



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

FREDERICK VENTURA,  
MARITES VENTURA-ROXAS,  
and PHILIP VENTURA (HEIRS  
OF DECEASED DOLORES C.  
VENTURA),

Petitioners,

- versus -

HEIRS OF SPOUSES EUSTACIO  
T. ENDAYA and TRINIDAD L.  
ENDAYA, namely, TITUS L.  
ENDAYA, ENRICO L. ENDAYA,  
and JOSEPHINE ENDAYA-  
BANTUG,<sup>1</sup>

Respondents.

G.R. No. 190016

Present:

CARPIO, J., Chairperson,  
BRION,  
DEL CASTILLO,  
PEREZ, and  
PERLAS-BERNABE, JJ.

Promulgated:

OCT 02 2013

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DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*<sup>2</sup> is the Decision<sup>3</sup> dated August 18, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 68465 which reversed and set aside the Decision<sup>4</sup> dated August 7, 2000 of the Regional Trial Court of Parañaque City, Branch 258 (RTC) in Civil Case No. 96-0500, dismissing petitioners' complaint for specific performance seeking to compel respondents to execute a deed of sale over the properties subject of this case.

<sup>1</sup> Deceased spouses Eustacio T. Endaya and Trinidad L. Endaya were substituted by their children, Titus L. Endaya, Enrico L. Endaya, and Josephine Endaya-Bantug. See Omnibus Motion i. For Substitution of Parties; and ii. For leave to File and Admit Comment dated January 15, 2010 (*rollo*, pp. 277-324). See also Court's Resolution dated July 26, 2010 (*id.* at 373).

<sup>2</sup> *Id.* at 3-31.

<sup>3</sup> *Id.* at 39-45. Penned by Associate Justice Santiago Javier Ranada, with Associate Justices Portia Aliño-Hormachuelos and Amelita G. Tolentino, concurring.

<sup>4</sup> *Id.* at 191-199. Penned by Judge Raul E. De Leon.

### The Facts

On June 29, 1981, Dolores Ventura (Dolores) entered into a Contract to Sell<sup>5</sup> (contract to sell) with spouses Eustacio and Trinidad Endaya (Sps. Endaya) for the purchase of two parcels of land covered by Transfer Certificates of Title (TCT) Nos. 392225<sup>6</sup> and (343392) S-67975<sup>7</sup> (subject properties), denominated as Lots 8 and 9, Block 3, situated in Marian Road II, Marian Park<sup>8</sup> (now Barangay San Martin de Porres),<sup>9</sup> Parañaque City, Metro Manila.

The contract to sell provides that the purchase price of ₱347,760.00 shall be paid by Dolores in the following manner: (a) downpayment of ₱103,284.00 upon execution of the contract; and (b) the balance of ₱244,476.00 within a 15-year period (payment period), plus 12% interest per annum (p.a.) on the outstanding balance and 12% interest p.a. on arrearages. It further provides that all payments made shall be applied in the following order: *first*, to the reimbursement of real estate taxes and other charges; *second*, to the interest accrued to the date of payment; *third*, to the amortization of the principal obligation; and *fourth*, to the payment of any other accessory obligation subsequently incurred by the owner in favor of the buyer. It likewise imposed upon Dolores the obligation to pay the real property taxes over the subject properties, or to reimburse Sps. Endaya for any tax payments made by them, plus 1% interest per month. Upon full payment of the stipulated consideration, Sps. Endaya undertook to execute a final deed of sale and transfer ownership over the same in favor of Dolores.<sup>10</sup>

Meanwhile, Dolores was placed in possession of the subject properties and allowed to erect a building thereon.<sup>11</sup> However, on April 10, 1992, before the payment period expired, Dolores passed away.<sup>12</sup>

On November 28, 1996, Dolores' children, Frederick Ventura, Marites Ventura-Roxas, and Philip Ventura (petitioners), filed before the RTC a Complaint<sup>13</sup> and, thereafter, an Amended Complaint<sup>14</sup> for specific performance, seeking to compel Sps. Endaya to execute a deed of sale over the subject properties. In this regard, they averred that due to the close friendship between their parents and Sps. Endaya, the latter did not require

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<sup>5</sup> Id. at 65-68.

