355 Phil. 48

THIRD DIVISION

[G.R. No. 126647, July 29, 1998]

LEBERMAN REALTY CORPORATION. AND ARAN REALTY AND DEVELOPMENT CORPORATION, PETITIONERS, VS. JOSEPH TYPINGCO AND THE COURT OF APPEALS, RESPONDENTS.

D E C I S I O N

KAPUNAN, J.:

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside 1) the Decision dated 13 May 1996; and 2) the Resolution dated 3 October 1996, of the Court of Appeals.

Finding the narration of facts of the Court if Appeals to be concise and well-written, we quote the same hereunder, in its entirety:

> Appellees LEBERMAN REALTY CORPORATION and ARAN REALTY AND DEVELOPMENT CORPORATION (LEBERMAN and ARAN, respectively, for brevity), are the registered co-owners of four (4) parcels of land at Binondo, Manila, containing an aggregate area of 1,124.80 square meters and covered by four separate certificates of title.
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> Sometime in March 1989, herein appellant JOSEPH TYPINGCO learned that the above-mentioned properties were being offered for sale. Interested on (sic) acquiring the realties, Typingco met with the officers of LEBERMAN and ARAN, namely Doris Venezuela, General Manager of LEBERMAN, and Remedios D. Hollander, President of Aran, to discuss the terms and conditions of the sale. On March 20, 1989, Venezuela and Hollander, in behalf of their respective principals, accepted the offer of Typingco to buy the properties for a total consideration of P43,888,888.88 as evidenced by a handwritten agreement executed on the same date (Exhibit "A"). Also, on the same date, Typingco made a down payment of P100,000.00 of which P50,000.00 was for LEBERMAN and the other P50,000.00 for ARAN (Exhs. "B" and "C").
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> Thereafter, on April 4, 1989, the Parties executed a document denominated as Contract To Sell (Exh. "D"), which contains the following relevant stipulations:
>
> 1. CONSIDERATION. That the total consideration for the purchase of the above-mentioned properties shall be x x x (P43,888,888.88) Philippine Currency payable as follows:
>
> 1.1 DOWNPAYMENT.
>
> The BUYER shall pay the SELLERS upon the signing of this agreement the

sum of One Hundred Thousand (P100,000.00) Pesos, receipt of which is hereby acknowledged by the SELLERS from the BUYER. It is agreed by the parties that the P100,000.00 consideration paid by the BUYER to the SELLERS on 20th march, 1989 shall be credited as part of the downpayment. Hence, there is a total downpayment of Two Hundred Thousand (P200,000.00) Pesos as of this date.

1.2 BALANCE 70% of P43,688,888.88 shall be paid by the BUYER within seven (7) days from receipt of notice duly signed by the SELLERS addressed to the BUYER that all the tenants or occupants or squatters in the above-mentioned properties have vacated the same; or, in the event that BUYER shall opt to pay the aforestated balance and demand the execution of the deed of absolute sale despite the fact that SELLERS have not yet cleared up the premises of tenants or occupants or squatters, as hereinafter provided, the BUYER shall pay seventy (70%) percent of P43,688,888.88 within seven (7) days from notice to SELLERS that the BUYER desires to exercise said option; that in such cases above, the remaining thirty (30%) percent of P43,688,888.88. shall be paid by the BUYER to SELLERS within one (1) day from receipt of notice duly signed by the SELLERS addressed to the BUYER that all their tax obligations due on the sale of said properties have been fully paid x x x.

