

**JULIE NABUS, MICHELLE NABUS AND BETTY TOLERO,
PETITIONERS, VS. JOAQUIN PACSON AND JULIA PACSON,
RESPONDENTS.**

G.R. No. 161318. November 25, 2009

Ponente: PERALTA, J.

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PERALTA, J.:

This is a petition for review on certiorari [1] of the Decision[2] of the Court of Appeals in CA-G.R. CV No. 44941 dated November 28, 2003. The Court of Appeals affirmed with modification the Decision of the Regional Trial Court of La Trinidad, Benguet, Branch 10, ordering petitioner Betty Tolero to execute a deed of absolute sale in favor of respondents, spouses Joaquin and Julia Pacson, over the lots covered by Transfer Certificate of Title (TCT) Nos. T-18650 and T-18651 upon payment to her by respondents of the sum of P57,544.[8]4 representing the balance due for the full payment of the property subject of this case; and ordering petitioner Betty Tolero to surrender to respondents her owner's duplicate copy of TCT Nos. T-18650 and T-18651.

The facts, as stated by the trial court,[3] are as follows:

The spouses Bate and Julie Nabus were the owners of parcels of land with a total area of 1,665 square meters, situated in Pico, La Trinidad, Benguet, duly registered in their names under TCT No. T-9697 of the Register of Deeds of the Province of Benguet. The property was mortgaged by the Spouses Nabus to the Philippine National Bank (PNB), La Trinidad Branch, to secure a loan in the amount of P30,000.00.

On February 19, 1977, the Spouses Nabus executed a Deed of Conditional Sale[4] covering 1,000 square meters of the 1,665 square meters of land in favor of respondents Spouses Pacson for a consideration of P170,000.00, which was duly notarized on February 21, 1977. The consideration was to be paid, thus:

THAT, the consideration of the amount of P170,000.00 will be paid by the VENDEE herein in my favor in the following manner:

- That the sum of P13,000.00, more or less, on or before February 21, 1977 and which amount will be paid directly to the PNB, La Trinidad Branch, and which will form part of the purchase price;
- That after paying the above amount to the PNB, La Trinidad, Benguet branch, a balance of about P17,500.00 remains as my mortgage balance and this amount will be paid by the VENDEE herein at the rate of not less than P3,000.00 a month beginning March 1977, until the said mortgage balance is fully liquidated, and that all payments made by the VENDEE to the PNB, La Trinidad, Benguet branch, shall form part of the consideration of this sale;
- That, as soon as the mortgage obligation with the PNB as cited above is fully paid, then the VENDEE herein hereby obligates himself, his heirs and assigns, to pay the amount of not less than P2,000.00 a month in favor of the VENDOR, his heirs and assigns, until the full amount of P170,000.00 is fully covered (including the payments cited in Pars. a and b above);

THAT, as soon as the full consideration of this sale has been paid by the VENDEE, the corresponding transfer documents shall be executed by the VENDOR to the VENDEE for the portion sold;

THAT, the portion sold is as shown in the simple sketch hereto attached as Annex "A" and made part hereof;

THAT, a segregation survey for the portion sold in favor of the VENDEE and the portion remaining in favor of the VENDOR shall be executed as soon as possible, all at the expense of the VENDEE herein;

THAT, it is mutually understood that in as much as there is a claim by other persons of the entire property of which the portion subject of this Instrument is only a part, and that this claim is now the subject of a civil case now pending before Branch III of the Court of First Instance of Baguio and Benguet, should the VENDOR herein be defeated in the said civil action to the end that he is divested of title over the area subject of this Instrument, then he hereby warrants that he shall return any and all monies paid by the VENDEE herein whether paid to the PNB, La Trinidad, Benguet Branch, or directly received by herein VENDOR, all such monies to be returned upon demand by the VENDEE;

THAT, [a] portion of the parcel of land subject of this instrument is presently in the possession of Mr. Marcos Tacloy, and the VENDOR agrees to cooperate and assist in any manner possible in the ouster of said Mr. Marcos Tacloy from said possession and occupation to the end that the VENDEE herein shall make use of said portion as soon as is practicable;

THAT, finally, the PARTIES hereby agree that this Instrument shall be binding upon their respective heirs, successors or assigns.[5]

Pursuant to the Deed of Conditional Sale, respondents paid PNB the amount of P12,038.86 on February 22, 1977[6] and P20,744.30 on July 17, 1978[7] for the full payment of the loan.

