

GROUP DEVELOPERS AND FINANCIERS, INC., PETITIONER, VS. LUMEN POLICARPIO AND THE INTERMEDIATE APPELLATE COURT, RESPONDENTS.

G.R. No. 73421. November 29, 1988

Ponente: GUTIERREZ, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-73421/>

GUTIERREZ, JR., J.:

This is a petition to review on certiorari the decision of the then Intermediate Appellate Court (now Court of Appeals) which set aside the trial court's order of default and rendered a new one ordering the remand of the records of the case for further proceedings.

Petitioner Group Developers and Financiers, Inc., filed an action against private respondent Lumen M. Policarpio for rescission of contract and damages.

The facts of the case as found by the trial court have not been seriously disputed. They are as follows:

"From the evidence presented, it appears that on December 3 1973, (should be December 5 1970) plaintiff corporation and the defendant entered into a 'Pre-need Purchase Agreement' for the purchase of one Heritage Family Court Estate Block 7 (Exhibit "A"). The consideration of the contract was for P59,836.00. The defendant agreed to pay the sum of P5,983.60 as downpayment and the balance to be paid at the rate of P1,197.92 per month for sixty (60) months starting January 16, 1971. The parties also agreed that time is of the essence in said contract (Exhibit "A") and that should any covenant or agreement remain unperformed by the defendant for a period of thirty (30) days after the same was to have been performed under the agreement, then the agreement shall become null and void at the option of plaintiff, and plaintiff may re-enter the premises and hold the same and all the payments made prior to such re-entry shall belong to the plaintiff as liquidated damages.

"On December 5, 1970, defendant paid the plaintiff the sum of P5,983.60 representing the downpayment required under the Pre-Need Purchase Agreement. Defendant never remitted to plaintiff any of the installments due under said agreement despite demands from the plaintiff (Exhibit "F").

"Sometime in November, 1970, plaintiff and defendant entered into a 'Supplemental Agreement' (Exhibit B) for the construction by plaintiff corporation of Family Court Unit on the Heritage Family Court Estate Block 7 for a consideration of P20,000.00. The Family Court Unit was to be constructed in accordance with the technical description and specification amended to the Agreement (Exhibit "B-1"). Under the Supplemental Agreement entered into, defendant agreed to pay the sum of P4,000.00 representing 20% of the total amount and the balance shall be paid in twelve (12) equal monthly installments with interest thereon. It was likewise agreed that the improvement on the lot shall be used for interment purposes only and shall remain as the exclusive property, rights and interest of the plaintiff. The plaintiff was to construct the Family Court Unit within one (1) year from the signing of the agreement. In case of non--performance by the defendant of any of the covenants or agreements for a period of 30 days after the same were to have been performed, then an agreement shall become null and void at the option of the plaintiff and plaintiff may re-enter the premises and hold the same and all the payments made prior to such re-entry shall belong to the plaintiff as liquidated

damages.

"On December 7, 1970, defendant Lumen Policarpio paid the downpayment of P4,000.00 as called for in the Supplemental Agreement. Plaintiff started to construct the Family Court Unit and completed the same within the prescribed period. Defendant however again failed to pay any of the installments due under said agreement, despite repeated demands from the plaintiff (Exhibit "F").

"On April 22, 1971, defendant called plaintiff corporation requesting for interment services for her father, one Simeon Cristobal Policarpio (Exhibits "E", "E-1", "E-2" and "E?2" (sic). For the interment services requested, defendant agreed to pay the sum of P275.00. On April 25, 1971, defendant's father was interred at the Loyola Memorial Park. However, defendant again failed to pay for the interment services rendered despite demand from plaintiff corporation (Exh. "F"). In reply to plaintiff's letter of demand dated October 17, 1972, defendant admitting her indebtedness to the plaintiff and she requested for time within which to pay her obligations (Exh. "F-2") but until the present, defendant has not paid any of the amounts due from her. (pp. 173-176, Record on Appeal of Defendant)" (pp. 10-12, Rollo)

On July 8, 1974, judgment was rendered by the lower court the dispositive portion of which reads.

"WHEREFORE, IN VIEW OF THE FOREGOING, Judgment is hereby rendered for the plaintiff and against defendant as follows:

"1.

The Pro-Need Purchase Agreement and the Supplemental (sic) are hereby deemed rescinded and plaintiff is allowed to take possession of the premises subject thereof;

"2.

The sum of P9,983.60 representing the down payment made by the defendant is deemed forfeited in favor of the plaintiff as liquidated damages;

"3.

To pay the proportionate cost of the interment unit used by the late Don Simeon Cristobal Policarpio thirty (30) days from notice;

"4.

