

SECOND DIVISION

[G.R. No. 174286, June 05, 2009]

TRADERS ROYAL BANK, PETITIONER, VS. CUISON LUMBER CO., INC., AND JOSEFA JERODIAS VDA. DE CUISON, RESPONDENTS.

DECISION

BRION, J.:

We review in this petition for review on *certiorari*^[1] the decision^[2] and resolution^[3] of the Court of Appeals (CA) in **CA-G.R. CV No. 49900**. The CA affirmed with modifications the decision^[4] of the Regional Trial Court (RTC), Davao City, Branch 13. The RTC ruled in favor of respondents Cuison Lumber Co., Inc. (CLCI) and Josefa Vda. De Cuison (*Mrs. Cuison*), collectively referred to as *respondents*, in the action they commenced for breach of contract, specific performance, damages, and attorney's fees, with prayer for the issuance of a writ of preliminary injunction against petitioner Traders Royal Bank (*bank*).

THE BACKGROUND FACTS

On July 14, 1978 and December 9, 1979, respectively, CLCI, through its then president, Roman Cuison Sr., obtained two loans from the bank. The loans were secured by a real estate mortgage over a parcel of land covered by Transfer Certificate of Title No. 10282 (*subject property*). CLCI failed to pay the loan, prompting the bank to extrajudicially foreclose the mortgage on the subject property. The bank was declared the highest bidder at the public auction that followed, conducted on August 1, 1985. A Certificate of Sale and a Sheriff's Final Certificate of Sale were subsequently issued in the bank's favor.

In a series of written communications between CLCI and the bank, CLCI manifested its intention to restructure its loan obligations and to repurchase the subject property. On July 31, 1986, Mrs. Cuison, the widow and administratrix of the estate of Roman Cuison Sr., wrote the bank's Officer-in-Charge, Remedios Calaguas, a letter indicating her offered terms of repurchase. She stated:

1. That I will pay the interest of P115,538.66, plus the additional expenses of P17,293.69, the total amount of which is P132,832.35 on August 8, 1986;
2. That I will pay 20% of the bid price of P949,632.84, plus whatever interest accruing within sixty (60) days from August 8, 1986;
3. That whatever remaining balance after the above two (2) payments shall be amortized for five (5) years on equal monthly installments

including whatever interest accruing lease on diminishing balance.

[5]

CLCI paid the bank P50,000.00 (on August 8, 1986) and P85,000.00 (on September 3, 1986). The bank received and regarded these amounts as "earnest money" for the repurchase of the subject property. On October 20, 1986, the bank sent Atty. Roman Cuison, Jr. (*Atty. Cuison*), as the president and general manager of CLCI, a letter informing CLCI of the bank's board of directors' resolution of October 10, 1986 (*TRB Repurchase Agreement*), laying down the conditions for the repurchase of the subject property:

This is to formally inform you that our Board of Directors, in its regular meeting held on October 10, 1986, passed a resolution for the repurchase of your property acquired by the bank, subject to the following terms and conditions, *viz*:

1. That the repurchase price shall be at total bank's claim as of the date of implementation;
2. That client shall initially pay P132,000.00 within fifteen (15) days from the expiration of the redemption period (August 8, 1986) and further payment of P200,632.84, representing 20% of the bid price, to be remitted on or before October 31, 1986;
3. That the balance of P749,000.00 to be paid in three (3) years in twelve (12) quarterly amortizations, with interest rate at 26% computed on diminishing balance;
4. That all the interest and other charges starting from August 8, 1986 to date of approval shall be paid first before implementation of the request; interest as of October 31, 1986 is P65,669.53;
5. Possession of the property shall be deemed transferred after signing of the Contract to Sell. However, title to the property shall be delivered only upon full payment of the repurchase price *via* Deed of Absolute Sale;
6. Registration fees, documentary stamps, transfer taxes at the date of sale and other similar government impost shall be for the exclusive account of the buyer;
7. The improvement of the property shall at all times be covered by insurance against loss with a policy to be obtained from a reputable company which designates the bank as beneficiary but premiums shall be paid by the client;
8. That the sale is good for thirty (30) days from the buyer's receipt of notice of approval of the offer; otherwise, sale is automatically cancelled;
9. Effective upon signing of the Contract to Sell, all realty taxes which will become due on the property shall be for the account of the buyer;

