

## THIRD DIVISION

[ G.R. No. 118203, July 05, 1996 ]

**EMILIO A. SALAZAR AND TERESITA DIZON, PETITIONERS, VS.  
COURT OF APPEALS AND JONETTE BORRES, RESPONDENTS.**

### DECISION

**DAVIDE, JR., J.:**

Petitioners seek to set aside the decision<sup>[1]</sup> of 29 November 1994 of the Court of Appeals in CA-G.R. CV No. 40197, which reversed the decision<sup>[2]</sup> of 3 September 1992 of Branch 66 of the Regional Trial Court (RTC) of Makati, Metro Manila, in Civil Case No. 89-4468.

The primary issues presented for our resolution are whether (a) the so-called Deed of Absolute Sale executed by petitioner Emilio A. Salazar in favor of private respondent Jonette Borres is a perfected contract of sale or a mere contract to sell, and (b) the action for specific performance which the latter filed will lie to compel the former to deliver the Deed of Absolute Sale, the Transfer Certificates of Title, and other documents relative to the property in question.

The factual antecedents of this case, as summarized by the trial court, are as follows:

That defendant Dr. Salazar is the owner of the two (2) parcels of land with improvements thereon located at 2914 Finlandia Street, Makati, Metro Manila and covered by Transfer Certificate of Title Nos. 31038 and 31039 of the Registry of Deeds of Makati; that Dr. Salazar offered to sell his properties to Jonette Borres for One Million Pesos (P1,000,000.00) (TSN pp. 7 and 8, November 5, 1991). The initial proposal took place at the Dimsum Restaurant, Makati, whereby it was proposed that the payment of the consideration was to be made within six (6) months but was objected to by Dr. Salazar and he reduced it to a three (3) months period (TSN, Direct Examination on Jonette Borres p. 22, November 12, 1991); that sometime on [May] 28, 1989, Jonette Borres together with a certain Emilio T. Salazar went to see Dr. Salazar at the latter's residence in Bataan bearing a copy of a Deed of Absolute sale (Exhibit "C") and Deed of Warranty (Exhibit "D") but Dr. Salazar refused to sign because Jonette Borres did not have the money ready then. In said occasion Dr. Salazar further reduced the period within which plaintiff may purchase the lots, to one (1) month or up to June 30, 1989 (TSN Direct Examination on Jonette Borres November 5, [1991], pp. 10 and 11).

Jonette Borres then met again Dr. Salazar on June 2, 1989 at the Ninoy International Airport who was about to leave for the United States of

America where he is a resident. Jonette Borres had with her the Deed of Absolute Sale and asked Dr. Salazar to sign said document. Dr. Salazar reluctantly agreed to sign the document provided that Jonette Borres pays one half (1/2) of the consideration or P500,000.00 in "cash" by June 15, 1989 and the balance was payable on June 30, 1989 (TSN Direct Examination on Emilio A. Salazar, May 21, [1991], p. 9; TSN Cross Examination on Jonette Borres, November 12, [1991], pp. 29 and 30). It was during this occasion that Dr. Salazar again emphasized to Jonette Borres that he needed the money because he was then buying a property in the United States (TSN pp. 15-20, November 5, 1991; pp. 22 and 23, May 21, 1991; and pp. 56-57, May 21, 1991).

Plaintiff agreed to the above conditions (TSN Cross Examination on Jonette Borres November 12, 1989, p. 32) and Dr. Salazar constituted co-defendant Teresa Dizon as custodian at the Deed of Absolute Sale (Exhibit "C") together with the Titles of the Land in question with the instruction to Teresa Dizon not to surrender said documents to Jonette Borres until upon payment of the full price in "cash" (TSN Direct Examination on Emilio A. Salazar, May 21, [1991], p. 11).

On June 14, 1989 Jonette Borres informed defendant Dizon that she will be able to pay the full amount of P1,000,000.00 on June 15, 1989 (TSN Direct Examination Jonette Borres, November 5, [1991], p. 25) and on the next day, she then went to the house of Teresa Dizon to see and get the documents entrusted to her by Dr. Salazar. The documents not being in Dizon's possession, they agreed to meet at Metro Bank West Avenue Branch to get the documents and then to proceed to Makati to meet the plaintiff's business partner a certain Balao who allegedly gave plaintiff a Far East Bank and Trust Company check for the amount of P1,500,000.00 (Exhibit "F") with which to buy the property (TSN Direct Examination on Jonette Borres November 5, [1991], pp. 30, 32 and 33). For some reason or another Jonette Borres and defendant Dizon failed to proceed to Makati.

In the meantime or on June 16, 1992, Dr. Salazar made an overseas call to co-defendant Dizon to inquire if Jonette Borres had already paid the down payment of P500,000.00 and Teresa Dizon replied to Dr. Salazar that Jonette Borres had not paid the down payment. Dr. Salazar then ordered Dizon to stop the sale (TSN Direct Examination on Emilio A. Salazar, May 21, [1991], pp. 12 and 13).