At the time of the transaction, Mr. Marcos Tacloy had a basket-making shop on the property, while the spouses Delfin and Nelita Flores had a store. Tacloy and the Spouses Flores vacated the property after respondents paid them P4,000.00 each.

Thereafter, respondents took possession of the subject property. They constructed an 80 by 32-feet building and a steel-matting fence around the property to house their truck body-building shop which they called the "Emiliano Trucking Body Builder and Auto Repair Shop."

On December 24, 1977, before the payment of the balance of the mortgage amount with PNB, Bate Nabus died. On August 17, 1978, his surviving spouse, Julie Nabus, and their minor daughter, Michelle Nabus, executed a Deed of Extra Judicial Settlement over the registered land covered by TCT No. 9697. On the basis of the said document, TCT No. T- 17718[8] was issued on February 17, 1984 in the names of Julie Nabus and Michelle Nabus.

Meanwhile, respondents continued paying their balance, not in installments of P2,000.00 as agreed upon, but in various, often small amounts ranging from as low as P10.00[9] to as high as P15,566.00,[10] spanning a period of almost seven years, from March 9, 1977[11] to January 17, 1984.[12]

There was a total of 364 receipts of payment,[13] which receipts were mostly signed by Julie Nabus, who also signed as Julie Quan when she remarried. The others who signed were Bate Nabus; PNB, La Trinidad Branch; Maxima Nabus; Sylvia Reyes; Michelle Nabus and the second husband of Julie Nabus, Gereon Quan. Maxima Nabus is the mother of Bate Nabus, while Sylvia Reyes is a niece.

The receipts showed that the total sum paid by respondents to the Spouses Nabus was P112,455.16,[14] leaving a balance of P57,544.84. The sum of P30,000.00 which was the value of the pick-up truck allegedly sold and delivered in 1978 to the Spouses Nabus, was not considered as payment because the registration papers remained

in the name of its owner, Dominga D. Pacson, who is the sister of Joaquin Pacson. The vehicle was also returned to respondents.

During the last week of January 1984, Julie Nabus, accompanied by her second husband, approached Joaquin Pacson to ask for the full payment of the lot. Joaquin Pacson agreed to pay, but told her to return after four days as his daughter, Catalina Pacson, would have to go over the numerous receipts to determine the balance to be paid. When Julie Nabus returned after four days, Joaquin sent her and his daughter, Catalina, to Atty. Elizabeth Rillera for the execution of the deed of absolute sale. Since Julie was a widow with a minor daughter, Atty. Rillera required Julie Nabus to return in four days with the necessary documents, such as the deed of extrajudicial settlement, the transfer certificate of title in the names of Julie Nabus and minor Michelle Nabus, and the guardianship papers of Michelle. However, Julie Nabus did not return.

Getting suspicious, Catalina Pacson went to the Register of Deeds of the Province of Benguet and asked for a copy of the title of the land. She found that it was still in the name of Julie and Michelle Nabus.

After a week, Catalina Pacson heard a rumor that the lot was already sold to petitioner Betty Tolero. Catalina Pacson and Atty. Rillera went to the Register of Deeds of the Province of Benguet, and found that Julie Nabus and her minor daughter, Michelle Nabus, represented by the former's mother as appointed guardian by a court order dated October 29, 1982, had executed a Deed of Absolute Sale in favor of Betty Tolero on March 5, 1984, covering the whole lot comprising 1,665 square meters.[15] The property was described in the deed of sale as comprising four lots: (1) Lot A-2-A, with an area of 832 square meters; (2) Lot A-2-B, 168 square meters; (3) Lot A-2-C, 200 square meters; and (4) Lot A-2-D, 465 square meters. Lots A-2-A and A-2-B, with a combined area of 1,000 square meters, correspond to the lot previously sold to Joaquin and Julia Pacson in the Deed of Conditional Sale.

Catalina Pacson and Atty. Rillera also found that the Certificate of Title over the property in the name of Julie and Michelle Nabus was cancelled on March 16, 1984, and four titles to the four lots were issued in the name of Betty Tolero, namely: TCT No. T-18650[16] for Lot A-2-A; TCT No. 18651[17] for Lot A-2-B; TCT No. T-18652[18] for Lot A-2-C; and T-18653[19] for Lot A-2-D.

