

**SPOUSES ADORACION C. PANGILINAN AND GEORGE B. PANGILINAN
REPRESENTED IN THIS SUIT BY THEIR ATTORNEY-IN-FACT,
ARCADIO S. MALLARI, PETITIONER, VS. COURT OF APPEALS, JOSE R.
CANLAS...**

G.R. No. 83588. September 29, 1997

Ponente: TORRES, JR., J.

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TORRES, JR., J.:

This petition for review seeks to set aside the January 14, 1988 decision [1] and May 31, 1988 resolution of the Court of Appeals in CA-GR CV No. 09175 which reversed the December 12, 1985 decision of the Regional Trial Court, Third Judicial Region, Branch XL VIII, San Fernando, Pampanga.

On May 18, 1968, petitioners Pangilinan (husband and wife), and the private respondents Jose R. Canlas and Luis R. Canlas entered into a Cotract to Buy and To Sell a subdivision lot at Sto. Niño Village, San Fernando, Pampanga, particularly Lot No. 1, Block 3; with an area of 577 square meters at P 30.00 per square meter, for a total contract price of P 17,310.00, payable on installment basis at P 189.02 a month for 120 months.[2] The sum of P 1, 731 representing 10% of the total price of the lot was paid by the petitioner to the private respondents and thereafter monthly installments which amounted to about 85% of the total price were effected as of January, 1974; the last payment thereof was made on May 14, 1975 (Exh. C-54). [3] Paragraph 5 of the contract provided for automatic extrajudicial rescission upon default in payment of three (3) consecutive monthly installments or to comply with any of the terms and conditions, with forfeitures of installment as rents and as payment for damages. The said contract to buy and to sell as well as the receipts of various payments made by petitioners in favor of private respondents were given by former to Mr. Arcadio S. Mallari. Mr. Mallari equipped with a Special Power of Attorney dated May 15, 1983 from the spouses Adoracion C. Pangilinan and George Pangilinan went personally to the private respondents and requested them to release the title of the lot as he would pay in full the alleged remaining balance of P 1,875.00. The private respondents told him to return after two weeks as they would confer with each other. When he returned, the private respondent Jose R. Canlas told him that they were not in a position to release the title of said lot because the same had already been disposed of. Mr. Mallari discovered that the lot was mortgaged to the Rural Bank of Sta. Rita. On July 25, 1983, after the lapse of eight years from the last date of payment, he instituted a complaint for Specific Performance and Damages docketed as Civil Case No. 6843 entitled "Spouses Adoracion G. Pangilinan, et. al. vs. Jose R. Canlas, et. al." before the Regional Trial Court, Branch XLVIII, San Fernando, Pampanga. On December 12, 1985, the trial court rendered its decision, the decretal part of which provides:

"In view of all the foregoing, judgment is hereby rendered against the defendants Jose R. Canlas and Luis R. Canlas ordering them the following:

- 1) to accept the final payment or balance of the consideration of the lot in the amount of P 2,277.82;
- 2) to execute the final deed of sale of the lot in question in favor of herein plaintiffs;

3) to pay the mortgage loan to the defendant Rural bank for the purpose of releasing the said lot embraced in Transfer Certificate of Title No. 89745-R, Registry of Deeds for the Province of Pampanga in order to free the said lot from encumbrances;

4) to pay the plaintiff the amount of P 5,000.00 for attorney's fees; P 2,000.00 for litigation expenses;

5) to pay plaintiff the amount of P10,000.00 for exemplary damages as a corrective measure due to malevolent act of defendants Canlases;

6) to pay the costs of the suit.

The counterclaim interposed by the defendant Jose R. Canlas are hereby dismissed for lack of evidence.

The defendant Rural Bank of Sta. Rita Incorporated is hereby absolved of any liability but its counterclaim is hereby dismissed for lack of evidence.

SO ORDERED. [4]

Private respondents appealed the abovementioned decision of the Court of Appeals which on January 14, 1988, promulgated its judgment which reversed and set aside the decision of the trial court, to wit:

"WHEREFORE, the decision appealed from is hereby SET ASIDE. Another judgment is hereby entered DISMISSING Civil Case No. 6843 before the court below. The counter-claim of defendants-appellants is hereby DISMISSED.

SO ORDERED." [5]

Petitioner filed a motion for reconsideration but was denied for lack of merit by the Court of Appeals in its resolution of May 31, 1988. Hence, petitioner instituted the instant petition for review raising two (2) assignment of errors, viz.:

1) THE COURT OF APPEALS ERRED THAT A CREDITOR CAN UNILATERALLY AND SUMMARILY RESCIND A CONTRACT TO SELL A SUBDIVISION LOT; 2) THE COURT OF APPEALS ERRED IN RULING THAT HEREIN PETITIONERS ARE GUILTY OF LACHES.

