

LEBERMAN REALTY CORPORATION. AND ARAN REALTY AND DEVELOPMENT CORPORATION, PETITIONERS, VS. JOSEPH TYPINGCO AND THE COURT OF APPEALS, RESPONDENTS.

G.R. No. 126647. July 29, 1998

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Before us is a petition for review on certiorari under Rule 45 of the Rules of Court seeking to reverse and set aside 1) the Decision dated 13 May 1996; and 2) the Resolution dated 3 October 1996, of the Court of Appeals.

Finding the narration of facts of the Court of Appeals to be concise and well-written, we quote the same hereunder, in its entirety:

Appellees LEBERMAN REALTY CORPORATION and ARAN REALTY AND DEVELOPMENT CORPORATION (LEBERMAN and ARAN, respectively, for brevity), are the registered co-owners of four (4) parcels of land at Binondo, Manila, containing an aggregate area of 1,124.80 square meters and covered by four separate certificates of title.

Sometime in March 1989, herein appellant JOSEPH TYPINGCO learned that the above-mentioned properties were being offered for sale. Interested on (sic) acquiring the realties, Typingco met with the officers of LEBERMAN and ARAN, namely Doris Venezuela, General Manager of LEBERMAN, and Remedios D. Hollander, President of Aran, to discuss the terms and conditions of the sale. On March 20, 1989, Venezuela and Hollander, in behalf of their respective principals, accepted the offer of Typingco to buy the properties for a total consideration of P43,888,888.88 as evidenced by a handwritten agreement executed on the same date (Exhibit "A"). Also, on the same date, Typingco made a down payment of P100,000.00 of which P50,000.00 was for LEBERMAN and the other P50,000.00 for ARAN (Exhs. "B" and "C").

Thereafter, on April 4, 1989, the Parties executed a document denominated as Contract To Sell (Exh. "D"), which contains the following relevant stipulations:

1. CONSIDERATION. That the total consideration for the purchase of the above-mentioned properties shall be x x x (P43,888,888.88) Philippine Currency payable as follows:

1.1 DOWNPAYMENT.

The BUYER shall pay the SELLERS upon the signing of this agreement the sum of One Hundred Thousand (P100,000.00) Pesos, receipt of which is hereby acknowledged by the SELLERS from the BUYER. It is agreed by the parties that the P100,000.00 consideration paid by the BUYER to the SELLERS on 20th march, 1989 shall be credited as part of the downpayment. Hence, there is a total downpayment of Two Hundred Thousand (P200,000.00) Pesos as of this date.

1.2 BALANCE 70% of P43,888,888.88 shall be paid by the BUYER within seven (7) days from receipt of notice duly signed by the SELLERS addressed to the BUYER that all the tenants or occupants or squatters in the above-mentioned properties have vacated the same; or, in the event that BUYER shall opt to pay the

aforestated balance and demand the execution of the deed of absolute sale despite the fact that SELLERS have not yet cleared up the premises of tenants or occupants or squatters, as hereinafter provided, the BUYER shall pay seventy (70%) percent of P43,688,888.88 within seven (7) days from notice to SELLERS that the BUYER desires to exercise said option; that in such cases above, the remaining thirty (30%) percent of P43,688,888.88. shall be paid by the BUYER to SELLERS within one (1) day from receipt of notice duly signed by the SELLERS addressed to the BUYER that all their tax obligations due on the sale of said properties have been fully paid x x x.

2. OBLIGATION OF SELLERS AND BUYER. The SELLERS and BUYER shall have the following obligations:

2.1 The SELLERS shall clear up the above-mentioned properties of all tenants or occupants or squatters if any, within eighteen (18) months from date of this Contract to Sell. If at anytime within the said eighteen (18) months and the SELLERS succeed in clearing up the premises of tenants, occupants or squatters, SELLERS shall send a written notice of such fact to the BUYER who shall pay in accordance with x x x par. 1 (1.2), this contract is deemed automatically, cancelled or rescinded.

x x x x x x x x

3. OPTION OF BUYER. From the seventh month from date of this contract to the eighteenth month, the BUYER shall have the option either to pay the balance of the purchase price notwithstanding that by that time SELLERS may have not yet cleared up the premises of all tenants or occupants or squatters therein, and demand the execution of a deed of absolute sale, or to cancel or rescind this contract. After the eighteenth month from date of this Contract, if the BUYER fails to exercise the option to pay the balance of the purchase price and to demand execution of the deed of absolute sale, this Contract shall be deemed automatically cancelled or rescinded. In all cases of rescission under this Contract, which may take place within the seventh to eighteenth month from date of this contract and after the eighteenth month as aforesaid, the downpayment of P200,000.00 as stated under par. 1(1.1) shall be returned to BUYER without interest.

