



Republic of the Philippines  
Supreme Court  
Manila

**SECOND DIVISION**

**NICOLAS P. DIEGO,**  
*Petitioner,*

**G.R. No. 179965**

Present:

- versus -

CARPIO, *Chairperson,*  
BRION,  
DEL CASTILLO,  
VILLARAMA, JR.,\* *and*  
PEREZ, *JJ.*

**RODOLFO P. DIEGO and**  
**EDUARDO P. DIEGO,**  
*Respondents.*

Promulgated:

FEB 20 2013 *AK Cabalagorfecto*

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**DECISION**

**DEL CASTILLO, J.:**

It is settled jurisprudence, to the point of being elementary, that an agreement which stipulates that the seller shall execute a deed of sale only upon or after full payment of the purchase price is a ***contract to sell***, not a contract of sale. In *Reyes v. Tuparan*,<sup>1</sup> this Court declared in categorical terms that “[w]here the vendor promises to execute a deed of absolute sale upon the completion by the vendee of the payment of the price, the contract is only a contract to sell. The aforesaid stipulation shows that the vendors reserved title to the subject property until full payment of the purchase price.”

In this case, it is not disputed as in fact both parties agreed that the deed of sale shall only be executed upon payment of the remaining balance of the purchase price. Thus, pursuant to the abovestated jurisprudence, we similarly declare that the transaction entered into by the parties is a contract to sell. *Mmm*

\* Per raffle dated October 17, 2012.

<sup>1</sup> G.R. No. 188064, June 1, 2011, 650 SCRA 283, 299. Citation omitted. Emphasis supplied.

Before us is a Petition for Review on *Certiorari*<sup>2</sup> questioning the June 29, 2007 Decision<sup>3</sup> and the October 3, 2007 Resolution<sup>4</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 86512, which affirmed the April 19, 2005 Decision<sup>5</sup> of the Regional Trial Court (RTC), Branch 40, of Dagupan City in Civil Case No. 99-02971-D.

### ***Factual Antecedents***

In 1993, petitioner Nicolas P. Diego (Nicolas) and his brother Rodolfo, respondent herein, entered into an oral contract to sell covering Nicolas's share, fixed at ₱500,000.00, as co-owner of the family's Diego Building situated in Dagupan City. Rodolfo made a downpayment of ₱250,000.00. It was agreed that the deed of sale shall be executed upon payment of the remaining balance of ₱250,000.00. However, Rodolfo failed to pay the remaining balance.

Meanwhile, the building was leased out to third parties, but Nicolas's share in the rents were not remitted to him by herein respondent Eduardo, another brother of Nicolas and designated administrator of the Diego Building. Instead, Eduardo gave Nicolas's monthly share in the rents to Rodolfo. Despite demands and protestations by Nicolas, Rodolfo and Eduardo failed to render an accounting and remit his share in the rents and fruits of the building, and Eduardo continued to hand them over to Rodolfo.

Thus, on May 17, 1999, Nicolas filed a Complaint<sup>6</sup> against Rodolfo and Eduardo before the RTC of Dagupan City and docketed as Civil Case No. 99-02971-D. Nicolas prayed that Eduardo be ordered to render an accounting of all the transactions over the Diego Building; that Eduardo and Rodolfo be ordered to deliver to Nicolas his share in the rents; and that Eduardo and Rodolfo be held solidarily liable for attorney's fees and litigation expenses.

Rodolfo and Eduardo filed their Answer with Counterclaim<sup>7</sup> for damages and attorney's fees. They argued that Nicolas had no more claim in the rents in the Diego Building since he had already sold his share to Rodolfo. Rodolfo admitted having remitted only ₱250,000.00 to Nicolas. He asserted that he would pay the balance of the purchase price to Nicolas only after the latter shall have executed a deed of absolute sale.

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<sup>2</sup> *Rollo*, pp. 8-5.

<sup>3</sup> *Id.* at 46-62; penned by Presiding Justice Ruben T. Reyes and concurred in by Associate Justices Regalado E. Maambong and Celia C. Librea-Leagogo.

<sup>4</sup> *Id.* at 63-64; penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Regalado E. Maambong and Estela M. Perlas-Bernabe (now a member of this Court).

<sup>5</sup> *Id.* at 73-78; penned by Acting Presiding Judge Emma M. Torio.

<sup>6</sup> *Records*, pp. 1-4.

<sup>7</sup> *Id.* at 22-25.

