

TOMAS K. CHUA, PETITIONER, VS. COURT OF APPEALS AND ENCARNACION VALDES-CHOY, RESPONDENTS.

G.R. No. 119255. April 09, 2003

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review on certiorari seeking to reverse the decision[1] of the Court of Appeals in an action for specific performance[2] filed in the Regional Trial Court[3] by petitioner Tomas K. Chua (“Chua”) against respondent Encarnacion Valdes-Choy (“Valdes-Choy”). Chua sought to compel Valdes-Choy to consummate the sale of her paraphernal house and lot in Makati City. The Court of Appeals reversed the decision[4] rendered by the trial court in favor of Chua.

The Facts

Valdes-Choy advertised for sale her paraphernal house and lot (“Property”) with an area of 718 square meters located at No. 40 Tampingco Street corner Hidalgo Street, San Lorenzo Village, Makati City. The Property is covered by Transfer Certificate of Title No. 162955 (“TCT”) issued by the Register of Deeds of Makati City in the name of Valdes-Choy. Chua responded to the advertisement. After several meetings, Chua and Valdes-Choy agreed on a purchase price of P10,800,000.00 payable in cash.

On 30 June 1989, Valdes-Choy received from Chua a check for P100,000.00. The receipt (“Receipt”) evidencing the transaction, signed by Valdes-Choy as seller, and Chua as buyer, reads:

30 June 1989

R E C E I P T

RECEIVED from MR. TOMAS K. CHUA PBCom Check No. 206011 in the amount of ONE HUNDRED THOUSAND PESOS ONLY (P100,000.00) as EARNEST MONEY for the sale of the property located at 40 Tampingco cor. Hidalgo, San Lorenzo Village, Makati, Metro Manila (Area : 718 sq. meters).

The balance of TEN MILLION SEVEN HUNDRED THOUSAND (P10,700,000.00) is payable on or before 15[5] July 1989. Capital Gains Tax for the account of the seller. Failure to pay balance on or before 15 July 1989 forfeits the earnest money. This provided that all papers are in proper order.[6]

CONFORME: ENCARNACION VALDES

Seller

TOMAS K. CHUA

Buyer

x x x.[7]

In the morning of 13 July 1989, Chua secured from Philippine Bank of Commerce (“PBCom”) a manager’s check for P480,000.00. Strangely, after securing the manager’s check, Chua immediately gave PBCom a verbal stop payment order claiming that this manager’s check for P480,000.00 “was lost and/or misplaced.”[8] On the same day, after receipt of Chua’s verbal order, PBCom Assistant Vice-President Julie C. Pe notified in writing[9] the PBCom Operations Group of Chua’s stop payment order.

In the afternoon of 13 July 1989, Chua and Valdes-Choy met with their respective counsels to execute the necessary documents and arrange the payments.[10] Valdes-Choy as vendor and Chua as vendee signed two Deeds of Absolute Sale (“Deeds of Sale”). The first Deed of Sale covered the house and lot for the purchase price of P8,000,000.00.[11] The second Deed of Sale covered the furnishings, fixtures and movable properties contained in the house for the purchase price of P2,800,000.00.[12] The parties also computed the capital gains tax to amount to P485,000.00.

On 14 July 1989, the parties met again at the office of Valdes-Choy’s counsel. Chua handed to Valdes-Choy the PBCom manager’s check for P485,000.00 so Valdes-Choy could pay the capital gains tax as she did not have sufficient funds to pay the tax. Valdes-Choy issued a receipt showing that Chua had a remaining balance of P10,215,000.00 after deducting the advances made by Chua. This receipt reads:

July 14, 1989

Received from MR. TOMAS K. CHUA PBCom. Check No. 325851 in the amount of FOUR HUNDRED EIGHTY FIVE THOUSAND PESOS ONLY (P485,000.00) as Partial Payment for the sale of the property located at 40 Tampingco Cor. Hidalgo St., San Lorenzo Village, Makati, Metro Manila (Area 718 sq. meters), covered by TCT No. 162955 of the Registry of Deeds of Makati, Metro Manila.

The total purchase price of the above-mentioned property is TEN MILLION EIGHT HUNDRED THOUSAND PESOS only, broken down as follows:

SELLING PRICE

P10,800,000.00

EARNEST MONEY P100,000.00

PARTIAL PAYMENT 485,000.00

_____ 585,000.00

BALANCE DUE TO

ENCARNACION VALDEZ-CHOY P10,215,000.00

VVVVVVVVVVVVV

PLUS P80,000.00 for documentary
stamps paid in advance by seller ____80,000.00

P10,295,000.00

x x x.[13]

