

SECOND DIVISION

[G.R. No. 117355, April 05, 2002]

**RIVIERA FILIPINA, INC., PETITIONER, VS. COURT OF APPEALS,
JUAN L. REYES, (NOW DECEASED), SUBSTITUTED BY HIS HEIRS,
NAMELY, ESTEFANIA B. REYES, JUANITA R. DE LA ROSA, JUAN B.
REYES, JR. AND FIDEL B. REYES, PHILIPPINE CYPRESS
CONSTRUCTION & DEVELOPMENT CORPORATION, CORNHILL
TRADING CORPORATION AND URBAN DEVELOPMENT BANK,
RESPONDENTS.**

D E C I S I O N

DE LEON, JR., J.:

Before us is a petition for review on certiorari of the Decision^[1] of the Court of Appeals^[2] dated June 6, 1994 in CA-G.R. CV No. 26513 affirming the Decision^[3] dated March 20, 1990 of the Regional Trial Court of Quezon City, Branch 89 dismissing Civil Case No. Q-89-3371.

Civil Case No. Q-89-3371 is a suit instituted by Riviera Filipina, Inc. (Riviera) on August 31, 1989^[4] to compel the defendants therein Juan L. Reyes, now deceased, Philippine Cypress Construction & Development Corporation (Cypress), Cornhill Trading Corporation (Cornhill) and Urban Development Bank to transfer the title covering a 1,018 square meter parcel of land located along EDSA, Quezon City for alleged violation of Riviera's right of first refusal.

It appears that on November 23, 1982, respondent Juan L. Reyes (Reyes, for brevity) executed a Contract of Lease with Riviera. The ten-year (10) renewable lease of Riviera, which started on August 1, 1982, involved a 1,018 square meter parcel of land located along Edsa, Quezon City, covered and described in Transfer Certificate of Title No. 186326 of the Registry of Deeds of Quezon City in the name of Juan L. Reyes.^[5]

The said parcel of land was subject of a Real Estate Mortgage executed by Reyes in favor of Prudential Bank. Since the loan with Prudential Bank remained unpaid upon maturity, the mortgagee bank extrajudicially foreclosed the mortgage thereon. At the public auction sale, the mortgagee bank emerged as the highest bidder. The redemption period was set to expire on March 7, 1989. Realizing that he could not possibly raise in time the money needed to redeem the subject property, Reyes decided to sell the same.^[6]

Since paragraph 11 of the lease contract expressly provided that the "*LESSEE shall have the right of first refusal should the LESSOR decide to sell the property during the term of the lease,*"^[7] Reyes offered to sell the subject property to Riviera, through its President Vicente C. Angeles, for Five Thousand Pesos (P5,000.00) per

square meter. However, Angeles bargained for Three Thousand Five Hundred Pesos (P3,500.00) per square meter. Since Reyes was not amenable to the said price and insisted on Five Thousand Pesos (P5,000.00) per square meter, Angeles requested Reyes to allow him to consult the other members of the Board of Directors of Riviera.^[8]

Seven (7) months later, or sometime in October 1988, Angeles communicated with Reyes Riviera's offer to purchase the subject property for Four Thousand Pesos (P4,000.00) per square meter. However, Reyes did not accept the offer. This time he asked for Six Thousand Pesos (P6,000.00) per square meter since the value of the property in the area had appreciated in view of the plans of Araneta to develop the vicinity.^[9]

In a letter dated November 2, 1988, Atty. Irineo S. Juan, acting as counsel for Reyes, informed Riviera that Reyes was selling the subject property for Six Thousand Pesos (P6,000.00) per square meter, net of capital gains and transfer taxes, registration fees, notarial fees and all other attendant charges. He further stated therein that:

In this connection, conformably to the provisions stipulated in Paragraph/Item No. 11 of your CONTRACT OF LEASE (Doc. No. 365, Page No. 63, Book No. X, Series of 1982, of the Notarial Registry of Notary Public Leovillo S. Agustin), notice is served upon your goodselves for you to exercise "the right of first refusal" in the sale of said property, for which purpose you are hereby given a period of ten (10) days from your receipt hereof within which to thus purchase the same under the terms and conditions aforestated, and failing which you shall be deemed to have thereby waived such pre-emptive right and my client shall thereafter be absolutely free to sell the subject property to interested buyers.^[10]

To answer the foregoing letter and confirm their telephone conversation on the matter, Riviera sent a letter dated November 22, 1988 to Atty. Juan, counsel for Reyes, expressing Riviera's interest to purchase the subject property and that Riviera is already negotiating with Reyes which will take a couple of days to formalize.^[11] Riviera increased its offer to Five Thousand Pesos (P5,000.00) per square meter but Reyes did not accede to said price as it was still lower than his quoted price of Six Thousand Pesos (P6,000.00) per square meter.^[12] Angeles asked Reyes to give him until the end of November 1988 for Riviera's final decision.