On March 22, 1984, the gate to the repair shop of the Pacsons was padlocked. A sign was displayed on the property stating "No Trespassing." [20]

On March 26, 1984, Catalina Pacson filed an affidavit-complaint regarding the padlocking incident of their repair shop with the police station at La Trinidad, Benguet.

On March 28, 2008, respondents Joaquin and Julia Pacson filed with the Regional Trial Court of La Trinidad, Benguet (trial court) a Complaint[21] for Annulment of Deeds, with damages and prayer for the issuance of a writ of preliminary injunction.[22] They sought the annulment of (1) the Extra-judicial Settlement of Estate, insofar as their right to the 1,000-square-meter lot subject of the Deed of Conditional Sale[23] was affected; (2) TCT No. T-17718 issued in the names of Julie and Michelle Nabus; and (3) the Deed of Absolute Sale[24] in favor of Betty Tolero and the transfer certificates of title issued pursuant thereto. They also prayed for the award of actual, moral and exemplary damages, as well as attorney's fees.

In their Answer,[25] Julie and Michelle Nabus alleged that respondent Joaquin Pacson did not proceed with the conditional sale of the subject property when he learned that there was a pending case over the whole property. Joaquin proposed that he would rather lease the property with a monthly rental of P2,000.00 and apply the sum of P13,000.00 as rentals, since the amount was already paid to the bank and could no longer be withdrawn. Hence, he did not affix his signature to the second page of a copy of the Deed of Conditional Sale.[26] Julie Nabus

alleged that in March 1994, due to her own economic needs and those of her minor daughter, she sold the property to Betty Tolero, with authority from the court.

During the hearing on the merits, Julie Nabus testified that she sold the property to Betty Tolero because she was in need of money. She stated that she was free to sell the property because the Deed of Conditional Sale executed in favor of the Spouses Pacson was converted into a contract of lease. She claimed that at the time when the Deed of Conditional Sale was being explained to them by the notary public, Joaquin Pacson allegedly did not like the portion of the contract stating that there was a pending case in court involving the subject property. Consequently, Joaquin Pacson did not continue to sign the document; hence, the second page of the document was unsigned.[27] Thereafter, it was allegedly their understanding that the Pacsons would occupy the property as lessees and whatever amount paid by them would be considered rentals.

Betty Tolero put up the defense that she was a purchaser in good faith and for value. She testified that it was Julie Nabus who went to her house and offered to sell the property consisting of two lots with a combined area of 1,000 square meters. She consulted Atty. Aurelio de Peralta before she agreed to buy the property. She and Julie Nabus brought to Atty. De Peralta the pertinent papers such as TCT No. T-17718 in the names of Julie and Michelle Nabus, the guardianship papers of Michelle Nabus and the blueprint copy of the survey plan showing the two lots. After examining the documents and finding that the title was clean, Atty. De Peralta gave her the go-signal to buy the property.

Tolero testified that upon payment of the agreed price of P200,000.00, the Deed of Absolute Sale was executed and registered, resulting in the cancellation of the title of Julie and Michelle Nabus and the issuance in her name of TCT Nos. T-18650 and T-18651[28] corresponding to the two lots. Thereafter, she asked her common-law husband, Ben Ignacio, to padlock the gate to the property and hang the "No Trespassing" sign.

Tolero also testified that as the new owner, she was surprised and shocked to receive the Complaint filed by the Spouses Pacson. She admitted that she knew very well the Spouses Pacson, because they used to buy vegetables regularly from her. She had been residing along the highway at Kilometer 4, La Trinidad, Benguet since 1971. She knew the land in question, because it was only 50 meters away across the highway. She also knew that the Spouses Pacson had a shop on the property for the welding and body-building of vehicles. She was not aware of the Deed of Conditional Sale executed in favor of the Pacsons, and she saw the document for the first time when Joaquin Pacson showed it to her after she had already bought the property and the title had been transferred in her name. At the time she was buying the property, Julie Nabus informed her that the Pacsons were merely renting the property. She did not bother to verify if that was true, because the Pacsons were no longer in the property for two years before she bought it.

In a Decision dated September 30, 1993, the trial court ruled in favor of respondents. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs, ordering defendant Betty Tolero to execute a deed of absolute sale in favor of the Spouses Joaquin and Julia Pacson over the lots covered by Transfer Certificates of Title Nos. T-18650 and T-18651 upon payment to her by the plaintiffs of the sum of P57,544.[8]4 representing the balance due for the full payment of the property subject of this case. In addition to the execution of a deed of absolute sale, defendant Betty Tolero shall surrender to the plaintiffs her owner's duplicate copy of Transfer Certificates of Title Nos. T-18650 and T-18651.

