

THIRD DIVISION

[G.R. No. 172733, August 20, 2008]

**SPS. CORNELIO JOEL I. ORDEN AND MARIA NYMPHA V. ORDEN,
AND REGISTER OF DEEDS OF NEGROS ORIENTAL, PETITIONERS,
VS. SPS. ARTURO AUREA AND MELODIA C. AUREA, SPS.
ERNESTO P. COBILE AND SUSANA M. COBILE, AND FRANKLIN M.
QUIJANO, RESPONDENTS.**

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure which seeks to set aside the Decision^[1] of the Court of Appeals dated 20 April 2006 in CA-G.R. CV No. 75788 affirming *in toto* the Decision^[2] of Branch 33 of the Regional Trial Court (RTC) of Dumaguete City in Civil Case No. 12056. The RTC decision ordered petitioners Sps. Cornelio Joel I. Orden and Maria Nympha V. Orden to return to respondents-spouses Ernesto Cobile and Susana M. Cobile the amount of P738,596.28 plus twenty percent interest per annum from the filing of the complaint until fully paid.

The antecedents are as follows:

Petitioners spouses Cornelio Joel I. Orden and Maria Nympha V. Orden are the owners of two parcels of land located at the Municipality of Sibulan, Negros Oriental covered by Transfer Certificate of Title Nos. T-27159 and T-27160, and the residential house standing thereon.

On 29 September 1994, petitioners Orden executed a Deed of Absolute Sale selling, transferring and conveying the aforementioned properties to respondents-spouses Arturo Aurea and Melodia C. Aurea, their heirs, successors and assigns. The Deed of Absolute Sale contained, among others, the following:

That for and in consideration of the sum of ONE MILLION NINE HUNDRED THOUSAND PESOS (P1.9M), receipt of which is hereby acknowledged to the satisfaction of the VENDORS, WE, the spouses CORNELIO JOEL I. ORDEN and MARIA NYMPHA VELARDO ORDEN, by these present, do hereby SELL, TRANSFER and CONVEY, in a manner, absolute, and irrevocable, unto and in favor of herein VENDEES, the spouses ARTURO AUREA and MELODIA C. AUREA, their heirs, successors and assigns, the above-described two (2) parcels of land, together with the residential house standing thereon, and declared under Tax Declaration _____, and assessed at _____.^[3]

Simultaneous with the execution of the Deed of Absolute Sale, respondents-spouses Aurea executed a Joint Affidavit whereby they declared that the true and real

purchasers of the abovementioned properties described in the Deed of Absolute Sale are respondents-spouses Ernesto P. Cobile and Susana M. Cobile. The pertinent portions of the affidavit read:

That we are the Vendees in a document denominated "DEED OF ABSOLUTE SALE" from the Vendors, the spouses CORNELIO JOEL I. ORDEN and MARIA NYMPHA VELARDO ORDEN, involving two (2) parcels of land under TCT-27159 (Tax Dec. No. 93-2-04-094) and TCT-27160 (Tax Dec. No. 93-2-04-095) and a residential house under Tax Dec. No. _____ for the sum of ONE MILLION NINE HUNDRED THOUSAND PESOS (P1.9M), per Doc. No. 384; Page No. 78, Book No. _____; Series of 1994, dated September _____, 1994 of Notary Public Atty. Jose G. Hernando, Jr.

That the true and real vendees in said "DEED OF ABSOLUTE SALE" adverted to above are one ERNESTO P. COBILE and SUSANA M. COBILE who are both American Citizens and residents of Honolulu, Hawaii, U.S.A.

We are executing this Joint Affidavit to prove and show that the real and true purchasers of the afore-mentioned two (2) parcels of land and the residential house sold by the spouses CORNELIO JOEL I. ORDEN are one ERNESTO P. COBILE and SUSANA M. COBILE.^[4]

Immediately after the signing of the Deed of Absolute Sale and Joint Affidavit, respondents Cobile paid petitioners Orden the amount of P384,000.00 as partial payment of the purchase price of P1,900,000.00 as evidenced by a receipt signed by petitioners Orden. The receipt reads:

R E C E I P T

RECEIVED from ERNESTO P. COBILE and SUSANA M. COBILE, the sum of THREE HUNDRED EIGHTY FOUR THOUSAND PESOS (P384,000.00) representing partial payment of the purchase price re "Deed of Absolute Sale" of two parcels of land and a residential house located at Sibulan, Negros Oriental, Philippines.^[5]

