ALFONSO L. IRINGAN, PETITIONER, VS. HON. COURT OF APPEALS AND ANTONIO PALAO, REPRESENTED BY HIS ATTORNEY-IN-FACT, FELISA P.DELOS SANTOS, RESPONDENTS.

G.R. No. 129107. September 26, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition assails the Decision[1] dated April 30, 1997 of the Court of Appeals in CA G.R. CV No. 39949, affirming the decision of the Regional Trial Court and deleting the award of attorney's fee.

The facts of the case are based on the records.

On March 22, 1985, private respondent Antonio Palao sold to petitioner Alfonso Iringan, an undivided portion of Lot No. 992 of the Tuguegarao Cadastre, located at the Poblacion of Tuguegarao and covered by Transfer Certificate of Title No. T-5790. The parties executed a Deed of Sale[2] on the same date with the purchase price of P295,000.00, payable as follows:

> (a) P10,000.00 - upon the execution of this instrument, and for this purpose, the vendor acknowledges having received the said amount from the vendee as of this date;
>
> (b) P140,000.00 - on or before April 30, 1985;
>
> (c) P145,000.00 - on or before December 31, 1985.[3]

When the second payment was due, Iringan paid only P40,000. Thus, on July 18, 1985, Palao sent a letter[4] to Iringan stating that he considered the contract as rescinded and that he would not accept any further payment considering that Iringan failed to comply with his obligation to pay the full amount of the second installment.

On August 20, 1985, Iringan through his counsel Atty. Hilarion L. Aquino,[5] replied that they were not opposing the revocation of the Deed of Sale but asked for the reimbursement of the following amounts:

> (a) P50,000.00 - cash received by you;
>
> (b) P3,200.00 - geodetic engineer's fee;
>
> (c) P500.00 - attorney's fee;
>
> (d) the current interest on P53,700.00.[6]

In response, Palao sent a letter dated January 10, 1986,[7] to Atty. Aquino, stating that he was not amenable to the reimbursements claimed by Iringan.

On February 21, 1989, Iringan, now represented by a new counsel - Atty. Carmelo Z. Lasam, proposed that the P50,000 which he had already paid Palao be reimbursed[8] or Palao could sell to Iringan, an equivalent portion of the land.

Palao instead wrote Iringan that the latter's standing obligation had reached P61,600, representing payment of arrears for rentals from October 1985 up to March 1989.[9] The parties failed to arrive at an agreement.

On July 1, 1991, Palao filed a Complaint[10] for Judicial Confirmation of Rescission of Contract and Damages against Iringan and his wife.

In their Answer,[11] the spouses alleged that the contract of sale was a consummated contract, hence, the remedy of Palao was for collection of the balance of the purchase price and not rescission. Besides, they said that they had always been ready and willing to comply with their obligations in accordance with said contract.

In a Decision[12] dated September 25, 1992, the Regional Trial Court of Cagayan, Branch I, ruled in favor of Palao and affirmed the rescission of the contract. It disposed,

> WHEREFORE, the Court finds that the evidence preponderates in favor of the plaintiff and against the defendants and judgment is hereby rendered as follows:
>
> (a) Affirming the rescission of the contract of sale;
>
> (b) Cancelling the adverse claim of the defendants annotated at the back of TCT No. T-5790;
>
> (c) Ordering the defendants to vacate the premises;
>
> (d) Ordering the defendants to pay jointly and severally the sum of P100,000.00 as reasonable compensation for use of the property minus 50% of the amount paid by them; and to pay P50,000.00 as moral damages; P10,000.00 as exemplary damages; and P50,000.00 as attorney's fee; and to pay the costs of suit.
>
> SO ORDERED.[13]

As stated, the Court of Appeals affirmed the above decision. Hence, this petition for review.

Iringan avers in this petition that the Court of Appeals erred:

1. In holding that the lower court did not err in affirming the rescission of the contract of sale; and

2. In holding that defendant was in bad faith for "resisting" rescission and was made liable to pay moral and exemplary damages.[14]

We find two issues for resolution: (1) whether or not the contract of sale was validly rescinded, and (2) whether or not the award of moral and exemplary damages is proper.

On the first issue, petitioner contends that no rescission was effected simply by virtue of the letter[15] sent by respondent stating that he considered the contract of sale rescinded. Petitioner asserts that a judicial or notarial act is necessary before one party can unilaterally effect a rescission.

