

**SPOUSES ORLANDO A. RAYOS AND MERCEDES T. RAYOS,
PETITIONERS, VS. THE COURT OF APPEALS AND SPOUSES ROGELIO
AND VENUS MIRANDA, RESPONDENTS.**

G.R. No. 135528. July 14, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari of the Decision[1] of the Court of Appeals[2] in CA-G.R. CV No. 46727 which affirmed the Decision[3] of the Regional Trial Court of Makati, Branch 62, in Civil Case No. 15639 for specific performance and damages, and Civil Case No. 15984 for sum of money and damages.

The two (2) cases stemmed from the following antecedent facts:

On December 24, 1985, petitioner Orlando A. Rayos, a practicing lawyer, and his wife, petitioner Mercedes T. Rayos, secured a short-term loan from the Philippine Savings Bank (PSB) payable within a period of one (1) year in quarterly installments of P29,190.28, the first quarterly payment to start on March 24, 1986. The loan was evidenced by a promissory note which the petitioners executed on December 24, 1985.[4] To secure the payment of the loan, the petitioners-spouses executed, on the same date, a Real Estate Mortgage over their property covered by Transfer Certificate of Title (TCT) No. 100156 located in Las Piñas, Metro Manila.[5]

On December 26, 1985, the petitioners, as vendors, and the respondents, Spouses Miranda, as vendees, executed a Deed of Sale with Assumption of Mortgage over the subject property for the price of P214,000.00. However, on January 29, 1986, the petitioners-spouses, likewise, executed a Contract to Sell the said property in favor of the respondents for P250,000.00 with the following condition:

- That upon full payment of the consideration hereof, the SELLER shall execute a Deed of Absolute Sale in favor of the BUYER that the payment of capital gains tax shall be for the account of the SELLER and that documentary stamps, transfer tax, registration expenses for the transfer of title including the notarization and preparation of this Contract and subsequent documents if any are to be executed, real estate taxes from January 1, 1986 and other miscellaneous expenses shall be for the account of the BUYER; the SELLER hereby represents that all association dues has been paid but that subsequent to the execution of this Contract the payment of the same shall devolve upon the BUYER.[6]

The petitioners obliged themselves to execute a deed of absolute sale over the property in favor of the respondents upon the full payment of the purchase price thereof.

Respondent Rogelio Miranda filed an application dated May 4, 1986 with the PSB to secure the approval of his assumption of the petitioners' obligation on the loan, and appended thereto a General Information sheet.[7] Respondent Rogelio Miranda stated therein that he was the Acting Municipal Treasurer of Las Piñas and had an unpaid account with the Manila Banking Corporation in the amount of P18,777.31. The PSB disapproved his application. Nevertheless, respondent Rogelio Miranda paid the first quarterly installment on the petitioners' loan on March 21, 1986 in the amount of P29,190.28. The said amount was paid for the account of the petitioners.

Respondent Rogelio Miranda, likewise, paid the second quarterly installment in the amount of P29,459.00 on June 23, 1986, also for the account of the petitioners.[8]

In the meantime, respondent Rogelio Miranda secured the services of petitioner Orlando Rayos as his counsel in a suit he filed against the Manila Banking Corporation, relative to a loan from the bank in the amount of P100,000.00. Both parties agreed to the payment of attorney's fees, as follows:

Our agreement is as follows:

- You will pay me P700.00 as filing fee and other miscellaneous expenses which I personally received from you this morning;
- Award to you of any amount in terms of moral, exemplary or actual and other forms of damages shall accrue to you in the amount of 70% thereof;
- 30% of the award to you in the concept of No. 2 hereof shall pertain to me as my contingent fee;
- All attorney's fees that the court shall award to me or by the management of TMBC if they agree to extrajudicially settle shall pertain exclusively to me;
- Execution of judgment expenses shall be for your account;
- Should the case be appealed, my contingent fee shall increase by 10% if the appeal is to the Intermediate Appellate Court on questions of facts and law, and if appealed from there to the Supreme Court, then another 10% shall accrue to me.[9]

On May 14, 1986, petitioner Orlando Rayos filed respondent Rogelio Miranda's complaint against the bank with the Regional Trial Court of Makati, docketed as Civil Case No. 13670.[10] In the meantime, the latter paid the third quarterly installment on the PSB loan account amounting to P29,215.66, for which the bank issued a receipt for the account of the petitioners.

