

REYNALDO MORTEL, PETITIONER, VS. KASSCO, INC. AND OSCAR SANTOS, RESPONDENTS.

G.R. No. 137823. December 15, 2000

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is a petition for review on certiorari of the Decision of the Court of Appeals,[1] dated September 30, 1998, in C.A. GR CV No. 52059 which affirmed the Decision of the Regional Trial Court of Makati City, Branch 66, in Civil Case No. 89-3260 dismissing petitioner's complaint for specific performance and/or rescission with damages.

The facts leading to the filing of the present petition are as follows:

KASSCO, Inc. is the registered owner of the lot covered by Transfer Certificate of Title No. 137791 as well as the building (named "Kassco Building") standing thereon located at the corner of Cavite and Lico Streets, Rizal Avenue, Sta. Cruz, Manila. To secure a loan obtained from the Philippine National Bank (PNB), which was renting the first floor of the building, KASSCO, Inc. mortgaged such property to the latter. This mortgage was duly annotated at the back of TCT No. 137791 on May 11, 1981.

In 1985, KASSCO, Inc. applied for the conversion of the Kassco Building into a condominium which application was approved by the then Human Settlements Regulatory Commission (HSRC) on August 9, 1985. As a requirement for registration and issuance of a license to sell, KASSCO, Inc. wrote PNB to secure its approval of the said conversion and the partial release or cancellation of the mortgage over the fully-paid units.

In the same year, KASSCO, Inc., represented by Oscar Santos, entered into an "Agreement" with herein petitioner Reynaldo Mortel, the pertinent provisions of which provide:

WHEREAS, the SELLER has offered to sell the second floor of the above-mentioned building, with the floor area of One Hundred Sixty Five (165) square meters, more or less, including common areas (referred to herein as "Second Floor") and the buyer has agreed to buy the same, subject to the terms and conditions hereinafter set forth:

WHEREAS, the aforementioned property is the subject of an application for conversion into a commercial condominium filed with the Human Settlements Regulatory Commission of the Ministry of Human Settlements, which has been recently approved:

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual stipulations hereinafter set forth, the parties hereby agree and bind themselves as follows:

1. Object of the Sale

xxx

2. Purchase Price

xxx

3. Manner of Payment

Upon securing the individual condominium certificate of title (CCT) over the Kassco Building, which the SELLER undertakes to accomplish within one year from execution hereof, the seller shall execute a Deed of Absolute sale in favor and deliver to the buyer the CCT corresponding to the Second Floor, free from any liens and encumbrances. Simultaneously, and to secure the payment by the buyer of the purchase price or balance thereof, the BUYER shall execute a Deed of Mortgage in favor of the SELLER over the said second Floor. The buyer undertakes to pay the full purchase price, or the remaining thereof, within two (2) months from the delivery of the CCT. Should the buyer fail to pay in full the agreed purchase price within two (2) months as herein agreed upon, the parties shall renegotiate the purchase price based on the prevailing Market Value of the property.

Upon full payment of the BUYER of the purchase price, the SELLER shall deliver to the BUYER a Deed of Release canceling the aforesaid mortgage.

4. Possession

xxx

5. Lease and Rental

Pending the delivery of the title to the BUYER and payment to the SELLER of the full amount of the purchase price, a contract of lease for definite period of one (1) year from the date of this agreement, is hereby constituted on the aforementioned Second Floor of the Kassco Building, subject to the following terms and conditions:

a. xxx

b. The lease herein constitute shall be deemed automatically terminated upon full payment of the purchase price to the SELLER, or the expiration of the agreed one (1) year lease period, whichever comes first.

c. If the Deed of Absolute Sale is not executed through no fault of the SELLER, BUYER-LESSEE shall peacefully and voluntarily vacate the premises upon the expiration of the one (1) year period. However, should SELLER fail to obtain the CCT or authority to sell within the one (1) year period agreed upon and delay or failure is attributable to the SELLER, the buyer may exercise any of the following options: 1) renew and/or extend the lease for another year under such terms and conditions mutually agreed upon between the parties; or 1) vacate the premises but shall have the right to buy the Second Floor for the purchase price reasonably fixed at such time that the SELLER is ready to convey ownership thereof.