Defendants Julie Nabus, Michelle Nabus, and Betty Tolero shall also pay the plaintiffs damages as follows: P50,000.00 for moral damages; P20,000.00 for exemplary damages; and P10,000.00 for attorney's fees and expenses for litigation.[29]

Two issues determined by the trial court were: (1) Was the Deed of Conditional Sale between the Spouses Pacson and the Nabuses converted into a contract of lease? and (2) Was Betty Tolero a buyer in good faith?

The trial court held that the Deed of Conditional Sale was not converted into a contract of lease because the original copy of the contract^[30] showed that all the pages were signed by all the parties to the contract. By the presumption of regularity, all other carbon copies must have been duly signed. The failure of Joaquin Pacson to sign the second page of one of the carbon copies of the contract was by sheer inadvertence. The omission was of no consequence since the signatures of the parties in all the other copies of the contract were complete. Moreover, all the receipts of payment expressly stated that they were made in payment of the lot. Not a single receipt showed payment for rental.

Further, the trial court held that Betty Tolero was not a purchaser in good faith as she had actual knowledge of the Conditional Sale of the property to the Pacsons.

The trial court stated that the Deed of Conditional Sale contained reciprocal obligations between the parties, thus:

THAT, as soon as the full consideration of this sale has been paid by the VENDEE, the corresponding transfer documents shall be executed by the VENDOR to the VENDEE for the portion sold;

x x x x

THAT, finally, the PARTIES hereby agree that this Instrument shall be binding upon their respective heirs, successors or assigns.^[31]

In other words, the trial court stated, when the vendees (the Spouses Pacson) were already ready to pay their balance, it was the corresponding obligation of the vendors (Nabuses) to execute the transfer documents.

The trial court held that "[u]nder Article 1191 of the Civil Code, an injured party in a reciprocal obligation, such as the Deed of Conditional Sale in the case at bar, may choose between the fulfillment [or] the rescission of the obligation, with the payment of damages in either case." It stated that in filing the case, the Spouses Pacson opted for fulfillment of the obligation, that is, the execution of the Deed of Absolute Sale in their favor upon payment of the purchase price.

Respondents appealed the decision of the trial court to the Court of Appeals.

In the Decision dated November 28, 2003, the Court of Appeals affirmed the trial court's decision, but deleted the award of attorney's fees. The dispositive portion of the Decision reads:

WHEREFORE, finding no reversible error in the September 30, 1993 Decision of the Regional Trial Court of La Trinidad, Benguet, Branch 10, in Civil Case No. 84-CV-0079, the instant appeal is hereby DISMISSED for lack of merit, and the assailed Decision is hereby AFFIRMED and UPHELD with the modification that the award of attorney's fees is deleted.^[32]

Petitioners filed this petition raising the following issues:

I

THE [COURT OF APPEALS] ERRED IN CONSIDERING THE CONTRACT ENTERED INTO BETWEEN THE SPOUSES BATE NABUS AND JULIE NABUS AND SPOUSES JOAQUIN PACSON AND JULIA PACSON TO BE A CONTRACT OF SALE.

II

THE COURT A QUO ERRED IN FINDING THAT THERE ARE ONLY TWO ISSUES IN THE CASE ON APPEAL AND THEY ARE: WHETHER THE DEED OF CONDITIONAL SALE WAS CONVERTED

INTO A CONTRACT OF LEASE; AND THAT [WHETHER] PETITIONER BETTY TOLERO WAS A BUYER IN GOOD FAITH.

III

THAT THE TRIAL COURT ERRED IN HOLDING THAT [RESPONDENTS'] BALANCE TO THE SPOUSES NABUS UNDER THE CONDITIONAL SALE IS ONLY P57,544.[8]4.

IV

THAT ASSUMING WITHOUT ADMITTING THAT PETITIONER BETTY TOLERO WAS AWARE OF THE EXISTENCE OF THE DEED OF CONDITIONAL SALE, THE TRIAL COURT, AS WELL AS THE [COURT OF APPEALS], ERRED IN ORDERING PETITIONER BETTY TOLERO TO EXECUTE A DEED OF ABSOLUTE SALE IN FAVOR OF THE [RESPONDENTS] AND TO SURRENDER THE OWNER'S DUPLICATE COPY OF TCT NOS. T-18650 AND T-18651, WHICH WAS NOT PRAYED FOR IN THE PRAYER IN THE COMPLAINT.