The parties executed a Compromise Agreement in Civil Case No. 13670 in which they agreed that each party shall pay for the respective fees of their respective counsels.[11] The trial court rendered judgment on October 23, 1986 based on the said compromise agreement.[12] Petitioner Orlando Rayos demanded the payment of attorney's fees in the amount of P5,631.93, but respondent Rogelio Miranda refused to pay.

On November 12, 1986, petitioner Orlando Rayos wrote to respondent Rogelio Miranda and enclosed a copy of his motion in Civil Case No. 13670 for the annotation of his attorney's lien at the dorsal portion of the latter's title used as security for the loan with the Manila Banking Corporation.[13] The respondent opposed the motion, claiming that the petitioner agreed to render professional services on a contingent basis.[14]

Petitioner Orlando Rayos again wrote respondent Rogelio Miranda on November 30, 1986, reminding the latter of the last quarterly payment of his loan with the PSB. He also advised the respondent to thereafter request the bank for the cancellation of the mortgage on his property and to receive the owner's duplicate of his title over the same. Petitioner Orlando Rayos also wrote that their dispute over his attorney's fees in Civil Case No. 13670 should be treated differently.[15]

Petitioner Orlando Rayos then received a Letter dated November 27, 1986 from the PSB, reminding him that his loan with the bank would mature on December 24, 1986, and that it expected him to pay his loan on or before the said date.[16] Fearing that the respondents would not be able to pay the amount due, petitioner Orlando Rayos paid P27,981.41[17] to the bank on December 12, 1986, leaving the balance of P1,048.04. In a Letter dated December 18, 1986, the petitioner advised the PSB not to turn over to the respondents the owner's duplicate of the title over the subject property, even if the latter paid the last quarterly installment on the loan, as they had not

assumed the payment of the same.[18]

On December 24, 1986, respondent Rogelio Miranda arrived at the PSB to pay the last installment on the petitioners' loan in the amount of P29,223.67. He informed the bank that the petitioners had executed a deed of sale with assumption of mortgage in their favor, and that he was paying the balance of the loan, conformably to said deed. On the other hand, the bank informed the respondent that it was not bound by said deed, and showed petitioner Orlando Rayos' Letter dated December 18, 1986. The respondent was also informed that the petitioners had earlier paid the amount of P27,981.41 on the loan. The bank refused respondent Rogelio Miranda's offer to pay the loan, and confirmed its refusal in a Letter dated December 24, 1986.[19]

On even date, respondent Rogelio Miranda wrote the PSB, tendering the amount of P29,223.67 and enclosed Interbank Check No. 01193344 payable to PSB.[20] Thereafter, on December 29, 1986, the petitioners paid the balance of their loan with the bank in the amount of P1,081.39 and were issued a receipt therefor.[21] On January 2, 1987, the PSB wrote respondent Rogelio Miranda that it was returning his check.[22]

On January 2, 1987, respondent Rogelio Miranda filed a complaint against the petitioners and the PSB for damages with a prayer for a writ of preliminary attachment with the RTC of Makati. The case was docketed as Civil Case No. 15639 and raffled to Branch 61 of the court. The respondent alleged inter alia that the petitioners and the PSB conspired to prevent him from paying the last quarterly payment of the petitioners' loan with the bank, despite the existence of the deed of sale with assumption of mortgage executed by him and the petitioners, and in refusing to turn over the owner's duplicate of TCT No. 100156, thereby preventing the transfer of the title to the property in his name. Respondent Rogelio Miranda prayed that:

WHEREFORE, it is respectfully prayed that judgment be rendered in favor of plaintiff and against defendants, ordering the latter, jointly and severally, as follows:

- To pay to plaintiff the sum of P267,197.33, with legal interest from date of demand, as actual or compensatory damages representing the unreturned price of the land;
- To pay to plaintiff the sum of P500,000.00 as consequential damages;
- To pay to plaintiff the sum of P1,000,000.00 as moral damages;
- To pay to plaintiff the sum of P100,000.00 as exemplary damages by way of example or correction for the public good;
- To pay to plaintiff the sum of P100,000.00 for and as attorney's fees;
- To pay for the costs of suit; and
- That a Writ of Attachment be issued against the properties of defendant Rayos spouses as security for the satisfaction of any judgment that may be recovered.

PLAINTIFF FURTHER PRAYS for such other remedies and relief as are just or equitable in the premises.[23]

The trial court granted the respondent's plea for a writ of preliminary attachment on a bond of P260,000.00. After posting the requisite bond, the respondent also filed a criminal complaint against petitioner Orlando Rayos for estafa with the Office of the Provincial Prosecutor of Makati, docketed as I.S. No. 87-150. He, likewise, filed a complaint for disbarment in this Court against petitioner Orlando Rayos, docketed as Administrative Case No. 2974. Unaware of the said complaint, the petitioner wrote the respondent on January 3, 1986 that as soon as his payment to the PSB of P29,223.67 was refunded, the owner's duplicate of the title would be released to him.[24] On January 5, 1986, petitioner Orlando Rayos wrote respondent Rogelio Miranda, reiterating that he would release the title in exchange for his cash settlement of P29,421.41.[25] The respondent failed to respond.

In the meantime, the PSB executed on January 8, 1987 a Release of Real Estate Mortgage in favor of the petitioners,[26] and released the owner's duplicate of title of TCT No. 100156.[27] On January 17, 1987, petitioner Orlando Rayos wrote respondent Rogelio Miranda, reiterating his stance in his Letters of January 3 and 5, 1987.

In the meantime, the petitioners received the complaint in Civil Case No. 15639 and filed their Answer with Counterclaim in which they alleged that:

- That plaintiff has no cause of action against defendants Rayos, the latter are willing to deliver the title sought by plaintiff under the terms set out in their letters dated January 3, 5, 17, and 20, hereto marked as Annexes "1," "1-A," "1-B" and "1-C;"[28]

Petitioner Orlando Rayos filed a complaint on February 1, 1987 against respondent Rogelio Miranda with the Regional Trial Court of Makati, docketed as Civil Case No. 15984 for Specific Performance with Damages for the collection of the amount of P29,223.67 which he had paid to the PSB on December 12 and 19, 1986, and his attorney's fees in Civil Case No. 13670. The trial court consolidated the cases in Branch 62 of the RTC.

Respondent Rogelio Miranda filed an Amended Complaint in Civil Case No. 15639 for specific performance with damages, impleading the officers of the PSB as parties-defendants. He alleged that of the purchase price of the property of P214,000.00, he had paid the entirety thereof to the petitioners, and that petitioner Orlando Rayos acted unethically in trying to collect P5,631.93 from him as his attorney's fees in Civil Case No. 13670, and in having such claim annotated at the dorsal portion of his title over the property he mortgaged to the Manila Banking Corporation.

