

ALBERT R. PADILLA, PETITIONER, VS. SPOUSES FLORESCO PAREDES AND ADELINA PAREDES, AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.

G.R. No. 124874. March 17, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For resolution is a petition for review on certiorari, seeking reversal of the decision of the Court of Appeals in CA G.R. CV No. 33089, which set aside the decision of the Regional Trial Court in Civil Case No. 4357 and confirmed the rescission of the contract between petitioner and private respondents.

From the records, we glean the following antecedent facts:

On October 20, 1988, petitioner Albert R. Padilla and private respondents Floresco and Adelina Paredes entered into a contract to sell^[1] involving a parcel of land in San Juan, La Union. At that time, the land was untitled although private respondents were paying taxes thereon. Under the contract, petitioner undertook to secure title to the property in private respondents' names. Of the P312,840.00 purchase price, petitioner was to pay a downpayment of P50,000.00 upon signing of the contract, and the balance was to be paid within ten days from the issuance of a court order directing issuance of a decree of registration for the property.

On December 27, 1989, the court ordered the issuance of a decree of land registration for the subject property. The property was titled in the name of private respondent Adelina Paredes. Private respondents then demanded payment of the balance of the purchase price, per the second paragraph of the contract to sell,^[2] which reads as follows:

"VENDEE agrees to pay the balance of the purchase price of subject property in the amount of TWO HUNDRED SIXTY TWO THOUSAND EIGHT HUNDRED FORTY (P262,840.00) PESOS, within ten (10) days counted from issuance of the Order of the Court for the issuance of a decree pursuant to an application for registration and confirmation of title of said subject property, of which the VENDEE is under obligation to secure the title of subject property at his own expense."

Petitioner made several payments to private respondents, some even before the court issued an order for the issuance of a decree of registration.^[3] Still, petitioner failed to pay the full purchase price even after the expiration of the period set. In a letter dated February 14, 1990,^[4] private respondents, through counsel, demanded payment of the remaining balance, with interest and attorney's fees, within five days from receipt of the letter. Otherwise, private respondents stated they would consider the contract rescinded.

On February 28, 1990, petitioner made a payment of P100,000.00 to private respondents,^[5] still insufficient to cover the full purchase price. Shortly thereafter, in a letter dated April 17, 1990,^[6] private respondents offered to sell to petitioner one-half of the property for all the payments the latter had made, instead of rescinding the contract. If petitioner did not agree with the proposal, private respondents said they would take steps to enforce

the automatic rescission of the contract.

Petitioner did not accept private respondents' proposal. Instead, in a letter dated May 2, 1990,[7] he offered to pay the balance in full for the entire property, plus interest and attorney's fees. Private respondents refused the offer.

On May 14, 1990, petitioner instituted an action for specific performance against private respondents, alleging that he had already substantially complied with his obligation under the contract to sell. He claimed that the several partial payments he had earlier made, upon private respondents' request, had impliedly modified the contract. He also averred that he had already spent P190,000.00 in obtaining title to the property, subdividing it, and improving its right-of-way.[8]

For their part, private respondents claimed before the lower court that petitioner maliciously delayed payment of the balance of the purchase price, despite repeated demand and despite his knowledge of private respondents' need therefor.[9] According to private respondents, their acceptance of partial payments did not at all modify the terms of their agreement, such that the failure of petitioner to fully pay at the time stipulated was a violation of the contract.[10] Private respondents claimed that this violation led to the rescission of the contract, of which petitioner was formally informed.[11]

After trial, the lower court ruled in favor of petitioner, saying that even if petitioner indeed breached the contract to sell, it was only a casual and slight breach that did not warrant rescission of the contract. The trial court pointed out that private respondents themselves breached the contract when they requested and accepted installment payments from petitioner, even before the land registration court ordered issuance of a decree of registration for the property.[12] According to the trial court, this constituted modification of the contract, though not reduced into writing as required by the contract itself. The payments, however, were evidenced by receipts duly signed by private respondents. Acceptance of delayed payments estopped private respondents from exercising their right of rescission, if any existed.[13]

The Court of Appeals, however, reversed the ruling of the trial court and confirmed private respondents' rescission of the contract to sell. According to the Court of Appeals, the issue of whether or not the breach of contract committed is slight or casual is irrelevant in the case of a contract to sell, where title remains in the vendor if the vendee fails to "comply with the condition precedent of making payment at the time specified in the contract." [14]

