

ANDRE T. ALMOCERA, Petitioner, vs. JOHNNY ONG, Respondent.*G.R. No. 170479. February 18, 2008*

Ponente: CHICO-NAZARIO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-170479/>**CHICO-NAZARIO, J.:**

Before Us is a Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure which seeks to set aside the Decision[1] of the Court of Appeals dated 18 July 2005 in CA-G.R. CV No. 75610 affirming in toto the Decision[2] of Branch 11 of the Regional Trial Court (RTC) of Cebu City in Civil Case No. CEB-23687 and its Resolution[3] dated 16 November 2005 denying petitioner's motion for reconsideration. The RTC decision found petitioner Andre T. Almocera, Chairman and Chief Executive Officer of First Builder Multi-Purpose Cooperative (FBMC), solidarily liable with FMBC for damages.

Stripped of non-essentials, the respective versions of the parties have been summarized by the Court of Appeals as follows:

Plaintiff Johnny Ong tried to acquire from the defendants a "townhome" described as Unit No. 4 of Atrium Townhomes in Cebu City. As reflected in a Contract to Sell, the selling price of the unit was P3,400,000.00 pesos, for a lot area of eighty-eight (88) square meters with a three-storey building. Out of the purchase price, plaintiff was able to pay the amount of P1,060,000.00. Prior to the full payment of this amount, plaintiff claims that defendants Andre Almocera and First Builders fraudulently concealed the fact that before and at the time of the perfection of the aforesaid contract to sell, the property was already mortgaged to and encumbered with the Land Bank of the Philippines (LBP). In addition, the construction of the house has long been delayed and remains unfinished. On March 13, 1999, Lot 4-a covered by TCT No. 148818, covering the unit was advertised in a local tabloid for public auction for foreclosure of mortgage. It is the assertion of the plaintiff that had it not for the fraudulent concealment of the mortgage and encumbrance by defendants, he would have not entered into the contract to sell.

On the other hand, defendants assert that on March 20, 1995, First Builders Multi-purpose Coop. Inc., borrowed money in the amount of P500,000.00 from Tommy Ong, plaintiff's brother. This amount was used to finance the documentation requirements of the LBP for the funding of the Atrium Town Homes. This loan will be applied in payment of one (1) town house unit which Tommy Ong may eventually purchase from the project. When the project was under way, Tommy Ong wanted to buy another townhouse for his brother, Johnny Ong, plaintiff herein, which then, the amount of P150,000.00 was given as additional partial payment. However, the particular unit was not yet identified. It was only on January 10, 1997 that Tommy Ong identified Unit No. 4 plaintiff's chosen unit and again tendered P350,000.00 as his third partial payment. When the contract to sell for Unit 4 was being drafted, Tommy Ong requested that another contract to sell covering Unit 5 be made so as to give Johnny Ong another option to choose whichever unit he might decide to have. When the construction was already in full blast, defendants were informed by Tommy Ong that their final choice was Unit 5. It was only upon knowing that the defendants will be selling Unit 4 to some other persons for P4million that plaintiff changed his choice from Unit 5 to Unit 4.[4]

In trying to recover the amount he paid as down payment for the townhouse unit, respondent Johnny Ong filed a complaint for Damages before the RTC of Cebu City, docketed as Civil Case No. CEB-23687, against defendants

Andre T. Almocera and FBMC alleging that defendants were guilty of fraudulent concealment and breach of contract when they sold to him a townhouse unit without divulging that the same, at the time of the perfection of their contract, was already mortgaged with the Land Bank of the Philippines (LBP), with the latter causing the foreclosure of the mortgage and the eventual sale of the townhouse unit to a third person.

In their Answer, defendants denied liability claiming that the foreclosure of the mortgage on the townhouse unit was caused by the failure of complainant Johnny Ong to pay the balance of the price of said townhouse unit.

After the pre-trial conference was terminated, trial on the merits ensued. Respondent and his brother, Thomas Y. Ong, took the witness stand. For defendants, petitioner testified.

In a Decision dated 20 May 2002, the RTC disposed of the case in this manner:

WHEREFORE, in view of all the foregoing premises, judgment is hereby rendered in this case in favor of the plaintiff and against the defendants:

(a) Ordering the defendants to solidarily pay to the plaintiff the sum of P1,060,000.00, together with a legal interest thereon at 6% per annum from April 21, 1999 until its full payment before finality of the judgment. Thereafter, if the amount adjudged remains unpaid, the interest rate shall be 12% per annum computed from the time when the judgment becomes final and executory until fully satisfied;

(b) Ordering the defendants to solidarily pay to the plaintiff the sum of P100,000.00 as moral damages, the sum of P50,000.00 as attorney's fee and the sum of P15,619.80 as expenses of litigation; and

(c) Ordering the defendants to pay the cost of this suit.[5]

The trial court ruled against defendants for not acting in good faith and for not complying with their obligations under their contract with respondent. In the Contract to Sell[6] involving Unit 4 of the Atrium Townhomes, defendants agreed to sell said townhouse to respondent for P3,400,000.00. The down payment was P1,000,000.00, while the balance of P2,400,000.00 was to be paid in full upon completion, delivery and acceptance of the townhouse. Under the contract which was signed on 10 January 1997, defendants agreed to complete and convey to respondent the unit within six months from the signing thereof.

