

## THIRD DIVISION

[ G.R. No. 119745, June 20, 1997 ]

**POWER COMMERCIAL AND INDUSTRIAL CORPORATION,  
PETITIONER, VS. COURT OF APPEALS, SPOUSES REYNALDO AND  
ANGELITA R. QUIAMBAO AND PHILIPPINE NATIONAL BANK,  
RESPONDENTS.**

### D E C I S I O N

**PANGANIBAN, J.:**

Is the seller's failure to eject the lessees from a lot that is the subject of a contract of sale with assumption of mortgage a ground (1) for rescission of such contract and (2) for a return by the mortgagee of the amortization payments made by the buyer who assumed such mortgage?

Petitioner posits an affirmative answer to such question in this petition for review on *certiorari* of the March 27, 1995 Decision<sup>[1]</sup> of the Court of Appeals, Eighth Division, in CA-G.R. CV Case No. 32298 upholding the validity of the contract of sale with assumption of mortgage and absolving the mortgagee from the liability of returning the mortgage payments already made.<sup>[2]</sup>

#### **The Facts**

Petitioner Power Commercial & Industrial Development Corporation, an industrial asbestos manufacturer, needed a bigger office space and warehouse for its products. For this purpose, on January 31, 1979, it entered into a contract of sale with the spouses Reynaldo and Angelita R. Quiambao, herein private respondents. The contract involved a 612-sq. m. parcel of land covered by Transfer Certificate of Title No. S-6686 located at the corner of Bagtican and St. Paul Streets, San Antonio Village, Makati City. The parties agreed that petitioner would pay private respondents P108,000.00 as down payment, and the balance of P295,000.00 upon the execution of the deed of transfer of the title over the property. Further, petitioner assumed, as part of the purchase price, the existing mortgage on the land. In full satisfaction thereof, he paid P79,145.77 to Respondent Philippine National Bank ("PNB" for brevity).

On June 1, 1979, respondent spouses mortgaged again said land to PNB to guarantee a loan of P145,000.00, P80,000.00 of which was paid to respondent spouses. Petitioner agreed to assume payment of the loan.

On June 26, 1979, the parties executed a Deed of Absolute Sale With Assumption of Mortgage which contained the following terms and conditions:<sup>[3]</sup>

"That for and in consideration of the sum of Two Hundred Ninety-Five Thousand Pesos (P295,000.00) Philippine Currency, to us in hand paid in cash, and which we hereby acknowledge to be payment in full and received to our entire satisfaction, by POWER COMMERCIAL AND INDUSTRIAL DEVELOPMENT CORPORATION, a 100% Filipino Corporation, organized and existing under and by virtue of Philippine Laws with offices located at 252-C Vito Cruz Extension, we hereby by these presents SELL, TRANSFER and CONVEY by way of absolute sale the above described property with all the improvements existing thereon unto the said Power Commercial and Industrial Development Corporation, its successors and assigns, free from all liens and encumbrances.

"We hereby certify that the aforesaid property is not subject to nor covered by the provisions of the Land Reform Code -- the same having no agricultural lessee and/or tenant.

"We hereby also warrant that we are the lawful and absolute owners of the above described property, free from any lien and/or encumbrance, and we hereby agree and warrant to defend its title and peaceful possession thereof in favor of the said Power Commercial and Industrial Development Corporation, its successors and assigns, against any claims whatsoever of any and all third persons; subject, however, to the provisions hereunder provided to wit:

That the above described property is mortgaged to the Philippine National Bank, Cubao, Branch, Quezon City for the amount of one hundred forty-five thousand pesos, Philippine, evidenced by document No. 163, found on page No. 34 of Book No. XV, Series of 1979 of Notary Public Herita L. Altamirano registered with the Register of Deeds of Pasig (Makati), Rizal xxx;

That the said Power Commercial and Industrial Development Corporation assumes to pay in full the entire amount of the said mortgage above described plus interest and bank charges, to the said mortgagee bank, thus holding the herein vendor free from all claims by the said bank;

That both parties herein agree to seek and secure the agreement and approval of the said Philippine National Bank to the herein sale of this property, hereby agreeing to abide by any and all requirements of the said bank, agreeing that failure to do so shall give to the bank first lieu (sic) over the herein described property."

