

## SECOND DIVISION

[ G.R. NO. 139523, May 26, 2006 ]

**SPS. FELIPE AND LETICIA CANNU, PETITIONERS, VS. SPS. GIL AND FERNANDINA GALANG AND NATIONAL HOME MORTGAGE FINANCE CORPORATION, RESPONDENTS.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

Before Us is a Petition for Review on *Certiorari* which seeks to set aside the decision<sup>[1]</sup> of the Court of Appeals dated 30 September 1998 which affirmed with modification the decision of Branch 135 of the Regional Trial Court (RTC) of Makati City, dismissing the complaint for Specific Performance and Damages filed by petitioners, and its Resolution<sup>[2]</sup> dated 22 July 1999 denying petitioners' motion for reconsideration.

A complaint<sup>[3]</sup> for Specific Performance and Damages was filed by petitioners-spouses Felipe and Leticia Cannu against respondents-spouses Gil and Fernandina Galang and the National Home Mortgage Finance Corporation (NHMFC) before Branch 135 of the RTC of Makati, on 24 June 1993. The case was docketed as Civil Case No. 93-2069.

The facts that gave rise to the aforesaid complaint are as follows:

Respondents-spouses Gil and Fernandina Galang obtained a loan from Fortune Savings & Loan Association for P173,800.00 to purchase a house and lot located at Pulang Lupa, Las Piñas, with an area of 150 square meters covered by Transfer Certificate of Title (TCT) No. T-8505 in the names of respondents-spouses. To secure payment, a real estate mortgage was constituted on the said house and lot in favor of Fortune Savings & Loan Association. In early 1990, NHMFC purchased the mortgage loan of respondents-spouses from Fortune Savings & Loan Association for P173,800.00.

Respondent Fernandina Galang authorized<sup>[4]</sup> her attorney-in-fact, Adelina R. Timbang, to sell the subject house and lot.

Petitioner Leticia Cannu agreed to buy the property for P120,000.00 and to assume the balance of the mortgage obligations with the NHMFC and with CERF Realty<sup>[5]</sup> (the Developer of the property).

Of the P120,000.00, the following payments were made by petitioners:

Date  
July 19, 1990

Amount Paid  
P40,000.00<sup>[6]</sup>

March 13, 1991	15,000.00 <sup>[7]</sup>
April 6, 1991	15,000.00 <sup>[8]</sup>
November 28, 1991	5,000.00 <sup>[9]</sup>
Total	P75,000.00

Thus, leaving a balance of P45,000.00.

A Deed of Sale with Assumption of Mortgage Obligation<sup>[10]</sup> dated 20 August 1990 was made and entered into by and between spouses Fernandina and Gil Galang (vendors) and spouses Leticia and Felipe Cannu (vendees) over the house and lot in question which contains, *inter alia*, the following:

NOW, THEREFORE, for and in consideration of the sum of TWO HUNDRED FIFTY THOUSAND PESOS (P250,000.00), Philippine Currency, receipt of which is hereby acknowledged by the Vendors and the assumption of the mortgage obligation, the Vendors hereby sell, cede and transfer unto the Vendees, their heirs, assigns and successor in interest the above-described property together with the existing improvement thereon.

It is a special condition of this contract that the Vendees shall assume and continue with the payment of the amortization with the National Home Mortgage Finance Corporation Inc. in the outstanding balance of P\_\_\_\_\_, as of \_\_\_\_\_ and shall comply with and abide by the terms and conditions of the mortgage document dated Feb. 27, 1989 and identified as Doc. No. 82, Page 18, Book VII, S. of 1989 of Notary Public for Quezon City Marites Sto. Tomas Alonzo, as if the Vendees are the original signatories.

Petitioners immediately took possession and occupied the house and lot.

