

SPS. REYNALDO K. LITONJUA AND ERLINDA P. LITONJUA AND PHIL. WHITE HOUSE AUTO SUPPLY, INC., PETITIONERS, VS. L & R CORPORATION, VICENTE M. COLOYAN IN HIS CAPACITY AS ACTING REGIS...

G.R. No. 130722. March 27, 2000

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

For resolution is petitioners' Motion for Partial Reconsideration of our December 9, 1999 Decision on the following grounds:

"I THE PROVISION OF PARAGRAPH NO. 9 OF THE SUBJECT MORTGAGE CONTRACT IS NULL AND VOID AB INITIO.

II THE RESCISSION OF THE DEED OF SALE DATED 6 AUGUST 1974 BETWEEN THE SPS. LITONJUA AND PHILIPPINE WHITEHOUSE AUTO SUPPLY, INC. HAS NEVER BEEN INVOKED AS A DEFENSE BY RESPONDENT L & R CORPORATION; THUS, DEEMED WAIVED.

III THE DECISION RESCINDING THE DEED OF SALE EXECUTED BY AND BETWEEN THE PETITIONERS IN EFFECT DEPRIVED THEM OF THEIR BASIC RIGHT TO DUE PROCESS."

Movants first theorize that paragraphs 8 (limiting the right of the mortgagor to sell the property, which we held as void) and 9 (on the right of first refusal of respondent Corporation) should be "regarded as a tandem designed to subvert the sound public policy prohibiting pactum commissarium"; that both paragraphs "constitute a package". In particular, petitioners argue that "(P)aragraph 9 being intended to support paragraph 8, it is therefore coupled thereto and is thus similarly mired in its invalidity".

This is the first time, though, that petitioners have raised the issue of invalidity of paragraph 9. While respondent Corporation has consistently invoked the provisions thereof, petitioners have remained silent insofar as this provision is concerned, concentrating their pleadings on the invalidity of paragraph 8 alone. Not having been timely objected to below, petitioners cannot belatedly present their objections thereto at this stage.

At any rate, even if we were to entertain petitioners' objections, the same will still be held as without merit. To be sure, paragraphs 8 and 9 are separate provisions of the subject contract and the invalidity of one does not automatically render the other invalid. Indeed, Article 1420 of the New Civil Code holds that "(I)n case of a divisible contract, if the illegal terms can be separated from the legal ones, the latter may be enforced." Contrary to the suppositions of petitioners, the invalid stipulation is independent from the rest of the terms of the agreement and can easily be separated therefrom without doing violence to the manifest intention of the parties. This being so, the legal terms of the contract, including paragraph 9, can be enforced.[1]

Petitioners next argue that even if paragraph 9 is considered independently of paragraph 8, it is still unenforceable for being null and void ab initio. In support of their argument, petitioners point out that the provision in paragraph

9 is not a perfected contract for lack of consideration as mandated by Article 1479. Petitioners argue that our finding that the consideration for the pre-emptive right is incorporated in the amount of the loan is a presumption that enjoys no basis.

Again, petitioners' arguments must be brushed aside.

Petitioners' contention that absent a consideration therefor, the right of first refusal embodied in paragraph 9 is void ab initio is misplaced. Such contention loses sight of the difference between a right of first refusal and an option contract where a separate consideration is, indeed, required. This distinction was set out in the analogous case of *Equatorial Realty Development, Inc. vs. Mayfair Theater, Inc.*[2] where it was held that -

"Both contracts of lease in question provide the identically worded paragraph 8, which reads:

`That if the LESSOR should desire to sell the leased premises, the LESSEE shall be given 30-days exclusive option to purchase the same.

In the event, however, that the leased premises is sold to someone other than the LESSEE, the LESSOR is bound and obligated, as it hereby binds and obligates itself, to stipulate in the Deed of Sale thereof that the purchaser shall recognize this lease and be bound by all the terms and conditions thereof.'