### ***Ruling of the Regional Trial Court***

After trial on the merits, or on April 19, 2005, the trial court rendered its Decision<sup>8</sup> dismissing Civil Case No. 99-02971-D for lack of merit and ordering Nicolas to execute a deed of absolute sale in favor of Rodolfo upon payment by the latter of the ₱250,000.00 balance of the agreed purchase price. It made the following interesting pronouncement:

It is undisputed that plaintiff (Nicolas) is one of the co-owners of the Diego Building, x x x. As a co-owner, he is entitled to [his] share in the rentals of the said building. However, plaintiff [had] already sold his share to defendant Rodolfo Diego in the amount of ₱500,000.00 and in fact, [had] already received a partial payment in the purchase price in the amount of ₱250,000.00. **Defendant Eduardo Diego testified that as per agreement, verbal, of the plaintiff and defendant Rodolfo Diego, the remaining balance of ₱250,000.00 will be paid upon the execution of the Deed of Absolute Sale.** It was in the year 1997 when plaintiff was being required by defendant Eduardo Diego to sign the Deed of Absolute Sale. Clearly, defendant Rodolfo Diego was not yet in default as the plaintiff claims which cause [sic] him to refuse to sign [sic] document. The contract of sale was already perfected as early as the year 1993 when plaintiff received the partial payment, hence, he cannot unilaterally revoke or rescind the same. From then on, plaintiff has, therefore, ceased to be a co-owner of the building and is no longer entitled to the fruits of the Diego Building.

Equity and fairness dictate that defendant [sic] has to execute the necessary document regarding the sale of his share to defendant Rodolfo Diego. Correspondingly, defendant Rodolfo Diego has to perform his obligation as per their verbal agreement by paying the remaining balance of ₱250,000.00.<sup>9</sup>

To summarize, the trial court ruled that as early as 1993, Nicolas was no longer entitled to the fruits of his aliquot share in the Diego Building because he had “ceased to be a co-owner” thereof. The trial court held that when Nicolas received the ₱250,000.00 downpayment, a “contract of sale” was perfected. Consequently, Nicolas is obligated to convey such share to Rodolfo, without right of rescission. Finally, the trial court held that the ₱250,000.00 balance from Rodolfo will only be due and demandable when Nicolas executes an absolute deed of sale.

### ***Ruling of the Court of Appeals***

Nicolas appealed to the CA which sustained the trial court’s Decision *in toto*. The CA held that since there was a perfected contract of sale between Nicolas and Rodolfo, the latter may compel the former to execute the proper sale document. Besides, Nicolas’s insistence that he has since rescinded their

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<sup>8</sup> *Rollo*, pp. 73-78.

<sup>9</sup> *Id.* at 77. Emphasis supplied.

agreement in 1997 proved the existence of a perfected sale. It added that Nicolas could not validly rescind the contract because: “1) Rodolfo ha[d] already made a partial payment; 2) Nicolas ha[d] already partially performed his part regarding the contract; and 3) Rodolfo opposes the rescission.”<sup>10</sup>

The CA then proceeded to rule that since no period was stipulated within which Rodolfo shall deliver the balance of the purchase price, it was incumbent upon Nicolas to have filed a civil case to fix the same. But because he failed to do so, Rodolfo cannot be considered to be in delay or default.

Finally, the CA made another interesting pronouncement, that by virtue of the agreement Nicolas entered into with Rodolfo, he had already transferred his ownership over the subject property and as a consequence, Rodolfo is legally entitled to collect the fruits thereof in the form of rentals. Nicolas’ remaining right is to demand payment of the balance of the purchase price, provided that he first executes a deed of absolute sale in favor of Rodolfo.

Nicolas moved for reconsideration but the same was denied by the CA in its Resolution dated October 3, 2007.

Hence, this Petition.

### **Issues**

The Petition raises the following errors that must be rectified:

#### **I**

THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT THERE WAS NO PERFECTED CONTRACT OF SALE BETWEEN PETITIONER NICOLAS DIEGO AND RESPONDENT RODOLFO DIEGO OVER NICOLAS’S SHARE OF THE BUILDING BECAUSE THE SUSPENSIVE CONDITION HAS NOT YET BEEN FULFILLED.

#### **II**

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE CONTRACT OF SALE BETWEEN PETITIONER AND RESPONDENT RODOLFO DIEGO REMAINS LEGALLY BINDING AND IS NOT RESCINDED GIVING MISPLACED RELIANCE ON PETITIONER NICOLAS’ STATEMENT THAT THE SALE HAS NOT YET BEEN REVOKED.

#### **III**

THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT PETITIONER NICOLAS DIEGO ACTED LEGALLY AND

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<sup>10</sup> Id. at 56.

CORRECTLY WHEN HE UNILATERALLY RESCINDED AND REVOKED HIS AGREEMENT OF SALE WITH RESPONDENT RODOLFO DIEGO CONSIDERING RODOLFO'S MATERIAL, SUBSTANTIAL BREACH OF THE CONTRACT.