On the same day, 14 July 1989, Valdes-Choy, accompanied by Chua, deposited the P485,000.00 manager’s check to her account with Traders Royal Bank. She then purchased a Traders Royal Bank manager’s check for P480,000.00 payable to the Commissioner of Internal Revenue for the capital gains tax. Valdes-Choy and Chua returned to the office of Valdes-Choy’s counsel and handed the Traders Royal Bank check to the counsel who

undertook to pay the capital gains tax. It was then also that Chua showed to Valdes-Choy a PBCom manager's check for P10,215,000.00 representing the balance of the purchase price. Chua, however, did not give this PBCom manager's check to Valdes-Choy because the TCT was still registered in the name of Valdes-Choy. Chua required that the Property be registered first in his name before he would turn over the check to Valdes-Choy. This angered Valdes-Choy who tore up the Deeds of Sale, claiming that what Chua required was not part of their agreement.[14]

On the same day, 14 July 1989, Chua confirmed his stop payment order by submitting to PBCom an affidavit of loss[15] of the PBCom Manager's Check for P480,000.00. PBCom Assistant Vice-President Pe, however, testified that the manager's check was nevertheless honored because Chua subsequently verbally advised the bank that he was lifting the stop-payment order due to his "special arrangement" with the bank.[16]

On 15 July 1989, the deadline for the payment of the balance of the purchase price, Valdes-Choy suggested to her counsel that to break the impasse Chua should deposit in escrow the P10,215,000.00 balance.[17] Upon such deposit, Valdes-Choy was willing to cause the issuance of a new TCT in the name of Chua even without receiving the balance of the purchase price. Valdes-Choy believed this was the only way she could protect herself if the certificate of title is transferred in the name of the buyer before she is fully paid. Valdes-Choy's counsel promised to relay her suggestion to Chua and his counsel, but nothing came out of it.

On 17 July 1989, Chua filed a complaint for specific performance against Valdes-Choy which the trial court dismissed on 22 November 1989. On 29 November 1989, Chua re-filed his complaint for specific performance with damages. After trial in due course, the trial court rendered judgment in favor of Chua, the dispositive portion of which reads:

Applying the provisions of Article 1191 of the new Civil Code, since this is an action for specific performance where the plaintiff, as vendee, wants to pursue the sale, and in order that the fears of the defendant may be allayed and still have the sale materialize, judgment is hereby rendered:

I. 1. Ordering the defendant to deliver to the Court not later than five (5) days from finality of this decision:

- the owner's duplicate copy of TCT No. 162955 registered in her name;
- the covering tax declaration and the latest tax receipt evidencing payment of real estate taxes;
- the two deeds of sale prepared by Atty. Mark Bocobo on July 13, 1989, duly executed by defendant in favor of the plaintiff, whether notarized or not; and

2. Within five (5) days from compliance by the defendant of the above, ordering the plaintiff to deliver to the Branch Clerk of Court of this Court the sum of P10,295,000.00 representing the balance of the consideration (with the sum of P80,000.00 for stamps already included);

3. Ordering the Branch Clerk of this Court or her duly authorized representative:

- to make representations with the BIR for the payment of capital gains tax for the sale of the house and lot (not to include the fixtures) and to pay the same from the funds deposited with her;
- to present the deed of sale executed in favor of the plaintiff, together with the owner's duplicate copy of TCT No. 162955, real estate tax receipt and proof of payment of capital gains tax, to the Makati Register of Deeds;
- to pay the required registration fees and stamps (if not yet advanced by the defendant) and if needed update the real estate taxes all to be taken from the funds deposited with her; and
- surrender to the plaintiff the new Torrens title over the property;

4. Should the defendant fail or refuse to surrender the two deeds of sale over the property and the fixtures that were prepared by Atty. Mark Bocobo and executed by the parties, the Branch Clerk of Court of this Court is hereby authorized and empowered to prepare, sign and execute the said deeds of sale for and in behalf of the defendant;

5. Ordering the defendant to pay to the plaintiff

- the sum of P100,000.00 representing moral and compensatory damages for the plaintiff; and
- the sum of P50,000.00 as reimbursement for plaintiff's attorney's fees and cost of litigation.

6. Authorizing the Branch Clerk of Court of this Court to release to the plaintiff, to be taken from the funds said plaintiff has deposited with the Court, the amounts covered at paragraph 5 above;

7. Ordering the release of the P10,295,000.00 to the defendant after deducting therefrom the following amounts:

- the capital gains tax paid to the BIR;
- the expenses incurred in the registration of the sale, updating of real estate taxes, and transfer of title; and
- the amounts paid under this judgment to the plaintiff.

8. Ordering the defendant to surrender to the plaintiff or his representatives the premises with the furnishings intact within seventy-two (72) hours from receipt of the proceeds of the sale;

9. No interest is imposed on the payment to be made by the plaintiff because he had always been ready to pay the balance and the premises had been used or occupied by the defendant for the duration of this case.

