

**EMILIA M. URACA, CONCORDIA D. CHING AND ONG SENG,
REPRESENTED BY ENEDINO H. FERRER, PETITIONERS, VS. COURT
OF APPEALS, JACINTO VELEZ, JR., CARMEN VELEZ TING, AVENUE
MERCHANDISIN...**

G.R. No. 115158. September 05, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Novation is never presumed; it must be sufficiently established that a valid new agreement or obligation has extinguished or changed an existing one. The registration of a later sale must be done in good faith to entitle the registrant to priority in ownership over the vendee in an earlier sale.

Statement of the Case

These doctrines are stressed by this Court as it resolves the instant petition challenging the December 28, 1993 Decision[1] of Respondent Court of Appeals[2] in CA-G.R. SP No. 33307, which reversed and set aside the judgment of the Regional Trial Court of Cebu City, Branch 19, and entered a new one dismissing the petitioners' complaint. The dispositive portion of the RTC decision reads:[3]

WHEREFORE, judgment is hereby rendered:

- 1) declaring as null and void the three (3) deeds of sale executed by the Velezes to Felix C. Ting, Manuel Ting and Alfredo Go;
- 2) ordering Carmen Velez Ting and Jacinto M. Velez, Jr. to execute a deed of absolute sale in favor of Concordia D. Ching and Emilia M. Uraca for the properties in question for P1,400,000.00, which sum must be delivered by the plaintiffs to the Velezes immediately after the execution of said contract;
- 3) ordering Carmen Velez Ting and Jacinto M. Velez, Jr. to reimburse Felix C. Ting, Manuel C. Ting and Alfredo Go whatever amount the latter had paid to the former;
- 4) ordering Felix C. Ting, Manuel C. Ting and Alfredo Go to deliver the properties in question to the plaintiffs within fifteen (15) days from receipt of a copy of this decision;
- 5) ordering all the defendants to pay, jointly and severally, the plaintiffs the sum of P20,000.00 as attorney's fees.

SO ORDERED.”

The Antecedent Facts

The facts narrated by the Court of Appeals are as follows:[4]

The Velezes (herein private respondents) were the owners of the lot and commercial building in question located at Progreso and M.C. Briones Streets in Cebu City.

Herein (petitioners) were the lessees of said commercial building.[5]

On July 8, 1985, the Velezes through Carmen Velez Ting wrote a letter to herein (petitioners) offering to sell the subject property for P1,050,000.00 and at the same time requesting (herein petitioners) to reply in three days.

On July 10, 1985, (herein petitioners) through Atty. Escolastico Daitol sent a reply-letter to the Velezes accepting the aforesaid offer to sell.

On July 11, 1985, (herein petitioner) Emilia Uraca went to see Carmen Ting about the offer to sell but she was told by the latter that the price was P1,400,000.00 in cash or manager's check and not P1,050,000.00 as erroneously stated in their letter-offer after some haggling. Emilia Uraca agreed to the price of P1,400,000.00 but counter-proposed that payment be paid in installments with a down payment of P1,000,000.00 and the balance of P400,000 to be paid in 30 days. Carmen Velez Ting did not accept the said counter-offer of Emilia Uraca although this fact is disputed by Uraca.

No payment was made by (herein petitioners) to the Velezes on July 12, 1985 and July 13, 1985.

On July 13, 1985, the Velezes sold the subject lot and commercial building to the Avenue Group (Private Respondent Avenue Merchandising Inc.) for P1,050,000.00 net of taxes, registration fees, and expenses of the sale.

At the time the Avenue Group purchased the subject property on July 13, 1985 from the Velezes, the certificate of title of the said property was clean and free of any annotation of adverse claims or lis pendens.

On July 31, 1985 as aforesaid, herein (petitioners) filed the instant complaint against the Velezes.

On August 1, 1985, (herein petitioners) registered a notice of lis pendens over the property in question with the Office of the Register of Deeds.[6]

On October 30, 1985, the Avenue Group filed an ejectment case against (herein petitioners) ordering the latter to vacate the commercial building standing on the lot in question.

Thereafter, herein (petitioners) filed an amended complaint impleading the Avenue Group as new defendants (after about 4 years after the filing of the original complaint)."

