

DIEGO RAPANUT, PETITIONER, VS. THE COURT OF APPEALS AND SUSAN FLUNKER, RESPONDENTS.

G.R. No. 109680. July 14, 1995

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for review on certiorari assailing the Decision of the Court of Appeals in CA-G.R. CV No. 29944, which affirmed the Decision of the Regional Trial Court, Branch 117, Pasay City in Civil Case No. 7224.

We grant the petition.

I

On November 29, 1985, petitioner and private respondent executed a Deed of Conditional Sale with Mortgage. Under the contract, private respondent agreed to sell to petitioner a parcel of land in San Rafael, Pasay City, covered by TCT No. 77982 for P42,840.00, payable in monthly installments of P500.00 to be paid not later than the fifth day of every month and in semi-annual installments of P1,000.00 to be paid on June 30 and December 31 of every year, "with an interest of 10% per annum on the remaining balance until the full amount is paid" (Rollo, p. 22).

In April 1986, petitioner and private respondent entered into a Supplemental Agreement with the following stipulations:

"WHEREAS, the VENDOR/MORTGAGEE is willing to sell said portion of her lots to the VENDEE/MORTGAGOR for a total price of P37,485.00 payable in monthly installments of P500.00 with an interest of 10% per annum on the remaining balance until the full amount is paid.

"Payments of the monthly installments of P500.00 shall be made not later than the fifth day of every month without need of demand starting January, 1986. Failure to pay any of the monthly installments when due for three months, shall be sufficient cause for rescission of this contract and all payments made shall be applied as corresponding rentals" (Rollo, pp. 25-26).

Petitioner, thus, had been making the P500.00 monthly installment payments until he received a letter dated February 13, 1990 from private respondent's counsel informing him that for his failure to pay the monthly installments plus 10% per annum interest on the balance, the Deed of Conditional Sale with Mortgage and the Supplemental Agreement were rescinded "as of receipt hereof," and that payments made were considered rentals. The letter further demanded that petitioner vacate the premises within 15 days from receipt thereof.

On March 14, 1990, private respondent filed a complaint against petitioner in the Regional Trial Court, Branch 117, Pasay City for rescission of the contracts (Civil Case No. 7224). After trial, the court a quo disposed:

"WHEREFORE, in view of the foregoing, the Court renders judgment in favor of [private respondent] against [petitioner] and orders the rescission of the Deed of Conditional Sale with Mortgage and Supplemental

Agreement; [petitioner] is also ordered to pay the amount of P5,000.00 by way of acceptance fee; P1,000.00 for every court appearance as attorney's fees; and actual damages in the amount of P2,000.00, plus costs" (Rollo, pp. 48-49).

Petitioner appealed to the Court of Appeals, which affirmed the trial court's decision but deleted the award of actual damages and attorney's fees.

II

Before us, petitioner raises the following issues: (1) whether the February 13, 1990 letter resolving the two contracts was effective; and (2) whether petitioner has substantially complied with his obligation.

Petitioner had paid private respondent the amount of P24,500.00, consisting of the P500.00 monthly installments from January 1986 to January 1990.

The trial court and the appellate court agreed with private respondent's theory that the above payments should be applied to the unpaid accrued interest (10% per annum on the balance) for the years 1986 to 1989 totalling P10,966.18, pursuant to Article 1253 of the Civil Code of the Philippines. Said Article provides that "[i]f the debt produces interest, payment of the principal shall not be deemed to have been made until the interests have been covered."

Thus, the courts a quo concluded that after such application of payment, petitioner had unpaid installments in the amount of P23,751.18 representing 21 monthly installments.

Petitioner, on the other hand, contends that under the contracts, "the provision on the payment of 10% should be understood to mean that the accrued and accumulated interests will be added to the principal and petitioner will continue to pay the monthly installment of P500.00 until the whole amount together with the interest are fully paid" (Rollo, p. 16). He asserts that this contention finds support in the fact that the contracts did not specify the date of payment of the 10% interest and the number of years within which to pay the installments (Rollo, p. 16).