On the same date, Mrs. C.D. Constantino, then General Manager of petitioner-corporation, submitted to PNB said deed with a formal application for assumption of mortgage.<sup>[4]</sup>

On February 15, 1980, PNB informed respondent spouses that, for petitioner's failure to submit the papers necessary for approval pursuant to the former's letter dated January 15, 1980, the application for assumption of mortgage was considered withdrawn; that the outstanding balance of P145,000.00 was deemed fully due and demandable; and that said loan was to be paid in full within fifteen (15) days from notice.<sup>[5]</sup>

Petitioner paid PNB P41,880.45 on June 24, 1980 and P20,283.14 on December 23, 1980, payments which were to be applied to the outstanding loan. On December 23, 1980, PNB received a letter from petitioner which reads:[6]

"With regard to the presence of the people who are currently in physical occupancy of the (l)ot xxx it is our desire as buyers and new owners of this lot to make use of this lot for our own purpose, which is why it is our desire and intention that all the people who are currently physically present and in occupation of said lot should be removed immediately.

"For this purpose we respectfully request that xxx our assumption of mortgage be given favorable consideration, and that the mortgage and title be transferred to our name so that we may undertake the necessary procedures to make use of this lot ourselves.

"It was our understanding that this lot was free and clear of problems of this nature, and that the previous owner would be responsible for the removal of the people who were there. Inasmuch as the previous owner has not been able to keep his commitment, it will be necessary for us to take legal possession of this lot inorder (sic) to take physical possession."

On February 19, 1982, PNB sent petitioner a letter as follows:[7]

"(T)his refers to the loan granted to Mr. Reynaldo Quiambao which was assumed by you on June 4, 1979 for P101,500.00. It was last renewed on December 24, 1980 to mature on June 4, 1981.

"A review of our records show that it has been past due from last maturity with interest arrearages amounting to P25,826.08 as of February 19, 1982. The last payment received by us was on December 24, 1980 for P20,283.14. In order to place your account in current form, we request you to remit payments to cover interest, charges, and at least part of the principal."

On March 17, 1982, petitioner filed Civil Case No. 45217 against respondent spouses for rescission and damages before the Regional Trial Court of Pasig, Branch 159. Then, in its reply to PNB's letter of February 19, 1982, petitioner demanded the return of the payments it made on the ground that its assumption of mortgage was never approved. On May 31, 1983,[8] while this case was pending, the mortgage was foreclosed. The property was subsequently bought by PNB during the public auction. Thus, an amended complaint was filed impleading PNB as party defendant.

On July 12, 1990, the trial court[9] ruled that the failure of respondent spouses to deliver actual possession to petitioner entitled the latter to rescind the sale, and in view of such failure and of the denial of the latter's assumption of mortgage, PNB was obliged to return the payments made by the latter. The dispositive portion of said decision states:[10]

"IN VIEW OF ALL THE FOREGOING, the Court hereby renders judgment in favor of plaintiff and against defendants:

(1) Declaring the rescission of the Deed of Sale with Assumption of Mortgage executed between plaintiff and defendants Spouses Quiambao, dated June 26, 1979;

(2) Ordering defendants Spouses Quiambao to return to plaintiff the amount of P187,144.77 (P108,000.00 plus P79,145.77) with legal interest of 12% per annum from date of filing of herein complaint, that is, March 17, 1982 until the same is fully paid;

(3) Ordering defendant PNB to return to plaintiff the amount of P62,163.59 (P41,880.45 and P20,283.14) with 12% interest thereon from date of herein judgment until the same is fully paid.

