

SECOND DIVISION

[G.R. NO. 172446, October 10, 2007]

ALEXANDER "ALEX" MACASAET, PETITIONER, VS. R. TRANSPORT CORPORATION, RESPONDENT.

DECISION

TINGA, J.:

This petition seeks the reversal of the Decision^[1] of the Court of Appeals dated 5 October 2005 in CA G.R. CV No. 70585, as well as its Resolution^[2] dated 28 March 2006 denying petitioner's motion for reconsideration.

First, the factual background.

On 3 January 1996, a Complaint for Recovery of Possession and Damages^[3] was filed by herein respondent R. Transport Corporation against herein petitioner Alexander Macasaet before the Regional Trial Court (RTC) of Makati, Branch 147. The complaint alleged that R. Transport was a holder of Certificates of Public Convenience (CPC) to operate a public utility bus service within Metro Manila and the provinces whereas New Mindoro Transport Classic (NMTC), represented by petitioner, operates a transportation company in Oriental Mindoro. On 11 October 1995, and Macasaet entered into a "Deed of Sale with Assumption of Mortgage" (deed of sale)^[4] over four (4) passenger buses^[5] whereby Macasaet undertook to pay the consideration of twelve million pesos (P12,000,000.00) and assume the existing mortgage obligation on the said buses in favor of Phil. Hino Sales Corporation. Accordingly, R. Transport delivered to Macasaet two (2) passenger buses.

Despite repeated demands, however, Macasaet failed to pay the stipulated purchase price. This prompted R. Transport to file a complaint seeking the issuance of a writ of replevin, praying for judgment declaring R. Transport as the lawful owner and possessor of the passenger buses and ordering Macasaet to remit the amount of P660,000.00 representing the income generated by the two buses from 16 October 1995 to 2 January 1996.^[6]

Prior to the execution of the contract, "Special Trip Contract" was entered into by the parties on 8 October 1995.^[7] This contract stipulated that R. Transport would lease the four buses subject of the deed of sale to Macasaet for the sum of P10,000.00 a day per bus or a total of P280,000.00 for the duration of one week, from 15-22 October 1995.^[8] Respondent's finance officer testified that the purpose of the contract was to support the delivery of the first two buses pending formal execution of the deed of sale.^[9]

On 8 January 1996, on R. Transport's motion, the trial court issued a writ of

seizure^[10] ordering the sheriff to take possession of the two buses in NMTC subject to R. Transport's filing of a bond in the amount of P12,000,000.00. The sheriff recovered the two buses and delivered them to R. Transport on 16 January 1996.^[11]

For his defense, petitioner alleged that he had paid respondent the full consideration of P12,000,000.00 and had agreed to assume the mortgage obligation in favor of Phil. Hino Sales Corporation. He claimed ownership over the four passenger buses, including the two buses already delivered to him. He further contended that he had already remitted P120,000.00 to respondent as partial payment of the mortgage obligation. Petitioner admitted that he had been earning at least P7,000.00 per day on each of the buses.^[12] For his counterclaim, he prayed for the return of the bus units seized and the immediate delivery of the other two units, as well as for payment of damages.^[13]

In its Decision^[14] dated 15 February 2001, the RTC upheld the right of respondent to possess the two buses but dismissed its claim for recovery of unpaid rentals for the use of the two buses. The dispositive portion of the decision reads as follows:

WHEREFORE, in view of the foregoing, the Court hereby renders judgment in favor of the defendant and against plaintiff, dismissing the Complaint as regards the claim for recovery of the unpaid rentals of the two (2) passenger buses which were used by the defendant from October 16, 1995 until January 16, 1996 for lack of evidence.

