

ROLANDO T. CATUNGAL, JOSE T. CATUNGAL, JR., CAROLYN T. CATUNGAL AND ERLINDA CATUNGAL-WESSEL, PETITIONERS, VS. ANGEL S. RODRIGUEZ, RESPONDENT.

G.R. No. 146839. March 23, 2011

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

Before the Court is a Petition for Review on Certiorari, assailing the following issuances of the Court of Appeals in CA-G.R. CV No. 40627 consolidated with CA-G.R. SP No. 27565: (a) the August 8, 2000 Decision,[1] which affirmed the Decision[2] dated May 30, 1992 of the Regional Trial Court (RTC), Branch 27 of Lapu-lapu City, Cebu in Civil Case No. 2365-L, and (b) the January 30, 2001 Resolution,[3] denying herein petitioners' motion for reconsideration of the August 8, 2000 Decision.

The relevant factual and procedural antecedents of this case are as follows:

This controversy arose from a Complaint for Damages and Injunction with Preliminary Injunction/Restraining Order[4] filed on December 10, 1990 by herein respondent Angel S. Rodriguez (Rodriguez), with the RTC, Branch 27, Lapu-lapu City, Cebu, docketed as Civil Case No. 2365-L against the spouses Agapita and Jose Catungal (the spouses Catungal), the parents of petitioners.

In the said Complaint, it was alleged that Agapita T. Catungal (Agapita) owned a parcel of land (Lot 10963) with an area of 65,246 square meters, covered by Original Certificate of Title (OCT) No. 105[5] in her name situated in the Barrio of Talamban, Cebu City. The said property was allegedly the exclusive paraphernal property of Agapita.

On April 23, 1990, Agapita, with the consent of her husband Jose, entered into a Contract to Sell[6] with respondent Rodriguez. Subsequently, the Contract to Sell was purportedly "upgraded" into a Conditional Deed of Sale dated July 26, 1990 between the same parties. Both the Contract to Sell and the Conditional Deed of Sale were annotated on the title.

The provisions of the Conditional Deed of Sale pertinent to the present dispute are quoted below:

1. The VENDOR for and in consideration of the sum of TWENTY[-]FIVE MILLION PESOS (P25,000,000.00) payable as follows:
 - a. FIVE HUNDRED THOUSAND PESOS (P500,000.00) downpayment upon the signing of this agreement, receipt of which sum is hereby acknowledged in full from the VENDEE.
 - b. The balance of TWENTY[-]FOUR MILLION FIVE HUNDRED THOUSAND PESO'S (P24,500,000.00) shall be payable in five separate checks, made to the order of JOSE Ch. CATUNGAL, the first check shall be for FOUR MILLION FIVE HUNDRED THOUSAND PESOS (P4,500,000.00) and the remaining balance to be paid in four checks in the amounts of FIVE MILLION PESOS (P5,000,000.00) each after the VENDEE have (sic) successfully negotiated, secured and provided a Road Right of Way consisting of 12 meters in width

cutting across Lot 10884 up to the national road, either by widening the existing Road Right of Way or by securing a new Road Right of Way of 12 meters in width. If however said Road Right of Way could not be negotiated, the VENDEE shall give notice to the VENDOR for them to reassess and solve the problem by taking other options and should the situation ultimately prove futile, he shall take steps to rescind or cancel the herein Conditional Deed of Sale.

c. That the access road or Road Right of Way leading to Lot 10963 shall be the responsibility of the VENDEE to secure and any or all cost relative to the acquisition thereof shall be borne solely by the VENDEE. He shall, however, be accorded with enough time necessary for the success of his endeavor, granting him a free hand in negotiating for the passage.

BY THESE PRESENTS, the VENDOR do hereby agree to sell by way of herein CONDITIONAL DEED OF SALE to VENDEE, his heirs, successors and assigns, the real property described in the Original Certificate of Title No. 105 x x x.

x x x x

5. That the VENDEE has the option to rescind the sale. In the event the VENDEE exercises his option to rescind the herein Conditional Deed of Sale, the VENDEE shall notify the VENDOR by way of a written notice relinquishing his rights over the property. The VENDEE shall then be reimbursed by the VENDOR the sum of FIVE HUNDRED THOUSAND PESOS (P500,000.00) representing the downpayment, interest free, payable but contingent upon the event that the VENDOR shall have been able to sell the property to another party.[8]

In accordance with the Conditional Deed of Sale, Rodriguez purportedly secured the necessary surveys and plans and through his efforts, the property was reclassified from agricultural land into residential land which he claimed substantially increased the property's value. He likewise alleged that he actively negotiated for the road right of way as stipulated in the contract.[9]

Rodriguez further claimed that on August 31, 1990 the spouses Catungal requested an advance of P5,000,000.00 on the purchase price for personal reasons. Rodriguez allegedly refused on the ground that the amount was substantial and was not due under the terms of their agreement. Shortly after his refusal to pay the advance, he purportedly learned that the Catungals were offering the property for sale to third parties.[10]

Thereafter, Rodriguez received letters dated October 22, 1990,[11] October 24, 1990[12] and October 29, 1990,[13] all signed by Jose Catungal who was a lawyer, essentially demanding that the former make up his mind about buying the land or exercising his "option" to buy because the spouses Catungal allegedly received other offers and they needed money to pay for personal obligations and for investing in other properties/business ventures. Should Rodriguez fail to exercise his option to buy the land, the Catungals warned that they would consider the contract cancelled and that they were free to look for other buyers.

