

SECOND DIVISION

[G.R. No. 154402, July 21, 2008]

HEIRS OF ANTONIO F. BERNABE (NAMELY: EVELYN C. VDA. DE BERNABE AND JOSE III, SHIRLEY ANN, GREGORY, ALEXANDER, AND MICHAEL, ALL SURNAMED BERNABE), PETITIONERS, VS. COURT OF APPEALS AND TITAN CONSTRUCTION CORPORATION, RESPONDENTS.

D E C I S I O N

TINGA, J.:

Petitioners in this case seek the review of the Court of Appeals Decision^[1] dated 22 January 2002 and Resolution^[2] dated 16 June 2002 in CA-G.R. CV No. 63168 which affirmed the Decision^[3] of the Regional Trial Court (RTC) of Makati City, Branch 146 dated 1 December 1998 in Civil Case No. 90-2534.

This case stemmed from a Complaint^[4] for specific performance filed by respondent Titan Construction Corporation (Titan) on 11 September 1990 before the RTC against petitioners' predecessor-in-interest, Antonio F. Bernabe, and his siblings Patricio F. Bernabe, Jose F. Bernabe and Cecilia Bernabe Perez (the defendants), who are co-owners of an undivided one-half (½) share in two (2) parcels of land located in La Huerta, Parañaque, Metro Manila. In an undated *Deed of Sale of Real Estate*^[5] entered into by Titan and the defendants, the latter sold their one-half (½) share in the properties to Titan for P17,700,00.00 to be paid in the following manner:

ONE MILLION (P1,000,000.00) PESOS upon the signing by the VENDORS for this DEED OF SALE[,] provided[,] however, that payment may be made each VENDORS [*sic*] as the latter signs this DEED OF SALE;

The balance shall be paid within, but not later than sixty (60) days after the acquisition by the VENDEE at the latter's expenses [*sic*] of a RIGHT OF WAY from the Municipal Government of Parañaque, Metro Manila, and upon the presentation by the VENDORS of an agreement with the ERIBERTA DEVELOPMENT CORPORATION that the latter has agreed that VENDOR'S [*sic*] share is the northern half and had waived the right of First Refusal as provided for in the DEED OF PARTITION OF REAL ESTATE; and upon the surrender by the VENDORS of the titles of the property subject of this DEED OF SALE. A violation by the VENDORS of the provision of this paragraph shall be a ground for cancellation of this Deed title.^[6]

Titan prayed for judgment ordering defendants to comply with their obligations under the contract and to pay damages, alleging that it had already paid a substantial portion of the down payment and was still waiting for the defendants' compliance with their undertaking which they had failed to perform despite repeated

reminders. Sometime in August 1990, Titan received a letter^[7] from the defendants' counsel, Atty. Samuel A. Arcamo, (Atty. Arcamo) canceling and revoking the deed of sale allegedly in view of Titan's failure to comply with the terms of the deed. Insisting that it was the defendants who had incurred in default, Titan also sought the award of damages.

Defendants Antonio and Jose filed their Answer,^[8] alleging therein that they alone signed^[9] the deed of sale because the other defendants, Patricio and Cecilia, did not agree to the terms of the deed. They conceded that they received the down payment corresponding to their share in the property subject of the sale, and claimed that they had written to the municipal council of Parañaque for the grant of a right of way but the same had remained unacted upon since Titan failed to comply with its undertaking to shoulder the expenses of the grant. They denied having authorized Atty. Arcamo to cancel the deed of sale or even to send a letter of cancellation and revocation to respondent. Patricio filed a separate Amended Answer,^[10] alleging that he had never met any of Titan's representatives much less entered into an agreement with anyone for the sale of the property or authorized anyone to act in his behalf pertaining to any sale. Cecilia, however, was declared in default for failure to file an answer.

On 26 December 1991, while the case was pending, Jose died without leaving any heir except his co-defendants.

A compromise agreement was subsequently entered into by Titan and the remaining defendants, whereby the latter agreed to the sale of their one-half (½) share in the properties to Titan and waived whatever cause of action for damages they might have against each other. By virtue of the compromise agreement, similar *Deeds of Conditional Sale* dated 3 March 1994 were separately entered into by respondent Titan as vendee, and defendants Patricio, Cecilia, and Antonio, who is represented by his attorneys-in-fact, as vendors of their undivided shares in the two properties. The three deeds were similarly worded and contained the same terms and conditions and differed only as to the amount of the purchase price.^[11]

The parties filed a Joint Motion for Judgment Based on Compromise Agreement.^[12] Antonio opposed the motion, contending that he had not entered into any compromise agreement.^[13] It turned out, however, that the joint motion though not signed by Antonio was executed in his behalf by his two children, Jose III and Shirley Ann, by virtue of a *Special Power of Attorney*^[14] (SPA) that Antonio himself had executed. Thus, the motion was denied.^[15]

Later, on 16 August 1994, defendant Antonio died and left herein petitioners -- his surviving spouse Evelyn Cruz and her children, Jose III, Shirley Ann, Gregory and Michael -- as his heirs.

