

**ANGEL CLEMENO, JR., MALYN CLEMENO, AND NILUS SACRAMENTO,
PETITIONERS, VS. ROMEO R. LOBREGAT, RESPONDENT.***G.R. No. 137845. September 09, 2004*

Ponente: CALLEJO, SR., J.

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This is a petition for review of the Decision[1] of the Court of Appeals in CA-G.R. CV No. 53655 reversing the decision of the Regional Trial Court of Quezon City, Branch 224, in Civil Case Nos. 92-12620 and 93-17268.

The Antecedents

The Spouses Nilus and Teresita Sacramento were the owners of a parcel of land covered by Transfer Certificate of Title (TCT) No. 158728 and the house constructed thereon located at No. 68 Madaling Araw Street, Teresa Heights Subdivision, Novaliches, Quezon City. The Spouses Sacramento mortgaged the property with the Social Security System (SSS) as security for their housing loan and, likewise, surrendered the owner's and duplicate copies of the certificate of title. On September 2, 1980, the spouses executed a Deed of Sale with Assumption of Mortgage in favor of Maria Linda Clemeno and her husband Angel C. Clemeno, Jr., with the conformity of the SSS.[2] On March 6, 1981, the Register of Deeds issued TCT No. 277244 over the property in the name of the vendees,[3] who, in turn, executed a Real Estate Mortgage Contract over the property in favor of the SSS to secure the payment of the amount of P22,900.00, the balance of the loan.[4] The Spouses Clemeno also surrendered the owner's duplicate copy of the said title to the SSS. However, per the records of the SSS Loans Department, the vendors (the Spouses Sacramento) remained to be the debtors.

On July 1, 1992, respondent Romeo R. Lobregat, a lawyer and an Election Registrar in the Commission on Elections, filed a Complaint against the petitioners, the Spouses Clemeno, and Nilus Sacramento for breach of contract, specific performance with damages with the RTC of Quezon City. The case was docketed as Civil Case No. 92-12620 and raffled to Branch 100. On May 7, 1993, the trial court dismissed the case without prejudice for lack of interest on the part of the plaintiff to prosecute.[5] The petitioners, for their part, filed a Complaint against the respondent for recovery of possession of property with damages, docketed as Civil Case No. 93-17268 and raffled to Branch 93 of the court. In the meantime, the RTC, Branch 100 set aside its Order in Civil Case No. 92-12620 and reinstated the case. The two (2) cases were then consolidated in the RTC, Branch 100.

The Evidence of**The Respondent**

On June 4, 1987, the respondent and petitioner Angel Clemeno, Jr., relatives by consanguinity, entered into a verbal contract of sale over the property covered by TCT No. 277244 under the following terms and conditions: (a) the respondent would pay the purchase price of the property in the amount of P270,000.00, inclusive of the balance of the loan of the petitioners, the Spouses Clemeno with the SSS[6] within two years from June 4, 1987;[7] (b) the respondent would pay the monthly amortizations of the vendor's loan with the SSS; and (c) upon the payment of the purchase price of the property, the Spouses Clemeno would execute a deed of sale in favor of

the respondent.[8] The respondent made a down payment of P25,000.00 for which petitioner Clemeno, Jr. issued a receipt dated June 4, 1987.[9] He then made a partial payment of P5,000.00 to petitioner Clemeno, Jr. on July 8, 1987,[10] and another partial payment of P50,000.00 on February 9, 1988.[11] The respondent paid the realty taxes due on the property for 1987 and 1988.[12]

