

**BOSTON BANK OF PHILIPPINES, (FORMERLY BANK OF COMMERCE),
PETITIONER, VS. PERLA P. MANALO AND CARLOS MANALO, JR.,
RESPONDENTS.**

G.R. NO. 158149. February 09, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before us is a Petition for Review on Certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 47458 affirming, on appeal, the Decision[2] of the Regional Trial Court (RTC) of Quezon City, Branch 98, in Civil Case No. Q-89-3905.

The Antecedents

The Xavierville Estate, Inc. (XEI) was the owner of parcels of land in Quezon City, known as the Xavierville Estate Subdivision, with an area of 42 hectares. XEI caused the subdivision of the property into residential lots, which was then offered for sale to individual lot buyers.[3]

On September 8, 1967, XEI, through its General Manager, Antonio Ramos, as vendor, and The Overseas Bank of Manila (OBM), as vendee, executed a "Deed of Sale of Real Estate" over some residential lots in the subdivision, including Lot 1, Block 2, with an area of 907.5 square meters, and Lot 2, Block 2, with an area of 832.80 square meters. The transaction was subject to the approval of the Board of Directors of OBM, and was covered by real estate mortgages in favor of the Philippine National Bank as security for its account amounting to P5,187,000.00, and the Central Bank of the Philippines as security for advances amounting to P22,185,193.74.[4] Nevertheless, XEI continued selling the residential lots in the subdivision as agent of OBM.[5]

Sometime in 1972, then XEI president Emerito Ramos, Jr. contracted the services of Engr. Carlos Manalo, Jr. who was in business of drilling deep water wells and installing pumps under the business name Hurricane Commercial, Inc. For P34,887.66, Manalo, Jr. installed a water pump at Ramos' residence at the corner of Aurora Boulevard and Katipunan Avenue, Quezon City. Manalo, Jr. then proposed to XEI, through Ramos, to purchase a lot in the Xavierville subdivision, and offered as part of the downpayment the P34,887.66 Ramos owed him. XEI, through Ramos, agreed. In a letter dated February 8, 1972, Ramos requested Manalo, Jr. to choose which lots he wanted to buy so that the price of the lots and the terms of payment could be fixed and incorporated in the conditional sale.[6] Manalo, Jr. met with Ramos and informed him that he and his wife Perla had chosen Lots 1 and 2 of Block 2 with a total area of 1,740.3 square meters.

In a letter dated August 22, 1972 to Perla Manalo, Ramos confirmed the reservation of the lots. He also pegged the price of the lots at P200.00 per square meter, or a total of P348,060.00, with a 20% down payment of the purchase price amounting to P69,612.00 less the P34,887.66 owing from Ramos, payable on or before December 31, 1972; the corresponding Contract of Conditional Sale would then be signed on or before the same date, but if the selling operations of XEI resumed after December 31, 1972, the balance of the downpayment would fall due then, and the spouses would sign the aforesaid contract within five (5) days from receipt of the notice of

resumption of such selling operations. It was also stated in the letter that, in the meantime, the spouses may introduce improvements thereon subject to the rules and regulations imposed by XEI in the subdivision. Perla Manalo conformed to the letter agreement.[7]

The spouses Manalo took possession of the property on September 2, 1972, constructed a house thereon, and installed a fence around the perimeter of the lots.

In the meantime, many of the lot buyers refused to pay their monthly installments until they were assured that they would be issued Torrens titles over the lots they had purchased.[8] The spouses Manalo were notified of the resumption of the selling operations of XEI.[9] However, they did not pay the balance of the downpayment on the lots because Ramos failed to prepare a contract of conditional sale and transmit the same to Manalo for their signature. On August 14, 1973, Perla Manalo went to the XEI office and requested that the payment of the amount representing the balance of the downpayment be deferred, which, however, XEI rejected. On August 10, 1973, XEI furnished her with a statement of their account as of July 31, 1973, showing that they had a balance of P34,724.34 on the downpayment of the two lots after deducting the account of Ramos, plus P3,819.68[10] interest thereon from September 1, 1972 to July 31, 1973, and that the interests on the unpaid balance of the purchase price of P278,448.00 from September 1, 1972 to July 31, 1973 amounted to P30,629.28.[11] The spouses were informed that they were being billed for said unpaid interests.[12]

On January 25, 1974, the spouses Manalo received another statement of account from XEI, inclusive of interests on the purchase price of the lots.[13] In a letter dated April 6, 1974 to XEI, Manalo, Jr. stated they had not yet received the notice of resumption of Lei's selling operations, and that there had been no arrangement on the payment of interests; hence, they should not be charged with interest on the balance of the downpayment on the property.[14] Further, they demanded that a deed of conditional sale over the two lots be transmitted to them for their signatures. However, XEI ignored the demands. Consequently, the spouses refused to pay the balance of the downpayment of the purchase price.[15]

Sometime in June 1976, Manalo, Jr. constructed a business sign in the sidewalk near his house. In a letter dated June 17, 1976, XEI informed Manalo, Jr. that business signs were not allowed along the sidewalk. It demanded that he remove the same, on the ground, among others, that the sidewalk was not part of the land which he had purchased on installment basis from XEI.[16] Manalo, Jr. did not respond. XEI reiterated its demand on September 15, 1977.[17]

Subsequently, XEI turned over its selling operations to OBM, including the receivables for lots already contracted and those yet to be sold.[18] On December 8, 1977, OBM warned Manalo, Jr., that "putting up of a business sign is specifically prohibited by their contract of conditional sale" and that his failure to comply with its demand would impel it to avail of the remedies as provided in their contract of conditional sale.[19]