Petitioners vigorously argue that automatic rescission of a contract extrajudicially undertaken by a creditor may be effected only if the defaulter was duly informed of the intention of the creditor to rescind the contract. If the defaulter will not object, then the creditor may proceed to extrajudicially rescind or cancel the contract, however, if the defaulter will manifest his objection, then the matter of rescission will be subjected to judicial determination. They further alleged that even if there is a waiver stipulated in the contract of adhesion, regarding rescission, such waiver will not apply because the waiver must be unequivocal and intelligently made. Moreover, granting that petitioner have committed a breach of contract for their failure to pay the balance of the consideration, yet this breach is slight, considering that 85% of the total consideration for the lot has been paid.

The Court is not persuaded.

The fifth paragraph of the Contract to Buy and to Sell pertinently reads:

This contract shall be considered automatically rescinded and canceled and of no further force or effect, upon failure of the VENDEE to pay when due, three (3) consecutive monthly installments or to comply with any of the terms and conditions hereof, in which case the VENDORS shall have the right to resell said parcel of land to any person or purchaser, as if this contract has never been entered into. In such case of cancellation of this contract, all amounts paid in accordance with the agreement together with all the improvements made on the premises shall be considered as rents paid for the use and occupation of the above-mentioned premises and as

and as payment for the damages suffered for the failure of the VENDEE to fulfill his part of this agreement; and for the VENDEE hereby renounces his right to demand or reclaim the return of the same obliges himself to peacefully vacate the premises and deliver the same to the VENDORS.” [6]

Article 1592 [7] of the New Civil Code, requiring demand by suit or by notarial act in case the vendor of realty wants to rescind does not apply to a contract to sell but only to contract of sale. In contracts to sell, where ownership is retained by the seller and is not to pass until the full payment, such payment, as we said, is a positive suspensive condition, the failure of which is not a breach, casual or serious, but simply an event that prevented the obligation of the vendor to convey title from acquiring binding force. 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 condition, which is not the case. [8]

The applicable provision of law in instant case is Article 1191 of the New Civil Code which provides as follows:

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. (1124)

Pursuant to the above, the law makes it available to the injured party alternative remedies such as the power to rescind or enforce fulfillment of the contract, with damages in either case if the obligor does not comply with what is incumbent upon him. There is nothing in this law which prohibits the parties from entering into an agreement that a violation of the terms of the contract would cause its cancellation even without court intervention. The rationale for the foregoing is that in contracts providing for automatic revocation, judicial intervention is necessary not for purposes of obtaining a judicial declaration rescinding a contract already deemed rescinded by virtue of an agreement providing for rescission even without judicial intervention, but in order to determine whether or not the rescission was proper. Where such propriety is sustained, the decision of the court will be merely declaratory of the revocation, but it is not itself the revocatory act.[9] Moreover, the vendor's right in contracts to sell with reserved title to extrajudicially cancel the sale upon failure of the vendee to pay the stipulated installments and retain the sums and installments already received has long been recognized by the well-established doctrine of 39 years standing.[10] The validity of the stipulation in the contract providing for automatic rescission upon non-payment cannot be doubted. It is in the nature of an agreement granting a party the right to rescind a contract unilaterally in case of breach without need of going to court. Thus, rescission under Article 1191 was inevitable due to petitioner's failure to pay the stipulated price within the original period fixed in the agreement.

On the second assigned error, petitioners aver that the doctrine of laches is not applicable in this particular case because (1) petitioner's failure to pay in full the balance of 15% of the total price of the lot was due to the reneged obligation of the private respondent to improve the subdivision and install facilities; and, (2) the mortgage of the lot to the Rural Bank of Sta. Rita was done without their consent and knowledge.

The same has no merit. It must be noted that upon a careful examination of the records of this case, it appears that the contention of the petitioners that their failure to pay the balance of 15% of the total contract price of the lot was due to the inability of the private respondent to improve the subdivision and install facilities which was raised

only for the first time on appeal. They did not raised this issue before the lower courts. It is settled that an issue which was neither averred in the complaint nor raised during the trial in the court below cannot be raised for the first time on appeal.[11] Issues of fact and arguments not adequately brought to the attention of the trial court need not be and ordinarily will not be considered by a reviewing court as they cannot be raised for the first time on appeal.[12] Assuming *arguendo* that it was raised before the trial court, the same would be without merit because the failure of the private respondents to install facilities would not deter them from asking for the rescission of the agreement if petitioners failed to comply with their obligation to pay the monthly installments when they become due, otherwise, the right of rescission would be rendered inutile. In the same vein, petitioners by virtue of their contract with private respondents should have complied in good faith with its terms and conditions being the law between them. From the moment the contract is perfected, the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all consequences which, according to their nature, may be in keeping with good faith, usage and law.[13] The Contract to Buy and to Sell, specifically paragraph 5 thereof, not being contrary to law, morals, good customs, public order or public policy, is valid and binding between the parties thereto.

