

PHILIPPINE NATIONAL BANK, PETITIONER, VS. COURT OF APPEALS AND LAPAZ KAW NGO, RESPONDENTS.

G.R. No. 119580. September 26, 1996

Ponente: HERMOSISIMA, JR., J.

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HERMOSISIMA, JR., J.:

The question at issue, one of law, is whether or not from the undisputed facts there was entered between the Philippine National Bank and Lapaz Kaw Ngo a perfected contract of sale of prime real property located in the heart of downtown Manila.

Before us is a petition for review on certiorari seeking the reversal of the decision[1] of the respondent Court of Appeals[2] in an action for specific performance[3] filed in the Regional Trial Court (RTC)[4] by private respondent Lapaz Kaw Ngo against petitioner Philippine National Bank (hereafter, "PNB"). Except for the award of P610,000.00 as actual damages which was deleted, respondent appellate court affirmed in all other respects the judgment[5] rendered by the RTC in favor of private respondent Ngo.

The facts of this case, as narrated by respondent appellate court, are undisputed:

"The subject matter of the case is a parcel of land containing a net area of 1,190.72 square meters (1391.70 square meters minus 200.98 square meters reserved for road widening and Light Rail Transit) situated at the corner of Carlos Palanca and Helios Streets, Sta. Cruz, Manila, covered by and embraced in Transfer Certificate of Title No. 134695 of the Registry of Deeds of Manila x x x owned and registered in the name of x x x the Philippine National Bank x x x

x x x

On July 14, 1983 Lapaz made a formal offer to purchase the parcel of land consisting of 1,250.70 [square meters] located at the corner of Carlos Palanca and Helios Streets, Sta. Cruz, Manila, owned by and registered in the name of x x x PNB x x x PNB advised Lapaz of its approval of the latter's offer to purchase the subject property subject to the terms and conditions stated in its official communication to the plaintiff [private respondent] dated September 8, 1983, viz:

'x x x

x x x your offer to purchase the Bank-acquired property x x x was approved by the Bank, subject to the following terms and conditions:

1. That the selling price shall be P5,394,300.00 (P100,000.00 already deposited) x x x
2. (a) That upon your failure to pay the additional deposit of P978,860.00 upon receipt of advice accepting your offer, your P100,000.00 initial deposit shall be forfeited and for this purpose the Bank shall be authorized to sell the property to other interested parties.

x x x

3. That the Bank sells only whatever rights, interests and participation it may have in the property and you are charged with full knowledge of the nature and extent of said rights, interests and participation and waives [sic] your right to warranty against eviction.

x x x

4. That the property shall be cleared of its present tenants/ occupants but all expenses to be incurred in connection with the ejectment proceedings shall be for your account.

6. That the sale shall be subject to such other terms and conditions that the Legal Department may impose to protect the interest of the Bank.

x x x'

On December 15, 1983, the plaintiff [private respondent] signified her conformity to the above letter-agreement by affixing her signature thereon x x x.

One of the conditions in the agreement was to clear the subject property of its then occupants; thus, Lapaz undertook the ejectment of the squatters/tenants at her own expense.

In a letter dated January 23, 1984, Lapaz, citing the then prevailing credit squeeze, requested for adjustment of payment proposals x x x.

On February 28, 1984, PNB wrote Lapaz reminding her Of her failure to remit the amount of P978,860.00 as embodied in its letter dated December 6, 1983 x x x and of her refusal to send her letter of conformity to the letter-agreement. Lapaz was likewise advised to remit her cash payment of the full price amounting to P5,378,902.50; otherwise, the subject property shall be sold to other interested party/ies and her deposit forfeited. Lapaz's request for adjustment of payments was likewise denied x x x.

In a letter dated March 1, 1984 x x x Lapaz, due to a significant reduction in the land area being purchased, requested for the reduction of the selling price from P5,394,300.00 to P5,135,599.17 on cash basis or a total of P6,066,706.49 on installment x x x.

On May 15, 1984, PNB favorably acted on Lapaz's request x x x.

However, when no further payment was received by PNB from Lapaz, the former notified the latter by telegram that it was giving her a last chance to pay the balance of the required downpayment of P563,341.29; failure of which shall cause the cancellation of the sale in her favor and the forfeiture of her P100,000.00 deposit x x x.

The sale in favor of Lapaz never materialized because of her failure to remit the required amount agreed upon; hence, the proposed sale was cancelled x x x and the plaintiff's [private respondent's] deposit of P100,000.00 was forfeited by the defendant [petitioner]. PNB then leased the property to a certain Morse Rivera x x x.