We agree with the respondent Court of Appeals that the aforecited contractual stipulation provides for a right of first refusal in favor of Mayfair. It is not an option clause or an option contract. It is a contract of a right of first refusal.

As early as 1916, in the case of *Beaumont vs. Prieto*, unequivocal was our characterization of an option contract as one necessarily involving the choice granted to another for a distinct and separate consideration as to whether or not to purchase a determinate thing at a predetermined fixed price.

`It is unquestionable that, by means of the document Exhibit E, to wit, the letter of December 4, 1911, quoted at the beginning of this decision, the defendant Valdes granted to the plaintiff Borck the right to purchase the Nagtahan Hacienda belonging to Benito Legarda, during the period of three months and for its assessed valuation, a grant which necessarily implied the offer or obligation on the part of the defendant Valdes to sell to Borck the said hacienda during the period and for the price mentioned. x x x. There was, therefore, a meeting of minds on the part of the one and the other, with regard to the stipulations made in the said document. But it is not shown that there was any cause or consideration for that agreement, and this omission is a bar which precludes our holding that the stipulations contained in Exhibit E is a contract of option, for, x x x, there can be no contract without the requisite, among others, of the cause for the obligation to be established.

In his Law Dictionary, edition of 1897, Bouvier defines an option as a contract, in the following language:

`A contract by virtue of which A, in consideration of the payment of a certain sum to B, acquires the privilege of buying from, or selling to B, certain securities or properties within a limited time at a specified price. (*Story vs. Salamon*, 71 N.Y., 420).'

From vol. 6, page 5001, of the work `Words and Phrases,' citing the case of *Ide vs. Leiser* (24 Pac., 695; 10 Mont., 5; 24 Am. St. Rep., 17) the following quotation has been taken:

`An agreement in writing to give a person the option to purchase lands within a given time at a named price is neither a sale nor an agreement to sell. It is simply a contract by which the owner of property agrees with another person that he shall have the right to buy his property at a fixed price within a certain time. He does not sell his land; he does not then agree to sell it; but he does sell something; that is, the right or privilege to buy at the election or option of the other party. The second party gets in praesenti, not lands, not an agreement that he shall have lands, but he does get something of value; that is, the right to call for and receive lands if he elects. The owner parts with his right to sell his lands, except to the second party, for a limited period. The second

party receives the right, or, rather, from his point of view, he receives the right to elect to buy.'

But the two definitions abovesited refer to the contract of option, or, what amounts to the same thing, to the case where there was cause or consideration for the obligation, the subject of the agreement made by the parties; while in the case at bar there was no such cause or consideration.'

The rule so early established in this jurisdiction is that the deed of option or the option clause in a contract, in order to be valid and enforceable, must, among other things, indicate the definite price at which the person granting the option, is willing to sell.

Notably, in one case we held that the lessee loses his right to buy the leased property for a named price per square meter upon failure to make the purchase within the time specified; in one other case we freed the landowner from her promise to sell her land if the prospective buyer could raise P4,500.00 in three weeks because such option was not supported by a distinct consideration; in the same vein in yet one other case, we also invalidated an instrument entitled, 'Option to Purchase' a parcel of land for the sum of P1,510.00 because of lack of consideration; and as an exception to the doctrine enumerated in the two preceding cases, in another case, we ruled that the option to buy the leased premises for P12,000.00 as stipulated in the lease contract, is not without consideration for in reciprocal contracts, like lease, the obligation or promise of each party is the consideration for that of the other. In all these cases, the selling price of the object thereof is always predetermined and specified in the option clause in the contract or in the separate deed of option. We elucidated, thus, in the very recent case of *Ang Yu Asuncion vs. Court of Appeals*, that:

'x x x. In sales, particularly, to which the topic for discussion about the case at bench belongs, the contract is perfected when a person, called the seller, obligates himself, for a price certain, to deliver and to transfer ownership of a thing or right to another, called the buyer, over which the latter agrees. Article 1458 of the Civil Code provides:

'Art. 1458. By the contract of sale one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

A contract of sale may be absolute or conditional.'