Titan subsequently filed a supplemental complaint^[16] alleging that Antonio had already received a substantial portion of the down payment for the sale of his share in the properties; that prior to his death, Antonio executed a SPA in favor of his two children, Jose III and Shirley Ann, empowering them to execute in his favor the 3 March 1994 *Deed of Conditional Sale*^[17] involving his share in the properties; that on the basis of the deed, it made additional substantial advances on the purchase

price and even expended certain amounts to satisfy the judgment debt of Antonio in Civil Case No. 92-2328; that the heirs of Antonio refused to execute the formal deed of sale; and that through its exclusive efforts, the one-half share of the original defendants in both properties was segregated and TCT No. 86793^[18] covering the same was subsequently issued.

Petitioners, as defendants, filed their Answer^[19] to the supplemental complaint essentially controverting the validity of the contracts entered into by the parties. They denied that a consummated sale was made between Titan and the original defendants since only an unconcluded negotiation is reflected in the *Deed of Sale of Real Estate* and that the fact that the negotiations did not push through is shown by the absence of the signatures of defendants Patricio and Cecilia. Petitioners also questioned the genuineness of the *Deed of Conditional Sale*, pointing out that it had been signed only later by Titan's representative. They argued that, hence, the *Deed of Conditional Sale* is null and void and if found otherwise, should be cancelled and rescinded for failure of Titan to comply with its undertaking.

The compromise agreements entered into by Titan and defendants Patricio and Cecilia were approved by the RTC in separate partial judgments.^[20] No settlement of the case was reached between Titan and petitioners.

After trial, the RTC decided in favor of Titan in its Decision dated 1 December 1998. The trial court upheld the validity of both the *Deed of Sale of Real Estate* and the *Deed of Conditional Sale*. It held that there was no basis to rescind the contracts since petitioners had not proven that Titan had failed to comply with its undertaking under them. The dispositive portion of the RTC decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering the latter to:

1. Execute the registrable Deed of Sale in favor of plaintiff upon payment by the latter of the remaini[n]g purchase price;
2. And to pay plaintiff cost[s] of suit.

SO ORDERED.^[21]

The RTC modified the decision in its Order^[22] dated 15 February 1999 by specifying that in view of the compromise agreements entered into by Titan and defendants Patricio and Cecilia, the 1 December 1998 Decision should be rendered against the heirs of Antonio. Accordingly, said heirs were ordered to execute a registrable Deed of Absolute Sale over the one-third (1/3) share of Antonio in the property covered by TCT No. 86793 of the Register of Deeds of Parañaque, pursuant to the *Deed of Conditional Sale*, upon Titan's payment to them of the amount of P3,431,058.42 representing the balance of the purchase price.

Petitioners appealed the RTC decision to the Court of Appeals. The appeal was dismissed in the Decision dated 22 January 2002, and the RTC decision was affirmed *in toto*. Petitioners' motion for reconsideration was denied in the Resolution^[23] dated 16 July 2002.

In the present petition for review, petitioners submit the following issues for resolution by the Court:

- (1) Under a deed of conditional sale of a parcel of land, may the vendee compel the vendors to execute a registerable deed of sale based on the allegation that it had paid a substantial portion of the P1 million down payment of the total consideration of P17,700,000.00, where it was expressly stipulated that the vendors would execute the necessary deed of absolute sale in favor of the vendee only upon full payment?
- (2) May the vendors in a deed of conditional sale ask for rescission of contract for failure of the vendee to pay in full the agreed consideration?^[24]

Petitioners, contending that the *Deed of Sale of Real Estate* and *Deed of Conditional Sale* are contracts to sell and not contracts of sale, allege that Titan has no cause of action to file the complaint for specific performance since it failed to pay the purchase price in full as agreed upon in the contracts. Petitioners argue that the import of the stipulations in the *Deed of Sale of Real Estate*--which was not signed by Titan's representative or by two of the four alleged vendors, and which was neither notarized nor registered and hence defective--is that full payment of the purchase price must be made before ownership of the properties passes to Titan. The *Deed of Conditional Sale*, which necessarily superseded and nullified the *Deed of Sale of Real Estate*, expressed this intent more clearly when it stated that "upon full payment of the purchase price, Vendor shall execute the necessary Deed of Absolute Sale in favor of Vendee transferring and conveying all his undivided shares in the x x x properties."^[25]