In case defendant fails to comply with the foregoing paragraph (Par. 3 of the dispositive portion of this decision), plaintiff is authorized to disinter and relocate the remains of Don Simeon Cristobal Policarpio to a single interment unit (sic) and defendant is ordered to pay the sum of P1,680.00 representing the value thereof as well as the expenses incidental thereto;

"5.

To pay the sum of P275.00 representing the value of interment services with legal interest thereon from May 25, 1971 until the same is fully paid;

"6.

To pay the sum of P2,500.00 as attorney's fees; and

"7.

To pay the costs of suit." (pp. 179--180, Defendant's Record on Appeal).

On October 3, 1974, on a motion for reconsideration by plaintiff, the court below issued an order, the dispositive part of which reads.

"WHEREFORE, after considering the reasons adduced by the Plaintiff and finding the same to be well taken, the motion for reconsideration is granted, and the dispositive portion of the decision dated July 8, 1974 is hereby amended to read as follows:

"WHEREFORE, the Court finds the plaintiff's claim for specific performance to be well established, and hereby orders the defendants:

"1.

To pay the plaintiff the amount of P90,860.70 which constitutes the entire balance due to the plaintiff from the defendant for the defendant's acquisition of a family court unit in the Heritage Family Court Estate Block No.7, of Loyola Memorial Park at Marikina, Rizal, and owned and operated by the plaintiff;

"2.

In the alternative, should the defendant fail to pay the amount of P90,860.70 within 60 days from receipt of this order, the defendant is hereby ordered to surrender the premises consisting of the Heritage Family Court Estate Block 7 and the Family Court Unit presently occupied by the defendant and her family to the plaintiff, and to pay the amount of P39,918.00 by way of damages;

"3.

Should the Plaintiff choose the second alternative and require the surrender of the premises, the court hereby authorizes the plaintiff to transfer the remains of Don Simeon Cristobal Policarpio to a suitable interment lot within Loyola Memorial Park at the expense of the defendant." (pp. 216-217, Defendant's Record on Appeal)

On December 30, 1974, on a second motion for reconsideration of plaintiff, the court below issued another order the dispositive portion of which reads:

"WHEREFORE, the order of this court dated October 3, 1974 modifying the dispositive portion of the decision dated July 8, 1974 is hereby amended so as to include that the defendant is hereby ordered to pay the sum of P275.00 representing the value of interment service with legal interest from May 25, 1971 until the same is fully paid and to pay the sum of P2,500.00 as attorney's fees and the costs of the suit." (p. 231, Record on Appeal of Defendant)

Both parties appealed from the decision of the lower court.

The respondent appellate court only dealt with one of the five errors raised by respondent Policarpio, namely:

THE LOWER COURT ERRED IN DECLARING THE DEFENDANT-APPELLANT IN DEFAULT AND IN

ALLOWING THE PRESENTATION OF EVIDENCE EX-PARTE AGAINST THE HEREIN DEFENDANT APPELLANT. (Rollo, p. 47)

The appellate court found the defendant's first assignment of error to be "very meritorious" and therefore did not find it necessary to discuss the defendant's other assigned errors and declared that "plaintiff's appeal is consequently rendered moot and academic." A motion for reconsideration filed by petitioner corporation was denied. Hence, this present petition.

The petitioner corporation raises the following assignment of errors which we treat as the issues of this petition:

I

THE RESPONDENT APPELLATE COURT GRAVELY ERRED IN RULING THAT RESPONDENT POLICARPIO HAD A VALID AND MERITORIOUS DEFENSE BECAUSE YOUR PETITIONER ALLEGEDLY ASKED ONLY FOR RESCISSION INSTEAD OF RESCISSION AND SPECIFIC PERFORMANCE.

II

THE RESPONDENT APPELLATE COURT GRAVELY ERRED IN RULING THAT RESPONDENT HAD A VALID AND MERITORIOUS DEFENSE BECAUSE YOUR PETITIONER HAD ALLOWED HER TO INTER HER FATHER'S REMAINS EVEN WHEN SHE HAD NOT YET FULLY PAID ON THE INTERMENT SPACE SHE HAD CONTRACTED FOR. (pp. 18-19 and 28, Rollo)

At the outset, counsel for both the petitioner and the respondent are admonished for their studied indifference and cavalier attitude towards the orders of this Court intended to expedite the resolution of the petition. They should have shown greater interest and taken the initiative in filing the required pleadings.

On April 14, 1986, the respondents were ordered to file a comment on the petition. The private respondent filed a motion for extension of time to file comment alleging that she had not yet received a copy of the petition. It may be noted that an ex-parte manifestation of the then counsel for petitioner, Francis E. Garchitorena, stated that a copy of the petition was furnished through registered mail to respondent Policarpio. Dispensing with the comment, the Court on July 1, 1987, gave due course to the petition and ordered the parties to file their respective memoranda. A motion for reconsideration of the due course resolution filed by the respondent was denied.

