

SECOND DIVISION

[G.R. NO. 134219, June 08, 2005]

**SPOUSES MARIO AND ELIZABETH TORCUATOR, PETITIONERS,
VS. SPOUSES REMEGIO AND GLORIA BERNABE AND SPOUSES
DIOSDADO AND LOURDES SALVADOR, RESPONDENTS.**

D E C I S I O N

TINGA, J.:

In the instant *Petition*,^[1] spouses Mario and Elizabeth Torcuator assail the *Decision*^[2] of the Court of Appeals in C.A.-G.R. CV No. 36427, which affirmed the trial court's dismissal of their complaint for specific performance,^[3] and its *Resolution*^[4] which denied their motion for reconsideration.

The facts as summarized by the Court of Appeals are as follows:

The subject of this action is Lot 17, Block 5 of the Ayala Alabang Village, Muntinlupa, Metro-Manila, with an area of 569 square meters and covered by TCT No. S-79773. The lower court found that the above parcel of land was purchased by the spouses Diosdado and Lourdes Salvador (Salvadors, for short) from the developers of Ayala Alabang subject, among others, to the following conditions:--

"It is part of the condition of buying a lot in Ayala Alabang Village (a) that the lot buyer shall deposit with Ayala Corporation a cash bond (about P17,000.00 for the Salvadors) which shall be refunded to him if he builds a residence thereon within two (2) years of purchase, otherwise the deposit shall be forfeited, (b) architectural plans for any improvement shall be approved by Ayala Corporation, and (c) no lot may be resold by the buyer unless a residential house has been constructed thereon (Ayala Corporation keeps the Torrens Title in their [sic] possession).

(p. 5, RTC Decision)

Evidences on record further reveal that on December 18, 1980, the Salvadors sold the parcel of land to the spouses Remigio and Gloria Bernabe (Bernabes, for expediency). Given the above restrictions, the Salvadors concomitantly executed a special power of attorney authorizing the Bernabes to construct a residential house on the lot and to transfer the title of the property in their names.

The Bernabes, on the other hand, without making any improvement, contracted to sell the parcel of land to the spouses Mario and Elizabeth

Torcuator (Torcuators, for brevity) sometime in September of 1986. Then again, confronted by the Ayala Alabang restrictions, the parties agreed to cause the sale between the Salvadors and the Bernabes cancelled (Exhibit "D"), in favor of (a) a new deed of sale from the Salvadors directly to the Torcuators; (b) a new Irrevocable Special Power of Attorney (Exhibit F) executed by the Salvadors to the Torcuators in order for the latter to build a house on the land in question; and (c) an Irrevocable Special Power of Attorney (Exhibit E) from the Salvadors to the Bernabes authorizing the latter to sell, transfer and convey, with power of substitution, the subject lot.

The Torcuators thereafter had the plans of their house prepared and offered to pay the Bernabes for the land upon delivery of the sale contract. For one reason or another, the deed of sale was never consummated nor was payment on the said sale ever effected. Subsequently, the Bernabes sold the subject land to Leonardo Angeles, a brother-in-law (Exh. "7"). The document however is not notarized. As a result, the Torcuators commenced the instant action against the Bernabes and Salvadors for Specific Performance or Rescission with Damages.

After trial, the court a quo rendered its decision, the decretal portion reads:--

"From all the foregoing disquisition, especially since the plaintiffs did not suffer any real damage (by January, 1987 they could have purchased another lot in Ayala Alabang, and the architectural plans they commissioned Arch. Selga to prepare could then be used by the plaintiffs), the complaint filed by the plaintiff spouses is dismissed. Since the plaintiff acted with sincerity and without delay in asserting what they believed to be their prerogatives, i.e., without any malice or desire to take advantage of another, the counter-claim interposed by the Bernabes against the Torcuator spouses is similarly dismissed.

Makati, Metro-Manila, August 20, 1991.^[5]

The Court of Appeals dismissed the appeal, ruling that the sale between the Bernabes and the Torcuators was tainted with serious irregularities and bad faith. The appellate court agreed with the trial court's conclusion that the parties entered into the contract with the intention of reneging on the stipulation disallowing the sale or transfer of vacant lots in Ayala Alabang Village.