Respondent Rogelio Miranda prayed that, after due proceedings, judgment be rendered in his favor, thus:

WHEREFORE, it is respectfully prayed that judgment be rendered in favor of plaintiff and against defendants, as follows:

- Ordering defendants spouses Orlando A. Rayos and Mercedes T. Rayos to deliver forthwith to plaintiff the Owner's Duplicate of Transfer Certificate of Title No. 100156, Registry of Deeds for Pasay City;
- Ordering defendants, jointly and severally, to pay to plaintiff the sum of P1,000,000.00 as moral damages;
- Ordering defendants, jointly and severally, to pay to plaintiff the sum of P867,197.33 as exemplary damages by way of example or correction for the public good;
- Ordering defendants, jointly and severally, to pay to plaintiff the sum of P100,000.00 for and as attorney's fees;
- Ordering defendants, jointly, to pay the costs of suit; and
- Ordering the issuance of a Writ of Attachment against the properties of defendants Rayos spouses as security for the satisfaction of any judgment that may be recovered.

PLAINTIFF further prays for such other remedies and relief as are just or equitable in the premises.[29]

In the meantime, petitioner Orlando Rayos filed an Amended Complaint in Civil Case No. 15984 impleading his wife and that of respondent Rogelio Miranda as parties to the case. On March 4, 1987, the trial court issued an Order granting the petitioners' motion in Civil Case No. 15639 for the discharge of the attachment on their property.[30] The court also denied the respondents' motion for reconsideration of the Order of the court. The respondents, thereafter, filed a petition for review with the Court of Appeals for the nullification of the said Order.

On July 9, 1987, the public prosecutor dismissed the charge of estafa against petitioner Orlando Rayos.[31] The

respondents appealed the resolution to the Department of Justice.

On May 26, 1987, the PSB and its officers filed their Answer in Civil Case No. 15639, and alleged the following by way of special and/or affirmative defenses, thus:

- The application for the plaintiff to assume the mortgage loan of the defendants Spouses Rayos was not approved, and it was NOT even recommended by the Marketing Group of defendant PSBank for approval by its Top Management, because the credit standing of the plaintiff was found out to be not good;
- The acceptance of the payments made by the plaintiff for three (3) amortizations on the loan of defendants Spouses Rayos was merely allowed upon the insistence of the plaintiff, which payments were duly and accordingly receipted, and said acceptance was in accordance with the terms of the Real Estate Mortgage executed by the defendants Spouses Rayos in favor of the defendant PSBank and is also allowed by law;[32]

The parties in Civil Case No. 15639 agreed to submit the case for the trial court's decision on the basis of their pleadings and their respective affidavits. In a Resolution dated July 26, 1988, then Undersecretary of Justice Silvestre Bello III affirmed the Public Prosecutor's resolution in I.S. No. 87-150.[33]

On January 30, 1989, the petitioners sold the property to Spouses Mario and Enriqueta Ercia for P144,000.00. The said spouses were not impleaded as parties-defendants in Civil Case No. 15639. On May 18, 1989, the petitioners filed an amended complaint in Civil Case No. 15984, appending thereto a copy of the Contract to Sell in favor of the respondents. The trial court admitted the said complaint.

On November 15, 1989, this Court rendered its Decision dismissing the complaint for disbarment against Rayos.[34]

On January 29, 1993, the trial court rendered judgment, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered, as follows:

I. (a) In Civil Case No. 15639, this Court orders plaintiff Rogelio Miranda to refund to spouses Orlando and Mercedes T. Rayos the total sum of P29,069.45, Rayos paid to PS Bank as the last amortization and as release of mortgage fee, without any interest; and upon receipt of the sum of P29,069.45 from Rogelio Miranda, Spouses Orlando and Mercedes T. Rayos shall deliver to Rogelio Miranda Transfer Certificate of Title No. 100156 of the Registry of Deeds of Pasay City; and, deliver to Rogelio Miranda the possession of the parcel of land described in the said title;

(b) Dismissing the complaint for damages of Plaintiff Rogelio Miranda against Spouses Orlando and Remedios (sic) T. Rayos, Philippine Savings Bank, Jose Araullo, Cesar I. Valenzuela, Dionisio Hernandez, Nestor E. Valenzuela, Raul T. Totanes, and Belinda Lim, for insufficiency of evidence; while the counterclaims of PS Bank, Jose Araullo, Cesar Valenzuela, Dionisio Hernandez, Nestor E. Valenzuela, Raul Totanes, and Belinda Lim, are likewise dismissed for insufficiency of evidence.

