PLATINUM PLANS PHIL. INC., YOUTH EDUCATIONAL PLANS, INC., AND ERNESTO L. SALAS, PETITIONERS, VS. ROMEO R. CUCUECO, RESPONDENT.

G.R. NO. 147405. April 25, 2006

Ponente: AZCUNA, J.

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AZCUNA, J.:

Challenged in this petition for review on certiorari[1] is the Decision[2]dated February 21, 2001 rendered by the Court of Appeals (CA) in CA-G.R. CV No. 60071 setting aside the decision[3] of the Regional Trial Court (RTC) of Pasig City, Branch 266, in Civil Case No. 64903 entitled "Romeo R. Cucueco vs. Platinum Philippines Inc., Youth Educational Plans, Inc., and Ernesto L. Salas."

This case is rooted in the complaint[4] filed by respondent Romeo R. Cucueco against petitioners Platinum Philippines Inc., Youth Educational Plans, Inc., and Ernesto L. Salas for specific performance and damages pursuant to an alleged contract of sale executed by them for the purchase of a condominium unit[5] in Valle Verde, Pasig City.
The antecedent facts are as follows:

> Plaintiff-appellant [herein respondent] alleged in his complaint that sometime in July 1993, being the lessee and present occupant of the said condominium unit, he verbally offered to buy the same from the defendants-appellants [herein petitioners], free from any lien or encumbrance in two(2) installments of P2,000,000.00.
>
> This was made into a formal offer in writing, the salient conditions of which are: (1) Plaintiff-appellant will issue a check for P100,000.00 as earnest money; (2) Plaintiff will also issue a post-dated check for P1,900,000.00 encashable on 30 September. 1993 on the condition that he will stop paying rental(s) for the said unit after 30 September 1993; and (3) That in case the defendants-appellants still had an outstanding loan (with the said unit as collateral/security) with the bank of less than P2,000,000.00, as of 31 December 1993, plaintiff-appellant shall assume the said loan and pay the defendants-appellants the difference from the remaining P2,000,000.00.
>
> Plaintiff-appellant claims that the defendants-appellants duly accepted his offer- the checks he issued in favor of the defendants-appellants were accepted and encashed. However, he was surprised to receive a letter from the defendants-appellants where the due date for the second installment was changed to 23 September 1993. Despite earnest efforts, both parties failed to settle the said difference amicably. Apparently, the plaintiff-appellant felt he was on the short end of the bargain since he stood to forfeit the initial P2,000,000.00 he has paid in favor of the defendants-appellants as provided in their agreement. The refusal of the defendants-appellants to return the said initial payment thus prompted the plaintiff-appellant to file a case for specific performance of the said sale and claim of damages for the injury he suffered as a result of the defendants-appellants' unjust refusal to comply with their obligation.
>
> In the main, plaintiff-appellant argued before the lower court that there was a perfected sale between them, as

> based on the facts he alleged Based on such perfected sale, plaintiff-appellant maintains that he may validly demand of the defendants-appellants to execute the necessary deed of sale and other documents transferring ownership and title over the property in his favor.
>
> On the other hand, defendants-appellants denied the substantial allegations of the plaintiff-appellant and asserted during trial that the plaintiff-appellant has already forfeited his initial downpayment of P2,000,000.00 as based on the terms and conditions agreed upon, to wit:
>
> - The terms of payment is only for two installments...payable on 1 August 1993 and the balance payable on 30 September 1993.
>
> - To ensure performance, (the) parties herein further agreed that in case of non-compliance on the part of the plaintiff, all installments made shall be forfeited in favor of the defendants;
>
> - Ownership over subject property is retained by defendants and is not to pass until full payment of the purchase price.
>
> Defendants-appellants counter the plaintiff-appellant's contention, stating they never accepted the plaintiff-appellant's offer to pay the remaining balance only on 31 December 1993. Their letter of 23 September 1993 undoubtedly contained their non-acceptance of the plaintiff-appellant's offer. Along with this, they maintain that the very fact that the plaintiff-appellant went to the defendants-appellants to negotiate the due date of the final payment belies the plaintiff-appellant's assertion that there was any sale perfected between them. They further submit as evidence the want of consent to the plaintiff-appellant's offer as shown by the absence of their signature of conformity on the letter sent to them.[6]

The trial court found that under the circumstances, the essential element of consent to the contract was lacking as indicated by the failure of the parties to agree on a definite date when full payment of the purchase price should be made by respondent. As a result, the court ruled against the existence of a perfected contract of sale between the parties and ordered petitioners to return the Two Million Pesos (P2,000,000) they received from respondent as downpayment for the condominium unit and to likewise pay respondent interest, moral damages and attorney's fees. For his part, respondent was directed to pay petitioners rentals in arrears for the use of the unit in the amount of Eighteen Thousand Pesos (P18,000) per month commencing in July 1993. Unsatisfied, both parties appealed the decision to the CA.

