LINA CALILAP-ASMERON, PETITIONER, VS. DEVELOPMENT BANK OF THE PHILIPPINES, PABLO CRUZ, TRINIDAD CABANTOG, ENI S.P. ATIENZA AND EMERENCIANA CABANTOG, RESPONDENTS.

G.R. No. 157330. November 23, 2011

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

The petitioner challenges the decision promulgated on June 21, 2002,[1] whereby the Court of Appeals (CA) affirmed the adverse decision rendered by the Regional Trial Court, Branch 11, in Malolos, Bulacan (RTC) in Civil Case No. 50-M-87 entitled Lina Calilap-Asmeron v. Development Bank of the Philippines, Pablo Cruz, Trinidad Cabantog, Eni S.P. Atienza, and Emerenciana Cabantog,[2] an action initiated to set aside the defendant bank's rescission of a deed of conditional sale involving foreclosed property, and to annul the subsequent sales of the property to other persons.

Antecedents

On March 17, 1975, the petitioner and her brother Celedonio Calilap constituted a real estate mortgage over two parcels of land covered by Transfer Certificate of Title (TCT) No. T-164117 and TCT No.T-160929, both of the Registry of Deeds of Bulacan, to secure the performance of their loan obligation with respondent Development Bank of the Philippines (DBP).[3] With the principal obligation being ultimately unpaid, DBP foreclosed the mortgage. The mortgaged parcels of land were then sold to DBP as the highest bidder. The one-year redemption period expired on September 1, 1981.[4]

As to what thereafter transpired, the petitioner and DBP tendered conflicting versions.

I
Version of Petitioner

The thrust of the petitioner's suit is that DBP accorded to her a preferential right to repurchase the property covered by TCT No. 164117.[5] Her version follows.

In August 1982, the petitioner negotiated with DBP to buy back the property covered by TCT No. 164117 by offering P15,000.00 as downpayment. Her offer was rejected by an executive officer of DBP's Acquired Assets Department, who required her to pay the full purchase price of P55,500.00 for the property within ten days.[6] She returned to DBP with the amount, only to be told that DBP would not sell back only one lot. Being made to believe that the lot covered by TCT No. 164117 would be released after paying two amortizations for the other lot (TCT No. 160929), however, she signed the deed of conditional sale covering both lots for the total consideration of P157,000.00.[7] When she later on requested the release of the property under TCT No. 164117 after paying two quarterly amortizations, DBP did not approve the release. She continued paying the amortizations until she had paid P40,000.00 in all, at which point she sought again the release of the lot under TCT No. 164117. DBP still denied her request, warning that it would rescind the contract should her remaining amortizations be still not paid.

On August 7, 1985, DBP rescinded the deed of conditional sale over her objections.[8]

On November 25, 1987, DBP sold the lot covered by TCT No. 164117 to respondent Pablo Cruz via a deed of absolute sale.[9] The petitioner consequently filed a complaint for the rescission of the sale to Cruz on January 30, 1987.[10] Notwithstanding their knowledge of her pending suit against Cruz, respondents Emerenciana Cabantog and Eni S.P. Atienza still bought the property from Cruz.[11] Hence, Cabantog and Atienza were impleaded as additional defendants by amendment.

II
Version of Respondents
DBP insisted that the petitioner's real intention had been to repurchase the two lots on installment basis. She manifested her real intention to that effect in writing through her letter dated September 14, 1981, thus:

> September 14, 1981
>
> DEVELOPMENT BANK OF THE PHIL.
> Acquired Assests [sic] Department
> Makati, Metro Manila
>
> ATTENTION: MR. J.A. SANCHEZ, JR.
> Assistant Manager
>
> ---
>
> Dear Sir:
>
> I wish to inform your good office that I am interested to reacquire the mortgage properties consisting of two (2) parcels of land under TCT Nos. T-160929 and T-164117 located at Sumapa, Malolos, Bulacan.
>
> I would like to reacquire the above stated properties under installment basis but I am requesting your goodselves [sic] to extend an extension of time up to the first week of November, 1981 for my money is coming by that time.
>
> Your kind consideration on the above request is most highly appreciated, I remain.
>
> Very truly yours,
>
> (sgd.)
> LINA CALILAP-ASMERON
> Co-maker[12]

