

ROBERTO Z. LAFORTEZA, GONZALO Z. LAFORTEZA, MICHAEL Z. LAFORTEZA, DENNIS Z. LAFORTEZA, AND LEA Z. LAFORTEZA, PETITIONERS, VS. ALONZO MACHUCA, RESPONDENT.

G.R. No. 137552. June 16, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This Petition for Review on Certiorari seeks the reversal of the Decision of the Court of Appeals[1] in CA G.R. CV No. 47457 entitled "ALONZO MACHUCA versus ROBERTO Z. LAFORTEZA, GONZALO Z. LAFORTEZA, LEA ZULUETA-LAFORTEZA MICHAEL Z. LAFORTEZA, and DENNIS Z. LAFORTEZA".

The following facts as found by the Court of Appeals are undisputed:

"The property involved consists of a house and lot located at No. 7757 Sherwood Street, Marcelo Green Village, Parañaque, Metro Manila, covered by Transfer Certificate of Title (TCT) No. (220656) 8941 of the Registered of Deeds of Parañaque (Exhibit "D", Plaintiff, record, pp. 331-332). The subject property is registered in the name of the late Francisco Q. Laforteza, although it is conjugal in nature (Exhibit "8", Defendants, record pp. 331-386).

On August 2, 1988, defendant Lea Zulueta-Laforteza executed a Special Power of Attorney in favor of defendants Roberto Z. Laforteza and Gonzalo Z. Laforteza, Jr., appointing both as her Attorney-in-fact authorizing them jointly to sell the subject property and sign any document for the settlement of the estate of the late Francisco Q. Laforteza (Exh. "A", Plaintiff, record, pp. 323-325).

Likewise on the same day, defendant Michael Z. Laforteza executed a Special Power of Attorney in favor of defendants Roberto Z. Laforteza and Gonzalo Laforteza, Jr., likewise, granting the same authority (Exh. "B", record, pp. 326-328). Both agency instruments contained a provision that in any document or paper to exercise authority granted, the signature of both attorneys-in-fact must be affixed.

On October 27, 1988, defendant Dennis Z. Laforteza executed a Special Power of Attorney in favor of defendant Roberto Z. Laforteza for the purpose of selling the subject property (Exh. "C", Plaintiff, record, pp. 329-330). A year later, on October 30, 1989, Dennis Z. Laforteza executed another Special Power of Attorney in favor of defendants Roberto Z. Laforteza and Gonzalo Laforteza, Jr. naming both attorneys-in-fact for the purpose of selling the subject property and signing any document for the settlement of the estate of the late Francisco Q. Laforteza. The subsequent agency instrument (Exh. "2", record, pp. 371-373) contained similar provisions that both attorneys-in-fact should sign any document or paper executed in the exercise of their authority.

In the exercise of the above authority, on January 20, 1989, the heirs of the late Francisco Q. Laforteza represented by Roberto Z. Laforteza and Gonzalo Z. Laforteza, Jr. entered into a Memorandum of Agreement (Contract to Sell) with the plaintiff[2] over the subject property for the sum of SIX HUNDRED THIRTY THOUSAND PESOS (P630,000.00) payable as follows:

(a) P30,000.00 as earnest money, to be forfeited in favor of the defendants if the sale is not effected due to the

fault of the plaintiff;

(b) P600,000.00 upon issuance of the new certificate of title in the name of the late Francisco Q. Laforteza and upon execution of an extra-judicial settlement of the decedent's estate with sale in favor of the plaintiff (Par. 2, Exh. "E", record, pp. 335-336).

Significantly, the fourth paragraph of the Memorandum of Agreement (Contract to Sell) dated January 20, 1989 (Exh. "E", supra.) contained a provision as follows:

'xxx. Upon issuance by the proper Court of the new title, the BUYER-LESSEE shall be notified in writing and said BUYER-LESSEE shall have thirty (30) days to produce the balance of P600,000.00 which shall be paid to the SELLER-LESSORS upon the execution of the Extrajudicial Settlement with sale.'

On January 20, 1989, plaintiff paid the earnest money of THIRTY THOUSAND PESOS (P30,000.00), plus rentals for the subject property (Exh. "F", Plaintiff, record, p. 339).

On September 18, 1998[3], defendant heirs, through their counsel wrote a letter (Exh. 1, Defendants, record, p. 370) to the plaintiff furnishing the latter a copy of the reconstituted title to the subject property, advising him that he had thirty (3) days to produce the balance of SIX HUNDRED PESOS (sic) (P600,000.00) under the Memorandum of Agreement which plaintiff received on the same date.

