

ANG YU ASUNCION, ARTHUR GO AND KEH TIONG, PETITIONERS, VS. THE HON. COURT OF APPEALS AND BUEN REALTY DEVELOPMENT CORPORATION, RESPONDENTS.

G.R. No. 109125. December 02, 1994

Ponente: VITUG, J.

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VITUG, J.:

Assailed, in this petition for review, is the decision of the Court of Appeals, dated 04 December 1991, in CA-G.R. SP No. 26345 setting aside and declaring without force and effect the orders of execution of the trial court, dated 30 August 1991 and 27 September 1991, in Civil Case No. 87-41058.

The antecedents are recited in good detail by the appellate court thusly:

"On July 29, 1987 a Second Amended Complaint for Specific Performance was filed by Ann Yu Asuncion and Keh Tiong, et al., against Bobby Cu Unjieng, Rose Cu Unjieng and Jose Tan before the Regional Trial Court, Branch 31, Manila in Civil Case No. 87-41058, alleging, among others, that plaintiffs are tenants or lessees of residential and commercial spaces owned by defendants described as Nos. 630-638 Ongpin Street, Binondo, Manila; that they have occupied said spaces since 1935 and have been religiously paying the rental and complying with all the conditions of the lease contract; that on several occasions before October 9, 1986, defendants informed plaintiffs that they are offering to sell the premises and are giving them priority to acquire the same; that during the negotiations, Bobby Cu Unjieng offered a price of P6-million while plaintiffs made a counter offer of P5-million; that plaintiffs thereafter asked the defendants to put their offer in writing to which request defendants acceded; that in reply to defendants' letter, plaintiffs wrote them on October 24, 1986 asking that they specify the terms and conditions of the offer to sell; that when plaintiffs did not receive any reply, they sent another letter dated January 28, 1987 with the same request; that since defendants failed to specify the terms and conditions of the offer to sell and because of information received that defendants were about to sell the property, plaintiffs were compelled to file the complaint to compel defendants to sell the property to them.

"Defendants filed their answer denying the material allegations of the complaint and interposing a special defense of lack of cause of action.

"After the issues were joined, defendants filed a motion for summary judgment which was granted by the lower court. The trial court found that defendants' offer to sell was never accepted by the plaintiffs for the reason that the parties did not agree upon the terms and conditions of the proposed sale, hence, there was no contract of sale at all. Nonetheless, the lower court ruled that should the defendants subsequently offer their property for sale at a price of P11-million or below, plaintiffs will have the right of first refusal. Thus the dispositive portion of the decision states:

"“WHEREFORE, judgment is hereby rendered in favor of the defendants and against the plaintiffs summarily dismissing the complaint subject to the aforementioned condition that if the defendants subsequently decide to offer their property for sale for a purchase price of Eleven Million Pesos or lower, then the plaintiffs has the

option to purchase the property or of first refusal, otherwise, defendants need not offer the property to the plaintiffs if the purchase price is higher than Eleven Million Pesos.

"‘SO ORDERED.’"

"Aggrieved by the decision, plaintiffs appealed to this Court in CA-G.R. CV No. 21123. In a decision promulgated on September 21, 1990 (penned by Justice Segundino G. Chua and concurred in by Justices Vicente V. Mendoza and Fernando A. Santiago), this Court affirmed with modification the lower court's judgment, holding:

""In resume, there was no meeting of the minds between the parties concerning the sale of the property. Absent such requirement, the claim for specific performance will not lie. Appellants' demand for actual, moral and exemplary damages will likewise fail as there exists no justifiable ground for its award. Summary judgment for defendants was properly granted. Courts may render summary judgment when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law (Garcia vs. Court of Appeals, 176 SCRA 815). All requisites obtaining, the decision of the court a quo is legally justifiable.

‘WHEREFORE, finding the appeal unmeritorious, the judgment appealed from is hereby AFFIRMED, but subject to the following modification: The court a quo in the aforestated decision gave the plaintiffs-appellants the right of first refusal only if the property is sold for a purchase price of Eleven Million pesos or lower; however, considering the mercurial and uncertain forces in our market economy today. We find no reason not to grant the same right of first refusal to herein appellants in the event that the subject property is sold for a price in excess of Eleven Million pesos. No pronouncement as to costs.

'SO ORDERED.'