The petitioner also sent a telegram on September 15, 1981,[13] whereby she similarly expressed to DBP her interest in reacquiring the properties. On November 16, 1981, DBP received another telegram from her,[14] requesting DBP to put the bidding of the properties on hold. A year later, she sent a letter dated August 31, 1982 to reiterate her intention to repurchase the two properties and to offer to deposit P55,500.00 as initial payment, to wit:

> August 31, 1982
>
> The Manager
> Acquired Assets Management Department
> Development Bank of the Philippines
> Makati, Metro Manila
>
> Dear Sir:

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> This has reference to our former properties consisting of two parcels of land with an aggregate area of 2,082.5 sq.m. covered by TCT Nos. T-160929 and T-164117 together with all the improvements erected thereon located at Bo. Sumpang Matanda, Malolos, Bulacan.
>
> I wish to inform you that in view of my intense desire to preserve said properties for our family's use, I am offering to buy back these properties for P157,000.00, payable on terms, balance to be paid in five (5) years on the quarterly amortization plan.
>
> This is my last appeal for your assistance in my wish to preserve these properties and should I fail to consummate the sale, I bind myself to whatever rules and regulations the Bank may impose with regards to my deposit.
>
> If this offer is acceptable to you, I am willing to deposit the amount of P55,500.00 on or before September 10, 1982.
>
> May I be advised accordingly?
>
> Thank you.
>
> Very truly yours,
> (Sgd.)
> LINA CALILAP-ASMERON[15]

The petitioner subsequently made the downpayment on September 10, 1992,[16] and DBP formally accepted the offer through its letter dated September 14, 1982, stating therein the terms and conditions.[17] Said terms and conditions, which were later embodied in the deed of conditional sale executed on January 21, 1983, included one that bound her to pay the first amortization of P7,304.15 three months from the execution of the deed, and the remaining amortizations to be due and payable every three months thereafter.[18]

DBP presented the duplicate copies of the receipts indicating her timely payment for the first quarterly amortization; however, she incurred delays in her subsequent installments.[19] She made her last payment amounting to P4,500.00 on March 12, 1985,[20] leaving five quarterly amortizations unpaid.[21]

On January 20, 1986, the petitioner sent a handwritten letter requesting DBP to put on hold any plans of selling the subject property, viz:

> January 20, 1986
>
> Mr. V.M. Macapagal
> Executive Officer
> Acquired Assets Mgmt. Division
> Development Bank of the Philippines
> Makati, Metro Manila
>
> Dear Sir:
>
> This is with reference regarding my Sale Acct. No. 617 under the name of my late brother Celedonio R. Calilap which are located in Sumapa, Malolos, Bulacan.
>
> In connection with these properties, I have already made an arrangement that I'm going to pay my whole obligations through a private financier under your Incentive Plan, which according to my last communication with them it was extended so I have to make an advance notice of four (4) days before paying so I may know the exact amount.
>
> I wanted it to be formal, so I send [sic] a letter to your good office for the reason that last January 17, 1986,

> your appraiser went to our place and made an assessment of my properties. May I request again to please hold any sale of the said property for I'm doing my best to settle my obligation at the soonest possible time, for sure after a week or two after the snap election.
>
> Thank you very much for your kind consideration and hoping for your help regarding my request.
>
> Respectfully yours,
> (sgd.)
> LINA CALILAP-ASMERON[22]

DBP replied by its letter dated February 5, 1986,[23] demanding payment of the petitioner's remaining obligation of P121,013.75 in cash, otherwise, it would be constrained to sell the property. She responded via telegram,[24] informing DBP that she would be arriving on March 4, 1986. The telegram was followed by a handwritten letter dated March 5, 1986[25] stating her willingness to pay 10% of her outstanding obligations.

On March 12, 1986, DBP demanded the immediate remittance of the promised amount via telegram.[26] When she did not pay the six quarterly amortizations, DBP rescinded the deed of conditional sale and applied for a writ of possession on November 17, 1986 in the RTC (Branch 17) in Malolos, Bulacan. Its application for the writ of possession was granted on November 18, 1986.[27]

Ruling of the RTC

Finding the petitioner's complaint lacking in merit, the RTC (Branch 11) rendered its decision on December 28, 1994 dismissing the case.[28] It observed that the stipulations in the deed of conditional sale and the tenor of the petitioner's communications to DBP clearly indicated that she had intended to repurchase both foreclosed properties, not just the property covered by TCT No. T-164117, thusly:

