

ADELFA PROPERTIES, INC., PETITIONER, VS. COURT OF APPEALS, ROSARIO JIMENEZ-CASTAÑEDA AND SALUD JIMENEZ, RESPONDENTS.

G.R. No. 111238. January 25, 1995

Ponente: REGALADO, J.

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REGALADO, J.:

The main issues presented for resolution in this petition for review on certiorari of the judgment of respondent Court of Appeals, dated April 6, 1993, in CA-G.R. CV No. 34767 [1] are (1) whether or not the "Exclusive Option to Purchase" executed between petitioner Adelfa Properties, Inc. and private respondents Rosario Jimenez-Castañeda and Salud Jimenez is an option contract; and (2) whether or not there was a valid suspension of payment of the purchase price by said petitioner, and the legal effects thereof on the contractual relations of the parties.

The records disclose the following antecedent facts which culminated in the present appellate review, to wit:

1. Herein private respondents and their brothers, Jose and Dominador Jimenez, were the registered co-owners of a parcel of land consisting of 17,710 square meters, covered by Transfer Certificate of Title (TCT) No. 309773, [2] situated in Barrio Culasi, Las Piñas, Metro Manila.
2. On July 28, 1988, Jose and Dominador Jimenez sold their share consisting of one-half of said parcel of land, specifically the eastern portion thereof, to herein petitioner pursuant to a "Kasulatan sa Bilihan ng Lupa." [3] Subsequently, a "Confirmatory Extrajudicial Partition Agreement" [4] was executed by the Jimenezes, wherein the eastern portion of the subject lot, with an area of 8,855 square meters was adjudicated to Jose and Dominador Jimenez, while the western portion was allocated to herein private respondents.
3. Thereafter, herein petitioner expressed interest in buying the western portion of the property from private respondents. Accordingly, on November 25, 1989, an "Exclusive Option to Purchase" [5] was executed between petitioner and private respondents, under the following terms and conditions:

"1. The selling price of said 8,655 square meters of the subject property is TWO MILLION EIGHT HUNDRED FIFTY SIX THOUSAND ONE HUNDRED FIFTY PESOS ONLY (P2,856,150.00);

"2. The sum of P50,000.00 which we received from ADELFA PROPERTIES, INC, as an option money shall be credited as partial payment upon the consummation of the sale and the balance in the sum of TWO MILLION EIGHT HUNDRED SIX THOUSAND ONE HUNDRED FIFTY PESOS (P2,806,150.00) to be paid on or before November 30, 1989;

"3. In case of default on the part of ADELFA PROPERTIES, INC. to pay said balance in accordance with paragraph 2 hereof, this option shall be cancelled and 50% of the option money to be forfeited in our favor and we will refund the remaining 50% of said option money upon the sale of said property to a third party:

"4. All expenses including the corresponding capital gains tax, cost of documentary stamps are for the account

of the VENDORS, and expenses for the registration of the deed of sale in the Registry of Deeds are for the account of ADELFA PROPERTIES, INC."

Considering, however, that the owner's copy of the certificate of title issued to respondent Salud Jimenez had been lost, a petition for the re-issuance of a new owner's copy of said certificate of title was filed in court through Atty. Bayani L. Bernardo, who acted as private respondents' counsel. Eventually, a new owner's copy of the certificate of title was issued but it remained in the possession of Atty. Bernardo until he turned it over to petitioner Adelfa Properties, Inc.

4. Before petitioner could make payment, it received summons [6] on November 29, 1989, together with a copy of a complaint filed by the nephews and nieces of private respondents against the latter, Jose and Dominador Jimenez, and herein petitioner in the Regional Trial Court of Makati, docketed as Civil Case No. 89-5541, for annulment of the deed of sale in favor of Household Corporation and recovery of ownership of the property covered by TCT No. 309773. [7]

5. As a consequence, in a letter dated November 29, 1989, petitioner informed private respondents that it would hold payment of the full purchase price and suggested that private respondents settle the case with their nephews and nieces, adding that "x x x if possible, although November 30, 1989 is a holiday, we will be waiting for you and said plaintiffs at our office up to 7:00 p.m." [8] Another letter of the same tenor and of even date was sent by petitioner to Jose and Dominador Jimenez. [9] Respondent Salud Jimenez refused to heed the suggestion of petitioner and attributed the suspension of payment of the purchase price to "lack of word of honor".

