

**POWER COMMERCIAL AND INDUSTRIAL CORPORATION,
PETITIONER, VS. COURT OF APPEALS, SPOUSES REYNALDO AND
ANGELITA R. QUIAMBAO AND PHILIPPINE NATIONAL BANK,
RESPONDENTS.**

G.R. No. 119745. June 20, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Is the seller's failure to eject the lessees from a lot that is the subject of a contract of sale with assumption of mortgage a ground (1) for rescission of such contract and (2) for a return by the mortgagee of the amortization payments made by the buyer who assumed such mortgage?

Petitioner posits an affirmative answer to such question in this petition for review on certiorari of the March 27, 1995 Decision[1] of the Court of Appeals, Eighth Division, in CA-G.R. CV Case No. 32298 upholding the validity of the contract of sale with assumption of mortgage and absolving the mortgagee from the liability of returning the mortgage payments already made.[2]

The Facts

Petitioner Power Commercial & Industrial Development Corporation, an industrial asbestos manufacturer, needed a bigger office space and warehouse for its products. For this purpose, on January 31, 1979, it entered into a contract of sale with the spouses Reynaldo and Angelita R. Quiambao, herein private respondents. The contract involved a 612-sq. m. parcel of land covered by Transfer Certificate of Title No. S-6686 located at the corner of Bagtican and St. Paul Streets, San Antonio Village, Makati City. The parties agreed that petitioner would pay private respondents P108,000.00 as down payment, and the balance of P295,000.00 upon the execution of the deed of transfer of the title over the property. Further, petitioner assumed, as part of the purchase price, the existing mortgage on the land. In full satisfaction thereof, he paid P79,145.77 to Respondent Philippine National Bank ("PNB" for brevity).

On June 1, 1979, respondent spouses mortgaged again said land to PNB to guarantee a loan of P145,000.00, P80,000.00 of which was paid to respondent spouses. Petitioner agreed to assume payment of the loan.

On June 26, 1979, the parties executed a Deed of Absolute Sale With Assumption of Mortgage which contained the following terms and conditions:[3]

"That for and in consideration of the sum of Two Hundred Ninety-Five Thousand Pesos (P295,000.00) Philippine Currency, to us in hand paid in cash, and which we hereby acknowledge to be payment in full and received to our entire satisfaction, by POWER COMMERCIAL AND INDUSTRIAL DEVELOPMENT CORPORATION, a 100% Filipino Corporation, organized and existing under and by virtue of Philippine Laws with offices located at 252-C Vito Cruz Extension, we hereby by these presents SELL, TRANSFER and CONVEY by way of absolute sale the above described property with all the improvements existing thereon

unto the said Power Commercial and Industrial Development Corporation, its successors and assigns, free from all liens and encumbrances.

“We hereby certify that the aforesaid property is not subject to nor covered by the provisions of the Land Reform Code -- the same having no agricultural lessee and/or tenant.

“We hereby also warrant that we are the lawful and absolute owners of the above described property, free from any lien and/or encumbrance, and we hereby agree and warrant to defend its title and peaceful possession thereof in favor of the said Power Commercial and Industrial Development Corporation, its successors and assigns, against any claims whatsoever of any and all third persons; subject, however, to the provisions hereunder provided to wit:

That the above described property is mortgaged to the Philippine National Bank, Cubao, Branch, Quezon City for the amount of one hundred forty-five thousand pesos, Philippine, evidenced by document No. 163, found on page No. 34 of Book No. XV, Series of 1979 of Notary Public Herita L. Altamirano registered with the Register of Deeds of Pasig (Makati), Rizal xxx;

That the said Power Commercial and Industrial Development Corporation assumes to pay in full the entire amount of the said mortgage above described plus interest and bank charges, to the said mortgagee bank, thus holding the herein vendor free from all claims by the said bank;

That both parties herein agree to seek and secure the agreement and approval of the said Philippine National Bank to the herein sale of this property, hereby agreeing to abide by any and all requirements of the said bank, agreeing that failure to do so shall give to the bank first lieu (sic) over the herein described property.”