On October 18, 1989, plaintiff sent the defendant heirs a letter requesting for an extension of the THIRTY (30) DAYS deadline up to November 15, 1989 within which to produce the balance of SIX HUNDRED THOUSAND PESOS (P600,000.00) (Exh. "G", Plaintiff, record, pp. 341-342). Defendant Roberto Z. Laforteza, assisted by his counsel Atty. Romeo L. Gutierrez, signed his conformity to the plaintiff's letter request (Exh. "G-1 and "G-2", Plaintiff, record, p. 342). The extension, however, does not appear to have been approved by Gonzalo Z. Laforteza, the second attorney-in-fact as his conformity does not appear to have been secured.

On November 15, 1989, plaintiff informed the defendant heirs, through defendant Roberto Z. Laforteza, that he already had the balance of SIX HUNDRED THOUSAND PESOS (P600,000.00) covered by United Coconut Planters Bank Manager's Check No. 000814 dated November 15, 1989 (TSN, August 25, 1992, p. 11; Exhs. "H", record, pp. 343-344; "M", records p. 350; and "N", record, p. 351). However, the defendants, refused to accept the balance (TSN, August 24, 1992, p. 14; Exhs. "M-1", Plaintiff, record, p. 350; and "N-1", Plaintiff, record, p. 351). Defendant Roberto Z. Laforteza had told him that the subject property was no longer for sale (TSN, October 20, 1992, p. 19; Exh. "J", record, p. 347).

On November 20, 1998[4], defendants informed the plaintiff that they were canceling the Memorandum of Agreement (Contract to Sell) in view of the plaintiff's failure to comply with his contractual obligations (Exh. "3").

Thereafter, plaintiff reiterated his request to tender payment of the balance of SIX HUNDRED THOUSAND PESOS (P600,000.00). Defendants, however, insisted on the rescission of the Memorandum of Agreement. Thereafter, plaintiff filed the instant action for specific performance. The lower court rendered judgment on July 6, 1994 in favor of the plaintiff, the dispositive portion of which reads:

'WHEREFORE, judgment is hereby rendered in favor of plaintiff Alonzo Machuca and against the defendant heirs of the late Francisco Q. Laforteza, ordering the said defendants.

'(a) To accept the balance of P600,000.00 as full payment of the consideration for the purchase of the house and lot located at No. 7757 Sherwood Street, Marcelo Green Village, Parañaque, Metro Manila, covered by Transfer Certificate of Title No. (220656) 8941 of the Registry of Deeds of Rizal Parañaque, Branch;

(b) To execute a registrable deed of absolute sale over the subject property in favor of the plaintiff;

(c) Jointly and severally to pay the plaintiff the sum of P20,000.00 as attorney's fees plus cost of suit.

'SO ORDERED.' (Rollo, pp. 74-75)."[5]

Petitioners appealed to the Court of Appeals, which affirmed with modification the decision of the lower court; the dispositive portion of the Decision reads:

"WHEREFORE, the questioned decision of the lower court is hereby AFFIRMED with the MODIFICATION that defendant heirs Lea Zulueta-Laforteza, Michael Z. Laforteza, Dennis Z. Laforteza and Roberto Z. Laforteza including Gonzalo Z. Laforteza, Jr. are hereby ordered to pay jointly and severally the sum of FIFTY THOUSAND PESOS (P50,000.00) as moral damages.

SO ORDERED."[6]

Motion for Reconsideration was denied but the Decision was modified so as to absolve Gonzalo Z. Laforteza, Jr. from liability for the payment of moral damages.[7] Hence this petition wherein the petitioners raise the following issues:

"I. WHETHER THE TRIAL AND APPELLATE COURTS CORRECTLY CONSTRUED THE MEMORANDUM OF AGREEMENT AS IMPOSING RECIPROCAL OBLIGATIONS.

II. WHETHER THE COURTS A QUO CORRECTLY RULED THAT RESCISSION WILL NOT LIE IN THE INSTANT CASE.

III. WHETHER THE RESPONDENT IS UNDER ESTOPPEL FROM RAISING THE ALLEGED DEFECT IN THE SPECIAL POWER OF ATTORNEY DATED 30 OCTOBER 1989 EXECUTED BY DENNIS LAFORTEZA.