It also ruled that the parties deprived the government of taxes when they made it appear that the property was sold directly by the Salvadors to the Torcuators. Since there were actually two sales, *i.e.*, the first sale between the Salvadors and the Bernabes and the second between the Bernabes and Torcuators, taxes should have been paid for both transfers.^[6]

The Court of Appeals denied petitioners' motion for reconsideration in its

Resolution^[7] dated June 15, 1998.

Petitioners then filed the instant petition, averring that the appellate court erred in dismissing their appeal on the strength of issues which were neither pleaded nor proved. The conditions allegedly imposed by Ayala Corporation on the sale of lots in Ayala Alabang Village were: "(a) that the lot-buyer shall deposit with Ayala Corporation a cash bond (about P17,000.00 for the Salvadors) which shall be refunded to him if he builds a residence thereon within two (2) years of purchase, otherwise the deposit shall be forfeited; (b) architectural plans for any improvement shall be approved by Ayala Corporation; and (c) no lot may be resold by the buyer unless a residential house has been constructed thereon (Ayala Corporation keeps the Torrens title in their (*sic*) possession.)"^[8]

According to petitioners, the stipulation prohibiting the sale of vacant lots in Ayala Alabang Village, adverted to by the appellate court in its decision as evidence that the sale between the Bernabes and the Torcuators was tainted with serious irregularities, was never presented or offered in evidence by any of the parties. Without such stipulation having been presented, marked and offered in evidence, the trial court and the appellate court should not have considered the same.

The appellate court allegedly also erred in declaring that the contract of sale subject of the case is void, as it was intended to deprive the government of revenue since the matter of taxes was not even mentioned in the appealed decision of the trial court.

Further, petitioners assert that the contract was a perfected contract of sale not a mere contract to sell. The trial court thus erred in declaring that the contract was void due only to petitioners' failure to deliver the agreed consideration. Likewise, the fact that the contract calls for the payment of the agreed purchase price in United States Dollars does not result in the contract being void. The most that could be demanded, in accordance with jurisprudence, is to pay the obligation in Philippine currency.

Petitioners also dispute the trial court's finding that they did not suffer any real damage as a result of the transaction. On the contrary, they claim that respondents' refusal to transfer the property caused them actual and moral damages.

Respondents filed their *Comment/Opposition (To the Petition for Certiorari)*^[9] dated November 4, 1998 countering that petitioners knew of the condition prohibiting the sale of vacant lots in Ayala Alabang Village as the same was annotated on the title of the property which was submitted and adopted by both parties as their evidence. The fact that the agreement required petitioners to construct a house in the name of the Salvadors shows that petitioners themselves knew of the condition and acknowledged its validity.

As regards petitioners' contention that the Court of Appeals should not have ruled on the matter of taxes due the government, respondents assert that the appellate court has the power to review the entire case to determine the validity of the judgment of the lower court. Thus, it may review even matters which were not raised on appeal.

Respondents refer to the circumstances surrounding the transaction as proof that the parties entered into a mere contract to sell and not a contract of sale. Allegedly, the memorandum containing the agreement of the parties merely used the term "offer." The payment of the purchase price was ostensibly a condition *sine qua non* to the execution of the deed of sale in favor of petitioners, especially since the Bernabes came to the Philippines with the express purpose of selling the property and were leaving for the United States as soon as they were paid. Moreover, petitioners were required to construct a residential house on the property before it could be sold to them in accordance with the condition imposed by Ayala Corporation.

Further, respondents maintain that the transaction was not consummated due to the fault of petitioners who failed not only to prepare the necessary documentation but also to pay the purchase price for the property. They also argue that the special power of attorney executed by the Salvadors in favor of petitioners merely granted the latter the right to construct a residential house on the property in the name of the Salvadors. The original document was not even given to the Torcuators precisely because they have not paid the purchase price.

Petitioners filed a *Reply*^[10] dated January 20, 1999 in reiteration of their arguments.

