537 Phil. 697

FIRST DIVISION

[G.R. NO. 152984, November 22, 2006]

WILLIAM G. KWONG, PETITIONER, VS. ATTY. RAMON GARGANTOS, ANACLETO GARGANTOS, SPS. REY & REMY SANTOS, AND SPS. LORNA & DANIEL ARCEO, RESPONDENTS.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Petitioner William G. Kwong is the owner of fifteen (15) lots located in the province of Pampanga. In an unnotarized Deed of Conditional Sale, petitioner, for himself and in behalf of William G. Kwong Management, sold said lots to respondents Anacleto Gargantos, Remy Santos and Lorna Arceo for the sum of $137,255.00 payable in two installments, with $10,000.00 being paid by respondents at the time of the execution of the contract, and the balance of $127,255.00 to be paid on or before December 15, 1986.[1] When respondents failed to pay the balance on the expected date, it was subsequently agreed that the same shall be paid on a staggered basis starting March 1989. Respondents, however, again failed to comply with their obligation. This compelled petitioner to write a letter of demand, through counsel, on November 16, 1989, asking respondents' compliance with their monetary obligation; otherwise, the contract shall be rescinded.[2] The letter was addressed to respondent Gargantos. There being no reply, another letter of demand dated February 21, 1990 was sent.[3]

On May 1, 1990, Atty. Ramon Gargantos (brother of respondent Anacleto Gargantos), armed with a Special Power of Attorney[4] executed by respondents, paid the amount of P1,776,200.00.[5] Thereafter, petitioner and Atty. Gargantos executed a notarized Deed of Absolute Sale, wherein petitioner sold to respondent Gargantos 11 out of the 15 lots for the sum of P500,000.00,[6] and Atty. Gargantos signed a Promissory Note for the payment of the amount of P373,074.95, on or before June 30, 1990, representing the unpaid balance of the purchase covering the remaining four lots.[7]

Again, respondent Gargantos failed to pay the agreed amount, forcing petitioner to write subsequent demand letters on November 12, 1990,[8] November 10, 1994,[9] October 15, 1995,[10] and July 29, 1996.[11] Respondent Gargantos, through counsel, finally answered, claiming that it was petitioner who did not comply with his undertaking to transfer 11 of the 15 titles to respondents prior to the payment of the balance, with the remaining four titles to be transferred afterwards.[12]

Petitioner then wrote respondents on September 15, 1996 asking for a conference in order to settle the matter.[13] In a letter dated November 12, 1996, respondent Gargantos's counsel reiterated his demand for the delivery of the 11 titles, failing

which a complaint for specific performance with damages and a criminal case for estafa will be filed against petitioner.[14]

On November 14, 1996, petitioner filed before the Regional Trial Court (RTC) of Angeles City, Branch 62, a complaint for the rescission of the Deed of Conditional Sale and forfeiture of all the payments made by respondents against herein respondents.[15]

Respondents filed an Answer with Compulsory Counterclaim, denying petitioner's allegations, and asking for the dismissal of the complaint. Respondents also prayed for the delivery of the 11 titles indicated in the Deed of Absolute Sale in exchange for the remaining balance and for damages.[16]

In a Pre-trial Order issued by the RTC on June 9, 1997, the following facts were admitted:

1. That plaintiff [petitioner] agreed to sell his real properties, consisting of 15 lots, to defendant for $137,255.00 U.S. Currency or in Philippine Currency at the rate of P20.40 per dollar, as evidenced by a deed of conditional sale dated November 1986.

2. That on the date the conditional sale was executed, defendants paid $10,000.00 U.S. Currency or P204,000.00, Philippine Currency thereby leaving a balance of $127,255.00 or P2,596,002.00 Philippine Currency which shall be paid on December 15, 1986 without interest.

3. That to guarantee payment of the balance defendants thru their attorney-in-fact, Atty. Ramon Gargantos, executed a promissory note dated May 1, 1990; and

4. That on the same date a deed of absolute sale was likewise executed.[17]

The issues were defined as follows:

1. Whether or not the terms and conditions of the deed of conditional sale dated November 1986 has been complied with by the parties;

2. Whether or not the said deed of conditional sale has been superseded or novated by the subsequent execution of the deed of absolute sale dated May 1, 1990; and

3. Whether or not the deed of absolute sale is binding and/or enforceable.[18]

On the first issue, the RTC ruled that "not only that defendants failed to comply with the terms and conditions of the Deed of Conditional Sale of 1986 but also of the Promissory Note of May 1, 1990."[19]

On the second issue, the RTC ruled that there was no novation of the Deed of Conditional Sale by the execution of the Deed of Absolute Sale because the parties

continued to recognize the validity of the conditional sale; the absolute sale was executed without the knowledge and consent of the other respondents; and there was no showing that the other respondents were released from their obligation under the conditional sale.[20]

On the third and last issue, the RTC ruled that the Deed of Absolute Sale cannot be enforced since Atty. Gargantos exceeded his powers under the Special Power of Attorney when he entered into the transaction.[21]

Thus, in its Decision dated February 4, 1999, the RTC granted rescission of the Deed of Conditional Sale and ordered petitioner to refund one-half of the amount paid by respondents, subject to 6% interest, with respondents forfeiting the other half in favor of petitioner. Respondents' counterclaim was dismissed.[22]

Respondents appealed to the Court of Appeals (CA), which reversed and set aside the RTC Decision, and dismissed petitioner's complaint and respondents' counterclaim per its Decision[23] dated December 14, 2001. The CA held that petitioner does not have any right to rescind the Deed of Conditional Sale because the Deed of Absolute Sale and the Promissory Note have already superseded it.[24] The CA also denied petitioner's Motion for Reconsideration per Resolution dated April 11, 2002.[25]

Petitioner now comes before the Court by way of a petition for review under Rule 45 of the Rules of Court, submitting that the CA committed a serious reversible error when it held that it was the parties' intention to supersede the Deed of Conditional Sale with the Deed of Absolute Sale.

The petition lacks merit.

Novation is the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one which extinguishes or modifies the first, either by changing the object or principal conditions, or, by substituting another in place of the debtor, or by subrogating a third person in the rights of the creditor.[26]

Under Article 1292 of the Civil Code, in order that an obligation may be extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other. The parties to a contract must expressly agree that they are abrogating their old contract in favor of a new one. In the absence of an express agreement, novation takes place only when the old and the new obligations are incompatible on every point.[27]

In *Iloilo Traders Finance, Inc, v. Heirs of Soriano, Jr.,*[28] the nature of novation was explained, thus:

> Novation may either be extinctive or modificatory, much being dependent on the nature of the change and the intention of the parties. *Extinctive novation* is never presumed; there must be an express intention to novate; in cases where it is implied, the acts of the parties must clearly demonstrate their intent to dissolve the old obligation as the moving