V

THAT THE [COURT OF APPEALS] ERRED IN FINDING BETTY TOLERO [AS] A BUYER [WHO] FAILED TO TAKE STEPS IN INQUIRING FROM THE [RESPONDENTS] THE STATUS OF THE PROPERTY IN QUESTION BEFORE HER PURCHASE, CONTRARY TO FACTS ESTABLISHED BY EVIDENCE.

VI

THE [COURT OF APPEALS] ERRED IN CONSIDERING PETITIONER BETTY TOLERO A BUYER IN BAD FAITH, IGNORING THE APPLICATION OF THE DOCTRINE IN THE RULING OF THE SUPREME COURT IN THE CASE OF RODOLFO ALFONSO, ET AL. VS. COURT OF APPEALS, G.R. NO. 63745.[33]

The main issues to be resolved are:

- 1) Whether or not the Deed of Conditional Sale was converted into a contract of lease;
- 2) Whether the Deed of Conditional Sale was a contract to sell or a contract of sale.

As regards the first issue, the Deed of Conditional Sale entered into by the Spouses Pacson and the Spouses Nabus was not converted into a contract of lease. The 364 receipts issued to the Spouses Pacson contained either the phrase "as partial payment of lot located in Km. 4" or "cash vale" or "cash vale (partial payment of lot located in Km. 4)," evidencing sale under the contract and not the lease of the property. Further, as found by the trial court, Joaquin Pacson's non-signing of the second page of a carbon copy of the Deed of Conditional Sale was through sheer inadvertence, since the original contract[34] and the other copies of the contract were all signed by Joaquin Pacson and the other parties to the contract.

On the second issue, petitioners contend that the contract executed by the respondents and the Spouses Nabus was a contract to sell, not a contract of sale. They allege that the contract was subject to the suspensive condition of full payment of the consideration agreed upon before ownership of the subject property could be transferred to the vendees. Since respondents failed to pay the full amount of the consideration, having an unpaid balance of P57,544.84, the obligation of the vendors to execute the Deed of Absolute Sale in favor of respondents did not arise. Thus, the subsequent Deed of Absolute Sale executed in favor of Betty Tolero, covering the same parcel of land was valid, even if Tolero was aware of the previous deed of conditional sale.

Moreover, petitioners contend that respondents violated the stipulated condition in the contract that the monthly

installment to be paid was P2,000.00, as respondents gave meager amounts as low as P10.00.

Petitioners also assert that respondents' allegation that Julie Nabus' failure to bring the pertinent documents necessary for the execution of the final deed of absolute sale, which was the reason for their not having paid the balance of the purchase price, was untenable, and a lame and shallow excuse for violation of the Deed of Conditional Sale. Respondents could have made a valid tender of payment of their remaining balance, as it had been due for a long time, and upon refusal to accept payment, they could have consigned their payment to the court as provided by law. This, respondents failed to do.

The Court holds that the contract entered into by the Spouses Nabus and respondents was a contract to sell, not a contract of sale.

A contract of sale is defined in Article 1458 of the Civil Code, thus:

Art. 1458. By the contract of sale, one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

A contract of sale may be absolute or conditional.

Ramos v. Heruela[35] differentiates a contract of absolute sale and a contract of conditional sale as follows:

Article 1458 of the Civil Code provides that a contract of sale may be absolute or conditional. 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.[36]

Coronel v. Court of Appeals[37] distinguished a contract to sell from a contract of sale, thus:

Sale, by its very nature, is a consensual contract because it is perfected by mere consent. The essential elements of a contract of sale are the following:

- a) Consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price;
- b) Determinate subject matter; and
- c) Price certain in money or its equivalent.