On October 3, 1984 Lapaz requested for a refund of her deposit in the total amount of P660,000.00 (P550,000.00) with a further request that since the Bank was willing to refund to her her deposit provided that the P100,000.00 is forfeited in favor of the Bank, the amount of P100,000.00 be reduced to P30,000.00 because her deposit of P660,000.00 (P550,000.00) had, after all, already accumulated to a sizable amount of interest and, besides there was a delay in the approval of the contract or proposal. Lapaz further intimated that her request for refund shall be subject to the release of the fund within one (1) week from receipt thereof; otherwise, she would insist on purchasing the property subject to mutually agreed grace period x x x.

On October 16, 1984, PNB released in favor of Lapaz the amount of P550,000.00 representing the refund of deposit made on the offer to purchase the subject property x x x.

On August 30, 1985, [Lapaz] wrote a letter to the former President of the Philippines, Ferdinand E. Marcos,

requesting for the lifting of the directive suspending the sale of the subject property, which letter was transmitted to the then President of the PNB for comment and/or action.

In its letter dated May 14, 1986, PNB advised Lapaz of the approval of her request for revival of the previously approved offer to purchase the subject property subject to the terms and conditions as follows:

'1. That the selling price shall be P5,135,599.17 (P200,000.00) already deposited x x x

2. a. That upon your failure to pay the additional deposit of P827,119.83 upon receipt of advice of approval, your P200,000.00 deposit shall be forfeited and for this purpose, the Bank can sell the property to other interested parties;

x x x

3. That your previous deposit of P100,000.00 which was forfeited by the Bank due to your failure to consummate the previously-approved sale, shall not be considered as part of the purchase price;

4. That the Bank sells only whatever rights, interests and participation it may have in the property and you are charged with full knowledge of the nature and extent of said rights, interests and participation and waives [sic] your right to warranty against eviction;

x x x

6. That the property shall be cleared of its present tenants/occupants but all expenses to be incurred in connection with the ejectment proceedings shall be for your account;

7. That the sale shall be subject to all terms and conditions covering sale of similar acquired real estate properties;

8. That the sale shall also be subject to all terms and conditions that the Legal Department may impose to protect the interest of the Bank.' x x x

A copy of the said letter appears to have been received by the plaintiff [private respondent] herself on May 20, 1986 x x x.

In a letter dated May 23, 1986 x x x Lapaz informed the PNB management that the terms and conditions set forth in its letter of May 14, 1986 were acceptable to her except condition no. 6 which says:

'6 That the property shall be cleared of its present tenants/occupants but all expenses to be incurred in connection with the ejectment proceedings shall be for your account.'

She therefore requested for the deletion of the above condition because she had already defrayed the expenses for the ejectment of the previous occupants of the premises in compliance with the condition in the original approved offer to purchase. Besides, the present occupants are not squatters, but lessees of PNB x x x Lapaz's request for modification was not acceptable to the Bank; thus, she was given up to July 10, 1986 to submit, duly signed, the letter-conforme dated May 14, 1986 and to remit the initial amount of P827,119.83 to comply with the approved terms and conditions; otherwise, the approved sale will be cancelled and her deposit of P200,000.00 forfeited x x x.

In a letter dated January 14, 1987, Lapaz through counsel informed PNB that she was willing to pay and remit the amount of P827,119.83 representing the balance of the 20% downpayment of the approved purchase price as soon as the subject property was cleared of its present tenants/occupants. However, the bank in its letter dated January 30, 1987 informed Lapaz that it could no longer grant her any extension to pay the abovestated amount, and cancelled on January 30, 1987 the approved sale in plaintiff's [private respondent's] favor for being stale and unimplemented and forfeited her deposit of P200,000.00 x x x.

To demonstrate her protest over the cancellation, Lapaz through counsel sent the letter dated February 6, 1987 asking for a reconsideration of bank's position on the matter by honoring the approved sale in plaintiff's [private respondent's] favor as well as her deposit x x x. In reply, the Bank denied any further extension in favor of the plaintiff [private respondent] and likewise informed her that it had already decided to sell the property for not less than P7,082,972.00 through negotiated or sealed bidding x x x.

As a consequence of the cancellation of the approved offer to purchase in her favor, Lapaz filed [an] action for Specific Performance and Damages with Prayer for a Writ of Preliminary Injunction and Temporary Restraining Order.

