

**OSCAR A. JACINTO AND LIBRADA FRANCO-JACINTO, PETITIONERS,
VS. ROGELIO KAPARAZ, RAUL KAPARAZ AND ROSE MARIET
KAPARAZ, RESPONDENTS.**

G.R. No. 81158. May 22, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Petitioners urge this Court to review and set aside the decision of the respondent Court of Appeals of 30 July 1987 in C.A.-G.R. CV No. 69357,[1] the dispositive portion of which reads:

"WHEREFORE, the appealed decision is hereby REVERSED and SET ASIDE and judgment is hereby rendered as follows:

1. The Complaint/Amended Complaint is hereby dismissed.
2. The agreement between the parties dated March 11, 1966 (Exhibit "A"; also marked as Exhibit "1") is hereby declared extinguished.
3. To prevent unjust enrichment at the expense of another, the defendants-appellants are hereby ordered to reimburse to the plaintiffs-appellees the sum of P500.00 paid by the latter to the Development Bank of the Philippines for the defendants- appellants' P2,600.00 loan account.

No pronouncement as to costs.

SO ORDERED."[2]

The undisputed antecedent facts are as follows:

On 11 March 1966, herein petitioners and private respondents entered into an agreement (hereinafter referred to as Agreement) under which the private respondents agreed to sell and convey to petitioners a portion consisting of six hundred (600) square meters of a lot located in Matiao, Mati, Davao Oriental and covered by Transfer Certificate of Title No. T-3694 for a total consideration of P1,800.00. A downpayment of P800.00 was paid upon execution of the Agreement. The balance of P1,000.00 was to be paid by petitioners on installment at the rate of P100.00 a month to the Development Bank of the Philippines (DBP) to be applied to private respondents' loan accounts. Paragraphs 5, 6, 7 and 8 of the Agreement read as follows:

"That the PARTY OF THE FIRST PART is very much in need of cash to pay the loan to the DEVELOPMENT BANK OF THE PHILIPPINES herein abovementioned which is very much in arrears and the PARTY OF THE SECOND PART is agreeable to advance the sum of EIGHT HUNDRED (P800.00) PESOS as partial payment of the said loan to the Development Bank of the Philippines provided that the PARTY OF THE FIRST PARTY (sic) shall sell, transfer, cede and convey absolutely to the party of the SECOND PART an area of SIX HUNDRED (600) SQUARE METERS with a frontage of twenty (20) METERS along the present national highway, at the corner of the aforementioned land bordering a proposed

five-meter subdivision road adjacent to the property of the PARTY OF THE SECOND PART;

That for and in consideration of the foregoing premises and of the sum of EIGHT HUNDRED (800.00) PESOS which the PARTY OF THE FIRST PARTY (sic) hereby acknowledges to have received from the PARTY OF THE SECOND PART, THE PARTY OF THE FIRST PART hereby agrees, promises and binds himself to sell, cede, transfer, and convey absolutely to the PARTY OF THE SECOND PART SIX HUNDRED (600) SQUARE METERS portion of the property covered by TRANSFER CERTIFICATE OF TITLE NO. T-3694 together with all the improvements thereon, which portion is situated along the national highway and shown as the shaded area in the sketch at the back hereof; the total consideration of the sale of the said SIX HUNDRED (600) SQUARE METERS shall be ONE THOUSAND EIGHT HUNDRED PESOS (P1,800.00), including the amount of EIGHT HUNDRED PESOS (P800.00) advanced by the PARTY OF THE SECOND PART upon the execution of this document;

That the unpaid balance of the total consideration of the sale amounting to ONE THOUSAND (P1,000.00) PESOS shall be paid by the PARTY OF THE SECOND PART directly to the DEVELOPMENT BANK OF THE PHILIPPINES, DAVAO BRANCH, in ten (10) equal monthly installments of ONE HUNDRED (P100.00) PESOS each not later than the 15th day following the end of each month beginning May 10, 1966;

