

SISKA DEVELOPMENT CORPORATION, PETITIONER, VS. OFFICE OF THE PRESIDENT OF THE PHILIPPINES, AND SPOUSES JOSE AND SOCORRO SERING, RESPONDENTS.

G.R. No. 93176. April 22, 1994

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for certiorari under Rule 65 of the Revised Rules of Court to review, reverse, and set aside Resolution No. 3376 dated November 25, 1988 and the Order dated December 6, 1989 of the Office of the President of the Philippines.

In Resolution No. 3376, the Office of the President reversed the resolution of the Human Settlements Regulatory Commission (HSRC) and directed petitioner to execute a final deed of sale on the lot covered by the Contract to Sell in favor of private respondents upon payment of the unpaid balance of P9,341.24.

In the Order dated December 8, 1989, the Office of the President denied the motion for reconsideration of the said resolution.

We affirm the said Resolution and Order.

I

On April 28, 1967, petitioner, a subdivision owner-developer, entered into a Contract to Sell with Guadalupe Sering, involving a lot situated at the Mira-Nila Subdivision in Quezon City.

On August 16, 1968, Guadalupe Sering, with the consent of petitioner, transferred all her rights and interests over the aforesaid lot in favor of respondent Socorro Sering, wife of respondent Jose Sering. Thereafter, private respondents assumed the transferor's obligation by paying the monthly amortizations for the lot.

On several occasions, private respondents defaulted in the payment of their monthly amortizations, but petitioner still accepted the late payments.

On October 18, 1974, petitioner sent private respondents a notice of rescission of the Contract to Sell for failure to pay the monthly amortizations on time. Petitioner, however, cancelled the said notice of rescission on November 12, 1974, after private respondents updated their payments. Petitioner, however, imposed the condition that private respondents' account "must be kept current" and that should it be necessary to rescind the contract for a second time, the second rescission would be final. Private respondents again defaulted in paying their monthly amortizations from January to September 1, 1975. When respondent Jose Sering offered to pay the remaining balance of the purchase price on September 18, 1975, an employee of petitioner refused to accept the payment, alleging that the contract had already been cancelled. However, said respondent protested that he had not received any notice of rescission from petitioner.

To compel the execution by petitioner of the final deed of sale, private respondents filed an action for specific performance in the Court of First Instance of Surigao. Petitioner questioned the order of the trial court, upholding the venue, before the Court of Appeals, which in turn ruled for petitioner and dismissed the case.

Private respondents filed another case in the Court of First Instance of Quezon City, but said court dismissed the case on the grounds that under P.D. No. 957, it was the National Housing Authority (NHA) that had exclusive jurisdiction over the action. Hence, another complaint was filed with the NHA.

The case was later transferred to the HSRC by virtue of Executive Order No. 648 dated Feb. 7, 1981 (HSRC Case No. REM-A-0156). After hearing, the Office of Appeals Adjudication and Legal Affairs (OAALA) of the HSRC denied private respondents' request for specific performance of the Contract to Sell and directed petitioner to refund to private respondents the amount of P15,960.73.

Their motion for reconsideration having been denied, private respondents appealed the OAALA decision to the HSRC. In a resolution dated May 16, 1986, the HSRC dismissed private respondents' appeal for lack of merit and affirmed the decision of the OAALA. Dissatisfied with the HSRC resolution, private respondents elevated the case to the Office of the President.

On November 23, 1988, the Office of the President ruled as follows:

"Clearly, it could be gleaned from the foregoing payment record of appellants that appellee tolerated, in not just one but in several instances, late and delayed payments by the former when it accepted updated payments covering past due accounts. Thus, it would be grossly unfair and unjustified for appellee to refuse to accept the last payment for the remaining balance in order to cancel the contract to sell on the ground of delay. If such be the case, the contract could have been cancelled on several occasions, yet appellee continued receiving late payments, save for the last one where it vigorously insisted on cancelling the contract due to delayed payments by appellants who readily offered to settle the whole balance.