On the same date, Mrs. C.D. Constantino, then General Manager of petitioner-corporation, submitted to PNB said deed with a formal application for assumption of mortgage.[4]

On February 15, 1980, PNB informed respondent spouses that, for petitioner’s failure to submit the papers necessary for approval pursuant to the former’s letter dated January 15, 1980, the application for assumption of mortgage was considered withdrawn; that the outstanding balance of P145,000.00 was deemed fully due and demandable; and that said loan was to be paid in full within fifteen (15) days from notice.[5]

Petitioner paid PNB P41,880.45 on June 24, 1980 and P20,283.14 on December 23, 1980, payments which were to be applied to the outstanding loan. On December 23, 1980, PNB received a letter from petitioner which reads:[6]

“With regard to the presence of the people who are currently in physical occupancy of the (l)ot xxx it is our desire as buyers and new owners of this lot to make use of this lot for our own purpose, which is why it is our desire and intention that all the people who are currently physically present and in occupation of said lot should be removed immediately.

“For this purpose we respectfully request that xxx our assumption of mortgage be given favorable consideration, and that the mortgage and title be transferred to our name so that we may undertake the necessary procedures to make use of this lot ourselves.

“It was our understanding that this lot was free and clear of problems of this nature, and that the previous owner would be responsible for the removal of the people who were there. Inasmuch as the previous owner has not been able to keep his commitment, it will be necessary for us to take legal possession of this lot in order (sic) to take physical possession.”

On February 19, 1982, PNB sent petitioner a letter as follows:[7]

“(T)his refers to the loan granted to Mr. Reynaldo Quiambao which was assumed by you on June 4, 1979 for

P101,500.00. It was last renewed on December 24, 1980 to mature on June 4, 1981.

“A review of our records show that it has been past due from last maturity with interest arrearages amounting to P25,826.08 as of February 19, 1982. The last payment received by us was on December 24, 1980 for P20,283.14. In order to place your account in current form, we request you to remit payments to cover interest, charges, and at least part of the principal.”

On March 17, 1982, petitioner filed Civil Case No. 45217 against respondent spouses for rescission and damages before the Regional Trial Court of Pasig, Branch 159. Then, in its reply to PNB’s letter of February 19, 1982, petitioner demanded the return of the payments it made on the ground that its assumption of mortgage was never approved. On May 31, 1983,[8] while this case was pending, the mortgage was foreclosed. The property was subsequently bought by PNB during the public auction. Thus, an amended complaint was filed impleading PNB as party defendant.

On July 12, 1990, the trial court[9] ruled that the failure of respondent spouses to deliver actual possession to petitioner entitled the latter to rescind the sale, and in view of such failure and of the denial of the latter’s assumption of mortgage, PNB was obliged to return the payments made by the latter. The dispositive portion of said decision states:[10]

“IN VIEW OF ALL THE FOREGOING, the Court hereby renders judgment in favor of plaintiff and against defendants:

(1) Declaring the rescission of the Deed of Sale with Assumption of Mortgage executed between plaintiff and defendants Spouses Quiambao, dated June 26, 1979;

(2) Ordering defendants Spouses Quiambao to return to plaintiff the amount of P187,144.77 (P108,000.00 plus P79,145.77) with legal interest of 12% per annum from date of filing of herein complaint, that is, March 17, 1982 until the same is fully paid;

(3) Ordering defendant PNB to return to plaintiff the amount of P62,163.59 (P41,880.45 and P20,283.14) with 12% interest thereon from date of herein judgment until the same is fully paid.

“No award of other damages and attorney’s fees, the same not being warranted under the facts and circumstances of the case.

“The counterclaim of both defendants spouses Quiambao and PNB are dismissed for lack of merit.

“No pronouncement as to costs.

“SO ORDERED.”

On appeal by respondent-spouses and PNB, Respondent Court of Appeals reversed the trial court. In the assailed Decision, it held that the deed of sale between respondent spouses and petitioner did not obligate the former to eject the lessees from the land in question as a condition of the sale, nor was the occupation thereof by said lessees a violation of the warranty against eviction. Hence, there was no substantial breach to justify the rescission of said contract or the return of the payments made. The dispositive portion of said Decision reads:[11]

“WHEREFORE, the Decision appealed from is hereby REVERSED and the complaint filed by Power Commercial and Industrial Development Corporation against the spouses Reynaldo and Angelita Quiambao and the Philippine National Bank is DISMISSED. No costs.”

Hence, the recourse to this Court .

Issues

Petitioner contends that: (1) there was a substantial breach of the contract between the parties warranting rescission; and (2) there was a “mistake in payment” made by petitioner, obligating PNB to return such payments. In its Memorandum, it specifically assigns the following errors of law on the part of Respondent Court:[12]

“A. Respondent Court of Appeals gravely erred in failing to consider in its decision that a breach of implied warranty under Article 1547 in relation to Article 1545 of the Civil Code applies in the case-at-bar.