That the PARTY OF THE SECOND PART has the right and privilege by virtue of this (sic) presents to take possession of the area of SIX HUNDRED (600) SQUARE METERS subject of this agreement and to appropriate for himself all the improvements existing thereon effective from the date of execution of this agreement;"[3]

Paragraph 9 thereof reads:

"That the PARTY OF THE FIRST PART agrees and binds himself to acknowledge receipt of every and all monthly payments remitted to the DEVELOPMENT BANK OF THE PHILIPPINES by the PARTY OF THE SECOND PART and further agrees and binds himself to execute the final deed of absolute sale of the SIX HUNDRED (600) SQUARE METERS herein above referred to in favor of the PARTY OF THE SECOND PART as soon as the settlement or partition of the estate of the deceased NARCISA R. KAPARAZ shall have been consummated and effected, but not later than March 31, 1967;"[4]

Upon the execution of the agreement, petitioners paid the downpayment of P800.00 and were placed in possession of the portion described therein. As to the P1,000.00 which was to be paid directly to the DBP, petitioners claim that they had even made an excess payment of P100.00.

In view of the refusal of private respondents to execute the deed of sale, petitioners filed against them a complaint for specific performance with the then Court of First Instance (now Regional Trial Court) of Davao Oriental. The complaint was docketed as Civil Case No. 586 and was amended on 23 January 1979. In their Answer filed on 28 June 1977, later amended on 19 December 1979 as a consequence of the filing of the amended complaint, private respondents alleged that the sale did not materialize because of the failure of petitioners to fulfill their promise to make timely payments on the stipulated price to the DBP; as a result of such failure, they (private respondents) failed to secure the release of the mortgage on the property. They then prayed for the dismissal of the case and a declaration that the agreement is null and void.

After due trial, the court below rendered on 19 November 1981 a decision in favor of the petitioners, the dispositive portion of which reads as follows:

"FOR ALL THE FOREGOING, judgment is hereby rendered in favor of the plaintiffs and against the defendants --

(1) Declaring the plaintiffs to be the owners of the property consisting of six hundred (600) square meters, more

or less, denominated as Lot H-12, Psd-11-000576, which was formerly a portion of the property covered by Transfer Certificate of Title No. T-3694, and now covered by Transfer Certificate of Title No. T-5824 in the name of defendant Rogelio Kaparaz;

(2) Ordering defendant Rogelio Kaparaz to reconvey this property to the plaintiffs herein;

(3) Ordering defendants to pay plaintiffs reasonable attorney's fees in the amount of P3,000.00 and to pay the costs.

SO ORDERED."[5]

The facts as found by the trial court are as follows:

x x x

"The adduced evidence will show that the parties herein above executed a certain agreement (Exh. "A" for the plaintiffs; Exhibit "1" for the defendants) dated March 11, 1966, the pertinent portions of which are hereunder quoted, to wit:

x x x

From the foregoing provisions of the said agreement, the defendants herein have bound themselves to sell and convey a portion of the property covered by Transfer Certificate Title No. T-3694, consisting of SIX HUNDRED (600) SQUARE METERS, to the plaintiffs for a consideration of P1,800.00, P800.00 of which had been received by the defendants upon the execution of the document and the remaining balance of P1,000.00 shall be paid by the plaintiffs directly to the Development Bank of the Philippines in 'ten (10) equal monthly installments of ONE HUNDRED (P100.00) PESOS EACH not later than the 15th day following the end of each month beginning May 10, 1966'. The defendants, on the other hand, have also bound themselves to execute the final deed of absolute sale of the portion above-mentioned in favor of the plaintiffs 'as soon as the settlement or partition of the estate of the deceased NARCISA R. KAPARAZ shall have been consummated and effected, but not later than March 31, 1967.'