<sup>6</sup> In the name of Rafael Lucido who is married to Cirila E. Lucido (records, Vol. 1, p. 432). The said title was cancelled on December 22, 1993 with the issuance of TCT No. 77366 in the name of respondent Eustacio T. Endaya (id. at 433).

<sup>7</sup> In the name of respondent Eustacio T. Endaya; id. at 434-435.

<sup>8</sup> *Rollo*, p. 72.

<sup>9</sup> Created under Presidential Decree No. 1324, entitled "Creating Barangay San Martin De Porres In The Municipality Of Parañaque, Metro-Manila," dated April 3, 1978.

<sup>10</sup> *Rollo*, pp. 65-68.

<sup>11</sup> Id. at 59.

<sup>12</sup> Id. at 175. See Certificate of Death.

<sup>13</sup> Id. at 46-49.

<sup>14</sup> Id. at 57-62. Dated February 11, 1997.

the then widowed Dolores to pay the downpayment stated in the contract to sell and, instead, allowed her to pay amounts as her means would permit. The payments were made in cash as well as in kind,<sup>15</sup> and the same were recorded by respondent Trinidad herself in a passbook<sup>16</sup> given to Dolores to evidence the receipt of said payments. As of June 15, 1996, the total payments made by Dolores and petitioners amounted to ₱952,152.00, which is more than the agreed purchase price of ₱347,760.00, including the 12% interest p.a. thereon computed on the outstanding balance.<sup>17</sup> However, when petitioners demanded<sup>18</sup> the execution of the corresponding deed of sale, Sps. Endaya refused.

For their part, Sps. Endaya filed their Answer,<sup>19</sup> admitting the execution and genuineness of the contract to sell and the passbook. However, they countered that Dolores did not pay the stipulated downpayment and remitted only a total of 22 installments. After her death in 1992, petitioners no longer remitted any installment. Sps. Endaya also averred that prior to Dolores' death, the parties agreed to a restructuring of the contract to sell whereby Dolores agreed to give a "bonus" of ₱265,673.93 and to pay interest at the increased rate of 24% p.a. on the outstanding balance. They further claimed that in April 1996, when the balance of the purchase price stood at ₱1,699,671.69, a final restructuring of the contract to sell was agreed with petitioners, fixing the obligation at ₱3,000,000.00. Thereafter, the latter paid a total of ₱380,000.00 on two separate occasions,<sup>20</sup> leaving a balance of ₱2,620,000.00. In any event, Sps. Endaya pointed out that the automatic cancellation clause under the foregoing contract rendered the same cancelled as early as 1981 with Dolores' failure to make a downpayment and to faithfully pay the installments;<sup>21</sup> hence, petitioners' complaint for specific performance must fail. In addition, Sps. Endaya interposed a counterclaim for the alleged unpaid balance of ₱2,620,000.00, plus damages, attorney's fees and costs of suit.<sup>22</sup>

In their Reply with Answer to Counterclaim,<sup>23</sup> petitioners denied the existence of any restructuring of the contract to sell, invoking<sup>24</sup> the Dead Man's Statute<sup>25</sup> and the Statute of Frauds.<sup>26</sup> In turn, Sps. Endaya filed a

<sup>15</sup> Petitioners alleged that payments made by Dolores in kind were all valued by Trinidad herself; see Amended Complaint; id. at 58.

<sup>16</sup> Id. at 69-71.

<sup>17</sup> Id. at 59.

<sup>18</sup> Id. at 75. Letter dated June 28, 1996.

<sup>19</sup> Id. at 79-93. Dated April 3, 1997.

<sup>20</sup> Covered by Philippine National Bank Manager's Checks dated April 29, 1996 and June 5, 1996 in the amounts of ₱200,00.00 and ₱180,000.00, respectively; id. at 173.

<sup>21</sup> Id. at 87-90.

<sup>22</sup> Id. at 90-92.

<sup>23</sup> Id. at 114-121. Dated May 6, 1997.

<sup>24</sup> Id. at 117.

