



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MANUEL UY & SONS, INC.,
Petitioner,

G.R. No. 179594

Present:

versus

VELASCO, JR., J., *Chairperson*,
PERALTA,
ABAD,
MENDOZA, and
LEONEN, JJ.

VALBUECO, INCORPORATED,
Respondent.

Promulgated:

SEP 11 2013

Alcasiano

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DECISION

PERALTA, J.:

This is a petition for review on *certiorari*¹ of the Court of Appeals' Decision² dated December 11, 2006 in CA-G.R. CV No. 85877, and its Resolution dated September 4, 2007, denying petitioner's motion for reconsideration.

The Court of Appeals reversed and set aside the Decision³ of the Regional Trial Court (RTC) of Manila, Branch 1, dismissing the Complaint for specific performance and damages. The Court of Appeals reinstated the Complaint and directed petitioner to execute deeds of absolute sale in favor of respondent after payment of the purchase price of the subject lots.

¹ Under Rule 45 of the Rules of Court.

² Penned by Associate Justice Vicente Q. Roxas of the Sixteenth Division, with Associate Justice Josefina Guevara-Salonga as Chairman and Associate Justice Apolinario D. Bruselas, Jr. as member, concurring.

³ In Civil Case No. 01-100411.

The facts, as stated by the Court of Appeals, are as follows:

Petitioner Manuel Uy & Sons, Inc. is the registered owner of parcels of land located in Teresa, Rizal covered by Transfer Certificate of Title (TCT) No. 59534, covering an area of about 6,119 square meters; TCT No. 59445, covering an area of about 6,838 square meters; TCT No. 59446, covering an area of about 12,389 square meters; and TCT No. 59444, covering an area of about 32,047 square meters.

On November 29, 1973, two Conditional Deeds of Sale were executed by petitioner, as vendor, in favor of respondent Valbueco, Incorporated, as vendee. The first Conditional Deed of Sale⁴ covered TCT Nos. 59534, 59445 and 59446, and contained the following terms and conditions:

That for and in consideration of the sum of ONE HUNDRED SIXTY-FOUR THOUSAND SEVEN HUNDRED FORTY-NINE (Php164,749.00) PESOS, Philippine currency, the VENDOR hereby agrees to SELL, CEDE, TRANSFER and CONVEY unto the VENDEE x x x the aforementioned properties, payable under the following terms and conditions:

1. The sum of FORTY-ONE THOUSAND ONE HUNDRED EIGHTY-SEVEN and 25/100 (Php 41,187.25) PESOS shall be paid upon signing of this conditional deed of sale; and

2. The balance of ONE HUNDRED TWENTY-THREE THOUSAND FIVE HUNDRED SIXTY-ONE and 75/100 (Php 123,561.75) PESOS shall be paid within a period of one (1) year from November 15, 1973, with interest of 12% per annum based on the balance, in the mode and manner specified below:

- a) January 4, 1974 – ₱16,474.90 plus interest
- b) On or before May 15, 1974 – ₱53,543.43 plus interest
- c) On or before November 15, 1974 – ₱53,543.32 plus interest

3. That the vendee shall be given a grace period of thirty (30) days from the due date of any installment with corresponding interest to be added, but should the VENDEE fail to make such payment within the grace period this contract shall be deemed rescinded and without force and effect after notice in writing by VENDOR to VENDEE.

4. That the VENDOR agrees to have the existing Mortgages on the properties subject of this sale released on or before May 20, 1974.

5. That the VENDOR agrees to have the above-described properties freed and cleared of all lessees, tenants, adverse occupants or squatters within 100 days from the execution of this conditional deed of sale. In case of failure by the VENDOR to comply with the undertaking provided in this paragraph and the VENDEE shall find it necessary to file

⁴

Rollo, pp. 351-354.

a case or cases in court to eject the said lessees, tenants, occupants and/or squatters from the land, subject of this sale, the VENDOR agrees to answer and pay for all the expenses incurred and to be incurred in connection with said cases until the same are fully and finally terminated.

6. That the VENDOR and the VENDEE agree that during the existence of this Contract and without previous expressed written permission from the other, they shall not sell, cede, assign, transfer or mortgage, or in any way encumber unto another person or party any right, interest or equity that they may have in and to said parcels of land.