On the same date, April 4, 1989, Typingco paid LEBERMAN and ARAN the amount of P50,000.00 each, again as downpayment (Exh. "G" and "H"). Thus, the total down payment made was P200,000.00.

Thereafter, Typingco started to generate funds to finance the construction of a building which he intended to put up on the lots. To his surprise however, on September 18, 1989, he received two (2) separate but uniformly-worded letters, both dated September 11, 1989, one from Jose M. Venezuela, Jr., Chairman of the Board of Directors of LEBERMAN and the other from Florencia D. Reyes, Vice President/Director of ARAN, advising Typingco that the two companies have respectively adopted and approved a resolution "rejecting" the contract to sell executed on April 4, 1989 "on the ground that the terms and conditions of said contract are grossly disadvantageous and highly prejudicial to the interests" of LEBERMAN and ARAN and that the officers who executed the contract "acted beyond the scope" of their authorities (Exhs. "J" and "K"). The letters likewise informed Typingco of the companies' decision to initiate a complaint for annulment or cancellation of the contract to sell. Enclosed with the letters are two checks for P100,000.00 each (Exhs. "J-1" and "K-1"), an apparent effort to return the downpayment Typingco had already made.

Obviously taken aback, Typingco immediately wrote LEBERMAN and ARAN telling them that he is not amenable to their decision to discontinue the sale. Accordingly, he returned to them the two checks aforementioned (Exhs. "L" and "M"). Unfortunately, Typingco's protest proved futile because the sellers refused to receive his letters.

Distraught with this development, Typingco then filed on September 26, 1989, in the Regional Trial Court of Manila the complaint in this case. In this complaint, docketed in the court a quo Civil Case No. 89-50512, Typingco alleged, inter alia, as follows:

“6. Plaintiff is definitely interested to proceed with the Contract to Sell and is, in fact, able, willing and prepared to perform his obligations thereunder.

x x x x x x x x

9. The unilateral decision of Defendants to rescind the Contract To Sell is unjustified, illegal and done in extreme bad faith and malice.

x x x x x x x x

12. The malicious act of Defendant of reneging from their obligations under the Contract To Sell has caused plaintiff mental anguish, fright, serious anxiety, wounded feelings, sleepless nights, besmirched reputation, moral shock and social humiliation for which Defendants stand liable to pay moral damages in the amount of not less than Three Million Pesos (P3,000,000.00).”

The complaint thus prayed for a judgment “ordering the Defendants to honor their commitment to plaintiff under the Contract To Sell by performing their undertakings therein fully”, as well as the payment of moral and exemplary damages, attorney’s fees and costs of suit (Records, pp. 1-8).

In their joint Answer with Counterclaim, defendants LEBERMAN and ARAN raised the following special and affirmative defenses:

“20. The complaint states no cause of action the same having been filed prematurely, or the action having been commenced before the cause of action had accrued. The cause of action in this case accrued only in the seventh month from April, 1989 or in October 1989. The filing of the complaint and the service of the summons in this case to commence the action was done on September 26, 1989, and September 29, 1989, respectively, before the cause of action accrued in October, 1989.

21. The contract to sell should be annulled because the consent of defendants’ representatives was given through intimidation. They signed the contract under duress, hence they were compelled to act beyond the scope of their authority.

22. The defendants acted in good faith and in self-protection in rejecting the contract to sell, the fact being that the terms and conditions of said contract are grossly disadvantageous and highly prejudicial to their interests.”

Simultaneously with the filing of their answer, defendants filed a motion praying that their affirmative defenses be preliminary heard as if a motion to dismiss had been filed. Their prayer for preliminary hearing was granted, but eventually, in an order dated December 15, 1989, the lower court denied defendants’ motion for dismissal because, “at this stage, the grounds to dismiss do not appear to be indubitable” and accordingly deferred its action thereon “without prejudice to ruling on the same day stage of the trial when said ground to dismiss appears to be indubitable”. The order pertinently reads:

“The alleged ground that the complaint should be dismissed is that the complaint was filed on September 26, 1989 and summonses were served September 29, 1989 but the cause of action had not yet accrued because under the agreement of the parties said action would accrue on November 1989. This is true. Defendant also cited jurisprudence that even if the cause of action should have accrued thereafter, the defect in the complaint is not thereby cured.

