

SOCORRO VDA. DE MONDRAGON AND THE HEIRS OF THE ESTATE OF DOMINADOR MONDRAGON, PETITIONERS, VS. HON. INTERMEDIATE APPELLATE COURT & THE SPOUSES MANUEL AND BELEN BAYONA, RESPONDENTS.

G.R. NO. 71889. April 17, 1990

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

The spouses Manuel and Belen Bayona are relatives of Socorro Vda. de Mondragon and her late husband, Dominador Mondragon. On August 22, 1960, the Mondragons agreed to sell to the Bayonas a 1000-square-meter portion of their Lot 995 of the Tacloban Cadastre for the price of P3 per square meter or a total of P3,000. On the same date, one-half of the agreed price (P1,500) was paid by the Bayonas. Further payments were made by them in cash and in kind, amounting to an additional sum of P297, leaving an unpaid balance of P1,203. This transaction is evidenced by a memorandum receipt signed by the parties (Exh. A).

On April 11, 1975, the Mondragons agreed to sell to the Bayonas an unsold portion of their Lot No. 901 of the Tacloban Cadastre, covered by Transfer Certificate of Title No. T-760, for P15,000, of which P7,900 was admittedly received by the Mondragons from the Bayonas (Exh. I).

On April 11, 1978, the Bayonas filed a complaint for specific performance and damages with preliminary attachment in the Court of First Instance of Leyte, Branch III (now Regional Trial Court of Leyte, Branch VI), against Socorro Vda. de Mondragon and the Heirs of Dominador Mondragon, alleging that they had demanded several times from the defendants the execution of the deeds of sale of the portions of Lots 995 and 901 that had been sold to them, but the defendants unjustifiably failed to execute the deeds; instead, the defendants have been selling their lots to other persons and may dispose of the properties which are the subject of the aforementioned agreements, with intent to defraud the plaintiffs; and, that due to the contractual breach committed by the Mondragons, the plaintiffs incurred expenses of litigation and suffered moral and exemplary damages.

In their answer, the defendants alleged that the Bayonas failed to pay the balance of the purchase price for Lot 995, decided to abandon the transaction and buy Lot 901 instead; that it was agreed that the amount they paid for Lot 995 would be considered as partial payment for Lot 901; that they could not possibly execute a deed of sale of Lot 901 in favor of the plaintiffs because the balance of the purchase price has not been paid. Defendants moved to dismiss the complaint for lack of a cause of action and prescription. The plaintiffs opposed the motion and the trial court denied it.

Hoping that the case would be settled amicably between the parties, "who are after all related to each other and are practically neighbors," the court appointed the Acting Clerk of Court as Commissioner to try to settle the case.

The plaintiffs submitted a Proposed Compromise Agreement which reads:

‘COME NOW Plaintiffs, in answer to the letter of Atty. Cristina T. Montejos, duly appointed Commissioner in

the above-entitled case, for the undersigned plaintiffs to submit a possible Compromise Agreement, hereby submit the foregoing Memorandum:

"1. The plaintiffs make it clear that despite the letter of demand they sent the herein defendants dated October 7, 1977, the herein defendants still sold to different buyers Lot 995 under Original Certificate of Title No. 760, containing an area of 391 sq. meters, which plaintiffs discovered after verification from the Tacloban City Register of Deeds;

"2. That Lot 995 under OCT 760 was subdivided by defendants and sold to the following:

"Lot 995 A - 284 sq. ms. to Encarnacion Alvares on 9/8/77

"Lot 995 B - 661 sq. ms. to Alberto Gonzalo on 11/14/77

"Lot 995 C - 500 sq. ms. (Clean title)

"Lot 995 D - 500 sq. ms. to Alberto Gonzalo on 9/2/77

"Lot 995 E - 370 sq. ms. to Vicente Quiton on 11/22/77

"Lot 995 F - 290 sq. ms. to Mer Lagman on 3/2/78

"Lot 995 G - 296 sq. ms. to Wilfredo Padilla on 2/15/78

"Lot 995 H- 290 sq. ms. to Dionisio Padilla on 2/15/78

"3. That as per the original agreement between the plaintiffs and defendant Socorro Mondragon for the purchase price of Lot 995, OCT 760, plaintiffs have already paid defendant Socorro Mondragon as admitted by her at the trial, the amount of P1,797.00 for Lot 995 C, which would have been paid up with an excess of P297 of an equivalent of 99 sq. meters at P3.00 per sq. meter as agreed between plaintiffs and defendants.

