

MARIO S. ESPINA, petitioner, vs. THE COURT OF APPEALS and RENE G. DIAZ, respondents.

G.R. No. 116805. June 22, 2000

Ponente: PARDO, J.

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PARDO, J.:

The case before the Court is an appeal from a decision of the Court of Appeals[1] reversing that of the Regional Trial Court, Antipolo, Rizal,[2] affirming in all respects the decision of the Municipal Trial Court, Antipolo, Rizal,[3] ordering respondent Rene G. Diaz to vacate the condominium unit owned by petitioner and to pay back current rentals, attorney's fees and costs.

The facts, as found by the Court of Appeals, are as follows:

"Mario S. Espina is the registered owner of a Condominium Unit No. 403, Victoria Valley Condominium, Valley Golf Subdivision, Antipolo, Rizal. Such ownership is evidenced by Condominium Certificate of Title No. N-10 (p. 31, Rollo).

"On November 29, 1991, Mario S. Espina, the private respondent as seller, and Rene G. Diaz, the petitioner as buyer, executed a Provisional Deed of Sale, whereby the former sold to the latter the aforesaid condominium unit for the amount of P100,000.00 to be paid upon the execution of the contract and the balance to be paid through PCI Bank postdated checks as follows:

"1. P400,000.00
Check No. 301245
January 15, 1992

"2. P200,000.00
Check No. 301246
February 1, 1992

"3. P200,000.00
Check No. 301247
February 22, 1992

"4. P200,000.00
Check No. 301248
March 14, 1992

"5. P200,000.00
Check No. 301249
April 4, 1992

"6. P200,000.00
Check No. 301250
April 25, 1992

(pp. 59-61, Rollo).

"Subsequently, in a letter dated January 22, 1992, petitioner informed private respondent that his checking account with PCI Bank has been closed and a new checking account with the same drawee bank is opened for practical purposes. The letter further stated that the postdated checks issued will be replaced with new ones in the same drawee bank (p. 63, Rollo).

"On January 25, 1992, petitioner through Ms. Socorro Diaz, wife of petitioner, paid private respondent Mario Espina P200,000.00, acknowledged by him as partial payment for the condominium unit subject of this controversy (p.64, Rollo).

"On July 26, 1992, private respondent sent petitioner a "Notice of Cancellation" of the Provisional Deed of Sale (p. 48, Rollo).

"However, despite the Notice of Cancellation from private respondent, the latter accepted payment from petitioner per Metrobank Check No. 395694 dated and encashed on October 28, 1992 in the amount of P 100,000.00 (p. 64, Rollo).

"On February 24, 1993, private respondent filed a complaint docketed as Civil Case No. 2104 for Unlawful Detainer against petitioner before the Municipal Trial Court of Antipolo, Branch 1.

"On November 12, 1993, the trial court rendered its decision, the dispositive portion of which reads:

`WHEREFORE, in view of the foregoing consideration, judgment is hereby rendered ordering the defendant and all persons claiming rights under him to vacate unit 403 of the Victoria Golf Valley Condominium, Valley Golf Subdivision, Antipolo, Rizal; to pay the total arrears of P126,000.00, covering the period July 1991 up to the filing (sic) complaint, and to pay P7,000.00 every month thereafter as rentals unit (sic) he vacates the premises; to pay the amount of P5,000.00 as and attorney's fees; the amount of P300.00 per appearance, and costs of suit.

`However, the plaintiff may refund to the defendant the balance from (sic) P400,000.00 after deducting all the total obligations of the defendant as specified in the decision from receipt of said decision.

`SO ORDERED.' (Decision, Annex "B"; p. 27, Rollo)

"From the said decision, petitioner appealed to the Regional Trial Court Branch 71, Antipolo, Rizal. On April 29, 1994, said appellate court affirmed in all respects the decision of the trial court."[4]

On June 14, 1994, petitioner filed with the Court of Appeals a petition for review.

On July 20, 1994, the Court of Appeals promulgated its decision reversing the appealed decision and dismissing the complaint for unlawful detainer with costs against petitioner Espina.

On August 8, 1994, petitioner filed a motion for reconsideration of the decision of the Court of Appeals.[5]

On August 19, 1994, the Court of Appeals denied the motion.[6]

Hence, this appeal via petition for review on certiorari.[7]

The basic issue raised is whether the Court of Appeals erred in ruling that the provisional deed of sale novated the existing contract of lease and that petitioner had no cause of action for ejectment against respondent Diaz.

We resolve the issue in favor of petitioner.

According to respondent Diaz, the provisional deed of sale that was subsequently executed by the parties novated the original existing contract of lease. The contention cannot be sustained. Respondent originally occupied the

condominium unit in question in 1987 as a lessee.[8] While he occupied the premises as lessee, petitioner agreed to sell the condominium unit to respondent by installments.[9] The agreement to sell was provisional as the consideration was payable in installments.

