

PALAY, INC. AND ALBERT ONSTOTT, PETITIONER, VS. JACOBO C. CLAVE, PRESIDENTIAL EXECUTIVE ASSISTANT, NATIONAL HOUSING AUTHORITY AND NAZARIO DUMPIT, RESPONDENTS.

G.R. No. 56076. September 21, 1983

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

The Resolution, dated May 2, 1980, issued by Presidential Executive Assistant Jacobo Clave in O.P. Case No. 1459, directing petitioners Palay, Inc. and Alberto Onstott, jointly and severally, to refund to private respondent, Nazario Dumpit, the amount of P13,722.50 with 12% interest per annum, as resolved by the National Housing Authority in its Resolution of July 10, 1979 in Case No. 2167, as well as the Resolution of October 28, 1980 denying petitioners' Motion for Reconsideration of said Resolution of May 2, 1980, are being assailed in this petition.

On March 28, 1965, petitioner Palay, Inc., through its President, Albert Onstott, executed in favor of private respondent Nazario Dumpit, a Contract to Sell a parcel of Land (Lot No. 8, Block IV) of the Crestview Heights Subdivision in Antipolo, Rizal, with an area of 1,165 square meters, covered by TCT No. 90454, and owned by said corporation. The sale price was P23,300.00 with 9% interest per annum, payable with a downpayment of P4,660.00 and monthly installments of P246.42 until fully paid. Paragraph 6 of the contract provided for automatic extrajudicial rescission upon default in payment of any monthly installment after the lapse of 90 days from the expiration of the grace period of one month, without need of notice and with forfeiture of all installments paid.

Respondent Dumpit paid the downpayment and several installments amounting to P13,722.50. The last payment was made on December 5, 1967 for installments up to September 1967.

On May 10, 1973, or almost six (6) years later, private respondent wrote petitioner offering to update all his overdue accounts with interest, and seeking its written consent to the assignment of his rights to a certain Lourdes Dizon. He followed this up with another letter dated June 20, 1973 reiterating the same request. Replying, petitioners informed respondent that his Contract to Sell had long been rescinded pursuant to paragraph 6 of the contract, and that the lot had already been resold.

Questioning the validity of the rescission of the contract, respondent filed a letter complaint with the National Housing Authority (NHA) for reconveyance with an alternative prayer for refund (Case No. 2167). In a Resolution, dated July 10, 1979, the NHA, finding the rescission void in the absence of either judicial or notarial demand, ordered Palay, Inc. and Alberto Onstott, in his capacity as President of the corporation, jointly and severally, to refund immediately to Nazario Dumpit the amount of P13,722.50 with 12% interest from the filing of the complaint on November 8, 1974. Petitioners' Motion for Reconsideration of said Resolution was denied by the NHA in its Order dated October 23, 1979.[1]

On appeal to the Office of the President, upon the allegation that the NHA Resolution was contrary to law (O.P.

Case No. 1459), respondent Presidential Executive Assistant, on May 2, 1980, affirmed the Resolution of the NHA. Reconsideration sought by petitioners was denied for lack of merit. Thus, the present petition wherein the following issues are raised:

I

"Whether notice or demand is not mandatory under the circumstances and, therefore, may be dispensed with by stipulation in a contract to sell.

II

Whether petitioners may be held liable for the refund of the installment payments made by respondent Nazario M. Dumpit.

III

Whether the doctrine of piercing the veil of corporate fiction has application to the case at bar.

IV

"Whether respondent Presidential Executive Assistant committed grave abuse of discretion in upholding the decision of respondent NHA holding petitioners solidarity liable for the refund of the installment payments made by respondent Nazario M. Dumpit thereby denying substantial justice to the petitioners, particularly petitioner Onstott."

We issued a Temporary Restraining Order on February 11, 1981 enjoining the enforcement of the questioned Resolutions and of the Writ of Execution that had been issued on December 2, 1980. On October 28, 1981, we dismissed the petition but upon petitioners' motion, reconsidered the dismissal and gave due course to the petition of March 15, 1982.

On the first issue, petitioners maintain that it was justified in cancelling the contract to sell without prior notice or demand upon respondent in view of paragraph 6 thereof which provides;

"6. That in case the BUYER fails to satisfy any monthly installment, or any other payments herein agree if upon, the BUYER shall be granted a month of grace within which to make the payment of the account in arrears together with the one corresponding to the said month of grace. It shall be understood, however, that should the month5Of grace herein granted to the BUYER expire, without the payments corresponding to both months having, been satisfied, an interest of ten (10%) per cent per annum shall be charged on the amounts the BUYER should have paid; it is understood further, that should a period of NINETY (90) DAYS elapse to begin from the expiration of the month of grace hereinbefore mentioned, and the BUYER shall not have paid all the amounts that the BUYER should have paid with the corresponding interest up to the date, the SELLER shall have the right to declare this contract cancelled and of no effect without notice, and as a consequence thereof, the SELLER may dispose of the lot/lots 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 which may have been paid by the BUYER in accordance with the 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 for liquidated damages suffered by virtue of the failure of the BUYER to fulfill his part of this agreement and the BUYER hereby renounces his right to demand or reclaim the return of the same and further obligates himself peacefully to vacate the premises and deliver the same to the SELLER."

