

SPOUSES EDUARDO AND ANN AGUSTIN, PETITIONERS, VS. HON. COURT OF APPEALS AND LABRADOR DEVELOPMENT CORPORATION, RESPONDENTS.

G.R. No. 84751. June 06, 1990

Ponente: REGALADO, J.

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REGALADO, J.:

This petition for review on certiorari impugns the decision of the Court of Appeals, dated March 28, 1988, with the following decretal portion:

“WHEREFORE, the present appeal is accordingly resolved deleting the adjudicated award of P20,000.00 as exemplary damages, and otherwise by AFFIRMING the Decision dated October 10, 1985 in Civil Case No. Q-42390 entitled ‘Labrador Development Corporation vs. Sps. Eduardo Agustin, et al.’ in all other respects.”

“Without pronouncement as to costs.”[1]

Said judgment of respondent court is based on the findings of fact set out in its decision thus:

“Plaintiff-appellee, being a subdivision developer, owned Lot 14, Block 1 of the San Pedro Compound IV at Tandang Sora, Quezon City, under Transfer Certificate of Title No. 277209. On November 7, 1981, plaintiff-appellee agreed to sell said parcel of land to defendants-appellants on a package deal together with a residential house per House Plan Model B-203 to be constructed thereon for the sum of P202,980.00 (Exh. ‘B’). As therein stipulated, the defendants-appellants were to pay P42,980.00 as equity - P30,133.00 as down payment and the balance of P12,847.00 upon completion and delivery of the property, the other P160,000.00 to have been funded through a Pag-Ibig Fund loan to be applied for by defendants-appellants. Central to the above was a stipulation that in the event the housing loan be insufficient to pay the full contract price owing, they shall pay the same in cash on or before occupancy and acceptance of the housing unit (ref. Exh. ‘B’, para. [e]). The agreement further provided -

‘(f). Failure of the Vendee to comply with any or all of the above stipulations shall ipso facto cancel this contract to sell; and thereupon, this contract to sell or any other contract executed in connection thereof, shall be of no further force and effect; and the title to the property, if already transferred in the name of the Vendee, shall automatically revert to the Vendor.’

The foregoing stipulation encompassed the necessity of transferring title to the lot to defendants-appellants as an accommodation to enable their application for a housing loan in their names.

“Hence, plaintiff-appellee executed a deed of sale over the lot (Exh. ‘C’) in favor of defendants-appellants, without additional consideration beyond the P30,133.00 down payment adverted to, and the issuance to said defendants-appellants of Transfer Certificate of Title No. 29435* (Exh. ‘D’). Thusly accommodated, defendants-appellants applied for a P160,000.00 housing loan with the First Summa Savings and Mortgage Bank as an accredited financing institution.

“After initial approval in the amount applied for, the Pag-Ibig housing loan was downgraded to P128,000.00

after reassessment. Under date of December 18, 1982, plaintiff-appellee apprised defendants-appellants of said development (Exh. 'F') enclosing the formal bank December 16, 1982 letter (Exh. 'E') requiring a co-borrower related within the fourth degree of consanguinity should the defendants-appellants desire approval of an increased loan amount.

"Defendants-appellants appear to have disdained a reply to plaintiff-appellee's said letter. Thus, under date of December 28, 1982, plaintiff-appellee again wrote a follow-up letter to defendants-appellants (Exh. 'G') affording the latter time to decide on their options, on pain of enforcement of the terms of the contract to sell.

"Failing reaction from defendants-appellants thereto, plaintiff-appellee resorted to enforcement of the contractual stipulations under date of March 1, 1983 (Exh. 'H') and remitted an enclosed check for P30,133.00 (Exh. 'I') representing the equity paid in by defendants-appellants. The latter accepted said check and deposited same into their account.

"Instead of reconveyance of title to the lot, defendants-appellants however sought time to buy the property; plaintiff-appellee agreed provided that payment be effected in cash. Defendants-appellants failed to make such payment in cash, despite the lapse of a second 30-day period afforded therefor. Thereupon, plaintiff-appellee demanded anew for reconveyance in a July 27, 1984 letter (Exh. 'J').

