

## SECOND DIVISION

[ G.R. NO. 146365, February 28, 2005 ]

**SIMPLICIO A. PALANCA, PETITIONER, VS. ULYSSIS GUIDES  
JOINED BY HER HUSBAND LORENZO GUIDES, RESPONDENT.**

### DECISION

**TINGA, J.:**

For review are the Court of Appeals' *Decision*<sup>[1]</sup> dated 17 November 1999 and *Resolution*<sup>[2]</sup> dated 15 November 2000 in CA-G.R. CV No. 56258, dismissing petitioner's appeal and affirming the *Decision*<sup>[3]</sup> of the Regional Trial Court of Bacolod City, Negros Occidental, Branch 42, in Civil Case No. 4721.

On 23 August 1983, petitioner Simplicio Palanca executed a *Contract to Sell* a parcel of land<sup>[4]</sup> on installment with a certain Josefa A. Jopson<sup>[5]</sup> for P11,250.00. In accordance with the contract, Jopson paid petitioner P1, 650.00 as her down payment, leaving a balance of P9, 600.00.

Sometime in December 1983, Jopson assigned and transferred all her rights and interests over the property in question in favor of the respondent Ulyssis Guides (hereafter simply respondent).<sup>[6]</sup> In the deed of transfer, respondent undertook to assume the balance of Jopson's account and to pay the same in accordance with the terms and conditions of the *Contract to Sell*.<sup>[7]</sup> After reimbursing Jopson P1,650.00, respondent acquired possession of the lot and paid petitioner the stipulated amortizations which were in turn acknowledged by petitioner through receipts issued in the name of respondent.<sup>[8]</sup>

Believing that she had fully paid the purchase price of the lot, respondent verified the status of the lot with the Register of Deeds, only to find out that title thereto was not in the name of the petitioner as it was covered by Transfer Certificate of Title No. 105742 issued on 26 September 1978 in the name of a certain Carissa T. de Leon. Respondent went to petitioner's office to secure the title to the lot, but petitioner informed her that she could not as she still had unpaid accounts. Thereafter, respondent, through a lawyer, sent a letter to petitioner demanding compliance with his obligation and the release of the title in her name. As petitioner did not heed her demands, respondent, joined by her husband, filed a *Complaint*<sup>[9]</sup> for specific performance with damages on 16 December 1987.

Petitioner sought the dismissal of the complaint on the ground of respondent's alleged failure to comply with the mandatory requirement of Presidential Decree (P.D.) No. 1508,<sup>[10]</sup> since the submitted certification referred to a different defendant, Oscar Rivera who was the manager of petitioner's subdivision, and not petitioner himself.<sup>[11]</sup> Opposing petitioner's motion, respondent manifested that

Rivera appeared in the barangay conference on behalf of petitioner as its subdivision manager. Attached to the opposition was the affidavit of the barangay secretary who admitted that he thought that Rivera should be the one named in the certification since he was the one who appeared at the hearing. The same secretary likewise stated that the date "September 8, 1986" was a clerical error and should have appeared as "September 8, 1987"<sup>[12]</sup> instead. The trial court denied petitioner's motion to dismiss, noting that the error in the designation of the parties was already corrected by the Lupon Secretary and that there was substantial compliance with P.D. No. 1508.<sup>[13]</sup>

Respondent alleged that she paid petitioner P14,880.00, which not only fully settled her obligation to him, but in fact overpaid it by P3,620.00. In addition, she claimed that petitioner charged her devaluation charges and illegal interest.<sup>[14]</sup>

On the other hand, petitioner claimed that the assignment of rights was subject to the condition that respondent shall comply with whatever obligation which Jopson may have had under the contract to sell. He stated that he refused to execute the document of sale in favor of respondent since the latter failed to comply with the said obligations and that respondent had not paid him the complete amount under the contract.<sup>[15]</sup> He claimed that respondent in fact still had an outstanding balance of P6,949.81, exclusive of charges for registration and documentation.<sup>[16]</sup>

At the pre-trial in 1989, both parties admitted that Jopson assigned her rights over the property in favor of respondent and respondent paid petitioner the subsequent monthly amortizations on installments. Petitioner likewise acknowledged the payments made by respondent as stated in the statement of accounts initiated by its manager, Oscar Rivera.<sup>[17]</sup> From the inception of the case until the end of 1994, Atty. Renecito Novero exclusively represented petitioner.

