

ROBERTO D. TUAZON, PETITIONER, VS. LOURDES Q. DEL ROSARIO-SUAREZ, CATALINA R. SUAREZ-DE LEON, WILFREDO DE LEON, MIGUEL LUIS S. DE LEON, ROMMEL LEE S. DE LEON, AND GUILLERMA L. S...

G.R. No. 168325. December 08, 2010

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

In a situation where the lessor makes an offer to sell to the lessee a certain property at a fixed price within a certain period, and the lessee fails to accept the offer or to purchase on time, then the lessee loses his right to buy the property and the owner can validly offer it to another.

This Petition for Review on Certiorari[1] assails the Decision[2] dated May 30, 2005 of the Court of Appeals (CA) in CA-G.R. CV No. 78870, which affirmed the Decision[3] dated November 18, 2002 of the Regional Trial Court (RTC), Branch 101, Quezon City in Civil Case No. Q-00-42338.

Factual Antecedents

Respondent Lourdes Q. Del Rosario-Suarez (Lourdes) was the owner of a parcel of land, containing more or less an area of 1,211 square meters located along Tandang Sora Street, Barangay Old Balara, Quezon City and previously covered by Transfer Certificate of Title (TCT) No. RT-56118[4] issued by the Registry of Deeds of Quezon City.

On June 24, 1994, petitioner Roberto D. Tuazon (Roberto) and Lourdes executed a Contract of Lease[5] over the abovementioned parcel of land for a period of three years. The lease commenced in March 1994 and ended in February 1997. During the effectivity of the lease, Lourdes sent a letter[6] dated January 2, 1995 to Roberto where she offered to sell to the latter subject parcel of land. She pegged the price at P37,541,000.00 and gave him two years from January 2, 1995 to decide on the said offer.

On June 19, 1997, or more than four months after the expiration of the Contract of Lease, Lourdes sold subject parcel of land to her only child, Catalina Suarez-De Leon, her son-in-law Wilfredo De Leon, and her two grandsons, Miguel Luis S. De Leon and Rommel S. De Leon (the De Leons), for a total consideration of only P2,750,000.00 as evidenced by a Deed of Absolute Sale[7] executed by the parties. TCT No. 177986[8] was then issued by the Registry of Deeds of Quezon City in the name of the De Leons.

The new owners through their attorney-in-fact, Guillerma S. Silva, notified Roberto to vacate the premises. Roberto refused hence, the De Leons filed a complaint for Unlawful Detainer before the Metropolitan Trial Court (MeTC) of Quezon City against him. On August 30, 2000, the MeTC rendered a Decision[9] ordering Roberto to vacate the property for non-payment of rentals and expiration of the contract.

Ruling of the Regional Trial Court

On November 8, 2000, while the ejectment case was on appeal, Roberto filed with the RTC of Quezon City a Complaint[10] for Annulment of Deed of Absolute Sale, Reconveyance, Damages and Application for Preliminary Injunction against Lourdes and the De Leons. On November 13, 2000, Roberto filed a Notice of Lis Pendens[11] with the Registry of Deeds of Quezon City.

On January 8, 2001, respondents filed An Answer with Counterclaim[12] praying that the Complaint be dismissed for lack of cause of action. They claimed that the filing of such case was a mere leverage of Roberto against them because of the favorable Decision issued by the MeTC in the ejectment case.

On September 17, 2001, the RTC issued an Order[13] declaring Lourdes and the De Leons in default for their failure to appear before the court for the second time despite notice. Upon a Motion for Reconsideration,[14] the trial court in an Order[15] dated October 19, 2001 set aside its Order of default.

After trial, the court a quo rendered a Decision declaring the Deed of Absolute Sale made by Lourdes in favor of the De Leons as valid and binding. The offer made by Lourdes to Roberto did not ripen into a contract to sell because the price offered by the former was not acceptable to the latter. The offer made by Lourdes is no longer binding and effective at the time she decided to sell the subject lot to the De Leons because the same was not accepted by Roberto. Thus, in a Decision dated November 18, 2002, the trial court dismissed the complaint. Its dispositive portion reads:

WHEREFORE, premises considered, judgment is hereby rendered dismissing the above-entitled Complaint for lack of merit, and ordering the Plaintiff to pay the Defendants, the following:

- the amount of P30,000.00 as moral damages;
- the amount of P30,000.00 as exemplary damages;
- the amount of P30,000.00 as attorney's fees; and
- cost of the litigation.