The Court of Appeals rejected petitioner's claim that there had been a novation of the contract when he tendered partial payments for the property even before payment was due. The Court of Appeals noted that the contract itself provides that no terms and conditions therein shall be modified unless such modification is in writing and duly signed by the parties. The modification alleged by petitioner is not in writing, much less signed by the parties.[15] Moreover, the Court of Appeals ruled that private respondents made a timely objection to petitioner's partial payments when they offered to sell to petitioner only one-half of the property for such partial payments.[16]

The Court of Appeals ruled that private respondents are entitled to rescission under Article 1191 of the Civil Code, but with the obligation to return to petitioner the payments the latter had made, including expenses incurred in securing title to the property and in subdividing and improving its right of way. Whatever damages private respondents had suffered should be deemed duly compensated by the benefits they derived from the payments made by petitioner.[17]

Hence, this petition, wherein petitioner assigns the following errors allegedly committed by the Court of Appeals:

1. ...IN HOLDING THAT: "THE APPELLANTS ARE ENTITLED TO RESCISSION UNDER ARTICLE

1191 OF THE CIVIL CODE."

2. ...IN CONFIRMING THE UNILATERAL RESCISSION OF THE CONTRACT TO SELL BY THE PRIVATE RESPONDENTS.

3. ...WHEN IT INTERPRETED AND APPLIED LIBERALLY IN FAVOR OF THE PRIVATE RESPONDENTS AND STRICTLY AGAINST THE HEREIN PETITIONERS, THE PROVISIONS OF ARTICLE 1191 AND OTHER PROVISIONS OF THE CIVIL CODE.[18]

Petitioner contends that private respondents are not entitled to rescission, because rescission cannot be availed of when the breach of contract is only slight or casual, and not so substantial and fundamental as to defeat the object of the parties in making the contract. Petitioner points out that he made partial payments even before they were due - in fact, even before the land registration court issued an order for the issuance of a decree of registration for the property - since private respondents requested it. Private respondents' acceptance of the payments amounted to a modification of the contract, though unwritten. Petitioner believed in good faith that private respondents would honor an alleged verbal agreement that the latter would not strictly enforce the period for the payment of the remaining balance.

Petitioner additionally argues that private respondents were also guilty of breach of contract since they failed to deliver the three-meter wide additional lot for a right-of-way, as agreed upon in their contract.

For their part, private respondents reiterate that, as ruled by the Court of Appeals, the issue of whether or not the breach is slight or casual is irrelevant in a contract to sell. They contend that in such a contract, the non-payment of the purchase price is not a breach but simply an event that prevents the vendor from complying with his obligation to transfer title to the property to the vendee. Moreover, they point out that the degree of breach was never raised as an issue during the pre-trial conference nor at the trial of this case.

Private respondents also aver that petitioner cannot avail of an action for specific performance since he is not an injured party as contemplated in Article 1191 of the Civil Code.

Private respondents admit having requested cash advances from petitioner due to dire financial need. Such need, they point out, is the same reason why time is of the essence in the payment of the balance of the purchase price. They claim that petitioner offered to pay the balance only after more than three months had lapsed from the date his obligation to pay became due.

Private respondents argue that their acceptance of advance payments does not amount to a novation of the contract since, as provided in the contract itself, modification of the contract would only be binding if written and signed by the parties, which is not the case here. Acceptance of advance payments is a mere act of tolerance, which under the contract would not be considered as a modification of the terms and conditions thereof. francis

The core issue in this case is whether the respondent Court of Appeals erred in reversing and setting aside the judgment of the trial court, by holding that private respondents are entitled to rescind their "contract to sell" the land to petitioner.

To begin with, petitioner is alleging that the contract entered into between the parties is a contract of sale, in which case rescission will not generally be allowed where the breach is only slight or casual. Petitioner insists that the title "Contract to Sell" does not reflect the true intention of the parties, which is to enter into a contract of sale.

We note, however, that petitioner only made this claim as to the nature of the contract in his reply to the comment of private respondents to his petition for review. In his complaint in the RTC and in his petition for review, petitioner refers to the subject contract as a contract to sell. The nature of the contract was never in issue in the

proceedings in the courts below. Moreover, petitioner does not deny private respondents' allegation that it was he and his counsel who prepared the contract. Thus, the ambiguity, if an exists, must be resolved strictly against him as the one who caused the same.[19]

At any rate, the contract between the parties in our view is indeed a contract to sell, as clearly inferable from the following provisions thereof:

"xxx

That the VENDORS hereby agree and bind themselves not to alienate (sic) encumber, or in any manner modify the right of title to said property.

xxx

That the VENDORS agree to pay real estate taxes of said subject property until the same will have been transferred to the VENDEE.