Petitioners made the following payments to the NHMFC:

Date	Amount	Receipt No.
July 9, 1990	P 14,312.47	D-503986 <sup>[11]</sup>
March 12, 1991	8,000.00	D-729478 <sup>[12]</sup>
February 4, 1992	10,000.00	D-999127 <sup>[13]</sup>
March 31, 1993	6,000.00	E-563749 <sup>[14]</sup>
April 19, 1993	10,000.00	E-582432 <sup>[15]</sup>
April 27, 1993	<u>7,000.00</u>	E-618326 <sup>[16]</sup>
	P 55,312.47	

Petitioners paid the "equity" or second mortgage to CERF Realty.<sup>[17]</sup>

Despite requests from Adelina R. Timbang and Fernandina Galang to pay the balance of P45,000.00 or in the alternative to vacate the property in question, petitioners refused to do so.

In a letter<sup>[18]</sup> dated 29 March 1993, petitioner Leticia Cannu informed Mr. Fermin T. Arzaga, Vice President, Fund Management Group of the NHMFC, that the ownership

rights over the land covered by TCT No. T-8505 in the names of respondents-spouses had been ceded and transferred to her and her husband per Deed of Sale with Assumption of Mortgage, and that they were obligated to assume the mortgage and pay the remaining unpaid loan balance. Petitioners' formal assumption of mortgage was not approved by the NHMFC.<sup>[19]</sup>

Because the Cannus failed to fully comply with their obligations, respondent Fernandina Galang, on 21 May 1993, paid P233,957.64 as full payment of her remaining mortgage loan with NHMFC.<sup>[20]</sup>

Petitioners opposed the release of TCT No. T-8505 in favor of respondents-spouses insisting that the subject property had already been sold to them. Consequently, the NHMFC held in abeyance the release of said TCT.

Thereupon, a Complaint for Specific Performance and Damages was filed asking, among other things, that petitioners (plaintiffs therein) be declared the owners of the property involved subject to reimbursements of the amount made by respondents-spouses (defendants therein) in preterminating the mortgage loan with NHMFC.

Respondent NHMFC filed its Answer.<sup>[21]</sup> It claimed that petitioners have no cause of action against it because they have not submitted the formal requirements to be considered assignees and successors-in-interest of the property under litigation.

In their Answer,<sup>[22]</sup> respondents-spouses alleged that because of petitioners-spouses' failure to fully pay the consideration and to update the monthly amortizations with the NHMFC, they paid in full the existing obligations with NHMFC as an initial step in the rescission and annulment of the Deed of Sale with Assumption of Mortgage. In their counterclaim, they maintain that the acts of petitioners in not fully complying with their obligations give rise to rescission of the Deed of Sale with Assumption of Mortgage with the corresponding damages.

After trial, the lower court rendered its decision ratiocinating:

On the basis of the evidence on record, testimonial and documentary, this Court is of the view that plaintiffs have no cause of action either against the spouses Galang or the NHMFC. Plaintiffs have admitted on record they failed to pay the amount of P45,000.00 the balance due to the Galangs in consideration of the Deed of Sale With Assumption of Mortgage Obligation (Exhs. "C" and "3"). Consequently, this is a breach of contract and evidently a failure to comply with obligation arising from contracts. . . In this case, NHMFC has not been duly informed due to lack of formal requirements to acknowledge plaintiffs as legal assignees, or legitimate transferees and, therefore, successors-in-interest to the property, plaintiffs should have no legal personality to claim any right to the same property.<sup>[23]</sup>

The decretal portion of the decision reads:

Premises considered, the foregoing complaint has not been proven even by preponderance of evidence, and, as such, plaintiffs have no cause of action against the defendants herein. The above-entitled case is ordered

dismissed for lack of merit.