Second, receipt of the notice of rescission adverted to by appellee as having been sent to appellants remains doubtful, as appellee failed to show proof of service thereof to appellants. It must be remembered that when Jose Sering went to appellee's office on September 18, 1975 to pay the whole unpaid balance of the purchase price, appellee's representative, a certain Mr. Valenzuela, did not inform Jose Sering that a notice of rescission had earlier been prepared. It must be stressed at this point that said notice of rescission serves no real purpose if the same was not actually received by appellants. Hence, Jose Sering would not have gone to appellee's office to pay the last balance had he known earlier of the notice of rescission.

Consequently, appellee is now estopped to insist on rescinding the contract to sell by the mere expedience of refusing to accept the last payment on the ground of delay when it has, in several instances, accepted delayed payments from appellants. There is here an evident bad faith on appellee's part in taking undue advantage of appellants' last delayed payment by invoking Section 6 of the Contract to Sell. To allow such a situation to arise would enable appellee to enrich itself at the expense of appellants. Under the circumstances, it is but fair that the original intention of the contracting parties should be made to prevail, that is, for the vendor subdivision developer to transfer all the rights and interest on the land to appellants upon payment by the latter of the whole purchase price" (Rollo, pp. 38-39).

Hence, this petition.

II

Petitioner assigns the following errors:

"FIRST - WHETHER OR NOT THE RESPONDENT OFFICE OF THE PRESIDENT COMMITTED A GRAVE ABUSE OF DISCRETION IN FINDING THAT THE NOTICE OF RESCISSION SENT BY THE

PETITIONER TO THE RESPONDENT SPOUSES SERVED NO REAL PURPOSE SINCE IT WAS NOT RECEIVED BY THE LATTER.

SECOND - WHETHER OR NOT THE RESPONDENT OFFICE OF THE PRESIDENT COMMITTED A GRAVE ABUSE OF DISCRETION IN FINDING THAT THE PETITIONER IS NOW ESTOPPED FROM INSISTING ON THE RESCISSION OF THE CONTRACT TO SELL WHEN IT HAD ON SEVERAL OCCASIONS ACCEPTED THE DELAYED PAYMENTS OF THE RESPONDENT SPOUSES.

THIRD - WHETHER OR NOT THE RESPONDENT OFFICE OF THE PRESIDENT COMMITTED A GRAVE ABUSE OF DISCRETION IN ORDERING THE PETITIONER TO ACCEPT THE SUM OF P9,341.24 AS FULL PAYMENT FROM THE RESPONDENT SPOUSES AND THEREAFTER TO ISSUE THE FINAL DEED OF SALE" (Rollo, pp. 4-5).

The Office of the President found that private respondents never received the notice of rescission sent by petitioner. This is a finding of fact of an administrative agency which we shall not disturb (*Chong Guan Trading v. National Labor Relations Commission*, 172 SCRA 831 [1989]).

Petitioner, however, claims that a notice of rescission is not necessary under paragraph 6 of the contract, which provides:

"6. Failure to Pay Installments. - In case the BUYER fails to satisfy any monthly installment, or any other payments herein agreed upon, an interest of 1% per month will be charged on the amount he should have paid. Should a period of ninety (90) days elapse from the time of default, and the BUYER has not paid all amounts he should have paid with the corresponding interest up to that date then this contract shall automatically and without any further formality, become null and void" (Rollo, p. 12).

The sending of a notice of cancellation to the buyer is mandated by R.A. 6552 entitled "An Act to Provide Protection to Buyers of Real Estate on Installment Payments," (the Maceda Law) which took effect on September 14, 1972 (*Jison v. Court of Appeals*, 164 SCRA 339 [1988]). In Section 3(b) thereof, it provides that "the actual cancellation of the contract shall take place thirty days from receipt of the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer."

Petitioner argues that the relationship between the parties is governed solely by the Contract to Sell because said contract was entered into long before the passage of the Maceda Law (Rollo, p. 7).

