

FIRST DIVISION

[G.R. No. 137823, December 15, 2000]

REYNALDO MORTEL, PETITIONER, VS. KASSCO, INC. AND OSCAR SANTOS, RESPONDENTS.

D E C I S I O N

KAPUNAN, J.:

This is a petition for review on certiorari of the Decision of the Court of Appeals,^[1] dated September 30, 1998, in C.A. GR CV No. 52059 which affirmed the Decision of the Regional Trial Court of Makati City, Branch 66, in Civil Case No. 89-3260 dismissing petitioner's complaint for specific performance and/or rescission with damages.

The facts leading to the filing of the present petition are as follows:

KASSCO, Inc. is the registered owner of the lot covered by Transfer Certificate of Title No. 137791 as well as the building (named "Kassco Building") standing thereon located at the corner of Cavite and Lico Streets, Rizal Avenue, Sta. Cruz, Manila. To secure a loan obtained from the Philippine National Bank (PNB), which was renting the first floor of the building, KASSCO, Inc. mortgaged such property to the latter. This mortgage was duly annotated at the back of TCT No. 137791 on May 11, 1981.

In 1985, KASSCO, Inc. applied for the conversion of the Kassco Building into a condominium which application was approved by the then Human Settlements Regulatory Commission (HSRC) on August 9, 1985. As a requirement for registration and issuance of a license to sell, KASSCO, Inc. wrote PNB to secure its approval of the said conversion and the partial release or cancellation of the mortgage over the fully-paid units.

In the same year, KASSCO, Inc., represented by Oscar Santos, entered into an "Agreement" with herein petitioner Reynaldo Mortel, the pertinent provisions of which provide:

WHEREAS, the SELLER has offered to sell the second floor of the above-mentioned building, with the floor area of One Hundred Sixty Five (165) square meters, more or less, including common areas (referred to herein as "Second Floor") and the buyer has agreed to buy the same, subject to the terms and conditions hereinafter set forth:

WHEREAS, the aforementioned property is the subject of an application for conversion into a commercial condominium filed with the Human Settlements Regulatory Commission of

the Ministry of Human Settlements, which has been recently approved:

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual stipulations hereinafter set forth, the parties hereby agree and bind themselves as follows:

1. Object of the Sale

xxx

2. Purchase Price

xxx

3. Manner of Payment

Upon securing the individual condominium certificate of title (CCT) over the Kassco Building, which the SELLER undertakes to accomplish within one year from execution hereof, the seller shall execute a Deed of Absolute sale in favor and deliver to the buyer the CCT corresponding to the Second Floor, free from any liens and encumbrances. Simultaneously, and to secure the payment by the buyer of the purchase price or balance thereof, the BUYER shall execute a Deed of Mortgage in favor of the SELLER over the said second Floor. The buyer undertakes to pay the full purchase price, or the remaining thereof, within two (2) months from the delivery of the CCT. Should the buyer fail to pay in full the agreed purchase price within two (2) months as herein agreed upon, the parties shall renegotiate the purchase price based on the prevailing Market Value of the property.

Upon full payment of the BUYER of the purchase price, the SELLER shall deliver to the BUYER a Deed of Release canceling the aforesaid mortgage.

4. Possession

xxx

5. Lease and Rental

Pending the delivery of the title to the BUYER and payment to the SELLER of the full amount of the purchase price, a contract of lease for definite period of one (1) year from the date of this agreement, is hereby constituted on the aforementioned Second Floor of the Kassco Building, subject to the following terms and conditions:

a. xxx

b. The lease herein constitute shall be deemed automatically terminated upon full payment of the purchase price to the SELLER, or the expiration of the agreed one (1) year lease period, whichever comes first.

c. If the Deed of Absolute Sale is not executed through no fault of the SELLER, BUYER-LESSEE shall peacefully and voluntarily vacate the premises upon the expiration of the one (1) year period. However, should SELLER fail to obtain the CCT or authority to sell within the one (1) year period agreed upon and delay or failure is attributable to the SELLER, the buyer may exercise any of the following options: 1) renew and/or extend the lease for another year under such terms and conditions mutually agreed upon between the parties; or 1) vacate the premises but shall have the right to buy the Second Floor for the purchase price reasonably fixed at such time that the SELLER is ready to convey ownership thereof.

7. Improvements

xxx

The buyer may introduce additional improvements on the premises herein agreed to be bought and sold but in case of non-payment of the purchase price and expiration of the lease period, such improvement shall be forfeited in favor of the SELLER.^[2]

KASSCO, Inc.'s request for partial cancellation of mortgage and delivery of TCT No. 137791 remained unacted upon by PNB such that the one-year period of lease with petitioner, as embodied in the "Agreement" expired without KASSCO securing and delivering the Condominium Certificate of Title (CCT) to petitioner.

Thus, petitioner and private respondent executed another agreement which substantially contained the same terms and conditions as the first agreement and modified only insofar as the purchase price and monthly rental fee of P680,000.00 and P5,000.00, respectively, were increased to P816,000.00 and P7,000.00.

The period covered by the second agreement again lapsed without KASSCO obtaining the release of the mortgage with PNB and the Condominium Certificate of Title. Nonetheless, petitioner remained in occupation of the premises at a monthly rental fee of P7,000.00.

On November 10, 1988, KASSCO ordered petitioner to vacate the premises and to pay an additional rental fee of P2,000.00 per month from October 18, 1987 to October 18, 1988. KASSCO also increased the monthly rental fee to P11,550.00 effective October 18, 1988.

On November 24, 1988, petitioner, in response, demanded from private respondent the delivery of the CCT over the subject property and the execution of a Deed of Absolute Sale in his favor.