II.

In the event that specific performance cannot be done for reasons or causes not attributable to the plaintiff, judgment is hereby rendered ordering the defendant:

1. To refund to the plaintiff the earnest money in the sum of P100,000.00, with interest at the legal rate from June 30, 1989 until fully paid;

2. To refund to the plaintiff the sum of P485,000.00 with interest at the legal rate from July 14, 1989 until fully paid;

3. To pay to the plaintiff the sum of P700,000.00 in the concept of moral damages and the additional sum of P300,000.00 in the concept of exemplary damages; and

4. To pay to the plaintiff the sum of P100,000.00 as reimbursement of attorney's fees and cost of litigation.

SO ORDERED.[18]

Valdes-Choy appealed to the Court of Appeals which reversed the decision of the trial court. The Court of Appeals handed down a new judgment, disposing as follows:

WHEREFORE, the decision appealed from is hereby REVERSED and SET ASIDE, and another one is rendered:

(1) Dismissing Civil Case No. 89-5772;

(2) Declaring the amount of P100,000.00, representing earnest money as forfeited in favor of defendant-appellant;

- (3) Ordering defendant-appellant to return/refund the amount of P485,000.00 to plaintiff-appellee without interest;
- (4) Dismissing defendant-appellant's compulsory counter-claim; and
- (5) Ordering the plaintiff-appellee to pay the costs.[19]

Hence, the instant petition.

The Trial Court's Ruling

The trial court found that the transaction reached an impasse when Valdes-Choy wanted to be first paid the full consideration before a new TCT covering the Property is issued in the name of Chua. On the other hand, Chua did not want to pay the consideration in full unless a new TCT is first issued in his name. The trial court faulted Valdes-Choy for this impasse.

The trial court held that the parties entered into a contract to sell on 30 June 1989, as evidenced by the Receipt for the P100,000.00 earnest money. The trial court pointed out that the contract to sell was subject to the following conditions: (1) the balance of P10,700,000.00 was payable not later than 15 July 1989; (2) Valdes-Choy may stay in the Property until 13 August 1989; and (3) all papers must be "in proper order" before full payment is made.

The trial court held that Chua complied with the terms of the contract to sell. Chua showed that he was prepared to pay Valdes-Choy the consideration in full on 13 July 1989, two days before the deadline of 15 July 1989. Chua even added P80,000.00 for the documentary stamp tax. He purchased from PBCom two manager's checks both payable to Valdes-Choy. The first check for P485,000.00 was to pay the capital gains tax. The second check for P10,215,000.00 was to pay the balance of the purchase price. The trial court was convinced that Chua demonstrated his capacity and readiness to pay the balance on 13 July 1989 with the production of the PBCom manager's check for P10,215,000.00.

On the other hand, the trial court found that Valdes-Choy did not perform her correlative obligation under the contract to sell to put all the papers in order. The trial court noted that as of 14 July 1989, the capital gains tax had not been paid because Valdes-Choy's counsel who was suppose to pay the tax did not do so. The trial court declared that Valdes-Choy was in a position to deliver only the owner's duplicate copy of the TCT, the signed Deeds of Sale, the tax declarations, and the latest realty tax receipt. The trial court concluded that these documents were all useless without the Bureau of Internal Revenue receipt evidencing full payment of the capital gains tax which is a pre-requisite to the issuance of a new certificate of title in Chua's name.

The trial court held that Chua's non-payment of the balance of P10,215,000.00 on the agreed date was due to Valdes-Choy's fault.

The Court of Appeals' Ruling

In reversing the trial court, the Court of Appeals ruled that Chua's stance to pay the full consideration only after the Property is registered in his name was not the agreement of the parties. The Court of Appeals noted that there is a whale of difference between the phrases "all papers are in proper order" as written on the Receipt, and "transfer of title" as demanded by Chua.

Contrary to the findings of the trial court, the Court of Appeals found that all the papers were in order and that Chua had no valid reason not to pay on the agreed date. Valdes-Choy was in a position to deliver the owner's duplicate copy of the TCT, the signed Deeds of Sale, the tax declarations, and the latest realty tax receipt. The Property was also free from all liens and encumbrances.

The Court of Appeals declared that the trial court erred in considering Chua's showing to Valdes-Choy of the PBCom manager's check for P10,215,000.00 as compliance with Chua's obligation to pay on or before 15 July 1989. The Court of Appeals pointed out that Chua did not want to give up the check unless "the property was already in his name." [20] Although Chua demonstrated his capacity to pay, this could not be equated with actual payment which he refused to do.

The Court of Appeals did not consider the non-payment of the capital gains tax as failure by Valdes-Choy to put the papers "in proper order." The Court of Appeals explained that the payment of the capital gains tax has no bearing on the validity of the Deeds of Sale. It is only after the deeds are signed and notarized can the final computation and payment of the capital gains tax be made.