> Lettered as she is, the plaintiff cannot now seek refuge on the excuse that what she intends to buy was only the property covered by TCT No. T-164117. The contents of her letter to the Manager of the Acquired Assets Division of DBP dated August 31, 1982 (Exh. 1 and its submarkings) and to Asst. Manager J.A. Sanchez of the DBP dated September 14, 1981 (Exh. 2) clearly demonstrate in unequivocal terms that she intended to reacquire both of her foreclosed properties. Moreso, the telegrams sent by her (Exhs. 3 & 4) to defendant bank clearly indicates the same intention.
>
> The aforequoted terms and conditions in the conditional sale which defendant failed to comply are clear and not susceptible whatsoever to any other interpretation as to the intention of the contracting parties. It is settled and fundamental that if the terms of the contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of the stipulations shall control (Art. 1370, Civil Code; Filoil Marketing Corp. vs. IAC GR 67115; Mercantile Ins. Corp. vs.Ysmael GR 43862; Baliuag Transit Corp. vs. CA GR 80447). In addition, her subsequent acts of writing DBP and complying with the terms of the conditional sale bolster the fact of her acquiescence in the said contract which she voluntarily entered into and she cannot now take a contrary position.[29]

Ruling of the CA

The petitioner appealed, contending that:

> I
>
> THE LOWER COURT GROSSLY ERRED IN NOT ANNULLING THE RESCISSION MADE BY THE DEVELOPMENT BANK OF THE PHILIPPINES (DBP) OF THE CONDITIONAL SALE OF JANUARY 4, 1983, APPELLANT HAVING ALREADY PAID A SUBSTANTIAL AMOUNT OF P100,000.00 OR

ABOUT TWO-THIRDS OF THE PRICE OR CONSIDERATION.

II
THE LOWER COURT ERRED IN NOT ANNULLING THE SALE MADE BY DBP TO PABLO CRUZ AS WELL AS THE SALE MADE BY THE LATTER TO THE OTHER DEFENDANTS.

Yet, on June 21, 2002, the CA affirmed the RTC,[30] pointing out that the petitioner had not presented testimonial or documentary evidence to support or corroborate her claim that she had been misled into signing the deed of conditional sale. It ruled that DBP could rescind the contract pursuant to the terms of the deed of conditional sale itself, and that DBP exercised its right to rescind only after she had failed to pay her quarterly amortizations.[31]

Issues

In her present appeal, the petitioner submits:

I

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR WHEN IT DISREGARDED THE TESTIMONIAL EVIDENCE ADDUCED BY THE PETITIONER, WHICH CLEARLY DETAILED THE TRUTH SURROUNDING THE EXECUTION OF THE DEED OF CONDITIONAL SALE OF THE SUBJECT LOT TO RESPONDENT CRUZ, AND THE LATTER TO CO-RESPONDENTS CABANTOG AND ATIENZA NULL AND VOID

II

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT AFFIRMED THE DECISION OF THE LOWER COURT UPHOLDING THE RESPONDENT BANK'S RESCISSION OF THE DEED OF CONDITIONAL SALE CONSIDERING THAT THE PETITIONER HAD ALREADY PAID A SUBSTANTIAL AMOUNT OF PHP100,000.00 OR ABOUT TWO-THIRD OF THE FULL CONSIDERATION OF PHP157,000.00.

The petitioner avers that her testimonial evidence sufficiently established the facts behind the execution of the deed of conditional sale; that she thereby proved that she had not fully understood the terms contained in the deed; that DBP could not resort to rescission because her nonpayment of the amortizations was only a slight or casual breach; and that the sale made by DBP to Cruz was tainted with bad faith, which was also true with the sale from Cruz to Cabantog and Atienza.

DBP counters that the petitioner is raising questions of fact in her present appeal, which is not allowed under Rule 45 of the Rules of Court; and that it had the right to rescind the deed of conditional sale under Article 1191 of the Civil Code.

On her part, Remedios Lim-Cruz, who had substituted her deceased husband, argues that the petitioner did not prove bad faith on the part of her husband in purchasing the property from DBP; and that her husband had relied in good faith on the title of DBP as the registered owner of the property at the time of the sale.

Ruling

The appeal lacks merit.

