

**GOLDENROD, INC., PETITIONER VS. COURT OF APPEALS, PIO BARRETTO & SONS, INC., PIO BARRETTO REALTY DEVELOPMENT, INC., AND ANTHONY QUE, RESPONDENTS.**

*G.R. No. 126812. November 24, 1998*

Ponente: BELLOSILLO, J.

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**BELLOSILLO, J.:**

In the absence of a specific stipulation, may the seller of real estate keep the earnest money to answer for damages in the event the sale fails due to the fault of the prospective buyer?

Pio Barretto and Sons, Inc. (BARRETTO & SONS) owned forty-three (43) parcels of registered land with a total area of 18,500 square meters located at Carlos Palanca St., Quiapo, Manila, which were mortgaged with the United Coconut Planters Bank (UCPB). In 1988, the obligation of the corporation with UCPB remained unpaid making foreclosure of the mortgage imminent.

Goldenrod, Inc. (GOLDENROD), offered to buy the property from BARRETTO & SONS. On 25 May 1988, through its president Sonya G. Mathay, petitioner wrote respondent Anthony Que, President of respondent BARRETTO & SONS, as follows:

Thank you for your reply to our letter offering to buy your property in Echague (C. Palanca) Quiapo.

We are happy that you have accepted our offer except the two amendments concerning the payment of interest which should be monthly instead of semi-annually and the period to remove the trusses, steel frames etc. which shall be 180 days instead of 90 days only. Please be advised that we agree to your amendments.

As to your other query, we prefer that the lots be reconsolidated back to its (sic) mother titles.

Enclosed is the earnest money of P1 million which shall form part of the purchase price.

Payment of the agreed total consideration shall be effected in accordance with our offer as you have accepted and upon execution of the necessary documents of sale to be implemented after the said reconsolidation of the lots.

Kindly acknowledge receipt of the earnest money.

When the term of existence of BARRETTO & SONS expired, all its assets and liabilities including the property located in Quiapo were transferred to respondent Pio Barretto Realty Development, Inc. (BARRETTO REALTY). Petitioner's offer to buy the property resulted in its agreement with respondent BARRETTO REALTY that petitioner would pay the following amounts: (a) P24.5 million representing the outstanding obligations of BARRETTO REALTY with UCPB on 30 June 1988, the deadline set by the bank for payment; and, (b) P20 million which was the balance of the purchase price of the property to be paid in installments within a 3-year period with interest at 18% per annum.

Petitioner did not pay UCPB the P24.5 million loan obligation of BARRETTO REALTY on the deadline set for

payment; instead, it asked for an extension of one (1) month or up to 31 July 1988 to settle the obligation, which the bank granted. On 31 July 1988, petitioner requested another extension of sixty (60) days to pay the loan. This time the bank demurred.

In the meantime BARRETTO REALTY was able to cause the reconsolidation of the forty-three (43) titles covering the property subject of the purchase into two (2) titles covering Lots 1 and 2, which were issued on 4 August 1988. The reconsolidation of the titles was made pursuant to the request of petitioner in its letter to private respondents on 25 May 1988. Respondent BARRETTO REALTY allegedly incurred expenses for the reconsolidation amounting to P250,000.00.

On 25 August 1988 petitioner sought reconsideration of the denial by the bank of its request for extension of sixty (60) days by asking for a shorter period of thirty (30) days. This was again denied by UCPB.

On 30 August 1988 Alicia P. Logarta, President of Logarta Realty and Development Corporation (LOGARTA REALTY), which acted as agent and broker of petitioner, wrote private respondent Anthony Que informing him on behalf of petitioner that it could not go through with the purchase of the property due to circumstances beyond its fault, i.e., the denial by UCPB of its request for extension of time to pay the obligation. In the same letter, Logarta also demanded the refund of the earnest money of P1 million which petitioner gave to respondent BARRETTO REALTY.

On 31 August 1988 respondent BARRETTO REALTY sold to Asiaworld Trade Center Phils., Inc. (ASIAWORLD), Lot 2, one of the two (2) consolidated lots, for the price of P23 million. On 13 October 1988 respondent BARRETTO REALTY executed a deed transferring by way of "dacion" the property reconsolidated as Lot 1 in favor of UCPB, which in turn sold the property to ASIAWORLD for P24 million.

On 12 December 1988 Logarta again wrote respondent Que demanding the return of the earnest money to GOLDENROD. On 7 February 1989 petitioner through its lawyer reiterated its demand, but the same remained unheeded by private respondents. This prompted petitioner to file a complaint with the Regional Trial Court of Manila against private respondents for the return of the amount of P1 million and the payment of damages including lost interests or profits. In their answer, private respondents contended that it was the agreement of the parties that the earnest money of P1 million would be forfeited to answer for losses and damages that might be suffered by private respondents in case of failure by petitioner to comply with the terms of their purchase agreement.