The Issues

In his Memorandum, Chua raises the following issues:

- WHETHER THERE IS A PERFECTED CONTRACT OF SALE OF IMMOVABLE PROPERTY;
- WHETHER VALDES-CHOY MAY RESCIND THE CONTRACT IN CONTROVERSY WITHOUT OBSERVING THE PROVISIONS OF ARTICLE 1592 OF THE NEW CIVIL CODE;
- WHETHER THE WITHHOLDING OF PAYMENT OF THE BALANCE OF THE PURCHASE PRICE ON THE PART OF CHUA (AS VENDEE) WAS JUSTIFIED BY THE CIRCUMSTANCES OBTAINING AND MAY NOT BE RAISED AS GROUND FOR THE AUTOMATIC RESCISSION OF THE CONTRACT OF SALE;
- WHETHER THERE IS LEGAL AND FACTUAL BASIS FOR THE COURT OF APPEALS TO DECLARE THE "EARNEST MONEY" IN THE AMOUNT OF P100,000.00 AS FORFEITED IN FAVOR OF VALDES-CHOY;
- WHETHER THE TRIAL COURT'S JUDGMENT IS IN ACCORD WITH LAW, REASON AND EQUITY DESERVING OF BEING REINSTATED AND AFFIRMED. [21]

The issues for our resolution are: (a) whether the transaction between Chua and Valdes-Choy is a perfected contract of sale or a mere contract to sell, and (b) whether Chua can compel Valdes-Choy to cause the issuance of a new TCT in Chua's name even before payment of the full purchase price.

The Court's Ruling

The petition is bereft of merit.

There is no dispute that Valdes-Choy is the absolute owner of the Property which is registered in her name under TCT No. 162955, free from all liens and encumbrances. She was ready, able and willing to deliver to Chua the owner's duplicate copy of the TCT, the signed Deeds of Sale, the tax declarations, and the latest realty tax receipt. There is also no dispute that on 13 July 1989, Valdes-Choy received PBCom Check No. 206011 for P100,000.00 as earnest money from Chua. Likewise, there is no controversy that the Receipt for the P100,000.00 earnest money embodied the terms of the binding contract between Valdes-Choy and Chua.

Further, there is no controversy that as embodied in the Receipt, Valdes-Choy and Chua agreed on the following terms: (1) the balance of P10,215,000.00 is payable on or before 15 July 1989; (2) the capital gains tax is for the account of Valdes-Choy; and (3) if Chua fails to pay the balance of P10,215,000.00 on or before 15 July 1989, Valdes-Choy has the right to forfeit the earnest money, provided that "all papers are in proper order." On 13 July 1989, Chua gave Valdes-Choy the PBCom manager's check for P485,000.00 to pay the capital gains tax.

Both the trial and appellate courts found that the balance of P10,215,000.00 was not actually paid to Valdes-Choy

on the agreed date. On 13 July 1989, Chua did show to Valdes-Choy the PBCom manager's check for P10,215,000.00, with Valdes-Choy as payee. However, Chua refused to give this check to Valdes-Choy until a new TCT covering the Property is registered in Chua's name. Or, as the trial court put it, until there is proof of payment of the capital gains tax which is a pre-requisite to the issuance of a new certificate of title.

First and Second Issues: Contract of Sale or Contract to Sell?

Chua has consistently characterized his agreement with Valdes-Choy, as evidenced by the Receipt, as a contract to sell and not a contract of sale. This has been Chua's persistent contention in his pleadings before the trial and appellate courts.

Chua now pleads for the first time that there is a perfected contract of sale rather than a contract to sell. He contends that there was no reservation in the contract of sale that Valdes-Choy shall retain title to the Property until after the sale. There was no agreement for an automatic rescission of the contract in case of Chua's default. He argues for the first time that his payment of earnest money and its acceptance by Valdes-Choy precludes the latter from rejecting the binding effect of the contract of sale. Thus, Chua claims that Valdes-Choy may not validly rescind the contract of sale without following Article 1592[22] of the Civil Code which requires demand, either judicially or by notarial act, before rescission may take place.

