ANTONIO R. CORTES (IN HIS CAPACITY AS ADMINISTRATOR OF THE ESTATE OF CLARO S. CORTES), PETITIONER,HON. COURT OF APPEALS AND VILLA ESPERANZA DEVELOPMENT CORPORATION, RESPONDENTS.

G.R. NO. 126083. July 12, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

The instant petition for review seeks the reversal of the June 13, 1996 Decision[1] of the Court of Appeals in CA-G.R. CV No. 47856, setting aside the June 24, 1993 Decision[2] of the Regional Trial Court of Makati, Branch 138, which rescinded the contract of sale entered into by petitioner Antonio Cortes (Cortes) and private respondent Villa Esperanza Development Corporation (Corporation).

The antecedents show that for the purchase price of P3,700,000.00, the Corporation as buyer, and Cortes as seller, entered into a contract of sale over the lots covered by Transfer Certificate of Title (TCT) No. 31113-A, TCT No. 31913-A and TCT No. 32013-A, located at Baclaran, Parañaque, Metro Manila. On various dates in 1983, the Corporation advanced to Cortes the total sum of P1,213,000.00. Sometime in September 1983, the parties executed a deed of absolute sale containing the following terms:[3]

> 1. Upon execution of this instrument, the Vendee shall pay unto the Vendor sum of TWO MILLION AND TWO HUNDRED THOUSAND (P2,200,000.00) PESOS, Philippine Currency, less all advances paid by the Vendee to the Vendor in connection with the sale;
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> 2. The balance of ONE MILLION AND FIVE HUNDRED THOUSAND [P1,500,000.00] PESOS, Phil. Currency shall be payable within ONE (1) YEAR from date of execution of this instrument, payment of which shall be secured by an irrevocable standby letter of credit to be issued by any reputable local banking institution acceptable to the Vendor.
>
> x x x x
>
> 4. All expense for the registration of this document with the Register of Deeds concerned, including the transfer tax, shall be divided equally between the Vendor and the Vendee. Payment of the capital gains shall be exclusively for the account of the Vendor; 5% commission of Marcosa Sanchez to be deducted upon signing of sale.[4]

Said Deed was retained by Cortes for notarization.

On January 14, 1985, the Corporation filed the instant case[5] for specific performance seeking to compel Cortes to deliver the TCTs and the original copy of the Deed of Absolute Sale. According to the Corporation, despite its readiness and ability to pay the purchase price, Cortes refused delivery of the sought documents. It thus prayed for the award of damages, attorney's fees and litigation expenses arising from Cortes' refusal to deliver the same documents.

In his Answer with counterclaim,[6] Cortes claimed that the owner's duplicate copy of the three TCTs were surrendered to the Corporation and it is the latter which refused to pay in full the agreed down payment. He added that portion of the subject property is occupied by his lessee who agreed to vacate the premises upon payment of disturbance fee. However, due to the Corporation's failure to pay in full the sum of P2,200,000.00, he in turn failed to fully pay the disturbance fee of the lessee who now refused to pay monthly rentals. He thus prayed that the Corporation be ordered to pay the outstanding balance plus interest and in the alternative, to cancel the sale and forfeit the P1,213,000.00 partial down payment, with damages in either case.

On June 24, 1993, the trial court rendered a decision rescinding the sale and directed Cortes to return to the Corporation the amount of P1,213,000.00, plus interest. It ruled that pursuant to the contract of the parties, the Corporation should have fully paid the amount of P2,200,000.00 upon the execution of the contract. It stressed that such is the law between the parties because the Corporation failed to present evidence that there was another agreement that modified the terms of payment as stated in the contract. And, having failed to pay in full the amount of P2,200,000.00 despite Cortes' delivery of the Deed of Absolute Sale and the TCTs, rescission of the contract is proper.