6. On December 7, 1989, petitioner caused to be annotated on the title of the lot its option contract with private respondents, and its contract of sale with Jose and Dominador Jimenez, as Entry No. 1437-4 and Entry No. 1438-4, respectively.

7. On December 14, 1989, private respondents sent Francisca Jimenez to see Atty. Bernardo, in his capacity as petitioner's counsel, and to inform the latter that they were cancelling the transaction. In turn, Atty. Bernardo offered to pay the purchase price provided that P500,000.00 be deducted therefrom for the settlement of the civil case. This was rejected by private respondents. On December 22, 1989, Atty. Bernardo wrote private respondents on the same matter but this time reducing the amount from P500,000.00 to P300,000.00, and this was also rejected by the latter.

8. On February 23, 1990, the Regional Trial Court of Makati dismissed Civil Case No. 89-5541. Thus, on February 28, 1990, petitioner caused to be annotated anew on TCT No. 309773 the exclusive option to purchase as Entry No. 4442-4.

9. On the same day, February 28, 1990, private respondents executed a Deed of Conditional Sale [10] in favor of Emylene Chua over the same parcel of land for P3,029,250.00, of which P1,500,000.00 was paid to private respondents on said date, with the balance to be paid upon the transfer of title to the specified one-half portion.

10. On April 16, 1990, Atty. Bernardo wrote private respondents informing the latter that in view of the dismissal of the case against them, petitioner was willing to pay the purchase price, and he requested that the corresponding deed of absolute sale be executed. [11] This was ignored by private respondents.

11. On July 27, 1990, private respondents' counsel sent a letter to petitioner enclosing therein a check for P25,000.00 representing the refund of fifty percent of the option money paid under the exclusive option to purchase. Private respondents then requested petitioner to return the owner's duplicate copy of the certificate of title of respondent Salud Jimenez. [12] Petitioner failed to surrender the certificate of title, hence private respondents filed Civil Case No. 7532 in the Regional Trial Court of Pasay City, Branch 113, for annulment of

contract with damages, praying, among others, that the exclusive option to purchase be declared null and void; that defendant, herein petitioner, be ordered to return the owner's duplicate certificate of title; and that the annotation of the option contract on TCT No. 309773 be cancelled. Emylene Chua, the subsequent purchaser of the lot, filed a complaint in intervention.

12. The trial court rendered judgment [13] therein on September 5, 1991 holding that the agreement entered into by the parties was merely an option contract, and declaring that the suspension of payment by herein petitioner constituted a counter-offer which, therefore, was tantamount to a rejection of the option. It likewise ruled that herein petitioner could not validly suspend payment in favor of private respondents on the ground that the vindicatory action filed by the latter's kin did not involve the western portion of the land covered by the contract between petitioner and private respondents, but the eastern portion thereof which was the subject of the sale between petitioner and the brothers Jose and Dominador Jimenez. The trial court then directed the cancellation of the exclusive option to purchase, declared the sale to intervenor Emylene Chua as valid and binding, and ordered petitioner to pay damages and attorney's fees to private respondents, with costs.

13. On appeal, respondent Court of Appeals affirmed in toto the decision of the court a quo and held that the failure of petitioner to pay the purchase price within the period agreed upon was tantamount to an election by petitioner not to buy the property; that the suspension of payment constituted an imposition of a condition which was actually a counter-offer amounting to a rejection of the option; and that Article 1590 of the Civil Code on suspension of payments applies only to a contract of sale or a contract to sell, but not to an option contract which it opined was the nature of the document subject of the case at bar. Said appellate court similarly upheld the validity of the deed of conditional sale executed by private respondents in favor of intervenor Emylene Chua.