The question is, did the provisional deed of sale novate the existing lease contract? The answer is no. The novation must be clearly proved since its existence is not presumed.[10] "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." [11] Novation takes place only if the parties expressly so provide, otherwise, the original contract remains in force. In other words, the parties to a contract must expressly agree that they are abrogating their old contract in favor of a new one.[12] Where there is no clear agreement to create a new contract in place of the existing one, novation cannot be presumed to take place, unless the terms of the new contract are fully incompatible with the former agreement on every point.[13] Thus, a deed of cession of the right to repurchase a piece of land does not supersede a contract of lease over the same property.[14] In the provisional deed of sale in this case, after the initial down payment, respondent's checks in payment of six installments all bounced and were dishonored upon presentment for the reason that the bank account was closed.[15] Consequently, on July 26, 1992, petitioner terminated the provisional deed of sale by a notarial notice of cancellation.[16] Nonetheless, respondent Diaz continued to occupy the premises, as lessee, but failed to pay the rentals due. On October 28, 1992, respondent made a payment of P100,000.00 that may be applied either to the back rentals or for the purchase of the condominium unit. On February 13, 1993, petitioner gave respondent a notice to vacate the premises and to pay his back rentals.[17] Failing to do so, respondent's possession became unlawful and his eviction was proper. Hence, on February 24, 1993, petitioner filed with the Municipal Trial Court, Antipolo, Rizal, Branch 01 an action for unlawful detainer against respondent Diaz.[18]

Now respondent contends that the petitioner's subsequent acceptance of such payment effectively withdrew the cancellation of the provisional sale. We do not agree. Unless the application of payment is expressly indicated, the payment shall be applied to the obligation most onerous to the debtor.[19] In this case, the unpaid rentals constituted the more onerous obligation of the respondent to petitioner. As the payment did not fully settle the unpaid rentals, petitioner's cause of action for ejectment survives. Thus, the Court of Appeals erred in ruling that the payment was "additional payment" for the purchase of the property.

WHEREFORE, the Court GRANTS the petition for review on certiorari, and REVERSES the decision of the Court of Appeals.[20] Consequently, the Court REVIVES the decision of the Regional Trial Court, Antipolo, Rizal, Branch 71,[21] affirming in toto the decision of the Municipal Trial Court, Antipolo, Rizal, Branch 01.[22]

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

[1] In CA-G.R. SP No. 34214, promulgated on July 20, 1994, Labitoria, J., ponente, Cui and Martin, Jr., JJ., concurring.

[2] In Civil Case No. 94-2997, decision, dated April 29, 1994, Judge Felix S. Caballes, presiding.

[3] In Civil Case No. 2104, decision, dated November 12, 1993, Judge Ruth C. Santos, presiding.

[4] Petition, Annex "G", Rollo, pp. 64-69.

[5] Ibid., Annex "H", Rollo, pp. 70-87.

- [6] Petition, Annex "I", Rollo, p. 89.
- [7] Filed on October 5, 1994, Petition for Review on Certiorari, Rollo, pp. 9-34. On November 22, 1995, we gave due course to the petition, Rollo, p. 199.
- [8] Petition for Review on Certiorari, paragraph 18, Section (b), Rollo, p.13.
- [9] Petition, Annex "K", Rollo, pp. 105-108.
- [10] *Rillo v. Court of Appeals*, 274 SCRA 461, 469 (1997), citing *Pacific Mills, Inc. v. Court of Appeals*, 206 SCRA 317 (1992); *Bisaya Land Transportation v. Sanchez*, 153 SCRA 532 (1987)
- [11] *Uraca v. Court of Appeals*, 278 SCRA 702, 710 (1997)
- [12] *Rillo v. Court of Appeals*, supra, citing *Ajax Marketing and Development Corporation v. Court of Appeals*, 248 SCRA 222 (1995)
- [13] *Rillo v. Court of Appeals*, supra; *Nyco Sales Corporation v. BA Finance Corporation*, 200 SCRA 637 (1991); *Lim Tay v. Court of Appeals*, 293 SCRA 634, 657 (1998)
- [14] Tolentino, *Civil Code of the Philippines*, Vol. IV, 1993 Reprinting, p. 383-384.
- [15] Petition for Review on Certiorari, paragraph 18, Section (e), Rollo, p. 13.
- [16] *Ibid.*, Section (f), Rollo, p. 14.
- [17] *Ibid.*, Section (g), Rollo, p. 14.
- [18] CA Decision, Rollo, p. 65.
- [19] Article 1254, Civil Code.
- [20] In CA-G.R. SP NO. 34214.
- [21] In Civil Case No. 94-2997, dated April 29, 1994.
- [22] In Civil Case No. 2104, dated November 12, 1993.

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