Chua's new theory is not well taken in light of well-settled jurisprudence. An issue not raised in the court below cannot be raised for the first time on appeal, as this is offensive to the basic rules of fair play, justice and due process.[23] In addition, when a party deliberately adopts a certain theory, and the case is tried and decided on that theory in the court below, the party will not be permitted to change his theory on appeal. To permit him to change his theory will be unfair to the adverse party.[24]

Nevertheless, in order to put to rest all doubts on the matter, we hold that the agreement between Chua and Valdes-Choy, as evidenced by the Receipt, is a contract to sell and not a contract of sale. The distinction between a contract of sale and contract to sell is well-settled:

In a contract of sale, the title to the property passes to the vendee upon the delivery of the thing sold; in a contract to sell, ownership is, by agreement, reserved in the vendor and is not to pass to the vendee until full payment of the purchase price. Otherwise stated, in a contract of sale, the vendor loses ownership over the property and cannot recover it until and unless the contract is resolved or rescinded; whereas, in a contract to sell, title is retained by the vendor until full payment of the price. In the latter contract, payment of the price is a positive suspensive condition, failure of which is not a breach but an event that prevents the obligation of the vendor to convey title from becoming effective.[25]

A perusal of the Receipt shows that the true agreement between the parties was a contract to sell. Ownership over the Property was retained by Valdes-Choy and was not to pass to Chua until full payment of the purchase price.

First, the Receipt provides that the earnest money shall be forfeited in case the buyer fails to pay the balance of the purchase price on or before 15 July 1989. In such event, Valdes-Choy can sell the Property to other interested parties. There is in effect a right reserved in favor of Valdes-Choy not to push through with the sale upon Chua's failure to remit the balance of the purchase price before the deadline. This is in the nature of a stipulation reserving ownership in the seller until full payment of the purchase price. This is also similar to giving the seller the right to rescind unilaterally the contract the moment the buyer fails to pay within a fixed period.[26]

Second, the agreement between Chua and Valdes-Choy was embodied in a receipt rather than in a deed of sale, ownership not having passed between them. The signing of the Deeds of Sale came later when Valdes-Choy was under the impression that Chua was about to pay the balance of the purchase price. The absence of a formal deed of conveyance is a strong indication that the parties did not intend immediate transfer of ownership, but only a

transfer after full payment of the purchase price.[27]

Third, Valdes-Choy retained possession of the certificate of title and all other documents relative to the sale. When Chua refused to pay Valdes-Choy the balance of the purchase price, Valdes-Choy also refused to turn-over to Chua these documents.[28] These are additional proof that the agreement did not transfer to Chua, either by actual or constructive delivery, ownership of the Property.[29]

It is true that Article 1482 of the Civil Code provides that “[W]hen earnest money is given in a contract of sale, it shall be considered as part of the price and proof of the perfection of the contract.” However, this article speaks of earnest money given in a contract of sale. In this case, the earnest money was given in a contract to sell. The Receipt evidencing the contract to sell stipulates that the earnest money is a forfeitable deposit, to be forfeited if the sale is not consummated should Chua fail to pay the balance of the purchase price. The earnest money forms part of the consideration only if the sale is consummated upon full payment of the purchase price. If there is a contract of sale, Valdes-Choy should have the right to compel Chua to pay the balance of the purchase price. Chua, however, has the right to walk away from the transaction, with no obligation to pay the balance, although he will forfeit the earnest money. Clearly, there is no contract of sale. The earnest money was given in a contract to sell, and thus Article 1482, which speaks of a contract of sale, is not applicable.

Since the agreement between Valdes-Choy and Chua is a mere contract to sell, the full payment of the purchase price partakes of a suspensive condition. The non-fulfillment of the condition prevents the obligation to sell from arising and ownership is retained by the seller without further remedies by the buyer.[30] Article 1592 of the Civil Code permits the buyer to pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by notarial act. However, Article 1592 does not apply to a contract to sell where the seller reserves the ownership until full payment of the price.[31]

Third and Fourth Issues: Withholding of Payment of the Balance of the Purchase Price and Forfeiture of the Earnest Money

Chua insists that he was ready to pay the balance of the purchase price but withheld payment because Valdes-Choy did not fulfill her contractual obligation to put all the papers in “proper order.” Specifically, Chua claims that Valdes-Choy failed to show that the capital gains tax had been paid after he had advanced the money for its payment. For the same reason, he contends that Valdes-Choy may not forfeit the earnest money even if he did not pay on time.

There is a variance of interpretation on the phrase “all papers are in proper order” as written in the Receipt. There is no dispute though, that as long as the papers are “in proper order,” Valdes-Choy has the right to forfeit the earnest money if Chua fails to pay the balance before the deadline.

The trial court interpreted the phrase to include payment of the capital gains tax, with the Bureau of Internal Revenue receipt as proof of payment. The Court of Appeals held otherwise. We quote verbatim the ruling of the Court of Appeals on this matter:

