

SECOND DIVISION

[G.R. No. 125347, June 19, 1997]

**EMILIANO RILLO, PETITIONER, VS. COURT OF APPEALS AND
CORB REALTY INVESTMENT, CORP., RESPONDENTS.**

DECISION

PUNO, J.:

This is an appeal under Rule 45 of the Rules of Court to set aside the decision^[1] of the Court of Appeals in CA G.R. CV No. 39108 cancelling the "Contract to Sell" between petitioner Emiliano Rillo and private respondent Corb Realty Investment Corporation. It also ordered Rillo to vacate the premises subject of the contract and Corb Realty to return 50% of P158,184.00 or P79,092.00 to Rillo.

The facts of the case are the following:

On June 18, 1985, petitioner Rillo signed a "Contract To Sell of Condominium Unit" with private respondent Corb Realty Investment Corporation. Under the contract, CORB REALTY agreed to sell to RILLO a 61.5 square meter condominium unit located in Mandaluyong, Metro Manila. The contract price was P150,000.00, one half of which was paid upon its execution, while the balance of P75,000.00 was to be paid in twelve (12) equal monthly installments of P7,092.00 beginning July 18, 1985. It was also stipulated that all outstanding balance would bear an interest of 24% per annum; the installment in arrears would be subject to liquidated penalty of 1.5% for every month of default from due date. It was further agreed that should petitioner default in the payment of three (3) or four (4) monthly installments, forfeiture proceedings would be governed by existing laws, particularly the Condominium Act.^[2]

On July 18, 1985, RILLO failed to pay the initial monthly amortization. On August 18, 1985, he again defaulted in his payment. On September 20, 1985, he paid the first monthly installment of P7,092.00. On October 2, 1985, he paid the second monthly installment of P7,092.00. His third payment was on February 2, 1986 but he paid only P5,000.00 instead of the stipulated P7,092.00.^[3]

On July 20, 1987 or seventeen (17) months after RILLO's last payment, CORB REALTY informed him by letter that it is cancelling their contract due to his failure to settle his accounts on time. CORB REALTY also expressed its willingness to refund RILLO's money.^[4]

CORB REALTY, however, did not cancel the contract for on September 28, 1987, it received P60,000.00 from petitioner.^[5]

RILLO defaulted again in his monthly installment payment. Consequently, CORB REALTY informed RILLO through letter that it was proceeding to rescind their

contract.^[6] In a letter dated August 29, 1988, it requested RILLO to come to its office and withdraw P102,459.35 less the rentals of the unit from July 1, 1985 to February 28, 1989.^[7] Again the threatened rescission did not materialize. A "compromise" was entered into by the parties on March 12, 1989, which stipulated the following:

"1. Restructure Outstanding Balance Down to P50,000.00

"2. Payment @ P2,000.00/Month @ 18% (Eighteen Percent)-Monthly- To Compute No. of Installments

"3. To Pay Titling Plus Any Real Estate Tax Due

"4. Installments to start April 15, 1989."^[8]

Rillo once more failed to honor their agreement. RILLO was able to pay P2,000.00 on April 25, 1989 and P2,000.00 on May 15, 1989.^[9]

On April 3, 1990, CORB REALTY sent RILLO a statement of accounts which fixed his total arrears, including interests and penalties, to P155,129.00. When RILLO failed to pay this amount, CORB REALTY filed a complaint^[10] for cancellation of the contract to sell with the Regional Trial Court of Pasig.

