

SPECIAL SECOND DIVISION

[CA-G.R. CV No. 100216, June 13, 2014]

**REYNALDO D. LUSANTA, PLAINTIFF-APPELLANT, VS.
ANNAMARIE A. BRUNNING, ALEXANDRA ALICIA A. APELES AND
ANTOINETTE A. APELES-BUDREWICZ, DEFENDANTS-APPELLEES.**

D E C I S I O N

SALAZAR-FERNANDO, J.:

Before this Court is an appeal from the Orders dated November 9, 2012^[1] and January 16, 2013^[2] of the Regional Trial Court (RTC), National Capital Judicial Region, Branch 92, Quezon City in Civil Case No. Q-12-71905 for Specific Performance, entitled "REYNALDO D. LUSANTA, *Plaintiff*, versus ANNAMARIE (sic) A. BRUNNING, ALEXANDRA ALICIA A. APELES & ANTOINETTE A. BUDREWICZ, *Defendants*.", the decretal portions of which read:

Order dated November 9, 2012

"WHEREFORE, premises considered, the above-entitled case is hereby DISMISSED.

SO ORDERED."^[3]

Order dated January 16, 2013

"WHEREFORE, the motion for reconsideration filed by the plaintiff is hereby DENIED.

SO ORDERED."^[4]

The facts are:

On September 7, 2012, plaintiff-appellant Reynaldo D. Lusanta (Lusanta for brevity) filed a Complaint^[5] for Specific Performance against defendants-appellees Annamarie A. Brunning, Alexandra Alicia A. Apeles, and Antoinette A. Budrewicz averring that: defendants-appellees are the heirs of the late Luz Antonio Apeles, who was the former owner of the subject property situated at No. 87, Timog Avenue, Quezon City with an area of 360.30 square meters^[6]; the subject property is now registered in the name of the defendants-appellees under Transfer Certificate of Title (TCT) No. 004-2010001419^[7]; on January 26, 1987, Luz A. Apeles executed a Contract of Lease with Option to Purchase^[8] involving the subject property in favor of Enrico S. Eulogio (Eulogio for brevity); thereafter, on June 15, 1987, Eulogio executed a Deed of Assignment^[9] in favor of plaintiff-appellant Lusanta assigning his rights over the one-half portion of the subject property; Eulogio and plaintiff-appellant Lusanta informed Luz A. Apeles about their arrangement, and the latter expressed her conformity^[10] thereto; thus, plaintiff-appellant Lusanta shared in the

possession and use of the subject property for his business; later on, he learned that Eulogio was being ejected^[11] from the subject property by the children of Luz A. Apeles, herein defendants-appellees, claiming that they inherited it; in view thereof, plaintiff-appellant Lusanta wrote the defendants-appellees indicating his intent to buy the subject property, offering a price higher than that agreed upon in the letter-contract with A. Luz Apeles; defendants-appellees, however, refused to receive his letters^[12]; he learned that Eulogio also increased his offer to buy the subject property at ₱5,400,000.00, but the same was rejected by the defendants-appellees; plaintiff-appellant Lusanta was constrained to file the instant case to protect his rights and interests over the subject property; as the late Luz A. Apeles had agreed to sell one-half of the property to him, her heirs, the defendants-appellees, therefore had the obligation to perform, deliver, and execute the sale in his favor; defendants-appellees failed to honor their obligation to sell the subject property to him; and, he is ready and willing to pay P2,700,000.00 for the subject property which is much more than the price indicated in the Contract of Lease with Option to Purchase.

Thereafter, plaintiff-appellant Lusanta filed an Ex-Parte Motion for Leave of Court to Serve Summons by personal service outside of the Philippines or thru publication.^[13]

On November 9, 2012, the lower court rendered the assailed Order^[14] dismissing the complaint *motu proprio* on the ground of prescription. The lower court noted that the Contract of Lease with Option to Purchase is effective only for three (3) years from January 26, 1987. Further, an action based upon a written contract prescribes in ten (10) years. The lower court added that there was no separate consideration for the Option to Purchase and that the defendants-appellees are not privies to the disputed contract.

Aggrieved, plaintiff-appellant Lusanta filed a Motion for Reconsideration^[15], which the lower court denied in the assailed Order^[16] dated January 16, 2013. The lower court held that since plaintiff-appellant Lusanta's ultimate objective was to obtain title to real property, the complaint is a real action, and as such, the assessed value of the subject property should have been alleged therein.

Hence, this appeal raising the following errors^[17]:

I.

THE HONORABLE TRIAL COURT COMMITTED GRAVE ERROR IN DISMISSING THE COMPLAINT ON GROUND OF PRESCRIPTION.

II.

THE HONORABLE TRIAL COURT COMMITTED GRAVE ERROR IN FINDING THAT THERE WAS NO CONSIDERATION OF THE OPTION CONTRACT.

III.

THE HONORABLE TRIAL COURT COMMITTED GRAVE ERROR IN DISMISSING THE COMPLAINT FOR LACK OF JURISDICTION.

The appeal lacks merit.

