

VICENTE LIM AND MICHAEL LIM, PETITIONERS, VS. COURT OF APPEALS AND LIBERTY H. LUNA, RESPONDENTS.

G.R. No. 118347. October 24, 1996

Ponente: MENDOZA, J.

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MENDOZA, J.:

Private respondent Liberty Luna is the owner of a piece of land located at the corner of G. Araneta Avenue and Quezon Avenue in Quezon City. The land, consisting of 1,013.6 square meters, is covered by TCT No. 193230 of Registry of Deeds of Quezon City. On September 2, 1988 private respondent sold the land to petitioners Vicente and Michael Lim for P3,547,600.00. As prepared by petitioners' broker, Atty. Rustico Zapata of the Zapata Realty Company, the receipt embodying the agreement[1] read as follows:

R E C E I P T

RECEIVED from ZAPATA REALTY CO. INC., through Mr. Edmundo Kaimo of 101 Kaimo Building, Metrobank Cashier's Check No. 020583, Dasmariñas branch, in the sum of TWO HUNDRED THOUSAND (P200,000.00) PESOS, as earnest money for the purchase of a parcel of land at the corner of G. Araneta Avenue and Quezon Avenue, Quezon City, with an area of 1,013.6 sq. m. covered by TCT 193230, Registry of Deeds for Quezon City, at the price of P3,547,600.00, subject to the following conditions:

1. This sum of P200,000.00 shall form part of the purchase price;
2. The balance of P3,347,600.00 shall be paid in full after the squatters/occupants have totally vacated the premises;
3. The seller assumes full responsibility to eject the squatters/occupants within a period of sixty (60) days from the date of receipt of the earnest money; and in case the seller shall fail in her commitment to eject the squatters/occupants within said period, the seller shall refund to the buyer this sum of P200,000.00 [plus another sum of ONE HUNDRED THOUSAND (P100,000.00) PESOS as liquidated damages]; however, if the buyer shall fail to pay the balance after the seller has ejected the squatters/occupants, this sum of P200,000.00 shall be forfeited by the seller;
4. Capital gains tax, documentary stamps tax and broker's commission shall be for seller's account while transfer and registration fees shall be for buyer's account.
5. That Zapata Realty Co. Inc. and Edmundo F. Kaimo are the exclusive brokers of the buyers Vicente & Michael Lim.
6. Buyer assumes responsibility of the premises immediately upon eviction of the squatters.

Quezon City, September 2, 1988.

(SGD.) LIBERTY H. LUNA
(Seller)

WITNESSED BY:

(SGD.) EDMUNDO KAIMO

However, when private respondent signed the receipt, she crossed out the bracketed portion in paragraph 3 providing for the payment by private respondent of the amount of P100,000.00 as liquidated damages in the event she failed to eject the squatters sixty (60) days after the signing of the agreement. Thereafter, a check for P200,000.00 was given to private respondent as earnest money, leaving a balance of P3,347,600.00 to be paid in full after the squatters are ejected.

Private respondent Luna failed to eject the squatters from the land despite her alleged efforts to do so. It appears that private respondent asked the help of a building official and a city engineers to effect ejectment.[2] Nonetheless, petitioners did not demand the return of their earnest money.

On January 17, 1989, the parties met at the office of Edmundo Kaimo to negotiate a price increase to facilitate the ejectment of the squatters. The parties agreed to an increase of P500.00 per square meter, by rounding off the total purchase price to P4,000,000.00, with the remaining 13.6 square meters of the 1.013.6 square meters given as a discount. Less the P200,000.00 given as earnest money, the balance to be paid by petitioners was P3,800,000.00.

After a few days, private respondent tried to return the earnest money alleging her failure to eject the squatters. She claimed that as a result of her failure to remove the squatters from the land, the contract of sale ceased to exist and she no longer had the obligation to sell and deliver her property to petitioners. As petitioners had refused to accept the refund of the earnest money, private respondent wrote them on February 22, 1989 that the amount would be deposited in court by consignment. On March 10, 1989, private respondent filed a complaint for consignment against petitioners.

Private respondent alleged that it was her obligation to return the earnest money under paragraph 3 of the receipt since the condition of ejecting the squatters had not been fulfilled but petitioners unjustly refused to accept the refund. She claimed that although she tried her best to eject the squatters, she failed in her efforts.

Petitioners, on the other hand, argued in their answer that the legal requisites for a valid consignment were not present and, therefore the consignment was improper. They claimed that private respondent never really intended to eject the squatters, as evidence by the absence of a case for ejectment. Petitioners charged that private respondent has used her own failure as an excuse to get out of her contract.

