

SECOND DIVISION

[G.R. No. 150308, November 26, 2004]

**VIVE EAGLE LAND, INC. AND VIRGILIO O. CERVANTES,
PETITIONERS, VS. COURT OF APPEALS AND GENUINO ICE CO.,
INC., RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

This is a petition filed by Vive Eagle Land, Inc. (VELI) and Virgilio Cervantes for the review of the July 19, 2001 Decision^[1] and October 4, 2001 Resolution of the Court of Appeals (CA) in CA-G.R. CV No. 51933.

The Antecedents

The Spouses Raul and Rosalie Flores were the owners of two parcels of land situated along Aurora Boulevard, Cubao, Quezon City, covered by Transfer Certificates of Title (TCT) Nos. 241845 and 241846, with an area of 1,026 and 2,963 square meters, respectively. On October 10, 1987, the Spouses Flores and Tatic Square International Corporation (TATIC) executed an Agreement to Sell in which the said spouses bound and obliged themselves to sell the properties to TATIC. The latter then applied for a loan with the Capital Rural Bank of Makati, Inc. (Bank) to finance its purchase of the said lots. The Bank agreed to grant the application of TATIC in the amount of P5,757,827.63 provided that the torrens titles over the subject properties would be registered under the name of the latter as the subject lots would be used as collateral for the payment of the said loan.^[2]

On April 13, 1988, the Spouses Flores, TATIC, Isidro S. Tobias (who acted as broker), and the Bank executed a Memorandum of Agreement (MOA), wherein the Spouses Flores, as vendees-owners, warranted that "the titles of the two properties were free and clear from any and all obligations and claims, whether past or present, from any creditors or third persons." Tobias, as broker, undertook to pay any and all the taxes and assessments imposed and/or charged over the lots, including the payment of capital gains tax; and to secure tax clearances from the proper government agencies within thirty days from April 12, 1988. Tobias also undertook to remove any and all tenants/occupants on the lots within sixty days from April 12, 1988 with the assistance and cooperation of the Spouses Flores. The parties agreed that the expenses to be incurred by Tobias and TATIC would be deducted from the purchase price of the property, which was estimated at P790,000.00:

6. The BROKER undertakes to clear the titles covering the two (2) parcels of land from any and all liens and encumbrances, including future claims and/or liability from any person or entity within thirty (30) days from April 12, 1988. Towards this end, the OWNER shall

endeavor to provide the BROKER the documents/papers, which are necessary and proper to carry out this objective;

The OWNERS warrant that the titles of the two properties are free and clear from any and all obligations and claims, whether past or present, from any bank or financial institution or any other creditor, or third persons;

7. The BROKER shall undertake to pay any and all taxes and assessments imposed and/or charged over the two (2) parcels of land including the payment of capital gains tax and secure tax clearance from the proper government agency/ies within thirty (30) days from April 12, 1988. Official receipts of payments thereof shall be presented and delivered to CAPITAL BANK;

The payment of any taxes and assessments on the two parcels of land may be advanced by CAPITAL BANK provided that TATIC SQUARE will execute a Promissory Note in favor of CAPITAL BANK in the amount corresponding thereto. The amount covered by this Promissory Note shall be deducted from the balance of the purchase price payable by TATIC SQUARE to the OWNERS;

8. The BROKER and TATIC SQUARE shall undertake to remove any and all occupants/tenants of the two (2) parcels of land whether legally or illegally residing thereat within sixty (60) days from April 12, 1988 with the assistance and cooperation of the OWNERS;
9. Any and all expenses to be incurred in complying with the undertakings mentioned in paragraphs 6, 7 and 8 shall be deducted from the purchase price of the two parcels of land, the expenses of which is estimated to be SEVEN HUNDRED NINETY THOUSAND PESOS (P790,000.00). If the said amount of P790,000.00 would not be sufficient, the other expenses connected therewith shall be taken and/or deducted from the amount due the BROKER.^[3]

On the same day, the Spouses Flores executed a deed of absolute sale over the two parcels of land for the price of P5,700,000.00 in favor of TATIC.^[4] The Spouses Flores, thereafter, turned over the custody of the owner's copy of their titles to the Bank.^[5]

