

MARIA A. GARCIA, ET AL., PETITIONERS, VS. RITA LEGARDA, INC., RESPONDENT.

G.R. No. 20175. October 30, 1967

Ponente: DIZON, J.

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DIZON, J.:

Appeal taken by the spouses Maria A. Garcia and Marcelino A. Timbang - hereinafter referred to as petitioners - from the decision of the Court of Appeals in CA-G.R. No. 27194-R reversing the one rendered on January 9, 1960 by the Court of First Instance of Manila in Civil Case No. 19642 entitled "Maria A. Garcia, et al., vs. Rita Legarda, Inc." The latter is a corporation organized under Philippine laws, and is engaged in the sale and resale of residential lots in Manila and suburbs. We shall refer to it hereinafter as the respondent.

On May 20, 1953 the petitioners instituted the civil case mentioned above against the respondent to have certain contracts numbered 322, 324, and 965 declared as existing and subsisting; to compel the respondent to accept payments tendered by them; and to recover moral and exemplary damages and attorney's fees in the amounts of P6,000.00 and P1,500.00, respectively.

The three causes of action alleged in their complaint involved the three parcels of land subject matter of the contracts aforesaid. Each had an area of about 150 square meters, and formed part of the Rita Legarda Estate situated in Manila, and subdivided into lots sold on installment basis.

(1) Contract to Sell No. 322 (Exhs. A and A-1) covering Lot 40, Block 5-CC, was executed by the respondent in favor of Emiliano Orellana on March 1, 1947. On June 26, 1947, the latter transferred all his rights and interest thereunder to Encarnacion Vito who, in turn, on November 3 of the same year, made a similar transfer of rights in favor of Delfin Bacho. Finally, on May 29, 1948, Bacho also transferred all his rights and interest to the petitioners.

(2) On March 1, 1947, Contract to Sell No. 324 (Exh. 2) covering Lot No. 20, Block 5-CC was executed by respondent in favor of Jesusa Felix. Two months later, Felix, with the written consent of the respondent, sold her rights and interest to petitioners.

(3) Contract to Sell No. 965 (Exh. 3) covering Lot No. 27, Block 5-CC was executed by the respondent in favor of Angela Alvarez Solomon on January 8, 1948. With the written consent of the former, Solomon also sold her rights and interest to the petitioners on May 11, 1948.

In its answer to the complaint, the respondent averred that in relation to the Contracts to Sell Nos. 322, 965 and 324, petitioners paid on November 7, 1951 the 53rd, 43rd and 53rd installments, respectively, corresponding to the installments for the month of July, 1951; that the petitioners, as of June 11, 1952, had failed to pay the stipulated monthly installments for Contracts Nos. 322 and 324 corresponding to the period from August, 1951 through June, 1952, and in the case of Contract No. 965, from August, 1951 through May, 1952; that despite several demands for payment of arrears made between December, 1951 and June, 1952 by the respondent, the petitioners had failed to pay the amounts due; and that upon the expiration of the 90-day grace period on June 11,

1952 stipulated in the sixth paragraph of the contracts, the respondent had cancelled them. The answer also prayed for an award of damages and attorney's fees in the sum of P2,000.00.

On April 20, 1954 the petitioners filed a reply denying that they were in arrears as to their obligations under the three contracts and, further averred as affirmative defense that the cancellation thereof was unlawful and arbitrary.

After trial the Court rendered judgment declaring Contracts Nos. 322, 324 and 965 as existing and subsisting; ordering the respondent to accept the payments tendered by the petitioners and to pay attorneys fees in the sum of P1,500.00, but denied the award of moral and exemplary damages. From this decision the respondent appealed to the Court of Appeals from whose decision - reversing that of the lower court - the instant appeal was taken.

Petitioners now urge Us, in turn, to reverse the decision of the Court of Appeals, claiming that the latter had committed the following errors:

"I. The Honorable Court of Appeals erred in declaring that the respondent Rita Legarda, Inc. had not waived its rights to cancel its contracts with the petitioners on the ground that it had previously accepted late payments of the installments due on such contracts.

"II. The Honorable Court of Appeals erred in declaring that par. 9 of the contracts in question is not in violation of Art. 1308 of the New Civil Code.

"III. The Honorable Court of Appeals erred in not declaring that the respondent Rita Legarda, Inc., after having tolerated and accepted previously late payments on the installments due on the contracts, suddenly and without suitable warning and giving of further opportunity to pay the same could not and should not have precipitously decided to forfeit, as it actually forfeited, all the payments which have already been made to it by petitioners.

"IV. The Honorable Court of Appeals erred in reversing and in not affirming the decision of the Court of First Instance of Manila in its entirety."

The second assignment of error is based on petitioners contention that the questioned stipulations of the contracts are in violation of the provisions of Article 1308 of the New Civil Code, while the first and third are based on the claim that the respondent having previously accepted late payments of installments due on the contracts aforesaid, must be deemed to have waived its right to cancel said contracts on the ground of late payment of installments, and that, at any rate, after having tolerated and accepted said late payments, it was arbitrary on its part to cancel the contracts suddenly and without suitable warning. The fifth and last assignment of error is merely a consequence of the others.

