

## SECOND DIVISION

[ G.R. No. 129760, December 29, 1998 ]

**RICARDO CHENG, PETITIONER, VS. RAMON B. GENATO AND  
ERNESTO R. DA JOSE & SOCORRO B. DA JOSE, RESPONDENTS.**

### D E C I S I O N

**MARTINEZ, J.:**

This petition for review on certiorari seeks to annul and set aside the Decision of the Court of Appeals (CA)<sup>[1]</sup> dated July 7, 1997 in CA-G.R. No. CV No. 44706 entitled "*Ricardo Cheng, plaintiff-appellee vs. Ramon B. Genato, defendant-appellant, Ernesto R. Da Jose & Socorro B. Da Jose, Intervenors-Appellants*" which reversed the ruling of the Regional Trial Court, Branch 96 of Quezon City dated January 18, 1994. The dispositive portion of the CA Decision reads:

"WHEREFORE, based on the foregoing, appealed decision is hereby REVERSED and SET ASIDE and judgment is rendered ordering;

1. The dismissal of the complaint;
2. The cancellation of the annotations of the defendant-appellant's Affidavit to Annul Contract to Sell and plaintiff-appellee's Notice of Adverse Claim in the subject TCT's, namely, TCT No. T-76.196 (M) and TCT No. T-76.197 (M);
3. Payment by the intervenors-appellants of the remaining balance of the purchase price pursuant to their agreement with the defendant-appellant to suspend encashment of the three post-dated checks issued since 1989.
4. Ordering the execution by the defendant-appellant Genato of the Deed of Absolute Sale over the subject two lots covered by TCT No. T-76.196 (M) and TCT No. T-76.197 (M) in favor of intervenors-appellants Spouses Da Jose;
5. The return by defendant-appellant Genato of P50,000.00 paid to him by the plaintiff-appellee Cheng, and
6. Payment by plaintiff-appellee Cheng of moral damages to herein intervenors-appellants Da Jose of P100,000.00, exemplary damages of P50,000.00, attorney's fees of P50,000.00, and costs of suit; and to defendant-appellant, of P100,000.00 in exemplary damages, P50,000.00 in attorney's fees. The amounts payable to the defendant-appellant may be compensated by plaintiff-appellee with the amount ordered under the immediately foregoing paragraph which defendant-appellant has to pay

the plaintiff-appellee.

SO ORDERED."<sup>[2]</sup>

The antecedents of the case are as follows:

Respondent Ramon B. Genato(Genato) is the owner of two parcels of land located at Paradise Farms, San Jose Del Monte, Bulacan covered by TCT No. T-76.196 (M)<sup>[3]</sup> and TCT No. T-76.197 (M)<sup>[4]</sup> with an aggregate area of 35,821 square meters, more or less.

On September 6, 1989, respondent Genato entered into an agreement with respondent-spouses Ernesto R. Da Jose and Socorro B. Da Jose (Da Jose spouses) over the above-mentioned two parcels of land. The agreement culminated in the execution of a contract to sell for which the purchase price was P80.00 per square meter. The contract was in a public instrument and was duly annotated at the back of the two certificates of title on the same day. Clauses 1 and 3 thereof provide:

"1. That the purchase price shall be EIGHTY (P80.00) PESOS, Philippine Currency per square meter, of which the amount of FIFTY THOUSAND (P50,000.00) Pesos shall be paid by the VENDEE to the VENDOR as partial down payment at the time of execution of this Contract to Sell.

xxx            xxx            xxx

"3. That the VENDEE, thirty (30) DAYS after the execution of this contract, and only after having satisfactorily verified and confirmed the truth and authenticity of documents, and that no restrictions, limitations, and developments imposed on and/or affecting the property subject of this contract shall be detrimental to his interest, the VENDEE shall pay to the VENDOR, NINE HUNDRED FIFTY THOUSAND (P950,000.00) PESOS, Philippine Currency, representing the full payment of the agreed Down Payment, after which complete possession of the property shall be given to the VENDEE to enable him to prepare the premises and any development therein."<sup>[5]</sup>

On October 4, 1989, the Da Jose spouses, not having finished verifying the titles mentioned in clause 3 as aforequoted, asked for and was granted by respondent Genato an extension of another 30 days - or until November 5, 1989. However, according to Genato, the extension was granted on condition that a new set of documents is made seven (7) days from October 4, 1989.<sup>[6]</sup> This was denied by the Da Jose spouses.

