HERNANDO R. PEÑALOSA ALIAS "HENRY PEÑALOSA," PETITIONER, VS. SEVERINO C. SANTOS (DECEASED), SUBSTITUTED BY HIS HEIRS: OLIVER SANTOS AND ADYLL M. SANTOS, AND ADELA DURAN MENDEZ S...

G.R. No. 133749. August 23, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Petitioner appeals by certiorari from the decision of the Court of Appeals, which affirmed the judgment of the Regional Trial Court of Quezon City, Branch 78, in Civil Case No. Q-92-13531, declaring the deed of absolute sale entered into between petitioner and respondents as void and inexistent and ordering petitioner to vacate the subject property and to pay reasonable compensation for its use.

The facts, as revealed by the records, are as follows:

Respondents Severino C. Santos (deceased) and Adela Mendez Santos are registered owners of a residential house and lot located at No. 113 Scout Rallos Street, Quezon City under TCT No. PT-23458 (54434).[1] In 1988, Severino and Adela decided to sell their property and for this purpose, negotiated with petitioner Hernando (or Henry) Peñalosa. The property was then occupied by a lessee, Eleuterio Perez, who was given preference to buy it under the same terms offered by the buyer.[2] Perez proposed less favorable terms[3] and expectedly, Severino rejected his offer.

On August 1, 1988, petitioner Henry Peñalosa and respondent Severino Santos attempted to enter into an agreement whereby the latter, for a consideration of P1,800,000.00, would sell to the former the property subject of the instant case. The deed of absolute sale[4] (first deed) evidencing this transaction was signed by Henry but not by Severino, because according to the latter, Henry "took time to decide" on the matter.[5]

On August 15, 1988, Henry signed a document[6] stating that the first deed was executed between him and Severino, for the sole purpose of helping the latter eject Perez, the occupant of the property. Henry acknowledged in said document that although Severino had agreed to sell the property to him, he had not paid the consideration stated in the first deed.

Thereafter, Henry and Severino executed another deed of absolute sale[7] (second deed) for a higher consideration of P2,000,000.00. Although the second deed was originally dated "August 1988", superimposed upon the same was the date "September 12, 1988". This second deed was signed by both parties and duly notarized. It states that Severino sells and transfers the house and lot to Henry, who had paid the full price of P2,000.000.00 therefor.

Severino explained that his initial asking price for the property was only P1,800,000.00 as shown in the first deed. But he later asked for a higher price because Henry could not give the money as soon as expected. However, Severino claimed that he made it clear to Henry that he agreed to sell the property under the second deed for

P2,000,000.00, provided that payment be immediately effected. Severino said that he wanted to use the money to invest in another property located in Alabang and told Henry that if payment was made at a later date, the price would be the current market value at the time of payment.

Henry then gave Severino P300,000.00 as "earnest money", purportedly with the understanding that the former was to pay the balance within 60 days. Otherwise, said amount would be forfeited in favor of Severino.[8] The latter also maintained that he signed the second deed only for the purpose of facilitating Henry's acquisition of a bank loan to finance payment of the balance of the purchase price[9] and added that execution of the second deed was necessary to enable Henry to file a court action for ejectment of the tenant.[10]

After execution of the second deed, Henry filed a loan application with the Philippine American Life Insurance Company (Philam Life) for the amount of P2,500,000.00.[11] According to Henry, he had agreed with Severino during the signing of the second deed, that the balance of P1,700,000.00 would be paid by means of a loan, with the property itself given as collateral.[12]

Meanwhile, on the strength of the first deed and as new "owner" of the property, Henry wrote a letter[13] dated August 8, 1988 to the lessee, Eleuterio Perez, demanding that the latter vacate the premises within 10 days. Failing in this effort, Henry brought a complaint for ejectment[14] against Perez before the Office of the Barangay Captain.

On September 1, 1988, a Certification To File Action[15] was issued by the barangay lupon. This led to the subsequent filing of Civil Case No. 88-0439 for unlawful detainer, before the Metropolitan Trial Court of Quezon City, Branch 43, entitled "Henry Peñalosa, Plaintiff vs. Eleuterio Perez, Defendant". Claiming that he still had a subsisting contract of lease over the property, Perez countersued and brought Civil Case No. Q-88-1062 before the Regional Trial Court of Quezon City, Branch 96, entitled "Eleuterio Perez, Plaintiff vs. Severino Santos, et. al, Defendants". In this latter case, Perez assailed the validity of the sale transaction between Henry and Severino and impleaded the former as co-defendant of Severino.

