

ERNESTO R. ANG AND ROSALINDA ANG, PETITIONERS, VS. THE COURT OF APPEALS AND LEE CHUY REALTY CORP., RESPONDENTS.

G.R. No. 80058. February 13, 1989

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals dated June 22, 1987[1] reversing the decision of the Regional Trial Court dated June 23, 1983 which dismissed the complaint of private respondent and awarded damages to petitioner.[2] The focus is on the issue of when a breach of contract may warrant its resolution.

The antecedents of this case are as follows:

Petitioners Ernesto Ang and Rosalinda Ang, brother and sister, are the owners of three (3) parcels of land located at A. Bonifacio St., Balintawak, Quezon City with an aggregate area of 2,096 square meters covered by Transfer Certificates of Title Nos. 258870, 258871 and 236872 which they acquired by purchase from the Cruz family on July 3, 1979 at a price of P680,000.00.[3]

Sometime in November 1979, negotiations were undertaken for the sale of the aforementioned properties between the petitioners as sellers and private respondent Lee Chuy Realty Corporation, through its president Henry Lee Chuy, as buyer.

On December 4, 1979, private respondent issued in favor of petitioners Manila Banking Corporation Check No. 30022695 in the amount of P50,000.00[4] which it transmitted to petitioners together with a receipt supposedly embodying the terms and conditions of their agreement as follows:

"RECEIVED from LEE CHUY REALTY CORPORATION the sum of FIFTY THOUSAND PESOS (P50,000.00) ONLY, Philippine Currency, per MBTC (sic) Check No, 30022695, as down payment for the sale to it of three (3) parcels of land located at A. Bonifacio, Balintawak, Quezon City, covered by TCT NOB. 258870, 258871, and 258872 of the Registry of Deeds for Metro Manila District II, at the agreed total price of One Million Six Hundred Thousand Pesos (P1,600,000.00), under the following agreement:

1. The sellers hereby undertake to remove and clear the subject property of all occupants and obstruction within this month of December 1979 at their own expenses (sic);
2. Upon the subject property being cleared of occupants and obstruction and ready for turn over to the buyer, the sellers shall forthwith execute and deliver a deed of absolute sale in favor of the buyer together with a tax clearance as to payment of capital gain (sic) tax and such other papers as are necessary for the buyer to register the sale and (the) issuance of the corresponding transfer certificate of title in its name, free from any lien and encumbrance; and simultaneously therewith, the buyer shall pay the sellers the additional sum of Seven Hundred Fifty Thousand Pesos (P750,000.00) to complete payment of fifty per centum (50%) of the price, and the balance of fifty per centum (50%) of the price in the amount of Eight Hundred Thousand Pesos (P800,000.00) shall be payable by the buyer to the sellers within a period of forty-five (45) days thereafter;

3. The sale carries the usual seller's warranty of peaceful possession and valid title by the buyer;
4. All expenses for the execution and registration of the sale, including lawyer's fees, notarial fees, documentary stamp tax, transfer tax, registration fees, and agent's commission are for the accounts (sic) of the sellers."[5]

The check for P50,000.00 was received and thereafter encashed by petitioners. However, the accompanying receipt was not returned by petitioners and instead another receipt prepared and signed by petitioners was forwarded to private respondent. This receipt thus reads:

"RECEIVED from LEE CHUY REALTY CORPORATION the sum of FIFTY THOUSAND PESOS (P50,000.00), Philippine Currency, per MBTC (sic) Check No. 30022695 as deposit to sale of three (3) parcels of land located at A. Bonifacio, Balintawak, Quezon City, covered by TCT Nos. 258870, 258871, and 258872 of the Registry of Deeds for Metro Manila District 11, in lieu of the agreed price, under the following agreements

1. The sellers hereby undertake to remove and clear the subject property of all occupants and obstruction within this month of December 1979 at their own expenses (sic)|
2. Upon the subject property being cleared of occupants and obstruction and ready for turn over to the buyer, the sellers shall forthwith execute and deliver a deed of absolute sale in favor of the buyer together with all pertinent papers necessary for the transfer of the certificate of title in its name, free from any lien and encumbrance and simultaneously therewith, the buyer shall pay the seller 50% of the agreed price minus the deposit of FIFTY THOUSAND PESOS (P50,000.00) in Philippine Currency and the balance of 50% of the agreed price shall be paid within a period of forty five (45) days with a post dated check;
3. The sale carries the usual seller's warranty of peaceful possession and valid title by the buyer;
4. The agent's commission will be for the account of the sellers;
5. All expenses for the execution and registration of the sale, including lawyer's fees, notarial fees, documentary stamp tax, transfer tax and registration fees will be deducted from the court's commission."[6]