"The decision of this Court was brought to the Supreme Court by petition for review on certiorari. The Supreme Court denied the appeal on May 6, 1991 'for insufficiency in form and substance' (Annex H, Petition).

"On November 15, 1990, while CA-G.R. CV No. 21123 was pending consideration by this Court, the Cu Unjieng spouses executed a Deed of Sale (Annex D, Petition) transferring the property in question to herein petitioner Buen Realty and Development Corporation, subject to the following terms and conditions:

""1. That for and in consideration of the sum of FIFTEEN MILLION PESOS (P15,000,000.00), receipt of which in full is hereby acknowledged, the VENDORS hereby sells, transfers and conveys for and in favor of the VENDEE, his heirs, executors, administrators or assigns, the above-described property with all the improvements found therein including all the rights and interest in the said property free from all liens and encumbrances of whatever nature, except the pending ejectment proceeding;

‘2. That the VENDEE shall pay the Documentary Stamp Tax, registration fees for the transfer of title in his favor and other expenses incidental to the sale of above-described property including capital gains tax and accrued real estate taxes.’

"As a consequence of the sale, TCT No. 105254/T-881 in the name of the Cu Unjieng spouses was cancelled and, in lieu thereof, TCT No. 195816 was issued in the name of petitioner on December 3, 1990.

"On July 1, 1991, petitioner as the new owner of the subject property wrote a letter to the lessees demanding that the latter vacate the premises.

"On July 16, 1991, the lessees wrote a reply to petitioner stating that petitioner brought the property subject to the notice of lis pendens regarding Civil Case No. 87-41058 annotated on TCT No. 105254/T-881 in the name

of the Cu Unjiengs.

"The lessees filed a Motion for Execution dated August 27, 1991 of the decision in Civil Case No. 87-41058 as modified by the Court of Appeals in CA-G.R. CV No. 21123.

"On August 30, 1991, respondent Judge issued an order (Annex A, Petition) quoted as follows:

"Presented before the Court is a Motion for Execution filed by plaintiff represented by Atty. Antonio Albano. Both defendants Bobby Cu Unjieng and Rose Cu Unjieng represented by Atty. Vicente Sison and Atty. Anacleto Magno respectively were duly notified in today's consideration of the motion as evidenced by the rubber stamp and signatures upon the copy of the Motion for Execution.

'The gist of the motion is that the Decision of the Court dated September 21, 1990 as modified by the Court of Appeals in its decision in CA G.R. CV-21123, and elevated to the Supreme Court upon the petition for review and that the same was denied by the highest tribunal in its resolution dated May 6, 1991 in G.R. No. L--97276, had now become final and executory. As a consequence, there was an Entry of Judgment by the Supreme Court as of June 6, 1991, stating that the aforesaid modified decision had already become final and executory.

'It is the observation of the Court that this property in dispute was the subject of the Notice of Lis Pendens and that the modified decision of this Court promulgated by the Court of Appeals which had become final to the effect that should the defendants decide to offer the property for sale for a price of P11 Million or lower, and considering the mercurial and uncertain forces in our market economy today, the same right of first refusal to herein plaintiffs/appellants in the event that the subject property is sold for a price in excess of Eleven Million pesos or more.

'WHEREFORE, defendants are hereby ordered to execute the necessary Deed of Sale of the property in litigation in favor of plaintiffs Ang Yu Asuncion, Keh Tiong and Arthur Go for the consideration of P15 Million pesos in recognition of plaintiffs' right of first refusal and that a new Transfer Certificate of Title be issued in favor of the buyer.

'All previous transactions involving the same property notwithstanding the issuance of another title to Buen Realty Corporation, is hereby set aside as having been executed in bad faith.

'SO ORDERED.'

"On September 22, 1991 respondent Judge issue another order, the dispositive portion of which reads:

"WHEREFORE, let there be Writ of Execution issue in the above-entitled case directing the Deputy Sheriff Ramon Enriquez of this Court to implement said Writ of Execution ordering the defendants among others to comply with the aforesaid Order of this Court within a period of one (1) week from receipt of this Order and for defendants to execute the necessary Deed of Sale of the property in litigation in favor of the plaintiffs Ang Yu Asuncion, Keh Tiong and Arthur Go for the consideration of P15,000,000.00 and ordering the Register of Deeds of the City of Manila, to cancel and set aside the title already issued in favor of Buen Realty Corporation which was previously executed between the latter and defendants and to register the new title in favor of the aforesaid plaintiffs Ang Yu Asuncion, Keh Tiong and Arthur Go.

