

**OFELIA C. LAVIBO AND BENJAMIN L. BARGAS, PETITIONERS, VS.
HON. COURT OF APPEALS AND TRADAL VENTURES AND
MANAGEMENT CORPORATION, RESPONDENTS.**

G.R. No. 123462. April 10, 1997

Ponente: VITUG, J.

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VITUG, J.:

Petitioners seek, via a petition for review on certiorari, the reversal of the decision,[1]dated 29 November 1995, of the Court of Appeals and its resolution of 09 January 1996 denying a reconsideration thereof.

The facts here obtaining are not in dispute.

On 07 December 1993, Tradal Ventures and Management Corporation ("Tradal") entered into a contract with Ofelia Lavibo to sell a unit in the Shenandoah Twinhomes, South Green Park Subdivision, Parañaque, Metro Manila, for P1,500,000.00. The amount was stipulated to be payable in the following manner, viz:

- "a. Partial payment in the amount of P100,000.00 upon execution of this agreement, receipt of which is hereby acknowledged by herein SELLER;
- "b. Partial payment in the amount of P120,000.00 on or before December 21, 1993;
- "c. Full downpayment in the amount of P280,000.00 on or before December 21, 1993;
- "d. The balance of one million pesos upon release of loan from BPI-Family Bank."[2]

It was agreed that the buyer would "not occupy or take possession of the aforementioned property until after the full release of buyer's loan from the BPI-Family Bank."[3] This proviso of the contract notwithstanding, Tradal, on 11 January 1994, allowed Lavibo to occupy the townhouse unit after the latter had issued two (2) postdated checks for the total amount of P330,000.00. When presented for payment, however, the checks were dishonored apparently because the covering account had by then been closed. On 19 September 1994, Tradal made a demand on Lavibo to vacate the premises. She failed to vacate the unit or to redeem the dishonored checks.

On 19 October 1994, Tradal filed with the Metropolitan Trial Court ("MeTC") of Parañaque, a complaint for ejectment against Lavibo and one Atty. Benjamin Bargas. The defendants, instead of filing an answer, filed a manifestation that sought the dismissal of the action on the following grounds: That —

- "a. it states no cause of action for a valid complaint for ejectment;
- "b. it anchors its complaint on a contract to sell a real estate property, and not a contract of lease having been violated that, otherwise, would put it under the Summary Rules;
- "c. it seeks recovery of at least five hundred thousand pesos in actual and moral damages, outside that, otherwise, would be covered by the Summary Rules; and
- "d. very clearly, it is outside and beyond the jurisdiction of the Honorable Court."[4]

The MeTC, on 27 February 1995, dismissed the complaint. It held that —

"x x x while the complaint is captioned for ejectment it actually prays for rescission of the parties' contract to sell. Further, plaintiff in its letter addressed to defendants only demands that the subject premises be vacated, and that the checks issued to the plaintiff were dishonored for 'Account Closed.'

"Be it noted that Ejectment may only be availed of and instituted by the plaintiff in the instant case only after its Contract to Sell with the defendants has been rescinded either by notarial act or by filing with the proper court an action for rescission under Articles 1380 and 1381 of the Civil Code.

"Under the foregoing circumstances, it appears that the filing of an ejectment case is premature, the basis of which being a violation of the parties' Contract to Sell which has not been rescinded as yet; thus, this court not being invested with jurisdiction on rescission of contracts, it cannot take cognizance of the instant case, especially so that at the moment the validity of the parties' Contract to Sell is still presumed. In the alternative, the plaintiff can also avail itself with the remedy of an action for specific performance.

"WHEREFORE, premises considered, let this case be DISMISSED for want of cause of action.

"SO ORDERED." [5]

On appeal, the Regional Trial Court ("RTC") [6] affirmed in toto the decision of the court a quo.