SO ORDERED.[16]

Ruling of the Court of Appeals

On May 30, 2005, the CA issued its Decision dismissing Roberto's appeal and affirming the Decision of the RTC.

Hence, this Petition for Review on Certiorari filed by Roberto advancing the following arguments:

I.

THE TRIAL COURT AND THE COURT OF APPEALS HAD DECIDED THAT THE "RIGHT OF FIRST REFUSAL" EXISTS ONLY WITHIN THE PARAMETERS OF AN "OPTION TO BUY", AND DID NOT EXIST WHEN THE PROPERTY WAS SOLD LATER TO A THIRD PERSON, UNDER FAVORABLE TERMS AND CONDITIONS WHICH THE FORMER BUYER CAN MEET.

II.

WHAT IS THE STATUS OR SANCTIONS OF AN APPELLEE IN THE COURT OF APPEALS WHO HAS NOT FILED OR FAILED TO FILE AN APPELLEE'S BRIEF?[17]

Petitioner's Arguments

Roberto claims that Lourdes violated his right to buy subject property under

the principle of "right of first refusal" by not giving him "notice" and the opportunity to buy the property under the same terms and conditions or specifically based on the much lower price paid by the De Leons.

Roberto further contends that he is enforcing his "right of first refusal" based on *Equatorial Realty Development, Inc. v. Mayfair Theater, Inc.*[18] which is the leading case on the "right of first refusal."

Respondents' Arguments

On the other hand, respondents posit that this case is not covered by the principle of "right of first refusal" but an unaccepted unilateral promise to sell or, at best, a contract of option which was not perfected. The letter of Lourdes to Roberto clearly embodies an option contract as it grants the latter only two years to exercise the option to buy the subject property at a price certain of P37,541,000.00. As an option contract, the said letter would have been binding upon Lourdes without need of any consideration, had Roberto accepted the offer. But in this case there was no acceptance made neither was there a distinct consideration for the option contract.

Our Ruling

The petition is without merit.

This case involves an option contract and not a contract of a right of first refusal

In *Beaumont v. Prieto*,[19] the nature of an option contract is explained thus:

In his Law Dictionary, edition of 1897, Bouvier defines an option as a contract, in the following language:

'A contract by virtue of which A, in consideration of the payment of a certain sum to B, acquires the privilege of buying from, or selling to, B certain securities or properties within a limited time at a specified price. (Story vs. Salamon, 71 N. Y., 420.)'

From Vol. 6, page 5001, of the work "Words and Phrases," citing the case of *Ide vs. Leiser* (24 Pac., 695; 10 Mont., 5; 24 Am. St. Rep., 17) the following quotation has been taken:

'An agreement in writing to give a person the 'option' to purchase lands within a given time at a named price is neither a sale nor an agreement to sell. It is simply a contract by which the owner of property agrees with another person that he shall have the right to buy his property at a fixed price within a certain time. He does not sell his land; he does not then agree to sell it; but he does sell something; that is, the right or privilege to buy at the election or option of the other party. The second party gets in praesenti, not lands, nor an agreement that he shall have lands, but he does get something of value; that is, the right to call for and receive lands if he elects. The owner parts with his right to sell his lands, except to the second party, for a limited period. The second party receives this right, or rather, from his point of view, he receives the right to elect to buy.

But the two definitions above cited refer to the contract of option, or, what amounts to the same thing, to the case where there was cause or consideration for the obligation x x x. (Emphasis supplied.)

