

VIRGILIO R. ROMERO, PETITIONER, VS. HON. COURT OF APPEALS AND ENRIQUETA CHUA VDA. DE ONGSIONG, RESPONDENTS.

G.R. No. 107207. November 23, 1995

Ponente: VITUG, J.

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VITUG, J.:

The parties pose this question: May the vendor demand the rescission of a contract for the sale of a parcel of land for a cause traceable to his own failure to have the squatters on the subject property evicted within the contractually-stipulated period?

Petitioner Virgilio R. Romero, a civil engineer, was engaged in the business of production, manufacture and exportation of perlite filter aids, perlite insulation and processed perlite ore. In 1988, petitioner and his foreign partners decided to put up a central warehouse in Metro Manila on a land area of approximately 2,000 square meters. The project was made known to several freelance real estate brokers.

A day or so after the announcement, Alfonso Flores and his wife, accompanied by a broker, offered a parcel of land measuring 1,952 square meters. Located in Barangay San Dionisio, Parañaque, Metro Manila, the lot was covered by TCT No. 361402 in the name of private respondent Enriqueta Chua vda. de Ongsiong. Petitioner visited the property and, except for the presence of squatters in the area, he found the place suitable for a central warehouse.

Later, the Flores spouses called on petitioner with a proposal that should he advance the amount of P50,000.00 which could be used in taking up an ejectment case against the squatters, private respondent would agree to sell the property for only P800.00 per square meter. Petitioner expressed his concurrence. On 09 June 1988, a contract, denominated "Deed of Conditional Sale," was executed between petitioner and private respondent. The simply-drawn contract read:

"DEED OF CONDITIONAL SALE

"KNOW ALL MEN BY THESE PRESENTS:

"This Contract, made and executed in the Municipality of Makati, Philippines this 9th day of June, 1988 by and between:

"ENRIQUETA CHUA VDA. DE ONGSIONG, of legal age, widow, Filipino and residing at 105 Simoun St., Quezon City, Metro Manila, hereinafter referred to as the VENDOR;

- and -

"VIRGILIO R. ROMERO, married to Severina L. Lat, of Legal age, Filipino, and residing at 110 San Miguel St., Plainview Subd., Mandaluyong, Metro Manila, hereinafter referred to as the VENDEE:

"W I T N E S S E T H : That

"WHEREAS, the VENDOR is the owner of One (1) parcel of land with a total area of ONE THOUSAND NINE HUNDRED FIFTY TWO (1,952) SQUARE METERS, more or less, located in Barrio San Dionisio, Municipality of Parañaque, Province of Rizal, covered by TCT No. 361402 issued by the Registry of Deeds of Pasig and more particularly described as follows:

"xxx xxx xxx

"WHEREAS, the VENDEE, for (sic) has offered to buy a parcel of land and the VENDOR has accepted the offer, subject to the terms and conditions hereinafter stipulated:

"NOW, THEREFORE, for and in consideration of the sum of ONE MILLION FIVE HUNDRED SIXTY ONE THOUSAND SIX HUNDRED PESOS (P1,561,600.00) ONLY, Philippine Currency, payable by VENDEE to in to (sic) manner set forth, the VENDOR agrees to sell to the VENDEE, their heirs, successors, administrators, executors, assign, all her rights, titles and interest in and to the property mentioned in the FIRST WHEREAS CLAUSE, subject to the following terms and conditions:

"1.

That the sum of FIFTY THOUSAND PESOS (P50,000.00) ONLY Philippine Currency, is to be paid upon signing and execution of this instrument.

"2.

The balance of the purchase price in the amount of ONE MILLION FIVE HUNDRED ELEVEN THOUSAND SIX HUNDRED PESOS (P1,511,600.00) ONLY shall be paid 45 days after the removal of all squatters from the above described property.

"3.

Upon full payment of the overall purchase price as aforesaid, VENDOR without necessity of demand shall immediately sign, execute, acknowledged (sic) and deliver the corresponding deed of absolute sale in favor of the VENDEE free from all liens and encumbrances and all Real Estate taxes are all paid and updated.