Pending the effectivity of the aforesaid extension period, and without due notice to the Da Jose spouses, Genato executed an Affidavit to Annul the Contract to Sell,<sup>[7]</sup> on October 13, 1989. Moreover, no annotation of the said affidavit at the back of his titles was made right away. The affidavit contained, inter alia, the following paragraphs;

"xxx            xxx            xxx

"That it was agreed between the parties that the agreed downpayment of

P950,000.00 shall be paid thirty (30) days after the execution of the Contract, that is on or before October 6, 1989;

"The supposed VENDEES failed to pay the said full downpayment even up to this writing, a breach of contract.

"That this affidavit is being executed to Annul the aforesaid Contract to Sell for the vendee having committed a breach of contract for not having complied with the obligation as provided in the Contract to Sell;"<sup>[8]</sup>

On October 24, 1989, herein petitioner Ricardo Cheng (Cheng) went to Genato's residence and expressed interest in buying the subject properties. On that occasion, Genato showed to Ricardo Cheng copies of his transfer certificates of title and the annotations at the back thereof of his contract to sell with the Da Jose spouses. Genato also showed him the aforementioned Affidavit to Annul the Contract to Sell which has not been annotated at the back of the titles.

Despite these, Cheng went ahead and issued a check for P50,000.00 upon the assurance by Genato that the previous contract with the Da Jose spouses will be annulled for which Genato issued a handwritten receipt (Exh. "D"), written in this wise.

"10/24/89

Received from Ricardo Cheng  
the Sum of Fifty Thousand Only (P50,000 -)  
as partial for T-76196 (M)  
T-76197 (M) area 35,821 Sq.m.  
Paradise Farm, Gaya-Gaya, San Jose Del Monte  
P70/m2 Bulacan  
Plus C.G.T. etc

(SGD) Ramon B.

Genato

Check # 470393  
10/24/89"<sup>[9]</sup>

On October 25, 1989, Genato deposited Cheng's check. On the same day, Cheng called up Genato reminding him to register the affidavit to annul the contract to sell.  
<sup>[10]</sup>

The following day, or on October 26, 1989, acting on Cheng's request, Genato caused the registration of the Affidavit to Annul the Contract to Sell in the Registry of Deeds, Meycauayan, Bulacan as primary entry No. 262702.<sup>[11]</sup>

While the Da Jose spouses were at the Office of the Registry of Deeds of Meycauaya, Bulacan on October 27, 1989, they met Genato by coincidence. It was only then that the Da Jose spouses discovered about the affidavit to annul their contract. The latter were shocked at the disclosure and protested against the rescission of their contract. After being reminded that he (Genato) had given them (Da Jose spouses)

an additional 30-day period to finish their verification of his titles, that the period was still in effect, and that they were willing and able to pay the balance of the agreed down payment, later on in the day, Genato decided to continue the Contract he had with them. The agreement to continue with their contract was formalized in a conforme letter dated October 27, 1989.

Thereafter, Ramon Genato advised Ricardo Cheng of his decision to continue his contract with the Da Jose spouses and the return of Cheng's P50,000.00 check. Consequently, on October 30, 1989, Cheng's lawyer sent a letter<sup>[12]</sup> to Genato demanding compliance with their agreement to sell the property to him stating that the contract to sell between him and Genato was already perfected and threatening legal action.

On November 2, 1989, Genato sent a letter<sup>[13]</sup> to Cheng (Exh. "6") enclosing a BPI Cashier's Check for P50,000.00 and expressed regret for his inability to "consummate his transaction" with him. After having received the letter of Genato on November 4, 1989, Cheng, however, returned the said check to the former via RCPI telegram<sup>[14]</sup> dated November 6, 1989, reiterating that "our contract to sell your property had already been perfected."

Meanwhile, also on November 2, 1989, Cheng executed an affidavit of adverse claim<sup>[15]</sup> and had it annotated on the subject TCT's.