Although the torrens titles over the lots were still in the custody of the Bank, TATIC, as vendor, and petitioner VELI, as vendee, executed a deed of absolute sale^[6] on April 14, 1988, in which TATIC sold the properties to the petitioner for P6,295,224.88, receipt of which was acknowledged in the said deed by TATIC. The latter warranted in the said deed that there were valid titles to the property and that it would deliver possession thereof to the petitioner. The parties executed a deed entitled "Addendum" in which they agreed on the following:

1. TATIC SQUARE represents and warrants that the titles covering the two (2) parcels of land are free from any and all liens and encumbrances except the mortgage which may be subsisting in favor of CAPITAL BANK. TATIC SQUARE shall cause the registration

and transfer of the titles covering the two (2) parcels of land in its name;

TATIC SQUARE undertakes to remove all the occupants/tenants whether legally or illegally residing thereat within sixty (60) days from April 12, 1988. Otherwise, VELI shall have the right and authority to withhold payment of the remaining balance of the purchase price of the sale of the entire project;

2. In consideration of the execution of the Deed of Sale over the two (2) parcels of land (Annex "A" hereof), VELI hereby absorbs and assumes to pay the loan obligations of TATIC SQUARE with CAPITAL BANK in the principal amount of FIVE MILLION SEVEN HUNDRED FIFTY-SEVEN THOUSAND EIGHT HUNDRED TWENTY-SEVEN & 63/100 (P5,757,827.63) plus whatever interests and other charges that may be imposed thereon by CAPITAL BANK including the release of the mortgage constituted over the property upon full payment of the loan;
3. TATIC SQUARE, likewise, represents and warrants that it is the absolute owner of the entire project known as TATIC WALK-UP CONDOMINIUM including its accessories and appurtenance thereto;
4. In accordance with the Deed of Sale of the entire project (Annex "B" hereof), VELI shall promptly pay on its due date TATIC SQUARE, the remaining balance of the purchase price in the amount of P400,000.00 subject to adjustment set forth in the next preceding paragraph.^[7]

On November 11, 1988, VELI, as vendor, through its president, petitioner Virgilio Cervantes, and respondent Genuino Ice Co., Inc., as vendee, executed a deed of absolute sale^[8] over the parcel of land covered by TCT No. 241846 for the price of P4,000,000.00, receipt of which was acknowledged by petitioner VELI. On the same day, the respondent and petitioner VELI executed a deed of assignment of rights in which the latter assigned in favor of the respondent, for and in consideration of P4,000,000.00, all its rights and interests under the Deed of Absolute Sale executed on April 13, 1988 by the Spouses Flores and the deed of absolute sale executed by TATIC in its favor, insofar as that lot covered by TCT No. 241846 only was concerned.^[9]

In the meantime, the respondent, through counsel, wrote petitioner VELI and made the following demands:

In view of the foregoing facts, demand is hereby made upon you to pay to the BIR the capital gains tax amounting to P285,000.00 and deliver to us the receipt and/or clearance thereof, plus the interests for all registration fees on account of delay in the payment of the capital gains tax and the 1% documentary stamp tax for the sale of the property from your company to our client or to give them a BIR clearance regarding payment of all said taxes within five (5) days from receipt hereof; otherwise, much to our regret, we will be constrained to file legal action

for specific performance and damages against your company in order to protect the interest of our client.^[10]

In a letter to the respondent, petitioner VELI, through counsel, rejected the former's demand.^[11]

On June 24, 1990, the respondent filed a Complaint against petitioner VELI and its president, Virgilio Cervantes, for specific performance and damages in the Regional Trial Court (RTC) of Quezon City. The respondent alleged, *inter alia*, that petitioner VELI failed (a) to transfer title to and in the name of the respondent over the property covered by TCT No. 241846 despite the lapse of a reasonable time; (b) to cause the eviction/removal of the squatters/occupants on the property; and (c) to pay the capital gains tax and other assessments due to effectuate the transfer of the titles of the property to and in its name. The respondent prayed that, after due proceedings, judgment be rendered in its favor, thus:

WHEREFORE, premises considered, it is most respectfully prayed that, after trial, judgment be rendered against defendants to, jointly and severally, indemnify plaintiff as follows:

I. FIRST CAUSE OF ACTION

- a) To effect or cause the transfer of title in favor of the plaintiff;
- b) To pay the capital gains tax and other requirements or expenses necessary to effect said transfer.