IV. SUPPOSING EX GRATIA ARGUMENTI THE MEMORANDUM OF AGREEMENT IMPOSES RECIPROCAL OBLIGATIONS, WHETHER THE PETITIONERS MAY BE COMPELLED TO SELL THE SUBJECT PROPERTY WHEN THE RESPONDENT FAILED TO MAKE A JUDICIAL CONSIGNATION OF THE PURCHASE PRICE?

V. WHETHER THE PETITIONERS ARE IN BAD FAITH SO TO AS MAKE THEM LIABLE FOR MORAL DAMAGES?"[8]

The petitioners contend that the Memorandum of Agreement is merely a lease agreement with "option to purchase". As it was merely an option, it only gave the respondent a right to purchase the subject property within a limited period without imposing upon them any obligation to purchase it. Since the respondent's tender of payment was made after the lapse of the option agreement, his tender did not give rise to the perfection of a contract of sale.

It is further maintained by the petitioners that the Court of Appeals erred in ruling that rescission of the contract was already out of the question. Rescission implies that a contract of sale was perfected unlike the Memorandum of Agreement in question which as previously stated is allegedly only an option contract.

Petitioner adds that at most, the Memorandum of Agreement (Contract to Sell) is a mere contract to sell, as indicated in its title. The obligation of the petitioners to sell the property to the respondent was conditioned upon the issuance of a new certificate of title and the execution of the extrajudicial partition with sale and payment of the P600,000.00. This is why possession of the subject property was not delivered to the respondent as the owner of the property but only as the lessee thereof. And the failure of the respondent to pay the purchase price in full prevented the petitioners' obligation to convey title from acquiring obligatory force.

Petitioners also allege that assuming for the sake of argument that a contract of sale was indeed perfected, the Court of Appeals still erred in holding that respondent's failure to pay the purchase price of P600,000.00 was only a "slight or casual breach".

The petitioners also claim that the Court of Appeals erred in ruling that they were not ready to comply with their obligation to execute the extrajudicial settlement. The Power of Attorney to execute a Deed of Sale made by Dennis Z. Laforteza was sufficient and necessarily included the power to execute an extrajudicial settlement. At any rate, the respondent is estopped from claiming that the petitioners were not ready to comply with their obligation for he acknowledged the petitioners' ability to do so when he requested for an extension of time within which to pay the purchase price. Had he truly believed that the petitioners were not ready, he would not have needed to ask for said extension.

Finally, the petitioners allege that the respondent's uncorroborated testimony that third persons offered a higher price for the property is hearsay and should not be given any evidentiary weight. Thus, the order of the lower court awarding moral damages was without any legal basis.

The appeal is bereft of merit.

A perusal of the Memorandum Agreement shows that the transaction between the petitioners and the respondent was one of sale and lease. The terms of the agreement read:

"1. For and in consideration of the sum of PESOS: SIX HUNDRED THIRTY THOUSAND (P630,000.00) payable in a manner herein below indicated, SELLER-LESSOR hereby agree to sell unto BUYER-LESSEE the property described in the first WHEREAS of this Agreement within six (6) months from the execution date hereof, or upon issuance by the Court of a new owner's certificate of title and the execution of extrajudicial partition with sale of the estate of Francisco Laforteza, whichever is earlier;

2. The above-mentioned sum of PESOS: SIX HUNDRED THIRTY THOUSAND (P630,000.00) shall be paid in the following manner:

P30,000.00- as earnest money and as consideration for this Agreement, which amount shall be forfeited in favor of SELLER-LESSORS if the sale is not effected because of the fault or option of BUYER-LESSEE;

P600,000.00- upon the issuance of the new certificate of title in the name of the late Francisco Laforteza and upon the execution of an Extrajudicial Settlement of his estate with sale in favor of BUYER-LESSEE free from lien or any encumbrances.

3. Parties reasonably estimate that the issuance of a new title in place of the lost one, as well as the execution of extrajudicial settlement of estate with sale to herein BUYER-LESSEE will be completed within six (6) months from the execution of this Agreement. It is therefore agreed that during the six months period, BUYER-LESSEE will be leasing the subject property for six months period at the monthly rate of PESOS: THREE THOUSAND FIVE HUNDRED (P3,500.00). Provided however, that if the issuance of new title and the execution of Extrajudicial Partition is completed prior to the expiration of the six months period, BUYER-LESSEE shall only be liable for rentals for the corresponding period commencing from his occupancy of the premises to the execution and completion of the Extrajudicial Settlement of the estate, provided further that if after the expiration of six (6) months, the lost title is not yet replaced and the extra judicial partition is not executed, BUYER-LESSEE shall no longer be required to pay rentals and shall continue to occupy, and use the premises until subject condition is complied by SELLER-LESSOR;