"On August 8, 1984, plaintiff-appellee filed Civil Case No. Q-42390 for reconveyance and damage. In answer, defendants-appellants maintained inter alia that approval of a P160,000.00 housing loan had been assured upon completion of the house with proof of its delivery and acceptance, but that acceptance could not be reasonably given by them in that certain specifications for the housing unit had not been complied with." [2]

After trial on the merits, the lower court rendered judgment in favor of private respondent, the dispositive part whereof reads:

"WHEREFORE, judgment is hereby rendered ordering defendants, jointly and severally:

- a) to reconvey to plaintiff the parcel of land covered by Transfer Certificate of Title No. 284735* of the Register of Deeds, Quezon City;
- b) to pay plaintiff the sum of P20,000.00 as exemplary damages;
- c) to pay plaintiff the sum of P5,000.00 as attorney's fees, plus costs of the suit." [3]

which judgment, as earlier stated, was affirmed by respondent court but with the deletion of the award of exemplary damages.

On August 22, 1988, respondent court denied petitioners' motion for reconsideration, hence this present petition raising the following issues:

I

"The 'Contract to Sell' dated November 7, 1981 creates a reciprocal obligation between Labrador Development Corporation, as seller, and spouses Eduardo and Ann Agustin, as buyer, of the questioned house and lot.

II

"The failure of Labrador Development Corporation (LADECO) to complete construction of the housing unit pursuant to the 'Contract to Sell' constitutes a substantial and serious breach thereof as would bar LADECO from executing the option of cancellation (rescission) of the 'Contract to Sell' under Article 1191 of the Civil Code.

III

“The justifiable refusal of Spouses Agustin to sign the ‘House Acceptance Form’ certifying that they accept the house as 100% complete constitutes merely a slight or casual breach of the ‘Contract to Sell’ which does not warrant the unilateral cancellation (rescission) of the contract under par. 4(f) thereof and Article 1191 of the Civil Code.

IV

“The remedy of reconveyance of title of the property in question cannot be availed of by LADECO as there was no valid, binding and effective cancellation (rescission) of the ‘Contract to Sell’.

V

“Private respondent LADECO is not entitled to attorney’s fees of P5,000.00 under the facts and circumstances of the case.”[4]

We agree with the Court of Appeals that reconveyance is proper in this case. Herein petitioners are already barred from questioning the validity of the cancellation of the contract to sell by their acquiescence thereto. Their acceptance and encashment of the checks representing the total amount paid by them to private respondent as equity, coupled by their failure to object or file an action, despite due notice, to question the validity of the extrajudicial cancellation of said contract and to ask for specific performance for more than one year, clearly show that they assented to the same.

Furthermore, after receiving the check refunding their equity payment incident to the reconveyance desired by private respondents, petitioners, disregarding the original agreement of the parties, offered to purchase anew the property in question to which private respondent agreed. This novatory agreement, however, was not consummated as petitioners again failed to raise and pay the purchase price despite two 30-day extensions. They never at that juncture questioned the propriety of the rescission and reconveyance desired by private respondent. Obviously, extrajudicial rescission produces legal effects where the other party does not oppose it.[5]

Moreover, even assuming that there was no implied assent to the cancellation of the contract to sell, reconveyance is still proper. The non-fulfillment by petitioners of their obligation to pay, which is a suspensive condition to the obligation of private respondent to sell and deliver the house and lot, rendered the contract to sell and the subsequent contract executed pursuant thereto ineffective and without force and effect.

The contract between petitioners and private respondent is not an absolute sale but a conditional sale or contract to sell, whereby ownership is retained by the vendor until full payment of the purchase price. Without such full payment, there is no obligation to sell and deliver. The subsequent execution of the deed of absolute sale and the transfer and registration of the title of the lot in the name of petitioners is of no moment, considering that the same, by mutual agreement of the parties, was made without consideration and solely for the purpose of facilitating the approval and release of the PAG-IBIG loan and not for the purpose of actually transferring ownership.

Under the contract to sell, the obligation of petitioners to completely pay the purchase price is a condition precedent to the obligation of private respondent to sell and deliver the house as provided in the contract to sell, which specifically states:

“5. Upon complete payment of the VENDEE/S of the purchase price herein above stated, and faithful compliance with all his obligations stipulated therein, the VENDOR, agrees to execute a valid deed of sale in favor of the VENDEE/S and cause the issuance of the Certificate of Title in the name of the latter, free from all

liens and encumbrances except those provided for in the Land Registration Act and other laws, Presidential Decrees, General Orders, Letters of Instruction, Zoning Ordinances, and the attached Deed of Restrictions, which form part of this Contract; x x x “[6]

The repeated failure and refusal of petitioners, despite due notice, to look for a co-borrower related to them within the fourth degree of consanguinity as required by the bank in order to prevent the downgrading of the loan, nor to communicate to private respondent the arrangement they intended to make regarding the difference between the approved loan of P128,000.00 and the unpaid amount of P160,000.00, clearly indicate their intention not to perform their obligations under the contract. This constituted not only a substantial or serious breach, but prevented the happening of the condition precedent which would give rise to the obligation of private respondent to sell and transfer ownership of the house and lot to petitioners.