I
Appeal under Rule 45 is
limited to questions of law only

The petitioner's submissions, that her testimonial evidence sufficiently established the facts behind the execution

of the deed of conditional sale, and that she had not fully understood the terms contained in the deed of conditional sale, involved questions of fact, for the consideration and resolution of them would definitely require the appreciation of evidence. As such, her petition for review is dismissible for raising factual issues. Under Rule 45 of the Rules of Court, only questions of law may be the proper subject of an appeal in this Court. The version of Section 1 of Rule 45 in force at the time the petitioner commenced her present recourse on April 28, 2003 expressly so stated, to wit:

> Section 1. Filing of petition with Supreme Court. — A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth. (1a, 2a) (emphasis supplied)[32]

To be sure, we have not lacked in reminding that in exercising its power of review the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case. For that reason, the findings of facts of the CA are conclusive and binding on the Court.

It is true that the Court has recognized several exceptions, in which it has undertaken the review and re-appreciation of the evidence. Among the exceptions have been: (a) when the findings of the CA are grounded entirely on speculation, surmises or conjectures; (b) when the inference made by the CA is manifestly mistaken, absurd or impossible; (c) when there is grave abuse of discretion on the part of the CA; (d) when the judgment of the CA is based on a misapprehension of facts; (e) when the findings of facts of the CA are conflicting; (f) when the CA, in making its findings, went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (g) when the findings of the CA are contrary to those of the trial court; (h) when the findings of the CA are conclusions without citation of specific evidence on which they are based; (i) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (j) when the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record; and (k) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[33]

Although the petitioner submits that the CA made findings of fact not supported by the evidence on record, this case does not fall under any of the recognized exceptions. Her claim that she had established the circumstances to prove her having been misled into signing the deed of conditional sale was unfounded, for the findings of fact of the CA rested on the records, as the following excerpt from the assailed decision of the CA indicates:

> Appellant would like this Court to believe that she was misled by appellee DBP's representatives into signing the Deed of Conditional Sale even if her original intention was to buy back only one of the properties, i.e., that which was covered by TCT No. T-164117. However, a closer scrutiny of the evidence on record reveals that aside from her bare allegations as to the circumstances leading to the signing of said Deed of Conditional Sale, the appellant has not presented other evidence, testimonial or documentary, to support or corroborate her claims. On the other hand, appellee DBP has presented the letter dated August 31, 1982 signed by appellant herself and addressed to the Manager of the Acquired Assets Management Department of the appellee DBP, expressing her intentions to buy back her foreclosed properties. In fact, she offered therein to pay a total of P157,000.00 for the two properties with P55,500.00 to be advanced by her as deposit and the balance to be paid in five (5) years under a quarterly amortization plan. Said letter has not been categorically denied by the appellant as during her testimony she merely feigned any recollections of its content. Moreover, it is well-settled that bad faith cannot be presumed and must be established by clear and convincing evidence.[34] (emphasis supplied)

The petitioner apparently relied solely on her bare testimony to establish her allegation of having been misled, and did not present other evidence for the purpose. She seemingly forgot that, firstly, her bare allegation of having

been misled was not tantamount to proof, and that, secondly, she, as the party alleging a disputed fact, carried the burden of proving her allegation.[35] In other words, her main duty was to establish her allegation by preponderance of evidence, because her failure to do so would result in her defeat.[36] Alas, she did not discharge her burden.

On the other hand, the records contained clear indicia of her real intention vis-à-vis her reacquisition of the two foreclosed properties. The letters and telegrams she had dispatched to DBP expressed the singular intention to repurchase both lots, not just the one covered by TCT No. 164711. That intention even became more evident and more definite when she set down the payment terms for the repurchase of both lots in her letter of August 31, 1982. Given all these, the CA rightly concluded that her written communications to DBP had revealed her earnest desire to re-acquire both foreclosed properties.

II
Article 1332 of the Civil Code
did not apply to the petitioner

The petitioner would have us consider that she had not given her full consent to the deed of conditional sale on account of her lack of legal and technical knowledge. In effect, she pleads for the application of Article 1332 of the Civil Code, which provides:

> Article 1332. When one of the parties is unable to read, or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former.

We cannot accede to the petitioner's plea.