In a letter dated November 4, 1990,[14] Rodriguez registered his objections to what he termed the Catungals' unwarranted demands in view of the terms of the Conditional Deed of Sale which allowed him sufficient time to negotiate a road right of way and granted him, the vendee, the exclusive right to rescind the contract. Still, on November 15, 1990, Rodriguez purportedly received a letter dated November 9, 1990[15] from Atty. Catungal, stating that the contract had been cancelled and terminated.

Contending that the Catungals' unilateral rescission of the Conditional Deed of Sale was unjustified, arbitrary and unwarranted, Rodriguez prayed in his Complaint, that:

1. Upon the filing of this complaint, a restraining order be issued enjoining defendants [the spouses Catungal], their employees, agents, representatives or other persons acting in their behalf from offering the property

subject of this case for sale to third persons; from entertaining offers or proposals by third persons to purchase the said property; and, in general, from performing acts in furtherance or implementation of defendants' rescission of their Conditional Deed of Sale with plaintiff [Rodriguez].

2. After hearing, a writ of preliminary injunction be issued upon such reasonable bond as may be fixed by the court enjoining defendants and other persons acting in their behalf from performing any of the acts mentioned in the next preceding paragraph.

3. After trial, a Decision be rendered:

a) Making the injunction permanent;

b) Condemning defendants to pay to plaintiff, jointly and solidarily:

Actual damages in the amount of P400,000.00 for their unlawful rescission of the Agreement and their performance of acts in violation or disregard of the said Agreement;

Moral damages in the amount of P200,000.00;

Exemplary damages in the amount of P200,000.00; Expenses of litigation and attorney's fees in the amount of P100,000.00; and Costs of suit.[16]

On December 12, 1990, the trial court issued a temporary restraining order and set the application for a writ of preliminary injunction for hearing on December 21, 1990 with a directive to the spouses Catungal to show cause within five days from notice why preliminary injunction should not be granted. The trial court likewise ordered that summons be served on them.[17]

Thereafter, the spouses Catungal filed their opposition[18] to the issuance of a writ of preliminary injunction and later filed a motion to dismiss[19] on the ground of improper venue. According to the Catungals, the subject property was located in Cebu City and thus, the complaint should have been filed in Cebu City, not Lapu-lapu City. Rodriguez opposed the motion to dismiss on the ground that his action was a personal action as its subject was breach of a contract, the Conditional Deed of Sale, and not title to, or possession of real property.[20]

In an Order dated January 17, 1991,[21] the trial court denied the motion to dismiss and ruled that the complaint involved a personal action, being merely for damages with a prayer for injunction.

Subsequently, on January 30, 1991, the trial court ordered the issuance of a writ of preliminary injunction upon posting by Rodriguez of a bond in the amount of P100,000.00 to answer for damages that the defendants may sustain by reason of the injunction.

On February 1, 1991, the spouses Catungal filed their Answer with Counterclaim[22] alleging that they had the right to rescind the contract in view of (1) Rodriguez's failure to negotiate the road right of way despite the lapse of several months since the signing of the contract, and (2) his refusal to pay the additional amount of P5,000,000.00 asked by the Catungals, which to them indicated his lack of funds to purchase the property. The Catungals likewise contended that Rodriguez did not have an exclusive right to rescind the contract and that the contract, being reciprocal, meant both parties had the right to rescind.[23] The spouses Catungal further claimed that it was Rodriguez who was in breach of their agreement and guilty of bad faith which justified their rescission of the contract.[24] By way of counterclaim, the spouses Catungal prayed for actual and consequential damages in the form of unearned interests from the balance (of the purchase price in the amount) of P24,500,000.00, moral and exemplary damages in the amount of P2,000,000.00, attorney's fees in the amount of P200,000.00 and costs of suits and litigation expenses in the amount of P10,000.00.[25] The spouses Catungal prayed for the dismissal of the complaint and the grant of their counterclaim.

The Catungals amended their Answer twice,[26] retaining their basic allegations but amplifying their charges of contractual breach and bad faith on the part of Rodriguez and adding the argument that in view of Article 1191 of the Civil Code, the power to rescind reciprocal obligations is granted by the law itself to both parties and does not need an express stipulation to grant the same to the injured party. In the Second Amended Answer with Counterclaim, the spouses Catungal added a prayer for the trial court to order the Register of Deeds to cancel the annotations of the two contracts at the back of their OCT.

On October 24, 1991, Rodriguez filed an Amended Complaint,[28] adding allegations to the effect that the Catungals were guilty of several misrepresentations which purportedly induced Rodriguez to buy the property at the price of P25,000,000.00. Among others, it was alleged that the spouses Catungal misrepresented that their Lot 10963 includes a flat portion of land which later turned out to be a separate lot (Lot 10986) owned by Teodora Tudtud who sold the same to one Antonio Pablo. The Catungals also allegedly misrepresented that the road right of way will only traverse two lots owned by Anatolia Tudtud and her daughter Sally who were their relatives and who had already agreed to sell a portion of the said lots for the road right of way at a price of P550.00 per square meter. However, because of the Catungals' acts of offering the property to other buyers who offered to buy the road lots for P2,500.00 per square meter, the adjacent lot owners were no longer willing to sell the road lots to Rodriguez at P550.00 per square meter but were asking for a price of P3,500.00 per square meter. In other words, instead of assisting Rodriguez in his efforts to negotiate the road right of way, the spouses Catungal allegedly intentionally and maliciously defeated Rodriguez's negotiations for a road right of way in order to justify rescission of the said contract and enable them to offer the property to other buyers.

