

PILAR T. OCAMPO, PETITIONER, VS. COURT OF APPEALS AND MAGDALENA S. VILLARUZ, RESPONDENTS.

G.R. No. 97442. June 30, 1994

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Two (2) documents, an “Agreement to Sell Real Property” and a “Contract to Sell,” covering the same parcel of land were executed by a seller in favor of two (2) different buyers. Both buyers now assert against each other a better title to the property.

In dispute is an 18,260-square meter lot in the Poblacion of Tigbauan, Iloilo, described in Plan Psu-223696, L.R.C. Case No. N-675, L.R.C. Record No. N-38846, and registered under Original Certificate of Title No. 0-7743 in the name of seller Severino Tolosa. On 20 August 1974, Tolosa mortgaged the land to the Philippine Veterans Bank and had the encumbrance annotated on his certificate of title under Entry No. 238353.

On 17 March 1975, Tolosa and Pilar T. Ocampo, the latter being then represented by Teresa T. Borres,[1] entered into a contract whereby Tolosa undertook to sell the same parcel of land to Ocampo not later than 15 May 1975 for P22,000.00, P1,000.00 of which was paid upon execution thereof.[2]

On 21 April 1975, the parties entered into an “Agreement to Sell Real Property”[3] whereby Tolosa “sells, cedes and transfers” the land to Ocampo in consideration of P25,000.00, P12,500.00 of which was paid upon signing of the deed and the balance to be due within six (6) months thereafter. Paragraph 4 of the contract provides that “immediately upon complete payment of the purchase price x x x by the VENDEE, the VENDOR x x x agrees to execute and deliver unto the VENDEE whatever pertinent document or documents necessary to implement this sale and to transfer title to the VENDEE.”

Before the six-month period to complete the payment of the purchase price expired, Ocampo paid but only the total of P16,700.00.[4] Nevertheless Tolosa accepted her subsequent late payments amounting to P3,900.00.[5] Meanwhile, the subject property was involved in a boundary dispute.[6]

On 6 June 1976, upon learning of the mortgage lien, Ocampo caused her adverse claim to be annotated on Tolosa’s certificate of title as Entry No. 279936.

In his letter to Ocampo dated 15 March 1977, Tolosa sought the cancellation of Ocampo’s adverse claim and presented her with two options, namely, a refund of payments made, or a share from the net proceeds if sold to a third party.[7] On even date, Ocampo through counsel wrote Tolosa expressing her readiness to pay the balance of the purchase price, which was P5,400.00, should Tolosa be ready to deliver to her the deed of absolute sale and the owner’s duplicate of OCT No. 0-7743 for purposes of registration.[8]

On 3 June 1977, Tolosa and Magdalena S. Villaruz executed a “Contract to Sell”[9] whereby Tolosa “sells, cedes, transfers, and conveys” to Villaruz the same land in consideration of P94,300.00. The amount of P15,000.00 was to be paid upon execution and the balance upon cancellation of all liens and encumbrances from

the certificate of title. The contract stipulated the immediate conveyance of the physical possession of the land to Villaruz, although no deed of definite sale would be delivered to her unless the price was fully paid. The contract noted the supposed judicial termination of the boundary dispute over the land.

On 19 July 1977, Tolosa wrote Ocampo offering to reimburse her what she paid provided she would sign a document canceling her adverse claim.[10] Failing to convince Ocampo, Tolosa filed a petition in the Court of First Instance of Iloilo to cancel the adverse claim of Ocampo. On 30 July 1977, Judge Ricardo M. Ilarde denied the petition.[11] On 4 August 1977, another adverse claim was caused to be annotated by Ocampo on OCT No. 0-7743 under Entry No. 302257.[12]

On 7 October 1977, Tolosa filed an action for “Breach of Contract, Damages and Quieting of Title” against Teresa Borres.[13] Borres claimed in her answer that she was merely the agent of Ocampo who was the real party in interest. Borres however died so that the trial court, on 2 July 1979, ordered her substitution by defendant Ocampo. Magdalena S. Villaruz, then claiming to have already bought the land, intervened in the case.

On 9 October 1979, during the pendency of Civil Case No. 12163, Tolosa succeeded in securing from another branch of the court the cancellation of the adverse claims of Ocampo without notice to her.[14] This paved the way for the registration on 23 November 1979 of the contract of sale of Villaruz dated 8 August 1979 and the subsequent issuance of Transfer Certificate of Title No. T-100021 in her name which canceled the Original Certificate of Title No. 0-7743 of Tolosa.