X X X X

8. That it is understood that ownership of the properties herein conveyed shall not pass to the VENDEE until after payment of the full purchase price; provided, however, that [the] VENDOR shall allow the annotation of this Conditional Deed of Sale at the back of the titles of the above-described parcels of land in the corresponding Registry of Deeds x x x.

9. That upon full payment of the total purchase price, a Deed of Absolute Sale shall be executed in favor of the VENDEE and the VENDOR agrees to pay the documentary stamps and the science stamp tax of the Deed of Sale; while the VENDEE agrees to pay the registration and other expenses for the issuance of a new title.

10. That it is mutually agreed that in case of litigation, the venue of the case shall be in the courts of Manila, having competent jurisdiction, any other venue being expressly waived.⁵

On the other hand, the second Conditional Deed of Sale⁶ covering Lot No. 59444 provides, thus:

1. The sum of FIFTY-TWO THOUSAND SEVENTY-SIX AND 37/100 (Php 52,076.37) PESOS, shall be paid upon signing of this conditional deed of sale; and

2. The balance of ONE HUNDRED FIFTY-SIX THOUSAND TWO HUNDRED TWENTY-NINE and 13/100 (Php 156,229.13) PESOS shall be paid within a period of one (1) year from November 15, 1973, with interest of 12% per annum based on the balance, in the mode and manner specified below:

- a) January 4, 1974 – ₱20,830.55 plus interest
- b) On or before May 15, 1974 – ₱67,699.29 plus interest
- c) On or before November 15, 1974, ₱67,699.29 plus interest

3. That the VENDEE shall be given a grace period of thirty (30) days from the due date of any installment with corresponding interest to be added, but should the VENDEE fail to make such payment within the grace period, this contract shall be deemed rescinded and without force and effect after notice in writing by VENDOR to VENDEE.

⁵ *Id.* at 352-353.

⁶ *Id.* at 355-358.

4. That the VENDOR agrees and acknowledges that any and all payments to be made by the VENDEE by reason of this presents unless hereafter advised by VENDOR to the contrary, shall be made in favor of and to the Philippine Trust Company by way of liquidation and payment of the existing mortgage on the property subject of this sale.

5. That after each payment adverted to above the VENDOR shall issue the corresponding receipt for the amount paid by the VENDOR to the Philippine Trust Company.

6. That the VENDOR agrees to have the above-described property freed and cleared of all lessees, tenants, adverse occupants or squatters within 100 days from the execution of this conditional deed of sale. In case of failure by the VENDOR to comply with this undertaking provided in this paragraph and the VENDEE shall find it necessary to file a case or cases in court to eject the said lessees, tenants, occupants and/or squatters from the land, subject of this sale, the VENDOR agrees to answer and pay for all the expenses incurred and to be incurred in connection with said cases until the same are fully and finally terminated.

7. That the VENDOR and the VENDEE agree that during the existence of this Contract and without previous expressed written permission from the other, they shall not sell, cede, assign, transfer or mortgage, or in any way encumber unto another person or party any right, interest or equity that they may have in and to said parcel of land.

X X X X

9. That it is understood that ownership of the property herein conveyed shall not pass to the VENDEE until after payment of the full purchase price, provided, however, that [the] VENDOR shall allow the annotation of the Conditional Deed of Sale at the back of the Title of the above-described parcel of land in the corresponding Registry of Deeds; x x x.

10. That upon full payment of the total purchase price, a Deed of Absolute Sale shall be executed in favor of the VENDEE and the VENDOR agrees to pay the documentary stamps and the science stamp tax of the Deed of Sale; while the VENDEE agrees to pay the registration and other expenses for the issuance of a new title.

11. That it is mutually agreed that in case of litigation, the venue of the case shall be in the courts of Manila, having competent jurisdiction, any other venue being expressly waived.⁷

Respondent was able to pay petitioner the amount of ₱275,055.55⁸ as partial payment for the two properties corresponding to the initial payments and the first installments of the said properties.

At the same time, petitioner complied with its obligation under the conditional deeds of sale, as follows: (1) the mortgage for TCT No. 59446

⁷ *Id.* at 356-357.

