

## THIRD DIVISION

[ G.R. No. 130347, March 03, 1999 ]

**ABELARDO VALARAO, GLORIOSA VALARAO AND CARLOS VALARAO, PETITIONERS, VS. COURT OF APPEALS AND MEDEN A. ARELLANO, RESPONDENTS.**

### D E C I S I O N

**PANGANIBAN, J.:**

Article 1592 of the Civil Code applies only to contracts of sale, and not to contracts to sell or conditional sales where title passes to the vendee only upon full payment of the purchase price. Furthermore, in order to enforce the automatic forfeiture clause in a deed of conditional sale, the vendors have the burden of proving a contractual breach on the part of the vendee.

#### The Case

Before us is a Petition for Review assailing the June 13, 1997 Decision of the Court of Appeals (CA)<sup>[1]</sup> which reversed and set aside the October 10, 1994 Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Quezon City, Branch 82. The dispositive portion of the assailed CA Decision reads:

"WHEREFORE, the decision appealed from is REVERSED and SET ASIDE, and a new one is entered (1) ordering [herein private respondent] to pay the amount of [o]ne [m]illion [o]ne [h]undred [n]inety [s]even [t]housand [p]esos (P1,197,000.00) in favor of [herein petitioners], with legal interest thereon from December 31, 1992; (2) and directing [herein petitioners] to execute in favor of [herein respondent], upon receipt of the aforesaid amount, the final and absolute deed of sale of the subject property with all the improvements."<sup>[3]</sup>

Also assailed by petitioners is the August 21, 1997 CA Resolution denying reconsideration.

The aforementioned RTC Decision, which was reversed and set aside by the CA, disposed as follows:

"WHEREFORE, premises considered, judgment is hereby rendered declaring the aforesaid Deed of conditional Sale as automatically rescinded and all payments made thereunder by the [private respondent] to the [petitioners] as forfeited in favor of the latter, by way of rentals and as liquidated damages, as well as declaring all improvements introduced on the property subject to the said Deed of Condition[al] Sale to belong to the [petitioners] without any right of reimbursement. Further, the [private respondent] and all persons claiming right under her are hereby ordered to vacate the said property and to turnover

possession thereof to the [petitioners]. FINALLY, the [private respondent] is hereby ordered to pay to the [petitioners] the amount of P50,000.00 as attorney's fees and for expenses of litigation, as well as to pay the costs of the suit. The Writ of Preliminary Injunction previously issued is hereby ordered LIFTED and DISSOLVED, and the bond posted for its issuance held liable for the satisfaction of the money judgment herein made in favor of the [petitioners]."<sup>[4]</sup>

### **The Facts**

The undisputed facts of the case as narrated by the Court of Appeals are as follows:

"On September 4, 1987, spouses Abelardo and Gloriosa Valarao, thru their son Carlos Valarao as their attorney-in-fact, sold to [Private Respondent] Meden Arellano under a Deed of Conditional Sale a parcel of land situated in the District of Diliman, Q.C., covered by TCT No. 152879 with an area of 1,504 square meters, for the sum of THREE MILLION TWO HUNDRED TWENTY FIVE THOUSAND PESOS (P3,225,000.00) payable under a schedule of payment stated therein.

"In the same Deed of Conditional Sale, the [private respondent] vendee obligated herself to encumber by way of real estate mortgage in favor of [petitioners] vendors her separate piece of property with the condition that upon full payment of the balance of P2,225,000.00, the said mortgage shall become null and void and without further force and effect. (Item No. 3, pp. 2-3 of Deed of Conditional Sale).

"It was further stipulated upon that should the vendee fail to pay three (3) successive monthly installments or any one year-end lump sum payment within the period stipulated, the sale shall be considered automatically rescinded without the necessity of judicial action and all payments made by the vendee shall be forfeited in favor of the vendors by way of rental for the use and occupancy of the property and as liquidated damages. All improvements introduced by the vendee to the property shall belong to the vendors without any right of reimbursement. (Par. (2), Item No. 3, p. 3 of Deed of Conditional Sale).