"It is hereby agreed, covenanted and stipulated by and between the parties hereto that if after 60 days from the date of the signing of this contract the VENDOR shall not be able to remove the squatters from the property being purchased, the downpayment made by the buyer shall be returned/reimbursed by the VENDOR to the VENDEE.

"That in the event that the VENDEE shall not be able to pay the VENDOR the balance of the purchase price of ONE MILLION FIVE HUNDRED ELEVEN THOUSAND SIX HUNDRED PESOS (P1,511,600.00) ONLY after 45 days from written notification to the VENDEE of the removal of the squatters from the property being purchased, the FIFTY THOUSAND PESOS (P50,000.00) previously paid as downpayment shall be forfeited in favor of the VENDOR.

"Expenses for the registration such as registration fees, documentary stamp, transfer fee, assurances and such other fees and expenses as may be necessary to transfer the title to the name of the VENDEE shall be for the account of the VENDEE while capital gains tax shall be paid by the VENDOR.

"IN WITNESS WHEREOF, the parties hereunto signed those (sic) presents in the City of Makati MM, Philippines on this 9th day of June, 1988.

(Sgd.)

(Sgd.)

VIRGILIO R. ROMERO**ENRIQUETA CHUA VDA.DE ONGSIONG**

Vendee

Vendor

"SIGNED IN THE PRESENCE OF:

(Sgd.)

(Sgd.)

Rowena C. Ongsiong

Jack M. Cruz"[1]

Alfonso Flores, in behalf of private respondent, forthwith received and acknowledged a check for P50,000.00[2] from petitioner.[3]

Pursuant to the agreement, private respondent filed a complaint for ejectment (Civil Case No. 7579) against Melchor Musa and 29 other squatter families with the Metropolitan Trial Court of Parañaque. A few months later, or on 21 February 1989, judgment was rendered ordering the defendants to vacate the premises. The decision was handed down beyond the 60-day period (expiring 09 August 1988) stipulated in the contract. The writ of execution of the judgment was issued, still later, on 30 March 1989.

In a letter, dated 07 April 1989, private respondent sought to return the P50,000.00 she received from petitioner since, she said, she could not "get rid of the squatters" on the lot. Atty. Sergio A. F. Apostol, counsel for petitioner, in his reply of 17 April 1989, refused the tender and stated:

"Our client believes that with the exercise of reasonable diligence considering the favorable decision rendered by the Court and the writ of execution issued pursuant thereto, it is now possible to eject the squatters from the premises of the subject property, for which reason, he proposes that he shall take it upon himself to eject the squatters, provided, that expenses which shall be incurred by reason thereof shall be chargeable to the purchase price of the land."[4]

Meanwhile, the Presidential Commission for the Urban Poor ("PCUD"), through its Regional Director for Luzon, Farley O. Vilorio, asked the Metropolitan Trial Court of Parañaque for a grace period of 45 days from 21 April 1989 within which to relocate and transfer the squatter families. Acting favorably on the request, the court suspended the enforcement of the writ of execution accordingly.

On 08 June 1989, Atty. Apostol reminded private respondent on the expiry of the 45-day grace period and his client's willingness to "underwrite the expenses for the execution of the judgment and ejectment of the occupants."[5]

In his letter of 19 June 1989, Atty. Joaquin Yuseco, Jr., counsel for private respondent, advised Atty. Apostol that the Deed of Conditional Sale had been rendered null and void by virtue of his client's failure to evict the squatters from the premises within the agreed 60-day period. He added that private respondent had "decided to retain the property."[6]

On 23 June 1989, Atty. Apostol wrote back to explain:

"The contract of sale between the parties was perfected from the very moment that there was a meeting of the

minds of the parties upon the subject lot and the price in the amount of P1,561,600.00. Moreover, the contract had already been partially fulfilled and executed upon receipt of the downpayment of your client. Ms. Ongsiong is precluded from rejecting its binding effects relying upon her inability to eject the squatters from the premises of subject property during the agreed period. Suffice it to state that, the provision of the Deed of Conditional Sale do not grant her the option or prerogative to rescind the contract and to retain the property should she fail to comply with the obligation she has assumed under the contract. In fact, a perusal of the terms and conditions of the contract clearly shows that the right to rescind the contract and to demand the return/reimbursement of the downpayment is granted to our client for his protection.