On 13 October 1981, Ocampo filed a third-party complaint against Villaruz.¹⁵

On 7 January 1988, Judge Julian Y. Ereño of the Regional Trial Court of Iloilo, Branch 27, rendered a decision in Civil Case No. 12163 dismissing the complaint of Tolosa as well as the complaint in intervention of Villaruz -

1. Declaring the contract to sell executed between plaintiff Severino Tolosa and third-party defendant Magdalena Villaruz as null and void as well as the Transfer of Certificate of Title issued in connection therewith, if any;
2. Ordering plaintiff Tolosa to execute the corresponding deed of sale in favor of third-party plaintiff Pilar T. Ocampo over the lot in litigation upon the latter's payment of the balance of P4,400.00;
3. Ordering plaintiff Tolosa to vacate and deliver possession of the lot in question to Pilar T. Ocampo;
4. Ordering plaintiff to pay Pilar T. Ocampo P10,000.00 as attorney's fees, P30,000.00 as moral damages, P2,000.00 as litigation expenses, and costs.

Her motion for reconsideration having been denied on 26 March 1988, Villaruz appealed to the Court of Appeals. On 11 October 1990, the 16th Division of the Court of Appeals,¹⁶ in CA-G.R. No. 18428, reversed and set aside the trial court's decision -

1. Declaring Magdalena S. Villaruz the absolute owner of the parcel of land covered by TCT No. T--100021 of the Register of Deeds of Iloilo;
2. Ordering the Register of Deeds of Iloilo to annotate at the back of TCT No. T-100021 the adverse claims filed by Pilar Ocampo under Entry No. 279936 and 302257 found in OCT No. 0-7743; and
3. Ordering the parties to pay proportionate costs.

The appellate court upheld the sale in favor of Villaruz on the theory that the 21 April 1975 agreement of Tolosa and Ocampo was merely a contract to sell. It claimed that in the absence of a deed of absolute sale in favor of Ocampo, in relation to par. 4 of the contract, Tolosa retained ownership over the land and validly conveyed the

same to Villaruz.

The agreement between Tolosa and Ocampo dated 21 April 1975 although titled “Agreement to Sell Real Property” was a perfected contract of absolute sale wherein Tolosa forthwith sold, ceded and transferred the land to Ocampo. It provided “[T]hat for and in consideration of the sum of TWENTY-FIVE THOUSAND PESOS (P25,000.00), Philippine Currency, to be paid by the VENDEE unto the VENDOR, the latter hereby SELLS, CEDES and TRANSFERS in favor of the former - her heirs and assigns, the above-described parcel of land, free from all liens and encumbrances.”

In *Dignos v. CA*,¹⁷ we laid down the criteria that:

“x x x a deed of sale is absolute in nature although denominated as a ‘Deed of Conditional Sale’ where nowhere in the contract in question is a proviso or stipulation to the effect that title to the property sold is reserved in the vendor until full payment of the purchase price, nor is there a stipulation giving the vendor the right to unilaterally rescind the contract the moment the vendee fails to pay within a fixed period (*Taguba v. Vda. de Leon*, 132 SCRA 722; *Luzon Brokerage Co., Inc. v. Maritime Building Co., Inc.*, 86 SCRA 305).

The conditions mentioned in *Dignos*, reiterating *Taguba* and *Luzon Brokerage Co., Inc.*, were not found in the subject contract to indicate that it was indeed a mere contract to sell or a deed of conditional sale. Contrary to the interpretation of the appellate court, we find nothing significant about par. 4 of the contract which provides that -

x x x immediately upon complete payment of the purchase price herein by the VENDEE, the VENDOR hereby agrees to execute and deliver unto the VENDEE whatever pertinent document or documents necessary to implement this sale and to transfer title to the VENDEE.

Paragraph 4 pertains to the undertaking of the seller to execute and deliver to the buyer any document deemed necessary by law to implement the sale and transfer title since the parties were unsure of what documents were pertinent. If the intent was for the seller to retain ownership and possession of the land through non-delivery of certain documents unless the price be fully paid, par. 4 alone should be inutile; it should have been complemented with a proviso that the sale would not be implemented nor the title considered transferred unless another document specifically for said purpose be first executed and delivered to the buyer. In this regard, no right to retain ownership and possession of the land pending full payment of the price can be inferred from the fact that no delivery was made to Ocampo.¹⁸