The trial court found two perfected contracts of sale between the Velezes and the petitioners, involving the real property in question. The first sale was for P1,050,000.00 and the second was for P1,400,000.00. In respect to the first sale, the trial court held that "[d]ue to the unqualified acceptance by the plaintiffs within the period set by the Velezes, there consequently came about a meeting of the minds of the parties not only as to the object certain but also as to the definite consideration or cause of the contract." [7] And even assuming arguendo that the second sale was not perfected, the trial court ruled that the same still constituted a mere modificatory novation which did not extinguish the first sale. Hence, the trial court held that "the Velezes were not free to sell the properties to the Avenue Group." [8] It also found that the Avenue Group purchased the property in bad faith. [9]

Private respondents appealed to the Court of Appeals. As noted earlier, the CA found the appeal meritorious. Like the trial court, the public respondent held that there was a perfected contract of sale of the property for P1,050,000.00 between the Velezes and herein petitioners. It added, however, that such perfected contract of sale was subsequently novated. Thus, it ruled: "Evidence shows that that was the original contract. However, the same was mutually withdrawn, cancelled and rescinded by novation, and was therefore abandoned by the parties when Carmen Velez Ting raised the consideration of the contract [by] P350,000.00, thus making the price P1,400,000.00 instead of the original price of P1,050,000.00. Since there was no agreement as to the 'second' price offered, there was likewise no meeting of minds between the parties, hence, no contract of sale was

perfected.”[10] The Court of Appeals added that, assuming there was agreement as to the price and a second contract was perfected, the later contract would be unenforceable under the Statute of Frauds. It further held that such second agreement, if there was one, constituted a mere promise to sell which was not binding for lack of acceptance or a separate consideration.[11]

The Issues

Petitioners allege the following “errors” in the Decision of Respondent Court:

“I

Since it ruled in its decision that there was no meeting of the minds on the ‘second’ price offered (P1,400,000.00), hence no contract of sale was perfected, the Court of Appeals erred in not holding that the original written contract to buy and sell for P1,050,000.00 the Velezes property continued to be valid and enforceable pursuant to Art. 1279 in relation with Art. 1479, first paragraph, and Art. 1403, subparagraph 2 (e) of the Civil Code.

II

The Court of Appeals erred in not ruling that petitioners have better rights to buy and own the Velezes’ property for registering their notice of lis pendens ahead of the Avenue Group’s registration of their deeds of sale taking into account Art. 1544, 2nd paragraph, of the Civil Code.”[12]

The Court’s Ruling

The petition is meritorious.

First Issue: No Extinctive Novation

The lynchpin of the assailed Decision is the public respondent’s conclusion that the sale of the real property in controversy, by the Velezes to petitioners for P1,050,000.00, was extinguished by novation after the said parties negotiated to increase the price to P1,400,000.00. Since there was no agreement on the sale at the increased price, then there was no perfected contract to enforce. We disagree.

The Court notes that the petitioners accepted in writing and without qualification the Velezes’ written offer to sell at P1,050,000.00 within the three-day period stipulated therein. Hence, from the moment of acceptance on July 10, 1985, a contract of sale was perfected since undisputedly the contractual elements of consent, object certain and cause concurred.[13] Thus, this question is posed for our resolution: Was there a novation of this perfected contract?

Article 1600 of the Civil Code provides that “(s)ales are extinguished by the same causes as all other obligations, x x x.” Article 1231 of the same Code states that novation is one of the ways to wipe out an obligation. Extinctive novation requires: (1) the existence of a previous valid obligation; (2) the agreement of all the parties to the new contract; (3) the extinguishment of the old obligation or contract; and (4) the validity of the new one.[14] The foregoing clearly show that novation is effected only when a new contract has extinguished an earlier contract between the same parties. In this light, novation is never presumed; it must be proven as a fact either by express stipulation of the parties or by implication derived from an irreconcilable incompatibility between old and new obligations or contracts.[15] After a thorough review of the records, we find this element lacking in the case at bar.

As aptly found by the Court of Appeals, the petitioners and the Velezes did not reach an agreement on the new

price of P1,400,000.00 demanded by the latter. In this case, the petitioners and the Velezes clearly did not perfect a new contract because the essential requisite of consent was absent, the parties having failed to agree on the terms of the payment. True, petitioners made a qualified acceptance of this offer by proposing that the payment of this higher sale price be made by installment, with P1,000,000.00 as down payment and the balance of P400,000.00 payable thirty days thereafter. Under Article 1319 of the Civil Code,[16] such qualified acceptance constitutes a counter-offer and has the ineludible effect of rejecting the Velezes' offer.[17] Indeed, petitioners' counter-offer was not accepted by the Velezes. It is well-settled that "(a)n offer must be clear and definite, while an acceptance must be unconditional and unbounded, in order that their concurrence can give rise to a perfected contract."[18] In line with this basic postulate of contract law, "a definite agreement on the manner of payment of the price is an essential element in the formation of a binding and enforceable contract of sale."[19] Since the parties failed to enter into a new contract that could have extinguished their previously perfected contract of sale, there can be no novation of the latter. Consequently, the first sale of the property in controversy, by the Velezes to petitioners for P1,050,000.00, remained valid and existing.