In a letter dated December 2, 1988, Angeles wrote Reyes confirming Riviera's intent to purchase the subject property for the fixed and final^[13] price of Five Thousand Pesos (P5,000.00) per square meter, complete payment within sixty (60) to ninety (90) days which "*offer is what we feel should be the market price of your property.*" Angeles asked that the decision of Reyes and his written reply to the offer be given within fifteen (15) days since there are also other properties being offered to them at the moment.^[14]

In response to the foregoing letter, Atty. Juan sent a letter to Riviera dated December 5, 1988 informing Riviera that Riviera's offer is not acceptable to his client. He further expressed, "*let it be made clear that, much as it is the earnest*

desire of my client to really give you the preference to purchase the subject property, you have unfortunately failed to take advantage of such opportunity and thus lost your right of first refusal in sale of said property."^[15]

Meanwhile, on December 4, 1988, Reyes confided to Rolando P. Traballo, a close family friend and President of Cypress, his predicament about the nearing expiry date of the redemption period of the foreclosed mortgaged property with Prudential Bank, the money for which he could not raise on time thereby offering the subject property to him for Six Thousand Pesos (P6,000.00) per square meter. Traballo expressed interest in buying the said property, told Reyes that he will study the matter and suggested for them to meet the next day.^[16]

They met the next day, December 5, 1988, at which time Traballo bargained for Five Thousand Three Hundred Pesos (P5,300.00) per square meter. After considering the reasons cited by Traballo for his quoted price, Reyes accepted the same. However, since Traballo did not have the amount with which to pay Reyes, he told the latter that he will look for a partner for that purpose.^[17] Reyes told Traballo that he had already afforded Riviera its right of first refusal but they cannot agree because Riviera's final offer was for Five Thousand Pesos (P5,000.00) per square meter.^[18]

Sometime in January 1989, apprehensive of the impending expiration in March 1989 of the redemption period of the foreclosed mortgaged property with Prudential Bank and the deal between Reyes and Traballo was not yet formally concluded, Reyes decided to approach anew Riviera. For this purpose, he requested his nephew, Atty. Estanislao Alinea, to approach Angeles and find out if the latter was still interested in buying the subject property and ask him to raise his offer for the purchase of the said property a little higher. As instructed, Atty. Alinea met with Angeles and asked the latter to increase his offer of Five Thousand Pesos (P5,000.00) per square meter but Angeles said that his offer is Five Thousand Pesos (P5,000.00) per square meter.^[19]

Following the meeting, Angeles sent a letter dated February 4, 1989 to Reyes, through Atty. Alinea, that his offer is Five Thousand Pesos (P5,000.00) per square meter payment of which would be fifty percent (50%) down within thirty (30) days upon submission of certain documents in three (3) days, the balance payable in five (5) years in equal monthly installments at twelve percent (12%) interest in diminishing balance.^[20] With the terms of this second offer, Angeles admittedly downgraded the previous offer of Riviera on December 2, 1988.^[21]

Atty. Alinea conveyed to Reyes Riviera's offer of Five Thousand Pesos (P5,000.00) per square meter but Reyes did not agree. Consequently, Atty. Alinea contacted again Angeles and asked him if he can increase his price. Angeles, however, said he cannot add anymore.^[22] Reyes did not expressly offer his subject property to Riviera at the price of Five Thousand Three Hundred Pesos (P5,300.00) per square meter.^[23]

Sometime in February 1989, Cypress and its partner in the venture, Cornhill Trading Corporation, were able to come up with the amount sufficient to cover the redemption money, with which Reyes paid to the Prudential Bank to redeem the subject property.^[24] On May 1, 1989, a Deed of Absolute Sale covering the subject

property was executed by Reyes in favor of Cypress and Cornhill for the consideration of Five Million Three Hundred Ninety Five Thousand Four Hundred Pesos (P5,395,400.00).^[25] On the same date, Cypress and Cornhill mortgaged the subject property to Urban Development Bank for Three Million Pesos (P3,000,000.00).^[26]

Thereafter, Riviera sought from Reyes, Cypress and Cornhill a resale of the subject property to it claiming that its right of first refusal under the lease contract was violated. After several unsuccessful attempts,^[27] Riviera filed the suit to compel Reyes, Cypress, Cornhill and Urban Development Bank to transfer the disputed title to the land in favor of Riviera upon its payment of the price paid by Cypress and Cornhill.