Despite requesting the trial court for an extension of time to file an amended Answer,[29] the Catungals did not file an amended Answer and instead filed an Urgent Motion to Dismiss[30] again invoking the ground of improper venue. In the meantime, for failure to file an amended Answer within the period allowed, the trial court set the case for pre-trial on December 20, 1991.

During the pre-trial held on December 20, 1991, the trial court denied in open court the Catungals' Urgent Motion to Dismiss for violation of the rules and for being repetitious and having been previously denied. However, Atty. Catungal refused to enter into pre-trial which prompted the trial court to declare the defendants in default and to set the presentation of the plaintiffs evidence on February 14, 1992:[32]

On December 23, 1991, the Catungals filed a motion for reconsideration[33] of the December 20, 1991 Order denying their Urgent Motion to Dismiss but the trial court denied reconsideration in an Order dated February 3, 1992.[34] Undeterred, the Catungals subsequently filed a Motion to Lift and to Set Aside Order of Default[35] but it was likewise denied for being in violation of the rules and for being not meritorious.[36] On February 28, 1992, the Catungals filed a Petition for Certiorari and Prohibition[37] with the Court of Appeals, questioning the denial of their motion to dismiss and the order of default. This was docketed as CA-G.R. SP No. 27565.

Meanwhile, Rodriguez proceeded to present his evidence before the trial court.

In a Decision dated May 30, 1992, the trial court ruled in favor of Rodriguez, finding that: (a) under the contract it was complainant (Rodriguez) that had the option to rescind the sale; (b) Rodriguez's obligation to pay the balance of the purchase price arises only upon successful negotiation of the road right of way; (c) he proved his diligent efforts to negotiate the road right of way; (d) the spouses Catungal were guilty of misrepresentation which defeated Rodriguez's efforts to acquire the road right of way; and (e) the Catungals' rescission of the contract had no basis and was in bad faith. Thus, the trial court made the injunction permanent, ordered the Catungals to reduce the purchase price by the amount of acquisition of Lot 10963 which they misrepresented was part of the property sold but was in fact owned by a third party and ordered them to pay P100,000.00 as damages, P30,000.00 as

attorney's fees and costs.

The Catungals appealed the decision to the Court of Appeals, asserting the commission of the following errors by the trial court in their appellants' brief⁸ dated February 9, 1994:

I

THE COURT A QUO ERRED IN NOT DISMISSING OF (SIC) THE CASE ON THE GROUNDS OF IMPROPER VENUE AND LACK OF JURISDICTION.

II

THE COURT A QUO ERRED IN CONSIDERING THE CASE AS A PERSONAL AND NOT A REAL ACTION.

III

GRANTING WITHOUT ADMITTING THAT VENUE WAS PROPERLY LAID AND THE CASE IS A PERSONAL ACTION, THE COURT A QUO ERRED IN DECLARING THE DEFENDANTS IN DEFAULT DURING THE PRE-TRIAL WHEN AT THAT TIME THE DEFENDANTS HAD ALREADY FILED THEIR ANSWER TO THE COMPLAINT.

IV

THE COURT A QUO ERRED IN CONSIDERING THE DEFENDANTS AS HAVING LOST THEIR LEGAL STANDING IN COURT WHEN AT MOST THEY COULD ONLY BE CONSIDERED AS IN DEFAULT AND STILL ENTITLED TO NOTICES OF ALL FURTHER PROCEEDINGS ESPECIALLY AFTER THEY HAD FILED THE MOTION TO LIFT THE ORDER OF DEFAULT.

V

THE COURT A QUO ERRED IN ISSUING THE WRIT [OF] PRELIMINARY INJUNCTION RESTRAINING THE EXERCISE OF ACTS OF OWNERSHIP AND OTHER RIGHTS OVER REAL PROPERTY OUTSIDE OF THE COURT'S TERRITORIAL JURISDICTION AND INCLUDING PERSONS WHO WERE NOT BROUGHT UNDER ITS JURISDICTION, THUS THE NULLITY OF THE WRIT.

VI

THE COURT A QUO ERRED IN NOT RESTRAINING ITSELF MOTU PROP[R]IO FROM CONTINUING WITH THE PROCEEDINGS IN THE CASE AND IN RENDERING DECISION THEREIN IF ONLY FOR REASON OF COURTESY AND FAIRNESS BEING MANDATED AS DISPENSER OF FAIR AND EQUAL JUSTICE TO ALL AND SUNDRY WITHOUT FEAR OR FAVOR IT HAVING BEEN SERVED EARLIER WITH A COPY OF THE PETITION FOR CERTIORARI QUESTIONING ITS VENUE AND JURISDICTION IN CA-G.R. NO. SP 27565 IN FACT NOTICES FOR THE FILING OF COMMENT THERETO HAD ALREADY BEEN SENT OUT BY THE HONORABLE COURT OF APPEALS, SECOND DIVISION, AND THE COURT A QUO WAS FURNISHED WITH COPY OF SAID NOTICE.