(c) The counterclaims of Spouses Orlando and Mercedes T. Rayos will be treated in Civil Case No. 15984;

II. In Civil Case No. 15984, this Court orders Defendant Rogelio Miranda to pay to Plaintiff Orlando Rayos the sum of P4,133.19 at 12% interest per annum, from the date of the filing of the complaint on Feb. 11, 1987 until fully paid.

No costs in both cases.

SO ORDERED.[35]

The petitioners appealed the decision to the Court of Appeals contending that:

- THE COURT A QUO COMMITTED A GRAVE ERROR IN NOT FINDING THAT ROGELIO A. MIRANDA COMMITTED A BREACH OF CONTRACT IN NOT PAYING THE FULL CONTINGENT FEE OF 30% IN WRITING IN THE MANILABANK CASE AND BECAUSE OF THAT BREACH, HE CANNOT NOW DEMAND SPECIFIC PERFORMANCE AND THE COURT A QUO SHOULD HAVE LEFT THE PARTIES AS THEY ARE;

- THE COURT A QUO SIMILARLY COMMITTED AN ERROR IN NOT FINDING THAT THE DECISION IN “SEVA VS. ALFREDO BERWIN & CO. & MEDEL” IS APPLICABLE FOUR SQUARE WHEREBY HE WHO BREACHES HIS CONTRACT IS NOT ENTITLED TO SPECIFIC PERFORMANCE;[36]

On July 27, 1998, the Court of Appeals rendered judgment affirming with modification the decision of the RTC, thus:

WHEREFORE, premises considered, the appealed decision of the Regional Trial Court of Makati City, is hereby AFFIRMED, with the modification abovestated.[37]

The petitioners filed the instant petition, and ascribed the following errors on the appellate court:

- THE COURT OF APPEALS (CA) COMMITTED AN ERROR IN NOT FINDING THAT THE PRIVATE RESPONDENT MIRANDA COMMITTED THE FIRST BREACH FOR FAILURE TO ASSUME THE LOAN THUS HE FAILED TO SURROGATE (sic) HIMSELF TO PSB.

- THE CA COMMITTED AN ERROR IN FINDING THAT PETITIONERS PRE-EMPTED PRIVATE RESPONDENT MIRANDA IN DEPOSITING THE LAST AMORTIZATION WHEN MIRANDA HAD NO LEGAL STANDING WITH PSB DUE TO THE LATTER’S NON-APPROVAL OF THE ASSUMPTION OF THE LOAN.

- THE CA COMMITTED AN ERROR IN FINDING BOTH PARTIES GUILTY OF FIRST VIOLATING THE OBLIGATIONS INCUMBENT UPON THEM EVEN INFERRING THAT PETITIONERS COMMITTED THE BREACH FIRST BUT LATER CONCLUDING THAT THE BREACH WAS COMMITTED BY BOTH PARTIES. IT DID NOT MAKE A CORRECT ASSESSMENT OF WHO ACTUALLY COMMITTED THE FIRST BREACH.

- THE CA COMMITTED AN ERROR IN NOT ALLOWING THE OFFSET IF ITS DECISION STOOD OF THE AMOUNT OF P4,133.19 PLUS 12% INT. P.A. FROM THE FILING OF THE COMPLAINT (CV 15984), THUS, ENTIRELY DISREGARDING THE DECISION OF THE TRIAL COURT IN SAID CASE ALLOWING ONLY THE DECISION IN CV 15639.