Following trial on the merits, the trial court dismissed the complaint of Riviera as well as the counterclaims and cross-claims of the other parties.^[28] It ruled that the defendants therein did not violate Riviera's right of first refusal, ratiocinating in this wise:

Resolving the first issue, this Court takes note that since the beginning of the negotiation between the plaintiff and defendant Reyes for the purchase of the property, in question, the plaintiff was firm and steadfast in its position, expressed in writing by its President Vicente Angeles, that it was not willing to buy the said property higher than P5,000.00, per square meter, which was far lower than the asking price of defendant Reyes for P6,000.00, per square meter, undoubtedly, because, in its perception, it would be difficult for other parties to buy the property, at a higher price than what it was offering, since it is in occupation of the property, as lessee, the term of which was to expire after about four (4) years more.

On the other hand, it was obvious, upon the basis of the last ditch effort of defendant Reyes, thru his nephew, Atty. Alinea, to have the plaintiff buy the property, in question, that he was willing to sell the said property at a price less than P6,000.00 and a little higher than P5,000.00, per square meter, precisely, because Atty. Alinea, in behalf of his uncle, defendant Reyes, sought plaintiff's Angeles and asked him to raise his price a little higher, indicating thereby the willingness of defendant Reyes to sell said property at less than his offer of P6,000.00, per square meter.

This being the case, it can hardly be validly said by the plaintiff that he was deprived of his right of first refusal to buy the subject property at a price of P5,300.00, per square meter which is the amount defendants Cypress/Cornhill bought the said property from defendant Reyes. For, it was again given such an opportunity to exercise its right of first refusal by defendant Reyes had it only signified its willingness to increase a little higher its purchase price above P5,000.00, per square meter, when its President, Angeles, was asked by Atty. Alinea to do so, instead of adamantly sticking to its offer of only P5,000.00 per square meter, by reason of which, therefore, the plaintiff had lost, for the second time, its right of first refusal, even if defendant Reyes did not expressly offer to sell to it the subject land at P5,300.00, per square meter, considering

that by the plea of Atty. Alinea, in behalf of defendant Reyes, for it to increase its price a little, the plaintiff is to be considered as having forfeited again its right of first refusal, it having refused to budged from its regid (sic) offer to buy the subject property at no more than P5,000.00, per square meter.

As such, this Court holds that it was no longer necessary for the defendant Reyes to expressly and categorically offer to the plaintiff the subject property at P5,300.00, per square meter, in order that he can comply with his obligation to give first refusal to the plaintiff as stipulated in the Contract of Lease, the plaintiff having had already lost its right of first refusal, at the first instance, by refusing to buy the said property at P6,000.00, per square meter, which was the asking price of defendant Reyes, since to do so would be a useless ceremony and would only be an exercise in futility, considering the firm and unbending position of the plaintiff, which defendant Reyes already knew, that the plaintiff, at any event, was not amenable to increasing its price at over P5,000.00, per square meter.

Dissatisfied with the decision of the trial court, both parties appealed to the Court of Appeals.^[29] However, the appellate court, through its Special Seventh Division, rendered a Decision dated June 6, 1994 which affirmed the decision of the trial court in its entirety.^[30] In sustaining the decision of the trial court, the Court of Appeals adopted the above-quoted ratiocination of the trial court and further added:

To put things in its proper perspective in accordance with the peculiar attendant circumstances herein, particular stress should be given to RIVIERA's uncompromising counter offer of only P5,000.00 per square meter on all the occasions when REYES offered the subject property to it. RIVIERA, in its letter to REYES dated December 2, 1988 (Exhibit "D", p. 68, Rollo) justified its rigid offer by saying that "the above offer is what we feel should be the market price of your property." If that be the case, We are convinced, the same manner that REYES was, that RIVIERA was unwilling to increase its counter offer at any present or future time. RIVIERA's unilateral valuation of the subject property thus binds him, it cannot now be heard to claim that it could have upped its offer had it been informed of CYPRESS' and CORNHILL'S offer of P5,000.00 (sic) per square meter. Defendants CYPRESS and CORNHILL were therefore right in saying that:

On the basic assumption that RIVIERA really meant what it said in its letter, DR. REYES could not be faulted for believing that RIVIERA was definitely NOT WILLING TO PAY MORE THAN P5,000.00 PER SQUARE METER ON HIS PROPERTY. The fault lies with the deceptive and insincere words of RIVIERA. Injustice (sic) and equity, RIVIERA must be deemed in estoppel in now belatedly asserting that it would have been willing to pay a price higher than P5,000.00 x x x." (Defendants-Appellees Cypress' and Cornhill's Brief, p. 8)

For this reason, no adverse inference can be drawn from REYES' failure to disclose to RIVIERA the intervening counter-offer of CYPRESS and CORNHILL.