

**BINALBAGAN TECH INC., AND HERMILO J. NAVA, PETITIONERS, VS.
THE COURT OF APPEALS, MAGDALENA L. PUENTEVELLA,
ANGELINA P. ECHAUS, ROMULO L. PUENTEVELLA, RENATO L.
PUENTEVELLA, NOL...**

G.R. No. 100594. March 10, 1993

Ponente: MELO, J.

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MELO, J.:

The petition for review on certiorari now before us seeks to reverse the decision of the Court of Appeals promulgated on March 27, 1991 in CA-G.R. CV No. 24635 (de Pano, Cacdac (P), and Vailoces, JJ.).

The facts of the case, as borne out by the record, are as follows:

On May 11, 1967, private respondents, through Angelina P. Echaus, in her capacity as Judicial Administrator of the intestate estate of Luis B. Puentevella, executed a Contract to Sell and a Deed of Sale of forty-two subdivision lots within the Phib-Khik Subdivision of the Puentevella family, conveying and transferring said lots to petitioner Binalbagan Tech., Inc. (hereinafter referred to as Binalbagan). In turn, Binalbagan, through its president, petitioner Hermilo J. Nava (hereinafter referred to as Nava), executed an Acknowledgment of Debt with Mortgage Agreement, mortgaging said lots in favor of the estate of Puentevella.

Upon the transfer to Binalbagan of titles to the 42 subdivision lots, said petitioner took possession of the lots and the building and improvements thereon. Binalbagan started operating a school on the property from 1967 when the titles and possession of the lots were transferred to it.

It appears that there was a pending case, Civil Case No. 7435 of Regional Trial Court stationed at Himamaylan, Negros Occidental. Relative to said case we shall quote the findings of fact of the Court of Appeals in its decision dated October 30, 1978 in CA--G.R. No. 42211-R:

To have a better perspective of the background facts leading to the filing of this instant case on appeal, there is a need to make reference to the circumstances surrounding the filing of Civil Case No. 7435, to wit:

The intestate estate of the late Luis B. Puentevella as registered owner of several subdivision lots, specifically mentioned in paragraph 2 of plaintiffs' complaint, thru Judicial Administratrix, Angelina L. Puentevella sold said aforementioned lots to Raul Javellana with the condition that the vendee-promisee would not transfer his rights to said lots without the express consent of Puentevella and that in case of the cancellation of the contract by reason of the violation of any of the terms thereof, all payments therefor made and all improvements introduced on the property shall pertain to the promissor and shall be considered as rentals for the use and occupation thereof.

Javellana having failed to pay the installments for a period of five years, Civil Case No. 7435 was filed by defendant Puentevella against Raul Javellana and the Southern Negros Colleges which was impleaded as a party defendant it being in actual possession thereof, for the rescission of their contract to sell and the recovery

of possession of the lots and buildings with damages.

Accordingly, after trial, judgment was rendered in favor of Puentevella and thereafter, defendants Deputy Sheriffs served a copy of the writ of execution on the Acting Director of the Southern Negros College and delivered possession of the lots and buildings to defendant Puentevella's representative, Mrs. Manuel Gentapanan, and further levied execution on the books and school equipment, supplies, library, apparatus, etc. to satisfy the monetary portion of the judgment under execution on October 27, 1967. Said books, equipment, etc. as reflected in the Depositary Receipt, (Exh. "B") dated October 28, 1965, were delivered by the Sheriffs to the Acting Director of the Southern Negros College as depositary of the same.

Came December 29, 1965 when the plaintiffs in the instant case on appeal filed their Third-Party Claim based on an alleged Deed of Sale executed in their favor by spouses Jose and Lolita Lopez, thus Puentevella was constrained to assert physical possession of the premises to counteract the fictitious and unenforceable claim of herein plaintiffs.

Upon the filing of the instant case for injunction and damages on January 3, 1966, an ex-parte writ of preliminary injunction was issued by the Honorable Presiding Judge Carlos Abiera, which order, however, was elevated to the Honorable Court of Appeals which issued a writ of preliminary injunction ordering Judge Carlos Abiera or any other persons or persons in his behalf to refrain from further enforcing the injunction issued by him in this case and from further issuing any other writs or prohibitions which would in any manner, affect the enforcement of the judgment rendered in Civil Case 7435, pending the finality of the decision of the Honorable Court of Appeals in the latter case. Thus, defendant Puentevella was restored to the possession of the lots and buildings subject of this case. However, plaintiffs filed a petition for review with the Supreme Court which issued a restraining order against the sale of the properties claimed by the spouses-plaintiffs [in *Abierra vs. Court of Appeals*, 45 SCRA 314].