Under this definition, a Contract to Sell may not be considered as a Contract of Sale because the first essential element is lacking. In a contract to sell, the prospective seller explicitly reserves the transfer of title to the prospective buyer, meaning, the prospective seller does not as yet agree or consent to transfer ownership of the property subject of the contract to sell until the happening of an event, which for present purposes we shall take as the full payment of the purchase price. What the seller agrees or obliges himself to do is to fulfill his promise to sell the subject property when the entire amount of the purchase price is delivered to him. In other words, the full payment of the purchase price partakes of a suspensive condition, the non-fulfilment of which prevents the obligation to sell from arising and, thus, ownership is retained by the prospective seller without further remedies by the prospective buyer.

x x x x

Stated positively, upon the fulfillment of the suspensive condition which is the full payment of the purchase price, the prospective seller's obligation to sell the subject property by entering into a contract of sale with the

prospective buyer becomes demandable as provided in Article 1479 of the Civil Code which states:

Art. 1479. A promise to buy and sell a determinate thing for a price certain is reciprocally demandable.

An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promisor if the promise is supported by a consideration distinct from the price.

A contract to sell may thus be defined as a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds himself to sell the said property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, that is, full payment of the purchase price.

A contract to sell as defined hereinabove, may not even be considered as a conditional contract of sale where the seller may likewise reserve title to the property subject of the sale until the fulfillment of a suspensive condition, because in a conditional contract of sale, the first element of consent is present, although it is conditioned upon the happening of a contingent event which may or may not occur. If the suspensive condition is not fulfilled, the perfection of the contract of sale is completely abated. However, if the suspensive condition is fulfilled, the contract of sale is thereby perfected, such that if there had already been previous delivery of the property subject of the sale to the buyer, ownership thereto automatically transfers to the buyer by operation of law without any further act having to be performed by the seller.

In a contract to sell, upon the fulfillment of the suspensive condition which is the full payment of the purchase price, ownership will not automatically transfer to the buyer although the property may have been previously delivered to him. The prospective seller still has to convey title to the prospective buyer by entering into a contract of absolute sale.[38]

Further, *Chua v. Court of Appeals*[39] cited this distinction between a contract of sale and a contract to sell:

In a contract of sale, the title to the property passes to the vendee upon the delivery of the thing sold; in a contract to sell, ownership is, by agreement, reserved in the vendor and is not to pass to the vendee until full payment of the purchase price. Otherwise stated, in a contract of sale, the vendor loses ownership over the property and cannot recover it until and unless the contract is resolved or rescinded; whereas, in a contract to sell, title is retained by the vendor until full payment of the price. In the latter contract, payment of the price is a positive suspensive condition, failure of which is not a breach but an event that prevents the obligation of the vendor to convey title from becoming effective.[40]

It is not the title of the contract, but its express terms or stipulations that determine the kind of contract entered into by the parties. In this case, the contract entitled "Deed of Conditional Sale" is actually a contract to sell. The contract stipulated that "as soon as the full consideration of the sale has been paid by the vendee, the corresponding transfer documents shall be executed by the vendor to the vendee for the portion sold." [41] Where the vendor promises to execute a deed of absolute sale upon the completion by the vendee of the payment of the price, the contract is only a contract to sell." [42] The aforementioned stipulation shows that the vendors reserved title to the subject property until full payment of the purchase price.

If respondents paid the Spouses Nabus in accordance with the stipulations in the Deed of Conditional Sale, the consideration would have been fully paid in June 1983. Thus, during the last week of January 1984, Julie Nabus approached Joaquin Pacson to ask for the full payment of the lot. Joaquin Pacson agreed to pay, but told her to return after four days as his daughter, Catalina Pacson, would have to go over the numerous receipts to determine the balance to be paid.

When Julie Nabus returned after four days, Joaquin Pacson sent Julie Nabus and his daughter, Catalina, to Atty.

Elizabeth Rillera for the execution of the deed of sale. Since Bate Nabus had already died, and was survived by Julie and their minor daughter, Atty. Rillera required Julie Nabus to return in four days with the necessary documents such as the deed of extrajudicial settlement, the transfer certificate of title in the names of Julie Nabus and minor Michelle Nabus, and the guardianship papers of Michelle. However, Julie Nabus did not return.

As vendees given possession of the subject property, the ownership of which was still with the vendors, the Pacsons should have protected their interest and inquired from Julie Nabus why she did not return and then followed through with full payment of the purchase price and the execution of the deed of absolute sale. The Spouses Pacson had the legal remedy of consigning their payment to the court; however, they did not do so. A rumor that the property had been sold to Betty Tolero prompted them to check the veracity of the sale with the Register of Deeds of the Province of Benguet. They found out that on March 5, 1984, Julie Nabus sold the same property to Betty Tolero through a Deed of Absolute Sale, and new transfer certificates of title to the property were issued to Tolero.