7. Improvements

xxx

The buyer may introduce additional improvements on the premises herein agreed to be bought and sold but in case of non-payment of the purchase price and expiration of the lease period, such improvement shall be forfeited in favor of the SELLER.[2]

KASSCO, Inc.'s request for partial cancellation of mortgage and delivery of TCT No. 137791 remained unacted upon by PNB such that the one-year period of lease with petitioner, as embodied in the "Agreement" expired without KASSCO securing and delivering the Condominium Certificate of Title (CCT) to petitioner.

Thus, petitioner and private respondent executed another agreement which substantially contained the same terms and conditions as the first agreement and modified only insofar as the purchase price and monthly rental fee of

P680,000.00 and P5,000.00, respectively, were increased to P816,000.00 and P7,000.00.

The period covered by the second agreement again lapsed without KASSCO obtaining the release of the mortgage with PNB and the Condominium Certificate of Title. Nonetheless, petitioner remained in occupation of the premises at a monthly rental fee of P7,000.00.

On November 10, 1988, KASSCO ordered petitioner to vacate the premises and to pay an additional rental fee of P2,000.00 per month from October 18, 1987 to October 18, 1988. KASSCO also increased the monthly rental fee to P11,550.00 effective October 18, 1988.

On November 24, 1988, petitioner, in response, demanded from private respondent the delivery of the CCT over the subject property and the execution of a Deed of Absolute Sale in his favor.

This prompted KASSCO, Inc. to file a complaint for unlawful detainer against petitioner on December 13, 1988. Petitioner Mortel, in turn, instituted the present case for specific performance or rescission with damages against KASSCO, Inc. When Oscar Santos failed to file his Answer within the reglementary period, he was declared in default and herein petitioner presented evidence ex-parte. Meanwhile, during the pendency of the case, the Kassco Building was foreclosed due to KASSCO's failure to settle its obligation with PNB.

On November 29, 1995, the Regional Trial Court dismissed petitioner's complaint. This dismissal was affirmed by the Court of Appeals on September 30, 1998. Hence, the present petition.

Petitioner contends that since the 1985 and 1986 agreements were in the nature of a contract to sell a condominium, then the pertinent provisions of the Condominium Law, P.D. 957 and the Law on Sale of Real Estate on Installment, R.A. 6581, shall apply such that he may recover whatever he has paid as partial payment and monthly rental fees under said agreements and likewise be reimbursed the value of the improvements he has introduced to the subject property.

Petitioner further attributes misrepresentation and bad faith to private respondent KASSCO, Inc. for its alleged failure to inform petitioner that the property was mortgaged to PNB and that it has not yet secured a license to sell at the time the subject agreements were entered into.

The Court finds no merit in the petition.

In interpretation of contracts, it is an elementary rule that if the terms of a contract are clear and leave no doubt as to the intentions of the contracting parties, then the literal meaning of its stipulations shall control.[3]

Clearly discernible from the subject Agreements is the existence of two contracts - the first is the principal contract to sell the second floor of the Kassco Building, and second is a contract of lease over the same property, pending delivery of title by KASSCO, effective for a period of one year from date of execution of the said agreements.

From its terms, the first contract is doubtlessly a contract to sell because ownership is reserved in the vendor and title is not to pass until full payment of the purchase price.[4] Moreover, this contract to sell is subject to a suspensive condition which is the acquisition of individual condominium certificates of title (CCT) over the building which private respondent undertook to accomplish within one year from date of execution. In contracts subject to a suspensive condition, the birth or effectivity of such contracts only takes place if and when the event constituting the condition happens or is fulfilled, and if the suspensive condition does not take place, the parties would stand as if the conditional obligation had never existed.[5]

In the present petition, the effectivity of the contract to sell is conditioned upon the obtainment and delivery of the condominium certificate of title to petitioner by private respondent. Under the terms of the agreement, title shall

only pass and a deed of absolute sale shall only be executed in favor of the buyer upon securing individual CCTs over the subject property. The non-fulfillment of this condition is thus evident when KASSCO, Inc. failed to secure the partial cancellation of its mortgage and the return of its Transfer Certificate of Title by PNB, both of which were indispensable to registration and the issuance of a license to sell a condominium, which in turn, are prerequisites to the issuance of a CCT.

