

SECOND DIVISION

[G.R. No. 152346, November 25, 2005]

**ISAIAS F. FABRIGAS AND MARCELINA R. FABRIGAS,
PETITIONERS, VS. SAN FRANCISCO DEL MONTE, INC.,
RESPONDENT.**

D E C I S I O N

TINGA, J.:

Before the Court is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, which assails the *Decision* of the Court of Appeals in CA-G.R. CV No. 45203 and its *Resolution* therein denying petitioners' motion for reconsideration. Said *Decision* affirmed the *Decision* dated January 3, 1994 of the Regional Trial Court (RTC), Branch 63, Makati City in Civil Case No. 90-2711 entitled *San Francisco Del Monte, Inc. v. Isaias F. Fabrigas and Marcelina R. Fabrigas*.

The dispositive portion of the trial court's Decision reads:

In the light of the foregoing, the Court is convinced that plaintiff has proven by preponderance of evidence, the allegation appearing in its complaint and is therefore, entitled to the reliefs prayed for.

Considering, however, that defendants had already paid P78,152.00, the Court exercising its discretion, hereby renders judgment as follows:

1. Ordering defendant to make complete payment under the conditions of Contract to Sell No. 2491-V dated January 21, 1985, within twenty days from receipt of this Decision, and in the event that defendant fail or refuse to observe the latter, defendants and all persons claiming right of possession or occupation from defendants are ordered to vacate and leave the premises, described as Lot No. 9 Block No. 3 of Subdivision Plan (LRC) Psd-50064 covered by Transfer Certificate of Title No. 4980 (161653) T-1083 of the Registry of Deeds of Rizal, and to surrender possession thereof to plaintiff or any of its authorized representatives;
2. That in the event that defendants chose to surrender possession of the property, they are further ordered to pay plaintiff P206,223.80 as unpaid installments on the land inclusive of interests;
3. Ordering defendants to jointly and severally pay plaintiff the amount of P10,000.00 as and for attorney's fees; and
4. Ordering defendants to pay the costs of suit.

SO ORDERED.^[1]

The following factual antecedents are matters of record.

On April 23, 1983, herein petitioner spouses Isaias and Marcelina Fabrigas ("Spouses Fabrigas" or "petitioners") and respondent San Francisco Del Monte, Inc. ("Del Monte") entered into an agreement, denominated as *Contract to Sell No. 2482-V*, whereby the latter agreed to sell to Spouses Fabrigas a parcel of residential land situated in Barrio Almanza, Las Piñas, Manila for and in consideration of the amount of P109,200.00. Said property, which is known as Lot No. 9, Block No. 3 of Subdivision Plan (LRC) Psd-50064, is covered by Transfer Certificate of Title No. 4980 (161653) T-1083 registered in the name of respondent Del Monte. The agreement stipulated that Spouses Fabrigas shall pay P30,000.00 as downpayment and the balance within ten (10) years in monthly successive installments of P1,285.69.^[2] Among the clauses in the contract is an automatic cancellation clause in case of default, which states as follows:

7. Should the PURCHASER fail to make any of the payments including interest as herein provided, within 30 days after the due date, this contract will be deemed and considered as forfeited and annulled without necessity of notice to the PURCHASER, and said SELLER shall be at liberty to dispose of the said parcel of land to any other person in the same manner as if this contract had never been executed. In the event of such forfeiture, all sums of money paid under this contract will be considered and treated as rentals for the use of said parcel of land, and the PURCHASER hereby waives all right to ask or demand the return thereof and agrees to peaceably vacate the said premises.^[3]

After paying P30,000.00, Spouses Fabrigas took possession of the property but failed to make any installment payments on the balance of the purchase price. Del Monte sent demand letters on four occasions to remind Spouses Fabrigas to satisfy their contractual obligation.^[4] In particular, Del Monte's third letter dated November 9, 1983 demanded the payment of arrears in the amount of P8,999.00. Said notice granted Spouses Fabrigas a fifteen-day grace period within which to settle their accounts. Petitioners' failure to heed Del Monte's demands prompted the latter to send a final demand letter dated December 7, 1983, granting Spouses Fabrigas another grace period of fifteen days within which to pay the overdue amount and warned them that their failure to satisfy their obligation would cause the rescission of the contract and the forfeiture of the sums of money already paid. Petitioners received Del Monte's final demand letter on December 23, 1983. Del Monte considered *Contract to Sell No. 2482-V* cancelled fifteen days thereafter, but did not furnish petitioners any notice regarding its cancellation.^[5]