After almost six years and several failed attempts to reach an amicable settlement between the parties, on 16 March 1995, the trial court called the case again for pre-trial.<sup>[18]</sup> At the said pre-trial, Atty. Teodulo Cario entered his special appearance for petitioner, informing the trial court that Atty. Novero was unavailable. Finding that the crucial issue of the case pertained only to the balance of the purchase price of the lot and upon motion of both counsels, the trial court considered the pre-trial conference closed.<sup>[19]</sup>

Presentation of respondent's evidence commenced and terminated with Atty. Cario appearing for the petitioner. Several hearings set for the reception of petitioner's evidence were postponed at petitioner's instance. At the last scheduled hearing on 10 November 1995, none appeared for petitioner-whether Atty. Novero, Atty. Cario or even petitioner himself-with nary an explanation for their non-appearance, despite the fact that it was Atty. Cario who sought the resetting of the hearing. The trial court, upon motion of respondent, considered petitioner to have waived his right to present evidence and to have rested his case and accordingly declared the case submitted for decision.<sup>[20]</sup>

Petitioner sought reconsideration of the *Order* dated 10 November 1995, claiming that Atty. Novero never knew of the hearing on said date as Atty. Cario did not inform him about it, and that his secretary was in fact informed by a personnel of

the trial court that the hearing was reset to 05 December 1995.<sup>[21]</sup> The motion was denied, with the trial court holding that there was due notice on Atty. Cario who himself had requested the resetting of the hearing to 10 November 1995.<sup>[22]</sup> A second *Motion for Reconsideration* was likewise denied on 03 July 1996.<sup>[23]</sup> With the case submitted for decision anew on 04 November 1996, the trial court rendered the challenged decision, the decretal portion of which reads:

WHEREFORE, premises considered, the court thereby renders judgment in favor of the plaintiff and against the defendant Simplicio A. Palanca, ordering him-

1. To execute in favor of plaintiff Ulyssis Guides and her husband, a Deed of Absolute Sale involving Lot 16-B, Block 23, Pcs 15073 of the Bacolod Cadastre consisting of Two Hundred Twenty Five (225) square meters and directing the same defendant to cause the issuance of Transfer Certificate of Title in favor of plaintiff affecting the same lot;
2. To pay plaintiff the sum of Ten Thousand (P10,000.00) Pesos as moral damages; the sum of Five Thousand (P5,000.00) Pesos as attorney's fees and the amount of Two Thousand (P2,000.00) Pesos as exemplary damages;
3. To reimburse plaintiff the sum of Two Thousand Five Hundred Eighty (P2,580.00) Pesos corresponding to the amount paid in excess of the total purchase price of Lot 16-B;
4. To pay the expenses of this litigation.

SO ORDERED.<sup>[24]</sup>

On 15 November 1996, petitioner filed his *Notice of Appeal*.<sup>[25]</sup> In the Court of Appeals, petitioner claimed that the trial court erred in denying his right to present evidence in support of his cause; in dismissing the complaint *a quo* for failure to comply with the required barangay conciliation; in considering that respondent overpaid or fully paid him; in ordering him to pay respondent moral and exemplary damages and attorney's fees; and in failing to consider certain terms and conditions of the contract to sell which respondent did not comply with.

In its assailed *Decision*, the Court of Appeals held that petitioner was afforded due process, having been given the opportunity to present and submit evidence in support of his defense. It agreed with the trial court that there was substantial compliance with Sec. 6 of P.D. No. 1508 on barangay conciliation, and that the proper certification was submitted by respondent. The appellate court also shared the findings of the trial court on the overpayment made by respondent. It added that petitioner's claim for payment of costs of transfer of title, registration and other expenses is unfounded, noting at the same time that the overpayment made by respondent is enough to cover said expenses. Thus, the Court of Appeals concluded that this last argument was a mere afterthought or subterfuge on the part of petitioner.

His *Motion for Reconsideration* having been denied by the Court of Appeals,<sup>[26]</sup>

petitioner elevated the case to this Court through a *Petition for Review on Certiorari*.