The trial court made much fuss in connection with the payment of the capital gains tax, of which Section 33 of the National Internal Revenue Code of 1977, is the governing provision insofar as its computation is concerned. The trial court failed to consider Section 34-(a) of the said Code, the last sentence of which provides, that “[t]he amount realized from the sale or other disposition of property shall be the sum of money received plus the fair market value of the property (other than money) received;” and that the computation of the capital gains tax can only be finally assessed by the Commission on Internal Revenue upon the presentation of the Deeds of Absolute Sale themselves, without which any premature computation of the capital gains tax becomes of no moment. At any rate, the computation and payment of the capital gains tax has no bearing

insofar as the validity and effectiveness of the deeds of sale in question are concerned, because it is only after the contracts of sale are finally executed in due form and have been duly notarized that the final computation of the capital gains tax can follow as a matter of course. Indeed, exhibit D, the PBC Check No. 325851, dated July 13, 1989, in the amount of P485,000.00, which is considered as part of the consideration of the sale, was deposited in the name of appellant, from which she in turn, purchased the corresponding check in the amount representing the sum to be paid for capital gains tax and drawn in the name of the Commissioner of Internal Revenue, which then allayed any fear or doubt that that amount would not be paid to the Government after all.[32]

We see no reason to disturb the ruling of the Court of Appeals.

In a contract to sell, the obligation of the seller to sell becomes demandable only upon the happening of the suspensive condition. In this case, the suspensive condition is the full payment of the purchase price by Chua. Such full payment gives rise to Chua's right to demand the execution of the contract of sale.

It is only upon the existence of the contract of sale that the seller becomes obligated to transfer the ownership of the thing sold to the buyer. Article 1458 of the Civil Code defines a contract of sale as follows:

Art. 1458. By the contract of sale one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.
x x x. (Emphasis supplied)

Prior to the existence of the contract of sale, the seller is not obligated to transfer ownership to the buyer, even if there is a contract to sell between them. It is also upon the existence of the contract of sale that the buyer is obligated to pay the purchase price to the seller. Since the transfer of ownership is in exchange for the purchase price, these obligations must be simultaneously fulfilled at the time of the execution of the contract of sale, in the absence of a contrary stipulation.

In a contract of sale, the obligations of the seller are specified in Article 1495 of the Civil Code, as follows:

Art. 1495. The vendor is bound to transfer the ownership of and deliver, as well as warrant the thing which is the object of the sale. (Emphasis supplied)

The obligation of the seller is to transfer to the buyer ownership of the thing sold. In the sale of real property, the seller is not obligated to transfer in the name of the buyer a new certificate of title, but rather to transfer ownership of the real property. There is a difference between transfer of the certificate of title in the name of the buyer, and transfer of ownership to the buyer. The buyer may become the owner of the real property even if the certificate of title is still registered in the name of the seller. As between the seller and buyer, ownership is transferred not by the issuance of a new certificate of title in the name of the buyer but by the execution of the instrument of sale in a public document.

In a contract of sale, ownership is transferred upon delivery of the thing sold. As the noted civil law commentator Arturo M. Tolentino explains it, -

Delivery is not only a necessary condition for the enjoyment of the thing, but is a mode of acquiring dominion and determines the transmission of ownership, the birth of the real right. The delivery, therefore, made in any of the forms provided in articles 1497 to 1505 signifies that the transmission of ownership from vendor to vendee has taken place. The delivery of the thing constitutes an indispensable requisite for the purpose of acquiring ownership. Our law does not admit the doctrine of transfer of property by mere consent; the ownership, the property right, is derived only from delivery of the thing. x x x.[33] (Emphasis supplied)

In a contract of sale of real property, delivery is effected when the instrument of sale is executed in a public

document. When the deed of absolute sale is signed by the parties and notarized, then delivery of the real property is deemed made by the seller to the buyer. Article 1498 of the Civil Code provides that –

Art. 1498. When the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred.

x x x.

Similarly, in a contract to sell real property, once the seller is ready, able and willing to sign the deed of absolute sale before a notary public, the seller is in a position to transfer ownership of the real property to the buyer. At this point, the seller complies with his undertaking to sell the real property in accordance with the contract to sell, and to assume all the obligations of a vendor under a contract of sale pursuant to the relevant articles of the Civil Code. In a contract to sell, the seller is not obligated to transfer ownership to the buyer. Neither is the seller obligated to cause the issuance of a new certificate of title in the name of the buyer. However, the seller must put all his papers in proper order to the point that he is in a position to transfer ownership of the real property to the buyer upon the signing of the contract of sale.

In the instant case, Valdes-Choy was in a position to comply with all her obligations as a seller under the contract to sell. First, she already signed the Deeds of Sale in the office of her counsel in the presence of the buyer. Second, she was prepared to turn-over the owner's duplicate of the TCT to the buyer, along with the tax declarations and latest realty tax receipt. Clearly, at this point Valdes-Choy was ready, able and willing to transfer ownership of the Property to the buyer as required by the contract to sell, and by Articles 1458 and 1495 of the Civil Code to consummate the contract of sale.

