

REVA RAZ, PETITIONER, VS. THE INTERMEDIATE APPELLATE COURT, FOURTH CIVIL CASES DIVISION AND ENCARNACION VILLANUEVA, RESPONDENTS.

G.R. No. 73010. April 27, 1990

Ponente: CRUZ, J.

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CRUZ, J.:

The subject of this petition is a Conditional Assignment of Rights and Interests over a Foreclosure Judgment entered into between petitioner Reva Raz and the original private respondent herein, Encarnacion Villanueva, on August 7, 1972.[1]

The said judgment was rendered in favor of Villanueva on February 5, 1969, and ordered the defendants therein to pay her the amount of P35,000.00, with 12% per annum interest from August 7, 1965, and other amounts, in default of which the property subject of the proceeding would be sold at public auction to satisfy the amounts owing her.[2] This property was a parcel of land located at Quezon City which had been mortgaged by the defendants to secure the payment of a loan she had extended to them. The judgment was pending appeal before the respondent court at the time of the execution of the Conditional Assignment.

By virtue of the Conditional Assignment, Villanueva transferred all her rights and interests in the said judgment to Raz in consideration of the sum of P75,000.00 to be paid by the petitioner as follows:

- a) The ASSIGNEE shall pay the ASSIGNOR, her heirs and/or assigns the sum of TWENTY TWO THOUSAND (P22,000.00), upon the signing of this agreement.
- b) The ASSIGNEE shall pay the ASSIGNOR, her heirs and/or assigns the sum of TWENTY THOUSAND (P20,000.00), within one year from August 7, 1972, and not later, August 7, 1973;
- c) The balance of THIRTY THREE THOUSAND P33,000.00) plus costs mentioned in the said judgment shall be paid within the next following year and not later, August 7, 1974. It is further understood that the full consideration mentioned in paragraph 3, and the costs mentioned in par. c, hereof shall be fully liquidated in two (2) years time from the signing of this agreement and not later, August 7, 1974.

It was also stipulated in Par. 3(d) of the agreement -

- d) That the ASSIGNOR shall, as soon as the decision in the aforementioned case shall become final and executory, proceed with the execution of the judgment and the auction sale if allowed by law of the property subject matter of the aforementioned case, and the ASSIGNOR and/or her heirs shall as soon as the full consideration hereof is fully satisfied, and if by operation of law shall become the legitimate owner of the said property, execute a Deed of Sale in favor of the ASSIGNEE or her heirs, and/or assigns in order to make this CONDITIONAL ASSIGNMENT OF RIGHTS AND INTERESTS permanent. All expenses for such execution and auction sale and other expenses necessary thereto shall be for the account of the ASSIGNEE.

The petitioner paid the first installment of P22,000.00 on August 7, 1972, and the second installment of

P20,000.00 on August 7, 1973. However, she refused to pay the third installment of P33,000.00, which was supposed to be due on August 7, 1974, on the ground that Villanueva had not complied with her obligation under their agreement.

On April 13, 1978, the petitioner filed a complaint for specific performance and damages against the private respondent, claiming that the latter had reneged on her duty to deliver the property to the assignee in accordance with their agreement.

In her answer, Villanueva alleged that it was the petitioner who had defaulted in her payments and thus given just cause for the rescission of the agreement. This was authorized in its Par. 3(h) reading as follows:

h) If for any reason, any of the above terms and conditions cannot fully be complied, the same may be considered rescinded by either party, in which event the ASSIGNOR shall return whatever money she or her heirs may have received from the ASSIGNEE, and the said ASSIGNEE, shall relinquish any and all rights which if any she or her heirs may have, and this contract shall forthwith be considered null and void and without force and effect whatsoever.

To support her claim, Villanueva presented two letters[3] she said she had sent Raz, the first to remind her of the third installment that had not yet been paid and the second to tender her the refund of her earlier payments in view of the rescission of their contract. These letters follow:

April 22, 1975

Reva Raz

16-A A. Matiyaga St.

Quezon City

Dear Mr. Raz:

I am writing you this letter to remind you of your obligation under the Deed of Assignment we have entered into. You have not complied with your promise to pay me the P33,000.00 the costs and expenses corresponding thereto.

Hoping that you give this matter your preferential attention. Final demand is hereby made that you pay the aforesaid amount otherwise I will be constrained to rescind the contract and avail of my rights provided for in the contract.

Truly yours,

(Sgd.) ENCARNACION G. VILLANUEVA

x x x

May 13, 1975

Mr. Reva C. Raz

16-A Matiyaga St.

Quezon City

Dear Mr. Raz:

I am writing you this letter again to inform you that inasmuch that you failed to pay me the P33,000.00 the costs and expenses corresponding thereto as provided in our contract of August 7, 1972, I am making to you

this formal tender of payment of the P42,000.00 you paid me before.

Please give this matter your preferential attention because if I will not hear from you within a period of two (2) days from receipt hereof I will be constrained to consign aforesaid amount in court at your own costs.

Yours truly,

(Sgd.) ENCARNACION VILLANUEVA

For her part, Raz contended that it was the private respondent who had incurred in delay and bad faith. The petitioner pointed out that the motion to dismiss the appeal was filed by the appellants on August 16, 1972, and was granted by the Court of Appeals in a resolution dated December 15, 1972. Yet it was only on August 16, 1973, that the private respondent filed a motion for execution of the foreclosure judgment.