In the present petition, the following assignment of errors are raised:

1. Respondent Court of Appeals acted with grave abuse of discretion in making its finding that the agreement entered into by petitioner and private respondents was strictly an option contract;
2. Granting *arguendo* that the agreement was an option contract, respondent Court of Appeals acted with grave abuse of discretion in grievously failing to consider that while the option period had not lapsed, private respondents could not unilaterally and prematurely terminate the option period;
3. Respondent Court of Appeals acted with grave abuse of discretion in failing to appreciate fully the attendant facts and circumstances when it made the conclusion of law that Article 1590 does not apply; and
4. Respondent Court of Appeals acted with grave abuse of discretion in conforming with the sale in favor of appellee Ma. Emylene Chua and the award of damages and attorney's fees which are not only excessive, but also without bases in fact and in law. [14]

An analysis of the facts obtaining in this case, as well as the evidence presented by the parties, irresistibly leads to the conclusion that the agreement between the parties is a contract to sell, and not an option contract or a contract of sale.

I

1. In view of the extended disquisition thereon by respondent court, it would be worthwhile at this juncture to briefly discourse on the rationale behind our treatment of the alleged option contract as a contract to sell, rather than a contract of sale. The distinction between the two is important for in a contract of sale, the title passes to the vendee upon the delivery of the thing sold; whereas in a contract to sell, by agreement the ownership is reserved in the vendor and is not to pass until the full payment of the price. In a contract of sale, the vendor has lost and cannot recover ownership until and unless the contract is resolved or rescinded; whereas in a contract to sell, title

is retained by the vendor until the full payment of the price, such payment being a positive suspensive condition and failure of which is not a breach but an event that prevents the obligation of the vendor to convey title from becoming effective. Thus, a deed of sale is considered absolute in nature where there is neither a stipulation in the deed that title to the property sold is reserved in the seller until the full payment of the price, nor one giving the vendor the right to unilaterally resolve the contract the moment the buyer fails to pay within a fixed period. [15]

There are two features which convince us that the parties never intended to transfer ownership to petitioner except upon full payment of the purchase price. Firstly, the exclusive option to purchase, although it provided for automatic rescission of the contract and partial forfeiture of the amount already paid in case of default, does not mention that petitioner is obliged to return possession or ownership of the property as a consequence of non-payment. There is no stipulation anent reversion or reconveyance of the property to herein private respondents in the event that petitioner does not comply with its obligation. With the absence of such a stipulation, although there is a provision on the remedies available to the parties in case of breach, it may legally be inferred that the parties never intended to transfer ownership to the petitioner prior to completion of payment of the purchase price.

In effect, there was an implied agreement that ownership shall not pass to the purchaser until he had fully paid the price. Article 1478 of the Civil Code does not require that such a stipulation be expressly made. Consequently, an implied stipulation to that effect is considered valid and, therefore, binding and enforceable between the parties. It should be noted that under the law and jurisprudence, a contract which contains this kind of stipulation is considered a contract to sell.

Moreover, that the parties really intended to execute a contract to sell, and not a contract of sale, is bolstered by the fact that the deed of absolute sale would have been issued only upon the payment of the balance of the purchase price, as may be gleaned from petitioner's letter dated April 16, 1990 [16] wherein it informed private respondents that it "is now ready and willing to pay you simultaneously with the execution of the corresponding deed of absolute sale."

Secondly, it has not been shown that there was delivery of the property, actual or constructive, made to herein petitioner. The exclusive option to purchase is not contained in a public instrument the execution of which would have been considered equivalent to delivery. [17] Neither did petitioner take actual, physical possession of the property at any given time. It is true that after the reconstitution of private respondents' certificate of title, it remained in the possession of petitioner's counsel, Atty. Bayani L. Bernardo, who thereafter delivered the same to herein petitioner. Normally, under the law, such possession by the vendee is to be understood as a delivery. [18] However, private respondents explained that there was really no intention on their part to deliver the title to herein petitioner with the purpose of transferring ownership to it. They claim that Atty. Bernardo had possession of the title only because he was their counsel in the petition for reconstitution. We have no reason not to believe this explanation of private respondents, aside from the fact that such contention was never refuted or contradicted by petitioner.

