

FERNANDO CARRASCOSO, JR., PETITIONER, VS. THE HONORABLE COURT OF APPEALS, LAURO LEVISTE, AS DIRECTOR AND MINORITY STOCKHOLDER AND ON BEHALF OF OTHER STOCKHOLDERS OF EL DORADO PL...

G.R. No. 123672. December 14, 2005

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

El Dorado Plantation, Inc. (El Dorado) was the registered owner of a parcel of land (the property) with an area of approximately 1,825 hectares covered by Transfer Certificate of Title (TCT) No. T-93[1] situated in Sablayan, Occidental Mindoro.

On February 15, 1972, at a special meeting of El Dorado's Board of Directors, a Resolution[2] was passed authorizing Feliciano Leviste, then President of El Dorado, to negotiate the sale of the property and sign all documents and contracts bearing thereon.

On March 23, 1972, by a Deed of Sale of Real Property,[3] El Dorado, through Feliciano Leviste, sold the property to Fernando O. Carrascoso, Jr. (Carrascoso).

The pertinent provisions of the Deed of Sale read:

NOW, THEREFORE, for and in consideration of the sum of ONE MILLION EIGHT HUNDRED THOUSAND (1,800,000.00) PESOS, Philippine Currency, the Vendor hereby sells, cedes, and transfer (sic) unto the herein VENDEE, his heirs, successors and assigns, the above-described property subject to the following terms and consitions (sic):

- Of the said sum of P1,800,000.00 which constitutes the full consideration of this sale, P290,000.00 shall be paid, as it is hereby paid, to the Philippines (sic) National Bank, thereby effecting the release and cancellation fo (sic) the present mortgage over the above-described property.

- That the sum of P210,000.00 shall be paid, as it is hereby paid by the VENDEE to the VENDOR, receipt of which amount is hereby acknowledged by the VENDOR.

- The remaining balance of P1,300,000.00 plus interest thereon at the rate of 10% per annum shall be paid by the VENDEE to the VENDOR within a period of three (3) years, as follows:

(a) One (1) year from the date of the signing of this agreement, the VENDEE shall pay to the VENDOR the sum of FIVE HUNDRED NINETEEN THOUSAND EIGHT HUNDRED THIRTY THREE & 33/100 (P519,833.33) PESOS.

(b) Two (2) years from the date of signing of this agreement, the VENDEE shall pay to the VENDOR the sum of FIVE HUNDRED NINETTEN (sic) THOUSAND EIGHT HUNDRED AND THIRTY-THREE & 33/100 (P519,833.33) PESOS.

(c) Three (3) years from the date of signing of this agreement, the VENDEE shall pay to the VENDOR the sum of FIVE Hundred NINETEEN THOUSAND EIGHT HUNDRED AND THIRTY-THREE & 33/100 (P519,833.33) PESOS.

- The title of the property, subject of this agreement, shall pass and be transferred to the VENDEE who shall have full authority to register the same and obtain the corresponding transfer certificate of title in his name.

xxx

- THE VENDOR certifies and warrants that the property above-described is not being cultivated by any tenant and is therefore not covered by the provisions of the Land Reform Code. If, therefore, the VENDEE becomes liable under the said law, the VENDOR shall reimburse the VENDEE for all expenses and damages he may incur thereon.[4] (Underscoring supplied)

From the above-quoted provisions of the Deed of Sale, Carrascoso was to pay the full amount of the purchase price on March 23, 1975.

On even date, the Board of Directors of El Dorado passed a Resolution reading:

"RESOLVED that by reason of the sale of that parcel of land covered by TCT No. T-93 to Dr. FERNANDO O. CARRASCOSO, JR., the corporation interposes no objection to the property being mortgage (sic) by Dr. FERNANDO O. CARRASCOSO, JR. to any bank of his choice as long as the balance on the Deed of Sale shall be recognized by Dr. FERNANDO O. CARRASCOSO, JR.;

"RESOLVED, FURTHER, that the corporation authorizes the preferred (sic) claim on the property to be subordinated to any mortgage that may be constituted by Dr. FERNANDO O. CARRASCOSO, JR.;

"RESOLVED, FINALLY, that in case of any mortgage on the property, the corporation waives the preference of any vendor's lien on the property."[5] (Emphasis and underscoring supplied)

Feliciano Leviste also executed the following affidavit on the same day:

- That by reason of the sale of that parcel of land covered by Transfer Certificate of Title T-93 as evidenced by the Deed of Sale attached hereto as Annex "A" and made an integral part hereof, the El Dorado Plantation, Inc. has no objection to the aforementioned property being mortgaged by Dr. Fernando O. Carrascoso, Jr. to any bank of his choice, as long as the payment of the balance due the El Dorado Plantation, Inc. under the Deed of Sale, Annex "A" hereof, shall be recognized by the vendee therein, Dr. Fernando O. Carrascoso, Jr. though subordinated to the preferred claim of the mortgagee bank.

- That in case of any mortgage on the property, the vendor hereby waives the preference of any vendor's lien on the property, subject matter of the deed of sale.

- That this affidavit is being executed to avoid any question on the authority of Dr. Fernando O. Carrascoso, Jr. to mortgage the property subject of the Deed of Sale, Annex "A" hereof, where the purchase price provided therein has not been fully paid.

- That this affidavit has been executed pursuant to a board resolution of El Dorado Plantation, Inc.[6] (Emphasis and underscoring supplied)

On the following day, March 24, 1972, Carrascoso and his wife Marlene executed a Real Estate Mortgage[7] over the property in favor of Home Savings Bank (HSB) to secure a loan in the amount of P1,000,000.00. Of this amount, P290,000.00 was paid to Philippine National Bank to release the mortgage priorly constituted on the property and P210,000.00 was paid to El Dorado pursuant to above-quoted paragraph Nos. 1 and 2 of the terms and conditions of the Deed of Sale.[8]

The March 23, 1972 Deed of Sale of Real Property was registered and annotated on El Dorado's TCT No. T-93 as Entry No. 15240[9] on April 5, 1972. On even date, TCT No. T-93 covering the property was cancelled and TCT No. T-6055[10] was in its stead issued by the Registry of Deeds of Occidental Mindoro in the name of Carrascoso on which the real estate mortgage in favor of HSB was annotated as Entry No. 15242.[11]

On May 18, 1972, the real estate mortgage in favor of HSB was amended to include an additional three year loan of P70,000.00 as requested by the spouses Carrascoso.[12] The Amendment of Real Estate Mortgage was also annotated on TCT No. T-6055 as Entry No. 15486 on May 24, 1972.[13]

The 3-year period for Carrascoso to fully pay for the property on March 23, 1975 passed without him having complied therewith.

In the meantime, on July 11, 1975, Carrascoso and the Philippine Long Distance Telephone Company (PLDT), through its President Ramon Cojuangco, executed an Agreement to Buy and Sell[14] whereby the former agreed to sell 1,000 hectares of the property to the latter at a consideration of P3,000.00 per hectare or a total of P3,000,000.00.

The July 11, 1975 Agreement to Buy and Sell was not registered and annotated on Carrascoso's TCT No. T-6055.

Lauro Leviste (Lauro), a stockholder and member of the Board of Directors of El Dorado, through his counsel, Atty. Benjamin Aquino, by letter[15] dated December 27, 1976, called the attention of the Board to Carrascoso's failure to pay the balance of the purchase price of the property amounting to P1,300,000.00. And Lauro's lawyer manifested that:

Because of the default for a long time of Mr. Carrascoso to pay the balance of the consideration of the sale, Don Lauro Leviste, in his behalf and in behalf of the other shareholders similarly situated like him, want a rescission of the sale made by the El Dorado Plantation, Inc. to Mr. Carrascoso. He desires that the Board of Directors take the corresponding action for rescission.[16]

Lauro's desire to rescind the sale was reiterated in two other letters[17] addressed to the Board dated January 20, 1977 and March 3, 1977.

