

SPS. JAIME BENOS AND MARINA BENOS, PETITIONERS, VS. SPS. GREGORIO LAWILAO AND JANICE GAIL LAWILAO, RESPONDENTS.*G.R. NO. 172259. December 05, 2006*

Ponente: YNARES-SANTIAGO, J.

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This petition for review under Rule 45 of the Rules of Court assails the December 5, 2005 Decision[1] of the Court of Appeals in CA-G.R. SP No. 78845, affirming the Judgment[2] dated July 1, 2003 of the Regional Trial Court of Bontoc, Mountain Province, Branch 35, in Civil Case No. 1091. The Regional Trial Court reversed the Decision[3] dated November 14, 2002 of the Municipal Circuit Trial Court of Bauko, Mountain Province in Civil Case No. 314, and ordered the consolidation of ownership of subject property in the name of respondent-spouses Gregorio and Janice Gail Lawilao. Also assailed is the March 17, 2006 Resolution[4] denying petitioners' motion for reconsideration.

The antecedent facts are as follows:

On February 11, 1999, petitioner-spouses Jaime and Marina Benos ("the Benos spouses") and respondent-spouses Gregorio and Janice Gail Lawilao ("the Lawilao spouses") executed a Pacto de Retro Sale[5] where the Benos spouses sold their lot covered by Tax Declaration No. 25300 and the building erected thereon for P300,000.00, one half of which was to be paid in cash to the Benos spouses and the other half to be paid to the bank to pay off the loan of the Benos spouses which was secured by the same lot and building. Under the contract, the Benos spouses could redeem the property within 18 months from date of execution by returning the contract price, otherwise, the sale would become irrevocable without necessity of a final deed to consolidate ownership over the property in the name of the Lawilao spouses.

After paying the P150,000.00, the Lawilao spouses immediately took possession of the property and leased out the building thereon. However, instead of paying the loan to the bank, Janice Lawilao restructured it twice. Eventually, the loan became due and demandable.

On August 14, 2000, a son of the Benos spouses paid the bank P159,000.00 representing the principal and interest. On the same day, the Lawilao spouses also went to the bank and offered to pay the loan, but the bank refused to accept the payment. The Lawilao spouses then filed with the Municipal Circuit Trial Court a petition[6] docketed as Civil Case No. 310 for consignation against the bank and simultaneously deposited the amount of P159,000.00. Upon the bank's motion, the court dismissed the petition for lack of cause of action.

Subsequently, the Lawilao spouses filed with the Municipal Circuit Trial Court a complaint docketed as Civil Case No. 314, for consolidation of ownership. This complaint is the precursor of the instant petition. The Benos spouses moved to dismiss on grounds of lack of jurisdiction and lack of cause of action but it was denied and the parties went to trial.

On November 14, 2002, the Municipal Circuit Trial Court rendered judgment in favor of the Benos spouses, the

dispositive portion of which states:

IN THE LIGHT of all the foregoing considerations, for lack of legal and factual basis to demand consolidation of ownership over the subject property, the above-entitled case is hereby ordered dismissed.

No pronouncement as to damages on the ground that no premium should be assessed on the right to litigate.

No costs.

SO ORDERED.[7]

The Lawilao spouses appealed before the Regional Trial Court which reversed the Municipal Circuit Trial Court and declared the ownership of the subject property consolidated in favor of the Lawilao spouses.[8]

The Benos spouses appealed to the Court of Appeals which affirmed the Regional Trial Court on December 5, 2005. The dispositive portion of the Decision reads:

WHEREFORE, the petition for review is DISMISSED for lack of sufficient merit. The decision rendered by the Regional Trial Court, Branch 35, Bontoc, Mountain Province in Civil Case No. 1091 on 1 July 2003, reversing the decision of the Municipal Circuit Trial Court of Bauko-Sabangan, Mountain Province in (Civil Case No.) 314, is AFFIRMED.

