

**JOSE V. HERRERA, PETITIONER, VS. L.P. LEVISTE & CO., INC.,
JOSE T. MARCELO, GOVERNMENT SERVICE INSURANCE SYSTEM,
PROVINCIAL SHERIFF OF RIZAL, REGISTER OF DEEDS OF RIZAL
AND THE ...**

G.R. No. 55744. February 28, 1985

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Before the Court is petitioner's Motion, dated July 3, 1981, for the reconsideration of the Resolution of this Court, dated April 1, 1981, denying due course to this Petition for Review on Certiorari for lack of merit.

The Motion for Reconsideration was set for oral argument on June 13, 1984, after which, the Court required the parties to submit simultaneously concise memoranda in amplification of their oral arguments. All parties have complied with the Courts directive.

Briefly, the antecedent facts may be summarized as follows:

On June 10, 1969, L.P. Leviste & Co. (Leviste, for short) had obtained a loan from the Government Service Insurance System (GSIS) in the amount of P1,854,311.50. As security therefor, Leviste mortgaged two (2) lots, one located at Parañaque (the Parañaque Property), and the other located at Buendia Avenue, Makati, with an area of approximately 2,775 square meters, together with the 3-story building thereon (the Buendia Property).

On November 3, 1971, Leviste sold to Petitioner, Jose V. Herrera, the Buendia Property for the amount of P3,750,000.00. The conditions were that petitioner would: (1) pay Leviste P1,895,688.50; (2) assume Leviste's indebtedness of P1,854,311.50 to the GSIS; and (3) substitute the Parañaque property with his own within a period of six (6) months.

For his part, Leviste undertook to arrange for the conformity of the GSIS to petitioner's assumption of the obligation.

It was further stipulated in the Contract to Sell that "failure to comply with any of the conditions contained therein, particularly the payment of the scheduled amortizations on the dates herein specified shall render this contract automatically cancelled and any and all payments made shall be forfeited in favor of the vendor and deemed as rental and/or liquidated damages".

Petitioner took possession of the Buendia property, received rentals of P21,000.00 monthly, and collected approximately P800,000.00 from December, 1971, up to March, 1975. However, petitioner remitted a total of only P300,000.00 to the GSIS.

On April 15, 1973, petitioner requested the GSIS for the restructuring of the mortgage obligation because of his own arrearages in the payment of the amortizations. GSIS replied that as a matter of policy, it could not act on his request unless he first made proper substitution of property, updated the account, and paid 20% thereof to the

GSIS. There was no requirement by the GSIS for the execution of a final deed of sale by Leviste in favor of petitioner.

On June 2, 1974, GSIS sent notice to Leviste of its intention to foreclose the mortgaged properties by reason of default in the payment of amortizations. An application for foreclosure was thereafter filed by the GSIS with the Provincial Sheriff of Rizal, and on February 15, 1975, the foreclosed properties were sold at public auction and a Certificate of Sale in favor of the GSIS, as the highest bidder, was issued.

On March 3, 1975, Leviste assigned its right to redeem both foreclosed properties to respondent Jose Marcelo, Jr. (Marcelo for brevity). Later, on November 20, 1975, Marcelo redeemed the properties from the GSIS by paying it the sum of P3,232,766.94 for which he was issued a certificate of redemption. The Parañaque property was turned over by Marcelo to Leviste upon payment by the latter of approximately P250,000.00 as disclosed at the hearing. Leviste needed the Parañaque Property as it had sold the same and suit had been filed against it for its recovery.

On May 6, 1975, petitioner wrote the GSIS (Exhibit "V") informing the latter of his right to redeem the foreclosed properties and asking that he be allowed to do so in installments. Apparently, the GSIS had not favorably acted thereon.

On May 13, 1975, petitioner instituted suit against Leviste before the Court of First Instance of Rizal for "Injunction, Damages, and Cancellation of Annotation."

