

JOSEFINA TAYAG, RICARDO GALICIA, TERESITA GALICIA, EVELYN GALICIA, JUAN GALICIA, JR. AND RODRIGO GALICIA, PETITIONERS, VS. COURT OF APPEALS AND ALBRIGIDO LEYVA, RESPONDENTS.

G.R. No. 96053. March 03, 1993

Ponente: MELO, J.

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MELO, J.:

The deed of conveyance executed on May 28, 1975 by Juan Galicia, Sr., prior to his demise in 1979, and Celerina Labuguin, in favor of Albrigido Leyva involving the undivided one-half portion of a piece of land situated at Poblacion, Guimba, Nueva Ecija for the sum of P50,000.00 under the following terms:

- "1. The sum of PESOS: THREE THOUSAND (P3,000.00) is HEREBY acknowledged to have been paid upon the execution of this agreement;
2. The sum of PESOS: TEN THOUSAND (P10,000.00) shall be paid within ten (10) days from and after the execution of this agreement;
3. The sum of PESOS: TEN THOUSAND (P10,000.00) represents the VENDORS' indebtedness with the Philippine Veterans Bank which is hereby assumed by the VENDEE; and
4. The balance of PESOS: TWENTY SEVEN THOUSAND (P27,000.00) shall be paid within one (1) year from and after the execution of this instrument." (p. 53, Rollo)

is the subject matter of the present litigation between the heirs of Juan Galicia, Sr. who assert breach of the conditions as against private respondent's claim anchored on full payment and compliance with the stipulations thereof.

The court of origin which tried the suit for specific performance filed by private respondent on account of the herein petitioners' reluctance to abide by the covenant, ruled in favor of the vendee (p. 64, Rollo) while respondent court practically agreed with the trial court except as to the amount to be paid to petitioners and the refund to private respondent are concerned (p. 46, Rollo).

There is no dispute that the sum of P3,000.00 listed as first installment was received by Juan Galicia, Sr. According to petitioners, of the P10,000.00 to be paid within ten days from execution of the instrument, only P9,707.00 was tendered to, and received by, them on numerous occasions from May 29, 1975, up to November 3, 1979. Concerning private respondent's assumption of the vendors' obligation to the Philippine Veterans Bank, the vendee paid only the sum of P6,926.41 while the difference of the indebtedness came from Celerina Labuguin (p. 73, Rollo). Moreover, petitioners asserted that not a single centavo of the P27,000.00 representing the remaining balance was paid to them. Because of the apprehension that the heirs of Juan Galicia, Sr. are disavowing the contract inked by their predecessor, private respondent filed the complaint for specific performance.

In addressing the issue of whether the conditions of the instrument were performed by herein private respondent as vendee, the Honorable Godofredo G. Rilloraza, Presiding Judge of Branch 31 of the Regional Trial Court,

Third Judicial Region stationed at Guimba, Nueva Ecija, decided to uphold private respondent's theory on the basis of constructive fulfillment under Article 1186 and estoppel through acceptance of piecemeal payments in line with Article 1235 of the Civil Code.

Anent the P10,000.00 specified as second installment, the lower court counted against the vendors the candid statement of Josefina Tayag who sat on the witness stand and made the admission that the check issued as payment thereof was nonetheless paid on a staggered basis when the check was dishonored (TSN, September 1, 1983, pp. 3-4; p. 3, Decision; p. 66, Rollo). Regarding the third condition, the trial court noted that plaintiff below paid more than P6,000.00 to the Philippine Veterans Bank but Celerina Labuguin, the sister and co-vendor of Juan Galicia, Sr. paid P3,778.77 which circumstance was construed to be a ploy under Article 1186 of the Civil Code that "prematurely prevented plaintiff from paying the installment fully" and "for the purpose of withdrawing the title to the lot". The acceptance by petitioners of the various payments even beyond the periods agreed upon, was perceived by the lower court as tantamount to faithful performance of the obligation pursuant to Article 1235 of the Civil Code. Furthermore, the trial court noted that private respondent consigned P18,520.00, an amount sufficient to offset the remaining balance, leaving the sum of P1,315.00 to be credited to private respondent.