“B. Respondent Court of Appeals gravely erred in failing to consider in its decision that a mistake in payment giving rise to a situation where the principle of *solutio indebiti* applies is obtaining in the case-at-bar.”

The Court’s Ruling

The petition is devoid of merit. It fails to appreciate the difference between a condition and a warranty and the consequences of such distinction.

Conspicuous Absence of an Imposed Condition

The alleged “failure” of respondent spouses to eject the lessees from the lot in question and to deliver actual and physical possession thereof cannot be considered a substantial breach of a condition for two reasons: first, such “failure” was not stipulated as a condition -- whether resolutory or suspensive -- in the contract; and second, its effects and consequences were not specified either.[13]

The provision adverted to by petitioner does not impose a condition or an obligation to eject the lessees from the lot. The deed of sale provides in part:[14]

“We hereby also warrant that we are the lawful and absolute owners of the above described property, free from any lien and/or encumbrance, and we hereby agree and warrant to defend its title and peaceful possession thereof in favor of the said Power Commercial and Industrial Development Corporation, its successors and assigns, against any claims whatsoever of any and all third persons; subject, however, to the provisions hereunder provided to wit:”

By his own admission, Anthony Powers, General Manager of petitioner-corporation, did not ask the corporation’s lawyers to stipulate in the contract that Respondent Reynaldo was guaranteeing the ejectment of the occupants, because there was already a proviso in said deed of sale that the sellers were guaranteeing the peaceful possession by the buyer of the land in question.[15] Any obscurity in a contract, if the above-quoted provision can be so described, must be construed against the party who caused it.[16] Petitioner itself caused the obscurity because it omitted this alleged condition when its lawyer drafted said contract.

If the parties intended to impose on respondent spouses the obligation to eject the tenants from the lot sold, it should have included in the contract a provision similar to that referred to in *Romero vs. Court of Appeals*,[17] where the ejectment of the occupants of the lot sold by private respondent was the operative act which set into motion the period of petitioner’s compliance with his own obligation, i.e., to pay the balance of the purchase price. Failure to remove the squatters within the stipulated period gave the other party the right to either refuse to proceed with the agreement or to waive that condition of ejectment in consonance with Article 1545 of the Civil Code. In the case cited, the contract specifically stipulated that the ejectment was a condition to be fulfilled; otherwise, the obligation to pay the balance would not arise. This is not so in the case at bar.

Absent a stipulation therefor, we cannot say that the parties intended to make its nonfulfillment a ground for rescission. If they did intend this, their contract should have expressly stipulated so. In *Ang vs. C.A.*,[18] rescission was sought on the ground that the petitioners had failed to fulfill their obligation “to remove and clear” the lot sold, the performance of which would have given rise to the payment of the consideration by private respondent. Rescission was not allowed, however, because the breach was not substantial and fundamental to the

fulfillment by the petitioners of the obligation to sell.

As stated, the provision adverted to in the contract pertains to the usual warranty against eviction, and not to a condition that was not met. The terms of the contract are so clear as to leave no room for any other interpretation.[19]

Futhermore, petitioner was well aware of the presence of the tenants at the time it entered into the sales transaction. As testified to by Reynaldo,[20] petitioner's counsel during the sales negotiation even undertook the job of ejecting the squatters. In fact, petitioner actually filed suit to eject the occupants. Finally, petitioner in its letter to PNB of December 23, 1980 admitted that it was the "buyer(s) and new owner(s) of this lot."

Effective Symbolic Delivery

The Court disagrees with petitioner's allegation that the respondent spouses failed to deliver the lot sold. Petitioner asserts that the legal fiction of symbolic delivery yielded to the truth that, at the execution of the deed of sale, transfer of possession of said lot was impossible due to the presence of occupants on the lot sold. We find this misleading.

Although most authorities consider transfer of ownership as the primary purpose of sale, delivery remains an indispensable requisite as our law does not admit the doctrine of transfer of property by mere consent.[21] The Civil Code provides that delivery can either be (1) actual (Article 1497) or (2) constructive (Articles 1498-1501). Symbolic delivery (Article 1498), as a species of constructive delivery, effects the transfer of ownership through the execution of a public document. Its efficacy can, however, be prevented if the vendor does not possess control over the thing sold,[22] in which case this legal fiction must yield to reality.