The new counsel for petitioner, Atty. Amador Y. Isonza, Jr., filed motions for extension of time to submit a memorandum but no such memorandum has been filed to this day. In the absence of the petitioner's memorandum, the private respondent has apparently decided not to file her own memorandum.

This case has been pending for sixteen (16) years and in this Court since February 25, 1986. We cannot wait forever for either party to act on their own case.

The absence of memoranda from both parties notwithstanding, the Court finds that on the basis of the records before it, there is enough to resolve the case. The decision of the respondent court was entirely based on only one assignment of error.

We resolve to end the entire controversy. This is in line with jurisprudence that the remand of a case to the lower courts for reception of evidence is not necessary if this Court could resolve the dispute on the records before it. (Adamos v. Bagasao, G.R. No. 63671, June 28 1988).

The petitioner centers its arguments on the contention that the order of default cannot be set aside absent a showing of a meritorious defense.

The petition has merit. Rule 18, Section 3 of the Rules of Court provides:

"Relief from order of default.-- A party declared in default may at any time after discovery thereof and before judgment file a motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable neglect and that he has a meritorious defense. In such case the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice."

Respondent Policarpio instead of filing a motion to set aside the order of default filed a motion for reconsideration without any accompanying affidavit of merit. The respondent appellate court held that this was sufficient as it was signed by the respondent and verified by her.

This ruling constitutes reversible error. The defendant must show that she has a meritorious defense otherwise the grant of her motion will prove to be a useless exercise. Thus, her motion must be accompanied by a statement of the evidence which she intends to present if the motion is granted and which is such as to warrant a reasonable belief that the result of the case would probably be otherwise if a new trial is granted.

As held in the case of *Arcilla v. Arcilla*, (138 SCRA 560, 569 [1985]):

"This way, petitioner could convince the Court that in his legal fight, he had a leg on which to stand. It thus results that reversal of the order complained of, as well as the judgment rendered thereon would be an idle ceremony. It would not advance or for that matter serve the ends of justice. It would only result in another waste of time, effort and expense. Paraphrasing what this Court has stated in *Paner vs. Yatco* it would be pointless to re-open this case, 'for like mirage it would merely raise false hopes and in the end avail her (him) nothing.'"

The respondent appellate court held that Policarpio had a meritorious defense. It stated:

"Did defendant have a meritorious defense? Without pre-judging the case, We think she has: (1) More than a year after defaulting in her installments in both contracts, and after demands for payments, plaintiff allowed her to inter her father in the burial lots subject of the contracts. The contract of December 5, 1970 stipulates in part: 'Interment will be permitted at any time if the cost including perpetual care of the site to be used has been fully paid.' Moreover, said contract of December 1970 is a mere contract to sell and buy, the Certificate of Ownership to be conveyed upon completion of all payments. (2) The complaint prayed solely for rescission. It did not pray for both rescission and specific performance, to vest option upon the court to grant either (*Mindanao Prespecting Assn. vs. Golden Gate Mining.*, 48 OG 3955).

The above cannot serve as meritorious defenses. They were not raised by Policarpio herself but merely advanced by the respondent appellate court. The fact that petitioner allowed the respondent to inter her father in one of the burial lots subject of the contracts should not be taken against the former, much less considered as proof that the respondent has paid all her obligations. Instead, this should be seen as an act of magnanimity on petitioner's part in the hope that the debts would then be fully paid.

Nowhere in Policarpio's pleadings did she deny her indebtedness to the petitioner. Even in her appeal, she merely raised as issues her having been declared in default and the trial court's decision finding the claim for specific performance meritorious thereby converting the suit for rescission into one for specific performance.

On this latter point, the relevant provision is Rule 18, Sec. 5 of the Rules of Court which provides:

"Extent of relief to be awarded. -- A judgment entered against a party in default shall not exceed the amount or be different in kind from that prayed for."

WHEREFORE, the respondent Appellate Court's decision is hereby SET ASIDE and the dispositive portion of

the trial court's decision rendered on July 8, 1974 is hereby reinstated. Costs against respondent Policarpio. Atty. Amador Y. Isonza, Jr., is ordered to show cause within ten (10) days from notice of this decision why disciplinary action should not be taken against him for failure to file a memorandum inspite of the extensions of time he requested and which were granted.

SO ORDERED.

Fernan, C.J., Feliciano, and Cortes, JJ., concur.

Bidin, J., took no part, as he was one of the concurring members in the appellate court.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.