SO ORDERED.[9]

The appellate court denied petitioners' motion for reconsideration, hence, the instant petition on the following assignment of errors:

4.0.It was error for the Regional Trial Court and, subsequently, the Court of Appeals to rule that respondents can consolidate ownership over the subject property.

4.1.It was likewise error for said lower courts not to have ruled that the contract between the parties is actually an equitable mortgage.[10]

The Benos spouses argue that consolidation is not proper because the Lawilao spouses violated the terms of the contract by not paying the bank loan; that having breached the terms of the contract, the Lawilao spouses cannot insist on the performance thereof by the Benos spouses; that the contract was actually an equitable mortgage as shown by the inadequacy of the consideration for the subject property; and that respondent-spouses' remedy should have been for recovery of the loan or foreclosure of mortgage.

The Lawilao spouses, on the other hand, assert that the Pacto de Retro Sale reflected the parties' true agreement; that the Benos spouses cannot vary its terms and conditions because they did not put in issue in their pleadings its ambiguity, mistake or imperfection as well as its failure to express the parties' true intention; that the Benos spouses admitted its genuineness and due execution; and that the delivery of the property to the Lawilao spouses after the execution of the contract shows that the agreement was a sale with a right of repurchase and not an equitable mortgage.

The Lawilao spouses also claim that they complied with their obligation when they offered to pay the loan to the bank and filed a petition for consignation; and that because of the failure of the Benos spouses to redeem the property, the title and ownership thereof immediately vested in them (Lawilao spouses).

The issue for resolution is whether the Lawilao spouses can consolidate ownership over the subject property.

The petition is impressed with merit.

In ruling for respondents, the Court of Appeals held that: (1) the pacto de retro sale was perfected because the

parties voluntarily agreed upon the object thereof and the price; (2) the Lawilao spouses acquired possession over the property immediately after execution of the pacto de retro sale; (3) the pacto de retro sale does not provide for automatic rescission in case the Lawilao spouses fail to pay the full price; (4) the Benos spouses did not rescind the contract after the Lawilao spouses failed to pay the P150,000.00 loan; (5) Janice Lawilao offered to pay the loan and deposited P150,000.00 to the bank although the period for payment had expired thus, complying with Article 1592 of the Civil Code allowing payment even after expiration of the period as long as no demand for rescission of the contract had been made either judicially or by a notarial act; (6) the title and ownership of the Lawilao spouses became absolute when the Benos spouses failed to repurchase the lot within the redemption period; and (7) the payment by the Benos spouses' son of P159,000.00 to the bank does not amount to a repurchase as it violates Article 1616 of the Civil Code requiring the vendor to return to the vendee the price of the sale, the expenses of the contract and other necessary and useful expenses.[11]

Contrary to the aforesaid findings, the evidence shows that the Lawilao spouses did not make a valid tender of payment and consignation of the balance of the contract price. As correctly found by the Regional Trial Court:

As matters stand, no valid tender of payment and/or consignation of the P150,000.00 which the Appellant (Lawilaos) still owes the Appellee (Benos) has been effected by the former. The amount of P159,000.00 deposited with the MCTC is in relation to Civil Case No. 310 earlier dismissed by said court, and not to the instant action. Hence, this Court cannot automatically apply such sum in satisfaction of the aforesaid debt of the Appellant and order the Appellee creditor to accept the same.[12] (Emphasis supplied)

The Lawilao spouses did not appeal said finding, and it has become final and binding on them. Although they had repeatedly alleged in their pleadings that the amount of P159,000.00 was still with the trial court which the Benos spouses could withdraw anytime, they never made any step to withdraw the amount and thereafter consign it. Compliance with the requirements of tender and consignation to have the effect of payment are mandatory. Thus

Tender of payment is the manifestation by debtors of their desire to comply with or to pay their obligation. If the creditor refuses the tender of payment without just cause, the debtors are discharged from the obligation by the consignation of the sum due. Consignation is made by depositing the proper amount to the judicial authority, before whom the tender of payment and the announcement of the consignation shall be proved. All interested parties are to be notified of the consignation. Compliance with these requisites is mandatory.[13] (Emphasis supplied)

In the instant case, records show that the Lawilao spouses filed the petition for consignation against the bank in Civil Case No. 310 without notifying the Benos spouses. The petition was dismissed for lack of cause of action against the bank. Hence, the Lawilao spouses failed to prove their offer to pay the balance of the purchase price and consignation. In fact, even before the filing of the consignation case, the Lawilao spouses never notified the Benos spouses of their offer to pay.

