

**SPOUSES CARMEN S. TONGSON AND JOSE C. TONGSON
SUBSTITUTED BY HIS CHILDREN NAMELY: JOSE TONGSON, JR.,
RAUL TONGSON, TITA TONGSON, GLORIA TONGSON ALMA
TONGSON, PETITIONERS, VS. EM...**

G.R. No. 167874. January 15, 2010

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a petition for review[1] of the 31 August 2004 Decision[2] and 10 March 2005 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 58242. In the 31 August 2004 Decision, the Court of Appeals partially granted the appeal filed by Emergency Pawnshop Bula, Inc. (EPBI) and Danilo R. Napala (Napala) by modifying the decision of the trial court. In the 10 March 2005 Resolution, the Court of Appeals denied the motion for partial reconsideration filed by the Spouses Jose C. Tongson and Carmen S. Tongson (Spouses Tongson).

The Facts

In May 1992, Napala offered to purchase from the Spouses Tongson their 364-square meter parcel of land, situated in Davao City and covered by Transfer Certificate of Title (TCT) No. 143020, for P3,000,000. Finding the offer acceptable, the Spouses Tongson executed with Napala a Memorandum of Agreement[4] dated 8 May 1992.

On 2 December 1992, respondents' lawyer Atty. Petronilo A. Raganas, Jr. prepared a Deed of Absolute Sale[5] indicating the consideration as only P400,000. When Carmen Tongson "noticed that the consideration was very low, she [complained] and called the attention of Napala but the latter told her not to worry as he would be the one to pay for the taxes and she would receive the net amount of P3,000,000." [6]

To conform with the consideration stated in the Deed of Absolute Sale, the parties executed another Memorandum of Agreement, which allegedly replaced the first Memorandum of Agreement,[7] showing that the selling price of the land was only P400,000.[8]

Upon signing the Deed of Absolute Sale, Napala paid P200,000 in cash to the Spouses Tongson and issued a postdated Philippine National Bank (PNB) check in the amount of P2,800,000,[9] representing the remaining balance of the purchase price of the subject property. Thereafter, TCT No. 143020 was cancelled and TCT No. T-186128 was issued in the name of EPBI.[10]

When presented for payment, the PNB check was dishonored for the reason "Drawn Against Insufficient Funds." Despite the Spouses Tongson's repeated demands to either pay the full value of the check or to return the subject parcel of land, Napala failed to do either. Left with no other recourse, the Spouses Tongson filed with the

Regional Trial Court, Branch 16, Davao City a Complaint for Annulment of Contract and Damages with a Prayer for the Issuance of a Temporary Restraining Order and a Writ of Preliminary Injunction.[11]

In their Answer, respondents countered that Napala had already delivered to the Spouses Tongson the amount of P2,800,000 representing the face value of the PNB check, as evidenced by a receipt issued by the Spouses Tongson. Respondents pointed out that the Spouses Tongson never returned the PNB check claiming that it was misplaced. Respondents asserted that the payment they made rendered the filing of the complaint baseless.[12]

At the pre-trial, Napala admitted, among others, issuing the postdated PNB check in the sum of P2,800,000.[13] The Spouses Tongson, on the other hand, admitted issuing a receipt which showed that they received the PNB check from Napala. Thereafter, trial ensued.

The Ruling of the Trial Court

The trial court found that the purchase price of the subject property has not been fully paid and that Napala's assurance to the Spouses Tongson that the PNB check would not bounce constituted fraud that induced the Spouses Tongson to enter into the sale. Without such assurance, the Spouses Tongson would not have agreed to the contract of sale. Accordingly, there was fraud within the ambit of Article 1338 of the Civil Code,[14] justifying the annulment of the contract of sale, the award of damages and attorney's fees, and payment of costs.

The dispositive portion of the 9 December 1996 Decision of the trial court reads:

WHEREFORE, judgment is hereby rendered -

I Annulling the contract entered into by the plaintiffs with the defendants;

II Declaring the writs of preliminary injunctions issued permanent;

III Ordering defendants to:

1) reconvey the property subject matter of the case to the plaintiffs;

2) pay plaintiffs:

a) P100,000 as moral damages;

b) P50,000 as exemplary damages;

c) P20,000 as attorney's fees; and

d) P35,602.50 cost of suit broken down as follows:

P70.00 bond fee

P60.00 lis pendens fee

P902.00 docket fee

P390.00 docket fee

P8.00 summons fee

P12.00 SDF

P178.50 Xerox

P9,000 Sidcor Insurance Bond fee

P25,000 Sidcor Insurance Bond fee

or the total sum of P205,602.50.