VII

THE COURT A QUO ERRED IN DECIDING THE CASE IN FAVOR OF THE PLAINTIFF AND AGAINST THE DEFENDANTS ON THE BASIS OF EVIDENCE WHICH ARE IMAGINARY, FABRICATED, AND DEVOID OF TRUTH, TO BE STATED IN DETAIL IN THE DISCUSSION OF THIS PARTICULAR ERROR, AND, THEREFORE, THE DECISION IS REVERSIBLE.[39]

On August 31, 1995, after being granted several extensions, Rodriguez filed his appellee's brief,[40] essentially arguing the correctness of the trial court's Decision regarding the foregoing issues raised by the Catungals.

Subsequently, the Catungals filed a Reply Brief[41] dated October 16, 1995.

From the filing of the appellants' brief in 1994 up to the filing of the Reply Brief, the spouses Catungal were represented by appellant Jose Catungal himself. However, a new counsel for the Catungals, Atty. Jesus N. Borromeo (Atty. Borromeo), entered his appearance before the Court of Appeals on September 2, 1997.[42] On the same date, Atty. Borromeo filed a Motion for Leave of Court to File Citation of Authorities[43] and a Citation of Authorities.[44] This would be followed by Atty. Borromeo's filing of an Additional Citation of Authority and Second Additional Citation of Authority both on November 17, 1997.[45]

During the pendency of the case with the Court of Appeals, Agapita Catungal passed away and thus, her husband, Jose, filed on February 17, 1999 a motion for Agapita's substitution by her surviving children[46]

On August 8, 2000, the Court of Appeals rendered a Decision in the consolidated cases CA-G.R. CV No. 40627 and CA-G.R. SP No. 27565,[47] affirming the trial court's Decision.

In a Motion for Reconsideration dated August 21, 2000,[48] counsel for the Catungals, Atty. Borromeo, argued for the first time that paragraphs 1(b) and 5[49] of the Conditional Deed of Sale, whether taken separately or jointly, violated the principle of mutuality of contracts under Article 1308 of the Civil Code and thus, said contract was void ab initio. He adverted to the cases mentioned in his various citations of authorities to support his argument of nullity of the contract and his position that this issue may be raised for the first time on appeal.

Meanwhile, a Second Motion for Substitution[50] was filed by Atty. Borromeo in view of the death of Jose Catungal.

In a Resolution dated January 30, 2001, the Court of Appeals allowed the substitution of the deceased Agapita and Jose Catungal by their surviving heirs and denied the motion for reconsideration for lack of merit

Hence, the heirs of Agapita and Jose Catungal filed on March 2001 the present petition for review,[51] which essentially argued that the Court of Appeals erred in not finding that paragraphs 1(b) and/or 5 of the Conditional Deed of Sale, violated the principle of mutuality of contracts under Article 1308 of the Civil Code. Thus, said contract was supposedly void ab initio and the Catungals' rescission thereof was superfluous.

In his Comment,[52] Rodriguez highlighted that (a) petitioners were raising new matters that cannot be passed upon on appeal; (b) the validity of the Conditional Deed of Sale was already admitted and petitioners cannot be allowed to change theories on appeal; (c) the questioned paragraphs of the Conditional Deed of Sale were valid; and (d) petitioners were the ones who committed fraud and breach of contract and were not entitled to relief for not having come to court with clean hands.

The Court gave due course to the Petition[53] and the parties filed their respective Memoranda.

The issues to be resolved in, the case at bar can be summed into two questions:

- Are petitioners allowed to raise their theory of nullity of the Conditional Deed of Sale for the first time on appeal?
- Do paragraphs 1(b) and 5 of the Conditional Deed of Sale violate the principle of mutuality of contracts under Article 1308 of the Civil Code?

On petitioners' change of theory

Petitioners claimed that the Court of Appeals should have reversed the trial courts' Decision on the ground of the alleged nullity of paragraphs 1(b) and 5 of the Conditional Deed of Sale notwithstanding that the same was not raised as an error in their appellants' brief. Citing *Catholic Bishop of Balanga v. Court of Appeals*,[54] petitioners

argued in the Petition that this case falls under the following exceptions:

- (3) Matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interest of justice or to avoid dispensing piecemeal justice;
- (4) Matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored;
- (5) Matters not assigned as errors on appeal but closely related to an error assigned; and
- (6) Matters not assigned as errors but upon which the determination of a question properly assigned is dependent.

We are not persuaded.

This is not an instance where a party merely failed to assign an issue as an error in the brief nor failed to argue a material point on appeal that was raised in the trial court and supported by the record. Neither is this a case where a party raised an error closely related to, nor dependent on the resolution of, an error properly assigned in his brief. This is a situation where a party completely changes his theory of the case on appeal and abandons his previous assignment of errors in his brief, which plainly should not be allowed as anathema to due process.

Petitioners should be reminded that the object of pleadings is to draw the lines of battle between the litigants and to indicate fairly the nature of the claims or defenses of both parties.[56] In *Philippine National Construction Corporation v. Court of Appeals*,[57] we held that "[w]hen a party adopts a certain theory in the trial court, he will not be permitted to change his theory on appeal, for to permit him to do so would not only be unfair to the other party but it would also be offensive' to the basic rules of fair play, justice and due process."