Chua, however, refused to give to Valdes-Choy the PBCOM manager's check for the balance of the purchase price. Chua imposed the condition that a new TCT should first be issued in his name, a condition that is found neither in the law nor in the contract to sell as evidenced by the Receipt. Thus, at this point Chua was not ready, able and willing to pay the full purchase price which is his obligation under the contract to sell. Chua was also not in a position to assume the principal obligation of a vendee in a contract of sale, which is also to pay the full purchase price at the agreed time. Article 1582 of the Civil Code provides that –

Art. 1582. The vendee is bound to accept delivery and to pay the price of the thing sold at the time and place stipulated in the contract.

x x x. (Emphasis supplied)

In this case, the contract to sell stipulated that Chua should pay the balance of the purchase price “on or before 15 July 1989.” The signed Deeds of Sale also stipulated that the buyer shall pay the balance of the purchase price upon signing of the deeds. Thus, the Deeds of Sale, both signed by Chua, state as follows:

Deed of Absolute Sale covering the lot:

xxx

For and in consideration of the sum of EIGHT MILLION PESOS (P8,000,000.00), Philippine Currency, receipt of which in full is hereby acknowledged by the VENDOR from the VENDEE, the VENDOR sells, transfers and conveys unto the VENDEE, his heirs, successors and assigns, the said parcel of land, together with the improvements existing thereon, free from all liens and encumbrances.[34] (Emphasis supplied)

Deed of Absolute Sale covering the furnishings:

xxx

For and in consideration of the sum of TWO MILLION EIGHT HUNDRED THOUSAND PESOS (P2,800,000.00), Philippine Currency, receipt of which in full is hereby acknowledged by the VENDOR from the VENDEE, the VENDOR sells, transfers and conveys unto the VENDEE, his heirs, successors and assigns, the said furnitures, fixtures and other movable properties thereon, free from all liens and encumbrances.[35] (Emphasis supplied)

However, on the agreed date, Chua refused to pay the balance of the purchase price as required by the contract to sell, the signed Deeds of Sale, and Article 1582 of the Civil Code. Chua was therefore in default and has only himself to blame for the rescission by Valdes-Choy of the contract to sell.

Even if measured under existing usage or custom, Valdes-Choy had all her papers “in proper order.” Article 1376 of the Civil Code provides that:

Art. 1376. The usage or custom of the place shall be borne in mind in the interpretation of the ambiguities of a contract, and shall fill the omission of stipulations which are ordinarily established.

Customarily, in the absence of a contrary agreement, the submission by an individual seller to the buyer of the following papers would complete a sale of real estate: (1) owner’s duplicate copy of the Torrens title;[36] (2) signed deed of absolute sale; (3) tax declaration; and (3) latest realty tax receipt. The buyer can retain the amount for the capital gains tax and pay it upon authority of the seller, or the seller can pay the tax, depending on the agreement of the parties.

The buyer has more interest in having the capital gains tax paid immediately since this is a pre-requisite to the issuance of a new Torrens title in his name. Nevertheless, as far as the government is concerned, the capital gains tax remains a liability of the seller since it is a tax on the seller’s gain from the sale of the real estate. Payment of the capital gains tax, however, is not a pre-requisite to the transfer of ownership to the buyer. The transfer of ownership takes effect upon the signing and notarization of the deed of absolute sale.

The recording of the sale with the proper Registry of Deeds[37] and the transfer of the certificate of title in the name of the buyer are necessary only to bind third parties to the transfer of ownership.[38] As between the seller and the buyer, the transfer of ownership takes effect upon the execution of a public instrument conveying the real estate.[39] Registration of the sale with the Registry of Deeds, or the issuance of a new certificate of title, does not confer ownership on the buyer. Such registration or issuance of a new certificate of title is not one of the modes of acquiring ownership.[40]

In this case, Valdes-Choy was ready, able and willing to submit to Chua all the papers that customarily would complete the sale, and to pay as well the capital gains tax. On the other hand, Chua’s condition that a new TCT be first issued in his name before he pays the balance of P10,215,000.00, representing 94.58% of the purchase price, is not customary in a sale of real estate. Such a condition, not specified in the contract to sell as evidenced by the Receipt, cannot be considered part of the “omissions of stipulations which are ordinarily established” by usage or custom.[41] What is increasingly becoming customary is to deposit in escrow the balance of the purchase price pending the issuance of a new certificate of title in the name of the buyer. Valdes-Choy suggested this solution but unfortunately, it drew no response from Chua.

Chua had no reason to fear being swindled. Valdes-Choy was prepared to turn-over to him the owner’s duplicate copy of the TCT, the signed Deeds of Sale, the tax declarations, and the latest realty tax receipt. There was no hindrance to paying the capital gains tax as Chua himself had advanced the money to pay the same and Valdes-Choy had procured a manager’s check payable to the Bureau of Internal Revenue covering the amount. It was only a matter of time before the capital gains tax would be paid. Chua acted precipitately in filing the action for specific performance a mere two days after the deadline of 15 July 1989 when there was an impasse. While

this case was dismissed on 22 November 1989, he did not waste any time in re-filing the same on 29 November 1989.