IV

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER HAS NO MORE RIGHTS OVER HIS SHARE IN THE BUILDING, DESPITE THE FACT THAT THERE WAS AS YET NO PERFECTED CONTRACT OF SALE BETWEEN PETITIONER NICOLAS DIEGO AND RODOLFO DIEGO AND THERE WAS YET NO TRANSFER OF OWNERSHIP OF PETITIONER'S SHARE TO RODOLFO DUE TO THE NON-FULFILLMENT BY RODOLFO OF THE SUSPENSIVE CONDITION UNDER THE CONTRACT.

V

THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT RESPONDENT RODOLFO HAS UNJUSTLY ENRICHED HIMSELF AT THE EXPENSE OF PETITIONER BECAUSE DESPITE NOT HAVING PAID THE BALANCE OF THE PURCHASE PRICE OF THE SALE, THAT RODOLFO HAS NOT YET ACQUIRED OWNERSHIP OVER THE SHARE OF PETITIONER NICOLAS, HE HAS ALREADY BEEN APPROPRIATING FOR HIMSELF AND FOR HIS PERSONAL BENEFIT THE SHARE OF THE INCOME OF THE BUILDING AND THE PORTION OF THE BUILDING ITSELF WHICH WAS DUE TO AND OWNED BY PETITIONER NICOLAS.

VI

THE HONORABLE COURT OF APPEALS ERRED IN NOT AWARDING ACTUAL DAMAGES, ATTORNEY'S FEES AND LITIGATION EXPENSES TO THE PETITIONER DESPITE THE FACT THAT PETITIONER'S RIGHTS HAD BEEN WANTONLY VIOLATED BY THE RESPONDENTS.<sup>11</sup>

***Petitioner's Arguments***

In his Petition, the Supplement<sup>12</sup> thereon, and Reply,<sup>13</sup> Nicolas argues that, contrary to what the CA found, there was no perfected contract of sale even though Rodolfo had partially paid the price; that in the absence of the third element in a sale contract – the price – there could be no perfected sale; that failing to pay the required price in full, Nicolas had the right to rescind the agreement as an unpaid seller.

Nicolas likewise takes exception to the CA finding that Rodolfo was not in default or delay in the payment of the agreed balance for his (Nicolas's) failure to file a case to fix the period within which payment of the balance should be made.

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<sup>11</sup> Id. at 19-21.

<sup>12</sup> Id. at 204-224.

<sup>13</sup> Id. at 237-262.

He believes that Rodolfo's failure to pay within a reasonable time was a substantial and material breach of the agreement which gave him the right to unilaterally and extrajudicially rescind the agreement and be discharged of his obligations as seller; and that his repeated written demands upon Rodolfo to pay the balance granted him such rights.

Nicolas further claims that based on his agreement with Rodolfo, there was to be no transfer of title over his share in the building until Rodolfo has effected full payment of the purchase price, thus, giving no right to the latter to collect his share in the rentals.

Finally, Nicolas bewails the CA's failure to award damages, attorney's fees and litigation expenses for what he believes is a case of unjust enrichment at his expense.

### ***Respondents' Arguments***

Apart from echoing the RTC and CA pronouncements, respondents accuse the petitioner of "cheating" them, claiming that after the latter received the ₱250,000.00 downpayment, he "vanished like thin air and hibernated in the USA, he being an American citizen,"<sup>14</sup> only to come back claiming that the said amount was a mere loan.

They add that the Petition is a mere rehash and reiteration of the petitioner's arguments below, which are deemed to have been sufficiently passed upon and debunked by the appellate court.

### **Our Ruling**

The Court finds merit in the Petition.

***The contract entered into by Nicolas and Rodolfo was a contract to sell.***

**a) The stipulation to execute a deed of sale upon full payment of the purchase price is a unique and distinguishing characteristic of a contract to sell. It also shows that the vendor reserved title to the property until full payment.**

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<sup>14</sup> Id. at 226.

There is no dispute that in 1993, Rodolfo agreed to buy Nicolas's share in the Diego Building for the price of ₱500,000.00. There is also no dispute that of the total purchase price, Rodolfo paid, and Nicolas received, ₱250,000.00. Significantly, it is also not disputed that the parties agreed that the remaining amount of ₱250,000.00 would be paid after Nicolas shall have executed a deed of sale.