The pertinent terms of the deed of conditional sale read:

> NOW THEREFORE for and in consideration of the foregoing premises and for the total sum of ONE HUNDRED FIFTY SEVEN THOUSAND PESOS (P157,000.00), Philippine Currency, to be fully paid as hereinafter set forth, the VENDOR agrees to convey by way of sale and the VENDEE agrees to buy the above stated properties covered by TCT Nos. T-160929 and T-164117, more particularly described at the back hereof under the following terms and conditions:
>
> That the downpayment shall be P55,500 and the balance of P101,500 to be paid in five (5) years on the quarterly amortization plan at 15% interest per annum the first amortization of P7,304.15 shall be due and payable 3 mos. from the date of execution of the Deed of Conditional Sale and all subsequent amortizations shall be due and payable every three (3) months thereafter;
>
> That if the vendee fails to sign the sale document within 15 days from date of receipt of our notice of approval of the offer, the approval hereof shall be deemed automatically revoked and the deposit forfeited in accordance with the rules and regulations of the Bank.
>
> The Vendee/s may pay the whole or part of the account under this contract at anytime during the term hereof; provided, however, that if the vendee/s is in default in the payment of at least six monthly amortizations, if payable monthly; two quarterly amortizations, if payable quarterly; one semi-annual and annual amortization if payable semi-annually and annually, the Vendor may, in its option, declare the whole account due and payable.
>
> xxx
>
> The title to the real estate property and all improvements thereon shall remain in the name of the vendor until after the purchase price, advances and interest shall have been fully paid. The Vendee/s agrees that in the event of his failure to pay the amortizations or installments as herein provided for, the contract shall, at the option of

> the Vendor, be deemed and considered annulled, and he shall forfeit, and by these presents, hereby waives whatever right he might have acquired to the said property. The Vendor shall then be at liberty to dispose of same as if this contract has never been made; and in the event of such annulment, all sums of money paid under the contract shall be considered and treated as rentals for the use of the property, and the Vendee/s waives all rights to ask or demand the return thereof and he further agrees to vacate peacefully and quietly said property, hereby waiving in favor of the Vendor whatever expenses he may have incurred in the property in the form of improvement or under any concept, without any right to reimbursement whatsoever.
>
> xxx
>
> It is hereby agreed, covenanted and stipulated by and between the parties hereto that should the Vendor decide to rescind this contract in view of the failure of the Vendee/s to pay the amortization/installments, when due, or otherwise fail/s to comply with any of the terms and conditions herein stipulated, and the Vendee/s refuse/s to peacefully deliver the possession of the property hereinabove mentioned to the Vendor, thereby obliging the Vendor to file suit in court with the view to taking possession thereof, the Vendee/s hereby agree/s to pay all the expenses of the suit incident thereto, all the damages that may be incurred thereby, as well as attorney's fees which it is hereby agreed, shall be 10% of the total amount due and outstanding, but in no case shall it be less than P100.00.[37]

It is quite notable that the petitioner did not specify which of the stipulations of the deed of conditional sale she had difficulty or deficiency in understanding. Her generalized averment of having been misled should, therefore, be brushed aside as nothing but a last attempt to salvage a hopeless position. Our impression is that the stipulations of the deed of conditional sale were simply worded and plain enough for even one with a slight knowledge of English to easily understand.

The petitioner was not illiterate. She had appeared to the trial court to be educated, its cogent observation of her as "lettered" (supra, at p. 7 hereof) being based on how she had composed her correspondences to DBP. Her testimony also revealed that she had no difficulty understanding English, as the following excerpt shows:

> ATTY. CUISON
>
> Q : Mrs. Witness, last time you identified the document, captioned as Deed of Conditional Sale which was executed last January 21, 1983, it was read in English language, correct?
> A : Yes, sir.
>
> Q : And, could you testify in this Court without in need of interpreter?
> A : Yes, sir.
>
> Q : So, you are aware or comfortable with the English language?
> A : Yes, sir.[38]

Nor was the petitioner's ignorance of the true nature of the deed of conditional sale probably true. By her own admission, she had asked the bank officer why she had been made to sign a deed of conditional sale instead of an absolute sale, which in itself reflected her full discernment of the matters subject of her dealings with DBP, to wit:

> COURT:
>
> Q : Now, before you signed this Deed of Conditional Sale sometime on January 21, 1983, did you read this document?
>
> A : Yes, your Honor, and I even told the officer of the Bank, that why it should be a Deed of Probitional (sic) Sale when in fact it should be a Deed of Absolute Sale because I paid already the full amount of P55,500.00 for the property covered by TCT No. 164117 and they told me that after a few amortizations on the other property, they are going to release the property which was paid in full but did not push through, Your

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> Honor.[39]

Thereby revealed was her distinctive ability to understand written and spoken English, the language in which the terms of the contract she signed had been written.