After trial, the lower court on November 15, 1990, rendered judgment in favor of the plaintiff [private respondent] x x x."[6]

In the decretal portion of the trial court's judgment, petitioner was ordered to comply with the approved sale of the subject property but without the right to impose the condition that private respondent shall bear the expenses for ejecting the occupants of the subject property. Petitioner was also ordered to pay P610,000.00 as actual expenses, P100,000.00 as attorney's fees, plus P1,000.00 per appearance, and the costs of suit.

The aforecited judgment of the court a quo, totally unacceptable to petitioner, was appealed to the respondent court. Petitioner took exception to the following postulations of the trial court: (1) that there was a perfected contract of sale between herein private parties notwithstanding the suspensive condition imposed upon private respondent for her to bear the expenses for ejecting the occupants of the subject property; (2) that the deposit of P200,000.00 given by private respondent was earnest money which is proof of the perfection of the contract of sale albeit the said condition imposed thereon; and (3) that the cancellation of the second sale was baseless notwithstanding proof of private respondent's refusal to pay the balance of the 20% down payment of the purchase price of the subject property.

The respondent court disagreed with and answered each of, the foregoing asseverations of petitioner in this wise:

"The plaintiff-appellee's [private respondent's] offer to purchase the subject property was originally approved by the defendant-appellant [petitioner] on September 8, 1983 subject however to the terms and conditions enumerated therein x x x.

From the moment the plaintiff-appellee [private respondent] signed the letter-agreement signifying her conformity thereto, which simply means that she was accepting the terms and conditions therein absolutely, there was created between the parties, a perfected contract of sale.

x x x

The failure of the plaintiff [private respondent] to remit the required downpayment does not negate the perfection of the first contract of sale between the parties. The failure of the vendee x x x to pay the price agreed upon in the contract only gives the vendor x x x the right to exact the fulfillment or to rescind the contract (Art. 1191, supra.; Jacinto vs. Kaparaz, 209 SCRA 246).

The terms and conditions in the letter-agreement need not be complied with before it could be said that the contract had already attained its perfection. A reading of the letter-agreement would reveal that the perfection of the contract does not depend on the fulfillment of the terms and conditions therein. Since there was a meeting of the minds between the parties upon the object of the contract and upon the price, the contract of sale had already been perfected. Thus, whether or not the conditions were fulfilled, the agreement remains to be valid and each party may reciprocally demand for its performance x x x.

Admittedly, the x x x [private respondent] failed to remit the required downpayment for the first contract after several notices for payment therefor x x x Thus, it was just proper for the defendant-Bank [petitioner] to cancel

the agreement to protect its interests. Anyway, it was merely exercising its right under Article 1191 of the New Civil Code which right was clearly stipulated in the agreement x x x.

The agreement nonetheless was subsequently revived, pursuant to which, another letter-agreement dated May 14, 1986 was sent by appellant [petitioner] to appellee [private respondent] x x x. The latter did not sign the letter-agreement but instead sent a letter to the appellant [petitioner] dated May 23, 1986 expressing her conformity to the terms and conditions stipulated therein except for the condition which states that the subject 'property shall be cleared of its present tenants/occupants' at her expense. x x x. On the other hand, appellant [petitioner] posits the view that since the approval of the revival of the offer to purchase was made subject to the terms and conditions stated therein, which conditions were necessary for the enforceability of the obligation against the appellant [petitioner], and there being no absolute acceptance by the plaintiff [private respondent] of such terms and conditions, then no contract of sale was perfected between the parties.

Appellant's [petitioner's] view is devoid of merit.

We note that the appellant [petitioner] itself admitted that the second agreement was merely a revival of the first agreement which was duly approved by the bank, and the terms and conditions thereof accepted by the appellee [private respondent] x x x. Although there were some changes in the second agreement, such changes were not substantial so as to make it a different contract of sale from that of the first agreement of the parties. x x x.

x x x

Considering that there was already an ejectment case filed by the appellant [petitioner] against its lessees, then there was no longer any need for the plaintiff-appellee [private respondent] to initiate another ejectment case at her expense, much less was there a need to incorporate condition no. 6 in the agreement. Thus, the forfeiture of the plaintiff's [private respondent's] deposit of P200,000.00 and the subsequent unilateral cancellation of the agreement have no legal basis at all. Such cancellation was made without the appellant's [petitioner's] action on the appellee's [private respondent's] request for reconsideration of the PNB's denial other of her request for deletion of condition no. 6 x x x.

x x x

Appellant [petitioner] likewise argues that the deposits given by the appellee [private respondent] were expressly subject to conditions agreed upon by the parties; hence, cannot be deemed as earnest money contemplated in Article 1482 of the New Civil Code.

x x x

A close scrutiny of the two letters-agreement shows that the deposits of P100,000.00 x x x and P200,000.00 x x x were made part of the selling/purchase price. x x x.