When the Supreme Court dissolved the aforesaid injunction issued by the Court of Appeals, possession of the building and other property was taken from petitioner Binalbagan and given to the third-party claimants, the de la Cruz spouses. Petitioner Binalbagan transferred its school to another location. In the meantime, an appeal was interposed by the defendants in Civil Case No. 293 with the Court of Appeals where the appeal was docketed as CA-G.R. No. 42211-R. On October 30, 1978, the Court of Appeals rendered judgment, reversing the appealed decision in Civil Case No. 293. On April 29, 1981, judgment was entered in CA-G.R. No. 42211, and the record of the case was remanded to the court of origin on December 22, 1981. Consequently, in 1982, the judgment in Civil Case No. 7435 was finally executed and enforced, and petitioner was restored to the possession of the subdivision lots on May 31, 1982. It will be noted that petitioner was not in possession of the lots from 1974 to May 31, 1982.

After petitioner Binalbagan was again placed in possession of the subdivision lots, private respondent Angelina Echaus demanded payment from petitioner Binalbagan for the subdivision lots, enclosing in the letter of demand a statement of account as of September 1982 showing a total amount due of P367,509.93, representing the price of the land and accrued interest as of that date.

As petitioner Binalbagan failed to effect payment, private respondent Angelina P. Echaus filed on October 8, 1982 Civil Case No. 1354 of the Regional Trial Court of the Sixth Judicial Region stationed in Himamaylan, Negros Occidental against petitioner's for recovery of title and damages. An amended complaint was filed by private respondent Angelina P. Echaus by including her mother, brothers, and sisters as co-plaintiffs, which was admitted by the trial court on March 18, 1983.

After trial, the trial court rendered a decision on August 30, 1989, the dispositive portion of which reads as follows:

IN VIEW OF THE FOREGOING, and inasmuch as there is no fraud and since the action on the written contract, Exh. "C", has long prescribed, judgment is hereby rendered in favor of the defendants and against the plaintiffs dismissing the amended complaint.

The counterclaim is likewise dismissed for lack of sufficient proof. Each shall bear their respective expenses of litigation. (pp. 71-72, Rollo)

Private respondents appealed to the Court of Appeals which rendered a decision on March 27, 1991, disposing:

WHEREFORE, premises considered, the appealed decision is REVERSED and SET ASIDE and a new one is rendered ordering the appellee Binalbagan Tech. Inc, through any of its officers, to execute a deed of conveyance or any other instrument, transferring and returning unto the appellants the ownership and titles of the subject 42 subdivision lots. Costs against appellees. (pp. 51-52, Rollo)

Thus, this petition for review on certiorari wherein petitioners assign the following alleged errors of the Court of Appeals:

First Error

The Court of Appeals erred in holding that the cause of action of the respondents has not prescribed.

Second Error

The Court of Appeals erred in holding that Civil Case No. 293 interrupts the running of the period of the prescription.

Third Error

The Court of Appeals erred in citing the cases of David-Garlitos and Rivero vs. Rivero to support its contention that the period of prescription was interrupted in the case at bar.

Fourth Error

The finding of facts of the Honorable Court of Appeals in reversing the lower court decision has no basis and is contradicted by the evidence on record of the case at bar as well as the admission of parties." (p. 16, Rollo)

The main issue of this case is: Whether private respondents' cause of action in Civil Case No. 1354 is barred by prescription.

On this point the Court of Appeals held:

As it is evident that there was an interruption during the period from 1974 up to 1982, the period of prescription, as correctly maintained by the appellants, was tolled during such period, due to the injunctive writ in Civil Case No. 293 as discussed earlier when the vendors could not maintain the vendee in possession, and consequently was in no position to legally demand payment of the price. Accordingly, while it may be conceded that appellants' cause of action to demand performance had accrued on June 10, 1967 due to the appellee institution's default in the payment of the first installment which became due on that date, the running of prescription was interrupted in 1974 when, from the words of the lower court itself, "the Supreme Court reversed the Court of Appeal's decision and dissolved the injunction which the latter court had earlier issued in Civil Case No. 293, possession of the building and other properties was taken from defendant Binalbagan Tech. Inc. and given to the de la Cruz spouses, through Southern Negros College". And the period of prescription commenced to run anew only on May 31, 1982 when the appellants were finally able to fully implement the already executory judgment in Case No. 7435, and thus restore appellees in possession of the 42 subdivision lots.