Thus, the Spouses Pacson filed this case for the annulment of the contract of absolute sale executed in favor of Betty Tolero and the transfer certificates of title issued in her name.

Unfortunately for the Spouses Pacson, since the Deed of Conditional Sale executed in their favor was merely a contract to sell, the obligation of the seller to sell becomes demandable only upon the happening of the suspensive condition.[43] The full payment of the purchase price is the positive suspensive condition, the failure of which is not a breach of contract, but simply an event that prevented the obligation of the vendor to convey title from acquiring binding force.[44] Thus, for its non-fulfilment, there is no contract to speak of, the obligor having failed to perform the suspensive condition which enforces a juridical relation.[45] With this circumstance, there can be no rescission or fulfilment of an obligation that is still non-existent, the suspensive condition not having occurred as yet.[46] Emphasis should be made that the breach contemplated in Article 1191 of the New Civil Code is the obligor's failure to comply with an obligation already extant, not a failure of a condition to render binding that obligation.[47]

The trial court, therefore, erred in applying Article 1191 of the Civil Code[48] in this case by ordering fulfillment of the obligation, that is, the execution of the deed of absolute sale in favor of the Spouses Pacson upon full payment of the purchase price, which decision was affirmed by the Court of Appeals. *Ayala Life Insurance, Inc. v. Ray Burton Development Corporation*[49] held:

Evidently, before the remedy of specific performance may be availed of, there must be a breach of the contract.

Under a contract to sell, the title of the thing to be sold is retained by the seller until the purchaser makes full payment of the agreed purchase price. Such payment is a positive suspensive condition, the non-fulfillment of which is not a breach of contract but merely an event that prevents the seller from conveying title to the purchaser. The non-payment of the purchase price renders the contract to sell ineffective and without force and effect. Thus, a cause of action for specific performance does not arise.[50]

Since the contract to sell was without force and effect, Julie Nabus validly conveyed the subject property to another buyer, petitioner Betty Tolero, through a contract of absolute sale, and on the strength thereof, new transfer certificates of title over the subject property were duly issued to Tolero.[51]

The Spouses Pacson, however, have the right to the reimbursement of their payments to the Nabuses, and are entitled to the award of nominal damages. The Civil Code provides:

Art. 2221. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

Art. 2222. The court may award nominal damages in every obligation arising from any source enumerated in article 1157, or in every case where any property right has been invaded.

As stated by the trial court, under the Deed of Conditional Sale, respondents had the right to demand from petitioners Julie and Michelle Nabus that the latter execute in their favor a deed of absolute sale when they were ready to pay the remaining balance of the purchase price. The Nabuses had the corresponding duty to respect the respondents' right, but they violated such right, for they could no longer execute the document since they had sold the property to Betty Tolero.[52] Hence, nominal damages in the amount of P10,000.00 are awarded to respondents.

Respondents are not entitled to moral damages because contracts are not referred to in Article 2219[53] of the Civil Code, which enumerates the cases when moral damages may be recovered. Article 2220[54] of the Civil Code allows the recovery of moral damages in breaches of contract where the defendant acted fraudulently or in bad faith. However, this case involves a contract to sell, wherein full payment of the purchase price is a positive suspensive condition, the non-fulfillment of which is not a breach of contract, but merely an event that prevents the seller from conveying title to the purchaser. Since there is no breach of contract in this case, respondents are not entitled to moral damages.

In the absence of moral, temperate, liquidated or compensatory damages, exemplary damages cannot be granted for they are allowed only in addition to any of the four kinds of damages mentioned.[55]

WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals in CA-G.R. CV No. 44941, dated November 28, 2003, is REVERSED and SET ASIDE. Judgment is hereby rendered upholding the validity of the sale of the subject property made by petitioners Julie Nabus and Michelle Nabus in favor of petitioner Betty Tolero, as well as the validity of Transfer Certificates of Title Nos. T-18650 and T-18651 issued in the name of Betty Tolero. Petitioners Julie Nabus and Michelle Nabus are ordered to reimburse respondents spouses Joaquin and Julia Pacson the sum of One Hundred Twelve Thousand Four Hundred Fifty-Five Pesos and Sixteen Centavos (P112,455.16), and to pay Joaquin and Julia Pacson nominal damages in the amount of Ten Thousand Pesos (P10,000.00), with annual interest of twelve percent (12%) until full payment of the amounts due to Joaquin and Julia Pacson.