4. It is hereby agreed that within reasonable time from the execution of this Agreement and the payment by BUYER-LESSEE of the amount of P30,000.00 as herein above provided, SELLER-LESSORS shall immediately file the corresponding petition for the issuance of a new title in lieu of the lost one in the proper Courts. Upon

issuance by the proper Courts of the new title, the BUYER-LESSEE shall have thirty (30) days to produce the balance of P600,000.00 which shall be paid to the SELLER-LESSORS upon the execution of the Extrajudicial Settlement with sale."^[9]

A contract of sale is a consensual contract and is perfected at the moment there is a meeting of the minds upon the thing which is the object of the contract and upon the price.^[10] From that moment the parties may reciprocally demand performance subject to the provisions of the law governing the form of contracts.^[11] The elements of a valid contract of sale under Article 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.^[12]

In the case at bench, there was a perfected agreement between the petitioners and the respondent whereby the petitioners obligated themselves to transfer the ownership of and deliver the house and lot located at 7757 Sherwood St., Marcelo Green Village, Parañaque and the respondent to pay the price amounting to six hundred thousand pesos (P600,000.00). All the elements of a contract of sale were thus present. However, the balance of the purchase price was to be paid only upon the issuance of the new certificate of title in lieu of the one in the name of the late Francisco Laforteza and upon the execution of an extrajudicial settlement of his estate. Prior to the issuance of the "reconstituted" title, the respondent was already placed in possession of the house and lot as lessee thereof for six months at a monthly rate of three thousand five hundred pesos (P3,500.00). It was stipulated that should the issuance of the new title and the execution of the extrajudicial settlement be completed prior to expiration of the six-month period, the respondent would be liable only for the rentals pertaining to the period commencing from the date of the execution of the agreement up to the execution of the extrajudicial settlement. It was also expressly stipulated that if after the expiration of the six month period, the lost title was not yet replaced and the extrajudicial partition was not yet executed, the respondent would no longer be required to pay rentals and would continue to occupy and use the premises until the subject condition was complied with by the petitioners.

The six-month period during which the respondent would be in possession of the property as lessee, was clearly not a period within which to exercise an option. An option is a contract granting a privilege to buy or sell within an agreed time and at a determined price. An option contract is a separate and distinct contract from that which the parties may enter into upon the consummation of the option.^[13] An option must be supported by consideration.^[14] An option contract is governed by the second paragraph of Article 1479 of the Civil Code^[15], which reads:

"Article 1479. xxx

An accepted unilateral promise to buy or to 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."

In the present case, the six-month period merely delayed the demandability of the contract of sale and did not determine its perfection for after the expiration of the six-month period, there was an absolute obligation on the part of the petitioners and the respondent to comply with the terms of the sale. The parties made a "reasonable estimate" that the reconstitution of the lost title of the house and lot would take approximately six months and thus presumed that after six months, both parties would be able to comply with what was reciprocally incumbent upon them. The fact that after the expiration of the six-month period, the respondent would retain possession of the house and lot without need of paying rentals for the use therefor, clearly indicated that the parties contemplated that ownership over the property would already be transferred by that time.

The issuance of the new certificate of title in the name of the late Francisco Laforteza and the execution of an extrajudicial settlement of his estate was not a condition which determined the perfection of the contract of sale. Petitioners' contention that since the condition was not met, they no longer had an obligation to proceed with the

sale of the house and lot is unconvincing. The petitioners fail to distinguish between a condition imposed upon the perfection of the contract and a condition imposed on the performance of an obligation. Failure to comply with the first condition results in the failure of a contract, while the failure to comply with the second condition only gives the other party the option either to refuse to proceed with the sale or to waive the condition. Thus, Art. 1545 of the Civil Code states:

"Art. 1545. Where the obligation of either party to a contract of sale is subject to any condition which is not performed, such party may refuse to proceed with the contract or he may waive performance of the condition. If the other party has promised that the condition should happen or be performed, such first mentioned party may also treat the nonperformance of the condition as a breach of warranty.