- THE CA COMMITTED AN ERROR IN NOT APPLYING THE DECISION (sic) LAID DOWN IN “SEVA VS. ALFRED BERWIN & CO. AND MEDEL” THAT A PERSON HIMSELF AT FAULT CANNOT ENFORCE SPECIFIC PERFORMANCE.[38]

The petitioners assert that the Court of Appeals erred in not finding that the respondents first committed a breach of their contract to sell upon their failure to pay the amount due for the last quarterly installment of their loan from the PSB. The petitioners fault the Court of Appeals for not relying on the resolution of Undersecretary Silvestre Bello III affirming the dismissal of the criminal complaint for estafa in I.S. No. 87-150, as cited by this Court in its decision in *Miranda v. Rayos*,[39] where it was also held that petitioner Orlando Rayos paid the last quarterly installment because he thought that the respondents would not be able to pay the same. The petitioners argue that they had no other alternative but to pay the last quarterly installment due on their loan with the PSB, considering that they received a demand letter from the bank on November 28, 1986, coupled by its denial of the respondents’ request to assume the payment of the loan. They insist that they did not block the respondents’ payment of the balance of the loan with the bank. The petitioners contend that even if the parties committed a breach of their

respective obligations under the contract to sell, it behooved the Court of Appeals to apply Article 1192 of the Civil Code in the instant case, which reads:

... The power to rescind obligation 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.

The petition has no merit.

The assailed ruling of the Court of Appeals reads:

After due study, the Court finds that there was no basis in fact and law for the appellants to usurp the payment of the last amortization on the mortgage upon the parcel of land it had conveyed to the Mirandas. Even if the appellants wanted to keep their good credit standing, they should not have preempted Miranda in paying the final amortization. There is no sufficient showing that Miranda was in danger of defaulting on the said payment. In fact, it appears that he approached the bank to tender payment, but he was refused by the bank, because he was beaten to the draw, so to speak, by the appellants. Appellants were able to do so because, for some reasons, the Mirandas' assumption of the mortgage has not been approved by the bank. In doing so, the appellants had unilaterally cancelled the deed of sale with assumption of mortgage, without the consent of the Mirandas. This conduct by the appellants is, to say the least, injudicious as under Article 1308 of the Civil Code, contracts must bind both contracting parties and their validity or compliance cannot be left to the will of one of them.

Just as nobody can be forced to enter into a contract, in the same manner, once a contract is entered into, no party can renounce it unilaterally or without the consent of the other. It is a general principle of law that no one may be permitted to change his mind or disavow and go back upon his own acts, or to proceed contrary thereto, to the prejudice of the other party. In a regime of law and order, repudiation of an agreement validly entered into cannot be made without any ground or reason in law or in fact for such repudiation.

In the same way that the Rayos spouses must respect their contract with the Mirandas for the sale of real property and assumption of mortgage, Rogelio Miranda has to recognize his obligations under his agreement to pay contingent attorney's fees to Orlando Rayos.[40]

The Court of Appeals erred in so ruling.

The findings and disquisitions of the Court of Appeals cannot prevail over our findings in *Miranda v. Rayos*,^[41] a case which involves the same parties, and where we held that the petitioners cannot be faulted for paying the amortization due for the last quarterly installment on their loan with the PSB:

It is difficult to imagine that complainant would be so naïve as to be totally unaware of the provisions of the original contract between the PSB and the spouses Rayos. He is a degree holder (A.B. Pre-Law and B.S.C.) and Acting Municipal Treasurer of Las Piñas. In short, he is not an ordinary layman. As a buyer with a knowledge of law, it was unnatural for him to read the provisions of the real estate mortgage wherein it is provided, among others, that the sale of the property covered by the mortgage does not in any manner relieve the mortgagor of his obligation but that "on the contrary, both the vendor and the vendee, or the party in whose favor the alienation or encumbrance is made shall be, jointly and severally, liable for said mortgage

obligations.” There is every reason to believe that it was pursuant to the said provision in the real estate mortgage that complainant tried to assume the loan obligation of the Rayoses by filling up and submitted the loan application (page 30, records) sent by Orland Rayos. By signing the loan application and the general information sheet (page 31, records) in connection with said application, complainant showed that he knew that there was a need to formally apply to the bank in order for him to assume the mortgage.