On September 12, 1984, judgment was rendered:

- "1. Ordering the defendants - heirs of Juan Galicia, to execute the Deed of Sale of their undivided ONE HALF (1/2) portion of Lot No. 1130, Guimba Cadastre, covered by TCT No. NT-120563, in favor of plaintiff Albrigido Leyva, with an equal frontage facing the national road upon finality of judgment; that, in their default, the Clerk of Court II, is hereby ordered to execute the deed of conveyance in line with the provisions of Section 10, Rule 39 of the Rules of Court;
2. Ordering the defendants, heirs of Juan Galicia, jointly and severally to pay attorney's fees of P6,000.00 and the further sum of P3,000.00 for actual and compensatory damages;
3. Ordering Celerina Labuguin and the other defendants herein to surrender to the Court the owner's duplicate of TCT No. NT-120563, province of Nueva Ecija, for the use of plaintiff in registering the portion, subject matter of the instant suit;
4. Ordering the withdrawal of the amount of P18,520.00 now consigned with the Court, and the amount of P17,204.75 be delivered to the heirs of Juan Galicia as payment of the balance of the sale of the lot in question, the defendants herein after deducting the amount of attorney's fees and damages awarded to the plaintiff hereof and the delivery to the plaintiff of the further sum of P1,315.25 excess or over payment and, defendants to pay the cost of the suit." (p. 69, Rollo)

and following the appeal interposed with respondent court, Justice Dayrit with whom Justices Purisima and Aldecoa, Jr. concurred, modified the fourth paragraph of the decretal portion to read:

- "4. Ordering the withdrawal of the amount of P18,500.00 now consigned with the Court, and that the amount of P16,870.52 be delivered to the heirs of Juan Galicia, Sr. as payment to the unpaid balance of the sale, including the reimbursement of the amount paid to Philippine Veterans Bank, minus the amount of attorney's fees and damages awarded in favor of plaintiff. The excess of P1,649.48 will be returned to plaintiff. The costs against defendants." (p. 51, Rollo)

As to how the foregoing directive was arrived at, the appellate court declared:

- "With respect to the fourth condition stipulated in the contract, the period indicated therein is deemed modified by the parties when the heirs of Juan Galicia, Sr. accepted payments without objection up to November 3, 1979. On the basis of receipts presented by appellee commencing from August 8, 1975 up to November 3, 1979, a total amount of P13,908.25 has been paid, thereby leaving a balance of P13,091.75. Said unpaid

balance plus the amount reimbursable to appellant in the amount of P3,778.77 will leave an unpaid total of P16,870.52. Since appellee consigned in court the sum of P18,500.00, he is entitled to get the excess of P1,629.48. Thus, when the heirs of Juan Galicia, Sr. (obligees) accepted the performance, knowing its incompleteness or irregularity and without expressing any protest or objection, the obligation is deemed fully complied with (Article 1235, Civil Code)." (p. 50, Rollo)

Petitioners are of the impression that the decision appealed from, which agreed with the conclusions of the trial court, is vulnerable to attack via the recourse before Us on the principal supposition that the full consideration of the agreement to sell was not paid by private respondent and, therefore, the contract must be rescinded.

The suggestion of petitioners that the covenant must be cancelled in the light of private respondent's so-called breach seems to overlook petitioners' demeanor who, instead of immediately filing the case precisely to rescind the instrument because of non-compliance, allowed private respondent to effect numerous payments posterior to the grace periods provided in the contract. This apathy of petitioners who even permitted private respondent to take the initiative in filing the suit for specific performance against them, is akin to waiver or abandonment of the right to rescind normally conferred by Article 1191 of the Civil Code. As aptly observed by Justice Gutierrez, Jr. in *Angeles vs. Calasanz* (135 SCRA 323 [1985]; 4 Paras, Civil Code of the Philippines Annotated, Twelfth Ed. [1989], p. 203):

"... We agree with the plaintiffs-appellees that when the defendants-appellants, instead of availing of their alleged right to rescind, have accepted and received delayed payments of installments, though the plaintiffs-appellees have been in arrears beyond the grace period mentioned in paragraph 6 of the contract, the defendants-appellants have waived, and are now estopped from exercising their alleged right of rescission ..."

In *Development Bank of the Philippines vs. Sarandi* (5 CAR (25) 811; 817-818; cited in 4 Padilla, Civil Code Annotated, Seventh Ed. [1987], pp. 212-213) a similar opinion was expressed to the effect that:

"In a perfected contract of sale of land under an agreed schedule of payments, while the parties may mutually oblige each other to compel the specific performance of the monthly amortization plan, and upon failure of the buyer to make the payment, the seller has the right to ask for a rescission of the contract under Art. 1191 of the Civil Code, this shall be deemed waived by acceptance of posterior payments."

