

RICARDO CHENG, PETITIONER, VS. RAMON B. GENATO AND ERNESTO R. DA JOSE & SOCORRO B. DA JOSE, RESPONDENTS.

G.R. No. 129760. December 29, 1998

Ponente: MARTINEZ, J.

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MARTINEZ, J.:

This petition for review on certiorari seeks to annul and set aside the Decision of the Court of Appeals (CA)[1] dated July 7, 1997 in CA-G.R. No. CV No. 44706 entitled "Ricardo Cheng, plaintiff-appellee vs. Ramon B. Genato, defendant-appellant, Ernesto R. Da Jose & Socorro B. Da Jose, Intervenor-Appellants" which reversed the ruling of the Regional Trial Court, Branch 96 of Quezon City dated January 18, 1994. The dispositive portion of the CA Decision reads:

"WHEREFORE, based on the foregoing, appealed decision is hereby REVERSED and SET ASIDE and judgment is rendered ordering;

1. The dismissal of the complaint;
2. The cancellation of the annotations of the defendant-appellant's Affidavit to Annul Contract to Sell and plaintiff-appellee's Notice of Adverse Claim in the subject TCT's, namely, TCT No. T-76.196 (M) and TCT No. T-76.197 (M);
3. Payment by the intervenors-appellants of the remaining balance of the purchase price pursuant to their agreement with the defendant-appellant to suspend encashment of the three post-dated checks issued since 1989.
4. Ordering the execution by the defendant-appellant Genato of the Deed of Absolute Sale over the subject two lots covered by TCT No. T-76.196 (M) and TCT No. T-76.197 (M) in favor of intervenors-appellants Spouses Da Jose;
5. The return by defendant-appellant Genato of P50,000.00 paid to him by the plaintiff-appellee Cheng, and
6. Payment by plaintiff-appellee Cheng of moral damages to herein intervenors-appellants Da Jose of P100,000.00, exemplary damages of P50,000.00, attorney's fees of P50,000.00, and costs of suit; and to defendant-appellant, of P100,000.00 in exemplary damages, P50,000.00 in attorney's fees. The amounts payable to the defendant-appellant may be compensated by plaintiff-appellee with the amount ordered under the immediately foregoing paragraph which defendant-appellant has to pay the plaintiff-appellee.

SO ORDERED."[2]

The antecedents of the case are as follows:

Respondent Ramon B. Genato(Genato) is the owner of two parcels of land located at Paradise Farms, San Jose Del Monte, Bulacan covered by TCT No. T-76.196 (M)[3] and TCT No. T-76.197 (M)[4] with an aggregate area of 35,821 square meters, more or less.

On September 6, 1989, respondent Genato entered into an agreement with respondent-spouses Ernesto R. Da Jose and Socorro B. Da Jose (Da Jose spouses) over the above-mentioned two parcels of land. The agreement culminated in the execution of a contract to sell for which the purchase price was P80.00 per square meter. The contract was in a public instrument and was duly annotated at the back of the two certificates of title on the same day. Clauses 1 and 3 thereof provide:

"1. That the purchase price shall be EIGHTY (P80.00) PESOS, Philippine Currency per square meter, of which the amount of FIFTY THOUSAND (P50,000.00) Pesos shall be paid by the VENDEE to the VENDOR as partial down payment at the time of execution of this Contract to Sell.

xxx xxx xxx

"3. That the VENDEE, thirty (30) DAYS after the execution of this contract, and only after having satisfactorily verified and confirmed the truth and authenticity of documents, and that no restrictions, limitations, and developments imposed on and/or affecting the property subject of this contract shall be detrimental to his interest, the VENDEE shall pay to the VENDOR, NINE HUNDRED FIFTY THOUSAND (P950,000.00) PESOS, Philippine Currency, representing the full payment of the agreed Down Payment, after which complete possession of the property shall be given to the VENDEE to enable him to prepare the premises and any development therein."[5]

On October 4, 1989, the Da Jose spouses, not having finished verifying the titles mentioned in clause 3 as aforequoted, asked for and was granted by respondent Genato an extension of another 30 days - or until November 5, 1989. However, according to Genato, the extension was granted on condition that a new set of documents is made seven (7) days from October 4, 1989.[6] This was denied by the Da Jose spouses.