Respondent Palao, on the other hand, contends that the right to rescind is vested by law on the obligee and since petitioner did not oppose the intent to rescind the contract, Iringan in effect agreed to it and had the legal effect of a mutually agreed rescission.

Article 1592 of the Civil Code is the applicable provision regarding the sale of an immovable property.

> Article 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. (Italics supplied)

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Article 1592 requires the rescinding party to serve judicial or notarial notice of his intent to resolve the contract.[16]

In the case of Villaruel v. Tan King,[17] we ruled in this wise,

> ...since the subject-matter of the sale in question is real property, it does not come strictly within the provisions of article 1124 (now Article 1191) of the Civil Code, but is rather subjected to the stipulations agreed upon by the contracting parties and to the provisions of article 1504 (now Article 1592) of the Civil Code."[18]

Citing Manresa, the Court said that the requirement of then Article 1504, "refers to a demand that the vendor makes upon the vendee for the latter to agree to the resolution of the obligation and to create no obstacles to this contractual mode of extinguishing obligations."[19]

Clearly, a judicial or notarial act is necessary before a valid rescission can take place, whether or not automatic rescission has been stipulated. It is to be noted that the law uses the phrase "even though"[20] emphasizing that when no stipulation is found on automatic rescission, the judicial or notarial requirement still applies.

On the first issue, both the trial and appellate courts affirmed the validity of the alleged mutual agreement to rescind based on Article 1191 of the Civil Code, particularly paragraphs 1 and 2 thereof.

> Article 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 payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible. [Emphasis ours.]
>
> 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.

But in our view, even if Article 1191 were applicable, petitioner would still not be entitled to automatic rescission. In Escueta v. Pando,[21] we ruled that under Article 1124 (now Article 1191) of the Civil Code, the right to resolve reciprocal obligations, is deemed implied in case one of the obligors shall fail to comply with what is incumbent upon him. But that right must be invoked judicially. The same article also provides: "The Court shall decree the resolution demanded, unless there should be grounds which justify the allowance of a term for the performance of the obligation."

This requirement has been retained in the third paragraph of Article 1191, which states that "the court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period."

Consequently, even if the right to rescind is made available to the injured party,[22] the obligation is not ipso facto erased by the failure of the other party to comply with what is incumbent upon him. The party entitled to rescind should apply to the court for a decree of rescission.[23] The right cannot be exercised solely on a party's own judgment that the other committed a breach of the obligation.[24] The operative act which produces the resolution of the contract is the decree of the court and not the mere act of the vendor.[25] Since a judicial or notarial act is required by law for a valid rescission to take place, the letter written by respondent declaring his intention to rescind did not operate to validly rescind the contract.

Notwithstanding the above, however, in our view when private respondent filed an action for Judicial Confirmation of Rescission and Damages[26] before the RTC, he complied with the requirement of the law for judicial decree of rescission. The complaint[27] categorically stated that the purpose was 1) to compel appellants

to formalize in a public document, their mutual agreement of revocation and rescission; and/or 2) to have a judicial confirmation of the said revocation/rescission under terms and conditions fair, proper and just for both parties.[28] In Luzon Brokerage Co., Inc. v. Maritime Building Co., Inc.,[29] we held that even a crossclaim found in the Answer could constitute a judicial demand for rescission that satisfies the requirement of the law.[30]

Petitioner contends that even if the filing of the case were considered the judicial act required, the action should be deemed prescribed based on the provisions of Article 1389 of the Civil Code.[31]

This provision of law applies to rescissible contracts,[32] as enumerated and defined in Articles 1380[33] and 1381.[34] We must stress however, that the "rescission" in Article 1381 is not akin to the term "rescission" in Article 1191 and Article 1592.[35] In Articles 1191 and 1592, the rescission is a principal action which seeks the resolution or cancellation of the contract while in Article 1381, the action is a subsidiary one limited to cases of rescission for lesion as enumerated in said article.[36]

The prescriptive period applicable to rescission under Articles 1191 and 1592, is found in Article 1144,[37] which provides that the action upon a written contract should be brought within ten years from the time the right of action accrues. The suit was brought on July 1, 1991, or six years after the default. It was filed within the period for rescission. Thus, the contract of sale between the parties as far as the prescriptive period applies, can still be validly rescinded.

On the issue of moral and exemplary damages, petitioner claims that the Court of Appeals erred in finding bad faith on his part when he resisted the rescission[38] and claimed he was ready to pay but never actually paid respondent, notwithstanding that he knew that appellee's principal motivation for selling the lot was to raise money to pay his SSS loan.[39] Petitioner would have us reverse the said CA findings based on the exception[40] that these findings were made on a misapprehension of facts.