On the basis of the above, there can be no other conclusion than that the deposits made x x x were actually earnest money, such that from the total selling price the arras (earnest money) must be deducted and the balance is all that has to be paid x x x.

x x x

The appellant [petitioner] likewise assigns as error the findings of the lower court on the absence of proof that the appellee [private respondent] refused to pay the x x x downpayment in the second agreement x x x

x x x The only reason which prevented the appellee [private respondent] from paying the required downpayment was the stipulation in the agreement requiring her to eject the present occupants of the premises when in fact she already spent for the eviction of its previous tenants x x x. However x x x there is no need for such stipulation because anyway the appellant [petitioner] had already instituted an action against its tenants x

x x Besides, the protest letter sent by appellee's [private respondent's] lawyer x x x as well as the filing of this case are eloquent proofs of the appellee's [private respondent's] desire, capacity and willingness to proceed with the sale of the property. As we noted above, the appellant [petitioner] never replied to the appellee's [private respondent's] request for reconsideration of its refusal to delete condition no. 6. PNB's inaction must have made Lapaz to suspend payment.[7]

Likewise rebuffed by the respondent Court of Appeals which, however, deleted the P610,000.00 award for actual damages granted by the trial court to private respondent, petitioner prays that the herein assailed decision be set aside because the respondent court apparently decided questions of substance not in accord with statutory and case law:

"THE COURT OF APPEALS ERRED:

I

IN HOLDING THAT THERE WAS A PERFECTED CONTRACT BETWEEN PNB AND MS. NGO DESPITE THEIR CLEAR DISAGREEMENT ON THE SUBSTANTIVE CONDITION THAT THE LATTER SHOULD THE EXPENSES FOR THE EJECTMENT OF THE OCCUPANTS OF THE LOT TO BE SOLD.

A. PNB's acceptance of Ms. Ngo's offer to revive her purchase of subject lot was subject to certain substantive conditions.

B. PNB's acceptance of Ms. Ngo's offer was in fact a counter-offer which she rejected by her insistence that PNB delete condition number 6.

C. PNB's Condition Number 6 is material and should be agreed upon at inception of contract.

D. The area of agreement in PNB's counter-offer/acceptance extends to Condition number 6 together with all other conditions PNB specified.

II

IN HOLDING THAT MS. NGO'S REFUSAL TO PAY THE P827,199.83 DOWNPAYMENT IS NOT A VALID BASIS FOR PNB'S CANCELLATION OF THE 'APPROVED' SALE."[8]

The petition is meritorious.

There are two separate transactions in the instant case; the first having been unconditionally cancelled, effects thereof cannot be deemed applicable to the second transaction.

Even private respondent admits in her pleadings that she failed to remit the required downpayment under the first letter-agreement, dated September 8, 1983. On this basis, respondent appellate court held that "[t]hus, it was just proper for the [petitioner] Bank to cancel the agreement to protect its interests[9]," as it did so on October 16, 1984. Notwithstanding such ruling, however, respondent court theorized that because private respondent accepted the terms and conditions in that first letter-agreement, and petitioner approved the revival thereof in another letter-agreement, dated May 14, 1986, conformity to this second letter-agreement by private respondent would be superfluous, the letter-agreement dated May 14, 1986 being "merely a revival of the first agreement which was duly approved by the bank and the terms and conditions thereof accepted by the appellee [private respondent]"[10]. Needless to say, this postulation of respondent court is in complete disregard of the status of the first letter-agreement as being non-existent and totally inefficacious as a result of its cancellation.

Respondent court then proceeded to state that petitioner having already complied with the condition that she shoulder all expenses for the ejectment of the occupants of the subject property under the first letter-agreement, "it

would have been too cumbersome and inequitable if the plaintiff appellee [private respondent were again made to shoulder the expenses for the eviction of the subsequent tenants/occupants of subject property[11]". Evidently, respondent court perceived the two letter-agreements to be a single transaction such that it justified private respondent's non-compliance with condition No. 6 in the second letter-agreement by invoking her earlier compliance with the same condition in the first letter-agreement.

