

## **SPOUSES NESTOR CASTILLO AND ROSIE REYES-CASTILLO, PETITIONERS, VS. SPOUSES RUDY REYES AND CONSOLACION REYES, RESPONDENTS.**

*G.R. No. 170917. November 28, 2007*

Ponente: NACHURA, J.

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### **NACHURA, J.:**

Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the December 6, 2005 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 79385.

On November 7, 1997, Emmaliza Bohler and respondents negotiated for the sale of the former's house and lot located at Poblacion, New Washington, Aklan, to the latter for the consideration of P165,000.00.[2] On the following day, November 8, they signed an Agreement which pertinently reads as follows:

We, the undersigned, agree to the following terms and conditions regarding the sale of the house and lot located at Poblacion, New Washington, Aklan:

- That the total amount to be paid shall be One Hundred Sixty-Five Thousand Pesos (P165,000.00) to be paid in full on or before the 15th of December 1997;
- That a partial payment (sic) a total amount of One Hundred Thirty Thousand Pesos (P130,000.00) shall be made today, the 8th of November 1997;
- That the remaining balance in the amount (sic) of Thirty-Five Thousand Pesos (P35,000.00) shall be made as per #1 above;
- That the buyers, represented by the Spouses Rudy and Consolacion Reyes (sic) shall be responsible for all the legal and other related documents and procedures regarding this sale;
- That the seller, represented by Ms. Emmaliza M. Bohler, shall vacate the said house and lot on or (sic) the 31st of January, 1998;
- That the tenants, represented by the Spouses Romeo and Epifania Vicente, shall vacate the same on or before the 30th of April, 1998; and
- That all parties concerned shall agree to all the terms and conditions stipulated herein.[3]

Upon the signing of the said contract, respondents handed to Bohler P20,000.00 cash and allegedly a P110,000.00-check. Bohler nonetheless insisted that the entire partial payment should be in cash as she needed it to redeem the subject property from the bank on the following Monday. She hence demanded for its payment up to midnight on that day otherwise she would cancel the sale. Because the respondents failed to make good the P110,000.00, Bohler subsequently sold the property to the petitioners.[4]

Having learned of the subsequent sale, the respondents immediately tendered the check, asked the bank for a

certification that it was funded and consulted their lawyer who sent a notice of lis pendens to the Register of Deeds and the Provincial Assessor.[5] Civil Case No. 6070 for annulment of sale, specific performance and damages was subsequently filed by the respondents with the Regional Trial Court (RTC) of Kalibo, Aklan against Bohler and the petitioners.

On February 21, 2003, the RTC rendered its Decision[6] declaring the November 8, 1997 Agreement a contract to sell. Considering that no actual sale happened between Bohler and the respondents, the former could validly sell the property to the petitioners. Thus, the trial court dismissed the complaint.

Aggrieved, respondents appealed the case to the CA. In the challenged December 6, 2005 Decision,[7] the appellate court reversed the trial court's ruling, declared the November 8, 1997 Agreement a contract of sale, and annulled the subsequent sale to the petitioners. The CA ruled, among others, that the wordings of the agreement and the conduct of the parties suggest that they intended to enter into a contract of sale. Ownership was not reserved by the vendor and non-payment of the purchase price was not made a condition for the contract's effectivity.[8]

Petitioners, thus, filed the instant petition for review on certiorari imputing the following errors to the CA:

- The appellate court erred in declaring the contract styled AGREEMENT dated 08 November 1997 as a "contract of sale" and not a contract to sell.
- The appellate court erred in declaring the petitioners in bad faith when they bought the subject matter house and lot on 02 March 1998 from Emmaliza H. Bohler.[9]

The pivotal question to be addressed by the Court in this petition is whether the transaction between Bohler and the respondents is a perfected contract of sale or a mere contract to sell.

Sale is a consensual contract and is perfected by mere consent, which is manifested by a meeting of the minds as to the offer and acceptance thereof on the subject matter, price and terms of payment of the price.[10] In the instant case, the November 8, 1997 Agreement clearly indicates that Bohler and the Spouses Reyes had a meeting of the minds on the subject matter of the contract, the house and lot; on the price, P165,000.00; and on the terms of payment, an initial payment of P130,000.00 on the date of execution of the agreement and the remaining balance on or before December 15, 1997. At that precise moment when the consent of both parties was given, the contract of sale was perfected.

The said agreement cannot be considered 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.[11] The November 8, 1997 Agreement herein cannot be characterized as a contract to sell because the seller made no express reservation of ownership or title to the subject house and lot.[12] Instead, the Agreement contains all the requisites of a contract of sale.

WHEREFORE, premises considered, the petition for review on certiorari is DENIED DUE COURSE.

**SO ORDERED.**

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

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[1] Penned by Associate Justice Enrico A. Lanzas, with Associate Justices Mercedes Gozo-Dadole and Pampio A. Abarintos, concurring; rollo, pp. 50-64.

[2] Id. at 42-43.

[3] Id. at 45.

[4] Id. at 44.

[5] Id. at 43.

[6] Id. at 41-48.

[7] Supra note 1.

[8] Rollo, p. 58.

[9] Id. at 20.

[10] Clemen v. Lobregat, G.R. No. 137845, September 9, 2004, 438 SCRA 22, 35.

[11] Chua v. Court of Appeals, 449 Phil. 25, 41-42 (2003), citing Salazar v. Court of Appeals, 258 SCRA 317, 325 (1996).

[12] See Coronel v. Court of Appeals, 331 Phil. 294, 312 (1996).

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