"Instead, however, of availing himself of the power to rescind the contract and demand the return, reimbursement of the downpayment, our client had opted to take it upon himself to eject the squatters from the premises. Precisely, we refer you to our letters addressed to your client dated April 17, 1989 and June 8, 1989.

"Moreover, it is basic under the law on contracts that the power to rescind is given to the injured party. Undoubtedly, under the circumstances, our client is the injured party.

"Furthermore, your client has not complied with her obligation under their contract in good faith. It is undeniable that Ms. Ongsiong deliberately refused to exert efforts to eject the squatters from the premises of the subject property and her decision to retain the property was brought about by the sudden increase in the value of realties in the surrounding areas.

"Please consider this letter as a tender of payment to your client and a demand to execute the absolute Deed of Sale."[7]

A few days later (or on 27 June 1989), private respondent, prompted by petitioners continued refusal to accept the return of the P50,000.00 advance payment, filed with the Regional Trial Court of Makati, Branch 133, Civil Case No. 89-4394 for rescission of the deed of "conditional" sale, plus damages, and for the consignment of P50,000.00 cash.

Meanwhile, on 25 August 1989, the Metropolitan Trial Court issued an alias writ of execution in Civil Case No. 7579 on motion of private respondent but the squatters apparently still stayed on.

Back to Civil Case No. 89-4394, on 26 June 1990, the Regional Trial Court of Makati[8] rendered decision holding that private respondent had no right to rescind the contract since it was she who "violated her obligation to eject the squatters from the subject property" and that petitioner, being the injured party, was the party who could, under Article 1191 of the Civil Code, rescind the agreement. The court ruled that the provisions in the contract relating to (a) the return/reimbursement of the P50,000.00 if the vendor were to fail in her obligation to free the property from squatters within the stipulated period or (b), upon the other hand, the sum's forfeiture by the vendor if the vendee were to fail in paying the agreed purchase price, amounted to "penalty clauses". The court added:

"This Court is not convinced of the ground relied upon by the plaintiff in seeking the rescission, namely: (1) he (sic) is afraid of the squatters; and (2) she has spent so much to eject them from the premises (p. 6, tsn, ses. Jan. 3, 1990). Militating against her profession of good faith is plaintiffs conduct which is not in accord with the rules of fair play and justice. Notably, she caused the issuance of an alias writ of execution on August 25, 1989 (Exh. 6) in the ejectment suit which was almost two months after she filed the complaint before this Court on June 27, 1989. If she were really afraid of the squatters, then she should not have pursued the issuance of an alias writ of execution. Besides, she did not even report to the police the alleged phone threats from the squatters. To the mind of the Court, the so-called squatter factor is simply factitious (sic)."[9]

The lower court, accordingly, dismissed the complaint and ordered, instead, private respondent to eject or cause the ejectment of the squatters from the property and to execute the absolute deed of conveyance upon payment of

the full purchase price by petitioner.

Private respondent appealed to the Court of Appeals. On 29 May 1992, the appellate court rendered its decision.[10] It opined that the contract entered into by the parties was subject to a resolutory condition, i.e., the ejectment of the squatters from the land, the non-occurrence of which resulted in the failure of the object of the contract; that private respondent substantially complied with her obligation to evict the squatters; that it was petitioner who was not ready to pay the purchase price and fulfill his part of the contract, and that the provision requiring a mandatory return/reimbursement of the P50,000.00 in case private respondent would fail to eject the squatters within the 60-day period was not a penal clause. Thus, it concluded:

"WHEREFORE, the decision appealed from is REVERSED and SET ASIDE, and a new one entered declaring the contract of conditional sale dated June 9, 1988 cancelled and ordering the defendant-appellee to accept the return of the downpayment in the amount of P50,000.00 which was deposited in the court below. No pronouncement as to costs." [11]

Failing to obtain a reconsideration, petitioner filed this petition for review on certiorari raising issues that, in fine, center on the nature of the contract adverted to and the P50,000.00 remittance made by petitioner.