The records do not support petitioner's claims. First, per the records, petitioner knew respondent's reason for selling his property. As testified to by petitioner[41] and in the deposition[42] of respondent, such fact was made known to petitioner during their negotiations as well as in the letters sent to petitioner by Palao.[43] Second, petitioner adamantly refused to formally execute an instrument showing their mutual agreement to rescind the contract of sale, notwithstanding that it was petitioner who plainly breached the terms of their contract when he did not pay the stipulated price on time, leaving private respondent desperate to find other sources of funds to pay off his loan. Lastly, petitioner did not substantiate by clear and convincing proof, his allegation that he was ready and willing to pay respondent. We are more inclined to believe his claim of readiness to pay was an afterthought intended to evade the consequence of his breach. There is no record to show the existence of such amount, which could have been reflected, at the very least, in a bank account in his name, if indeed one existed; or, alternatively, the proper deposit made in court which could serve as a formal tender of payment.[44] Thus, we find the award of moral and exemplary damages proper.

WHEREFORE, the petition is DENIED. The assailed decision dated April 30, 1997 of the Court of Appeals in CA G.R. CV No. 39949, affirming the Regional Trial Court decision and deleting the award of attorney's fees, is hereby AFFIRMED. Costs against the petitioner.

SO ORDERED.

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

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[1] Rollo, pp. 31-39.

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[2] Records, pp. 13-14.

[3] Id. at 13.

[4] Id. at 15.

[5] Id. at 16.

[6] Ibid.

[7] Id. at 19-20.

[8] Id. at 21.

[9] Id. at 22.

[10] Id. at 1-12.

[11] Id. at 53-64.

[12] Id. at 180-184.

[13] Id. at 184.

[14] Rollo, p. 18.

[15] Supra, note 4.

[16] Villaruel v. Tan King, 43 Phil. 251, 256 (1922).

[17] 43 Phil. 251 (1922); See also Dignos v. Court of Appeals, 158 SCRA 375 (1988).

[18] Id. at 255; See also Bucoy v. Paulino, 23 SCRA 248 (1968).

[19] Id. at 257.

[20] E. Paras. CIVIL CODE OF THE PHILIPPINES ANNOTATED 230 (14[th] ed. 2000)

[21] 76 Phil 256, 260 (1946).

[22] Mateos v. Lopez, 6 Phil. 206, 210 (1906); Bosque v. Yu Chipco, 14 Phil. 95, 98 (1910).

[23] Rubio de Larena v. Villanueva, 53 Phil 923, 929 (1928).

[24] Tanv. CA, 175 SCRA 656, 662 (1989); Philippine Amusement Enterprises, Inc. v. Natividad, 21 SCRA 284, 289 (1967).

[25] Ocejo, Perez & Co. v.International Bank, 37 Phil 631, 642 (1918).

[26] Supra, note 10.

[27] Records, pp. 1-12.

[28] Id. at 10.

[29] 43 SCRA 93 (1972).

[30] Id. at 104 (1972).

[31] Art. 1389. The action to claim rescission must be commenced within four years.

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For persons under guardianship and for absentees, the period of four years shall not begin until the termination of the former's incapacity, or until the domicile of the latter is known.

[32] Chapter 6, Title II, Book IV of the Civil Code.

[33] Article 1380. Contracts validly agreed upon may be rescinded in the cases established by law.

[34] Article 1381. The following contracts are rescissible:

(1) Those which are entered into by guardians whenever the wards whom they represent suffer lesion by more than one-fourth of the value of the things which are the object thereof;

(2) Those agreed upon in representation of absentees, if the latter suffer the lesion stated in the preceding number;

(3) Those undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them;

(4) Those which refer to things under litigation if they have been entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority;

(5) All other contracts specially declared by law to be subject to rescission.

[35] Ong v. CA, 310 SCRA 1, 9 (1999).

[36] Ibid.

[37] Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:

(1) upon a written contract;

x x x

[38] Supra, note 1 at 38.

[39] Ibid.

[40] Fuentes v. CA, 268 SCRA 703, 708 (1997); Solid Homes, Inc v. CA, 275 SCRA 267, 279 (1997).

[41] TSN, June 17, 1992, p. 81.

[42] Records pp. 107-122.

[43] Id. at 109-110, 15.

[44] See Art. 1256-1261, Civil Code, on Tender of Payment and Consignation.

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