SO ORDERED. ^[15]

The trial court observed that there was no basis for the payment of unpaid rentals because respondent failed to formally offer in evidence the records of operational expenses incurred by the buses delivered to petitioner and marked as Exhibits "W," "W-1" to "W-3."^[16] The trial court did not bother to give a definitive ruling on the issues related to the counterclaim for specific performance of the deed of sale on the ground that the issuance of a writ of replevin effectively disposed of the cause of action in the principal complaint, which is recovery of possession. The trial court was likewise silent with respect to the status of the deed of sale.^[17]

Dissatisfied with the RTC's refusal to award rentals, respondent filed a petition for review before the Court of Appeals asserting its right as an owner to the fruits of the two passenger buses, over the fruits thereof, *i.e.*, the income derived from their use. The Court of Appeals, in its Decision dated 5 October 2005, sustained the trial court's finding that ownership over the passenger buses remained with respondent.

Unlike the RTC, the Court of Appeals ruled that the deed of sale was not perfected, thus, respondent retained ownership over the buses. It further ordered petitioner to remit the income from the passenger buses in the amount of P7,000.00 per day for the period between 16 October 1995 and 16 January 1996, deducting therefrom the amount of P120,000.00 which had already been remitted to respondent.^[18]

Macasaet filed a motion for reconsideration which the appellate court denied.

Hence, the instant petition raising this sole issue: Is Section 34 of Rule 132 of the

Rules of Court which states that “the court shall consider no evidence which has not been formally offered” applicable in the case at bar?^[19] However, other interrelated issues have to be looked into to resolve the controversy.

Petitioner argues in the main that there was no legal and factual basis for the Court of Appeals to order the remittance of income. He harps on the fact that there was no lease agreement alleged in respondent’s complaint to support its claim for unpaid rentals. He reiterates the trial court’s finding that the exhibits tending to prove the rentals were not formally offered in evidence. Moreover, no other competent evidence was presented to substantiate its claim for unpaid rentals.^[20] Respondent, in its comment, merely parrots the ruling of the Court of Appeals, petitioner notes.^[21]

Crucial to the resolution of the case is the continuing efficacy of the deed of sale, which in turn is the basis in determining the ownership of the buses. Respondent, on the other hand, claims that the contract was never consummated for lack of consideration and because of the subsequent disapproval of the security finance needed for petitioner to assume the mortgage obligation. On the other hand, petitioner asserts ownership over the subject buses by virtue of payment of the stipulated consideration for the sale.

The appellate court declared that the non-perfection of the deed of sale precluded petitioner from possessing and enjoying the buses, including the income thereof. Explained the appellate court:

True, the plaintiff-appellant and the defendant-appellee have no agreement as to the payment of rentals for the subject passenger buses, since what was actually agreed upon by the parties herein, was not the lease, but the sale of the subject buses to the defendant-appellee in the amount of P12,000,000.00, with assumption of mortgage, as evidenced by the *Deed of Sale* with Assumption of Mortgage.

It was pursuant to this *Deed of Sale* with Assumption of Mortgage that the subject two passenger buses were delivered by the plaintiff-appellant to the defendant-appellee in October,[sic] 1995. The said contract was the basis of the defendant-appellee’s possession and enjoyment of the subject property, which includes entitlement to the income thereof.

However, the aforementioned contract of sale has never been perfected.

Firstly, the court *a quo* found that no payment has been made by the defendant-appellee, for otherwise, it could not have upheld the plaintiff-appellant’s possession over the subject buses.^[22]

The Court of Appeals erred in stating that the deed of sale was not perfected, for it was. There was no consummation, though. However, the rescission or resolution of the deed of sale is in order.

The essential requisites of a contract under Article 1318 of the New Civil Code are: (1) consent of the contracting parties; (2) object certain which is the subject matter of the contract; and (3) cause of the obligation which is established. Thus, contracts, other than real contracts are perfected by mere consent which is

manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. Once perfected, they bind other contracting parties and the obligations arising therefrom have the force of law between the parties and should be complied with in good faith. The parties are bound not only to the fulfillment of what has been expressly stipulated but also to the consequences which, according to their nature, may be in keeping with good faith, usage and law.^[23]

Being a consensual contract, sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price. From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts.^[24] A perfected contract of sale imposes reciprocal obligations on the parties whereby the vendor obligates himself to transfer the ownership of and to deliver a determinate thing to the buyer who, in turn, is obligated to pay a price certain in money or its equivalent.^[25] Failure of either party to comply with his obligation entitles the other to rescission as the power to rescind is implied in reciprocal obligations.^[26]

Applying these legal precepts to the case at bar, we hold that respondent has the right to rescind or cancel the deed of sale in view of petitioner's failure to pay the stipulated consideration. *Montecillo v. Reynes*,^[27] cited by the appellate court, is particularly instructive in distinguishing the legal effects of "failure to pay consideration" and "lack of consideration:"

x x x Failure to pay the consideration is different from lack of consideration. The former results in a right to demand the fulfillment or cancellation of the obligation under an existing contract, while the latter prevents the existence of a valid contract.