This stipulation, *i.e.*, to execute a deed of absolute sale upon full payment of the purchase price, is a unique and distinguishing characteristic of a **contract to sell**. In *Reyes v. Tuparan*,<sup>15</sup> this Court ruled that a stipulation in the contract, “[w]here the vendor promises to execute a deed of absolute sale upon the completion by the vendee of the payment of the price,” indicates that the parties entered into a **contract to sell**. According to this Court, this particular provision is tantamount to a reservation of ownership on the part of the vendor. Explicitly stated, the Court ruled that the agreement to execute a deed of sale upon full payment of the purchase price “shows that the vendors reserved title to the subject property until full payment of the purchase price.”<sup>16</sup>

In *Tan v. Benolirao*,<sup>17</sup> this Court, speaking through **Justice Brion**, ruled that the parties entered into a **contract to sell** as revealed by the following stipulation:

d) That in case, BUYER has complied with the terms and conditions of this contract, then the SELLERS shall execute and deliver to the BUYER the appropriate Deed of Absolute Sale;<sup>18</sup>

The Court further held that “[j]urisprudence has established that where the seller promises to execute a deed of absolute sale upon the completion by the buyer of the payment of the price, the contract is only a contract to sell.”<sup>19</sup>

b) The acknowledgement receipt signed by Nicolas as well as the contemporaneous acts of the parties show that they agreed on a contract to sell, not of sale. The absence of a formal deed of conveyance is indicative of a contract to sell.

In *San Lorenzo Development Corporation v. Court of Appeals*,<sup>20</sup> the facts show that spouses Miguel and Pacita Lu (Lu) sold a certain parcel of land to Pablo Babasanta (Pablo). After several payments, Pablo wrote Lu demanding “the

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<sup>15</sup> Supra note 1.

<sup>16</sup> Id. Emphasis supplied.

<sup>17</sup> G.R. No. 153820, October 16, 2009, 604 SCRA 36.

<sup>18</sup> Id. at 49.

<sup>19</sup> Id. Emphasis supplied.

<sup>20</sup> 490 Phil. 7 (2005).

execution of a final deed of sale in his favor so that he could effect full payment of the purchase price.”<sup>21</sup> To prove his allegation that there was a perfected contract of sale between him and Lu, Pablo presented a receipt signed by Lu acknowledging receipt of ₱50,000.00 as partial payment.<sup>22</sup>

However, when the case reached this Court, it was ruled that the transaction entered into by Pablo and Lu was only a **contract to sell**, not a contract of sale. The Court held thus:

The receipt signed by Pacita Lu merely states that she accepted the sum of fifty thousand pesos (₱50,000.00) from Babasanta as partial payment of 3.6 hectares of farm lot situated in Sta. Rosa, Laguna. While there is no stipulation that the seller reserves the ownership of the property until full payment of the price which is a distinguishing feature of a contract to sell, the subsequent acts of the parties convince us that **the Spouses Lu never intended to transfer ownership to Babasanta except upon full payment of the purchase price.**

Babasanta’s letter dated 22 May 1989 was quite telling. He stated therein that despite his repeated requests for the execution of the final deed of sale in his favor so that he could effect full payment of the price, Pacita Lu allegedly refused to do so. **In effect, Babasanta himself recognized that ownership of the property would not be transferred to him until such time as he shall have effected full payment of the price. Moreover, had the sellers intended to transfer title, they could have easily executed the document of sale in its required form simultaneously with their acceptance of the partial payment, but they did not. Doubtlessly, the receipt signed by Pacita Lu should legally be considered as a perfected contract to sell.**<sup>23</sup>

In the instant case, records show that Nicolas signed a mere receipt<sup>24</sup> acknowledging partial payment of ₱250,000.00 from Rodolfo. It states:

July 8, 1993

Received the amount of [₱250,000.00] for 1 share of Diego Building as partial payment for Nicolas Diego.

(signed)  
Nicolas Diego<sup>25</sup>

As we ruled in *San Lorenzo Development Corporation v. Court of Appeals*,<sup>26</sup> the parties could have executed a document of sale upon receipt of the partial payment but they did not. This is thus an indication that Nicolas did not intend to immediately transfer title over his share but only upon full payment of

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<sup>21</sup> Id. at 11.

<sup>22</sup> Id. at 18.

<sup>23</sup> Id. at 19. Emphases supplied.

<sup>24</sup> Records, p. 90.

<sup>25</sup> Id.

<sup>26</sup> Supra note 20.



the purchase price. Having thus reserved title over the property, the contract entered into by Nicolas is a contract to sell. In addition, Eduardo admitted that he and Rodolfo repeatedly asked Nicolas to sign the deed of sale<sup>27</sup> but the latter refused because he was not yet paid the full amount. As we have ruled in *San Lorenzo Development Corporation v. Court of Appeals*,<sup>28</sup> the fact that Eduardo and Rodolfo asked Nicolas to execute a deed of sale is a clear recognition on their part that the ownership over the property still remains with Nicolas. In fine, the totality of the parties' acts convinces us that Nicolas never intended to transfer the ownership over his share in the Diego Building until the full payment of the purchase price. Without doubt, the transaction agreed upon by the parties was a contract to sell, not of sale.