In the *Resolution*^[11] dated February 10, 1999, the parties were required to file their respective memoranda. Accordingly, petitioners filed their *Memorandum*^[12] on April 19, 1999. On the other hand, in view of respondents' disappearance without notice, the Court resolved to dispense with their memorandum.^[13]

The trial court denied petitioners' complaint on three (3) grounds, namely: (1) the alleged nullity of the contract between the parties as it violated Ayala Corporation's condition that the construction of a house is a prerequisite to any sale of lots in Ayala Alabang Village; (2) non-payment of the purchase price; and (3) the nullity of the contract as it called for payment in United States Dollars. To these reasons, the Court of Appeals added a fourth basis for denying petitioners' appeal and that is the alleged nullity of the agreement because it deprived the government of taxes.

An analysis of the facts obtaining in this case leads us to affirm the assailed decisions although from a slightly different but related thrust.

Let us begin by characterizing the agreement entered into by the parties, *i.e.*, whether the agreement is a contract to sell as the trial court ruled, or a contract of sale as petitioners insist.

The differences between a contract to sell and a contract of sale are well-settled in jurisprudence. As early as 1951, we held that in a contract of sale, title passes to the buyer upon delivery of the thing sold, while in a contract to sell, ownership is reserved in the seller and is not to pass until the full payment of the purchase price is made. In the first case, non-payment of the price is a negative resolutive condition; in the second case, full payment is a positive suspensive condition. Being contraries, their effect in law cannot be identical. In the first case, the vendor has lost and cannot recover the ownership of the land sold until and unless the contract of sale is itself resolved and set aside. In the second case, however, the title

remains in the vendor if the vendee does not comply with the condition precedent of making payment at the time specified in the contract.^[14]

In other words, in a contract to sell, ownership is retained by the seller and is not to pass to the buyer until full payment of the price or the fulfillment of some other conditions either of which is a future and uncertain event the non-happening of which is not a breach, casual or serious, but simply an event that prevents the obligation of the vendor to convey title from acquiring binding force.^[15]

We have carefully examined the agreement between the parties and are far from persuaded that it was a contract of sale.

Firstly, the agreement imposed upon petitioners the obligation to fully pay the agreed purchase price for the property. That ownership shall not pass to petitioners until they have fully paid the price is implicit in the agreement. Notably, respondent Remigio Bernabe testified, without objection on the part of petitioners, that he specifically informed petitioners that the transaction should be completed, *i.e.*, that he should receive the full payment for the property, before he left for the United States on October 14, 1986.^[16]

Moreover, the deed of sale would have been issued only upon full payment of the purchase price, among other things. Petitioner Mario Torcuator acknowledged this fact when he testified that the deed of sale and original special power of attorney were only to be delivered upon full payment of the purchase price.^[17]

As correctly observed by the trial court, the Salvadors did not execute a deed of sale in favor of petitioners, and instead executed a special power of attorney authorizing the Bernabes to sell the property on their behalf, in order to afford the latter a measure of protection that would guarantee full payment of the purchase price before any deed of sale in favor of petitioners was executed.

Remarkably, the records are bereft of any indication that petitioners ever attempted to tender payment or consign the purchase price as required by law. The *Complaint*^[18] filed by petitioners makes no mention at all of a tender of payment or consignment having been made, much less that petitioners are willing and ready to pay the purchase price. Petitioners' averments to the effect that they have sufficient funds to pay for the property and have even applied for a telegraphic transfer from their bank account to the Bernabes' bank account, uncoupled with actual tender and consignment, are utterly self-serving.

The trial court correctly noted that petitioners should have consigned the amount due in court instead of merely sending respondents a letter expressing interest to push through with the transaction. Mere sending of a letter by the vendee expressing the intention to pay without the accompanying payment is not considered a valid tender of payment. Consignment of the amount due in court is essential in order to extinguish the obligation to pay and oblige the vendor to convey title.^[19]

On this score, even assuming that the agreement was a contract of sale, respondents may not be compelled to deliver the property and execute the deed of absolute sale. In cases such as the one before us, which involve the performance of