In its motion for reconsideration, the Corporation contended that the trial court failed to consider their agreement that it would pay the balance of the down payment when Cortes delivers the TCTs. The motion was, however, denied by the trial court holding that the rescission should stand because the Corporation did not act on the offer of Cortes' counsel to deliver the TCTs upon payment of the balance of the down payment. Thus:

> The Court finds no merit in the [Corporation's] Motion for Reconsideration. As stated in the decision sought to be reconsidered, [Cortes'] counsel at the pre-trial of this case, proposed that if [the Corporation] completes the down payment agreed upon and make arrangement for the payment of the balances of the purchase price, [Cortes] would sign the Deed of Sale and turn over the certificate of title to the [Corporation]. [The Corporation] did nothing to comply with its undertaking under the agreement between the parties.
>
> WHEREFORE, in view of the foregoing considerations, the Motion for Reconsideration is hereby DENIED.
>
> SO ORDERED.[7]

On appeal, the Court of Appeals reversed the decision of the trial court and directed Cortes to execute a Deed of Absolute Sale conveying the properties and to deliver the same to the Corporation together with the TCTs, simultaneous with the Corporation's payment of the balance of the purchase price of P2,487,000.00. It found that the parties agreed that the Corporation will fully pay the balance of the down payment upon Cortes' delivery of the three TCTs to the Corporation. The records show that no such delivery was made, hence, the Corporation was not remiss in the performance of its obligation and therefore justified in not paying the balance. The decretal portion thereof, provides:

> WHEREFORE, premises considered, [the Corporation's] appeal is GRANTED. The decision appealed from is hereby REVERSED and SET ASIDE and a new judgment rendered ordering [Cortes] to execute a deed of absolute sale conveying to [the Corporation] the parcels of land subject of and described in the deed of absolute sale, Exhibit D. Simultaneously with the execution of the deed of absolute sale and the delivery of the corresponding owner's duplicate copies of TCT Nos. 31113-A, 31931-A and 32013-A of the Registry of Deeds for the Province of Rizal, Metro Manila, District IV, [the Corporation] shall pay [Cortes] the balance of the purchase price of P2,487,000.00. As agreed upon in paragraph 4 of the Deed of Absolute Sale, Exhibit D, under terms and conditions, "All expenses for the registration of this document (the deed of sale) with the Register of Deeds concerned, including the transfer tax, shall be divided equally between [Cortes and the Corporation]. Payment of the capital gains shall be exclusively for the account of the Vendor; 5% commission of Marcosa Sanchez to be deducted upon signing of sale." There is no pronouncement as to costs.

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SO ORDERED.[8]

Cortes filed the instant petition praying that the decision of the trial court rescinding the sale be reinstated.

There is no doubt that the contract of sale in question gave rise to a reciprocal obligation of the parties. Reciprocal obligations are those which arise from the same cause, and 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. They are to be performed simultaneously, so that the performance of one is conditioned upon the simultaneous fulfillment of the other.[9]

Article 1191 of the Civil Code, states:

> 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.
>
> x x x x

As to when said failure or delay in performance arise, Article 1169 of the same Code provides that –

> ART. 1169
>
> x x x x
>
> In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins. (Emphasis supplied)

The issue therefore is whether there is delay in the performance of the parties' obligation that would justify the rescission of the contract of sale. To resolve this issue, we must first determine the true agreement of the parties.

The settled rule is that the decisive factor in evaluating an agreement is the intention of the parties, as shown not necessarily by the terminology used in the contract but by their conduct, words, actions and deeds prior to, during and immediately after executing the agreement. As such, therefore, documentary and parol evidence may be submitted and admitted to prove such intention.[10]

In the case at bar, the stipulation in the Deed of Absolute Sale was that the Corporation shall pay in full the P2,200,000.00 down payment upon execution of the contract. However, as correctly noted by the Court of Appeals, the transcript of stenographic notes reveal Cortes' admission that he agreed that the Corporation's full payment of the sum of P2,200,000.00 would depend upon his delivery of the TCTs of the three lots. In fact, his main defense in the Answer is that, he performed what is incumbent upon him by delivering to the Corporation the TCTs and the carbon duplicate of the Deed of Absolute Sale, but the latter refused to pay in full the down payment.[11] Pertinent portion of the transcript, reads:

> [Q]
>
> Now, why did you deliver these three titles to the plaintiff despite the fact that it has not been paid in full the agreed down payment?
>
> A
>
> Well, the broker told me that the down payment will be given if I surrender the titles.
>
> Q
>
> Do you mean to say that the plaintiff agreed to pay in full the down payment of P2,200,000.00 provided you surrender or entrust to the plaintiff the titles?