Meanwhile, on December 5, 1979, the Register of Deeds issued Transfer Certificate of Title (TCT) No. T-265822 over Lot 1, Block 2, and TCT No. T-265823 over Lot 2, Block 2, in favor of the OBM.[20] The lien in favor of the Central Bank of the Philippines was annotated at the dorsal portion of said title, which was later cancelled on August 4, 1980.[21]

Subsequently, the Commercial Bank of Manila (CBM) acquired the Xavierville Estate from OBM. CBM wrote Edilberto Ng, the president of Xavierville Homeowners Association that, as of January 31, 1983, Manalo, Jr. was one of the lot buyers in the subdivision.[22] CBM reiterated in its letter to Ng that, as of January 24, 1984, Manalo was a homeowner in the subdivision.[23]

In a letter dated August 5, 1986, the CBM requested Perla Manalo to stop any on-going construction on the

property since it (CBM) was the owner of the lot and she had no permission for such construction.[24] She agreed to have a conference meeting with CBM officers where she informed them that her husband had a contract with OBM, through XEI, to purchase the property. When asked to prove her claim, she promised to send the documents to CBM. However, she failed to do so.[25] On September 5, 1986, CBM reiterated its demand that it be furnished with the documents promised,[26] but Perla Manalo did not respond.

On July 27, 1987, CBM filed a complaint[27] for unlawful detainer against the spouses with the Metropolitan Trial Court of Quezon City. The case was docketed as Civil Case No. 51618. CBM claimed that the spouses had been unlawfully occupying the property without its consent and that despite its demands, they refused to vacate the property. The latter alleged that they, as vendors, and XEI, as vendee, had a contract of sale over the lots which had not yet been rescinded.[28]

While the case was pending, the spouses Manalo wrote CBM to offer an amicable settlement, promising to abide by the purchase price of the property (P313,172.34), per agreement with XEI, through Ramos. However, on July 28, 1988, CBM wrote the spouses, through counsel, proposing that the price of P1,500.00 per square meter of the property was a reasonable starting point for negotiation of the settlement.[29] The spouses rejected the counter proposal,[30] emphasizing that they would abide by their original agreement with XEI. CBM moved to withdraw its complaint[31] because of the issues raised.[32]

In the meantime, the CBM was renamed the Boston Bank of the Philippines. After CBM filed its complaint against the spouses Manalo, the latter filed a complaint for specific performance and damages against the bank before the Regional Trial Court (RTC) of Quezon City on October 31, 1989.

The plaintiffs alleged therein that they had always been ready, able and willing to pay the installments on the lots sold to them by the defendant's remote predecessor-in-interest, as might be or stipulated in the contract of sale, but no contract was forthcoming; they constructed their house worth P2,000,000.00 on the property in good faith; Manalo, Jr., informed the defendant, through its counsel, on October 15, 1988 that he would abide by the terms and conditions of his original agreement with the defendant's predecessor-in-interest; during the hearing of the ejectment case on October 16, 1988, they offered to pay P313,172.34 representing the balance on the purchase price of said lots; such tender of payment was rejected, so that the subject lots could be sold at considerably higher prices to third parties.

Plaintiffs further alleged that upon payment of the P313,172.34, they were entitled to the execution and delivery of a Deed of Absolute Sale covering the subject lots, sufficient in form and substance to transfer title thereto free and clear of any and all liens and encumbrances of whatever kind and nature.[33] The plaintiffs prayed that, after due hearing, judgment be rendered in their favor, to wit:

WHEREFORE, it is respectfully prayed that after due hearing:

(a) The defendant should be ordered to execute and deliver a Deed of Absolute Sale over subject lots in favor of the plaintiffs after payment of the sum of P313,172.34, sufficient in form and substance to transfer to them titles thereto free and clear of any and all liens and encumbrances of whatever kind or nature;

(b) The defendant should be held liable for moral and exemplary damages in the amounts of P300,000.00 and P30,000.00, respectively, for not promptly executing and delivering to plaintiff the necessary Contract of Sale, notwithstanding repeated demands therefor and for having been constrained to engage the services of undersigned counsel for which they agreed to pay attorney's fees in the sum of P50,000.00 to enforce their rights in the premises and appearance fee of P500.00;

(c) And for such other and further relief as may be just and equitable in the premises.[34]

In its Answer to the complaint, the defendant interposed the following affirmative defenses: (a) plaintiffs had no cause of action against it because the August 22, 1972 letter agreement between XEI and the plaintiffs was not binding on it; and (b) "it had no record of any contract to sell executed by it or its predecessor, or of any statement of accounts from its predecessors, or records of payments of the plaintiffs or of any documents which entitled them to the possession of the lots." [35] The defendant, likewise, interposed counterclaims for damages and attorney's fees and prayed for the eviction of the plaintiffs from the property. [36]

Meanwhile, in a letter dated January 25, 1993, plaintiffs, through counsel, proposed an amicable settlement of the case by paying P942,648.70, representing the balance of the purchase price of the two lots based on the current market value. [37] However, the defendant rejected the same and insisted that for the smaller lot, they pay P4,500,000.00, the current market value of the property. [38] The defendant insisted that it owned the property since there was no contract or agreement between it and the plaintiffs' relative thereto.

During the trial, the plaintiffs adduced in evidence the separate Contracts of Conditional Sale executed between XEI and Alberto Soller; [39] Alfredo Aguila, [40] and Dra. Elena Santos-Roque [41] to prove that XEI continued selling residential lots in the subdivision as agent of OBM after the latter had acquired the said lots.

