

AGUSTINA LIQUETTE TAN, PETITIONER, VS. COURT OF APPEALS AND SPS. MARIANO SINGSON AND VISITACION SINGSON, RESPONDENTS.

G.R. No. 80479. July 28, 1989

Ponente: CORTES, J.

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CORTES, J.:

The instant petition for review raises the main issue of whether the private respondents committed a substantial breach of their obligation so as to warrant petitioner's exercise of her right to rescind the contract of sale under Article 1191 of the Civil Code.

The antecedents of the instant controversy had been summarized in the respondent court's decision* as follows:

* * *

The evidence shows that defendants-appellants spouses (private respondents herein) are the owners of a house and lot located at No. 34 Easter Road, Baguio City, and covered by T.C.T. No. T-13826, which were then for sale. On June 14, 1984, plaintiff-appellee together with her agent went to see said spouses at their residence regarding the property. After appellants had shown appellee around the house and had conversation about the encumbrances and/or liens on the property, the parties finally agreed on the price of P1,800,000.00, with appellee to advance earnest money of P200,000.00 to enable appellants to secure the cancellation of the mortgage and lien annotated on the title of the property and the balance of the price to be paid by appellee on June 21, 1984. Forthwith, appellee handed to appellants a check for P200,000.00 and thereupon the parties signed a receipt (Exh. A) in the following tenor:

* * *

In turn, appellants handed to appellee a xerox copy of the title and other papers pertaining to the property as well as an inventory of the furnishings of the house that are included in the sale. Three (3) days thereafter, i.e., on June 17, 1984, appellee returned to appellants' house together with her daughter Corazon and one Ines, to ask for a reduction of the price to P1,750,000.00 and appellants spouses agreed, and so another receipt entitled "Agreement" (Exh. B) was signed by the parties as follows:

* * *

The very same day that appellants received the earnest money of P200,000.00, they started paying their mortgage loan with the Development Bank of the Philippines (DBP) to clear up the title of the subject property. On June 14, 1984, appellants paid the bank P30,000.00 per receipt, Exhibit B; on June 18, 1984 another P50,000.00 (Exh. 4-c); on June 29, 1984, P20,000.00 (Exh. 4?D); and on July 5, 1984, P70,909.59 and another P19,886.60 (Exhs. 4-F and 4-G) in full payment of the mortgage loan. On July 9, 1984, the DBP executed a cancellation of mortgage, which was registered with the Registry of Property of Baguio City in July 12, 1984. Appellants also paid all the taxes due and in arrears on the property. It likewise appears that appellants paid in full on July 17, 1984 the cost price of the 338 square meter lot which was awarded to appellant Visitacion Singson per her townsite sale application for said property. And the request of the City

Sheriff of Baguio City to lift the notice of levy in execution dated February 2, 1978 in Civil Case No. Q-10202, Pio S. Acampado, et al. v. Mariano D. Singson, et al., was duly annotated on the back of TCT No. T-13826 on August 2, 1979.

On June 25, 1984, appellee accompanied by her daughter Corazon and her lawyer. Atty. Vicente Quitariano, went to Baguio City to inquire about the status of the property and appellants told her that the Development Bank of the Philippines was taking some time processing their payments and preparing the deed of cancellation of the mortgage. On that occasion, the parties agreed on an extension of two (2) weeks for the execution of the deed of sale. Here, the parties' respective versions on the matter parted ways. According to appellants, it was appellee who asked for the extension because she was not yet ready to pay the balance of P1,550,000.00. On the other hand, appellee said that it was appellants who asked for it because the title of the property was not yet cleared. The court below believed appellee because on said date the Development Bank had not yet executed the deed of cancellation of mortgage, and no title has yet been issued for the driveway although already fully paid for.

Immediately, upon execution by the DBP of the deed of cancellation of mortgage of July 9, 1984, appellants tried to contact appellee and/or her daughter Corazon to come to Baguio City for the formal execution of the deed of sale, but to no avail. Instead, appellants received a telegram from Atty. Quitariano cancelling the sale and demanding the return of the P200,000.00 earnest money. Appellants countered with a letter of their lawyer. Atty. Tiofisto Rodes, calling on appellee to perform her part of the contract because "the title to the house and lot right now suffers no imperfection or doubt. The levy on execution has long been lifted, the mortgage indebtedness released, the portion of the public land used as driveway has long been awarded and fully paid for the City of Baguio. In short, the title can now be transferred in your name upon execution of the contract of sale. . . Your refusal will compel Us to sue for specific performance. . ."

Before appellants could make good their threat, appellee "jumped the gun", so to speak, upon them by filing in court on August 27, 1984 the case for recovery of sum of money with damages which is now this case on appeal before Us.