The CA, on the other hand, differed from the conclusion of the trial court and ruled that there was, in this instance, a perfected contract of sale despite the fact that the parties never agreed on the date of payment of the remaining balance of the purchase price. Accordingly, the CA reversed and set aside the judgment of the RTC in its Decision dated February 21, 2001, the dispositive portion of which reads:

> WHEREFORE, premises considered, the judgment of the Regional Trial Court of Pasig City, Branch 226, in Civil Case No. 64903 is hereby REVERSED and SET ASIDE and a new one is RENDERED as follows:
>
> - Plaintiff-appellant ROMEO R. CUCUECO is hereby ordered to pay the defendants-appellants the balance of the purchase price in the amount of P2,000,000.00 with 6% interest per annum starting from 21 October 1993 until full payment, for the sale of Unit 17, Block 3, Casa Verde Townhouse, Valle Verde, Pasig City as covered by TCT No. PT-80413 registered with the Registry of Deeds of Pasig City.
>
> - Defendants-appellants, PLATINUM PLANS PHILIPPINES, INC. is hereby ordered to execute and deliver the sufficient Deed of Sale of the said property in favor of said plaintiff-appellant, as well as any other pertinent document necessary for the transfer of ownership and title of the said property to the plaintiff-appellant, after full payment of the balance purchase price plus interest has been made by the plaintiff-appellant in their favor.

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SO ORDERED.[7]

Hence, this petition which assigns the following errors:

I.

THE HONORABLE COURT OF APPEALS SERIOUSLY MISAPPREHENDED THE FACTS OF THE CASE AND GROSSLY MISAPPRECIATED THE EVIDENCE, AND THUS COMMITTED PATENT ERROR WHEN IT RULED THAT THERE WAS A PERFECTED CONTRACT OF SALE OVER THE SUBJECT PROPERTY.

II.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT FOUND THAT THE PRIVATE RESPONDENT'S BREACH OF THE CONTRACT WAS NOT SUBSTANTIAL AS TO WARRANT THE RESCISSION THEREOF.

III.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT RULED AGAINST THE PETITIONERS' FORFEITURE OF THE PRIVATE RESPONDENT'S 1ST INSTALLMENT.

IV.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT REVERSED THE DECISION OF THE REGIONAL TRIAL COURT INSOFAR AS THE TRIAL COURT'S ORDER DIRECTED THE PRIVATE RESPONDENT TO PAY BACK RENTALS IN THE AMOUNT OF PI 8,000.00 PER MONTH COMMENCING FROM JULY 1993

The petition has merit.

The primary issue in this case centers upon a determination of the true nature of the agreement of the parties concerning the condominium unit. In brief, petitioners claim that the parties merely entered into a contract to sell while respondent insists that it was already a perfected contract of sale. It is therefore critical to ascertain whether the parties intended to enter into a contract of sale or a contract to sell as these two contracts produce very different effects under the law.

To begin with, a contract of sale is defined under Article 1458 of the Civil Code as follows:

> By the contract of sale one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

In a contract of sale, the vendor cannot recover ownership of the thing sold until and unless the contract itself is resolved and set aside.[8] On this score, it is significant to note that the resolution or rescission of a contract of sale is further circumscribed by Article 1592 of the Civil Code which provides:

> 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. (Emphasis supplied.)

The demand mentioned above refers to that made, upon the vendee to agree to the resolution of the contract. A party who fails to invoke judicially or by notarial act the resolution of the contract of sale would be prevented from blocking the consummation of the same in light of the precept that mere failure to fulfill that contract does not operate ipso facto as its rescission.[9]

On the other hand, a contract to sell is defined as a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite its delivery to the prospective buyer, commits to sell the property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, that is, full payment of the purchase price. Full payment in this context is deemed a positive suspensive condition. It bears stressing that ownership of the property offered for sale is reserved in the seller and is not to pass to the buyer until such condition has been fulfilled.

As a result, if the party contracting to sell, because of non-compliance with the suspensive condition stipulated, seeks to eject the would-be buyer from the land object of the agreement, the former is enforcing the contract and not resolving it.[10] The failure to make payment is not a breach of the contract but an event that prevented the obligation to convey the title from materializing.[11]

Based on the foregoing distinctions, a contract to sell may not be considered as a contract of sale because the first essential element of consent to a transfer of ownership is lacking in the former. Since the prospective seller in a contract to sell explicitly reserves the transfer of title to the prospective buyer, the prospective seller does not as yet unequivocally agree or consent to a transfer ownership of the property subject of the contract to sell. On the happening of an event, that is, the full payment of the purchase price, the obligation then arises to execute a contract of sale that alone will transfer such ownership.

In its decision, the CA characterized the transaction as a straight sale and ruled that the failure of the parties to agree with respect to the manner of payment did not negate the existence of a perfected contract of sale between them, explaining as follows:

> Apparently, the lower court relied upon the time element regarding the payment of the balance of the purchase price. We consider, however, that first, the object and the total amount of the purchase price has been agreed upon. It was error on the part of the lower court to consider any form or manner of payment since under the present circumstances, and based upon the Levy Hermanos' definition of what a sale on installment is, the agreement between the parties to this case would constitute a simple "straight sale." Such manner of payment as discussed by the lower court, to Our mind, would find pertinent application in the realm of installment sales. Thus, being a case of straight sale, the manner of payment- which must be construed here as being made in cash- has no bearing in the present case. The mode of payment is cash and there is no subsequent installment to speak of. Being such, the performance of the contract will not necessarily affect the validity of the perfected contract of sale.[12]

However, the reliance of the CA upon Levy Hermanos, Inc. vs. Gervacio[13] is misplaced because the factual circumstances as well as the issues raised therein are not on all fours with those in the present case. Levy Hermanos involved a collection suit to recover the balance of the purchase price in a sale of personal property after the vendee already paid partly in cash and partly on term by way of a promissory note that was secured with a mortgage over the property. Since the vendee failed to pay the note upon its maturity, the vendor was constrained to foreclose on the mortgage. The proceeds from the foreclosure sale, however, were insufficient to discharge the note, prompting the vendor to seek judicial recourse.

In Levy Hermanos, there was no question as to the intent and nature of the agreement entered into by the parties. Clearly, it was a contract of sale which immediately vested unto the vendee the ownership of the personal property subject of the transaction. The issue posed in that case, rather, pertained to the applicability of Article 1454-A[14] of the old Civil Code regarding the right of the vendor to recover the remaining balance of the purchase price when such vendor has previously exercised the right to foreclose the subject property. In resolving the issue, this Court delineated the difference between an installment sale and a "straight" sale and declared that the transaction between the parties in that case was a "straight" sale not falling within the purview of Section

1454-A of the old Civil Code.

In the present case, it was unnecessary for the CA to distinguish whether the transaction between the parties was an installment sale or a straight sale. In the first place, there is no valid and enforceable contract to speak of. It was error for the appellate court to rely upon Article 1482 of the Civil Code in concluding that the earnest money given "would be considered as part of the purchase price and proof of the perfection of the contract."[15] This Court has emphasized that it is the proof of the concurrence of all the essential elements of the contract of sale, and not the giving of earnest money, which establishes the existence of a perfected sale.[16]

As correctly pointed out by the trial court, the fact that respondent delivered to petitioners and petitioners accepted part of the downpayment on the price cannot be considered as proof of the perfection of the contract as they had not agreed on how and when the balance was to be paid. Respondent admitted as much during his cross-examination on August 12, 1996, to wit:

> Court: Do I understand from you that after all in regard to writing, there was no consummated agreement in regards to the terms and period of payment?A: None, your Honor.
>
> Court: So there was no definite period when the full payment...
>
> A: No, your honor. There is a definite agreement as to the period of payment, your Honor, but apparently there is a misunderstanding or both parties alleged different date, that's why...
>
> Court: That's why my question is, there was no definite time frame agreed upon by you and the defendant as to when the last payment of full payment will be made?
>
> A: Based on my letter...
>
> Court: No, between you ..."yung definite na pinagkasunduan ninyo. Yung proposal n'yo that was rejected by the defendant." My question is, there was nothing definite in regard to specific date when the full payment may be made, because your proposal was rejected, isn't it?
>
> A: Yes, your Honor, it was rejected.
>
> Court: Alright, to clarify, what was the date you proposed?
>
> A: December 30, your Honor.
>
> Court: What was the counter date made by the defendant?
>
> A: The last payment, your Honor, they asked me to pay October 19... October 15 and October 31.
>
> xxx
>
> Court: And you did not agree in regard to the dates fixed by defendants?A: Yes, your Honor, I did not agree.
>
> xxx
>
> Q: Do you recall having gone to the office of defendant corporation on November 4, 1993?
>
> A: Yes, ma'm.
>
> Q: What was the purpose of your visit to the office of defendant corporation?
>
> A: To remind them of my proposal that the balance. I will only pay it on December 30.
>
> Q: Was there any negotiation on the payment of the balance of the purchase price of the unit?A: They insists (sic) on that I will pay it earlier, ma'm.Q: But you did not agree to the payment?A: Yes, ma'm.

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> Q: Were you not given another period within which you could pay the balance instead of December 30, 1993?A: They gave me a period earlier than December 30 but I did not accept.
>
> Q: Are you saying that in the negotiation, you just went to tell the defendant corporation that you are not acceeding (sic) to their proposal of an earlier payment?
>
> A: Yes, ma'm[.[17]] (Emphasis supplied.)

Significantly, neither side has been able to produce any written evidence documenting the actual terms of their agreement, specifically the date of full payment of the purchase price. The evidence adduced during the trial showed that the respective offers and counter-offers made by the parties were not accepted by the other party. The trial court properly found that there was no meeting of the minds in this case considering the acceptance of the offer was not absolute and unconditional.[18] This further confirmed the absence of the contractual element of consent.

In a number of cases,[19]this Court has held that before a valid and binding contract of sale can exist, the manner of payment of the purchase price must first be established. The manner of payment affects the essential validity of the sale notwithstanding that the object and purchase price may have previously been agreed upon. Although not an express statutory requirement, the minds of the parties must meet on the terms or manner of payment of the price, otherwise, there is no sale.[20] An agreement on the manner of payment goes into the price such that a disagreement on the manner of payment is tantamount to a failure to agree on the price[21]

Secondly, the reservation of the title in the name of petitioners indicates the intention of the parties to enter, at most, into a contract to sell. The CA already found that "there was an express stipulation regarding the reservation of title of the property made by the seller until full payment of the price agreed upon."[22] Indeed, this finding is supported by the records of this case and admitted by respondent himself.[23] Both parties understood that the documents conveying title over the unit shall be executed only upon completing payment of the purchase price. Otherwise, even prior to the belated tender by respondent of the remaining balance, he would have demanded that petitioners draw in his favor the necessary deed of absolute sale. Where the seller promises to execute a deed of absolute sale upon completion of payment of the purchase price by the buyer, the agreement is unequivocally a contract to sell.[24]

Be that as it may, the intention of the parties to enter into a contract to sell did not effectively translate into an enforceable obligation in view of their failure to agree on the contract's actual terms.[25] As in a contract of sale, it is important that there be a stipulation on the period within which the payment would become due and demandable, the absence of which would justify the conclusion that there was no consent to the contract proposed.

The Court, in this instance, cannot step in to cure the deficiency by fixing the period of the obligation pursuant to either Article 1191[26] [which, incidentally, applies only to contracts of sale] or Article 1197[27] of the Civil Code. In the first place, respondent did not pray for this relief when he filed his complaint for specific performance seeking to compel petitioners to receive the balance of the purchase price and to transfer title of the property in his name. He instead claimed that the parties had previously fixed the period of the obligation on December 31, 1993.

Secondly, respondent impliedly admits in his pleadings below that he was in default when he tendered payment on August 4, 1994, or almost eight months after the above-stated deadline. Even as he acknowledges that petitioners made several demands upon him to complete payment, respondent argues that his belated tender of payment was still acceptable considering that petitioners did not validly rescind by judicial or notarial act their perfected contract. This, however, applies only to a contract of sale.

