

## FIRST DIVISION

[ G.R. No. 140942, October 18, 2000 ]

**BENIGNO M. SALVADOR, PETITIONER, VS. JORGE Z. ORTOLL,  
RESPONDENT.**

### D E C I S I O N

**PARDO, J.:**

What is before us is an appeal *via certiorari* to set aside the decision<sup>[1]</sup> of the Court of Appeals annulling the order of the Regional Trial Court, Branch 163, Pasig City which granted the issuance of a writ of execution in Civil Case No. 64798.<sup>[2]</sup>

The antecedent facts are as follows:

Respondent Jorge Z. Ortoll was the owner of a three-bedroom condominium unit at Alexandra Apartments in Pasig, Metro Manila. In December 1992, respondent Ortoll and petitioner Benigno M. Salvador entered into an option to purchase agreement which, for and in consideration of two hundred thousand (P200,000.00) pesos, granted petitioner Salvador the option to purchase the condominium unit within a period of six (6) months from December 1, 1992, for the total sum of six million four hundred thousand (P6,400,000.00) pesos, payable in cash.

Upon petitioner Salvador's request, respondent Ortoll allowed him to occupy the condominium unit, subject to the condition that if petitioner Salvador failed to exercise the option within the agreed period, he would voluntarily vacate the premises without necessity of demand or judicial intervention. Moreover, petitioner Salvador would pay liquidated damages in the amount of five hundred thousand (P500,000.00) pesos should it become necessary to go to court to evict him from the property. The option to buy is not assignable, nor is there an intention to put the unit up for lease.

On May 28, 1993, petitioner Salvador informed respondent Ortoll that his bank approved his loan application in the amount of three million five hundred thousand (P3,500,000.00) pesos and asked that he be granted a few more weeks to complete the purchase price. However, on June 1, 1993, Atty. Domingo Gonzales, respondent Ortoll's lawyer, sent petitioner Salvador a letter demanding that he vacate the property on June 30, 1993 and pay the amount of thirty five thousand (P35,000.00) pesos as usage fee of the condominium unit for the month of June 1993.

On June 7, 1993, petitioner Salvador informed respondent Ortoll that his bank, Monte de Piedad Savings and Loan Bank, increased his approved loan to ten million (P10,000,000.00) pesos and repeated his appeal to extend the period to exercise his option to purchase the condominium unit.

In a letter faxed on July 7, 1993, respondent Ortoll told petitioner Salvador that these proposals were not acceptable. The thirty five thousand (P35,000.00) pesos that he was asking Salvador to pay corresponded to the usage fee of the

condominium unit for the duration covered by the option agreement, and not payment for the extension of the lease. If he were to grant the request for extension until August 31, 1993, Salvador must pay the option money to extend the option to purchase agreement of one hundred five thousand (P105,000.00) pesos.

Petitioner Salvador did not inform respondent Ortoll whether he was accepting the counter-proposal. Neither did he vacate the condominium unit nor pay the purchase price of six million four hundred (P6,400,000.00) pesos.

On September 15, 1993, respondent Ortoll filed with the Metropolitan Trial Court, Branch 68, Pasig City an action for ejectment.

On December 29, 1993, the Metropolitan Trial Court decided the case in favor of respondent Ortoll.<sup>[3]</sup> However, on appeal, the Regional Trial Court, Pasig City, on September 23, 1994, reversed the decision.<sup>[4]</sup>

On October 17, 1994, respondent Ortoll moved for reconsideration of the decision but the Regional Trial Court denied the motion.<sup>[5]</sup> Upon appeal *via* petition for review to the Court of Appeals, the appellate court reversed the decision of the Regional Trial Court and reinstated the decision of the Metropolitan Trial Court, with modification. The dispositive portion reads:

"WHEREFORE, premises considered, the decision of the court a quo is REVERSED and the MTC decision is REINSTITUTED with MODIFICATION that the private respondent shall pay to the petitioner, as plaintiff in the case the amount of P500,000.00 liquidated damages pursuant to the agreement between them."<sup>[6]</sup>

Petitioner Salvador appealed to the Supreme Court.<sup>[7]</sup>

During the pendency of the appeal, petitioner Salvador initiated a new complaint with the Regional Trial Court, Branch 163, Pasig City<sup>[8]</sup> for specific performance and damages and prayed for the enforcement of the option to purchase agreement then pending with the Supreme Court.

To put an end to the case pending before the trial court, petitioner Salvador and respondent Ortoll entered into a compromise agreement, which the Regional Trial Court approved on June 28, 1996.<sup>[9]</sup> The pertinent provisions of the agreement provided that:

"1. Both parties have agreed to settle the case amicably with the plaintiff buying the Alexandra Unit E-251 of defendant for ELEVEN MILLION THREE HUNDRED THOUSAND PESOS (P11,300,000.00), under the following terms and conditions:

"A. TERMS OF PAYMENT

"A. 1. 50% or P5,650,000.00 payable on or before the 90<sup>th</sup> day from execution of this compromise agreement; and, the balance of:

"A. 2. 50% or P5,650,000.00 payable on or before the 30<sup>th</sup> day from due date of the first payment;

"A. 3. The total consideration of P11.3 Million shall be covered by two (2) separate post dated checks.

"A. 4. Jorge Z. Ortoll, to deliver CCT No. PT-7461 to Plaintiff upon encashment of second check covering the full payment together with the real estate taxes payment for 1996.

"B. OTHER TERMS AND CONDITIONS:

"B.1. The above consideration of P11.3 million shall be net CASH to defendant. Plaintiff have agreed to pay the EVAT, withholding tax, documentary stamps to be affixed to the Deed of Sale, transfer tax, registration expenses and all other incidental expenses to transfer title of subject property in the name of the buyer.

"B.2. As a further consideration of the compromise agreement, both parties have agreed to file a Joint Motion to Withdraw the Petition for Review docketed as G. R. No. 122164 (CA-G. R. SP No. 36531) now pending before the Supreme Court (Second Division) covering the same property subject matter of the above captioned complaint.

"B.3. Finally, both parties have agreed to waive any and all causes or rights of action each one may have against the other involving the said property."<sup>[10]</sup>

Under the terms of the compromise agreement, petitioner Salvador would pay one half of the purchase price on or before September 26, 1996, and the other half thirty (30) days after, or on or before October 26, 1996. Petitioner Salvador failed to comply with these obligations, since payment was tendered only on October 28, 1996, two days late from the deadline.

On October 14, 1996, petitioner Salvador informed respondent Ortoll that his application for a loan of P11,300,000.00 had been approved by the United Coconut Planters Life Assurance Corporation (UCPLAC). However, the approved loan was for the account of Jasper Phils. Corporation, and subject to the condition that the deed of sale be issued in the name of Jasper Phils.

On October 16, 1996, respondent Ortoll informed petitioner Salvador that he would deliver the title upon full payment of the purchase price, including payment of taxes due thereon pursuant to the terms of the judgment by compromise. The following additional conditions were set:

(a) Salvador would pay an interest equivalent to 1.5% on the amount of P5,650,000.00 due and unpaid as of September 26, 1996;

(b) Salvador would pay rent for his possession and occupation of the condominium unit until the sale has been finalized;

(c) Salvador would pay the E-VAT and other taxes due on the property; and

(d) The seller would be Tamaraw Investors Management Enterprises, Inc. (TIME), who had purchased Ortoll's interests on the condominium unit on