

ALEJO BASCO, PETITIONER, VS. MACARIO PUZON AND MARCELINA F. DE PUZON, RESPONDENTS.*G.R. No. 46952. June 14, 1940*

Ponente: MORAN, J.

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Appeal by certiorari from the Court of Appeals. On July 11, 1932, respondents Macario Puzon and Marcelina F. de Puzon, mortgaged in favor of the petitioner Alejo Basco, a parcel of land with two houses of strong materials constructed thereon, situated in the City of Baguio. While the mortgage was in force, one of the houses was destroyed by fire, for which the mortgagee received from the insurance company the sum of P2,190. Later, a suit for foreclosure of the mortgage was filed by the petitioner against the respondents, which terminated in an amicable settlement, by which the debtors sold the property, with the improvements, to the creditor in the sum of P7,600, with the following stipulations: (1) that the respondents could repurchase the property within one year ending May 10, 1934, in the sum of P7,600, adding thereto the expenses for repairs of the property and for the reconstruction of the house destroyed by fire; (2) that from these sums should be deducted the rents of the property during the pendency of the right of repurchase, and any sum which the petitioner, Alejo Basco, may receive from the insurance company; and (3) that an interest of twelve per centum on P7,600 should be deducted from the rents of the property which should be credited in case of repurchase, and that the petitioner should notify the respondents of any improvement, construction or repair which should be made on the property, in order that they may inspect the work and estimate the expenses.

Within the year stipulated for the repurchase, respondents wanted to exercise their right, and to that effect requested the petitioner to make an accounting, with a view to being apprised of the specific amount they should pay for the redemption. Petitioner made such accounting, wherein it appeared that the respondents should pay the amount of P10,054.51. This accounting was found by the Court of Appeals to be erroneous and arbitrary. Erroneous, because the true balance should be P8,694.92, and arbitrary, because many of the items therein stated were not verified by vouchers, receipts or supporting papers of any kind, and besides, the rents of the property aggregating P1,397.32, were not included. Not knowing the specific amount that they should pay, respondents failed to repurchase the property within the period stipulated. And, upon the expiration of that time, petitioner refused to allow any repurchase. Hence, the action by the respondents against him.

In the Court of First Instance, the action was dismissed, but this judgment was reversed by the Court of Appeals, which ordered the petitioner to allow the repurchase of the property within thirty days for the sum to be determined in the manner provided by the court.

We hold that the judgment of the Court of Appeals is correct. The stipulations contained in the contract of repurchase are such as to require an accounting on the part of the petitioner before the repurchase could be made by the respondents. The amounts that should be added to or deducted from the original purchase price of P7,600, being peculiarly within the knowledge of the petitioner alone, could not, without such accounting, be known by the respondents, and without such knowledge their right of repurchase could not possibly be effected.

Accordingly, if petitioner failed to render an accounting, or if he made an erroneous, incomplete or arbitrary one, he, in effect, rendered the repurchase impossible, and, under such circumstance, equity demands that the respondents be given an additional time within which to repurchase after a correct accounting has been made either by the petitioner or by the court.

Petitioner argues that, in order to save their right of repurchase, respondents should have tendered to him such specific amount as they might honestly believe to be the proper repurchase price, which respondents failed to do. It is true that, as a general rule, an offer or tender of the redemption price is necessary to preserve an option. But this rule cannot with justice be applied where, as in the instant case, the redemption price is yet to be fixed in an accounting to be rendered by the person from whom the repurchase is to be made.

Petitioner contends that, the letter addressed by him to the respondents, informing them of the amount to be paid for the repurchase, respondents signed same and registered no objection to the statements made therein, specially to the amount of P10,000 therein fixed. It appears, however, that their having signed the letter means no more than mere acknowledgment of its receipt, and their nonconformity with the amount therein stated is implied in their reply letter wherein they said that there should be a fair determination of the amount of the expenses made for the repairs, as well as of the amount of the insurance and rents of the property which petitioner has been collecting.

Whether or not the lapse of about two years from the expiration of the time agreed upon for the repurchase, to the time when the action was filed, may be construed as acquiescence on the part of the respondents in the accounting made by the petitioner, is a question that depends upon many circumstances the cognizance of which would require an examination of the evidence, which we cannot do. Judgment is affirmed, with costs against petitioner.

Avanceña, C.J., Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

Petition denied.

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