The trial court found that respondent was able to make a down payment or partial payment of P1,060,000.00 and that the defendants failed to complete the construction of, as well as deliver to respondent, the townhouse within six months from the signing of the contract. Moreover, respondent was not informed by the defendants at the time of the perfection of their contract that the subject townhouse was already mortgaged to LBP. The mortgage was foreclosed by the LBP and the townhouse was eventually sold at public auction. It said that defendants were guilty of fraud in their dealing with respondent because the mortgage was not disclosed to respondent when the contract was perfected. There was also non-compliance with their obligations under the contract when they failed to complete and deliver the townhouse unit at the agreed time. On the part of respondent, the trial court declared he was justified in suspending further payments to the defendants and was entitled to the return of the down payment.

Aggrieved, defendants appealed the decision to the Court of Appeals assigning the following as errors:

- THE LOWER COURT ERRED IN HOLDING THAT PLAINTIFF HAS A VALID CAUSE OF ACTION FOR DAMAGES AGAINST DEFENDANT(S).
- THE LOWER COURT ERRED IN HOLDING THAT DEFENDANT ANDRE T. ALMOCERA IS SOLIDARILY LIABLE WITH THE COOPERATIVE FOR THE DAMAGES TO THE PLAINTIFF.[7]

The Court of Appeals ruled that the defendants incurred delay when they failed to deliver the townhouse unit to

the respondent within six months from the signing of the contract to sell. It agreed with the finding of the trial court that the nonpayment of the balance of P2.4M by respondent to defendants was proper in light of such delay and the fact that the property subject of the case was foreclosed and auctioned. It added that the trial court did not err in giving credence to respondent's assertion that had he known beforehand that the unit was used as collateral with the LBP, he would not have proceeded in buying the townhouse. Like the trial court, the Court of Appeals gave no weight to defendants' argument that had respondent paid the balance of the purchase price of the townhouse, the mortgage could have been released. It explained:

We cannot find fault with the choice of plaintiff not to further dole out money for a property that in all events, would never be his. Moreover, defendants could, if they were really desirous of satisfying their obligation, demanded that plaintiff pay the outstanding balance based on their contract. This they had not done. We can fairly surmise that defendants could not comply with their obligation themselves, because as testified to by Mr. Almocera, they already signified to LBP that they cannot pay their outstanding loan obligations resulting to the foreclosure of the townhouse.[8]

Moreover, as to the issue of petitioner's solidary liability, it said that this issue was belatedly raised and cannot be treated for the first time on appeal.

On 18 July 2005, the Court of Appeals denied the appeal and affirmed in toto the decision of the trial court. The dispositive portion of the decision reads:

IN LIGHT OF ALL THE FOREGOING, this appeal is DENIED. The assailed decision of the Regional Trial Court, Branch 11, Cebu City in Civil Case No. CEB-23687 is AFFIRMED in toto.[9]

In a Resolution dated 16 November 2005, the Court of Appeals denied defendants' motion for reconsideration.

Petitioner is now before us pleading his case via a Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure. The petition raises the following issues:

- THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT DEFENDANT HAS INCURRED DELAY.
- THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN SUSTAINING RESPONDENT'S REFUSAL TO PAY THE BALANCE OF THE PURCHASE PRICE.
- THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT DEFENDANT ANDRE T. ALMOCERA IS SOLIDARILY LIABLE WITH THE DEFENDANT COOPERATIVE FOR DAMAGES TO PLAINTIFF.[10]

It cannot be disputed that the contract entered into by the parties was a contract to sell. The contract was denominated as such and it contained the provision that the unit shall be conveyed by way of an Absolute Deed of Sale, together with the attendant documents of Ownership – the Transfer Certificate of Title and Certificate of Occupancy – and that the balance of the contract price shall be paid upon the completion and delivery of the unit, as well as the acceptance thereof by respondent. All these clearly indicate that ownership of the townhouse has not passed to respondent.

In *Serrano v. Caguiat*, [11] we explained:

A contract to sell is akin to a conditional sale where the efficacy or obligatory force of the vendor's obligation to transfer title is subordinated to the happening of a future and uncertain event, so that if the suspensive condition does not take place, the parties would stand as if the conditional obligation had never existed. The suspensive condition is commonly full payment of the purchase price.