In other words, the period of prescription was interrupted, because from 1974 up to 1982, the appellants themselves could not have restored unto the appellees the possession of the 42 subdivision lots precisely because of the preliminary injunction mentioned elsewhere. Consequently, the appellants could not have

prospered in any suit to compel performance or payment from the appellees-buyers, because the appellants themselves were in no position to perform their own corresponding obligation to deliver to and maintain said buyers in possession of the lots subject matter of the sale. (Article 1458, 1495, 1537, Civil Code). (pp. 49-50, Rollo)

We agree with the Court of Appeals.

A party to a contract cannot demand performance of the other party's obligations unless he is in a position to comply with his own obligations. Similarly, the right to rescind a contract can be demanded only if a party thereto is ready, willing and able to comply with his own obligations thereunder (Art. 1191, Civil Code; *Seva vs. Berwin*, 48 Phil. 581 [1926]; *Paras*, Civil Code of the Philippines, 12th ed. Vol. IV, p. 200). In a contract of sale, the vendor is bound to transfer the ownership of and deliver, as well as warrant, the thing which is the object of the sale (Art. 1495, Civil Code); he warrants that the buyer shall, from the time ownership is passed, have and enjoy the legal and peaceful possession of the thing -

Art. 1547. In a contract of sale, unless a contrary intention appears, there is:

(1) An implied warranty on the part of the seller that he has a right to sell the thing at the time when the ownership is to pass, and that the buyer shall from that time have and enjoy the legal and peaceful possession of the thing.

x x x

As afore-stated, petitioner was evicted from the subject subdivision lots in 1974 by virtue of a court order in Civil Case No. 293 and reinstated to the possession thereof only in 1982. During the period, therefore, from 1974 to 1982, seller private respondent Angelina Echaus' warranty against eviction given to buyer petitioner was breached though, admittedly, through no fault of her own. It follows that during that period, 1974 to 1982, private respondent Echaus was not in a legal position to demand compliance of the prestation of petitioner to pay the price of said subdivision lots. In short, her right to demand payment was suspended during that period, 1974-1982.

The prescriptive period within which to institute an action upon a written contract is ten years (Art. 1144, Civil Code). The cause of action of private respondent Echaus is based on the deed of sale aforementioned. The deed of sale whereby private respondent Echaus transferred ownership of the subdivision lots was executed on May 11, 1967. She filed Civil Case No. 1354 for recovery of title and damages only on October 8, 1982. From May 11, 1967 to October 8, 1982, more than fifteen (15) years elapsed. Seemingly, the 10-year prescriptive period had expired before she brought her action to recover title. However, the period 1974 to 1982 should be deducted in computing the prescriptive period for the reason that, as above discussed, from 1974 to 1982, private respondent Echaus was not in a legal position to initiate action against petitioner since as afore-stated, through no fault of hers, her warranty against eviction was breached. In the case of *Daniel vs. Garlitos*, (95 Phil. 387 [1954]), it was held that a court order deferring action on the execution of judgment suspended the running of the 5-year period for execution of a judgment. Here the execution of the judgment in Civil Case No. 7435 was stopped by the writ of preliminary injunction issued in Civil Case No. 293. It was only when Civil Case No. 293 was dismissed that the writ of execution in Civil Cse No. 7435 could be implemented and petitioner Binalbagan restored to the possession of the subject lots.

Deducting eight years (1974 to 1982) from the period 1967 to 1982, only seven years elapsed. Consequently, Civil Case No. 1354 was filed within the 10-year prescriptive period. Working against petitioner's position too is the principle against unjust enrichment which would certainly be the result if petitioner is allowed to own the 42 lots without full payment thereof.

WHEREFORE, the petition is DENIED and the decision of the Court of Appeals in CA-G.R. CV No. 24635 is AFFIRMED.

SO ORDERED.

Feliciano, (Acting Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

[*] Hugo E. Gutierrez, Jr., J., On Terminal Leave.

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