"4. That on Lot 1 (LRC) 8828, with an area of 378 sq. ms. plaintiff would like to deduct the paid up 99 sq. ms. which is in excess from Lot 995 leaving the plaintiffs 279 sq. ms. to account for, so that:

279 sq. ms.

x P39 .66 price per sq. meter

P11,070.00

less 7,100.00 paid up

P 3,970.00 balance still payable by plaintiffs.

"5. Plaintiffs seek that this amount of P3,970.00 be charged against defendants as damages and attorney's fees, plus other reliefs plaintiffs are entitled in the premises.

RESPECTFULLY SUBMITTED;

(SGD) MANUEL K. BAYONA (SGD) BELEN S. BAYONA
Plaintiff Plaintiff

(SGD) ATTY. FEDERICO NOEL
Counsel for the Plaintiffs

COPY FURNISHED:

Atty. Andres Santos

Counsel for the Defendants
Marasbaras, Tacloban City”

(pp. 12-13, Petition.)

The defendants filed a Counter-Proposal for Compromise Agreement, as follows:

"COUNTER PROPOSAL FOR COMPROMISE AGREEMENT

"COME NOW defendants thru counsel in the above-entitled case unto this Honorable Court most respectfully aver:

“1. That defendants are ready to enter into the following:

"(a) That Lot No. 995 of the Tacloban Cadastre of which plaintiffs has paid ONE THOUSAND SEVEN HUNDRED NINETY SEVEN PESOS (P1,797.00), defendants cannot compromise with the same as they have already been sold;

“2. That insofar as Lot 901 is concerned of which plaintiffs has (sic) paid SEVEN THOUSAND ONE HUNDRED PESOS (P7,100.00), defendants are willing to execute the proper conveyance provided that the plaintiffs pay the balance of SEVEN THOUSAND NINE HUNDRED PESOS (P7,900.00) minus ONE THOUSAND SEVEN HUNDRED NINETY SEVEN PESOS (P1,797.00) advance payment for Lot No. 995. On the basis of this offer which is most fair and equitable to the parties, defendants are willing to submit the proposed agreement.

"TACLOBAN CITY, for Palo, Leyte, February 24, 1981.

(SGD) ATTY. ANDRES S. SANTOS Counsel for the Defendants Marasbaras, Tacloban City"

(p. 14, Petition.)

On September 30, 1981, the trial court rendered a decision holding that there was a novation of the first contract to sell Lot 995. It observed that Lot 995 is located in the City of Tacloban where both parties lived as neighbors, hence, its subdivision and sale to third persons could not have been done without the consent or knowledge of the plaintiffs, who did nothing about it except to send a demand letter two and a half years later. It held that only the contract to sell Lot 901 existed between the plaintiffs and the defendants, for the agreed price of P15,000, out of which P9,697 had already been paid (P7,900 as advance payment, plus P1,797 paid for Lot 995 or a total of P9,697), leaving a balance of P5,303 only.

Upon the denial of their motion for reconsideration of the decision, the plaintiffs appealed to the Intermediate Appellate Court (AC-G.R. CV No. 00905-R) which rejected the novation theory and reversed the lower court's finding. It ordered the defendants:

“1. to execute the proper Deed of Conveyance over Lot 995-C of the Tacloban Cadastre in favor of the plaintiffs under OCT No. T-760; and

“2. to execute the proper Deed of Conveyance over Lot No. 901 of the Tacloban Cadastre likewise in favor of the plaintiffs after the latter shall have paid the balance of P7,603.00, without any special pronouncement as to costs." (p. 152, Rollo.)

Defendants-appellees filed a motion for reconsideration of the decision, which the Appellate Court denied. Hence, this petition for review.

The lone issue posed by the petition is whether the agreement to sell a portion of Lot 995 (Exh. A) was novated

by the agreement (Exh. I) to sell a portion of Lot 901.