In his answer to the complaint, RILLO averred, among others, that while he had already paid a total of P149,000.00, CORB REALTY could not deliver to him his individual title to the subject property; that CORB REALTY could not claim any right under their previous agreement as the same was already novated by their new agreement for him to pay P50,000.00 representing interest charges and other penalties spread through twenty-five (25) months beginning April 1989; and that CORB REALTY's claim of P155,129.99 over and above the amount he already paid has no legal basis.^[11]

At the pre-trial, the parties stipulated that RILLO's principal outstanding obligation as of March 12, 1989 was P50,000.00 and he has paid only P4,000.00 thereof and that the monthly amortization of P2,000.00 was to bear 18% interest per annum based on the unpaid balance. The issues were defined as: (1) whether or not CORB REALTY was entitled to a rescission of the contract; and (2) if not, whether or not RILLO's current obligation to CORB REALTY amounts to P62,000.00 only inclusive of accrued interests.^[12]

The Regional Trial Court held that CORB REALTY cannot rescind the "Contract to Sell" because petitioner did not commit a substantial breach of its terms. It found that RILLO substantially complied with the "Contract to Sell" by paying a total of P154,184.00. It ruled that the remedy of CORB REALTY is to file a case for specific performance to collect the outstanding balance of the purchase price.

CORB REALTY appealed the aforesaid decision to public respondent Court of Appeals assigning the following errors, to wit:

"THE TRIAL COURT ERRED IN DISREGARDING OTHER FACTS OF THE CASE, INCLUDING THE FACT THAT THE CONTRACT TO SELL, AS

NOVATED, CREATED RECIPROCAL OBLIGATIONS ON BOTH PARTIES;

"THE TRIAL COURT ERRED IN DISREGARDING ARTICLE 1191 OF THE CIVIL CODE;

"THE TRIAL COURT ERRED IN RENDERING JUDGMENT BY SIMPLY DISREGARDING THE CASE OF ROQUE V. LAPUZ, 96 SCRA 744, AND WITHOUT INDICATING THE APPLICABLE LAW ON THE CASE.

"THE TRIAL COURT ERRED IN RENDERING A DECISION WHICH DID NOT COMPLETELY DISPOSE OF THE CASE."

The respondent Court of Appeals reversed the decision. It ruled: (1) that rescission does not apply as the contract between the parties is not an absolute conveyance of real property but is a contract to sell; (2) that the Condominium Act (Republic Act No. 4726, as amended by R.A. 7899) does not provide anything on forfeiture proceedings in cases involving installment sales of condominium units, hence, it is Presidential Decree No. 957 (Subdivision and Condominium Buyers Protective Decree) which should be applied to the case at bar. Under Presidential Decree No. 957, the rights of a buyer in the event of failure to pay installment due, other than the failure of the owner or developer to develop the project, shall be governed by Republic Act No. 6552 or the REALTY INSTALLMENT BUYER PROTECTION ACT also known as the Maceda Law (enacted on September 14, 1972). The dispositive portion of its Decision states:

"WHEREFORE, the decision appealed from is hereby SET ASIDE. The Contract to Sell is hereby declared cancelled and rendered ineffective. Plaintiff-Appellant is hereby ordered to return 50% of P158,184.00 or P79,092.00 to appellee who is hereby ordered to vacate the subject premises.

"SO ORDERED."^[13]

Hence, this appeal with the following assignment of errors:

"THE HONORABLE COURT OF APPEALS SERIOUSLY AND GRAVELY ERRED IN HOLDING AND DECIDING THAT RESCISSION IS THE PROPER REMEDY ON A PERFECTED AND CONSUMMATED CONTRACT;

"THE HONORABLE COURT OF APPEALS SERIOUSLY AND GRAVELY ERRED IN NOT HOLDING AND DECIDING THAT THE OLD CONSUMMATED CONTRACT HAS BEEN SUPERSEDED BY A NEW, SEPARATE, INDEPENDENT AND SUBSEQUENT CONTRACT BY NOVATION."

The petition is without merit.

The respondent court did not err when it did not apply Articles 1191 and 1592 of the Civil Code on rescission to the case at bar. The contract between the parties is not an absolute conveyance of real property but a contract to sell. In a contract to sell real property on installments, the full payment of the purchase price is a positive suspensive condition, the failure of which is not considered a breach, casual or serious, but simply an event which prevented the obligation of the vendor to convey