Thirdly, the Court cannot arbitrarily set a period different from the term probably contemplated by the parties.[28] In the present case, both parties submit that the due date of the final payment had been sometime in 1993; they only differ with respect to the exact month and day. For this reason, the Court would have no basis for granting to respondent an extension of time within which to pay his outstanding balance well beyond the contemplated period.

Furthermore, assuming that there was a perfected contract to sell, the Court would not be inclined to interfere with the decision of petitioners to extra-judicially terminate the operation of their contract. Article 1592 of the Civil Code which requires that prior demand upon the respondent be made by judicial or notarial act so as to rescind the contract would be inapplicable in this case as the provision contemplates only contracts of sale. Rather, the contract to sell would be rendered ineffective and without force and effect by the non-fulfillment of respondent's obligation to pay, which is a suspensive condition to the obligation of petitioners to sell and deliver the title to the property. The parties stand as if the conditional obligation had never existed.[29] There can be no rescission of an obligation that is still non-existent, the suspensive condition not having as yet occurred.[30]

This is not to say that petitioners can treat the agreement as cancelled without serving notice to respondent of their decision to do so. The act of a party in treating a contract as cancelled should be made known to the other party because this act is subject to scrutiny and review by the courts in case the alleged defaulter brings the matter for judicial determination.[31] This point was explained in University of the Philippines v. De Los Angeles,[32] thus:

> It is understood that the act of a party in treating a contract as rescinded or cancelled or resolved on account of infractions by the other contracting party must be made known to the other and is always provisional, being ever subject to the scrutiny and review by the proper court. If the other party denies that rescission is justified, it is free to resort to judicial action in its own behalf, and bring the matter to court. Then, should the court, after due hearing, decide that the resolution of the contract was not warranted, the responsible party will be sentenced to damages; in the contrary case, the resolution will be affirmed, and the consequent indemnity awarded to the party prejudiced.
>
> In other words, the party who deems the contract violated may consider it resolved or rescinded, and act accordingly, without previous court action, but it proceeds at its own risk. For it is only the final judgment of the corresponding court that will conclusively and finally settle whether the action taken was or was not correct in law. But the law definitely does not require that the contracting party who believes itself injured must first file suit and wait for a judgment before taking extra-judicial steps to protect its interest. Otherwise, the party injured by the other's breach will have to passively sit and watch its damages accumulate during the pendency of the suit until the final judgment of rescission is rendered when the law itself requires that [it] should exercise due diligence to minimize its own damages.

In the present case, petitioners repeatedly reminded respondent in writing to pay the outstanding balance of the purchase price of the unit, always with a warning that his failure to do so would result in the cancellation of their agreement and the forfeiture of the downpayment already made.[33] Finally, because of respondent's continuing default in his obligation, petitioners served notice of their decision to rescind the contract in a letter dated September 23, 1994.[34] Under such circumstances, the cancellation by petitioners of the purported contract is reasonable and valid. However, the forfeiture of the downpayment is unwarranted as respondent never acceded to the same.

Considering that the agreement of the parties did not ripen into a binding and enforceable contract meaning it did not acquire any obligatory force either for the transfer of the ownership of the property or the rendition of payments as part of the purchase price due to the absence of the essential element of consent, the Court is precluded from finding any cause of action that would warrant the granting of the reliefs prayed for in respondent's complaint. Accordingly, the initial payment of Two Million Pesos (P2,000,000) advanced by

respondent should be returned by petitioners lest the latter unjustly enrich themselves at the expense of the former. In the same vein, considering that respondent has been in continuous possession of the subject unit beginning July of 1993, the award of back rentals in favor of petitioners is likewise proper, but the award of moral damages and attorney's fees should be deleted for lack of sufficient basis.

WHEREFORE, the petition is GRANTED and the assailed Decision dated February 21, 2001 rendered by the Court of Appeals (CA) in CA-G.R. CV No. 60071 is REVERSED and SET ASIDE. Accordingly, the Decision dated May 18, 1998 of the Regional Trial Court of Pasig City, Branch 266, in Civil Case No, 64903 is REINSTATED.

However, moral damages and attorney's fees awarded are DELETED for lack of basis.

No costs.