When the sale is not absolute but conditional, such as in a 'Contract to Sell' where invariably the ownership of the thing sold is retained until the fulfillment of a positive suspensive condition (normally, the full payment of the purchase price), the breach of the condition will prevent the obligation to convey title from acquiring an obligatory force. x x x.

An unconditional mutual promise to buy and sell, as long as the object is made determinate and the price is fixed, can be obligatory on the parties, and compliance therewith may accordingly be exacted.

An accepted unilateral promise which specifies the thing to be sold and the price to be paid, when coupled with a valuable consideration distinct and separate from the price, is what may properly be termed a perfected contract of option. This contract is legally binding, and in sales, it conforms with the second paragraph of Article 1479 of the Civil Code, viz.

'ART. 1479. x x x.

An accepted unilateral promise to buy or sell a determinate thing for a price certain is binding upon the promisor if the promise is supported by a consideration distinct from the price.'

Observe, however, that the option is not the contract of sale itself. The optionee has the right, but not the obligation, to buy. Once the option is exercised timely, i.e., the offer is accepted before a breach of the option, a

bilateral promise to sell and to buy ensues and both parties are then reciprocally bound to comply with their respective undertakings.

Let us elucidate a little. A negotiation is formally initiated by an offer. An imperfect promise (*policitacion*) is merely an offer. Public advertisements or solicitations and the like are ordinarily construed as mere invitations to make offers or only as proposals. These relations, until a contract is perfected, are not considered binding commitments. Thus, at any time prior to the perfection of the contract, either negotiating party may stop the negotiation. The offer, at this stage, may be withdrawn; the withdrawal is effective immediately after its manifestation, such as by its mailing and not necessarily when the offeree learns of the withdrawal. (*Laudico vs. Arias*, 43 Phil. 270). Where a period is given to the offeree within which to accept the offer, the following rules generally govern:

(1) If the period is not itself founded upon or supported by a consideration, the offeror is still free and has the right to withdraw the offer before its acceptance, or, if an acceptance has been made, before the offeror's coming to know of such fact, by communicating that withdrawal to the offeree. The right to withdraw, however, must not be exercised whimsically or arbitrarily; otherwise, it could give rise to a damage claim under Article 19 of the Civil Code which ordains that 'every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.'

(2) If the period has a separate consideration, a contract of 'option' is deemed perfected, and it would be a breach of that contract to withdraw the offer during the agreed period. The option, however, is an independent contract by itself, and it is to be distinguished from the projected main agreement (subject matter of the option) which is obviously yet to be concluded. If, in fact, the optioner-offeror withdraws the offer before its acceptance (exercise of the option) by the optionee-offeree, the latter may not sue for specific performance on the proposed contract ('object' of the option) since it has failed to reach its own stage of perfection. The optioner-offeror, however, renders himself liable for damages for breach of the option. x x x.'

In the light of the foregoing disquisition and in view of the wording of the questioned provision in the two lease contracts involved in the instant case, we so hold that no option to purchase in contemplation of the second paragraph of Article 1479 of the Civil Code, has been granted to Mayfair under the said lease contracts.

Respondent Court of Appeals correctly ruled that the said paragraph 8 grants the right of first refusal to Mayfair and is not an option contract. It also correctly reasoned that as such, the requirement of a separate consideration for the option, has no applicability in the instant case.

There is nothing in the identical Paragraphs '8' of the June 1, 1967 and March 31, 1969 contracts which would bring them into the ambit of the usual offer or option requiring an independent consideration.

An option is a contract granting a privilege to buy or sell within an agreed time and at a determined price. It is a separate and distinct contract from that which the parties may enter into upon the consummation of the option. It must be supported by consideration. In the instant case, the right of first refusal is an integral part of the contracts of lease. The consideration is built into the reciprocal obligations of the parties.