"[Private respondent] appellant alleged that as of September , 1990, she had already paid the amount of [t]wo [m]illion [t]wenty-[e]ight [t]housand (P2,028,000.00) [p]esos, although she admitted having failed to pay the installments due in October and November, 1990. Petitioner, however, [had] tried to pay the installments due [in] the said months, including the amount due [in] the month of December, 1990 on December 30 and 31, 1990, but was turned down by the vendors-[petitioners] thru their maid, Mary Gonzales, who refused to accept the payment offered. [Private respondent] maintains that on previous occasions, the same maid was the one who [had] received payments tendered by her. It appears that Mary Gonzales refused to receive payment allegedly on orders of her employers who were not at home.

"[Private respondent] then reported the matter to, and sought the help of, the local barangay officials. Efforts to settle the controversy before the

barangay proved unavailing as vendors-[petitioners] never appeared in the meetings arranged by the barangay lupon.

"[Private respondent] tried to get in touch with [petitioners] over the phone and was able to talk with [Petitioner] Gloriosa Valarao who told her that she [would] no longer accept the payments being offered and that [private respondent] should instead confer with her lawyer, a certain Atty. Tuazon. When all her efforts to make payment were unsuccessful, [private respondent] sought judicial action by filing this petition for consignment on January 4, 1991.

"On the other hand, vendors-[petitioners], thru counsel, sent [private respondent] a letter dated 4 January 1991 (Exh. `C') notifying her that they were enforcing the provision on automatic rescission as a consequence of which the Deed of Conditional Sale [was deemed] null and void, and xxx all payments made, as well as the improvements introduced on the property, [were] thereby forfeited. The letter also made a formal demand on the [private respondent] to vacate the property should she not heed the demand of [petitioners] to sign a contract of lease for her continued stay in the property (p. 2 of Letter dated Jan. 4, 1991; Exh. `C').

"In reply, [private respondent] sent a letter dated January 14, 1991 (Exh. `D'), denying that she [had] refused to pay the installments due [in] the months of October, November and December, and countered that it was [petitioners] who refused to accept payment, thus constraining her to file a petition for consignment before the Regional Trial Court of Quezon City docketed as Civil Case No. Q-91-7603.

"Notwithstanding their knowledge of the filing by [private respondent] of a consignment case against them in the Regional Trial Court of Quezon City docketed as Civil Case No. Q-91-7603, [petitioners], through counsel, sent the [private respondent] another letter dated January 19, 1991 (Exh. `F'), denying the allegations of her attempts to tender payment on December 30 and 31, 1990, and demanding that [private respondent] vacate and turnover the property and pay a monthly compensation for her continued occupation of the subject property at the rate of P20,000.00, until she shall have vacated the same."

### **Ruling of the Court of Appeals**

In reversing the Regional Trial Court, the Court of Appeals held that the refusal of herein petitioners "to accept the tender of payment was unjustified." Notwithstanding the stipulation in the Deed of Conditional Sale that "the rescission of the contract shall of right take place" upon the failure of the vendee to pay three successive monthly installments, the appellate court observed that a judicial demand or a notarial act was still required pursuant to Article 1592 of the Civil Code. Thus, petitioners' letter informing private respondent of the rescission of the contract did not suffice, for it was not notarized. The CA also observed that "the alleged breach of contract arising from the failure of the vendee to pay the monthly installments for October and November 1990 within the stipulated time is rather slight and not substantial, and to authorize the automatic rescission on account

thereof will work injustice to the other party, who has paid a total of P2,028,000.00 out of a total obligation of P3,225,000.00. The rule is that rescission cannot be availed of as to unjustly enrich one party."