<sup>25</sup> Section 23, Rule 130 of the Rules of Court provides:

Sec. 23. *Disqualification by reason of death or insanity of adverse party.* — Parties or assignors of parties to a case, or persons in whose behalf a case is prosecuted, against an executor or administrator or other representative of a deceased person, or against a person of unsound mind, upon a claim or demand against the estate of such deceased person or against such person of unsound mind, cannot testify as to any matter of fact occurring before the death of such deceased person or before such person became of unsound mind.

Rejoinder,<sup>27</sup> challenging the inapplicability of the foregoing principles since the case was not filed against an estate or an administrator of an estate, and in view of the partial performance of the contract to sell.<sup>28</sup>

While the oral depositions of Sps. Endaya were taken at the 4<sup>th</sup> Municipal Circuit Trial Court of Malvar-Balete, Batangas on account of their frailty and old age, they, however, did not make a formal offer of their depositions and documentary evidence. Hence, the case was submitted for decision on the basis of the petitioners' evidence.<sup>29</sup>

### **The RTC Ruling**

In a Decision<sup>30</sup> dated August 7, 2000, the RTC found that petitioners were able to prove by a preponderance of evidence the fact of full payment of the purchase price for the subject properties.<sup>31</sup> As such, it ordered Sps. Endaya to execute a deed of absolute sale covering the sale of the subject properties in petitioners' favor and to pay them attorney's fees and costs of suit.<sup>32</sup> Dissatisfied, Sps. Endaya elevated the matter to the CA.

### **The CA Ruling and Subsequent Proceedings**

In a Decision<sup>33</sup> dated August 18, 2006 (August 18, 2006 Decision), the CA reversed and set aside the RTC ruling. It found that petitioners were not able to show that they fully complied with their obligations under the contract to sell. It observed that aside from the payment of the purchase price and 12% interest p.a. on the outstanding balance, the contract to sell imposed upon petitioners the obligations to pay 12% interest p.a. on the arrears and to reimburse Sps. Endaya the amount of the pertinent real estate taxes due on the subject properties, which the former, however, totally disregarded as shown in their summary of payments.<sup>34</sup>

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<sup>26</sup> Article 1403(2)(e) of the Civil Code provides in part:

Art. 1403. The following contracts are unenforceable, unless they are ratified:

x x x x

(2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum, thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:

x x x x

(e) An agreement of the leasing for a longer period than one year, or for the sale of real property or of an interest therein;

x x x x

<sup>27</sup> *Rollo*, pp. 122-128. Filed on May 30, 1997.

<sup>28</sup> *Id.* at 124.

<sup>29</sup> See RTC Decision dated August 7, 2000; *id.* at 197.

<sup>30</sup> *Id.* at 191-199.

<sup>31</sup> *Id.* at 197.

<sup>32</sup> *Id.* at 199.

<sup>33</sup> *Id.* at 39-45.

<sup>34</sup> *Id.* at 44.

Meanwhile, counsel for petitioners, Atty. German A. Gineta, passed away on June 12, 2006,<sup>35</sup> hence, the notice of the August 18, 2006 Decision sent to him was returned unserved.<sup>36</sup> On the other hand, the notice sent to petitioners at No. 2, Barangay San Martin de Porres, Parañaque City, was likewise returned unserved for the reason “insufficient address.”<sup>37</sup> Nonetheless, the CA deemed the service of the said notice to them as valid and complete as of March 9, 2007 pursuant to Section 8,<sup>38</sup> Rule 13 of the Rules of Court (Rules). Accordingly, it directed<sup>39</sup> the Division Clerk of Court to issue the corresponding Entry of Judgment. An Entry of Judgment<sup>40</sup> was, thus, made in the CA Book of Entries of Judgments certifying that the August 18, 2006 Decision became final and executory on March 25, 2007. The records were thereafter remanded<sup>41</sup> to the RTC.

In July 2009, respondent Titus Endaya, heir of Sps. Endaya,<sup>42</sup> demanded<sup>43</sup> petitioners to vacate the subject properties, which they refused.