In *Chua v. Court of Appeals*,<sup>29</sup> the parties reached an impasse when the seller wanted to be first paid the consideration before a new transfer certificate of title (TCT) is issued in the name of the buyer. Contrarily, the buyer wanted to secure a new TCT in his name before paying the full amount. Their agreement was embodied in a receipt containing the following terms: "(1) the balance of ₱10,215,000.00 is payable on or before 15 July 1989; (2) the capital gains tax is for the account of x x x; and (3) if [the buyer] fails to pay the balance x x x the [seller] has the right to forfeit the earnest money x x x."<sup>30</sup> The case eventually reached this Court. In resolving the impasse, the Court, speaking through **Justice Carpio**, held that "[a] perusal of the Receipt shows that the true agreement between the parties was a contract to sell."<sup>31</sup> The Court noted that "the agreement x x x was embodied in a receipt rather than in a deed of sale, ownership not having passed between them."<sup>32</sup> The Court thus concluded that **"[t]he absence of a formal deed of conveyance is a strong indication that the parties did not intend immediate transfer of ownership, but only a transfer after full payment of the purchase price."**<sup>33</sup> Thus, the "true agreement between the parties was a contract to sell."<sup>34</sup>

In the instant case, the parties were similarly embroiled in an impasse. The parties' agreement was likewise embodied only in a receipt. Also, Nicolas did not want to sign the deed of sale unless he is fully paid. On the other hand, Rodolfo did not want to pay unless a deed of sale is duly executed in his favor. We thus say, pursuant to our ruling in *Chua v. Court of Appeals*<sup>35</sup> that the agreement between Nicolas and Rodolfo is a contract to sell.

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<sup>27</sup> See TSN, March 21, 2001, p. 22.

<sup>28</sup> Supra note 20.

<sup>29</sup> 449 Phil. 25 (2003).

<sup>30</sup> Id. at 40.

<sup>31</sup> Id. at 42.

<sup>32</sup> Id.

<sup>33</sup> Id. Emphasis supplied.

<sup>34</sup> Id. Emphasis supplied.

<sup>35</sup> Supra note 29.

This Court cannot subscribe to the appellate court's view that Nicolas should *first* execute a deed of absolute sale in favor of Rodolfo, before the latter can be compelled to pay the balance of the price. This is patently ridiculous, and goes against every rule in the book. This pronouncement virtually places the prospective seller in a contract to sell at the mercy of the prospective buyer, and sustaining this point of view would place all contracts to sell in jeopardy of being rendered ineffective by the act of the prospective buyers, who naturally would demand that the deeds of absolute sale be first executed before they pay the balance of the price. Surely, no prospective seller would accommodate.

In fine, **“the need to execute a deed of absolute sale upon completion of payment of the price generally indicates that it is a contract to sell, as it implies the reservation of title in the vendor until the vendee has completed the payment of the price.”**<sup>36</sup> In addition, “[a] stipulation reserving ownership in the vendor until full payment of the price is x x x typical in a contract to sell.”<sup>37</sup> Thus, contrary to the pronouncements of the trial and appellate courts, the parties to this case only entered into a contract to sell; as such title cannot legally pass to Rodolfo until he makes full payment of the agreed purchase price.

**c) Nicolas did not surrender or deliver title or possession to Rodolfo.**

Moreover, there could not even be a surrender or delivery of title or possession to the prospective buyer Rodolfo. This was made clear by the nature of the agreement, by Nicolas's repeated demands for the return of all rents unlawfully and unjustly remitted to Rodolfo by Eduardo, and by Rodolfo and Eduardo's repeated demands for Nicolas to execute a deed of sale which, as we said before, is a recognition on their part that ownership over the subject property still remains with Nicolas.

Significantly, when Eduardo testified, he claimed to be knowledgeable about the terms and conditions of the transaction between Nicolas and Rodolfo. However, aside from stating that out of the total consideration of ₱500,000.00, the amount of ₱250,000.00 had already been paid while the remaining ₱250,000.00 would be paid after the execution of the Deed of Sale, he never testified that there was a stipulation as regards delivery of title or possession.<sup>38</sup>

It is also quite understandable why Nicolas belatedly demanded the payment of the rentals. Records show that the structural integrity of the Diego Building was severely compromised when an earthquake struck Dagupan City in

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<sup>36</sup> *Heirs of Cayetano Pangan and Consuelo Pangan v. Perreras*, G.R. No. 157374, August 27, 2009, 597 SCRA 253, 262. Emphasis supplied.

<sup>37</sup> *Id.*

<sup>38</sup> See TSN, March 21, 2001, pp. 12-21.