When private respondent thus failed to secure CCTs over the property subject of this controversy, the contract to sell did not take into effect. Consequently, the laws invoked by petitioner, PD 957 and RA 6581, find no application to the present case because said laws presuppose the existence of a valid and effective contract to sell a condominium. As succinctly pointed out by the Court of Appeals, the parties must have, in fact, anticipated the non-fulfillment of the suspensive condition when they incorporated the lease contract in their agreements.[6] Moreover, the subsequent act of herein petitioner, specifically, the payment of monthly rental fees evidenced by receipts denominated as "rental" confirm petitioner's assent to the lease contract embodied in the subject agreements. Since, the conditional obligation is deemed not to have existed by reason of the non-fulfillment of the suspensive condition, the award of damages under Art. 1191 of the Civil Code[7] is unwarranted.

As to the allegation of bad faith and misrepresentation on the part of private respondent KASSCO, Inc., again, the contention is bereft of merit. It is well-settled that bad faith cannot be presumed and must be established by clear and convincing evidence.[8] And the person who seeks damages due to the acts of another has the burden of proving that the latter acted in bad faith or with ill-motive.[9] In the case under scrutiny, petitioner failed to show bad faith on the part of private respondent KASSCO, Inc. We quote with approval the disquisitions of the court a quo on the matter as affirmed by the Court of Appeals:

In the ordinary course of things, prudence dictates that a buyer of a real property (plaintiff claims to be so) would look into the title thereof. xxx Plaintiff is a sales manager of PHILAMLIFE Co. and it is expected that a person holding such a position will not readily enter into a contract without exercising ordinary care by checking the title covering the property.

Moreover, plaintiff testified that he learned of the mortgage in the middle of the year 1986 when the first agreement was in operation (TSN, Oct. 23, 1993: p.11-12). If this was so, plaintiff should have asked for explanation about the said mortgage or protested the same. This, he did not do. Notwithstanding this knowledge, he entered into another agreement for (sic) October 18, 1986 to October 18, 1987 with the same terms and conditions as the 1985 agreement except for the purchase price and the monthly rents. (Exh. "B" or "2").[10]

As to the alleged representations made by private respondent that it had license to sell condominium units at the time the subject agreements were executed, the Court finds no such misrepresentation. The only assurance given by private respondent to herein petitioner is that its application for conversion of the Kassco Building into a commercial condominium has been approved by the HSRC. In fact, the undertaking assumed by herein private respondent to secure individual condominium certificates of title over the subject property within one year from date of execution of the agreement is an indication that its registration and the issuance of its license to sell was still in process.

Finally, it must be pointed out that neither the law nor the courts will excuse a party from an unwise or undesirable contract he or she entered into with all the required formalities and with full awareness of its consequences[11] as in the case of herein petitioner.

WHEREFORE, the petition is DENIED for lack of merit. The Decision of the Court of Appeals, dated September 30, 1998, in CA-GR CV No. 52059 is hereby AFFIRMED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Pardo, and Ynares-Santiago, JJ., concur.

[1] First Division, penned by Associate Justice Artemio G. Tuquero, and concurred in by Associate Justices Arturo B. Buena and Eubulo G. Verzola

[2] Rollo, pp. 28-31.

[3] Art. 1370, Civil Code; see also *Palmares vs. Court of Appeals*, 288 SCRA 422, 434 (1998).

[4] *Adelfa Propeties, Inc. vs. Court of Appeals*, 240 SCRA 565, 576-577 (1995).

[5] *Cheng vs. Genato*, 300 SCRA 722, 735-736 (1998).

[6] Decision of the Court of Appeals, p. 9; Rollo, p. 35.

[7] Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may as to seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

xxx xxx xxx

[8] *Philippine Air Lines vs. Miano*, 242 SCRA 235, 240 (1995) citing *LBC vs. Court of Appeals*, G.R. # 108670, Sept. 21, 1994.

[9] *Chua vs. Court of Appeals*, 242 SCRA 341, 345 (1995).

[10] Decision of the Court of Appeals, p. 10; Rollo, p. 36.

[11] *Opulencia vs. Court of Appeals*, 293 SCRA 385, 396 (1998).

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