Article 1308 of the New Civil Code reads as follows:

"The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them."

The above legal provision is a virtual reproduction of Article 1256 of the old Civil Code but it was so phrased as to emphasize the principle that the contract must bind both parties. This, of course, is based firstly, on the principle that obligations arising from contracts have the force of law between the contracting parties and secondly, that there must be mutuality between the parties based on their essential equality to which is repugnant to have one party bound by the contract leaving the other free therefrom (8 Manresa 556). Its ultimate purpose is to render void a contract containing a condition which makes its fulfillment dependent exclusively upon the uncontrolled will of one of the contracting parties.

Paragraph 6 of the contracts in question - which is the one claimed to be violative of the legal provision above quoted - reads as follows:

"SIXTH - In case the party of the SECOND PART fails to satisfy any monthly installments, or any other payments herein agreed upon, he is granted a month of grace within which to make the retarded payment, together with the one corresponding to the said month of grace; it is understood, however, that should the month of grace herein granted to the party of the SECOND PART expire, without the payments corresponding to both months having been satisfied, an interest of 10% per annum will be charged on the amounts he should have paid; it is understood further, that should a period of 90 days elapse, to begin from the expiration of the month of grace herein mentioned, and the party of the SECOND PART has not paid all the amounts he should have paid with the corresponding interest up to that date, the party of the FIRST PART has the right to declare this contract cancelled and of no effect, and as consequence thereof, the party of the FIRST PART may dispose of the parcel or parcels of land covered by this contract in favor of other persons, as if this contract had never been entered into. In case of such cancellation of this contract, all the amounts paid in accordance with this agreement together with all the improvements made on the premises, shall be considered as rents paid for the use and occupation of the above mentioned premises, and as payment for the damages suffered by failure of the party of the SECOND PART to fulfill his part of this agreement; and the party of the SECOND PART hereby renounces all his right to de-mand or reclaim the return of the same and obliges himself to peacefully vacate the premises and deliver the same to the party of the FIRST PART."

The above stipulation, to our mind, merely gives the vendor "the right to declare this contract cancelled and of no effect" upon fulfillment of the conditions therein set forth. It does not leave the validity or compliance of the contract entirely "to the will of one of the contracting parties"; the stipulation or agreement simply says that in case of default in the payment of installments by the vendee, he shall have (1) "a month of grace", and that (2) should said month of grace expire without the vendee paying his arrears, he shall have another "period of 90 days" to pay "all the amounts he should have paid" etc., then the vendor "has the right to declare this contract cancelled and of no effect". We have heretofore upheld the validity of similar stipulations. In *Taylor vs. Ky Tieng Piao* etc. 43 Phil. 873, 876-878 the ruling was that a contract expressly giving to one party the right to cancel the same if a resolutive condition therein agreed upon - similar to the one under consideration - is not fulfilled, is valid, the reason being that when the contract is thus cancelled, the agreement of the parties is in reality being fulfilled. Indeed, the power thus granted can not be said to be immoral, much less unlawful, for it could be exercised - not arbitrarily - but only upon the other contracting party committing the breach of contract of non-payment of the installment, agreed upon. Obviously, all that said party had to do to prevent the other from exercising the power to cancel the contract was for him to comply with his part of the contract. And in this case, after the maturity of any particular installment and its non-payment, the contract gave him not only its month grace but an additional period of 90 days.

Having arrived at the above conclusions, We now come to the question of whether or not by having previously accepted payments of overdue installments the respondent had waived its right to declare the contracts cancelled and of no effect.

In this connection the record shows that on June 11, 1952 when the Contracts to Sell Nos. 234 and 965 were cancelled, the vendees were ten months in arrears, and that in the case of Contract to Sell No. 322 the vendees had never resumed payment of a single installment from the date when, upon their petition, said contract was reinstated on September 28, 1952. The contracts under consideration are not of absolute sale but mere contracts to sell - on installment. They give the respondent (vendor) the right to declare the contracts cancelled and of no effect - as in fact it did - upon fulfillment of certain conditions. All said conditions - so the record shows - have been fulfilled. Consequently, respondent's (vendor) right to cancel the contracts can not be doubted.

That prior to the cancellation it had in fact accepted payment of installments in arrears was but another act of forbearance on its part to give the petitioners an additional opportunity to keep the contracts alive. Rather than give rise to the presumption that by such act of humanity it waived its right to cancel the contracts, it strengthens

its right to do so, considering that even after such act of accommodation beneficial to the petitioners, the latter subsequently defaulted again and again in the fulfillment of their obligation.

It is, of course, painful for the petitioners to lose not only the right they had acquired under the contracts but also whatever amounts they had already paid thereunder, but such consequences had been foreseen by the contracting parties. To avoid them, all that petitioners had to do - as already said heretofore - was to comply with their part of the bargain. Having failed to do so, they really have no valid reason to complain. That one contracting party appears to have made a poor bargain is no reason for setting aside the agreement (*Fernandez vs. Manila Railroad*, 14 Phil. 274, 287).

WHEREFORE, the appealed judgment being in accordance with law and the facts of the case, the same is hereby affirmed.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

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