

BUENAVENTURA ANGELES, ET AL., PLAINTIFFS-APPELLEES, VS. URSULA TORRES CALASANZ, ET AL., DEFENDANTS-APPELLANTS.

G.R. No. L-42283. March 18, 1985

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Court of First Instance of Rizal, Seventh Judicial District, Branch X, declaring the contract to sell as not having been validly cancelled and ordering the defendants-appellants to execute a final deed of sale in favor of the plaintiffs-appellees, to pay P500.00 attorney's fees and costs.

The facts being undisputed, the Court of Appeals certified the case to us since only pure questions of law have been raised for appellate review.

On December 19, 1957, defendants-appellants Ursula Torres Calasan and Tomas Calasan and plaintiffs-appellees Buenaventura Angeles and Teofila Juani entered into a contract to sell a piece of land located in Cainta, Rizal for the amount of P3,920.00 plus 7% interest per annum.

The plaintiffs-appellees made a downpayment of P392.00 upon the execution of the contract. They promised to pay the balance in monthly installments of P41.20 until fully paid, the installments being due and payable on the 19th day of each month. The plaintiffs-appellees paid the monthly installments until July 1966, when their aggregate payment already amounted to P4,533.38. On numerous occasions, the defendants-appellants accepted and received delayed installment payments from the plaintiffs-appellees.

On December 7, 1966, the defendants-appellants wrote the plaintiffs-appellees a letter requesting the remittance of past due accounts.

On January 28, 1967, the defendants-appellants cancelled the said contract because the plaintiffs-appellees failed to meet subsequent payments. The plaintiffs' letter with their plea for reconsideration of the said cancellation was denied by the defendants-appellants.

The plaintiffs-appellees filed Civil Case No. 8943 with the Court of First Instance of Rizal, Seventh Judicial District, Branch X to compel the defendants-appellants to execute in their favor the final deed of sale alleging inter alia that after computing all subsequent payments for the land in question, they found out that they have already paid the total amount of P4,533.38 including interests, realty taxes and incidental expenses for the registration and transfer of the land.

The defendants-appellants alleged in their answer that the complaint states no cause of action and that the plaintiffs-appellees violated paragraph six (6) of the contract to sell when they failed and refused to pay and/or offer to pay the monthly installments corresponding to the month of August, 1966 for more than five (5) months, thereby constraining the defendants-appellants to cancel the said contract.

The lower court rendered judgment in favor of the plaintiffs-appellees. The dispositive portion of the decision

reads:

"WHEREFORE, based on the foregoing considerations, the Court hereby renders judgment in favor of the plaintiffs and against the defendants declaring that the contract subject matter of the instant case was NOT VALIDLY cancelled by the defendants. Consequently, the defendants are ordered to execute a final Deed of Sale in favor of the plaintiffs and to pay the sum of P500.00 by way of attorney's fees. Costs against the defendants."

A motion for reconsideration filed by the defendants-appellants was denied.

As earlier stated, the then Court of Appeals certified the case to us considering that the appeal involves pure questions of law.

The defendants-appellants assigned the following alleged errors of the lower court:

First Assignment of Error

THE LOWER COURT ERRED IN NOT HOLDING THE CONTRACT TO SELL (ANNEX "A" OF COMPLIANCE) AS HAVING BEEN LEGALLY AND VALIDLY CANCELLED.

Second Assignment of Error

EVEN ASSUMING ARGUENDO THAT THE SAID CONTRACT TO SELL HAS NOT BEEN LEGALLY AND VALIDLY CANCELLED, THE LOWER COURT ERRED IN ORDERING DEFENDANTS TO EXECUTE A FINAL DEED OF SALE IN FAVOR OF THE PLAINTIFF.

Third Assignment of Error

THE LOWER COURT ERRED IN ORDERING DEFENDANTS TO PAY PLAINTIFFS THE SUM OF P500.00 AS ATTORNEY'S FEES.

The main issue to be resolved is whether or not the contract to sell has been automatically and validly cancelled by the defendants-appellants.