While Titan admitted that it had already made payments of substantial amounts, petitioners on the one hand argue that this is not the full payment agreed upon in the *Deed of Conditional Sale* that would entitle Titan to demand the execution of a deed of absolute sale in its favor. Petitioners believe that Titan should have at least tendered payment to them or deposited the money in court by way of consignment if acceptance of payment was refused; otherwise, Titan has no right to demand specific performance from petitioners. Thus, for failure of Titan to comply with its obligations, petitioners pray for the rescission of the *Deed of Conditional Sale* and the dismissal of Titan's complaint for specific performance.

On the other hand, Titan dismisses petitioners' claim that the *Deed of Sale of Real Estate* was superseded and nullified by the subsequent *Deed of Conditional Sale*, arguing that neither of these documents exclusively controls and determines the agreement between the parties. Instead, it relies on the declaration of the Court of Appeals that there was a perfected contract of sale of real estate evidenced by the *Deed of Sale of Real Estate*. However, Titan expounds, said contract was not in the form required for registration under the law and so the courts below, in affirming it and requiring petitioners to execute a registerable deed, simply followed the provisions of the Civil Code governing the form of contracts, particularly Articles 1356, 1357 and 1358. Titan adds that it is only upon the execution of a registerable deed of sale that full payment of the consideration should be made, and that since the contract still has to be put in a registerable form as required by law, there is

nothing yet to rescind. Moreover, it claims that it has not been shown to have breached the contract as in fact its obligation to pay the remainder of the purchase price would arise only upon petitioners' fulfillment of several conditions stipulated in the contract. It thus argues that petitioners have no cause of action for rescission.
[26]

The petition should be denied.

The document that spells out the nature of the transaction of the parties is the *Deed of Conditional Sale*. Stemming from the compromise agreement entered into by Titan and petitioners, the *Deed of Conditional Sale* has superseded the *Deed of Sale of Real Estate* which is the original contract. The whole essence of a compromise is that by making reciprocal concessions, the parties avoid litigation or put an end to one already commenced.^[27] A compromise agreement can be entered into without novating or supplanting existing contracts,^[28] but in this case, the irreconcilable incompatibility between the *Deed of Sale of Real Estate* and the *Deed of Conditional Sale* inevitably resulted in extinctive novation.^[29]

The first contract or the *Deed of Sale of Real Estate* embodies a perfected contract of sale. There is no stipulation in the said deed that title to the properties would remain with defendants until full payment of the consideration, or that the right to unilaterally resolve the contract upon Titan's failure to pay within a fixed period is given to defendants. Patently, the contract executed by the parties is a contract of sale and not a contract to sell.

When the parties entered into a compromise, they executed new contracts involving the shares of Patricio, Cecilia and Antonio in the properties. These new contracts are the three deeds of conditional sale entered into by Titan with Patricio, Cecilia and Antonio, the last represented by his attorneys-in-fact. These contracts, all entitled *Deed of Conditional Sale*, are contracts to sell.

The difference between contracts of sale and contracts to sell is relevant. In a contract of sale, the title to the property passes to the vendee upon the delivery of the thing sold; in a contract to sell, ownership is, by agreement, reserved in the vendor and is not to pass to the vendee until full payment of the purchase price. Otherwise stated, in a contract of sale, the vendor loses ownership over the property and cannot recover it until and unless the contract is resolved or rescinded; whereas in a contract to sell, title is retained by the vendor until full payment of the price. In the latter contract, payment of the price is a positive suspensive condition, failure of which is not a breach but an event that prevents the obligation of the vendor to convey title from becoming effective.^[30]

A careful reading of the stipulations in the *Deed of Conditional Sale* conveys the intent of the parties to enter into a contract to sell. The fourth paragraph of the contract explicitly states that only when full payment of the purchase price is made shall Antonio execute the deed of absolute sale transferring and conveying his shares in the subject properties. Clearly, the intent is to reserve ownership in the seller, Antonio, until the buyer, Titan, pays in full the purchase price. The full payment of the purchase price does not automatically vest ownership in Titan. A deed of absolute sale still has to be executed by Antonio.