Private respondent testified that she had wanted to return the earnest money after realizing that she could not successfully eject the squatters but that she was not able to do so because petitioners' broker, Zapata Realty Company, refused to give her petitioners' address.[3] In her cross examination, she claimed that the primary reason for the January 17, 1989 meeting was for her to return the money and to withdraw from the sale and that the idea of increasing the price came from petitioners to convince her to continue with the sale.[4] She later admitted, however, that the price increase and decision to proceed with the sale were mutually agreed upon by her and petitioner Vicente Lim.[5] Her admission was confirmed by her broker, Edmundo Kaimo, who testified[6] that the purpose of the meeting was to discuss ways of carrying out the sale, considering that private respondent was having difficulty ejecting the squatters and that what he private respondent proposed to petitioners was to increase the purchase price to facilitate the ejectment.

Testifying in their turn, petitioner Vicente Lim denied that the January 17, 1989 meeting was held at their instance.[7] He said that he was reluctant to agree to the price increase but was prevailed upon to do so by his broker, Zapata Realty Company, and by Edmundo Kaimo. This testimony was corroborated by Atty. Rustico Zapata and Francisco Zapata of the Zapata Realty Company.

On December 28, 1992 the trial court[8] rendered a decision holding that there was a perfected contract of sale

between the parties and that pursuant to Art. 1545 of the Civil Code, although the failure of private respondent to eject the squatters was a breach of warranty, the performance of warranty could be waived by the buyer, as petitioners did in this case. It found private respondent to have acted in bad faith by not exerting earnest efforts to eject the squatters, in order to get out of the contract. The dispositive portion of its decision reads:

WHEREFORE, under cool reflection and prescinding from the foregoing, judgment is rendered in favor of the defendants and against plaintiff:

1. The complaint is dismissed.
2. Perforce, plaintiff is ordered to comply with the Receipt Agreement dated September 02, 1988 regarding the sale to the defendants of the property covered by Transfer Certificate of Title No. T-193230 of the Registry of Deeds of Quezon City, upon payment by the defendants of the balance of P3,800,000.00.
3. Plaintiff is ordered to pay the defendants the sum of P500,000.00 as moral damages.
4. Plaintiff to pay defendants the sum of P50,000.00 by way of attorney's fees.
5. Plaintiff to pay the cost.

SO ORDERED.

The private respondent appealed to the Court of Appeals, which reversed[9] the trial court and allowed the complaint for consignation. It held that as a result of the non-fulfillment of the condition of ejecting the squatters, petitioners lost the right to demand from the private respondent the sale of the land to them. The appellate court described the sale in this case as a "contract with a conditional obligation" whereby the private respondent's obligation to sell and deliver and the petitioners' obligation to pay the balance of the purchase price depended on the fulfillment of the condition that the squatters be removed within 60 days.

The Court of Appeals held:

Under such conditions, upon the ejectment of the squatters plaintiff would acquire the right to demand that defendants proceed with the sale and pay the balance of the purchase price; and, on the other hand, should the event not happen, defendants would lose the right they had acquired by giving the earnest money to plaintiff to demand that the latter sell said land to them.

It also ruled that consignation was proper as the obligation to refund earnest money was a clear debt and that contrary to the finding of the trial court, the facts show that private respondent exerted earnest efforts to eject the squatters and was, therefore, not in bad faith.

The petitioners filed this petition for review on the following grounds.

I. THE RULING OF THE COURT OF APPEALS THAT "THE NON-FULFILLMENT OF THE CONDITION OF EJECTING THE SQUATTERS RESULTED IN DEFENDANTS' LOSING THE RIGHT (ACQUIRED BY VIRTUE OF THE EARNEST MONEY) TO DEMAND THAT PLAINTIFF SELL THE LAND TO THEM" IS PATENTLY AGAINST THE SPECIFIC LAW ON SALES, AND IS A DISTORTED AND CLEARLY ERRONEOUS APPLICATION OF THE GENERAL PROVISIONS OF THE LAW ON OBLIGATIONS AND CONTRACTS.

II. THE RULING OF THE COURT OF APPEALS IS A DISTORTION OF THE CONTRACT BETWEEN THE PARTIES, WAY OF JUSTICE ITSELF BECAUSE IT REWARDS RATHER THAN SANCTIONS THE NON-PERFORMANCE OF A CONTRACTED OBLIGATION.