The defendants-appellants submit that the contract was validly cancelled pursuant to paragraph six of the contract which provides:

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"SIXTH. - In case the party of the SECOND PART fails to satisfy any monthly installments, or any other payments herein agreed upon, he is granted a month of grace within which to make the retarded payment, together with the one corresponding to the said month of grace; it is understood, however, that should the month of grace herein granted to the party of the SECOND PART expired; without the payments corresponding to both months having been satisfied, an interest of 10% per annum will be charged on the amounts he should have paid; it is understood further, that should a period of 90 days elapse, to begin from the expiration of the month of grace herein mentioned, and the party of SECOND PART has not paid all the amounts he should have paid with the corresponding interest up to that date, the party of the FIRST PART has the right to declare this contract cancelled and of no effect, and as consequence thereof, the party of the FIRST PART may dispose of the parcel of land covered by this contract in favor of other persons, as if this contract had never been entered into. In case of such cancellation of the contract, all the amounts paid in accordance with this agreement together with all the improvements made on the premises, shall be considered as rents paid for the use and occupation of the above mentioned premises, and as payment for the damages suffered by failure of the party of the SECOND PART to fulfill his part of the agreement; and the party of the SECOND PART hereby renounces all his right to demand or reclaim the return of the same and obliges himself to peacefully vacate the premises and deliver the same to the party of the FIRST PART." (Underscoring supplied

by appellant)

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The defendants-appellants argue that the plaintiffs-appellees failed to pay the August, 1966 installment despite demands for more than four (4) months. The defendants-appellants point to *Jocson v. Capitol Subdivision* (G.R. No. L-6573, February 28, 1955) where this Court upheld the right of the subdivision owner to automatically cancel a contract to sell on the strength of a provision or stipulation similar to paragraph 6 of the contract in this case. The defendants-appellants also argue that even in the absence of the aforequoted provision, they had the right to cancel the contract to sell under Article 1191 of the Civil Code of the Philippines.

The plaintiffs-appellees on the other hand contend that the *Jocson* ruling does not apply. They state that paragraph 6 of the contract to sell is contrary to law insofar as it provides that in case of specified breaches of its terms, the sellers have the right to declare the contract cancelled and of no effect, because it granted the sellers an absolute and automatic right of rescission.

Article 1191 of the Civil Code on the rescission of reciprocal obligations provides:

"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."

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Article 1191 is explicit. In reciprocal obligations, either party has the right to rescind the contract upon the failure of the other to perform the obligation assumed thereunder. Moreover, there is nothing in the law that prohibits the parties from entering into an agreement that violation of the terms of the contract would cause its cancellation even without court intervention (*Froilan v. Pan Oriental Shipping, Co., et al.*, 12 SCRA 276) -

"Well settled is, however, the rule that a judicial action for the rescission of a contract is not necessary where the contract provides that it may be revoked and cancelled for violation of any of its terms and conditions' (*Lopez v. Commissioner of Customs*, 37 SCRA 327, 334, and cases cited therein)

"Resort to judicial action for rescission is obviously not contemplated . . . The validity of the stipulation can not be seriously disputed. It is in the nature of a facultative resolutory condition which in many cases has been upheld by this Court. (*Ponce Enrile v. Court of Appeals*, 29 SCRA 504)."

The rule that it is not always necessary for the injured party to resort to court for rescission of the contract when the contract itself provides that it may be rescinded for violation of its terms and conditions, was qualified by this Court in *University of the Philippines v. De los Angeles*, (35 SCRA 102) where we explained that:

"Of course, it must be understood that the act of a party in treating a contract as cancelled or resolved on account of infractions by the other contracting party must be made known to the other and is always provisional, being ever subject to scrutiny and review by the proper court. If the other party denies that rescission is justified, it is free to resort to judicial action in its own behalf, and bring the matter to court. Then, should the court, after due hearing, decide that the resolution of the contract was not warranted, the responsible party will be sentenced to damages; in the contrary case, the resolution will be affirmed, and the consequent indemnity awarded to the party prejudiced.

"In other words, the party who deems the contract violated may consider it resolved or rescinded, and act accordingly, without previous court action, but it proceeds at its own risk. For it is only the final judgment of

the corresponding court that will conclusively and finally settle whether the action taken was or was not correct in law. xxx.

"We see no conflict between this ruling and the previous jurisprudence of this Court invoked by respondent declaring that judicial action is necessary for the resolution of a reciprocal obligation, (*Ocejo, Perez & Co. v. International Banking Corp.*, 37 Phil. 631; *Republic v. Hospital de San Juan de Dios, et al.*, 84 Phil. 820) since in every case where the extrajudicial resolution is contested only the final award of the court of competent jurisdiction can conclusively settle whether the resolution was proper or not. It is in this sense that judicial action will be necessary, as without it, the extrajudicial resolution will remain contestable and subject to judicial in validation, unless attack thereon should become barred by acquiescence, estoppel or prescription."