A perfected contract of sale may either be absolute or conditional[12] depending on whether the agreement is devoid of, or subject to, any condition imposed on the passing of title of the thing to be conveyed or on the obligation of a party thereto. When ownership is retained until the fulfillment of a positive condition the breach of the condition will simply prevent the duty to convey title from acquiring an obligatory force. If the condition is imposed on an obligation of a party which is not complied with, the other party may either refuse to proceed or waive said condition (Art. 1545, Civil Code). Where, of course, the condition is imposed upon the perfection of the contract itself, the failure of such condition would prevent the juridical relation itself from coming into existence.[13]

In determining the real character of the contract, the title given to it by the parties is not as much significant as its substance. For example, a deed of sale, although denominated as a deed of conditional sale, may be treated as absolute in nature, if title to the property sold is not reserved in the vendor or if the vendor is not granted the right to unilaterally rescind the contract predicated on the fulfillment or non-fulfillment, as the case may be, of the prescribed condition.[14]

The term "condition" in the context of a perfected contract of sale pertains, in reality, to the compliance by one party of an undertaking the fulfillment of which would beckon, in turn, the demandability of the reciprocal prestation of the other party. The reciprocal obligations referred to would normally be, in the case of vendee, the payment of the agreed purchase price and, in the case of the vendor, the fulfillment of certain express warranties (which, in the case at bench is the timely eviction of the squatters on the property).

It would be futile to challenge the agreement here in question as not being a duly perfected contract. A sale is at once perfected when a person (the seller) obligates himself, for a price certain, to deliver and to transfer ownership of a specified thing or right to another (the buyer) over which the latter agrees.[15]

The object of the sale, in the case before us, was specifically identified to be a 1,952-square meter lot in San Dionisio, Parañaque, Rizal, covered by Transfer Certificate of Title No. 361402 of the Registry of Deeds for Pasig and therein technically described. The purchase price was fixed at P1,561,600.00, of which P50,000.00 was to be paid upon the execution of the document of sale and the balance of P1,511,600.00 payable "45 days after the removal of all squatters from the above described property."

From the moment the contract is perfected, the parties are bound not only to the fulfillment of what has been

expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law. Under the agreement, private respondent is obligated to evict the squatters on the property. The ejectment of the squatters is a condition the operative act of which sets into motion the period of compliance by petitioner of his own obligation, i.e., to pay the balance of the purchase price. Private respondent's failure "to remove the squatters from the property" within the stipulated period gives petitioner the right to either refuse to proceed with the agreement or waive that condition in consonance with Article 1545 of the Civil Code.[16] This option clearly belongs to petitioner and not to private respondent.

We share the opinion of the appellate court that the undertaking required of private respondent does not constitute a "potestative condition dependent solely on his will" that might, otherwise, be void in accordance with Article 1182 of the Civil Code[17] but a "mixed" condition "dependent not on the will of the vendor alone but also of third persons like the squatters and government agencies and personnel concerned." [18] We must hasten to add, however, that where the so-called "potestative condition" is imposed not on the birth of the obligation but on its fulfillment, only the condition is avoided, leaving unaffected the obligation itself.[19]

In contracts of sale particularly, Article 1545 of the Civil Code, aforementioned, allows the obligee to choose between proceeding with the agreement or waiving the performance of the condition. It is this provision which is the pertinent rule in the case at bench. Here, evidently, petitioner has waived the performance of the condition imposed on private respondent to free the property from squatters.[20]