On the other hand, plaintiffs filed their OPPOSITION/COMMENT thereto, of which the Court has also taken note, particularly the argument that the plaintiff’s cause of action already existed at the time of the filing of the complaint due to defendants’ backing or rescinding the contract in question unilaterally and unjustifiably. Said act of rejecting the contract to sell which signaled the refusal of the defendants to proceed with their commitments thereunder, is the very basis of the plaintiff in coming to court for relief. Said rejection of the contract appears to be admitted by the defendants in their Answer. It is to be further considered that by said actuations, the defendants have made it an exercise in futility for plaintiff to wait for the seven (7) months

provided for in Article 3 of the contract before taking action. By the very act of the defendants in rescinding the contract of sale they have rendered it unnecessary for the plaintiff to wait for said period coming to court for relief.

PREMISES CONSIDERED, at this stage, the grounds to dismiss do not appear to be indubitable and the court hereby defers action on said ground for dismissal without prejudice to ruling on the same at any stage of the trial when said ground to dismiss appears to be indubitable.

SO ORDERED. (Records, pp. 100-101.)”

Defendants moved for a reconsideration of the above-quoted order but their motion was denied by the lower court in its subsequent order of January 26, 1990 (Records, pp. 102 and 112).

Thereafter, trial ensued. After the plaintiff had rested his case, the defendants, instead of going forward with their defensive evidence, filed a Motion to Dismiss, this time on the ground that “[P]laintiff’s claim had been extinguished when he opted to automatically cancel or rescind the Contract To Sell.” Elaborating on said ground, the defendants state in their motion:

“3. Considering that the Contract To Sell (Contract for short) was executed and notarized on April 5, 1989, the eighteenth-month period within which plaintiff (buyer) should exercise his option either to pay the balance of the purchase price or to cancel and rescind the Contract expired on October 5, 1990. By not paying the balance of the purchase price within the eighteenth-month period (which expired on October 5, 1990) as stipulated in Contract, plaintiff had indubitably opted for the automatic cancellation or rescission of the Contract, pursuant to the aforequoted provision of paragraph 3 thereof. Consequently, the Contract is “deemed automatically cancelled or rescinded”.

x x x x x x x x

7. Defendants’ obligation to execute a deed of absolute sale had already been extinguished when the Contract was automatically cancelled and rescinded at the option of plaintiff, who chose not pay the balance of the purchase price within the period expressly for and agreed upon by the parties in the Contract. As defendants no longer have the obligation to execute a deed of absolute sale in favor plaintiff, and as plaintiff had opted to cancel and rescind the Contract, hence plaintiff has no more cause of action against the defendants. There being no more cause of action, this case should then be dismissed (Records, pp. 186-189).”

After an exchange of pleadings by the parties the lower court came out with an order on December 13, 1990, denying defendants’ Motion to Dismiss “for lack of merit.” More specifically, said order pertinently reads:

“(2) The defendants argued in their Motion To Dismiss that the ‘plaintiff’s claim had been extinguished when he opted to automatically cancel or rescind the Contract To Sell.’ On the other hand, the plaintiff in his Opposition to Motion to Dismiss cited the grounds, among others, that defendants in the instant case had unilaterally and without justification rescinded and rejected the Contract to Sell;

(3) This Court, however, noted and as alleged by the plaintiff in his Opposition to the Motion to Dismiss, that ‘at one time the defendants claim that there was no Comment to Sell on the ground that their representatives were not duly authorized to enter into contract with the herein plaintiff. In another instance, the ‘defendants not only recognize the same but would even want to apply strictly the provisions of the said contract;’

(4) Well-settled is the rule that in the determination of the existence of a cause of action, the Court needs to rely only on the facts alleged in the complaint and no other should be considered. In fact, ‘an affirmative defense of lack of cause of action implies that the defense hypothetically admits the allegations of the complaint’;

(5) Likewise, it is the view of this Court that there is a need to find out through trial on the merits whether or not the alleged non-compliance and rescission or rejection of the contract by either party subsists, in order to

determine if either of them is entitled to the relief sought before this Court.