On December 20, 1977, the Trial Court rendered its Decision dismissing petitioner's Complaint for lack of basis in fact and in law, and ordering all payments made by petitioner to Leviste forfeited in favor of the latter pursuant to their contract providing for automatic forfeiture "in the event of failure to comply with any of the conditions contained therein, particularly the payment of the scheduled amortizations."

On appeal, the Appellate Court affirmed the judgment in toto, stating in part:

"It is to be noted that appellee L. P. Leviste and Co., Inc. was not in a financial position to redeem the foreclosed property and there was no assurance that appellant would redeem the property within the period. In this situation, appellee has no other alternative, but to assign the right of redemption to a person willing and capable to assume the same, if only to protect his interest in the said property. Likewise, when the equity to redeem was assigned, appellant could have preserved and protected whatever right he may have to the property by tendering the redemption price to Marcelo. He had up to February 24, 1976, to do so, but he did not. The record established further that appellant did not redeem the property. x x x"[1]

Reconsideration sought by petitioner was met with denial by respondent Appellate Court. Hence, the instant Petition seeking review by Certiorari before this instance.

As hereinbefore stated, we denied the Petition for lack of merit.

Petitioner seeks reconsideration essentially on the contention that affirmance of the Appellate Court's Decision would result in patent injustice as he would not only forfeit the Buendia Property to Marcelo, but would also lose the amount of P1,895,688.50 and P300,000.00, which he paid to Leviste and the GSIS, respectively; that it would result in the unjust enrichment of Leviste; and that Leviste as well as the GSIS and Marcelo would be benefiting at petitioner's expense.

Considering the grounds of petitioner's Motion for Reconsideration, the arguments adduced during the oral argument and in the parties' respective Memoranda, we resolve to deny reconsideration upon the following considerations:

1. (a) The GSIS has not benefited in any way at the expense of petitioner. What it received, by way of

redemption from respondent Marcelo, was the mortgage loan it had extended plus interest and sundry charges.

(b) Neither has Marcelo benefited at the expense of petitioner. Said respondent had paid to GSIS the amount P3,232,766.94, which is not far below the sum of P3,750,000.00, which was the consideration petitioner would have paid to Leviste had his contract been consummated.

(c) Leviste had neither profited at the expense of petitioner. For losing his Buendia Property, all he had received was P1,854,311.50 from GSIS less amounts he had paid, plus P1,895,688.00 paid to him by petitioner the total of which is substantially a reasonable value of the Buendia Property.

2. It is quite true that petitioner had lost the P1,895,688.00 he had paid to Leviste, plus P300,000.00 he had paid to GSIS, less the rentals he had received when in possession of the Buendia Property. That loss is attributable to his fault in:

(a) Not having been able to submit collateral to GSIS in substitution of the Parañaque Property;

(b) Not paying off the mortgage debt when GSIS decided to foreclose; and

(c) Not making an earnest effort to redeem the property as a possible redemptioner.

3. It cannot be validly said that petitioner had fully complied with all the conditions of his contract with Leviste. For one thing, he was not able to substitute the Parañaque Property with another collateral for the GSIS loan. Moreover, as stated by the Court of Appeals, "nowhere in the letter (of the GSIS) was mentioned that a final deed of sale must first be executed and presented before the assumption may be considered. For if it was really the in-tention of GSIS, the requirement of Deed of Sale should have been stated in its letter."

ACCORDINGLY, petitioner's Motion for Reconsideration is hereby denied.

SO ORDERED.

Plana, Relova, De la Fuente, and Cuevas[*], JJ., concur.

Teehankee, J., (Chairman), separate opinion.

Gutierrez, Jr., and Alampay, JJ., no part.

[1] Rollo, p. 67.

[*] Justice Serafin Cuevas was designated to sit in the First Division per Special Order No. 293, dated October 5, 1984.

DISSENTING OPINION

TEEHANKEE, J.:

I vote to grant petitioner's motion for reconsideration of the Court's earlier Resolution denying the petition and instead to grant the relief sought therein by petitioner, for the grounds and considerations hereinafter stated.

It can be inferred from the antecedent facts that respondent Leviste & Co., Inc. (Leviste) was guilty of bad faith and of violating the terms and conditions of its Contract to Sell with petitioner Jose V. Herrera.