⁸ Records, pp. 117-123; Decision of the Court of Appeals, *id.* at 73.

was released on May 18, 1984, while the mortgages for TCT Nos. 59445 and 59534 were released on July 19, 1974; (2) the unlawful occupants of the lots covered by TCT Nos. 59444, 59534, 59445 and 59446 surrendered their possession and use of the said lots in consideration of the amount of ₱6,000.00 in a document⁹ dated November 19, 1973, and they agreed to demolish their shanties on or before December 7, 1973; and (3) the mortgage with Philippine Trust Company covering TCT No. 59444 was discharged¹⁰ in 1984.

However, respondent suspended further payment as it was not satisfied with the manner petitioner complied with its obligations under the conditional deeds of sale. Consequently, on March 17, 1978, petitioner sent respondent a letter¹¹ informing respondent of its intention to rescind the conditional deeds of sale and attaching therewith the original copy of the respective notarial rescission.

On November 28, 1994, respondent filed a Complaint¹² for specific performance and damages against petitioner with the RTC of Antipolo City. However, on January 15, 1996, the case was dismissed without prejudice¹³ for lack of interest, as respondent's counsel failed to attend the pre-trial conference.

Five years later, or on March 16, 2001, respondent again filed with the RTC of Manila, Branch 1 (trial court) a Complaint¹⁴ for specific performance and damages, seeking to compel petitioner to accept the balance of the purchase price for the two conditional deeds of sale and to execute the corresponding deeds of absolute sale. Respondent contended that its non-payment of the installments was due to the following reasons: (1) Petitioner refused to receive the balance of the purchase price as the properties were mortgaged and had to be redeemed first before a deed of absolute sale could be executed; (2) Petitioner assured that the existing mortgages on the properties would be discharged on or before May 20, 1974, or that petitioner did not inform it (respondent) that the mortgages on the properties were already released; and (3) Petitioner failed to fully eject the unlawful occupants in the area.

In its Answer,¹⁵ petitioner argued that the case should be dismissed, as it was barred by prior judgment. Moreover, petitioner contended that it could not be compelled to execute any deed of absolute sale, because respondent failed to pay in full the purchase price of the subject lots. Petitioner claimed

⁹ Records, pp. 294-295.

¹⁰ *Id.* at 256.

¹¹ *Id.* at 52.

¹² Docketed as Civil Case No. 94-3426.

¹³ Records, p. 89.

¹⁴ Docketed as Civil Case No. 01-100411.

¹⁵ Records, pp. 43-46.

that it gave respondent a notice of notarial rescission of both conditional deeds of sale that would take effect 30 days from receipt thereof. The notice of notarial rescission was allegedly received by respondent on March 17, 1978. Petitioner asserted that since respondent failed to pay the full purchase price of the subject lots, both conditional deeds of sale were rescinded as of April 16, 1978; hence, respondent had no cause of action against it.

In its Reply,¹⁶ respondent denied that it received the alleged notice of notarial rescission. Respondent also denied that the alleged recipient (one Wenna Laurenciana)¹⁷ of the letter dated March 17, 1978, which was attached to the notice of notarial rescission, was its employee. Respondent stated that assuming *arguendo* that the notice was sent to it, the address (6th Floor, SGC Bldg., Salcedo Street, Legaspi Village, Makati, Metro Manila) was not the given address of respondent. Respondent contended that its address on the conditional deeds of sale and the receipts issued by it and petitioner showed that its principal business address was the 7th Floor, Bank of P.I. Bldg, Ayala Avenue, Makati, Rizal.

On August 1, 2005, the trial court rendered a Decision,¹⁸ dismissing the complaint, as petitioner had exercised its right to rescind the contracts. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the complaint is
DISMISSED for lack of merit.

Claims and counterclaims for damages are also dismissed.¹⁹

The trial court stated that the issues before it were: (1) Did petitioner unlawfully evade its obligation to execute the final deed of sale and to eject the squatters/occupants on the properties; (2) Is the case barred by prior judgment; and (3) Does respondent have a cause of action against petitioner.