'SO ORDERED.'

"On the same day, September 27, 1991 the corresponding writ of execution (Annex C, Petition) was issued." [1]

On 04 December 1991, the appellate court, on appeal to it by private respondent, set aside and declared without

force and effect the above questioned orders of the court a quo.

In this petition for review on certiorari, petitioners contend that Buen Realty can be held bound by the writ of execution by virtue of the notice of lis pendens, carried over on TCT No. 195816 issued in the name of Buen Realty, at the time of the latter's purchase of the property on 15 November 1991 from the Cu Unjiengs.

We affirm the decision of the appellate court.

A not too recent development in real estate transactions is the adoption of such arrangements as the right of first refusal, a purchase option and a contract to sell. For ready reference, we might point out some fundamental precepts that may find some relevance to this discussion.

An obligation is a juridical necessity to give, to do or not to do (Art. 1156, Civil Code). The obligation is constituted upon the concurrence of the essential elements thereof, viz: (a) The vinculum juris or juridical tie which is the efficient cause established by the various sources of obligations (law, contracts, quasi-contracts, delicts and quasi-delicts); (b) the object which is the prestation or conduct, required to be observed (to give, to do or not to do); and (c) the subject-persons who, viewed from the demandability of the obligation, are the active (obligee) and the passive (obligor) subjects.

Among the sources of an obligation is a contract (Art. 1157, Civil Code), which is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service (Art. 1305, Civil Code). A contract undergoes various stages that include its negotiation or preparation, its perfection and, finally, its consummation. Negotiation covers the period from the time the prospective contracting parties indicate interest in the contract to the time the contract is concluded (perfected). The perfection of the contract takes place upon the concurrence of the essential elements thereof. A contract which is consensual as to perfection is so established upon a mere meeting of minds, i.e., the concurrence of offer and acceptance, on the object and on the cause thereof. A contract which requires, in addition to the above, the delivery of the object of the agreement, as in a pledge or commodatum, is commonly referred to as a real contract. In a solemn contract, compliance with certain formalities prescribed by law, such as in a donation of real property, is essential in order to make the act valid, the prescribed form being thereby an essential element thereof. The stage of consummation begins when the parties perform their respective undertakings under the contract culminating in the extinguishment thereof.

Until the contract is perfected, it cannot, as an independent source of obligation, serve as a binding juridical relation. In sales, particularly, to which the topic for discussion about the case at bench belongs, the contract is perfected when a person, called the seller, obligates himself, for a price certain, to deliver and to transfer ownership of a thing or right to another, called the buyer, over which the latter agrees. Article 1458 of the Civil Code provides:

"Art. 1458. By the contract of sale one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

"A contract of sale may be absolute or conditional."

When the sale is not absolute but conditional, such as in a "Contract to Sell" where invariably the ownership of the thing sold is retained until the fulfillment of a positive suspensive condition (normally, the full payment of the purchase price), the breach of the condition will prevent the obligation to convey title from acquiring an obligatory force.[2] In *Dignos vs. Court of Appeals* (158 SCRA 375), we have said that, although denominated a "Deed of Conditional Sale," a sale is still absolute where the contract is devoid of any proviso that title is reserved or the right to unilaterally rescind is stipulated, e.g., until or unless the price is paid. Ownership will then be

transferred to the buyer upon actual or constructive delivery (e.g., by the execution of a public document) of the property sold. Where the condition is imposed upon the perfection of the contract itself, the failure of the condition would prevent such perfection.[3] If the condition is imposed on the obligation of a party which is not fulfilled, the other party may either waive the condition or refuse to proceed with the sale (Art. 1545, Civil Code).[4]

An unconditional mutual promise to buy and sell, as long as the object is made determinate and the price is fixed, can be obligatory on the parties, and compliance therewith may accordingly be exacted.[5]

An accepted unilateral promise which specifies the thing to be sold and the price to be paid, when coupled with a valuable consideration distinct and separate from the price, is what may properly be termed a perfected contract of option. This contract is legally binding, and in sales, it conforms with the second paragraph of Article 1479 of the Civil Code, viz:

"ART. 1479. x x x.

