

FIRST DIVISION

[G.R. No. 123462, April 10, 1997]

**OFELIA C. LAVIBO AND BENJAMIN L. BARGAS, PETITIONERS, VS.
HON. COURT OF APPEALS AND TRADAL VENTURES AND
MANAGEMENT CORPORATION, RESPONDENTS.
D E C I S I O N**

VITUG, J.:

Petitioners seek, via a petition for review on *certiorari*, the reversal of the decision, [1] dated 29 November 1995, of the Court of Appeals and its resolution of 09 January 1996 denying a reconsideration thereof.

The facts here obtaining are not in dispute.

On 07 December 1993, Tradal Ventures and Management Corporation ("Tradal") entered into a contract with Ofelia Lavibo to sell a unit in the Shenandoah Twinhomes, South Green Park Subdivision, Parañaque, Metro Manila, for P1,500,000.00. The amount was stipulated to be payable in the following manner, viz:

"a. Partial payment in the amount of P100,000.00 upon execution of this agreement, receipt of which is hereby acknowledged by herein SELLER;

"b. Partial payment in the amount of P120,000.00 on or before December 21, 1993;

"c. Full downpayment in the amount of P280,000.00 on or before December 21, 1993;

"d. The balance of one million pesos upon release of loan from BPI-Family Bank." [2]

It was agreed that the buyer would "not occupy or take possession of the aforementioned property until after the full release of buyer's loan from the BPI-Family Bank." [3] This proviso of the contract notwithstanding, Tradal, on 11 January 1994, allowed Lavibo to occupy the townhouse unit after the latter had issued two (2) postdated checks for the total amount of P330,000.00. When presented for payment, however, the checks were dishonored apparently because the covering account had by then been closed. On 19 September 1994, Tradal made a demand on Lavibo to vacate the premises. She failed to vacate the unit or to redeem the dishonored checks.

On 19 October 1994, Tradal filed with the Metropolitan Trial Court ("MeTC") of

Parañaque, a complaint for ejectment against Lavibo and one Atty. Benjamin Bargas. The defendants, instead of filing an answer, filed a manifestation that sought the dismissal of the action on the following grounds: That —

"a. it states no cause of action for a valid complaint for ejectment;

"b. it anchors its complaint on a contract to sell a real estate property, and not a contract of lease having been violated that, otherwise, would put it under the Summary Rules;

"c. it seeks recovery of at least five hundred thousand pesos in actual and moral damages, outside that, otherwise, would be covered by the Summary Rules; and

"d. very clearly, it is outside and beyond the jurisdiction of the Honorable Court."^[4]

The MeTC, on 27 February 1995, dismissed the complaint. It held that —

"x x x while the complaint is captioned for ejectment it actually prays for rescission of the parties' contract to sell. Further, plaintiff in its letter addressed to defendants only demands that the subject premises be vacated, and that the checks issued to the plaintiff were dishonored for 'Account Closed.'

"Be it noted that Ejectment may only be availed of and instituted by the plaintiff in the instant case only after its Contract to Sell with the defendants has been rescinded either by notarial act or by filing with the proper court an action for rescission under Articles 1380 and 1381 of the Civil Code.

"Under the foregoing circumstances, it appears that the filing of an ejectment case is premature, the basis of which being a violation of the parties' Contract to Sell which has not been rescinded as yet; thus, this court not being invested with jurisdiction on rescission of contracts, it cannot take cognizance of the instant case, especially so that at the moment the validity of the parties' Contract to Sell is still presumed. In the alternative, the plaintiff can also avail itself with the remedy of an action for specific performance.

"WHEREFORE, premises considered, let this case be DISMISSED for want of cause of action.

"SO ORDERED."^[5]

On appeal, the Regional Trial Court ("RTC")^[6] affirmed in *toto* the decision of the court a quo.

Tradal forthwith filed a petition for review on *certiorari* with the Court of Appeals. On 29 November 1995, the appellate court, ruling in favor of Tradal, concluded: