371 Phil. 445

THIRD DIVISION

[G.R. No. 112330, August 17, 1999]

SPS. HENRY CO AND ELIZABETH CO AND MELODY CO, PETITIONERS, VS. COURT OF APPEALS AND MRS. ADORACION CUSTODIO, REPRESENTED BY HER ATTORNEY-IN-FACT, TRINIDAD KALAGAYAN, RESPONDENTS.

D E C I S I O N

GONZAGA-REYES, J.:

Before us is a Petition for Review on *Certiorari* of the decision of the Court of Appeals[1] in CA-G.R. CV No. 32972 entitled MRS. ADORACION CUSTODIO, represented by her Attorney-in-fact, TRINIDAD KALAGAYAN vs. SPS. HENRY CO AND ELIZABETH CO AND MELODY CO.

The following facts as found by the lower court and adopted by the Court of Appeals are undisputed:

> "xxx sometime on October 9, 1984, plaintiff entered into a verbal contract with defendant for her purchase of the latter's house and lot located at 316 Beata St., New Alabang Village, Muntinlupa, Metro Manila, for and in consideration of the sum of $100,000.00. One week thereafter, and shortly before she left for the United States, plaintiff paid to the defendants the amounts of $1,000.00 and P40,000.00 as earnest money, in order that the same may be reserved for her purchase, said earnest money to be deducted from the total purchase price. The purchase price of $100,000.00 is payable in two payments $40,000.00 on December 4, 1984 and the balance of $60,000.00 on January 5, 1985. On January 25, 1985, although the period of payment had already expired, plaintiff paid to the defendant Melody Co in the United States, the sum of $30,000.00, as partial payment of the purchase price. Defendant's counsel, Atty. Leopoldo Cotaco, wrote a letter to the plaintiff dated March 15, 1985, demanding that she pay the balance of $70,000.00 and not receiving any response thereto, said lawyer wrote another letter to plaintiff dated August 8, 1986, informing her that she has lost her `option to purchase' the property subject of this case and offered to sell her another property.
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> Under date of September 5 (1986), Atty. Estrella O. Laysa, counsel for plaintiff, wrote a letter to Atty. Leopoldo Cotaco informing him that plaintiff `is now ready to pay the remaining balance to complete the sum of $100,000.00, the agreed amount as selling price' and on October 24, 1986, plaintiff filed the instant complaint."[2]

The Regional Trial Court (RTC) ruled in favor of private respondent Adoracion Custodio (CUSTODIO) and ordered the petitioner spouses Henry and Elizabeth Co

(COS) to refund the amount of $30,000.00 in CUSTODIO's favor. The dispositive portion of the RTC's decision reads:

> "WHEREFORE, the Court hereby orders:
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> 1. that the earnest money of $1,000.00 and P40,000.00 is hereby forfeited in favor of the defendants, and
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> 2. the defendants are ordered to remit to plaintiff the peso equivalent of THIRTY THOUSAND ($30,000.00) U.S. DOLLARS, at the prevailing rate of exchange at the time of payment.
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> Costs against plaintiff.
>
> SO ORDERED."[3]

Not satisfied with the decision, the COS appealed to the Court of Appeals which affirmed the decision of the RTC. Hence, this appeal where the COS assign as sole error the following:

> **PETITIONER RESPECTFULLY SUBMITS THAT RESPONDENT COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW AND THE APPLICABLE DECISIONS OF THE SUPREME COURT.**[4]

The COS argue that the Court of Appeals erred in ruling that CUSTODIO could still exercise her option to pay the balance of the purchase price of the property. The COS claim that CUSTODIO was in default since she failed to pay after a demand was made by the petitioners in their March 15, 1985 letter[5]. The COS claim that they never granted CUSTODIO an extension of time to exercise the "option" contrary to the finding of the Court of Appeals that a thirty (30) day period of time was granted to her in their August 8, 1986 letter[6]. Said period refers to another option which the COS gave CUSTODIO to buy another piece of property and not the Beata property as they could no longer hold the Beata property for CUSTODIO. In fact, said letter specifically states that CUSTODIO lost her option to purchase the subject property; that the COS were willing to apply the payments already made to the payment of the second property; and that if CUSTODIO failed to purchase the second property within thirty (30) days, she would forfeit her previous payments. Since CUSTODIO manifested her readiness to exercise her option to pay the balance of the purchase price of the Beata property and not the second property, her manifestation was no longer of any legal effect as this option was no longer available to her. This being the case, the Court of Appeals should have ruled that the COS properly rescinded their contract with CUSTODIO over the Beata property pursuant to Article 1191[7] of the Civil Code and should have further ordered her to pay them damages consequent to the rescission. Moreover, even assuming that they waived the deadline by accepting the payment of $30,000.00 on January 26, 1986, CUSTODIO still failed to pay the remaining balance of $70,000.00. Her offer to pay the remaining balance came too late as the option given to her had already been lost. In addition, the Court of Appeals also erred in ordering the COS to return the $30,000.00 dollars since the August 8, 1986 letter warned CUSTODIO that if the she did not exercise her option within thirty days, she would lose her option and other rights and any payments made shall be forfeited. Finally, the COS claim that the

Court of Appeals erred in not granting them attorney's fees when the law allows recovery therefor considering that by the defendant's act or omission, the plaintiff is compelled to litigate with third persons or to incur expenses to protect his rights.[8]

The core issue is whether or not the Court of Appeals erred in ordering the COS to return the $30,000.00 paid by CUSTODIO pursuant to the "option" granted to her over the Beata property?

We rule in the negative.

The COS' main argument is that CUSTODIO lost her "option" over the Beata property and her failure to exercise said option resulted in the forfeiture of any amounts paid by her pursuant to the August letter.

An option is a contract granting a privilege to buy or sell within an agreed time and at a determined price. It is a separate and distinct contract from that which the parties may enter into upon the consummation of the option. It must be supported by consideration.[9] An option contract conforms with the second paragraph of Article 1479 of the Civil Code[10] which reads:

> "Article 1479. xxx
>
> An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promissor if the promise is supported by a consideration distinct from the price."

However, the March 15, 1985 letter[11] sent by the COS through their lawyer to the CUSTODIO reveals that the parties entered into a perfected contract of sale and not an option contract.

A contract of sale is a consensual contract and is perfected at the moment there is a meeting of the minds upon the thing which is the object of the contract and upon the price. From that moment the parties may reciprocally demand performance subject to the provisions of the law governing the form of contracts.[12] The elements of a valid contract of sale under Article 1458 of the Civil Code are (1) consent or meeting of the minds; (2) determinate subject matter; and (3) price certain in money or its equivalent.[13] As evidenced by the March 15, 1985 letter, all three elements of a contract of sale are present in the transaction between the petitioners and respondent. CUSTODIO's offer to purchase the Beata property, subject of the sale at a price of $100,000.00 was accepted by the COS. Even the manner of payment of the price was set forth in the letter. Earnest money in the amounts of US$1,000.00 and P40,000.00 was already received by the COS. Under Article 1482[14] of the Civil Code, earnest money given in a sale transaction is considered part of the purchase price and proof of the perfection of the sale.[15]

Despite the fact that CUSTODIO's failure to pay the amounts of US$ 40,000.00 and US$ 60,000.00 on or before December 4, 1984 and January 5, 1985 respectively was a breach of her obligation under Article 1191[16] of the Civil Code, the COS did not sue for either specific performance or rescission of the contract. The COS were of the mistaken belief that CUSTODIO had lost her "option" over the Beata property when she failed to pay the remaining balance of $70,000.00 pursuant to their

August 8, 1986 letter. In the absence of an express stipulation authorizing the sellers to extrajudicially rescind the contract of sale, the COS cannot unilaterally and extrajudicially rescind the contract of sale.[17] Accordingly, CUSTODIO acted well within her rights when she attempted to pay the remaining balance of $70,000.00 to complete the sum owed of $100,000.00 as the contract was still subsisting at that time. When the COS refused to accept said payment and to deliver the Beata property, CUSTODIO immediately sued for the rescission of the contract of sale and prayed for the return of the $30,000.00 she had initially paid.

Under Article 1385[18] of the Civil Code, rescission creates the obligation to return the things which were the object of the contract but such rescission can only be carried out when the one who demands rescission can return whatever he may be obliged to restore. This principle has been applied to rescission of reciprocal obligations under Article 1191 of the Civil Code.[19] The Court of Appeals therefore did not err in ordering the COS to return the amount of $30,000.00 to CUSTODIO after ordering the rescission of the contract of sale over the Beata property. We quote with approval the Court of Appeals' decision to wit:

> "Since it has been shown that the appellee who was not in default, was willing to perform part of the contract while the appellants were not, rescission of the contract is in order. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him, (Article 1191, same Code). Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest x x x x (Article 1385, same Code).
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> In the case at bar, the property involved has not been delivered to the appellee. She has therefore nothing to return to the appellants. The price received by the appellants has to be returned to the appellee as aptly ruled by the lower court, for such is a consequence of rescission, which is to restore the parties in their former situations.
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> No error was committed by the lower court when it did not award attorney's fees to the appellants for as has been shown, the appellee's complaint is not unfounded."[20]

We cannot uphold the forfeiture clause contained in the petitioners' August 8, 1986 letter. It appears that such condition was unilaterally imposed by the COS and was not agreed to by CUSTODIO. It cannot therefore be considered as part of the contract of sale as it lacks the consent of CUSTODIO.[21]

Finally, the Court of Appeals did not err in not awarding the COS attorney's fees. Although attorney's fees may be awarded if the claimant is compelled to litigate with third persons or to incur expenses to protect his interest by reason of an unjustified act or omission of the party from whom it is sought[22], we find that CUSTODIO's act clearly was not unjustified.

WHEREFORE, the instant petition is hereby **DENIED,** and the appealed decision of the Court of Appeals is **AFFIRMED.**