

**WILLIAM G. KWONG, PETITIONER, VS. ATTY. RAMON GARGANTOS, ANACLETO GARGANTOS, SPS. REY &#038; REMY SANTOS, AND SPS. LORNA &#038; DANIEL ARCEO, RESPONDENTS.***G.R. NO. 152984. November 22, 2006*

Ponente: AUSTRIA-MARTINEZ, J.

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Petitioner William G. Kwong is the owner of fifteen (15) lots located in the province of Pampanga. In an unnotarized Deed of Conditional Sale, petitioner, for himself and in behalf of William G. Kwong Management, sold said lots to respondents Anacleto Gargantos, Remy Santos and Lorna Arceo for the sum of \$137,255.00 payable in two installments, with \$10,000.00 being paid by respondents at the time of the execution of the contract, and the balance of \$127,255.00 to be paid on or before December 15, 1986.[1] When respondents failed to pay the balance on the expected date, it was subsequently agreed that the same shall be paid on a staggered basis starting March 1989. Respondents, however, again failed to comply with their obligation. This compelled petitioner to write a letter of demand, through counsel, on November 16, 1989, asking respondents' compliance with their monetary obligation; otherwise, the contract shall be rescinded.[2] The letter was addressed to respondent Gargantos. There being no reply, another letter of demand dated February 21, 1990 was sent.[3]

On May 1, 1990, Atty. Ramon Gargantos (brother of respondent Anacleto Gargantos), armed with a Special Power of Attorney[4] executed by respondents, paid the amount of P1,776,200.00.[5] Thereafter, petitioner and Atty. Gargantos executed a notarized Deed of Absolute Sale, wherein petitioner sold to respondent Gargantos 11 out of the 15 lots for the sum of P500,000.00,[6] and Atty. Gargantos signed a Promissory Note for the payment of the amount of P373,074.95, on or before June 30, 1990, representing the unpaid balance of the purchase covering the remaining four lots.[7]

Again, respondent Gargantos failed to pay the agreed amount, forcing petitioner to write subsequent demand letters on November 12, 1990,[8] November 10, 1994,[9] October 15, 1995,[10] and July 29, 1996.[11] Respondent Gargantos, through counsel, finally answered, claiming that it was petitioner who did not comply with his undertaking to transfer 11 of the 15 titles to respondents prior to the payment of the balance, with the remaining four titles to be transferred afterwards.[12]

Petitioner then wrote respondents on September 15, 1996 asking for a conference in order to settle the matter.[13] In a letter dated November 12, 1996, respondent Gargantos's counsel reiterated his demand for the delivery of the 11 titles, failing which a complaint for specific performance with damages and a criminal case for estafa will be filed against petitioner.[14]

On November 14, 1996, petitioner filed before the Regional Trial Court (RTC) of Angeles City, Branch 62, a complaint for the rescission of the Deed of Conditional Sale and forfeiture of all the payments made by respondents against herein respondents.[15]

Respondents filed an Answer with Compulsory Counterclaim, denying petitioner's allegations, and asking for the

dismissal of the complaint. Respondents also prayed for the delivery of the 11 titles indicated in the Deed of Absolute Sale in exchange for the remaining balance and for damages.[16]

In a Pre-trial Order issued by the RTC on June 9, 1997, the following facts were admitted:

- That plaintiff [petitioner] agreed to sell his real properties, consisting of 15 lots, to defendant for \$137,255.00 U.S. Currency or in Philippine Currency at the rate of P20.40 per dollar, as evidenced by a deed of conditional sale dated November 1986.
- That on the date the conditional sale was executed, defendants paid \$10,000.00 U.S. Currency or P204,000.00, Philippine Currency thereby leaving a balance of \$127,255.00 or P2,596,002.00 Philippine Currency which shall be paid on December 15, 1986 without interest.
- That to guarantee payment of the balance defendants thru their attorney-in-fact, Atty. Ramon Gargantos, executed a promissory note dated May 1, 1990; and
- That on the same date a deed of absolute sale was likewise executed.[17]

The issues were defined as follows:

- Whether or not the terms and conditions of the deed of conditional sale dated November 1986 has been complied with by the parties;
- Whether or not the said deed of conditional sale has been superseded or novated by the subsequent execution of the deed of absolute sale dated May 1, 1990; and
- Whether or not the deed of absolute sale is binding and/or enforceable.[18]

On the first issue, the RTC ruled that "not only that defendants failed to comply with the terms and conditions of the Deed of Conditional Sale of 1986 but also of the Promissory Note of May 1, 1990." [19]

On the second issue, the RTC ruled that there was no novation of the Deed of Conditional Sale by the execution of the Deed of Absolute Sale because the parties continued to recognize the validity of the conditional sale; the absolute sale was executed without the knowledge and consent of the other respondents; and there was no showing that the other respondents were released from their obligation under the conditional sale.[20]

On the third and last issue, the RTC ruled that the Deed of Absolute Sale cannot be enforced since Atty. Gargantos exceeded his powers under the Special Power of Attorney when he entered into the transaction.[21]