In her complaint, appellee alleged that she gave appellants spouses P200,000.00 upon their assurances that they could transfer to her the house and lot she was buying from them free from any liens and encumbrances, including the furnishings thereof and the adjacent lot being used as driveway, on June 25, 1984, but that day had come and passed without appellants being able to make good their promise, because she "discovered to her shock and dismay that she had been dealt with in bad faith by defendants" as the mortgage on the property was not released or cancelled and the driveway was still public land and could not be validly transferred to her as any disposition thereof would yet require approval by the Secretary of Agriculture and Natural Resources. Hence, the suit against appellants spouses for recovery of the P200,000.00 earnest money which is, in essence and concept, one for rescission with damages.

* * *

[CA Decision, pp. 1-6; Rollo, pp. 53-57.]

The Regional Trial Court which took cognizance of Civil Case No. 3709-V filed by petitioner Agustina Liqueste Tan rendered a decision disposing of the case as follows:

WHEREFORE, judgment is hereby rendered in favor of plaintiff and against defendants:

- (1) Ordering the rescission of the contracts entered into by and between plaintiff and the defendants, which are embodied in Exhs. "A" or "1" and "B" or "2";
- (2) Ordering the defendants, spouses Mariano Singson and Visitacion Singson to return to plaintiff the P200,000.00 earnest money given by her to defendants:

(3) Ordering the defendants to pay plaintiff interest at the rate of 12% per annum on the P200,000.00 from the filing of the complaint until fully paid:

(4) Ordering the defendant (sic) to pay plaintiff moral damages in the sum of P50,000.00;

(5) Ordering the defendants to pay plaintiff the amount of P20,000.00 as attorney's fees; and

(6) Ordering the defendants to pay the costs of this suit.

SO ORDERED. [Rollo, pp. 49-50.]

Private respondents interposed an appeal from said decision alleging that the trial court erred

I. . . in considering the consent of appellee to the agreement was vitiated by fraud.

II. . . in resolving in favor of the appellee the sole right of rescission.

III. . . in considering the adjacent lot as part of the sale agreed upon by the parties.

IV. . . in deciding the case in favor of the appellee and awarding damages.

On August 24, 1987, the respondent Court of Appeals promulgated a decision reversing that of the trial court, the decretal portion of which reads as follows:

WHEREFORE, the appealed decision is REVERSED and SET ASIDE and a new one is hereby entered ordering immediately upon the finality of this judgment appellants spouses to execute and sign an absolute deed of sale conveying to appellee free from any lien or encumbrance the house and lot covered by T.C.T. No. 13826 of the Registry of Deeds of Baguio City together with the furnishings and appliances listed in Exhibit C and the adjacent lot used as driveway covered by the Order of Award. Exhibit E-3 and appellee to pay appellants spouses the sum of P1,550,000.00 plus interest at the legal rate from the finality of this judgment until fully paid.

SO ORDERED. (Rollo, p. 61.)

Petitioners filed the instant petition for review on certiorari assailing the conclusion of the respondent Court of Appeals that the private respondents had not committed a substantial breach of their obligation and therefore, there was no legal basis for the judgment ordering rescission of the contract. Petitioners maintain that since private respondents were not prepared to convey the title to the subject property on the date agreed upon in view of the various liens and encumbrances thereon, the former are entitled to rescind the contract pursuant to Article 1191 of the Civil Code which states:

Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with articles 1385 and 1388 and the Mortgage Law.

After a thorough examination of the allegations contained in the parties' pleadings, the Court finds the instant petition to be devoid of any merit.

That the power to rescind obligations is implied in reciprocal ones in case one of the obligors should not comply with what is incumbent upon him is clear from a reading of the Civil Code provisions. However, it is equally settled that, in the absence of a stipulation to the contrary, this power must be invoked judicially; it cannot be exercised solely on a party's own judgment that the other has committed a breach of the obligation. Where there is nothing in the contract empowering the petitioner to rescind it without resort to the courts, the petitioners action in unilaterally terminating the contract in this case is unjustified [Philippine Amusement Enterprises, Inc. v. Natividad, G.R. No. L-21876. September 29, 1967, 21 SCRA 284.]

In this case, petitioner received on July 17, 1984 through her daughter Cora Tan Singson, a telegram from private respondent Visitacion Singson advising the former that the papers for the sale of the property are ready for final execution. The parties likewise met on June 25, 1984, the day agreed upon for the full payment of the purchase price, and they agreed on a further extension of two weeks for the execution of the deed sale. Despite this agreement, private respondents suddenly received a telegram from Atty. Quitoriano, counsel for the petitioner, unilaterally stopping the sale and demanding the return of the earnest money paid by petitioner [Exhibit "9", Original Records, p. 99.]