III

The controversial provision in the Supplemental Agreement reads: "xxx the VENDOR/MORTGAGEE is willing to sell said portion of her lot to the VENDEE/MORTGAGOR for a total price of P37,485.00 payable in monthly installments of P500.00 with an interest of 10% per annum on the remaining balance until the full amount is paid" (Rollo, pp. 25-26; Underscoring supplied).

Private respondent's view is that the 10% interest must be paid every year. Petitioner posits that the P500.00 monthly installments include the 10% interest.

The interpretation of the provision in question having been put in issue, the Court is constrained to determine which interpretation is more in accord with the intent of the parties (cf. *Capital Insurance & Surety Co., Inc. v. Central Azucarera del Danao*, 221 SCRA 98 [1993]). To ascertain the intent of the parties, the Court shall look at their contemporaneous and subsequent acts (Civil Code of the Philippines, Art. 1371).

The Deed of Conditional Sale with Mortgage categorically provides for the date of payment of the P500.00 monthly installments, that is, not later than the fifth of every month, and of the P1000.00 semi-annual installment, that is, on June 30 and December 31. The Supplemental Agreement was likewise specific that petitioner shall pay private respondent "monthly installments of P500.00 with an interest of 10% per annum on the remaining balance until the full amount is paid" (Rollo, p. 26).

A liberal interpretation of the contracts in question is that at the end of each year, all the installment payments made shall be deducted from the principal obligation. The 10% interest on the balance is then added to whatever remains of the principal. Thereafter, petitioner shall pay the monthly installments on the stipulated dates. In other words, the interests due are added to and paid like the remaining balance of the principal. Thus, we must rule that the parties intended that petitioner pay the monthly installments at predetermined dates, until the full amount, consisting of the purchase price and the interests on the balance, is paid.

Significant is the fact that private respondent accepted the payments petitioner religiously made for four years. Private respondent cannot rely on the clause in the contract stating that no demand is necessary to explain her silence for four years as to the 10% interest, as such clause refers to the P500.00 monthly installments.

Even granting as acceptable private respondent's theory that the monthly amortizations shall first be applied to the payment of the interests, we must still rule for petitioner.

The contracts provided for private respondent's right of rescission which may be exercised upon petitioner's failure to pay installments for three months. Private respondent's failure to exercise her right of rescission after petitioner's alleged default constitutes a waiver of such right. Her continued acceptance of the installment payments places her in estoppel.

In *Angeles v. Calasanz*, 135 SCRA 323 (1985), therein defendants-appellants accepted delayed installment payments from the plaintiffs-appellees, but subsequently rescinded the contract to sell. Paragraph six of said contract provided for the vendor's right to rescind the contract upon the vendee's failure to pay an installment, which can be exercised after the lapse of a grace period of one month. We ruled that:

"xxx. 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" (at p. 332).

Angeles cites as precedent *De Guzman v. Guieb*, 48 SCRA 68 (1972). In *De Guzman*, the "Option to Purchase Real Property" provided that the option was rendered null and void upon the failure of the grantee to pay the monthly rentals for six consecutive months. The Court held:

"But appellants do not deny that in spite of long arrearages, neither they nor their predecessor xxx even took steps to cancel the option or to eject the appellees from the home-lot 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 of appellees of all their arrearages" (at p. 77).

After pondering on the meaning of Article 1253, we reach the conclusion that in a contract involving installment payments with interest chargeable against the remaining balance of the obligation, it is the duty of the creditor to inform the debtor of the amount of interest that falls due and that he is applying the installment payments to cover said interest. Otherwise, the creditor cannot apply the payments to the interest and then hold the debtor in default for non-payment of installments on the principal.

WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals is REVERSED and a new one entered as follows:

1. Private respondent's rescission of the contracts is ANNULLED; and
2. Private respondent is ORDERED to ACCEPT the monthly installments of petitioner without penalty until the full amount of the contracts, including the accrued interest, is paid in full.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., and Kapunan, JJ., concur.

Bellosillo, J., on leave.

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