For its part, defendant presented in evidence the letter dated August 22, 1972, where XEI proposed to sell the two lots subject to two suspensive conditions: the payment of the balance of the downpayment of the property, and the execution of the corresponding contract of conditional sale. Since plaintiffs failed to pay, OBM consequently refused to execute the corresponding contract of conditional sale and forfeited the P34,877.66 downpayment for the two lots, but did not notify them of said forfeiture. [42] It alleged that OBM considered the lots unsold because the titles thereto bore no annotation that they had been sold under a contract of conditional sale, and the plaintiffs were not notified of XEI's resumption of its selling operations.

On May 2, 1994, the RTC rendered judgment in favor of the plaintiffs and against the defendant. The fallo of the decision reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendant –

(a) Ordering the latter to execute and deliver a Deed of Absolute Sale over Lot 1 and 2, Block 2 of the Xavierville Estate Subdivision after payment of the sum of P942,978.70 sufficient in form and substance to transfer to them titles thereto free from any and all liens and encumbrances of whatever kind and nature.

(b) Ordering the defendant to pay moral and exemplary damages in the amount of P150,000.00; and

(c) To pay attorney's fees in the sum of P50,000.00 and to pay the costs.

SO ORDERED. [43]

The trial court ruled that under the August 22, 1972 letter agreement of XEI and the plaintiffs, the parties had a "complete contract to sell" over the lots, and that they had already partially consummated the same. It declared that the failure of the defendant to notify the plaintiffs of the resumption of its selling operations and to execute a deed of conditional sale did not prevent the defendant's obligation to convey titles to the lots from acquiring binding effect. Consequently, the plaintiffs had a cause of action to compel the defendant to execute a deed of sale over the lots in their favor.

Boston Bank appealed the decision to the CA, alleging that the lower court erred in (a) not concluding that the letter of XEI to the spouses Manalo, was at most a mere contract to sell subject to suspensive conditions, i.e., the payment of the balance of the downpayment on the property and the execution of a deed of conditional sale (which were not complied with); and (b) in awarding moral and exemplary damages to the spouses Manalo

despite the absence of testimony providing facts to justify such awards.[44]

On September 30, 2002, the CA rendered a decision affirming that of the RTC with modification. The fallo reads:

WHEREFORE, the appealed decision is AFFIRMED with MODIFICATIONS that (a) the figure "P942,978.70" appearing [in] par. (a) of the dispositive portion thereof is changed to "P313,172.34 plus interest thereon at the rate of 12% per annum from September 1, 1972 until fully paid" and (b) the award of moral and exemplary damages and attorney's fees in favor of plaintiffs-appellees is DELETED.

SO ORDERED.[45]

The appellate court sustained the ruling of the RTC that the appellant and the appellees had executed a Contract to Sell over the two lots but declared that the balance of the purchase price of the property amounting to P278,448.00 was payable in fixed amounts, inclusive of pre-computed interests, from delivery of the possession of the property to the appellees on a monthly basis for 120 months, based on the deeds of conditional sale executed by XEI in favor of other lot buyers.[46] The CA also declared that, while XEI must have resumed its selling operations before the end of 1972 and the downpayment on the property remained unpaid as of December 31, 1972, absent a written notice of cancellation of the contract to sell from the bank or notarial demand therefor as required by Republic Act No. 6552, the spouses had, at the very least, a 60-day grace period from January 1, 1973 within which to pay the same.

Boston Bank filed a motion for the reconsideration of the decision alleging that there was no perfected contract to sell the two lots, as there was no agreement between XEI and the respondents on the manner of payment as well as the other terms and conditions of the sale. It further averred that its claim for recovery of possession of the aforesaid lots in its Memorandum dated February 28, 1994 filed before the trial court constituted a judicial demand for rescission that satisfied the requirements of the New Civil Code. However, the appellate court denied the motion.

Boston Bank, now petitioner, filed the instant petition for review on certiorari assailing the CA rulings. It maintains that, as held by the CA, the records do not reflect any schedule of payment of the 80% balance of the purchase price, or P278,448.00. Petitioner insists that unless the parties had agreed on the manner of payment of the principal amount, including the other terms and conditions of the contract, there would be no existing contract of sale or contract to sell.[47] Petitioner avers that the letter agreement to respondent spouses dated August 22, 1972 merely confirmed their reservation for the purchase of Lot Nos. 1 and 2, consisting of 1,740.3 square meters, more or less, at the price of P200.00 per square meter (or P348,060.00), the amount of the downpayment thereon and the application of the P34,887.00 due from Ramos as part of such downpayment.

Petitioner asserts that there is no factual basis for the CA ruling that the terms and conditions relating to the payment of the balance of the purchase price of the property (as agreed upon by XEI and other lot buyers in the same subdivision) were also applicable to the contract entered into between the petitioner and the respondents. It insists that such a ruling is contrary to law, as it is tantamount to compelling the parties to agree to something that was not even discussed, thus, violating their freedom to contract. Besides, the situation of the respondents cannot be equated with those of the other lot buyers, as, for one thing, the respondents made a partial payment on the downpayment for the two lots even before the execution of any contract of conditional sale.

Petitioner posits that, even on the assumption that there was a perfected contract to sell between the parties, nevertheless, it cannot be compelled to convey the property to the respondents because the latter failed to pay the balance of the downpayment of the property, as well as the balance of 80% of the purchase price, thus resulting in the extinction of its obligation to convey title to the lots to the respondents.

Another egregious error of the CA, petitioner avers, is the application of Republic Act No. 6552. It insists that such law applies only to a perfected agreement or perfected contract to sell, not in this case where the downpayment on the purchase price of the property was not completely paid, and no installment payments were made by the buyers.

