

TRADERS ROYAL BANK, PETITIONER, VS. CUISON LUMBER CO., INC., AND JOSEFA JERODIAS VDA. DE CUISON, RESPONDENTS.*G.R. No. 174286. June 05, 2009*

Ponente: BRION, J.

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BRION, J.:

We review in this petition for review on certiorari[1] the decision[2] and resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 49900. The CA affirmed with modifications the decision[4] of the Regional Trial Court (RTC), Davao City, Branch 13. The RTC ruled in favor of respondents Cuison Lumber Co., Inc. (CLCI) and Josefa Vda. De Cuison (Mrs. Cuison), collectively referred to as respondents, in the action they commenced for breach of contract, specific performance, damages, and attorney's fees, with prayer for the issuance of a writ of preliminary injunction against petitioner Traders Royal Bank (bank).

THE BACKGROUND FACTS

On July 14, 1978 and December 9, 1979, respectively, CLCI, through its then president, Roman Cuison Sr., obtained two loans from the bank. The loans were secured by a real estate mortgage over a parcel of land covered by Transfer Certificate of Title No. 10282 (subject property). CLCI failed to pay the loan, prompting the bank to extrajudicially foreclose the mortgage on the subject property. The bank was declared the highest bidder at the public auction that followed, conducted on August 1, 1985. A Certificate of Sale and a Sheriff's Final Certificate of Sale were subsequently issued in the bank's favor.

In a series of written communications between CLCI and the bank, CLCI manifested its intention to restructure its loan obligations and to repurchase the subject property. On July 31, 1986, Mrs. Cuison, the widow and administratrix of the estate of Roman Cuison Sr., wrote the bank's Officer-in-Charge, Remedios Calaguas, a letter indicating her offered terms of repurchase. She stated:

- That I will pay the interest of P115,538.66, plus the additional expenses of P17,293.69, the total amount of which is P132,832.35 on August 8, 1986;
- That I will pay 20% of the bid price of P949,632.84, plus whatever interest accruing within sixty (60) days from August 8, 1986;
- That whatever remaining balance after the above two (2) payments shall be amortized for five (5) years on equal monthly installments including whatever interest accruing lease on diminishing balance.[5]

CLCI paid the bank P50,000.00 (on August 8, 1986) and P85,000.00 (on September 3, 1986). The bank received and regarded these amounts as "earnest money" for the repurchase of the subject property. On October 20, 1986, the bank sent Atty. Roman Cuison, Jr. (Atty. Cuison), as the president and general manager of CLCI, a letter informing CLCI of the bank's board of directors' resolution of October 10, 1986 (TRB Repurchase Agreement), laying down the conditions for the repurchase of the subject property:

This is to formally inform you that our Board of Directors, in its regular meeting held on October 10, 1986,

passed a resolution for the repurchase of your property acquired by the bank, subject to the following terms and conditions, viz:

1. That the repurchase price shall be at total bank's claim as of the date of implementation;
2. That client shall initially pay P132,000.00 within fifteen (15) days from the expiration of the redemption period (August 8, 1986) and further payment of P200,632.84, representing 20% of the bid price, to be remitted on or before October 31, 1986;
3. That the balance of P749,000.00 to be paid in three (3) years in twelve (12) quarterly amortizations, with interest rate at 26% computed on diminishing balance;
4. That all the interest and other charges starting from August 8, 1986 to date of approval shall be paid first before implementation of the request; interest as of October 31, 1986 is P65,669.53;
5. Possession of the property shall be deemed transferred after signing of the Contract to Sell. However, title to the property shall be delivered only upon full payment of the repurchase price via Deed of Absolute Sale;
6. Registration fees, documentary stamps, transfer taxes at the date of sale and other similar government impost shall be for the exclusive account of the buyer;
7. The improvement of the property shall at all times be covered by insurance against loss with a policy to be obtained from a reputable company which designates the bank as beneficiary but premiums shall be paid by the client;
8. That the sale is good for thirty (30) days from the buyer's receipt of notice of approval of the offer; otherwise, sale is automatically cancelled;
9. Effective upon signing of the Contract to Sell, all realty taxes which will become due on the property shall be for the account of the buyer;
10. That the first quarterly installment shall be due within ninety (90) days of approval hereof, and the succeeding installment shall be due every three (3) months thereafter;
11. Upon default of the buyer to pay two (2) successive quarterly installments, contract is automatically cancelled at the Bank's option and all payments already made shall be treated as rentals or as liquidated damages; and
12. Other terms and conditions that the bank may further impose to protect its interest.

Should you agree with the above terms and conditions please sign under "Conforme" on the space provided below.

We attach herewith your Statement of Account[6] as of October 31, 1986, for your reference.

Thank you.