We have repeatedly ruled that:

“In contracts to sell, where ownership is retained by the seller and is not to pass until the full payment of the price, such payment, as we said is a positive suspensive condition, the failure of which is a not a breach, casual or serious, but simply an event that prevented the obligation of the vendor to convey title from acquiring binding force, in accordance with Article 1117 of the Old Civil Code. 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 resolutory condition, which is not the case.

“x x x appellant overlooks that its contract with appellee Myers is not the ordinary sale envisaged by Article 1592, transferring ownership simultaneously with the delivery of the real property sold, but one in which the vendor retained ownership of the immovable object of the sale, merely undertaking to convey it provided the buyer strictly complied with the terms of the contract (see paragraph [d], ante, page 5). In suing to recover possession of the building from Maritime, appellee Myers is not after the resolution or setting aside of the contract and the restoration of the parties to the status quo ante, as contemplated by Article 1592, but precisely enforcing the provisions of the agreement that it is no longer obligated to part with the ownership or possession of the property because Maritime failed to comply with the specific condition precedent, which is to pay the installment as they fell due.

“The distinction between contracts of sale and contracts to sell with reserved title has been recognized by this Court in repeated decisions upholding the power of promissors under contracts to sell in case of failure of the other party to complete payment, to extrajudicially terminate the operation of the contract, refuse conveyance and retain the sums or installments already received, where such rights are expressly provided for, as in the case at bar.”[7]

We repeat, the obligation of petitioners to fully comply with their undertakings was necessarily determinative of the obligation of private respondent to complete the construction of the house. Where one of the parties to a contract did not perform the undertaking which he was bound by the terms of the agreement to perform, he is not entitled to insist upon the performance of the other party.[8] For failure of one party to assume and perform the obligation imposed on him, the other party does not incur in delay.[9]

Correspondingly, we reject the argument of petitioners that the failure of private respondent to complete the construction of the house constitutes a substantial breach as would bar the latter from cancelling the contract. Instead, the facts of this case persuade us to hold that petitioners were merely posturing when, after being required to reconvey the premises, they came up with belated complaints about the imperfections or incompleteness of the house involved, in the same manner that they also pretended to be interested in purchasing the property but failed to do so after importuning private respondents to grant them extensions of time for that purpose.

With the foregoing circumstances, reconveyance is proper and exigible pursuant to Paragraph 4(f) of the contract

to sell quoted in the decision of respondent court, supra, and on the basic principle that when an obligation has been extinguished or resolved, it is the duty of the court to require the parties to surrender whatever they may have received from the other, and the parties must be restored, as far as practicable, to their original situation.[10]

The award to private respondent of attorney's fees, however, must be disallowed considering that the award of exemplary damages was eliminated by respondent court and the text of the decision of the trial court, which was affirmed by the Court of Appeals, is bereft of any findings of fact and law to justify such award. The accepted rule is that the reason for the award of attorney's fees must be stated in the text of the court's decision; otherwise, if it is stated only in the dispositive portion of the decision, the same must be disallowed on appeal. The award of attorney's fees being an exception rather than the general rule, it is necessary for the court to make findings of facts and law that would bring the case within the exception and justify the grant of such award.[11]

WHEREFORE, except for the award of attorney's fees which is hereby deleted, the decision of respondent Court of Appeals is hereby AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Rollo, 38.

* This should read "294735."

[2] Ibid., 33-35.

* The correct number is "294735."

[3] Ibid., 42-43.

[4] Ibid., 20-21.

[5] Zulueta vs. Mariano, etc., et al., 111 SCRA 206 (1982).

[6] Original Record, 8.

[7] Roque vs. Lapuz, et al., 96 SCRA 741 (1980), and cases therein cited.

[8] Boysaw, et al. vs. Interphil Promotions, Inc., et al, 148 SCRA 635 (1987).

[9] Abaya vs. Standard-Vacuum Oil Co., 101 Phil. 1262 (1957).

[10] Po Pauco vs. Siguenza, et al., 49 Phil. 404 (1926); Magdalena Estate, Inc. vs. Myrick, 71 Phil. 344 (1941).

[11] Estate of Buan, etc., et al., vs. Camaganacan, 16 SCRA 321 (1986); Mirasol vs. De la Cruz, etc., et al., 84 SCRA 337 (1978); Abrogar, et al. vs. Intermediate Appellate Court, et al., 157 SCRA 57 (1988).

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