

SECOND DIVISION

[G.R. No. 179965, February 20, 2013]

**NICOLAS P. DIEGO, PETITIONER, VS. RODOLFO P. DIEGO AND
EDUARDO P. DIEGO, RESPONDENTS.**

D E C I S I O N

DEL CASTILLO, J.:

It is settled jurisprudence, to the point of being elementary, that an agreement which stipulates that the seller shall execute a deed of sale only upon or after full payment of the purchase price is a ***contract to sell***, not a contract of sale. In *Reyes v. Tuparan*,^[1] this Court declared in categorical terms that “[w]here the vendor promises to execute a deed of absolute sale upon the completion by the vendee of the payment of the price, the contract is only a contract to sell. The aforesaid stipulation shows that the vendors reserved title to the subject property until full payment of the purchase price.”

In this case, it is not disputed as in fact both parties agreed that the deed of sale shall only be executed upon payment of the remaining balance of the purchase price. Thus, pursuant to the abovestated jurisprudence, we similarly declare that the transaction entered into by the parties is a contract to sell.

Before us is a Petition for Review on *Certiorari*^[2] questioning the June 29, 2007 Decision^[3] and the October 3, 2007 Resolution^[4] of the Court of Appeals (CA) in CA-G.R. CV No. 86512, which affirmed the April 19, 2005 Decision^[5] of the Regional Trial Court (RTC), Branch 40, of Dagupan City in Civil Case No. 99-02971-D.

Factual Antecedents

In 1993, petitioner Nicolas P. Diego (Nicolas) and his brother Rodolfo, respondent herein, entered into an oral contract to sell covering Nicolas’s share, fixed at P500,000.00, as co-owner of the family’s Diego Building situated in Dagupan City. Rodolfo made a downpayment of P250,000.00. It was agreed that the deed of sale shall be executed upon payment of the remaining balance of P250,000.00. However, Rodolfo failed to pay the remaining balance.

Meanwhile, the building was leased out to third parties, but Nicolas’s share in the rents were not remitted to him by herein respondent Eduardo, another brother of Nicolas and designated administrator of the Diego Building. Instead, Eduardo gave Nicolas’s monthly share in the rents to Rodolfo. Despite demands and protestations by Nicolas, Rodolfo and Eduardo failed to render an accounting and remit his share in the rents and fruits of the building, and Eduardo continued to hand them over to Rodolfo.

Thus, on May 17, 1999, Nicolas filed a Complaint^[6] against Rodolfo and Eduardo before the RTC of Dagupan City and docketed as Civil Case No. 99-02971-D. Nicolas prayed that Eduardo be ordered to render an accounting of all the transactions over the Diego Building; that Eduardo and Rodolfo be ordered to deliver to Nicolas his share in the rents; and that Eduardo and Rodolfo be held solidarily liable for attorney's fees and litigation expenses.

Rodolfo and Eduardo filed their Answer with Counterclaim^[7] for damages and attorney's fees. They argued that Nicolas had no more claim in the rents in the Diego Building since he had already sold his share to Rodolfo. Rodolfo admitted having remitted only P250,000.00 to Nicolas. He asserted that he would pay the balance of the purchase price to Nicolas only after the latter shall have executed a deed of absolute sale.

Ruling of the Regional Trial Court

After trial on the merits, or on April 19, 2005, the trial court rendered its Decision^[8] dismissing Civil Case No. 99-02971-D for lack of merit and ordering Nicolas to execute a deed of absolute sale in favor of Rodolfo upon payment by the latter of the P250,000.00 balance of the agreed purchase price. It made the following interesting pronouncement:

It is undisputed that plaintiff (Nicolas) is one of the co-owners of the Diego Building, x x x. As a co-owner, he is entitled to [his] share in the rentals of the said building. However, plaintiff [had] already sold his share to defendant Rodolfo Diego in the amount of P500,000.00 and in fact, [had] already received a partial payment in the purchase price in the amount of P250,000.00. **Defendant Eduardo Diego testified that as per agreement, verbal, of the plaintiff and defendant Rodolfo Diego, the remaining balance of P250,000.00 will be paid upon the execution of the Deed of Absolute Sale.** It was in the year 1997 when plaintiff was being required by defendant Eduardo Diego to sign the Deed of Absolute Sale. Clearly, defendant Rodolfo Diego was not yet in default as the plaintiff claims which cause [sic] him to refuse to sign [sic] document. The contract of sale was already perfected as early as the year 1993 when plaintiff received the partial payment, hence, he cannot unilaterally revoke or rescind the same. From then on, plaintiff has, therefore, ceased to be a co-owner of the building and is no longer entitled to the fruits of the Diego Building.