Petitioner assigns the following errors:

#### ASSIGNMENT OF ERRORS

With utmost respect, it is submitted that in promulgating the questioned *Decision*, the Court of Appeals:

- I. Has decided a question of substance not in accord with law and applicable decisions of the Supreme Court when it failed to consider that petitioner was unjustly denied of his right to present evidence in support of his cause;
- II. Has decided a question of substance not in accord with law and applicable decisions of the Supreme Court when it did not dismiss the case for failure of the plaintiff/respondent to comply with Section 6, P.D. No. 1508;
- III. Has decided a question of substance not in accord with law and applicable decision of the Supreme Court when it sustained the trial court's decision finding the therein respondent to have overpaid or fully paid therein petitioner despite very clear evidence to the contrary and despite very clear provisions of their contract to sell, the law between themselves which strongly negate such alleged overpayment;
- IV. Has decided a question of substance not in accord with law and applicable decisions of the Supreme Court when it sustained the decision of the trial court ordering therein petitioner to pay respondent moral and exemplary damages as well as attorney's fee notwithstanding the absence of any justification therefore;
- V. Has decided a question of substance not in accord with law and applicable decisions of the Supreme Court when it did not consider certain terms and conditions of the *Contract to Sell*, which is the law between the parties, which therein respondent failed to comply as well as the terms and conditions which therein respondent must first perform as prerequisite before herein petitioner may be required to transfer or facilitate the transfer of title to the respondent.<sup>[27]</sup>

In the present petition, petitioner insists that he was unjustly deprived of his right to present evidence in support of his cause when the trial court considered him to have rested his case when he failed to appear during the 10 November 1995 hearing. Claiming that he did not receive any order/notice from the trial court informing him of the hearing, petitioner capitalizes on the affidavit of his secretary who allegedly called the trial court to verify the schedule of hearing, only to be misinformed by a personnel of the court that the hearing was reset to 05 December 1995. He faults the trial court's strict application of the rules against them, considering that it took the said court eight months to resolve petitioner's right to present evidence and about one year to render judgment on the case. He claims that had the trial court allowed him another opportunity to present his evidence, it would have taken only

one setting, and it would not do any harm to the parties, much less to the court.<sup>[28]</sup> Petitioner claims that the judgment rendered by the trial court solely on the basis of respondent's evidence is technically a judgment on default that is discouraged in this jurisdiction.<sup>[29]</sup>

Petitioner further claims that the Court of Appeals and the trial court erred in ruling that respondent substantially complied with the requirements of P.D. No. on barangay conciliation. He argues that the error in the original certification could not simply be corrected by an affidavit whose affiant was not presented in court, a factor which designates the affidavit as mere hearsay evidence which is bereft of any probative worth.<sup>[30]</sup>

Petitioner also posits that in view of the clear terms of the contract which bound respondent, the trial court erred in holding that respondent overpaid him. He points to the provision in the contract which states that failure on the part of the vendee to pay three consecutive installments serves to forfeit her rights and interest in the property. Petitioner states that when respondent came into the picture in 1984, ten (10) months had already passed since Jopson made the down payment in 1983. Thus, petitioner claims that the money initially paid by Jopson was already considered lost, gone and forfeited and cannot be credited to respondent.<sup>[31]</sup>

Petitioner adds that under the contract, the vendee had to pay three percent (3%) monthly as service fee and penalty based on the outstanding account. The ten-month delay in the payment of installments represent a total thirty percent (30%) of the outstanding account, which, according to petitioner, respondent also assumed when she acquired the rights and interests of Jopson in the subject property.<sup>[32]</sup>

Petitioner mentions a devaluation charge of forty percent (40%) by virtue of the clause in the contract for proportionate adjustment in case of inflation or fluctuation,<sup>[33]</sup> which was allegedly never questioned by respondent. Anent the Court of Appeals' observation that petitioner's claim for payment of advance costs of transfer of title, registration, documentation and other expenses as mere afterthought, petitioner counters that the charges were expressly provided for in the contract.<sup>[34]</sup>

Likewise raised as an issue is the aspect that while the Court of Appeals honored the rights of respondent in the contract to sell, it closed its eyes to her corresponding obligations under the same contract. Further, petitioner points to the *Deed of Transfer of Rights and Interest With Assumption of Obligations*<sup>[35]</sup> entered into by respondent and Jopson, as well as the receipts issued by Jopson in favor of respondent, which in effect bound respondent to the terms and conditions of the *Contract to Sell* originally entered into by Jopson and petitioner. According to petitioner, these documents negate the observation of the Court of Appeals that "there is no room for the defendant Palanca to impose charges and penalties (as proposed in the answer) in the absence of a formal agreement between Palanca and Plaintiff to that effect."<sup>[36]</sup>

Finally, petitioner maintains that the real reason which prevented the transfer of the property to respondent was the latter's failure to pay in full her obligations, not the fact that the subject lot was still registered in the name of Carissa T. de Leon. In that regard, petitioner argues that he cannot be guilty of bad faith, as respondent