The key word is control, not possession, of the land as petitioner would like us to believe. The Court has consistently held that:[23]

"x x x (I)n order that this symbolic delivery may produce the effect of tradition, it is necessary that the vendor shall have had such control over the thing sold that xxx its material delivery could have been made. It is not enough to confer upon the purchaser the ownership and the right of possession. The thing sold must be placed in his control. When there is no impediment whatever to prevent the thing sold passing into the tenancy of the purchaser by the sole will of the vendor, symbolic delivery through the execution of a public instrument is sufficient. But if, notwithstanding the execution of the instrument, the purchaser cannot have the enjoyment and material tenancy of the thing and make use of it himself or through another in his name, because such tenancy and enjoyment are opposed by the interposition of another will, then fiction yields to reality -- the delivery has not been effected."

Considering that the deed of sale between the parties did not stipulate or infer otherwise, delivery was effected through the execution of said deed. The lot sold had been placed under the control of petitioner; thus, the filing of the ejectment suit was subsequently done. It signified that its new owner intended to obtain for itself and to terminate said occupants' actual possession thereof. Prior physical delivery or possession is not legally required and the execution of the deed of sale is deemed equivalent to delivery.[24] This deed operates as a formal or symbolic delivery of the property sold and authorizes the buyer to use the document as proof of ownership. Nothing more is required.

Requisites of Breach of Warranty Against Eviction

Obvious to us in the ambivalent stance of petitioner is its failure to establish any breach of the warranty against eviction. Despite its protestation that its acquisition of the lot was to enable it to set up a warehouse for its

asbestos products and that failure to deliver actual possession thereof defeated this purpose, still no breach of warranty against eviction can be appreciated because the facts of the case do not show that the requisites for such breach have been satisfied. A breach of this warranty requires the concurrence of the following circumstances:

- (1) The purchaser has been deprived of the whole or part of the thing sold;
- (2) This eviction is by a final judgment;
- (3) The basis thereof is by virtue of a right prior to the sale made by the vendor; and
- (4) The vendor has been summoned and made co-defendant in the suit for eviction at the instance of the vendee.[25]

In the absence of these requisites, a breach of the warranty against eviction under Article 1547 cannot be declared.

Petitioner argues in its memorandum that it has not yet ejected the occupants of said lot, and not that it has been evicted therefrom. As correctly pointed out by Respondent Court, the presence of lessees does not constitute an encumbrance of the land,[26] nor does it deprive petitioner of its control thereof.

We note, however, that petitioner's deprivation of ownership and control finally occurred when it failed and/or discontinued paying the amortizations on the mortgage, causing the lot to be foreclosed and sold at public auction. But this deprivation is due to petitioner's fault, and not to any act attributable to the vendor-spouses.

Because petitioner failed to impugn its integrity, the contract is presumed, under the law, to be valid and subsisting.

Absence of Mistake In Payment

Contrary to the contention of petitioner that a return of the payments it made to PNB is warranted under Article 2154 of the Code, *solutio indebiti* does not apply in this case. This doctrine applies where: (1) a payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment, and (2) the payment is made through mistake, and not through liberality or some other cause.[27]

In this case, petitioner was under obligation to pay the amortizations on the mortgage under the contract of sale and the deed of real estate mortgage. Under the deed of sale (Exh. "2"),[28] both parties agreed to abide by any and all the requirements of PNB in connection with the real estate mortgage. Petitioner was aware that the deed of mortgage (Exh. "C") made it solidarily and, therefore, primarily[29] liable for the mortgage obligation:[30]

"(e) The Mortgagor shall neither lease the mortgaged property xxx nor sell or dispose of the same in any manner, without the written consent of the Mortgagee. However, if not withstanding this stipulation and during the existence of this mortgage, the property herein mortgaged, or any portion thereof, is xxx sold, it shall be the obligation of the Mortgagor to impose as a condition of the sale, alienation or encumbrance that the vendee, or the party in whose favor the alienation or encumbrance is to be made, should take the property subject to the obligation of this mortgage in the same terms and condition under which it is constituted, it being understood that the Mortgagor is not in any manner relieved of his obligation to the Mortgagee under this mortgage by such sale, alienation or encumbrance; on the contrary both the vendor and the vendee, or the party in whose favor the alienation or encumbrance is made shall be jointly and severally liable for said mortgage obligations. xxx."

Therefore, it cannot be said that it did not have a duty to pay to PNB the amortization on the mortgage.

Also, petitioner insists that its payment of the amortization was a mistake because PNB disapproved its assumption of mortgage after it failed to submit the necessary papers for the approval of such assumption.