Equity and fairness dictate that defendant [sic] has to execute the necessary document regarding the sale of his share to defendant Rodolfo Diego. Correspondingly, defendant Rodolfo Diego has to perform his obligation as per their verbal agreement by paying the remaining balance of P250,000.00.^[9]

To summarize, the trial court ruled that as early as 1993, Nicolas was no longer entitled to the fruits of his aliquot share in the Diego Building because he had "ceased to be a co-owner" thereof. The trial court held that when Nicolas received the P250,000.00 downpayment, a "contract of sale" was perfected. Consequently,

Nicolas is obligated to convey such share to Rodolfo, without right of rescission. Finally, the trial court held that the P250,000.00 balance from Rodolfo will only be due and demandable when Nicolas executes an absolute deed of sale.

Ruling of the Court of Appeals

Nicolas appealed to the CA which sustained the trial court's Decision *in toto*. The CA held that since there was a perfected contract of sale between Nicolas and Rodolfo, the latter may compel the former to execute the proper sale document. Besides, Nicolas's insistence that he has since rescinded their agreement in 1997 proved the existence of a perfected sale. It added that Nicolas could not validly rescind the contract because: "1) Rodolfo ha[d] already made a partial payment; 2) Nicolas ha[d] already partially performed his part regarding the contract; and 3) Rodolfo opposes the rescission."^[10]

The CA then proceeded to rule that since no period was stipulated within which Rodolfo shall deliver the balance of the purchase price, it was incumbent upon Nicolas to have filed a civil case to fix the same. But because he failed to do so, Rodolfo cannot be considered to be in delay or default.

Finally, the CA made another interesting pronouncement, that by virtue of the agreement Nicolas entered into with Rodolfo, he had already transferred his ownership over the subject property and as a consequence, Rodolfo is legally entitled to collect the fruits thereof in the form of rentals. Nicolas' remaining right is to demand payment of the balance of the purchase price, provided that he first executes a deed of absolute sale in favor of Rodolfo.

Nicolas moved for reconsideration but the same was denied by the CA in its Resolution dated October 3, 2007.

Hence, this Petition.

Issues

The Petition raises the following errors that must be rectified:

I

THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT THERE WAS NO PERFECTED CONTRACT OF SALE BETWEEN PETITIONER NICOLAS DIEGO AND RESPONDENT RODOLFO DIEGO OVER NICOLAS'S SHARE OF THE BUILDING BECAUSE THE SUSPENSIVE CONDITION HAS NOT YET BEEN FULFILLED.

II

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE CONTRACT OF SALE BETWEEN PETITIONER AND RESPONDENT RODOLFO DIEGO REMAINS LEGALLY BINDING AND IS NOT RESCINDED GIVING MISPLACED RELIANCE ON PETITIONER NICOLAS' STATEMENT THAT THE

SALE HAS NOT YET BEEN REVOKED.

III

THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT PETITIONER NICOLAS DIEGO ACTED LEGALLY AND CORRECTLY WHEN HE UNILATERALLY RESCINDED AND REVOKED HIS AGREEMENT OF SALE WITH RESPONDENT RODOLFO DIEGO CONSIDERING RODOLFO'S MATERIAL, SUBSTANTIAL BREACH OF THE CONTRACT.

IV

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER HAS NO MORE RIGHTS OVER HIS SHARE IN THE BUILDING, DESPITE THE FACT THAT THERE WAS AS YET NO PERFECTED CONTRACT OF SALE BETWEEN PETITIONER NICOLAS DIEGO AND RODOLFO DIEGO AND THERE WAS YET NO TRANSFER OF OWNERSHIP OF PETITIONER'S SHARE TO RODOLFO DUE TO THE NON-FULFILLMENT BY RODOLFO OF THE SUSPENSIVE CONDITION UNDER THE CONTRACT.

