

**SPS. HENDRIK BIESTERBOS AND ALICIA S. BIESTERBOS,
PETITIONERS, VS. HON. COURT OF APPEALS AND EFREN E.
BARTOLOME, RESPONDENTS.**

G.R. No. 152529. September 22, 2003

Ponente: VITUG, J.

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VITUG, J.:

On 18 April 1992, private respondent Efren E. Bartolome entered into a Contract to Sell with petitioners, the spouses Hendrik and Alice Biesterbos, in which Bartolome agreed to sell to the spouses Biesterbos one (1) unit of a duplex residential house and lot with an area of three hundred forty-five (345) square meters, more or less, situated at Crestwood Court Subdivision, Bakakeng Norte, Baguio City, for Two Million (P2,000,000.00) Pesos. The property was, at the time of the agreement, mortgaged to the Philippine National Bank (PNB). The contract to sell provided, among other stipulations, that -

"1. The BUYER shall pay to the OWNER the sum of One Million Pesos (P1,000,000.00), Philippine Currency, as downpayment upon signing of this Contract to Sell; the balance of One Million Pesos shall be paid by the BUYER to the OWNER on or before July 30, 1992;

"2. The OWNER upon receipt of the downpayment will cause without delay and at his own expenses, the following:

"2.1

Immediate transfer of possession of the townhouse, the subject of this contract to sell;

"2.2

Installation of a water tank with a capacity of not less than 1,000 liters;

"2.3

Partition or segregation of the lot area in accordance with the designated boundaries and corners indicated in the lot plan and to obtain a separate certificate of title to the property subject of this contract to sell;

"2.4

Construction of another driveway for the use of the other unit of the Duplex to insure the BUYER will have an exclusive use of the existing driveway;

"2.5

Fabrication and/or installation of a movable partition to be located between the living and dining area of the house.

"3. The OWNER will execute a Deed of Absolute Sale in favor of the BUYER upon payment by the latter of the balance of One Million Pesos to the former; the OWNER will also deliver the Transfer Certificate of Title to the BUYER free from all liens and encumbrances;

"4. The OWNER will facilitate the transfer of ownership to the property into the name of the BUYER by paying the capital gains tax, Documentary and Science stamps, including the real estate tax for the current year; the BUYER on the other hand will shoulder the cost of transfer, registration and documentation fee;

"5. That the OWNER, in addition to the sale of the house and lot subject of this contract, will advance for the BUYER the cost of the adjacent vacant lot belonging to his brother at an agreed price of SIX HUNDRED THOUSAND (P600,000.00) PESOS, Philippine Currency; the lot being Lot B-1-H consisting of Four Hundred (400) Square Meters and covered by Transfer Certificate of Title No. T-44549 of the Registry of Deeds of Baguio City;

"6. The BUYER shall reimburse to the OWNER, the Six Hundred Thousand Pesos including the cost of transfer, documentation and registration fee, within a reasonable time or on/or before July 30, 1992, after ownership of the lot is transferred into the name of the BUYER."[1]

On 23 April 1992, respondent received, by way of a downpayment, the amount of P972,486.00 from petitioners. Conformably with paragraph 5 of the agreement, respondent advanced for and in behalf of petitioners the sum of P600,000.00 for the purchase by the latter of an adjacent lot owned by respondent's brother. In turn, the couple obligated themselves to reimburse respondent for the amount thus advanced.

Petitioners failed to pay the amounts due and owing to respondent under the contract as so agreed. Nevertheless, on 05 August 1992, respondent received from petitioners the amount of P319,612.65; subsequent payments were also made by petitioners to respondent. Thus -

"1) Sept. 11, 1992 - 348,849.43 but actually received on Sept. 15, 1992

"2) Oct. 10, 1992 - 345,259.36 but actually received on Oct. 12, 1992

"3) Feb. 9, 1993 - 50,000.00

"4) March 23, 1993 - 10,000.00 but actually received on Mar. 24, 1993

"5) March 30, 1993 - 30,000.00 paid by defendant-appellants at PNB

"6) April 6, 1993 - 5,000.00 as evidenced by Exh. '5' of Original Records

789,108.79

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"Plus payments made on the following dates:

"April 17, 1992 - 972,486.80

"July 30, 1992 - 319,612.65

"TOTAL PAYMENT MADE P2,081,208.24[2]

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Several demands were made by respondent for the full settlement by petitioners of their due obligation. In a letter, dated 20 December 1992, allegedly addressed to the Baguio residence of petitioners, respondent demanded the payment of the still unpaid balance of P710,713.16. On 24 March 1993, respondent claimed to have sent another letter to petitioners with the summary of the amounts due and payable, totaling P718,407.92, inclusive of -

"Bank's Interest and Bank charges

From 01 August to 13 October 1992 - P94,021.80

"Accrued Interest and Bank charges

from 14 October 1992 to 30 March

1993 - P64,694.36

"Cost of Maintenance and Caretaker - P 3,000.00"[3]

On 18 May 1993, respondent reiterated his demand and informed petitioners that, because of the delay, respondent had to pay additional interests on his bank loan thereby increasing to P918,407.92 the sum due from petitioners. Except for this letter of 18 May 1993, petitioners denied having received any other demand-letter from respondent.