This is confused sophism. When the first letter-agreement was cancelled by petitioner, and private respondent agreed to that cancellation upon receiving P550,000.00 as refund of her aggregate deposit, all the effects of that agreement were terminated. Upon mutual assent to that cancellation, the agreement so cancelled thereafter no longer existed. Thus, compliance by private respondent with the terms and conditions of that first agreement served the purposes of that agreement and cannot be made to serve the purposes of the second letter-agreement. Respondent court fallaciously tacked the two agreements with each other and commingled their effects; it incorrectly considered petitioner's successful ejectment of the subject property's 1983 occupants under the first letter-agreement to be sufficient compliance with the condition under the second letter-agreement that the subject property be cleared of its 1986 occupants.

The records attest to the fact that private respondent refused to accept condition No. 6 of the second letter-agreement, dated May 14, 1986. Private respondent offered, for the second time, after the first letter-agreement was cancelled, to buy the subject property from petitioner who accepted such offer but subject to specified terms and conditions. Thus, petitioner's acceptance of private respondent's offer was a qualified acceptance, which in effect, is a counter-offer necessitating private respondent's acceptance in return. Refusing to bind herself to bear the expenses for a second ejectment suit involving the subject property, private respondent in effect rejected petitioner's counter offer or at the least, accepted the same subject to the deletion of condition No. 6. This, it has to be noted, is another counter-offer necessitating acceptance this time by petitioner. Petitioner was unwilling to accept the same and demanded remittance of the remainder of the downpayment, the failure of which payment, petitioner warned private respondent, would result in the forfeiture of the initial deposit of P200,000.00 and the ipso facto cancellation of the second letter-agreement enabling petitioner to sell the subject property through sealed bidding.

From the foregoing, it is clear that private respondent and petitioner were negotiating for terms mutually acceptable to them. Unfortunately, a mutually acceptable set of terms was not reached between them, and petitioner exercised its right under the second letter-agreement to cancel the same. This process of negotiation undertaken in 1986 by herein private parties is undeniably distinct from and entirely independent of the events that transpired in 1983 in the context of the first letter agreement. Precisely another negotiation was necessary because this 1986 transaction is different and separate from that undertaken by the said parties in 1983.

Both letter-agreements are in the nature of contracts to sell; non-compliance with the suspensive conditions set forth therein prevents the obligation of the vendor to convey title from having obligatory force

The fundamental flaw in the reasoning of both the trial court and the respondent appellate court is their admitted premise that both letter-agreements are contracts of sale the perfection of which are proven by the earnest money tendered to and accepted by petitioner in the form of deposits of P100,000.00 and P200,000.00 under the first and second letter-agreements, respectively.

A perusal of the letter-agreements shows that they are contracts to sell and not contracts of sale.

A contract to sell is akin to a conditional sale where the efficacy or obligatory force of the vendor's obligation to transfer title is subordinated to the happening of a future and uncertain event so that if the suspensive condition

does not take place, the parties would stand as if the conditional obligation had never existed.[12] The suspensive condition is commonly full payment of the purchase price.[13]

"Thus it has been held that a deed of sale is absolute in nature although denominated as a "Deed of Conditional Sale" where nowhere in the contract in question is a proviso or stipulation to the effect that title to the property is sold is reserved in the vendor until full payment of the purchase price, nor is there a stipulation giving the vendor the right to unilaterally rescind the contract the moment the vendee fails to pay within a fixed period x x x." [14]

If it were not full payment of the purchase price upon which depends the passing of title from the vendor to the vendee, it may be some other condition or conditions that have been stipulated and must be fulfilled before the contract is converted from a contract to sell or at the most an executory sale into an executed one.[15]

"x x x Where the seller promised to execute a deed of absolute sale upon completing payment of the price, it is a contract to sell. In the case at bar, the sale is still in the executory stage, namely, that if private respondent is able to secure the needed funds to be used in the purchase of the two lots owned by petitioners. A mere executory sale, one where the sellers merely promise to transfer the property at some future date, or where some conditions have to be fulfilled before the contract is converted from an executory to an executed one, does not pass ownership over the real estate being sold.

