

**SPS. ENRIQUE AND CONSUELO LIM, PETITIONERS, VS. THE
HONORABLE COURT OF APPEALS, SPS. TERESITA AND OSCAR
GUEVARRA, SPS. MARCOS AND ANITA ORLINO, SPS. ROMULO AND
CONSUELO ORLINO, ...**

G.R. No. 85733. February 23, 1990

Ponente: CRUZ, J.

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CRUZ, J.:

The subject of this controversy is a parcel of land consisting of 1,101 square meters and located in Diliman, Quezon City. It was originally owned by Felix, Manuel and Maria Concepcion Orlino, who mortgaged it to the Progressive Commercial Bank as security for a P100,000.00 loan on July 1, 1965. The loan not having been paid, the mortgage was foreclosed and the bank acquired the property as the highest bidder at the auction sale on March 28, 1969. The mortgagee thereafter transferred all its assets, including the said land, to the Pacific Banking Corporation (PBC).

On May 22, 1975, the Orlinos, and their respective spouses (hereinafter referred to as the private respondents), who had remained in possession of the land, made a written offer to PBC to repurchase the property. In response, the bank, through its Assistant Vice-President, sent the following letter dated November 9, 1977, to the private respondents' counsel:

This will confirm our agreement concerning the repurchase by your clients, Mr. and Mrs. Oscar C. Guevarra of that certain property situated at 26 Jose Abad Santos, Heroes Hills, Quezon City with an area of 1,101 square meters, more or less, under the following terms and conditions:

- a) The cash consideration shall be P160,000.00 payable in full upon signing of the Deed of Absolute Sale;
- b) The additional consideration shall consist of your client's conveyance to us of their share of 2,901.15 square meters on the property situated at Camarin, Caloocan City.

We understand that your clients will be applying for a loan with a bank. In this connection, we are enclosing a xerox copy of the Transfer Certificate of Title No. 218661-Quezon City, Tax Declaration No. 3092 and Official Receipt No. E-404723 covering payment of real estate taxes for 1977. Kindly request your clients to expedite the loan so that we can consummate the transaction as soon as possible.

Please request your clients to sign their conformity below and return the duplicate thereof for our files.[1]

Oscar C. Guevarra, one of the private respondents, indicated the required conformity.

One year later, on November 2, 1978, PBC advised the private respondents that if the transaction was not finalized within 30 days, it would consider the offer of other buyers.[2] The record does not show any further development until June 8, 1979, when the private respondents requested PBC to allow them to secure a certified true copy of its Torrens certificate over the land for purposes of its survey and partition among them preparatory

to the actual transfer of title to them.[3] PBC granted the request subject to the condition that title would remain with it until the execution of the necessary deed of conveyance.[4]

On April 8, 1980, or two years later, PBC reminded the private respondents of its letter of November 2, 1978, but again no action was taken to deliver to it the stipulated consideration for the sale. Finally, on May 14, 1980, PBC executed a deed of sale over the land in favor of the herein petitioners, the spouses Enrique and Consuelo Lim, for the sum of P300,000.00.[5]

On September 30, 1980, the private respondents filed a complaint in the Regional Trial Court of Quezon City against the petitioners and PBC for the annulment of the deed of sale on the ground that the subject land had been earlier sold to them. In its judgment for the plaintiffs, the court held that both PBC and the spouses Lim had acted in bad faith when they concluded the sale knowing that "there was a cloud in the status of the property in question." [6] The decision was affirmed in toto by the respondent court,[7] and the petitioners are now before us, urging reversal.

The petitioners claim they are purchasers in good faith, having relied on the assurances of PBC as verified from the records in the Registry of Deeds of Quezon City that the land belonged to PBC and was unencumbered. They therefore should have preferential right to the disputed land, which they had registered in their name under TCT No. 268623. For their part, the private respondents insist that as they had a valid and binding earlier deed of sale in their favor, the land could no longer be sold by PBC to the petitioners, who were aware of their prior right.

In support of their position that it was not incumbent upon them to go beyond the land records to check the real status of the land, the petitioners cite *Seño v. Mangubat*,[8] where the Court said:

In order that a purchaser of land with a Torrens title may be considered as a purchaser in good faith, it is enough that he examines the latest certificate of title which in this case is that issued in the name of the immediate transferor. The purchaser is not bound by the original certificate of title but only by the certificate of title of the person from whom he has purchased the property.

xxx xxx xxx

Thus, where innocent third persons relying on the correctness of the certificate of title issued, acquire rights over the property, the court cannot disregard such rights and order the total cancellation of the certificate for that would impair public confidence in the certificate of title; otherwise everyone dealing with property registered under the torrens system would have to inquire in every instance as to whether the title had been regularly or irregularly issued by the court. Indeed, this is contrary to the evident purpose of the law. Every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefore and the law will in no way oblige him to go behind the certificate to determine the condition of the property. Stated differently, an innocent purchaser for value relying on a torrens title issued is protected.

And even assuming that there was an earlier valid sale of the property to the private respondents, the petitioners add, they would still prevail under Article 1544 of the Civil Code, providing as follows:

If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith.

The private respondents, however, deny that the petitioners had acted in good faith, pointing to the evidence that

Consuelo Lim had, before the execution of the disputed deed of sale, visited the property and been informed of their existing adverse claim thereto.[9] Besides, the said deed contained the following stipulation:

That the VENDEE is aware of the fact that the aforementioned property is presently occupied by the former owners and that clearing of the property of its occupants shall be for the exclusive responsibility and account of the vendee.

