

**ROSELLER T. LIM, ET AL., PLAINTIFFS AND APPELLANTS, VS.
PACITA DE LOS SANTOS, ET AL., DEFENDANTS AND APPELLEES.***G.R. No. L-18137. August 31, 1963*

Ponente: REYES, J.B.L., J.

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Appeal from an order sustaining a motion to dismiss the complaint in Civil Case No. Q-5482 of the Court of First Instance of Rizal, Quezon City Branch.

The defendants contracted to sell to each of the several plaintiffs certain subdivision lots embraced in the Congressional Avenue Subdivision and covered by Transfer Certificates of Title Nos. 35882, 27016, and 34844 of the Register of Deeds of Quezon City. Except as to the lots, the amounts for the consideration of the contracts, the parties and corresponding particulars involved for each plaintiff, the contracts were identical and were executed within the months of February to April, 1960. The contracts, among other stipulations, provided for payment in installments, the same to be deemed as liquidated damages and rentals in case of failure to pay any installment, but to be considered as the purchase price as for an absolute sale upon full payment. These identical contracts made no reference to Ordinance No. 2969 of Quezon City and the rules and regulations of the National Planning Commission, but provided that—

"representatives of the Vendors shall have the right to enter the property at any time for the purposes of inspection, measurement or the laying of necessary lines of water, gas, light, telephone, etc."

The complaint alleges that while the plaintiffs-vendees have complied with their obligations and have begun or contracted for the construction of their houses, the defendants have failed, notwithstanding the plaintiffs' demands, to construct the necessary roads that would serve as outlets in accordance with the requirements and specifications of existing laws and regulations; that defendant de los Santos "made plaintiffs understand that she binds herself to, among others, construct roads, particularly outlets for entrance and egress to and from the lots"; that "defendant represented to plaintiffs that she would have constructed adequate outlets to and from the lots purchased"; that without these roads, the lots in question would be uninhabitable, impassable and valueless pieces of real estate which plaintiff would not even venture to consider purchasing; wherefore, the plaintiffs pray for judgment ordering the defendants to construct these roads and pay actual and moral damages and attorney's fees.

The defendants interposed a motion to dismiss on the ground that the complaint states no cause of action, and that the plaintiffs have no legal capacity to sue. The trial court sustained the motion to dismiss. Not satisfied, the plaintiffs filed a motion for reconsideration, insisting that they have alleged in their complaint that the defendants promised to construct roads. Acting upon this motion for reconsideration, the court, over plaintiffs' objection and protest that by the motion to dismiss defendant admitted the allegations of the complaint, held a hearing, which was limited to the reception of evidence on the aforesaid allegation. Finding from the testimonies that the alleged promise was verbal, that it was not included in the written agreements, and that the defendants denied having made such a promise, the said court denied the motion for reconsideration.

Thereafter, the case was regularly appealed to this Court by the plaintiffs.

The issues raised by the motion to dismiss are two:

- (1) Did the complaint state a cause of action to compel defendant to construct, roads to serve as outlets for the lots in question?
- (2) Do the plaintiffs have the capacity to bring an action to enforce Quezon City Ordinance No. 2969?

On the first point, we are of the opinion that the complaint did state a cause of action. The lower court, in dismissing the complaint because the appended written contract mentioned no obligation to construct roads, has erroneously assumed that plaintiffs predicate their action exclusively on the written agreements, and has ignored the specific allegations of fact in paragraph VI of the complaint—

"That prior to and simultaneously with the execution of the aforesaid contracts to sell, and continuously thereafter, defendant represented to plaintiffs that in accordance with her legal and contractual obligations, she would have constructed adequate outlets to and from the lots purchased by plaintiffs towards a public or national highway, aside from other facilities and improvements, on or before the expected termination of the construction of the residence of plaintiffs Roseller T. Lim and Amy S. Lim which was to be on or about July, 1960, and on the strength of such representation, the aforesaid plaintiffs not only religiously paid all installments begun the construction of their residential house but also paid in full the purchase price of two lots." (*Italics supplied*)

It is elementary that the motion to dismiss based on failure to state a cause of action should be deemed to have admitted the truth of the facts averred in the paragraph quoted (*Ruperto vs. Fernando*, 83 Phil 343); and if they are true, then, necessarily, defendant should be required to comply with her representations to construct the roads and other facilities, because the plaintiffs have made disbursements in reliance thereon that altered their position to their detriment, particularly in the construction of their residence on the lots sold them by the defendant-appellee.