In the meantime, petitioner Clemeno, Jr. read a press release from the SSS in the newspapers allowing delinquent borrowers to restructure the balance of their loans as of March 31, 1988 with no arrearages on the balance of their account under certain terms and conditions.[13] On February 26, 1988, he paid the amount of P6,692.63 to the SSS, in partial payment of his loan account.[14] He also made a written request to the SSS for a restructuring of his loan.[15] Thereafter, the SSS Loans Collection Department issued on March 15, 1988, addressed to the borrower on record, that effective March 15, 1988, the monthly amortization on the loan was P841.84.[16] Petitioner Clemeno, Jr., as mortgagor, affixed his conformity thereto.[17] He then wrote a letter authorizing the respondent to pay the balance of his restructured loan with the SSS, which payments would be considered as partial payment of the house and lot.[18] Conformably, the respondent remitted to the SSS the monthly amortization payments for the account of petitioner Clemeno, Jr. However, the receipts issued by the SSS were in the name of petitioners Nilus Sacramento or Clemeno, Jr.[19]

The respondent made additional partial payments for the sale of the property to petitioner Clemeno, Jr. on January 17, 1989, and, March 20, 1989, in the total amount of P10,000.00.[20] He also continued remitting to the SSS the monthly amortizations due for the account of petitioner Clemeno, Jr.[21]

The respondent was able to secure a loan of P160,000.00 on April 1, 1989, which was more than sufficient to cover his balance of the purchase of the property. He then offered to pay the said balance to petitioner Clemeno, Jr.,[22] but the latter told him to keep the money because the owner's duplicate copy of the title was still with the SSS and to instead continue paying the monthly amortizations due. The respondent did so and made payments until March 1990.[23] He no longer paid after this date because the SSS informed him that petitioner Clemeno, Jr. had already paid the balance of his account in full on March 23, 1990. Indeed, on May 9, 1990, the SSS had executed a Release of Real Estate Mortgage in favor of petitioner Clemeno, Jr. and released the owner's duplicate of TCT No. 277244.[24]

The respondent offered to pay the balance of the purchase price of the property to petitioner Clemeno, Jr. and asked the latter to execute the deed of sale over the property and deliver the title over the property under his name, but petitioner Clemeno, Jr. refused to do so unless the respondent agreed to buy the property at the price prevailing in 1992. The respondent refused.

On June 12, 1992, the respondent's counsel wrote petitioner Clemeno, Jr., informing the latter that he (the respondent) had already paid P113,049.96 of the purchase price of the property and that he was ready to pay the balance thereof in the amount of P156,970.04. He demanded that petitioner Clemeno, Jr. execute a deed of absolute sale over the property and deliver the title thereto in his name upon his receipt of the amount of P156,970.04.[25]

In his reply-letter, petitioner Clemeno, Jr. stated that he never sold the property to the respondent; that he merely tolerated the respondent's possession of the property for one year or until 1987, after which the latter offered to buy the property, which offer was rejected; and that he instead consented to lease the property to the respondent. The petitioner also declared in the said letter that even if the respondent wanted to buy the property, the same was unenforceable as there was no document executed by them to evince the sale.[26]

In their Answer to the complaint, the petitioners alleged that they entered into a verbal lease-purchase agreement over the house and lot with the respondent under the following terms and conditions:

(a)

The purchase price will be P270,000.00 to be paid in full not later than June 1, 1988;

(b)

The rental is P1,500.00 a month, for the whole period from June 1987 to June 1, 1988;

(c)

If the whole purchase price is not paid on the agreed date, the total amount equivalent to one-year rental shall be deducted from the amount already paid by the plaintiff, who shall peacefully vacate the premises and surrender possession of the house and lot to the defendants.

(d)

The purchase price of P270,000.00 shall be payable: P90,000.00 upon taking possession of the property, P90,000.00 payable within six (6) months thereafter, and P90,000.00 not later than June 1, 1988.[27]

The petitioners further alleged that despite the respondent's failure to comply with the conditions of their agreement, the latter was still granted an extension of until September 1989 to pay the purchase price of the property, but managed to pay only P113,049.96, including the monthly amortizations of their loan account with the SSS and realty tax payments. The petitioners further alleged that the respondent even failed to pay any rental for the property from June 1987 to June 1, 1988. They posited that the contract between the parties was unenforceable under Article 1403(2) of the New Civil Code, and prayed that judgment be rendered in their favor as prayed for by them in their complaint in Civil Case No. 93-17268, thus:

WHEREFORE, it is most respectfully prayed that after due hearing, a decision in favor of plaintiff be rendered, ordering Defendant –

(a)

And all other persons claiming under him to vacate the premises located at 86 Madaling Araw St., Teresa Heights Subdivision, Novaliches, Quezon City;

(b)

To pay plaintiff a balance of P64,349.14 for the use and occupancy of the premises until May 31, 1993, and at the rate of P3,628.80 a month from June 1, 1993 until the premises shall have been finally vacated;

(c)

To pay P50,000.00 plus P2,000.00 per appearance as and for attorney's fees; and

(d)

To pay the costs of suit.

Plaintiff further prays for such other relief reasonable and conscionable in the premises.[28]

The Evidence for the
Petitioners

Petitioner Clemeno, Jr. and the respondent were townmates. Sometime in June 1987, petitioner Clemeno, Jr. agreed to sell the property for P270,000.00 payable in three (3) installments: (a) P90,000.00 upon the respondent's taking possession of the property; (b) P90,000.00 payable within six (6) months thereafter; and (c) P90,000.00 not later than June 1, 1988. The respondent assured petitioner Clemeno, Jr. that there would be nothing to worry about the documentation of the sale; being a lawyer, he would take care of everything. However, the respondent failed to pay the balance of the purchase price of the property in the amount of P156,970.04 despite promises to do so.

On September 16, 1989, petitioner Clemeno, Jr. went to the respondent's house to talk to him anew, but the latter was nowhere to be found. He made a typewritten letter to the respondent, stating that the latter had been given more than enough time to exercise the option to buy the property but failed to do so; hence, the offer was deemed cancelled. The petitioner left the letter with the respondent's daughter, Michelle Lobregat.

The trial court rendered judgment in favor of the petitioners, as follows:

Accordingly, therefore, the Court hereby renders judgment in favor of Angel Clemeno, [Jr.] as against Romeo Lobregat and orders the latter and other persons claiming under him to:

- Vacate the premises located at No. 86 Madaling Araw Street, Teresa Heights Subdivision, Novaliches, Quezon City;
- Pay Angel Clemeno, Jr. the amount of P64,349.14 for the use and occupancy of the premises until May 31, 1993 and at the rate of P3,628.80 a month from June 1, 1993 until the premises have been finally vacated;
- Pay the amount of P50,000.00 as attorney's fees and other legal expenses, and
- To pay the costs of suit.

IT IS SO ORDERED.[29]

The trial court ruled that since both the sale and lease agreements were not reduced to writing, both contracts were unenforceable under Article 1403(2) of the New Civil Code, and had decided the case based on justice and equity.

The respondent appealed the decision to the Court of Appeals and raised the following assignment of errors:

- THE LOWER COURT, AFTER THE COMPLETE, MERITORIOUS AND WRITTEN PIECES OF EVIDENCE SUBMITTED BY PLAINTIFF-APPELLANT LOBREGAT, FAILED/REFUSED TO CONSIDER THE SAME. INSTEAD, DECIDED ONLY THE CASE OF ACCION PUBLICIANA FILED BY DEFENDANT-APPELLEE A. CLEMENO, JR.
- THE LOWER COURT FAILED TO CONSIDER THAT RECEIPTS ARE NOT CONTRACT OF SALE BUT EVIDENCE FOR CONTRACT OF SALE AS EVEN NOTED BY THE LOWER COURT.
- THAT THE LOWER COURT FAILED TO CONSIDER THAT THE PIECES OF EVIDENCE OF LOBREGAT CLEARLY SHOW THAT [THE] SALE WAS THE TRANSACTION BETWEEN HEREIN PARTIES AS ADMITTED BY DEFENDANT-APPELLEE A. CLEMENO, JR. (T.S.N., p. 16, Nov. 20, 1995) (T.S.N., pp. 26 & 27, April 19, 1996)
- THAT THE HONORABLE LOWER COURT DISREGARDED ITS OWN RULING AS TO THE APPELLEE'S INTENTIONAL FAILURE TO FOLLOW/COMPLY WITH ITS ORDER DATED MAY 31, 1996.
- THAT THE LOWER COURT FAILED TO CONSIDER THE DELIBERATE OMISSION OF DEFENDANTS-APPELLEES TO OBSERVE THE NON-FORUM SHOPPING REQUIREMENT.