III. THE QUESTION OF WHETHER OR NOT RESPONDENT LUNA EXERTED EARNEST EFFORTS TO EJECT THE SQUATTERS DOES NOT PERTAIN TO THE ISSUE OF THE PROPRIETY OF

CONSIGNATION BUT REFERS TO THE MATTER OF WHETHER OR NOT RESPONDENT LUNA WAS IN BAD FAITH AND IS THEREFORE LIABLE FOR DAMAGES INFLICTED UPON THE PETITIONERS; AND THE RULING THAT SUCH EARNEST EFFORTS WAS PRESENT IS CONTRARY TO UNCONTRADICTED EVIDENCE.

The petition is well taken. The first question is whether as a result of private respondent's failure to eject the squatters from the land, petitioners, as the Court of Appeals ruled, lost the right to demand that the land be sold to them. We hold that they did not and that the appellate court erred in holding otherwise. The agreement, as quoted, shows a perfected contract of sale. Under Art. 1475 of the Civil Code, there is a perfected contract of sale if there is a meeting of the minds on the subject and the price. A sale is a consensual contract requiring only the consent of the parties on these two points. In this case, the parties agreed on the subject, the 1,013.6 square meter lot and on the purchase price of P4,000,000.00. No particular form is required for the validity of their contract and, therefore, upon its perfection. The parties can reciprocally demand performance of their respective obligations.[10]

Indeed, the earnest money given is proof of the perfection of the contract. As Art. 1482 of the Civil Code states, "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." This perfected contract imposed reciprocal obligations on the parties. Petitioners' obligation was to pay the balance of the price, while private respondent's obligation was to deliver the property to petitioners upon payment of the price. It is true that private respondent undertook to eject the squatters before the delivery of the property within a certain period and that for her failure to carry out her obligation she could be ordered to refund the P200,000.00 earnest money. But whether she would be obliged to do so depends on petitioners who can waive the condition and opt to proceed with the sale instead.

Private respondent Luna contends that as the condition of ejecting the squatters was not met, she no longer has an obligation to proceed with the sale of her lot. This contention is erroneous. Private respondent fails to distinguish between a condition imposed on the perfection of the contract and a condition imposed on the performance of an obligation. Failure to comply with the first condition results in the failure of a contract, while failure to comply with the second condition only gives the other party the option either to refuse to proceed with the sale or to waive the condition. Thus, Art. 1545 of the Civil Code states:

ART. 1545. Where the obligation of either party to a contract of sale is subject to any condition which is not performed, such party may refuse to proceed with the contract or he may waive performance of the condition. If the other party has promised that the condition should happen or be performed, such first mentioned party may also treat the nonperformance of the condition as a breach of warranty.

Where the ownership in the things has not passed, the buyer may treat the fulfillment by the seller of his obligation to deliver the same as described and as warranted expressly or by implication in the contract of sale as a condition of the obligation of the buyer to perform his promise to accept and pay for the thing. (Emphasis added)

In this case, there is already a perfected contract. The condition was imposed only on the performance of the obligation. Hence, petitioners have the right to choose whether to demand the return of P200,000.00 which they have paid as earnest money or to proceed with the sale. They have chosen to proceed with the sale and private respondent cannot refuse to do so.

Indeed, private respondent is not the injured party. She cannot rescind the contract without violating the principle of mutuality of contracts, which prohibits allowing the validity and performance of contracts to be left to the will of one of the parties.[11] Thus in a case[12] on all fours with this case, this Court held:

Under the agreement, private respondent is obligated to evict the squatters on the property. The ejectment of the squatters is a condition the operative act of which sets into motion the period of compliance by petitioner of his own obligation, i.e., to pay the balance of the purchase price. Private respondent's failure "to remove the squatters from the property" within the stipulated period gives petitioner the right to either refuse to proceed with the agreement or waive that condition in consonance with Article 1545 of the Civil Code. This option clearly belongs to petitioner and not to private respondent.[13]

. . . .

In any case, private respondent's action for rescission is not warranted. She is not the injured party. The right of resolution of a party to an obligation under Article 1191 of the Civil Code is predicated on a breach of faith by the other party that violates the reciprocity between them. It is private respondent who has failed in her obligation under the contract.[14]

The second question is whether private respondent is liable for damages to petitioners. The trial court correctly found private respondent guilty of breach of contract and awarding moral damages and attorney's fees to petitioners. The court held:

The failure of the plaintiff (Luna) to eject the squatters which is her "full responsibility" and "commitment" under the contract of sale, aggravated by her persistence in evading the obligation to deliver the property on the basis of her very own failure, the persistence culminating in the instant case for consignment, show not just a breach of contract but a breach in bad faith. . . .

The Court finds that the defendant may be awarded moral damages in the amount they prayed for, which is P500,000.00 considering that it was the same amount which the parties have determined as the cost of the removal of the squatters. The clear absence of merit of plaintiff's position, which at [the] bottom is an attempt to profit from one's own breach, compels this court to award attorney's fees, defendants having been unnecessary dragged into a litigation.