WHEREFORE, in view of the foregoing premises, the Motion to Dismiss is hereby DENIED, for lack of merit.

SO ORDERED (Records, pp. 219-220; Underscoring supplied.)

Obviously discontented, the defendants filed a motion for reconsideration, to which an opposition was interposed by the plaintiff.

On July 8, 1991, without the trial on the merits having been resumed or no new matter having been added into the records of the case defendants had not even commenced to present their evidence, the lower court somersaulted by issuing the herein assailed order granting the defendants' motion for reconsideration, thereby vacating and setting aside its earlier order of December 13, 1990, and accordingly dismissed the case. After reciting the factual antecedents, the questioned order states:

"A careful analysis of the ground of the Motion for Reconsideration of the Order of this Court denying the Motion To Dismiss also with Opposition from the plaintiff, was made by this Court which hereby resolves the said motions based on the aforesaid premises and on the following grounds:

1. In the contract itself the buyer was given by the seller the option from the seventh month from date of the contract, that is from April 4, 1989 to the 18th month:

a) either to pay the balance of the purchase price notwithstanding that by that time sellers may have not yet cleared the premises of all tenants or occupants or squatters therein, and demand the execution of a deed of absolute sale.

b) or to cancel or rescind the contract, subject matter of this case.

2. After the eighteenth month from date of Contract if buyer to exercise the option to pay the balance of the purchase price and to demand execution of the deed of absolute sale, the contract will be deemed automatically cancelled or rescind."

The plaintiff, as noted by this Court and as admitted by him, did not exercise this option under the Contract. Plaintiff could, of course, do this at the opportune time. But this is an option he alone can make. Even the defendants cannot dictate to him when to exercise this option.

The focal point to be resolved in this case is whether or not plaintiff has a cause of action so that he can pray for judgment ordering the defendants to honor their commitment to him or to fully perform their undertaking under the Contract. In the order of this Court dated December 15, 1989, this ticklish issue was already resolved. It is to be noted that plaintiff never manifested nor intimated his desire to exercise the option granted to him under Article 3 of the Contract to Sell to pay the balance of the purchase price, notwithstanding that on September 18, 1989 defendants returned the downpayment of P200,000.00 on the ground, that the terms and conditions of said contract are grossly disadvantageous, highly prejudicial to their interest, and the officers who executed the contract acted beyond the scope of their authority.

Finally, the very basis of plaintiff in coming to court for relief is allegedly the illegal, unjustified and unilateral decision of defendants to rescind the contract. However, plaintiff was very much aware that when he filed the instant case he was not yet entitled to any relief from this Court, considering that he failed to exercise his option pursuant to the stipulation Number three (3) of the Contract to Sell.

WHEREFORE, PREMISES CONSIDERED, the motion for Reconsideration of the Order dated December 13, 1990 is hereby GRANTED, and the Court Order dated December 13, 1990 is SET ASIDE. Accordingly, the instant case is hereby DISMISSED.

SO ORDERED. (Records, pp. 257-261.)

This time, it was Typingco who moved for reconsideration. However, in its subsequent order of December 9, 1991, the lower court denied the motion for “lack of merit.” (Records, p. 328).[1]

From the trial court’s Order dated 8 July 1991, plaintiff Typingco, now herein respondent appealed to the Court of Appeals, anchored on the following assigned errors:

[1] THE LOWER COURT ERRED IN FINDING THAT THE APPELLANT DID NOT HAVE A CAUSE OF ACTION AT THE TIME HE FILED THE COMPLAINT.

[2] THE LOWER COURT ERRED IN FINDING THAT THE APPELLANT NEVER MANIFESTED HIS DESIRE TO EXERCISE HIS OPTION UNDER THE CONTRACT TO SELL.

[3] THE LOWER COURT ERRED IN IGNORING APPELLANT’S CLAIM FOR DAMAGES.[2]

On May 1996, the appellate court rendered a decision, the dispositive portion of which reads as follows:

Wherefore, the order under appeal dated July 8, 1991 is hereby REVERSED and SET ASIDE and the order dated December 13, 1990 is REINSTATED.

Accordingly, the instant case is ordered remanded to the court of origin for further proceedings.

