

FIRST DIVISION

[G.R. No. 168325, December 08, 2010]

ROBERTO D. TUAZON, PETITIONER, VS. LOURDES Q. DEL ROSARIO-SUAREZ, CATALINA R. SUAREZ-DE LEON, WILFREDO DE LEON, MIGUEL LUIS S. DE LEON, ROMMEL LEE S. DE LEON, AND GUILLERMA L. SANDICO-SILVA, AS ATTORNEY-IN-FACT OF THE DEFENDANTS, EXCEPT LOURDES Q. DEL ROSARIO-SUAREZ, RESPONDENTS.

D E C I S I O N

DEL CASTILLO, J.:

In a situation where the lessor makes an offer to sell to the lessee a certain property at a fixed price within a certain period, and the lessee fails to accept the offer or to purchase on time, then the lessee loses his right to buy the property and the owner can validly offer it to another.

This Petition for Review on *Certiorari*^[1] assails the Decision^[2] dated May 30, 2005 of the Court of Appeals (CA) in CA-G.R. CV No. 78870, which affirmed the Decision^[3] dated November 18, 2002 of the Regional Trial Court (RTC), Branch 101, Quezon City in Civil Case No. Q-00-42338.

Factual Antecedents

Respondent Lourdes Q. Del Rosario-Suarez (Lourdes) was the owner of a parcel of land, containing more or less an area of 1,211 square meters located along Tandang Sora Street, *Barangay* Old Balara, Quezon City and previously covered by Transfer Certificate of Title (TCT) No. RT-56118^[4] issued by the Registry of Deeds of Quezon City.

On June 24, 1994, petitioner Roberto D. Tuazon (Roberto) and Lourdes executed a Contract of Lease^[5] over the abovementioned parcel of land for a period of three years. The lease commenced in March 1994 and ended in February 1997. During the effectivity of the lease, Lourdes sent a letter^[6] dated January 2, 1995 to Roberto where she offered to sell to the latter subject parcel of land. She pegged the price at P37,541,000.00 and gave him two years from January 2, 1995 to decide on the said offer.

On June 19, 1997, or more than four months after the expiration of the Contract of Lease, Lourdes sold subject parcel of land to her only child, Catalina Suarez-De Leon, her son-in-law Wilfredo De Leon, and her two grandsons, Miguel Luis S. De Leon and Rommel S. De Leon (the De Leons), for a total consideration of only P2,750,000.00 as evidenced by a Deed of Absolute Sale^[7] executed by the parties. TCT No. 177986^[8] was then issued by the Registry of Deeds of Quezon City in the

name of the De Leons.

The new owners through their attorney-in-fact, Guillerma S. Silva, notified Roberto to vacate the premises. Roberto refused hence, the De Leons filed a complaint for Unlawful Detainer before the Metropolitan Trial Court (MeTC) of Quezon City against him. On August 30, 2000, the MeTC rendered a Decision^[9] ordering Roberto to vacate the property for non-payment of rentals and expiration of the contract.

Ruling of the Regional Trial Court

On November 8, 2000, while the ejectment case was on appeal, Roberto filed with the RTC of Quezon City a Complaint^[10] for Annulment of Deed of Absolute Sale, Reconveyance, Damages and Application for Preliminary Injunction against Lourdes and the De Leons. On November 13, 2000, Roberto filed a Notice of *Lis Pendens*^[11] with the Registry of Deeds of Quezon City.

On January 8, 2001, respondents filed An Answer with Counterclaim^[12] praying that the Complaint be dismissed for lack of cause of action. They claimed that the filing of such case was a mere leverage of Roberto against them because of the favorable Decision issued by the MeTC in the ejectment case.

On September 17, 2001, the RTC issued an Order^[13] declaring Lourdes and the De Leons in default for their failure to appear before the court for the second time despite notice. Upon a Motion for Reconsideration,^[14] the trial court in an Order^[15] dated October 19, 2001 set aside its Order of default.

After trial, the court *a quo* rendered a Decision declaring the Deed of Absolute Sale made by Lourdes in favor of the De Leons as valid and binding. The offer made by Lourdes to Roberto did not ripen into a contract to sell because the price offered by the former was not acceptable to the latter. The offer made by Lourdes is no longer binding and effective at the time she decided to sell the subject lot to the De Leons because the same was not accepted by Roberto. Thus, in a Decision dated November 18, 2002, the trial court dismissed the complaint. Its dispositive portion reads:

WHEREFORE, premises considered, judgment is hereby rendered dismissing the above-entitled Complaint for lack of merit, and ordering the Plaintiff to pay the Defendants, the following:

1. the amount of P30,000.00 as moral damages;
2. the amount of P30,000.00 as exemplary damages;
3. the amount of P30,000.00 as attorney's fees; and
4. cost of the litigation.

SO ORDERED.^[16]

Ruling of the Court of Appeals

On May 30, 2005, the CA issued its Decision dismissing Roberto's appeal and

affirming the Decision of the RTC.

Hence, this Petition for Review on *Certiorari* filed by Roberto advancing the following arguments:

I.

THE TRIAL COURT AND THE COURT OF APPEALS HAD DECIDED THAT THE "RIGHT OF FIRST REFUSAL" EXISTS ONLY WITHIN THE PARAMETERS OF AN "OPTION TO BUY", AND DID NOT EXIST WHEN THE PROPERTY WAS SOLD LATER TO A THIRD PERSON, UNDER FAVORABLE TERMS AND CONDITIONS WHICH THE FORMER BUYER CAN MEET.

II.