Jose P. Leviste, as President of El Dorado, later sent a letter of February 21, 1977[18] to Carrascoso informing him that in view of his failure to pay the balance of the purchase price of the property, El Dorado was seeking the rescission of the March 23, 1972 Deed of Sale of Real Property.

The pertinent portions of the letter read:

x x x

I regret to inform you that the balance of P1,300,000.00 and the interest thereon have long been due and payable, although you have mortgaged said property with the Home Savings Bank for P1,000,000.00 on March 24, 1972, which was subsequently increased to P1,070,000.00 on May 18, 1972.

You very well know that the El Dorado Plantation, Inc., is a close family corporation, owned exclusively by the members of the Leviste family and I am one of the co-owners of the land. As nothing appears to have been done on your part after our numerous requests for payment of the said amount of P1,300,000.00 and the interest of 10% per annum due thereon, please be advised that we would like to rescind the contract of sale of the land.[19] (Underscoring supplied)

Jose Leviste, by letter[20] dated March 10, 1977, informed Lauro's counsel Atty. Aquino of his (Jose's) February 21, 1977 letter to Carrascoso, he lamenting that "Carrascoso has not deemed it fit to give [his] letter the courtesy of a reply" and advis[ing] that some of the Directors of [El Dorado] could not see their way clear in complying

with the demands of your client [Lauro] and have failed to reach a consensus to bring the corresponding action for rescission of the contract against . . . Carrascoso."[21]

Lauro and El Dorado finally filed on March 15, 1977 a complaint[22] for rescission of the March 23, 1972 Deed of Sale of Real Property between El Dorado and Carrascoso with damages before the Court of First Instance (CFI) of Occidental Mindoro, docketed as Civil Case No. R-226.

Lauro and El Dorado also sought the cancellation of TCT No. T-6055 in the name of Carrascoso and the revival of TCT No. T-93 in the name of El Dorado, free from any liens and encumbrances. Furthermore, the two prayed for the issuance of an order for Carrascoso to: (1) reconvey the property to El Dorado upon return to him of P500,000.00, (2) secure a discharge of the real estate mortgage constituted on the property from HSB, (3) submit an accounting of the fruits of the property from March 23, 1972 up to the return of possession of the land to El Dorado, (4) turn over said fruits or the equivalent value thereof to El Dorado and (5) pay the amount of P100,000.00 for attorney's fees and other damages.[23]

Also on March 15, 1977, Lauro and El Dorado caused to be annotated on TCT No. T-6055 a Notice of Lis Pendens, inscribed as Entry No. 39737.[24]

In the meantime, Carrascoso, as vendor and PLDT, as vendee forged on April 6, 1977 a Deed of Absolute Sale[25] over the 1,000 hectare portion of the property subject of their July 11, 1975 Agreement to Buy and Sell. The pertinent portions of the Deed are as follows:

WHEREAS, the VENDOR and the VENDEE entered into an agreement To Buy and Sell on July 11, 1975, which is made a part hereof by reference;

WHEREAS, the VENDOR and the VENDEE are now decided to execute the Deed of Absolute Sale referred to in the aforementioned agreement to Buy and Sell;

WHEREFORE, for and in consideration of the foregoing premises and the terms hereunder stated, the VENDOR and the VENDEE have agreed as follows:

- For and in consideration of the sum of THREE MILLION PESOS (P3,000,000.00), Philippine currency, of which ONE HUNDRED TWENTY THOUSAND PESOS P120,000.00 have (sic) already been received by the VENDOR, the VENDOR hereby sells, transfers and conveys unto the VENDEE one thousand hectares (1,000 has.) of his parcel of land covered by T.C.T. No. T-6055 of the Registry of Deeds of Mindoro, delineated as Lot No. 3-B-1 in the subdivision survey plan xxx

- The VENDEE shall pay to the VENDOR upon the signing of this agreement, the sum of TWO MILLION FIVE HUNDRED THOUSAND PESOS (P2,500,000.00) in the following manner:

a) The sum of TWO MILLION THREE HUNDRED THOUSAND PESOS (P2,300,000.00) to Home Savings Bank in full payment of the VENDOR's mortgaged obligation therewith;

b) The sum of TWO HUNDRED THOUSAND PESOS (P200,000.00) to VENDOR;

The remaining balance of the purchase price in the sum of THREE HUNDRED EIGHTY THOUSAND PESOS (P380,000.00), less such expenses which may be advanced by the VENDEE but which are for the account of the VENDOR under Paragraph 6 of the Agreement to Buy and Sell, shall be paid by the VENDEE to the VENDOR upon issuance of title to the VENDEE.[26] (Underscoring supplied)

In turn, PLDT, by Deed of Absolute Sale[27] dated May 30, 1977, conveyed the aforesaid 1,000 hectare portion of the property to its subsidiary, PLDT Agricultural Corporation (PLDTAC), for a consideration of P3,000,000.00, the amount of P2,620,000.00 of which was payable to PLDT upon signing of said Deed, and

P380,000.00 to Carrascoso upon issuance of title to PLDTAC.

In the meantime, on October 19, 1977, the El Dorado Board of Directors, by a special meeting,[28] adopted and approved a Resolution ratifying and conferring "the prosecution of Civil Case No. R-226 of the Court of First Instance of Occidental Mindoro, entitled "Lauro P. Leviste vs. Fernando Carascoso (sic), etc." initiated by stockholder Mr. Lauro P. Leviste." [29]

In his Answer with Compulsory Counterclaim,[30] Carrascoso alleged that: (1) he had not paid his remaining P1,300,000.00 obligation under the March 23, 1972 Deed of Sale of Real Property in view of the extensions of time to comply therewith granted him by El Dorado; (2) the complaint suffered from fatal defects, there being no showing of compliance with the condition precedent of exhaustion of intra-corporate remedies and the requirement that a derivative suit instituted by a complaining stockholder be verified under oath; (3) El Dorado committed a gross misrepresentation when it warranted that the property was not being cultivated by any tenant to take it out of the coverage of the Land Reform Code; and (4) he suffered damages due to the premature filing of the complaint for which Lauro and El Dorado must be held liable.

On February 21, 1978, the April 6, 1977 and May 30, 1977 Deeds of Absolute Sale and the respective Articles of Incorporation of PLDT and PLDTAC were annotated on TCT No. T-6055 as Entry Nos. 24770,[31] 42774,[32] 42769[33] and 24772,[34] respectively. On even date, Carrascoso's TCT No. T-6055 was cancelled and TCT No. T-12480[35] covering the 1,000 hectare portion of the property was issued in the name of PLDTAC. The March 15, 1977 Notice of Lis Pendens was carried over to TCT No. T-12480.

On July 31, 1978, PLDT and PLDTAC filed an Urgent Motion for Intervention[36] which was granted by the trial court by Order[37] of September 7, 1978.

PLDT and PLDTAC thereupon filed their Answer In Intervention with Compulsory Counterclaim and Crossclaim[38] against Carrascoso on November 13, 1978, alleging that: (1) when Carrascoso executed the April 6, 1977 Deed of Absolute Sale in favor of PLDT, PLDT was not aware of any litigation involving the 1,000 hectare portion of the property or of any flaw in his title, (2) PLDT is a purchaser in good faith and for value; (3) when PLDT executed the May 30, 1977 Deed of Absolute Sale in favor of PLDTAC, they had no knowledge of any pending litigation over the property and neither were they aware that a notice of lis pendens had been annotated on Carrascoso's title; and (4) Lauro and El Dorado knew of the sale by Carrascoso to PLDT and PLDT's actual possession of the 1,000 hectare portion of the property since June 30, 1975 and of its exercise of exclusive rights of ownership thereon through agricultural development.[39]

By Decision[40] of January 28, 1991, Branch 45 of the San Jose Occidental Mindoro Regional Trial Court to which the CFI has been renamed, dismissed the complaint on the ground of prematurity, disposing as follows, quoted verbatim:

WHEREFORE, in view of all the foregoing considerations, judgment is hereby rendered:

- Dismissing the plaintiffs' complaint against the defendant on the ground of prematurity;
- Ordering the plaintiffs to pay to the defendant the sum of P2,980,000.00 as actual and compensatory damages, as well as the sum of P100,000.00 as and for attorneys fees; provided, however, that the aforesaid amounts must first be set off from the latter's unpaid balance to the former;
- Dismissing the defendants-intervenors' counterclaim and cross-claim; and
- Ordering the plaintiffs to pay to (sic) the costs of suit.