On January 12, 1980, petitioner Rosalinda R. Ang sent private respondent a letter giving the latter up to January 24, 1980 to pay the balance of the purchase price, and informing it the failure to do so will result in the cancellation of their agreement.[7]

In reply thereto, private respondent wrote petitioners on January 23, 1980, expressing surprise over the demand for payment made by petitioners since private respondent had been ready since December 1979 to perform its part of the agreement while petitioners had not yet complied with their undertaking to clear the subject properties of the obstructions thereon.[8]

On March 3, 1980, private respondent, through its counsel, wrote petitioners demanding the refund of the P50,000.00 down payment made by private respondent on account of the failure of the petitioners to comply with their undertaking and their subsequent withdrawal from the sale.[9]

Upon the failure of the petitioners to return the P50,000.00 down payment, private respondent filed a complaint for the collection of a sum of money with damages before the Court of First Instance (now Regional Trial Court) of Rizal on May 9, 1980.

The petitioners sought the dismissal of the complaint. They also filed a counterclaim, praying for actual damages of P20,000.00 a month counted from November 1979 to continue while their deprivation of rental income persists, as well as moral and exemplary damages, plus attorney's fees.

After trial where the parties presented only one (1) witness each, the trial court rendered its decision dated June 23, 1983[10] in favor of petitioners and ordered private respondent to pay to petitioners the amounts of P170,000.00 with interest of 12% per annum to commence from the date of the filing of the complaint, P25,000.00 as exemplary damages and P20,000.00 as attorney's fees.

Both petitioners and private respondent appealed the decision of the trial court.

The Court of Appeals held that petitioners were the ones who breached the agreement. In a decision dated June 22, 1987,[11] the appellate court reversed the decision of the trial court and ordered petitioners to pay private respondent the amount, of P50,000.00 with legal interest computed from March 3, 1980 plus P10,000.00 attorney's fees.

The motion for reconsideration filed by petitioners was denied by the Court of Appeals in its resolution dated September 18, 1987.[12]

Hence, this petition for review on certiorari wherein petitioners raise several errors which all boil down to the issue of which party, the petitioners or the private respondent, breached the agreement.

Outside of the documentary evidence submitted by the parties, the only evidence available are the testimonies of the two witnesses presented during the trial - Henry Lee Chuy, president of respondent corporation, for the plaintiff (herein private respondent) and An alias Tan Tian, father of the petitioner, for the defense - which testimonies are diametrically opposed to one another.

After a careful examination of the records of the case, this Court rules in favor of the private respondent.

There is no doubt that there was a perfected contract for the sale of subject properties between petitioners and private respondent as evidenced by the down payment of P50,000.00.[13] What needs to be resolved is the agreed price for the sale of subject properties. In the receipt prepared by private respondent which was not signed by petitioners, the stated purchase price is P1,600,000.00. However, the receipt signed by petitioners, which substantially reproduced the terms and conditions embodied in the original receipt, did not state the agreed price.

Henry Lee Chuy testified that the second receipt did not indicate the agreed price because petitioners wanted to undervalue the price of P1,600,000.00 so that they will not pay a large amount of capital gains tax considering that the prior acquisition price for the property was only P680,000.00.[14] Initially, he refused to agree but upon the assurance of petitioners' father Ang Kilin that the clearing work in the property will be completed in a week or two, he agreed to keep the receipt.

On the other hand, Ang Kilin testified that the real price for the sale is P2,340,000.00 and not P1,600,000.00 as claimed by private respondent so that they (the petitioners) did not sign the receipt prepared by the latter. He claimed that it was Mrs. Lee, the mother of Henry Lee Chuy, who did not want to state the correct price since she wanted to undervalue the property. He adds that they have received offers for the properties in the amount of P2,160,000.00 from Dolora Chua[15] and P1,300.00 per square meter from Eusebio Chang of the Ching Hua Printing Press.[16] He also testified that inasmuch as the offer of private respondent was made earlier, petitioners were not in a position to negotiate with the other buyers.

The respondent Court of Appeals arrived at the conclusion that the petitioner committed a breach of their contract and acted in bad faith in dealing with private respondent.

We agree.

Petitioners did not offer any plausible explanation as to why Mrs. Lee did not want to state the correct price except that the latter wanted to undervalue the property. The reason why Mrs. Lee wanted to undervalue the

property was not clear. On the other hand, Henry Lee Chuy categorically stated that petitioners did not want to state the correct price for purposes of reducing their capital gains tax liability.