In a nutshell, plaintiff-appellant Lusanta contends^[18] that: his cause of action accrued only on May 23, 2009, or after the Supreme Court issued an Entry of Judgment in the case of *Enrico S. Eulogio v. Spouses Clemente and Luz Apeles*^[19]; the Deed of Assignment executed in his favor is binding and enforceable against Luz A. Apeles, her heirs, and successors-in-interest; the Contract of Lease with Option to Purchase has been declared by the Supreme Court to be unenforceable, but not void; when Luz A. Apeles gave her written conformity to the assignment of rights over one-half of the subject property to him, Apeles bound herself as well as the defendants-appellees to effectuate the transfer; it is proper to implead the defendants-appellees considering that they have already transferred the title over the subject property to their name; and, the lower court has jurisdiction over the case, as the action, which is for specific performance, is incapable of pecuniary estimation.

After a thorough examination of the records of the case, this Court finds that the lower court committed no reversible error in dismissing plaintiff-appellant Lusanta's complaint. The *motu proprio* dismissal of the complaint by the lower court is anchored on Rule 9, Section 1 of the Revised Rules of Court which provides that:

“SECTION 1. *Defenses and objections not pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.”

The second sentence of this provision allows courts to dismiss cases *motu proprio* on any of the enumerated grounds — (1) lack of jurisdiction over the subject matter; (2) *litis pendentia*; (3) *res judicata*; and (4) prescription — provided that the ground for dismissal is apparent from the pleadings or the evidence on record.^[20]

Records show that plaintiff-appellant Lusanta filed the instant Complaint for Specific Performance on September 7, 2012^[21] on the basis of an Option to Purchase^[22] and Deed of Assignment^[23] both executed more than two (2) decades ago in 1987.

On this matter, the Supreme Court's pronouncement in *Spouses Julio and Marina Villamor v. Court of Appeals, et al.*^[24] pertinently holds, thus:

“Under Article 1144 (1) of the Civil Code, actions upon a written contract must be brought within ten (10) years. The Deed of Option was executed on November 11, 1971. The acceptance, as already mentioned, was also accepted in the same instrument. The complaint in this case was filed by the petitioners on July 13, 1987, **seventeen (17) years from the time of the execution of the contract. Hence, the right of action had prescribed.** There were allegations by the petitioners that they demanded from the private respondents as early as 1984 the enforcement of their rights under the contract. Still, it was beyond the ten (10) year period prescribed by the Civil Code. xxx xxx xxx” (Emphasis and underscoring supplied)

In the said case, the Deed of Option was silent as to the period to exercise the option to buy the property. The Supreme Court, nonetheless, applied the ten (10)

year prescriptive period under Article 1144, reckoned from the date of execution of the instrument in 1971. Thus, as the complaint therein was filed in 1987, or seventeen (17) years from the execution of the Deed of Option, the Supreme Court held that the right of action had already prescribed.

In the instant case, it should be stressed that the Contract of Lease with Option to Purchase^[25], which was executed on January 26, 1987, explicitly provided only for a three-year period to exercise the option.

The pertinent portions of the contract read:

"3. That this Contract shall be effective commencing from January 26, 1987 and shall remain valid and binding for THREE (3) YEARS from the said date. The LESSOR hereby gives the LESSEE under this Contract of Lease the right and option to buy the subject house and lot within the said 3-year lease period.

4. That the purchase price or total consideration of the house and lot subject of this Contract of Lease shall, should the LESSEE exercise his option to buy it **on or before the expiration of the 3-year lease period**, be fixed or agreed upon by the LESSOR and the LESSEE, Provided, that the said purchase price, as it is hereby agreed, shall not be more than ONE MILLION FIVE HUNDRED THOUSAND PESOS (P1,500,000.00) and, provided further, that the monthly rentals paid by the LESSEE to the LESSOR **during the 3-year lease period** shall form part of or be deducted from the purchase price or total consideration as may hereafter be mutually fixed or agreed upon by the LESSOR and the LESSEE.

5. That if the LESSEE shall give oral or written notice to the LESSOR **on or before the expiry date of the 3-year lease period stipulated herein of his desire to exercise his option to buy or purchase the house and lot herein leased**, the LESSOR upon receipt of the purchase price/total consideration as fixed or agreed upon less the total amount of monthly rentals paid by the LESSEE **during the 3-year lease period** shall execute the appropriate Deed to SELL, TRANSFER and CONVEY the house and lot subject of this Contract in favor of the LESSEE, his heirs, successors and assigns, together with all the fixtures and accessories therein, free from all liens and encumbrances." (Emphasis and underscoring supplied)

One of the most fundamental principles in civil law is that a contract is the law between the parties and that they are bound by the stipulations in the contracts voluntarily entered into by them. When there is no ambiguity in the language of a contract, as in this case, there is no room for construction, only compliance.^[26] Courts have no power to make or modify contracts. Indeed, when the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon.^[27] In this case, the Contract of Lease with Option to Purchase is simple, clear, and unequivocal that it is only effective for three (3) years.

Having been executed on January 26, 1987, the period to exercise the Option to Purchase, therefore, expired in January 1990. Thus, the instant action, which was filed by plaintiff-appellant Lusanta twenty-two (22) years later, or on September 7,