In our jurisdiction, it has been held that an accepted bilateral promise to buy and sell is in a sense similar to, but not exactly the same, as a perfected contract of sale because there is already a meeting of minds upon the thing which is the object of the contract and upon the price. but a contract of sale is consummated only upon delivery and payment. x x x

x x x Petitioners as promisors were never obliged to convey title before the happening of the suspensive condition. In fact, nothing stood in the way of their selling the property to another after unsuccessful demand for said price upon the expiration of the time agreed upon." [16]

The differences between a contract to sell and a contract of sale are well-settled in jurisprudence. As early as 1951, we have held that:

"x x x [a] distinction must be made between a contract of sale in which title passes to the buyer upon delivery of the thing sold and a contract to sell x x x where by agreement the ownership is reserved in the seller and is not to pass until the full payment, of the purchase price is made. In the first case, non-payment of the price is a negative resolutive condition; in the second case, full payment is a positive suspensive condition. Being contraries, their effect in law cannot be identical. In the first case, the vendor has lost and cannot recover the ownership of the land sold until and unless the contract of sale is itself resolved and set aside. In the second case, however, the title remains in the vendor if the vendee does not comply with the condition precedent of making payment at the time specified in the contract." [17]

In other words, in a contract to sell, ownership is retained by the seller and is not to pass to the buyer until full payment of the price or the fulfillment of some other conditions either of which is a future and uncertain event the non-happening of which is not a breach, casual or serious, but simply an event that prevents the obligation of the vendor to convey title from acquiring binding force.[18] To illustrate the effect of a Positive suspensive condition upon the nature of the transaction, as to whether it is a contract to sell or a contract of sale, we have held thus:

"In the agreement in question, entitled PURCHASE AND SALE OF SCRAP IRON, the seller bound and promised itself to sell the scrap iron upon the fulfillment by the private respondent of his obligation to make or indorse an irrevocable and unconditional letter of credit in payment of the purchase price. Its principal stipulation reads, to wit:

x x x

'Witnesseth:

That the SELLER agrees to sell, and the BUYER agrees to buy x x x on the following terms and conditions:

1. x x x

2. To cover payment of the purchase price, BUYER will open, make or indorse an irrevocable and unconditional letter of credit not later than May 15, 1983 at the Consolidated Bank and Trust Company, Dumaguete City Branch, in favor of the SELLER in the sum of x x x (P250,000.00) x x x

3. x x x

4. x x x'

The petitioner corporation's obligation to sell is unequivocally subject to a positive suspensive condition, i.e., the private respondent's opening, making or endorsing of an irrevocable and unconditional letter of credit. The former agreed to deliver the scrap iron only upon payment of the purchase price by means of an irrevocable and unconditional letter of credit. Otherwise stated, the contract is not one of sale where the buyer acquired ownership over the property subject to the resolatory condition that the purchase price would be paid after delivery. Thus, there was to be no actual sale until the opening, making or endorsing of the irrevocable and unconditional letter of credit. Since what obtains in the case at bar is a mere promise to sell, the failure of the private respondent to comply with the positive suspensive condition cannot even be considered a breach -- casual or serious -- but simply an event that prevented the obligation of petitioner corporation to convey title from acquiring binding force.

x x x

In the instant case, x x x private respondent fail[ed] to open, make or indorse an irrevocable and unconditional letter of credit x x x

Consequently, the obligation of the petitioner corporation to sell did not arise; it therefore cannot be compelled by specific performance to comply with its prestation. x x x"[19]

In the instant case, private respondent does not dispute the fact that, under identical provisions in the two letter-agreements, her obligation was to deposit an initial amount (P100,000.00 under the first letter-agreement and P200,000.00 under the second letter-agreement) and then subsequently to deposit an additional amount representing roughly 20% of the purchase price (P978,860.00 under the first letter agreement and P827,119.93 under the second letter-agreement). Under both letter-agreements, the consequences of private respondent's failure to remit the additional deposit, are unequivocal and plainly comprehensible: "x x x deposit shall be forfeited and for this purpose, the Bank can sell the property to other interested parties x x x due to your [private respondent's] failure to consummate the previously-approved sale x x x "[20]

This right reserved in the petitioner to in effect cancel the agreement to sell upon failure of petitioner to remit the additional deposit and to consequently open the subject property anew to purchase offers, is in the nature of a stipulation reserving title in the vendor until full payment of the purchase price or giving the vendor the right to unilaterally rescind the contract the moment the vendee fails to pay within a fixed period.