Both the trial and appellate courts were, therefore, correct in sustaining the claim of private respondent anchored on estoppel or waiver by acceptance of delayed payments under Article 1235 of the Civil Code in that:

"When the obligee accepts the performance, knowing its incompleteness or irregularity, and without expressing any protest or objection, the obligation is deemed fully complied with."

considering that the heirs of Juan Galicia, Sr. accommodated private respondent by accepting the latter's delayed payments not only beyond the grace periods but also during the pendency of the case for specific performance (p. 27, Memorandum for petitioners; p. 166, Rollo). Indeed, the right to rescind is not absolute and will not be granted where there has been substantial compliance by partial payments (4 Caguioa, Comments and Cases on Civil Law, First Ed. [1968], p. 132). By and large, petitioners' actuation is susceptible of but one construction ---- that they are now estopped from reneging from their commitment on account of acceptance of benefits arising from overdue accounts of private respondent.

Now, as to the issue of whether payments had in fact been made, there is no doubt that the second installment was actually paid to the heirs of Juan Galicia, Sr. due to Josefina Tayag's admission in *judicio* that the sum of P10,000.00 was fully liquidated. It is thus erroneous for petitioners to suppose that "the evidence in the records do not support this conclusion" (p. 18, Memorandum for Petitioners; p. 157, Rollo). A contrario, when the court of origin, as well as the appellate court, emphasized the frank representation along this line of Josefina Tayag before

the trial court (TSN, September 1, 1983, pp. 3-4; p. 5, Decision in CA-G.R. CV No. 13339, p. 50, Rollo; p. 3, Decision in Civil Case No. 681-G, p. 66, Rollo), petitioners chose to remain completely mute even at this stage despite the opportunity accorded to them, for clarification. Consequently, the prejudicial aftermath of Josefina Tayag's spontaneous reaction may no longer be obliterated on the basis of estoppel (Article 1431, Civil Code; Section 4, Rule 129; Section 2(a), Rule 131, Revised Rules on Evidence).

Insofar as the third item of the contract is concerned, it may be recalled that respondent court applied Article 1186 of the Civil Code on constructive fulfillment which petitioners claim should not have been appreciated because they are the obligees while the proviso in point speaks of the obligor. But, petitioners must concede that in a reciprocal obligation like a contract of purchase (*Ang vs. Court of Appeals*, 170 SCRA 286 [1989]; 4 Paras, *supra*, at p. 201), both parties are mutually obligors and also obligees (*4 Padilla*, *supra*, at p. 197), and any of the contracting parties may, upon non-fulfillment by the other privy of his part of the prestation, rescind the contract or seek fulfillment (Article 1191, Civil Code). In short, it is puerile for petitioners to say that they are the only obligees under the contract since they are also bound as obligors to respect the stipulation in permitting private respondent to assume the loan with the Philippine Veterans Bank which petitioners impeded when they paid the balance of said loan. As vendors, they are supposed to execute the final deed of sale upon full payment of the balance as determined hereafter.

Lastly, petitioners argue that there was no valid tender of payment nor consignment of the sum of P18,520.00 which they acknowledge to have been deposited in court on January 22, 1981 five years after the amount of P27,000.00 had to be paid (p. 23, Memorandum for Petitioners; p. 162, Rollo). Again this suggestion ignores the fact that consignment alone produced the effect of payment in the case at bar because it was established below that two or more heirs of Juan Galicia, Sr. claimed the same right to collect (Article 1256, (4), Civil Code; pp. 4-5, Decision in Civil Case No. 681-G; pp. 67-68, Rollo). Moreover, petitioners did not bother to refute the evidence on hand that, aside from the P18,520.00 (not P18,500.00 as computed by respondent court) which was consigned, private respondent also paid the sum of P13,908.25 (Exhibits "F" to "CC"; p. 50, Rollo). These two figures representing private respondent's payment of the fourth condition amount to P32,428.25, less the P3,778.77 paid by petitioners to the bank, will lead us to the sum of P28,649.48 or a refund of P1,649.48 to private respondent as overpayment of the P27,000.00 balance.

WHEREFORE, the petition is hereby DISMISSED and the decision appealed from is hereby AFFIRMED with the slight modification of Paragraph 4 of the dispositive thereof which is thus amended to read:

"4. ordering the withdrawal of the sum of P18,520.00 consigned with the Regional Trial Court, and that the amount of P16,870.52 be delivered by private respondent with legal rate of interest until fully paid to the heirs of Juan Galicia, Sr. as balance of the sale including reimbursement of the sum paid to the Philippine Veterans Bank, minus the attorney's fees and damages awarded in favor of private respondent. The excess of P1,649.48 shall be returned to private respondent also with legal interest until fully paid by petitioners. With costs against petitioners."

SO ORDERED.

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

[*] Hugo E. Gutierrez, Jr., J., On Terminal Leave.

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