10. That the first quarterly installment shall be due within ninety (90) days of approval hereof, and the succeeding installment shall be due every three (3) months thereafter;

11. Upon default of the buyer to pay two (2) successive quarterly installments, contract is automatically cancelled at the Bank's option and all payments already made shall be treated as rentals or as liquidated damages; and

12. Other terms and conditions that the bank may further impose to protect its interest.

Should you agree with the above terms and conditions please sign under "Conforme" on the space provided below.

We attach herewith your Statement of Account^[6] as of October 31, 1986, for your reference.

Thank you.

Very truly yours,
(Signed)

Conforme: (Not signed)^[7]

CLCI failed to comply with the above terms notwithstanding the extensions of time given by the bank. Nevertheless, CLCI tendered, on February 3, 1987, a check for P135,091.57 to cover fifty percent (50%) of the twenty percent (20%) bid price. The check, however, was returned for "insufficiency of funds." On May 13, 1987, CLCI tendered an additional P50,000.00.^[8] On May 29, 1987, the bank sent Atty. Cuison a letter informing him that the P185,000.00 CLCI paid was not a deposit, but formed part of the earnest money under the TRB Repurchase Agreement. On August 28, 1987, Atty. Cuison, by letter, requested that CLCI's outstanding obligation of P1,221,075.61 (as of July 31, 1987) be reduced to P1 million, and the amount of P221,075.61 be condoned by the bank. To show its commitment to the request, CLCI paid the bank P100,000.00 and P200,000.00 on August 28, 1987. The bank credited both payments as earnest money.

A year later, CLCI inquired about the status of its request. The bank responded that the request was still under consideration by the bank's Manila office. On September 30, 1988, the bank informed CLCI that it would resell the subject property at an offered price of P3 million, and gave CLCI 15 days to make a formal offer; otherwise, the bank would sell the subject property to third parties. On October 26, 1988, CLCI offered to repurchase the subject property for P1.5 million, given that it had already tendered the amount of P400,000.00 as earnest money.

CLCI subsequently claimed that the bank breached the terms of repurchase, as it had wrongly considered its payments (in the amounts of P140,485.18, P200,000.00 and P100,000.00) as earnest money, instead of applying them to the purchase price. Through its counsel, CLCI demanded that the bank rectify the repurchase

agreement to reflect the true consideration agreed upon for which the earnest money had been given. The bank did not act on the demand. Instead, it informed CLCI that the amounts it received were not earnest money, and that the bank was willing to return these sums, less the amounts forfeited to answer for the unremitted rentals on the subject property.

In view of these developments, CLCI and Mrs. Cuison, on February 10, 1989, filed with the RTC a complaint for breach of contract, specific performance, damages, and attorney's fees against the bank. On April 20, 1989, the bank filed its Answer alleging that the TRB repurchase agreement was already cancelled given CLCI's failure to comply with its provisions; *by way of counterclaim*, the bank also demanded the payment of the accrued rentals in the subject property as of January 31, 1989, and the award of moral damages and exemplary damages as well as attorney's fees and litigation expenses for the unfounded suit instituted against the bank by CLCI.^[9] After trial on the merits, the RTC ruled in respondents' favor. The dispositive portion of its November 4, 1994 Decision states:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiffs and against the defendant bank, ordering said defendant bank to:

1. Execute and consummate a Contract to Sell which is reflective of the true consideration indicated in the Resolution of the Board of Directors of Traders Royal Bank held on October 10, 1986 (Exhibit "F" and Exhibit "13"), duly accrediting the amount of P435,000 as earnest money to be part of the price, the mode of payment being on quarterly installment, but the period within which the first quarterly payment being on quarterly payment shall be made to commence upon the execution of said Contract to Sell;
2. Pay to plaintiffs the amounts of P50,000.00 in concept of moral damages, P20,000.00 as exemplary damages;
3. Pay attorney's fees of P20,000.00; and
4. Pay litigation expenses in the amount of P2,000.00.