Without expressly stating so, petitioner's line of argument invokes the non-impairment clause of the Constitution (Art. III, Sec. 10). The purpose of said clause is to safeguard the integrity of contracts against unwarranted interference by the State. As a rule, contracts should not be tampered with by subsequent laws that would change or modify the rights and obligations of the parties. As noted by Justice Isagani A. Cruz "[T]he will of the obligor and obligee must be observed; the obligation of their contract must not be impaired" (Constitutional Law, 1991 ed., p. 239).

Impairment is anything that diminishes the efficacy of the contract. There is an impairment if a subsequent law changes the terms of a contract between the parties, imposes new conditions, dispenses with those agreed upon or withdraws remedies for the enforcement of the rights of the parties (*Clemons v. Nolting*, 42 Phil. 702 [1922]).

The requirement of notice of the rescission under the Maceda Law does not change the time or mode of performance or impose new conditions or dispense with the stipulations regarding the binding effect of the contract. Neither does it withdraw the remedy for its enforcement. At most, it merely provides for a procedure in aid of the remedy of rescission.

While the contract was entered into before the effectivity of the Maceda Law, the rescission took place when the said law was in full force and effect. But even before the effectivity of said law, jurisprudence made necessary a notice of rescission.

While juridical action for the rescission of a contract is not necessary where the contract provides that it may be revoked and cancelled for violation of any of its terms and conditions, jurisprudence requires that a written notice be sent to the defaulter informing him of the rescission (*Palay, Inc. v. Clave*, 124 SCRA 638 [1983]). As stressed in *University of the Philippines v. Walfrido De los Angeles* 35 SCRA 102 (1970), the act of the party in treating a contract as cancelled should be made known to the other.

Anent the second issue, according to petitioner, if ever on several occasions it accepted the delayed payments of private respondents, then that must not be considered a waiver or estoppel on its part. Petitioner invokes paragraph 9 of the contract, which provides:

"9. Effect of failure to enforce provision. - That whatever consideration the Owner may concede to the Buyer as not exacting a strict compliance with any of the terms and conditions of this contract, as well as any other condonation that the Owner may give to the Buyer with regard to the obligations of the latter, shall not be interpreted as a renunciation on the part of the Owner of any rights granted it under this contract in case of any default or non-compliance by the Buyer" (Rollo, p. 8).

The Contract to Sell entered into by the parties has some characteristics of a contract of adhesion. The petitioner drafted and prepared the contract. Private respondents, who were eager to acquire a lot upon which they could build a home, affixed their signatures thereon and assented to the terms and conditions of the contract. They had no opportunity to question nor change any of the terms of the agreement. It was offered to them on a take-it-or-leave-it basis (*Angeles v. Calasanz*, 135 SCRA 323 [1985]).

When petitioner accepted and received delayed payments beyond the grace period mentioned in paragraph 9 of the contract, it waived its right to rescind and is now estopped from exercising it (*Angeles v. Calasanz*, *supra*).

Anent the third issue, unilateral cancellation of a contract to sell is not warranted if the breach is slight or casual (*Song Fo & Co. v. Hawaii-Philippine Co.*, 47 Phil. 821 [1925]). The breach of the contract adverted to by petitioner was so slight considering that private respondents had already paid P26,601.21 (inclusive of interests and penalties) out of the total purchase price of P21,328.00 and the remaining balance was only P9,341.24, which private respondents were willing to pay. To sanction the rescission made by petitioner will work injustice to private respondents. It would unjustly enrich petitioner at their expense (Civil Code of the Philippines, Art. 22).

WHEREFORE, the petition is DISMISSED. Petitioner is ordered to accept the amount of P9,341.29, the balance of the purchase price and to execute immediately the final deed of sale in favor of private respondents. No pronouncement as to costs.

SO ORDERED.

Narvasa, C.J., Cruz, Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, and Kapunan, JJ., concur.

Feliciano, J., in the result.

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