Petitioner also faults the CA for declaring that petitioner failed to serve a notice on the respondents of cancellation or rescission of the contract to sell, or notarial demand therefor. Petitioner insists that its August 5, 1986 letter requiring respondents to vacate the property and its complaint for ejectment in Civil Case No. 51618 filed in the Metropolitan Trial Court amounted to the requisite demand for a rescission of the contract to sell. Moreover, the action of the respondents below was barred by laches because despite demands, they failed to pay the balance of the purchase price of the lots (let alone the downpayment) for a considerable number of years.

For their part, respondents assert that as long as there is a meeting of the minds of the parties to a contract of sale as to the price, the contract is valid despite the parties' failure to agree on the manner of payment. In such a situation, the balance of the purchase price would be payable on demand, conformably to Article 1169 of the New Civil Code. They insist that the law does not require a party to agree on the manner of payment of the purchase price as a prerequisite to a valid contract to sell. The respondents cite the ruling of this Court in *Buenaventura v. Court of Appeals*[48] to support their submission.

They argue that even if the manner and timeline for the payment of the balance of the purchase price of the property is an essential requisite of a contract to sell, nevertheless, as shown by their letter agreement of August 22, 1972 with the OBM, through XEI and the other letters to them, an agreement was reached as to the manner of payment of the balance of the purchase price. They point out that such letters referred to the terms of the terms of the deeds of conditional sale executed by XEI in favor of the other lot buyers in the subdivision, which contained uniform terms of 120 equal monthly installments (excluding the downpayment, but inclusive of pre-computed interests). The respondents assert that XEI was a real estate broker and knew that the contracts involving residential lots in the subdivision contained uniform terms as to the manner and timeline of the payment of the purchase price of said lots.

Respondents further posit that the terms and conditions to be incorporated in the "corresponding contract of conditional sale" to be executed by the parties would be the same as those contained in the contracts of conditional sale executed by lot buyers in the subdivision. After all, they maintain, the contents of the corresponding contract of conditional sale referred to in the August 22, 1972 letter agreement envisaged those contained in the contracts of conditional sale that XEI and other lot buyers executed. Respondents cite the ruling of this Court in *Mitsui Bussan Kaisha v. Manila E.R.R. & L. Co.*[49]

The respondents aver that the issues raised by the petitioner are factual, inappropriate in a petition for review on certiorari under Rule 45 of the Rules of Court. They assert that petitioner adopted a theory in litigating the case in the trial court, but changed the same on appeal before the CA, and again in this Court. They argue that the petitioner is estopped from adopting a new theory contrary to those it had adopted in the trial and appellate courts. Moreover, the existence of a contract of conditional sale was admitted in the letters of XEI and OBM. They aver that they became owners of the lots upon delivery to them by XEI.

The issues for resolution are the following: (1) whether the factual issues raised by the petitioner are proper; (2) whether petitioner or its predecessors-in-interest, the XEI or the OBM, as seller, and the respondents, as buyers, forged a perfect contract to sell over the property; (3) whether petitioner is estopped from contending that no such contract was forged by the parties; and (4) whether respondents has a cause of action against the petitioner for specific performance.

The rule is that before this Court, only legal issues may be raised in a petition for review on certiorari. The reason is that this Court is not a trier of facts, and is not to review and calibrate the evidence on record. Moreover, the findings of facts of the trial court, as affirmed on appeal by the Court of Appeals, are conclusive on this Court unless the case falls under any of the following exceptions:

(1) when the conclusion is a finding grounded entirely on speculations, surmises and conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) when the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.[50]

We have reviewed the records and we find that, indeed, the ruling of the appellate court dismissing petitioner's appeal is contrary to law and is not supported by evidence. A careful examination of the factual backdrop of the case, as well as the antecedental proceedings constrains us to hold that petitioner is not barred from asserting that XEI or OBM, on one hand, and the respondents, on the other, failed to forge a perfected contract to sell the subject lots.

It must be stressed that the Court may consider an issue not raised during the trial when there is plain error.[51] Although a factual issue was not raised in the trial court, such issue may still be considered and resolved by the Court in the interest of substantial justice, if it finds that to do so is necessary to arrive at a just decision,[52] or when an issue is closely related to an issue raised in the trial court and the Court of Appeals and is necessary for a just and complete resolution of the case.[53] When the trial court decides a case in favor of a party on certain grounds, the Court may base its decision upon some other points, which the trial court or appellate court ignored or erroneously decided in favor of a party.[54]

In this case, the issue of whether XEI had agreed to allow the respondents to pay the purchase price of the property was raised by the parties. The trial court ruled that the parties had perfected a contract to sell, as against petitioner's claim that no such contract existed. However, in resolving the issue of whether the petitioner was obliged to sell the property to the respondents, while the CA declared that XEI or OBM and the respondents failed to agree on the schedule of payment of the balance of the purchase price of the property, it ruled that XEI and the respondents had forged a contract to sell; hence, petitioner is entitled to ventilate the issue before this Court.

We agree with petitioner's contention that, for a perfected contract of sale or contract to sell to exist in law, there must be an agreement of the parties, not only on the price of the property sold, but also on the manner the price is to be paid by the vendee.

