

## TWENTY FIRST DIVISION

[ CV No. 88177, February 12, 2010 ]

**SPS. MIGUELA LOMOTAN AND JOSE LOMOTAN, PLAINTIFFS-APPELLEES, VS. ARTURO MIRANDA AND CARMEN MIRANDA, DEFENDANTS-APPELLANTS.**

### DECISION

Before Us is an appeal from the Decision<sup>[1]</sup> dated March 23, 2006 of the Regional Trial Court, Branch 83, Malolos, Bulacan in Civil Case No. 468-M-2003 which rescinded the Conditional Deed of Sale dated October 31, 2001 between plaintiff-appellees spouses Miguela and Jose Lomotan and defendants-appellants spouses Arturo and Carmen Miranda and consequently directed the former to return the partial payments made thereon and the latter in turn to vacate the subject property, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered:

1. Ordering the public document executed by plaintiffs and defendants entitled "Conditional Deed of Sale" rescinded;
2. Ordering plaintiffs to return the payments made by defendants in the amount of P105,000.00;
3. Ordering the defendants to vacate the premises and to surrender the peaceful possession thereof to plaintiffs and;
4. Ordering the defendants to pay plaintiff the amount of P30,000.00 as nominal damages; and,
5. Ordering the defendants to pay P2,500.00 as monthly rental from the time plaintiff filed the instant case on July 1, 2003 until they vacate the same with legal interest;

No pronouncement as to attorneys fees and cost of suit.

SO ORDERED.<sup>[2]</sup>

### THE FACTS

Plaintiffs-appellees spouses Miguela and Jose Lomotan are the registered owners of a parcel of land with an area of 230 square meters indentified as Lot 230-E, situated at San Vincete, San Miguel, Bulacan and covered by Transfer Certificate of Title No. RT-7947 (T-165171)<sup>[3]</sup> of the Registry of Deeds of Bulacan. On the other hand, defendants-appellants spouses Arturo and Carmen Miranda are in actual possession of the subject land by tolerance for a period of twenty (20) years.

Sometime in 2001, appellees agreed to sell the property to appellants for a consideration of P345,000.00 which shall be paid by giving a down payment of P75,000.00 while the balance of P270,000.00 shall be payable on or before September 30, 2001. On July 16, 2001, appellants paid the initial down payment of P75,000.00.<sup>[4]</sup> The corresponding Conditional Deed of Sale<sup>[5]</sup> was, however, executed and notarized only on October 31, 2001. The contract reflected the parties' prior agreement as to the terms of payment and further stipulated that appellees shall execute the corresponding deed of absolute sale over the subject property upon fully payment of the total purchase price. In case of any violation by appellants of the terms and conditions thereof, the contract shall be deemed rescinded. The pertinent portions of the Conditional Deed of Sale are quoted:

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2. That for and in consideration of the sum of THREE HUNDRED FORTY FIVE THOUSAND PESOS (P345,000.00), the vendor hereby sells, transfers and conveys unto the VENDEE, his heir and assigns, the above described property, in installment basis, under the following terms and conditions:
  - a. The sum of seventy five thousand pesos (75,000.00) shall be paid by vendee as initial downpayment and the balance of TWO HUNDRED SEVENTY THOUSAND PESOS (P27,000.00) shall be payable on or before SEPTEMBER 30, 2001;
3. vendor shall execute, in favor of vendee, his heirs and assigns, the corresponding Absolute Deed of Sale only upon full payment of the purchase price as aforementioned agreed upon.
4. That violation of any of the provisions of this Conditional Deed of Sale shall automatically cause the rescission and/or termination of this contract at the option of the vendor.<sup>[6]</sup>

Appellants defaulted in the payment of the balance. Appellees sent a written demand letter<sup>[7]</sup> dated August 29, 2002 requiring appellants to pay the outstanding balance of P270,000.00; otherwise, the contract shall be deemed rescinded and appellants must vacate the subject property. Another demand letter<sup>[8]</sup> dated February 7, 2003 was sent to appellants but the same remained unheeded.

On July 1, 2003, a Complaint<sup>[9]</sup> for Rescission of Contract, Recovery of Possession and Damages was filed by appellees against appellants before the Regional Trial Court of Malolos, Bulacan alleging that appellants failed and repeatedly refuse to comply with their obligations under the contract, specifically their obligation to pay the remaining balance of P270,000.00. appellees gave appellants an opportunity to settle their outstanding balance but the latter merely informed them that they could no longer comply with their obligation. Appellants even offered to sell the property to interested buyers. Appellees thus prayed for the rescission of the Conditional Deed of Sale dated October 31, 2001, forfeiture of the P75,000.00 down payment, reconveyance of the property, payment of reasonable rentals for the use thereof and attorney's fees.

In a Joint Answer<sup>[10]</sup> dated August 25, 2003, appellants averred that their outstanding balance amounts to only P240,000.00 and not P270,000.00. Aside from the P75,000.00 down payment, appellants also made succeeding payments on June 19, 2002 in the amount of P10,000.00 and on October 5, 2002 in the amount of P20,000.00. Since appellees accepted the payments made by appellants after a demand was made upon them, the Conditional Deed of Sale should then be considered novated. As such a new contract of sale should be executed between the parties fixing the amount and period of payment of the unpaid balance. Further, appellants suggested that they be allowed to pay the outstanding obligation by making monthly payments of P5,000.00 until the consideration is fully satisfied.