"An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promissor if the promise is supported by a consideration distinct from the price. (1451a)"[6]

Observe, however, that the option is not the contract of sale itself.[7] The optionee has the right, but not the obligation, to buy. Once the option is exercised timely, i.e., the offer is accepted before a breach of the option, a bilateral promise to sell and to buy ensues and both parties are then reciprocally bound to comply with their respective undertakings.[8]

Let us elucidate a little. A negotiation is formally initiated by an offer. An imperfect promise (policitacion) is merely an offer. Public advertisements or solicitations and the like are ordinarily construed as mere invitations to make offers or only as proposals. These relations, until a contract is perfected, are not considered binding commitments. Thus, at any time prior to the perfection of the contract, either negotiating party may stop the negotiation.' The offer, at this stage, may be withdrawn; the withdrawal is effective immediately after its manifestation, such as by its mailing and not necessarily when the offeree learns of the withdrawal (Laudico vs. Arias, 43 Phil. 270). Where a period is given to the offeree within which to accept the offer, the following rules generally govern:

(1) If the period is not itself founded upon or supported by a consideration, the offeror is still free and has the right to withdraw the offer before its acceptance, or, if an acceptance has been made, before the offeror's coming to know of such fact, by communicating that withdrawal to the offeree (see Art. 1324, Civil Code; see also *Atkins, Kroll & Co. vs. Cua*, 102 Phil. 948, holding that this rule is applicable to a unilateral promise to sell under Art. 1479, modifying the previous decision in *South Western Sugar vs. Atlantic Gulf*, 97 Phil. 249; see also Art. 1319, Civil Code; *Rural Bank of Parañaque, Inc., vs. Remolado*, 135 SCRA 409; *Sanchez vs. Rigos*, 45 SCRA 368). The right to withdraw, however, must not be exercised whimsically or arbitrarily; otherwise, it could give rise to a damage claim under Article 19 of the Civil Code which ordains that "every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith."

(2) If the period has a separate consideration, a contract of "option" is deemed perfected, and it would be a breach of that contract to withdraw the offer during the agreed period. The option, however, is an independent contract by itself, and it is to be distinguished from the projected main agreement (subject matter of the option) which is obviously yet to be concluded. If, in fact, the optioner-offeror withdraws the offer before its acceptance (exercise of the option) by the optionee-offeree, the latter may not sue for specific performance on the proposed contract ("object" of the option) since it has failed to reach its own stage of perfection. The optioner-offeror, however, renders himself liable for damages for breach of the option. In these cases, care

should be taken of the real nature of the consideration given, for if, in fact, it has been intended to be part of the consideration for the main contract with a right of withdrawal on the part of the optionee, the main contract could be deemed perfected; a similar instance would be an "earnest money" in a contract of sale that can evidence its perfection (Art. 1482, Civil Code).

In the law on sales, the so-called "right of first refusal" is an innovative juridical relation. Needless to point out, it cannot be deemed a perfected contract of sale under Article 1458 of the Civil Code. Neither can the right of first refusal, understood in its normal concept, per se be brought within the purview of an option under the second paragraph of Article 1479, aforequoted, or possibly of an offer under Article 1319[9] of the same Code. An option or an offer would require, among other things,[10] a clear certainty on both the object and the cause or consideration of the envisioned contract. In a right of first refusal, while the object might be made determinate, the exercise of the right, however, would be dependent not only on the grantor's eventual intention to enter into a binding juridical relation with another but also on terms, including the price, that obviously are yet to be later firmed up. Prior thereto, it can at best be so described as merely belonging to a class of preparatory juridical relations governed not by contracts (since the essential elements to establish the *vinculum juris* would still be indefinite and inconclusive) but by, among other laws of general application, the pertinent scattered provisions of the Civil Code on human conduct.

Even on the premise that such right of first refusal has been decreed under a final judgment, like here, its breach cannot justify correspondingly an issuance of a writ of execution under a judgment that merely recognizes its existence, nor would it sanction an action for specific performance without thereby negating the indispensable element of consensuality in the perfection of contracts.[11] It is not to say, however, that the right of first refusal would be inconsequential for, such as already intimated above, an unjustified disregard thereof, given, for instance, the circumstances expressed in Article 19[12] of the Civil Code, can warrant a recovery for damages.

The final judgment in Civil Case No. 87-41058, it must be stressed, has merely accorded a "right of first refusal" in favor of petitioners. The consequence of such a declaration entails no more than what has heretofore been said. In fine, if, as it is here so conveyed to us, petitioners are aggrieved by the failure of private respondents to honor the right of first refusal, the remedy is not a writ of execution on the judgment, since there is none to execute, but an action for damages in a proper forum for the purpose.

