

THIRD DIVISION

[G.R. No. 136308, January 23, 2001]

**ELAINE A. DEL ROSARIO, PETITIONER, VS. MELINDA F. BONGA,
RESPONDENT.**

D E C I S I O N

PANGANIBAN, J.:

Issues and arguments not presented before the trial court cannot be raised for the first time on appeal. Basic considerations of due process impel this rule.

The Case

The Court applies this principle in resolving the present Petition for Review, which assails the March 20, 1998 Decision^[1] of the Court of Appeals (CA) in CA-GR CV No. 41040, as well as the November 17, 1998 CA Resolution^[2] denying reconsideration. Modifying the August 3, 1992 Decision of the Regional Trial Court of Pasig, the appellate court disposed as follows:

"WHEREFORE, the appealed Decision is **MODIFIED** as follows:

"a) The Deed of Conditional Sale (Exhibit A) is hereby rescinded;

b) [Petitioner] is hereby ordered to immediately surrender to plaintiff the subject property covered by the Conditional Deed of Sale as well as the apartment unit actually occupied by the former;

c) [Respondent] is directed to reimburse [petitioner in] the amount of P81,250.00 representing 50% of the total payment of P162,500.00 with legal interest from date hereof;

d) [Petitioner] is commanded to pay [respondent] the amount of P1,500.00 per month as reasonable compensation for the use of the 3rd-door apartment unit, from February 1990 until the former fully vacates the premises;

e) [Petitioner] is required to pay [respondent] the sum of P15,000.00 as and by way of attorney's fees;

f) The writ of preliminary injunction issued on September 13, 1991 is made permanent."^[3]

The Facts

The facts, as summarized by the CA, are as follows:

"In her Amended Complaint, [herein Respondent] Melinda F. Bonga alleged that she is the owner of a two-door residential apartment and another unfinished apartment unit and a lot situated at Coronado St., Hulo, Mandaluyong, Metro Manila. On February 9, 1990, she sold her 2-door residential apartment to [petitioner] for a price of P330,000.00 This agreement was embodied in a Deed of Conditional Sale. The contract specifically states that [petitioner] pays a down-payment of P130,000.00 and [the] balance of P200,000.00 shall be paid within twelve months from execution thereof to [respondent] alone. The down payment was paid by [petitioner]. In the absence of [respondent] who was then abroad, [petitioner] occupied the other vacant door of the former's apartment, which was not the subject of the contract, and rented out the unit or apartment door which [petitioner] was supposed to occupy per contract. Aside from this violation, [petitioner] also failed and refused to pay the balance of P200,000.00 to [respondent] despite repeated demands. For failure to pay, [respondent] was constrained to engage the services of a lawyer x x x whom she agreed to pay P20,000.00 as and by way of attorney's fees, plus P1,000.00 per appearance; that in order to prevent [petitioner] from further introducing improvements in the subject property, [respondent] prayed for the issuance of a writ of preliminary injunction; that over and above this claim, [respondent] sought to recover a total amount of P60,000.00 moral and exemplary damages.

"Answering the Complaint, [petitioner] denied that [respondent] owned the unfurnished apartment unit. She also denied that she refused to pay the balance of the purchase price of the property in question asserting that she made payments [for] the balance to [respondent]'s husband who insisted that he was the real owner of the property.

"During the pre-trial, the parties agreed on the only two issues to be resolved by the [trial] court. These were so stated in the Pre-trial Order dated October 11, 1991, to wit:

"1. Whether or not [respondent] has the right to rescind the Contract, and

"2. Damages suffered by the prevailing party."

"The lower court made the following findings of fact which this Court found to be supported by the evidence and borne by the records of this case.

"It appears from the evidence presented by plaintiff, Melinda Bonga, that the property located at 579 Coronado St., Hulo, Mandaluyong, Metro Manila, particularly the 2-door residential apartment was a subject of a Conditional Deed of Sale (Exhibit "A") dated February 9, 1990, entered into between Bonga, vendor, with the marital consent of his wife, herein plaintiff, and Elaine del Rosario, vendee, also with her husband's consent, for a consideration of three hundred thirty thousand (P330,000.00) pesos; that the balance of P200,000.00 to be paid within a period of twelve (12) months beginning February

9, 1990 shall be payable only to Melinda Bonga. It was the parties' agreement that upon the signing of the contract, defendant may take physical possession of one of the 2-door residential apartment units subject of the contract, free of any rent until full payment of the purchase price; that in the event vendee fails to pay the balance, 50% of whatever amount defendant has paid by way of down-payment shall be forfeited in favor of the vendor, thereby declaring the contract null and void.

"On February 15, 1990, plaintiff left for Saudi Arabia arriving during the second week of February 1991. On February 23, 1991, when [respondent] verbally demanded from defendant the balance of P200,000.00, the latter offered her old jeep as payment thereof, but which the former did not accept (TSN, Nov. 25, 1991, p. 9, and TSN February 3, 1992, p. 5). On February 24, 1991, she sent a demand letter (Exhibit E) to defendant, thru registered mail, received on June 28, 1991 by Catherine Asejo, sister-in-law of defendant.

"Plaintiff also testified that subject contract allowed [petitioner] to occupy one door of the 2-door residential units subject of the Deed of Conditional Sale, free from any rent. It was their agreement, that pending payment in full of the balance of the purchase price, plaintiff will collect the rent of the other unit. However during the absence of [respondent], defendant finished the construction of the third-door unit apartment, which was not included in the Deed of Conditional Sale. And when the construction was finally finished defendant occupied the same, and rented out that door which she used to occupy, in complete breach of the parties' express stipulations.