As maybe seen from the evidence presented by the plaintiff and the defendants, the terms and conditions of the agreement for the sale of the two (2) parcels of land owned by Dr. Salazar in favor of the plaintiff Jonette Borres, are that the purchase price is in the amount of P1,000,000.00, fifty percent (50%) of which or P500,000.00 was to be paid on or before June 15, 1989 while the balance thereof was to be paid on or before June 30, 1989 (TSN May 21, 1991, p. 27); that the payment was to be made in "cash" (TSN May 21, 1991, p. 55); that the place of payment is at defendant's bank, Metropolitan Bank Quezon City Branch (TSN October 21, 1991, p. 23).<sup>[3]</sup>

The trial court held that the Deed of Absolute Sale was in reality a contract to sell, and that since Borres failed to pay Salazar the downpayment of P500,000.00 on the agreed date, 15 June 1989, the complaint for specific performance cannot prosper. It then dismissed the complaint and ordered Borres to pay the petitioners P5,000.00 each as attorney's fees and litigation expenses.<sup>[4]</sup>

In ruling that the Deed of Absolute Sale was a contract to sell, the trial court considered pertinent the circumstances attending its execution. First, that the Deed of Absolute Sale was "reluctantly signed" by Dr. Salazar, who was then about to leave for the United States of America, in order that if Borres would comply with the terms and conditions of their agreement, he need not come to the Philippines just to sign it; hence, it does not bind Dr. Salazar until the suspensive condition, i. e., the downpayment of P500,000.00 to be effected on or before 15 June 1989 and the balance to be paid on or before 30 June 1989, is complied with. Second, Borres was not, in fact, financially prepared to buy the parcels of land on or before 15 June 1989 considering that

[s]he was just looking for possible buyers or business partners. First, she requested that the pertinent documents like the Deed of Sale (Exhibit "C") and the corresponding Transfer Certificates of Titles Nos. 31038 and 31039 of the Register of Deeds of Rizal (Exhibits "A" and "B") be entrusted to her even before making the downpayment of P500,000.00 purposely to raise the amount needed. When Dr. Salazar refused her request, Jonette Borres approached a certain businessman P.D. Dionisio for loan and was turned down when Jonette Borres cannot [sic] produce the Deed of Absolute Sale and the Titles of the parcels of land in question (TSN November 5, 1991, pp. 20-25). Then she approached a certain Benjamin Balao a realtor developer. Although Balao had issued to her his check in the amount of P1,500,000.00 (Exhibit "F") he instructed his bank not to honor his check without his presence (TSN November 14, 1991, pp. 81 to 84). Jonette Borres admitted that she was not in a position to encash the check (Exhibit "F") although it was payable to 'cash' (TSN November 21, 1991, pp. 41 and 44).<sup>[5]</sup>

Salazar's victory was short-lived. On Borres's appeal from the decision of the trial court, the Court of Appeals, in its challenged decision of 29 November 1994, ruled that the Deed of Absolute Sale, whose existence and due execution was undisputed, is a perfected contract of sale, with a definite object and a specific consideration which the parties had agreed upon. As proof that it is a contract of sale and not a contract to sell, the Court of Appeals stressed the absence of a proviso that the title to the property is reserved in the vendor until full payment of the purchase price or that the vendor may unilaterally rescind the contract the moment the vendee fails to pay within the fixed period.<sup>[6]</sup> Salazar's reluctance to sign it is of no moment, since there is no allegation of fraud, forgery, or duress. And even assuming that Borres failed to pay the contract price, such failure did not convert the contract into one without cause or consideration as to vitiate the validity of the contract, it not being essential for the existence of cause that payment or full payment be made at the time of the contract. Neither did such failure ipso facto resolve the contract in question. The remedy of the vendor, Dr. Emilio A. Salazar, is to demand specific

performance or rescission, with damages in either case. On the other hand, the vendee, Jonette Borres, may demand specific performance, i.e., compel the vendor to accept the price and deliver the title of the land object of the contract.

The Court of Appeals disagreed with the trial court's finding that Borres was not in a position to pay the downpayment because:

[o]n June 15, 1989, plaintiff-appellant had a Far East Bank check payable to her order, in the amount of P1,500,000.00--more than the whole agreed purchase price of P1,000,000.00. Defendant-appellee Teresa Dizon agreed (on June 14, 1989) to meet her on June 15, 1989, at Metro Bank West and thereafter to proceed to Makati in order to encash the Far East Bank check. Defendant-appellee Teresa Dizon somehow managed to manipulate things by making herself unavailable so that the payment could not be made on June 15, 1989 (TSN, Nov. 5, 1991, pp. 27-41). On the next day, June 16, 1989, defendant-appellee Teresa Dizon informed plaintiff-appellant that defendant-appellee Dr. Emilio A. Salazar called up in the evening of June 15, 1989 asking whether plaintiff-appellant paid on that day and upon being answered in the negative, said vendor said that he is revoking the contract (TSN, Nov. 5, 1991, pp. 41-42). Defendant-appellee Teresa Dizon having her own interested buyer, evidently acted in bad faith, tried and indeed succeeded to frustrate the efforts of plaintiff-appellant to comply with her reciprocal obligation to pay the agreed purchase price.