SO ORDERED.[41] (Underscoring supplied)

Carrascoso, PLDT and PLDTAC filed their respective appeals to the Court of Appeals.

By Decision[42] of January 31, 1996, the appellate court reversed the decision of the trial court, disposing as follows, quoted verbatim:

WHEREFORE, not being meritorious, PLDT's/PLDTAC's appeal is hereby DISMISSED and finding El Dorado's appeal to be impressed with merit, We REVERSE the appealed Decision and render the following judgment:

- The Deed of Sale of Real Property (Exhibit C) is hereby rescinded and TCT No. T-12480 (Exhibit Q) is cancelled while TCT No. T-93 (Exhibit A), is reactivated.

- Fernando Carrascoso, Jr. is commanded to:

2.1. return the possession of the 825 [hectare-] remaining portion of the land to El Dorado Plantation, Inc. without prejudice to the landholdings of legitimate tenants thereon;

2.2. return the net fruits of the land to El Dorado Plantation, Inc. from March 23, 1972 to July 11, 1975, and of the 825-hectare-remaining portion minus the tenants' landholdings, from July 11, 1975 up to its delivery to El Dorado Plantation, Inc. including whatever he may have received from the tenants if any by way of compensation under the Operation Land Transfer or under any other pertinent agrarian law;

2.3 Pay El Dorado Plantation, Inc. an attorney's fee of P20,000.00 and litigation expenses of P30,000.00;

2.4 Return to Philippine Long Distance Telephone Company/PLDT Agricultural Corporation P3,000,000.00 plus legal interest from April 6, 1977 until fully paid;

- PLDT Agricultural Corporation is ordered to surrender the possession of the 1000-hectare Farm to El Dorado Plantation, Inc.;

- El Dorado Plantation, Inc. is directed to return the P500,000.00 to Fernando Carrascoso, Jr. plus legal interest from March 23, 1972 until fully paid. The performance of this obligation will however await the full compliance by Fernando Carrascoso, Jr. of his obligation to account for and deliver the net fruits of the land mentioned above to El Dorado Plantation, Inc.

- To comply with paragraph 2.2 herein, Carrascoso is directed to submit in (sic) the court a quo a full accounting of the fruits of the land during the period mentioned above for the latter's approval, after which the net fruits shall be delivered to El Dorado, Plantation, Inc.

- El Dorado Plantation, Inc. should inform Philippine Long Distance Telephone Co. and PLDT Agricultural Corporation in writing within ten (10) days after finality of this decision regarding the exercise of its option under Art. 448 of the Civil Code.

SO ORDERED.[43] (Underscoring supplied)

PLDT and PLDTAC filed on February 22, 1996, a Motion for Reconsideration[44] of the January 31, 1996 CA Decision, while Carrascoso went up this Court by filing on March 25, 1996 a petition for review,[45] docketed as G.R. No. 123672, assailing the January 31, 1996 CA Decision and seeking the reinstatement of the January 28, 1991 Decision of the trial court except with respect to its finding that the acquisition of PLDT and PLDTAC of the 1,000 hectare portion of the property was subject to the notice of lis pendens.

Lauro, in the meantime, died, hence, on April 16, 1996, a Motion for Substitution of Party[46] was filed praying that his heirs, represented by Conrad C. Leviste, be substituted as respondents. The Motion was granted by Resolution[47] of July 10, 1996.

PLDT and PLDTAC filed their Comment[48] to Carrascoso's petition and prayed that judgment be rendered

finding them to be purchasers in good faith to thus entitle them to possession and ownership of the 1,000 hectare portion of the property, together with all the improvements they built thereon. Reiterating that they were not purchasers pendente lite, they averred that El Dorado and Lauro had actual knowledge of their interests in the said portion of the property prior to the annotation of the notice of lis pendens to thereby render said notice ineffective.

El Dorado and the heirs of Lauro, both represented by Conrad C. Leviste, also filed their Comment[49] to Carrascoso's petition, praying that it be dismissed for lack of merit and that paragraph 6 of the dispositive portion of the January 31, 1996 CA Decision be modified to read as follows:

- El Dorado Plantation, Inc. should inform Philippine Long Distance Telephone Co. and PLDT Agricultural Corporation in writing within ten (10) days after finality of this decision regarding the exercise of its option under Arts. 449 and 450 of the Civil Code, without right to indemnity on the part of the latter should the former decide to keep the improvements under Article 449.[50] (Underscoring supplied)

Carrascoso filed on November 13, 1996 his Reply[51] to the Comment of El Dorado and the heirs of Lauro.

In the meantime, as the February 22, 1996 Motion for Reconsideration filed by PLDT and PLDTAC of the CA decision had remained unresolved, this Court, by Resolution[52] of June 30, 2003, directed the appellate court to resolve the same.

By Resolution[53] of July 8, 2004, the CA denied PLDT and PLDTAC's Motion for Reconsideration for lack of merit.

PLDT[54] thereupon filed on September 2, 2004 a petition for review[55] before this Court, docketed as G.R. No. 164489, seeking to reverse and set aside the January 31, 1996 Decision and the July 8, 2004 Resolution of the appellate court. It prayed that judgment be rendered upholding its right, interest and title to the 1,000 hectare portion of the property and that it and its successors-in-interest be declared owners and legal possessors thereof, together with all improvements built, sown and planted thereon.

By Resolution[56] of August 25, 2004, G.R. No. 164489 was consolidated with G.R. No. 123672.

In his petition, Carrascoso faults the CA as follows:

I

THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AND COMMITTED A MISTAKE OF LAW IN NOT DECLARING THAT THE ACTION FOR RESCISSION WAS PREMATURELY FILED.

II

THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AND COMMITTED A MISTAKE OF LAW IN DISREGARDING THE CRUCIAL SIGNIFICANCE OF THE WARRANTY OF NON-TENANCY EXPRESSLY STIPULATED IN THE CONTRACT OF SALE.

III

THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION IN REVERSING THE DECISION OF THE TRIAL COURT.[57] (Underscoring supplied)

PLDT, on the other hand, faults the CA as follows:

I

THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN HOLDING THAT PETITIONER

AND PLTAC (sic) TOOK THEIR RIGHT, INTEREST AND TITLE TO THE FARM SUBJECT TO THE NOTICE OF LIS PENDENS, THE SAME IN DISREGARD OF THE PROTECTION ACCORDED THEM UNDER ARTICLES 1181 AND 1187 OF THE NEW CIVIL CODE.

II

THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN HOLDING THAT PETITIONER AND PLDTAC TOOK THEIR RIGHT, INTEREST AND TITLE TO THE FARM SUBJECT TO THE NOTICE OF LIS PENDENS, THE SAME IN DISREGARD OF THE LEGAL PRINCIPLE THAT RESPONDENTS EL DORADO ET AL.'s PRIOR, ACTUAL KNOWLEDGE OF PETITIONER PLDT'S AGREEMENT TO BUY AND SELL WITH RESPONDENT CARRASCOSO RESULTING IN THE DELIVERY TO, AND POSSESSION, OCCUPATION AND DEVELOPMENT BY, SAID PETITIONER OF THE FARM, IS EQUIVALENT TO REGISTRATION OF SUCH RIGHT, INTEREST AND TITLE AND, THEREFORE, A PRIOR REGISTRATION NOT AFFECTED BY THE LATER NOTICE OF LIS PENDENS.[58] (Underscoring supplied)

Carrascoso posits that in the El Dorado Board Resolution and the Affidavit of Feliciano Leviste, both dated March 23, 1972, no objection was interposed to his mortgaging of the property to any bank provided that the balance of the purchase price of the property under the March 23, 1972 Deed of Sale of Real Property is recognized, hence, El Dorado could collect the unpaid balance of P1,300,000.00 only after the mortgage in favor of HSB is paid in full; and the filing of the complaint for rescission with damages on March 15, 1977 was premature as he fully paid his obligation to HSB only on April 5, 1977 as evidenced by the Cancellation of Mortgage[59] signed by HSB President Gregorio B. Licaros.