Indeed, the evidence shows that private respondent made little more than token effort to seek the ejectment of squatters from the land, revealing her real intention to be finding a way of getting out of her contract. Her failure to eject the squatters despite sufficient time and funds given to her by petitioners, her offer to return the earnest money only a month after their meeting on January 17, 1989 in which she agreed to proceed with the sale in consideration of which the purchase price was increased by almost P500,000.00 and her consignment of the earnest money despite petitioners' insistence that the sale should go on even if she had failed to eject the squatters -- all these betray private respondent's failure to comply with her obligation. Private respondent's lack of intention to really comply with her obligation under the contract is underscored by her failure to seek the assistance of courts in ejecting the squatters. It might be granted that, at first, she thought going to the city engineer's office was the expedient way of ejecting the squatters. However, having seen the futility of such recourse and having been given money, private respondent had no excuse for filing the action below. Her failure to make use of her resources and her insistence on rescinding the sale shows quite clearly that she was indeed just looking for away to get out of her contractual obligation by pointing to her own abject failure to rid the land of squatters.

The Court of Appeals erred in holding that private respondent had made earnest efforts in discharging her obligation, relying for this purpose on the testimony of Domingo Tapay, Building Official of Quezon City. Edgardo C. Julian, Civil Engineer in charge of demolition in the Office of the Building Official of Quezon City, testified that though a request for demolition had been made by private respondent Luna, no demolition actually took place and that the attempt to do so was made only sometime in mid-1989.[15] This confirms the letter dated April 24, 1989 of the City Engineer's Office of Quezon City to petitioner that as of that date there was no record

in that office of any request for the ejectment of squatters from the land.[16]

The trial court awarded P500,000.00 to petitioners as moral damages for suffering, delay and inconvenience they experienced as a result of private respondent's failure in bad faith to proceed under the contract. This amount corresponds to the price increase agreed to be paid to private respondent to facilitate the ejectment of the squatters.

The award of moral damages is in accordance with Art. 2220 of the Civil Code which provides that moral damages may be awarded in case of a breach of contract where the defendant acted fraudulently or in bad faith. However, the amount awarded is in our opinion excessive. To be sure the amount to be awarded depends upon the discretion of the court based on the circumstances of each case but, having regard for the purposes for awarding such damages, we think that fixing the amount equivalent to the increase given to private respondent would be contrary to the rule that moral damages are not intended to enrich the complainant at the expense of the defendant[17] or to penalize the defendant.[18] Under the circumstance an award of P100,000.00 would be fair and reasonable.

This Court also agrees with the award of attorney's fees by the trial court. As found by the trial court, there was clear absence of merit in private respondent's position thus unnecessarily forcing petitioners to litigate. Under Art. 2208(4)(5) of the Civil Code, attorney's fees may be recovered when the civil action or proceeding against the plaintiff is clearly unfounded and where defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's claim.

WHEREFORE, the decision of the Court of Appeals is REVERSED and that of the Regional Trial Court is REINSTATED, with the MODIFICATION that private respondent is ordered to pay the sum of P100,000.00 as moral damages and P50,000.00 as attorney's fees to petitioners.

SO ORDERED.

Regalado (Chairman), Romero, Puno, and Torres, Jr., JJ., concur.

[1] Records, p. 5 Par. 5 was written on the left margin, while par. 6 was written on the right margin of the document and initialed by private respondent.

[2] TSN, pp. 8-20, Nov. 17, 1989.

[3] TSN, p. 24, Nov. 17, 1989.

[4] TSN, pp. 7-9, March 8, 1990.

[5] Id., p. 26.

[6] TSN, pp. 7-8, Aug. 2, 1990.

[7] TSN, pp. 19-20, Aug. 20, 1992.

[8] Presided over by Judge Efren N. Ambrosio.

[9] Penned by Justice Jesus M. Elbinias and concurred in by Justices Lourdes K. Tayao-Jaguros and Jose C. De la Rama.

[10] *Dalion v. Court of Appeals*, 182 SCRA 872 (1990).

[11] ART. 1191. "The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

"The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

"The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period."

4A. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 410 (1991).

[12] Romero v. Court of Appeals, 250 SCRA 223 (1995).

[13] Id., at 234.

[14] Id., at 235.

[15] TSN, pp. 4-6. Aug. 6, 1992.

[16] Records, p. 13.

[17] Korean Airlines Co., Ltd. v. Court of Appeals, 234 SCRA 717, 724 (1994).

[18] SIMEX International (Manila), Inc. v. Court of Appeals, 183 SCRA 360, 365 (1990).

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