

ROMAN CATHOLIC BISHOP OF MALOLOS, INC., PETITIONER, VS. INTERMEDIATE APPELLATE COURT, AND ROBES-FRANCISCO REALTY AND DEVELOPMENT CORPORATION, RESPONDENTS.

G.R. No. 72110, November 16, 1990

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

This is a petition for review on certiorari which seeks the reversal and setting aside of the decision[1] of the Court of Appeals,[2] the dispositive portion of which reads:

WHEREFORE, the decision appealed from is hereby reversed and set aside and another one entered for the plaintiff ordering the defendant-appellee Roman Catholic Bishop of Malolos, Inc. to accept the balance of P124,000.00 being paid by plaintiff-appellant and thereafter to execute in favor of Robes-Francisco Realty Corporation a registerable Deed of Absolute Sale over 20,655 square meters portion of that parcel of land situated in San Jose del Monte, Bulacan described in OCT No. 575 (now Transfer Certificates of Title Nos. T-169493, 169494, 169495 and 169496) of the Register of Deeds of Bulacan. In case of refusal of the defendant to execute the Deed of Final Sale, the clerk of court is directed to execute the said document. Without pronouncement as to damages and attorney's fees. Costs against the defendant-appellee.[3]

The case at bar arose from a complaint filed by the private respondent, then plaintiff, against the petitioner, then defendant, in the Court of First Instance (now Regional Trial Court) of Bulacan, at Sta. Maria, Bulacan,[4] for specific performance with damages, based on a contract[5] executed on July 7, 1971.

The property subject matter of the contract consists of a 20,655 sq.m.-portion, out of the 30,655 sq.m. total area, of a parcel of land covered by Original Certificate of Title No. 575 of the Province of Bulacan, issued and registered in the name of the petitioner which it sold to the private respondent for and in consideration of P123,930.00.

The crux of the instant controversy lies in the compliance or non-compliance by the private respondent with the provision for payment to the petitioner of the principal balance of P100,000.00 and the accrued interest of P24,000.00 within the grace period.

A chronological narration of the antecedent facts is as follows:

On July 7, 1971, the subject contract over the land in question was executed between the petitioner as vendor and the private respondent through its then president, Mr. Carlos F. Robes, as vendee, stipulating for a downpayment of P23,930.00 and the balance of P100,000.00 plus 12% interest per annum to be paid within four (4) years from execution of the contract, that is, on or before July 7, 1975. The contract likewise provides for cancellation, forfeiture of previous payments, and reconveyance of the land in question in case the private respondent would fail to complete payment within the said period.

On March 12, 1973, the private respondent, through its new president, Atty. Adalia Francisco, addressed a

letter[6] to Father Vasquez, parish priest of San Jose Del Monte, Bulacan, requesting to be furnished with a copy of the subject contract and the supporting documents.

On July 17, 1975, admittedly after the expiration of the stipulated period for payment, the same Atty. Francisco wrote the petitioner a formal request[7] that her company be allowed to pay the principal amount of P100,000.00 in three (3) equal installments of six (6) months each with the first installment and the accrued interest of P24,000.00 to be paid immediately upon approval of the said request.

On July 29, 1975, the petitioner, through its counsel, Atty. Carmelo Fernandez, formally denied the said request of the private respondent, but granted the latter a grace period of five (5) days from the receipt of the denial[8] to pay the total balance of P124,000.00, otherwise, the provisions of the contract regarding cancellation, forfeiture, and reconveyance would be implemented.

On August 4, 1975, the private respondent, through its president, Atty. Francisco, wrote[9] the counsel of the petitioner requesting an extension of 30 days from said date to fully settle its account. The counsel for the petitioner, Atty. Fernandez, received the said letter on the same day. Upon consultation with the petitioner in Malolos, Bulacan, Atty. Fernandez, as instructed, wrote the private respondent a letter[10] dated August 7, 1975 informing the latter of the denial of the request for an extension of the grace period.