While the aforesaid court cases were pending resolution, Philam Life informed Severino through a letter,[16] that Henry's loan application had been approved by the company on January 18, 1989. Philam Life stated in the letter that of the total purchase price of P2,500,000.00, the amount of P1,700,000.00 would be paid directly to Severino by Philam Life, while P800,000.00 would be paid by Henry.

The release of the loan proceeds was made subject to the submission of certain documents in Severino's possession, one of which is the owner's duplicate of the Transfer Certificate of Title (TCT) pertaining to the property. However, when Henry and Severino met with officials of Philam Life to finalize the loan/mortgage contract, Severino refused to surrender the owner's duplicate title and insisted on being paid immediately in cash.[17] As a consequence, the loan/mortgage contract with Philam Life did not materialize.

Subsequently, on April 28, 1989, judgment[18] was rendered by the MTC-QC, Branch 43, in Civil Case No. 0439, ordering the tenant Perez to vacate and surrender possession of the property to Henry. In said judgment, Henry was explicitly recognized as the new owner of the property by virtue of the contract of sale dated September 12, 1988, after full payment of the purchase price of P2,000,000.00, receipt of which was duly acknowledged by Severino.

Upon finality of said judgment, Henry and his family moved into the disputed house and lot on August 1989, after making repairs and improvements.[19] Henry spent a total of P700,000.00 for the renovation, as evidenced by receipts.[20]

On July 27, 1992, Severino sent a letter[21] to Henry, through counsel, demanding that Henry vacate the house

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and lot, on the ground that Henry did not conclusively offer nor tender a price certain for the purchase of the property. The letter also stated that Henry's alleged offer and promise to buy the property has since been rejected by Severino.

When Henry refused to vacate the property, Severino brought this action for quieting of title, recovery of possession and damages before the Regional Trial Court of Quezon City, Branch 78, on September 28, 1992. Severino alleged in his complaint[22] that there was a cloud over the title to the property, brought about by the existence of the second deed of sale.

Essentially, Severino averred that the second deed was void and inexistent because: a) there was no cause or consideration therefor, since he did not receive the P2,000,000.00 stated in the deed; b) his wife, Adela, in whose name the property was titled, did not consent to the sale nor sign the deed; c) the deed was not registered with the Register of Deeds; d) he did not acknowledge the deed personally before the notary public; e) his residence certificate, as appearing in the deed, was falsified; and f) the deed is fictitious and simulated because it was executed only for the purpose of placing Henry in possession of the property because he tendered "earnest money". Severino also claimed that there was no meeting of minds with respect to the cause or consideration, since Henry's varied offers of P1,800,000.00, P2,000,000.00, and P2,500,000.00, were all rejected by him.

For his part, Henry asserted that he was already the owner of the property being claimed by Severino, by virtue of a final agreement reached with the latter. Contrary to Severino's claim, the price of the property was pegged at P2,000,000.00, as agreed upon by the parties under the second deed. Prior to the filing of the action, his possession of the property remained undisturbed for three (3) years. Nevertheless, he admitted that since the signing of the second deed, he has not paid Severino the balance of the purchase price. He, however, faulted the latter for the non-payment, since according to him, Severino refused to deliver the owner's duplicate title to the financing company.

On Aug. 20, 1993, the trial court rendered judgment in favor of Severino and disposed:

> WHEREFORE, judgment is rendered as follows:
>
> 1) DECLARING the "Deed of Absolute Sale" which was signed by the plaintiff Severino C. Santos as vendor and the defendant as vendee and which was entered in the notarial register of notary public Dionilo Marfil of Quezon City as Doc. No. 474, Page No. 95, Book No. 173, Series of 1988, as inexistent and void from the beginning; and consequently, plaintiff's title to the property under T.C.T. No. PT-23458 (54434) issued by the Register of Deeds of Quezon City is quieted, sustained and maintained;
>
> 2) ORDERING the defendant to pay plaintiffs the amount of P 15, 000.00 a month as reasonable compensation for the use of the House and Lot located at No. 113 Scout Rallos St., Quezon City, beginning on the month of August, 1993, until the premises is fully vacated, (the compensation for the use thereof from the time the defendant had occupied the premises up to July, 1993, is recompensed for the repairs made by him); and
>
> 3) ORDERING the plaintiffs to reimburse the defendant the amount of P300,000.00 after defendant had vacated the premises in question, and the reasonable compensation for the use thereof had been paid.
>
> All other claims and counterclaims are DENIED for lack of legal and factual bases. No pronouncement as to costs.
>
> SO ORDERED.[23]

Both Henry and Severino appealed the above decision to the Court of Appeals. Before the appellate court could decide the same, Severino passed away and was substituted by his wife and children as respondents. Henry filed a motion for leave to be allowed to deposit P1,700,000.00 in escrow with the Landbank of the Philippines to answer

for the money portion of the decision.[24] This motion was granted.

On December 29, 1997, the appellate court affirmed[25] the judgment of the trial court and thereafter, denied Henry's motion for reconsideration.[26] Thus, Henry brought this petition, citing the following as alleged errors:

> I.
>
> THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED IN CONCLUDING THAT THERE WAS NO PERFECTED CONTRACT OF SALE BETWEEN SEVERINO C. SANTOS AND PETITIONER HENRY R. PEÑALOSA.
>
> II.
>
> THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED IN CONSIDERING NON-PAYMENT OF THE FULL PURCHASE PRICE AS CAUSE FOR DECLARING A PERFECTED CONTRACT OF SALE AS NULL AND VOID.
>
> III.
>
> THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED IN REFUSING TO RECOGNIZE THAT OWNERSHIP OF THE SUBJECT PROPERTY HAD BEEN EFFECTIVELY VESTED UPON PETITIONER HENRY R. PEÑALOSA WHEN ACTUAL POSSESSION THEREOF HAD LAWFULLY TRANSFERRED TO PETITIONER HENRY R. PEÑALOSA BY VIRTUE OF THE COURT JUDGMENT IN THE EJECTMENT SUIT AGAINST THE FORMER LESSEE.[27]

The pivotal issue presented before us is whether or not the second deed is valid and constitutes evidence of the final agreement between the parties regarding the sale transaction entered into by them.

Petitioner maintains that the existence of a perfected contract of sale in this case is beyond doubt, since there clearly was a meeting of minds between the parties as to the object and consideration of the contract. According to petitioner, the agreement of the parties is evidenced by provisions contained in the second deed, which cannot possibly be simulated or fictitious. Subsequent and contemporaneous acts indubitably point to the fact that the parties truly intended to be bound by the second deed. Accordingly, the P2,000,000.00 stated therein was the actual price agreed upon by the parties as consideration for the sale.

On the other hand, in their memorandum, respondents insist that the second deed is a complete nullity because, as found by both the appellate and trial court: a) the consideration stated in the deed was not paid; b) Severino's passport showed that he was in the U.S. when said deed was notarized; c) Severino did not surrender a copy of the title at the time of the alleged sale; d) petitioner did not pay real estate taxes on the property; e) it was executed only for the purpose of helping Severino eject the tenant; f) Severino's wife, Adela, did not sign the deed; and g) the various documentary exhibits proved that there was no price certain accepted or paid.

Respondents additionally argue that petitioner merely seeks a review of the aforesaid factual findings of the lower court and that consequently, we should deny the petition on the ground that it raises only factual questions.

Considering the pivotal issue presented after close scrutiny of the assigned errors as well as the arguments of the parties, we are unable to agree with respondents and we must give due course to the petition.

First of all, the petition filed before this Court explicitly questions "the legal significance and consequences of the established facts"[28] and not the findings of fact themselves. As pointed out by petitioner, he submits to the factual findings of the lower court, but maintains that its legal conclusions are irreconcilable and inconsistent therewith. He also states that the grounds relied upon in this petition do not call for the weighing of conflicting evidence submitted by the parties. Rather, he merely asks the Court to give due significance to certain undisputed

and admitted facts spread throughout the record, which, if properly appreciated, would justify a different conclusion.