Very truly yours,
(Signed)

Conforme: (Not signed)[7]

CLCI failed to comply with the above terms notwithstanding the extensions of time given by the bank. Nevertheless, CLCI tendered, on February 3, 1987, a check for P135,091.57 to cover fifty percent (50%) of the twenty percent (20%) bid price. The check, however, was returned for "insufficiency of funds." On May 13, 1987, CLCI tendered an additional P50,000.00.[8] On May 29, 1987, the bank sent Atty. Cuison a letter informing him

that the P185,000.00 CLCI paid was not a deposit, but formed part of the earnest money under the TRB Repurchase Agreement. On August 28, 1987, Atty. Cuison, by letter, requested that CLCI's outstanding obligation of P1,221,075.61 (as of July 31, 1987) be reduced to P1 million, and the amount of P221,075.61 be condoned by the bank. To show its commitment to the request, CLCI paid the bank P100,000.00 and P200,000.00 on August 28, 1987. The bank credited both payments as earnest money.

A year later, CLCI inquired about the status of its request. The bank responded that the request was still under consideration by the bank's Manila office. On September 30, 1988, the bank informed CLCI that it would resell the subject property at an offered price of P3 million, and gave CLCI 15 days to make a formal offer; otherwise, the bank would sell the subject property to third parties. On October 26, 1988, CLCI offered to repurchase the subject property for P1.5 million, given that it had already tendered the amount of P400,000.00 as earnest money.

CLCI subsequently claimed that the bank breached the terms of repurchase, as it had wrongly considered its payments (in the amounts of P140,485.18, P200,000.00 and P100,000.00) as earnest money, instead of applying them to the purchase price. Through its counsel, CLCI demanded that the bank rectify the repurchase agreement to reflect the true consideration agreed upon for which the earnest money had been given. The bank did not act on the demand. Instead, it informed CLCI that the amounts it received were not earnest money, and that the bank was willing to return these sums, less the amounts forfeited to answer for the unremitted rentals on the subject property.

In view of these developments, CLCI and Mrs. Cuison, on February 10, 1989, filed with the RTC a complaint for breach of contract, specific performance, damages, and attorney's fees against the bank. On April 20, 1989, the bank filed its Answer alleging that the TRB repurchase agreement was already cancelled given CLCI's failure to comply with its provisions; by way of counterclaim, the bank also demanded the payment of the accrued rentals in the subject property as of January 31, 1989, and the award of moral damages and exemplary damages as well as attorney's fees and litigation expenses for the unfounded suit instituted against the bank by CLCI.[9] After trial on the merits, the RTC ruled in respondents' favor. The dispositive portion of its November 4, 1994 Decision states:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiffs and against the defendant bank, ordering said defendant bank to:

1. Execute and consummate a Contract to Sell which is reflective of the true consideration indicated in the Resolution of the Board of Directors of Traders Royal Bank held on October 10, 1986 (Exhibit "F" and Exhibit "13"), duly accrediting the amount of P435,000 as earnest money to be part of the price, the mode of payment being on quarterly installment, but the period within which the first quarterly payment being on quarterly payment shall be made to commence upon the execution of said Contract to Sell;
2. Pay to plaintiffs the amounts of P50,000.00 in concept of moral damages, P20,000.00 as exemplary damages;
3. Pay attorney's fees of P20,000.00; and
4. Pay litigation expenses in the amount of P2,000.00.

The counterclaim of defendant bank is hereby dismissed.

SO ORDERED.

On appeal to the CA, the bank pointed out the misappreciation of facts the RTC committed and argued that: first, the repurchase agreement did not ripen into a perfected contract; and second, even assuming that there was a perfected repurchase agreement, the bank had the right to revoke it and apply the payments already made to the rentals due for the use of the subject property, or as liquidated damages under paragraph 11 of the TRB

Repurchase Agreement, since CLCI violated its terms and conditions. Further, the bank contended that CLCI had abandoned the TRB Repurchase Agreement in its letters dated August 28, 1987 and October 26, 1988 when it proposed to repurchase the subject property for P1 million and P1.5 million, respectively. Lastly, the bank objected to the award of damages in the plaintiffs' favor.

THE CA DECISION

On March 31, 2006, the CA issued the challenged Decision and affirmed the RTC's factual findings and legal conclusions. Although it deleted the awards of attorney's fees, moral and exemplary damages, the CA ruled that there was a perfected contract to repurchase the subject property given the bank's acceptance (as stated in the letter dated October 20, 1986) of CLCI's proposal contained in Mrs. Cuison's letter of July 31, 1986. The CA distinguished between a condition imposed on the perfection of the contract and a condition imposed on the performance of an obligation, and declared that the conditions laid down in the letter dated October 20, 1986 merely relate to the manner the obligation is to be performed and implemented; failure to comply with the latter obligation does not result in the failure of the contract and only gives the other party the options and/or remedies to protect its interest. The CA held that the same conclusion obtains even if the letter of October 20, 1986 is considered a counter-offer by the bank; CLCI's payment of P135,000.00 operated as an implied acceptance of the bank's counter-offer, notwithstanding CLCI's failure to expressly manifest its conformer. In light of these findings, the CA went on to acknowledge the validity of the terms of paragraph 11 of the TRB Repurchase Agreement, but nonetheless held that CLCI has not yet violated its terms given the bank's previous acts (i.e., the grant of extensions to pay), which showed that it had waived the agreement's original terms of payment.