Clearly, Article 1332 of the Civil Code does not apply to the petitioner. According to Lim v. Court of Appeals,[40] the provision came into being because a sizeable percentage of the country's populace had comprised of illiterates, and the documents at the time had been written either in English or Spanish, viz:

> In calibrating the credibility of the witnesses on this issue, we take our mandate from Article 1332 of the Civil Code which provides: "When one of the parties is unable to read, or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former." This substantive law came into being due to the finding of the Code Commission that there is still a fairly large number of illiterates in this country, and documents are usually drawn up in English or Spanish. It is also in accord with our state policy of promoting social justice. It also supplements Article 24 of the Civil Code which calls on court to be vigilant in the protection of the rights of those who are disadvantaged in life.[41] (Emphasis supplied)

III
DBP validly exercised its right to rescind the
deed of conditional sale upon the petitioner's default

The petitioner argues that despite the right to rescind due to nonpayment being stipulated in the deed of conditional sale, DBP could not exercise its right because her nonpayment of an obligation constituted only a slight or casual breach that did not warrant rescission. Moreover, she posits that Article 1191[42] of the Civil Code empowers the court to fix the period within which the obligor may comply with the obligation.

The petitioner's argument lacks persuasion.

Firstly, a contract is the law between the parties. Absent any allegation and proof that the contract is contrary to law, morals, good customs, public order or public policy, it should be complied with in good faith.[43] As such, the petitioner, being one of the parties in the deed of conditional sale, could not be allowed to conveniently renounce the stipulations that she had knowingly and freely agreed to.

Secondly, the issue of whether or not DBP validly exercised the right to rescind is a factual one that the RTC and the CA already passed upon and determined. The Court, which is not a trier of facts, adopts their findings, and sustains the exercise by DBP of its right to rescind following the petitioner's failure to pay her six monthly amortizations, and after her being given due notice of the notarial rescission.[44] As a consequence of the valid rescission, DBP had the legal right to thereafter sell the property to a person other than the petitioner, like Cruz. In turn, Cruz could validly sell the property to Cabantog and Trinidad, which he did.

And, thirdly, Article 1191 of the Civil Code did not prohibit the parties from entering into an agreement whereby a violation of the terms of the contract would result to its cancellation. In Pangilinan v. Court of Appeals,[45] the Court upheld the vendor's right in a contract to sell to extrajudicially cancel the contract upon failure of the vendee to pay the installments and even to retain the sums already paid, holding:

> [Article 1191 of the Civil Code] makes it available to the injured party alternative remedies such as the power to rescind or enforce fulfillment of the contract, with damages in either case if the obligor does not comply with what is incumbent upon him. There is nothing in this law which prohibits the parties from entering into an agreement that a violation of the terms of the contract would cause its cancellation even without court intervention. The rationale for the foregoing is that in contracts providing for automatic revocation, judicial intervention is necessary not for purposes of obtaining a judicial declaration rescinding a contract already

> deemed rescinded by virtue of an agreement providing for rescission even without judicial intervention, but in order to determine whether or not the rescission was proper. Where such propriety is sustained, the decision of the court will be merely declaratory of the revocation, but it is not itself the revocatory act. Moreover, the vendor's right in contracts to sell with reserved title to extrajudicially cancel the sale upon failure of the vendee to pay the stipulated installments and retain the sums and installments already received has long been recognized by the well-established doctrine of 39 years standing. The validity of the stipulation in the contract providing for automatic rescission upon non-payment cannot be doubted. It is in the nature of an agreement granting a party the right to rescind a contract unilaterally in case of breach without need of going to court. Thus, rescission under Article 1191 was inevitable due to petitioner's failure to pay the stipulated price within the original period fixed in the agreement.

ACCORDINGLY, the petition for review is DENIED for lack of merit, and the decision of the Court of Appeals promulgated on June 21, 2002 is AFFIRMED.

Costs of suit shall be paid by the petitioner.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Del Castillo, and Villarama, Jr., JJ., concur.

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[*] Substituted by his wife Remedios Lim-Cruz, per Supreme Court Resolution dated July 26, 2006 (rollo, pp. 135-136).