Pending the effectivity of the aforesaid extension period, and without due notice to the Da Jose spouses, Genato executed an Affidavit to Annul the Contract to Sell,[7] on October 13, 1989. Moreover, no annotation of the said affidavit at the back of his titles was made right away. The affidavit contained, inter alia, the following paragraphs;

"xxx xxx xxx

"That it was agreed between the parties that the agreed downpayment of P950,000.00 shall be paid thirty (30) days after the execution of the Contract, that is on or before October 6, 1989;

"The supposed VENDEES failed to pay the said full downpayment even up to this writing, a breach of contract.

"That this affidavit is being executed to Annul the aforesaid Contract to Sell for the vendee having committed a breach of contract for not having complied with the obligation as provided in the Contract to Sell;"[8]

On October 24, 1989, herein petitioner Ricardo Cheng (Cheng) went to Genato's residence and expressed interest in buying the subject properties. On that occasion, Genato showed to Ricardo Cheng copies of his transfer certificates of title and the annotations at the back thereof of his contract to sell with the Da Jose spouses. Genato also showed him the aforementioned Affidavit to Annul the Contract to Sell which has not been annotated at the back of the titles.

Despite these, Cheng went ahead and issued a check for P50,000.00 upon the assurance by Genato that the previous contract with the Da Jose spouses will be annulled for which Genato issued a handwritten receipt (Exh. "D"), written in this wise.

"10/24/89

Received from Ricardo Cheng
the Sum of Fifty Thousand Only (P50,000 -)
as partial for T-76196 (M)
T-76197 (M) area 35,821 Sq.m.
Paradise Farm, Gaya-Gaya, San Jose Del Monte
P70/m2 Bulacan
Plus C.G.T. etc

(SGD) Ramon B. Genato

Check # 470393
10/24/89"[9]

On October 25, 1989, Genato deposited Cheng's check. On the same day, Cheng called up Genato reminding him to register the affidavit to annul the contract to sell.[10]

The following day, or on October 26, 1989, acting on Cheng's request, Genato caused the registration of the Affidavit to Annul the Contract to Sell in the Registry of Deeds, Meycauayan, Bulacan as primary entry No. 262702.[11]

While the Da Jose spouses were at the Office of the Registry of Deeds of Meycauaya, Bulacan on October 27, 1989, they met Genato by coincidence. It was only then that the Da Jose spouses discovered about the affidavit to annul their contract. The latter were shocked at the disclosure and protested against the rescission of their contract. After being reminded that he (Genato) had given them (Da Jose spouses) an additional 30-day period to finish their verification of his titles, that the period was still in effect, and that they were willing and able to pay the balance of the agreed down payment, later on in the day, Genato decided to continue the Contract he had with them. The agreement to continue with their contract was formalized in a conforme letter dated October 27, 1989.

Thereafter, Ramon Genato advised Ricardo Cheng of his decision to continue his contract with the Da Jose spouses and the return of Cheng's P50,000.00 check. Consequently, on October 30, 1989, Cheng's lawyer sent a letter[12] to Genato demanding compliance with their agreement to sell the property to him stating that the contract to sell between him and Genato was already perfected and threatening legal action.

On November 2, 1989, Genato sent a letter[13] to Cheng (Exh. "6") enclosing a BPI Cashier's Check for P50,000.00 and expressed regret for his inability to "consummate his transaction" with him. After having received the letter of Genato on November 4, 1989, Cheng, however, returned the said check to the former via RCPI telegram[14] dated November 6, 1989, reiterating that "our contract to sell your property had already been perfected."

Meanwhile, also on November 2, 1989, Cheng executed an affidavit of adverse claim[15] and had it annotated on the subject TCT's.

On the same day, consistent with the decision of Genato and the Da Jose spouses to continue with their Contract to Sell of September 6, 1989, the Da Jose spouses paid Genato the complete down payment of P950,000.00 and delivered to him three (3) postdated checks (all dated May 6, 1990, the stipulated due date) in the total amount of P1,865,680.00 to cover full payment of the balance of the agreed purchase price. However, due to the filing of the pendency of this case, the three (3) postdated checks have not been encashed.

On December 8, 1989, Cheng instituted a complaint[16] for specific performance to compel Genato to execute a deed of sale to him of the subject properties plus damages and prayer for preliminary attachment. In his complaint, Cheng averred that the P50,000.00 check he gave was a partial payment to the total agreed purchase

price of the subject properties and considered as an earnest money for which Genato acceded. Thus, their contract was already perfected.

