

## THIRD DIVISION

[ G.R. No. 146839, March 23, 2011 ]

**ROLANDO T. CATUNGAL, JOSE T. CATUNGAL, JR., CAROLYN T. CATUNGAL AND ERLINDA CATUNGAL-WESSEL, PETITIONERS,  
VS. ANGEL S. RODRIGUEZ, RESPONDENT.**

### DECISION

Before the Court is a Petition for Review on *Certiorari*, assailing the following issuances of the Court of Appeals in CA-G.R. CV No. 40627 consolidated with CA-G.R. SP No. 27565: (a) the August 8, 2000 Decision,<sup>[1]</sup> which affirmed the Decision<sup>[2]</sup> dated May 30, 1992 of the Regional Trial Court (RTC), Branch 27 of Lapu-lapu City, Cebu in Civil Case No. 2365-L, and (b) the January 30, 2001 Resolution,<sup>[3]</sup> denying herein petitioners' motion for reconsideration of the August 8, 2000 Decision.

The relevant factual and procedural antecedents of this case are as follows:

This controversy arose from a Complaint for Damages and Injunction with Preliminary Injunction/Restraining Order<sup>[4]</sup> filed on December 10, 1990 by herein respondent Angel S. Rodriguez (Rodriguez), with the RTC, Branch 27, Lapu-lapu City, Cebu, docketed as Civil Case No. 2365-L against the spouses Agapita and Jose Catungal (the spouses Catungal), the parents of petitioners.

In the said Complaint, it was alleged that Agapita T. Catungal (Agapita) owned a parcel of land (Lot 10963) with an area of 65,246 square meters, covered by Original Certificate of Title (OCT) No. 105<sup>[5]</sup> in her name situated in the Barrio of Talamban, Cebu City. The said property was allegedly the exclusive paraphernal property of Agapita.

On April 23, 1990, Agapita, with the consent of her husband Jose, entered into a Contract to Sell<sup>[6]</sup> with respondent Rodriguez. Subsequently, the Contract to Sell was purportedly "upgraded" into a Conditional Deed of Sale dated July 26, 1990 between the same parties. Both the Contract to Sell and the Conditional Deed of Sale were annotated on the title.

The provisions of the Conditional Deed of Sale pertinent to the present dispute are quoted below:

1. The VENDOR for and in consideration of the sum of TWENTY[-]FIVE MILLION PESOS (£25,000,000.00) payable as follows:

a. FIVE HUNDRED THOUSAND PESOS (P500,000.00) downpayment upon the signing of this agreement, receipt of which sum is hereby acknowledged in full from the VENDEE.

b. The balance of TWENTY[-]FOUR MILLION FIVE HUNDRED THOUSAND PESO'S (P24,500,000.00) shall be payable in five separate checks, made to the order of JOSE Ch. CATUNGAL, the first check shall be for FOUR MILLION FIVE HUNDRED THOUSAND PESOS (P4,500,000.00) and the remaining balance to be paid in four checks in the amounts of FIVE MILLION PESOS (P5,000,000.00) each after the VENDEE have (sic)' successfully negotiated, secured and provided a Road Right of Way consisting of 12 meters in width cutting across Lot 10884 up to the national road, either by widening the existing Road Right of Way or by securing a new Road Right of Way of 12 meters in width. If however said Road Right of Way could not be negotiated, the VENDEE shall give notice to the VENDOR for them to reassess and solve the problem by taking other options and should the situation ultimately prove futile, he shall take steps to rescind or cancel the herein Conditional Deed of Sale.

c. That the access road or Road Right of Way leading to Lot 10963 shall be the responsibility of the VENDEE to secure and any or all cost relative to the acquisition thereof shall be borne solely by the VENDEE. He shall, however, be accorded with enough time necessary for the success of his endeavor, granting him a free hand in negotiating for the passage.

BY THESE PRESENTS, the VENDOR do hereby agree to sell by way of herein CONDITIONAL DEED OF SALE to VENDEE, his heirs, successors and assigns, the real property described in the Original Certificate of Title No. 105 x x x.

x x x x

5. That the VENDEE has the option to rescind the sale. In the event the VENDEE exercises his option to rescind the herein Conditional Deed of Sale, the VENDEE shall notify the VENDOR by way of a written notice relinquishing his rights over the property. The VENDEE shall then be reimbursed by the VENDOR the sum of FIVE HUNDRED THOUSAND PESOS (P500,000.00) representing the downpayment, interest free, payable but contingent upon the event that the VENDOR shall have been able to sell the property to another party.<sup>[8]</sup>