On 15 March 1991 the trial court rendered a decision<sup>[1]</sup> ordering private respondents jointly and severally to pay petitioner P1,000,000.00 with legal interest from 9 February 1989 until fully paid, P50,000.00 representing unrealized profits and P10,000.00 as attorney's fees. The trial court found that there was no written agreement between the parties concerning forfeiture of the earnest money if the sale did not push through. It further declared that the earnest money given by petitioner to respondent BARRETTO REALTY was intended to form part of the purchase price; thus, the refusal of the latter to return the money when the sale was not consummated violated Arts. 22 and 23 of the Civil Code against unjust enrichment.

Obviously dissatisfied with the decision of the trial court, private respondents appealed to the Court of Appeals which reversed the trial court and ordered the dismissal of the complaint; hence, this petition.

Petitioner alleges that the Court of Appeals erred in disregarding the finding of the trial court that the earnest money given by petitioner to respondent BARRETTO REALTY should be returned to the former. The absence of an express stipulation that the same shall be forfeited in favor of the seller in case the buyer fails to comply with his obligation is compelling. It argues that the forfeiture of the money in favor of respondent BARRETTO

REALTY would amount to unjust enrichment at the expense of petitioner.

We sustain petitioner. Under Art. 1482 of the Civil Code, whenever earnest money is given in a contract of sale, it shall be considered as part of the purchase price and as proof of the perfection of the contract. Petitioner clearly stated without any objection from private respondents that the earnest money was intended to form part of the purchase price. It was an advance payment which must be deducted from the total price. Hence, the parties could not have intended that the earnest money or advance payment would be forfeited when the buyer should fail to pay the balance of the price, especially in the absence of a clear and express agreement thereon. By reason of its failure to make payment petitioner, through its agent, informed private respondents that it would no longer push through with the sale. In other words, petitioner resorted to extrajudicial rescission of its agreement with private respondents.

In *University of the Philippines v. de los Angeles*,<sup>[2]</sup> the right to rescind contracts is not absolute and is subject to scrutiny and review by the proper court. We held further, in the more recent case of *Adelfa Properties, Inc. v. Court of Appeals*,<sup>[3]</sup> that rescission of reciprocal contracts may be extrajudicially rescinded unless successfully impugned in court. If the party does not oppose the declaration of rescission of the other party, specifying the grounds therefor, and it fails to reply or protest against it, its silence thereon suggests an admission of the veracity and validity of the rescinding party's claim.

Private respondents did not interpose any objection to the rescission by petitioner of the agreement. As found by the Court of Appeals, private respondent BARRETTO REALTY even sold Lot 2 of the subject consolidated lots to another buyer, ASIAWORLD, one day after its President Anthony Que received the broker's letter rescinding the sale. Subsequently, on 13 October 1988 respondent BARRETTO REALTY also conveyed ownership over Lot 1 to UCPB which, in turn, sold the same to ASIAWORLD.

Article 1385 of the Civil Code provides that rescission creates the obligation to return the things which were the object of the contract together with their fruits and interest. The vendor is therefore obliged to return the purchase price paid to him by the buyer if the latter rescinds the sale,<sup>[4]</sup> or when the transaction was called off and the subject property had already been sold to a third person, as what obtained in this case.<sup>[5]</sup> Therefore, by virtue of the extrajudicial rescission of the contract to sell by petitioner without opposition from private respondents who, in turn, sold the property to other persons, private respondent BARRETTO REALTY, as the vendor, had the obligation to return the earnest money of P1,000,000.00 plus legal interest from the date it received notice of rescission from petitioner, i.e., 30 August 1988, up to the date of the return or payment. It would be most inequitable if respondent BARRETTO REALTY would be allowed to retain petitioner's payment of P1,000,000.00 and at the same time appropriate the proceeds of the second sale made to another.<sup>[6]</sup>

WHEREFORE, the Petition is GRANTED. The decision of the Court of Appeals is REVERSED and SET ASIDE. Private respondent Pio Barretto Realty Development, Inc. (BARRETTO REALTY), its successors and assigns are ordered to return to petitioner Goldenrod, Inc. (GOLDENROD), the amount of P1,000,000.00 with legal interest thereon from 30 August 1988, the date of notice of extrajudicial rescission, until the amount is fully paid, with costs against private respondents.

### **SO ORDERED.**

Davide Jr. (Chairman), Vitug, Panganiban, and Quisumbing JJ., concur

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[1] Rollo, p. 48.

[2] No. L-28602, 29 September 1970, 35 SCRA 102.

[3] G.R. No. 111238, 25 January 1995, 240 SCRA565.

[4] Halili v. Doret, 95 Phil 78 [1954].

[5] Palay Inc. v. Clave, G.R. No. 56076, 21 September 1983, 124 SCRA 638.

[6] Ibid.

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