2. Irrefragably, the controverted document should legally be considered as a perfected contract to sell. On this particular point, therefore, we reject the position and ratiocination of respondent Court of Appeals which, while awarding the correct relief to private respondents, categorized the instrument as "strictly an option contract."

The important task in contract interpretation is always the ascertainment of the intention of the contracting parties and that task is, of course, to be discharged by looking to the words they used to project that intention in their contract, all the words not just a particular word or two, and words in context not words standing alone. [19] Moreover, judging from the subsequent acts of the parties which will hereinafter be discussed, it is undeniable

that the intention of the parties was to enter into a contract to sell. [20] In addition, the title of a contract does not necessarily determine its true nature. [21] Hence, the fact that the document under discussion is entitled "Exclusive Option to Purchase" is not controlling where the text thereof shows that it is a contract to sell.

An option, as used in the law on sales, is a continuing offer or contract by which the owner stipulates with another that the latter shall have the right to buy the property at a fixed price within a certain time, or under, or in compliance with, certain terms and conditions, or which gives to the owner of the property the right to sell or demand a sale. It is also sometimes called an "unaccepted offer." An option is not of itself a purchase, but merely secures the privilege to buy. [22] It is not a sale of property but a sale of the right to purchase. [23] It is simply a contract by which the owner of property agrees with another person that he shall have the right to buy his property at a fixed price within a certain time. He does not sell his land; he does not then agree to sell it; but he does sell something, that is, the right or privilege to buy at the election or option of the other party. [24] Its distinguishing characteristic is that it imposes no binding obligation on the person holding the option, aside from the consideration for the offer. Until acceptance, it is not, properly speaking, a contract, and does not vest, transfer, or agree to transfer, any title to, or any interest or right in the subject matter, but is merely a contract by which the owner of property gives the optionee the right or privilege of accepting the offer and buying the property on certain terms. [25]

On the other hand, a contract, like a contract to sell, involves a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service. [26] Contracts, in general, are perfected by mere consent, [27] which 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. [28]

The distinction between an "option" and a contract of sale is that an option is an unaccepted offer. It states the terms and conditions on which the owner is willing to sell his land, if the holder elects to accept them within the time limited. If the holder does so elect, he must give notice to the other party, and the accepted offer thereupon becomes a valid and binding contract. If an acceptance is not made within the time fixed, the owner is no longer bound by his offer, and the option is at an end. A contract of sale, on the other hand, fixes definitely the relative rights and obligations of both parties at the time of its execution. The offer and the acceptance are concurrent, since the minds of the contracting parties meet in the terms of the agreement. [29]

A perusal of the contract in this case, as well as the oral and documentary evidence presented by the parties, readily shows that there is indeed a concurrence of petitioner's offer to buy and private respondents' acceptance thereof. The rule is that except where a formal acceptance is so required, although the acceptance must be affirmatively and clearly made and must be evidenced by some acts or conduct communicated to the offeror, it may be made either in a formal or an informal manner, and may be shown by acts, conduct, or words of the accepting party that clearly manifest a present intention or determination to accept the offer to buy or sell. Thus, acceptance may be shown by the acts, conduct, or words of a party recognizing the existence of the contract of sale. [30]

The records also show that private respondents accepted the offer of petitioner to buy their property under the terms of their contract. At the time petitioner made its offer, private respondents suggested that their transfer certificate of title be first reconstituted, to which petitioner agreed. As a matter of fact, it was petitioner's counsel, Atty. Bayani L. Bernardo, who assisted private respondents in filing a petition for reconstitution. After the title was reconstituted, the parties agreed that petitioner would pay either in cash or manager's check the amount of P2,856,150.00 for the lot. Petitioner was supposed to pay the same on November 25, 1989, but it later offered to make a down payment of P50,000.00, with the balance of P2,806,150.00 to be paid on or before November 30,

1989. Private respondents agreed to the counter-offer made by petitioner. [31] As a result, the so-called exclusive option to purchase was prepared by petitioner and was subsequently signed by private respondents, thereby creating a perfected contract to sell between them.