On June 10, 1969, Leviste had secured a loan from the Government Service Insurance System in the amount of P1,854,311.50, mortgaging two parcels of land, one located at Parañaque and the other located at Buendia Avenue, Makati, with an area of 2,775 square meters and the building and other improvements thereon (covered

by TCT No. 9811 of the Registry of Deeds of the Province of Rizal).

Later, or on November 3, 1971, Leviste sold to Herrera the Buendia property for the sum of P3,750,000.00. Herrera agreed that (1) he would assume Leviste's indebtedness of P1,854,311.50 to the GSIS; (2) that he would pay Leviste the balance of P1,895,688.50 within two (2) years from the date of the contract, with interest thereon at 12% per annum; and (3) that he would substitute the Parañaque property with his own within a period of six months.

On the other hand, Leviste undertook that it would arrange for the conformity of the GSIS to Herrera's assumption of its mortgage obligation.

The parties further stipulated that "failure to comply with any of the conditions contained therein, particularly the payment of the scheduled amortization on the dates herein specified shall render this contract automatically cancelled and any and all payments made shall be forfeited in favor of the vendor and deemed as rental and/or unliquidated damages.

About the first week of December, 1971, Herrera took possession of the Buendia property and received the monthly rentals of around P21,000.00.

On December 20, 1971, Herrera notified GSIS of the Contract to Sell executed by Leviste providing for his assumption of Leviste's mortgage obligation. When no action was taken thereon by the GSIS and Leviste failed to take any action to facilitate the assumption of the mortgage by Herrera, the latter sent his administrator, Mr. Isidro Cavestany, to follow it up with the GSIS. In the course thereof, Cavestany found that Leviste was in arrears in its amortization payments for 14 months, which Herrera did not know at the time of the sale.

The GSIS required Herrera to submit papers to support his assumption of the mortgage until finally he was informed that the assumption could not be approved until Herrera could submit a final deed of sale (the original contract being merely a contract to sell or a conditional sale) and that he has no personality to represent Leviste in connection with the restructuring of the mortgage. But nevertheless, the GSIS received payments from Herrera for the account of Leviste, suggesting that this was necessary for "further actions" to be taken on the assumption of mortgage. The Manager of the Collection Department even suggested to Cavestany to continue the payments as a gesture of good faith. Herrera remitted a total of P300,000.00 to the GSIS, credited against Leviste's account.

Meanwhile, Leviste continued to receive payments from Herrera under the Contract to Sell. Upon full payment, Cavestany then requested Leviste to execute the final deed of sale for submission to the GSIS but Leviste refused, alleging as an excuse Herrera's failure to assume the mortgage (which Leviste itself had blocked).

Unknown to Herrera, Leviste alone was notified on June 21, 1974 by the GSIS of its intention to foreclose the mortgage. Herrera came to know about it only on January 17, 1975. He immediately wrote an urgent appeal to the GSIS reminding the GSIS that he had already paid in full the principal of P1,895,688.50 to Leviste and P300,000.00 to the GSIS and asked that the foreclosure be held in abeyance pending efforts to settle Leviste's account which Leviste had undertaken to have Herrera assume. Nonetheless, the GSIS proceeded with the auction sale and itself bidded for the property.

On March 3, 1975, Leviste (notwithstanding its having received full payment of P1,895,688.50 from Herrera) yet sold for undisclosed amount and considerations the equity of redemption (which in justice and equity pertained to Herrera) to its correspondent Jose T. Marcelo and eventually, Herrera was ousted from the property in dispute.

On May 13, 1975, Herrera filed a complaint against Leviste before the Court of First Instance of Rizal for injunction, damages and cancellation of annotation. The trial court dismissed the complaint for alleged lack of

basis in fact and in law, and ordered all payments made by Herrera forfeited in favor of Leviste. Herrera appealed to the Court of Appeals which affirmed the lower court's decision and denied reconsideration.