[**] Declared in default, per Supreme Court Resolution dated December 15, 2008 (rollo, pp. 162-163).

[1] Rollo, pp. 29-36; penned by Associate Justice Mercedes Gozo-Dadole (retired), with Associate Justice Salvador J. Valdez, Jr. (retired/deceased) and Associate Justice Amelita G. Tolentino concurring.

[2] Records, pp. 365-367.

[3] Id., pp. 255-256.

[4] Id., p. 333.

[5] TSN dated July 18, 1991, p. 6.

[6] TSN dated July 23, 1991, pp. 22-26.

[7] Records, pp. 224-225.

[8] Rollo, p. 13.

[9] Records, p. 232.

[10] Id., pp. 2-8.

[11] Id., p. 277.

[12] Id., p. 307.

[13] Id., p. 309. The telegram reads as follows:

> JA SANCHEZ JR.
> DBP ACQUIRED ASSETS
> MAKATI

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INTERESTED TO REACQUIRE PROPERTIES PLEASE GIVE EXTENSION FIRST WEEK NOVEMBER MONEY COMING

LINA CALILAP-ASMERON.

[14] Id., p. 308.

[15] Id., p. 306.

[16] Id., p. 226 (Exhibit B).

[17] Id., pp. 310-311.

[18] Id., p. 224 (Exhibit 6-C).

[19] TSN dated January 28, 1992, pp. 22-27 (Testimony of Rosalinda Diaz).

[20] Records, p. 229 (Exhibit B-6).

[21] TSN dated January 28, 1992, p. 27 (Testimony of Rosalinda Diaz).

[22] Records, p. 319.

[23] Id., p. 322 (Exhibit 11).

[24] Id., p. 321 (Exhibit 10).

[25] Id., p. 320 (Exhibit 9).

[26] Id., p. 323.

[27] Id., p. 9.

[28] Id., p. 367.

[29] Id., pp. 366-367.

[30] CA Rollo, p. 98.

[31] Rollo, pp. 34-35.

[32] Although Section 1 of Rule 45 has since been amended under A.M. No. 07-7-12-SC, effective December 27, 2007, the revised text still prescribes that the petition shall raise only questions of law. The revised text reads:

Section 1. Filing of petition with Supreme Court.—A party desiring to appeal by certiorari from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

[33] Sampayan v. Court of Appeals, G.R. No. 156360, January 14, 2005, 448 SCRA 220, 229; Langkaan Realty Development, Inc. v. United Coconut Planters Bank, G.R. No. 139437, December 8, 2000, 347 SCRA 542, 549; Nokom v. National Labor Relations Commission, G.R. No. 140043, July 18, 2000, 336 SCRA 97, 110; Sta. Maria v. Court of Appeals, G.R. No. 127549, January 28, 1998, 285 SCRA 351, 357.

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[34] Rollo, pp. 34-35.

[35] Quizon v. Juan, G.R. No. 171442, June 17, 2008, 554 SCRA 601, 611; Heirs of Cipriano Reyes v. Calumpang, G.R. No. 138463, October 30, 2006, 506 SCRA 56, 72.

[36] Hyatt Elevators and Escalators Corporation v. Cathedral Heights Building Complex Association, Inc., G.R. No. 173881, December 1, 2010, 636 SCRA 401, 412; Aleligay v. Laserna, G.R. No. 165943, November 20, 2007, 537 SCRA 699, 706.

[37] Records, p. 224.

[38] TSN dated August 8, 1991, p. 3 (Cross-examination of Lilia Calilap-Asmeron).

[39] TSN dated July 23, 1991, p. 35 (Testimony of Lilia Calilap-Asmeron).

[40] G.R. No. 55201, February 3, 1994, 229 SCRA 616.

[41] Lim v. Court of Appeals, G.R. No. 55201, February 3, 1994, 229 SCRA 616, 623.

[42] 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)

[43] Ayala Corporation v. Rosa-Diana Realty and Development Corporation, G.R. No. 134284, December 1, 2000, 346 SCRA 663, 676; Intestate Estate of the Late Ricardo P. Presbitero, Sr. v. Court of Appeals, G.R. No. 102432, January 21, 1993, 217 SCRA 372, 382.

[44] Rollo, p. 35.

[45] G.R. No. 83588, September 29, 1997, 279 SCRA 590, 597-598.

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