It cannot be gainsaid that the offer to buy a specific piece of land was definite and certain, while the acceptance thereof was absolute and without any condition or qualification. The agreement as to the object, the price of the property, and the terms of payment was clear and well-defined. No other significance could be given to such acts than that they were meant to finalize and perfect the transaction. The parties even went beyond the basic requirements of the law by stipulating that "all expenses including the corresponding capital gains tax, cost of documentary stamps are for the account of the vendors, and expenses for the registration of the deed of sale in the Registry of Deeds are for the account of Adelfa Properties, Inc." Hence, there was nothing left to be done except the performance of the respective obligations of the parties.

We do not subscribe to private respondents' submission, which was upheld by both the trial court and respondent Court of Appeals, that the offer of petitioner to deduct P500,000.00, (later reduced to P300,000.00) from the purchase price for the settlement of the civil case was tantamount to a counter-offer. It must be stressed that there already existed a perfected contract between the parties at the time the alleged counter-offer was made. Thus, any new offer by a party becomes binding only when it is accepted by the other. In the case of private respondents, they actually refused to concur in said offer of petitioner, by reason of which the original terms of the contract continued to be enforceable.

At any rate, the same cannot be considered a counter-offer for the simple reason that petitioner's sole purpose was to settle the civil case in order that it could already comply with its obligation. In fact, it was even indicative of a desire by petitioner to immediately comply therewith, except that it was being prevented from doing so because of the filing of the civil case which, it believed in good faith, rendered compliance improbable at that time. In addition, no inference can be drawn from that suggestion given by petitioner that it was totally abandoning the original contract.

More importantly, it will be noted that the failure of petitioner to pay the balance of the purchase price within the agreed period was attributed by private respondents to "lack of word of honor" on the part of the former. The reason of "lack of word of honor" is to us a clear indication that private respondents considered petitioner already bound by its obligation to pay the balance of the consideration. In effect, private respondents were demanding or exacting fulfillment of the obligation from herein petitioner. With the arrival of the period agreed upon by the parties, petitioner was supposed to comply with the obligation incumbent upon it to perform, not merely to exercise an option or a right to buy the property.

The obligation of petitioner on November 30, 1993 consisted of an obligation to give something, that is, the payment of the purchase price. The contract did not simply give petitioner the discretion to pay for the property. [32] It will be noted that there is nothing in the said contract to show that petitioner was merely given a certain period within which to exercise its privilege to buy. The agreed period was intended to give time to herein petitioner within which to fulfill and comply with its obligation, that is, to pay the balance of the purchase price. No evidence was presented by private respondents to prove otherwise.

The test in determining whether a contract is a "contract of sale or purchase" or a mere "option" is whether or not the agreement could be specifically enforced. [33] There is no doubt that the obligation of petitioner to pay the purchase price is specific, definite and certain, and consequently binding and enforceable. Had private respondents chosen to enforce the contract, they could have specifically compelled petitioner to pay the balance of P2,806,150.00. This is distinctly made manifest in the contract itself as an integral stipulation, compliance with

which could legally and definitely be demanded from petitioner as a consequence.

This is not a case where no right is as yet created nor an obligation declared, as where something further remains to be done before the buyer and seller obligate themselves. [34] An agreement is only an "option" when no obligation rests on the party to make any payment except such as may be agreed on between the parties as consideration to support the option until he has made up his mind within the time specified. [35] An option, and not a contract to purchase, is effected by an agreement to sell real estate for payments to be made within a specified time and providing for forfeiture of money paid upon failure to make payment, where the purchaser does not agree to purchase, to make payment, or to bind himself in any way other than the forfeiture of the payments made. [36] As hereinbefore discussed, this is not the situation obtaining in the case at bar.

While there is jurisprudence to the effect that a contract which provides that the initial payment shall be totally forfeited in case of default in payment is to be considered as an option contract, [37] still we are not inclined to conform with the findings of respondent court and the court a quo that the contract executed between the parties is an option contract, for the reason that the parties were already contemplating the payment of the balance of the purchase price, and were not merely quoting an agreed value for the property. The term "balance," connotes a remainder or something remaining from the original total sum already agreed upon.