The CA rejected the theory that CLCI had abandoned the terms of the TRB Repurchase Agreement and found no incompatibility between the agreement and the contents of the August 28, 1987 and October 26, 1988 letters which did not show an implied abandonment by CLCI, nor the latter's expressed intent to cancel or abandon the perfected repurchase agreement. In the same manner, the CA struck down the bank's position that CLCI's payments were "deposits" rather than earnest money. The appellate court reasoned that while the amounts tendered cannot be strictly considered as earnest money under Article 1482 of the New Civil Code,[10] they were nevertheless within the concept of earnest money under this Court's ruling in *Spouses Doromal, Sr. v. CA*,[11] since they were paid as a guarantee so that the buyer would not back out of the contract.

The CA however ruled that the award of moral and exemplary damages, attorney's fees and litigation expenses lacked factual and legal support. The CA found that the bank acted in good faith and based its actions on the erroneous belief that CLCI had already abandoned the repurchase agreement. Likewise, the award of moral damages was not in order as there was no showing that CLCI's reputation was debased or besmirched by the bank's action of applying the previous payments made to the interest and rentals due on the subject property; neither is Mrs. Cuison entitled to moral damages without any evidence to justify this award. The CA also ruled that there was nothing in the records to warrant the awards of exemplary damages and attorney's fees.

The bank subsequently moved but failed to secure a reconsideration of the CA decision. The bank thus came to us with the following -

ISSUES

I.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN APPREHENDING THE SIGNIFICATION (SIC) OF THE TERM "OFFER" ON THE ONE HAND AND "ACCEPTANCE" ON THE OTHER HAND IN SALES CONTRACT WHICH ERROR LED IT TO ARRIVE AT A WRONG CONCLUSION OF LAW.

II.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN ITS INTERPRETATION OF THE STIPULATIONS AND TERMS AND CONDITIONS EMBODIED IN THE PROPOSED REPURCHASE AGREEMENT xxx WHICH LED IT TO ERRONEOUSLY CONCLUDE THAT THERE WAS A "PERFECTED" REPURCHASE AGREEMENT BETWEEN RESPONDENTS AND PETITIONER AND WHICH INTERPRETATION IS NOT IN ACCORDANCE WITH THE APPLICABLE LAW AND ESTABLISHED JURISPRUDENCE.

Reduced to the most basic, the main issue posed is whether or not a perfected contract of repurchase existed and can be enforced between the parties.

THE COURT'S RULING

We GRANT the petition.

The case presents to us as threshold issue the presence or absence of consent as a requisite for a perfected contract to repurchase the subject property. The RTC ruled that a perfected contract existed based mainly on the following facts: first, the existence of the TRB Repurchase Agreement which "clearly depicts the repurchase agreement of the subject property under the terms therein embodied"; and second, the payment of earnest money in the total amount of P435,000.00 which forms part of the price and, as initial payment, is proof of the perfection of the contract.[12] In concurring with the foregoing findings on appeal, the CA, in turn, declared that there was a meeting of the minds between the parties on the offer and acceptance for the repurchase of the subject property under the following quoted facts:

It may be recalled that it was Mrs. Cuison, through her letter of July 31, 1986, who proposed to repurchase the foreclosed property. She in fact had tendered right away an amount of P50,000.00 as partial payment of the P132,000.00 she had promised to pay as initial payment. In response, TRB sent a letter dated October 20, 1986 to Atty. Cuison informing him of the resolution passed by the Board of Directors of TRB acknowledging the proposal of Ms. Cuison to repurchase the property. Under the circumstance, the proposal made by Ms. Cuison constituted the "offer" contemplated by law, and the reply of TRB was the corresponding "acceptance" of the proposal-offer.

x x x

Conceding arguendo that TRB's letter-response October 20, 1986 constituted a counter-offer or politacion, CLCI's ensuing remittance of P135,000.00 as initial payment of the price, operates effectively as an implied acceptance of TRB's counter-offer. The absence of a signature to signify plaintiff's conforme to the repurchase agreement is of no moment. While the conforme portion of the subject repurchase agreement indeed bears no signature at all, this fact, however, does not detract from the accomplished fact that plaintiffs had acquiesced or assented to the standing "conditional counter-offer" of TRB. Plaintiffs' "conforme" would at best be a mere formality considering that the repurchase agreement had already been perfected, if impliedly.[13]

Based on these findings, the crucial points that the lower courts apparently considered were Mrs. Cuison's letter of July 31, 1986 to the bank; the bank's letter of October 20, 1986 to CLCI; and the parties' subsequent conduct showing their acknowledgement of the existence of their agreement, specifically, the respondents' payments (designated as earnest money) and the bank's acceptance of these payments. However, unlike the RTC's conclusion that relied on CLCI's payment and the bank's acceptance of the payment as "earnest money," the CA concluded that there was a perfected contract, either because of the bank's acceptance of CLCI's offer (made through Mrs. Cuison's letter of July 31, 1986), or by CLCI's implied acceptance indicated by its initial payments in compliance with the terms of the TRB Repurchase Agreement.

The petitioner bank, of course, argues differently and concludes that the undisputed facts of the case show that

there was no meeting of the minds between the parties given CLCI's failure to give its consent and conformity to the bank's letter of October 20, 1986, confirmed by the testimony of Atty. Cuison, no less, when he denied that CLCI consented to the agreement's terms of implementation.

Our task in this petition for review on certiorari is not to review the factual findings of the CA and the RTC, but to determine whether or not, on the basis of the said findings, the conclusions of law reached by the said courts are correct.

Under the law, a contract is perfected by mere consent, that is, from the moment that there is a meeting of the offer and the acceptance upon the thing and the cause that constitute the contract.[14] The law requires that the offer must be certain and the acceptance absolute and unqualified.[15] An acceptance of an offer may be express and implied; a qualified offer constitutes a counter-offer.[16] Case law holds that an offer, to be considered certain, must be definite,[17] while an acceptance is considered absolute and unqualified when it is identical in all respects with that of the offer so as to produce consent or a meeting of the minds.[18] We have also previously held that the ascertainment of whether there is a meeting of minds on the offer and acceptance depends on the circumstances surrounding the case.[19]

In Villonco Realty Co. v. Bormacheco,[20] the Court found a perfected contract of sale between the parties after considering the parties' written communications showing the offer (counter-offer) and acceptance by the seller who formally manifested his conformity with the offer in the buyer's letter. We took note of the acts of the parties - the payment of the buyer of an amount representing the partial payment under the contract; the acceptance of the partial payment by the seller; the allowance of the buyer for the seller to encash the check containing the partial payment; the subsequent return of the amount representing the partial payment by the buyer with the corresponding interest stated in the buyer's letter (offer) - and considered them evidence of the perfection of the sale. Under these circumstances, we also declared that a change in a phrase in the offer to purchase, that does not essentially change the terms of the offer, does not amount to a rejection of the offer and the tender of a counter-offer.

In Schuback & Sons Philippine Trading Corp. v. CA,[21] we declared a meeting of minds between the vendor and the vendee even though the quantity of goods purchased had not been fully determined. We noted that the vendee, after expressing his intention to purchase the merchandise, simultaneously enclosed a purchase order whose receipt prompted the vendor to immediately order the merchandise. We also took into account the act of the vendee in requesting for a discount as proof of his acceptance of the quoted price.

Yuviengco v. Dacuycuy[22] yielded a different result, as we considered that the letter and telegrams sent by the parties to each other showed that there was no meeting of minds in the absence of an unconditional acceptance to the terms of the contract of sale; otherwise, the buyers would not have included the phrase "to negotiate details" when they agreed to the property that was subject of the proposed contract.

Similarly, in Philippine National Bank v. CA,[23] we ruled that there was no perfected contract of sale because the specified terms and conditions imposed under the facts of the case constituted counter-offers against each other that were not accepted by either of the parties. This case involved a first contract, involving the same property, which the parties mutually cancelled; we said that the terms of this earlier contract cannot be considered in determining the acceptance and compliance with the terms of a proposed second contract - a distinct and separate contract from the one earlier aborted.

The incomplete details of the agreement led us to conclude in Insular Life Assurance Co. Ltd. v. Assets Builders Corp.[24] that no perfected contract existed; there were "other matters or details - in addition to the subject matter and the consideration - [that] would be stipulated and agreed." We likewise considered the subsequent acts

between the parties and the existence of a second proposal which belied the perfection of any initial contract.

The recent *Navarra v. Planters Development Bank*[25] is another case where we saw no perfected contract, as the offer was incomplete for lack of agreed details on the manner of paying the purchase price; there was also no acceptance as the letter of Planters Development Bank indicated the need to discuss other details of the transaction.

All these cases illustrate the rule that the concurrence of the offer and acceptance is vital to the birth and the perfection of a contract. The clear and neat principle is that the offer must be certain and definite with respect to the cause or consideration and object of the proposed contract, while the acceptance of this offer - express or implied - must be unmistakable, unqualified, and identical in all respects to the offer. The required concurrence, however, may not always be immediately clear and may have to be read from the attendant circumstances; in fact, a binding contract may exist between the parties whose minds have met, although they did not affix their signatures to any written document.[26]

The facts of the present case, although ambivalent in some respects, point on the whole to the conclusion that both parties agreed to the repurchase of the subject property.