On January 23, 1981, Herrera filed the petition for review on certiorari which was denied by this Court in a minute resolution dated April 1, 1981. Hence, Herrera's motion for reconsideration, which was heard and argued before the Court on June 13, 1984. Herrera reiterated the main issues, thus:

"-Can respondent Leviste lawfully refuse to issue a final deed of sale to the petitioner even after it had already received full payment of what was due it under the Contract to Sell?

"-Can respondent Leviste lawfully refuse to comply with its obligation under the Contract to Sell to secure the conformity of respondent GSIS to the assumption of the mortgage obligation by petitioner?

"-Can respondent Leviste automatically cancel the Contract to Sell and forfeit all the sums paid by petitioner thereunder when respondent Leviste was the one that voluntarily prevented the petitioner from fulfilling his obligations under the Contract to Sell and by otherwise making it legally or physically impossible for the petitioner to fulfill such obligations?

"-Can respondent Leviste lawfully assign its equity of redemption over the Buendia property to respondent Marcelo, and can the latter's redemption of said property from respondent GSIS be considered lawful?

"-Can respondent Leviste be lawfully awarded damages and attorney's fees in the instant case? "

Leviste patently had no justification to refuse to execute the final deed of sale to Herrera, after receiving full payment of the stipulated amount, and thereby prevent fulfillment of the remaining condition for Herrera's assumption of its mortgage obligation with GSIS, which it had expressly undertaken to secure from GSIS. There was constructive fulfillment on Herrera's part of his obligations under the Contract and under Article 1186 of the Civil Code, "(T)he condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment."

The motion for reconsideration should be granted and the petition granted to obviate a miscarriage of justice. While it is true that under paragraph No. 11 of the Contract to Sell, failure to comply with any of the conditions therein enumerated would render the contract automatically cancelled and all the sums paid by petitioner forfeited, Herrera was prevented from fulfilling the condition of assuming the GSIS mortgage because of Leviste's own non-compliance with its obligation of securing the consent of GSIS thereto. The contract expressly obligated Leviste to work out with the GSIS Herrera's assumption of the mortgage. But obviously because of selfish and self-serving motives and designs, as borne out by the events, Leviste made no effort to assist and arrange for Herrera's assumption of its mortgage obligation. In spite of the fact that Herrera had already paid Leviste the full amount of P1,895,688.50, Leviste refused to execute the final deed of sale in favor of Herrera as required by GSIS.

The substitution of Leviste's Parañaque property with Herrera's own property as additional security for Leviste's indebtedness could not be worked out and agreed upon by Herrera with GSIS, which refused to deal with him without such final deed of sale from Leviste. Indeed, Herrera was verily squeezed in this pincer movement; - Herrera could not assume Leviste's mortgage obligation and restructure the same with GSIS which refused to recognize and deal with him without a final deed of sale from Leviste. But Leviste refused to execute such final deed of sale notwithstanding that he had been paid by Herrera the full amount of P1,895,688.50 due to him and what was left was Leviste's outstanding mortgage indebtedness to GSIS. The GSIS, in turn, notwithstanding Herrera's payment on account thereof directly to it of some P300,000.00 and the more than sufficient security in its favor of the Buendia property alone, refused (abetted by Leviste's absolute non-cooperation, contrary to his contractual obligation) to have Herrera assume the mortgage obligation. Instead, GSIS without notice to Herrera foreclosed the mortgage and completely shut off Herrera - even from his right of redemption as Leviste's vendee.

If a party charges himself with an obligation possible to be performed, he must abide by it unless performance is rendered impossible by the act of God, the law, or the other party. (*Labayen vs. Talisay Silay Milling Co.*, 52 Phil. 440). By Leviste's unjustifiable act, it virtually prevented Herrera from complying with his obligation to assume the GSIS mortgage and Leviste cannot now in equity and justice insist on rescission of the contract because of Herrera's failure which Leviste itself had brought about.

The situation is analogous to that contemplated in Article 1266 of the Civil Code which provides that "(T)he debtor in obligations to do shall also be released when the prestation becomes legally or physically impossible without the fault of the obligor." Leviste's non-compliance with its own undertaking which prevented Herrera from assuming the GSIS mortgage bars it from invoking the rescission clause.