Consequently, Atty. Francisco, the private respondent's president, wrote a letter[11] dated August 22, 1975, directly addressed to the petitioner, protesting the alleged refusal of the latter to accept tender of payment purportedly made by the former on August 5, 1975, the last day of the grace period. In the same letter of August 22, 1975, received on the following day by the petitioner, the private respondent demanded the execution of a deed of absolute sale over the land in question and after which it would pay its account in full, otherwise, judicial action would be resorted to.

On August 27, 1975, the petitioner's counsel, Atty. Fernandez, wrote a reply[12] to the private respondent stating the refusal of his client to execute the deed of absolute sale due to its (private respondent's) failure to pay its full obligation. Moreover, the petitioner denied that the private respondent had made any tender of payment whatsoever within the grace period. In view of this alleged breach of contract, the petitioner cancelled the contract and considered all previous payments forfeited and the land as ipso facto reconveyed.

From a perusal of the foregoing facts, we find that both the contending parties have conflicting versions on the main question of tender of payment.

The trial court, in its ratiocination, preferred not to give credence to the evidence presented by the private respondent. According to the trial court:

x x x What made Atty. Francisco suddenly decide to pay plaintiff's obligation on August 5, 1975, go to defendant's office at Malolos, and there tender her payment, when her request of August 4, 1975 had not yet been acted upon until August 7 1975? If Atty. Francisco had decided to pay the obligation and had available funds for the purpose on August 5, 1975, then there would have been no need for her to write defendant on August 4, 1975 to request an extension of time. Indeed, Atty. Francisco's claim that she made a tender of payment on August 5, 1975 -- such alleged act, considered in relation to the circumstances both antecedent and subsequent thereto, being not in accord with the normal pattern of human conduct -- is not worthy of credence.[13]

The trial court likewise noted the inconsistency in the testimony of Atty. Francisco, president of the private respondent, who earlier testified that a certain Mila Policarpio accompanied her on August 5, 1975 to the office of the petitioner. Another person, however, named Aurora Oracion, was presented to testify as the secretary-companion of Atty. Francisco on that same occasion.

Furthermore, the trial court considered as fatal the failure of Atty. Francisco to present in court the certified personal check allegedly tendered as payment or, at least, its xerox copy, or even bank records thereof. Finally, the trial court found that the private respondent had insufficient funds available to fulfill the entire obligation considering that the latter, through its president, Atty. Francisco, only had a savings account deposit of P64,840.00, and although the latter had a money-market placement of P300,000.00, the same was to mature only after the expiration of the 5-day grace period.

Based on the above considerations, the trial court rendered a decision in favor of the petitioner, the dispositive portion of which reads:

WHEREFORE, finding plaintiff to have failed to make out its case, the court hereby declares the subject contract cancelled and plaintiff's down payment of P23,930.00 forfeited in favor of defendant, and hereby dismisses the complaint; and on the counterclaim, the Court orders plaintiff to pay defendant.

(1) Attorney's fees of P10,000.00;

(2) Litigation expenses of P2,000.00; and

(3) Judicial costs.

SO ORDERED.[14]

Not satisfied with the said decision, the private respondent appealed to the respondent Intermediate Appellate Court (now Court of Appeals) assigning as reversible errors, among others, the findings of the trial court that the available funds of the private respondent were insufficient and that the latter did not effect a valid tender of payment and consignment.

The respondent court, in reversing the decision of the trial court, essentially relies on the following findings:

x x x We are convinced from the testimony of Atty. Adalia Francisco and her witnesses that in behalf of the plaintiff-appellant they have a total available sum of P364,840.00 at her and at the plaintiff's disposal on or before August 4, 1975 to answer for the obligation of the plaintiff-appellant. It was not correct for the trial court to conclude that the plaintiff-appellant had only about P64,840.00 in savings deposit on or before August 5, 1975, a sum not enough to pay the outstanding account of P124,000.00. The plaintiff-appellant, through Atty. Francisco proved and the trial court even acknowledged that Atty. Adalia Francisco had about P300,000.00 in money market placement. The error of the trial court lies in concluding that the money market placement of P300,000.00 was out of reach of Atty. Francisco. But as testified to by Mr. Catalino Estrella, a representative of the Insular Bank of Asia and America, Atty. Francisco could withdraw anytime her money market placement and place it at her disposal, thus proving her financial capability of meeting more than the whole of P124,000.00 then due per contract. This situation, We believe, proves the truth that Atty. Francisco apprehensive that her request for a 30-day grace period would be denied, she tendered payment on August 4, 1975 which offer defendant through its representative and counsel refused to receive. x x x[15] (Underscoring supplied)