On the other hand, in *Ang Yu Asuncion v. Court of Appeals*,[20] an elucidation on the "right of first refusal" was made thus:

In the law on sales, the so-called 'right of first refusal' is an innovative juridical relation. Needless to point out, it cannot be deemed a perfected contract of sale under Article 1458 of the Civil Code. Neither can the right of first refusal, understood in its normal concept, per se be brought within the purview of an option under the second paragraph of Article 1479, aforequoted, or possibly of an offer under Article 1319 of the same Code. An option or an offer would require, among other things, a clear certainty on both the object and the cause or consideration of the envisioned contract. In a right of first refusal, while the object might be made determinate, the exercise of the right, however, would be dependent not only on the grantor's eventual intention to enter into

a binding juridical relation with another but also on terms, including the price, that obviously are yet to be later firmed up. Prior thereto, it can at best be so described as merely belonging to a class of preparatory juridical relations governed not by contracts (since the essential elements to establish the vinculum juris would still be indefinite and inconclusive) but by, among other laws of general application, the pertinent scattered provisions of the Civil Code on human conduct.

Even on the premise that such right of first refusal has been decreed under a final judgment, like here, its breach cannot justify correspondingly an issuance of a writ of execution under a judgment that merely recognizes its existence, nor would it sanction an action for specific performance without thereby negating the indispensable element of consensuality in the perfection of contracts. It is not to say, however, that the right of first refusal would be inconsequential for, such as already intimated above, an unjustified disregard thereof, given, for instance, the circumstances expressed in Article 19 of the Civil Code, can warrant a recovery for damages. (Emphasis supplied.)

From the foregoing, it is thus clear that an option contract is entirely different and distinct from a right of first refusal in that in the former, the option granted to the offeree is for a fixed period and at a determined price. Lacking these two essential requisites, what is involved is only a right of first refusal.

In this case, the controversy is whether the letter of Lourdes to Roberto dated January 2, 1995 involved an option contract or a contract of a right of first refusal. In its entirety, the said letter-offer reads:

206 Valdes Street
Josefa Subd. Balibago
Angeles City 2009
January 2, 1995

Tuazon Const. Co.
986 Tandang Sora Quezon City

Dear Mr. Tuazon,

I received with great joy and happiness the big box of sweet grapes and ham, fit for a king's party. Thanks very much.

I am getting very old (79 going 80 yrs. old) and wish to live in the U.S.A. with my only family. I need money to buy a house and lot and a farm with a little cash to start.

I am offering you to buy my 1211 square meter at P37,541,000.00 you can pay me in dollars in the name of my daughter. I never offered it to anyone. Please shoulder the expenses for the transfer. I wish the Lord God will help you buy my lot easily and you will be very lucky forever in this place. You have all the time to decide when you can, but not for 2 years or more.

I wish you long life, happiness, health, wealth and great fortune always!

I hope the Lord God will help you be the recipient of multi-billion projects aid from other countries.

Thank you,

Lourdes Q. del Rosario vda de Suarez

It is clear that the above letter embodies an option contract as it grants Roberto a fixed period of only two years to buy the subject property at a price certain of P37,541,000.00. It being an option contract, the rules applicable are found in Articles 1324 and 1479 of the Civil Code which provide:

Art. 1324. When the offerer has allowed the offeree a certain period to accept, the offer may be withdrawn at

any time before acceptance by communicating such withdrawal, except when the option is founded upon a consideration, as something paid or promised.

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.

It is clear from the provision of Article 1324 that there is a great difference between the effect of an option which is without a consideration from one which is founded upon a consideration. If the option is without any consideration, the offeror may withdraw his offer by communicating such withdrawal to the offeree at anytime before acceptance; if it is founded upon a consideration, the offeror cannot withdraw his offer before the lapse of the period agreed upon.

The second paragraph of Article 1479 declares that "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." *Sanchez v. Rigos*[21] provided an interpretation of the said second paragraph of Article 1479 in relation to Article 1324. Thus:

There is no question that under Article 1479 of the new Civil Code "an option to sell," or "a promise to buy or to sell," as used in said article, to be valid must be "supported by a consideration distinct from the price." This is clearly inferred from the context of said article that a unilateral promise to buy or to sell, even if accepted, is only binding if supported by consideration. In other words, "an accepted unilateral promise can only have a binding effect if supported by a consideration, which means that the option can still be withdrawn, even if accepted, if the same is not supported by any consideration. Hence, it is not disputed that the option is without consideration. It can therefore be withdrawn notwithstanding the acceptance made of it by appellee.