II. SECOND CAUSE OF ACTION

- a) To direct defendants to cause the removal or eviction of the squatters or unlawful occupants for (sic) the area;
- b) In the alternative, if eviction is not accomplished to forfeit the amount of P300,000 in favor of plaintiff.

III. THIRD CAUSE OF ACTION

- a) To pay actual damages in the amount of no less than FIVE HUNDRED THOUSAND PESOS;
- b) To pay exemplary damages in the amount of FIVE HUNDRED THOUSAND PESOS;
- c) Attorney's fees in the amount of P250,000;
- d) Costs of suits.

Plaintiff further prays for such relief or reliefs as may be just and equitable under the premises.^[12]

In their answer^[13] to the complaint, the petitioners alleged that the respondent had no cause of action against them because (a) petitioner VELI was exempt from the payment of capital gains tax; (b) the Spouses Flores and Tobias were liable for the payment of capital gains tax; and (c) the Spouses Flores and Tobias were responsible for the eviction of the occupants/squatters from the property.

The trial court rendered judgment, amended per its Order dated April 17, 1995, in favor of the respondent. The *fallo* of the decision, as amended, reads:

WHEREFORE, foregoing considered, judgment is hereby rendered in favor of plaintiff ordering defendants to cause the transfer of the title to the plaintiff. The payment of the capital gains tax shall be paid by the defendants. Further, defendants are hereby ordered to remove or evict or cause the removal or eviction of the squatters or unlawful occupants of the area, otherwise, the amount of P300,000.00 shall be deemed forfeited in favor of plaintiff; to pay attorney's fees of P20,000.00 and to pay the costs.

SO ORDERED.^[14]

The trial court held that the petitioners were liable for the payment of the capital gains tax, and that the respondent was not privy to the deeds of absolute sale executed by the Spouses Flores and TATIC, and TATIC and petitioner VELI, and as such is not bound by the said deeds; neither could the respondent enforce the same against the Spouses Flores, TATIC and petitioner VELI.

In due course, the petitioners appealed to the CA which rendered judgment, on July 19, 2001, affirming, with modification, the appealed decision. The CA held that the petitioners were liable for the expenses for the registration of the sale. It also ruled that the respondent was not bound by the deed of absolute sale executed by TATIC and the petitioners because it was not a party thereto, and that the latter were obliged to cause the eviction of the squatters from the property.^[15]

The petitioners, in the instant petition for review, raise the following issues for resolution: (a) whether or not petitioner VELI is obliged to pay for the expenses for transfer of the property and the issuance of the titles to and under the name of the respondent; (b) whether or not the petitioners are liable for the capital gains tax for the sale between petitioner VELI and the respondent; and (c) whether or not the petitioners are obliged to evict the remaining squatters from the land.

Petitioner VELI is Obligated to Cause the Registration of the November 11, 1988 Deed of Absolute Sale in Favor of Respondent, the Issuance of a Torrens Title in the Name of Respondent and the Eviction of the Tenants/Occupants from the Property at the Expense of the Petitioner.

The petitioners assail the ruling of the CA that, under Article 1487 of the New Civil Code, petitioner VELI, as vendor, is liable for the expenses for the registration of the third deed of sale in favor of the respondent, as vendee, and to secure a torrens title over the property to and under the name of the latter. The petitioners contend that, under the MOA executed by the Spouses Flores, Tobias (the broker), the Bank and TATIC, the April 14, 1988 agreement and the first deed of sale executed by the Spouses Flores and Tobias, the latter obliged themselves to spend for the registration of the said deed of absolute sale and for the issuance of torrens titles over the properties in the name of the vendees; and further obliged themselves to