In other words, the respondent court, finding that the private respondent had sufficient available funds, ipso facto concluded that the latter had tendered payment. Is such conclusion warranted by the facts proven? The petitioner submits that it is not.

Hence, this petition.[16]

The petitioner presents the following issues for resolution:

xxx xxx xxx

A. Is a finding that private respondent had sufficient available funds on or before the grace period for the payment of its obligation proof that it (private respondent) did tender of (sic) payment for its said obligation within said period?

xxx xxx xxx

B. Is it the legal obligation of the petitioner (as vendor) to execute a deed of absolute sale in favor of the private respondent (as vendee) before the latter has actually paid the complete consideration of the sale - where the contract between and executed by the parties stipulates -

"That upon complete payment of the agreed consideration by the herein VENDEE, the VENDOR shall cause the execution of a Deed of Absolute Sale in favor of the VENDEE."

xxx xxx xxx

C. Is an offer of a check a valid tender of payment of an obligation under a contract which stipulates that the consideration of the sale is in Philippine Currency?[17]

We find the petition impressed with merit.

With respect to the first issue, we agree with the petitioner that a finding that the private respondent had sufficient available funds on or before the grace period for the payment of its obligation does not constitute proof of tender of payment by the latter for its obligation within the said period. Tender of payment involves a positive and unconditional act by the obligor of offering legal tender currency as payment to the obligee for the former's obligation and demanding that the latter accept the same. Thus, tender of payment cannot be presumed by a mere inference from surrounding circumstances. At most, sufficiency of available funds is only affirmative of the capacity or ability of the obligor to fulfill his part of the bargain. But whether or not the obligor avails himself of such funds to settle his outstanding account remains to be proven by independent and credible evidence. Tender of payment presupposes not only that the obligor is able, ready, and willing, but more so, in the act of performing his obligation. *Ab posse ad actu non vale illatio*. "A proof that an act could have been done is no proof that it was actually done."

The respondent court was therefore in error to have concluded from the sheer proof of sufficient available funds on the part of the private respondent to meet more than the total obligation within the grace period, the alleged truth of tender of payment. The same is a classic case of non-sequitur.

On the contrary, the respondent court finds itself remiss in overlooking or taking lightly the more important findings of fact made by the trial court which we have earlier mentioned and which as a rule, are entitled to great weight on appeal and should be accorded full consideration and respect and should not be disturbed unless for strong and cogent reasons.[18]

While the Court is not a trier of facts, yet, when the findings of fact of the Court of Appeals are at variance with those of the trial court,[19] or when the inference of the Court of Appeals from its findings of fact is manifestly mistaken,[20] the Court has to review the evidence in order to arrive at the correct findings based on the record.

Apropos the second issue raised, although admittedly the documents for the deed of absolute sale had not been prepared, the subject contract clearly provides that the full payment by the private respondent is an a priori condition for the execution of the said documents by the petitioner.

That upon complete payment of the agreed consideration by the herein VENDEE, the VENDOR shall cause the execution of a Deed of Absolute Sale in favor of the VENDEE.[21]

The private respondent is therefore in estoppel to claim otherwise as the latter did in the testimony in cross-examination of its president, Atty. Francisco, which reads:

Q Now, you mentioned, Atty. Francisco, that you wanted the defendant to execute the final deed of sale before you would given (sic) the personal certified check in payment of your balance, is that correct?