A reading of the petitioner's letter of October 20, 1986 informing CLCI that the bank's board of directors "passed a resolution for the repurchase of [your] property" shows that the tenor of acceptance, except for the repurchase price, was subject to conditions not identical in all respects with the CLCI's letter-offer of July 31, 1986. In this sense, the bank's October 20, 1986 letter was effectively a counter-offer that CLCI must be shown to have accepted absolutely and unqualifiedly in order to give birth to a perfected contract. Evidence exists showing that CLCI did not sign any document to show its conformity with the bank's counter-offer. Testimony also exists explaining why CLCI did not sign; Atty. Cuison testified that CLCI did not agree with the implementation of the repurchase transaction since the bank made a wrong computation.[27]

These indicators notwithstanding, we find that CLCI accepted the terms of the TRC Repurchase Agreement and thus unqualifiedly accepted the bank's counter-offer under the TRB Repurchase Agreement and, in fact, partially executed the agreement, as shown from the following undisputed evidence:

(a)

The letter-reply dated November 29, 1986 of Atty. Cuison, as president and general manager of CLCI, to the bank (in response to the bank's demand letter dated November 27, 1986 to pay 20% of the bid price); CLCI requested an extension of time, until the end of December 1986, to pay its due obligation;[28]

(b)

Mrs. Cuison's letter-reply of February 3, 1987 (to the bank's letter of January 13, 1987) showed that she acknowledged CLCI's failure to comply with its requested extension and proposed a new payment scheme that would be reasonable given CLCI's critical economic difficulties; Mrs. Cuison tendered a check for P135,091.57, which represented 50% of the 20% bid price;[29]

(c)

The CLCI's continuous payments of the repurchase price after their receipt of the bank's letter of October 20, 1986;

(d)

CLCI's possession of the subject property pursuant to paragraph 5 of the TRB Repurchase Agreement,

notwithstanding the absence of a signed contract to sell between the parties;

x x x

We counted the following facts, too, as indicators leading to the conclusion that a perfected contract existed: CLCI did not raise any objection to the terms and conditions of the TRB Repurchase Agreement, and instead, unconditionally paid without protests or objections[30]; CLCI's acknowledgment of their obligations under the TRB Repurchase Agreement (as shown by Atty. Cuison's letter of November 29, 1986); and Atty. Cuison's admission that the TRB Repurchase Agreement was already a negotiated agreement between CLCI and the bank, as shown by the following testimony:

Q

When you received this document, this Exh. "F" from the defendant bank, did you already consider this as an agreement?

A

We consider that as a negotiated agreement pending the documentation of the formal contract to sell which is stated under the repurchase agreement.

Q

In other words, at the time you received this document Exh. "F," which was on October 23, 1986 date of receipt, was there already a meeting of the minds between the parties?

A

That is precisely we put [sic] the earnest money because we were of the opinion that the bank is already agreeable to the implementation of the repurchase agreement.

x x x

COURT

Q

Insofar as Exh. "F" is concerned?

A

There was initially, that is precisely we [sic] deposited in consideration of the repurchase agreement.[31]

The bank, for its part, showed its recognition of the existence of a repurchase agreement between itself and CLCI by the following acts:

(a)

The letter dated November 27, 1986 of the bank, reminding CLCI that it was remiss in its commitments to pay 20% of the bid price under the terms of the TRB Repurchase Agreement;

(b)

In the same letter, the bank gave CLCI an extension of time (until November 30, 1986) to comply with its past due obligations under the agreement;

(c)

The bank's acceptance of CLCI's payments as earnest money for the repurchase of the property;

(d)

CLCI's continued possession of the subject property with the bank's consent;

(e)

The bank's grant of extensions to CLCI for the payment of its obligations under the contract;

(f)

The Statement of Account dated July 31, 1987 showing that the bank applied CLCI's payments according to the terms of the TRB Repurchase Agreement;

(g)

The letter of January 26, 1989 of the bank's counsel, Atty. Abarquez, addressed to CLCI's counsel, showing the bank's recognition that there was an agreement between the bank and CLCI, which the latter failed to honor; and

(h)

The testimonies of the bank's witnesses - Mr. Eulogio Giramis^[32] and Ms. Arlene Aportadera,^[33] the bank's employees who handled the CLCI transactions - who admitted the existence of the repurchase agreement with CLCI and the latter's failure to comply with the agreement's terms.

Admittedly, some evidence on record may be argued to point to the absence of a meeting of the minds (more particularly, the previous offers made by CLCI to change the payment scheme of the repurchase of the subject property which was not accepted; the bank's expressed intent to offer the subject property for sale to third persons at a higher price; and the unaccepted counter-offer by the respondents after the bank increased the purchase price).^[34] These incidents, however, were the results of CLCI's failure to comply with its obligations to pay the amounts due on the stipulated time and were made after the parties' minds had met on the terms of the contract. The seemingly contrary indications, therefore, do not go into and affect the perfection of the contract; they came after the contract had been perfected and, as discussed below, were indicative of the bank's cancellation of the repurchase agreement.