It appears that plaintiffs had paid defendant Domingo Kaparaz the amount of P400.00 (Exh. "B"), the P200.00 which was paid by plaintiffs to the Development Bank of the Philippines for the account of the late Domingo Kaparaz and the P200.00 was given to said defendant. Plaintiff Oscar Jacinto made another payment to the Development Bank of the Philippines for the account of Domingo and Narcisa Kaparaz covered by Official Receipt No. 1113990, dated November 29, 1966, in the amount of P200.00 (Exh. "F"). Another payment was again made to the Development Bank of the Philippines for the same account by plaintiff Oscar Jacinto covered by Official Receipt No. 1334193, dated December 5, 1968, in the amount of P300.00 (Exh. "C") and another payment also was made on December 9, 1968 in the amount of P200.00 covered by Official Receipt No. 1334196 (Exh. "H"). All of these payments are certified by the Development Bank of the Philippines (Exh. "E") to have been made by plaintiff Oscar Jacinto and applied to the accounts of Domingo and Narcisa Kaparaz. For the subdivision survey of the lot of six hundred (600) square meters involved in this case, plaintiffs contributed the amount of P80.00 (Exh. "J") and another amount of P350.00 was paid also to Engr. Ladera (Exh. "I"). Plaintiffs, all in all, aside from the payments that they made to the Surveyor, have paid the Development Bank of the Philippines for the account of the late Domingo Kaparaz in the total amount of P700.00 which is already in excess of the price consideration of P1,800.00 after defendants had received the amount of P1,200.00. Plaintiff Oscar Jacinto explained that the payment was in excess of P100.00 because the balance of P600.00 which was originally intended to be paid for the surveyor was instead paid by him to the bank plus P100.00 to cover the accumulated interests. Thus (sic), making the total payments to the Development Bank of the Philippines in the amount of P700.00.

On the other (hand), defendant Rogelio Kaparaz testified that plaintiffs did not comply with the terms of the

agreement (Exh. "A") by having failed to pay the ten (10) equal monthly installments. For failure of plaintiffs to pay the monthly installments, as agreed (sic) in the agreement (Exh. "A"), he decided to pay the Development Bank of the Philippines of (sic) their accounts. The partial payment was made on July 3, 1967 in the amount of P3,000.00 covered by Official Receipt No. 1160314 (Exh. "2") and another payment for the balance was made on August 15, 1967 in the amount of P3,124.11 covered by Official Receipt No. 1160831 (Exh. "4").

It is likewise admitted that the estate of the late Narcisa R. Kaparaz had already been settled and that six hundred (600) square meters portion of the lot covered by Transfer Certificate of Title No. T-3694, or Lot No. H?12, Psd-11-000576, has already been adjudicated to defendant Rogelio Kaparaz and is now registered in his name under Transfer Certificate of Title No. T-5824."^[6]

Private respondents appealed from said decision to the Court of Appeals which docketed the case as C.A-G.R. CV No. 69357. In their Brief, they contended that the trial court erred in: (a) finding that petitioners had fully paid the consideration for the property subject of the agreement, (b) ruling that the delay in the payments to the DBP is only a slight breach of the agreement, (c) holding private respondents' failure to protest petitioners' delay of payment amounted to implied waiver to rescind the agreement, (d) declaring that laches did not operate against petitioners considering that the prescriptive period has not even expired, (e) not holding that the parties are in *pari delicto*, and (f) ordering Rogelio Kaparaz to reconvey the property in question to petitioners.