In other words, the alleged option money of P50,000.00 was actually earnest money which was intended to form part of the purchase price. The amount of P50,000.00 was not distinct from the cause or consideration for the sale of the property, but was itself a part thereof. It is a statutory rule that whenever earnest money is given in a contract of sale, it shall be considered as part of the price and as proof of the perfection of the contract. [38] It constitutes an advance payment and must, therefore, be deducted from the total price. Also, earnest money is given by the buyer to the seller to bind the bargain.

There are clear distinctions between earnest money and option money, viz.: (a) earnest money is part of the purchase price, while option money is the money given as a distinct consideration for an option contract; (b) earnest money is given only where there is already a sale, while option money applies to a sale not yet perfected; and (c) when earnest money is given, the buyer is bound to pay the balance, while when the would-be buyer gives option money, he is not required to buy. [39]

The aforequoted characteristics of earnest money are apparent in the so-called option contract under review, even though it was called "option money" by the parties. In addition, private respondents failed to show that the payment of the balance of the purchase price was only a condition precedent to the acceptance of the offer or to the exercise of the right to buy. On the contrary, it has been sufficiently established that such payment was but an element of the performance of petitioner's obligation under the contract to sell. [40]

II

1. This brings us to the second issue as to whether or not there was valid suspension of payment of the purchase price by petitioner and the legal consequences thereof. To justify its failure to pay the purchase price within the agreed period, petitioner invokes Article 1590 of the Civil Code which provides:

"ART. 1590. Should the vendee be disturbed in the possession or ownership of the thing acquired, or should he have reasonable grounds to fear such disturbance, by a vindicatory action or a foreclosure of mortgage, he may suspend the payment of the price until the vendor has caused the disturbance or danger to cease, unless the latter gives security for the return of the price in a proper case, or it has been stipulated that, notwithstanding any such contingency, the vendee shall be bound to make the payment. A mere act of trespass shall not authorize the suspension of the payment of the price."

Respondent court refused to apply the aforequoted provision of law on the erroneous assumption that the true agreement between the parties was a contract of option. As we have hereinbefore discussed, it was not an option contract but a perfected contract to sell. Verily, therefore, Article 1590 would properly apply.

Both lower courts, however, are in accord that since Civil Case No. 89-5541 filed against the parties herein involved only the eastern half of the land subject of the deed of sale between petitioner and the Jimenez brothers, it did not, therefore, have any adverse effect on private respondents' title and ownership over the western half of the land which is covered by the contract subject of the present case. We have gone over the complaint for recovery of ownership filed in said case [41] and we are not persuaded by the factual findings made by said courts. At a glance, it is easily discernible that, although the complaint prayed for the annulment only of the contract of sale executed between petitioner and the Jimenez brothers, the same likewise prayed for the recovery of therein plaintiffs' share in that parcel of land specifically covered by TCT No. 309773. In other words, the plaintiffs therein were claiming to be co-owners of the entire parcel of land described in TCT No. 309773, and not only of a portion thereof nor, as incorrectly interpreted by the lower courts, did their claim pertain exclusively to the eastern half adjudicated to the Jimenez brothers.

Such being the case, petitioner was justified in suspending payment of the balance of the purchase price by reason of the aforesaid vindicatory action filed against it. The assurance made by private respondents that petitioner did not have to worry about the case because it was pure and simple harassment [42] is not the kind of guaranty contemplated under the exceptive clause in Article 1590 wherein the vendor is bound to make payment even with the existence of a vindicatory action if the vendee should give a security for the return of the price.

2. Be that as it may, and the validity of the suspension of payment notwithstanding, we find and hold that private respondents may no longer be compelled to sell and deliver the subject property to petitioner for two reasons, that is, petitioner's failure to duly effect the consignation of the purchase price after the disturbance had ceased; and, secondarily, the fact that the contract to sell had been validly rescinded by private respondents.