- THAT THE LOWER COURT MISAPPLIED THE PRINCIPLE OF STATUTE OF FRAUDS.[30]

On February 23, 1999, the Court of Appeals rendered judgment reversing the decision of the trial court. The fallo of the decision reads:

WHEREFORE, the decision appealed from is REVERSED, and judgment is hereby rendered:

- In Civil Case No. Q-92-12620 –

(a)

Ordering defendants-appellees to accept the remaining balance of the purchase price of the house and lot subject of sale in the amount of P156,109.00 and, thereafter, execute in favor of plaintiff-appellant the corresponding deed of sale or proper mode of conveyance; and

(b)

Ordering defendants-appellees to pay, jointly and severally, plaintiff-appellant P50,000.00 by way of moral damages, P25,000.00 by way of exemplary damages, and P15,000.00 as attorney's fees.

- In Civil Case No. Q-93-17268 – dismissing the complaint therein.

Costs against defendants-appellees.

SO ORDERED.[31]

The Court of Appeals ruled that the contract entered into between the parties was a contract of sale, not a contract to sell. The appellate court also ruled that Article 1403(2) was not applicable because the contract was already partly performed, since partial payments had been made by the respondent as evidenced by receipts signed by the petitioners.

The petitioners now come to this Court, contending that:

I

The Honorable Court of Appeals grossly erred in holding that the contract entered by the parties is a contract of sale and not a contract to sell.[32]

II

The Court of Appeals erred seriously when it held that “Under Article 1356 of the Civil Code, contract shall be obligatory, in whatever form they may have been entered into, provided all the essential requisites for their validity are present and that the contract of sale of a piece of land may be proved orally, totally ignoring the positive mandate of Article 1358 of the Civil Code, ...”[33]

III

The Honorable Court of Appeals erred in holding that the Statute of Frauds cannot be raised as a defense against specific performance, there being partial performance of the down-payment and subsequent installments, even if short of the full price and after the expiry of the agreed dates of payment.[34]

The Court shall resolve these issues simultaneously as they are interrelated.

The petitioners posit that the respondent failed to prove the essential elements of a contract of sale over the subject property. They contend that the receipts wherein they acknowledged the receipt of the amounts therein

specified do not conform to the legal requirements of a contract of sale, and cited the ruling of this Court in *Manotok Realty, Inc. vs. Court of Appeal*.^[35] They also posit that even by his own admission, the respondent defaulted in the payment of the purchase price of the property; hence, they are not obliged to execute a deed of absolute sale over the property and deliver the title to him. The petitioners assert that even if they had entered into an agreement with the respondent, such agreement was a mere contract to sell, not a contract of sale. They further assert that even if, indeed, the parties had entered into a contract of sale, the same is unenforceable under paragraph 2, Article 1403 of the New Civil Code, which provides that such contract must be in writing; and Article 1358 of the New Civil Code which requires that such contract must appear in a public document.