The differences between a contract to sell and a contract of sale are well-settled in jurisprudence. As early as 1951, in *Sing Yee v. Santos* [47 O.G. 6372 (1951)], we held that:

“x x x [a] distinction must be made between a contract of sale in which title passes to the buyer upon delivery of the thing sold and a contract to sell x x x where by agreement the ownership is reserved in the seller and is not to pass until the full payment of the purchase price is made. In the first case, non-payment of the price is a negative resolutive condition; in the second case, full payment is a positive suspensive condition. Being contraries, their effect in law cannot be identical. In the first case, the vendor has lost and cannot recover the ownership of the land sold until and unless the contract of sale is itself resolved and set aside. In the second case, however, the title remains in the vendor if the vendee does not comply with the condition precedent of making payment at the time specified in the contract.”

In other words, in a contract to sell, ownership is retained by the seller and is not to pass to the buyer until full payment of the price.

The Contract to Sell entered into by the parties contains the following pertinent provisions:

- TERMS OF PAYMENT:

4a. ONE MILLION PESOS (P1,000,000.00) is hereby acknowledged as Downpayment for the above-mentioned Contract Price.

4b. The Balance, in the amount of TWO MILLION FOUR HUNDRED PESOS (P2,400,000.00) shall be paid thru financing Institution facilitated by the SELLER, preferably Landbank of the Philippines (LBP).

Upon completion, delivery and acceptance of the BUYER of the Townhouse Unit, the BUYER shall have paid the Contract Price in full to the SELLER.

x x x x

- COMPLETION DATES OF THE TOWNHOUSE UNIT:

The unit shall be completed and conveyed by way of an Absolute Deed of Sale together with the attendant documents of Ownership in the name of the BUYER – the Transfer Certificate of Title and Certificate of Occupancy within a period of six (6) months from the signing of Contract to Sell.[12]

From the foregoing provisions, it is clear that petitioner and FBMC had the obligation to complete the townhouse unit within six months from the signing of the contract. Upon compliance therewith, the obligation of respondent to pay the balance of P2,400,000.00 arises. Upon payment thereof, the townhouse shall be delivered and conveyed to respondent upon the execution of the Absolute Deed of Sale and other relevant documents.

The evidence adduced shows that petitioner and FBMC failed to fulfill their obligation -- to complete and deliver the townhouse within the six-month period. With petitioner and FBMC's non-fulfillment of their obligation, respondent refused to pay the balance of the contract price. Respondent does not ask that ownership of the townhouse be transferred to him, but merely asks that the amount or down payment he had made be returned to him.

Article 1169 of the Civil Code reads:

Art. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

(1) When the obligation or the law expressly so declares; or

(2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or

(3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins.

The contract subject of this case contains reciprocal obligations which were to be fulfilled by the parties, i.e., to complete and deliver the townhouse within six months from the execution of the contract to sell on the part of petitioner and FBMC, and to pay the balance of the contract price upon completion and delivery of the townhouse on the part of the respondent.

In the case at bar, the obligation of petitioner and FBMC which is to complete and deliver the townhouse unit within the prescribed period, is determinative of the respondent's obligation to pay the balance of the contract price. With their failure to fulfill their obligation as stipulated in the contract, they incurred delay and are liable for damages.[13] They cannot insist that respondent comply with his obligation. Where one of the parties to a contract did not perform the undertaking to which he was bound by the terms of the agreement to perform, he is not entitled to insist upon the performance of the other party.[14]

On the first assigned error, petitioner insists there was no delay when the townhouse unit was not completed within six months from the signing of the contract inasmuch as the mere lapse of the stipulated six (6) month period is not by itself enough to constitute delay on his part and that of FBMC, since the law requires that there must either be judicial or extrajudicial demand to fulfill an obligation so that the obligor may be declared in default. He argues there was no evidence introduced showing that a prior demand was made by respondent before the original action was instituted in the trial court.

We do not agree.

Demand is not necessary in the instant case. Demand by the respondent would be useless because the impossibility of complying with their (petitioner and FBMC) obligation was due to their fault. If only they paid their loans with the LBP, the mortgage on the subject townhouse would not have been foreclosed and thereafter sold to a third person.

Anent the second assigned error, petitioner argues that if there was any delay, the same was incurred by respondent because he refused to pay the balance of the contract price.

We find his argument specious.