In light of this conclusion, we now determine the consequential rights, obligations and liabilities of the parties. It is at this point that we diverge from the conclusions of the CA and the RTC, as we conclude that while there was a perfected contract between the parties, the bank effectively cancelled the contract when it communicated with CLCI that it would sell the subject property at a higher price to third parties, giving CLCI 15 days to make a formal offer, and disregarding CLCI's counter-offer to buy the subject property for P1.5 million. We arrive at this conclusion after considering the following reasons:

First, the bank communicated its intent not to proceed with the repurchase as above outlined and formally cancelled the TRB Repurchase Agreement in its letters dated January 11 and 30, 1989 to CLCI.^[35] Thus, CLCI's rights acquired under the TRB Repurchase Agreement to repurchase the subject property have been defeated by its own failure to comply with its obligations under the agreement. The right to cancel for breach is provided under paragraph 11 of the TRB Repurchase Agreement, as follows:

- Upon default of the buyer to pay two (2) successive quarterly installments, contract is automatically cancelled at the Bank's option and all payments already made shall be treated as rentals or as liquidated damages;

We note, additionally, that the TRB Repurchase Agreement is in the nature of a contract to sell where the title to

the subject property remains in the bank's name, as the vendor, and shall only pass to the respondents, as vendees, upon the full payment of the repurchase price.[36] The settled rule for contracts to sell is that the full payment of the purchase price is a positive suspensive condition; the failure to pay in full is not to be considered a breach, casual or serious, but simply an event that prevents the obligation of the vendor to convey title from acquiring any obligatory force.[37] Viewed in this light, the bank cannot be compelled to perform its obligations under the TRB Repurchase Agreement that has been rendered ineffective by the respondents' non-performance of their own obligations.

Second, the respondents violated the terms and conditions of the TRB Repurchase Agreement when they failed to pay their obligations under the agreement as these obligations fell due. Paragraphs 2 and 10 of the TRB Repurchase Agreement are clear on the respondents' obligation to pay the bid price and the quarterly installments. Paragraphs 2 and 10 state:

- That client shall initially pay P132,000.00 within fifteen (15) days from the expiration of the redemption period (August 8, 1986) and further payment of P200,632.84 representing 20% of the bid price to be remitted on or before October 31, 1986;

xxx xxx xxx

- That the first quarterly installment shall be due within ninety (90) days of approval hereof, and the succeeding installment shall be due every three (3) months thereafter;

The approval referred to under paragraph 10 is the approval by the bank of the repurchase of the subject property, as indicated in the bank's letter of October 20, 1986 which states, "This is to formally inform you that our Board of Directors in its regular meeting held on October 10, 1986, passed a resolution for the repurchase of your property acquired by the bank..." It was on the basis of this approval and the quoted terms of the agreement that the bank issued its Statement of Account dated July 31, 1987 indicating that the respondents were already in default, not only with respect to the 20% of the bid price, but also with the three quarterly installments.

Third, the respondents themselves claim that the bank violated the agreement when it applied the respondents' payments to the interest and penalties due without the respondents' consent, instead of applying these to the repurchase price for the subject property.[38] An examination of the provisions of the TRB Repurchase Agreement reveals that the bank is allowed to apply the respondents' payments first to the amounts due as interests and other charges, before applying any payment to the repurchase price. Paragraph 4 of the agreement provides:

4. That all the interest and other charges starting from August 8, 1986 to date of approval shall be paid first before implementation of the request; interest as of October 31, 1986 is P65,669.53;

Under these terms, the bank cannot be faulted for the application of payments it made. Likewise, the bank cannot be faulted for the application of other amounts paid as rentals as this is allowed under paragraph 11, quoted above, of the agreement.

Fourth, the petitioner bank cannot be said, as the CA ruled, to have already waived the terms of the TRB Repurchase Agreement by extending the time to pay and subsequently accepting late payments. The CA's conclusion lacks factual and legal basis taking into account that the Statement of Account of July 31, 1987, heretofore cited, which shows that the bank considered the respondents already in default. At this point, Atty. Cuison, by letter, requested that part of its outstanding obligation be condoned by the bank, paying P300,000.00 as of August 31, 1987, which amount the bank accepted as earnest money. For one whole year thereafter, neither party moved. Significantly, the respondents, who had continuing payments to make and who had the burden of

complying with the terms of the agreement, failed to act except to ask the bank for the status of its requested condonation. Under these facts, a continuing breach of the agreement took place, even granting that a waiver had intervened as of August 31, 1987. Thus, the bank was well within its right to consider the agreement cancelled when, in September 1988, it changed the repurchase terms to P3.0 million. We find it significant that the respondents, instead of asserting its rights under the TRB Repurchase Agreement, counter-offered P1.5 million with the P400,000.00 already paid as part of the purchase price. At that point, it was clear that even the respondents themselves considered the TRB Repurchase Agreement cancelled.