In accordance with the Conditional Deed of Sale, Rodriguez purportedly secured the necessary surveys and plans and through his efforts, the property was reclassified from agricultural land into residential land which he claimed substantially increased the property's value. He likewise alleged that he actively negotiated for the road right of way as stipulated in the contract.<sup>[9]</sup>

Rodriguez further claimed that on August 31, 1990 the spouses Catungal requested an advance of P5,000,000.00 on the purchase price for personal reasons. Rodriguez allegedly refused on the ground that the amount was substantial and was not due under the terms of their agreement. Shortly after his refusal to pay the advance, he purportedly learned that the Catungals were offering the property for sale to third parties.<sup>[10]</sup>

Thereafter, Rodriguez received letters dated October 22, 1990,<sup>[11]</sup> October 24,

1990<sup>[12]</sup> and October 29, 1990,<sup>[13]</sup> all signed by Jose Catungal who was a lawyer, essentially demanding that the former make up his mind about buying the land or exercising his "option" to buy because the spouses Catungal allegedly received other offers and they needed money to pay for personal obligations and for investing in other properties/business ventures. Should Rodriguez fail to exercise his option to buy the land, the Catungals warned that they would consider the contract cancelled and that they were free to look for other buyers.

In a letter dated November 4, 1990,<sup>[14]</sup> Rodriguez registered his objections to what he termed the Catungals' unwarranted demands in view of the terms of the Conditional Deed of Sale which allowed him sufficient time to negotiate a road right of way and granted him, the vendee, the exclusive right to rescind the contract. Still, on November 15, 1990, Rodriguez purportedly received a letter dated November 9, 1990<sup>[15]</sup> from Atty. Catungal, stating that the contract had been cancelled and terminated.

Contending that the Catungals' unilateral rescission of the Conditional Deed of Sale was unjustified, arbitrary and unwarranted, Rodriguez prayed in his Complaint, that:

1. Upon the filing of this complaint, a restraining order be issued enjoining defendants [the spouses Catungal], their employees, agents, representatives or other persons acting in their behalf from offering the property subject of this case for sale to third persons; from entertaining offers or proposals by third persons to purchase the said property; and, in general, from performing acts in furtherance or implementation of defendants' rescission of their Conditional Deed of Sale with plaintiff [Rodriguez].

2. After hearing, a writ of preliminary injunction be issued upon such reasonable bond as may be fixed by the court enjoining defendants and other persons acting in their behalf from performing any of the acts mentioned in the next preceding paragraph.

3. After trial, a Decision be rendered:

- a) Making the injunction permanent;

- b) Condemning defendants to pay to plaintiff, jointly and solidarily:

Actual damages in the amount of P400,000.00 for their unlawful rescission of the Agreement and their performance of acts in violation or disregard of the said Agreement;

Moral damages in the amount of P200,000.00;

Exemplary damages in the amount of P200,000.00; Expenses of litigation and attorney's fees in the amount of P100,000.00; and Costs of suit.<sup>[16]</sup>

On December 12, 1990, the trial court issued a temporary restraining order and set the application for a writ of preliminary injunction for hearing on December 21, 1990 with a directive to the spouses Catungal to show cause within five days from notice why preliminary injunction should not be granted. The trial court likewise ordered

that summons be served on them.<sup>[17]</sup>

Thereafter, the spouses Catungal filed their opposition<sup>[18]</sup> to the issuance of a writ of preliminary injunction and later filed a motion to dismiss<sup>[19]</sup> on the ground of improper venue. According to the Catungals, the subject property was located in Cebu City and thus, the complaint should have been filed in Cebu City, not Lapu-lapu City. Rodriguez opposed the motion to dismiss on the ground that his action was a personal action as its subject was breach of a contract, the Conditional Deed of Sale, and not title to, or possession of real property.<sup>[20]</sup>

In an Order dated January 17, 1991,<sup>[21]</sup> the trial court denied the motion to dismiss and ruled that the complaint involved a personal action, being merely for damages with a prayer for injunction.

Subsequently, on January 30, 1991, the trial court ordered the issuance of a writ of preliminary injunction upon posting by Rodriguez of a bond in the amount of P100,000.00 to answer for damages that the defendants may sustain by reason of the injunction.