On November 6, 1984, petitioner Marcelina Fabrigas ("petitioner Marcelina") remitted the amount of P13,000.00 to Del Monte.^[6] On January 12, 1985, petitioner Marcelina again remitted the amount of P12,000.00.^[7] A few days thereafter, or on January 21, 1985, petitioner Marcelina and Del Monte entered into another agreement denominated as *Contract to Sell No. 2491-V*, covering the same property but under restructured terms of payment. Under the second contract, the parties agreed on a new purchase price of P131,642.58, the amount of P26,328.52 as downpayment and the balance to be paid in monthly installments of P2,984.60 each.^[8]

Between March 1985 and January 1986, Spouses Fabrigas made irregular payments under Contract to Sell No. 2491-V, to wit:

March 19, 1985	P1, 328.52
July 2, 1985	P2, 600.00
September 30, 1985	P2, 600.00
November 27, 1985	P2, 600.00
January 20, 1986	P2, 000.00 ^[9]

Del Monte sent a demand letter dated February 3, 1986, informing petitioners of their overdue account equivalent to nine (9) installments or a total amount of P26,861.40. Del Monte required petitioners to satisfy said amount immediately in two subsequent letters dated March 5 and April 2, 1986.^[10] This prompted petitioners to pay the following amounts:

February 3, 1986	P2, 000.00
March 10, 1986	P2, 000.00
April 9, 1986	P2, 000.00
May 13, 1986	P2, 000.00
June 6, 1986	P2, 000.00
July 14, 1986	P2, 000.00 ^[11]

No other payments were made by petitioners except the amount of P10,000.00 which petitioners tendered sometime in October 1987 but which Del Monte refused to accept, the latter claiming that the payment was intended for the satisfaction of *Contract to Sell No. 2482-V* which had already been previously cancelled. On March 24, 1988, Del Monte sent a letter demanding the payment of accrued installments under *Contract to Sell No. 2491-V* in the amount of P165,759.60 less P48,128.52, representing the payments made under the restructured contract, or the net amount of P117,631.08. Del Monte allowed petitioners a grace period of thirty (30) days within which to pay the amount asked to avoid rescission of the contract. For failure to pay, Del Monte notified petitioners on March 30, 1989 that *Contract to Sell No. 2482-V* had been cancelled and demanded that petitioners vacate the property.^[12]

On September 28, 1990, Del Monte instituted an action for Recovery of Possession with Damages against Spouses Fabrigas before the RTC, Branch 63 of Makati City. The complaint alleged that Spouses Fabrigas owed Del Monte the principal amount of P206,223.80 plus interest of 24% per annum. In their answer, Spouses Fabrigas claimed, among others, that Del Monte unilaterally cancelled the first contract and forced petitioner Marcelina to execute the second contract, which materially and unjustly altered the terms and conditions of the original contract.^[13]

After trial on the merits, the trial court rendered a *Decision* on January 3, 1994, upholding the validity of *Contract to Sell No. 2491-V* and ordering Spouses Fabrigas either to complete payments thereunder or to vacate the property.

Aggrieved, Spouses Fabrigas elevated the matter to the Court of Appeals, arguing that the trial court should have upheld the validity and existence of *Contract to Sell No. 2482-V* instead and nullified *Contract to Sell No. 2491-V*. The Court of Appeals

rejected this argument on the ground that *Contract to Sell No. 2482-V* had been rescinded pursuant to the automatic rescission clause therein. While the Court of Appeals declared *Contract to Sell No. 2491-V* as merely unenforceable for having been executed without petitioner Marcelina's signature, it upheld its validity upon finding that the contract was subsequently ratified.

Hence, the instant petition attributing the following errors to the Court of Appeals:

- A. THE COURT OF APPEALS GRAVELY ERRED WHEN IT IGNORED THE PROVISIONS OF R.A. NO. 6552 (THE MACEDA LAW) AND RULED THAT CONTRACT TO SELL NO. 2482-V WAS VALIDLY CANCELLED BY SENDING A MERE NOTICE TO THE PETITIONERS.
- B. THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THERE WAS AN IMPLIED RATIFICATION OF CONTRACT TO SELL NO. 2491-V.
- C. THE COURT OF APPEALS ERRED IN ITS APPLICATION OF THE RULES OF NOVATION TO THE INSTANT CASE.^[14]

As reframed for better understanding, the questions are the following: Was *Contract to Sell No. 2482-V* extinguished through rescission or was it novated by the subsequent *Contract to Sell No. 2491-V*? If *Contract to Sell No. 2482-V* was rescinded, should the manner of rescission comply with the requirements of Republic Act No. (R.A.) 6552? If *Contract to Sell No. 2482-V* was subsequently novated by *Contract to Sell No. 2491-V*, are petitioners liable for breach under the subsequent agreement?