In a letter of 03 July 1993, petitioners, through counsel, informed respondent that they had deposited the amount of P521,691.76, "In Trust For Mr. Efren Bartolome," at the PNB branch in Baguio City, and that the money could be withdrawn by him at anytime during banking hours. Apparently not satisfied with the arrangement made with the bank, respondent, on 09 July 1993, filed a complaint for specific performance and damages against petitioners before the Regional Trial Court of Baguio City, specifically praying thusly:

"WHEREFORE, premises considered, it is respectfully prayed of the Honorable Court, after due notice and hearing to render judgment in favor of the plaintiff and against the defendants, ordering the defendants jointly and severally to:

"1. Comply with their obligations and pay unto the plaintiff the following:

"a.

P556,691.76 representing the balance unpaid arising out of the contract to sell plus interest until fully paid;

"b.

P158,716.16 representing losses/damages actually incurred and paid to the bank;

"c.

P2,900.00 representing the cost of transfer of the other lot plus P3,000.00 representing maintenance cost and caretaker of the duplex house and lot;

"d.

P100,000.00 as moral damages; P100,000.00 as exemplary damages;

"e.

P100,000.00 as attorney's fees plus P500.00 every hearing as appearance fees; and

"f.

P20,000.00 as litigation expenses plus the cost of this suit.

"2. Plaintiff further prays for such reliefs just and equitable in the premises."[4]

In their answer, petitioners contended that respondent had failed to comply with his obligations in accordance with the contract to sell such as, among other things, the immediate transfer of possession of the property and the construction and installation of a driveway. Petitioners also asserted that Alicia Biesterbos had paid respondent the following amounts even after the agreed period of 30 July 1992, to wit:

"1) 17 April 1992 – P 972,486.80

"2) 30 July 1992 – P 319,612.65

"3) 11 September 1992 – P 348,849.43

"4) 10 October 1992 – P 355,259.36

"5) 09 February 1993 – P 50,000.00

"6) 23 March 1993 – P 10,000.00

"7) 30 March 1993 – P 30,000.00

"8) 06 April 1993 – P 5,000.00

"Total Payments Made – P2,081,208.24"[5]

Petitioners claimed that the deadline for the payment of the balance of the due obligation was novated when private respondent continued to receive payments even beyond the 30[th] July 1992 deadline, and that they, being unaware of the loan obligation to the Philippine National Bank, should not be held liable for any alleged bank charges and interests. Petitioners prayed that the consignment of the amount of P521,691.76, representing what they averred to be the amount due from them under the contract to sell, be meanwhile approved by the trial court and respondent be made to transfer to them the absolute ownership of the property.

On 21 July 1994, the trial court issued an order denying the prayer for consignment for lack of merit. In time, the Regional Trial Court, Branch 7, of Baguio City finally rendered its decision, it adjudged:

"WHEREFORE, in view of all the foregoing, judgment is hereby rendered:

"(a) Declaring defendants Biesterbos to have complied with their obligation under the contract to sell with respect to the townhouse and lot;

"(b) Ordering plaintiff Bartolome to execute the corresponding deed of sale transferring the townhouse and lot to the defendants Biesterbos;

"(c) Ordering the plaintiff Bartolome to deliver the Transfer Certificate of Title to the defendants-buyers Biesterbos free from all liens and encumbrances as committed by him in the contract to sell;

"(d) Ordering the defendants Biesterbos to reimburse to the plaintiff P518,791.60 representing the balance of the P600,000.00 which the latter had advanced to the owner of the adjacent lot;

"(e) Ordering the defendants to pay the plaintiff P2,900.00 which represents the cost of the transfer of the other adjacent lot, which amount is admitted in the defendants' pleading (answer);

"(f) Denying the claim of the defendants for the refund of P300,000.00 alleged overpayment for lack of merit;

"(g) Denying the claims for damages by both parties for lack of merit;

"(h) Costs of the suit to be shared by the contending parties.[6]

Still feeling aggrieved, respondent appealed the case to the Court of Appeals. On 22 February 2000, the appellate court rendered a decision affirming that of the trial court except insofar as the latter had ordered the payment of interest on "P518,791.76 representing the balance of the P600,000.00 which the latter (Bartolome) had advanced for petitioners as payment to the owner of the adjacent lot, with an interest of 12% per annum from the time the defendants-appellees defaulted in their payment up to the time of the filing of the complaint being in the nature of a contract of loan." [7] In its resolution of 21 December 2001, the Court of Appeals granted the motion for reconsideration of respondent and ordered that the interest of 12% per annum awarded to him should be paid from the time of default until full payment of the principal.