The failure of the buyer to pay the price in full within a fixed period does not, by itself, bar the transfer of the ownership or possession,¹⁹ much less dissolve the contract of sale. We held in *De la Cruz v. Legaspi*:²⁰

x x x they err in the assertion that as plaintiff failed to pay the price after the execution of the document of sale as agreed previously, the contract became null and void for lack of consideration. It cannot be denied that when the document was signed the cause or consideration existed: P450. The document specifically said so; and such was undoubtedly the agreement. Subsequent non-payment of the price at the time agreed upon did not convert the contract into one without cause or consideration: a nudum pactum (*Levy vs. Johnson*, 4 Phil. 650; *Puato vs. Mendoza*, 64 Phil. 457). The situation was rather one in which there is failure to pay the consideration, with its resultant consequences. In other words, when after the notarization of the contract, plaintiff failed to hand the money to defendants, as he previously promised, there was default on his part at most, and defendants’ right was to demand interest - legal interest - for the delay, pursuant to article 1501 (3) of the Civil Code²¹ (*Villaruel vs. Tan King*, 43 Phil. 251), or to demand rescission in court. (*Escueta vs. Pardo*, 42 Off. Gaz. 2759; *Cortes vs. Bibaño*, 41 Phil. 298.) Such failure, however, did not ipso facto resolve the contract, no stipulation to that effect having been alleged (Cf. *Warner Barnes & Co. vs. Inza*, 43 Phil. 505). Neither was there any agreement nor allegation that payment on time was essential (Cf. *Abella vs. Francisco*, 55 Phil. 477; *Berg vs. Magdalena Estate*, 92 Phil. 110).

Under Art. 1592 of the Civil Code, the failure of Ocampo to complete her payment of the purchase price within the stipulated period merely accorded Tolosa the option to rescind the contract of sale upon judicial or notarial demand.²²

However, the letter of 2 August 1977 claimed to have been sent by Tolosa to Ocampo rescinding the contract of sale²³ was defective because it was not notarized²⁴ and, more importantly, it was not proven to have been received by Ocampo.²⁵

Likewise, Civil Case No. 12163 could not be considered a judicial demand under Art. 1592 of the Civil Code because it did not pray for the rescission of the contract. Although the complaint sought the cancellation of Ocampo's adverse claim on Tolosa's OCT and for the refund of the payments made, these could not be equivalent to a rescission. In other words, seeking discharge from contractual obligations and an offer for restitution is not the same as abrogation of the contract. To rescind is "[t]o declare a contract void in its inception and to put an end to it as though it never were."²⁶ It is "[n]ot merely to terminate it and release parties from further obligations to each other but to abrogate it from the beginning and restore parties to relative positions which they would have occupied had no contract ever been made."²⁷

Even assuming arguendo that Civil Case No. 12163 was a valid judicial demand, rescission is not granted as a matter of course. Before Civil Case No. 12163 was filed on 7 October 1977, Ocampo not only paid Tolosa a total of P20,600.00 but also discharged Tolosa's mortgage debt in the amount of P4,453.41. Had not Tolosa ordered the Philippine Veterans Bank to return the mortgage debt payment by Ocampo,²⁸ the purchase price would have been deemed fully paid.

If only to accentuate her intention to make good her contractual obligations, Ocampo offered to pay the balance of the purchase price in her letter of 15 March 1977 or more than four months before Tolosa allegedly wrote his letter of rescission on 2 August 1977, and more than six-months before the filing of Civil Case No. 12163 on 7 October 1977. This offer to pay prior to the demand for rescission is sufficient to defeat Tolosa's prerogative under Art. 1592 of the Civil Code.

Tolosa, on the other hand, is now precluded from raising the issue of late payments. His unqualified acceptance of payments after the six-month period expired constitutes waiver of the period and, hence, of the ground to rescind under Art. 1592.

In any case, however, the breach on the part of Ocampo was only slight if not outweighed by the bad faith of Tolosa in reneging in his own prestations, hence, judicial rescission of the contract cannot be justified. *Angeles v. Calasanz*²⁹ is apropos -

The right to rescind the contract for non-performance of one of its stipulations x x x is not absolute. In *Universal Food Corp. v. Court of Appeals* (33 SCRA 1) the Court stated: The general rule is that rescission of a contract will not be permitted for a slight or casual breach, but only for such substantial and fundamental breach as would defeat the very object of the parties in making the agreement (*Song Fo & Co. v. Hawaiian-Philippine Co.*, 47 Phil., 821, 827); The question of whether a breach of a contract is substantial depends upon the attendant circumstances (*Corpus v. Hon. Alikpala, et al.*, L-23707 & L-23720, Jan. 17, 1968) x x x x

The defendants-appellants state that the plaintiffs-appellees violated Section two of the contract to sell x x x x because they failed to pay the August installment, despite demand, for more than four (4) months.