And, indeed, the Court also said in *Seño* that:

The well-known rule in this jurisdiction is that a person dealing with a registered land has a right to rely upon the face of the Torrens Certificate of Title and to dispense with the need of inquiring further, except when the party concerned has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry. (*Italics supplied.*)

As the Court sees it, the real issue is not whether the petitioners acted in good faith but whether there was in fact a prior sale of the same property to the private respondents. Only if it is established that there was indeed a double sale of the property will it be necessary to ascertain if Article 1544 is applicable.

Stated differently, the question is: Was the transaction between the private respondents and PBC, as embodied in the letter of November 9, 1977, a contract to sell or a contract of sale?

It is not enough to say that the contract of sale being consensual, it became effective between the bank and the private respondents as of November 9, 1977. There is no question about that; but such agreement is like putting the cart before the horse. Precisely, our purpose is to ascertain to what particular undertakings the parties have given their mutual consent so we can determine the nature of their agreement.

According to *Sing Yee v. Santos*:^[10]

x x x A distinction must be made between a contract of sale in which title passes to the buyer upon delivery of the thing sold and a contract to sell (or of "exclusive right and privilege to purchase" as in this case) where by agreement the ownership is reserved in the seller and is not to pass until the full payment of the purchase price is made. In the first case, non-payment of the price is a negative resolutory condition; in the second case, full payment is a positive suspensive condition. Being contraries, their effect in law cannot be identical. In the first case, the vendor has lost and cannot recover the ownership of the land sold until and unless the contract of sale is itself resolved and set aside. In the second case, however, the title remains in the vendor if the vendee does not comply with the condition precedent of making payment at the time specified in the contract.

Applying these distinctions, the Court finds that the agreement between PBC and the private respondents was only a contract to sell, not a contract of sale. And the reasons are obvious.

There was no immediate transfer of title to the private respondents as would have happened if there had been a sale at the outset. The supposed sale was never registered and TCT No. 218661 in favor of PBC was not replaced with another certificate of title in favor of the private respondents. In their letter to PBC on June 8, 1979, they acknowledged that title to the property would remain with the bank until their transaction shall have been finalized. In response, PBC reiterated the same condition. No less important, the consideration agreed upon by the parties was never paid by the private respondents, to convert the agreement into a contract of sale. In fact, PBC reminded them twice — on November 2, 1978, and on April 8, 1980 — to comply with their obligations. They did not. Their default was not, as the respondent court described it, "a slight delay" but lasted for all of three years and in fact continued up to the rendition of the decision in the trial court. As payment of the consideration was a positive suspensive condition, title to the subject property never passed to the private respondents. Hence, the property was legally unencumbered and still belonged to PBC on May 14, 1980, when it was sold by the bank to the petitioners.

It is true that the contract to sell imposes reciprocal obligations and so cannot be terminated unilaterally by either party. Judicial rescission is required under Article 1191 of the Civil Code. However, this rule is not absolute. We have held that in proper cases, a party may take it upon itself to consider the contract rescinded and act accordingly albeit subject to judicial confirmation, which may or may not be given. It is true that the rescinding party takes a risk that its action may not be approved by the court. But as we said in *University of the Philippines v. De los Angeles*:^[1]

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 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 other's breach will have to passively sit and watch its damages accumulate during the pendency of the suit until final judgment of rescission is rendered when the law itself requires that he should exercise due diligence to minimize its own damages.

In the case at bar, the private respondents obligated themselves to deliver to the bank the sum of P160,000.00 and their share of 2,901.15 square meters on a property situated in Caloocan City. In the letter of PBC dated November 9, 1977, they were requested to "expedite the loan (they were negotiating for this purpose) so we can consummate the transaction as soon as possible." That was in 1977. In 1978, they were reminded of their obligation and asked to comply within thirty days. They did not. On April 8, 1980, they were reminded of that letter of November 2, 1978, and again asked to comply; but again they did not. Surely, the bank could not be required to wait for them forever, especially so since they remained in possession of the property and there is no record that they were paying rentals. Under the circumstances, PBC had the right to consider the contract to sell between them terminated for non-payment of the stipulated consideration. We hereby confirm that rescission.

Having arrived at these conclusions, the Court no longer finds it necessary to determine if the petitioners acted in bad faith when they purchased the subject property. The private respondents lost all legal interest in the land when their contract to sell was rescinded by PBC for their non-compliance with its provisions. As that contract was no longer effective when the land was sold by PBC to the petitioners, the private respondents had no legal standing to assail that subsequent transaction. The deed of sale between PBC and the petitioners must therefore be sustained.

WHEREFORE, the petition is GRANTED and the challenged decision of the Court of Appeals is REVERSED. TCT No. 268623 in favor of the petitioners is recognized as valid and the complaint for the annulment of the deed of sale dated May 14, 1980, is hereby dismissed. Costs against the private respondents.

SO ORDERED.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Exh. "G," Orig. Rec., p. 122.

[2] Exh. "1," Ibid., p. 183.

[3] Exh. "H," Id., p. 123.

[4] Exh. "I," id., p. 124.

[5] Exh. "7," id., pp. 190-192.

[6] Rollo, p. 61; Decision penned by Judge Jose P. Castro, RTC of Quezon City, Branch LXXXV.

[7] Martinez, J., with Lombos-De la Fuente and Pe, JJ., concurring.

[8] 156 SCRA 113.

[9] Rollo, 60.

[10] 47 O.G. 6372.

[11] 35 SCRA 102.

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