Lastly, the perfected repurchase agreement itself provides for the respondents' possession of the subject property; in fact, the respondents have been in continuous possession of the subject property since October 1986, despite the absence of a contract to sell apparently with the bank's consent. The agreement also provides under its paragraph 11 that upon the respondents' default and the cancellation of the agreement, all payments already made shall be treated as rentals or as liquidated damages.

The undisputed facts show that the bank has been deprived of the use and benefit of its property that has been in the possession of the respondents for the latter's use and benefit without paying any rentals thereon. The records reveal that until now, the respondents are still in possession of the subject property.[39]

We note that subsequent to the bank's counterclaim for the payment of rentals due as of January 31, 1989, the bank also seeks to recover the rentals that accrued after January 31, 1989, which as of August 8, 1993 amounted to P1,123,500.00 as shown by the evidence presented by the bank before the RTC and in the pleadings it had filed before the RTC, CA, and the Court.[40] Although this claim was not alleged in the bank's Answer being an after-acquired claim which was only raised during the trial proper through the testimony dated August 17, 1993 of Ms. Arlene Aportadera,[41] the bank is not barred from recovering these rentals. As we explained in *Banco de Oro Universal Bank v. CA*,[42] a party is not barred from setting up a claim even after the filing of the answer if the claim did not exist or had not matured at the time said party filed its answer. Moreover, we note that the respondents did not object to the presentation of this evidence, hence, the issue of rentals from August 8, 1993 and onwards was tried with the implied consent of the parties; applying Section 5, Rule 10 of the 1997 Rules of Civil Procedure,[43] the issue should be treated in all respects as if it had been raised in the pleadings.[44] Given the implied consent, judgment may be validly rendered on this issue even if no motion had been filed and no amendment had been ordered.[45]

In *National Power Corporation v. CA*,[46] we held that where there is a variance in the defendant's pleadings and the evidence adduced by it at the trial, the Court may treat the pleading as amended to conform to the evidence.

Additionally, the respondents are also liable to pay interest by way of damages for their failure to pay the rentals due for the use of the subject property. In *Eastern Shipping Lines v. CA*,[47] we laid down the following guidelines with respect to the award and the computation of legal interest, as follows:

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest,

however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169 Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit. [Emphasis supplied]

The records are unclear on when the bank made a demand outside of the judicial proceedings for the rentals on the subject property.[48] However, the records show that the bank made a counterclaim for the payments of the rentals due as of January 31, 1989 in its Answer and subsequently, a claim for the after-acquired rentals was made by the bank through the testimony of Ms. Arlene Aportadera. Applying *Eastern Shipping Lines*, the payment of interest for the rentals shall be reckoned from the date the judicial demand was made by the bank or on April 20, 1989 when the bank set up its counterclaim for rentals in the subject property.

Under the circumstances, we can impose a 6% interest on the rentals from April 20, 1989 up to the finality of this decision. Thereafter, the interest shall be computed at 12% per annum from such finality up to full satisfaction.

We find no basis for the award of exemplary damages. Article 2232 of the Civil Code declares:

Article 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.

Considering the factual circumstances we have discussed above, we can hardly characterize respondents' act of insisting on the enforcement of the repurchase agreement as wanton, fraudulent, reckless, oppressive, or malevolent.

As there is no basis for an award of exemplary damages, the awards of attorney's fees and litigation expenses to the bank are not justified under Article 2208 of the Civil Code.

WHEREFORE, premises considered, we hereby GRANT the petition. The Decision dated March 31, 2006 and Resolution dated August 11, 2006 of the Court of Appeals in CA-G.R. CV No. 49900 are hereby REVERSED and SET ASIDE.

The complaint in Civil Case No. 19416-89 for breach of contract, specific performance, damages, and attorney's fees, with preliminary injunction filed by Cuison Lumber Co., Inc. and Mrs. Cuison against Traders Royal Bank is hereby DISMISSED. The respondents are ordered to vacate the subject property and to restore its possession to the petitioner bank.

The respondents are further ordered to pay reasonable compensation, for the use and occupation of the subject property in the amount of P1,123,500.00, representing the accrued rentals as of August 8, 1993, less the amount of P485,000.00 representing deposits paid by the respondents. In addition, respondents are also ordered to pay the amount of P13,700.00 a month by way of rentals starting from August 8, 1993 until they vacate the subject property. The rentals shall earn a corresponding legal interest of six percent (6%) per annum to be computed from April 20, 1989 until the finality of this decision. After this decision becomes final and executory, the rate of legal interest shall be computed at twelve percent (12%) per annum from such finality until its satisfaction.

Costs against the respondents.

SO ORDERED.

Quisumbing, (Chairperson), Ynares-Santiago,[*] Velasco, Jr., and Leonardo-De Castro,[**] JJ., concur.

[*] Designated additional Member of the Second Division per Special Order No. 645 dated May 15, 2009.

[**] Designated additional Member of the Second Division effective May 11, 2009 per Special Order No. 635 dated May 7, 2009.