It is true that under Article 1324 of the new Civil Code, the general rule regarding offer and acceptance is that, when the offerer gives to the offeree a certain period to accept, "the offer may be withdrawn at any time before acceptance" except when the option is founded upon consideration, but this general rule must be interpreted as modified by the provision of Article 1479 above referred to, which applies to "a promise to buy and sell" specifically. As already stated, this rule requires that a promise to sell to be valid must be supported by a consideration distinct from the price.

In *Diamante v. Court of Appeals*,[22] this Court further declared that:

A unilateral promise to buy or sell is a mere offer, which is not converted into a contract except at the moment it is accepted. Acceptance is the act that gives life to a juridical obligation, because, before the promise is accepted, the promisor may withdraw it at any time. Upon acceptance, however, a bilateral contract to sell and to buy is created, and the offeree ipso facto assumes the obligations of a purchaser; the offeror, on the other hand, would be liable for damages if he fails to deliver the thing he had offered for sale.

x x x x

Even if the promise was accepted, private respondent was not bound thereby in the absence of a distinct consideration. (Emphasis ours.)

In this case, it is undisputed that Roberto did not accept the terms stated in the letter of Lourdes as he negotiated for a much lower price. Roberto's act of negotiating for a much lower price was a counter-offer and is therefore not an acceptance of the offer of Lourdes. Article 1319 of the Civil Code provides:

Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer. (Emphasis supplied.)

The counter-offer of Roberto for a much lower price was not accepted by Lourdes. There is therefore no contract that was perfected between them with regard to the sale of subject property. Roberto, thus, does not have any right to demand that the property be sold to him at the price for which it was sold to the De Leons neither does he have the right to demand that said sale to the De Leons be annulled.

Equatorial Realty Development, Inc. v. Mayfair Theater, Inc. is not applicable here

It is the position of Roberto that the facts of this case and that of Equatorial are similar in nearly all aspects. Roberto is a lessee of the property like Mayfair Theater in Equatorial. There was an offer made to Roberto by Lourdes during the effectivity of the contract of lease which was also the case in Equatorial. There were negotiations as to the price which did not bear fruit because Lourdes sold the property to the De Leons which was also the case in Equatorial wherein Carmelo and Bauermann sold the property to Equatorial. The existence of the lease of the property is known to the De Leons as they are related to Lourdes while in Equatorial, the lawyers of Equatorial studied the lease contract of Mayfair over the property. The property in this case was sold by Lourdes to the De Leons at a much lower price which is also the case in Equatorial where Carmelo and Bauerman sold to Equatorial at a lesser price. It is Roberto's conclusion that as in the case of Equatorial, there was a violation of his right of first refusal and hence annulment or rescission of the Deed of Absolute Sale is the proper remedy.

Roberto's reliance in Equatorial is misplaced. Despite his claims, the facts in Equatorial radically differ from the facts of this case. Roberto overlooked the fact that in Equatorial, there was an express provision in the Contract of Lease that -

(i)f the LESSOR should desire to sell the leased properties, the LESSEE shall be given 30-days exclusive option to purchase the same.

There is no such similar provision in the Contract of Lease between Roberto and Lourdes. What is involved here is a separate and distinct offer made by Lourdes through a letter dated January 2, 1995 wherein she is selling the leased property to Roberto for a definite price and which gave the latter a definite period for acceptance. Roberto was not given a right of first refusal. The letter-offer of Lourdes did not form part of the Lease Contract because it was made more than six months after the commencement of the lease.

It is also very clear that in Equatorial, the property was sold within the lease period. In this case, the subject property was sold not only after the expiration of the period provided in the letter-offer of Lourdes but also after the effectivity of the Contract of Lease.

Moreover, even if the offer of Lourdes was accepted by Roberto, still the former is not bound thereby because of the absence of a consideration distinct and separate from the price. The argument of Roberto that the separate consideration was the liberality on the part of Lourdes cannot stand. A perusal of the letter-offer of Lourdes would show that what drove her to offer the property to Roberto was her immediate need for funds as she was already very old. Offering the property to Roberto was not an act of liberality on the part of Lourdes but was a simple matter of convenience and practicality as he was the one most likely to buy the property at that time as he was then leasing the same.