In any case, private respondent's action for rescission is not warranted. She is not the injured party.[21] The right of resolution of a party to an obligation under Article 1191 of the Civil Code is predicated on a breach of faith by the other party that violates the reciprocity between them.[22] It is private respondent who has failed in her obligation under the contract. Petitioner did not breach the agreement. He has agreed, in fact, to shoulder the expenses of the execution of the judgment in the ejectment case and to make arrangements with the sheriff to effect such execution. In his letter of 23 June 1989, counsel for petitioner has tendered payment and demanded forthwith the execution of the deed of absolute sale. Parenthetically, this offer to pay, having been made prior to the demand for rescission, assuming for the sake of argument that such a demand is proper under Article 1592[23] of the Civil Code, would likewise suffice to defeat private respondent's prerogative to rescind thereunder.

There is no need to still belabor the question of whether the P50,000.00 advance payment is reimbursable to petitioner or forfeitable by private respondent, since, on the basis of our foregoing conclusions, the matter has ceased to be an issue. Suffice it to say that petitioner having opted to proceed with the sale, neither may petitioner demand its reimbursement from private respondent nor may private respondent subject it to forfeiture.

WHEREFORE, the questioned decision of the Court of Appeals is hereby REVERSED AND SET ASIDE, and another is entered ordering petitioner to pay private respondent the balance of the purchase price and the latter to execute the deed of absolute sale in favor of petitioner. No costs.

SO ORDERED.

Feliciano, (Chairman), Romero, Melo, and Panganiban, JJ., concur.

[1] Records, pp. 60-61.

[2] Exh. 9.

[3] Exh. 2.

[4] Records, p. 116.

[5] Exh. 8-B.

[6] Exh. D.

[7] Records, pp. 74-75.

[8] Presided by Judge Buenaventura J. Guerrero.

[9] Records, p. 205.

[10] Penned by Associate Justice Fermin A. Martin, Jr. and concurred in by Associate Justices Emeterio C. Cui and Cezar D. Francisco.

[11] Rollo, p. 46.

[12] Art. 1458, second paragraph, Civil Code of the Philippines.

[13] See *Ang Yu Asuncion, et al., vs. Court of Appeals*, 238 SCRA 602.

[14] *Ibid.*, Vol. V, p. 3 citing *Dignos v. Court of Appeals*, No. L-59266, February 29, 1988, 158 SCRA 375.

[15] Art. 1475. The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.

From the moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts.

[16] Art. 1545. Where the obligation of either party to a contract of sale is subject to any condition which is not performed, such party may refuse to proceed with the contract or he may waive performance of the condition. If the other party has promised that the condition should happen or be performed, such first mentioned party may also treat the nonperformance of the condition as a breach of warranty.

Where the ownership in the thing has not passed, the buyer may treat the fulfillment by the seller of his obligation to deliver the same as described and as warranted expressly or by implication in the contract of sale as a condition of the obligation of the buyer to perform his promise to accept and pay for the thing.

[17] Art. 1182. When the fulfillment of the condition depends upon the sole will of the debtor, the conditional obligation shall be void. If it depends upon chance or upon the will of a third person, the obligation shall take effect in conformity with the provisions of this Code.

[18] Decision, p. 17.

[19] See *Osmeña vs. Rama*, 14 Phil. 99.

[20] See: *Intestate Estate of the Late Ricardo P. Presbitero, Sr. v. Court of Appeals*, 217 SCRA 372.

[21] In *Boysaw v. Interphil. Promotions, Inc.* (148 SCRA 635, 643), the Court has said: "The power to rescind is given to the injured party. `Where the plaintiff is the party who did not perform the undertaking which he was bound by the terms of the agreement to perform, he is not entitled to insist upon the performance of the contract by the defendant, or recover damages by reason of his own breach.'"

[22] *Deiparine, Jr. v. Court of Appeals*, 221 SCRA 503, 513 citing *Universal Food Corporation v. Court of Appeals*, 33 SCRA 1

[23] See *Ocampo v. Court of Appeals*, *supra*. Art. 1592 states: "In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract

shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by a notarial act. After the demand, the court may not grant him a new term."

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