As earlier adverted to, in its decision of 30 July 1987, the respondent Court of Appeals reversed the decision of the trial court. The respondent Court was of the opinion that: (a) The petitioners had not fully discharged their obligation under the agreement considering that their last payments to DBP of P300.00^[7] and P200.00^[8] were "several months delayed beyond the date/s agreed upon by the parties," and that the agricultural loan to which the amortizations of the unpaid balance of P1,000.00 of the purchase price were to be applied had in fact been fully settled by the private respondents. The application of these payments by the DBP to another account of the private respondents was of no moment because the agreement of the parties specifically referred to the agricultural loan. (b) No evidence supports the conclusion of the trial court that private respondents failed to protest the delay in the payments. On the contrary, the evidence discloses that private respondents demanded from the petitioners the balance of the obligation after the latter had defaulted; having received no response, private respondents themselves paid the agricultural loan. (c) The delay in the payments was not a slight breach. The dates of the payments were so essential that they were specifically stipulated upon by the parties. The primary importance of timely payments sprang from the nature of the subject bank account consisting of a loan secured by a real estate mortgage which demanded up-to-date amortization to prevent foreclosure. (d) While the trial court was correct in holding that both parties defaulted in the performance of their respective obligations, petitioners were the first to incur in delay. There is, therefore, greater justification to decree rescission. Moreover, even granting that there was no evidence as to who violated the agreement first, then the contract is deemed extinguished pursuant to the second sentence of Article 1192 of the Civil Code. This Article provides that:

"In case both parties have committed a breach of the obligation, the liability of the first infractor shall be equitably tempered by the courts. If it cannot be determined which of the parties first violated the contract, the same shall be deemed extinguished, and each shall bear his own damage."

Unable to accept the above verdict, petitioner commenced this petition wherein they allege that respondent Court erred in not finding that: (a) petitioners had fully paid the consideration for the 600 square meters of Lot H; (b) private respondents' failure to protest the delay of payments can be considered as estoppel on their part and an implied waiver of their right to rescind the sale; (c) assuming that the last two payments to the DBP were not valid as they were applied to another account, there was at least substantial performance by the petitioners of their obligation; (d) the breach on the part of petitioners was only slight or casual and would not warrant rescission of

the sale; (e) under the circumstances, it was necessary for the respondents to make a notarial demand or obtain prior judicial approval to effect rescission of the sale; and finally, (e) the agreement was extinguished.

After the filing of the Comments by private respondents, the reply thereto by petitioners and the rejoinder to the latter by private respondents, the Court gave due course to the petition and required the parties to submit simultaneously their respective Memoranda,[9] which they subsequently complied with.[10]

The petition is impressed with merit.

Vital to the resolution of the controversy is the determination of the true nature of the questioned agreement. Is it a contract of sale or a contract to sell? The two are not, of course, the same. In the latter case, ownership is retained by the seller and is not to pass until full payment of the price. Such payment is a positive suspensive condition the failure of which is not a breach, casual or serious, but simply an event that prevents the obligation of the vendor to convey title from acquiring binding force. In such a situation, to argue that there was only a casual breach is to proceed from the assumption that the contract is one of absolute sale, where non-payment is a resolutive question.[11] Otherwise stated, as capsulized in *Luzon Brokerage Co., Inc. vs. Maritime Building Co., Inc.*,[12] "there can be no rescission or resolution of an obligation as yet non-existent, because the suspensive condition did not happen." Expanding on this point, this Court, in said case, made the following disquisitions:

"x x x The upshot of all these stipulations is that in seeking the ouster of Maritime for failure to pay the price as agreed upon, Myers was not rescinding (or more properly, resolving) the contract, but precisely enforcing it according to its express terms. In its suit Myers was not seeking restitution to it of the ownership of the thing sold (since it was never disposed of), such restoration being the logical consequence of the fulfillment of a resolutive condition, express or implied (article 1190); neither was it seeking a declaration that its obligation to sell was extinguished. What is sought was a judicial declaration that because the suspensive condition (full and punctual payment) had not been fulfilled, its obligation to sell to Maritime never arose or never became effective and, therefore, it (Myers) was entitled to repossess the property object of the contract, possession being a mere incident to its right of ownership. It is elementary that, as stated by Castan, --

'b) Si la condicion suspensiva llega a faltar, la obligacion se tiene por no existente, y el acreedor pierde todo derecho, incluso el de utilizar las medidas conservativas. (3 Castan, Derecho Civil, 7a Ed., p. 107) (Also Puig Peña, Der. Civ., T. IV (1), p. 113).'"