As above-discussed, the obligation of respondent to pay the balance of the contract price was conditioned on petitioner and FBMC's performance of their obligation. Considering that the latter did not comply with their obligation to complete and deliver the townhouse unit within the period agreed upon, respondent could not have incurred delay. For failure of one party to assume and perform the obligation imposed on him, the other party does not incur delay.[15]

Under the circumstances obtaining in this case, we find that respondent is justified in refusing to pay the balance of the contract price. He was never in possession of the townhouse unit and he can no longer be its owner since ownership thereof has been transferred to a third person who was not a party to the proceedings below. It would simply be the height of inequity if we are to require respondent to pay the balance of the contract price. To allow

this would result in the unjust enrichment of petitioner and FBMC. The fundamental doctrine of unjust enrichment is the transfer of value without just cause or consideration. The elements of this doctrine which are present in this case are: enrichment on the part of the defendant; impoverishment on the part of the plaintiff; and lack of cause. The main objective is to prevent one to enrich himself at the expense of another. It is commonly accepted that this doctrine simply means a person shall not be allowed to profit or enrich himself inequitably at another's expense.[16] Hence, to allow petitioner and FBMC keep the down payment made by respondent amounting to P1,060,000.00 would result in their unjust enrichment at the expense of the respondent. Thus, said amount should be returned.

What is worse is the fact that petitioner and FBMC intentionally failed to inform respondent that the subject townhouse which he was going to purchase was already mortgaged to LBP at the time of the perfection of their contract. This deliberate withholding by petitioner and FBMC of the mortgage constitutes fraud and bad faith. The trial court had this say:

In the light of the foregoing environmental circumstances and milieu, therefore, it appears that the defendants are guilty of fraud in dealing with the plaintiff. They performed voluntary and willful acts which prevent the normal realization of the prestation, knowing the effects which naturally and necessarily arise from such acts. Their acts import a dishonest purpose or some moral obliquity and conscious doing of a wrong. The said acts certainly give rise to liability for damages (8 Manresa 72; Borrell-Macia 26-27; 3 Camus 34; O'Leary v. Macondray & Company, 454 Phil. 812; Heredia v. Salinas, 10 Phil. 157). Article 1170 of the New Civil Code of the Philippines provides expressly that "those who in the performance of their obligations are guilty of fraud and those who in any manner contravene the tenor thereof are liable for damages.[17]

On the last assigned error, petitioner contends that he should not be held solidarily liable with defendant FBMC, because the latter is a separate and distinct entity which is the seller of the subject townhouse. He claims that he, as Chairman and Chief Executive Officer of FBMC, cannot be held liable because his representing FBMC in its dealings is a corporate act for which only FBMC should be held liable.

This issue of piercing the veil of corporate fiction was never raised before the trial court. The same was raised for the first time before the Court of Appeals which ruled that it was too late in the day to raise the same. The Court of Appeals declared:

In the case below, the pleadings and the evidence of the defendants are one and the same and never had it made to appear that Almocera is a person distinct and separate from the other defendant. In fine, we cannot treat this error for the first time on appeal. We cannot in good conscience, let the defendant Almocera raise the issue of piercing the veil of corporate fiction just because of the adverse decision against him. x x x.[18]

To allow petitioner to pursue such a defense would undermine basic considerations of due process. Points of law, theories, issues and arguments not brought to the attention of the trial court will not be and ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory not ventilated before the trial court.[19]

As to the award of damages granted by the trial court, and affirmed by the Court of Appeals, we find the same to be proper and reasonable under the circumstances.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals dated 18 July 2005 in CA-G.R. CV No. 75610 is AFFIRMED. Costs against the petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

- [1] Associate Justice Pampio A. Abarintos with Associate Justices Mercedes Gozo-Dadole and Ramon M. Bato, Jr., concurring; rollo, pp. 25-32;
- [2] Penned by Hon. Isaias P. Dicdican.
- [3] Id. at 33-34.
- [4] Rollo, pp. 26-27.
- [5] Id. at 47.
- [6] Exhibit A.
- [7] Rollo, pp. 15-16.
- [8] Id. at 30.
- [9] Id. at 32.
- [10] Id. at 16.
- [11] G.R. No. 139173, 28 February 2007, 517 SCRA 57, 64-65.
- [12] Rollo, p. 28-29.
- [13] Leaño v. Court of Appeals, 420 Phil. 836, 848 (2001).
- [14] Agustin v. Court of Appeals, G.R. No. 84751, 6 June 1990, 186 SCRA 375, 383.
- [15] Agustin v. Court of Appeals, id., citing Abaya v. Standard-Vacuum Oil Co., 101 Phil. 1262 (1957).
- [16] P.C. Javier & Sons, Inc. v. Court of Appeals, G.R. No. 129552, 29 June 2005, 462 SCRA 36, 47.
- [17] Rollo, p. 44.
- [18] Id. at 31.
- [19] Valdez v. China Banking Corporation, G.R. No. 155009, 12 April 2005, 455 SCRA 687, 696.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.