Proportionate costs against both parties.

SO ORDERED.[3]

Hence, this petition wherein petitioner make the following ASSIGNMENT OF ERRORS:

FIRST ASSIGNMENT OF ERROR – THE COURT OF APPEALS, IN REVERSING THE RTC/COURT A QUO’S DECISION IN FAVOR OF HEREIN PETITIONER BY RENDERING THE QUESTIONED DECISION, COMMITTED A SERIOUS ERROR OF LAW, AND, WORSE, ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT RULED THAT RESPONDENT HAS A CAUSE OF ACTION AGAINST THE PETITIONER, THE LEGAL AND FACTUAL TRUTHS BEING THAT RESPONDENT’S COMPLAINT A QUO STATES NO CAUSE OF ACTION (SECTION I-G, RULE 16, RULES OF COURT) AND THAT RESPONDENT HAD NO CAUSE OF ACTION AT THE TIME HE FILED HIS COMPLAINT, SAID PLEADING, AT BEST, HAVING BEEN PREMATURELY FILED;

SECOND ASSIGNMENT OF ERROR – ASSUMING ARGUENDO THAT RESPONDENT DID HAVE A CAUSE OF ACTION AT THE TIME HE FILED HIS COMPLAINT AND THE COMPLAINT STATES A CAUSE OF ACTION, THE COURT OF APPEALS NONETHELESS COMMITTED A SERIOUS ERROR OF LAW AND, WORSE, ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT RULED IN FAVOR OF RESPONDENT, THE LEGAL AND FACTUAL TRUTHS BEING THAT WHATEVER CAUSE OF ACTION, IF ANY, RESPONDENT HAD, WAS LOST WHEN HE AUTOMATICALLY CANCELLED OR RESCINDED THE CONTRACT TO SELL, THE ACTIONABLE DOCUMENT, BY HIS FAILURE (EVEN TO DATE) TO EXERCISE HIS OPTION THEREUNDER TO PAY THE BALANCE OF THE PURCHASE PRICE. AS A RESULT, RESPONDENT’S CAUSE OF ACTION/CLAIMS, IF ANY, HAD BEEN LOST/EXTINGUISHED (SECTION 1-H, RULE 16 AND SECTION 2, RULE 9, RULES OF COURT). IN LAW AND EVIDENCE-WISE THE RESPONDENT HAS NONE AND HAD NO CAUSE OF ACTION VERSUS THE PETITIONERS; AND

THIRD ASSIGNMENT OF ERROR – THE QUESTIONED DECISIONS WERE RENDERED BY THE COURT OF APPEALS IN TOTAL DISREGARD OF AND IN GROSS VIOLATION OF THE DOCTRINAL

RULING OF THE SUPREME COURT IN ANG TIBAY VS. CIR (69 PHIL. 635).[4]

The petition is devoid of merit.

The pivotal issue in this case is whether or not the private respondent has a cause of action against the petitioners for prematurity. Petitioners contend that the complaint was prematurely filed because at the time of the institution of the complaint on September 26, 1989, respondent had yet to exercise his option under the “Option of Buyer” clause of the contract. Accordingly to petitioners, the contract dated April 4, 1989 gave private respondent (the buyer) from the seventh (7th) month following the date of the contract which was November 4, 1989 up to the eighteenth (18th) month, which was October 4, 1990, to exercise his option either to pay the balance of the purchase price and demand the execution of the deed of absolute sale, or to cancel or rescind the contract. Thus, when private respondent filed his complaint on September 26, 1989, compelling petitioners to execute in his favor a Deed of Absolute Sale without having exercised his option under the contract, his cause of action had not yet accrued.

A cause of action is an act or omission of one party in violation of the legal right or rights of another.[5] It exists if the following elements are present, namely: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligations of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages.[6]

It is clear from the above-quoted portions of the complaint, as well as the contract to sell, which forms part of the complaint, that all the elements constituting a cause of action are present in this case.

First. There is a legal right in favor of the private respondent, i.e., the right, by virtue of the contract to sell, to complete the payment of the purchase price should he choose to do so.

Second. There is an obligation on the part of the petitioners to sell the subject property exclusively to the private respondent upon full payment of the purchase price.