On the same day, consistent with the decision of Genato and the Da Jose spouses to continue with their Contract to Sell of September 6, 1989, the Da Jose spouses paid Genato the complete down payment of P950,000.00 and delivered to him three (3) postdated checks (all dated May 6, 1990, the stipulated due date) in the total amount of P1,865,680.00 to cover full payment of the balance of the agreed purchase price. However, due to the filing of the pendency of this case, the three (3) postdated checks have not been encashed.

On December 8, 1989, Cheng instituted a complaint<sup>[16]</sup> for specific performance to compel Genato to execute a deed of sale to him of the subject properties plus damages and prayer for preliminary attachment. In his complaint, Cheng averred that the P50,000.00 check he gave was a partial payment to the total agreed purchase price of the subject properties and considered as an earnest money for which Genato acceded. Thus, their contract was already perfected.

In Answer<sup>[17]</sup> thereto, Genato alleged that the agreement was only a simple receipt of an option-bid deposit, and never stated that it was a partial payment, nor is it an earnest money and that it was subject to the condition that the prior contract with the Da Jose spouses be first cancelled.

The Da Jose spouses, in their Answer in Intervention,<sup>[18]</sup> asserted that they have a superior right to the property as first buyers. They alleged that the unilateral cancellation of the Contract to Sell was without effect and void. They also cited Cheng's bad faith as a buyer being duly informed by Genato of the existing annotated Contract to Sell on the titles.

After trial on the merits, the lower court ruled that the receipt issued by Genato to

Cheng unerringly meant a sale and not just a priority or an option to buy. It cannot be true that the transaction was subjected to some condition or reservation, like the priority in favor of the Da Jose spouses as first buyer because, if it were otherwise, the receipt would have provided such material condition or reservation, especially as it was Genato himself who had made the receipt in his own hand. It also opined that there was a valid rescission of the Contract to Sell by virtue of the Affidavit to Annul the Contract to Sell. Time was of the essence in the execution of the agreement between Genato and Cheng, under this circumstance demand, extrajudicial or judicial, is not necessary. It falls under the exception to the rule provided in Article 1169<sup>[19]</sup> of the Civil Code. The right of Genato to unilaterally rescind the contract is said to be under Article 1191<sup>[20]</sup> of the Civil Code. Additionally, after reference was made to the substance of the agreement between Genato and the Da Jose spouses, the lower court also concluded that Cheng should be preferred over the intervenors-Da Jose spouses in the purchase of the subject properties. Thus, on January 18, 1994 the trial court rendered its decision the decretal portion of which reads:

WHEREFORE, judgment is hereby rendered:

1. Declaring the contract to sell dated September 6, 1989 executed between defendant Ramon Genato, as vendor, and intervenors Spouses Ernesto and Socorro Da Jose, as vendees, resolved and rescinded in accordance with Art. 1191, Civil Code, by virtue of defendant's affidavit to annul contract to sell dated October 13, 1989 and as the consequence of intervenors' failure to execute within seven (7) days from October 4, 1989 another contract to sell pursuant to their mutual agreement with the defendant;
2. Ordering defendant to return to the intervenors the sum of P1,000,000.00, plus interest at the legal rate from November 2, 1989 until full payment;
3. Directing defendant to return to the intervenors the three (3) postdated checks immediately upon finality of this judgment;
4. Commanding defendant to execute with and in favor of the plaintiff Ricardo Cheng, as vendee, a deed of conveyance and sale of the real properties described and covered in Transfer Certificates of Title No. T-76-196 (M) and T-76.197 (M) of the Registry of Deeds of Bulacan, Meycauyan Branch, at the rate of P70.00/sqaure meter, less the amount of P50,000.00 already paid to defendant, which is considered as part of the purchase price, with the plaintiff being liable for payment of the capital gains taxes and other expenses of the transfer pursuant to the agreement to sell dated October 24, 1989; and
5. Ordering defendant to pay the plaintiff and the intervenors as follows:
  - a/ P50,000.00, as nominal damages, to plaintiff;
  - b/ P50,000.00, as nominal damages, to intervenors;
  - c/ P20,000.00, as and for attorney's fees, to plaintiff;
  - d/ P20,000.00, as and for attorney's fees, to intervenors; and
  - e/ Cost of the suit.