Thus, in its Decision dated February 4, 1999, the RTC granted rescission of the Deed of Conditional Sale and ordered petitioner to refund one-half of the amount paid by respondents, subject to 6% interest, with respondents forfeiting the other half in favor of petitioner. Respondents' counterclaim was dismissed.[22]

Respondents appealed to the Court of Appeals (CA), which reversed and set aside the RTC Decision, and dismissed petitioner's complaint and respondents' counterclaim per its Decision[23] dated December 14, 2001. The CA held that petitioner does not have any right to rescind the Deed of Conditional Sale because the Deed of Absolute Sale and the Promissory Note have already superseded it.[24] The CA also denied petitioner's Motion for Reconsideration per Resolution dated April 11, 2002.[25]

Petitioner now comes before the Court by way of a petition for review under Rule 45 of the Rules of Court, submitting that the CA committed a serious reversible error when it held that it was the parties' intention to supersede the Deed of Conditional Sale with the Deed of Absolute Sale.

The petition lacks merit.

Novation is the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one which extinguishes or modifies the first, either by changing the object or principal conditions, or, by substituting another in place of the debtor, or by subrogating a third person in the rights of the creditor.[26]

Under Article 1292 of the Civil Code, in order that an obligation may be extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other. The parties to a contract must expressly agree that they are abrogating their old contract in favor of a new one. In the absence of an express agreement, novation takes place only when the old and the new obligations are incompatible on every point.[27]

In *Iloilo Traders Finance, Inc. v. Heirs of Soriano, Jr.*,[28] the nature of novation was explained, thus:

Novation may either be extinctive or modificatory, much being dependent on the nature of the change and the intention of the parties. Extinctive novation is never presumed; there must be an express intention to novate; in cases where it is implied, the acts of the parties must clearly demonstrate their intent to dissolve the old obligation as the moving consideration for the emergence of the new one. Implied novation necessitates that the incompatibility between the old and new obligation be total on every point such that the old obligation is completely superseded by the new one. The test of incompatibility is whether they can stand together, each one having an independent existence; if they cannot and are irreconcilable, the subsequent obligation would also extinguish the first. (Emphasis supplied)

The test of incompatibility between two obligations or contracts is whether or not they can stand together, each one having an independent existence. If they cannot, they are incompatible, and the later obligation novates the first.[29]

In this case, an examination of the Deed of Absolute Sale and the Promissory Note, as well as the surrounding circumstances of this case, shows that it was meant to novate and replace the Deed of Conditional Sale. Logically, the Deed of Conditional Sale and the Deed of Absolute Sale cannot co-exist as these are of different nature and provide for separate and distinct obligations, to wit:

A contract of sale is absolute when title to the property passes to the vendee upon delivery of the thing sold. A deed of sale is absolute when there is no stipulation in the contract that title to the property remains with the seller until full payment of the purchase price. The sale is also absolute if there is no stipulation giving the vendor the right to cancel unilaterally the contract the moment the vendee fails to pay within a fixed period. In a conditional sale, as in a contract to sell, ownership remains with the vendor and does not pass to the vendee until full payment of the purchase price. The full payment of the purchase price partakes of a suspensive condition, and non-fulfillment of the condition prevents the obligation to sell from arising.[30]

The fact that the Deed of Absolute Sale of the 11 lots was executed even without respondents having fully paid the purchase price for the entire 15 parcels of land covered by the Deed of Conditional Sale enforces the conclusion that the parties intended to enter into a new agreement and discard the old one; otherwise, petitioner could have enforced his right to rescind the contract by filing a complaint instead of dealing anew with respondents and entering into the succeeding agreements. What subsequently occurred was a segregated sale of the 11 lots, while the Promissory Note covered the remaining four lots.

The Court notes that respondents had already paid a substantial amount for the subject lots. Petitioner admitted that a down payment of \$10,000.00 was made upon the execution of the Deed of Conditional Sale, and respondents also made further payments in the amount of \$20,000.00.[31] Thereafter, Atty. Gargantos, in behalf of respondents, paid P1,776,200.00 on May 1, 1990. It was after such payment was made that the parties entered into the Deed of Absolute Sale and the Promissory Note. Obviously, the Deed of Absolute Sale was intended by the parties to close the transaction involving the 11 lots. What remained for enforcement is the Promissory Note,

which covers the four remaining lots.

The Court also notes that the Deed of Conditional Sale reflected the amount of \$137,255.00 or its peso equivalent at the rate of P20.40 per US dollar (or P2,800,002.00), as purchase price for the entire 15 lots. On the other hand, the Deed of Absolute Sale provided that the 11 parcels of land were being sold for P500,000.00, while the Promissory Note reflects the intention of petitioner to sell the other four lots for an undisclosed amount the balance of which is P373,074.95. Apparently, these two subsequent agreements do not show the true value of the subject lots.