Under par. 4 of the Contract to Sell, it was expressly undertaken by Leviste that "the assumption of mortgage shall be arranged and conformity thereto by GSIS obtained by the Vendor with the full cooperation of the Vendee." But notwithstanding its having received the full amount due it, Leviste did not fulfill the essential condition required by GSIS for Herrera's assumption of the mortgage - the execution by Leviste of the final deed of sale. Article 1169 of the Civil Code expressly provides, in this regard, that "(I)n reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins."

As documented by Herrera in his memorandum in amplification of oral argument (Record, pp. 314-315), "Leviste has clearly not complied with (its) obligation. Thus, when asked repeatedly by this Honorable Court what definitive steps it took to arrange and secure such conformity of respondent GSIS, respondent Leviste could not readily answer, as it could not point to any definitive step that it had actually undertaken. Indeed, if respondent Leviste was acting in good faith and was sincere in complying with its obligation, it could have at least done the following:

"1. Officially inform respondent GSIS about its execution of the Contract to Sell and officially request GSIS to approve petitioner's assumption of its mortgage obligation, subject to the condition stated in the contract.

"2. Officially inform respondent GSIS that petitioner had already paid to it the full amount due under the Contract to Sell, and for this reason, it was willing to transfer the title of the Buendia property to the petitioner, and for this purpose, issue a final Deed of Sale, even if subject to certain conditions.

"3. If petitioner had indeed failed to comply with his obligations under the Contract to Sell, during the period covering the years 1972, and 1973, then why did respondent Leviste continue receiving payments from petitioner? It must be noted that respondent Leviste was paid the full amount of the consideration (P1,895,688.50) due to it on installment basis, the last of which was on July 2, 1974 (Exhs. 'E', 'F', 'G', 'H', 'I', 'J', 'K' and 'L')

"4. Respondent Leviste could also have formally complained to petitioner or even respondent GSIS about petitioner's alleged non-fulfillment of his obligations under the Contract to Sell, or advise respondent GSIS not to receive any more payments from petitioner made in its name.

"Why did respondent Leviste keep quiet and allow respondent GSIS to continue receiving said payments? It must be noted that petitioner made the following payments to respondent GSIS, for the account of respondent Leviste:

P100, 000.00 - - - -

1973

50, 000.00 - - - -

May 10, 1974

50,000.00 - - - -

May 24, 1974

50,000.00 - - - -

Nov. 5, 1974

50,000.00 - - - -

Jan. 22, 1975

[Exh. 'Y']

"From the above, it will be seen that respondent Leviste not only was the one that clearly failed to comply with its obligations under the Contract to Sell, but also it was the one that prevented the petitioner from fulfilling his obligation under said contract."

Even as to the restructuring of Leviste's mortgage obligation which Herrera had requested (since Leviste's documented arrearages before the execution of the contract amounted to around P800,000.00), GSIS had declined to entertain the same for lack of the final deed of sale, stating in a letter to Herrera that

"We wish to inform you that we cannot go on processing your papers in view of the fact that as of this date L. P. Leviste and Co, is still the registered owner of the mortgaged property, hence, we cannot entertain your request." (Exhibit O; underscoring supplied)

It also appears that respondent GSIS inexplicably did not sympathize with the plight of Herrera (brought about by Leviste itself) as may be seen by the following circumstances:

- (1) It required Herrera to submit supporting papers which led him to believe that the assumption of the mortgage would be properly acted upon;
- (2) It accepted payments from Herrera for the account of Leviste;
- (3) It did not inform Herrera of its intention to foreclose the property knowing that Herrera had purchased the same and hence had the right to redeem the property as Leviste's vendee, notwithstanding its knowledge and that Herrera was directly making payments to it on account of Leviste's mortgage indebtedness;
- (4) It proceeded with the auction sale, notwithstanding the letter-appeal of Herrera, that he had already paid in full the principal amount to Leviste and P300,000.00 to the GSIS and asking that he be given a chance to settle Leviste's account;
- (5) It allowed and recognized the sale of equity of redemption to a total stranger, Marcelo, notwithstanding the offer of Herrera as Leviste's vendee and successor to redeem the property within the period of redemption, as was Herrera's right in law and equity;
- (6) The total stranger Marcelo was allowed to redeem the property, and returned the Parañaque property to Leviste; and