Accordingly, since Chua refused to pay the consideration in full on the agreed date, which is a suspensive condition, Chua cannot compel Valdes-Choy to consummate the sale of the Property. Article 1181 of the Civil Code provides that -

ART. 1181. In conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired shall depend upon the happening of the event which constitutes the condition.

Chua acquired no right to compel Valdes-Choy to transfer ownership of the Property to him because the suspensive condition - the full payment of the purchase price - did not happen. There is no correlative obligation on the part of Valdes-Choy to transfer ownership of the Property to Chua. There is also no obligation on the part of Valdes-Choy to cause the issuance of a new TCT in the name of Chua since unless expressly stipulated, this is not one of the obligations of a vendor.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CV No. 37652 dated 23 February 1995 is AFFIRMED in toto.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, Ynares-Santiago, and Azcuna, JJ., concur.

[1] In CA-G.R. CV No. 37652, dated 23 February 1995, penned by Associate Justice Artemon D. Luna with Associate Justices Cancio C. Garcia and Godardo A. Jacinto concurring.

[2] Civil Case No. 89-5772.

[3] Branch 142, Makati, National Capital Judicial Region, presided by Judge Salvador P. De Guzman, Jr.

[4] Dated 29 August 1991.

[5] The typewritten figure “30” was corrected in ink to “15”.

[6] The italicized portions were also handwritten in ink and initialed by Chua.

[7] Annex “A,” Records, p. 7.

[8] TSN, 24 July 1990, pp. 20-28.

[9] Exhibit “8,” Records, p. 140.

[10] TSN, 25 January 1990, p. 87.

[11] Exhibit “B,” Records, pp. 107-109.

[12] Exhibit “C,” Records, pp. 110-112.

[13] Records, p. 73.

[14] TSN, 25 January 1990, p. 226.

[15] Exhibit “9,” Records, p. 141.

[16] TSN, 24 July 1989, p. 37.

[17] TSN, 5 February 1990, pp. 37-38.

[18] Rollo, pp. 71-72.

[19] Ibid., p. 62.

[20] Rollo, p. 60.

[21] Ibid., p. 203.

[22] Art. 1592. In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by a notarial act. After the demand, the court may not grant him a new term.

[23] Rivera v. Court of Appeals, G.R. No. 44111, 10 August 1989, 176 SCRA 169.

[24] FMIC v. Court of Appeals, G.R. No. 85141, 28 November 1989, 179 SCRA 638.

[25] Salazar v. Court of Appeals, G.R. No. 118203, 5 July 1996, 258 SCRA 317.

[26] Philippine National Bank v. Court of Appeals, G.R. No. 119580, 26 September 1996, 262 SCRA 464.

[27] Alfonso v. Court of Appeals, G.R. No. 63745, 8 June 1990, 186 SCRA 400.

[28] TSN, 5 February 1990, pp. 33-34.

[29] Salazar v. Court of Appeals, *supra*, see note 25.

[30] Roque v. Lapuz, G.R. No. L-32811, 31 March 1980, 96 SCRA 741.

[31] Alfonso v. Court of Appeals, *supra*, see note 27.

[32] Rollo, pp. 60-61.

[33] ARTURO M. TOLENTINO, CIVIL CODE OF THE PHILIPPINES, VOL. V, p. 51 (1992).

[34] Exhibit "B," Records, pp. 51-53.

[35] Exhibit "C," Records, pp. 54-54-(A).

[36] Section 53 of PD No. 1529 provides:

Section 53. Presentation of owner's duplicate upon entry of new certificate. — No voluntary instrument shall be registered by the Register of Deeds, unless the owner's duplicate certificate is presented with such instrument, except in cases expressly provided for in this Decree or upon order of the court, for cause shown.

The production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the Register of Deeds to enter a new certificate or to make a memorandum of registration in accordance with such instrument, and the new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under him, in favor of every purchaser for value and in good faith.

x x x.

[37] Garcia v. Court of Appeals, G.R. Nos. L-48971 and 49011, 22 January 1980, 95 SCRA 380.

[38] Sections 51 and 52, Property Registration Decree (PD No.1529).

[39] Sapto v. Fabiana, 103 Phil. 658 (1958); Abuyo, et al. v. De Suazo, 124 Phil.1138 (1966); Philippine Suburban Development Corp. v. Auditor General, G.R. No. L-19545, 18 April 1975, 63 SCRA 397.

[40] Bollozos v. Yu Tieng Su, G.R. No. L-29442, 11 November 1987, 155 SCRA 506.

[41] Mirasol v. Yusay, et al., 120 Phil. 407 (1964).

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