V

THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT RESPONDENT RODOLFO HAS UNJUSTLY ENRICHED HIMSELF AT THE EXPENSE OF PETITIONER BECAUSE DESPITE NOT HAVING PAID THE BALANCE OF THE PURCHASE PRICE OF THE SALE, THAT RODOLFO HAS NOT YET ACQUIRED OWNERSHIP OVER THE SHARE OF PETITIONER NICOLAS, HE HAS ALREADY BEEN APPROPRIATING FOR HIMSELF AND FOR HIS PERSONAL BENEFIT THE SHARE OF THE INCOME OF THE BUILDING AND THE PORTION OF THE BUILDING ITSELF WHICH WAS DUE TO AND OWNED BY PETITIONER NICOLAS.

VI

THE HONORABLE COURT OF APPEALS ERRED IN NOT AWARDING ACTUAL DAMAGES, ATTORNEY'S FEES AND LITIGATION EXPENSES TO THE PETITIONER DESPITE THE FACT THAT PETITIONER'S RIGHTS HAD BEEN WANTONLY VIOLATED BY THE RESPONDENTS.^[11]

Petitioner's Arguments

In his Petition, the Supplement^[12] thereon, and Reply,^[13] Nicolas argues that, contrary to what the CA found, there was no perfected contract of sale even though Rodolfo had partially paid the price; that in the absence of the third element in a sale contract – the price – there could be no perfected sale; that failing to pay the required price in full, Nicolas had the right to rescind the agreement as an unpaid seller.

Nicolas likewise takes exception to the CA finding that Rodolfo was not in default or delay in the payment of the agreed balance for his (Nicolas's) failure to file a case to fix the period within which payment of the balance should be made. He believes

that Rodolfo's failure to pay within a reasonable time was a substantial and material breach of the agreement which gave him the right to unilaterally and extrajudicially rescind the agreement and be discharged of his obligations as seller; and that his repeated written demands upon Rodolfo to pay the balance granted him such rights.

Nicolas further claims that based on his agreement with Rodolfo, there was to be no transfer of title over his share in the building until Rodolfo has effected full payment of the purchase price, thus, giving no right to the latter to collect his share in the rentals.

Finally, Nicolas bewails the CA's failure to award damages, attorney's fees and litigation expenses for what he believes is a case of unjust enrichment at his expense.

Respondents' Arguments

Apart from echoing the RTC and CA pronouncements, respondents accuse the petitioner of "cheating" them, claiming that after the latter received the P250,000.00 downpayment, he "vanished like thin air and hibernated in the USA, he being an American citizen,"^[14] only to come back claiming that the said amount was a mere loan.

They add that the Petition is a mere rehash and reiteration of the petitioner's arguments below, which are deemed to have been sufficiently passed upon and debunked by the appellate court.

Our Ruling

The Court finds merit in the Petition.

The contract entered into by Nicolas and Rodolfo was a contract to sell.

a) The stipulation to execute a deed of sale upon full payment of the purchase price is a unique and distinguishing characteristic of a contract to sell. It also shows that the vendor reserved title to the property until full payment.

There is no dispute that in 1993, Rodolfo agreed to buy Nicolas's share in the Diego Building for the price of P500,000.00. There is also no dispute that of the total purchase price, Rodolfo paid, and Nicolas received, P250,000.00. Significantly, it is also not disputed that the parties agreed that the remaining amount of P250,000.00 would be paid after Nicolas shall have executed a deed of sale.

This stipulation, *i.e.*, to execute a deed of absolute sale upon full payment of the purchase price, is a unique and distinguishing characteristic of a **contract to sell**.

In ***Reyes v. Tuparan***,^[15] this Court ruled that a stipulation in the contract, "[w]here the vendor promises to execute a deed of absolute sale upon the completion by the vendee of the payment of the price," indicates that the parties entered into a **contract to sell**. According to this Court, this particular provision is tantamount to a reservation of ownership on the part of the vendor.