

THIRD DIVISION

[G.R. No. 115158, September 05, 1997]

**EMILIA M. URACA, CONCORDIA D. CHING AND ONG SENG,
REPRESENTED BY ENEDINO H. FERRER, PETITIONERS, VS.
COURT OF APPEALS, JACINTO VELEZ, JR., CARMEN VELEZ TING,
AVENUE MERCHANDISING, INC., FELIX TING AND ALFREDO GO,
RESPONDENTS.**

DECISION

PANGANIBAN, J.:

Novation is never presumed; it must be sufficiently established that a valid new agreement or obligation has extinguished or changed an existing one. The registration of a later sale must be done in good faith to entitle the registrant to priority in ownership over the vendee in an earlier sale.

Statement of the Case

These doctrines are stressed by this Court as it resolves the instant petition challenging the December 28, 1993 Decision^[1] of Respondent Court of Appeals^[2] in CA-G.R. SP No. 33307, which reversed and set aside the judgment of the Regional Trial Court of Cebu City, Branch 19, and entered a new one dismissing the petitioners' complaint. The dispositive portion of the RTC decision reads:^[3]

WHEREFORE, judgment is hereby rendered:

- 1) declaring as null and void the three (3) deeds of sale executed by the Velezes to Felix C. Ting, Manuel Ting and Alfredo Go;
- 2) ordering Carmen Velez Ting and Jacinto M. Velez, Jr. to execute a deed of absolute sale in favor of Concordia D. Ching and Emilia M. Uraca for the properties in question for P1,400,000.00, which sum must be delivered by the plaintiffs to the Velezes immediately after the execution of said contract;
- 3) ordering Carmen Velez Ting and Jacinto M. Velez, Jr. to reimburse Felix C. Ting, Manuel C. Ting and Alfredo Go whatever amount the latter had paid to the former;
- 4) ordering Felix C. Ting, Manuel C. Ting and Alfredo Go to deliver the properties in question to the plaintiffs within fifteen (15) days from receipt of a copy of this decision;
- 5) ordering all the defendants to pay, jointly and severally, the plaintiffs the sum of P20,000.00 as attorney's fees.

SO ORDERED.”

The Antecedent Facts

The facts narrated by the Court of Appeals are as follows:^[4]

The Velezes (herein private respondents) were the owners of the lot and commercial building in question located at Progreso and M.C. Briones Streets in Cebu City.

Herein (petitioners) were the lessees of said commercial building.^[5]

On July 8, 1985, the Velezes through Carmen Velez Ting wrote a letter to herein (petitioners) offering to sell the subject property for P1,050,000.00 and at the same time requesting (herein petitioners) to reply in three days.

On July 10, 1985, (herein petitioners) through Atty. Escolastico Daitol sent a reply-letter to the Velezes accepting the aforesaid offer to sell.

On July 11, 1985, (herein petitioner) Emilia Uraca went to see Carmen Ting about the offer to sell but she was told by the latter that the price was P1,400,000.00 in cash or manager’s check and not P1,050,000.00 as erroneously stated in their letter-offer after some haggling. Emilia Uraca agreed to the price of P1,400,000.00 but counter-proposed that payment be paid in installments with a down payment of P1,000,000.00 and the balance of P400,000 to be paid in 30 days. Carmen Velez Ting did not accept the said counter-offer of Emilia Uraca although this fact is disputed by Uraca.

No payment was made by (herein petitioners) to the Velezes on July 12, 1985 and July 13, 1985.

On July 13, 1985, the Velezes sold the subject lot and commercial building to the Avenue Group (Private Respondent Avenue Merchandising Inc.) for P1,050,000.00 net of taxes, registration fees, and expenses of the sale.

At the time the Avenue Group purchased the subject property on July 13, 1985 from the Velezes, the certificate of title of the said property was clean and free of any annotation of adverse claims or lis pendens.

On July 31, 1985 as aforestated, herein (petitioners) filed the instant complaint against the Velezes.

On August 1, 1985, (herein petitioners) registered a notice of lis pendens over the property in question with the Office of the Register of Deeds.^[6]

On October 30, 1985, the Avenue Group filed an ejectment case against (herein petitioners) ordering the latter to vacate the commercial building

standing on the lot in question.

Thereafter, herein (petitioners) filed an amended complaint impleading the Avenue Group as new defendants (after about 4 years after the filing of the original complaint)."