No costs.

SO ORDERED.

Corona, (Chairperson), Chico-Nazario, Velasco, Jr., and Nachura, JJ., concur.

[*] Referred to as NABOS in the RTC and CA Decisions, and in the pleadings.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Sergio L. Pestaño, with Associate Justices Marina L. Buzon and Jose C. Mendoza, concurring; rollo, pp. 38-43.

[3] CA rollo, pp. 20-26.

[4] Exhibit "B," compilation of exhibits, p. 5.

[5] Rollo, pp. 57-58.

[6] Exhibit "D," compilation of exhibits, p. 13.

- [7] Exhibit "E," id.
- [8] Exhibit "R," id. at 60.
- [9] Exhibits "K-14," "K-25," "K-29," and "L-27," id. at 33-34, 37.
- [10] Exhibit "J-19," id. at 31.
- [11] Exhibit "H," id. at 22.
- [12] Exhibit "N-1," id. at 41.
- [13] Exhibits "D" to "F"; "F-1" to "F-3"; "G"; "G-1" to "G-88"; "H"; "H-1" to "H-42"; "I"; "I-1" to "I-57"; "J"; "J-1" to "J-62"; "K"; "K-1" to "K-52"; "L"; "L-1" to "L-28"; "M"; "M-1" to "M-40"; "N" and "N-1," id. at 13-41.
- [14] Exhibits "UU," "UU-1" to "UU-9," id. at 131.
- [15] Exhibit "Q," id. at 55.
- [16] Exhibit "S," id. at 61.
- [17] Exhibit "T," id. at 62.
- [18] Exhibit "U," id. at 63.
- [19] Exhibit "V," id. at 64.
- [20] Exhibit "W," id. at 65.
- [21] Annex "C," rollo, pp. 48-56.
- [22] Docketed as Civil Case No. 84-CV-0079.
- [23] Rollo, pp. 57-60.
- [24] Id. at 61-65.
- [25] Id. at 66-73.
- [26] Annex "A," records, vol. I, p. 11.
- [27] Id.
- [28] Exhibits "9" and "10," records, vol. II, pp. 1469-1470.
- [29] CA rollo, pp. 29-30.
- [30] Exhibit "A," compilation of exhibits, p. 1.
- [31] Rollo, p. 58.
- [32] Id. at 42.
- [33] Id. at 15-16.
- [34] Exhibits "A" and "A-5," compilation of exhibits, pp. 1-2.
- [35] G.R. No. 145330, October 14, 2005, 473 SCRA 79.
- [36] Id. at 86. (Emphasis supplied.)

[37] 331 Phil. 294 (1996).

[38] Id. at 308-311. (Emphasis supplied; citations omitted).

[39] 449 Phil. 25 (2003).

[40] Id. at 41-42, citing *Salazar v. Court of Appeals*, 258 SCRA 317 (1996).

[41] Emphasis supplied.

[42] *Ver Reyes v. Salvador, Sr.*, G.R. Nos. 139047 & 139365, September 11, 2008, 564 SCRA 456, 479-480.

[43] *Chua v. Court of Appeals*, supra note 39.

[44] *Heirs of Pedro Escanlar v. Court of Appeals*, G.R. No. 119777, October 23, 1997, 281 SCRA 176, 188. (Emphasis supplied.)

[45] *Cheng v. Genato*, 360 Phil. 891, 904-905 (1998).

[46] Id. at 905.

[47] Id.

[48] Art. 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.

[49] G.R. No. 163075, January 23, 2006, 479 SCRA 462.

[50] Id. at 469. (Emphasis supplied.)

[51] See *Ver Reyes v. Salvador, Sr.*, supra note 42.

[52] RTC Decision, records, p. 20.

[53] Art. 2219. Moral damages may be recovered in the following analogous cases:

- (1) A criminal case resulting in physical injuries;
- (2) Quasi-delicts causing physical injuries;
- (3) Seduction, abduction, rape, or other lascivious acts;
- (4) Adultery or concubinage
- (5) Illegal or arbitrary detention or arrest;
- (6) Illegal search;
- (7) Libel, slander or any other form of defamation;
- (8) Malicious prosecution;
- (9) Acts mentioned in Article 309;
- (10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

[54] Art. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should

find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

[55] Civil Code, Art. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good; in addition to the moral, temperate, liquidated or compensatory damages.

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