

SPOUSES REMEDIOS DIJAMCO AND TEODORO DIJAMCO, PETITIONERS, VS. COURT OF APPEALS AND PREMIERE DEVELOPMENT BANK RESPONDENTS.

G.R. No. 113665. October 07, 2004

Ponente: CORONA, J.

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CORONA, J.:

This is a petition for review[1] of the January 7, 1994 resolution and March 30, 1993 decision[2] of the Court of Appeals in CA G.R. CV No. 34125, affirming the February 27, 1991 decision[3] of the Regional Trial Court, Branch 109, Pasay City in Civil Case No. 5795, which dismissed petitioners' complaint against private respondent Premiere Development Bank for recovery of real property and damages.

This dispute arose from the following facts, as summarized by the RTC and the CA:

It appears on record that plaintiffs were granted four separate loans by defendant bank, as follows: Industrial Loan No. 1833 in the amount of P75,000.00 granted on April, 1976; Industrial loan No. 2985 in the amount of P80,000.00 granted on March, 1980; Real Estate Loan No. 2084 in the amount of P80,000.00 granted on February, 1986 and Real Estate Loan No. 64 in the amount of P210,000.00 granted on October, 1981. The subject of this complaint pertains to the fourth loan or the Real Estate Loan No. 2084. To secure the payment of the fourth loan, plaintiffs executed a real estate mortgage over a parcel of land located in Pasay City covered by TCT No. 34450 which according to plaintiffs has an improvement thereon a five-door apartment.

Due to severe economic reverses, plaintiffs failed to remit monthly amortizations regularly on the fourth loan. It appears that plaintiffs were not only in arrears on the fourth loan but also on the second and third loans, as well. At the time that the plaintiffs were negotiating for the settlement of the second and third loans, the fourth loan was about ten (10) months in arrears. Because of this predicament, plaintiffs approached Atty. Araos, Vice President of defendant bank and a family friend of the Dijamcos. According to the plaintiffs, Atty. Araos "advised them to first settle all the two smaller loans (the second and third loans) and not to worry about the P210,000.00 loan" (par. 6, page 2, Amended Complaint). On the other hand, defendant bank alleges that it was plaintiff's (sic) scheme to pay off the second and third loans first so that they (plaintiffs) would then use the collateral of these loans in securing a loan from another which proceeds they would then use to pay off the fourth loan, but this plaintiffs failed to do despite the cooperation of defendant bank.

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On March 6, 1983, defendant bank sought the assistance of the City Sheriff of Pasay City regarding defendant bank's Petition for Extrajudicial Foreclosure of Mortgage under Act 3135 against spouses Remedios R. Dijamco and Teodoro S. Dijamco (See Exh. 4), stating therein among other things that the mortgagors, herein plaintiffs, have violated the provisions of the mortgage contract executed in favor of the defendant bank and that the mortgagee bank is now entitled to foreclose the same. On September 6, 1983, Deputy Sheriff Umberto Ramos for and in behalf of the Ex-Officio Sheriff of Pasay City issued a Notice of Sheriffs' sale (Exh. 5) stating therein that a sheriff's sale shall be conducted on October 6, 1983 by virtue of the power of attorney inserted in the Deed of Real Estate Mortgage and upon the verified petition of the mortgagee in accordance

with the provisions of Act 4118. However, the sheriff's sale was not held as previously scheduled due to the request for postponement filed by herein plaintiffs dated October 4, 1983 (Exh. 6). Plaintiffs requested for five successive postponements in separate requests, to wit Nov. 4, 1983 (Exh. 7); Dec. 7, 1983 (Exh. 8); Jan. 5, 1984 (Exh. 9); and Feb. 4, 1984 (Exh. 10).

On March 7, 1984, the Office of the Ex-Officio Sheriff of Pasay City issued a Certificate of Sale of even date (Exh. 11), stating therein that the mortgaged property covered by TCT 34450 was sold in public auction on said date, with defendant bank as the highest bidder for the price of P359,881.80.

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...plaintiffs failed to redeem the property within the redemption period.

In a letter dated June 11, 1986 (Exh. 14) addressed to Dr. Procopio C. Reyes, President of defendant bank, plaintiff Remedios Dijamco offered to repurchase the subject property, the pertinent and most important contents of which is hereinbelow reproduced and underlined, as follows:

“ x x x.