This motion was granted by the trial court on October 6, 1973. The property was sold at public auction on January 23, 1975, and the certificate of sale was issued in favor of Villanueva on February 25, 1975. This was registered on March 26, 1975, and the period of redemption expired one year later. However, it was only on February 9, 1978, that the court, on Villanueva's motion, ordered the confirmation of the sale and a new certificate of title was issued in her name.

According to the petitioner, the two letters allegedly sent to her by the private respondents should not have been admitted in evidence not only because there was no proof that she had received them. No less importantly, their genuineness had not been established in accordance with Rule 132, Section 21, reading as follows:

Sec. 21. Private writing, its execution and authenticity, how proved. - Before any private writing may be received in evidence, its due execution and authenticity must be proved either:

- a) By anyone who saw the writing executed;
- b) By evidence of the genuineness of the handwriting of the maker; or
- c) By a subscribing witness.

The petitioner likewise submitted that the rescission of the agreement was improper because it was Villanueva who had violated the contract by refusing to deliver the property to her. Moreover, every rescission, even if extrajudicial, requires proper notice to the other party, and there was no proof that such notice had been served on her.

The Court has deliberated on the issues and the arguments of the parties and finds that the respondent court[4] committed no reversible error in sustaining the trial court[5] and dismissing the appeal.

The petitioner was actually arguing against herself in invoking Rule 132, Section 21, for one of the modes prescribed therein for proving the execution and authenticity of any private writing is "by evidence of the genuineness of the handwriting of the maker." This mode must be read with Section 23 of the same Rule, which says that -

x x x Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered or proved to be genuine to the satisfaction of the judge.

We have made such comparison and find that the signature of Encarnacion G. Villanueva on the Conditional Assignment (which is not disputed) is similar to the signatures affixed to the two letters sent to the petitioner. There is no doubt that the agreement and the two letters were signed by private respondent Encarnacion G. Villanueva. Consequently, their authenticity and execution having been established, we hold that the letters were

admissible as evidence of the private respondent.

The Court is also convinced that the two letters were correctly sent to and personally delivered at the petitioner's address as stated in the Conditional Assignment, were actually received there and later presumably conveyed to her. Indeed, the signature of the person who received the first letter closely resembles that of one of petitioner's counsel as an examination of her pleadings will reveal.[6] At any rate, even if they were not really transmitted to the petitioner and the letters were correctly rejected as inadmissible, Raz would still be bound by her own admission in the complaint, where she made the following allegations in Par. 8:

a) A week or so before August 7, 1974, defendant demanded from plaintiff the payment of the balance of P33,000.00 of the consideration;

x x x

e) In view of plaintiff's insistence that the P33,000.00 would be paid only after defendant had obtained ownership of the subject property and would thus be ready to execute the corresponding deed of sale, defendant instead offered to return the amount of P42,000.00 already paid to her by plaintiff and have the contract rescinded, clearly revealing her interest not to recognize the aforesaid contract. (Emphasis supplied.)

The last quoted-paragraph is especially telling because it belies the petitioner's insistence that she had not been notified of the rescission. By her own words, she has admitted understanding the letter of May 13, 1975, as informing her that because of her failure to pay the balance of the stipulated payment, the contract was being rescinded by the private respondent. As she herself alleged, Villanueva "offered to return the amount of P42,000.00 already paid to her by the plaintiff and have the contract rescinded." This is a judicial admission that the petitioner cannot now disavow.[7]

While it is true that a certain degree of delay did accompany the registration of the property in Villanueva's name, this was not entirely imputable to her. Good faith is presumed except in the face of the strongest evidence to the contrary, which is not present here. The Court also notes from her conduct that the petitioner is not entirely blameless either. Considering the investment she had made in the land, having already paid thereon the sum of P33,000.00, we feel she should have been more vigilant in the protection of her interests.

The petitioner's counsel repeatedly says it was informed of each development in the sale and registration of the property "later on." [8] By this vague statement, which suggests that it was not following up the matter closely, it would absolve its client of all negligence. We do not agree.

It seems to us that in view of her substantial stake in the property, it behooved the petitioner to see to it that the private respondent discharged her part of the bargain without delay, especially so since no specific date was imposed upon the private respondent to transfer the land to the petitioner. If Raz felt that Villanueva was dilly-dallying, she should have taken steps to make her move faster (short of refusing to pay the last installment). As the trial judge observed, "plaintiff could very well have paid the whole amount and then substituted herself as plaintiff in Civil Case No. 10109." But she did not and just stood by, waiting to hear of developments "later on."

The sum of it all is that the petitioner, in insisting on the registration first in her name of the subject property before paying the balance, was invoking a right not stipulated in the Conditional Assignment. What was clearly provided therein was that the balance of P33,000.00 would be paid by her within two years from the date of the agreement and not later than August 7, 1974. For her refusal to make this payment, the contract was, pursuant to its terms, properly rescinded.

WHEREFORE, the petition is DENIED and the challenged decision of the respondent court is AFFIRMED, with costs against the petitioner.

SO ORDERED.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, p. 36. Upon her death in 1979, Encarnacion Villanueva was substituted by her daughter, Nora V. Daza.

[2] Annex "1;" Records, p. 124.

[3] Exhibits "6" and "7;" Records, pp. 33, 34. Reva Raz is erroneously addressed as "Mr."

[4] Decision penned by Sison, P.V., J. with Bidin and Veloso, JJ. concurring.

[5] Decision penned by Judge Ernani Cruz Paño.

[6] Records, pp. 73, 80, 115, 134, 142, 145, 150, 156 and 189.

[7] Rule 129, Sec. 2, Rules of Court.

[8] Records, pp. 144-145.

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