Under Article 1458 of the New Civil Code, in a contract of sale, whether absolute or conditional, one of the contracting parties obliges himself to transfer the ownership of and deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent. A contract of sale is perfected at the moment there is a meeting of the minds upon the thing which is the object of the contract and the price. From the averment of perfection, the parties are bound, not only to the fulfillment of what has been expressly stipulated, but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law.[55] On the other hand, when the contract of sale or to sell is not perfected, it cannot, as an independent source of obligation, serve as a binding juridical relation between the parties.[56]

A definite agreement as to the price is an essential element of a binding agreement to sell personal or real property

because it seriously affects the rights and obligations of the parties. Price is an essential element in the formation of a binding and enforceable contract of sale. The fixing of the price can never be left to the decision of one of the contracting parties. But a price fixed by one of the contracting parties, if accepted by the other, gives rise to a perfected sale.[57]

It is not enough for the parties to agree on the price of the property. The parties must also agree on the manner of payment of the price of the property to give rise to a binding and enforceable contract of sale or contract to sell. This is so because the agreement as to 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.[58]

In a contract to sell property by installments, it is not enough that the parties agree on the price as well as the amount of downpayment. The parties must, likewise, agree on the manner of payment of the balance of the purchase price and on the other terms and conditions relative to the sale. Even if the buyer makes a downpayment or portion thereof, such payment cannot be considered as sufficient proof of the perfection of any purchase and sale between the parties. Indeed, this Court ruled in *Velasco v. Court of Appeals*[59] that:

It is not difficult to glean from the aforequoted averments that the petitioners themselves admit that they and the respondent still had to meet and agree on how and when the down-payment and the installment payments were to be paid. Such being the situation, it cannot, therefore, be said that a definite and firm sales agreement between the parties had been perfected over the lot in question. Indeed, this Court has already ruled before that a definite agreement on the manner of payment of the purchase price is an essential element in the formation of a binding and enforceable contract of sale. The fact, therefore, that the petitioners delivered to the respondent the sum of P10,000.00 as part of the downpayment that they had to pay cannot be considered as sufficient proof of the perfection of any purchase and sale agreement between the parties herein under article 1482 of the New Civil Code, as the petitioners themselves admit that some essential matter – the terms of payment – still had to be mutually covenanted.[60]

We agree with the contention of the petitioner that, as held by the CA, there is no showing, in the records, of the schedule of payment of the balance of the purchase price on the property amounting to P278,448.00. We have meticulously reviewed the records, including Ramos' February 8, 1972 and August 22, 1972 letters to respondents,[61] and find that said parties confined themselves to agreeing on the price of the property (P348,060.00), the 20% downpayment of the purchase price (P69,612.00), and credited respondents for the P34,887.00 owing from Ramos as part of the 20% downpayment. The timeline for the payment of the balance of the downpayment (P34,724.34) was also agreed upon, that is, on or before XEI resumed its selling operations, on or before December 31, 1972, or within five (5) days from written notice of such resumption of selling operations. The parties had also agreed to incorporate all the terms and conditions relating to the sale, inclusive of the terms of payment of the balance of the purchase price and the other substantial terms and conditions in the "corresponding contract of conditional sale," to be later signed by the parties, simultaneously with respondents' settlement of the balance of the downpayment.

The February 8, 1972 letter of XEI reads:

Mr. Carlos T. Manalo, Jr.
Hurricane Rotary Well Drilling
Rizal Avenue Ext., Caloocan City

Dear Mr. Manalo:

We agree with your verbal offer to exchange the proceeds of your contract with us to form as a down payment for a lot in our Xavierville Estate Subdivision.

Please let us know your choice lot so that we can fix the price and terms of payment in our conditional sale.

Sincerely yours,

XAVIERVILLE ESTATE, INC.

(Signed)

EMERITO B. RAMOS, JR.

President

CONFORME:

(Signed)

CARLOS T. MANALO, JR.

Hurricane Rotary Well Drilling[62]

The August 22, 1972 letter agreement of XEI and the respondents reads:

Mrs. Perla P. Manalo

1548 Rizal Avenue Extension

Caloocan City

Dear Mrs. Manalo:

This is to confirm your reservation of Lot Nos. 1 and 2; Block 2 of our consolidation-subdivision plan as amended, consisting of 1,740.3 square meters more or less, at the price of P200.00 per square meter or a total price of P348,060.00.

It is agreed that as soon as we resume selling operations, you must pay a down payment of 20% of the purchase price of the said lots and sign the corresponding Contract of Conditional Sale, on or before December 31, 1972, provided, however, that if we resume selling after December 31, 1972, then you must pay the aforementioned down payment and sign the aforesaid contract within five (5) days from your receipt of our notice of resumption of selling operations.

In the meanwhile, you may introduce such improvements on the said lots as you may desire, subject to the rules and regulations of the subdivision.

If the above terms and conditions are acceptable to you, please signify your conformity by signing on the space herein below provided.

Thank you.

Very truly yours,

XAVIERVILLE ESTATE, INC. CONFORME:

By:

(Signed) (Signed)

EMERITO B. RAMOS, JR. PERLA P. MANALO

President Buyer[63]

Based on these two letters, the determination of the terms of payment of the P278,448.00 had yet to be agreed upon on or before December 31, 1972, or even afterwards, when the parties sign the corresponding contract of conditional sale.

Jurisprudence is that if a material element of a contemplated contract is left for future negotiations, the same is too indefinite to be enforceable.[64] And when an essential element of a contract is reserved for future agreement of the parties, no legal obligation arises until such future agreement is concluded.[65]

So long as an essential element entering into the proposed obligation of either of the parties remains to be determined by an agreement which they are to make, the contract is incomplete and unenforceable.[66] The reason is that such a contract is lacking in the necessary qualities of definiteness, certainty and mutuality.[67]

There is no evidence on record to prove that XEI or OBM and the respondents had agreed, after December 31, 1972, on the terms of payment of the balance of the purchase price of the property and the other substantial terms and conditions relative to the sale. Indeed, the parties are in agreement that there had been no contract of conditional sale ever executed by XEI, OBM or petitioner, as vendor, and the respondents, as vendees.[68]

The ruling of this Court in *Buenaventura v. Court of Appeals* has no bearing in this case because the issue of the manner of payment of the purchase price of the property was not raised therein.