The latter argues that there being a written contract and it not being alleged that the same does not express the true intent of the parties, oral bargains can not be admitted to extend, or vary, the written terms. But the rule thus invoked is one of evidence (sec. 22, Rule 123), and goes into the merits of the case, while we are here concerned solely with the legal sufficiency of the complaint, not with the question of weight or admissibility of oral proof.

The allegations in the complaint that defendant-vendor made representations that "she would have constructed (i. e., would cause to be built) adequate outlets" for the lots sold do not strike us to be so improbable as to justify their being disbelieved *de piano*. After all, a seller's duty is to deliver the thing sold in a condition suitable for its enjoyment by the buyer for the purposes contemplated (*Sent, Trib. Supremo of Spain*, 17 Nov. 1930), and proper access to a residence is essential to its enjoyment. Additionally, at the time the contracts in question were made (1960), the Subdivision Regulations of the National Urban Planning Commission (45 Off. Gaz., No. 6, p. 2422) required paved roadways to be constructed by the subdivision owner (sec. 17(6)) as they expressly specified that:

"Sec. 19. Approval.

e. Conditional approval. Until December 31, 1949, subdivisions may be approved and offered for sale prior to full completion of the improvements required by these regulations, upon the filing of an undertaking by the subdivider that such improvements shall be completed at the subdivider's expense within a stated period of time."

These words plainly imply that after December 31, 1949 subdivisions may not be offered for sale until completion of improvements required by the regulations. While the regulations could be modified by the City or Municipal Board concerned, such modification, if made, would have to be pleaded by way of defense in the answer, and not

assumed when a motion to dismiss is filed.

The taking of evidence upon the motion for reconsideration of the order of dismissal was, in itself, an irregular procedure not authorized by the rules, since it is precisely in the case of a motion to dismiss for failure to state a cause of action where no evidence may be alleged or considered to test the sufficiency of the complaint except the very facts pleaded therein (*Versoza vs. Rigonan*, 94 Phil., 794; *Dimayuga vs. Dimayuga*, 96 Phil., 859; and in the event, the judge may not inquire into the truth of the allegations, and find them to be false, before a hearing is had on the merits of the case (*Palma vs. Graciano*, 99 Phil., 72; *Carreon vs. Prov. Bd. of Pampanga*, 99 Phil., 808; 52 Off. Gaz, 6558).

As a second ground for holding that the complaint failed to state a cause of action, the court below declared that plaintiffs-appellants had no personality to sue to compel defendant to comply with Urban Planning Regulations and Quezon City Ordinance No. 2969, invoked by them in paragraph V of the complaint. The court based its ruling on our decision in *Subido vs. City of Manila*, (108 Phil., 462). That doctrine, however, is inapplicable to the case before us, because it ruled that a private citizen may not contest the validity of an ordinance in the absence of proof of special injury; while here appellants seek to compel another private party (appellee) to comply with the Regulations and Ordinances requiring a subdivision owner to construct roads and facilities in the subdivision that afford access to plaintiffs' own lots. The absence of such roads clearly causes plaintiffs-appellants a special injury as lot purchasers, distinct and apart from the damage caused to the community at large by the absence of such roads.

In any event, since paragraph VI of the complaint avers a representation by defendant herself that she would construct the roads, her failure to do so constitutes by itself a distinct and sufficient cause of action irrespective of the Regulations and Ordinance that plaintiffs invoke in paragraph V of their complaint. Whether such promise was really made or not is a matter to be threshed out at the trial on the merits, and not by a motion to dismiss for failure to state a cause of action.

Wherefore, the order of dismissal appealed from is hereby set aside, and the records ordered remanded for further proceedings conformable to law.

Bengzon, C. J., Padilla, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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