WHAT IS THE STATUS OR SANCTIONS OF AN APPELLEE IN THE COURT OF APPEALS WHO HAS NOT FILED OR FAILED TO FILE AN APPELLEE'S BRIEF?^[17]

Petitioner's Arguments

Roberto claims that Lourdes violated his right to buy subject property under

the principle of "right of first refusal" by not giving him "notice" and the opportunity to buy the property under the same terms and conditions or specifically based on the much lower price paid by the De Leons.

Roberto further contends that he is enforcing his "right of first refusal" based on *Equatorial Realty Development, Inc. v. Mayfair Theater, Inc.*^[18] which is the leading case on the "right of first refusal."

Respondents' Arguments

On the other hand, respondents posit that this case is not covered by the principle of "right of first refusal" but an unaccepted unilateral promise to sell or, at best, a contract of option which was not perfected. The letter of Lourdes to Roberto clearly embodies an option contract as it grants the latter only two years to exercise the option to buy the subject property at a price certain of P37,541,000.00. As an option contract, the said letter would have been binding upon Lourdes without need of any consideration, had Roberto accepted the offer. But in this case there was no acceptance made neither was there a distinct consideration for the option contract.

Our Ruling

The petition is without merit.

This case involves an option contract and not a contract of a right of first refusal

In *Beaumont v. Prieto*,^[19] the nature of an option contract is explained thus:

In his Law Dictionary, edition of 1897, Bouvier defines an option as a contract, in the following language:

`A contract by virtue of which A, in consideration of the payment of a certain sum to B, acquires the privilege of buying from, or selling to, B certain securities or properties within a limited time at a specified price. (Story vs. Salamon, 71 N. Y., 420.)'

From Vol. 6, page 5001, of the work "Words and Phrases," citing the case of Ide vs. Leiser (24 Pac., 695; 10 Mont., 5; 24 Am. St. Rep., 17) the following quotation has been taken:

`An agreement in writing to give a person the `option' to purchase lands within a given time at a named price is neither a sale nor an agreement to sell. **It is simply a contract by which the owner of property agrees with another person that he shall have the right to buy his property at a fixed price within a certain time.** He does not sell his land; he does not then agree to sell it; but he does sell something; that is, the right or privilege to buy at the election or option of the other party. The second party gets *in praesenti*, not lands, nor an agreement that he shall have lands, but he does get something of value; that is, the right to call for and receive lands if he elects. The owner parts with his right to sell his lands, except to the second party, for a limited period. The second party receives this right, or rather, from his point of view, he receives the right to elect to buy.

But the two definitions above cited refer to the contract of option, or, what amounts to the same thing, to the case where there was cause or consideration for the obligation x x x. (Emphasis supplied.)

On the other hand, in *Ang Yu Asuncion v. Court of Appeals*,^[20] an elucidation on the "right of first refusal" was made thus:

In the law on sales, the so-called `right of first refusal' is an innovative juridical relation. Needless to point out, it cannot be deemed a perfected contract of sale under Article 1458 of the Civil Code. Neither can the right of first refusal, understood in its normal concept, *per se* be brought within the purview of an option under the second paragraph of Article 1479, aforequoted, or possibly of an offer under Article 1319 of the same Code. An option or an offer would require, among other things, a clear certainty on both the object and the cause or consideration of the envisioned contract. **In a right of first refusal, while the object might be made determinate, the exercise of the right, however, would be dependent not only on the grantor's eventual intention to enter into a binding juridical relation with another but also on terms, including the price, that obviously are yet to be later firmed up.** Prior thereto, it can at best be so described as merely belonging to a class of preparatory juridical relations governed not by contracts (since the essential elements to establish the *vinculum juris* would still be indefinite and inconclusive) but by, among other laws of

general application, the pertinent scattered provisions of the Civil Code on human conduct.

Even on the premise that such right of first refusal has been decreed under a final judgment, like here, its breach cannot justify correspondingly an issuance of a writ of execution under a judgment that merely recognizes its existence, nor would it sanction an action for specific performance without thereby negating the indispensable element of consensuality in the perfection of contracts. It is not to say, however, that the right of first refusal would be inconsequential for, such as already intimated above, an unjustified disregard thereof, given, for instance, the circumstances expressed in Article 19 of the Civil Code, can warrant a recovery for damages. (Emphasis supplied.)

From the foregoing, it is thus clear that an option contract is entirely different and distinct from a right of first refusal in that in the former, the option granted to the offeree is for a **fixed period** and at a **determined price**. Lacking these two essential requisites, what is involved is only a right of first refusal.

In this case, the controversy is whether the letter of Lourdes to Roberto dated January 2, 1995 involved an option contract or a contract of a right of first refusal. In its entirety, the said letter-offer reads:

206 Valdes Street
Josefa Subd. Balibago
Angeles City 2009
January 2, 1995

Tuazon Const. Co.
986 Tandang Sora Quezon City

Dear Mr. Tuazon,

I received with great joy and happiness the big box of sweet grapes and ham, fit for a king's party. Thanks very much.

I am getting very old (79 going 80 yrs. old) and wish to live in the U.S.A. with my only family. I need money to buy a house and lot and a farm with a little cash to start.

I am offering you to buy my **1211 square meter** at **P37,541,000.00** you can pay me in dollars in the name of my daughter. I never offered it to anyone. Please shoulder the expenses for the transfer. I wish the Lord God will help you buy my lot easily and you will be very lucky forever in this place. **You have all the time to decide when you can, but not for 2 years or more.**

I wish you long life, happiness, health, wealth and great fortune always!

I hope the Lord God will help you be the recipient of multi-billion projects