Thus, as far as the Benos are concerned, there was no full and complete payment of the contract price, which gives them the right to rescind the contract pursuant to Articles 1191 in relation to Article 1592 of the Civil Code, which provide:

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 of the Mortgage Law.

Art. 1592. In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by a notarial act. After the demand, the court may not grant him a new term.

In the instant case, while the Benos spouses did not rescind the Pacto de Retro Sale through a notarial act, they nevertheless rescinded the same in their Answer with Counterclaim where they stated that:

- Plaintiffs did not perform their obligation as spelled out in the Pacto de Retro Sale (ANNEX "A"), particularly the assumption of the obligation of defendants to the Rural Bank of Bontoc. Defendants were the ones who paid their loan through their son, ZALDY BENOS. As a result, ANNEX "A" is rendered null and of no effect. Therefore, the VENDEE a retro who is one of plaintiffs herein cannot consolidate her ownership over the property subject of the null and ineffective instrument.

- Since plaintiffs did not perform their corresponding obligation under ANNEX "A", defendants have been all too willing to return the amount of ON[E] HUNDRED FIFTY THOUSAND PESOS (P150,000.00) and reasonable interest thereon to plaintiffs. But plaintiffs refused to accept the same.

With the filing of this answer, defendants pray that this serves as a notice of tender of payment, and they shall consign the amount with the proper court as soon as it is legally feasible.[14]

They also prayed that the Municipal Circuit Trial Court render judgment "[d]eclaring the Pacto de Retro Sale rescinded or ineffective or void for lack of, or insufficient consideration." [15]

In *Iringan v. Court of Appeals*, [16] we ruled that "even a crossclaim found in the Answer could constitute a judicial demand for rescission that satisfies the requirement of the law." Similarly, the counterclaim of the Benos spouses in their answer satisfied the requisites for the judicial rescission of the subject Pacto de Retro Sale.

The Municipal Circuit Trial Court thus correctly dismissed the complaint for consolidation of ownership filed by the Lawilao spouses for their failure to comply with the conditions of the Pacto de Retro Sale. Nevertheless, it refused to declare the rescission of the Pacto de Retro Sale as prayed for in the counterclaim of the Benos spouses, stating that:

How about the other obligations and/or rights owing to either party by virtue of the Pacto de Retro Sale? This, the court opines that it can not delve into without overstepping the limits of its functions there being appropriate remedies. It is hornbook in our jurisprudence that a right in law may be enforced and a wrong way be remedied but always through the appropriate action.[17]

The issue of rescission having been put in issue in the answer and the same having been litigated upon without objections by the Lawilao spouses on grounds of jurisdiction, the Municipal Circuit Trial Court should have ruled on the same and wrote *finis* to the controversy.

Thus, as a necessary consequence of its ruling that the Lawilao spouses breached the terms of the Pacto de Retro Sale, the Municipal Circuit Trial Court should have rescinded the Pacto de Retro Sale and directed the Benos spouses to return P150,000.00 to the Lawilao spouses, pursuant to our ruling in *Cannu v. Galang*, [18] to wit:

Petitioners maintain that inasmuch as respondents-spouses Galang were not granted the right to unilaterally rescind the sale under the Deed of Sale with Assumption of Mortgage, they should have first asked the court for the rescission thereof before they fully paid the outstanding balance of the mortgage loan with the NHMFC.

They claim that such payment is a unilateral act of rescission which violates existing jurisprudence.