On November 10, 2009, petitioners filed the instant petition invoking the benevolence of the Court to set aside the CA’s August 18, 2006 Decision and, instead, reinstate the RTC Decision in the interest of substantial justice. They claimed that they had no knowledge of the demise of their counsel; therefore, they were unable to file a timely motion for reconsideration before the CA or the proper petition before the Court. Further, they contend that they have proven full payment of the purchase price within the payment period as required by the contract to sell.

For their part, the heirs of Sps. Endaya (respondents) objected<sup>44</sup> to the belated filing of the petition long after the said CA Decision had lapsed into finality, especially as the petition raised factual issues that are improper in a petition for review on *certiorari* under Rule 45 of the Rules. In any case, they countered that the CA correctly held that petitioners failed to fully comply with their obligations under the contract to sell; thus, respondents are under no obligation to execute any deed of sale over the subject properties in favor of petitioners.

On September 22, 2010, the Court gave due course to the petition and required the parties to file their respective memoranda,<sup>45</sup> which they duly submitted.

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<sup>35</sup> See Certificate of Death; *id.* at 254.

<sup>36</sup> For the reason “deceased”; *CA rollo*, p. 77.

<sup>37</sup> *Id.* at 87.

<sup>38</sup> Sec. 8. *Substituted service*. – If service of pleadings, motions, notices, resolutions, orders and other papers cannot be made under the two preceding sections, the office and place of residence of the party or his counsel being unknown, **service may be made by delivering the copy to the clerk of court, with proof of failure of both personal service and service by mail.** The service is complete at the time of such delivery. (Emphasis supplied)

<sup>39</sup> See Resolution dated August 23, 2007; *CA rollo*, p. 89.

<sup>40</sup> *Rollo*, p. 330.

<sup>41</sup> *Id.* at 331.

<sup>42</sup> Records show that Trinidad passed away on January 31, 2002, while Eustacio died on October 23, 2003; *id.* at 332-333.

<sup>43</sup> Mentioned in the final demand letter dated August 23, 2009; *id.* at 252-253.

<sup>44</sup> See Comment (On Petition for Review on *Certiorari*) dated October 27, 2009; *id.* at 285-326.

<sup>45</sup> *Id.* at 400.

### The Issues Before the Court

The principal issues in this case are: (a) whether or not petitioners' right to appeal before the Court should be upheld; and (b) whether or not respondents should execute a deed of sale over the subject properties in favor of petitioners.

### The Court's Ruling

The petition is partly meritorious.

Anent the first issue, it is observed that the CA erroneously sent the notice of the assailed August 18, 2006 Decision to petitioners at **No. 2**, Barangay San Martin de Porres, Parañaque City, instead of their address of record, *i.e.*, **Marian Road 2**, Brgy. San Martin de Porres, Parañaque, Metro Manila<sup>46</sup> and thus, was returned unserved for the reason "insufficient address."<sup>47</sup> The notices of the Entry of Judgment<sup>48</sup> and the transmittal letter<sup>49</sup> to the Clerk of Court of the RTC indicate this fact. As such, there was clearly no proper and valid service of the said CA Decision which deprived petitioners of the opportunity to file a motion for reconsideration before the CA and/or further appeal to the Court. Verily, it would be unjust and unfair to allow petitioners to suffer the adverse effects of the premature entry of judgment made by the CA. Therefore, the Court deems it prudent to set aside the foregoing entry and upholds petitioners' right to appeal.

Nevertheless, with respect to the second issue, a thorough review of the records reveals no sufficient reason to warrant the reversal of the CA's August 18, 2006 Decision dismissing petitioners' complaint for specific performance which sought to enforce the contract to sell and to compel respondents to execute a deed of sale over the subject properties.

A contract to sell is defined as a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds himself to sell the said property exclusively to the latter upon his fulfillment of the conditions agreed upon, *i.e.*, the full payment of the purchase price<sup>50</sup> and/or compliance with the other obligations stated in the contract to sell. Given its contingent nature, the failure of the prospective buyer to make full payment<sup>51</sup> and/or abide by his commitments stated in the contract to sell prevents the obligation of the prospective seller to execute the corresponding

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<sup>46</sup> Id. at 57.

<sup>47</sup> CA rollo, p. 87.

<sup>48</sup> Id. at 330.

<sup>49</sup> Id. at 331.