At any rate, in Baricuatro, Jr. vs. Court of Appeals, 325 SCRA 137, 145 (2000), we reiterated the doctrine that findings of fact of the Court of Appeals are binding and conclusive upon this Court, subject to certain exceptions, one of which is when the judgment is based on a misapprehension of facts. In this case, after carefully poring over the records, we are convinced that the lower courts misappreciated the evidence presented by the parties and that, indeed, a reversal of the assailed judgment is in order.

It should have been readily apparent to the trial court that the circumstances it cited in its decision are not proper grounds for holding that the second deed is simulated. Simulation is a declaration of a fictitious will, deliberately made by agreement of the parties, in order to produce, for purposes of deception, the appearance of a juridical act which does not exist or is different from that which was really executed. Its requisites are: a) an outward declaration of will different from the will of the parties; b) the false appearance must have been intended by mutual agreement; and c) the purpose is to deceive third persons.[29] None of these requisites is present in this case.

The basic characteristic of an absolutely simulated or fictitious contract is that the apparent contract is not really desired or intended to produce legal effects or alter the juridical situation of the parties in any way.[30] However, in this case, the parties already undertook certain acts which were directed towards fulfillment of their respective covenants under the second deed, indicating that they intended to give effect to their agreement.

In particular, as early as August 8, 1988, after execution of the first deed, Severino authorized petitioner to bring an action for ejectment against the overstaying tenant and allowed petitioner to pursue the ejectment case to its final conclusion, presumably to secure possession of the property in petitioner's favor. Petitioner also applied for a loan, which was approved by Philam Life, to complete payment of the stipulated price. After making extensive repairs with the knowledge of Severino, petitioner moved into the premises and actually occupied the same for three years before this action was brought. Moreover, simultaneous with the execution of the second deed, petitioner gave Severino P300,000.00 in earnest money, which under Article 1482[31] of the New Civil Code, is part of the purchase price and proof of perfection of the contract.

What may have led the lower courts into incorrectly believing that the second deed was simulated is Exhibit D - a document in which petitioner declared that the deed was executed only for the purpose of helping Severino eject the tenant. However, a perusal of this document reveals that it made reference to the first deed and not the second deed, which was executed only after Exhibit D. So that while the first deed was qualified by stipulations contained in Exhibit D, the same cannot be said of the second deed which was signed by both parties.

Further, the fact that Severino executed the two deeds in question, primarily so that petitioner could eject the tenant and enter into a loan/mortgage contract with Philam Life, is to our mind, a strong indication that he intended to transfer ownership of the property to petitioner. For why else would he authorize the latter to sue the tenant for ejectment under a claim of ownership, if he truly did not intend to sell the property to petitioner in the first place? Needless to state, it does not make sense for Severino to allow petitioner to pursue the ejectment case, in petitioner's own name, with petitioner arguing that he had bought the property from Severino and thus entitled to possession thereof, if petitioner did not have any right to the property.

Also worth noting is the fact that in the case filed by Severino's tenant against Severino and petitioner in 1989, assailing the validity of the sale made to petitioner, Severino explicitly asserted in his sworn answer to the complaint that the sale was a legitimate transaction. He further alleged that the ejectment case filed by petitioner against the tenant was a legitimate action by an owner against one who refuses to turn over possession of his

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property.[32]

Our attention is also drawn to the fact that the genuineness and due execution of the second deed was not denied by Severino. Except to allege that he was not physically present when the second deed was notarized before the notary public, Severino did not assail the truth of its contents nor deny that he ever signed the same. As a matter of fact, he even admitted that he affixed his signature on the second deed to help petitioner acquire a loan. This can only signify that he consented to the manner proposed by petitioner for payment of the balance and that he accepted the stipulated price of P2,000,000.00 as consideration for the sale.