In *Tan v. Court of Appeals*, this court said:

. . . [T]he power to rescind obligations is implied in reciprocal ones in case one of the obligors should not comply with what is incumbent upon him is clear from a reading of the Civil Code provisions. However, it is equally settled that, in the absence of a stipulation to the contrary, this power must be invoked judicially; it cannot be exercised solely on a party's own judgment that the other has committed a breach of the obligation. Where there is nothing in the contract empowering the petitioner to rescind it without resort to the courts, the petitioner's action in unilaterally terminating the contract in this case is unjustified.

It is evident that the contract under consideration does not contain a provision authorizing its extrajudicial rescission in case one of the parties fails to comply with what is incumbent upon him. This being the case, respondents-spouses should have asked for judicial intervention to obtain a judicial declaration of rescission. Be that as it may, and considering that respondents-spouses' Answer (with affirmative defenses) with Counterclaim seeks for the rescission of the Deed of Sale with Assumption of Mortgage, it behooves the court to settle the matter once and for all than to have the case re-litigated again on an issue already heard on the merits and which this court has already taken cognizance of. Having found that petitioners seriously breached the contract, we, therefore, declare the same is rescinded in favor of respondents-spouses.

As a consequence of the rescission or, more accurately, resolution of the Deed of Sale with Assumption of Mortgage, it is the duty of the court to require the parties to surrender whatever they may have received from the other. The parties should be restored to their original situation.

The record shows petitioners paid respondents-spouses the amount of P75,000.00 out of the P120,000.00 agreed upon. They also made payments to NHMFC amounting to P55,312.47. As to the petitioners' alleged payment to CERF Realty of P46,616.70, except for petitioner Leticia Cannu's bare allegation, we find the same not to be supported by competent evidence. As a general rule, one who pleads payment has the burden of proving it. However, since it has been admitted in respondents-spouses' Answer that petitioners shall assume the second mortgage with CERF Realty in the amount of P35,000.00, and that Adelina Timbang, respondents-spouses' very own witness, testified that same has been paid, it is but proper to return this amount to petitioners. The three amounts total P165,312.47 -- the sum to be returned to petitioners.

WHEREFORE, the petition is GRANTED. The Decision dated December 5, 2005 and Resolution dated March 17, 2006 of the Court of Appeals in CA-G.R. SP No. 78845, affirming the Judgment dated July 1, 2003 of the Regional Trial Court of Bontoc, Mountain Province, Branch 35, in Civil Case No. 1091, are REVERSED and SET ASIDE. The Decision dated November 14, 2002 of the Municipal Circuit Trial Court of Bauko, Mountain Province in Civil Case No. No. 314 dismissing respondents' complaint for consolidation of ownership and damages is REINSTATED WITH THE MODIFICATION that the Pacto de Retro Sale dated February 11, 1999 is declared rescinded and petitioners are ordered to return the amount of P150,000.00 to respondents. No costs. SO ORDERED.

Panganiban, C.J., (Chairperson), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Rollo, pp. 25-33. Penned by Associate Justice Santiago Javier Ranada and concurred in by Associate Justices Roberto A. Barrios and Mario L. Guariña III.

[2] Id. at 46-49. Penned by Pairing Judge Artemio B. Marrero.

[3] Id. at 38-45. Penned by Judge James P. Kibiten.

[4] Id. at 23.

[5] Id. at 35-36.

[6] Id. at 42.

[7] Id. at 44-45.

[8] Id. at 49.

[9] Id. at 32.

[10] Id. at 12.

[11] Id. at 30-32.

[12] Id. at 49.

[13] Ramos v. Sarao, G.R. No. 149756, February 11, 2005, 451 SCRA 103, 118-119.

[14] CA rollo, p. 37.

[15] Id. at 38.

[16] 418 Phil. 286, 296 (2001).

[17] Rollo, p. 44.

[18] G.R. No. 139523, May 26, 2005, 459 SCRA 80, 99-101.

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