We have also previously ruled that "courts of justice have no jurisdiction or power to decide a question not in issue. Thus, a judgment that goes beyond the issues and purports to adjudicate something on which the court did not hear the parties, is not only irregular but also extrajudicial and invalid. The rule rests on the fundamental tenets of fair play."[59]

During the proceedings before the trial court, the spouses Catungal never claimed that the provisions in the Conditional Deed of Sale, stipulating that the payment of the balance of the purchase price was contingent upon the successful negotiation of a road right of way (paragraph 1[b]) and granting Rodriguez the option to rescind (paragraph 5), were void for allegedly making the fulfillment of the contract dependent solely on the will of Rodriguez.

On the contrary, with respect to paragraph 1(b), the Catungals did not aver in the Answer (and its amended versions) that the payment of the purchase price was subject to the will of Rodriguez but rather they claimed that paragraph 1(b) in relation to 1(c) only presupposed a reasonable time be given to Rodriguez to negotiate the road right of way. However, it was petitioners' theory that more than sufficient time had already been given Rodriguez to negotiate the road right of way. Consequently, Rodriguez's refusal/failure to pay the balance of the purchase price, upon demand, was allegedly indicative of lack of funds and a breach of the contract on the part of Rodriguez.

Anent paragraph 5 of the Conditional Deed of Sale, regarding Rodriguez's option to rescind, it was petitioners' theory in the court a quo that notwithstanding such provision, they retained the right to rescind the contract for Rodriguez's breach of the same under Article 1191 of the Civil Code.

Verily, the first time petitioners raised their theory of the nullity of the Conditional Deed of Sale in view of the

questioned provisions was only in their Motion for Reconsideration of the Court of Appeals' Decision, affirming the trial court's judgment. The previous filing of various citations of authorities by Atty. Borromeo and the Court of Appeals' resolutions noting such citations were of no moment. The citations of authorities merely listed cases and their main rulings without even any mention of their relevance to the present case or any prayer for the Court of Appeals to consider them. In sum, the Court of Appeals did not err in disregarding the citations of authorities or in denying petitioners' motion for reconsideration of the assailed August 8, 2000 Decision in view of the proscription against changing legal theories on appeal.

Ruling on the questioned provisions of the Conditional Deed of Sale

Even assuming for the sake of argument that this Court may overlook the procedural misstep of petitioners, we still cannot uphold their belatedly proffered arguments.

At the outset, it should be noted that what the parties entered into is a Conditional Deed of Sale, whereby the spouses Catungal agreed to sell and Rodriguez agreed to buy Lot 10963 conditioned on the payment of a certain price but the payment of the purchase price was additionally made contingent on the successful negotiation of a road right of way. It is elementary that "[i]n conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition." [60]

Petitioners rely on Article 1308 of the Civil Code to support their conclusion regarding the claimed nullity of the aforementioned provisions. Article 1308 states that "[t]he contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them."

Article 1182 of the Civil Code, in turn, provides:

Art. 1182. When the fulfillment of the condition depends upon the sole will of the debtor, the conditional obligation shall be void. If it depends upon chance or upon the will of a third person, the obligation shall take effect in conformity with the provisions of this Code.

In the past, this Court has distinguished between a condition imposed on the perfection of a contract and a condition imposed merely on the performance of an obligation. While failure to comply with the first condition results in the failure of a contract, failure to comply with the second merely gives the other party the option to either refuse to proceed with the sale or to waive the condition. [61] This principle is evident in Article 1545 of the Civil Code on sales, which provides in part:

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 x x.

Paragraph 1(b) of the Conditional Deed of Sale, stating that respondent shall pay the balance of the purchase price when he has successfully negotiated and secured a road right of way, is not a condition on the perfection of the contract nor on the validity of the entire contract or its compliance as contemplated in Article 1308. It is a condition imposed only on respondent's obligation to pay the remainder of the purchase price. In our view and applying Article 1182, such a condition is not purely potestative as petitioners contend. It is not dependent on the sole will of the debtor but also on the will of third persons who own the adjacent land and from whom the road right of way shall be negotiated. In a manner of speaking, such a condition is likewise dependent on chance as there is no guarantee that respondent and the third party-landowners would come to an agreement regarding the road right of way. This type of mixed condition is expressly allowed under Article 1182 of the Civil Code.

Analogous to the present case is *Romero v. Court of Appeals*,^[62] wherein the Court interpreted the legal effect of a condition in a deed of sale that the balance of the purchase price would be paid by the vendee when the vendor has successfully ejected the informal settlers occupying the property. In *Romero*, we found that such a condition did not affect the perfection of the contract but only imposed a condition on the fulfillment of the obligation to pay the balance of the purchase price, to wit:

From the moment the contract is perfected, the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law. Under the agreement, private respondent is obligated to evict the squatters on the property. The ejectment of the squatters is a condition the operative act of which sets into motion the period of compliance by petitioner of his own obligation, i.e., to pay the balance of the purchase price. Private respondent's failure "to remove the squatters from the property" within the stipulated period gives petitioner the right to either refuse to proceed with the agreement or waive that condition in consonance with Article 1545 of the Civil Code. This option clearly belongs to petitioner and not to private respondent.

We share the opinion of the appellate court that the undertaking required of private respondent does not constitute a "potestative condition dependent solely on his will" that might, otherwise, be void in accordance with Article 1182 of the Civil Code but a "mixed" condition "dependent not on the will of the vendor alone but also of third persons like the squatters and government agencies and personnel concerned." We must hasten to add, however, that where the so-called "potestative condition" is imposed not on the birth of the obligation but on its fulfillment, only the condition is avoided, leaving unaffected the obligation itself.^[63] (Emphases supplied.)