Carrascoso further posits that extensions of the period to pay El Dorado were verbally accorded him by El Dorado's directors and officers, particularly Jose and Angel Leviste.

Article 1191 of the Civil Code provides:

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

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

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

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.

Reciprocal obligations are those which arise from the same cause, and in which each party is a debtor and a creditor of the other, such that the obligation of one is dependent upon the obligation of the other.[60] They are to be performed simultaneously such that the performance of one is conditioned upon the simultaneous fulfillment of the other.[61]

The right of rescission of a party to an obligation under Article 1191 is predicated on a breach of faith by the other party who violates the reciprocity between them.[62]

A contract of sale is a reciprocal obligation. The seller obligates itself to transfer the ownership of and deliver a determinate thing, and the buyer obligates itself to pay therefor a price certain in money or its equivalent.[63] The non-payment of the price by the buyer is a resolutory condition which extinguishes the transaction that for a time existed, and discharges the obligations created thereunder.[64] Such failure to pay the price in the manner

prescribed by the contract of sale entitles the unpaid seller to sue for collection or to rescind the contract.[65]

In the case at bar, El Dorado already performed its obligation through the execution of the March 23, 1972 Deed of Sale of Real Property which effectively transferred ownership of the property to Carrascoso. The latter, on the other hand, failed to perform his correlative obligation of paying in full the contract price in the manner and within the period agreed upon.

The terms of the Deed are clear and unequivocal: Carrascoso was to pay the balance of the purchase price of the property amounting to P1,300,000.00 plus interest thereon at the rate of 10% per annum within a period of three (3) years from the signing of the contract on March 23, 1972. When Jose Leviste informed him that El Dorado was seeking rescission of the contract by letter of February 21, 1977, the period given to him within which to fully satisfy his obligation had long lapsed.

The El Dorado Board Resolution and the Affidavit of Jose Leviste interposing no objection to Carrascoso's mortgaging of the property to any bank did not have the effect of suspending the period to fully pay the purchase price, as expressly stipulated in the Deed, pending full payment of any mortgage obligation of Carrascoso.

As the CA correctly found:

The adverted resolution (Exhibit 2) does not say that the obligation of Carrascoso to pay the balance was extended. Neither can we see in it anything that can logically infer said accommodation.

A partially unpaid seller can agree to the buyer's mortgaging the subject of the sale without changing the time fixed for the payment of the balance of the price. The two agreements are not incompatible with each other such that when one is to be implemented, the other has to be suspended. In the case at bench, there was no impediment for Carrascoso to pay the balance of the price after mortgaging the land.

Also, El Dorado's subordinating its "preferred claim" or waiving its superior "vendor's lien" over the land in favor of the mortgagee of said property only means that in a situation where the unpaid price of the Land and loan secured by the mortgage over the Land both become due and demandable, the mortgagee shall have precedence in going after the Land for the satisfaction of the loan. Such accommodations do not necessarily imply the modification of the period fixed in the contract of sale for the payment by Carrascoso of the balance.

The palpable purpose of El Dorado in not raising any objection to Carrascoso's mortgaging the land was to eliminate any legal impediment to such a contract. That was so succinctly expressed in the Affidavit (Exhibit 2-A) of President Feleciano (sic) Leviste. El Dorado's yielding its "superior lien" over the land in favor of the mortgagee was plainly intended to overcome the natural reluctance of lending institutions to accept a land whose price has not yet been fully paid as collateral of a loan.[66] (Underscoring supplied)

Respecting Carrascoso's insistence that he was granted verbal extensions within which to pay the balance of the purchase price of the property by El Dorado's directors and officers Jose and Angel Leviste, this Court finds the same unsubstantiated by the evidence on record.

It bears recalling that Jose Leviste wrote Carrascoso, by letter of February 21, 1977, calling his attention to his failure to comply, despite "numerous" requests, with his obligation to pay the amount of P1,300,000.00 and 10% annual interest thereon, and advising him that "we would like to rescind the contract of sale." This letter reiterated the term of payment agreed upon in the March 23, 1972 Deed of Sale of Real Property and Carrascoso's non-compliance therewith.

Carrascoso, harping on Jose Leviste's March 10, 1977 letter to Lauro's counsel wherein he (Jose Leviste) stated that "some of the Directors of the corporation could not see their way clear in complying with the demands of [Lauro] and have failed to reach a consensus to bring the corresponding action for rescission of the contract

against Dr. Fernando Carrascoso," argues that the extensions priorly given to him "no doubt lead to the logical conclusion on some of the directors' inability to file suit against him." [67]

The argument is specious. As the CA found, even if some officers of El Dorado were initially reluctant to file suit against him, the same should not be interpreted to mean that this was brought about by a prior extension of the period to pay the balance of the purchase price of the property as such reluctance could have been due to a myriad of reasons totally unrelated to the period of payment of the balance.

The bottomline however is, if El Dorado really intended to extend the period of payment of the balance there was absolutely no reason why it did not do it in writing in clear and unmistakable terms. That there is no such writing negates all the speculations of the court a quo and pretensions of Carrascoso.

x x x

The unalterable fact here remains that on March 23, 1973, with or without demand, the obligation of Carrascoso to pay P519,933.33 became due. The same was true on March 23, 1974 and on March 23, 1975 for equal amounts. Since he did not perform his obligation under the contract of sale, he, therefore, breached it. Having breached the contract, El Dorado's cause of action for rescission of that contract arose. [68] (Underscoring supplied)

Carrascoso goes on to argue that the appellate court erred in ignoring the import of the warranty of non-tenancy expressly stipulated in the March 23, 1972 Deed of Sale of Real Property. He alleges that on March 8, 1972 or two weeks prior to the execution of the Deed of Sale, he discovered, while inspecting the property on board a helicopter, that there were people and cattle in the area; when he confronted El Dorado about it, he was told that the occupants were caretakers of cattle who would soon leave; [69] four months after the execution of the Deed of Sale, upon inquiry with the Bureau of Lands and the Bureau of Soils, he was informed that there were people claiming to be tenants in certain portions of the property; [70] and he thus brought the matter again to El Dorado which informed him that the occupants were not tenants but squatters. [71]

Carrascoso now alleges that as a result of what he concludes to be a breach of the warranty of non-tenancy committed by El Dorado, he incurred expenses in the amount of P2,890,000.00 for which he should be reimbursed, his unpaid obligation to El Dorado amounting to P1,300,000.00 to be deducted therefrom. [72]

The breach of an express warranty makes the seller liable for damages. [73] The following requisites must be established in order that there be an express warranty in a contract of sale: (1) the express warranty must be an affirmation of fact or any promise by the seller relating to the subject matter of the sale; (2) the natural tendency of such affirmation or promise is to induce the buyer to purchase the thing; and (3) the buyer purchases the thing relying on such affirmation or promise thereon. [74]

Under the March 23, 1972 Deed of Sale of Real Property, El Dorado warranted that the property was not being cultivated by any tenant and was, and therefore, not covered by the provisions of the Land Reform Code. If Carrascoso would become liable under the said law, he would be reimbursed for all expenses and damages incurred thereon.

Carrascoso claims to have incurred expenses in relocating persons found on the property four months after the execution of the Deed of Sale. Apart from such bare claim, the records are bereft of any proof that those persons were indeed tenants. [75] The fact of tenancy [76] not having been priorly established, [77] El Dorado may not be held liable for actual damages.

Carrascoso further argues that both the trial and appellate courts erred in holding that the sale of the 1,000 hectare portion of the property to PLDT, as well as its subsequent sale to PLDTAC, is subject to the March 15, 1977

Notice of Lis Pendens.