Since the genuineness and due execution of the second deed was not seriously put in issue, it should be upheld as the best evidence of the intent and true agreement of the parties. Oral testimony, depending as it does exclusively on human memory, is not as reliable as written or documentary evidence.[33]

It should be emphasized that the non-appearance of the parties before the notary public who notarized the deed does not necessarily nullify nor render the parties' transaction void ab initio. We have held previously that the provision of Article 1358[34] of the New Civil Code on the necessity of a public document is only for convenience, not for validity or enforceability. Failure to follow the proper form does not invalidate a contract. Where a contract is not in the form prescribed by law, the parties can merely compel each other to observe that form, once the contract has been perfected.[35] This is consistent with the basic principle that contracts are obligatory in whatever form they may have been entered into, provided all essential requisites are present.[36]

The elements of a valid contract of sale under Art. 1458 of the Civil Code are: (1) consent or meeting of the minds; (2) determinate subject matter; and (3) price certain in money or its equivalent.[37] In the instant case, the second deed reflects the presence of all these elements and as such, there is already a perfected contract of sale.

Respondent's contention that the second deed was correctly nullified by the lower court because Severino's wife, Adela, in whose name the property was titled, did not sign the same, is unavailing. The records are replete with admissions made by Adela that she had agreed with her husband to sell the property[38] which is conjugal in nature[39] and that she was aware of this particular transaction with petitioner. She also said that it was Severino who actually administered their properties with her consent, because she did not consider this as her responsibility.[40]

We also observe that Severino's testimony in court contained (1) admissions that he indeed agreed to sell the property and (2) references to petitioner's failure to pay the purchase price.[41] He did not mention that he did not intend at all to sell the property to petitioner and instead, stressed the fact that the purchase price had not yet been paid. Why would Severino stress non-payment if there was no sale at all?

However, it is well-settled that non-payment of the purchase price is not among the instances where the law declares a contract to be null and void. It should be pointed out that the second deed specifically provides:

> That for and in consideration of the sum of TWO MILLION PESOS (P2,000,000.00), Philippine Currency paid in full by HENRY R. PEÑALOSA, receipt of which is hereby acknowledged by me to my full satisfaction, I hereby by these presents, sells (sic), cede, convey and otherwise dispose of the above described parcel of land, unto HENRY R. PEÑALOSA, his heirs, successors and assigns, free from all liens and encumbrances.
>
> x x x
>
> (SGD.)
> SEVERINO C. SANTOS
> VENDOR

x x x[42]

As can be seen from above, the contract in this case is absolute in nature and is devoid of any proviso that title to the property is reserved in the seller until full payment of the purchase price. Neither does the second deed give Severino a unilateral right to resolve the contract the moment the buyer fails to pay within a fixed period.[43] At most, the non-payment of the contract price merely results in a breach of contract for non-performance and warrants an action for rescission or specific performance under Article 1191 of the Civil Code.[44]

Be that as it may, we agree with petitioner that although the law allows rescission as a remedy for breach of contract, the same may not be availed of by respondents in this case. To begin with, it was Severino who prevented full payment of the stipulated price when he refused to deliver the owner's original duplicate title to Philam Life. His refusal to cooperate was unjustified, because as Severino himself admitted, he signed the deed precisely to enable petitioner to acquire the loan. He also knew that the property was to be given as security therefor. Thus, it cannot be said that petitioner breached his obligation towards Severino since the former has always been willing to and could comply with what was incumbent upon him.

In sum, the only conclusion which can be deduced from the aforesaid circumstances is that ownership of the property has been transferred to petitioner. Article 1477 of the Civil Code states that ownership of the thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof. It is undisputed that the property was placed in the control and possession of petitioner[45] when he came into material possession thereof after judgment in the ejectment case. Not only was the contract of sale perfected, but also actual delivery of the property effectively consummated the sale.

WHEREFORE, the petition is GRANTED. The decision of the Court of Appeals dated December 29, 1997 and its resolution dated April 15, 1998 in CA-G.R. CV No. 45206 which had affirmed the judgment of the Regional Trial Court of Quezon City, Branch 78, are REVERSED and SET ASIDE. A new judgment is hereby rendered UPHOLDING the validity of Exhibit B, the Deed of Absolute Sale dated September 12, 1988, entered into between the parties. The Landbank of the Philippines is further ordered to RELEASE to respondents the amount of P1,700,000.00 held in escrow, representing the balance of the purchase price agreed upon by the parties under the deed of absolute sale. Finally, the respondents are ordered to DELIVER to petitioner the owner's duplicate copy of TCT No. PT-23458 after said release, with the corresponding payment of taxes due. Costs against respondents.