A Yes, sir.[22]

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Art. 1159 of the Civil Code of the Philippines provides that "obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith." And unless the stipulations in said contract are contrary to law, morals, good customs, public order, or public policy, the same are binding as between the parties.[23]

What the private respondent should have done if it was indeed desirous of complying with its obligations would have been to pay the petitioner within the grace period and obtain a receipt of such payment duly issued by the latter. Thereafter, or, allowing a reasonable time, the private respondent could have demanded from the petitioner the execution of the necessary documents. In case the petitioner refused, the private respondent could have had always resorted to judicial action for the legitimate enforcement of its right. For the failure of the private respondent to undertake this more judicious course of action, it alone shall suffer the consequences.

With regard to the third issue, granting arguendo that we would rule affirmatively on the two preceding issues, the case of the private respondent still can not succeed in view of the fact that the latter used a certified personal check which is not legal tender nor the currency stipulated, and therefore, can not constitute valid tender of payment. The first paragraph of Art. 1249 of the Civil Code provides that "the payment of debts in money shall be made in the currency stipulated, and if it is not possible to deliver such currency, then in the currency which is legal tender in the Philippines.

The Court en banc in the recent case of Philippine Airlines v. Court of Appeals,[24] G.R. No. L-49188, stated thus:

Since a negotiable instrument is only a substitute for money and not money, the delivery of such an instrument does not, by itself, operate as payment (citing Sec. 189, Act 2031 on Negs. Insts.; Art. 1249, Civil Code; Bryan London Co. v. American Bank, 7 Phil. 255; Tan Sunco v. Santos, 9 Phil. 44; 21 R.C.L. 60, 61). A check, whether a manager's check or ordinary check, is not legal tender, and an offer of a check in payment of a debt is not a valid tender of payment and may be refused receipt by the obligee or creditor.

Hence, where the tender of payment by the private respondent was not valid for failure to comply with the requisite payment in legal tender or currency stipulated within the grace period and as such, was validly refused receipt by the petitioner, the subsequent consignment did not operate to discharge the former from its obligation to the latter.

In view of the foregoing, the petitioner in the legitimate exercise of its rights pursuant to the subject contract, did validly order therefore the cancellation of the said contract, the forfeiture of the previous payment, and the reconveyance ipso facto of the land in question.

WHEREFORE, the petition for review on certiorari is GRANTED and the DECISION of the respondent court promulgated on April 25, 1985 is hereby SET ASIDE and ANNULLED and the DECISION of the trial court dated May 25, 1981 is hereby REINSTATED. Costs against the private respondent.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

- [1] Promulgated on April 25, 1985; Zosa, M.A., J., ponente; Bartolome, F.C. and Ejercito, B.C., JJ., concurring.
- [2] AC-G.R. CV No. 69626, Robes-Francisco Realty & Development Corporation vs. Roman Catholic Bishop of Malolos, Inc.
- [3] Rollo, 37.
- [4] Hon. Jesus M. Elbinias, Presiding Judge, Branch V.
- [5] Rollo, 9-11.
- [6] Annex "T", 2, Record on Appeal, Court of First Instance, Bulacan, Branch V, Rollo, 49.
- [7] Annex "C-3", Id.
- [8] Annex "A-4", Id.
- [9] Annex "A-5", Id.
- [10] Annex "T", 5, Id.
- [11] Annex "C-6", Id.
- [12] Annex "C-7", 1-2, Id.
- [13] Annex "T", 14, Id.
- [14] Annex "T", 22, Id.
- [15] Rollo, 35.
- [16] Filed on October 25, 1985.
- [17] Rollo, 8-9.
- [18] Natividad del Rosario Vda. de Alberto v. Court of Appeals, G.R. 29759, May 18, 1989; Matabuena v. Court of Appeals, G.R. 76542, May 5, 1989.
- [19] Robleza v. Court of Appeals, G.R. 80364, June 28, 1989.
- [20] Reynolds Philippine Corporation v. Court of Appeals, G.R. 38187, January 17, 1987.
- [21] Rollo, 11.
- [22] T.s.n., June 9, 1977, 24.
- [23] Article 1409, Civil Code, par. 1.
- [24] Promulgated on January 30, 1990.

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