It is further ordered that the monetary award be offsetted [sic] to defendants' downpayment of P200,000 thereby leaving a balance of P5,602.50.[15]

Respondents appealed to the Court of Appeals.

The Ruling of the Court of Appeals

The Court of Appeals agreed with the trial court's finding that Napala employed fraud when he misrepresented to the Spouses Tongson that the PNB check in the amount of P2,800,000 would be properly funded at its maturity. However, the Court of Appeals found that the issuance and delivery of the PNB check and fraudulent representation made by Napala could not be considered as the determining cause for the sale of the subject parcel of land. Hence, such fraud could not be made the basis for annulling the contract of sale. Nevertheless, the fraud employed by Napala is a proper and valid basis for the entitlement of the Spouses Tongson to the balance of the purchase price in the amount of P2,800,000 plus interest at the legal rate of 6% per annum computed from the date of filing of the complaint on 11 February 1993.

Finding the trial court's award of damages unconscionable, the Court of Appeals reduced the moral damages from P100,000 to P50,000 and the exemplary damages from P50,000 to P25,000.

The dispositive portion of the 31 August 2004 Decision of the Court of Appeals reads:

WHEREFORE, the instant appeal is **PARTIALLY GRANTED**. The assailed decision of the Regional Trial Court, 11[th] Judicial Region, Branch 16, Davao City, in Civil Case No. 21,858-93, is hereby **MODIFIED**, to read:

WHEREFORE, judgment is hereby rendered ordering defendants to pay plaintiffs:

- a) the sum of P2,800,000.00 representing the balance of the purchase price of the subject parcel of land, plus interest at the legal rate of 6% per annum computed from the date of filing of the complaint on 11 February 1993, until the finality of the assailed decision; thereafter, the interest due shall be at the legal rate of 12% per annum until fully paid;
- b) P50,000 as moral damages;
- c) P25,000 as exemplary damages;
- d) P20,000 as attorney's fees; and
- e) The costs of suit in the total amount of P35,602.50.

It is understood, however, that plaintiffs' entitlement to items a to d, is subject to the condition that they have not received the same or equivalent amounts in criminal case for Violation of Batas Pambansa Bilang 22, docketed as Criminal Case No. 30508-93, before the Regional Trial Court of Davao City, Branch 12, instituted against the defendant Danilo R. Napala by plaintiff Carmen S. Tongson.

SO ORDERED.[16]

The Spouses Tongson filed a partial motion for reconsideration which was denied by the Court of Appeals in its Resolution dated 10 March 2005.

The Issues

The Spouses Tongson raise the following issues:

1. WHETHER THE CONTRACT OF SALE CAN BE ANNULLED BASED ON THE FRAUD EMPLOYED BY NAPALA; and
2. WHETHER THE COURT OF APPEALS ERRED IN REDUCING THE AMOUNT OF DAMAGES AWARDED BY THE TRIAL COURT.

The Ruling of the Court

The petition has merit.

On the existence of fraud

A contract is a meeting of the minds between two persons, whereby one is bound to give something or to render some service to the other.[17] A valid contract requires the concurrence of the following essential elements: (1) consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price; (2) determinate subject matter; and (3) price certain in money or its equivalent.[18]

In the present case, there is no question that the subject matter of the sale is the 364-square meter Davao lot owned by the Spouses Tongson and the selling price agreed upon by the parties is P3,000,000. Thus, there is no dispute as regards the presence of the two requisites for a valid sales contract, namely, (1) a determinate subject matter and (2) a price certain in money.

The problem lies with the existence of the remaining element, which is consent of the contracting parties, specifically, the consent of the Spouses Tongson to sell the property to Napala. Claiming that their consent was vitiated, the Spouses Tongson point out that Napala's fraudulent representations of sufficient funds to pay for the property induced them into signing the contract of sale. Such fraud, according to the Spouses Tongson, renders the contract of sale void.

On the contrary, Napala insists that the Spouses Tongson willingly consented to the sale of the subject property making the contract of sale valid. Napala maintains that no fraud attended the execution of the sales contract.