Respondents Cobile then executed a document entitled "PROMISSORY" whereby they promised to pay petitioners Orden the amount of P566,000.00 on or before 31 October 1994, and the remaining P950,000.00 to be paid as soon as the titles of the properties shall have been transferred to them. Said document reads:

PROMISSORY

WE, ERNESTO P. COBILE and SUSANA M. COBILE, residents of Hawaii, U.S.A., by these presents, do hereby promise to pay to the spouses CORNELIO JOEL I. ORDEN and MARIA NYMPHA VELARDO ORDEN, the sum of FIVE HUNDRED SIXTY SIX THOUSAND PESOS (P566,000.00) on or before October 31, 1994, said amount representing the one-half balance of the purchase price of the sale of two (2) parcels of land and a residential house located at the Municipality of Sibulan, Negros Oriental, per Doc. No. 384; Page No. 78; Book No. IV; Series of 1994 of Notary Public JOSE G. HERNANDO, JR., the remaining balance of NINE HUNDRED

FIFTY THOUSAND PESOS (P950,000.00) to be paid as soon as the titles of the properties subject-matter of the sale shall have been transferred to us.^[6]

The Deed of Absolute Sale, Joint Affidavit, receipt for P384,000.00 and the promissory note were all prepared by Atty. Jose G. Hernando, Jr., counsel of petitioners Orden. It was the suggestion and advice of Atty. Hernando that respondents Aurea be indicated as the vendees in the Deed of Absolute Sale in lieu of respondents Cobile. Atty. Hernando explained that respondents Cobile, being American citizens, could not own land in the Philippines.^[7] To show true ownership of the properties to be purchased, respondents executed the Joint Affidavit declaring that the real vendees were respondents Cobile.

Respondents Cobile failed to pay the P566,000.00 which was due on or before 31 October 1994.

On 13 December 1994, respondents Cobile, through Arturo Aurea, paid petitioners Orden P354,596.28 representing partial payment of the purchase price. The same was evidenced by a receipt executed by the petitioners Orden which reads:

RECEIPT

RECEIVED from SPS. ERNESTO P. COBILE and SUSANA M. COBILE, the sum of PESOS: THREE HUNDRED FIFTY FOUR THOUSAND FIVE HUNDRED NINETY SIX & 28/100 (P354,596.28) representing partial payment of the purchase price re "Deed of Absolute Sale" of two (2) parcels of land and a residential house located at Sibulan, Negros Oriental, per Doc. No. 384; Page No. 78; Book No. IV; Series of 1994 of the notary public JOSE G. HERMANDO, Jr.

Balance after this payment = P1,161,403.72^[8]

Failing to pay the balance of the purchase price, petitioners Orden wrote respondents Cobile a letter dated 11 March 1995 informing the latter of their intention to dispose of the properties to other interested parties if respondents Cobile did not comply with their promise to pay the remaining balance of the purchase price. Petitioners Orden, however, gave respondents Cobile ten days from receipt of the letter to pay; otherwise, their non-payment shall be construed as refusal on their part and the properties shall be sold to others. The letter reads:

Please be informed that we have decided to dispose of the property (Lot 1 and 4, Block B of the Consolidation Subdivision Plan, (LRC) Pcs-7321, all located at Barrio Maslog, Sibulan, Negros Oriental, Philippines, entered by Transfer Certificate of Title No. T-27160 and T-272159, respectively) to other [interested] parties, in view of your failure to make good the conditions imposed on the "Deed of Sale" we have executed as vendors, in your favor as vendees, sometime last September 29, 1994.

However, if only to give you a chance to fully consummate our transaction, notice is hereby given upon your goodness to pay us the remaining balance of the aforesaid "Deed of Sale" ten (10) days upon receipt of this letter. Your failure to do so within said period shall be

constrained (sic) as your refusal and we then shall proceed to dispose of the property.

Rest assured that you will be reimbursed of the advance payments you made, after the properties shall have been sold and after deductions be made concerning damages, attorney's fees, etc.^[9]

Respondents Cobile did not make any further payment. All in all, they paid petitioners Orden P738,596.28 (P384,000.00 + P354,596.28). Petitioners Orden did not transfer the titles to the properties to respondents Cobile.