The trial court said that both conditional deeds of sale clearly provided that “ownership x x x shall not pass to the VENDEE until after full payment of the purchase price.” Respondent admitted that it has not yet fully paid the purchase price. The trial court held that the conditions in the conditional deeds of sale being suspensive, that is, its fulfillment gives rise to the obligation, the reasons for the inability of respondent to fulfill its own obligations is material, in order that the obligation of petitioner to execute the final deeds of absolute sale will arise. The trial court stated that the evidence showed that petitioner had exercised its right to rescind the contract by a written notice dated March 17, 1978 and notarial acts both dated March 15, 1978. The trial court noted that respondent denied having received the

¹⁶ *Id.* at 69-75.

¹⁷ Also mentioned as “Wilma” Laurenciana in the TSN dated April 24, 2003.

¹⁸ *Rollo*, pp. 53-62.

¹⁹ *Id.* at 62.

notice and disclaimed knowing the recipient, Wenna Laurenciana. However, on cross-examination, respondent's witness, Gaudencio Juan, who used to be respondent's Personnel Manager and Forester at the same time, admitted knowing Laurenciana because she was the secretary of Mr. Valeriano Bueno, respondent's president at that time, although Laurenciana was not employed by respondent, but she was employed by Mahogany Products Corporation, presumably one of the 14 other companies being controlled by Mr. Bueno.²⁰

The trial court held that the conditional deeds of sale were executed on November 29, 1973 and were already covered by Republic Act (R.A.) No. 6552, otherwise known as the *Realty Installment Buyer Act*. Under Section 4 of the law, if the buyer fails to pay the installments due at the expiration of the grace period, which is not less than 60 days from the date the installment became due, the seller may cancel the contract after 30 days from receipt of the buyer of the notice of cancellation or the demand for rescission of the contracts by notarial act. The trial court found no lawful ground to grant the relief prayed for and dismissed the complaint for lack of merit.

Respondent appealed the decision of the trial court to the Court of Appeals, and made these assignments of error: (1) the trial court erred in holding that petitioner did not unlawfully evade executing a final deed of sale, since respondent's failure to fulfill its own obligation is material; (2) the trial court erred in holding that it is unbelievable and a self-contradiction that respondent was informed of the mortgage only when it was paying the balance of the properties; and (3) the trial court erred in holding that as early as November 19, 1973, petitioner had already taken necessary steps to evict the squatters/occupants through the intercession of the agrarian reform officer.

On December 11, 2006, the Court of Appeals rendered a Decision, reversing and setting aside the Decision of the trial court. It reinstated the complaint of respondent, and directed petitioner to execute deeds of absolute sale in favor of respondent after payment of the balance of the purchase price of the subject lots. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the August 1, 2005 Decision of the Regional Trial Court of Manila, Branch 1, in Civil Case No. 01-100411, is hereby **REVERSED** and **SET ASIDE**.

A new one is hereby entered: **REINSTATING** the complaint and defendant-appellee MANUEL UY & SONS INC. is hereby **DIRECTED**, pursuant to Sec. 4, R. A. No. 6552, otherwise known as the Maceda Law, to **EXECUTE** and **DELIVER**:

²⁰RTC Decision, *id.* at 61, citing TSN, April 24, 2003, p. 17; TSN, October 16, 2001, p. 22.

- (1) Deeds of Absolute Sale in favor of VALBUECO, INC.; and
- (2) Transfer Certificates of Title pertaining to Nos. 59534, 59445, 59446 and 59444, in the name of plaintiff-appellant VALBUECO, INC.,

after VALBUECO pays MANUEL UY & SONS, without additional interest, within thirty days from finality of this judgment, the balance of the contract price.

If MANUEL UY & SONS refuses to deliver the Deeds of Absolute Sale and the co-owner's copy of the TCTs, the Register of Deeds of Antipolo, Rizal is hereby **DIRECTED** to **CANCEL** the latest TCTs issued derived from TCT Nos. 59534, 59445, 59446 and 59444, and to **ISSUE** new TCTS in the name of VALBUECO.

Only if VALBUECO fails in the payment directed above, then defendant-appellee MANUEL UY & SONS INC. has the opportunity to serve a valid notice of notarial rescission.

SO ORDERED.²¹

The Court of Appeals held that the two conditional deeds of sale in this case are contracts to sell. It stated that the law applicable to the said contracts to sell on installments is R.A. No. 6552, specifically Section 4 thereof, as respondent paid less than two years in installments. It held that upon repeated defaults in payment by respondent, petitioner had the right to cancel the said contracts, but subject to the proper receipt of respondent of the notice of cancellation or the demand for the rescission of the contracts by notarial act.