The breach of the contract adverted to by the defendants-appellants is so slight and casual when we consider that apart from the initial downpayment of P392.00 the plaintiffs-appellees had already paid the monthly installments for a period of almost nine (9) years. In other words, in only a short time, the entire obligation

would have been paid. Furthermore, although the principal obligation was only P3920.00 excluding the 7 percent interest, the plaintiffs-appellees had already paid an aggregate amount of P4,533.38. To sanction the rescission made by the defendants-appellants will work injustice to the plaintiffs-appellees (See *J.M. Tuazon and Co., Inc. v. Javier*, 31 SCRA 829). It would unjustly enrich the defendants-appellants.

Article 1234 of the Civil Code which provides that '[I]f the obligation has been substantially performed in good faith, the obligor may recover as though there had been a strict and complete fulfillment, less damages suffered by the obligee,' also militates against the unilateral act of the defendants-appellants in canceling the contract.

x x x x We agree with the plaintiffs-appellees that when the defendants-appellants, instead of availing of their 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 *De Guzman v. Guieb* (48 SCRA 68), we held x x x x But defendants do not deny that in spite of the long arrearages, neither they nor their predecessor x x x x even took steps to cancel the option or to eject the appellees from the home-lot in question. On the contrary, it is admitted that the delayed payments were received without protest or qualification. x x x x Under these circumstances, We cannot but agree with the lower court that at the time appellees exercised their option, appellants had already forfeited their right to invoke the above-quoted provision regarding the nullifying effect of the non-payment of six-months rentals by appellees by their having accepted without qualification on July 21, 1964 the full payment by appellees of all their arrearages.

While the contract dated 3 June 1977 in favor of Villaruz is also a contract of sale, that of Ocampo dated 21 April 1975 should prevail pursuant to Art. 1544 of the Civil Code on double sales.³⁰ While Villaruz may have registered his contract or came into possession ahead of Ocampo, Villaruz was never in good faith.

Since Ocampo had her adverse claim annotated on Tolosa's OCT on 6 June 1976, Villaruz could not profess innocence thereof when she signed her contract on 3 June 1977; in fact, her full payment of the purchase price was made dependent, among others, on the cancelation of this claim. Moreover, Villaruz admitted having been informed by Tolosa of the first sale to Ocampo while still negotiating to buy the land.³¹ Knowledge of the foregoing should have impelled Villaruz to investigate the circumstances of the annotation since this is equivalent to registration of Ocampo's contract of sale as against Villaruz. In sum, Ocampo having the older title in good faith and considering that personal knowledge thereof by Villaruz constitutes registration as against the latter, Ocampo should be considered the preferred buyer.

Incidentally, the stipulation in the contract of Villaruz conveying the land in her favor bows to Tolosa's admission at the witness stand on 15 May 1980 that he never actually delivered the possession of the property to anyone.³²

From the foregoing, although the decision of the trial court ordering Tolosa to execute another deed of sale in favor of Ocampo already became final as against him for failing to appeal therefrom, there is no more need for it. For practical purposes, it is enough that we order Villaruz to reconvey the property to Ocampo.

WHEREFORE, the decision of the Court of Appeals is REVERSED and SET ASIDE and the decision dated 7 January 1988 of the Regional Trial Court of Iloilo, Branch 27, in Civil Case No. 12163 is REINSTATED, with the modification that respondent Magdalena S. Villaruz is directed to reconvey the subject land now covered by TCT No. T-100021 in her name to petitioner Pilar T. Ocampo, without prejudice to Severino Tolosa collecting from petitioner Pilar T. Ocampo the balance of the purchase price of P4,400.00 which nevertheless may be deducted from the monetary awards made by the trial court in favor of petitioner Ocampo.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., Quiason, and Kapunan, JJ., concur.

[1] Par. 2 of the Pre-Trial Order reads: "It appearing from the Answer that the proper party-defendant x x x is not Teresa T. Borres but Pilar T. Ocampo, as indicated in the Waiver x x x Teresa T. Borres is hereby substituted by Pilar T. Ocampo, as party-defendant x x x with the conformity of the plaintiff and intervenor" (RTC Record, Civil Case No. 12163, p. 127).

[2] Exh. "1," RTC Record, p. 286.

[3] Annex "B," Answer, RTC Rec. pp. 21, 313.