From the provisions of the Conditional Deed of Sale subject matter of this case, it was the vendee (Rodriguez) that had the obligation to successfully negotiate and secure the road right of way. However, in the decision of the trial court, which was affirmed by the Court of Appeals, it was found that respondent Rodriguez diligently exerted efforts to secure the road right of way but the spouses Catungal, in bad faith, contributed to the collapse of the negotiations for said road right of way. To quote from the trial court's decision:

It is therefore apparent that the vendee's obligations (sic) to pay the balance of the purchase price arises only when the road-right-of-way to the property shall have been successfully negotiated, secured and provided. In other words, the obligation to pay the balance is conditioned upon the acquisition of the road-right-of-way, in accordance with paragraph 2 of Article 1181 of the New Civil Code. Accordingly, "an obligation dependent upon a suspensive condition cannot be demanded until after the condition takes place because it is only after the fulfillment of the condition that the obligation arises." (Javier v[s] CA 183 SCRA) Exhibits H, D, P, R, T, FF and JJ show that plaintiff [Rodriguez] indeed was diligent in his efforts to negotiate for a road-right-of-way to the property. The written offers, proposals and follow-up of his proposals show that plaintiff [Rodriguez] went all out in his efforts to immediately acquire an access road to the property, even going to the extent of offering P3,000.00 per square meter for the road lots (Exh. Q) from the original P550.00 per sq. meter. This Court also notes that defendant (sic) [the Catungals] made misrepresentation in the negotiation they have entered into with plaintiff [Rodriguez]. (Exhs. F and G) The misrepresentation of defendant (sic) [the Catungals] as to the third lot (Lot 10986) to be part and parcel of the subject property [(Lot 10963)] contributed in defeating the plaintiffs [Rodriguez's] effort in acquiring the road-right-of-way to the property. Defendants [the Catungals] cannot now invoke the non-fulfillment of the condition in the contract as a ground for rescission when defendants [the Catungals] themselves are guilty of preventing the fulfillment of such condition.

From the foregoing, this Court is of the considered view that rescission of the conditional deed of sale by the defendants is without any legal or factual basis.^[64] x x x. (Emphases supplied.)

In all, we see no cogent reason to disturb the foregoing factual findings of the trial court.

Furthermore, it is evident from the language of paragraph 1(b) that the condition precedent (for respondent's obligation to pay the balance of the purchase price to arise) in itself partly involves an obligation to do, i.e., the undertaking of respondent to negotiate and secure a road right of way at his own expense.[65] It does not escape our notice as well, that far from disclaiming paragraph 1(b) as void, it was the Catungals' contention before the trial court that said provision should be read in relation to paragraph 1(c) which stated:

c. That the access road or Road Right of Way leading to Lot 10963 shall be the responsibility of the VENDEE to secure and any or all cost relative to the acquisition thereof shall be borne solely by the VENDEE. He shall, however, be accorded with enough time necessary for the success of his endeavor; granting him a free hand in negotiating for the passage.[66] (Emphasis supplied.)

The Catungals' interpretation of the foregoing stipulation was that Rodriguez's obligation to negotiate and secure a road right of way was one with a period and that period, i.e., "enough time" to negotiate, had already lapsed by the time they demanded the payment of P5,000,000.00 from respondent. Even assuming *arguendo* that the Catungals were correct that the respondent's obligation to negotiate a road right of way was one with an uncertain period, their rescission of the Conditional Deed of Sale would still be unwarranted. Based on their own theory, the Catungals had a remedy under Article 1197 of the Civil Code, which mandates:

Art. 1197. If the obligation does not fix a period, but from its nature and the circumstances it can be inferred that a period was intended, the courts may fix the duration thereof.

The courts shall also fix the duration of the period when it depends upon the will of the debtor.

In every case, the courts shall determine such period as may under the circumstances have been probably contemplated by the parties. Once fixed by the courts, the period cannot be changed by them.

What the Catungals should have done was to first file an action in court to fix the period within which Rodriguez should accomplish the successful negotiation of the road fight of way pursuant to the above quoted provision. Thus, the Catungals' demand for Rodriguez to make an additional payment of P5,000,000.00 was premature and Rodriguez's failure to accede to such demand did not justify the rescission of the contract.

With respect to petitioners' argument that paragraph 5 of the Conditional Deed of Sale likewise rendered the said contract void, we find no merit to this theory. Paragraph 5 provides:

5. That the VENDEE has the option to rescind the sale. In the event the VENDEE exercises his option to rescind the herein Conditional Deed of Sale, the VENDEE shall notify the VENDOR by way of a written notice relinquishing his rights over the property. The VENDEE shall then be reimbursed by the VENDOR the sum of FIVE HUNDRED THOUSAND PESOS (P500,000.00) representing the downpayment, interest free, payable but contingent upon the event that the VENDOR shall have been able to sell the property to another party.[67]

Petitioners posited that the above stipulation was the "deadliest" provision in the Conditional Deed of Sale for violating the principle of mutuality of contracts since it purportedly rendered the contract subject to the will of respondent.

We do not agree.

It is petitioners' strategy to insist that the Court examine the first sentence of paragraph 5 alone and, resist a correlation of such sentence with other provisions of the contract. Petitioners' view, however, ignores a basic rule in the interpretation of contracts - that the contract should be taken as a whole.