<sup>50</sup> *Nabus v. Pacson*, G.R. No. 161318, November 25, 2009, 605 SCRA 334, 350, citing *Coronel v. CA*, 331 Phil. 294, 310 (1996).

<sup>51</sup> See *Nabus v. Pacson*, id. at 353.

deed of sale to effect the transfer of ownership to the buyer from arising. As discussed in *Sps. Serrano and Herrera v. Caguiat*:<sup>52</sup>

A contract to sell is akin to a conditional sale where the efficacy or obligatory force of the vendor's obligation to transfer title is subordinated to the happening of a future and uncertain event, so that if the suspensive condition does not take place, the parties would stand as if the conditional obligation had never existed. x x x.<sup>53</sup>

To note, while the quality of contingency inheres in a contract to sell, the same should not be confused with a conditional contract of sale. In a contract to sell, the fulfillment of the suspensive condition will not automatically transfer ownership to the buyer although the property may have been previously delivered to him. The prospective seller still has to convey title to the prospective buyer by entering into a contract of absolute sale.<sup>54</sup> On the other hand, in a conditional contract of sale, the fulfillment of the suspensive condition renders the sale absolute and the previous delivery of the property has the effect of automatically transferring the seller's ownership or title to the property to the buyer.<sup>55</sup>

Keeping with these principles, the Court finds that respondents had no obligation to petitioners to execute a deed of sale over the subject properties. As aptly pointed out by the CA, aside from the payment of the purchase price and 12% interest p.a. on the outstanding balance, the contract to sell likewise imposed upon petitioners the obligation to pay the real property taxes over the subject properties as well as 12% interest p.a. on the arrears.<sup>56</sup> However, the summary of payments<sup>57</sup> as well as the statement of account<sup>58</sup> submitted by petitioners clearly show that only the payments corresponding to the principal obligation and the 12% interest p.a. on the outstanding balance were considered in arriving at the amount of ₱952,152.00. The Court has examined the petition<sup>59</sup> as well as petitioners' memorandum<sup>60</sup> and found no justifiable reason for the said omission. Hence, the reasonable conclusion would therefore be that petitioners indeed failed to comply with all their obligations under the contract to sell and, as such, have no right to enforce the same. Consequently, there lies no error on the part of the CA in reversing the RTC Decision and dismissing petitioners' complaint for specific performance seeking to compel respondents to execute a deed of sale over the subject properties.

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<sup>52</sup> 545 Phil. 660 (2007).

<sup>53</sup> Id. at 667.

<sup>54</sup> *Coronel v. CA*, 331 Phil. 294, 311 (1996).

<sup>55</sup> "In a conditional contract of sale, however, **upon the fulfillment of the suspensive condition, the sale becomes absolute** and this will definitely affect the seller's title thereto. In fact, if there had been previous delivery of the subject property, the seller's ownership or title to the property is automatically transferred to the buyer such that, the seller will no longer have any title to transfer to any third person x x x." (id.; emphasis supplied)

<sup>56</sup> *Rollo*, p. 44.

<sup>57</sup> Id. at 73-74.

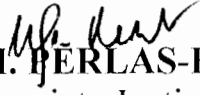
<sup>58</sup> The same was prepared by Horacio C. Calma, a Certified Public Accountant who conducted an audit of the summary payments made by petitioners; see *rollo*, pp. 176-176-A; see also records, Vol. 2, pp. 806-812.

<sup>59</sup> *Rollo*, pp. 3-32.

<sup>60</sup> Id. at 402-427.

**WHEREFORE**, the Entry of Judgment in CA-G.R. CV No. 68465 is hereby **LIFTED**. The Decision dated August 18, 2006 of the Court of Appeals in the said case is, however, **AFFIRMED**.

**SO ORDERED.**

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

**WE CONCUR:**

  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson

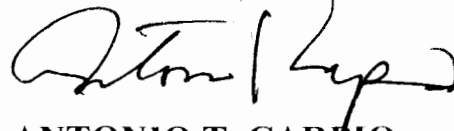
  
**ARTURO D. BRION**  
Associate Justice

  
**MARIANO C. DEL CASTILLO**  
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, Second Division



**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