The trial court found two perfected contracts of sale between the Velezes and the petitioners, involving the real property in question. The first sale was for P1,050,000.00 and the second was for P1,400,000.00. In respect to the first sale, the trial court held that "[d]ue to the unqualified acceptance by the plaintiffs within the period set by the Velezes, there consequently came about a meeting of the minds of the parties not only as to the object certain but also as to the definite consideration or cause of the contract."^[7] And even assuming *arguendo* that the second sale was not perfected, the trial court ruled that the same still constituted a mere modificatory novation which did not extinguish the first sale. Hence, the trial court held that "the Velezes were not free to sell the properties to the Avenue Group."^[8] It also found that the Avenue Group purchased the property in bad faith.^[9]

Private respondents appealed to the Court of Appeals. As noted earlier, the CA found the appeal meritorious. Like the trial court, the public respondent held that there was a perfected contract of sale of the property for P1,050,000.00 between the Velezes and herein petitioners. It added, however, that such perfected contract of sale was subsequently novated. Thus, it ruled: "Evidence shows that that was the original contract. However, the same was mutually withdrawn, cancelled and rescinded by novation, and was therefore abandoned by the parties when Carmen Velez Ting raised the consideration of the contract [by] P350,000.00, thus making the price P1,400,000.00 instead of the original price of P1,050,000.00. Since there was no agreement as to the 'second' price offered, there was likewise no meeting of minds between the parties, hence, no contract of sale was perfected."^[10] The Court of Appeals added that, assuming there was agreement as to the price and a second contract was perfected, the later contract would be unenforceable under the Statute of Frauds. It further held that such second agreement, if there was one, constituted a mere promise to sell which was not binding for lack of acceptance or a separate consideration.^[11]

The Issues

Petitioners allege the following "errors" in the Decision of Respondent Court:

"I

Since it ruled in its decision that there was no meeting of the minds on the 'second' price offered (P1,400,000.00), hence no contract of sale was perfected, the Court of Appeals erred in not holding that the original written contract to buy and sell for P1,050,000.00 the Velezes property continued to be valid and enforceable pursuant to Art. 1279 in relation with Art. 1479, first paragraph, and Art. 1403, subparagraph 2 (e) of the Civil Code.

II

The Court of Appeals erred in not ruling that petitioners have better rights to buy and own the Velezes' property for registering their notice of lis pendens ahead of the Avenue Group's registration of their deeds of sale taking into account Art. 1544, 2nd paragraph, of the Civil Code."^[12]

The Court's Ruling

The petition is meritorious.

First Issue: No Extinctive Novation

The lynchpin of the assailed Decision is the public respondent's conclusion that the sale of the real property in controversy, by the Velezes to petitioners for P1,050,000.00, was extinguished by novation after the said parties negotiated to increase the price to P1,400,000.00. Since there was no agreement on the sale at the increased price, then there was no perfected contract to enforce. We disagree.

The Court notes that the petitioners accepted in writing and without qualification the Velezes' written offer to sell at P1,050,000.00 within the three-day period stipulated therein. Hence, from the moment of acceptance on July 10, 1985, a contract of sale was perfected since undisputedly the contractual elements of consent, object certain and cause concurred.^[13] Thus, this question is posed for our resolution: Was there a novation of this perfected contract?

Article 1600 of the Civil Code provides that "(s)ales are extinguished by the same causes as all other obligations, x x x." Article 1231 of the same Code states that novation is one of the ways to wipe out an obligation. Extinctive novation requires: (1) the existence of a previous valid obligation; (2) the agreement of all the parties to the new contract; (3) the extinguishment of the old obligation or contract; and (4) the validity of the new one.^[14] The foregoing clearly show that novation is effected only when a new contract has extinguished an earlier contract between the same parties. In this light, novation is never presumed; it must be proven as a fact either by express stipulation of the parties or by implication derived from an irreconcilable incompatibility between old and new obligations or contracts.^[15] After a thorough review of the records, we find this element lacking in the case at bar.

As aptly found by the Court of Appeals, the petitioners and the Velezes did not reach an agreement on the new price of P1,400,000.00 demanded by the latter. In this case, the petitioners and the Velezes clearly did not perfect a new contract because the essential requisite of consent was absent, the parties having failed to agree on the terms of the payment. True, petitioners made a qualified acceptance of this offer by proposing that the payment of this higher sale price be made by installment, with P1,000,000.00 as down payment and the balance of P400,000.00 payable thirty days thereafter. Under Article 1319 of the Civil Code,^[16] such qualified acceptance constitutes a counter-offer and has the ineludible effect of rejecting the Velezes' offer.^[17] Indeed, petitioners' counter-offer was not accepted by the Velezes. It is well-settled that "(a)n offer must be clear and definite, while an acceptance must be unconditional and unbounded, in order that their concurrence can give rise to a perfected contract."^[18] In line with this basic postulate of contract law, "a definite