The trial and appellate courts had conflicting findings on the question of whether the consent of the Spouses Tongson was vitiated by fraud. While the Court of Appeals agreed with the trial court's finding that Napala employed fraud when he assured the Spouses Tongson that the postdated PNB check was fully funded when in fact it was not, the Court of Appeals disagreed with the trial court's ruling that such fraud could be the basis for the annulment of the contract of sale between the parties.

Under Article 1338 of the Civil Code, there is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to. In order that fraud may vitiate consent, it must be the causal (*dolo causante*), not merely the incidental (*dolo incidente*), inducement to the making of the contract.[19] Additionally, the fraud must be serious.[20]

We find no causal fraud in this case to justify the annulment of the contract of sale between the parties. It is clear from the records that the Spouses Tongson agreed to sell their 364-square meter Davao property to Napala who offered to pay P3,000,000 as purchase price therefor. Contrary to the Spouses Tongson's belief that the fraud employed by Napala was "already operational at the time of the perfection of the contract of sale," the misrepresentation by Napala that the postdated PNB check would not bounce on its maturity hardly equates to *dolo causante*. Napala's assurance that the check he issued was fully funded was not the principal inducement for the Spouses Tongson to sign the Deed of Absolute Sale. Even before Napala issued the check, the parties had already consented and agreed to the sale transaction. The Spouses Tongson were never tricked into selling their property to Napala. On the contrary, they willingly accepted Napala's offer to purchase the property at P3,000,000. In short, there was a meeting of the minds as to the object of the sale as well as the consideration therefor.

Some of the instances where this Court found the existence of causal fraud include: (1) when the seller, who had no intention to part with her property, was "tricked into believing" that what she signed were papers pertinent to her application for the reconstitution of her burned certificate of title, not a deed of sale;[21] (2) when the signature of the authorized corporate officer was forged;[22] or (3) when the seller was seriously ill, and died a week after signing the deed of sale raising doubts on whether the seller could have read, or fully understood, the

contents of the documents he signed or of the consequences of his act.[23] Suffice it to state that nothing analogous to these badges of causal fraud exists in this case.

However, while no causal fraud attended the execution of the sales contract, there is fraud in its general sense, which involves a false representation of a fact,[24] when Napala inveigled the Spouses Tongson to accept the postdated PNB check on the representation that the check would be sufficiently funded at its maturity. In other words, the fraud surfaced when Napala issued the worthless check to the Spouses Tongson, which is definitely not during the negotiation and perfection stages of the sale. Rather, the fraud existed in the consummation stage of the sale when the parties are in the process of performing their respective obligations under the perfected contract of sale. In *Swedish Match, AB v. Court of Appeals*,[25] the Court explained the three stages of a contract, thus:

In general, contracts undergo three distinct stages, to wit: negotiation; perfection or birth; and consummation. Negotiation begins from the time the prospective contracting parties manifest their interest in the contract and ends at the moment of agreement of the parties. Perfection or birth of the contract takes place when the parties agree upon the essential elements of the contract. Consummation occurs when the parties fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof.

Indisputably, the Spouses Tongson as the sellers had already performed their obligation of executing the Deed of Sale, which led to the cancellation of their title in favor of EPBI. Respondents as the buyers, on the other hand, failed to perform their correlative obligation of paying the full amount of the contract price. While Napala paid P200,000 cash to the Spouses Tongson as partial payment, Napala issued an insufficiently funded PNB check to pay the remaining balance of P2.8 million. Despite repeated demands and the filing of the complaint, Napala failed to pay the P2.8 million until the present. Clearly, respondents committed a substantial breach of their reciprocal obligation, entitling the Spouses Tongson to the rescission of the sales contract. The law grants this relief to the aggrieved party, thus:

Article 1191 of the Civil Code provides:

Article 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

Article 1385 of the Civil Code provides the effects of rescission, viz:

ART. 1385. Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest; consequently, it can be carried out only when he who demands rescission can return whatever he may be obliged to restore.

Neither shall rescission take place when the things which are the object of the contract are legally in the possession of third persons who did not act in bad faith.

While they did not file an action for the rescission of the sales contract, the Spouses Tongson specifically prayed in their complaint for the annulment of the sales contract, for the immediate execution of a deed of reconveyance, and for the return of the subject property to them.[26] The Spouses Tongson likewise prayed "for such other reliefs which may be deemed just and equitable in the premises." In view of such prayer, and considering respondents' substantial breach of their obligation under the sales contract, the rescission of the sales contract is but proper and justified. Accordingly, respondents must reconvey the subject property to the Spouses Tongson, who in turn shall refund the initial payment of P200,000 less the costs of suit.