In Answer[17] thereto, Genato alleged that the agreement was only a simple receipt of an option-bid deposit, and never stated that it was a partial payment, nor is it an earnest money and that it was subject to the condition that the prior contract with the Da Jose spouses be first cancelled.

The Da Jose spouses, in their Answer in Intervention,[18] asserted that they have a superior right to the property as first buyers. They alleged that the unilateral cancellation of the Contract to Sell was without effect and void. They also cited Cheng's bad faith as a buyer being duly informed by Genato of the existing annotated Contract to Sell on the titles.

After trial on the merits, the lower court ruled that the receipt issued by Genato to Cheng unerringly meant a sale and not just a priority or an option to buy. It cannot be true that the transaction was subjected to some condition or reservation, like the priority in favor of the Da Jose spouses as first buyer because, if it were otherwise, the receipt would have provided such material condition or reservation, especially as it was Genato himself who had made the receipt in his own hand. It also opined that there was a valid rescission of the Contract to Sell by virtue of the Affidavit to Annul the Contract to Sell. Time was of the essence in the execution of the agreement between Genato and Cheng, under this circumstance demand, extrajudicial or judicial, is not necessary. It falls under the exception to the rule provided in Article 1169[19] of the Civil Code. The right of Genato to unilaterally rescind the contract is said to be under Article 1191[20] of the Civil Code. Additionally, after reference was made to the substance of the agreement between Genato and the Da Jose spouses, the lower court also concluded that Cheng should be preferred over the intervenors-Da Jose spouses in the purchase of the subject properties. Thus, on January 18, 1994 the trial court rendered its decision the decretal portion of which reads:

WHEREFORE, judgment is hereby rendered:

1. Declaring the contract to sell dated September 6, 1989 executed between defendant Ramon Genato, as vendor, and intervenors Spouses Ernesto and Socorro Da Jose, as vendees, resolved and rescinded in accordance with Art. 1191, Civil Code, by virtue of defendant's affidavit to annul contract to sell dated October 13, 1989 and as the consequence of intervenors' failure to execute within seven (7) days from October 4, 1989 another contract to sell pursuant to their mutual agreement with the defendant;
2. Ordering defendant to return to the intervenors the sum of P1,000,000.00, plus interest at the legal rate from November 2, 1989 until full payment;
3. Directing defendant to return to the intervenors the three (3) postdated checks immediately upon finality of this judgment;
4. Commanding defendant to execute with and in favor of the plaintiff Ricardo Cheng, as vendee, a deed of conveyance and sale of the real properties described and covered in Transfer Certificates of Title No. T-76-196 (M) and T-76.197 (M) of the Registry of Deeds of Bulacan, Meycauyan Branch, at the rate of P70.00/square meter, less the amount of P50,000.00 already paid to defendant, which is considered as part of the purchase price, with the plaintiff being liable for payment of the capital gains taxes and other expenses of the transfer pursuant to the agreement to sell dated October 24, 1989; and
5. Ordering defendant to pay the plaintiff and the intervenors as follows:
 - a/ P50,000.00, as nominal damages, to plaintiff;
 - b/ P50,000.00, as nominal damages, to intervenors;
 - c/ P20,000.00, as and for attorney's fees, to plaintiff;
 - d/ P20,000.00, as and for attorney's fees, to intervenors; and

e/ Cost of the suit.

xxx xxx xxx"

Not satisfied with the aforesaid decision, herein respondents Ramon Genato and Da Jose spouses appealed to the court a quo which reversed such judgment and ruled that the prior contract to sell in favor of the Da Jose spouses was not validly rescinded, that the subsequent contract to sell between Genato and Cheng, embodied in the handwritten receipt, was without force and effect due to the failure to rescind the prior contract; and that Cheng should pay damages to the respondents herein being found to be in bad faith.

Hence this petition.[21]

This petition for review, assails the Court of Appeals' Decision on the following grounds: (1) that the Da Jose spouses' Contract to Sell has been validly rescinded or resolved; (2) that Ricardo Cheng's own contract with Genato was not just a contract to sell but one of conditional contract of sale which gave him better rights, thus precluding the application of the rule on double sales under Article 1544, Civil Code; and (3) that, in any case, it was error to hold him liable for damages.

The petition must be denied for failure to show that the Court of Appeals committed a reversible error which would warrant a contrary ruling.

No reversible error can be ascribed to the ruling of the Court of Appeals that there was no valid and effective rescission of resolution of the Da Jose spouses' Contract to Sell, contrary to petitioner's contentions and the trial court's erroneous ruling.