PLDT additionally argues that the CA incorrectly ignored the Agreement to Buy and Sell which it entered into with Carrascoso on July 11, 1975, positing that the efficacy of its purchase from Carrascoso, upon his fulfillment of the condition it imposed resulting in its decision to formalize their transaction and execute the April 6, 1977 Deed of Sale, retroacted to July 11, 1975 or before the annotation of the Notice of Lis Pendens.[78]

The pertinent portions of the July 11, 1975 Agreement to Buy and Sell between PLDT and Carrascoso read:

- That the VENDOR hereby agrees to sell to the VENDEE and the latter hereby agrees to purchase from the former, 1,000 hectares of the above-described parcel of land as shown in the map hereto attached as Annex "A" and made an integral part hereof and as hereafter to be more particularly determined by the survey to be conducted by Certeza & Co., at the purchase price of P3,000.00 per hectare or for a total consideration of Three Million Pesos (P3,000,000.00) payable in cash.

- That this contract shall be considered rescinded and cancelled and of no further force and effect, upon failure of the VENDOR to clear the aforementioned 1,000 hectares of land of all the occupants therein located, within a period of one (1) year from the date of execution of this Agreement. However, the VENDEE shall have the option to extend the life of this Agreement by another six months, during which period the VENDEE shall definitely inform the VENDOR of its decision on whether or not to finalize the deed of absolute sale for the aforementioned 1,000 hectares of land.

The VENDOR agrees that the amount of P500.00 per family within the aforementioned 1,000 hectares of land shall be spent by him for relocation purposes, which amount however shall be advanced by the VENDEE and which shall not exceed the total amount of P120,000.00, the same to be thereafter deducted by the VENDEE from the aforementioned purchase price of P3,000,000.00.

The aforementioned advance of P120,000.00 shall be remitted by the VENDEE to the VENDOR upon the signing of this Agreement.

x x x

It is likewise further agreed that the VENDEE shall have the right to enter into any part of the aforementioned 1,000 hectares at any time within the period of this Agreement for purposes of commencing the development of the same.

x x x

- Title to the aforementioned land shall also be cleared of all liens or encumbrances and if there are any unpaid taxes, existing mortgages, liens and encumbrances on the land, the payments to be made by the VENDEE to the VENDOR of the purchase price shall first be applied to liquidate said mortgages, liens and/or encumbrances, such that said payments shall be made directly to the corresponding creditors. Thus, the balance of the purchase price will be paid to the VENDOR after the title to the land is cleared of all such liens and encumbrances.

x x x

- The VENDOR agrees that, during the existence of this Agreement and without the previous written permission from the VENDEE, he shall not sell, cede, assign and/or transfer the parcel of land subject of this Agreement.[79]

A notice of lis pendens is an announcement to the whole world that a particular real property is in litigation, and serves as a warning that one who acquires an interest over said property does so at his own risk, or that he gambles on the result of the litigation over said property.[80]

Once a notice of lis pendens has been duly registered, any cancellation or issuance of title over the land involved as well as any subsequent transaction affecting the same would have to be subject to the outcome of the suit. In other words, a purchaser who buys registered land with full notice of the fact that it is in litigation between the vendor and a third party stands in the shoes of his vendor and his title is subject to the incidents and result of the pending litigation.[81]

x x x Notice of lis pendens has been conceived and, more often than not, availed of, to protect the real rights of the registrant while the case involving such rights is pending resolution or decision. With the notice of lis pendens duly recorded, and while it remains uncanceled, the registrant could rest secure that he would not lose the property or any part of it during the litigation.

The filing of a notice of lis pendens in effect (1) keeps the subject matter of litigation within the power of the court until the entry of the final judgment so as to prevent the defeat of the latter by successive alienations; and (2) binds a purchaser of the land subject of the litigation to the judgment or decree that will be promulgated thereon whether such a purchaser is a bona fide purchaser or not; but (3) does not create a non-existent right or lien.

The doctrine of lis pendens is founded upon reason of public policy and necessity, the purpose of which is to keep the subject matter of the litigation within the power of the court until the judgment or decree shall have been entered; otherwise by successive alienations pending the litigation, its judgment or decree shall be rendered abortive and impossible of execution. The doctrine of lis pendens is based on considerations of public policy and convenience, which forbid a litigant to give rights to others, pending the litigation, so as to affect the proceedings of the court then progressing to enforce those rights, the rule being necessary to the administration of justice in order that decisions in pending suits may be binding and may be given full effect, by keeping the subject matter in controversy within the power of the court until final adjudication, that there may be an end to litigation, and to preserve the property that the purpose of the pending suit may not be defeated by successive alienations and transfers of title.[82] (*Italics in the original*)

In ruling against PLDT and PLDTAC, the appellate court held:

PLDT and PLDTAC argue that in reality the Farm was bought by the former on July 11, 1975 when Carrascoso and it entered into the Agreement to Buy and Sell (Exhibit 15). How can an agreement to buy and sell which is a preparatory contract be the same as a contract of sale which is a principal contract? If PLDT's contention is correct that it bought the Farm on July 11, 1975, why did it buy the same property again on April 6, 1977? There is simply no way PLDT and PLDTAC can extricate themselves from the effects of said Notice of Lis Pendens. It is admitted that PLDT took possession of the Farm on July 11, 1975 after the execution of the Agreement to Buy and Sell but it did so not as owner but as prospective buyer of the property. As prospective buyer which had actual on (sic) constructive notice of the lis pendens, why did it pursue and go through with the sale if it had not been willing to gamble with the result of this case?[83] (*Underscoring supplied*)

Further, in its July 8, 2004 Resolution, the CA held:

PLDT cannot shield itself from the notice of lis pendens because all that it had at the time of its inscription was an Agreement to Buy and Sell with CARRASCOSO, which in effect is a mere contract to sell that did not pass to it the ownership of the property.

x x x

Ownership was retained by CARRASCOSO which EL DORADO may very well recover through its action for rescission.

x x x

PLDT's possession at the time the notice of lis pendens was registered not being a legal possession based on ownership but a mere possession in fact and the Agreement to Buy and Sell under which it supposedly took possession not being registered, it is not protected from an adverse judgment that may be rendered in the case subject of the notice of lis pendens.[84] (Underscoring supplied)

In a contract of sale, the title passes to the vendee upon the delivery of the thing sold; whereas in a contract to sell, ownership is not transferred upon delivery of the property but upon full payment of the purchase price.[85] In the former, the vendor has lost and cannot recover ownership until and unless the contract is resolved or rescinded; whereas in the latter, title is retained by the vendor until the full payment of the price, such payment being a positive suspensive condition and failure of which is not a breach but an event that prevents the obligation of the vendor to convey title from becoming effective.[86]

PLDT argues that the July 11, 1975 Agreement to Buy and Sell is a conditional contract of sale, thus calling for the application of Articles 1181[87] and 1187[88] of the Civil Code as held in *Coronel v. Court of Appeals*.[89]

The Court is not persuaded.

For in a conditional contract of sale, if the suspensive condition is fulfilled, the contract of sale is thereby perfected, such that if there had already been previous delivery of the property subject of the sale to the buyer, ownership thereto automatically transfers to the buyer by operation of law without any further act having to be performed by the seller.[90] Whereas in a contract to sell, upon fulfillment of the suspensive condition, ownership will not automatically transfer to the buyer although the property may have been previously delivered to him. The prospective seller still has to convey title to the prospective buyer by entering into a contract of absolute sale.[91]

A perusal of the contract[92] adverted to in *Coronel* reveals marked differences from the Agreement to Buy and Sell in the case at bar. In the *Coronel* contract, there was a clear intent on the part of the therein petitioners-sellers to transfer title to the therein respondent-buyer. In the July 11, 1975 Agreement to Buy and Sell, PLDT still had to "definitely inform Carrascoso of its decision on whether or not to finalize the deed of absolute sale for the 1,000 hectare portion of the property," such that in the April 6, 1977 Deed of Absolute Sale subsequently executed, the parties declared that they "are now decided to execute" such deed, indicating that the Agreement to Buy and Sell was, as the appellate court held, merely a preparatory contract in the nature of a contract to sell. In fact, the parties even had to stipulate in the said Agreement to Buy and Sell that Carrascoso, "during the existence of the Agreement, shall not sell, cede, assign and/or transfer the parcel of land," which provision this Court has held to be a typical characteristic of a contract to sell.[93]

Being a contract to sell, what was vested by the July 11, 1975 Agreement to Buy and Sell to PLDT was merely the beneficial title to the 1,000 hectare portion of the property.