A

Yes, sir.[12]

What further confirmed the agreement to deliver the TCTs is the testimony of Cortes that the title of the lots will be transferred in the name of the Corporation upon full payment of the P2,200,000.00 down payment. Thus –

ATTY. ANTARAN

[Q]

Of course, you have it transferred in the name of the plaintiff, the title?

A

Upon full payment.

x x x x

ATTY. SARTE

Q

When you said upon full payment, are you referring to the agreed down payment of P2,200,000.00?

A

Yes, sir.[13]

By agreeing to transfer title upon full payment of P2,200,000.00, Cortes' impliedly agreed to deliver the TCTs to the Corporation in order to effect said transfer. Hence, the phrase "execution of this instrument" [14] as appearing in the Deed of Absolute Sale, and which event would give rise to the Corporation's obligation to pay in full the amount of P2,200,000.00, can not be construed as referring solely to the signing of the deed. The meaning of "execution" in the instant case is not limited to the signing of a contract but includes as well the performance or implementation or accomplishment of the parties' agreement.[15] With the transfer of titles as the corresponding reciprocal obligation of payment, Cortes' obligation is not only to affix his signature in the Deed, but to set into motion the process that would facilitate the transfer of title of the lots, i.e., to have the Deed notarized and to surrender the original copy thereof to the Corporation together with the TCTs.

Having established the true agreement of the parties, the Court must now determine whether Cortes delivered the TCTs and the original Deed to the Corporation. The Court of Appeals found that Cortes never surrendered said documents to the Corporation. Cortes testified that he delivered the same to Manny Sanchez, the son of the broker, and that Manny told him that her mother, Marcosa Sanchez, delivered the same to the Corporation.

Q

Do you have any proof to show that you have indeed surrendered these titles to the plaintiff?

A

Yes, sir.

Q

I am showing to you a receipt dated October 29, 1983, what relation has this receipt with that receipt that you have mentioned?

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A

That is the receipt of the real estate broker when she received the titles.

Q

On top of the printed name is Manny Sanchez, there is a signature, do you know who is that Manny Sanchez?

A

That is the son of the broker.

x x x x

Q

May we know the full name of the real estate broker?

A

Marcosa Sanchez

x x x x

Q

Do you know if the broker or Marcosa Sanchez indeed delivered the titles to the plaintiff?

A

That is what [s]he told me. She gave them to the plaintiff.

x x x x.[16]

ATTY. ANTARAN

Q

Are you really sure that the title is in the hands of the plaintiff?

x x x x

It is in the hands of the broker but there is no showing that it is in the hands of the plaintiff?

Yes, sir.

COURT

How do you know that it was delivered to the plaintiff by the son of the broker?

The broker told me that she delivered the title to the plaintiff.

ATTY. ANTARAN

Q

Did she not show you any receipt that she delivered to [Mr.] Dragon[17] the title without any receipt?

A

I have not seen any receipt.

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Q

So, therefore, you are not sure whether the title has been delivered to the plaintiff or not. It is only upon the allegation of the broker?

A

Yes, sir.[18]

However, Marcosa Sanchez's unrebutted testimony is that, she did not receive the TCTs. She also denied knowledge of delivery thereof to her son, Manny, thus:

Q

The defendant, Antonio Cortes testified during the hearing on March 11, 1986 that he allegedly gave you the title to the property in question, is it true?

A

I did not receive the title.

Q

He likewise said that the title was delivered to your son, do you know about that?

A

I do not know anything about that.[19]

What further strengthened the findings of the Court of Appeals that Cortes did not surrender the subject documents was the offer of Cortes' counsel at the pre-trial to deliver the TCTs and the Deed of Absolute Sale if the Corporation will pay the balance of the down payment. Indeed, if the said documents were already in the hands of the Corporation, there was no need for Cortes' counsel to make such offer.