We have carefully reviewed the record and find neither express nor implied novation of the first contract to sell by the second contract. Both contracts are completely independent of each other and can stand alone.

The novation of obligations is governed by the following provisions of the New Civil Code:

"Article 1291. Obligations may be modified by:

"1. changing their object or principal conditions;

"2. substituting the person of the debtor;

"3. subrogating a third person in the rights of the creditor.

"Article 1292. In order that an obligation may be extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other."

The Court of Appeals found that:

"Although the plaintiffs paid the defendants almost 50% of the purchase price of lot 901 under the second contract to sell, this does not mean that the first contract to sell covering lot 995 for which the plaintiffs had already paid more than 50% or almost the entirety of the contract price, of the lot, was novated, sans any stipulation to this effect. Here, the lower court presumed that the original contract was already cancelled by the second contract because of the failure of the plaintiffs to complete the payment on lot no. 995 first, before making a downpayment on lot no. 901. This interpretation is a little bit strained, considering the stiff requirement of the law on novation that the intention to novate must be express and never presumed. Under the circumstances, the more reasonable interpretation of the acts of the plaintiffs in paying a downpayment of almost 1/2 of the consideration of lot no. 901 which was then more or less similar to, or would approximate, their payment status with regards to lot no. 995, is that, plaintiffs were so desirous to acquire both lots, that is why they made sizeable advances for the purchase price. Had it been their intention to extinguish the first obligation by the second, they should have stated said intention in any one of the receipts issued by the defendant Socorro Vda. de Mondragon for payments of the second lot, Exhs. F, G, H, I and I-1, L and M, but no such stipulation was included. The receipts and statement of account covering payments for the first lot are intact and separately maintained, Exhs. A to D, inclusive, without any annotation on either of them regarding their cancellation and/or incorporation in the payment of the purchase price of lot 901. This interpretation is supported by the letters of demand which were later sent by the plaintiffs to the defendants, both of which are quoted in full in the decision of the lower court. In both letters, the plaintiffs were demanding the execution of the Deeds of Absolute Sale separately covering both lot nos. 995 and 901, and not lot No. 901 alone. Nothing is mentioned in both letters regarding the alleged novation. What is more, the defendants never made any reply to said letters invoking any novation which was previously agreed upon. Ordinary experience would tell Us that the defendants should have refuted plaintiffs' demand letters for the conveyance of both lots, if there was indeed a novation of their contract. The fact that they did not, leads Us to believe that their claim of novation in their answer is only a delayed notion or afterthought, just to be able to put up a defense of some sort in this action.

"One other reason why We cannot consider novation here is the fact that the same was not proved during the trial. It was only alleged in the answer of the defendants, but allegation is not proof. The testimony of defendant Socorro Vda. de Mondragon regarding the payments on the two (2) lots does not make mention of the change of subject matter of the first proposed sale, or of any novation for that matter. x x x

"Appellees' explanation that said defendant was actuated to demand payment for the two (2) lots out of exasperation when she failed to collect the balances of the purchase price of lot no. 901 is untenable, because if

indeed there was an express agreement to cancel the first contract and consolidate all payments in the second contract, even out of exasperation, Socorro Vda. de Mondragan would have no right to revive and collect on the first contract over lot no. 995 all over again." (pp. 149-151, Rollo.)

The express mandate of the law that for an obligation to be extinguished by another which substitutes the same, "it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other," (Art. 1292, Civil Code) sets the guidelines to be followed in appraising the defense of novation. There can be no novation unless the two distinct and successive binding contracts take place, with the later one designed to replace the preceding convention (*Montelibano vs. Bacolod-Murcia Milling Co., Inc.*, 5 SCRA 36).

"Novation by presumption has never been favored. To be sustained, it need be established that the old and the new contracts are incompatible in all points, or that the will to novate appears by express agreement of the parties or in acts of similar import." (*Anastacio Dungo vs. Adriano Lopez, et al.*, 6 SCRA 1007.)

In the absence of an express release, nothing less than a showing of complete incompatibility between the obligations would justify a finding of novation by implication.

WHEREFORE, the assailed decision is affirmed in all respects.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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