The right of Daniel Jovellanos to the property under the contract [to sell] with Philamlife was merely an inchoate and expectant right which would ripen into a vested right only upon his acquisition of ownership which, as aforesaid, was contingent upon his full payment of the rentals and compliance with all his contractual obligations thereunder. A vested right is an immediate fixed right of present and future enjoyment. It is to be distinguished from a right that is expectant or contingent. It is a right which is fixed, unalterable, absolute, complete and unconditional to the exercise of which no obstacle exists, and which is perfect in itself and not dependent upon a contingency. Thus, for a property right to be vested, there must be a transition from the potential or contingent to the actual, and the proprietary interest must have attached to a thing; it must have become fixed or established and is no longer open to doubt or controversy.[94] (Underscoring supplied)

In the case at bar, the July 11, 1975 Agreement to Buy and Sell was not registered, which act of registration is the operative act to convey and affect the land.

An agreement to sell is a voluntary instrument as it is a willful act of the registered owner. As such voluntary instrument, Section 50 of Act No. 496 [now Section 51 of PD 1529] expressly provides that the act of registration shall be the operative act to convey and affect the land. And Section 55 of the same Act [now Section 53 of PD 1529] requires the presentation of the owner's duplicate certificate of title for the registration of any deed or voluntary instrument. As the agreement to sell involves an interest less than an estate in fee simple, the same should have been registered by filing it with the Register of Deeds who, in turn, makes a brief memorandum thereof upon the original and owner's duplicate certificate of title. The reason for requiring the production of the owner's duplicate certificate in the registration of a voluntary instrument is that, being a willful act of the registered owner, it is to be presumed that he is interested in registering the instrument and would willingly surrender, present or produce his duplicate certificate of title to the Register of Deeds in order to accomplish such registration. However, where the owner refuses to surrender the duplicate certificate for the annotation of the voluntary instrument, the grantee may file with the Register of Deeds a statement setting forth his adverse claim, as provided for in Section 110 of Act No. 496. xxx[95] (Underscoring supplied)

In *Valley Golf Club, Inc. v. Salas*,^[96] where a Deed of Absolute Sale covering a parcel of land was executed prior to the annotation of a notice of lis pendens by the original owner thereof but which Deed was registered after such annotation, this Court held:

The advance payment of P15,000.00 by the CLUB on October 18, 1960 to ROMERO, and the additional payment by the CLUB of P54,887.50 as full payment of the purchase price on October 26, 1960, also to ROMERO, cannot be held to be the dates of sale such as to precede the annotation of the adverse claim by the SISTERS on October 25, 1960 and the lis pendens on October 27, 1960. It is basic that it is the act of registration of the sale that is the operative act to convey and affect the land. That registration was not effected by the CLUB until December 4, 1963, or three (3) years after it had made full payment to ROMERO. xxx

x x x

As matters stand, therefore, in view of the prior annotations of the adverse claim and lis pendens, the CLUB must be legally held to have been aware of the flaws in the title. By virtue of the lis pendens, its acquisition of the property was subject to whatever judgment was to be rendered in Civil Case No. 6365. xxx The CLUB's cause of action lies, not against the SISTERS, to whom the property had been adjudged by final judgment in Civil Case No. 6365, but against ROMERO who was found to have had no right to dispose of the land.^[97] (Underscoring supplied)

PLDT further argues that El Dorado's prior, actual knowledge of the July 11, 1975 Agreement to Buy and Sell is equivalent to prior registration not affected by the Notice of Lis Pendens. As such, it concludes that it was not a purchaser pendente lite nor a purchaser in bad faith.

PLDT anchors its argument on the testimony of Lauro and El Dorado's counsel Atty. Aquino from which it infers that Atty. Aquino filed the complaint for rescission and caused the notice of lis pendens to be annotated on Carrascoso's title only after reading newspaper reports on the sale to PLDT of the 1,000 hectare portion of the property.

The pertinent portions of Atty. Aquino's testimony are reproduced hereunder:

Q:

Do you know, Atty. Aquino, what you did after the filing of the complaint in the instant case of Dr. Carrascoso?

A:

Yes, I asked my associates to go to Mamburao and had the notice of Lis Pendens covering the property as a result of the filing of the instant complaint.

Q:

Do you know the notice of Lis Pendens?

A:

Yes, it is evidenced by a [Transfer] Certificate Copy of Title of Dr. Carrascoso entitled "Notice of Lis Pendens".

Q:

As a consequence of the filing of the complaint which was annotated, you have known that?

A:

Yes.

x x x

Q:

After the annotation of the notice of Lis Pendens, do you know, if any further transaction was held on the property?

A:

As we have read in the newspaper, that Dr. Carrascoso had sold the property in favor of the PLDT, Co.

Q:

And what did you do?

A:

We verified the portion of the property having recorded under entry No. 24770 xxx and we also discovered that the articles incorporated (sic) and other corporate matters had been organized and established of the PLDT, Co., and had been annotated.

x x x

Q:

Do you know what happened to the property?

A:

It was sold by the PLDT to its sub-PLDT Agitating (sic) Co. when at that time there was already notice of Lis Pendens.

x x x

Q:

In your testimony, you mentioned that you had come cross-(sic) reading the sale of the subject litigation (sic) between Dr. Fernando Carrascoso, the defendant herein and the PLDT, one of defendants-intervenor, may I say when?

A:

I cannot remember now, but it was in the newspaper where it was informed or mentioned of the sold property to PLDT.

x x x

Q:

Will you tell to the Honorable Court what newspaper was that?

A:

Well, I cannot remember what is that newspaper. That is only a means of [confirming] the transaction. What was [confirmed] to us is whether there was really transaction (sic) and we found out that there was in the Register of Deeds and that was the reason why we obtained the case.

Q:

Well, may I say, is there any reason, the answer is immaterial. The question is as regard the matter of time when counsel is being able (sic) to read the newspaper allegedly (interrupted)

x x x

Q:

The idea of the question, your Honor, is to establish and ask further the notice of [lis pendens] with regards (sic) to the transfer of property to PLDT, would have been accorded prior to the pendency of the case.

x x x

A:

I cannot remember.[98]

PLDT also relies on the following testimony of Carrascoso:

Q:

You mentioned Doctor a while ago that you mentioned to the late Governor Feliciano Leviste regarding your transaction with the PLDT in relation to the subject property you allegedly mention (sic) your intention to sell with the PLDT?

A:

It was Dr. Jose Leviste and Dr. Angel Leviste that was constantly in touched (sic) with me with respect to my transaction with the PLDT, sir.

Q:

Any other officer of the corporation who knows with instruction aside from Dr. Angel Leviste and Dr. Jose Leviste?

A:

Yes, sir. It was Trinidad Andaya Leviste and Assemblyman Expedito Leviste.

x x x

Q:

What is the position of Mrs. Trinidad Andaya Leviste with the plaintiff-corporation?

A:

One of the stockholders and director of the plaintiff-corporation, sir.

Q:

Will you please tell us the other officers?

A:

Expedito Leviste, sir.

A:

Will you tell the position of Expedito Leviste?

A:

He was the corporate secretary, sir.

Q:

If you know, was Dr. Jose Leviste also a director at that time?

A:

Yes, sir.[99]

On the other hand, El Dorado asserts that it had no knowledge of the July 11, 1975 Agreement to Buy and Sell prior to the filing of the complaint for rescission against Carrascoso and the annotation of the notice of lis pendens on his title. It further asserts that it always acted in good faith:

xxx The contract to sell between the Petitioner [Carrascoso] and PLDT was executed in July 11, 1975. There is no evidence that El Dorado was notified of this contract. The property is located in Mindoro, El Dorado is based in Manila. The land was planted to rice. This was not an unusual activity on the land, thus it could have been the Petitioner who was using the land. Not having been notified of this sale, El Dorado could not have stopped PLDT from developing the land.

