the Civil Code to the effect that in reciprocal obligations, "neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins." [1] It was thus incumbent on petitioner Angel T. Limjoco, defendant in the lower court and thereafter appellant before respondent Court, to demonstrate that the conduct of respondent Tan could be considered as falling within the above codal provision. That he was unable to do. The facts as found by the lower court, and thereafter affirmed by respondent Court, negated his contention. The conclusion reached by respondent Court was thus adverse to petitioner. After a careful study of the records and in the light of the facts as found, impressed as they are with the attribute of finality, there is no justification for a reversal. We affirm.

The basic contract that gave rise to this dispute executed on April 30, 1957, starts with the recital that petitioner Angel T. Limjoco acknowledged the receipt of P5,000.00 from Robert Tan, respondent in this case, as earnest money "for the land with a total area of 3,148 square meters located in the compound at No. 56 (old number) R. Pascual Street, San Juan, Rizal, together with all the improvements thereon which as absolute owner thereof," [2] the aforesaid Limjoco promised and did undertake to sell to Tan for the sum of P85,000.00, it being further stipulated "1. That within sixty days from this date [he undertakes] to execute the necessary deed of sale in favor of Mr. Robert Tan for the above described property as evidenced by Transfer Certificates of Title Nos. 25184, 7869 and 20713 of the Registry of Deeds of Rizal with all the improvements thereon for the sum of [Eighty five thousand] (P85,000.00) [pesos], the terms of payment of which will be that the buyer Mr. Robert Tan will assume the mortgage lien of about [Thirty two thousand] (P32,000.00) [pesos] in said property in favor of the Rehabilitation Finance Corporation for a ten-year period [with Limjoco undertaking] to arrange with said corporation, and the said buyer upon [the] execution of the deed of sale will pay [him] one half of the remaining balance after deducting the amount of mortgage to be assumed by the buyer and the sum of [Five thousand] (P5,000.00) [pesos] earnest money here received by [him] within one hundred twenty days thereafter the other half of the aforesaid remaining balance; 2. That should [he] fail to perform the undertaking herein stipulated, [he] hereby [binds himself] to return to Mr. Robert Tan the said sum of [Five thousand] (P5,000.00) [pesos] within fifteen days after the lapse of the sixty-day period herein stipulated, otherwise [he] shall be liable to him for the additional sum of [Five thousand] (P5,000.00) [pesos] as damages; and 3. That should [he] comply with all the stipulations herein stated within the sixty-day period and Mr. Robert Tan fails to purchase the property herein

described under the conditions herein agreed, within fifteen days upon written notice to him, then his earnest money of [Five thousand] (P5,000.00) [pesos] shall be declared forfeited by [Tan] in [his] favor." [3]

As noted at the outset, there was a failure to consummate such proposed sale. The lower court found, and it was upheld by respondent Court, that for such frustration of the intent of the parties, petitioner Limjoco was to blame. Thus: "As may be seen, defendant in explicit terms undertook to execute the necessary deed of sale or conveyance of the property, object of the contract, within 60 days from and after the execution of the contract, Exhibit A. This contract, as already stated, was executed on April 30, 1957, so that defendant had until June 29, 1957, within which to comply with its terms. By the terms of the contract also, defendant undertook to arrange with the RFC the assumption by the plaintiff of the mortgage lien of about P32,000.00 covering said property in favor of the said corporation for a period of 10 years. There is no dispute that defendant failed to comply with these conditions. Defendant contended, however, that he was not able to arrange the approval of the assumption of the mortgage with the RFC because of the refusal of the plaintiff to have his credit rating investigated. This is not borne out by the facts, however, because the plaintiff had expressed his willingness to have his credit rating investigated although he thought it was unnecessary. The truth of the matter is that it was only on July 9, 1957, when an attempt was made by a representative of the RFC to investigate him but at that time the period set forth in the contract, Exhibit A, had already expired." [4] Further to the same effect: "As to the reason of the delay of the attempt to investigate the plaintiff that has not been satisfactorily explained by defendant. Defendant further contended that he had submitted a draft of the deed of sale to the plaintiff before the expiration of the date but according to him the plaintiff refused to accept the draft. The refusal, however, [of] the plaintiff to accept the draft was based on the fact that there was no need of the said draft because the terms and conditions of the deed of sale were explicitly set forth in their agreement, Exhibit A. This he made explicit in his letter to the defendant, Exhibit J, wherein he stated that he had reminded defendant's lawyer to execute the necessary deed of sale on or before June 29, 1957. Defendant, however, failed to execute the deed. The reason for this failure was, in the opinion of the Court, the fact that the defendant could not secure the signatures of all his children because one of them was in Davao at the time and 'was expected to be here about the end of next month' (Exhibit G)." [5] As it turned out, petitioner Limjoco, whose status according to the contract was that of a widower, was not the sole owner. His children apparently were co-owners.