All told, the facts of the case, as found by the RTC and the CA, do not support Roberto's claims that the letter of Lourdes gave him a right of first refusal which is similar to the one given to Mayfair Theater in the case of Equatorial. Therefore, there is no justification to annul the deed of sale validly entered into by Lourdes with the De Leons.

What is the effect of the failure of Lourdes to file her appellee's brief at the CA?

Lastly, Roberto argues that Lourdes should be sanctioned for her failure to file her appellee's brief before the CA.

Certainly, the appellee's failure to file her brief would not mean that the case would be automatically decided against her. Under the circumstances, the prudent action on the part of the CA would be to deem Lourdes to have waived her right to file her appellee's brief. *De Leon v. Court of Appeals*,^[23] is instructive when this Court decreed:

On the second issue, we hold that the Court of Appeals did not commit grave abuse of discretion in considering the appeal submitted for decision. The proper remedy in case of denial of the motion to dismiss is to file the appellee's brief and proceed with the appeal. Instead, petitioner opted to file a motion for reconsideration which, unfortunately, was pro forma. All the grounds raised therein have been discussed in the first resolution of the respondent Court of Appeals. There is no new ground raised that might warrant reversal of the resolution. A cursory perusal of the motion would readily show that it was a near verbatim repetition of the grounds stated in the motion to dismiss; hence, the filing of the motion for reconsideration did not suspend the period for filing the appellee's brief. Petitioner was therefore properly deemed to have waived his right to file appellee's brief. (Emphasis supplied.)

In the above cited case, *De Leon* was the plaintiff in a Complaint for a sum of money in the RTC. He obtained a favorable judgment and so defendant went to the CA. The appeal of defendant-appellant was taken cognizance of by the CA but *De Leon* filed a Motion to Dismiss the Appeal with Motion to Suspend Period to file Appellee's Brief. The CA denied the Motion to Dismiss. *De Leon* filed a Motion for Reconsideration which actually did not suspend the period to file the appellee's brief. *De Leon* therefore failed to file his brief within the period specified by the rules and hence he was deemed by the CA to have waived his right to file appellee's brief.

The failure of the appellee to file his brief would not result to the rendition of a decision favorable to the appellant. The former is considered only to have waived his right to file the Appellee's Brief. The CA has the jurisdiction to resolve the case based on the Appellant's Brief and the records of the case forwarded by the RTC. The appeal is therefore considered submitted for decision and the CA properly acted on it.

WHEREFORE, the instant petition for review on certiorari is DENIED. The assailed Decision of the Court of Appeals in CA-G.R. CV No. 78870, which affirmed the Decision dated November 18, 2002 of the Regional Trial Court, Branch 101, Quezon City in Civil Case No. Q-00-42338 is AFFIRMED.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Abad,[*] and Perez, JJ., concur.

[*] In lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 917 dated November 24, 2010.

[1] Rollo, pp. 9-26.

[2] CA rollo, pp. 41-55; penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Roberto A. Barrios and Amelita G. Tolentino.

[3] Records, pp. 154-162.

[4] Id. at 7-9.

[5] Id. at 10-11.

[6] Id. at 14.

[7] Id. at 15-16.

[8] Id. at 17-18.

[9] Id. at 23-25.

[10] Id. at 1-6.

[11] Id. at 33-35.

[12] Id. at 48-54.

[13] Id. at 74.

[14] Id. at 75-78.

[15] Id. at 97.

[16] Id. at 162.

[17] Id. at 121-122.

[18] 332 Phil 525, 550 (1996).

[19] 41 Phil 670, 686-687 (1916).

[20] G.R. No. 109125, December 2, 1994, 238 SCRA 602, 614-615.

[21] 150-A Phil. 714, 721-722 (1972), citing *Southwestern Sugar and Molasses Co. v. Atlantic Gulf and Pacific Co.*, 97 Phil. 249 251-252 (1955).

[22] G.R. No. 51824, February 7, 1992, 206 SCRA 52, 62, citing Tolentino, *Civil Code of the Philippines*, vol. V, 1959 ed., 20-21.

[23] 432 Phil. 775, 791 (2002).

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