Petitioners theorize that *Contract to Sell No. 2482-V* should remain valid and subsisting because the notice of cancellation sent by Del Monte did not observe the requisites under Section 3 of R.A. 6552.^[15] According to petitioners, since respondent did not send a notarial notice informing them of the cancellation or rescission of *Contract to Sell No. 2482-V* and also did not pay them the cash surrender value of the payments on the property, the Court of Appeals erred in concluding that respondent correctly applied the automatic rescission clause of *Contract to Sell No. 2482-V*. Petitioners also cite Section 7^[16] of said law to bolster their theory that the automatic rescission clause in *Contract to Sell No. 2482-V* is invalid for being contrary to law and public policy.

The Court of Appeals erred in ruling that Del Monte was "well within its right to cancel the contract by express grant of paragraph 7 without the need of notifying [petitioners],^[17]" instead of applying the pertinent provisions of R.A. 6552. Petitioners' contention that none of Del Monte's demand letters constituted a valid rescission of *Contract to Sell No. 2482-V* is correct.

Petitioners defaulted in all monthly installments. They may be credited only with the amount of P30,000.00 paid upon the execution of *Contract to Sell No. 2482-V*, which should be deemed equivalent to less than two (2) years' installments. Given the nature of the contract between petitioners and Del Monte, the applicable legal provision on the mode of cancellation of *Contract to Sell No. 2482-V* is Section 4 and not Section 3 of R.A. 6552. Section 4 is applicable to instances where less than two years installments were paid. It reads:

SECTION 4. In case where less than two years of installments were paid, the seller shall give the buyer a grace period of not less than sixty days from the date the installment became due.

If the buyer fails to pay the installments due at the expiration of the grace period, the seller may cancel the contract after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act.

Thus, the cancellation of the contract under Section 4 is a two-step process. First, the seller should extend the buyer a grace period of at least sixty (60) days from the due date of the installment. Second, at the end of the grace period, the seller shall furnish the buyer with a notice of cancellation or demand for rescission through a notarial act, effective thirty (30) days from the buyer's receipt thereof. It is worth mentioning, of course, that a mere notice or letter, short of a notarial act, would not suffice.

While the Court concedes that Del Monte had allowed petitioners a grace period longer than the minimum sixty (60)-day requirement under Section 4, it did not comply, however, with the requirement of notice of cancellation or a demand for rescission. Instead, Del Monte applied the automatic rescission clause of the contract. Contrary, however, to Del Monte's position which the appellate court sustained, the automatic cancellation clause is void under Section 7^[18] in relation to Section 4 of R.A. 6552.^[19]

Rescission, of course, is not the only mode of extinguishing obligations. Ordinarily, obligations are also extinguished by payment or performance, by the loss of the thing due, by the condonation or remission of the debt, by the confusion or merger of the rights of the creditor and debtor, by compensation, or by novation.^[20]

Novation, in its broad concept, may either be extinctive or modificatory. It is extinctive when an old obligation is terminated by the creation of a new obligation that takes the place of the former; it is merely modificatory when the old obligation subsists to the extent it remains compatible with the amendatory agreement. An extinctive novation results either by changing the object or principal conditions (objective or real), or by substituting the person of the debtor or subrogating a third person in the rights of the creditor (subjective or personal). Under this mode, novation would have dual functions—one to extinguish an existing obligation, the other to substitute a new one in its place—requiring a conflux of four essential requisites: (1) a previous valid obligation; (2) an agreement of all parties concerned to a new contract; (3) the extinguishment of the old obligation; and (4) the birth of a valid new obligation.^[21]

Notwithstanding the improper rescission, the facts of the case show that Contract to Sell No. 2482-V was subsequently novated by *Contract to Sell No. 2491-V*. The execution of *Contract to Sell No. 2491-V* accompanied an upward change in the contract price, which constitutes a change in the object or principal conditions of the contract. In entering into *Contract to Sell No. 2491-V*, the parties were impelled by causes different from those obtaining under *Contract to Sell No. 2482-V*. On the part of petitioners, they agreed to the terms and conditions of *Contract to Sell No. 2491-V* not only to acquire ownership over the subject property but also to avoid the