However, the Court of Appeals found that petitioner sent the notice of notarial rescission to the wrong address. The business address of respondent, as used in all its transactions with petitioner, was the 7th Floor, Bank of the Philippine Islands Building, Ayala Avenue, Makati City, but the notice of notarial rescission was sent to the wrong address at the 6th Floor, SGC Building, Salcedo Street, Legaspi Village, Makati, Metro Manila. Petitioner served the notice to the address of Mahogany Products Corporation. It was established that the person who received the notice, one Wenna Laurenciana, was an employee of Mahogany Products Corporation and not an employee of respondent or Mr. Valeriano Bueno, the alleged president of Mahogany Products Corporation and respondent company.²² The appellate court stated that this cannot be construed as to have been constructively received by respondent as the two corporations are two separate entities with a distinct personality independent from each other. Thus, the Court of Appeals held that the notarial rescission was invalidly served. It stated that it is a general rule that when service of notice is an issue, the person alleging that the notice was served must prove the fact of service by a preponderance

²¹ *Rollo*, pp. 84-85. (Emphasis in the original)

²² TSN, April 24, 2003, pp. 17-19, Cross-examination and Re-direct examination of witness Gaudencio Juan.

of evidence. In this case, the Court of Appeals held that there was no evidence that the notice of cancellation by notarial act was actually received by respondent. Thus, for petitioner's failure to cancel the contract in accordance with the procedure provided by law, the Court of Appeals held that the contracts to sell on installment were valid and subsisting, and respondent has the right to offer to pay for the balance of the purchase price before actual cancellation.

Petitioner's motion for reconsideration was denied for lack of merit by the Court of Appeals in a Resolution²³ dated September 4, 2007.

Petitioner filed this petition raising the following issues:

I

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN REVERSING THE RTC DECISION AND REINSTATING THE COMPLAINT WHEN ON ITS FACE IT HAS LONG BEEN PRESCRIBED, AS IT WAS FILED AFTER 27 YEARS AND HAS NO JURISDICTION (SIC).

II

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN COMPELLING PETITIONER TO EXECUTE A FINAL DEED OF ABSOLUTE [SALE] EVEN IF RESPONDENT JUDICIALLY ADMITTED ITS NON-PAYMENT OF THE BALANCE OF THE DEEDS OF CONDITIONAL SALE DUE SINCE 1974.

III

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN GRANTING THE RELIEFS PRAYED BY RESPONDENT IN ITS COMPLAINT FOR SPECIFIC PERFORMANCE WHEN IT WAS RESPONDENT WHO BREACHED THE CONTRACT.

IV

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE INJUSTICE WHEN IT PENALIZED PETITIONER FOR EXERCISING ITS LEGAL RIGHT AND DID NOT COMMIT AN ACTIONABLE WRONG WHILE IT HEFTILY REWARDED RESPONDENT, WHO BREACHED THE CONTRACT, AND ORDERED TO PAY WITHOUT INTEREST PHP 97,998.95, WHICH IS DUE SINCE 1974 UNDER THE CONTRACT, FOR FOUR (4) PARCELS OF LAND (57,393 SQUARE METERS), NOW WORTH HUNDRED MILLIONS.

V

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN ANNULING THE NOTARIAL RESCISSION WHEN THE

²³

Rollo, p. 89.

COMPLAINT IS ONLY FOR SPECIFIC PERFORMANCE AND WAS NOT AN ISSUE RAISED IN THE PLEADINGS OR DURING THE TRIAL.²⁴

The main issue is whether respondent is entitled to the relief granted by the Court of Appeals. Petitioner contends that the Court of Appeals erred in directing it to execute deeds of absolute sale over the subject lots even if respondent admitted non-payment of the balance of the purchase price.

As found by the Court of Appeals, the two conditional deeds of sale entered into by the parties are contracts to sell, as they both contained a stipulation that ownership of the properties shall not pass to the vendee until after full payment of the purchase price. In a conditional sale, as in a contract to sell, ownership remains with the vendor and does not pass to the vendee until full payment of the purchase price.²⁵ The full payment of the purchase price partakes of a suspensive condition, and non-fulfillment of the condition prevents the obligation to sell from arising.²⁶ To differentiate, a deed of sale is absolute when there is no stipulation in the contract that title to the property remains with the seller until full payment of the purchase price. *Ramos v. Heruela*²⁷ held that Articles 1191 and 1592 of the Civil Code²⁸ are applicable to contracts of sale, while R.A. No. 6552 applies to contracts to sell.