Napala's claims that rescission is not proper and that he should be given more time to pay for the unpaid remaining balance of P2,800,000 cannot be countenanced. Having acted fraudulently in performing his obligation, Napala is not entitled to more time to pay the remaining balance of P2,800,000, and thereby erase the default or breach that he had deliberately incurred.[27] To do otherwise would be to sanction a deliberate and reiterated infringement of the contractual obligations incurred by Napala, an attitude repugnant to the stability and obligatory force of contracts.[28]

The Court notes that the selling price indicated in the Deed of Absolute Sale was only P400,000, instead of the true purchase price of P3,000,000. The undervaluation of the selling price operates to defraud the government of the taxes due on the basis of the correct purchase price. Under the law,[29] the sellers have the obligation to pay the capital gains tax. In this case, Napala undertook to "advance" the capital gains tax, among other fees, under the Memorandum of Agreement, thus:

ATTY. ALABASTRO:

Q

Is it not a fact that you were the one who paid for the capital gains tax?

A

No, I only advanced the money.

Q

To whom?

A

To BIR.

COURT:

Q

You were the one who went to the BIR to pay the capital gains tax?

A

It is embodied in the memorandum agreement.[30]

While Carmen Tongson protested against the "very low consideration," she eventually agreed to the "reduced" selling price indicated in the Deed of Absolute since Napala assured her not to worry about the taxes and expenses, as he had allegedly made arrangements with the Bureau of Internal Revenue (BIR) regarding the payment of the taxes, thus:

Q

What is the amount in the Deed of Absolute Sale?

A

It was only Four Hundred Thousand. And he told me not to worry because x x x the BIR and not to worry because he will pay me what was agreed - the amount of Three Million and he will be paying all these expenses so I was thinking, if that is the case, anyway he paid me the Two Hundred Thousand cash and a subsequent Two Point Eight Million downpayment check so I really thought that he was paying the whole

amount.

COURT:

Proceed.

ATTY. LIZA:

Q

So you eventually agreed that this consideration be reduced to Four Hundred Thousand Pesos and to be reflected in the Deed of Absolute Sale?

A

Yes, but when I was complaining to him why it is so because I was worried why that was like that but Mr. Napala told me don't worry because [he] can remedy this. And I asked him how can [he] remedy this? And he told me we can make another Memorandum of Agreement.

COURT:

Q

Before you signed the Deed of Absolute Sale, you found out the amount?

A

Yes, sir.

Q

And you complained?

A

Yes.[31]

Considering that the undervaluation of the selling price of the subject property, initiated by Napala, operates to defraud the government of the correct amount of taxes due on the sale, the BIR must therefore be informed of this Decision for its appropriate action.

On the award of damages

Citing Article 1338 of the Civil Code, the trial court awarded P100,000 moral damages and P50,000 exemplary damages to the Spouses Tongson. While agreeing with the trial court on the Spouses Tongson's entitlement to moral and exemplary damages, the Court of Appeals reduced such awards for being unconscionable. Thus, the moral damages was reduced from P100,000 to P50,000, and the exemplary damages was reduced from P50,000 to P25,000.

As discussed above, Napala defrauded the Spouses Tongson in his acts of issuing a worthless check and representing to the Spouses Tongson that the check was funded, committing in the process a substantial breach of his obligation as a buyer. For such fraudulent acts, the law, specifically the Civil Code, awards moral damages to the injured party, thus:

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. (Emphasis supplied)

Considering that the Spouses Tongson are entitled to moral damages, the Court may also award exemplary damages, thus:

ART. 2232. In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.

Article 2234. When the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages would be awarded. In case liquidated damages have been agreed upon, although no proof of loss is necessary in order that such liquidated damages may be recovered, nevertheless, before the court may consider the question of granting exemplary in addition to the liquidated damages, the plaintiff must show that he would be entitled to moral, temperate or compensatory damages were it not for the stipulation for liquidated damages. (Emphasis supplied)

Accordingly, we affirm the Court of Appeals' awards of moral and exemplary damages, which we find equitable under the circumstances in this case.

WHEREFORE, we PARTIALLY GRANT the petition. We SET ASIDE the 31 August 2004 Decision and 10 March 2005 Resolution of the Court of Appeals in CA-G.R. CV No. 58242, except as to the award of moral and exemplary damages, and ORDER the rescission of the contract of sale between the Spouses Tongson and Emergency Pawnshop Bula, Inc.