We find respondent spouses’ version that when complainant’s application to assume the mortgage loan was disapproved he begged that he be allowed to pay the quarterly amortization credible, owing to the fact that complainant made the payments for the account of the Rayoses. Hence, complainant knew that since his application to the PSB was not approved, there was no substitution of parties and so he had to pay for the account of respondent spouses as shown by the receipts issued by the PSB.

As for the charge that Rayos paid the last installment to block complainant from getting the title and transferring the same to his name, respondents’ version is more satisfactory and convincing. Respondent Orland Rayos paid the last amortization when it became apparent that complainant would not be able to give the payment on the due date as he was still trying to sell his Lancer car. Even if complainant was able to pay the last installment of the mortgage loan, the title would not be released to him as he knew very well that his application to assume the mortgage was disapproved and he had no personality as far as PSB was concerned.[42]

Contrary to the ruling of the Court of Appeals, the petitioners did not unilaterally cancel their contract to sell with the respondents when they paid the total amount of P29,062.80 to the PSB in December 1986.[43] In fact, the petitioners wrote the respondents on January 3, 5 and 17, 1987, that they were ready to execute the deed of absolute sale and turn over the owner’s duplicate of TCT No. 100156 upon the respondents’ remittance of the amount of P29,223.67. The petitioners reiterated the same stance in their Answer with Counterclaim in Civil Case No. 15639. The petitioners cannot, likewise, be faulted for refusing to execute a deed of absolute sale over the property in favor of the respondents, and in refusing to turn over the owner’s duplicate of TCT No. 100156 unless the respondents refunded the said amount. The respondents were obliged under the contract to sell to pay the said amount to the PSB as part of the purchase price of the property. On the other hand, it cannot be argued by the petitioners that the respondents committed a breach of their obligation when they refused to refund the said amount.

It bears stressing that the petitioners and the respondents executed two interrelated contracts, viz: the Deed of Sale with Assumption of Mortgage dated December 26, 1985, and the Contract to Sell dated January 29, 1986. To determine the intention of the parties, the two contracts must be read and interpreted together.[44] Under the two contracts, the petitioners bound and obliged themselves to execute a deed of absolute sale over the property and transfer title thereon to the respondents after the payment of the full purchase price of the property, inclusive of the quarterly installments due on the petitioners’ loan with the PSB:

- That upon full payment of the consideration hereof, the SELLER shall execute a Deed of Absolute Sale in favor of the BUYER that the payment of capital gains tax shall be for the account of the SELLER and that documentary stamps, transfer tax, registration expenses for the transfer of title including the notarization and preparation of this Contract and subsequent documents if any are to be executed, real estate taxes from January 1, 1986 and other miscellaneous expenses shall be for the account of the BUYER; the SELLER hereby represents that all association dues has been paid but that subsequent to the execution of this Contract the payment of the same shall devolve upon the BUYER.[45]

Construing the contracts together, it is evident that the parties executed a contract to sell and not a contract of sale. The petitioners retained ownership without further remedies by the respondents[46] until the payment of the purchase price of the property in full. Such payment is a positive suspensive condition, failure of which is not

really a breach, serious or otherwise, but an event that prevents the obligation of the petitioners to convey title from arising, in accordance with Article 1184 of the Civil Code.[47] In *Lacanilao v. Court of Appeals*,[48] we held that:

It is well established that where the seller promised to execute a deed of absolute sale upon completion of payment of the purchase price by the buyer, the agreement is a contract to sell. In contracts to sell, where ownership is retained by the seller until payment of the price in full, such payment is a positive suspensive condition, failure of which is not really a breach but an event that prevents the obligation of the vendor to convey title in accordance with Article 1184 of the Civil Code.