To rule that a contractual stipulation such as that found in paragraph 8 of the contracts is governed by Article 1324 on withdrawal of the offer or Article 1479 on promise to buy and sell would render ineffectual or 'inutile' the provisions on right of first refusal so commonly inserted in leases of real estate nowadays. The Court of Appeals is correct in stating that Paragraph 8 was incorporated into the contracts of lease for the benefit of Mayfair which wanted to be assured that it shall be given the first crack or the first option to buy the property at the price which Carmelo is willing to accept. It is not also correct to say that there is no consideration in an

agreement of right of first refusal. The stipulation is part and parcel of the entire contract of lease. The consideration for the lease includes the consideration for the right of first refusal. Thus, Mayfair is in effect stating that it consents to lease the premises and to pay the price agreed upon provided the lessor also consents that, should it sell the leased property, then, Mayfair shall be given the right to match the offered purchase price and to buy the property at that price. As stated in *Vda. De Quirino vs. Palarca*, in reciprocal contract, the obligation or promise of each party is the consideration for that of the other.

In the instant case, as we have already stated in our Decision sought to be reconsidered, the consideration for the loan-mortgage includes the consideration for the right of first refusal. Again, contrary to petitioners' charge that this conclusion enjoys no basis, we have merely taken our cue from the Equatorial case, *aforequoted*.

Petitioners also pray that since the subject contract is a contract of adhesion, its validity and legality should be strictly interpreted against respondent Corporation. As explained in *Ayala Corporation vs. Ray Burton Development Corporation*,^[3] however, where this court refrained from applying the rule on strict interpretation of a contract of adhesion -

"(T)he stringent treatment towards contracts of adhesion which the courts are enjoined to observe is in pursuance of the mandate in Article 24 of the New Civil Code that '(i)n all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age or other handicap, the courts must be vigilant for his protection.

Thus, the validity and/or enforceability of a contract of adhesion will have to be determined by the peculiar circumstances obtaining in each case and the situation of the parties concerned."

Here, petitioners, being not only educated but businesspersons as well, cannot claim being the weaker or disadvantaged parties in the subject contract so as to call for a strict interpretation against respondent Corporation.

The court also went on to rule in the *Ayala* case (*supra*), that since the stipulations in the subject Deed of Restrictions are plain and unambiguous, which leave no room for interpretation, there was no cause for applying the rule on stringent treatment towards contracts of adhesion. Indeed, while ambiguities in a contract of adhesion are to be construed against the party that prepared the same, this rule applies only if the stipulations in such contract are obscure or ambiguous. If the terms thereof are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations control. In the latter case, there would be no need for construction.^[4] Coming now to the case at bar, considering that the contract provision in question (paragraph 9) is likewise plain and unambiguous, we also find no occasion to apply the aforesaid treatment called for by petitioners.

With respect to the rescission of the Deed of Sale, petitioners complain that this was never invoked as a defense by respondent corporation and is thus deemed waived. Thus, petitioners also complain that our Decision deprived them of due process since they were not given the opportunity to confront the issue of rescission, not having been raised as a defense by respondent corporation.

It cannot be denied, however, that respondent Corporation had always invoked its right of first refusal, which became the basis for our order of rescission. Stated differently, rescission was the necessary relief arising out of the violation of the right of first refusal. For the same reason, neither may petitioners complain of having been denied due process as they were given the chance to meet the issue of violation of respondent Corporation's right of first refusal upon which we anchored our order for the rescission of the Deed of Sale.

WHEREFORE, premises considered, petitioners' Motion for Partial Reconsideration is hereby DENIED for lack of merit.

SO ORDERED.

Bellosillo, Melo, Puno, Kapunan, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and De Leon, Jr., JJ., concur.

Davide, Jr., C.J., reiterates his original vote and joins J. Vitug's separate opinion.

Vitug, J., reiterates his separate opinion.

Mendoza, J., reiterates his previous vote.

[1] Velayo vs. Court of Appeals, 107 Phil. 587.

[2] 264 SCRA 483 (1996)

[3] 294 SCRA 48 (1998)

[4] Rizal Commercial Banking Corporation vs. Court of Appeals, G.R. No. 133107, 25 March 1999.

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