In view of the validity and subsistence of their original contract of sale as previously discussed, it is unnecessary to discuss public respondent's theses that the second agreement is unenforceable under the Statute of Frauds and that the agreement constitutes a mere promise to sell.

Second Issue: Double Sale of an Immovable

The foregoing holding would have been simple and straightforward. But Respondent Velezes complicated the matter by selling the same property to the other private respondents who were referred to in the assailed Decision as the Avenue Group.

Before us therefore is a classic case of a double sale -- first, to the petitioner; second, to the Avenue Group. Thus, the Court is now called upon to determine which of the two groups of buyers has a better right to said property.

Article 1544 of the Civil Code provides the statutory solution:

"xxx xxx xxx

Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith."

Under the foregoing, the prior registration of the disputed property by the second buyer does not by itself confer ownership or a better right over the property. Article 1544 requires that such registration must be coupled with good faith. Jurisprudence teaches us that "(t)he governing principle is *primus tempore, potior jure* (first in time, stronger in right). Knowledge gained by the first buyer of the second sale cannot defeat the first buyer's rights except where the second buyer registers in good faith the second sale ahead of the first, as provided by the Civil Code. Such knowledge of the first buyer does not bar her from availing of her rights under the law, among them, to register first her purchase as against the second buyer. But in *converso* knowledge gained by the second buyer of the first sale defeats his rights even if he is first to register the second sale, since such knowledge taints his prior registration with bad faith This is the price exacted by Article 1544 of the Civil Code for the second buyer being able to displace the first buyer; that before the second buyer can obtain priority over the first, he must show that he acted in good faith throughout (i.e. in ignorance of the first sale and of the first buyer's rights) ---- from the time of acquisition until the title is transferred to him by registration or failing registration, by delivery of possession." [20] (Emphasis supplied)

After a thorough scrutiny of the records of the instant case, the Court finds that bad faith tainted the Avenue Group's purchase on July 13, 1985 of the Velezes' real property subject of this case, and the subsequent registration thereof on August 1, 1995. The Avenue Group had actual knowledge of the Velezes' prior sale of the same property to the petitioners, a fact antithetical to good faith. For a second buyer like the Avenue Group to successfully invoke the second paragraph, Article 1544 of the Civil Code, it must possess good faith from the time of the sale in its favor until the registration of the same. This requirement of good faith the Avenue Group sorely failed to meet. That it had knowledge of the prior sale, a fact undisputed by the Court of Appeals, is explained by the trial court thus:

The Avenue Group, whose store is close to the properties in question, had known the plaintiffs to be the lessee-occupants thereof for quite a time. Felix Ting admitted to have a talk with Ong Seng in 1983 or 1984 about the properties. In the cross-examination, Manuel Ting also admitted that about a month after Ester Borromeo allegedly offered the sale of the properties Felix Ting went to see Ong Seng again. If these were so, it can be safely assumed that Ong Seng had consequently told Felix about plaintiffs' offer on January 11, 1985 to buy the properties for P1,000,000.00 and of their timely acceptance on July 10, 1985 to buy the same at P1,050,000.00.

The two aforesaid admissions by the Tings, considered together with Uraca's positive assertion that Felix Ting met with her on July 11th and who was told by her that the plaintiffs had transmitted already to the Velezes their decision to buy the properties at P1,050,000.00, clinches the proof that the Avenue Group had prior knowledge of plaintiffs' interest. Hence, the Avenue Group defendants, earlier forewarned of the plaintiffs' prior contract with the Velezes, were guilty of bad faith when they proceeded to buy the properties to the prejudice of the plaintiffs.”[21]

The testimony of Petitioner Emilia Uraca supports this finding of the trial court. The salient portions of her testimony follow:

BY ATTY. BORROMEO: (To witness)

Q According to Manuel Ting in his testimony, even if they know, referring to the Avenue Group, that you were tenants of the property in question and they were neighbors to you, he did not inquire from you whether you were interested in buying the property, what can you say about that?

A It was Felix Ting who approached me and asked whether I will buy the property, both the house and the land and that was on July 10, 1985.

ATTY BORROMEO: (To witness)

Q What was your reply, if any?

A Yes, sir, I said we are going to buy this property because we have stayed for a long time there already and we have a letter from Carmen Ting asking us whether we are going to buy the property and we have already given our answer that we are willing to buy.

COURT: (To witness)

Q What do you mean by that, you mean you told Felix Ting and you showed him that letter of Carmen Ting?

