

## SECOND DIVISION

[ G.R. NO. 131408, July 31, 2006 ]

**VICENTE L. GO, PETITIONER, VS. PURA V. KALAW, INC.,  
RESPONDENT.**

### DECISION

**SANDOVAL-GUTIERREZ, J.:**

For our resolution is the instant Petition for Review on Certiorari seeking to reverse the Decision<sup>[1]</sup> and Resolution<sup>[2]</sup> of the Court of Appeals dated July 8, 1997 and November 14, 1997, respectively, in CA-G.R. CV No. 43785, entitled "*Vicente L. Go, plaintiff-appellee, v. Pura V. Kalaw, Inc. and Metropolitan Trial Court, Branch 13, Manila and Hon. Escolastico Cruz, Jr., Presiding Judge, defendants-appellants.*"

Pura V. Kalaw, Inc., a domestic corporation, herein respondent, is the registered owner of a parcel of land located at Quezon Boulevard, Quiapo, Manila with an area of 143.60 square meters. Constructed thereon is a building intended to be a commercial/residential condominium (PVK Condominium).

On July 13, 1980, while respondent was constructing the PVK Condominium, Vicente Go, petitioner, agreed to purchase Unit 1-A for P665,200.00. Unit 1-A comprises one-half (1/2) of the ground floor and mezzanine of the building. The parties then executed a Contract to Sell providing, among others, that the down payment is 1/2 of the purchase price. The balance is payable upon completion of Unit 1-A and upon written notice to the buyer that the unit has been completed and ready for occupancy.

Petitioner then paid the down payment of P327,600.00. He moved in to the unit and has occupied it since February 1982.

On February 25, 1982, respondent sent a letter to petitioner demanding payment of the balance of P327,600.00. Petitioner replied that he was applying for a bank loan in order to settle his obligation.

On June 5, 1982, respondent informed petitioner that its request with the Human Settlement Regulatory Board for approval of its building as a condominium was denied for lack of parking spaces. Respondent then asked petitioner to sign a "waiver of parking space" in order that the building can be approved as a condominium.

However, petitioner refused to sign the waiver, citing defects in the building. Respondent then sent petitioner a letter dated December 8, 1982 suggesting to reimburse his down payment with interest, as provided for in their Contract to Sell.

Since petitioner refused to sign a waiver and to pay the balance of the purchase

price, respondent sent him a letter dated March 14, 1983 rescinding the Contract to Sell and considering all his payments as rentals.

Subsequently, respondent sent petitioner two letters dated December 6, 1988 and February 15, 1989 offering to sell the building and lot for P3,023,000.00. But the latter did not respond. This prompted respondent's counsel to send petitioner another letter (dated April 24, 1989) asking him to pay rentals and vacate the premises. Thereafter, respondent offered the building for sale to third persons.

Petitioner replied that since respondent violated the terms of their agreement, it could not unilaterally rescind the Contract to Sell. Respondent responded by sending petitioner a computation of his overdue rentals. However, he refused to pay, prompting respondent to file a Complaint for Illegal Detainer against petitioner with the Metropolitan Trial Court (MeTC), Branch 13, Manila, docketed as Civil Case No. 132536-CV.

In turn, petitioner filed with the Regional Trial Court (RTC), Branch 23, Manila, a complaint for Specific Performance or Rescission of Contract, docketed as Civil Case No. 90-53744. Forthwith, upon petitioner's application, the RTC issued an Order enjoining the MeTC from hearing the illegal detainer case.

Later, petitioner amended his complaint by alleging that respondent failed to complete the construction of the condominium unit and deliver it to him in accordance with their Contract to Sell; and that the filing of the complaint for illegal detainer and respondent's intention to sell the unit to third persons caused him injury and prejudice. He thus prayed that respondent be ordered to sell the unit, or, in the alternative, that the contract be rescinded. In either case, he asked for an award of P100,000.00 as exemplary damages, and P50,000.00 as attorney's fees.

In its Answer, respondent alleged that due to petitioner's refusal to sign the "waiver of parking space," the building could not be declared as a condominium. Moreover, petitioner has resided in the unit for eight (8) years without paying either the balance of the purchase price or the realty taxes thereon. Respondent prayed that petitioner's down payment be applied as rentals; and that petitioner be ordered to vacate the unit and pay exemplary and moral damages, as well as attorney's fees.

On May 17, 1993, the RTC rendered its Decision, the dispositive portion of which is quoted below:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant as follows:

1. Declaring and holding the contract to sell, Exh. A and Exh. 1, as rescinded and consequently, plaintiff is hereby directed to turn over and surrender the premises covered by said contract to defendant, and simultaneously with such turnover, defendant is ordered as follows:

- A. To refund and pay plaintiff the sum of P327,600.00 representing the initial payment of 50% of the purchase price of the condominium unit purchased by plaintiff with interest at the rate of 1% per month from July 30, 1980, the date of execution of the contract to sell until said

amount is fully paid as provided for in the Contract to Sell;

B. To pay plaintiff the sum of P1,000,000.00 as actual or compensatory damages suffered by plaintiff for the loss of the condominium unit he purchased;

C. To pay plaintiff the sum of P1,000,000.00 as moral damages for his sufferings, embarrassment, and the mental anguish he suffered brought about or as a result of the Contract to Sell he executed with the defendant, resulting to the filing of an ejectment suit against him, for the threats and harassment contained in the letters of the defendant's lawyer and his fear of losing his shoes and bags business;

D. To pay the sum of P50,000.00 as exemplary damages;

E. To pay the sum of P30,000.00 for and as attorney's fees;

F. To pay the cost of litigation.

The injunction previously issued by this Court is ordered made permanent.

The counterclaim is ordered dismissed.

SO ORDERED.

On appeal, the Court of Appeals, on July 8, 1997, promulgated its Decision affirming the RTC judgment with modification, thus:

WHEREFORE, judgment is hereby rendered:

1. Affirming the decision appealed from only insofar as it declared the "Contract to Sell" rescinded and directed appellee "to turn over and surrender the premises" to appellant, the other dispositions being deleted (underscoring in the original);
2. Declaring the downpayment of P327,600.00 as rentals for the use of the premises in accordance with the Contract to Sell;
3. Ordering appellee to pay appellant attorney's fees of P200,000.00 and the costs of suit.

SO ORDERED.

Petitioner filed a motion for reconsideration, but it was denied by the Court of Appeals in its Resolution of November 14, 1997.

Hence, the present petition.