The right to rescind the contract for non-performance of one of its stipulations, therefore, is not absolute. In *Universal Food Corp. v. Court of Appeals* (33 SCRA 1) the Court stated that -

"The general rule is that rescission of a contract will not be permitted for a slight or casual breach, but only for such substantial and fundamental breach as would defeat the very object of the parties in making the agreement. (*Song Fo & Co. v. Hawaiian-Philippine Co.*, 47 Phil. 821, 827) The question of whether a breach of a contract is substantial depends upon the attendant circumstances. (*Corpus v. Hon. Alikpala, et al.*, L-23707 & L-23720, Jan. 17, 1968)." x x x.

The defendants-appellants state that the plaintiffs-appellees violated Section two of the contract to sell which provides:

"SECOND. - That in consideration of the agreement of sale of the above described property, the party of the SECOND PART obligates himself to pay to the party of the FIRST PART the Sum of THREE THOUSAND NINE HUNDRED TWENTY ONLY (P3,920.00), Philippine Currency, plus interest at the rate of 7% per annum, as follows:

"(a) The amount of THREE HUNDRED NINETY TWO only (P392.00) when this contract is signed; and

"(b) The sum of FORTY ONE AND 20/100 ONLY (P41.20) on or before the 19th day of each month, from this date until the total payment of the price above stipulated, including interest."

because they failed to pay the August installment, despite demand, for more than four (4) months.

The breach of the contract adverted to by the defendants-appellants is so slight and casual when we consider that apart from the initial down payment of P392.00 the plaintiffs-appellees had already paid the monthly installments for a period of almost nine (9) years. In other words, in only a short time, the entire obligation would have been paid. Furthermore, although the principal obligation was only P3,920.00 excluding the 7 percent interests, the plaintiffs-appellees had already paid an aggregate amount of P4,533.38. To sanction the rescission made by the defendants-appellants will work injustice to the plaintiffs-appellees. (*See J. M. Tuazon and Co., Inc. v. Javier*, 31 SCRA 829) It would unjustly enrich the defendants-appellants.

Article 1234 of the Civil Code which provides that:

"If the obligation has been substantially performed in good faith, the obligor may recover as though there had been a strict and complete fulfillment, less damages suffered by the obligee."

also militates against the unilateral act of the defendants-appellants in canceling the contract.

We agree with the observation of the lower court to the effect that:

"Although the primary object of selling subdivided lots is business, yet, it cannot be denied that this subdivision is likewise purposely done to afford those landless, low income group people of realizing their dream of a little parcel of land which they can really call their own."

The defendants-appellants cannot rely on paragraph 9 of the contract which provides:

"NINTH. - That whatever consideration of the party of the FIRST PART may concede to the party of the SECOND PART, as not exacting a strict compliance with the conditions of paragraph 6 of this contract, as well as any other condonation that the party of the FIRST PART may give to the party of the SECOND PART with regards to the obligations of the latter, should not be interpreted as a renunciation on the part of the party of the FIRST PART of any right granted it by this contract, in case of default or non-compliance by the party of the SECOND PART."

The defendants-appellants argue that paragraph nine clearly allows the seller to waive the observance of paragraph 6 not merely once, but for as many times as he wishes.

The defendants-appellants' contention is without merit. We agree with the plaintiffs-appellees that when the defendants-appellants, instead of availing of their alleged right to rescind, have accepted and received delayed payments of installments, though the plaintiffs-appellees have been in arrears beyond the grace period mentioned in paragraph 6 of the contract, the defendants-appellants have waived and are now estopped from exercising their alleged right of rescission. In *De Guzman v. Guieb* (48 SCRA 68), we held that:

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"But defendants do not deny that in spite of the long arrearages, neither they nor their predecessor, Teodoro de Guzman, even took steps to cancel the option or to eject the appellees from the homelot in question. On the contrary, it is admitted that the delayed payments were received without protest or qualification. x x x Under these circumstances, We cannot but agree with the lower court that at the time appellees exercised their option, appellants had already forfeited their right to invoke the above-quoted provision regarding the nullifying effect of the non-payment of six months rentals by appellees by their having accepted without qualification on July 21, 1964 the full payment by appellees of all their arrearages."