The counterclaim of defendant bank is hereby dismissed.

SO ORDERED.

On appeal to the CA, the bank pointed out the misappreciation of facts the RTC committed and argued that: *first*, the repurchase agreement did not ripen into a perfected contract; and *second*, even assuming that there was a perfected repurchase agreement, the bank had the right to revoke it and apply the payments already made to the rentals due for the use of the subject property, or as liquidated damages under paragraph 11 of the TRB Repurchase Agreement, since CLCI violated its terms and conditions. Further, the bank contended that CLCI had abandoned the TRB Repurchase Agreement in its letters dated August 28, 1987 and October 26, 1988 when it proposed to repurchase the subject property for P1 million

and P1.5 million, respectively. Lastly, the bank objected to the award of damages in the plaintiffs' favor.

THE CA DECISION

On March 31, 2006, the CA issued the challenged Decision and affirmed the RTC's factual findings and legal conclusions. Although it deleted the awards of attorney's fees, moral and exemplary damages, the CA ruled that there was a perfected contract to repurchase the subject property given the bank's acceptance (as stated in the letter dated October 20, 1986) of CLCI's proposal contained in Mrs. Cuison's letter of July 31, 1986. The CA distinguished between a condition imposed on the perfection of the contract and a condition imposed on the performance of an obligation, and declared that the conditions laid down in the letter dated October 20, 1986 merely relate to the manner the obligation is to be performed and implemented; failure to comply with the latter obligation does not result in the failure of the contract and only gives the other party the options and/or remedies to protect its interest. The CA held that the same conclusion obtains even if the letter of October 20, 1986 is considered a counter-offer by the bank; CLCI's payment of P135,000.00 operated as an implied acceptance of the bank's counter-offer, notwithstanding CLCI's failure to expressly manifest its *conforme*. In light of these findings, the CA went on to acknowledge the validity of the terms of paragraph 11 of the TRB Repurchase Agreement, but nonetheless held that CLCI has not yet violated its terms given the bank's previous acts (*i.e.*, the grant of extensions to pay), which showed that it had waived the agreement's original terms of payment.

The CA rejected the theory that CLCI had abandoned the terms of the TRB Repurchase Agreement and found no incompatibility between the agreement and the contents of the August 28, 1987 and October 26, 1988 letters which did not show an implied abandonment by CLCI, nor the latter's expressed intent to cancel or abandon the perfected repurchase agreement. In the same manner, the CA struck down the bank's position that CLCI's payments were "deposits" rather than earnest money. The appellate court reasoned that while the amounts tendered cannot be strictly considered as earnest money under Article 1482 of the New Civil Code,^[10] they were nevertheless within the concept of earnest money under this Court's ruling in *Spouses Doromal, Sr. v. CA*,^[11] since they were paid as a guarantee so that the buyer would not back out of the contract.

The CA however ruled that the award of moral and exemplary damages, attorney's fees and litigation expenses lacked factual and legal support. The CA found that the bank acted in good faith and based its actions on the erroneous belief that CLCI had already abandoned the repurchase agreement. Likewise, the award of moral damages was not in order as there was no showing that CLCI's reputation was debased or besmirched by the bank's action of applying the previous payments made to the interest and rentals due on the subject property; neither is Mrs. Cuison entitled to moral damages without any evidence to justify this award. The CA also ruled that there was nothing in the records to warrant the awards of exemplary damages and attorney's fees.

The bank subsequently moved but failed to secure a reconsideration of the CA decision. The bank thus came to us with the following -

ISSUES