The records of this case reveal that as early as February 28, 1990 when petitioner caused its exclusive option to be annotated anew on the certificate of title, it already knew of the dismissal of Civil Case No. 89-5541. However, it was only on April 16, 1990 that petitioner, through its counsel, wrote private respondents expressing its willingness to pay the balance of the purchase price upon the execution of the corresponding deed of absolute sale. At most, that was merely a notice to pay. There was no proper tender of payment nor consignation in this case as required by law.

The mere sending of a letter by the vendee expressing the intention to pay, without the accompanying payment, is not considered a valid tender of payment. [43] Besides, a mere tender of payment is not sufficient to compel private respondents to deliver the property and execute the deed of absolute sale. It is consignation which is essential in order to extinguish petitioner's obligation to pay the balance of the purchase price. [44] The rule is different in case of an option contract [45] or in legal redemption or in a sale with right to repurchase, [46] wherein consignation is not necessary because these cases involve an exercise of a right or privilege (to buy, redeem or repurchase) rather than the discharge of an obligation, hence tender of payment would be sufficient to preserve the right or privilege. This is because the provisions on consignation are not applicable when there is no obligation to pay. [47] A contract to sell, as in the case before us, involves the performance of an obligation, not merely the exercise of a privilege or a right. Consequently, performance or payment may be effected not by tender of payment alone but by both tender and consignation.

Furthermore, petitioner no longer had the right to suspend payment after the disturbance ceased with the dismissal of the civil case filed against it. Necessarily, therefore, its obligation to pay the balance again arose and resumed

after it received notice of such dismissal. Unfortunately, petitioner failed to seasonably make payment, as in fact it has failed to do so up to the present time, or even to deposit the money with the trial court when this case was originally filed therein.

By reason of petitioner's failure to comply with its obligation, private respondents elected to resort to and did announce the rescission of the contract through its letter to petitioner dated July 27, 1990. That written notice of rescission is deemed sufficient under the circumstances. Article 1592 of the Civil Code which requires rescission either by judicial action or notarial act is not applicable to a contract to sell. [48] Furthermore, judicial action for rescission of a contract is not necessary where the contract provides for automatic rescission in case of breach, [49] as in the contract involved in the present controversy.

We are not unaware of the ruling in *University of the Philippines vs. De los Angeles, etc.* [50] that the right to rescind is not absolute, being ever subject to scrutiny and review by the proper court. It is our considered view, however, that this rule applies to a situation where the extrajudicial rescission is contested by the defaulting party. In other words, resolution of reciprocal contracts may be made extrajudicially unless successfully impugned in court. If the debtor impugns the declaration, it shall be subject to judicial determination. [51] Otherwise, if said party does not oppose it, the extrajudicial rescission shall have legal effect. [52]

In the case at bar, it has been shown that although petitioner was duly furnished and did receive a written notice of rescission which specified the grounds therefor, it failed to reply thereto or protest against it. Its silence thereon suggests an admission of the veracity and validity of private respondents' claim. [53] Furthermore, the initiative of instituting suit was transferred from the rescinder to the defaulter by virtue of the automatic rescission clause in the contract. [54] But then, the records bear out the fact that aside from the lackadaisical manner with which petitioner treated private respondents' letter of cancellation, it utterly failed to seriously seek redress from the court for the enforcement of its alleged rights under the contract. If private respondents had not taken the initiative of filing Civil Case No. 7532, evidently petitioner had no intention to take any legal action to compel specific performance from the former. By such cavalier disregard, it has been effectively estopped from seeking the affirmative relief it now desires but which it had theretofore disdained.

WHEREFORE, on the foregoing modificatory premises, and considering that the same result has been reached by respondent Court of Appeals with respect to the relief awarded to private respondents by the court a quo which we find to be correct, its assailed judgment in CA-G.R. CV No. 34767 is hereby AFFIRMED.

SO ORDERED.

Narvasa, C.J., (Chairman), Puno, and Mendoza, JJ., concur.

[1] Penned by Associate Justice Antonio M. Martinez, with Associate Justices Artemon D. Luna and Buenaventura J. Guerrero, concurring; Annex C, Petition; Rollo, 84.