Article 1374 of the Civil Code provides that "[t]he various stipulations of a contract shall be interpreted together,

attributing to the doubtful ones that sense which may result from all of them taken jointly." The same Code further sets down the rule that "[i]f some stipulation of any contract should admit of several meanings, it shall be understood as bearing that import which is most adequate to render it effectual." [68]

Similarly, under the Rules of Court it is prescribed that "[i]n the construction of an instrument where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all" [69] and "for the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject thereof and of the parties to it, may be shown, so that the judge may be placed in the position of those whose language he is to interpret." [70]

Bearing in mind the aforementioned interpretative rules, we find that the first sentence of paragraph 5 must be taken in relation with the rest of paragraph 5 and with the other provisions of the Conditional Deed of Sale.

Reading paragraph 5 in its entirety will show that Rodriguez's option to rescind the contract is not absolute as it is subject to the requirement that there should be written notice to the vendor and the vendor shall only return Rodriguez's downpayment of P500,000.00, without interest, when the vendor shall have been able to sell the property to another party. That what is stipulated to be returned is only the downpayment of P500,000.00 in the event that Rodriguez exercises his option to rescind is significant. To recall, paragraph 1(b) of the contract clearly states that the installments on the balance of the purchase price shall only be paid upon successful negotiation and procurement of a road right of way. It is clear from such provision that the existence of a road right of way is a material consideration for Rodriguez to purchase the property. Thus, prior to him being able to procure the road right of way, by express stipulation in the contract, he is not bound to make additional payments to the Catungals. It was further stipulated in paragraph 1(b) that: "[i]f however said road right of way cannot be negotiated, the VENDEE shall give notice to the VENDOR for them to reassess and solve the problem by taking other options and should the situation ultimately prove futile, he [Rodriguez] shall take steps to rescind or [cancel] the herein Conditional Deed of Sale." The intention of the parties for providing subsequently in paragraph 5 that Rodriguez has the option to rescind the sale is undeniably only limited to the contingency that Rodriguez shall not be able to secure the road right of way. Indeed, if the parties intended to give Rodriguez the absolute option to rescind the sale at any time, the contract would have provided for the return of all payments made by Rodriguez and not only the downpayment. To our mind, the reason only the downpayment was stipulated to be returned is that the vendee's option to rescind can only be exercised in the event that no road right of way is secured and, thus, the vendee has not made any additional payments, other than his downpayment.

In sum, Rodriguez's option to rescind the contract is not purely potestative but rather also subject to the same mixed condition as his obligation to pay the balance of the purchase price - i.e., the negotiation of a road right of way. In the event the condition is fulfilled (or the negotiation is successful), Rodriguez must pay the balance of the purchase price. In the event the condition is not fulfilled (or the negotiation fails), Rodriguez has the choice either (a) to not proceed with the sale and demand return of his downpayment or (b) considering that the condition was imposed for his benefit, to waive the condition and still pay the purchase price despite the lack of road access. This is the most just interpretation of the parties' contract that gives effect to all its provisions.

In any event, even if we assume for the sake of argument that the grant to Rodriguez of an option to rescind, in the manner provided for in the contract, is tantamount to a potestative condition, not being a condition affecting the perfection of the contract, only the said condition would be considered void and the rest of the contract will remain valid. In *Romero*, the Court observed that "where the so-called 'potestative condition' is imposed not on the birth of the obligation but on its fulfillment, only the condition is avoided, leaving unaffected the obligation itself." [71]

It cannot be gainsaid that "contracts have the force of law between the contracting parties and should be complied with in good faith." We have also previously ruled that "[b]eing the primary law between the parties, the contract governs the adjudication of their rights and obligations. A court has no alternative but to enforce the contractual stipulations in the manner they have been agreed upon and written." We find no merit in petitioners' contention that their parents were merely "duped" into accepting the questioned provisions in the Conditional Deed of Sale. We note that although the contract was between Agapita Catungal and Rodriguez, Jose Catungal nonetheless signed thereon to signify his marital consent to the same. We concur with the trial court's finding that the spouses Catungals' claim of being misled into signing the contract was contrary to human experience and conventional wisdom since it was Jose Catungal who was a practicing lawyer while Rodriguez was a non-lawyer.[74] It can be reasonably presumed that Atty. Catungal and his wife reviewed the provisions of the contract, understood and accepted its provisions before they affixed their signatures thereon.

After thorough review of the records of this case, we have come to the conclusion that petitioners failed to demonstrate that the Court of Appeals committed any reversible error in deciding the present controversy. However, having made the observation that it was desirable for the Catungals to file a separate action to fix the period for respondent Rodriguez's obligation to negotiate a road right of way, the Court finds it necessary to fix said period in these proceedings. It is but equitable for us to make a determination of the issue here to obviate further delay and in line with the judicial policy of avoiding multiplicity of suits.

If still warranted, Rodriguez is given a period of thirty (30) days from the finality of this decision to negotiate a road right of way. In the event no road right of way is secured by Rodriguez at the end of said period, the parties shall reassess and discuss other options as stipulated in paragraph 1(b) of the Conditional Deed of Sale and, for this purpose, they are given a period of thirty (30) days to agree on a course of action. Should the discussions of the parties prove futile after the said thirty (30)-day period, immediately upon the expiration of said period for discussion, Rodriguez may (a) exercise his option to rescind the contract, subject to the return of his downpayment, in accordance with the provisions of paragraphs 1(b) and 5 of the Conditional Deed of Sale or (b) waive the road right of way and pay the balance of the deducted purchase price as determined in the RTC Decision dated May 30, 1992.