We reject the submission of respondents that they and Ramos had intended to incorporate the terms of payment contained in the three contracts of conditional sale executed by XEI and other lot buyers in the "corresponding contract of conditional sale," which would later be signed by them.[69] We have meticulously reviewed the respondents' complaint and find no such allegation therein.[70] Indeed, respondents merely alleged in their complaint that they were bound to pay the balance of the purchase price of the property "in installments." When respondent Manalo, Jr. testified, he was never asked, on direct examination or even on cross-examination, whether the terms of payment of the balance of the purchase price of the lots under the contracts of conditional sale executed by XEI and other lot buyers would form part of the "corresponding contract of conditional sale" to be signed by them simultaneously with the payment of the balance of the downpayment on the purchase price.

We note that, in its letter to the respondents dated June 17, 1976, or almost three years from the execution by the parties of their August 22, 1972 letter agreement, XEI stated, in part, that respondents had purchased the property "on installment basis." [71] However, in the said letter, XEI failed to state a specific amount for each installment, and whether such payments were to be made monthly, semi-annually, or annually. Also, respondents, as plaintiffs below, failed to adduce a shred of evidence to prove that they were obliged to pay the P278,448.00 monthly, semi-annually or annually. The allegation that the payment of the P278,448.00 was to be paid in installments is, thus, vague and indefinite. Case law is that, for a contract to be enforceable, its terms must be certain and explicit, not vague or indefinite.[72]

There is no factual and legal basis for the CA ruling that, based on the terms of payment of the balance of the purchase price of the lots under the contracts of conditional sale executed by XEI and the other lot buyers, respondents were obliged to pay the P278,448.00 with pre-computed interest of 12% per annum in 120-month installments. As gleaned from the ruling of the appellate court, it failed to justify its use of the terms of payment under the three "contracts of conditional sale" as basis for such ruling, to wit:

On the other hand, the records do not disclose the schedule of payment of the purchase price, net of the downpayment. Considering, however, the Contracts of Conditional Sale (Exhs. "N," "O" and "P") entered into by XEI with other lot buyers, it would appear that the subdivision lots sold by XEI, under contracts to sell, were payable in 120 equal monthly installments (exclusive of the downpayment but including pre-computed interests) commencing on delivery of the lot to the buyer.[73]

By its ruling, the CA unilaterally supplied an essential element to the letter agreement of XEI and the respondents. Courts should not undertake to make a contract for the parties, nor can it enforce one, the terms of which are in doubt.[74] Indeed, the Court emphasized in *Chua v. Court of Appeals*[75] that it is not the province of a court to alter a contract by construction or to make a new contract for the parties; its duty is confined to the interpretation of the one which they have made for themselves, without regard to its wisdom or folly, as the court cannot supply material stipulations or read into contract words which it does not contain.

Respondents, as plaintiffs below, failed to allege in their complaint that the terms of payment of the P278,448.00 to be incorporated in the "corresponding contract of conditional sale" were those contained in the contracts of conditional sale executed by XEI and Soller, Aguila and Roque.[76] They likewise failed to prove such allegation in this Court.

The bare fact that other lot buyers were allowed to pay the balance of the purchase price of lots purchased by them in 120 or 180 monthly installments does not constitute evidence that XEI also agreed to give the respondents the same mode and timeline of payment of the P278,448.00.

Under Section 34, Rule 130 of the Revised Rules of Court, evidence that one did a certain thing at one time is not admissible to prove that he did the same or similar thing at another time, although such evidence may be received to prove habit, usage, pattern of conduct or the intent of the parties.

Similar acts as evidence. – Evidence that one did or did not do a certain thing at one time is not admissible to prove that he did or did not do the same or a similar thing at another time; but it may be received to prove a specific intent or knowledge, identity, plan, system, scheme, habit, custom or usage, and the like.

However, respondents failed to allege and prove, in the trial court, that, as a matter of business usage, habit or pattern of conduct, XEI granted all lot buyers the right to pay the balance of the purchase price in installments of 120 months of fixed amounts with pre-computed interests, and that XEI and the respondents had intended to adopt such terms of payment relative to the sale of the two lots in question. Indeed, respondents adduced in evidence the three contracts of conditional sale executed by XEI and other lot buyers merely to prove that XEI continued to sell lots in the subdivision as sales agent of OBM after it acquired said lots, not to prove usage, habit or pattern of conduct on the part of XEI to require all lot buyers in the subdivision to pay the balance of the purchase price of said lots in 120 months. It further failed to prove that the trial court admitted the said deeds[77] as part of the testimony of respondent Manalo, Jr.[78]

Habit, custom, usage or pattern of conduct must be proved like any other facts. Courts must contend with the caveat that, before they admit evidence of usage, of habit or pattern of conduct, the offering party must establish the degree of specificity and frequency of uniform response that ensures more than a mere tendency to act in a given manner but rather, conduct that is semi-automatic in nature. The offering party must allege and prove specific, repetitive conduct that might constitute evidence of habit. The examples offered in evidence to prove habit, or pattern of evidence must be numerous enough to base on inference of systematic conduct. Mere similarity of contracts does not present the kind of sufficiently similar circumstances to outweigh the danger of prejudice and confusion.