Where the ownership in the things has not passed, the buyer may treat the fulfillment by the seller of his obligation to deliver the same as described and as warranted expressly or by implication in the contract of sale as a condition of the obligation of the buyer to perform his promise to accept and pay for the thing." [16]

In the case at bar, there was already a perfected contract. The condition was imposed only on the performance of the obligations contained therein. Considering however that the title was eventually "reconstituted" and that the petitioners admit their ability to execute the extrajudicial settlement of their father's estate, the respondent had a right to demand fulfillment of the petitioners' obligation to deliver and transfer ownership of the house and lot.

What further militates against petitioners' argument that they did not enter into a contract of sale is the fact that the respondent paid thirty thousand pesos (P30,000.00) as earnest money. Earnest money is something of value to show that the buyer was really in earnest, and given to the seller to bind the bargain. [17] Whenever earnest money is given in a contract of sale, it is considered as part of the purchase price and proof of the perfection of the contract. [18]

We do not subscribe to the petitioners' view that the Memorandum Agreement was a contract to sell. There is nothing contained in the Memorandum Agreement from which it can reasonably be deduced that the parties intended to enter into a contract to sell, i.e. one whereby the prospective seller would explicitly reserve the transfer of title to the prospective buyer, meaning, the prospective seller does not as yet agree or consent to transfer ownership of the property subject of the contract to sell until the full payment of the price, such payment being a positive suspensive condition, the failure of which is not considered a breach, casual or serious, but simply an event which prevented the obligation from acquiring any obligatory force. [19] There is clearly no express reservation of title made by the petitioners over the property, or any provision which would impose non-payment of the price as a condition for the contract's entering into force. Although the memorandum agreement was also denominated as a "Contract to Sell", we hold that the parties contemplated a contract of sale. A deed of sale is absolute in nature although denominated a conditional sale in the absence of a stipulation reserving title in the petitioners until full payment of the purchase price. [20] In such cases, ownership of the thing sold passes to the vendee upon actual or constructive delivery thereof. [21] The mere fact that the obligation of the respondent to pay the balance of the purchase price was made subject to the condition that the petitioners first deliver the reconstituted title of the house and lot does not make the contract a contract to sell for such condition is not inconsistent with a contract of sale. [22]

The next issue to be addressed is whether the failure of the respondent to pay the balance of the purchase price within the period allowed is fatal to his right to enforce the agreement.

We rule in the negative.

Admittedly, the failure of the respondent to pay the balance of the purchase price was a breach of the contract and was a ground for rescission thereof. The extension of thirty (30) days allegedly granted to the respondent by

Roberto Z. Laforteza (assisted by his counsel Attorney Romeo Gutierrez) was correctly found by the Court of Appeals to be ineffective inasmuch as the signature of Gonzalo Z. Laforteza did not appear thereon as required by the Special Powers of Attorney.[23] However, the evidence reveals that after the expiration of the six-month period provided for in the contract, the petitioners were not ready to comply with what was incumbent upon them, i.e. the delivery of the reconstituted title of the house and lot. It was only on September 18, 1989 or nearly eight months after the execution of the Memorandum of Agreement when the petitioners informed the respondent that they already had a copy of the reconstituted title and demanded the payment of the balance of the purchase price. The respondent could not therefore be considered in delay for in reciprocal obligations, neither party incurs in delay if the other party does not comply or is not ready to comply in a proper manner with what was incumbent upon him.[24]

Even assuming for the sake of argument that the petitioners were ready to comply with their obligation, we find that rescission of the contract will still not prosper. The rescission of a sale of an immovable property is specifically governed by Article 1592 of the New Civil Code, which reads:

"In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by a notarial act. After the demand, the court may not grant him a new term." [25]

It is not disputed that the petitioners did not make a judicial or notarial demand for rescission. The November 20, 1989 letter of the petitioners informing the respondent of the automatic rescission of the agreement did not amount to a demand for rescission, as it was not notarized.[26] It was also made five days after the respondent's attempt to make the payment of the purchase price. This offer to pay prior to the demand for rescission is sufficient to defeat the petitioners' right under article 1592 of the Civil Code.[27] Besides, the Memorandum Agreement between the parties did not contain a clause expressly authorizing the automatic cancellation of the contract without court intervention in the event that the terms thereof were violated. A seller cannot unilaterally and extrajudicially rescind a contract of sale where there is no express stipulation authorizing him to extrajudicially rescind.[28] Neither was there a judicial demand for the rescission thereof. Thus, when the respondent filed his complaint for specific performance, the agreement was still in force inasmuch as the contract was not yet rescinded. At any rate, considering that the six-month period was merely an approximation of the time it would take to reconstitute the lost title and was not a condition imposed on the perfection of the contract and considering further that the delay in payment was only thirty days which was caused by the respondents justified but mistaken belief that an extension to pay was granted to him, we agree with the Court of Appeals that the delay of one month in payment was a mere casual breach that would not entitle the respondents to rescind the contract. Rescission of a contract will not be permitted for a slight or casual breach, but only such substantial and fundamental breach as would defeat the very object of the parties in making the agreement.[29]