We have sought ways and means to repurchase the subject property from you up to this time we are unable to do so. However, we could pay interest monthly, just so the principal of P622,095.00 as of May 30, 1986 will no longer be increased. In connection therewith we wish to repurchase our foreclosed properties within a year's time and are submitting the following plan of payment for your approval:

Repurchase price as of May 30, 1986 - P622,095.00

Interest of 26% PA to be paid monthly – P13,478.00

Grace period requested to repurchase the subject properties is one (1) year from May 30, 1986 or until May 30, 1987.

CONDITIONS:

- Interest of P13,478.73 shall be paid on a monthly basis starting June 30, 1986 and every 30[th] day of every month until May 30, 1987.
- Failure to remit interest payment when the same is due will render this proposal automatically revoked without need of formal demand, and you may immediately enforce your Writ of Possession.
- That in case of failure to repurchase the subject property within the period above mentioned, all interest and other payment made by us shall be treated as rentals for the use of the property.

We shall appreciate your favorable action on the matter.

Very truly yours,

Signed

REMEDIOS R. DIJAMCO

CONFORME:

Premiere Development Bank

By:

Signed Procopio C. Reyes

Authorized Signatory”

x x x x x x x

In compliance with the letter-agreement dated June 11, 1986 (Exh. 14), plaintiffs paid defendant bank six (6)

monthly remittances in the amount of P13,478.73 or a total of P80,872.38. According to the plaintiffs, the payment was discontinued by the plaintiffs when Atty. Araos informed plaintiffs that “none of the amount will be deducted from the purchase price x x x” (Par. 17, Amended Complaint). ([RTC] Decision, pp. 1-7; Records, pp. 446-452) (Emphasis and underscoring supplied).[4]

In accordance with the June 11, 1986 agreement, petitioners remitted monthly interest for six months, until January 1987, after which petitioners stopped paying and sued respondent Premiere Development Bank on May 13, 1988. They claimed that the latter employed fraud and undue advantage in depriving them of their property and prayed for recovery of said property for P350,000 and damages. The RTC dismissed the complaint for utter lack of merit and the CA affirmed such dismissal.

Hence, this appeal.

We hold that the RTC and the CA were correct in dismissing petitioners’ complaint. Thus, we deny this petition.

Petitioners themselves admit the uniform factual findings of the RTC and the CA that respondent bank validly acquired the subject property at the auction sale, and that it was only after the title was consolidated and transferred to the bank that petitioner Remedios Dijamco signed the June 11, 1986 agreement to purchase the same property (not to repurchase it, as their right of redemption had long expired).[5] Remedios voluntarily entered into the June 11, 1986 agreement without fraud or undue advantage from respondent bank. As such, the agreement was binding, valid and enforceable between the parties, pursuant to Articles 1315[6] 1159[7] and 1370[8] of the Civil Code of the Philippines.

Contrary to petitioners’ assertion that the June 11, 1986 agreement was a contract of sale, we hold that it was a contract of option to purchase and a contract to sell.

We distinguish between a contract of sale in which title passes to the buyer upon delivery of the thing sold and a contract to sell where, by agreement, the ownership is reserved by the seller till full payment of the purchase price. Thus:

- In a contract of sale, non-payment of the price is a negative resolutory condition.

In a contract to sell, full payment is a positive suspensive condition.

- In a contract of sale, the vendor has lost and cannot recover the ownership of the thing sold until and unless the contract of sale is itself resolved and set aside.

In a contract to sell, the title remains in the vendor if the vendee does not comply with the condition precedent of making payment at the time specified in the contract. If the vendor, because of non-compliance with the suspensive condition stipulated, seeks to eject the buyer from the land object of the agreement, said vendor is enforcing the contract and is not resolving the same.[9]

Indeed, the CA was correct in finding that the June 11, 1986 agreement was a contract to sell because:

- By its own terms, it [was] a contract whereby the appellants [were] granted the right to repurchase the property involved at the fixed price of P622,095.00 within a year provided they [paid] monthly interest payments of P13,478.73;

- No transfer or conveyance of ownership was effected by its terms;

- The interest payments [were] not even part of the repurchase price because in case of failure to exercise the right to repurchase they would be considered as rentals for the use of the property. They [were] not to be returned (Condition No. 3);

- The interest payments were in a way a consideration to preserve the right to repurchase. In default of the interest payments, the right to repurchase terminate[d] (Condition No. 2)[10]

The stipulation on interest payments was actually a consideration for the contract of option to purchase in compliance with the second paragraph of Article 1479 of the Civil Code, that is, “An accepted unilateral promise to buy (in this case, by petitioners) or to sell a determinate thing (in this case, the subject real property of respondent bank) for a price certain (in this case, P622,095) is binding upon the promisor if the promise is supported by a consideration distinct from the price” (in this case, a monthly interest payment of P13,478.73).