On the other hand, the appellate court held that the petitioners and the respondent entered into a verbal contract of sale and not a contract to sell over the subject property, thus:

In the case at bench, Clemeno had agreed to sell his house and lot to Lobregat for a total consideration of P270,000.00 payable in installments within a period of two (2) years. The receipt, Exhibit "A", is self-explanatory: it speaks of the receipt by Clemeno of the sum of P25,000.00 from Lobregat as advance payment of the subject house and lot, the total purchase price of which is P270,000.00. Significantly, upon his receipt of the advance payment, Clemeno delivered the possession of the premises to Lobregat who is now the present possessor thereof. Subsequent payments were made by Lobregat on the purchase price, all of which were duly receipted for by Clemeno. The receipts Exhibits "A-1", "A-2" and "A-3", for example, speak uniformly of "additional part payment" for the house and lot subject of this case. Moreover, as suggested by Clemeno himself, Lobregat had been religiously remitting the monthly payments on Clemeno's loan obligation with the SSS. Note, for instance, Exhibit "A-4" – one of the many receipts of payment to SSS – where it is indicated that the real estate loan is in the name of Angel C. Clemeno, Jr., as borrower, but bears the name of Romeo Lobregat, as payor, on behalf of Clemeno. It is as clear as sunlight that the parties had entered into a contract of sale and not merely a contract to sell.^[36]

The petition has no merit.

We find and so hold that the contract between the parties was a perfected verbal contract of sale, not a contract to sell over the subject property, with the petitioner as vendor and the respondent as vendee. Sale is a consensual contract and is perfected by mere consent, which is manifested by a meeting of the minds as to the offer and acceptance thereof on three elements: subject matter, price and terms of payment of the price.^[37] The petitioners sold their property to the respondent for P270,000.00, payable on installments, and upon the payment of the purchase price thereof, the petitioners were bound to execute a deed of sale in favor of the respondent and deliver to him the certificate of title over the property in his name. The parties later agreed for the respondent to assume the payment of the petitioners' loan amortization to the SSS, which payments formed part of the purchase price of the property. The evidence shows that upon the payment made by the respondent of the amount of P27,000.00 on June 4, 1987, the petitioners vacated their house and delivered possession thereof to the respondent. Conformably to Article 1477 of the New Civil Code, the ownership of the property was transferred to the respondent upon such delivery. The petitioners cannot re-acquire ownership and recover possession thereof unless the contract is rescinded in accordance with law.^[38] The failure of the respondent to complete the payment of the purchase price of the property within the stipulated period merely accorded the petitioners the option to rescind the contract of sale as provided for in Article 1592 of the New Civil Code.^[39]

The contract entered into by the parties was not a contract to sell because there was no agreement for the petitioners to retain ownership over the property until after the respondent shall have paid the purchase price in full, nor an agreement reserving to the petitioners the right to unilaterally resolve the contract upon the buyer's failure to pay within a fixed period.^[40] Unlike in a contract of sale, the payment of the price is a positive suspensive condition in a contract to sell, failure of which is not a breach but an event that prevents the obligation

of the vendor to convey the title from becoming effective.[41]

The fact that the receipts issued by the SSS evidencing the respondent's remittances of the monthly amortization payments of the petitioners' loan, and that the receipts issued to the respondent for the payment of realty taxes for 1987 and 1988 were in the name of Nilus Sacramento and/or the petitioner Clemeno, Jr., does not negate the fact of the transfer of the ownership over the property to the respondent on June 4, 1987. Moreover, the deed of sale over the property in favor of the respondent had not yet been executed by the petitioners. The Spouses Sacramento and later, the petitioners, were the borrowers, as per the records of the SSS.

The contract of sale of the parties is enforceable notwithstanding the fact that it was an oral agreement and not reduced in writing as required by Article 1403(2) of the New Civil Code, which reads:

Art. 1403. The following contracts are unenforceable, unless they are ratified:

...

“(2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases, an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the parties charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:

...

‘(d) An agreement for the sale of goods, chattels or things in action, at a price not less than five hundred pesos, unless the buyer accepts and receives part of such goods and chattels, or the evidences, or some of them, of such things in action, or pay at the time some part of the purchase money: but when a sale is made by auction and entry is made by the auctioneer in his sales book, at the time of the sale, of the amount and kind of property sold, terms of sale, price, names of the purchasers and person on whose account the sale is made, it is a sufficient memorandum; ...”