1990.<sup>39</sup> In order to rehabilitate the building, the co-owners obtained a loan from a bank.<sup>40</sup> Starting May 1994, the property was leased to third parties and the rentals received were used to pay off the loan.<sup>41</sup> It was only in 1996, or after payment of the loan that the co-owners started receiving their share in the rentals.<sup>42</sup> During this time, Nicolas was in the USA but immediately upon his return, he demanded for the payment of his share in the rentals which Eduardo remitted to Rodolfo. Failing which, he filed the instant Complaint. To us, this bolsters our findings that Nicolas did not intend to immediately transfer title over the property.

It must be stressed that it is anathema in a contract to sell that the prospective seller should deliver title to the property to the prospective buyer pending the latter's payment of the price in full. It certainly is absurd to assume that in the absence of stipulation, a buyer under a contract to sell is granted ownership of the property even when he has not paid the seller in full. If this were the case, then prospective sellers in a contract to sell would in all likelihood not be paid the balance of the price.

This *ponente* has had occasion to rule that “[a] contract to sell is one where the prospective seller reserves the transfer of title to the prospective buyer until the happening of an event, such as full payment of the purchase price. What the seller obliges himself to do is to sell the subject property only when the entire amount of the purchase price has already been delivered to him. ‘In other words, the full payment of the purchase price partakes of a suspensive condition, the non-fulfillment of which prevents the obligation to sell from arising and thus, ownership is retained by the prospective seller without further remedies by the prospective buyer.’ It does not, by itself, transfer ownership to the buyer.”<sup>43</sup>

***The contract to sell is terminated or cancelled.***

Having established that the transaction was a contract to sell, what happens now to the parties' agreement?

The remedy of rescission is not available in contracts to sell.<sup>44</sup> As explained in *Spouses Santos v. Court of Appeals*:<sup>45</sup>

In view of our finding in the present case that the agreement between the parties is a contract to sell, it follows that the appellate court erred when it

<sup>39</sup> See Memorandum for Defendants, p. 3, records, p. 40.

<sup>40</sup> Id. at 5; id. at 149.

<sup>41</sup> See Report of Daroya Accounting Office, pp. 1-2; id. at 76-77.

<sup>42</sup> Id. at 2; id. at 77.

<sup>43</sup> *Luzon Development Bank v. Enriquez*, G.R. Nos. 168646 & 168666, January 12, 2011, 639 SCRA 332, 351.

<sup>44</sup> See *Tan v. Benolirao*, supra note 17 at 53; *Chua v. Court of Appeals*, supra note 29 at 43-44.

<sup>45</sup> 391 Phil. 739 (2000).

decreed that a judicial rescission of said agreement was necessary. This is because there was no rescission to speak of in the first place. As we earlier pointed out, in a contract to sell, title remains with the vendor and does not pass on to the vendee until the purchase price is paid in full. Thus, in a contract to sell, the payment of the purchase price is a positive suspensive condition. Failure to pay the price agreed upon is not a mere breach, casual or serious, but a situation that prevents the obligation of the vendor to convey title from acquiring an obligatory force. This is entirely different from the situation in a contract of sale, where non-payment of the price is a negative resolutive condition. The effects in law are not identical. In a contract of sale, the vendor has lost ownership of the thing sold and cannot recover it, unless the contract of sale is rescinded and set aside. In a contract to sell, however, the vendor remains the owner for as long as the vendee has not complied fully with the condition of paying the purchase price. If the vendor should eject the vendee for failure to meet the condition precedent, he is *enforcing the contract and not rescinding it*. When the petitioners in the instant case repossessed the disputed house and lot for failure of private respondents to pay the purchase price in full, they were merely enforcing the contract and not rescinding it. As petitioners correctly point out, the Court of Appeals erred when it ruled that petitioners should have judicially rescinded the contract pursuant to Articles 1592 and 1191 of the Civil Code. Article 1592 speaks of non-payment of the purchase price as a resolutive condition. It does not apply to a contract to sell. As to Article 1191, it is subordinated to the provisions of Article 1592 when applied to sales of immovable property. Neither provision is applicable in the present case.<sup>46</sup>

Similarly, we held in *Chua v. Court of Appeals*<sup>47</sup> that “Article 1592 of the Civil Code permits the buyer to pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by notarial act. However, Article 1592 does not apply to a contract to sell where the seller reserves the ownership until full payment of the price,”<sup>48</sup> as in this case.