[2] Exhibit A; Original Record, 8.

[3] Exhibits B and 7; *ibid.*, 9.

[4] Exhibits C and 8; *ibid.*, 12.

[5] Exhibit D; *ibid.*, 17.

[6] Exhibit 2; *ibid.*, 151.

[7] Exhibit 3; *ibid.*, 152.

- [8] Exhibit 6; *ibid.*, 37.
- [9] Exhibit 4; *ibid.*, 38.
- [10] Exhibit G; *ibid.*, 67.
- [11] Exhibit 5; *ibid.*, 39.
- [12] Exhibit F; *ibid.*, 125.
- [13] Original Record, 179; per Judge Baltazar Relativo Dizon.
- [14] Rollo, 14.
- [15] Pingol, et al. vs. Court of Appeals, et al., G.R. No. 102909, September 6, 1993, 226 SCRA 118.
- [16] Exhibit 5; *ibid.*, 39.
- [17] Article 1498, Civil Code.
- [18] Article 1501, *id.*
- [19] Fernandez vs. Court of Appeals, et al., G.R. No. 80231, October 18, 1988, 166 SCRA 577.
- [20] Heirs of Severo Legaspi, Sr. vs. Vda. de Dayot, et al., G.R. No. 83904, August 13, 1990, 188 SCRA 508.
- [21] Cruz, et al. vs. Court of Appeals, et al., G.R. No. 50350, May 15, 1984, 129 SCRA 222.
- [22] 77 C.J.S. Sales, Sec. 33, pp. 651-652.
- [23] 30 Words and Phrases, 15.
- [24] *Op. cit.*, 20.
- [25] 77 C.J.S. Sales, Sec. 33, pp. 651-652.
- [26] Article 1305, Civil Code.
- [27] Article 1315, *id.*
- [28] Article 1319, *id.*
- [29] *McMillan vs. Philadelphia Co.*, 28 A. 220.
- [30] 77 C.J.S. Sales, Sec. 28, p. 641.
- [31] TSN, March 1, 1991, 5-7.
- [32] *Cf. Aspinwall vs. Ryan*, 226 P.2d 814.
- [33] 30 Words and Phrases, 14.
- [34] 77 C.J.S. Sales, Sec. 24, p. 630.
- [35] 30 Words and Phrases, 13.
- [36] *Ibid.*, 15.
- [37] *Hanscom vs. Blanchard*, 105 A. 291.
- [38] Article 1482, Civil Code.

- [39] De Leon, Comments and Cases on Sales, 1986 rev. ed., 67.
- [40] See 77 C.J.S. Sales, Sec. 33, 654.
- [41] Exhibit 3; Original Record, 33.
- [42] TSN, February 1, 1991, 18-20.
- [43] Vda. de Zulueta, et al. vs. Octaviano, et al., G.R. No. 55350, March 28, 1983, 121 SCRA 314.
- [44] Tolentino, Civil Code of the Philippines, Vol. IV, 1986 ed., 323.
- [45] Nietes vs. Court of Appeals, et al., L-32875, August 18, 1972, 46 SCRA 654.
- [46] Francisco, et al. vs. Bautista, et al., L-44167, December 19, 1990, 192 SCRA 388.
- [47] Tolentino, op cit., 323-324; Fn 44.
- [48] Albea vs. Inquimboy, et al., 86 Phil. 477 (1950); Alfonso, et al., vs. Court of Appeals, et al., G.R. No. 63745, June 8, 1990, 186 SCRA 400.
- [49] Palay, Inc., et al. vs. Clave, et al., G.R. No. 56076, September 21, 1983, 124 SCRA 638.
- [50] L-28602, September 29, 1970, 35 SCRA 102.
- [51] Palay, Inc., et al. vs. Clave, et al., supra.
- [52] Zulueta vs. Mariano, etc., et al., L-29360, January 30, 1982, 111 SCRA 206
- [53] Pellicer vs. Ruiz, L-14300, May 30, 1961, 2 SCRA 160.
- [54] University of the Philippines vs. De los Angeles, etc., supra.

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