SO ORDERED.

Sandoval-Gutierrez (Acting Chairperson), Corona, and Cancio-Garcia, JJ., concur.
Puno, C.J., (Chairperson), on leave.

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[1] Under Rule 45 of the Rules of Court.
[2] CA Rollo, pp. 149-164.
[3] Records, pp. 460-472.
[4] Records, pp. 1-17.
[5] The subject unit measuring one hundred thirty-six (136) square meters is covered by Transfer Certificate of Title No. PT-80413.
[6] CA Rollo, pp. 150-152.
[7]CA Rollo, p. 163.
[8]V COMMENT ARIES AND JURISPRUDENCE ON THE CIVIL CODE, TOLENTINO, p. 24 (1999).
[9] Guevara v. Pascual, 12 Phil. 311 (1908).
[10]TOLENTINO, supra note 8.
[11]Spouses Gimenez v. CA, G.R. No. 92171, March 13, 1991, 195 SCRA 205; Augustin v. CA, G.R. No. 84751, June 6, 1990, 186 SCRA 375; Roque v. Lapuz, G.R. No. L-32811, March 31, 1980, 96 SCRA 741; Luzon Brokerage Co. v. Maritime Building Co., G.R. No. 25885, January 31,1972, 43 SCRA 93.
[12]CA Rollo, pp. 158-159.
[13] 69 Phil. 52 (1939).
[14]This article outlined the remedies of a vendor in a contract of sale of personal property payable in installments, to wit:

> In a contract for the sale of personal property payable in installments, failure to pay two or more installments shall confer upon the vendor the right to cancel the sale or foreclose the mortgage if one has been given on the property, without reimbursement to the purchasers of the installments already paid, if there be an agreement to this effect.
> However, if the vendor has chosen to foreclose the mortgage, he shall have no further action against the purchaser for the recovery of any unpaid balance owing by the same, and any agreement to the contrary shall be null and void.

[15] CA Rollo, p. 159.
[16]San Miguel Properties Philippines, Inc. v. Spouses Huang, G.R. No. 137290, July 31, 2000, 336 SCRA 737.
[17] Transcript of Stenographic Notes (TSN), August 12, 1996, pp. 12-16.

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[18] Records, pp. 470-471.
[19]Swedish Match, AB v. CA, G.R. No. 128120, October 20, 2004, 441 SCRA 1; Montecillo v. Reynes, 434 Phil. 456 (2002); San Miguel Properties Philippines, Inc. v. Spouses Huang, supra note 16; Co v. CA, 349 Phil 745 (1998); Uraca v. CA, G.R. No. 115158, September 5, 1997, 278 SCRA 702; Limketkai Sons Milling, Inc. v. CA, 330 Phil. 171 (1996); Toyota Shaw, Inc. v. CA, 314 Phil. 201 (1995).
[20] Montecillo v. Reynes, supra note 19; Navarro v. Sugar Producers Cooperative Marketing Association, Inc., G.R. No. L-12888, April 29, 1961, 1 SCRA 1181.
[21] San Miguel Properties Philippines, Inc. v. Spouses Huang quoting Toyota Shaw, Inc. v. CA, 314 Phil. 201 (1995)], supra note 16.
[22] CA Rollo, p. 159.
[23]TSN, August 12,1996, p. 10.
[24] Rayos v. CA, G.R. No. 135528, July 14, 2004, 434 SCRA 365.
[25]Ebrada v. Ramos, G.R. No. 154413, August 31, 2005, 468 SCRA 597.
[26]CIVIL CODE, Article 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 also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.
The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period. This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with articles 1385 and 1388 and the Mortgage Law. (1124)
[27]CIVIL CODE, Article 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. (1128a)
[28] Gregorio Araneta, Inc. v. Philippine Sugar Estates Development Co., Ltd., G.R. No. L-22558, May 31, 1967, 20 SCRA 331.
[29] Rayos v. CA, supra note 21.
[30] Cheng v. Genato, G.R. No. 129760, December 29,1998, 300 SCRA 722.
[31] Palay, Inc. v. Clave, GR No. L-56076, September 21, 1983, 124 SCRA 638.
[32]L-28602, September 29, 1970, 35 SCRA 107.
[33]Records, pp. 332-334, 435-437.
[34] Id. at 440.

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