Let a copy of this Decision be forwarded to the Bureau of Internal Revenue for its appropriate action.

SO ORDERED.

Brion, Del Castillo, Abad, and Perez, JJ., concur.

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

[2] Rollo, pp. 33-63. Penned by Associate Justice Perlita J. Tria Tirona with Associate Justices Ruben T. Reyes and Jose C. Reyes, Jr., concurring.

[3] Id. at 73-74.

[4] Exhibit "B."

[5] Exhibit "C."

[6] Records, pp. 4-5; TSN, 29 April 1994, pp. 10-11.

[7] TSN, 27 January 1995, pp. 5-6. Atty. Petronilo Raganas testified on this matter, thus:

ATTY. ALABASTRO:

Q

After this Exhibit "B" was prepared, a new Memorandum Agreement was prepared to replace this Memorandum of Agreement marked as Exhibit "B"?

A

That other Memorandum Agreement was made to replace that Memorandum Agreement in the amount of Three Million pesos to jibe with the Deed of Sale.

Q

So the first Memorandum Agreement which was prepared and replaced by another Memorandum Agreement with the consideration of Four Hundred Thousand pesos was this Memorandum Agreement wherein the consideration was Three Million Pesos?

A

Yes, sir.

Q

And of course, this was notarized by you, this Exhibit "B"?

A

Actually, this was notarized but this was replaced by another Memorandum of Agreement using the same document.

Q

You mean using the same document number, page number?

A

Yes, to jibe.

Q

I'm showing to you these documents consisting of 2 pages marked as Exhibit "J" and "J-1" with the letter head of Raganas Law Office. That is in your own handwriting?

A

Yes, sir.

Q

So, the true consideration of the transaction involving the property of the spouses is Three Million and not Four Hundred Thousand?

A

In principle, they agreed on that amount.

[8] Exhibit "EE-1."

[9] Exhibit "D."

[10] Exhibit "F."

[11] Docketed as Civil Case No. 21,858-93.

[12] Records, p. 27.

[13] Id. at 110.

[14] ART. 1338. There is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to.

[15] Rollo, p. 148. Penned by Judge Romeo D. Marasigan.

[16] Id. at 61-62.

[17] Article 1305 of the Civil Code.

[18] Article 1318 of the Civil Code in relation to Article 1458 of the same Code.

ART. 1318. There is no contract unless the following requisites concur:

- (1) Consent of the contracting parties;
- (2) Object certain which is the subject matter of the contract;
- (3) Cause of the obligation which is established.

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.

[19] Woodhouse v. Halili, 93 Phil. 526, 537 (1953).

[20] Article 1344 of the Civil Code provides: "In order that fraud may make a contract voidable, it should be serious and should not have been employed by both contracting parties.

Incidental fraud only obliges the person employing it to pay damages."

[21] Archipelago Management and Marketing Corp. v. CA, 359 Phil. 363 (1998).

[22] Sanchez v. Mapalad, G.R. No. 148516, 27 December 2007, 541 SCRA 397.

[23] Paragas v. Heirs of Balacano, G.R. No. 168220, 31 August 2005, 468 SCRA 717.

[24] See Bartolo v. Sandiganbayan, G.R. No. 172173, 16 April 2009.

[25] 483 Phil. 735, 750-751 (2004), citing Bugatti v. Court of Appeals, 397 Phil. 376 (2000).

[26] Records, p. 8.

[27] Luzon Brokerage v. Maritime Building Co., Inc., 150 Phil. 114, 125 (1972).

[28] Id.

[29] Capital Gains from Sale of Real Property. --

(1) In General. - The provisions of Section 39(B) notwithstanding, a final tax of six percent (6%) based on the gross selling price or current fair market value as determined in accordance with Section 6(E) of this Code, whichever is higher, is hereby imposed upon capital gains presumed to have been realized from the sale, exchange, or other disposition of real property located in the Philippines, classified as capital assets, including pacto de retro sales and other forms of conditional sales, by individuals, including estates and trusts: Provided,

That the tax liability, if any, on gains from sales or other dispositions of real property to the government or any of its political subdivisions or agencies or to government-owned or -controlled corporations shall be determined either under Section 24(A) or under this Subsection, at the option of the taxpayer; x x x

[30] TSN, 20 July 1995, p. 61.

[31] TSN, 29 April 1994, pp. 10-11.

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