(7) It departed from the established policy of government financial institutions of allowing the restructuring of debtor's mortgage accounts, unless they were in extremis and violated its own settled policy of giving due preference to the owner and vendee Herrera of redeeming and/or reacquiring the foreclosed property. As the late Chief Justice Castro stated in his separate opinion in *DBP vs. Mirang*, 66 SCRA 141, in taking notice of such policy and urging the DBP to extend such assistance to the hapless respondent debtor therein, "(I)t is well to remember that uncompromising or mechanical application of the letter of the law has resulted, not infrequently, in the denial of moral justice," after laying the premise that.

"Justice Makasiar makes the pertinent suggestion that the DBP restructure the account of Mirang. Like Justice Makasiar, I personally know that the DBP and similar Government financial institutions (the Philippine National Bank, the Government Service Insurance System, and the Social Security System) have restructured accounts of debtors. Considering the inordinate appreciation of land values everywhere, there appears to be no insuperable obstacle to the DBP restructuring the account of Mirang, not only to enable him to pay his indebtedness in easy terms over a period of years but as well to make available additional funds to be utilized by him in the development of his 18-1/2-hectare land. It is not too late in the day - in this, our compassionate society - for the DBP to do so. "

Respondent Marcelo was equally not in good faith when he purchased the equity of redemption. Marcelo knew of the Contract to Sell with Herrera at the time the equity was assigned to him by Leviste. Moreover, Herrera was still in material possession of the property then.

If iniquitous automatic rescission of the contract be sustained, Leviste would be unjustly enriched by (1) P1,895,688.50, the principal amount directly paid to it by Herrera; (2) P300,000.00, the amount paid by Herrera to GSIS for Leviste's arrearages; (3) the Paranaque property, which was returned to him by Marcelo; (4) the undisclosed proceeds of the sale of equity of redemption to Marcelo (in effect a double payment to Leviste for the same property); and (5) moreover, GSIS foreclosed the mortgage for Leviste's total outstanding indebtedness to GSIS in the sum of P3,232,766.94 (pp. 2, 4, main Resolution); this was a total gain to Leviste, for it was thereby discharged and relieved entirely of its said mortgage debt of P3,232,766.94 at the loss of only the Buendia property, which it had already sold to and had been fully paid by, Herrera in the agreed amount of P1,895,688.50. This constitutes unjust enrichment at the expense of Herrera whose payments to Leviste and the GSIS, totalling almost P2.2-million were declared forfeited.

Basic principles of justice and equity cry out against such unjust enrichment and inequity. As we held in *Air Manila, Inc. vs. CIR*, 83 SCRA 579, "(E)quity as the complement of legal jurisdiction seeks to reach and do complete justice where courts of law, through the inflexibility of their rules and want of power to adapt their judgments to the special circumstances of cases, are incompetent to do so. 'Equity regards the spirit and not the letter, the intent and not the form, the substance rather than the circumstance, as it is variously expressed by different courts.'" Herrera is entitled to the relief sought by him under these basic principles of law, justice and equity, as was extended by this Court under analogous circumstances to the debtor in its recent decision in *Republic of the Phil. (NEDA) vs. Court of Appeals* (G. R. No. 52774, Nov. 29, 1984) notwithstanding that the debtor in "evident good faith" had incurred in delay in discharging its obligations to another government agency, the NEDA, which had shown "clear procrastination and indecision" in seeking afterwards to reject the payments made and cancel the previous authorization it had given for the sale of the debtor's attached real property.

The unkindest blow is that the Court has upheld even the award of P5,000. -nominal damages and P75,000. -attorney's fees against Herrera for seeking the just vindication in court his rights.

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