As stated by the appellate court, thus:

The peculiar fact that militates against the cause of the appellees is that the appellees spouses Pangilinan did not directly and personally prosecute the present proceedings. As shown from the records, Mr. Mallari had equipped himself with the special power of attorney in his favor by the appellees executed only on May 15, 1983 or about six (should be eight) years from the date of last payment, made on May 14, 1975 for the January, 1974 installment, during which time, the actual buyers, the Pangilinan spouses had not by themselves personally shown interest in compelling the appellants to accept the remaining balance of the purchase price of the said subdivision lot, to execute in their favor the Deed of Absolute Sale and deliver to them the Transfer Certificate of Title over the said property. The aforesaid circumstances constitute laches. There was failure or neglect on the part of the Pangilinan spouses for an unreasonable and unexplained length of time to do that which by exercising due diligence or could have been done earlier, such failure or negligence warrants presumption that they had abandoned or declined to assert such right (*Tejado vs. Zamacoma*, 138 SCRA 78)."

Further, the Court of Appeals, stated:

The disturbing fact in the case at bar is that the spouses Pangilinan who bought the subject lot from the appellant seller did not directly and personally prosecute the present case from May, 1975 (date of last payment for January, 1974 installment). Mr. Arcadio S. Mallari, the alleged attorney-in-fact of the said spouses, represented them in the instant case which was filed only on July 25, 1983. He has an alleged special power of attorney in his favor by the appellees which appears to have been executed on May 15, 1983 or about eight (8) years from the date of last payment on May 14, 1975 by the buyer spouses for the January, 1974 installment. Mr. Mallari was the only witness for the prosecution. He alone identified the said power of attorney executed in his favor and testified on its due execution. The notary public who appears to have notarized the said document was not presented neither did the Pangilinan spouses appear in the lower court. There was no mention in his (Mallari) testimony of the whereabouts of the said Pangilinan spouses nor why the instant case had to be filed by him for them. The Court has doubts whether or not the said Pangilinan spouses are really interested in the prosecution of this case. And more than this, in the mind of the Court, the genuineness of the said special power of attorney has not been satisfactorily proved.

It also bears emphasis that from the said last payment on May 14, 1975, for the January, 1974 installment up to the execution of the alleged special power of attorney (assuming the same to be true) in favor of Mr. Mallari, on May 15, 1983, and the filing of Mallari of the instant case (which covers a period of eight (8) years)* the actual buyers, the Pangilinan spouses had not by themselves personally shown interest in compelling the appellants to accept the remaining balance of the purchase price of the subdivision lot, to execute in their favor

the Deed of Absolute Sale and deliver to them the Transfer Certificate of Title over the said lot. Such failure/neglect on their part constitutes laches because for an unreasonable and unexplained length of time [eight (8) years], they failed/neglected to do that which by exercising due diligence could or should have been done earlier, and as stated in the decision rendered in the present appeal, such failure or negligence warrants a presumption that they had abandoned or declined to assert such right.”

Explicitly, spouses Pangilinan instead of being vigilant and diligent in asserting their rights over the subject property had failed to assert their rights when the law requires them to act. Laches or “stale demands” is based upon grounds of public policy which requires, for the peace of society, the discouragement of stale claims and unlike the statute of limitations, is not a mere question of time but is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted.[14]

The legal adage finds application in the case at bar. *Tempus enim modus tollendi obligationes et actiones, quia tempus currit contra desides et sui juris contemptores* – For time is a means of dissipating obligations and actions, because time runs against the slothful and careless of their own rights.

IN VIEW WHEREOF, the petition is hereby DENIED and the decision of respondent court AFFIRMED in toto. Regalado, (Chairman), and Puno, JJ., concur.

Mendoza, J., on leave.

[1] Penned by J. Paras and concurred by J. Mendoza and J. Limcaoco.

[2] Rollo, Exhibits B., p. 3.

[3] Rollo p. 31.

[4] Ibid., p. 24.

[5] Ibid., p. 30.

[6] Exhibits B; Rollo, p. 3.

[7] Art. 1592. In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the 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. (1504a)

[8] Manuel vs. Rodriguez, No. L-13435, July 27, 1960, 109 Phil 1; Roque vs. Lapuz, No. L-32811, March 31, 1980, 96 SCRA 741.

[9] Roman Catholic Archbishop of Manila vs. Court of Appeals, G.R. No. 77425 and 77450, June 19, 1991; 198 SCRA 300; De Luna vs. Abrigo, G.R. No. 57455, January 18, 1990; 181 SCRA 150.

[10] Luzon brokerage Co., Inc. vs. Maritime Building Co., Inc., No. L-25885, November 16, 1978, 86 SCRA 305.

[11] Reparations Commission vs. Visayan Packing Corporation, G.R. No. 30712, February 6, 1991; 193 SCRA 531.

[12] Berin vs. Court of Appeals, G.R. No. 57490, February 27, 1991, 194 SCRA 508.

[13] Samhwa Company Ltd. vs. Intermediate Appellate Court, G.R. No. 74305, January 31, 1992, 205 SCRA 632.

[14] Bergado vs. Court of Appeals, G.R. No. 84051, May 19, 1989, 173 SCRA 497; Marcelino vs. Court of Appeals, G.R. No. 94422, June 26, 1992, 210 SCRA 444.

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