Petitioners, in their petition for review before this Court, would now question the interest payment decreed by the Court of Appeals, contending that –

"(a) The Court of Appeals committed grave abuse of discretion and error in law, as it violated the provisions of Art. 2209 of the New Civil Code, when it ordered herein petitioners to pay '12% interest per annum' of the amount of P518,791.76, when no such or any interest was agreed upon by the parties; and

"(b) The Court of Appeals committed grave abuse of discretion and error in law when it ruled that the running of the period to pay such 12% interest per annum is from the time of 'default until full payment of the principal' despite the fact that there was a valid tender of payment made by the petitioners even before the filing of the complaint." [8]

The trial court and the appellate court correctly concluded that the agreement between the parties insofar as it had obligated (a) respondent to "advance for the buyer (petitioners) the cost of the adjacent vacant lot belonging to his (respondent's) brother at an agreed price of Six Hundred Thousand (P600,000.00) Pesos," and (b) petitioners to, in turn, reimburse to respondent the "Six Hundred Thousand Pesos, including the cost of transfer, documentation and registration fee, within a reasonable time or on/or before July 30, 1992, after ownership of the lot is transferred to petitioners," [9] was in the nature of a contract of loan or a forbearance. [10] While the trial court and the appellate court did not make any categorical statement as to when an initial demand was made by respondent, the parties, however, agreed at the pre-trial conference in the trial court to stipulate on the authenticity of the demand-letter of 18 May 1993 sent to petitioners by Atty. George Florendo (respondent's counsel). The Court would here then consider such date, absent any contrary showing, as the demand to occasion default. [11]

In their letter of 03 July 1993, likewise included among the stipulation of facts of the parties during the pre-trial conference, petitioners, through counsel, informed respondent that the former had deposited the amount of P521,691.76 "In Trust For Mr. Efren Bartolome" at the PNB, Session Road, Baguio City, which sum could be withdrawn by respondent at anytime during banking hours. While such a procedure did not strictly constitute a valid tender of payment and consignment, [12] still, it could be considered an act of good faith on the part of

petitioners to fully settle their obligation. Equity and justice would demand that such an act, placing at the disposal of respondent the deposited sum, should have the effect of suspending the running of the interest on said outstanding amount. In *Gregorio Araneta, Inc. vs. De Paterno and Vidal*,^[13] this Court said:

"The matter of the suspension of the running of interest on the loan is governed by principles which regard reality rather than technicality, substance rather than form. Good faith of the offeror or ability to make good the offer should in simple justice excuse the debtor from paying interest after the offer was rejected. A debtor cannot be considered delinquent who offered checks backed by sufficient deposit or ready to pay cash if the creditor chose that means of payment. Technical defects of the offer cannot be adduced to destroy its effects when the objection to accept the payment was based on entirely different grounds. Thus, although the defective consignment made by the debtor did not discharge the mortgage debt, the running of interest on the loan is suspended by the offer and tender of payment."

With regard the payment of interest, the ruling of this Court in *Eastern Shipping Lines, Inc. vs. Court of Appeals*^[14] should be worthwhile reiterating for guidance. Thus -

"I. When an obligation, regardless of its source, i.e., law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on 'Damages' of the Civil Code govern in determining the measure of recoverable damages.

"II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

"1. When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

"2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

"3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit."^[15]

WHEREFORE, the petition is partly GRANTED. The questioned decision and resolution of the appellate court are hereby AFFIRMED with MODIFICATION, i.e., that the legal interest to be paid on the principal amount of P518,791.76 is TWELVE PERCENT (12%) per annum which shall commence from 18 May 1993 when extrajudicial demand was made on petitioners up until 03 July 1993 when petitioners notified respondent that the amount of P521,691.76 had been deposited in his name with the Philippine National Bank withdrawable by him at any time during banking hours. Another 12% interest per annum shall be paid on the amount due and owing as of, and from, the date of finality of this decision until full payment would have actually been made. No costs.

SO ORDERED.

Davide, C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 32-33.

[2] Rollo, p. 43.

[3] Rollo, p. 44.

[4] Rollo, p. 21.

[5] Rollo, p. 22.

[6] Rollo, p. 38.

[7] Rollo, p. 62.

[8] Rollo, p. 11.

[9] Rollo, p. 33.

[10] A loan (*mutuum*) means the delivery by one party and the receipt by the other party of a given sum of money or other consumable thing upon an agreement, express or implied, to repay the same amount of the same kind and quality with or without interest (Comments of Cases on Credit Transactions, De Leon, 1995 Edition).

[11] Art. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

(1) When the obligation or the law expressly so declares; or

(2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or

(3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins. (Civil Code)

[12] Tender of payment involves a positive and unconditional act by the obligor of offering legal tender currency as payment to the obligee for the former's obligation and demanding that the latter accept the same (Roman Catholic Bishop of Malolos, Inc. vs. IAC, 191 SCRA 411).

Tender of payment is the definitive act of offering the creditor that is due him or her, together with the demand that the creditor accept the same (Far East Bank & Trust Co. vs. Diaz Realty, Inc., 363 SCRA 659).

[13] 91 Phil. 786.

[14] 234 SCRA 78.

[15] At pp. 95-97.

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