The defendants-appellants contend in the second assignment of error that the ledger of payments show a balance of P671.67 due from the plaintiffs-appellees. They submit that while it is true that the total monthly installments paid by the plaintiffs-appellees may have exceeded P3,920.00, a substantial portion of the said payments were applied to the interests since the contract specifically provides for a 7% interest per annum on the remaining balance. The defendants-appellants rely on paragraph 2 of the contract which provides:

"SECOND. - That in consideration of the agreement of sale of the above described property, the party of the SECOND PART obligates himself to pay to the party of the FIRST PART the Sum of THREE THOUSAND NINE HUNDRED TWENTY ONLY (P3,920.00), Philippine Currency, plus interest at the rate of 7% per annum x x x." (Underscoring supplied)

The plaintiffs-appellees on the other hand are firm in their submission that since they have already paid the defendants-appellants a total sum of P4,533.38, the defendants-appellants must now be compelled to execute the final deed of sale pursuant to paragraph 12 of the contract which provides:

"TWELFTH. - That once the payment of the sum of P3,920.00, the total price of the sale is completed, the party of the FIRST PART will execute in favor of the party of the SECOND PART, the necessary deed or deeds to transfer to the latter the title of the parcel of land sold, free from all liens and encumbrances other than those expressly provided in this contract; it is understood, however, that all the expenses which may be incurred in the said transfer of title shall be paid by the party of the SECOND PART, as above stated."

Closely related to the second assignment of error is the submission of the plaintiffs-appellees that the contract herein is a contract of adhesion.

We agree with the plaintiffs-appellees. The contract to sell entered into by the parties has some characteristics of a

contract of adhesion. The defendants-appellants drafted and prepared the contract. The plaintiffs-appellees, eager to acquire a lot upon which they could build a home, affixed their signatures and assented to the terms and conditions of the contract. They had no opportunity to question nor change any of the terms of the agreement. It was offered to them on a "take it or leave it" basis. In *Sweet Lines, Inc. v. Teves* (83 SCRA 361), we held that:

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"x x x '(W)hile generally, stipulations in a contract come about after deliberate drafting by the parties thereto, . . . there are certain contracts almost all the provisions of which have been drafted only by one party, usually a corporation. Such contracts are called contracts of adhesion, because the only participation of the party is the signing of his signature or his 'adhesion' thereto. Insurance contracts, bills of lading, contracts of sale of lots on the installment plan fall into this category.' (Paras, Civil Code of the Philippines, Seventh ed., Vol. I, p. 80.)" (Emphasis supplied)

While it is true that paragraph 2 of the contract obligated the plaintiffs-appellees to pay the defendants-appellants the sum of P3,920.00 plus 7% interest per annum, it is likewise true that under paragraph 12 the seller is obligated to transfer the title to the buyer upon payment of the P3,920.00 price sale.

The contract to sell, being a contract of adhesion, must be construed against the party causing it. We agree with the observation of the plaintiffs-appellees to the effect that "the terms of a contract must be interpreted against the party who drafted the same, especially where such interpretation will help effect justice to buyers who, after having invested a big amount of money, are now sought to be deprived of the same thru the prayed application of a contract clever in its phraseology, condemnable in its lopsidedness and injurious in its effect which, in essence, and in its entirety is most unfair to the buyers."

Thus, since the principal obligation under the contract is only P3,920.00 and the plaintiffs-appellees have already paid an aggregate amount of P4,533.38, the courts should only order the payment of the few remaining installments but not uphold the cancellation of the contract. Upon payment of the balance of P671.67 without any interests thereon, the defendants-appellants must immediately execute the final deed of sale in favor of the plaintiffs-appellees and execute the necessary transfer documents as provided in paragraph 12 of the contract. The attorney's fees are justified.

WHEREFORE, the instant petition is DENIED for lack of merit. The decision appealed from is AFFIRMED with the modification that the plaintiffs-appellees should pay the balance of SIX HUNDRED SEVENTY ONE PESOS AND SIXTY-SEVEN CENTAVOS (P671.67) without any interests. Costs against the defendants-appellants.

SO ORDERED.

Melencio-Herrera, Plana, Relova, De La Fuente, and Alampay, JJ., concur.
Teehankee, J., (Chairman), took no part.

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