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

[2] Dated March 31, 2006; penned by Associate Justice Edgardo A. Camello, with Associate Justice Normandie B. Pizarro and Associate Justice Ricardo R. Rosario, concurring; rollo, pp. 45-66.

[3] Dated August 11, 2006; id., pp. 85-86.

[4] Dated November 4, 1994; records, pp. 254-275.

[5] Id., p. 47.

[6] The total amount due was P1,082,465.10; see note 17 of CA Decision, id., p. 48.

[7] Italics theirs; rollo, pp. 48-49.

[8] Records, p. 16.

[9] Id., pp. 14-22.

[10] Article 1492 states: Whenever earnest money is given in a contract of sale, it shall be considered as part of the price and as proof of the perfection of the contract.

[11] G.R. No. L-36083, September 5, 1975, 66 SCRA 75.

[12] RTC Decision dated November 4, 1994, pp. 8 and 13; records, pp. 261 and 266.

[13] Rollo, pp. 55-56.

[14] CIVIL CODE, Articles 1315 and 1319.

[15] Id., Articles 1319 and 1320.

[16] Ibid.

[17] *Rosenstock v. Burke*, 46 Phil. 217 (1924).

[18] *Limketkai Milling, Inc. v. Court of Appeals*, G.R. No. 11850, March 29, 1996, 255 SCRA 626, 639.

[19] See *Insular Life Assurance Co. Ltd. v. Assets Builders Corp.*, G.R. No. 147410, February 5, 2004, 422 SCRA 148; *Firme v. Bukal Enterprises and Development Corp.*, G.R. No. 146608, October 23, 2003, 414 SCRA 190; *Philippine National Bank v. Court of Appeals*, G.R. No. 119580, September 26, 1996, 262 SCRA 464; *Schuback & Sons Philippine Trading Corp. v. Court of Appeals*, G.R. No. 105387, November 11, 1993, 227 SCRA 717; *Yuviengco v. Dacuycuy*, G.R. No. L-55048, May 27, 1981, 104 SCRA 668; *Villonco Realty Co. v. Bormacheco, Inc.*, G.R. No. L-26872, July 25, 1975, 65 SCRA 352, where the Supreme Court considered the circumstances of the case to determine whether there was a meeting of the offer and acceptance.

[20] Id., pp. 363-366.

[21] Id., pp. 721-722.

[22] Id., pp. 676-677.

[23] Id., pp. 476-477.

[24] G.R. No. 147410, February 5, 2004, 422 SCRA 148, 162 and 164.

[25] G.R. No. 172674, July 12, 2007, 527 SCRA 562, 573-575.

[26] People's Industrial and Commercial Corp. v. Court of Appeals, G.R. No. 112733, October 24, 1997, 281 SCRA 206, 220.

[27] TSN, February 20, 1991, p. 3.

[28] Exhibits "15" and "16."

[29] Exhibit "19."

[30] Shown, among others, by the following testimony of Atty. Cuison (TSN, February 19, 1991, p. 8 and TSN, February 20, 1991, p. 2) where he stated:

Atty. Abarquez:

x x x

Q

Let us make this clear, you said you did not accept, did you write the bank a letter that you did not accept the proposal of the bank?

A

We did not write.

Q

You never told the bank that you did not accept?

A

We did not.

x x x

Q

Did you not tell the bank?

A

What we did, we deposited.

[31] TSN, February 20, 1999, p. 2.

[32] TSN, May 20, 1993, p. 17.

[33] TSN, November 22, 1993, p. 7; also referred to as Arleen Arpotadera in the records.

[34] Letter dated January 13, 1987 (Exhibit "18"); Letter dated March 27, 1987 (Exhibit "20"); Letter dated April 6, 1987 (Exhibit "22"); and Letter dated April 27, 1987 (Exhibit "26").

[35] Exhibits "37" and "39," respectively.

[36] See Paragraph 5 of the TRB Repurchase Agreement, Exhibit "F."

[37] *Rillo v. Court of Appeals*, G.R. No. 125347, June 19, 1997, 274 SCRA 461, 467.

[38] Records, p. 2.

[39] Rollo, p. 39.

[40] *Id.*, p. 39; CA rollo, p. 52; records, p. 251, and Exhibit "43."

[41] TSN, August 17, 1993, p. 7. See Exhibit "43."

[42] G.R. No. 160354, August 25, 2005, 468 SCRA 166, 185.

[43] Section 5. Amendment to conform to or authorize presentation of evidence. - When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made.

[44] *Sy v. Court of Appeals*, G.R. No. 124581, December 27, 2007, 541 SCRA 371, 386-387.

[45] *Id.*, p. 387

[46] G.R. No. L-43814, April 16, 1982, 113 SCRA 556 cited in *Sy v. Court of Appeals*, *supra* note 45.

[47] G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95-97.

[48] Article 2209 read in relation with Article 1169, which provisions state:

Art. 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six percent per annum. (1108)

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. xxx.

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