The non-fulfillment by the respondent of his obligation to pay, which is a suspensive condition to the obligation of the petitioners to sell and deliver the title to the property, rendered the contract to sell ineffective and without force and effect.[49] The parties stand as if the conditional obligation had never existed. Article 1191 of the New Civil Code will not apply because it presupposes an obligation already extant.[50] There can be no rescission of an obligation that is still non-existing, the suspensive condition not having happened.[51]

However, the respondents may reinstate the contract to sell by paying the P29,223.67, and the petitioners may agree thereto and accept the respondents' late payment.[52] In this case, the petitioners had decided before and after the respondents filed this complaint in Civil Case No. 15639 to accept the payment of P29,223.67, to execute the deed of absolute sale over the property and cause the transfer of the title of the subject property to the respondents. The petitioners even filed its amended complaint in Civil Case No. 15984 for the collection of the said amount. The Court of Appeals cannot, thus, be faulted for affirming the decision of the trial court and ordering the petitioners to convey the property to the respondents upon the latter's payment of the amount of P29,223.67, provided that the property has not been sold to a third-party who acted in good faith.

IN VIEW OF ALL THE FOREGOING, the petition is DENIED DUE COURSE. The Decision of the Court of Appeals in CA-G.R. CV No. 46727 is AFFIRMED, except as to the factual finding that the petitioners "usurped the payment of the last amortization on the mortgage upon the parcel of land." Costs against the petitioners.

SO ORDERED.

Puno, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Jainal D. Rasul (retired) and Delilah Vidallon-Magtolis, concurring.

[2] Seventh Division.

[3] Penned by Judge Roberto C. Diokno (retired).

[4] Records, Vol. I, p. 15. (Civil Case No. 15639).

[5] Id. at 14.

[6] Records, Vol. II, p. 832. (Civil Case No. 15639).

[7] Records, Vol. I, pp. 450-451. (Civil Case No. 15639).

[8] Id. at 43.

[9] Id. at 106.

- [10] Id. at 107-109.
- [11] Records, Vol. II, p. 826. (Civil Case No. 15639).
- [12] Records, Vol. I, p. 112. (Civil Case No. 15639).
- [13] Id. at 113.
- [14] Id. at 116-117.
- [15] Id. at 270.
- [16] Id. at 21.
- [17] Id. at 463.
- [18] Id. at 635.
- [19] Id. at 19.
- [20] Id. at 22-23.
- [21] Id. at 464.
- [22] Id. at 128.
- [23] Id. at 10.
- [24] Id. at 182.
- [25] Id. at 183.
- [26] Id. at 465.
- [27] Id. at 466.
- [28] Id. at 64.
- [29] Records, Vol. I, p. 103. (Civil Case No. 15639).
- [30] Id. at 254.
- [31] Id. at 471.
- [32] Id. at 346-347.
- [33] I.S. No. 87-150.
- [34] *Miranda v. Rayos*, 179 SCRA 489 (1989).
- [35] Record, Vol. II, pp. 964-965. (Civil Case No. 15639).
- [36] CA Rollo, p. 21.
- [37] Id. at 19.
- [38] Id. at 5-6.
- [39] *Supra*.
- [40] Rollo, pp. 17-18.

[41] Supra.

[42] Rollo, pp. 28-29.

[43] See notes 17 and 21.

[44] *Golden Diamond, Inc. v. Court of Appeals*, 332 SCRA 605 (2000).

[45] Records, Vol. II, p. 832. (Civil Case No. 15639).

[46] *Coronel v. Court of Appeals*, 263 SCRA 15 (1996).

[47] *Leaño v. Court of Appeals*, 369 SCRA 36 (2001).

[48] 262 SCRA 486 (1996).

[49] *Agustin v. Court of Appeals*, 186 SCRA 375 (1990).

[50] *Padilla v. Posadas*, 328 SCRA 434 (2001).

[51] *Rillo v. Court of Appeals*, 274 SCRA 461 (1997).

[52] See *Leaño v. Court of Appeals*, supra.

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