Well settled is the rule, as held in previous jurisprudence,[2] that judicial action for the rescission of a contract is not necessary where the contract provides that it may be revoked and cancelled for violation of any of its terms and conditions. However, even in the cited cases, there was at least a written notice sent to the defaulter informing

him of the rescission. As stressed in *University of the Philippines vs. Walfrido de los Angeles*[3] the act of a party in treating a contract as cancelled should be made known to the other. We quote the pertinent excerpt:

"Of course, it must be understood that the act of a party in treating a contract as cancelled or resolved on account of infractions by the other contracting party must be made known to the other and is always provisional, being ever subject to scrutiny and review by the proper court. If the other party denies that rescission is justified, it is free to resort to judicial action in its own behalf, and bring the matter to court. Then, should the court, after due hearing, decide that the resolution of the contract was not warranted, the responsible party will be sentenced to damages; in the contrary case, the resolution will be affirmed, and the consequent indemnity awarded to the party prejudice.

In other words, the party who deems the contract violated may consider it resolved or rescinded, and act accordingly without previous court action, but it proceeds at its own risk. For it is only the final judgment of the corresponding court that will conclusively and finally settle whether the action taken was or was not correct in law. But the law definitely does not require that the contracting party who believes itself injured must first file suit and wait for a judgment before taking extrajudicial steps to protect its interest. Otherwise, the party injured by the other's breach will have to passively sit and watch its damages accumulate during the pendency of the suit until the final judgment of rescission is rendered when the law itself requires that he should exercise due diligence to minimize its own damages. (Civil Code, Article 2203)

We see no conflict between this ruling and the previous jurisprudence of this Court; invoked by respondent declaring that judicial action is necessary for the resolution, of a reciprocal obligation (*Ocejo, Perez. & Co., vs. International Banking Corp.*, 37 Phil. 631; *Republic vs. Hospital de San Juan de Dios, et al.*, 84 Phil. 820) since in every case where the extrajudicial resolution is contested only the final award of the court of competent jurisdiction can conclusively settle whether the resolution was proper or not. It is in this sense that judicial action will be necessary, as without it, the extrajudicial resolution will remain contestable and subject to judicial invalidation unless attack thereon should become barred by acquiescence, estoppel or prescription.

Fears have been expressed that a stipulation providing for a unilateral rescission in case of breach of contract may render nugatory the general rule requiring judicial action (v. Footnote, *Padilla*, Civil Law, Civil Code Anno.; 1967 ed. Vol. IV, page 140) but, as already observed, in case of abuse or error by the rescinder, the other party is not barred from questioning in court such abuse or error, the practical effect of the stipulation being merely to transfer to the defaulter the initiative of instituting suit, instead of the rescinder." (Italics ours)

Of similar import is the ruling in *Nera vs. Vacante*,[4] reading:

"A stipulation entitling one party to take possession of the land and building if the other party violates the contract does not *ex proprio vigore* confer upon the former the right to take possession thereof if objected to without judicial intervention and determination."

This was reiterated in *Zulueta vs. Mariano*[5] where we held that extrajudicial rescission has legal effect where the other party does not oppose it.[6] Where it is objected to, a judicial determination of the issue is still necessary.

In other words, resolution of reciprocal contracts may be made extrajudicially unless successfully impugned in Court. If the debtor impugns the declaration, it shall be subject to judicial determination.[7]

In this case, private respondent has denied that rescission is justified and has resorted to judicial action. It is now for the Court to determine whether resolution of the contract by petitioners was warranted.

We hold that resolution by petitioners of the contract was ineffective and inoperative against private respondent for lack of notice of resolution, as held in the *U.P. vs. Angeles* case, *supra*.

Petitioner relies on *Torralba vs. De los Angeles*[8] where it was held that "there was no contract to rescind in court because from the moment the petitioner defaulted in the timely payment of the installments, the contract between the parties was deemed ipso facto rescinded." However, it should be noted that even in that case notice in writing was made to the vendee of the cancellation and annulment of the contract although the contract entitled the seller to immediate re-possession of the land upon default by the buyer.

The indispensability of notice of cancellation to the buyer was to be later underscored in Republic Act No. 6551 entitled "An Act to Provide Protection to Buyers of Real Estate on Installment Payments" which took effect on September 14, 1972, when it specifically provided:

"Sec. 3(b) . . . the actual cancellation of the contract shall take place after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer." (Italics supplied)

The contention that private respondent had waived his right to be notified under paragraph 6 of the contract is neither meritorious because it was a contract of adhesion, a standard form of petitioner corporation, and private respondent had no freedom to stipulate. A waiver must be certain and unequivocal, and intelligently made; such waiver follows only where liberty of choice has been fully accorded.[9] Moreover, it is a matter of public policy to protect buyers of real estate on installment payments against onerous and oppressive conditions. Waiver of notice is one such onerous and oppressive condition to buyers of real estate on installment payments. Regarding the second issue on refund of the installment payments made by private respondent. Article 1385 of the Civil Code provides:

"ART. 1385. Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest; consequently, it can be carried out only when he who demands rescission can return whatever he may be obliged to restore.