Third. There was a breach of petitioners’ obligation to sell the property to respondent upon full payment of the purchase price, when they rejected the contract to sell even before the private respondent could exercise his option to buy, notwithstanding that the latter had already made a downpayment in the total amount of Two Hundred Thousand Pesos (P200,000.00)

Petitioners contend that there is nothing on record to suggest that they committed any overt act of rescission, either by a notarial act, court or by any act whatsoever.[7]

Petitioner’ allegation is downright untrue. In uniformly-worded letters dated September 11, 1989, one from the Chairman of the Board of Director of LEBERMAN and the other from the Vice-President/Director of ARAN, private respondent was advised that the two companies had adopted and approved a resolution “rejecting the contract to sell” on the ground that the terms and conditions of the contract are grossly disadvantageous and highly prejudicial to the interest of LEBERMAN and ARAN and that the officers who executed the contract “acted beyond the scope” of their authorities.

The fact that the rejection or cancellation of the contract by petitioners was not made judicially or by notarial acts is of no moment. It is enough for purposes of determining the existence of a breach in obligation, and therefore, the existence of a cause of action, that petitioners had declared in no uncertain terms their refusal to be bound by the contract to sell. Such declaration, coupled with petitioners’ act of returning respondent’s downpayment of P200,000.00, clearly indicates petitioners’ rejection of the contract to sell. The invocation by petitioners of

Article 1592[8] of the Civil Code is misplaced. The provision contemplates of a situation where the buyer who failed to pay the price at the time agreed upon, may still pay, even after the expiration of the period, as long as no demand for rescission has been made upon him either judicially or by a notarial act. In the case at bar, private respondent was never guilty of failure to pay the price of the land within the period agreed upon. It was petitioners who cancelled the contract before the period to pay arrived.

Thus, petitioners' argument that respondent failed to exercise his option to buy within the period provided in the contract, and which period expired/lapsed during the pendency of the case, is plainly absurd. For how could private respondent have exercised the option granted him under the "Option to Buyer" clause when the contract itself was rejected/cancelled by the petitioners even before the arrival of the period for the exercise of said option?

We quote with approval the Court of Appeals' disquisition on the point thus:

It must be emphasized that it was appellees' repudiation of their contract with the appellant that impelled the latter to sue for specific performance. Having been notified by the appellees of their decision to reject the contract in question even before the appellant could exercise his option thereunder, the latter certainly cannot be expected to merely ignore the notice and simply wait for the arrival of the option period. Indeed, with appellees' rejection of the very contract which contains the option, it may even be said that there is no more option to speak of. We are thus at a loss to understand how the appellees could shift the blame to the appellant when it was their very own conduct which preempted the latter's exercise of the option granted him under the contract. It is thus ironic that having already wronged the appellant, appellees would still want to profit from their very own wrongful act. Worse, after having rejected the contract, the appellees had still (sic) the nerve to invoke the option clause thereof to ward off the appellant's suit.

Moreover, it would have been disastrous for the appellant had he simply ignored the appellees' respective rejection letters and just content himself (sic) with merely waiting for the arrival of the option period. Silence or inaction on the part of the appellant could have meant an acquiescence on his part to the appellees' unilateral repudiation of the agreement, which acquiescence could have well estopped him from subsequently invoking the option provision of the contract. x x x

It is thus, to us, of no moment that the option period expired without the appellant having paid the balance of the purchase price. The reason is obvious: the period expired while this suit was pending in the lower court, which suit was precisely brought about by the appellees' rejection of the contract. For the same reason, we find it hard to comprehend how appellees could additionally argue that appellant's failure to pay said balance during the option period amount to appellant's rescission of the same contract. x x x.[9]

WHEREFORE, PREMISES CONSIDERED, the Decision dated 13 May 1996, of the Court of Appeals is hereby AFFIRMED.

SO ORDERED.

Narvasa, C.J., (Chairman), Romero, and Purisima, JJ., concur.

[1] Rollo, CA Decision penned by Justice Concio C. Garcia and concurred by Justices Eugenio S. Labitoria and Artemio G. Tuquero.

[2] Rollo, p. 229, 328.

[3] Id., at 335.

[4] Id., at 13-14

[5] *British Airways, Inc. vs. CA*, 218 SCRA 699 (1993).

[6] *Dulay vs. CA*, 243 SCRA 220 (1995).

[7] See note 2, pp. 33.

[8] 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.

[9] See note 1, pp. 333-334.

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