Tradal forthwith filed a petition for review on certiorari with the Court of Appeals. On 29 November 1995, the appellate court, ruling in favor of Tradal, concluded:

"WHEREFORE, the instant petition is hereby GRANTED and the decision appealed from REVERSED and SET ASIDE. The court orders private respondents:

"1. and all persons claiming right under them to immediately vacate the premises, to peacefully restore possession thereof to petitioner; and

"2. to pay petitioner the unit's fair rental value of P7,000.00 a month starting January 11, 1994, until the premises is vacated, the P100,000.00 initially paid by private respondent to petitioner to be applied to the total fair rental value; and to pay the petitioner the balance thereof.

"SO ORDERED." [7]

In a resolution, dated 09 January 1996, the appellate court denied a motion to have the decision reconsidered.

Hence, the recourse to this Court.

The petition was initially dismissed for failing to comply with Revised Circular No. 28-91. Later, however, the Court granted petitioners' motion for reconsideration and reinstated the petition.

We rule for petitioners.

The jurisdiction of a court is determined by the allegations of the complaint. The rule is no different in an action for ejectment. [8] The complaint filed by Tradal before the MeTC, in pertinent parts, reads:

"That on December 7, 1993, plaintiff entered into a contract to sell to defendants Unit 3B Shenandoah Twin Homes in Merville, Parañaque, M.M., copy of which is hereto attached as Annex 'A' and made part hereof;

"Under par. 2(4) of said contract, defendants shall not occupy or take possession of subject property until full payment of the purchase price;

"However, upon assurance by the defendants that their post-dated checks would be honored, copy each of

which are hereto attached as Annexes 'B' and 'C' and made parts hereof, plaintiff allowed them to transfer to said unit sometime in January, 1994;

"Upon encashment of said checks, however, they were dishonored for reasons of 'ACCOUNT CLOSED' and since then defendants refused to redeem those checks or vacate the premises despite demands to do so, much less paid for the unit;

"Finally, plaintiff referred the matter to the undersigned counsel who wrote defendants a demand letter, copy of which is hereto attached as Annex 'D' and made part hereof, which defendant Bargas personally received as shown therein;

"That by virtue of the unwarranted acts of defendants, plaintiff is entitled to rescission of the contract, Annex 'A' and to damages amounting to P500T in form of unrealized profits, mental anguish and embarrassment, expenses for litigation and attorney's fees for which defendants should be held liable including exemplary damages in the discretion of the Court.

"WHEREFORE, it is respectfully prayed that judgment be rendered in favor of plaintiff against defendants, ejecting them or their representatives from said unit and ordering defendants to pay P500T for actual and moral damages and such sum that the Court may grant in its discretion for exemplary damages and declaring the contract, Annex 'A' rescinded. Plaintiff further prays for such other reliefs just and proper under the circumstances." [9]

It thus appears to be evident that the suit is, in reality, one for rescission (with the plaintiff claiming to be "entitled to rescission"), and as such the complaint is cognizable not by the MeTC but by the RTC. Since the "Contract to Sell" between the parties still subsists, at least until properly rescinded, the action for ejectment filed by Tradal is clearly premature. The dismissal of the complaint by the MeTC has been rightly sustained by the RTC.

It is most unfortunate that time, not to mention the efforts of both parties, has been uselessly spent on the case but when jurisdiction is correctly assailed, little, if at all, can be done to discard the problem.

WHEREFORE, the decision of the Court of Appeals is REVERSED and SET ASIDE, and the decision of the Regional Trial Court is REINSTATED. No costs.
SO ORDERED.

Padilla, (Chairman), Bellosillo, and Kapunan, JJ., concur.
Hermosisima, Jr., J., on leave.

[1] Penned by Associate Justice Antonio P. Solano and concurred in by Associate Justices Emeterio C. Cui and Ricardo P. Galvez.

[2] Rollo, p. 30.

[3] Ibid.

[4] Rollo, pp. 30-31.

[5] Rollo, pp. 31-32.

[6] In a decision, dated 28 June 1995.

[7] Rollo, pp. 12-13.

[8] Asset Privatization Trust vs. Court of Appeals, 229 SCRA 627.

[9] Rollo, pp. 41-42.

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