[4] It was established at the trial that the P1,000.00 earnest money was paid on 11 March 1975 (Exh. "1") as part of the price, P12,500.00 upon the signing of the contract on 21 April 1975 (Exh. "16"), P1,000.00 on 12 August 1975 (Exh. "2"), P1,500.00 on 12 September 1975 (Exh. "3"), P300.00 on 26 September 1975 (Exh. "4"), and P400.00 on 27 September 1975 (Exh. "5").

[5] The trial court found the following payments to Tolosa after the six-month period lapsed on 21 October 1975: P500.00 on 18 December 1975 (Exh. "6"), P900.00 on 10 December 1976 (Exh. "7"), and P2,500.00 on various dates under receipt dated 18 March 1976 (Exh. "8").

[6] Although it was noted in the Contract to Sell dated 3 June 1977 between Tolosa and Magdalena S. Villaruz that "the boundary dispute between the VENDOR and the adjacent owner Salvador Tumines has already been judicially resolved x x x x" (RTC Record, p. 383), Tolosa however admitted on the stand that the case was on review before the Court of Appeals (TSN, 28 March 1980, p. 35).

[7] Exh. "12," RTC Record, p. 297.

[8] The letter adds: "x x x x It appears that x x x the second installment was not paid because your land was involved in a case with a certain Dodoy Tomines, so that you could not deliver to her the title thereof, free from all liens and encumbrances. Nevertheless, you have been continually asking money from my client x x x x leaving a balance of P5,400.00 unpaid x x x x My client will have to continue the suit against Tomines x x x x I understand that the PLS Monuments of the land are not yet embedded in their proper places in order to fix the boundaries of the land you have agreed to sell to my client" (RTC Record, p. 312).

[9] RTC Record, pp. 382-383.

[10] Exh. 13, RTC Record, p. 298.

[11] RTC Record, pp. 305-306.

[12] RTC Record, pp. 300.

[13] Docketed as Civil Case No. 12163.

[14] Entry No. 342601 canceled Entry No. 279936, while Entry No. 342602 canceled Entry No. 302257, both under orders of Judge Midpantao L. Adil, Court of First Instance of Iloilo, Br. 2.

15 RTC Record, pp. 249-253.

16 Penned by Justice Ricardo L. Pronove, Jr., with Justices Nicolas P. Lapeña, Jr., and Salome A. Montoya, concurring.

17 G.R. No. 59266, 29 February 1988, 158 SCRA 375, 382.

18 TSN, 20 July 1981, pp. 25-26.

19 “[W]hat is deferred is not the transfer of ownership but the full payment of the purchase price, which is to be made in installments, on the dates indicated” (Filoil Marketing Corp. v. IAC, G.R. No. 67115, 20 January 1989, 169 SCRA 293, 301).

20 98 Phil. 43, 45-46 (1955).

21 Now Art. 1589, par. 3, New Civil Code.

22 In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall 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.

23 Exh. “B”, RTC Record, p. 209.

24 A notarial act presupposes signing before a notary public and two competent witnesses (Words and Phrases, 1955, vol. 28A, p. 459, citing *Smith v. Bratsos*, La.App., 12 So.2d 241, 243).

25 As found by the trial court, “[t]o such alleged rescission letter, the return card was not presented and, of equal importance, the alteration or super-imposition appearing in the alleged registry receipt (Exh. “B-2”) was not explained. Such failures on the part of the plaintiff cannot overcome the denial of receipt by the defendant and the latter therefore prevails” (Decision, Civil Case No. 12163, p. 5, RTC Record, p. 444).

26 Black’s Law Dictionary, 4th ed., p. 1471, citing *Russel v. Stephens*, 191 Wash. 314, 71 P.2d 30, 31.

27 *Ibid*, citing *Wall v. Zynda*, 283 Mich. 260, 278 N.W. 66, 68, 114 A.L.R. 1521; *Sylvania Industrial Corporation v. Lilienfeld’s Estate*, C.C.A. Va., 132 F.2d 887, 892, 145 A.L.R. 612.

28 Exh. “20,” RTC Rec., p. 312. Tolosa maintains that the payment by Ocampo of his mortgage debt was prejudicial to his interest.

29 No. L-42283, 18 March 1985, 135 SCRA 323, 330-331; cited by Court En Banc in *Siska Development Corporation v. Office of the President*, G.R. No. 93176, 22 April 1994.

30 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.

31 TSN, 9 June 1983, pp. 22-23.

32 Decision, Civil Case No. 12163, citing TSN, 15 May 1980, p. 18.

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