Petitioner, in rescinding the sale, claims that a substantial breach of the obligation has been committed by the private respondents as indicated by the following facts proved to be existing as of the date agreed upon for the consummation of the sale:

1. That no title has yet been issued by the Registry Of Deeds of the City of Baguio in the name of either of the respondents in connection with the 338-square meter lot where the driveway is located;
2. That the private respondents have not paid in full the total consideration for the said lot to the City of Baguio because they were able to complete the payment of the purchase price only on July 17, 1984 as found out by the respondent court in its decision (Please see page 8 of the Court of Appeals' decision, Annex "B");
3. That private respondents have not acquired the "previous consent of the Secretary of Natural Resources" for the said transfer to the petitioner as required by the award;
4. That the restrictions indicated in the AWARD makes whatever conveyance to be made by the awardee of the lot within the prohibited period as null and void and could cause the forfeiture of all the payments already made as well as the improvements introduced therein;
5. That there are still liens and encumbrances insofar as TCT No. T-13826 consisting of a mortgage with the DBP and a notice of Levy and Writ of Execution. [Rollo, pp. 14-15.]

Alternatively, petitioner seeks annulment of the contract on the ground of fraud since private respondents had misrepresented to her that they could validly convey title to the property subject of the contract which however is encumbered with various existing liens.

1. The alleged breach of the obligation by the private respondents, which consists in a mere delay for a few days in clearing the title to the property, cannot be considered substantial enough to warrant rescission of the contract.

A thorough review of the records clearly indicates that private respondents had substantially complied with their undertaking of clearing the title to the property which has a total land area of 886 square meters. It must be pointed out that the subject lot consists of private land, with an area of 548 square meters, covered by TCT No. T-13826 and of a portion of the public land which has been awarded to the private respondents under Townsite Sales Application No. 7-676-A. While TCT No. T-13826 was subject to a mortgage in favor of DBP, private respondents, upon receipt of the earnest money paid by petitioner, utilized the same to settle its obligations with DBP thus enabling them to secure a cancellation of the existing mortgage, which was duly noted in the title to the

property [See Original Records, p. 94.]

It is a settled principle of law that rescission will not be permitted for a slight or casual breach of the contract but only for such breaches as are so substantial and fundamental as to defeat the object of the parties in making the agreement (Universal Food Corporation v. Court of Appeals, G.R. No. L-29155, May 13, 1970, 33 SCRA 1; Philippine Amusement Enterprises, Inc. v. Natividad, *supra*; Roque v. Lapuz, G.R. No. L-32811, March 31, 1980, 96 SCRA 741.) A court, in determining whether rescission is warranted, must exercise its discretion judiciously considering that the question of whether a breach of a contract is substantial depends upon the attendant circumstances [Corpus v. Alikpala, et al., G.R. Nos. L-23720 and L-23707, January 17, 1968, 22 SCRA 104.]

In this case, as to the lot covered by TCT No. T-13826, it is true that as of June 25, 1984, the date set for the execution of the final deed of sale, the mortgage lien in favor of DBP annotated in the title has not yet been cancelled as it took DBP some time in processing the papers relative thereto. However, just a few days after, or on July 12, 1984, the cancellation of the DBP mortgage was entered by the Register of Deeds and duly noted on the title. Time not being of the essence in the agreement, a slight delay on the part of the private respondents in the performance of their obligation, is not sufficient ground for the resolution of the agreement [Biando and Espanto v. Embestro and Bardaje, 105 Phil. 1164 (1959)], more so when the delay was not totally attributable to them.

As to the notice of levy and execution annotated on TCT No. T-13826, a request to lift the same had already been filed with the Register of Deeds and duly noted on the title [Original Records, p. 95.] The fact that said notice had not yet been cancelled by the Register of Deeds as of June 25, 1984 cannot prejudice the sellers who must be deemed to have substantially complied with their obligation. The rule in this jurisdiction is that where the fulfillment of the condition (in a conditional obligation) does not depend on the will of the obligor, but on that of a third person, the obligor's part of the contract is complied with, if he does all that is in his power and it then becomes incumbent upon the other contracting party to comply with the terms of the contract [Article 1182, Civil Code; Smith Bell and Co. v. Sotelo Matti, 44 Phil. 874 (1922).]

On the other hand, private respondents' interest in the public land used as a driveway can likewise be conveyed to petitioner although no title has yet been issued in the name of Visitacion Singson. Such portion of the public land has long been awarded to Singson in 1972 and payment of the purchase price thereof has already been completed as of July 17, 1984. The fact that the consent of the Secretary of Agriculture and Natural Resources to the sale of the property to petitioner has not yet been secured cannot be considered a substantial breach of private respondents' obligation under the contract of sale.