In determining whether the examples are numerous enough, and sufficiently regular, the key criteria are adequacy of sampling and uniformity of response. After all, habit means a course of behavior of a person regularly represented in like circumstances.[79] It is only when examples offered to establish pattern of conduct or habit are numerous enough to lose an inference of systematic conduct that examples are admissible. The key criteria are adequacy of sampling and uniformity of response or ratio of reaction to situations.[80]

There are cases where the course of dealings to be followed is defined by the usage of a particular trade or market or profession. As expostulated by Justice Benjamin Cardozo of the United States Supreme Court: "Life casts the moulds of conduct, which will someday become fixed as law. Law preserves the moulds which have taken form and shape from life." [81] Usage furnishes a standard for the measurement of many of the rights and acts of men.[82] It is also well-settled that parties who contract on a subject matter concerning which known usage prevail, incorporate such usage by implication into their agreement, if nothing is said to be contrary.[83]

However, the respondents inexplicably failed to adduce sufficient competent evidence to prove usage, habit or

pattern of conduct of XEI to justify the use of the terms of payment in the contracts of the other lot buyers, and thus grant respondents the right to pay the P278,448.00 in 120 months, presumably because of respondents' belief that the manner of payment of the said amount is not an essential element of a contract to sell. There is no evidence that XEI or OBM and all the lot buyers in the subdivision, including lot buyers who pay part of the downpayment of the property purchased by them in the form of service, had executed contracts of conditional sale containing uniform terms and conditions. Moreover, under the terms of the contracts of conditional sale executed by XEI and three lot buyers in the subdivision, XEI agreed to grant 120 months within which to pay the balance of the purchase price to two of them, but granted one 180 months to do so.[84] There is no evidence on record that XEI granted the same right to buyers of two or more lots.

Irrefragably, under Article 1469 of the New Civil Code, the price of the property sold may be considered certain if it be so with reference to another thing certain. It is sufficient if it can be determined by the stipulations of the contract made by the parties thereto[85] or by reference to an agreement incorporated in the contract of sale or contract to sell or if it is capable of being ascertained with certainty in said contract;[86] or if the contract contains express or implied provisions by which it may be rendered certain;[87] or if it provides some method or criterion by which it can be definitely ascertained.[88] As this Court held in *Villaraza v. Court of Appeals*,[89] the price is considered certain if, by its terms, the contract furnishes a basis or measure for ascertaining the amount agreed upon.

We have carefully reviewed the August 22, 1972 letter agreement of the parties and find no direct or implied reference to the manner and schedule of payment of the balance of the purchase price of the lots covered by the deeds of conditional sale executed by XEI and that of the other lot buyers[90] as basis for or mode of determination of the schedule of the payment by the respondents of the P278,448.00.

The ruling of this Court in *Mitsui Bussan Kaisha v. Manila Electric Railroad and Light Company*[91] is not applicable in this case because the basic price fixed in the contract was P9.45 per long ton, but it was stipulated that the price was subject to modification "in proportion to variations in calories and ash content, and not otherwise." In this case, the parties did not fix in their letters-agreement, any method or mode of determining the terms of payment of the balance of the purchase price of the property amounting to P278,448.00.

It bears stressing that the respondents failed and refused to pay the balance of the downpayment and of the purchase price of the property amounting to P278,448.00 despite notice to them of the resumption by XEI of its selling operations. The respondents enjoyed possession of the property without paying a centavo. On the other hand, XEI and OBM failed and refused to transmit a contract of conditional sale to the respondents. The respondents could have at least consigned the balance of the downpayment after notice of the resumption of the selling operations of XEI and filed an action to compel XEI or OBM to transmit to them the said contract; however, they failed to do so.

As a consequence, respondents and XEI (or OBM for that matter) failed to forge a perfected contract to sell the two lots; hence, respondents have no cause of action for specific performance against petitioner. Republic Act No. 6552 applies only to a perfected contract to sell and not to a contract with no binding and enforceable effect.

IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The Decision of the Court of Appeals in CA-G.R. CV No. 47458 is REVERSED and SET ASIDE. The Regional Trial Court of Quezon City, Branch 98 is ordered to dismiss the complaint. Costs against the respondents.

SO ORDERED.

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

[1] Penned by Associate Justice Edgardo P. Cruz, with Associate Justices Oswaldo D. Agcaoili (retired) and

Amelita G. Tolentino, concurring; rollo, pp. 9-19.

[2] Penned by Judge Justo M. Sultan; records, pp. 295-304.

[3]Exhibits "N," "O" and "P," folder of exhibits, pp. 37-57.

[4]Exhibit "L," id. at 19.

[5] Exhibits "N," "O" and "P," id. at 37-57.

[6]Exhibit "A," id. at 1.

[7] Exhibit "B," id. at 2.

[8]Exhibit "Q-1," id. at 60.

[9] TSN, May 21, 1990, p. 11.

[10]Exhibit "E-1," id. at 6.

[11]Id.

[12] Exhibit "E," id. at 5.

[13] Exhibit "F," id. at 7.

[14] Id.

[15]TSN, 20 January 1992, p. 5.

[16] Exhibit "G," folder of exhibits, p. 8.

[17]Exhibit "H," id. at 9.

[18] TSN, July 17, 1992, pp. 14-18.

[19] Exhibit "H," folder of exhibits, p. 9.

[20]Exhibits "1" and "2," id. at 79-84.

[21]Id.

[22]Exhibit "I-1," id. at 11.

[23] Exhibit "J-1," id. at 13.

[24] Exhibit "6," id. at 91.

[25] Exhibit "7," id. at 92.

[26] Id.

[27]Exhibit "S," id. at 68.

[28] Exhibit "T," id. at 71.

[29] Exhibit "R," id. at 65.

[30] Exhibit "R-1," id. at 67.

[31]Exhibit "U," id. at 74.