"On the other hand, defendant's evidence tend to show that on November 21, 1989, a Deed of Mortgage (Exhibit `H") was entered into between Deodato Bonga, plaintiff's husband, and herein defendant for a sum of P70,000.00 involving the same property subject of this action. Before this indebtedness could be paid, Mr. Bonga, with the conformity of his wife, herein plaintiff, decided to sell the 2-door residential apartment units to herein defendant in the total amount of P330,000.00. Defendant testified that when the subject Deed of Conditional Sale was being prepared, only plaintiff was present (TSN, Dec. 6, 1991, p. 6). When she queried about the whereabouts of plaintiff's husband, the latter answered that he went somewhere and intimated that she [would] just request her husband to sign the same. However, when the document was presented to defendant, the same already bore the signature of Mr. Deodato Bonga, plaintiff's husband.

"Defendant on direct examination testified that she began to doubt the authenticity of Mr. Bonga's signature when

[respondent] wrote her from Abu Dhabi, on March 1, 1990 telling her to just ignore any claim of Mr. Bonga that he never signed the subject agreement of his denial of any knowledge of the same (Exhibits `2' and `2-A'). She further testified that during the absence of plaintiff, the latter's husband went to see defendant informing her that he [did] not know anything about the sale and kept on insisting that he was the absolute owner of the subject property as evidenced by a Deed of Sale earlier executed between him and one Rogelio Morales under [the] date of December 7, 1984 denominated as Kasunduan sa Pagbibili (Exhibit `12'). Because of said document, and plaintiff's husband's intimation that he [would] only recognize the subject sale [i]f payment [would be] made to him directly, defendant made the following payment, to wit: P15,000.00, on March 7, 1990 (Exhibit `4'); P5,000.00 on August 1990 (Exhibit `4-A'); P10,000.00 on April 11, 1991 (Exhibit `5'); and, P2,500.00 on May 16, 1991 (Exhibit `4-B').

"When plaintiff arrived from Middle East and demanded payment of the balance, defendant testified that she told the former that she [would] pay only in the presence of Mr. Bonga. She likewise testified that defendant was supposed to see plaintiff the following day but the former instead received a subpoena.

"On the alleged construction of the unfinished apartment unit, not the subject of the contract, defendant husband permitted her to do so. (TSN, Dec. 9, 1991, p. 9) Defendant also admitted that she transferred to the newly finished apartment right upon the completion and leased out that unit which she used to occupy on November 1990, receiving a monthly rent of P1,500.00; that she stopped receiving the rental payment from the time this case was filed (TSN, Dec. 9, 1991, p. 11).

"On the basis of those factual findings, the lower court in effect concluded that [respondent] successfully established her cause of action and so rendered judgment on August 3, 1992 in her favor, the dispositive part of which reads:

"WHEREFORE, in view of all the foregoing, judgment is hereby rendered declaring the Conditional Deed of Sale (Exhibit `A') under [the] date of February 9, 1990 RESCINDED[; and]

(a) Ordering defendant to immediately surrender to plaintiff the subject property covered by the Conditional Deed of Sale as well as the apartment unit actually occupied by the former;

(b) Ordering plaintiff to reimburse defendant the amount of P65,000.00 representing the 50% of the down payment of P130,000.00, with legal rate of interest from date hereof.

(c) Ordering defendant to pay plaintiff the amount of

P1,500.00 per month as reasonable compensation for the use of the 3rd-door apartment unit, from February 1990 until the former fully vacates the premises;

(d) Ordering defendant to pay plaintiff the sum of P15,000.00 as and by way of attorney's fees.

The writ of preliminary injunction earlier issued on September 13, 1991 is made permanent."^[4]

The CA Ruling

The Court of Appeals rejected the claim of petitioner that respondent had no right to ask for the rescission of the Deed of Conditional Sale, because the latter had no title to the subject property. Petitioner argued that since respondent's husband had acquired the property from an awardee of the National Housing Authority (NHA) within five years from the award without the NHA's prior written consent and authority, the acquisition was void and transferred no title to respondent. And because respondent had no title to the property, the Deed of Conditional Sale in favor of petitioner was also void. Hence, respondent had no right to ask for its rescission. The CA held that such argument had not been presented before the trial court and could not be raised for the first time on appeal.

The appellate court agreed with the trial court that the suit filed by respondent to rescind the Deed of Conditional Sale was supported by evidence and law, but ordered that payment that had been made to her husband be credited to petitioner's favor.

Hence, this recourse.^[5]

The Alleged Errors

In her Memorandum,^[6] petitioner imputes to the Court of Appeals the following alleged errors:

- "a. The Honorable Court of Appeals ERRED when it ruled that no question [could] be entertained on appeal unless it ha[d] been raised below.
- "b. The Honorable Court of Appeals ERRED when it ruled that respondent was the rightful and legal owner of the subject lot covered by Exh. A, as well as the apartment unit occupied by the petitioner.
- "c. The Honorable Court of Appeals ERRED when it ruled that petitioner was a purchaser for value and a builder in good faith.
- "d. The Honorable Court of Appeals ERRED when it ruled that Petitioner del Rosario was raising new issues as Annexes 2,3,4 and 5-Appeal (Annexes C,D,E and F, herein) were not presented or formally offered in evidence below and were