WITNESS:

A We have a letter of Carmen Ting where she offered to us for sale the house and lot and I told him that I have already agreed with Concordia Ching, Ong Seng and my self that we buy the land. We want to buy the land and the building.”[22]

We see no reason to disturb the factual finding of the trial court that the Avenue Group, prior to the registration of the property in the Registry of Property, already knew of the first sale to petitioners. It is hornbook doctrine that

“findings of facts of the trial court, particularly when affirmed by the Court of Appeals, are binding upon this Court”[23] save for exceptional circumstances[24] which we do not find in the factual milieu of the present case. True, this doctrine does not apply where there is a variance in the factual findings of the trial court and the Court of Appeals. In the present case, the Court of Appeals did not explicitly sustain this particular holding of the trial court, but neither did it controvert the same. Therefore, because the registration by the Avenue Group was in bad faith, it amounted to no “inscription” at all. Hence, the third and not the second paragraph of Article 1544 should be applied to this case. Under this provision, petitioners are entitled to the ownership of the property because they were first in actual possession, having been the property’s lessees and possessors for decades prior to the sale.

Having already ruled that petitioners’ actual knowledge of the first sale tainted their registration, we find no more reason to pass upon the issue of whether the annotation of *lis pendens* automatically negated good faith in such registration.

WHEREFORE, the petition is GRANTED. The assailed Decision of the Court of Appeals is hereby SET ASIDE and the dispositive portion of the trial court’s decision dated October 19, 1990 is REVIVED with the following MODIFICATION -- the consideration to be paid under par. 2 of the disposition is P1,050,000.00 and not P1,400,000.00. No Costs.

SO ORDERED.

Narvasa, C.J., (Chairman), and Melo, JJ., concur.

Davide Jr., J., (in the results).

[1] Rollo, pp. 46-52. Penned by J. Segundino G. Chua and concurred in by JJ. Fermin A. Martin, Jr. and Buenaventura J. Guerrero.

[2] Twelfth Division.

[3] *Ibid.*, p. 138; Record of the Court of Appeals, p. 126. Penned by Judge Leopoldo Abarquez.

[4] Decision of the Court of Appeals, pp. 4-5; rollo, pp. 49-50.

[5] Emilia Uraca, Concordia Ching and Ong Seng -- plaintiffs of the original complaint -- occupied the building since 1947, 1964 and 1948, respectively. Decision of the Regional Trial Court, p. 8; record of the Court of Appeals, p. 120.

[6] On August 1, 1985 at 10:45 A.M. the petitioners registered a notice of *lis pendens* over the land in controversy; and at 3:30 P.M. Private Respondents Avenue Merchandising Inc., Felix C. Ting and Alfredo Go registered the respective deeds of sale whereby the same property was sold to them. See Decision of the Regional Trial Court, p.4; record of the Court of Appeals, p. 116.

[7] RTC Decision, p. 7; rollo, p. 144.

[8] See Decision of the Regional Trial Court, pp. 6-10; record of the Court of Appeals, p. 118-122.

[9] *Ibid.*, pp. 10-12; record of the Court of Appeals, pp. 122-124.

[10] Decision of the Court of Appeals, p. 5; rollo, p. 50.

[11] *Ibid.*

[12] Petition, pp. 7-8; rollo, pp. 8-9.

[13] Article 1318, Civil Code of the Philippines.

“Art. 1318 There is no contract unless the following requisites concur:

- (1) Consent of the contracting parties;
- (2) Object certain which is the subject matter of the contract;
- (3) Cause of the obligation which is established.”

[14] Justice Vitug, Jose C., Compendium of Civil Law and Jurisprudence (1993 ed.), p. 528; citing *Tiu vs. Habana*, 45 Phil. 707. See also Tolentino, Arturo M., Commentaries and Jurisprudence on the Civil Code of the Philippines (1991 ed.), p. 382; citing *Clark vs. Billings*, 59 Ind. 508, 509, and *Zapanta vs. De Rostaeche*, 21 Phil. 54.

[15] *Ibid.*

[16] “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.

xxx xxx xxx”

[17] See Vitug, *supra*, p. 541.

[18] *Maria Cristina Fertilizer Corporation and Marcelo Steel Corporation represented by Mr. Jose P. Marcelo vs. The Hon. Court of Appeals and Ceferina Argallon-Jocson assisted by her husband Mr. Marcelino Jocson*, G.R. No. 123905, p. 7, June 9, 1997, per Vitug, J.

[19] *Toyota Shaw, Inc. vs. Court of Appeals*, 244 SCRA 320, 328, May 23, 1995, per Davide, J.

[20] *Cruz vs. Cabana*, 129 SCRA 656, 663, June 22, 1984, per Teehankee, J.

[21] Decision of the Regional Trial Court, p. 11; record of the Court of Appeals, p. 123.

[22] TSN, March 12, 1990, pp. 19-23.

[23] *Maximino Fuentes vs. The Hon. Court of Appeals, Thirteenth Division, and Virgilio Uy, Brigido Saguindang, Leoncio Caligang, et. al.*, G.R. No. 109849, p. 9, February 26, 1997.

[24] See *Ibid.*, p. 6-8.

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