Where the deed of sale states that the purchase price has been paid but in fact has never been paid, the deed of sale is null and void *ab initio* for lack of consideration. x x x^[28]

The Court of Appeals however failed to consider that in the instant case, there was failure on the part of petitioner to pay the purchase price and to complete the assumption of mortgage. The latter argued before the lower court that payment was in fact made and counterclaimed for the immediate delivery of the two other passenger buses and payment of damages.^[29] However, this claim remained a claim and was not substantiated.

While the Court of Appeals relied on the text of the deed of sale which adverts to payment of the purchase price,^[30] the non-payment of the purchase price was no longer an issue at the appellate level. Respondent presented strong evidence that petitioner did not pay the purchase price, and that paved the way for the issuance of a writ of replevin. Petitioner did not challenge the finding of the trial court before the Court of Appeals and this Court. He did not also controvert the non-consummation of the assumption of mortgage at any level of the proceedings.

Non-payment of the purchase price of property constitutes a very good reason to rescind a sale for it violates the very essence of the contract of sale.^[31] While it is preferable that respondent instead should have filed an action to resolve or cancel

the deed as the right to do so must be invoked judicially,^[32] this shortcoming was cured when the complaint itself made out a case for rescission or resolution for failure of petitioner to comply with his obligation to pay the full purchase price. The complaint relevantly alleged:

x x x x

3. (a) That on October 11, 1995, the plaintiff and the defendant entered into and executed a Deed of Sale with Assumption of Mortgage with plaintiff as Vendor and the defendant as Vendee covering four (4) units of passenger airconditioned buses. x x x

3. (b) That the plaintiff and the defendant in said Deed of Sale with Assumption of Mortgage x x x hereof agreed that the price of the sale of the above-described motor vehicles is in the sum of PESOS TWELVE MILLION (P12,000,000.00), Philippine Currency, with the stipulation that the defendant as Vendee will assume the existing mortgage of the above-described motor vehicle with PHIL. HINO SALES CORPORATION and consequently, will assume the balance of the remaining obligation due to PHIL. HINO SALES CORPORATION as agreed upon in the said Deed of Sale with Assumption of Mortgage;

3. (c) That pursuant to said Deed of Sale with Assumption of Mortgage, the plaintiff delivered to the defendant at Calapan, Oriental Mindoro, the first two (2) motor vehicles x x x withholding the other two (2) passenger buses pending the payment by the defendant to the plaintiff of the purchase price of the sale of PESOS TWELVE MILLION (P12,000,000.00), Philippine currency and assumption of mortgage by said defendant obligating himself to pay the remaining balance of the obligation due to the PHIL. HINO SALES CORPORATION constituted over the above-described motor vehicles;

3. (d) That inspite of repeated demands made by the plaintiff to the defendant to pay the purchase price of the sale x x x the defendant, in evident bad faith, refused and failed and continue to refuse and fail to pay the plaintiff the purchase price of the said vehicles;

x x x x

4. b.) That the plaintiff-applicant is the owner of the two (2) buses claimed as above-described and is entitled to the rightful possession thereof x x x

4. c.) That the above-described two (2) units of passenger buses are wrongfully detained by the defendant pretending that he is the owner under the Deed of Sale with Assumption of Mortgage which pretension is false because the defendant has not paid the plaintiff any single centavo out of the PESOS TWELVE MILLION (P12,000,000.00), Philippine currency, the purchase price of the sale of the four (4) passenger buses,
^[33]

x x x x