"Neither shall rescission take place when the things which are the object of the contract are legally in the possession of third persons who did not act in bad faith.

"In this case, indemnity for damages may be demanded from the person causing the loss."

As a consequence of the resolution by petitioners, rights to the lot should be restored to private respondent or the same should be replaced by another acceptable lot. However, considering that the property had already been sold to a third person and there is no evidence on record that other lots are still available, private respondent is entitled to the refund of installments paid plus interest at the legal rate of 12% computed from the date of the institution of the action.[10] It would be most inequitable if petitioners were to be allowed to retain private respondent's payments and at the same time appropriate the proceeds of the second sale to another.

We come now to the third and fourth issues regarding the personal liability of petitioner Onstott, who was made jointly and severally liable with petitioner corporation for refund to private respondent of the total amount the latter had paid to petitioner company. It is basic that a corporation is invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other legal entity to which it may be related.[11] As a general rule, a corporation may not be made to answer for acts or liabilities of its stockholders or those of the legal entities to which it may be connected and vice versa. However, the veil of corporate fiction may be pierced when it is used as a shield to further an end subversive of justice;[12] or for purposes that could not have been intended by the law that created it;[13] or to defeat public convenience, justify wrong, protect fraud, or defend crime;[14] or to perpetuate fraud or confuse legitimate issues;[15] or to circumvent the law or perpetuate deception;[16] or as an alter ego, adjunct or business conduit for the sole benefit of the stockholders.[17]

We find no badges of fraud on petitioners' part. They had literally relied, albeit mistakenly, on paragraph 6 (supra) of its contract with private respondent when it rescinded the contract to sell extrajudicially and had sold it to a third person.

In this case, petitioner Onstott was made liable because he was then the President of the corporation and he appeared to be the controlling stockholder. No sufficient proof exists on record that said petitioner used the corporation to defraud private respondent. He cannot, therefore, be made personally liable just because he "appears to be the controlling stockholder." Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality.[18]In this respect then, a modification of the Resolution under review is called for.

WHEREFORE, the questioned Resolution of respondent public official, dated May 2, 1980, is hereby modified. Petitioner Palay, Inc. is directed to refund to respondent Nazario M. Dumpit the amount of P13,722.50, with interest at twelve (12%) percent per annum from November 8, 1974, the date of the filing of the Complaint. The temporary Restraining Order heretofore issued is hereby lifted.

No costs.

SO ORDERED.

Plana, Relova, and Gutierrez, Jr., JJ. concur.

Teehankee (Chairman), J., in the result.

[1] pp. 103-104, Rollo.

[2] Torralba vs. De los Angeles, 96 SCRA 69; Luzon, Brokerage Co., Inc. vs. Maritime Building Co., 43 SCRA 93 and 86 SCRA 3105; Lopez vs. Commissioner of Customs, 37 SCRA 327; U.P. vs; De los Angeles, 35 SCRA 102; Ponce Enrile vs. CA, 29 SCRA 504; Froilan vs. Pan Oriental Shipping Co., 12 SCRA 276; Taylor vs. Uy Tieng Piao, 43 Phil. 873.

[3] 35 SCRA 102 (1970).

[4] 3 SCRA 505 (1961).

[5] 111 SCRA 206 (1982).

[6] Tolentino, Civil Code of the Philippines, Vol. IV, 1962 ed., p. 168, citing Magdalena Estate vs. Myrick, 71 Phil. 344 (1941).

[7] U.P. vs. De los Angeles, supra.

[8]96 SCRA 69 (1980).

[9]Chavez vs. Court of Appeals, 24 SCRA 663, 682-683 (1968).

[10] Verceluz vs. Edano, 46 Phil. 801 (1924).

[11] Yutivo Sons Hardware Co. vs. Court of Tax Appeals, 1 SCRA 160 (1961).

[12] Emilio Cano Enterprises, Inc. vs. CIR, 13 SCRA 290 (1965).

[13] McConnel vs. CA, 1 SCRA 722, 726 (1961).

[14] Yutivo Sons Hardware Co. vs. CTA, *supra*; McConnel vs. CA, *supra*.

[15] R.F. Sugay & Co., Inc. vs. Reyes, 12 SCRA 700 (1964).

[16] Gregorio Araneta, Inc. vs. De Paterno & Vidal, 91 Phil. 786 (1952).

[17] McConnel vs. CA, *supra*; Commissioner of Internal Revenue vs. Norton Harrison Co., 120 Phil. 684 (1964).

[18] Liddel & Co. vs. Collector of Internal Revenue, 2 SCRA 632, 640 (1961).

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