On February 1, 1991, the spouses Catungal filed their Answer with Counterclaim<sup>[22]</sup> alleging that they had the right to rescind the contract in view of (1) Rodriguez's failure to negotiate the road right of way despite the lapse of several months since the signing of the contract, and (2) his refusal to pay the additional amount of P5,000,000.00 asked by the Catungals, which to them indicated his lack of funds to purchase the property. The Catungals likewise contended that Rodriguez did not have an exclusive right to rescind the contract and that the contract, being reciprocal, meant both parties had the right to rescind.<sup>[23]</sup> The spouses Catungal further claimed that it was Rodriguez who was in breach of their agreement and guilty of bad faith which justified their rescission of the contract.<sup>[24]</sup> By way of counterclaim, the spouses Catungal prayed for actual and consequential damages in the form of unearned interests from the balance (of the purchase price in the amount) of P24,500,000.00, moral and exemplary damages in the amount of P2,000,000.00, attorney's fees in the amount of P200,000.00 and costs of suits and litigation expenses in the amount of P10,000.00.<sup>[25]</sup> The spouses Catungal prayed for the dismissal of the complaint and the grant of their counterclaim.

The Catungals amended their Answer twice,<sup>[26]</sup> retaining their basic allegations but amplifying their charges of contractual breach and bad faith on the part of Rodriguez and adding the argument that in view of Article 1191 of the Civil Code, the power to rescind reciprocal obligations is granted by the law itself to both parties and does not need an express stipulation to grant the same to the injured party. In the Second Amended Answer with Counterclaim, the spouses Catungal added a prayer for the trial court to order the Register of Deeds to cancel the annotations of the two contracts at the back of their OCT.

On October 24, 1991, Rodriguez filed an Amended Complaint,<sup>[28]</sup> adding allegations to the effect that the Catungals were guilty of several misrepresentations which purportedly induced Rodriguez to buy the property at the price of P25,000,000.00. Among others, it was alleged that the spouses Catungal misrepresented that their Lot 10963 includes a flat portion of land which later turned out to be a separate lot

(Lot 10986) owned by Teodora Tudtud who sold the same to one Antonio Pablo. The Catungals also allegedly misrepresented that the road right of way will only traverse two lots owned by Anatolia Tudtud and her daughter Sally who were their relatives and who had already agreed to sell a portion of the said lots for the road right of way at a price of P550.00 per square meter. However, because of the Catungals' acts of offering the property to other buyers who offered to buy the road lots for P2,500.00 per square meter, the adjacent lot owners were no longer willing to sell the road lots to Rodriguez at P550.00 per square meter but were asking for a price of P3,500.00 per square meter. In other words, instead of assisting Rodriguez in his efforts to negotiate the road right of way, the spouses Catungal allegedly intentionally and maliciously defeated Rodriguez's negotiations for a road right of way in order to justify rescission of the said contract and enable them to offer the property to other buyers.

Despite requesting the trial court for an extension of time to file an amended Answer,<sup>[29]</sup> the Catungals did not file an amended Answer and instead filed an Urgent Motion to Dismiss<sup>[30]</sup> again invoking the ground of improper venue. In the meantime, for failure to file an amended Answer within the period allowed, the trial court set the case for pre-trial on December 20, 1991.

During the pre-trial held on December 20, 1991, the trial court denied in open court the Catungals' Urgent Motion to Dismiss for violation of the rules and for being repetitious and having been previously denied. However, Atty. Catungal refused to enter into pre-trial which prompted the trial court to declare the defendants in default and to set the presentation of the plaintiffs evidence on February 14, 1992;<sup>[32]</sup>

On December 23, 1991, the Catungals filed a motion for reconsideration<sup>[33]</sup> of the December 20, 1991 Order denying their Urgent Motion to Dismiss but the trial court denied reconsideration in an Order dated February 3, 1992.<sup>[34]</sup> Undeterred, the Catungals subsequently filed a Motion to Lift and to Set Aside Order of Default<sup>[35]</sup> but it was likewise denied for being in violation of the rules and for being not meritorious.<sup>[36]</sup> On February 28, 1992, the Catungals filed a Petition for *Certiorari* and Prohibition<sup>[37]</sup> with the Court of Appeals, questioning the denial of their motion to dismiss and the order of default. This was docketed as **CA-G.R. SP No. 27565**.

Meanwhile, Rodriguez proceeded to present his evidence before the trial court.

In a Decision dated May 30, 1992, the trial court ruled in favor of Rodriguez, finding that: (a) under the contract it was complainant (Rodriguez) that had the option to rescind the sale; (b) Rodriguez's obligation to pay the balance of the purchase price arises only upon successful negotiation of the road right of way; (c) he proved his diligent efforts to negotiate the road right of way; (d) the spouses Catungal were guilty of misrepresentation which defeated Rodriguez's efforts to acquire the road right of way; and (e) the Catungals' rescission of the contract had no basis and was in bad faith. Thus, the trial court made the injunction permanent, ordered the Catungals to reduce the purchase price by the amount of acquisition of Lot 10963 which they misrepresented was part of the property sold but was in fact owned by a third party and ordered them to pay P100,000.00 as damages, P30,000.00 as attorney's fees and costs.