That on payment of the full purchase price of the above-mentioned property the VENDORS will execute and deliver a deed conveying to the VENDEE the title in fee simple of said property free from all lien and encumbrances..." (Underscoring supplied.)[20]

These provisions signify that title to the property remains in the vendors until the vendee should have fully paid the purchase price, which is a typical characteristic of a contract to sell.

Now, admittedly, petitioner failed to comply with his obligation to pay the full purchase price within the stipulated period. Under the contract, petitioner was to pay the balance of the purchase price within 10 days from the date of the court order for the issuance of the decree of registration for the property. Private respondents claim, and petitioner admits, that there was delay in the fulfillment of petitioner's obligation. The order of the court was dated December 27, 1989. By April 1990, or four months thereafter, petitioner still had not fully paid the purchase price, clearly in violation of the contract. *novero*

Petitioner's offer to pay is clearly not the payment contemplated in the contract. While he might have tendered payment through a check, this is not considered payment until the check is encashed.[21] Besides, a mere tender of payment is not sufficient. Consignation is essential to extinguish petitioner's obligation to pay the purchase price.[22]

We sustain the decision of the Court of Appeals, to the effect that private respondents may validly cancel the contract to sell their land to petitioner. However, the reason for this is not that private respondents have the power to rescind such contract, but because their obligation thereunder did not arise.

Article 1191 of the Civil Code, on rescission, is inapplicable in the present case. This is apparent from the text of the article itself:

"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."

Article 1191 speaks of obligations already existing, which may be rescinded in case one of the obligors fails to comply with what is incumbent upon him. However, in the present case, there is still no obligation to convey title of the land on the part of private respondents. There can be no rescission of an obligation that is non-existent, considering that the suspensive condition therefor has not yet happened.[23]

In *Rillo v. Court of Appeals*,[24] we ruled:

"The respondent court did not err when it did not apply Articles 1191 and 1592 of the Civil Code on rescission to the case at bar. The contract between the parties is not an absolute conveyance of real property but a contract to sell. In a contract to sell real property on installments, the full payment of the purchase price is a positive suspensive condition, the failure of which is not considered a breach, casual or serious, but simply an event which prevented the obligation of the vendor to convey title from acquiring any obligatory force. The transfer of ownership and title would occur after full payment of the purchase price."[25]

We reiterated this rule in *Odyssey Park, Inc. v. Court of Appeals*, 280 SCRA 253 (1997). Moreover, we held in *Odyssey*:

"The breach contemplated in Article 1191 of the Code is the obligor's failure to comply with an obligation already extant, not a failure of a condition to render binding that obligation."[26]

Under the parties' contract, the property will be transferred to petitioner only upon the latter's "complete compliance of his obligation provided in [the] contract." Because of petitioner's failure to fully pay the purchase price, the obligation of private respondents to convey title to the property did not arise.[27] Thus, private respondents are under no obligation, and may not be compelled, to convey title to petitioner and receive the full purchase price.

Petitioner's reliance on Article 1592 of the Civil Code is misplaced. It provides:

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

Clearly, what this provision contemplates is an absolute sale and not a contract to sell as in the present case.

Private respondents' acceptance of several partial payments did not modify the parties' contract as to exempt petitioner from complying with his obligation to pay within the stipulated period. The contract itself provided:

"No terms and conditions shall be considered modified, changed, altered, or waived by any verbal agreement by and between the parties hereto or by an act of tolerance on the parties unless such modification, change, alteration or waiver appears in writing duly signed by the parties hereto."[28]

Acceptance of the partial payments is, at best, an act of tolerance on the part of private respondents that could not modify the contract, absent any written agreement to that effect signed by the parties.

The Court of Appeals is correct in ordering the return to petitioner of the amounts received from him by private respondents, on the principle that no one may unjustly enrich himself at the expense of another.

WHEREFORE, the petition is DENIED, for lack of merit. Costs against petitioner.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Rollo, pp. 36-39.