### **The Issues**

In their Memorandum before us, petitioners raise the following issues:<sup>[5]</sup>

"I Whether the Answer [-- (a)] categorically indicating willingness to accept the amount already due if the [private respondent] would update the account, [(b)] praying that `if she fail[ed] to do so immediately, xxx the Deed of Conditional Sale be declared rescinded, pursuant to the second paragraph of Section 3 thereof, with costs against the [private respondent], [(c)] ordering the latter to vacate and turn over possession of the premises to the [petitioners], and to pay the latter attorney's fees in the amount of P50,000.00 and the expenses of litigation' [--] is tantamount to a judicial demand and notice of rescission under Art. 1592 of the Civil Code.

"II Whether the automatic forfeiture clause is valid and binding between the parties."

"III Whether the action for consignation may prosper without actual deposit [in court] of the amount due xxx [so as] to produce the effect of payment."

### **The Court's Ruling**

The petition<sup>[6]</sup> is devoid of merit.

#### **Preliminary Matter:** **Notarial or Judicial Demand**

Citing Article 1592 of the Civil Code, the Court of Appeals ruled that the petitioners' letter dated January 4, 1991, could not effect the rescission of the Deed of Conditional Sale, because the said letter was not notarized. On the other hand, petitioners argue that they made a judicial demand, which was embodied in their Manifestation filed on May 1, 1991, and Answer submitted on July 1, 1991.<sup>[7]</sup>

We believe, however, that the issue of whether the requirement of a judicial demand or a notarial act has been fulfilled is immaterial to the resolution of the present case. Article 1592 of the Civil Code states:

"ART. 1592. In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by notarial act. After the demand, the court may not grant him a new term."

It is well-settled that the above-quoted provision applies only to a contract of sale,<sup>[8]</sup> and not to a sale on installment<sup>[9]</sup> or a contract to sell.<sup>[10]</sup> Thus, in *Luzon Brokerage v. Maritime Building*,<sup>[11]</sup> this Court ruled that "Art. 1592 of the new Civil Code (Art. 1504 of the old Civil Code) requiring demand by suit or notarial act in case the vendor of realty wants to rescind does not apply to a contract to sell or promise to sell, where title remains with the vendor until" full payment of the price. The Court stresses the difference between these two types of contract. In a contract *to sell*, "the title over the subject property is transferred to the vendee only upon the full payment of the stipulated consideration. Unlike in a contract *of sale*, the title does not pass to the vendee upon the execution of the agreement or the delivery of the thing sold."<sup>[12]</sup>

In the present case, the Deed of Conditional Sale is of the same nature as a sale on installment or a contract to sell, which is not covered by Article 1592. The aforementioned agreement provides:

"x x x

"Should the VENDEE fail to pay three (3) successive monthly installments or any one year-end lump sum payment within the period stipulated herein, this Deed of Conditional Sale shall be considered xxx automatically rescinded without the necessity of judicial action[,], and all payments made by the VENDEE shall be forfeited in favor of the VENDORS by way of rental for the use and occupancy of the property and as liquidated damages. All improvements introduced by the VENDEE to the property shall belong to the VENDORS without any right of reimbursement. The VENDORS and/or their agents or representatives shall have the right to enter the premises of the property and to eject the VENDEE and all persons claiming right under her therefrom with the use of reasonable force if necessary.

That upon full payment to the VENDORS of the total consideration of P3,225,000.00, the VENDORS shall immediately and without delay execute in favor of the VENDEE the final and absolute deed of sale of the property and all its improvements."

Petitioners-vendors unmistakably reserved for themselves the title to the property until full payment of the purchase price by the vendee. Clearly, the agreement was not a deed of sale, but more in the nature of a contract to sell or of a sale on installments.<sup>[13]</sup> Even after the execution of the Deed of Conditional Sale, the Torrens Certificate of Title remained with and in the name of the vendors. In rejecting the application of Article 1592 to a contract to sell, the Court held in *Luzon Brokerage*<sup>[14]</sup> that "the full payment of the price (through the punctual performance of the monthly payments) was a condition precedent to the execution of the final sale and to the transfer of the property from [the vendor] to the [vendee]; so that there was to be no actual sale until and unless full payment was made."

**Main Issue:**  
**Enforcement of the Automatic Forfeiture Clause**