Since Cortes did not perform his obligation to have the Deed notarized and to surrender the same together with the TCTs, the trial court erred in concluding that he performed his part in the contract of sale and that it is the Corporation alone that was remiss in the performance of its obligation. Actually, both parties were in delay. Considering that their obligation was reciprocal, performance thereof must be simultaneous. The mutual inaction of Cortes and the Corporation therefore gave rise to a compensation morae or default on the part of both parties because neither has completed their part in their reciprocal obligation.[20] Cortes is yet to deliver the original copy of the notarized Deed and the TCTs, while the Corporation is yet to pay in full the agreed down payment of P2,200,000.00. This mutual delay of the parties cancels out the effects of default,[21] such that it is as if no one is guilty of delay.[22]

We find no merit in Cortes' contention that the failure of the Corporation to act on the proposed settlement at the pre-trial must be construed against the latter. Cortes argued that with his counsel's offer to surrender the original Deed and the TCTs, the Corporation should have consigned the balance of the down payment. This argument would have been correct if Cortes actually surrendered the Deed and the TCTs to the Corporation. With such delivery, the Corporation would have been placed in default if it chose not to pay in full the required down payment. Under Article 1169 of the Civil Code, from the moment one of the parties fulfills his obligation, delay by the other begins. Since Cortes did not perform his part, the provision of the contract requiring the Corporation to pay in full the down payment never acquired obligatory force. Moreover, the Corporation could not be faulted for not automatically heeding to the offer of Cortes. For one, its complaint has a prayer for damages which it may

not want to waive by agreeing to the offer of Cortes' counsel. For another, the previous representation of Cortes that the TCTs were already delivered to the Corporation when no such delivery was in fact made, is enough reason for the Corporation to be more cautious in dealing with him.

The Court of Appeals therefore correctly ordered the parties to perform their respective obligation in the contract of sale, i.e., for Cortes to, among others, deliver the necessary documents to the Corporation and for the latter to pay in full, not only the down payment, but the entire purchase price. And since the Corporation did not question the Court of Appeal's decision and even prayed for its affirmance, its payment should rightfully consist not only of the amount of P987,000.00, representing the balance of the P2,200,000.00 down payment, but the total amount of P2,487,000.00, the remaining balance in the P3,700,000.00 purchase price.

WHEREFORE, the petition is DENIED and the June 13, 1996 Decision of the Court of Appeals in CA-G.R. CV No. 47856, is AFFIRMED.
SO ORDERED.

Panganiban, Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur

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[1] Penned by Associate Justice Eduardo G. Montenegro and concurred in by Associate Justices Emeterio C. Cui and Jose C. De La Rama; rollo, pp. 33-51.

[2] Penned by Judge Fernando P. Agdamag; rollo, pp. 66-68.

[3] Complaint, records, pp. 1-2.

[4] Exhibit "D," records, p. 10.

[5] Records, pp. 1-4.

[6] Id. at 35-39.

[7] Id. at 102.

[8] Id. at 50-51. Petitioner filed a motion for reconsideration but was denied on August 30, 1996; rollo, p. 53.

[9] Asuncion v. Evangelista, 375 Phil. 328, 356 (1999), citing Tolentino, Arturo, Commentaries and Jurisprudence on the Civil Code of the Phil., Vol. IV, 1985 edition, p. 175.

[10] Agas v. Sabico, G.R. No. 156447, April 26, 2005, 457 SCRA 263, 275.

[11] Rollo, p. 62.

[12] TSN, March 11, 1986, records, p. 324.

[13] Id. at 373.

[14] "1. Upon execution of this instrument, the Vendee shall pay unto the Vendor sum of TWO MILLION AND TWO HUNDRED THOUSAND (P2,200,000.00) PESOS, Philippine Currency, less all advances paid by the Vendee to the Vendor in connection with the sale; (Emphasis supplied)

[15] Eastern Assurance & Surety Corporation v. Intermediate Appellate Court, G.R. No. 69450, November 22, 1988, 179 SCRA 561, 567.

[16] TSN, March 11, 1988, records, 321-324.

[17] Mr. Renato Dragon is the President of respondent Corporation and the signatory to the Deed of Sale. See

records, p. 11.

[18] TSN, March 11, 1988, records, pp. 367-369.

[19] TSN, October 27, 1989, records, pp. 389-390.

[20] Paras, Civil Code, Book IV, Fourteenth edition, p. 123.

[21] Vitug, Compendium of Civil Law and Jurisprudence, 1993 edition, p. 482.

[22] Paras, supra.

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