"No award of other damages and attorney's fees, the same not being warranted under the facts and circumstances of the case.

"The counterclaim of both defendants spouses Quiambao and PNB are dismissed for lack of merit.

"No pronouncement as to costs.

"SO ORDERED."

On appeal by respondent-spouses and PNB, Respondent Court of Appeals reversed the trial court. In the assailed Decision, it held that the deed of sale between respondent spouses and petitioner did not obligate the former to eject the lessees from the land in question as a condition of the sale, nor was the occupation thereof by said lessees a violation of the warranty against eviction. Hence, there was no substantial breach to justify the rescission of said contract or the return of the payments made. The dispositive portion of said Decision reads:<sup>[11]</sup>

"WHEREFORE, the Decision appealed from is hereby REVERSED and the complaint filed by Power Commercial and Industrial Development Corporation against the spouses Reynaldo and Angelita Quiambao and the Philippine National Bank is DISMISSED. No costs."

Hence, the recourse to this Court .

### **Issues**

Petitioner contends that: (1) there was a substantial breach of the contract between the parties warranting rescission; and (2) there was a "mistake in payment" made by petitioner, obligating PNB to return such payments. In its Memorandum, it specifically assigns the following errors of law on the part of Respondent Court:<sup>[12]</sup>

"A. Respondent Court of Appeals gravely erred in failing to consider in its decision that a breach of implied warranty under Article 1547 in relation to Article 1545 of the Civil Code applies in the case-at-bar.

"B. Respondent Court of Appeals gravely erred in failing to consider in its decision that a mistake in payment giving rise to a situation where the principle of solutio indebiti applies is obtaining in the case-at-bar."

### **The Court's Ruling**

The petition is devoid of merit. It fails to appreciate the difference between a condition and a warranty and the consequences of such distinction.

### **Conspicuous Absence of an Imposed Condition**

The alleged "failure" of respondent spouses to eject the lessees from the lot in question and to deliver actual and physical possession thereof cannot be considered a substantial breach of a condition for two reasons: first, such "failure" was not stipulated as a condition -- whether resolutory or suspensive -- in the contract; and second, its effects and consequences were not specified either.<sup>[13]</sup>

The provision adverted to by petitioner does not impose a condition or an obligation to eject the lessees from the lot. The deed of sale provides in part:<sup>[14]</sup>

"We hereby also warrant that we are the lawful and absolute owners of the above described property, free from any lien and/or encumbrance, and we hereby agree and warrant to defend its title and peaceful possession thereof in favor of the said Power Commercial and Industrial Development Corporation, its successors and assigns, against any claims whatsoever of any and all third persons; subject, however, to the provisions hereunder provided to wit:"

By his own admission, Anthony Powers, General Manager of petitioner-corporation, did not ask the corporation's lawyers to stipulate in the contract that Respondent Reynaldo was guaranteeing the ejectment of the occupants, because there was already a proviso in said deed of sale that the sellers were guaranteeing the peaceful possession by the buyer of the land in question.<sup>[15]</sup> Any obscurity in a contract, if the above-quoted provision can be so described, must be construed against the party who caused it.<sup>[16]</sup> Petitioner itself caused the obscurity because it omitted this alleged condition when its lawyer drafted said contract.

If the parties intended to impose on respondent spouses the obligation to eject the tenants from the lot sold, it should have included in the contract a provision similar to that referred to in Romero vs. Court of Appeals,<sup>[17]</sup> where the ejectment of the occupants of the lot sold by private respondent was the operative act which set into motion the period of petitioner's compliance with his own obligation, i.e., to pay the balance of the purchase price. Failure to remove the squatters within the stipulated period gave the other party the right to either refuse to proceed with the agreement or to waive that condition of ejectment in consonance with Article 1545 of the Civil Code. In the case cited, the contract specifically stipulated that the ejectment was a condition to be fulfilled; otherwise, the obligation to pay the balance would not