This is so because the provision applies only to executory, and not to completed, executed or partially executed contracts.[42] In this case, the contract of sale had been partially executed by the parties, with the transfer of the possession of the property to the respondent and the partial payments made by the latter of the purchase price thereof.

We agree with the petitioners' contention that the respondent did not pay the total purchase price of the property within the stipulated period. Moreover, the respondent did not pay the balance of the purchase price of the property. However, such failure to pay on the part of the respondent was not because he could not pay, but because petitioner Angel Clemeno, Jr. told him not to do so. The latter instructed the respondent to continue paying the monthly amortizations due to the SSS on the loan. Unknown to the respondent, petitioner Angel Clemeno, Jr. wanted to increase the purchase price of the property at the prevailing market value in 1992, and not its value in 1987 when the contract of sale was perfected.

The petitioners failed to prove their claim that a lease purchase agreement over the property was entered into. Except for their bare claim, they failed to adduce a morsel of documentary evidence to prove the same. On the other hand, all the receipts issued by them on the partial payments made by the respondent were for the purchase price of the property, and not as rentals thereof.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit. Costs against the petitioners.

SO ORDERED.

Puno, (Chairman), Tinga, and Chico-Nazario, JJ., concur.
Austria-Martinez, J., on official leave.

- [1] Penned by Associate Justice Oswaldo D. Agcaoili (retired), with Associate Justices Corona Ibay-Somera (retired) and Eloy R. Bello, Jr., concurring.
- [2] Exhibit “B,” Records, p. 197. (Civil Case No. 93-12620)
- [3] Exhibit “A,” Id. at 195.
- [4] Exhibit “C,” Id. at 203.
- [5] Id. at 52.
- [6] Exhibit “D,” Id. at 204.
- [7] TSN, 20 November 1995, p. 14; TSN, 19 January 1996, p. 14.
- [8] TSN, 19 January 1996, p. 29.
- [9] Annex “A,” Records, p. 7. (Civil Case No. 92-12620)
- [10] Annex “B,” Id. at 8.
- [11] Annex “C.”
- [12] Annexes “F” and “F-1,” Id. at 34-35.
- [13] Exhibit “D,” supra.
- [14] Exhibit “G,” Id. at 207.
- [15] Exhibit “E,” Id. at 205.
- [16] Exhibit “F,” Id. at 206.
- [17] Id.
- [18] Exhibit “D,” supra.
- [19] Exhibits “A-8” to “A-13,” Id. at 155-160.
- [20] Exhibit “A-31,” Id. at 178.
- [21] Exhibits “A-14” to “A-26,” Id. at 161-173.
- [22] Exhibit “B,” supra.
- [23] Exhibits “A-14” to “A-26,” supra.
- [24] Exhibit “H,” Id. at 209.
- [25] Exhibit “C,” Id. at 180.
- [26] Exhibit “I,” Id. at 210.
- [27] Id. at 86.

[28] Records, pp. 4-5. (Civil Case No. 93-17268)

[29] Id. at 232-233.

[30] Rollo, pp. 40-41.

[31] Id. at 49.

[32] Id. at 21.

[33] Id. at 25-26.

[34] Id. at 27.

[35] 149 SCRA 174 (1987).

[36] Rollo, p. 44.

[37] *Quejada v. Court of Appeals*, 299 SCRA 695 (1998).

[38] *Philippine National Bank v. Court of Appeals*, 272 SCRA 291 (1997).

[39] *Ocampo v. Court of Appeals*, 233 SCRA 551 (1994).

[40] *Pingol v. Court of Appeals*, 226 SCRA 118 (1993).

[41] *Abesamis v. Court of Appeals*, 361 SCRA 328 (2001).

[42] *Cordial v. Miranda*, 348 SCRA 158 (2000); *Diwa v. Donato*, 234 SCRA 608 (1994); *Almirol v. Monserrat*, 48 Phil. 67 (1925).

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