The absolute sale of the land to PLDT took place on April 6, 1977, or AFTER the filing of this case on March 15, 1977 and the annotation of a notice of lis pendens on March 16, 1977. In spite of the notice of lis pendens, PLDT then PLDTAC persisted not only in buying the land but also in putting up improvements on the property such as buildings, roads, irrigation systems and drainage. This was done during the pendency of this case, where PLDT and PLDTAC actively participated as intervenors. They were not innocent bystanders. xxx[100]

This Court finds the above-quoted testimony of Atty. Aquino to be susceptible of conflicting interpretations. As such, it cannot be the basis for inferring that El Dorado knew of the July 11, 1975 Agreement to Buy and Sell prior to the annotation of the notice of lis pendens on Carrascoso's title.

Respecting Carrascoso's allegation that some of the directors and officers of El Dorado had knowledge of his dealings with PLDT, it is true that knowledge of facts acquired or possessed by an officer or agent of a corporation in the course of his employment, and in relation to matters within the scope of his authority, is notice to the corporation, whether he communicates such knowledge or not.[101] In the case at bar, however, apart from Carrascoso's claim that he in fact notified several of the directors about his intention to sell the 1,000 hectare portion of the property to PLDT, no evidence was presented to substantiate his claim. Such self-serving, uncorroborated assertion is indubitably inadequate to prove that El Dorado had notice of the July 11, 1975 Agreement to Buy and Sell before the annotation of the notice of lis pendens on his title.

PLDT is, of course, not without recourse. As held by the CA:

Between Carrascoso and PLDT/PLDTAC, the former acted in bad faith while the latter acted in good faith. This is so because it was Carrascoso's refusal to pay his just debt to El Dorado that caused PLDT/PLDTAC to suffer pecuniary losses. Therefore, Carrascoso should return to PLDT/PLDTAC the P3,000,000.00 price of the farm plus legal interest from receipt thereof until paid.[102] (Underscoring supplied)

The appellate court's decision ordering the rescission of the March 23, 1972 Deed of Sale of Real Property between El Dorado and Carrascoso being in order, mutual restitution follows to put back the parties to their original situation prior to the consummation of the contract.

The exercise of the power to rescind extinguishes the obligatory relation as if it had never been created, the extinction having a retroactive effect. The rescission is equivalent to invalidating and unmaking the juridical tie, leaving things in their status before the celebration of the contract.

Where a contract is rescinded, it is the duty of the court to require both parties to surrender that which they have respectively received and to place each other as far as practicable in his original situation, the rescission has the effect of abrogating the contract in all parts.[103] (Underscoring supplied)

The April 6, 1977 and May 30, 1977 Deeds of Absolute Sale being subject to the notice of lis pendens, and as the Court affirms the declaration by the appellate court of the rescission of the Deed of Sale executed by El Dorado in favor of Carrascoso, possession of the 1,000 hectare portion of the property should be turned over by PLDT to El Dorado.

As regards the improvements introduced by PLDT on the 1,000 hectare portion of the property, a distinction should be made between those which it built prior to the annotation of the notice of lis pendens and those which it introduced subsequent thereto.

When a person builds in good faith on the land of another, Article 448 of the Civil Code governs:

Art. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such a case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after the proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

The above provision covers cases in which the builders, sowers or planters believe themselves to be owners of the land or, at least, to have a claim of title thereto.[104] Good faith is thus identified by the belief that the land is owned; or that by some title one has the right to build, plant, or sow thereon.[105]

The owner of the land on which anything has been built, sown or planted in good faith shall have the right to

appropriate as his own the building, planting or sowing, after payment to the builder, planter or sower of the necessary and useful expenses,[106] and in the proper case, expenses for pure luxury or mere pleasure.[107]

The owner of the land may also oblige the builder, planter or sower to purchase and pay the price of the land.

If the owner chooses to sell his land, the builder, planter or sower must purchase the land, otherwise the owner may remove the improvements thereon. The builder, planter or sower, however, is not obliged to purchase the land if its value is considerably more than the building, planting or sowing. In such case, the builder, planter or sower must pay rent to the owner of the land.

If the parties cannot come to terms over the conditions of the lease, the court must fix the terms thereof.

The right to choose between appropriating the improvement or selling the land on which the improvement of the builder, planter or sower stands, is given to the owner of the land.[108]

On the other hand, when a person builds in bad faith on the land of another, Articles 449 and 450 govern:

Art. 449. He who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without right to indemnity.

Art. 450. The owner of the land on which anything has been built, planted or sown in bad faith may demand the demolition of the work, or that the planting or sowing be removed, in order to replace things in their former condition at the expense of the person who built, planted or sowed; or he may compel the builder or planter to pay the price of the land, and the sower the proper rent.

In the case at bar, it is undisputed that PLDT commenced construction of improvements on the 1,000 hectare portion of the property immediately after the execution of the July 11, 1975 Agreement to Buy and Sell with the full consent of Carrascoso.[109] Thus, until March 15, 1977 when the Notice of Lis Pendens was annotated on Carrascoso's TCT No. T-6055, PLDT is deemed to have been in good faith in introducing improvements on the 1,000 hectare portion of the property.

After March 15, 1977, however, PLDT could no longer invoke the rights of a builder in good faith.

Should El Dorado then opt to appropriate the improvements made by PLDT on the 1,000 hectare portion of the property, it should only be made to pay for those improvements at the time good faith existed on the part of PLDT or until March 15, 1977,[110] to be pegged at its current fair market value.[111]

The commencement of PLDT's payment of reasonable rent should start on March 15, 1977 as well, to be paid until such time that the possession of the 1,000 hectare portion is delivered to El Dorado, subject to the reimbursement of expenses as aforesaid, that is, if El Dorado opts to appropriate the improvements.[112]

If El Dorado opts for compulsory sale, however, the payment of rent should continue up to the actual transfer of ownership.[113]

WHEREFORE, the petitions are DENIED. The Decision dated January 13, 1996 and Resolution dated July 8, 2004 of the Court of Appeals are AFFIRMED with MODIFICATION in that

1) the Regional Trial Court of San Jose, Occidental Mindoro, Branch 45 is further directed to:

- determine the present fair price of the 1,000 hectare portion of the property and the amount of the expenses actually spent by PLDT for the improvements thereon as of March 15, 1977;

- include for determination the increase in value ("plus value") which the 1,000 hectare portion may have acquired by reason of the existence of the improvements built by PLDT before March 15, 1977 and the current fair market

value of said improvements;

2. El Dorado is ordered to exercise its option under the law, whether to appropriate the improvements, or to oblige PLDT to pay the price of the land, and

3) PLDT shall pay El Dorado the amount of Two Thousand Pesos (P2,000.00) per month as reasonable compensation for its occupancy of the 1,000 hectare portion of the property from the time that its good faith ceased to exist until such time that possession of the same is delivered to El Dorado, subject to the reimbursement of the aforesaid expenses in favor of PLDT or until such time that the payment of the purchase price of the 1,000 hectare portion is made by PLDT in favor of El Dorado in case the latter opts for its compulsory sale. Costs against petitioners.

SO ORDERED.

Sandoval-Gutierrez, Corona and Garcia, JJ., concur.

Panganiban, (Chairman), J., No part. Former counsel of a party.

[1] Exhibit "A", II Records at 366-372.

[2] I Records at 9-10.

[3] Exhibit "1", II Records at 376-380.

[4] Id. at 377-378.

[5] Exhibit "2", Id. at 857.

[6] Exhibit "2-A", Id. at 858.

[7] Exhibit "D-3-a", Id. at 384-389.

[8] G.R. No. 123672 Rollo at 38.

[9] Exhibit "A-2", II, Records at 371.

[10] Exhibit "D", Id. at 381-383.

[11] II Records at 382.

[12] Exhibit "D-3-b", II Records at 390-391.