On the other hand, since in a contract of sale, the non-payment of the price is a resolutive condition,[13] the remedy of the seller under Article 1191 of the Civil Code is to exact fulfillment or to rescind the contract. In respect, however, to the sale of immovable property, this Article must be read together with Article 1592 of the same Code:

"ARTICLE 1592. In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by a notarial act. After the demand, the court may not grant him a new term."

This Article applies to instances where no stipulation for automatic rescission is made because it says "even though".[14]

The agreement in the instant case has all the earmarks of a contract of sale. The possession of the portion sold was immediately delivered to the petitioners. They were granted the right to enjoy all the improvements therein effective from the date of the execution of the agreement. Private respondents unqualifiedly bound themselves to execute the final deed of sale "as soon as the settlement or partition of the estate of the deceased Narcisa R. Kaparaz shall have been consummated and effected, but not later than March 31, 1967" and only upon full

payment of the unpaid portion of the purchase price. The private respondents did not reserve unto themselves the ownership of property until full payment of the unpaid balance of P1,000.00. Finally, there is no stipulation giving the private respondents the right to unilaterally rescind the contract the moment the vendee fails to pay within a fixed period. In reality, the agreement was an absolute sale which allowed the petitioners to pay the remaining balance of the purchase price in installment. We agree with the submission of petitioners[15] that *Dignos vs. Court of Appeals*[16] applies in this case. In said case, this Court stated:

"Thus, it has been held that a deed of sale is absolute in nature although denominated as a 'Deed of Conditional Sale' where nowhere in the contract in question is a proviso or stipulation to the effect that title to the property sold is reserved in the vendor until full payment of the purchase price, nor is there a stipulation giving the vendor the right to unilaterally rescind the contract the moment the vendee fails to pay within a fixed period (*Taguba v. Vda. de Leon*, 132 SCRA 722; *Luzon Brokerage Co., Inc. v. Maritime Building Co., Inc.*, 86 SCRA 305)."

As stated earlier, in a contract of sale, the remedy of an unpaid seller is either specific performance or rescission. The latter, with respect to the sale of immovables, is specifically governed by Article 1592 of the Civil Code.[17] In the case at bar, there was non-compliance with the requirements prescribed in these provisions. It is not controverted that private respondents had neither filed an action for specific performance nor demanded the rescission of the agreement either judicially or by a notarial act before the filing of the complaint in Civil Case No. 586. It is only in their Answer that they belatedly raised the defense of resolution of the contract pursuant to Article 1191 by reason of petitioners' breach of their obligation.

Even if the general law on resolution, Article 1191 of the Civil Code, is to be applied, Our decision would still be for the petitioners. The third paragraph of this Article reads:

x x x

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

It is not denied that petitioners made two (2) payments in the sums of P200.00 and P300.00 at a time when what remained unsettled under the agreement was only P400.00. There was then an excess payment of P100.00. These payments were made to the DBP which applied them to an outstanding account of the private respondents. Private respondents neither complained of the delay in these payments nor rejected their application to their account. They were, undoubtedly, benefited by the application because it either satisfied their account or correspondingly reduced it. The claim that the account to which it was applied was not the account stipulated in the agreement is without merit. In the first place, the agreement fails to disclose an express agreement that the monthly amortizations on the P1,000.00 unpaid balance of the purchase price to be made to the DBP should be applied exclusively to the agricultural loan indicated in the exorcium of the agreement. The loan was mentioned only to lay the basis for private respondents' need for the downpayment. In the second place, to allow private respondents to reject the payment of P400.00, plus the excess of P100.00 after they benefited therefrom, would be unjust.