WHEREFORE, the Decision dated August 8, 2000 and the Resolution dated January 30, 2001 of the Court of Appeals in CA-G.R. CV No. 40627 consolidated with CA-G.R. SP No. 27565 are AFFIRMED with the following MODIFICATION:

If still warranted, respondent Angel S. Rodriguez is given a period of thirty (30) days from the finality of this Decision to negotiate a road right of way. In the event no road right of way is secured by respondent at the end of said period, the parties shall reassess and discuss other options as stipulated in paragraph 1(b) of the Conditional Deed of Sale and, for this purpose, they are given a period of thirty (30) days to agree on a course of action. Should the discussions of the parties prove futile after the said thirty (30)-day period, immediately upon the expiration of said period for discussion, Rodriguez may (a) exercise his option to rescind the contract, subject to the return of his downpayment, in accordance with the provisions of paragraphs 1(b) and 5 of the Conditional Deed of Sale or (b) waive the road right of way and pay the balance of the deducted purchase price as determined in the RTC Decision dated May 30, 1992.

No pronouncement as to costs.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Del Castillo, and Perez, JJ., concur.

[1] Rollo, pp. 12-23; penned by Associate Justice Eloy R. BeLlo, Jr. with Associate Justices Delilah Vidallon-Magtolis and Elvi John S. Asuncion, concurring.

[2] CA rollo (CA-G.R. CV No. 40627), pp. 72-81.

[3] Rollo, pp. 8-9.

[4] Records, pp. 1-27.

[5] Id. at 12-13.

[6] Id. at 14-16.

[7] Id. at 17-19.

[8] Id. at 17-18.

[9] Id. at 3.

[10] Id.

[11] Id. at 20.

[12] Id. at 21.

[13] Id. at 22,

[14] Id. at 23-26.

[15] Id. at 27.

[16] Id. at 9-10.

[17] Id. at 28,

[18] Id. at 33.

[19] Id. at 37.

[20] Id. at 48-50.

[21] Id. at 45.

[22] Id. at 55-66.

[23] Id. at 57-58; see Paragraphs 6 and 7 of the Answer with Counterclaim.

[24] Id. at 64; see Paragraphs 17, 19 and 36 of the Answer with Counterclaim.

[25] Id. at 66-67.

[26] Id. at 94-111 and 120-139; the first Amended Answer with Counterclaim was dated April 4, 1991, the Second Amended Answer with Counterclaim was dated May 6, 1991.

[27] Id. at 139.

[28] Id. at 195-217.

[29] Id. at 219.

[30] Id. at 253.

[31] Id. at 254.

[32] Id. at 255.

[33] Id. at 256-259.

[34] Id. at 264.

[35] Id. at 267.

[36] Id. at 273.

[37] CA rollo (CA-G.R. SP No. 27565), pp. 1-46.

[38] CA rollo (CA-G.R. CV No. 40627), pp. 26-71 and (CA-G.R. SP No. 27565), pp. 23-114.

[39] Id. at 26-27.

[40] Id. at 259-296.

[41] Id. at 318-336.

[42] Id. at 339.

[43] Id. at 341,

[44] Id. at 342.

[45] Id. at 343-346.

[46] Id. at 349-350.

[47] This is the petition for certiorari and prohibition previously filed by the Catungals to question the trial court's denial of the motion to dismiss and the order of default.

[48] CA rollo (CA-G.R. CV No. 40627), pp. 365-374.

[49] In petitioners' pleadings, they refer to this as paragraph "f" when it should be paragraph 5 of the Conditional Deed of Sale.

[50] CA rollo (CA-G.R. CV No. 40627), pp. 391-393.

[51] Rollo, pp. 26-40.

[52] Id. at 51-65.

[53] Id. at 80-81.

[54] 332 Phil. 206 (1996).

[55] Id. at 217-218.

[56] *Ortega v. Social Security Commission*, G.R. No. 176150, June 25, 2008, 555 SCRA 353,370.

[57] 505 Phil. 87(2005).

[58] Id. at 102.

[59] Commissioner of Internal Revenue v. Mirant Pagbilao Corporation, G.R. No. 159593, October 16, 2006, 504 SCRA 484, 495.

[60] Civil Code, Article 1181.

[61] Babasa v. Court of Appeals, 352 Phil. 1142, 1154 (1998).

[62] 320 Phil. 269 (1995).

[63] Id. at 281-282.

[64] CA rollo (CA-G.R. CV No. 40627), pp. 78-79.

[65] Records, p. 17; paragraph 1(b) and (c) of the Conditional Deed of Sale.

[66] Id.

[67] Id. at 18.

[68] Civil Code, Article 1373.

[69] Rules of Court, Rule 130, Section 11.

[70] Id., Section 13.

[71] Romero v. Court of Appeals, supra note 62 at 282.

[72] Civil Code, Article 1159.

[73] Raquel-Sanlos v. Court of Appeals, G.R. Nos. 174986, 175071 and 181415, July 7, 2009, 592 SCRA 169, 194; Felsan Realty & Development Corporation v. Commonwealth of Australia, G.R. No. 169656, October 11, 2007, 535 SCRA 618, 629; Pryce Corporation v. Philippine Amusement and Gaming Corporation, 497 Phil. 490, 503 (2005).

[74] CA rollo (CA-G.R. CV No. 40627), p. 77.

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