[13] II Records at 462-A.

[14] Exhibit "15", I Records at 159-163.

[15] Exhibit "E", II Records at 393-394.

[16] II Records at 394.

[17] Exhibits "F" and "G", II Records at 395-398.

[18] Exhibit "H-1", Id. at 400-401.

[19] Id. at 401.

[20] Exhibit "H", II Records at 399.

[21] Ibid.

- [22] I Records at 1-8.
- [23] Id. at 7-8.
- [24] Exhibit "L-1", II Records at 472.
- [25] Exhibit "21", I Records at 261-264.
- [26] Id. at 261-262.
- [27] Exhibit "T", I Records at 265-267.
- [28] Exhibit "K", II Records at 406-408.
- [29] Exhibit "J", Id. at 405.
- [30] I Records at 145-153.
- [31] Exhibit "L-2", II Records at 473.
- [32] II Records at 474.
- [33] Id. at 472.
- [34] Exhibit "L-3", II Records at 473.
- [35] Exhibit "Q", III Records at 1480.
- [36] I Records at 220-223.
- [37] Id. at 240.
- [38] Id. at 247-255.
- [39] Id. at 251-252.
- [40] III Records at 1962-1970.
- [41] Id. at 1969-1970.
- [42] G.R. No. 123672 Rollo at 35-58.
- [43] Id. at 56-58.
- [44] Id. at 147-154.
- [45] Id. at 11-33.
- [46] Id. at 79-81.
- [47] Id. at 95.
- [48] Id. at 87-94.
- [49] Id. at 102-126.
- [50] Id. at 126.
- [51] Id. at 128-134.
- [52] Id. at 171-177.

[53] Id. at 181-196.

[54] PLDTAC, now a moribund company, no longer joined in the petition.

[55] G.R. No. 164489 Rollo at 210-246.

[56] Id. at 50.

[57] G.R. No. 123672 Rollo at 20-21.

[58] G.R. No. 164489 Rollo at 226.

[59] Exhibit "5", II Records at 864.

[60] Ong v. Court of Appeals, 310 SCRA 1, 9 (1999) (citation omitted).

[61] IV A. Tolentino, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINESA, 175 (1997 ed).

[62] Velarde v. Court of Appeals, 361 SCRA 56, 68 (2001).

[63] Id. at 66.

[64] Blas v. Angeles-Hutalla, 439 SCRA 273, 293 (2004) (citation omitted), Soliva v. Intestate Estate of Marcelo M. Villalba, 417 SCRA 277, 285 (2003) (citation omitted).

[65] Velarde v. Court of Appeals, supra at 57.

[66] G.R. No. 123672 Rollo at 44-45.

[67] Id. at 22.

[68] Id. at 47.

[69] TSN, August 21, 1979 at 45.

[70] TSN, June 2, 1980 at 15.

[71] TSN, August 21, 1979 at 47.

[72] Id. at 26.

[73] C. Villanueva, LAW ON SALES, 538 (2004 ed).

[74] CIVIL CODE, art. 1546.

[75] Bautista v. Mag-isa Vda. De Villena [438 SCRA 259, 265-266 (2004)] provides:

Tenants are defined as persons who – in themselves and with the aid available from within their immediate farm households – cultivate the land belonging to or possessed by another, with the latter's consent; for purposes of production, sharing the produce with the landholder under the share tenancy system, or paying to the landholder a price certain or ascertainable in produce or money or both under the leasehold tenancy system.

[76] VHJ Construction and Development Corporation v. Court of Appeals [436 SCRA 392, 398-399 (2004)] provides:

xxx a tenancy relationship cannot be presumed. There must be evidence to prove this allegation. xxx

x x x

The requisites of a tenancy relationship are as follows: (1) the parties are the landowner and the tenant; (2) the subject is agricultural land; (3) there is consent by the landowner; (4) the purpose is agricultural production; (5) there is personal cultivation, and (6) there is sharing of the harvests. All these requisites are necessary to create a tenancy relationship, and the absence of one or more requisites will not make the alleged tenant a de jure tenant. xxx unless a person has established his status as a de jure tenant, he is not xxx covered by the Land Reform Program of the Government under existing tenancy laws. xxx

[77] Vide: *Investment & Development, Inc. v. Court of Appeals*, 162 SCRA 636 (1988).

[78] G.R. No. 164489 Rollo at 232.

[79] Exhibit "15", I Records at 160-162.

[80] *Villanueva v. Court of Appeals*, 281 SCRA 298, 306 (1997) (citations omitted).

[81] *Esguerra v. Court of Appeals*, 267 SCRA 380, 397-398 (1997) citations omitted).

[82] *Po Lam v. Court of Appeals*, 347 SCRA 86, 96-97 (2000) (citations omitted).

[83] G.R. No. 123672 Rollo at 51.

[84] *Id.* at 192-195.

[85] *Jovellanos v. Court of Appeals*, 210 SCRA 126, 132 (1992) (citation omitted).

[86] *Adelfa Properties, Inc. v. Court of Appeals*, 240 SCRA 565, 576-577 (1995).

[87] 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.

[88] Art. 1187. The effects of a conditional obligation to give, once the condition has been fulfilled, shall retroact to the day of the constitution of the obligation. Nevertheless, when the obligation imposes reciprocal prestations upon the parties, the fruits and interests during the pendency of the condition shall be deemed to have been mutually compensated. If the obligation is unilateral, the debtor shall appropriate the fruits and interests received, unless from the nature and circumstances of the obligation it should be inferred that the intention of the person constituting the same was different.

[89] 263 SCRA 15 (1996).

[90] *Coronel v. Court of Appeals*, *supra* at 27-28.

[91] *Id.* at 28.

[92] RECEIPT OF DOWNPAYMENT

x x x

Received from Miss Ramona Patricia Alcaraz of 146 Timog, Quezon City, the sum of Fifty Thousand Pesos purchase price of our inherited house and lot, covered by TCT No. 119627 of the Registry of Deeds of Quezon City, in the total amount of P1,240,000.00.

We bind ourselves to effect the transfer in our names from our deceased father, Constancio P. Coronel, the transfer certificate of title immediately upon receipt of the down payment above-stated.

On our presentation of the TCT already in or (sic) name, We will immediately execute the deed of absolute sale of

said property and Miss Ramona Patricia Alcaraz shall immediately pay the balance of the P1,190,000.00.

[93] Padilla v. Paredes, 328 SCRA 434, 442-443 (2000).

[94] Jovellanos v. Court of Appeals, 210 SCRA 126, 134-135 (1992) (citations omitted).

[95] L.P. Leviste & Company v. Noblejas, 89 SCRA 520, 528 (1979) (citations omitted).

[96] 125 SCRA 471 (1983).

[97] Id. at 477-478 (citation omitted).

[98] TSN, August 21, 1979 at 8-13.

[99] TSN, February 4, 1982 at 39-44.

[100] G.R. No. 123672 Rollo at 124-125.

[101] Francisco v. Government Service Insurance System, 7 SCRA 577, 584-585 (1963) (citation omitted).

[102] G.R. No. 123672 Rollo at 55.

[103] IV A. Tolentino, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, 180-181 (1997 ed).

[104] Macasaet v. Macasaet, 439 SCRA 625, 643 (2004) (citations omitted).

[105] Id. at 644 (citation omitted).

[106] CIVIL CODE, art. 546.

[107] CIVIL CODE, art 548.

[108] Ballatan v. Court of Appeals, 304 SCRA 34, 46 (1999).

[109] The July 11, 1975 Agreement to Buy and Sell likewise provides that PLDT shall have the right to enter any part of the 1,000 hectare portion of the property within the period of the Agreement for purposes of commencing its development.

[110] Rosales v. Castelltort, G.R. No. 157044, October 5, 2005.

[111] Pecson v. Court of Appeals, 244 SCRA 407, 415-416 (1995).

[112] Rosales v. Castelltort, *supra*.

[113] Tecnogas Philippines Manufacturing Corporation v. Court of Appeals, 268 SCRA 5, 22 (1997).

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