In a Contract to Sell, the payment of the purchase price is a positive suspensive condition, the failure of which is not a breach, casual or serious, but a situation that prevents the obligation of the vendor to convey title from acquiring an obligatory force.[22] It is one where the happening of the event gives rise to an obligation. Thus, for its non-fulfillment there will be no contract to speak of, the obligor having failed to perform the suspensive condition which enforces a juridical relation. In fact with this circumstance, there can be no rescission of an obligation that is still non-existent, the suspensive condition not having occurred as yet.[23] Emphasis should be made that the breach contemplated in Article 1191 of the New Civil Code is the obligor's failure to comply with an obligation already extant, not a failure of a condition to render binding that obligation.[24]

Obviously, the foregoing jurisprudence cannot be made to apply to the situation in the instant case because no default can be ascribed to the Da Jose spouses since the 30-day extension period has not yet expired. The Da Jose spouses' contention that no further condition was agreed when they were granted the 30-days extension period from October 7, 1989 in connection with clause 3 of their contract to sell dated September 6, 1989 should be upheld for the following reason, to wit; firstly, If this were not true, Genato could not have been persuaded to continue his contract with them and later on agree to accept the full settlement of the purchase price knowing fully well that he himself imposed such sine qua non condition in order for the extension to be valid; secondly, Genato could have immediately annotated his affidavit to annul the contract to sell on his title when it was executed on October 13, 1989 and not only on October 26, 1989 after Cheng reminded him of the annotation; thirdly, Genato could have sent at least a notice of such fact, there being no stipulation authorizing him for automatic rescission, so as to finally clear the encumbrance of his titles and make it available to other would be buyers. It likewise settles the holding of the trial court that Genato "needed money urgently."

Even assuming in gratia argumenti that the Da Jose spouses defaulted, as claimed by Genato, in their Contract to Sell, the execution by Genato of the affidavit to annul the contract is not even called for. For with or without the aforesaid affidavit their non-payment to complete the full downpayment of the purchase price ipso facto avoids

their contract to sell, it being subjected to a suspensive condition. When a contract is subject to a suspensive condition, its birth or effectivity can take place only if and when the event which constitutes the condition happens or is fulfilled.[25] If the suspensive condition does not take place, the parties would stand as if the conditional obligation had never existed.[26]

Nevertheless, this being so Genato is not relieved from the giving of a notice, verbal or written, to the Da Jose spouses for decision to rescind their contract. In many cases,[27] even though we upheld the validity of a stipulation in a contract to sell authorizing automatic rescission for a violation of its terms and conditions, at least a written notice must be sent to the defaulter informing him of the same. The act of a party in treating a contract as cancelled should be made known to the other.[28] For such act is always provisional. It is always subject to scrutiny and review by the courts in case the alleged defaulter brings the matter to the proper courts. In *University of the Philippines vs. De Los Angeles*,[29] this Court stressed and we quote:

In other words, the party who deems the contract violated may consider it resolved or rescinded, and act accordingly, without previous court action, but it proceeds at its own risk. For it is only the final judgment of the corresponding court that will conclusively and finally settle whether the action taken was or was not correct in law. But the law definitely does not require that the contracting party who believes itself injured must first file suit and wait for a judgment before taking extrajudicial steps to protect its interest. Otherwise, the party injured by the other's breach will have to passively sit and watch its damages accumulate during the pendency of the suit until the final judgment of rescission is rendered when the law itself requires that he should exercise due diligence to minimize its own damages (Civil Code, Article 2203).

This rule validates, both in equity and justice, contracts such as the one at bat, in order to avoid and prevent the defaulting party from assuming the offer as still in effect due to the obligee's tolerance for such non-fulfillment. Resultantly, litigations of this sort shall be prevented and the relations among would-be parties may be preserved. Thus, Ricardo Cheng's contention that the Contract to Sell between Genato and the Da Jose spouses was rescinded or resolved due to Genato's unilateral rescission finds no support in this case.