After due trial, the court *a quo* rendered the assailed Decision<sup>[11]</sup> dated March 23, 2006 rescinding the Conditional Deed of Sale dated October 31, 2001. It was ratiocinated that appellants' failure to pay the balance of the purchase price constituted a substantial breach of the contract to sell. Appellants were in fact given ample time by appellees to comply with their obligation. However, appellants still failed to pay the remaining balance. As such, appellees rightfully exercised their right to rescind the contract under Article 1191 of the New Civil Code. Further, the acceptance by appellees of the subsequent payments made by appellants after the demand could not be deemed a novation of the previous contract. The elements of novation were clearly lacking in this case. Consequently, appellants must vacate the subject property and surrender possession thereof to appellees, pay P2,500.00 plus legal interest as monthly rental for the occupation thereof from the filing of the instant case until appellants vacate the same and pay appellees the amount of P30,000.00 as nominal damages. Appellees were likewise ordered to return to appellants the amount of P105,000.00 representing the latter's partial payments under the contract. The pertinent portions of the Decision read:

In the case at bar, the agreement was clearly a contract to sell, where ownership of the property remains with the vendor and does not pass to the vendee until full payment of the purchase price. When the defendants failed to comply with what is incumbent upon them, i.e. pay the balance on the stipulated date, the obligation of plaintiffs to sell the subject property was prevented from taking place.

Under Article 1191 of the New Civil Code, 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. \*\*\*

Rescission may be had only for such breaches that are substantial and fundamental as to defeat the object of the parties in making the agreement. \*\*\*

Defendants' failure to pay the remaining balance of P270,000.00 is considered to be substantial. Even assuming *arguendo* that payment of P30,000.00 was made by defendants on two separate occasions, the amount of P240,000.00 is still substantial. Taken together with the fact that the last payment made was on October 5, 2002, and the letter addressed to the plaintiffs by the defendants suggesting that they sell the property to another, the intention of defendants to renege on their obligation is utterly clear.

\*\*\* They were given ample time to do what was required of them i.e. to pay the P240,000.00 balance but still they failed to comply.

Anent the issue whether or not the acceptance by the plaintiffs of defendants' late payment after the lapse of the stipulated period is tantamount to condonation or novation of the contract, this court rules in the negative.

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The elements of novation are clearly lacking in the instant case. Obviously, there is no mutual consent to replace the old contract with a new obligation. The conflicting intention and acts of the parties emphasize the absence of any express disclosure or circumstances with which to deduce a clear and unequivocal intent by the parties to novate the old agreement. Further, a contract cannot be novated by the will of only one party.\*\*\*

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The receipt of plaintiffs of the aggregate amount of P30,000.00 from the defendants after demand has been made upon them cannot be construed as a waiver on the part of plaintiffs to demand the rescission of the subject Conditional Deed of Sale. \*\*\* Hence, the contention of the defendants that the acceptance by the plaintiffs of their late payments is tantamount to a novation or condonation *i/s* untenable

Thus, for failure of defendants to comply with the obligation set forth under the terms and conditions of the subject instrument entitled "Conditional Deed of Sale", the same may be rescinded and the plaintiffs are entitled to be restored to the possession of the thing sold.

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Hence, as a consequence of the rescission or, more accurately, resolution of the Conditional Deed of Sale, it is the duty of the court to require the parties to surrender whatever they may have received from the other. \*\*\* The plaintiffs should therefore refund to the defendants the total amount of P105,000.00 while defendants should surrender the peaceful possession of the subject property of the plaintiffs.

As to the prayer of plaintiffs for the forfeiture of the P75,000.00 down payment made by defendants, the same cannot be given due course considering that no stipulation was made in the subject agreement as to liquidated damages in case of breach thereof. However, considering that the defendants have been in actual possession of the subject property to the exclusion of the plaintiffs for a considerable length of time, this Court believes that payment of rental in the amount of P2,500.00 per month with legal interest for the use of the same is proper to be reckoned from the date of filing of the instant case until the defendants shall have surrendered the peaceful possession thereof to the plaintiffs.

Anent the issue of damages, par. 2 of Art.1191 of the New Civil Code provides that "the injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case \*\*\*". Otherwise stated, while plaintiffs are indeed obliged to return the said amount to defendants, defendants are at the same time liable to plaintiffs for damages for their breach of their contract.

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Under the fact and circumstances of the instant case, this Court opines that the award of P30,000.00 as nominal damages is appropriate.

Hence, this appeal in which appellants raised the **Assignment of Errors** as follows:  
[12]

I.

THE COURT *A QUO ERRED* WHEN IT ORDERED THE CONDITIONAL DEED OF SALE RESCINDED.

II.

THE COURT *A QUO ERRED* IN NOT ORDERING THE REFORMATION OF THE CONDITIONAL DEED OF SALE.

III.

THE COURT *A QUO ERRED* WHEN IT ORDERED THE EJECTMENT OF APPELLANTS AND ORDERED THE PAYMENT OF RENTALS.

IV.

THE COURT *A QUO ERRED* IN NOT HOLDING THAT APPELLANTS ARE BUILDERS IN GOOD FAITH.

### **THE ISSUE**

The pivotal issue that needs to be resolved in this appeal is whether or not the court *a quo* erred in ruling that appellees are entitled to rescind the Conditional Deed of Sale dated October 31, 2001.

### **THE RULING**

The appeal must fail.

Stripped of the non-essentials, appellants primarily argue that rescission of the contract was not proper since ownership over the subject property has already been transferred to them. The only remedy left for appellees was to collect the balance of the purchase price. The court *a quo* thus erred in directing the appellants to vacate the lot in dispute and pay the monthly rental to appellees. Further, the court *a quo* should have ordered the reformation of the Conditional Deed of Sale dated October