

## SECOND DIVISION

[ G.R. No. 131679, February 01, 2000 ]

**CAVITE DEVELOPMENT BANK AND FAR EAST BANK AND TRUST COMPANY, PETITIONERS, VS. SPOUSES CYRUS LIM AND LOLITA CHAN LIM AND COURT OF APPEALS, RESPONDENTS.**

### DECISION

**MENDOZA, J.:**

This is a petition for review on certiorari of the decision<sup>[1]</sup> of the Court of Appeals in C.A. GR CV No. 42315 and the order dated December 9, 1997 denying petitioners' motion for reconsideration.

The following facts are not in dispute.

Petitioners Cavite Development Bank (CDB) and Far East Bank and Trust Company (FEBTC) are banking institutions duly organized and existing under Philippine laws. On or about June 15, 1983, a certain Rodolfo Guansing obtained a loan in the amount of P90,000.00 from CDB, to secure which he mortgaged a parcel of land situated at No. 63 Calavite Street, La Loma, Quezon City and covered by TCT No. 300809 registered in his name. As Guansing defaulted in the payment of his loan, CDB foreclosed the mortgage. At the foreclosure sale held on March 15, 1984, the mortgaged property was sold to CDB as the highest bidder. Guansing failed to redeem, and on March 2, 1987, CDB consolidated title to the property in its name. TCT No. 300809 in the name of Guansing was cancelled and, in lieu thereof, TCT No. 355588 was issued in the name of CDB.

On June 16, 1988, private respondent Lolita Chan Lim, assisted by a broker named Remedios Gatpandan, offered to purchase the property from CDB. The written Offer to Purchase, signed by Lim and Gatpandan, states in part:

We hereby offer to purchase your property at #63 Calavite and Retiro Sts., La Loma, Quezon City for P300,000.00 under the following terms and conditions:

- (1) 10% Option Money;
- (2) Balance payable in cash;
- (3) Provided that the property shall be cleared of illegal occupants or tenants.

Pursuant to the foregoing terms and conditions of the offer, Lim paid CDB P30,000.00 as Option Money, for which she was issued Official Receipt No. 3160, dated June 17, 1988, by CDB. However, after some time following up the sale, Lim discovered that the subject property was originally registered in the name of Perfecto Guansing, father of mortgagor Rodolfo Guansing, under TCT No. 91148. Rodolfo succeeded in having the property registered in his name under TCT No.

300809, the same title he mortgaged to CDB and from which the latter's title (TCT No. 355588) was derived. It appears, however, that the father, Perfecto, instituted Civil Case No. Q-39732 in the Regional Trial Court, Branch 83, Quezon City, for the cancellation of his son's title. On March 23, 1984, the trial court rendered a decision<sup>[2]</sup> restoring Perfecto's previous title (TCT No. 91148) and cancelling TCT No. 300809 on the ground that the latter was fraudulently secured by Rodolfo. This decision has since become final and executory.

Aggrieved by what she considered a serious misrepresentation by CDB and its mother-company, FEBTC, on their ability to sell the subject property, Lim, joined by her husband, filed on August 29, 1989 an action for specific performance and damages against petitioners in the Regional Trial Court, Branch 96, Quezon City, where it was docketed as Civil Case No. Q-89-2863. On April 20, 1990, the complaint was amended by impleading the Register of Deeds of Quezon City as an additional defendant.

On March 10, 1993, the trial court rendered a decision in favor of the Lim spouses. It ruled that: (1) there was a perfected contract of sale between Lim and CDB, contrary to the latter's contention that the written offer to purchase and the payment of P30,000.00 were merely pre-conditions to the sale and still subject to the approval of FEBTC; (2) performance by CDB of its obligation under the perfected contract of sale had become impossible on account of the 1984 decision in Civil Case No. Q-39732 cancelling the title in the name of mortgagor Rodolfo Guansing; (3) CDB and FEBTC were not exempt from liability despite the impossibility of performance, because they could not credibly disclaim knowledge of the cancellation of Rodolfo Guansing's title without admitting their failure to discharge their duties to the public as reputable banking institutions; and (4) CDB and FEBTC are liable for damages for the prejudice caused against the Lims.<sup>[3]</sup> Based on the foregoing findings, the trial court ordered CDB and FEBTC to pay private respondents, jointly and severally, the amount of P30,000.00 plus interest at the legal rate computed from June 17, 1988 until full payment. It also ordered petitioners to pay private respondents, jointly and severally, the amounts of P250,000.00 as moral damages, P50,000.00 as exemplary damages, P30,000.00 as attorney's fees, and the costs of the suit.<sup>[4]</sup>

Petitioners brought the matter to the Court of Appeals, which, on October 14, 1997, affirmed *in toto* the decision of the Regional Trial Court. Petitioners moved for reconsideration, but their motion was denied by the appellate court on December 9, 1997. Hence, this petition. Petitioners contend that -

1. The Honorable Court of Appeals erred when it held that petitioners CDB and FEBTC were aware of the decision dated March 23, 1984 of the Regional Trial Court of Quezon City in Civil Case No. Q-39732.
2. The Honorable Court of Appeals erred in ordering petitioners to pay interest on the deposit of THIRTY THOUSAND PESOS (P30,000.00) by applying Article 2209 of the New Civil Code.
3. The Honorable Court of Appeals erred in ordering petitioners to pay moral damages, exemplary damages, attorney's fees and costs of suit.