Anent the issue on the nature of the agreement between Cheng and Genato, the records of this case are replete with admissions[30] that Cheng believed it to be one of a Contract to Sell and not one of Conditional Contract of Sale which he, in a transparent turn-around, now pleads in this Petition. This ambivalent stance of Cheng is even noted by the appellate court, thus:

"At the outset, this Court notes that plaintiff-appellee was inconsistent in characterizing the contract he allegedly entered into. In his complaint,[31] Cheng alleged that the P50,000.00 down payment was earnest money. And next, his testimony[32] was offered to prove that the transaction between him and Genato on October 24, 1989 was actually a perfected contract to sell."[33]

Settled is the rule that an issue which was not raised during the trial in the court below cannot be raised for the first time on appeal.[34] Issues of fact and arguments not adequately brought to the attention of the trial court need not be and ordinarily will not be considered by a reviewing court as they cannot be raised for the first time on appeal.[35] In fact, both courts below correctly held that the receipt which was the result of their agreement, is a contract to sell. This was, in fact Cheng's contention in his pleadings before said courts. This patent twist only operates against Cheng's posture which is indicative of the weakness of his claim.

But even if we are to assume that the receipt, Exh. "D," is to be treated as a conditional contract of sale, it did not acquire any obligatory force since it was subject to suspensive condition that the earlier contract to sell between Genato and the Da Jose spouses should first be cancelled or rescinded - a condition never met, as Genato, to his credit, upon realizing his error, redeemed himself by respecting and maintaining his earlier contract with the Da Jose spouses. In fact a careful reading of the receipt, Exh. "D," alone would not even show that a conditional

contract of sale has been entered by Genato and Cheng. When the requisites of a valid contract of sale are lacking in said receipt, therefore the "sale" is neither valid or enforceable.[36]

To support his now new theory that the transaction was a conditional contract of sale, petitioner invokes the case of Coronel vs. Court of Appeals[37] as the law that should govern their Petition. We do not agree. Apparently, the factual milieu in Coronel is not on all fours with those in the case at bar.

In Coronel, this Court found that the petitioners therein clearly intended to transfer title to the buyer which petitioner themselves admitted in their pleading. The agreement of the parties therein was definitively outline in the "Receipt of Down Payment" both as to property, the purchase price, the delivery of the seller of the property and the manner of the transfer of title subject to the specific condition that upon the transfer in their names of the subject property the Coronels will execute the deed of absolute sale.

Whereas, in the instant case, even by a careful perusal of the receipt, Exh. "D," alone such kind of circumstances cannot be ascertained without however resorting to the exceptions of the Rule on Parol Evidence.

To our mind, the trial court and the appellate court correctly held that the agreement between Genato and Cheng is a contract to sell, which was, in fact, petitioner's connection in his pleadings before the said courts. Consequently, both to mind, which read:

"Article 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

Should there be no inscription, the ownership shall pertain to the person who in good faith was first in possession; and in the absence thereof, to the person who presents the oldest title, provided there is good faith"

However, a meticulous reading of the aforequoted provision shows that said law is not apropos to the instant case. This provision connotes that the following circumstances must concur:

- "(a) The two (or more) sales transactions in the issue must pertain to exactly the same subject matter, and must be valid sales transactions.
- (b) The two (or more) buyers at odds over the rightful ownership of the subject matter must each represent conflicting interests; and
- (c) The two (or more) buyers at odds over the rightful ownership of the subject matter must each have bought from the very same seller."

These situations obviously are lacking in a contract to sell for neither a transfer of ownership nor a sales transaction has been consummated. The contract to be binding upon the obligee or the vendor depends upon the fulfillment or non-fulfillment of an event.

Notwithstanding this contrary finding with the appellate court, we are of the view that the governing principle of Article 1544, Civil Code, should apply in this situation. Jurisprudence[38] teaches us that the governing principle is PRIMUS TEMPORE, PORTIOR JURE (first in time, stronger in right). For not only was the contract between herein respondents first in time; it was also registered long before petitioner's intrusion as a second buyer. This principle only applies when the special rules provided in the aforcited article of Civil Code do not apply or fit the specific circumstances mandated under said law or by jurisprudence interpreting the article.

The rule exacted by Article 1544 of the Civil Code for the second buyer to be able to displace the first buyer are:

- (1) that the second buyer must show that he acted in good faith (i.e. in ignorance of the first sale and of the first

buyer's rights) from the time of acquisition until title is transferred to him by registration or failing registration, by delivery of possession;[39]

(2) the second buyer must show continuing good faith and innocence or lack of knowledge of the first sale until his contract ripens into full ownership through prior registration as provided by law.[40]

Thus, in the case at bar, the knowledge gained by the Da Jose spouses, as first buyers, of the new agreement between Cheng and Genato will not defeat their rights as first buyers except where Cheng, as second buyer, registers or annotates his transaction or agreement on the title of the subject properties in good faith ahead of the Da Jose spouses. Moreover, although the Da Jose spouses, as first buyers, knew of the second transaction it will not bar them from availing of their rights granted by law, among them, to register first their agreement as against the second buyer.