The Court of Appeals correctly held that R.A. No. 6552, otherwise known as the *Realty Installment Buyer Act*, applies to the subject contracts to sell. R.A. No. 6552 recognizes in conditional sales of all kinds of real estate (industrial, commercial, residential) the right of the seller to cancel the contract upon non-payment of an installment by the buyer, which is simply an event that prevents the obligation of the vendor to convey title from acquiring binding force.²⁹ It also provides the right of the buyer on installments in case he defaults in the payment of succeeding installments³⁰ as follows:

²⁴ *Id.* at 29-30.

²⁵ *Ramos v. Heruela*, 509 Phil. 658, 665 (2005).

²⁶ *Id.*

²⁷ *Id.* at 667.

²⁸ Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.

Art. 1592. In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may 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 a notarial act. After the demand, the court may not grant him a new term.

²⁹ *Rillo v. Court of Appeals*, G.R. No. 125347, June 19, 1997, 274 SCRA 461, 467-468.

³⁰ *Id.* at 468.

Section 3. In all transactions or contracts involving the sale or financing of real estate on installment payments, including residential condominium apartments but excluding industrial lots, commercial buildings and sales to tenants under Republic Act Numbered Thirty-eight hundred forty-four, as amended by Republic Act Numbered Sixty-three hundred eighty-nine, where the buyer has paid at least two years of installments, the buyer is entitled to the following rights in case he defaults in the payment of succeeding installments:

- (a) To pay, without additional interest, the unpaid installments due within the total grace period earned by him which is hereby fixed at the rate of one month grace period for every one year of installment payments made: Provided, That this right shall be exercised by the buyer only once in every five years of the life of the contract and its extensions, if any.
- (b) If the contract is canceled, the seller shall refund to the buyer the cash surrender value of the payments on the property equivalent to fifty per cent of the total payments made, and, after five years of installments, an additional five per cent every year but not to exceed ninety per cent of the total payments made: Provided, That the actual cancellation of the contract shall take place after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer.

Down payments, deposits or options on the contract shall be included in the computation of the total number of installment payments made.

Sec. 4. In case where *less than two years of installments were paid*, the seller shall give the buyer a grace period of not less than sixty days from the date the installment became due.

If the buyer fails to pay the installments due at the expiration of the grace period, the seller may cancel the contract after thirty days from receipt by the buyer of the *notice of cancellation or the demand for rescission of the contract by a notarial act*.³¹

In this case, respondent has paid less than two years of installments; therefore, Section 4 of R.A. No. 6552 applies.

The Court of Appeals held that even if respondent defaulted in its full payment of the purchase price of the subject lots, the conditional deeds of sale remain valid and subsisting, because there was no valid notice of notarial rescission to respondent, as the notice was sent to the wrong address, that is, to Mahogany Products Corporation, and it was received by a person employed by Mahogany Products Corporation and not the respondent. The Court of Appeals stated that the allegation that Mahogany Products Corporation and respondent have the same President, one Valeriano Bueno, is irrelevant and has not been actually proven or borne by

³¹ Emphasis supplied.

evidence. The appellate court held that there was insufficient proof that respondent actually received the notice of notarial rescission of the conditional deeds of sale; hence, the unilateral rescission of the conditional deeds of sale cannot be given credence.

However, upon review of the records of this case, the Court finds that respondent had been served a notice of the notarial rescission of the conditional deeds of sale when it was furnished with the petitioner's Answer, dated February 16, 1995, to its first Complaint filed on November 28, 1994 with the RTC of Antipolo City, which case was docketed as Civil Case No. 94-3426, but the complaint was later dismissed without prejudice on January 15, 1996.³²

It appears that after respondent filed its *first* Complaint for specific performance and damages with the RTC of Antipolo City on November 28, 1994, petitioner filed an Answer and attached thereto a copy of the written notice dated March 17, 1978 and copies of the notarial acts of rescission dated March 15, 1978, and that respondent received a copy of the said Answer with the attached notices of notarial rescission. However, to reiterate, the *first* Complaint was dismissed without prejudice.