On 21 May 1996, petitioners sold the properties to Fortunata Adalim Houthuijzen and the titles thereto transferred to her name.^[10]

On 30 September 1997, respondents-spouses Aurea and spouses Cobile, and respondent Franklin M. Quijano filed a Complaint before the Regional Trial Court of Dumaguete City for Enforcement of Contract and Damages with a Prayer for a Writ of Preliminary Attachment, Prohibitory Injunction and Restraining Order against petitioners Orden and the Register of Deeds of Negros Oriental. Franklin Quijano was the attorney-in-fact of respondents spouses Aurea and Cobile. The complaint was docketed as Civil Case No. 12056 and was raffled to Branch 44 of said court.

The complaint, among other things, asked the trial court to order petitioners Orden and the Register of Deeds of Negros Oriental for the delivery of the titles to the properties involved in the names of respondents Cobile; in the alternative, if the titles to the properties could not be delivered in respondents Cobile's name, to order petitioners Orden to pay the whole consideration of the sale plus interest of 20% per annum. The restraining order and writ of preliminary injunction were sought to restrain petitioners Orden from selling, transferring, conveying or encumbering the properties involved to other person during the pendency of the case and to prohibit the Register of Deeds of Negros Oriental from recording, registering and transferring the titles to the properties to other persons except to respondents Cobile.

On 29 October 1997, petitioners Orden filed their Answer with Counterclaim.^[11] They asked that the complaint be dismissed for lack of cause of action and that the Deed of Absolute Sale be declared rescinded. They likewise ask for damages.

On 9 September 1998, following the trial court's order to amend the complaint, impleaded therein were spouses Henricus C. Houthuijzen and Fortunata Adalim Houthuijzen, the subsequent purchasers of the subject properties and holders of the titles thereto.^[12]

On 23 February 1999, the trial court dismissed the case for lack of interest to prosecute.^[13] On 12 March 1999, respondents filed a motion for reconsideration which the trial court granted.^[14] Thus, the case was reinstated.^[15]

On 13 April 1999, spouses Henricus C. Houthuijzen and Fortunata Adalim Houthuijzen filed their Answer with Motion to Dismiss.^[16]

In an Order dated 1 June 1999, the trial court granted the spouses Houthuijzen's motion to dismiss, ruling that said spouses were buyers in good faith who were able

to register the sale with the Register of Deeds, and that respondents Cobile's complaint could be enforced only against petitioners Orden.^[17]

On 8 July 1999, respondents moved for the reconsideration^[18] of the 1 June 1999 Order which the trial court denied for lack of merit.^[19]

During the pre-trial conference, the parties agreed only on the identities of the parties and of the subject properties.^[20]

On 25 April 2000, respondents filed a Motion for Inhibition^[21] which was granted by the Presiding Judge of Branch 44. The case was re-raffled to Branch 33. Trial ensued.

In a decision dated 26 April 2002, the trial court disposed of the case as follows:

ACCORDINGLY, from the foregoing disquisition, judgment is hereby rendered ordering the defendants:

(1) to return to plaintiffs, spouses Ernesto Cobile and Susana M. Cobile the amount of SEVEN HUNDRED THIRTY EIGHT THOUSAND FIVE HUNDRED NINETY-SIX PESOS and TWENTY-EIGHT CENTAVOS (P738,596.28) representing the total amount advanced by the plaintiffs to defendants; and

(2) to pay plaintiffs interest of the aforecited amount at the rate of Twenty (20%) percent per annum from the filing of the complaint until fully paid.^[22]

The trial court found that petitioners Orden and respondents Cobile entered into a contract of sale. The contract, it explained, was subject to the conditions laid down in the promissory note - that respondents Cobile would pay the amount of P566,000.00 on or before 31 October 1994, and the petitioners Ordens would undertake the transfer of the titles to the properties in the names of respondents Cobile, after which the latter would pay the remaining balance of P950,000.00. It said that this was an example of reciprocal obligations. Since respondents Cobile already violated the terms of the promissory note when they failed to pay the total amount of P566,000.00 on the agreed date, petitioners Orden should have filed for rescission. This, the trial court said, petitioner Orden failed to do. The letter that petitioners Orden sent to respondents Cobile -- informing them that should they fail to comply with the terms and conditions of the promissory note, petitioners Orden would be constrained to sell the properties to other interested persons -- was not the rescission envisaged by law. The rescission made by petitioners Orden was thus open to contest.

The trial court likewise ruled that the properties subject matter of the case could not be given to respondents Cobile because the ownership thereof had passed to Fortunata Adalim-Houthuijzen whom it regarded as an innocent purchaser for value.

Furthermore, the trial court declared that respondents Cobile could not demand specific performance or rescission of contract, for they themselves failed to comply with the terms and conditions set forth in the promissory note when they failed to