## I.

At the outset, it is necessary to determine the legal relation, if any, of the parties.

Petitioners deny that a contract of sale was ever perfected between them and private respondent Lolita Chan Lim. They contend that Lim's letter-offer clearly states that the sum of P30,000.00 was given as option money, not as earnest money.<sup>[5]</sup> They thus conclude that the contract between CDB and Lim was merely an option contract, not a contract of sale.

The contention has no merit. Contracts are not defined by the parties thereto but by principles of law.<sup>[6]</sup> In determining the nature of a contract, the courts are not bound by the name or title given to it by the contracting parties.<sup>[7]</sup> In the case at bar, the sum of P30,000.00, although denominated in the offer to purchase as "option money," is actually in the nature of earnest money or down payment when considered with the other terms of the offer. In *Carcelar v. Court of Appeals*,<sup>[8]</sup> we explained the nature of an option contract, viz. -

An option contract is a preparatory contract in which one party grants to the other, for a fixed period and under specified conditions, the power to decide, whether or not to enter into a principal contract, it binds the party who has given the option not to enter into the principal contract with any other person during the period designated, and within that period, to enter into such contract with the one to whom the option was granted, if the latter should decide to use the option. It is a separate agreement distinct from the contract to which the parties may enter upon the consummation of the option.

An option contract is therefore a contract separate from and preparatory to a contract of sale which, if perfected, does not result in the perfection or consummation of the sale. Only when the option is exercised may a sale be perfected.

In this case, however, after the payment of the 10% option money, the Offer to Purchase provides for the payment only of the balance of the purchase price, implying that the "option money" forms part of the purchase price. This is precisely the result of paying earnest money under Art. 1482 of the Civil Code. It is clear then that the parties in this case actually entered into a contract of sale, partially consummated as to the payment of the price. Moreover, the following findings of the trial court based on the testimony of the witnesses establish that CDB accepted Lim's offer to purchase:

It is further to be noted that CDB and FEBTC already considered plaintiffs' offer as good and no longer subject to a final approval. In his testimony for the defendants on February 13, 1992, FEBTC's Leomar Guzman stated that he was then in the Acquired Assets Department of FEBTC wherein plaintiffs' offer to purchase was endorsed thereto by Myoresco Abadilla, CDB's senior vice-president, with a recommendation that the necessary petition for writ of possession be filed in the proper court; that the recommendation was in accord with one of the conditions of the offer, i.e., the clearing of the property of illegal occupants or tenants (tsn, p. 12); that, in compliance with the request, a petition for writ of possession

was thereafter filed on July 22, 1988 (Exhs. 1 and 1-A); that the offer met the requirements of the banks; and that no rejection of the offer was thereafter relayed to the plaintiffs (p. 17); which was not a normal procedure, and neither did the banks return the amount of P30,000.00 to the plaintiffs.<sup>[9]</sup>

Given CDB's acceptance of Lim's offer to purchase, it appears that a contract of sale was perfected and, indeed, partially executed because of the partial payment of the purchase price. There is, however, a serious legal obstacle to such sale, rendering it impossible for CDB to perform its obligation as seller to deliver and transfer ownership of the property.

*Nemo dat quod non habet*, as an ancient Latin maxim says. One cannot give what one does not have. In applying this precept to a contract of sale, a distinction must be kept in mind between the "perfection" and "consummation" stages of the contract.

A contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.<sup>[10]</sup> It is, therefore, not required that, at the perfection stage, the seller be the owner of the thing sold or even that such subject matter of the sale exists at that point in time.<sup>[11]</sup> Thus, under Art. 1434 of the Civil Code, when a person sells or alienates a thing which, at that time, was not his, but later acquires title thereto, such title passes by operation of law to the buyer or grantee. This is the same principle behind the sale of "future goods" under Art. 1462 of the Civil Code. However, under Art. 1459, at the time of delivery or consummation stage of the sale, it is required that the seller be the owner of the thing sold. Otherwise, he will not be able to comply with his obligation to transfer ownership to the buyer. It is at the consummation stage where the principle of *nemo dat quod non habet* applies.

In *Dignos v. Court of Appeals*,<sup>[12]</sup> the subject contract of sale was held void as the sellers of the subject land were no longer the owners of the same because of a prior sale.<sup>[13]</sup> Again, in *Nool v. Court of Appeals*,<sup>[14]</sup> we ruled that a contract of repurchase, in which the seller does not have any title to the property sold, is invalid:

We cannot sustain petitioners' view. Article 1370 of the Civil Code is applicable only to valid and enforceable contracts. The Regional Trial Court and the Court of Appeals ruled that the principal contract of sale contained in Exhibit C and the auxiliary contract of repurchase in Exhibit D are both void. This conclusion of the two lower courts appears to find support in *Dignos v. Court of Appeals*, where the Court held:

"Be that as it may, it is evident that when petitioners sold said land to the Cabigas spouses, they were no longer owners of the same and the sale is null and void."

In the present case, it is clear that the sellers no longer had any title to the parcels of land at the time of sale. Since Exhibit D, the alleged contract of repurchase, was dependent on the validity of Exhibit C, it is itself void. A void contract cannot give rise to a valid one. Verily, Article 1422 of the Civil Code provides that (a) contract which is the direct result