Then too, at no time before the filing of their Answer did private respondents declare their intention to rescind the agreement, or if they did, communicate such intention to the petitioners. It was necessary for private respondents to have done so. As this Court held in *University of the Philippines vs. De los Angeles*:[18]

"Of course, it must be understood that the act of a party in treating a contract as cancelled or resolved on account of infractions by the other contracting party must be made known to the other and is always provisional, being ever subject to scrutiny and review by the proper court. If the other party denies that rescission is justified, it is free to resort to judicial action in its own behalf, and bring the matter to court. Then,

should the court, after due hearing, decide that the resolution of the contract was not warranted, the responsible party will be sentenced to damages; in the contrary case, the resolution will be affirmed, and the consequent indemnity awarded to the party prejudiced.

In other words, the party who deems the contract violated may consider it resolved or rescinded, and act accordingly, without previous court action, but it proceeds at its own risk. For it is only the final judgment of the corresponding court that will conclusively and finally settle whether the action taken was or was not correct in law. But the law definitely does not require that the contracting party who believes itself injured must first file suit and wait for a judgment before taking extrajudicial steps to protect its interest. Otherwise, the party injured by the others' breach will have to passively sit and watch its damages accumulate during the pendency of the suit until the final judgment of rescission rendered when the law itself requires that he should exercise due diligence to minimize its own damages (Civil Code, Article 2203)."

Finally, the delay incurred by petitioners was but a casual or slight breach of the agreement, which did not defeat the object of the parties in entering into the agreement. A mere casual breach does not justify rescission.[19] The prompt payment of the monthly amortizations of the unpaid balance of P1,000.00 was not a condition precedent to the execution of the final deed of sale. Besides, petitioners had already paid P1,400.00 of the total consideration of P1,800.00, or exactly 77.77% of the purchase price within the period stipulated. Moreover, they had in fact overpaid the private respondents by P100.00.

Accordingly, We rule that rescission of the agreement was not available to private respondents.

We further rule that the respondent Court erred in declaring the agreement extinguished pursuant to the second sentence of Article 1192 of the Civil Code. Having concluded, although erroneously, that petitioners were the first to breach the agreement, it should have applied the first sentence thereof by equitably tempering petitioners' liability. The second sentence applies only to cases where it cannot be determined which of the parties first violated the contract.

The foregoing disquisitions render unnecessary any discussion on the other issues raised by petitioners.

WHEREFORE, the petition is GRANTED. The challenged decision of the Court of Appeals is REVERSED and the judgment of the lower court is hereby REINSTATED and AFFIRMED. Costs against private respondents.

SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Bidin, and Romero, JJ., concur.

[1] Per Associate Justice Cecilio L. Pe, concurred in by Associate Justices Nathanael P. De Paño, Jr. and Antonio M. Martinez.

[2] Rollo, 39.

[3] Rollo, 54-55; pages 12-13 of Brief for Petitioners in C.A.- G.R. CV. No. 69357.

[4] Rollo, 57.

[5] Rollo, 13.

[6] Rollo, 30-32; Decision in C.A.-G.R. CV No. 69357 (Annex "A" of Petition), 3-5.

[7] Exhibit "G".

[8] Exhibit "H".

[9] Rollo, 129.

[10] Id., 138; 148.

[11] Manuel vs. Rodriguez, 109 Phil. 1 [1960]; Roque vs. Lapuz, 96 SCRA 741 [1980].

[12] 46 SCRA 381 [1972].

[13] Manuel vs. Rodriguez, supra.; Lim vs. Court of Appeals, 182 SCRA 564 [1990], citing Sing Yee vs. Santos, 47 O.G. 6372.

[14] PARAS, E.L., Civil Code of the Philippines Annotated, vol., V, 11th ed., 1986, 198.

[15] Memorandum for Petitioners, 7; Rollo, 144, et seq.

[16] 158 SCRA 375 [1988].

[17] This was Article 1504 of the old Civil Code; Luzon Brokerage Co., Inc., vs. Maritime Building Co., Inc., 86 SCRA 305 [1978].

[18] 35 SCRA 102 [1970].

[19] Philippine Amusement Enterprises, Inc. vs. Natividad, 21 SCRA 284 [1967]; Angeles vs. Calasanz, 135 SCRA 323 [1985].

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