Applying the above jurisprudence, we hold that when Rodolfo failed to fully pay the purchase price, the contract to sell was deemed terminated or cancelled.<sup>49</sup> As we have held in *Chua v. Court of Appeals*,<sup>50</sup> “[s]ince the agreement x x x is a mere contract to sell, the full payment of the purchase price partakes of a suspensive condition. **The non-fulfillment of the condition prevents the obligation to sell from arising and ownership is retained by the seller without further remedies by the buyer.**” Similarly, we held in *Reyes v. Tuparan*<sup>51</sup> that “petitioner’s obligation to sell the subject properties becomes demandable only upon the happening of the positive suspensive condition, which is the respondent’s full payment of the purchase price. **Without respondent’s full payment, there can be no breach of contract to speak of because petitioner**

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<sup>46</sup> Id. at 751-752. Italics in the original.

<sup>47</sup> Supra note 29.

<sup>48</sup> Id. at 43-44.

<sup>49</sup> See *Tan v. Benolirao*, supra note 17 at 54.

<sup>50</sup> Supra note 29 at 43. Emphasis supplied.

<sup>51</sup> Supra note 1 at 296.

**has no obligation yet to turn over the title.** Respondent's failure to pay ~~in full~~ the purchase price in full is not the breach of contract contemplated under Article 1191 of the New Civil Code but rather just an event that prevents the petitioner from being bound to convey title to respondent." Otherwise stated, Rodolfo has no right to compel Nicolas to transfer ownership to him because he failed to pay in full the purchase price. Correlatively, Nicolas has no obligation to transfer his ownership over his share in the Diego Building to Rodolfo.<sup>52</sup>

Thus, it was erroneous for the CA to rule that Nicolas should have filed a case to fix the period for Rodolfo's payment of the balance of the purchase price. It was not Nicolas's obligation to compel Rodolfo to pay the balance; it was Rodolfo's duty to remit it.

It would appear that after Nicolas refused to sign the deed as there was yet no full payment, Rodolfo and Eduardo hired the services of the Daroya Accounting Office "for the purpose of estimating the amount to which [Nicolas] still owes [Rodolfo] as a consequence of the unconsummated verbal agreement regarding the former's share in the co-ownership of [Diego Building] in favor of the latter."<sup>53</sup> According to the accountant's report, after Nicolas revoked his agreement with Rodolfo due to non-payment, the downpayment of ₱250,000.00 was considered a loan of Nicolas from Rodolfo.<sup>54</sup> The accountant opined that the ₱250,000.00 should earn interest at 18%.<sup>55</sup> Nicolas however objected as regards the imposition of interest as it was not previously agreed upon. Notably, the contents of the accountant's report were not disputed or rebutted by the respondents. In fact, it was stated therein that "[a]ll the bases and assumptions made particularly in the fixing of the applicable rate of interest have been discussed with [Eduardo]."<sup>56</sup>

We find it irrelevant and immaterial that Nicolas described the termination or cancellation of his agreement with Rodolfo as one of rescission. Being a layman, he is understandably not adept in legal terms and their implications. Besides, this Court should not be held captive or bound by the conclusion reached by the parties. The proper characterization of an action should be based on what the law says it to be, not by what a party believed it to be. "A contract is what the law defines it to be x x x and not what the contracting parties call it."<sup>57</sup>

On the other hand, the respondents' additional submission – that Nicolas cheated them by "vanishing and hibernating" in the USA after receiving Rodolfo's ₱250,000.00 downpayment, only to come back later and claim that the amount he

<sup>52</sup> See *Chua v. Court of Appeals*, supra note 29 at 51-52.

<sup>53</sup> See Report of the Daroya Accounting Office, p. 1, records, p. 76.

<sup>54</sup> Id. at 2; id. at 77,

<sup>55</sup> Id.; id.

<sup>56</sup> Id.; id.

<sup>57</sup> *Tan v. Benolirao*, supra note 17 at 48.

received was a mere loan – cannot be believed. How the respondents could have been cheated or disadvantaged by Nicolas’s leaving is beyond comprehension. If there was anybody who benefited from Nicolas’s perceived “hibernation”, it was the respondents, for they certainly had free rein over Nicolas’s interest in the Diego Building. Rodolfo put off payment of the balance of the price, yet, with the aid of Eduardo, collected and appropriated for himself the rents which belonged to Nicolas.