Petitioners' insistence that the respondent should have consigned the amount is not determinative of whether respondent's action for specific performance will lie. Petitioners themselves point out that the effect of consignment is to extinguish the obligation. It releases the debtor from responsibility therefor.[30] The failure of the respondent to consignate the P600,000.00 is not tantamount to a breach of the contract for by the fact of tendering payment, he was willing and able to comply with his obligation.

The Court of Appeals correctly found the petitioners guilty of bad faith and awarded moral damages to the respondent. As found by the said Court, the petitioners refused to comply with their obligation for the reason that they were offered a higher price therefor and the respondent was even offered P100,000.00 by the petitioners' lawyer, Attorney Gutierrez, to relinquish his rights over the property. The award of moral damages is in

accordance with Article 1191[31] of the Civil Code pursuant to Article 2220 which provides that moral damages may be awarded in case of a breach of contract where the defendant acted in bad faith. The amount awarded depends on the discretion of the court based on the circumstances of each case.[32] Under the circumstances, the award given by the Court of Appeals amounting to P50,000.00 appears to us to be fair and reasonable.

ACCORDINGLY, the decision of the Court of Appeals in CA G.R. CV No. 47457 is AFFIRMED and the instant petition is hereby DENIED.

No pronouncement as to costs.

SO ORDERED.

Melo, (Chairman), Panganiban, and Purisima, JJ., concur.

Vitug, J., Abroad, On Official Business.

[1] Twelfth Division composed of the ponente J. Mariano M. Umali and the members: J. Consuelo Ynares-Santiago (Chairman) and J. Romeo J. Callejo, Sr. concurring.

[2] Alonzo Machuca, respondent herein.

[3] Should be 1989; Exhibit "1", Record, p. 370.

[4] Should be 1989; Exhibit "3"; Record, p. 374.

[5] Decision, pp. 1-4; Rollo, pp. 39-42.

[6] Decision, pp. 14-15; Rollo, pp. 52-53.

[7] Resolution, p. 7; Rollo, p. 59.

[8] Petitioners' Memorandum, p. 7-8; Rollo, pp. 119-120.

[9] Rollo, pp. 23-25.

[10] City of Cebu vs. Heirs of Candido Rubi, 306 SCRA 408 at p. 417 [1999].

[11] Article 1475, Civil Code.

[12] City of Cebu vs. Heirs of Candido Rubi, supra.

[13] Co vs. Court of Appeals, G. R. No. 112330, August 17, 1999 at p. 7.

[14] Ibid.

[15] Ibid.

[16] Lim vs. Court of Appeals, 263 SCRA 569 at p. 578 [1996].

[17] Topacio vs. Court of Appeals, 211 SCRA 291 at p. 295 [1992].

[18] Article 1482, Civil Code.

[19] City of Cebu vs. Heirs of Candido Rubi, supra at p. 419.

[20] Babasa vs. Court of Appeals, 290 SCRA 532 at p. 540 [1998].

[21] Ibid.

[22] Ibid.

[23] The Powers of Attorney read:

"xxx It is hereby understood that in signing any document or paper to exercise the authority herein granted, the signature of both attorneys must be affixed to said document." (emphasis supplied)

[24] Article 1169, Civil Code.

[25] Article 1592 requiring demand by suit or notarial act in case the vendor wants to rescind does not apply to a contract to sell or promise to sell where title remains with the vendor until fulfillment of a positive condition such as full payment of the price [Roque vs. Lapuz, 96 SCRA 741 citing Manuel vs. Rodriguez 109 Phil.].

[26] Record, p. 56.

[27] Ocampo vs. Court of Appeals, 233 SCRA 551 at p. 562 [1994].

[28] Co vs. Court of Appeals, supra at p. 9.

[29] Ocampo vs. Court of Appeals, supra.

[30] Article 1256 of the Civil Code reads: "If the creditor to whom tender of payment has been made refuses without just cause to accept it, the debtor shall be released from responsibility by the consignment of the thing or sum due. xxx"

[31] "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 fulfillment and 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. xxx"

[32] Lim vs. Court of Appeals, Supra at p. 581.

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