Moreover, the lower court did reach the conclusion that petitioner was not successful in trying to prove through certain exhibits that respondent Tan was not without fault because of the alleged loss of interest. Thus: "As may be noted, these documents bear dates after the period of 60 days had already elapsed. Assuming that plaintiff had lost interest in the deal, such loss of interest cannot be interpreted as proof of plaintiff's default in view of the fact that the loss of interest had taken place after the 60 days period. It should not be lost sight of the fact that defendant had been reminded thru his counsel to prepare the deed of sale on or before June 29, 1957, as shown by the letter, Exhibit G. It will be noted that the fact of reminder about the deed has not been denied or refuted by defendant." [6]

There was a reiteration later in the opinion of the lower court, a view with which respondent Court was in agreement, that petitioner should be held at fault for the sale not going through. Thus: "As has already been shown elsewhere in this decision, the failure of defendant to comply with the terms of Exhibit A was due in the first place to the fact that one of his children was not in a position to sign the deed as she was then in Davao, and was not expected to return until the end of July, and, second, because of the fact that a representative of the RFC only took steps to investigate the credit rating of the plaintiff after the expiration of the period. If the defendant had exercised due diligence, these two circumstances could have been avoided. Moreover, when he found it impossible to comply with the terms of the contract, he should have returned the earnest money and put an end to the contract. He failed to do all these however. Instead he asked for extension of 30 days within which to comply

with the terms of the contract or a period of 90 days within which to return the money." [7]

On appeal, respondent Court, after quoting in full the above decision, explained why it was entitled to affirmance. Thus: "We have carefully read and scrutinized the testimonial and documentary evidence presented by both parties at the pre-trial and at the formal trial of this case, and we are greatly satisfied that the findings of fact and conclusions of the learned trial Judge are fully supported by the evidence and the law. Why the plaintiff-appellee was not declared to be the party who failed to comply with his duties and obligations under his contract with defendant-appellant (Exhibit A), but it was the latter who was found remiss in connection therewith, is explained at length in the above-quoted decision. As regards this point, we have nothing to add thereto." [8]

On the above facts, which as pointed out we are not at liberty to ignore, there is, to repeat, no legal basis for the reversal of the decision of respondent Court of Appeals.

The first three alleged errors imputed to respondent Court would seek to impress on us that respondent Tan failed to comply in a proper manner with what was incumbent upon him and that therefore under Article 1169 of the Civil Code, petitioner Limjoco could not be considered as having incurred any delay in the fulfillment of his obligation. [9] It is undeniable that if a case were properly made out calling for the application of Article 1169, then such a contention should be accorded acceptance. The facts as conclusively found not only by respondent Court but also by the lower court negate such a claim. There is no denying that if the sale within the two-month period stipulated did not take place, it was due solely to petitioner. As was so aptly expressed in the opinion of the lower court to which there was full concurrence on the part of respondent Court, "the failure of the defendant to execute the deed of sale within the time limit was due to his inability to secure the signature of all his children, and his failure to secure the approval of the RFC to the assumption of the mortgage covering said property, which in the agreement, Exhibit A, he undertook to arrange." [10] There is no basis then for the allegation that respondent Court was unmindful of the reciprocal obligation assumed by respondent Tan and that he should be held accountable for the failure to comply with what was incumbent upon him which in turn prevented petitioner from fulfilling his part of the contract. The first two assigned errors are thus obviously without foundation. It would likewise follow that, as had been set forth above, the last paragraph of Article 1169 of the Civil Code cannot be relied upon by petitioner for relieving him from the obligation to execute the deed within the period stipulated as his inability to do so was not the result of any fault that could be imputed to respondent Tan. The third assignment of error is thus equally lacking in merit as is the fourth alleged error committed by respondent Court to the effect that the suit by respondent Tan was premature as he then lacked a cause of action. There being a failure on the part of petitioner to execute the deed of sale, he was required under the contract to return the earnest money and to pay the liquidated damages.

This liability for liquidated damages is assailed in the fifth assignment of error as immoral, petitioner relying on another provision of the Civil Code [11] which would allow an equitable reduction in liquidated damages when found iniquitous or unconscionable. This Court does not find persuasive the plea that for the failure on the part of a party to comply with what is incumbent upon him, he is not only required to return the earnest money but likewise to pay liquidated damages in the same amount. Petitioner was under no compulsion to enter into such stipulation. Nor, in the absence of other considerations which petitioner's brief failed to mention at all, could it be held as a matter of law that the sum agreed upon as liquidated damages could be assailed for the ground of its being iniquitous or unconscionable. Petitioner Limjoco and respondent Tan are both property owners and men of affairs who are presumed to know how to protect their interests in dealing with other parties. After entering into such an agreement, petitioner cannot thereafter turn his back on his word with a plea that on him was inflicted a penalty shocking to the conscience and impressed with iniquity as to call for the relief sought on the part of a judicial tribunal.

WHEREFORE, the decision of respondent Court of October 31, 1962 is hereby affirmed. With costs against petitioner.

Dizon, Makalintal, Zaldivar, Ruiz Castro, Teehankee, and Barredo, JJ., concur.

Concepcion, C.J., and Reyes, J.B.L., J., in the result.

Villamor and Makasiar, JJ., did not take part.

[1] Article 1169 reads in full: "Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation. However, the demand by the creditor shall not be necessary in order that delay may exist: (1) When the obligation or the law expressly so declares; or (2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or (3) When demand would be useless, as when the obligor has rendered it beyond his power to perform. In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins."

[2] Appendix to the Brief for the Petitioner - Appellant, p. 37.

[3] Ibid, pp. 37-39.

[4] Ibid, pp. 48-49.

[5] Ibid, pp. 49-50.

[6] Ibid, pp. 51-52.

[7] Ibid, p. 52.

[8] Ibid, p. 55.

[9] Cf. Article 1169 and the following decisions: *Rodriguez v. Belgica*, L-10801, Feb. 28, 1961, 1 SCRA 611; *Ramcar, Inc. v. Garcia*, L-16997, April 25, 1962, 4 SCRA 1087; *Camus v. Price, Inc.* L-17858-59, July 13, 1962, 5 SCRA 581.

[10] Appendix to the Brief for the Petitioner-Appellant, pp. 52-53.

[11] Article 2227 provides: "Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable."

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