"xxx

"For and in consideration of the agreed purchase price of P312,840.00 PESOS, Philippine Currency of which the sum of FIFTY THOUSAND (P50,000.00) PESOS, has been paid by the VENDEE upon execution of this contract, the VENDORS hereby agree to sell and the VENDEE agrees to buy that certain parcel of land described as follows:

'A parcel of land, Lot 19, of Plan Psu-1-005494, situated at Barangay Taboc, Municipality of San Juan, Province of La Union, Island of Luzon. Bounded on the S., along line 1-2 by Lot 18; on the W., along line 2-3 by salvage zone (20.00 M. wide); on the N., along line 3-4 by the property of Justiniano Gaetos; and on the E., along line 4-1 by the property (abandoned) of the Manila Railroad Co. (30.00 M. wide), all of Plan Psu-1-005494, x x x containing an area of SEVEN THOUSAND EIGHT HUNDRED TWENTY ONE (7,821) SQUARE METERS x x x'

covered by Tax Declaration No. 19028 of the Assessor's Office of La Union, Certified Blue copy of Plan Psu-1-005494 and Certified True Copy of TD No. ____ are hereto attached as Annexes 'A' and 'B', respectively, and made an integral part of this Contract.

"VENDEE agrees to pay the balance of the purchase price of subject property in the amount of TWO HUNDRED SIXTY TWO THOUSAND EIGHT HUNDRED FORTY (P252,840.00) PESOS, within ten (10) days counted from issuance of the Order of the Court for the issuance of a decree pursuant to application for registration and confirmation of title of said subject property, of which the VENDEE is under obligation to secure the title of subject property at his own expense.

"That the VENDORS hereby undertake and agree with the VENDEE that the first-named party shall warrant and defend the title to said real property in favor of the second-named party, his heirs, successors and assigns, against all just claims of all persons and entities.

"That the VENDORS will also guarantee the right of said VENDEE to possess the property subject of this Contract and will defend him against all judicial or administrative actions for eviction.

"That the VENDORS will execute any additional document to complete the title of the VENDEE to the above-described property so that it may be registered in the name of the said VENDEE in accordance with the provisions of the Land Registration Act.

"That the VENDORS hereby agree and bind themselves not to alienate, encumber, or in any manner modify the right of title to said property. Courtä

"That the VENDORS shall grant a three (3) meter wide right-of-way without any payment thereof across Lot 1, Psu 1-005494, measured from the National Road up to Lot 19, Psu-1-005494, to provide the subject property access to the National Road; Provided that, the VENDORS shall further allow the VENDEE to purchase additional Three (3) meter wide, measured from the National Road up the subject property and alongside the right-of-way mentioned in order that the access road will have a total width of six (6) meters at the rate of Forty (P40.00) Pesos per square meter.

"That thirty days before the execution of this Contract, all adjoining owners have been notified in accordance with

the provision of the Civil Code and furthermore this subject property is untenanted.

"That the VENDORS agree to pay real estate taxes of said subject property until the same will have been transferred to the VENDEE.

"That on payment of the full purchase price of the above-mentioned property the VENDORS will execute and deliver a deed conveying to the VENDEE the title in fee simple of said property free from all lien and encumbrances, and should the VENDEE need any other instrument to perfect his title to said property upon complete compliance of his obligation provided in this Contract, the VENDORS will execute and deliver the same.

"No terms and conditions shall be considered modified, changed, altered, or waived by any verbal agreement by and between the parties hereto or by an act of tolerance on the parties unless such modification, change, alteration or waiver appears in writing duly signed by the parties hereto.

"That all the provisions and contents of this contract have been translated also in Ilocano, the dialect known by the VENDORS and the VENDEE; hence, the parties hereto have fully understood all and any of the terms and conditions of this Contract."

[2] Id. at 37.

[3] Folder of Exhibits, pp. 5-18.

[4] Id. at 19.

[5] Id. at 23.

[6] Id. at 20.

[7] Id. at 21-22.

[8] Records, pp. 1-4.

[9] Id. at 20, 23.

[10] Id. at 20.

[11] Id. at 24.

[12] Id. at 198.

[13] Id. at 199.

[14] Rollo, p. 46.

[15] Id. at 46-47.

[16] Id. at 48. See CIVIL CODE, Art. 1235.

[17] Ibid.

[18] Rollo, p. 23.

[19] CIVIL CODE, Art. 1377.

[20] Rollo, pp. 37-38.

[21] CIVIL CODE, Art. 1249.

[22] People's Industrial and Commercial Corp. v. Court of Appeals, 281 SCRA 206, 223 (1997).

[23] Rillo v. Court of Appeals, 274 SCRA 461, 467 (1997).

[24] Supra.

[25] Supra note 23.

[26] 280 SCRA 253, 260 (1997).

[27] Luzon Brokerage Co., Inc. v. Maritime Building Co., Inc., 46 SCRA 381, 387 (1972); Agustin v. Court of Appeals, 186 SCRA 375, 381 (1990).

[28] Folder of Exhibits, p. 3.

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