In contrast, knowledge gained by Cheng of the first transaction between the Da Jose spouses and Genato defeats his rights even if he is first to register the second transaction, since such knowledge taints his prior registration with bad faith.

"Registration", as defined by Soler and Castillo, means any entry made in the books of the registry, including both registration in its ordinary and strict sense and cancellation, annotation, and even marginal notes.[41] In its strict acceptance, it is the entry made in the registry which records solemnly and permanently the right of ownership and other real rights.[42] We have ruled[43] before that when a Deed of Sale is inscribed in the registry of property on the original document itself, what was done with respect to said entries or annotations and marginal notes amounted to a registration of the sale. In this light, we see no reason why we should not give priority in right the annotation made by the Da Jose spouses with respect to their Contract to Sell dated September 6, 1989.

Moreover, registration alone in such cases without good faith is not sufficient. Good faith must concur with registration for such prior right to be enforceable. In the instant case, the annotation made by the Da Jose spouses on the titles of Genato of their "Contract to Sell" more than satisfies this requirement. Whereas in the case of Genato's agreement with Cheng such is unavailing. For even before the receipt, Exh. "D," was issued to Cheng information of such pre-existing agreement has been brought to his knowledge which did not deter him from pursuing his agreement with Genato. We give credence to the factual finding of the appellate court that "Cheng himself admitted that it was he who sought Genato in order to inquire about the property and offered to buy the same." [44] And since Cheng was fully aware, or could have been if he had chosen to inquire, of the rights of the Da Jose spouses under the Contract to Sell duly annotated on the transfer certificates of titles of Genato, it now becomes unnecessary to further elaborate in detail the fact that he is indeed in bad faith in entering into such agreement. As we have held in *Leung Yee vs. F.L. Strong Machinery Co.*: [45]

"One who purchases real estate with knowledge of a defect x x x of title in his vendor cannot claim that he has acquired title thereto in good faith as against x x x x an interest therein; and the same rule must be applied to one who has knowledge of facts which should have put him upon such inquiry and investigation as might be necessary to acquaint him with the defects in the title of his vendor. A purchaser cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor. His mere refusal to believe that such defect exists, or his willful closing of his eyes to the possibility of the existence of a defect in his vendor's title, will not make him an innocent purchaser for value, if it afterwards develops that the title was in fact defective, and it appears that he had such notice of the defect as would have led to its discovery had he acted with that measure of precaution which may reasonably be required of a prudent man in a like situation. Good faith, or lack of it, is in its last analysis a question of intention; but in ascertaining the intention by which one is actuated on a given occasion, we are necessarily controlled by the evidence as to the conduct and outward acts by which alone the inward motive may, with safety, be determined. So it is that 'the honesty of intention,' 'the honest lawful

intent,' which constitutes good faith implies a 'freedom from knowledge and circumstances which ought to put a person on inquiry,' and so it is that proof of such knowledge overcomes the presumption of good faith in which the courts always indulge in the absence of the proof to the contrary. 'Good faith, or the want of it, is not a visible, tangible fact that can be seen or touched, but rather a state or condition of mind which can only be judge of by actual or fancied tokens or signs.' (Wilder vs. Gilman, 55 Vt. 504, 505; Cf. Cardenas vs. Miller, 108 Cal., 250; Breaux-Renoudet, Cypress Lumber Co. vs. Shadel, 52 La. Ann., 2094-2098; Pinkerton Bros. Co. vs. Bromely, 119 Mich., 8, 10, 17.) Emphasis ours

Damages were awarded by the appellate court on the basis of its finding that petitioner "was in bad faith when he filed the suit for specific performance knowing fully well that his agreement with Genato did not push through." [46] Such bad faith, coupled with his wrongful interference with the contractual relations between Genato and the Da Jose spouses, which culminated in his filing of the present suit and thereby creating what the counsel for the respondents describes as "a prolonged and economically unhealthy gridlock" [47] on both the land itself and the respondents' rights provides ample basis for the damages awarded. Based on these overwhelming evidence of bad faith on the part of herein petitioner Ricardo Cheng, we find that the award of damages made by the appellate court is in order.