- [32] Id.
- [33] Records, pp. 3-6.
- [34] Id. at 6-7.
- [35] Id. at 35-36.
- [36] Id. at 36-38.
- [37] Exhibit "V," folder of exhibits, p. 77.
- [38] TSN, December 17, 1993, pp. 1-5.
- [39] Exhibit "N," folder of exhibits, p. 17.
- [40] Exhibit "O," id. at 44.
- [41] Exhibit "P," id. at 51.
- [42] TSN, 17 July 1992, pp. 7-25.
- [43] Records, p. 304.
- [44] CA rollo, p. 32.
- [45] Rollo, p. 85.
- [46] Exhibits "N," "O" and "P," folder of exhibits, p. 82.
- [47] Rollo, pp. 46-47.
- [48] G.R. No. 126376, November 20, 2003, 416 SCRA 263 (2003).
- [49] 39 Phil. 624 (1919).
- [50] *Siasat v. Court of Appeals*, 425 Phil. 139, 145 (2002)
- [51] *Del Rosario v. Bonga*, G.R. No. 136308, January 23, 2001, 350 SCRA 101, 110.
- [52] *Abra Valley College, Inc. v. Aquino*, G.R. No. L-39086, June 15, 1988, 162 SCRA 106, 116, citing *Perez v. Court of Appeals*, 127 SCRA 645 (1984).
- [53] *F.F. Mañacop Construction Co., Inc. v. Court of Appeals*, 334 Phil. 208, 212 (1997), citing *Garrido v. CA*, 236 SCRA 450 (1994).
- [54] *See Relativo v. Castro*, 76 Phil. 563 (1946).
- [55] *GSIS v. Province of Tarlac*, G.R. No. 157860, December 1, 2003, 417 SCRA 60.
- [56] *Jovan Land, Inc. v. Court of Appeals*, 335 Phil. 626, 629 (1997).
- [57] Article 1473, New Civil Code.
- [58] *Montecillo v. Reynes*, 434 Phil. 456 (2002); *San Miguel Proprietor Philippines, Inc. v. Huang*, 391 Phil. 636 (2000); *Co v. Court of Appeals*, 349 Phil. 749 (1998); *Uraca v. Court of Appeals*, 344 Phil. 253 (1997); *Toyota Car, Inc. v. Court of Appeals*, 314 Phil. 201 (1995).
- [59] 151-A Phil. 868 (1973).
- [60] Id. at 887.

[61]Infra.

[62]Exhibit "A," folder of exhibits, p. 1 (Underscoring supplied)

[63]Exhibit "B," id. at 2.

[64]Ansorge v. Kane, 155 N.E. 683 (1927); A.M. Webb & Co. v. Robert P. Miller Co., 157 F.2d 865 (1946).

[65]Boatright v. Steinite Radio Corporation, 46 F. 2d 385 (1931).

[66]WILLISTON ON CONTRACTS, VOLUME I, SECTION 45, 149 (3rd ed. 1957).

[67] Weigham v. Kilifer, 215 F. 168.

[68] TSN, May 21, 1990, pp. 17-18; TSN, July 17, 1992, p. 25.

[69] Exhibits "N," "O" & "P," folder of exhibits, pp. 37-57.

[70] Supra, at note 22.

[71] Exhibit "G," folder of exhibits, p. 8

[72]Potter v. Leitenberger Mach. Co., 166 Pa. Super 31, 70 A. 2d 390 (1950).

[73] Rollo, p. 82.

[74]Id.

[75] 361 Phil. 308, 317 (1999), citing Bacolod – Murcia Milling Co., Inc., v. Bana Nacional Filipino, 74 Phil. 675, 680 (1944).

[76]Supra, at note 66.

[77] EXHIBIT "N" – Conditional Contract of Sale executed by Xavierville Estate, Inc. in favor of Alberto Soller dated December 8, 1969, to prove that after Xavierville Estate sold its lots, it continued to execute sales contracts over same in its name; EXHIBIT "O" – Xerox copy of Deed of Absolute Sale executed by Xavierville Estate, Inc. in favor of Alfredo Aguila dated May 20, 1970, to prove that although the lots in said subdivision were already sold by virtue of EXHIBIT "L," Commercial Bank of Manila (COMBANK) the VENDEE still allowed Xavierville Estate to sign contracts in its name; EXHIBIT "P" – Xerox copy of Deed of Absolute Sale executed by Xavierville Estate, Inc. in favor of Elena Roque Santos dated June 29, 1970, to prove that although lots in Xavierville Estate were already sold to Combank, the latter still allowed Xavierville Estate to sign contracts in its name;

[78]Records, p. 128.

[79] Wilson v. Volkswagen of America, Inc., 561 F.2d 494 (1977).

[80]Loughan v. Firestone Tire & Rubber Co., 749 F.2d. 1519 (1985).

[81]THE NATURE OF THE JUDICIAL PROCESS (THE STORRS LECTURES DELIVERED AT YALE UNIVERSITY), 64 (1963).

[82]Tong v. Borstad, 231 N.W. 2d. 795 (1975).

[83]Robinson v. United States, 82 U.S. 363; 20 L.ed 653 (1871).

[84]Name of the purchasers

[85] *Majarabas v. Leonardo*, 11 Phil. 272 (1908).

[86] *Kelley v. Creston Buick Sales Co.*, 34 N.W. 2d. 598 (1948).

[87] *Hoskins v. McLaughlin*, 161 S.W.2d 395 (1942).

[88] *Packard Fort Work, Inc. v. Van Zandt*, 224 S.W.2d 896 (1949).

[89] 334 Phil. 750,760 (1997), citing *Mararabas v. Leonardo*, *supra*.

[90] See note 66.

[91] 39 Phil. 624 (1919).

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