2. OBLIGATION OF SELLERS AND BUYER. The SELLERS and BUYER shall have the following obligations:

2.1 The SELLERS shall clear up the above-mentioned properties of all tenants or occupants or squatters if any, within eighteen (18) months from date of this Contract to Sell. If at anytime within the said eighteen (18) months and the SELLERS succeed in clearing up the premises of tenants, occupants or squatters, SELLERS shall send a written notice of such fact to the BUYER who shall pay in accordance with x x x par. 1 (1.2), this contract is deemed automatically, cancelled or rescinded.

x x x x x x x x x

3. OPTION OF BUYER. From the seventh month from date of this contract to the eighteenth month, the BUYER shall have the option either to pay the balance of the purchase price notwithstanding that by that time SELLERS may have not yet cleared up the premises of all tenants or occupants or squatters therein, and demand the execution of a deed of absolute sale, or to cancel or rescind this contract. After the eighteenth month from date of this Contract, if the BUYER fails to exercise the option to pay the balance of the purchase price and to demand execution of the deed of absolute sale, this Contract shall be deemed automatically cancelled or rescinded. In all cases of rescission under this Contract, which may take place within the seventh to eighteenth month from date of this contract and after the eighteenth month as aforesaid, the downpayment of P200,000.00 as stated under par. 1(1.1) shall be returned to BUYER without interest.

On the same date, April 4, 1989, Typingco paid LEBERMAN and ARAN the amount of P50,000.00 each, again as downpayment (Exh. "G" and "H").

Thus, the total down payment made was P200,000.00.

Thereafter, Typingco started to generate funds to finance the construction of a building which he intended to put up on the lots. To his surprise however, on September 18, 1989, he received two (2) separate but uniformly-worded letters, both dated September 11, 1989, one from Jose M. Venezuela, Jr., Chairman of the Board of Directors of LEBERMAN and the other from Florencia D. Reyes, Vice President/Director of ARAN, advising Typingco that the two companies have respectively adopted and approved a resolution "rejecting" the contract to sell executed on April 4, 1989 "on the ground that the terms and conditions of said contract are grossly disadvantageous and highly prejudicial to the interests" of LEBERMAN and ARAN and that the officers who executed the contract "acted beyond the scope" of their authorities (Exhs. "J" and "K"). The letters likewise informed Typingco of the companies' decision to initiate a complaint for annulment or cancellation of the contract to sell. Enclosed with the letters are two checks for P100,000.00 each (Exhs. "J-1" and "K-1"), an apparent effort to return the downpayment Typingco had already made.

Obviously taken aback, Typingco immediately wrote LEBERMAN and ARAN telling then that he is not amenable to their decision to discontinue the sale. Accordingly, he returned to them the two checks aforementioned (Exhs. "L" and "M"). Unfortunately, Typingco's protest proved futile because the sellers refused to receive his letters.

Distraught with this development, Typingco then filed on September 26, 1989, in the Regional Trial Court of Manila the complaint in this case. In this complaint, docketed in the court a quo Civil Case No. 89-50512, Typingco alleged, inter alia, as follows:

"6. Plaintiff is definitely interested to proceed with the Contract to Sell and is, in fact, able, willing and prepared to perform his obligations thereunder.

x x x x x x x x x

9. The unilateral decision of Defendants to rescind the Contract To Sell is unjustified, illegal and done in extreme bad faith and malice.

x x x x x x x x x

12. The malicious act of Defendant of reneging from their obligations under the Contract To Sell has caused plaintiff mental anguish, fright, serious anxiety, wounded feelings, sleepless nights, besmirched reputation, moral shock and social humiliation for which Defendants stand liable to pay moral damages in the amount of not less than Three Million Pesos (P3,000,000.00)."

The complaint thus prayed for a judgment "ordering the Defendants to honor their commitment to plaintiff under the Contract To Sell by performing their undertakings therein fully", as well as the payment of

moral and exemplary damages, attorney's fees and costs of suit (Records, pp. 1-8).

In their joint Answer with Counterclaim, defendants LEBERMAN and ARAN raised the following special and affirmative defenses:

"20. The complaint states no cause of action the same having been filed prematurely, or the action having been commenced before the cause of action had accrued. The cause of action in this case accrued only in the seventh month from April, 1989 or in October 1989. The filing of the complaint and the service of the summons in this case to commence the action was done on September 26, 1989, and September 29, 1989, respectively, before the cause of action accrued in October, 1989.

21. The contract to sell should be annulled because the consent of defendants' representatives was given through intimidation. They signed the contract under duress, hence they were compelled to act beyond the scope of their authority.