Judgment is hereby rendered by way of counterclaim, in favor of defendants and against plaintiffs, to wit:

1. Ordering the Deed of Sale With Assumption of Mortgage Obligation (Exhs. "C" and "3") rescinded and hereby declared the same as nullified without prejudice for defendants-spouses Galang to return the partial payments made by plaintiffs; and the plaintiffs are ordered, on the other hand, to return the physical and legal possession of the subject property to spouses Galang by way of mutual restitution;
2. To pay defendants spouses Galang and NHMFC, each the amount of P10,000.00 as litigation expenses, jointly and severally;
3. To pay attorney's fees to defendants in the amount of P20,000.00, jointly and severally; and
4. The costs of suit.
5. No moral and exemplary damages awarded.<sup>[24]</sup>

A Motion for Reconsideration<sup>[25]</sup> was filed, but same was denied. Petitioners appealed the decision of the RTC to the Court of Appeals. On 30 September 1998, the Court of Appeals disposed of the appeal as follows:

Obligations arising from contract have the force of law between the contracting parties and should be complied in good faith. The terms of a written contract are binding on the parties thereto.

Plaintiffs-appellants therefore are under obligation to pay defendants-appellees spouses Galang the sum of P250,000.00, and to assume the mortgage.

Records show that upon the execution of the Contract of Sale or on July 19, 1990 plaintiffs-appellants paid defendants-appellees spouses Galang the amount of only P40,000.00.

The next payment was made by plaintiffs-appellants on March 13, 1991 or eight (8) months after the execution of the contract. Plaintiffs-appellants paid the amount of P5,000.00.

The next payment was made on April 6, 1991 for P15,000.00 and on November 28, 1991, for another P15,000.00.

From 1991 until the present, no other payments were made by plaintiffs-appellants to defendants-appellees spouses Galang.

Out of the P250,000.00 purchase price which was supposed to be paid on the day of the execution of contract in July, 1990 plaintiffs-appellants have paid, in the span of eight (8) years, from 1990 to present, the amount of only P75,000.00. Plaintiffs-appellants should have paid the

P250,000.00 at the time of the execution of contract in 1990. Eight (8) years have already lapsed and plaintiffs-appellants have not yet complied with their obligation.

We consider this breach to be substantial.

The tender made by plaintiffs-appellants after the filing of this case, of the Managerial Check in the amount of P278,957.00 dated January 24, 1994 cannot be considered as an effective mode of payment.

Performance or payment may be effected not by tender of payment alone but by both tender and consignation. It is consignation which is essential in order to extinguish plaintiffs-appellants obligation to pay the balance of the purchase price.

In addition, plaintiffs-appellants failed to comply with their obligation to pay the monthly amortizations due on the mortgage.

In the span of three (3) years from 1990 to 1993, plaintiffs-appellants made only six payments. The payments made by plaintiffs-appellants are not even sufficient to answer for the arrearages, interests and penalty charges.

On account of these circumstances, the rescission of the Contract of Sale is warranted and justified.

. . .

WHEREFORE, foregoing considered, the appealed decision is hereby AFFIRMED with modification. Defendants-appellees spouses Galang are hereby ordered to return the partial payments made by plaintiff-appellants in the amount of P135,000.00.

No pronouncement as to cost.<sup>[26]</sup>

The motion for reconsideration<sup>[27]</sup> filed by petitioners was denied by the Court of Appeals in a Resolution<sup>[28]</sup> dated 22 July 1999.

Hence, this Petition for *Certiorari*.

Petitioners raise the following assignment of errors:

1. THE HONORABLE COURT OF APPEALS ERRED WHEN IT HELD THAT PETITIONERS' BREACH OF THE OBLIGATION WAS SUBSTANTIAL.
2. THE HONORABLE COURT OF APPEALS ERRED WHEN IN EFFECT IT HELD THAT THERE WAS NO SUBSTANTIAL COMPLIANCE WITH THE OBLIGATION TO PAY THE MONTHLY AMORTIZATION WITH NHMFC.
3. THE HONORABLE COURT OF APPEALS ERRED WHEN IT FAILED TO CONSIDER THE OTHER FACTS AND CIRCUMSTANCES THAT MILITATE AGAINST RESCISSION.