The fact that the Far East Bank check was payable to the Order of plaintiff-appellant, and it covers the amount of P1,500,000.00--which is much more than the agreed purchase price of P1,000,000.00--reveals that plaintiff-appellant was financially prepared to comply with her reciprocal obligation. That plaintiff-appellant filed the present suit for specific performance on July 6, 1989, bolsters the fact that she is really willing and able to pay the agreed purchase price. How and from whom she borrowed/obtained the said amount, is of no consequence.<sup>[7]</sup>

Accordingly, the respondent Court reversed the decision of the trial court and handed down a new judgment ordering Emilio A. Salazar to accept from Jonette Borres the payment representing the purchase price in the amount of P1 Million and thereafter to comply with his reciprocal obligation to surrender the original copies of the deed of absolute sale and Torrens title covering the parcels of land subject of the contract. Finding petitioner Teresita Dizon to have "acted in bad faith in frustrating the efforts" of Borres to comply with her obligation to pay the purchase price, the appellate court ordered her to pay Borres the amounts of P80,000.00 as moral damages; P50,000.00 as exemplary damages; and P100,000.00 as attorney's fees.

Unable to accept the reversal of the trial court's decision, the petitioners filed the instant petition wherein they submit that the Court of Appeals committed grave and serious errors:

A. x x x in relying on the Deed of Absolute Sale dated May 30, 1989 notwithstanding the fact that:

1. BORRES EXECUTED A DEED OF WARRANTY (EXHS. "D" AND "2") STATING THEREIN THAT UNTIL AND UNLESS THE AMOUNT OF P1,000,000.00 REPRESENTING THE PURCHASE PRICE FOR THAT PARCELS OF LAND COVERED BY TCT NOS. S-31038 AND S-31039 BE PAID BY HER TO SALAZAR, SHE HAS NO RIGHT WHATSOEVER TO THE ORIGINAL COPIES OF THE DEED OF ABSOLUTE SALE AND THAT SHE HAS NO LEGAL RIGHT WHATSOEVER TO ANY AND ALL PERTINENT RECORDS OF THE ABOVE-MENTIONED LOTS;

2. UPON HER BEHEST, BORRES WAS GIVEN A PHOTOCOPY OF THE DEED OF ABSOLUTE SALE BY DIZON BUT ONLY AFTER THE LATTER ERASED THE SIGNATURE OF SALAZAR AS THE VENDEE THEREIN;

3. BORRES HAD NOT PAID ANY PORTION OF THE AGREED PURCHASE PRICE AND THUS RENDERS THE DEED OF ABSOLUTE SALE VOID AB INITIO.

B. x x x in concluding that the agreement between SALAZAR and BORRES is a contract of sale and thus, perfected upon agreement on the subject matter and consideration, notwithstanding the fact that:

1. THE AGREEMENT BETWEEN THE PARTIES IS ESSENTIALLY A CONTRACT TO SELL SUBJECT TO SUSPENSIVE CONDITION, THE BIRTH OR EFFECTIVITY OF WHICH SHOULD TAKE PLACE ONLY IF AND WHEN THE EVENT WHICH CONSTITUTES THE CONDITION HAPPENS OR IS FULFILLED. SINCE BORRES FAILED TO COMPLY WITH HER OBLIGATION, THE AGREEMENT TO SELL BECAME STILLBORN;

2. THERE WAS AN EXPRESS AGREEMENT BETWEEN THE PARTIES THAT BORRES SHALL BE ENTITLED TO THE PROPERTY OR ANY RECORDS PERTAINING THERETO OR ORIGINAL COPIES OF THE DEED OF ABSOLUTE SALE ONLY UPON FULL PAYMENT OF THE PURCHASE PRICE.

C. x x x in holding that DIZON acted in bad faith and succeeded to frustrate the efforts of BORRES to comply with her reciprocal obligation to pay the purchase price notwithstanding the fact that:

1. AT THE TIME THAT BORRES WAS OBLIGED TO PAY AT LEAST 50% OF THE PURCHASE PRICE OR ON JUNE 15, 1989, SHE WAS NOT READY, WILLING AND ABLE TO DO SO. EVEN ASSUMING FOR THE SAKE OF ARGUMENT THAT THE LATTER HAD THE FINANCIAL CAPABILITY TO MEET HER OBLIGATION, THE FACT REMAINS THAT SHE FAILED TO PROPERLY TENDER PAYMENT OF HER OBLIGATION AND IN CASE TENDER OF PAYMENT WAS REFUSED, TO CONSIGN THE SAME IN COURT;

2. DIZON HAD NO REASON TO FRUSTRATE THE EFFORTS OF BORRES TO COMPLY WITH HER OBLIGATION TO PAY THE AGREED PURCHASE PRICE SINCE SHE WAS MERELY CONSTITUTED AS CUSTODIAN OF THE DEED OF ABSOLUTE SALE AND TITLES OF THE PROPERTY WITH SPECIFIC