The contract of option to purchase was separate from the contract to sell and both contracts needed separate and distinct considerations for validity.

The monthly interest payment of P13,478.73 as consideration for petitioners’ option to purchase the lot formerly owned by them and which they continued to occupy even after the filing of their complaint in 1988 until mid of 1989,[11] was valid, fair and reasonable. First, it was the petitioners themselves who proposed such consideration which was duly accepted by private respondent bank in writing. Hence, it was a valid, binding and enforceable contract between them. Second, the consideration was fair and reasonable because it preserved not only petitioners’ preferred right to purchase subject property at a fixed price for one year but also their continued possession and enjoyment of it. Third, petitioners could not feign mistake or ignorance of the terms of the agreement because, as observed by the CA, “plaintiff-appellant Dijamco testified that she had come to realize the alleged unfairness of having to pay P13,478.73 all for interest only after she paid the monthly installment[12] and everytime she paid she told them (the bank people) ‘it is unfair’.[13] Yet inexplicably, she kept on paying for six months even after she had come to know about such unfairness.”[14]

Although petitioners paid six months’ interest until January 1987, they did not exercise their right to purchase the property during that period. Neither did they keep on paying the monthly interest as consideration for the continuation of their option right for the next six months. Hence, the automatic revocation clause of the agreement took effect, resulting in the rescission of the contract of option to purchase and the contract to sell by respondent bank. A judicial action for the rescission of a contract is not necessary where the contract provides that it may be revoked and cancelled for violation of any of its terms and conditions.[15] Furthermore, inasmuch as the six months’ interest was the consideration for petitioners’ option to purchase the property during that period, the payments therefor could not possibly be credited as part of the purchase price of the contract to sell.

All told, petitioners have no right to demand reconveyance of the subject property for P350,000 and claim damages.

WHEREFORE, the petition is hereby DENIED for lack of merit.

Costs against petitioners.

SO ORDERED.

Panganiban (Chairman) and Sandoval-Gutierrez, JJ., concur.
Carpio Morales, J., on leave.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Serafin V.C. Guingona and concurred in by the Associate Justices Segudino G. Chua and Ricardo P. Galvez of the Sixteenth Division.

[3] Penned by Judge Lilia C. Lopez.

[4] Rollo, pp. 33-36.

[5] In their Brief, petitioners admitted that:

“In the case at bar, ownership of the subject property was acquired by private respondent, not by purchase from petitioners, but as highest bidder in the auction sale conducted by the sheriff after the mortgaged (sic) over the said property was foreclosed by the bank. For that matter, when the letter agreement dated June 11, 1986 was signed by the parties, ownership over the subject property was already consolidated with respondent bank and title to the property was then already in its name. The period of redemption having expired without the petitioners redeeming the subject property, the same had become an “acquired asset” of private respondent bank.

“While the respondent bank was obligated to unload acquired assets periodically, it is free to sell the same to any interested party. Petitioners, as former owners thereof, has (sic) no right to have priority in the purchase of the said property.

“The point we are driving at is that in the sale of the subject property, petitioners were in the same standing as any Tom, Dick or Harry who might be interested to buy the same. Clearly therefore, the letter-agreement dated June 11, 1986 was not a repurchase agreement. Petitioners have no right to repurchase the subject property, as their right of redemption had already long expired.” (Petitioners’ Brief, pp. 10-11; Rollo, pp. 16-17).

[6] Art. 1315. Contracts are perfected by mere consent, and from that moment 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.

[7] Art. 1159. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.

[8] Art. 1370. If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall control.

If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former.

[9] Luzon Brokerage vs. Maritime Bldg., L-25885, 31 January 1972, 43 SCRA 93.

[10] Rollo, pp. 43-44.

[11] According to petitioners, the writ of possession was issued to respondent bank in the middle of 1989. (Petitioners’ Brief, Rollo, p. 28)

[12] TSN, November 16, 1989, p. 12.

[13] Ibid.

[14] CA Decision, Rollo, p. 41.

[15] Luzon Brokerage Co. Inc. vs. Maritime Building Co., Inc., 43 SCRA 93, 103.

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