***Eduardo is solidarily liable with Rodolfo as regards the share of Nicolas in the rents.***

For his complicity, bad faith and abuse of authority as the Diego Building administrator, Eduardo must be held solidarily liable with Rodolfo for all that Nicolas should be entitled to from 1993 up to the present, or in respect of actual damages suffered in relation to his interest in the Diego Building. Eduardo was the primary cause of Nicolas’s loss, being directly responsible for making and causing the wrongful payments to Rodolfo, who received them under obligation to return them to Nicolas, the true recipient. As such, Eduardo should be principally responsible to Nicolas as well. Suffice it to state that every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith; and every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.<sup>58</sup>

***Attorney’s fees and other costs.***

“Although attorney’s fees are not allowed in the absence of stipulation, the court can award the same when the defendant’s act or omission has compelled the plaintiff to incur expenses to protect his interest or where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff’s plainly valid, just and demandable claim.”<sup>59</sup> In the instant case, it is beyond cavil that petitioner was constrained to file the instant case to protect his interest because of respondents’ unreasonable and unjustified refusal to render an accounting and to remit to the petitioner his rightful share in rents and fruits in the Diego Building. Thus, we deem it proper to award to petitioner attorney’s fees in the amount of ₱50,000.00,<sup>60</sup> as well as litigation expenses in the amount of ₱20,000.00 and the sum of ₱1,000.00 for each court appearance by his lawyer or lawyers, as prayed for.

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<sup>58</sup> CIVIL CODE, Articles 19 and 20.

<sup>59</sup> *Alcatel Philippines, Inc. v. I. M. Bongar & Co., Inc.*, G.R. No. 182946, October 5, 2011, 658 SCRA 741, 743-744.

<sup>60</sup> *Estores v. Supangan*, G.R. No. 175139, April 18, 2012, 670 SCRA 95, 108-109.

**WHEREFORE**, premises considered, the Petition is **GRANTED**. The June 29, 2007 Decision and October 3, 2007 Resolution of the Court of Appeals in CA-G.R. CV No. 86512, and the April 19, 2005 Decision of the Dagupan City Regional Trial Court, Branch 40 in Civil Case No. 99-02971-D, are hereby **ANNULLED and SET ASIDE**.

The Court further decrees the following:

1. The oral contract to sell between petitioner Nicolas P. Diego and respondent Rodolfo P. Diego is **DECLARED** terminated/cancelled;

2. Respondents Rodolfo P. Diego and Eduardo P. Diego are **ORDERED** to surrender possession and control, as the case may be, of Nicolas P. Diego's share in the Diego Building. Respondents are further commanded to return or surrender to the petitioner the documents of title, receipts, papers, contracts, and all other documents in any form or manner pertaining to the latter's share in the building, which are deemed to be in their unauthorized and illegal possession;

3. Respondents Rodolfo P. Diego and Eduardo P. Diego are **ORDERED** to immediately render an accounting of all the transactions, from the period beginning 1993 up to the present, pertaining to Nicolas P. Diego's share in the Diego Building, and thereafter commanded to jointly and severally remit to the petitioner all rents, monies, payments and benefits of whatever kind or nature pertaining thereto, which are hereby deemed received by them during the said period, and made to them or are due, demandable and forthcoming during the said period and from the date of this Decision, with legal interest from the filing of the Complaint;

4. Respondents Rodolfo P. Diego and Eduardo P. Diego are **ORDERED**, immediately and without further delay upon receipt of this Decision, to solidarily pay the petitioner attorney's fees in the amount of ₱50,000.00; litigation expenses in the amount of ₱20,000.00 and the sum of ₱1,000.00 per counsel for each court appearance by his lawyer or lawyers;

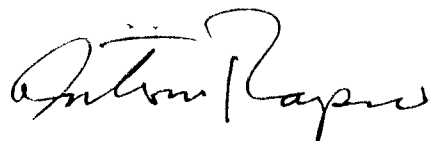
5. The payment of ₱250,000.00 made by respondent Rodolfo P. Diego, with legal interest from the filing of the Complaint, shall be **APPLIED**, by way of compensation, to his liabilities to the petitioner and to answer for all damages and other awards and interests which are owing to the latter under this Decision; and

6. Respondents' counterclaim is **DISMISSED**.

**SO ORDERED.**

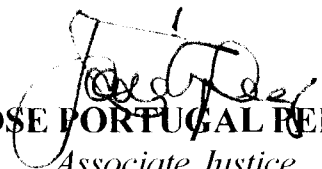
  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*

WE CONCUR:

  
**ANTONIO T. CARPIO**  
*Associate Justice*  
*Chairperson*

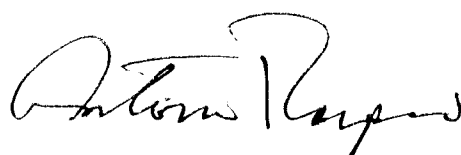
  
**ARTURO D. BRION**  
*Associate Justice*

  
**MARTIN S. VILLARAMA, JR.**  
*Associate Justice*

  
**JOSE PORTUGAL PEREZ**  
*Associate Justice*

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ANTONIO T. CARPIO**  
*Associate Justice*  
*Chairperson*



**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**MARIA LOURDES P. A. SERENO***Chief Justice*