WHEREFORE, premises considered, the instant petition for review is DENIED and the assailed decision is hereby AFFIRMED EN TOTO.

SO ORDERED.

Bellosillo (Chairman), Puno, and Mendoza, JJ., concur.

[1] Thirteenth Division.

[2] Penned by Justice Demetrio G. Demetria and concurred by Justices Jinal Rasul and Godardo A. Jacinto.

[3] Annex "A," Petition; Rollo, pp. 105-106.

[4] Annex "B," Petition; Rollo, pp. 107-108.

[5] Annex "1," Petition; Rollo, pp. 142-143.

[6] TSN, June 26, 1992, p. 16; Rollo, p. 77.

[7] Annex "D," Petition; Rollo, p. 110.

[8] Ibid.

[9] Annex "C," Petition; Rollo, p. 109.

[10] Annex "I," Petition p. 7; Rollo, p. 145

[11] Annex "B," Petition; Rollo, pp. 106 & 108.

[12] Annex "E," Petition; Rollo, p. 111

[13] Rollo, p. 115.

[14] Rollo, p. 120.

[15] Rollo, pp. 106 & 108.

[16] Rollo, pp. 99-104.

[17] Rollo, pp. 112-114.

[18] Rollo, pp. 124-132.

[19] Article 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

(1) xxx; or

(2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or

(3) xxx."

[20] 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 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. (1124)"

[21] Filed on September 4, 1997.

[22] *Odyssey Park, Inc. vs. CA*, 280 SCRA 253.

[23] *Rillo vs. CA*, 274 SCRA 461.

[24] *Odyssey Park, Inc. vs. CA*, *supra*.

[25] *Javier vs. CA*, 183 SCRA 171 citing Article 1181, Civil Code and *Araneta vs. Rural Progress Administration*, 92 Phil. 98.

[26] *Javier vs. CA*, *supra*, also citing *Gaite vs. Fonacier, et al.*, 2 SCRA 830.

[27] *Palay, Inc. vs. Clave*, 124 SCRA 638 citing *Torralba vs. De los Angeles*, 96 SCRA 69; *Luzon Brokerage Co., Inc. vs. Maritime Building Co.*, 43 SCRA 93 and 86 SCRA 305; *Lopez vs. Commissioner of Customs*, 37 SCRA 327; *U.P. vs. De los Angeles*, 35 SCRA 102; *Ponce Enrile vs. CA*, 29 SCRA 504; *Froilan vs. Pan Oriental Shipping Co.*, 12 SCRA 276; *Taylor vs. Uy Tieng Piao*, 43 Phil. 873.

[28] *Palay, Inc. vs. Clave*, *supra*.

[29] 35 SCRA 102.

[30] Rollo, p. 111; Annex "D" at pp. 1 & 2, Petition, Rollo, pp. 116 & 117; RCPI Telegram dated November 06, 1989, Rollo, p. 120; CA Brief for Plaintiff-Appellee at p. 6, Rollo, p. 257.

[31] Annex "A" at par. 5, p. 15, Petition; Rollo, p. 87.

[32] Ibid.

[33] CA Decision at par. 5, p. 15, Annex "A," Petition; Rollo, p. 87.

[34] Pangilinan vs. CA, 279 SCRA 590 citing Reparations Commission vs. Visayan Packing Corporation, 193 SCRA 531.

[35] Pangilinan vs. CA, supra, citing Berin vs. CA, 194 SCRA 508.

[36] Jovan Land, Inc. vs. CA, 268 SCRA 160.

[37] 263 SCRA 15.

[38] Uraca vs. CA, 278 SCRA 702; Cruz vs. Cabana, 129 SCRA 656; Carbonell vs. CA, 69 SCRA 99, concurring Separate Opinion of then Associate Justice Claudio Teehankee, later to be the Chief Justice.

[39] See Uraca vs. CA, supra.

[40] Ibid.

[41] Tolentino, Arturo M., "Commentaries and Jurisprudence on the Civil Code, Vol. V," 1992, pp. 97-98.

[42] Ibid.

[43] Veguillas vs. Jaucian, 25 Phil. 315.

[44] Annex "A," Petition; Rollo, par. 2, p. 95.

[45] 37 Phil. 644.

[46] Annex "A," Petition; Rollo, p. 95.

[47] Comment of Da Jose spouses, p. 3; Rollo, p. 315.

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