The Court finds that the latter explanation appears to be the more logical reason why petitioners did not state any specified amount for the agreed price in the receipt they signed. Since petitioners acquired the property for only P680,000.00 and the purchase price of the same was set at P1,600,000.00, they would have been liable to pay quite a large amount of capital gains tax or the profits to be realized from the sale, and even more had the price been set at P2,340,000.00.

Moreover, the original receipt prepared by private respondent recites in detail the manner of payment of the balance of the purchase price, to wits P750,000.00 to be paid after the property is cleared of occupants and obstructions and upon delivery of the deed of absolute sale; and the balance of P800,000.00 to be paid within 45 days thereafter. On the other hand, the receipt prepared and signed by petitioners merely indicates that 50% of the price minus the deposit shall be paid upon delivery of the deed of absolute sale and the other 30% would be paid within 45 days thereafter without stating the price. If the price was really P2,340,000.00 as claimed, by petitioners, they could have easily written the amount in the receipt. With or without a lawyer to assist: them, petitioners must have been aware of the importance of indicating the correct amount in the receipt since they claim that they did not sign the receipt prepared by private respondent because the price indicated thereon was wrong. Petitioners were the ones who clearly caused the obscurity when they omitted the purchase price in the receipt they prepared and signed. Hence, such obscurity must be construed against them.[17]

The claim of the petitioners, which the trial court believed, is that they could no longer accept the offers they have received from Dolora Chua and the Ching Hua Printing Press because of their previous commitment with private respondent. This pretension is not supported by the evidence. The records show that petitioners had entered into an "Agreement of Purchase or Sale" with Dolora Chua on December 3, 1979[18] or one day before the date of the receipt they signed for the P50,000.00 down payment made by private respondent.

Petitioners also argue that the appellate court erred when it considered the said document as an agreement and not a mere offer. We have carefully examined the said document and We find no cogent basis to view the same as a mere offer. It is clearly stated in the agreement that petitioners received P20,000.00 from Dolora Chua as down payment for the subject properties with the balance of the purchase price of P2,160,000.00 to be paid in full at the time the land shall have been cleared and that petitioners bind themselves to deliver to the buyer a deed of sale and conveyance upon full payment. The terms of the agreement are so clear as not to leave room for any other interpretation.[19]

The aforementioned agreement further bolsters the conclusion that the price agreed upon by petitioners and private respondent was P1,600,000.00. If the true price was P2,340,000.00, it would be unusual for petitioners to enter into such an agreement with Chua at a lesser purchase price. The only logical conclusion is that petitioners had intentionally omitted the price of P1,600,000.00 in the receipt they signed either to compel private respondent to agree to a price increase or to enable them to back out of their agreement notwithstanding their plan to reduce their capital gains tax liability.

Having settled the issue as to the agreed purchase price, We are now faced with the question of who breached the agreement and, as a corollary to this, who has the right to withdraw from the sale.

The Court of Appeals found that the petitioners breached the agreement when they failed to undertake fulfillment of the two conditions embodied in the same: (1) that petitioners will undertake to remove and clear the subject property of all occupants and obstructions within the month of December 1979 and (2) that when the subject property is cleared of all occupants and obstructions, the petitioners shall deliver a deed of absolute sale in favor

of private respondent with all pertinent papers necessary for the registration and issuance of a certificate of title in the name of private respondent.

Said conclusion of the Court of Appeals that petitioners failed to comply with their part of the agreement is conclusive upon this Court.[20] The appellate court discussed in detail its findings on the matter. We have gone through the records of this case and find no cogent reason to disturb such findings.

However, such breach of the agreement by petitioner does not warrant a resolution of the contract.[21] While it is true that in reciprocal obligations, such as the contract of purchase and sale in this case, the power to rescind is implied and any of the contracting parties may, upon non-fulfillment by the other party of his part of the obligation, resolve the contract,[22] rescission will not be permitted for a slight or casual breach of the contract: Rescission may be had only for such breaches that are so substantial and fundamental as to defeat the object of the parties in making the agreement.[23] The two aforementioned conditions that were breached by petitioners are not essential for the fulfillment of the obligation to sell on their part but merely an incidental undertaking. The rescission of the contract may not be allowed on this ground alone.