22. The defendants acted in good faith and in self-protection in rejecting the contract to sell, the fact being that the terms and conditions of said contract are grossly disadvantageous and highly prejudicial to their interests."

Simultaneously with the filing of their answer, defendants filed a motion praying that their affirmative defenses be preliminary heard as if a motion to dismiss had been filed. Their prayer for preliminary hearing was granted, but eventually, in an order dated December 15, 1989, the lower court denied defendants' motion for dismissal because, "at this stage, the grounds to dismiss do not appear to be indubitable" and accordingly deferred its action thereon "without prejudice to ruling on the same day stage of the trial when said ground to dismiss appears to be indubitable". The order pertinently reads:

"The alleged ground that the complaint should be dismissed is that the complaint was filed on September 26, 1989 and summonses were served September 29, 1989 but the cause of action had not yet accrued because under the agreement of the parties said action would accrue on November 1989. This is true. Defendant also cited jurisprudence that even if the cause of action should have accrued thereafter, the defect in the complaint is not thereby cured.

On the other hand, plaintiffs filed their OPPOSITION/COMMENT thereto, of which the Court has also taken note, particularly the argument that the plaintiff's cause of action already existed at the time of the filing of the complaint due to defendants' backing or rescinding the contract in question unilaterally and unjustifiably. Said act of rejecting the contract to sell which signaled the refusal of the defendants to proceed with their commitments thereunder, is the very basis of the plaintiff in coming to court for relief. Said rejection of the contract appears to be admitted by the defendants in their Answer. It is to be further considered that by said actuations, the defendants have made it an exercise in futility for plaintiff

to wait for the seven (7) months provided for in Article 3 of the contract before taking action. By the very act of the defendants in rescinding the contract of sale they have rendered it unnecessary for the plaintiff to wait for said period coming to court for relief.

PREMISES CONSIDERED, at this stage, the grounds to dismiss do not appear to be indubitable and the court hereby defers action on said ground for dismissal without prejudice to ruling on the same at any stage of the trial when said ground to dismiss appears to be indubitable.

SO ORDERED. (Records, pp. 100-101.)"

Defendants moved for a reconsideration of the above-quoted order but their motion was denied by the lower court in its subsequent order of January 26, 1990 (Records, pp. 102 and 112).

Thereafter, trial ensued. After the plaintiff had rested his case, the defendants, instead of going forward with their defensive evidence, filed a Motion to Dismiss, this time on the ground that "[P]laintiff's claim had been extinguished when he opted to automatically cancel or rescind the Contract To Sell." Elaborating on said ground, the defendants state in their motion:

"3. Considering that the Contract To Sell (Contract for short) was executed and notarized on April 5, 1989, the eighteenth-month period within which plaintiff (buyer) should exercise his option either to pay the balance of the purchase price or to cancel and rescind the Contract expired on October 5, 1990. By not paying the balance of the purchase price within the eighteenth-month period (which expired on October 5, 1990) as stipulated in Contract, plaintiff had indubitably opted for the automatic cancellation or rescission of the Contract, pursuant to the aforequoted provision of paragraph 3 thereof. Consequently, the Contract is "deemed automatically cancelled or rescinded".

x x x x x x x x x

7. Defendants' obligation to execute a deed of absolute sale had already been extinguished when the Contract was automatically cancelled and rescinded at the option of plaintiff, who chose not pay the balance of the purchase price within the period expressly for and agreed upon by the parties in the Contract. As defendants no longer have the obligation to execute a deed of absolute sale in favor plaintiff, and as plaintiff had opted to cancel and rescind the Contract, hence plaintiff has no more cause of action against the defendants. There being no more cause of action, this case should then be dismissed (Records, pp. 186-189)."

After an exchange of pleadings by the parties the lower court came out with an order on December 13, 1990, denying defendants' Motion to Dismiss "for lack of merit." More specifically, said order pertinently reads:

"(2) The defendants argued in their Motion To Dismiss that the 'plaintiff's claim had been extinguished when he opted to automatically cancel or