But even if petitioner was a third party in regard to the mortgage of the land purchased, the payment of the loan by petitioner was a condition clearly imposed by the contract of sale. This fact alone disproves petitioner's insistence that there was a "mistake" in payment. On the contrary, such payments were necessary to protect its interest as a "the buyer(s) and new owner(s) of the lot."

The quasi-contract of *solutio indebiti* is one of the concrete manifestations of the ancient principle that no one shall enrich himself unjustly at the expense of another.^[31] But as shown earlier, the payment of the mortgage was an obligation petitioner assumed under the contract of sale. There is no unjust enrichment where the transaction, as in this case, is *quid pro quo*, value for value.

All told, respondent Court did not commit any reversible error which would warrant the reversal of the assailed Decision.

WHEREFORE, the petition is hereby DENIED, and the assailed Decision is AFFIRMED.
SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., and Melo, JJ., concur.
Francisco, J., on leave.

[1] Penned by J. Jesus M. Elbinias and concurred in by JJ. Lourdes K. Tayao-Jaguros and B.A. Adefuin-De la Cruz.

[2] Rollo, p. 34.

[3] Records, pp. 361-362.

[4] Records, pp. 261-264.

[5] Records, p. 306.

[6] Records, p. 298.

[7] Records, p. 299.

[8] Notice of Extra-Judicial Sale, Records, p. 372.

[9] The decision was penned by then Judge (now Justice of the Court of Appeals) Maria Alicia M. Austria.

[10] Rollo, p. 44.

[11] Rollo, p. 34.

[12] Rollo, p. 148.

[13] Article 1458, 2nd paragraph, Civil Code; and *Romero vs. Court of Appeals*, 250 SCRA 223, 232, November 23, 1995.

[14] Records, p. 361.

[15] TSN, April 1, 1987, pp. 19-21; and Rollo, p. 147.

[16] Article 1377, Civil Code; *Ang vs. Court of Appeals*, 170 SCRA 286, 294, February 13, 1989; and *Lim Yhi Luya vs. Court of Appeals*, 99 SCRA 668, 682-683, September 11, 1980.

[17] *Supra*, p. 234.

[18] *Supra*, p. 296.

[19] Article 1370, Civil Code; *Ang vs. C.A.*, *ibid*, p. 295; *Sy vs. Court of Appeals*, 131 SCRA 116, 124, July 31, 1984; *Labasan vs. Lacuesta*, 86 SCRA 16, 21, October 30, 1978.

[20] TSN, November 4, 1983, p.23 and November 14, 1983, pp. 28-30.

[21] Article 1477 & 1495, Civil Code; *Fidelity & Deposit Co. vs. Wilson*, 8 Phil. 51, 56-57 (1907); *Tan Leonco vs. Go Inqui*, 8 Phil. 531, 534 (1907); and *Kuenzle & Streiff vs. Macke & Chandler*, 14 Phil. 610, 611-612 (1909).

[22] *Addison vs. Felix*, 38 Phil. 404, 408 (1918); *Vda. de Sarmiento vs. Lesaca*, 108 Phil. 900, 902-903 (1960); and *Danguilan vs. Intermediate Appellate Court*, 168 SCRA 22, 32, November 28, 1988.

[23] *Ibid*.

[24] *Manuel R. Dulay Enterprises, Inc. vs. Court of Appeals*, 225 SCRA 678, 687, August 27, 1993.

[25] *Escaler v. Court of Appeals*, 138 SCRA 1, 7, August 1, 1985; *Canizares Tiana v. Torrejos*, 21 Phil. 127, 130 (1911); *Bautista vs. Laserna*, 72 Phil. 506, 510 (1941); and *Jovellano vs. Lualhati*, 47 Phil. 371, 373 (1925).

[26] *Investment & Development Corp. vs. Court of Appeals*, 162 SCRA 636, 641-642, June 27, 1988.

[27] *Velez vs. Balzarza*, 73 Phil. 630, 632 (1942); *City of Cebu vs. Judge Piccio*, 110 Phil. 558, 563 (1960); and *Andres vs. Manufacturers Hanover & Trust Corporation*, 177 SCRA 618, 622, September 15, 1989.

[28] *Records*, p. 362.

[29] Article 1216, Civil Code.

[30] *Records*, p. 256.

[31] *Ibid.*; and *Ramie Textiles, Inc. vs. Mathay, Sr.*, 89 SCRA 586, 592, April 30, 1979.

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