SO ORDERED.

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

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[1] Exhibit "A", Records, p. 10.

[2] Exhibit "8-N", Folder of Exhibits.

[3] Exhibit "8-O", Folder of Exhibits.

[4] Exhibit "H", Records, p. 85.

[5] TSN, February 18, 1993, pp. 9-19.

[6] Exhibit "D", Records, p. 15.

[7] Exhibit "B", Records, p. 12.

[8] Supra, note 5 at 20-27.

[9] Id. at 44-45.

[10] TSN, February 18, 1993, pp. 28-29.

[11] TSN, March 30, 1993, pp. 11-14.

[12] Id. at 4.

[13] Exhibit "5", Folder of Exhibits.

[14] Exhibit "6", Folder of Exhibits.

[15] Exhibit "7", Folder of Exhibits.

[16] Exhibit "I", Records, pp. 86-87.

[17] Supra, note 11 at 17-18.

[18] Exhibit "8-T", Folder of Exhibits.

[19] Supra, note 11 at 7.

[20] Exhibit "9", Folder of Exhibits.

[21] Exhibit "E", Records, p. 16.

[22] Records, p.1.

[23] Rollo, pp. 39-40.

[24] Id. at 101-102.

[25] Id. at 41-48.

[26] Id. at 49

[27] Id. at 16.

[28] Id. at 20.

[29] See Loyola vs. Court of Appeals, G.R. No. 115734, 326 SCRA 285, 293-294 (2000).

[30] Robleza vs. Court of Appeals, G.R. No. 80364 174 SCRA 354, 363 (1989), citing Carantes vs. Court of Appeals, et. al., G.R. No. L-33360, 76 SCRA 514, 522 (1977).

[31] Art. 1482. Whenever earnest money is given in a contract of sale it shall be considered as part of the price and as proof of the perfection of the contract.

[32] Exhibit "8-G", Folder of Exhibits.

[33] Abapo vs. Court of Appeals, G.R. No. 128677, 327 SCRA 180, 188 (2000), citing Abella vs. Court of Appeals, G.R. No. 107606, 257 SCRA 482, 487 (1996), and De Leon vs. Court of Appeals, G.R. No. 95511, 205 SCRA 612, 613 (1992).

[34] Art. 1358. The following must appear in a public document:

(1) Acts and contracts which have for their object the creation, transmission, modification or extinguishment of

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real rights over immovable property; sales of real property or of an interest therein are governed by Articles 1403, No. 2 and 1405;

(2) The cession, repudiation or renunciation of hereditary rights or of those of the conjugal partnership of gains;

(3) The power to administer property, or any other power which has for its object an act appearing or which should appear in a public document, or should prejudice a third persons;

(4) The cession of actions or rights proceeding from an act appearing in a public document.

All other contracts where the amount involved exceeds five hundred pesos must appear in writing, even a private one. But sales of goods, chattels or things in action are governed by Articles 1403, No. 2 and 1405.

[35] Article 1357, Civil Code of the Philippines

[36] Agasen vs. Court of Appeals, G.R. No. 115508, 325 SCRA 504, 513 (2000), citing Tan vs. Lim, G.R. No. 128004, 296 SCRA 455,472 (1998) and Balatbat vs. Court of Appeals, G.R. No. 109410, 261 SCRA 128, 140 (1996).

[37] Co. vs. Court of Appeals, G.R. No. 112330, 312 SCRA 528, 535 (1999) citing City of Cebu vs. Heirs of Candido Rubi, G.R. No. 128579, 306 SCRA 408 (1999).

[38] TSN, March 4, 1993, pp. 8, 10, 11 & 13.

[39] Id. at 8.

[40] Id. at 14.

[41] TSN, February 18, 1993, pp. 20, 23, 26, 30-32, 49.

[42] Supra, note 23 at 118.

[43] Heirs of Juan San Andres vs. Rodriguez, G. R. No. 135634, 332 SCRA 769, 782 (2000).

[44] Supra, note 30 at 363; Art. 1191 of the Civil Code states:

Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what was 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.

[45] Art. 1497, Civil Code of the Philippines.

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