We had already made the finding that the letter-agreements in question indeed bear the provisions reserving title in petitioner until payment of the additional deposit representing more or less 20% of the purchase price. We also find, however, that the intention of the private parties herein to make the sale dependent on petitioner's compliance with certain other conditions, is undeniable and plainly evident in the letter-agreements. Identical provisions therein relating to petitioner's waiver of her right to warranty against eviction and her accountability for the expenses for the ejectment proceedings, are not so called "standard" provisions that are more of a

rhetorical device than conditions genuinely meant by the parties to be suspensive conditions in the legal sense. In fact we find the inclusion of these provisions to be part of the consideration of petitioner in considering private respondent's offer to purchase the subject property. Corollarily, we find condition No. 6 under the second letter-agreement relating to the accountability of petitioner for the expenses for the ejectment proceedings, to be a positive suspensive condition, among the other positive suspensive conditions embodied in the letter-agreement, non-compliance of which prevents petitioner's obligation to proceed with the sale and ultimately transfer title to private respondent, from having obligatory force.

Moreover, no less revealing is the fact that the letter-agreements are not deeds of sale, thereunder no title having been passed from petitioner to private respondent. Herein lies another important distinction between a contract to sell and a contract of sale.

"x x x The distinction between the two is important for in a contract of sale, the title passes to the vendee upon the delivery of the thing sold, whereas in a contract to sell, by agreement, ownership is reserved in the vendor and is not to pass until the full payment of the price. In a contract of sale, the vendor has lost and cannot recover ownership until and unless the contract is resolved or rescinded, whereas in a contract to sell, title is retained by the vendor until the full payment of the price, such payment being a positive suspensive condition, failure of which is not a breach but an event that prevented the obligation of the vendor to convey title from becoming effective." [21]

We have often stated that it is not enough to say that the contract of sale, being consensual, became automatically and immediately effective. [22]

"Manuel v. Rodriguez, 109 Phil. 1, was one such occasion. In Manuel, 'only the price and the terms of payment were in writing,' but the most important matter in the controversy, the alleged transfer of title was never 'reduced to any written document. It was held that the contract should not be considered x x x a sale but a promise to sell; and that 'the absence of a formal deed of conveyance' was a strong indication 'that the parties did not intend immediate transfer of title, but only a transfer after full payment of the price.' Under these circumstances, the Court ruled Article 1504 of the Civil Code of 1889 (Art. 1592 of the present Code) to be inapplicable to the contract in controversy -- a contract to sell or promise to sell -- 'where title remains with the vendor until fulfillment of a positive suspensive condition x x x.'" [23]

Thus, we have applied the above doctrine not in a few cases and looked into, in determining the true nature of an alleged sale transaction, whether or not there was transfer of title. In one case, we found that:

"Applying these distinctions, the Court finds that the agreement between PBC and the private respondents was only a contract to sell, not a contract of sale. And the reasons are obvious.

There was no immediate transfer of title to the private respondents as would have happened if there had been a sale at the outset. The supposed sale was never registered and TCT No. 218661 in favor of PBC was not replaced with another certificate of title in favor of the private respondents. x x x" [24]

In the instant case, there was apparently no transfer of title, not even mention of such a transfer in the future, considering that all the parties were aware of the occupancy of the subject property by third persons. This circumstance all the more reinforces our finding that the transaction contemplated under the letter-agreements was a contract to sell or a conditional sale which absolutely depends, for its efficacy, upon the happening of the conditions specified in the said letter-agreements.

Private respondent also asseverates that the initial deposit of P200,000.00 under the second letter-agreement is earnest money, that is, by express provision of the Civil Code, considered part of the purchase price and proof of the perfection of the sale.

Indeed under Article 1482 of the Civil Code, earnest money given in a sale transaction is considered part of the purchase price and proof of the perfection of the sale. This provision, however, gives no more than a disputable presumption that prevails in the absence of contrary or rebuttal evidence. In the instant case, the letter-agreements themselves are the evidence of an intention on the part of herein private parties to enter into negotiations leading to a contract of sale that is mutually acceptable as to absolutely bind them to the performance of their obligations thereunder. The letter-agreements are replete with substantial condition precedents, acceptance of which on the part of private respondent must first be made in order for petitioner to proceed to the next step in the negotiations. The initial deposits under the two letter-agreements, therefore, should rather be construed, not strictly as earnest money, but as part of the consideration for petitioner's promise to reserve the subject property for private respondent. Certainly in excluding all other prospective buyers from bidding for the subject property, petitioner was in effect giving up what may have been more lucrative offers or better deals.