At any rate, private respondent at first did not seek to rescind the contract on the basis of the non-fulfillment of these conditions. Private respondent in fact sought definite advice from petitioners as to when they can comply with the conditions since it was ready to perform its part of the agreement since December 1979. This was after it received the letter of petitioners demanding payment of the balance of the purchase price on or before January 24, 1980 with the threat that failure to do so will lead to the repudiation of the agreement. Of course, petitioners cannot unilaterally repudiate the contract for the slight delay in payment incurred by private respondent which, on if true, cannot also be a ground for rescission since the same amounts to a slight breach.[24] Indeed, it was the failure of the petitioners to comply with the aforementioned conditions of the agreement that caused the delay in the payment by private respondent. However, when petitioners still failed to comply with their obligation and refused to proceed with the sale unless the purchase price is increased, that was the time private respondent demanded the resolution of the sale by asking for the refund of the down payment.

The Court holds that when petitioners refused to proceed with the sale unless private respondent agreed to pay the higher price of P2,340,000.00, the petitioners thereby committed a serious breach of the agreement. There was a perfected contract of sale between the parties and the purchase price was set at P1,600,000.00. Petitioners cannot increase the purchase price agreed upon without the consent of private respondent. As private respondent was willing to buy the subject property at the price of P1,600,000.00 as agreed upon and petitioners were not willing to sell unless the price is increased to P2,340,000.00,[25] private respondent had the right to rescind the agreement as petitioners committed a serious breach of the terms of the same.

Moreover, as the Court of Appeals correctly observed, since petitioners had already sold the subject properties to Dolora Chua, they can no longer perform what was incumbent upon them under the terms of the agreement, that is, to deliver the subject property to private respondent. This is another breach of their agreement. The appellate court aptly characterized the actuations of petitioners to be "double-dealing."

As a consequence of the resolution of the contract of sale, the parties should be restored to their original situation.[26] Petitioners should, therefore, be liable to refund the P50,000.00, down payment they have received from private respondent with legal interest computed from the date of the extrajudicial demand made on March 3, 1980.[27]

WHEREFORE, the decision of the Court of Appeals dated June 22, 1987 in Case No. CA-GR CV No. 07139 is hereby AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Narvasa, Cruz, Griño-Aquino and Medialdea, JJ., concur.

[1] Penned by Associate Justice L. I. Luciano and concurred in by Associate Justices O. M. Herrera and J.P. Torres, Jr.

[2] Penned by Judge Eduardo C. Tutaan.

[3] Exhibit B, page 35, Original Record.

[4] Exhibit D, page 39-A, *ibid*.

[5] Exhibit E, page 40, *ibid*.

[6] Exhibit F, page 41, *ibid*.

[7] Exhibit G, page 42, *ibid*.

[8] Exhibit H, page 3, *ibid*.

[9] Exhibit I, page 44, *ibid*.

[10] Pages 154 to 160, *ibid*.

[11] Pages 41 to 51 Rollo.

[12] Page 53, *ibid*.

[13] Exhibits E and F, Original Record.

[14] TSN, January 28, 1981, pages 5 and 14.

[15] Exhibit 4, page 100, Original Record.

[16] Exhibit 3, page 99, *ibid*.

[17] Article 1377, Civil Code of the Philippines; *Lim Yhi Luya vs. Court of Appeals*, 99 SCRA 668 (1980).

[18] Exhibit 4, Original Record.

[19] *Sy vs. Court of Appeals*, 131 SCRA 116 (1984); *Labasan vs. Lacuesta*, 86 SCRA 16 (1973); Article 1370, Civil Code.

[20] *Garcia vs. Cruz*, 25 SCRA 224 (1968); *Court of Appeals vs. Bautista*, 28 SCRA 211 (1969).

[21] See concurring opinion of Justice J.B.L. Reyes in *Universal Food Corporation vs. Court of Appeals*, 33 SCRA 1 (1970) where it was held that rescission as used in Article 1191 of the Civil Code actually means resolution which involves the right to cancel (or resolve) the contract or the reciprocal obligations for breach of stipulations.

[22] Article 1191, Civil Code; *Cortez vs. Bibaño and Beramo*, 41 Phil 298 (1920); *Magdalena Estate, Inc. vs. Louis J. Myrick*, 71 Phil. 344 (1941).

[23] *Angeles vs. Calasanz*, 135 SCRA 323 (1985); *Song Fo & Co. vs. Hawaiian - Philippine Co.* 47 Phil 821 (1925); *Borromeo vs. Franco, et al.*, 5 Phil. 49 (1905).

[24] Roque vs. Lapuz, 96 SCRA 741 (1980); Song Fo & Co vs. Hawaiian - Philippine Co., supra.

[25] TSN, January 28, 1981, pages 8 and 18.

[26] Article 1385, Civil Code; Magdalena Estate, Inc. vs. Louis J. Myrick, supra.

[27] Cabarroguis v. Vicente, 107 Phil. 340 (1960).

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