In *Juanico and Barredo v. American Land Commercial Co., Inc., et al.* [97 Phil. 221 (1955)], this Court had ruled that the prior approval of the Secretary of Agriculture and Natural Resources is required only in cases of sale and encumbrance of the public land during the pendency of the application by the purchaser and before his compliance with the requirements of the law. Thus:

. . . But such approval becomes unnecessary after the purchaser had complied with all the requirements of the law, even if the patent has not been actually issued, for in that case the rights of the purchaser are already deemed vested, the issuance of the patent being a mere ceremony. Thus, "the execution and delivery of the patent after the right to it has become complete, are the mere ministerial acts of the officers charged with that duty". . . And, as it has been held, "One who has done everything which is necessary in order to entitle him to receive a patent for public land has, even before the patent is actually issued by the land department, a complete acquitable estate in the land which he can sell and convey, mortgage or lease. A fortiori a contract to convey land made before the issuance of a patent but after final proof has been made and the land paid for is not illegal" . . . [At 227; Underscoring supplied.]

Here, since the land in question had already been awarded to private respondents since 1972 and all the

requirements of the law for the purchase of public land were subsequently complied with, private respondents, as owners of said property, can properly convey title thereto to petitioner.

Inasmuch as the private respondents are ready, willing and able to comply with their obligation to deliver title to the property subject of the sale and had already demanded that petitioner pay the full amount of the purchase price, the petitioner must be considered as having incurred in delay. This conclusion is warranted by the clear provision of Article 1169 of the Civil Code which states:

Art. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extra-judicially demands from them the fulfillment of their obligation.

* * *

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins.

It is basic that the breach of a contract gives the aggrieved party under the law and even under general principles of fairness, the right to rescind the contract or to ask for specific performance (Nagarmull v. Binalbagan-Isabela Sugar Co., Inc., G.R. No. L-22470, May 28, 1970, 33 SCRA 46.) Petitioner having failed to comply with her obligation of paying the balance of the purchase price despite demands by private respondents, private respondents were clearly entitled to their counterclaim for specific performance, as correctly adjudged by the respondent court.

2. The claim that petitioner's consent to the contract was vitiated by fraud and, therefore, the contract in question is voidable is patently unmeritorious. The contract of sale is not voidable where no evidence was shown that through insidious words or machinations under Article 1338 of the Civil Code, the seller had induced the buyer to enter into the contract [Caram v. Laureta, Jr., G.R. No. L-28740, February 24, 1981, 103 SCRA 7.]

In this case, the evidence on record fully supports the finding of the appellate court that private respondents did not represent to petitioner that the house and lot they were selling were free from liens and encumbrances. Rather, they told her that the property was mortgaged to the DBP which was why they asked her to advance P200,000.00 as earnest money so that they could settle the mortgage indebtedness and clear up the title (Rollo, p. 60.) The testimony of petitioner herself shows that she was furnished with xerox copies of the title, at the back of which was a memorandum of the encumbrances on the property [TSN, September 30, 1985, p. 4.] Further, it is undisputed that at the time petitioner entered into the agreement in question, she was accompanied by her daughter Corazon and one Maria Lorenzo whom she could have asked to explain the particulars of the transaction that she could not understand (Rollo, p. 61.)

One final point. The decision of the respondent Court of Appeals ordered execution by private respondents of the absolute deed of sale conveying the subject property to petitioner and payment by petitioner of the balance of the purchase price immediately upon finality of such judgment. However, under the third paragraph of Article 1191 of the Civil Code the Court is given a discretionary power to allow a period within which a person in default may be permitted to perform his obligation [Kapisanan Banahaw v. Dejarne and Alvero, 55 Phil. 339 (1930).] Considering the huge amount of money involved in this sale, the Court, in the exercise of its sound discretion, hereby fixes a period of ninety (90) days within which petitioner shall pay the balance of the purchase price amounting to one million and five hundred fifty thousand pesos (P1,550,000.00) plus interest thereon at the legal rate from finality of this judgment until fully paid. After such payment has been made, the private respondents are ordered to sign and execute the necessary absolute deed of sale in favor of petitioner.

WHEREFORE, the assailed decision of the respondent Court of Appeals granting the counterclaim for specific performance of herein private respondents is hereby **AFFIRMED** with the **MODIFICATION** that the petitioner is given a period of ninety (90) days within which to pay the sum of one million and five hundred fifty thousand pesos (P1,550,000.00) representing the balance of the purchase price, with interest thereon at the legal rate from the finality of this judgment until fully paid. The private respondents are ordered to sign and execute the absolute deed of sale after the petitioner has completed payment of the purchase price and the interest thereon.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

* Penned by Justice Manuel T. Reyes and concurred in by Justices Oscar R. Victoriano and Hector C. Fule.

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