Furthermore, whether private respondent Buen Realty Development Corporation, the alleged purchaser of the property, has acted in good faith or bad faith and whether or not it should, in any case, be considered bound to respect the registration of the *lis pendens* in Civil Case No. 87-41058 are matters that must be independently addressed in appropriate proceedings. Buen Realty, not having been impleaded in Civil Case No. 87-41058, cannot be held subject to the writ of execution issued by respondent Judge, let alone ousted from the ownership and possession of the property, without first being duly afforded its day in court.

We are also unable to agree with petitioners that the Court of Appeals has erred in holding that the writ of execution varies the terms of the judgment in Civil Case No. 87-41058, later affirmed in CA-G.R. CV-21123. The Court of Appeals, in this regard, has observed:

"Finally, the questioned writ of execution is in variance with the decision of the trial court as modified by this Court. As already stated, there was nothing in said decision[13] that decreed the execution of a deed of sale between the Cu Unjiengs and respondent lessees, or the fixing of the price of the sale, or the cancellation of title in the name of petitioner (Limpin vs. IAC, 147 SCRA 516; Pamantasan ng Lungsod ng Maynila vs. IAC, 143 SCRA 311; De Guzman vs. CA, 137 SCRA 730; Pastor vs. CA, 122 SCRA 885)."

It is likewise quite obvious to us that the decision in Civil Case No. 87-41058 could not have decreed at the time the execution of any deed of sale between the Cu Unjiengs and petitioners.

WHEREFORE, we UPHOLD the Court of Appeals in ultimately setting aside the questioned Orders, dated 30 August 1991 and 27 September 1991, of the court a quo. Costs against petitioners.

SO ORDERED.

Narvasa, C.J., Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, and Mendoza, JJ., concur.

Feliciano, J., on leave.

Kapunan, J., no part.

[1] Rollo, pp. 32-38.

[2] Roque vs. Lapuz, 96 SCRA 741; Agustin vs. CA, 186 SCRA 375.

[3] See People's Homesite and Housing Corp. vs. Court of Appeals, 133 SCRA 777.

[4] Delta Motor Corporation vs. Genuino, 170 SCRA 29.

[5] See Art. 1459; Atkins, Kroll and Co., Inc. vs. Cua Hian Tek, 102 Phil. 948.

[6] It is well to note that when the consideration given, for what otherwise would have been an option, partakes the nature in reality of a part payment of the purchase price (termed as "earnest money" and considered as an initial payment thereof), an actual contract of sale is deemed entered into and enforceable as such.

[7] Enriquez de la Cavada vs. Diaz, 37 Phil. 982.

[8] Atkins, Kroll & Co., Inc., vs. Cua Hian Tek, 102 Phil. 948.

[9] Article 1319, Civil Code, provides:

"Art. 1319. Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer." (Emphasis supplied.)

[10] It is also essential for an option to be binding that valuable consideration distinct from the price should be given (see Montilla vs. Court of Appeals, 161 SCRA 167; Sps. Natino vs. IAC, 197 SCRA 323; Cronico vs. J.M. Tuason & Co., Inc., 78 SCRA 331).

[11] See Article 1315 and 1318, Civil Code; Madrigal & Co. vs. Stevenson & Co., 15 Phil. 38; Salonga vs. Ferrales, 105 SCRA 359).

[12] Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

[13] The decision referred to reads:

"In resume, there was no meeting of the minds between the parties concerning the sale of the property. Absent such requirement, the claim for specific performance will not lie. Appellants' demand for actual, moral and exemplary damages will likewise fail as there exists no justifiable ground for its award. Summary judgment for defendants was properly granted. Courts may render summary judgment when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law (Garcia vs. Court of Appeals, 176 SCRA 815). All requisites obtaining, the decision of the court a quo is legally justifiable.

"WHEREFORE, finding the appeal unmeritorious, the judgment appealed from is hereby AFFIRMED, but subject to the following modification: The court a quo in the aforestated decision, gave the plaintiffs-considering the mercurial and uncertain forces in our market economy today. We find no reason not to grant the same right of first refusal to herein appellants in the event that the subject property is sold for a price in excess of Eleven Million pesos. No pronouncement as to costs."

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