Nevertheless, it is well-settled that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control; however, if the contract appears to be contrary to the evident intentions of the parties, the latter shall prevail over the former. Moreover, the agreement of the parties may be embodied in only one contract or in two or more separate writings. In such event, the writings of the parties should be read and interpreted together in such a way as to render their intention effective.[32]

It is at this point that the receipt[33] dated May 1, 1990 for P1,776,200.00 becomes material. Construed in conjunction with the Deed of Absolute Sale and the Promissory Note, it becomes clear that the 15 lots have already been substantially paid for by respondents, and there only remains the balance of P373,074.95. What the parties clearly intended was that the Deed of Absolute Sale will then cover the 11 lots, the purchase price of which shall be considered as fully paid, with the payment of the P500,000.00 acknowledged in the Deed of Absolute Sale, while the Promissory Note will answer for the other four lots. For whatever purpose the parties in this case may have had in undervaluing the properties, the fact remains that the Deed of Absolute Sale and the Promissory Note were meant to supplant the Deed of Conditional Sale.

What's more, it was petitioner's own counsel, Atty. Avelino Liangco, who drafted the Deed of Absolute Sale and Promissory Note on May 1, 1990, after petitioner met with Atty. Gargantos at the Shanghai Restaurant, which was owned by petitioner. According to Atty. Liangco, on May 1, 1990, Atty. Gargantos paid a "considerable" sum of money to petitioner as partial fulfillment of respondents' obligation under the Deed of Conditional Sale. Thereafter, Atty. Liangco prepared the Deed of Absolute Sale of the 11 lots and the Promissory Note for the remaining obligation.[34] Atty. Liangco also testified that it was petitioner himself who dictated the amount to be indicated in the Deed of Absolute Sale and the Promissory Note, and petitioner kept the original copies of these documents.[35] It is settled that in order to ascertain the true intention of the parties, their actions, subsequent or contemporaneous, must be principally considered.[36] The foregoing circumstances confirm petitioner's grasp of what he was entering into and was very well aware of the terms and conditions of the Deed of Absolute Sale and the Promissory Note. He cannot now turn his back on it and claim that it was merely executed so that Atty. Gargantos will have something to show his principals. To sustain this is to make a mockery of the sanctity of contracts. In addition, it is merely bare allegation supported by nothing but uncorroborated words.

In fine, the Deed of Conditional Sale had ceased to exist with the execution of the Deed of Absolute Sale and the Promissory Note. There is nothing more to rescind. Petitioner's complaint must therefore fail.

Petitioner cannot be compelled, in the present petition, to deliver to respondents the titles to the 11 lots because the latter did not appeal from the CA's dismissal of their counterclaim.

WHEREFORE, the petition is DENIED. The assailed Decision dated December 14, 2001 and Resolution dated April 11, 2002 of the Court of Appeals are AFFIRMED.

Costs against petitioner.

**SO ORDERED.**

Panganiban, C.J., (Chairperson), Ynares-Santiago, Callejo, Sr., and Chico-Nazario, JJ., concur.

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- [1] Exhibit "A", Folder of Plaintiff's Exhibits, pp. 128-131.
- [2] Folder of Plaintiff's Exhibits, p. 139.
- [3] Id. at 141.
- [4] Exhibit "N", records, p. 184.
- [5] Exhibits "D" and "4", Folder of Defendants' Exhibits, p. 197.
- [6] Exhibits "C" and "3", id. at 193-196.
- [7] Exhibits "B" and "2", id. at 22-23.
- [8] Folder of Plaintiff's Exhibits, p. 142.
- [9] Id. at 144.
- [10] Id. at 145.
- [11] Id. at 158.
- [12] Id. at 159.
- [13] Id. at 160.
- [14] Folder of Defendants' Exhibits, p. 199.
- [15] Records, pp. 6-11.
- [16] Id. at 61-63.
- [17] Id. at 82-83.
- [18] Id. at 83.
- [19] Id. at 194.
- [20] Id. at 196-199.
- [21] Id. at 199-202.
- [22] Id. at 202-203.
- [23] Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Eubulo J. Verzola and Eliezer R. De los Santos, concurring, CA rollo, p. 162.
- [24] Id.
- [25] Id. at 188.
- [26] Philippine Savings Bank v. Mañalac, Jr., G.R. No. 145441, April 26, 2005, 457 SCRA 203, 217.
- [27] Rillo v. Court of Appeals, G.R. No. 125347, June 19, 1997, 274 SCRA 461, 469.

[28] 452 Phil. 82, 89 (2003).

[29] Young v. Court of Appeals, 274 Phil. 205, 210 (1991).

[30] Ramos v. Heruela, G.R. No. 145330, October 14, 2005, 473 SCRA 79, 86.

[31] TSN, July 16, 1997, p. 17.

[32] Valdez v. Court of Appeals, G.R. No. 140715, September 24, 2004, 439 SCRA 55, 73.

[33] Exhibits "D" and "4", supra, note 5.

[34] TSN, October 20, 1997, pp. 7-11.

[35] Id. at 18-20.

[36] Buce v. Court of Appeals, 387 Phil. 897, 905 (2000).

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