Five years after the dismissal of the first Complaint, respondent again filed this case for specific performance and damages, this time, with the RTC of Manila. Petitioner filed an Answer, and alleged, among others, that the case was barred by prior judgment, since respondent filed a complaint on November 28, 1994 before the RTC of Antipolo City, Branch 73, against it (petitioner) involving the same issues and that the case, docketed as Civil Case No. 94-3426, was dismissed on January 15, 1996 for lack of interest. Respondent filed a Reply³³ dated July 18, 2001, asserting that petitioner prayed for the dismissal of the first case filed on November 28, 1994 (Civil Case No. 94-3426) on the ground of improper venue as the parties agreed in the deeds of conditional sale that in case of litigation, the venue shall be in the courts of Manila. To prove its assertion, respondent attached to its Reply a copy of petitioner's Answer to the *first* Complaint in Civil Case No. 94-3426, which Answer included the written notice dated March 17, 1978 and two notarial acts of rescission, both dated March 15, 1978, of the two conditional deeds of sale. Hence, respondent is deemed to have had notice of the notarial rescission of the two conditional deeds of sale when it received petitioner's Answer to its *first* complaint filed with the RTC of Antipolo, since petitioner's Answer included notices of notarial rescission of the two conditional deeds of sale. The first complaint was filed six years earlier before this complaint was filed. As stated earlier, the first complaint was dismissed without prejudice, because respondent's counsel failed to appear at the pre-trial. Since respondent already received notices of the notarial rescission of the conditional deeds of sale, together with petitioner's Answer

³² Records, p. 89.

³³ *Id.* at 69.

to the first Complaint five years before it filed this case, it can no longer deny having received notices of the notarial rescission in this case, as respondent admitted the same when it attached the notices of notarial rescission to its Reply in this case. Consequently, respondent is not entitled to the relief granted by the Court of Appeals.

Under R.A. No. 6552, the right of the buyer to refund accrues only when he has paid at least two years of installments.³⁴ In this case, respondent has paid less than two years of installments; hence, it is not entitled to a refund.³⁵

Moreover, petitioner raises the issue of improper venue and lack of jurisdiction of the RTC of Manila over the case. It contends that the complaint involved real properties in Antipolo City and cancellation of titles; hence, it was improperly filed in the RTC of Manila.

Petitioner's contention lacks merit, as petitioner and respondent stipulated in both Conditional Deeds of Sale that they mutually agreed that in case of litigation, the case shall be filed in the courts of Manila.³⁶

Further, petitioner contends that the action has prescribed. Petitioner points out that the cause of action is based on a written contract; hence, the complaint should have been brought within 10 years from the time the right of action accrues under Article 1144 of the Civil Code. Petitioner argues that it is evident on the face of the complaint and the two contracts of conditional sale that the cause of action accrued in 1974; yet, the complaint for specific performance was filed after 27 years. Petitioner asserts that the action has prescribed.

The contention is meritorious.

Section 1, Rule 9 of the 1997 Rules of Civil Procedure provides:

Section 1. ***Defense and objections not pleaded.*** - Defenses and objections not pleaded whether in a motion to dismiss or in the answer are deemed waived. However, ***when it appears from the pleadings*** 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.***³⁷

³⁴ *Rillo v. Court of Appeals*, *supra* note 29, at 469.

³⁵ *Id.*

³⁶ See Rules of Court, Rule 5, Sec. 4.

³⁷ Emphasis supplied.

In *Gicano v. Gegato*,³⁸ the Court held:

x x x (T)rial courts have authority and discretion to dismiss an action on the ground of prescription when the parties' pleadings or other facts on record show it to be indeed time-barred; (Francisco v. Robles, Feb. 15, 1954; Sison v. McQuaid, 50 O.G. 97; Bambao v. Lednicky, Jan. 28, 1961; Cordova v. Cordova, Jan. 14, 1958; Convets, Inc. v. NDC, Feb. 28, 1958; 32 SCRA 529; Sinaon v. Sorongan, 136 SCRA 408); and it may do so on the basis of a motion to dismiss (Sec. 1,f, Rule 16, Rules of Court), or an answer which sets up such ground as an affirmative defense (Sec. 5, Rule 16), **or even if the ground is alleged after judgment on the merits, as in a motion for reconsideration (Ferrer v. Ericta, 84 SCRA 705); or even if the defense has not been asserted at all, as where no statement thereof is found in the pleadings (Garcia v. Mathis, 100 SCRA 250; PNB v. Pacific Commission House, 27 SCRA 766; Chua Lamco v. Dioso, et al., 97 Phil. 821); or where a defendant has been declared in default (PNB v. Perez, 16 SCRA 270). What is essential only, to repeat, is that the facts demonstrating the lapse of the prescriptive period, be otherwise sufficiently and satisfactorily apparent on the record; either in the averments of the plaintiff's complaint, or otherwise established by the evidence.**³⁹

Moreover, *Dino v. Court of Appeals*⁴⁰ held:

Even if the defense of prescription was raised for the first time on appeal in respondent's Supplemental Motion for Reconsideration of the appellate court's decision, this does not militate against the due process right of the petitioners. On appeal, there was no new issue of fact that arose in connection with the question of prescription, thus it cannot be said that petitioners were not given the opportunity to present evidence in the trial court to meet a factual issue. Equally important, petitioners had the opportunity to oppose the defense of prescription in their Opposition to the Supplemental Motion for Reconsideration filed in the appellate court and in their Petition for Review in this Court.⁴¹

In this case, petitioner raised the defense of prescription for the first time before this Court, and respondent had the opportunity to oppose the defense of prescription in its Comment to the petition. Hence, the Court can resolve the issue of prescription as both parties were afforded the opportunity to ventilate their respective positions on the matter. The Complaint shows that the Conditional Deeds of Sale were executed on November 29, 1973, and payments were due on both Conditional Deeds of Sale on November 15, 1974. Article 1144⁴² of the Civil Code provides that

³⁸ 241 Phil. 139, 145-146 (1988), cited in *Dino v. Court of Appeals*, 411 Phil. 594, 603-604 (2001).

³⁹ Emphasis supplied.

⁴⁰ *Supra* note 38.

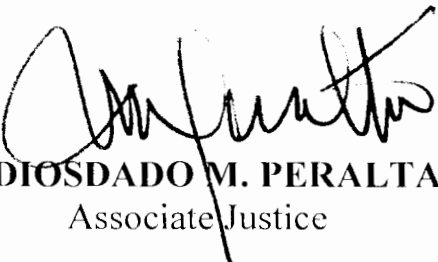
⁴¹ *Dino v. Court of Appeals, supra*, at 605.

⁴² Civil Code, Art. 1144. The following actions must be brought within ten years from the time the right of action accrues: (1) Upon a written contract; (2) Upon an obligation created by law; and (3) Upon a judgment.

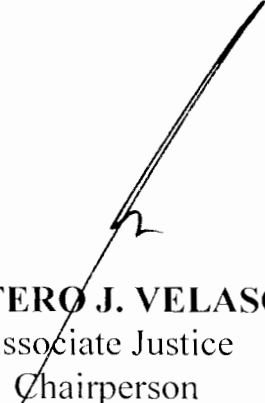
actions based upon a written contract must be brought within ten years from the time the right of action accrues. Non-fulfillment of the obligation to pay on the last due date, that is, on November 15, 1974, would give rise to an action by the vendor, which date of reckoning may also apply to any action by the vendee to determine his right under R.A. No. 6552. The vendee, respondent herein, filed this case on March 16, 2001, which is clearly beyond the 10-year prescriptive period; hence, the action has prescribed.


WHEREFORE, the petition is **GRANTED**. The Decision of the Court of Appeals, dated December 11, 2006, in CA-G.R. CV No. 85877 and its Resolution dated September 4, 2007 are **REVERSED** and **SET ASIDE**. The Decision of the Regional Trial Court of Manila, Branch 1, dated August 1, 2005 in Civil Case No. 01-100411, dismissing the case for lack of merit, is **REINSTATED**.

SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson


ROBERTO A. ABAD
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


MARVIC MARIO VICTOR F. LEONEN
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.



PRESBITERO J. VELASCO, JR.

Associate Justice
Chairperson, Third 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