WHEREFORE, the Petition for Review is HEREBY GRANTED. The decision of the Court of Appeals in CA-G.R. CV No. 33490 and the decision of the Regional Trial Court of Manila, Branch XXVI, in Civil Case No. 87-39598, are hereby reversed and set aside. Private respondent's complaint for specific performance and damages in Civil Case No. 87-39598 is dismissed.

No pronouncement as to costs.

SO ORDERED.

Padilla, (Chairman), Bellosillo, Vitug, and Kapunan, JJ., concur.

[1] In CA-G.R. CV No. 33490, dated March 15, 1995, penned by Associate Justice Delilah Vidallon-Magtolis and concurred in by Associate Justice Gloria C. Paras and Quirino D. Abad Santos, Jr.

[2] Fourth Division.

[3] Civil Case No. 87-39598.

[4] Branch 26, Manila, National Capital Region, presided by then Judge, now Associate Justice, Corona Ibay-Somera.

[5] Dated November 15, 1990.

[6] Decision in CA-G.R. CV No. 33490, *supra*, pp.2-9; Rollo, pp.28-35.

[7] *Id.*, pp.10-16; Rollo, pp.36-42.

[8] Culled from the Petition for Review on Certiorari dated May 3, 1995, pp.13-18; Rollo, pp.18-23.

[9] Decision in CA-G.R. CV No. 33490 *supra*, p.11; Rollo, p.37.

[10] *Id.*, p.12; Rollo, p.38.

[11] *Ibid.*

[12] *Rose Packing Co., Inc. vs. Court of Appeals*, 167 SCRA 309, 318 (1988), citing *Gaite vs. Fonacier*, 2 SCRA 831 (1961).

[13] *Lim vs. Court of Appeals*, 182 SCRA 564, 670 (1990), citing *Sing Yee vs. Santos*, 47 O.G. 6372 (1951); *Jacinto vs. Kaparaz*, 209 SCRA 246, 254 (1992); *Visayan Sawmill Company, Inc. vs. Court of Appeals*, 219 SCRA 378, 389 (1993), citing *Luzon Brokerage Co., Inc. vs. Maritime Building Co., Inc.*, 46 SCRA 381 (1972); *Bowe vs. Court of Appeals*, 220 SCRA 158, 165 (1993); *Pingol vs. Court of Appeals*, 226 SCRA 118, 126

(1993); Bricktown Development Corp. vs. Amor Tierra Development Corp., 239 SCRA 126, 132 (1994), citing Roque vs. Lapuz, 96 SCRA 741 and Agustin vs. Court of Appeals, 186 SCRA 375).

[14] Dignos vs. Court of Appeals, 158 SCRA 375, 382 (1988), citing Taguba vs. Vda. de Leon, 132 SCRA 722 Luzon Brokerage Co., Inc. vs. Maritime Building Co., Inc., 86 SCRA 305; Pingol vs. Court of Appeals, 226 SCRA 118, 127 (1993)

[15] Macion. vs. Guiani, 225 SCRA 102,107-108 (1993).

[16] Ibid.

[17] Bowe vs. Court of Appeals, 220 SCRA 158, 164 (1993), citing Lim vs. Court of Appeals, 182 SCRA 564 (1990) and Sing Yee vs. Santos, 47 O.G. 6372 (1951).

[18] Jacinto vs. Kaparaz, 209 SCRA 246, 254 (1992).

[19] Visayan Sawmill Company, Inc. vs. Court of Appeals, 219 SCRA 378, 388-390 (1993)

[20] Decision in CA-G.R. CV No. 33490 dated March 15, 1995, pp.3 and 7; Rollo, pp.29 and 33.

[21] Pingol vs. Court of Appeals, 226 SCRA 118, 126 (1993).

[22] Lim vs. Court of Appeals, 182 SCRA 564, 570 (1990); Bowe vs. Court of Appeals, 220 SCRA 158, 164 (1993).

[23] Alfonso vs. Court of Appeals, 186 SCRA 400, 404-405 (1990), citing Manuel vs. Rodriguez, 109 Phil. 1, Caridad Estates v. Santero, 71 Phil. 114, Albea vs. Inquimboy, 86 Phil. 476; Jocson vs. Capitol Subdivision, Inc., et al., L-6573, Feb. 28, 1955; Miranda vs. Caridad Estates, L-1077 and Aspuria vs. Caridad Estates, L-2121, Oct. 3, 1950.

[24] Lim vs. Court of Appeals, 182 SCRA 564, 570 (1990)

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