

FIRST DIVISION

[G.R. No. 119580, September 26, 1996]

PHILIPPINE NATIONAL BANK, PETITIONER, VS. COURT OF APPEALS AND LAPAZ KAW NGO, RESPONDENTS.

DECISION

HERMOSISIMA, JR., J.:

The question at issue, one of law, is whether or not from the undisputed facts there was entered between the Philippine National Bank and Lapaz Kaw Ngo a perfected contract of sale of prime real property located in the heart of downtown Manila.

Before us is a petition for review on certiorari seeking the reversal of the decision^[1] of the respondent Court of Appeals^[2] in an action for specific performance^[3] filed in the Regional Trial Court (RTC)^[4] by private respondent Lapaz Kaw Ngo against petitioner Philippine National Bank (hereafter, "PNB"). Except for the award of P610,000.00 as actual damages which was deleted, respondent appellate court affirmed in all other respects the judgment^[5] rendered by the RTC in favor of private respondent Ngo.

The facts of this case, as narrated by respondent appellate court, are undisputed:

"The subject matter of the case is a parcel of land containing a net area of 1,190.72 square meters (1391.70 square meters minus 200.98 square meters reserved for road widening and Light Rail Transit) situated at the corner of Carlos Palanca and Helios Streets, Sta. Cruz, Manila, covered by and embraced in Transfer Certificate of Title No. 134695 of the Registry of Deeds of Manila x x x owned and registered in the name of x x x the Philippine National Bank x x x

x x x

On July 14, 1983 Lapaz made a formal offer to purchase the parcel of land consisting of 1,250.70 [square meters] located at the corner of Carlos Palanca and Helios Streets, Sta. Cruz, Manila, owned by and registered in the name of x x x PNB x x x PNB advised Lapaz of its approval of the latter's offer to purchase the subject property subject to the terms and conditions stated in its official communication to the plaintiff [private respondent] dated September 8, 1983, viz:

'x x x

x x x your offer to purchase the Bank-acquired property x x x was

approved by the Bank, subject to the following terms and conditions:

1. That the selling price shall be P5,394,300.00 (P100,000.00 already deposited) x x x

2. (a) That upon your failure to pay the additional deposit of P978,860.00 upon receipt of advice accepting your offer, your P100,000.00 initial deposit shall be forfeited and for this purpose the Bank shall be authorized to sell the property to other interested parties.

x x x

3. That the Bank sells only whatever rights, interests and participation it may have in the property and you are charged with full knowledge of the nature and extent of said rights, interests and participation and waives [sic] your right to warranty against eviction.

x x x

4. That the property shall be cleared of its present tenants/ occupants but all expenses to be incurred in connection with the ejectment proceedings shall be for your account.

6. That the sale shall be subject to such other terms and conditions that the Legal Department may impose to protect the interest of the Bank.

x x x'

On December 15, 1983, the plaintiff [private respondent] signified her conformity to the above letter-agreement by affixing her signature thereon x x x.

One of the conditions in the agreement was to clear the subject property of its then occupants; thus, Lapaz undertook the ejectment of the squatters/tenants at her own expense.

In a letter dated January 23, 1984, Lapaz, citing the then prevailing credit squeeze, requested for adjustment of payment proposals x x x.

On February 28, 1984, PNB wrote Lapaz reminding her Of her failure to remit the amount of P978,860.00 as embodied in its letter dated December 6, 1983 x x x and of her refusal to send her letter of conformity to the letter-agreement. Lapaz was likewise advised to remit her cash payment of the full price amounting to P5,378,902.50; otherwise, the subject property shall be sold to other interested party/ies and her deposit forfeited. Lapaz's request for adjustment of payments was likewise denied x x x.

In a letter dated March 1, 1984 x x x Lapaz, due to a significant reduction in the land area being purchased, requested for the reduction of the selling price from P5,394,300.00 to P5,135,599.17 on cash basis or a total of P6,066,706.49 on installment x x x.

On May 15, 1984, PNB favorably acted on Lapaz's request x x x.

However, when no further payment was received by PNB from Lapaz, the former notified the latter by telegram that it was giving her a last chance to pay the balance of the required downpayment of P563,341.29; failure of which shall cause the cancellation of the sale in her favor and the forfeiture of her P100,000.00 deposit x x x.

The sale in favor of Lapaz never materialized because of her failure to remit the required amount agreed upon; hence, the proposed sale was cancelled x x x and the plaintiff's [private respondent's] deposit of P100,000.00 was forfeited by the defendant [petitioner]. PNB then leased the property to a certain Morse Rivera x x x.

On October 3, 1984 Lapaz requested for a refund of her deposit in the total amount of P660,000.00 (P550,000.00) with a further request that since the Bank was willing to refund to her her deposit provided that the P100,000.00 is forfeited in favor of the Bank, the amount of P100,000.00 be reduced to P30,000.00 because her deposit of P660,000.00 (P550,000.00) had, after all, already accumulated to a sizable amount of interest and, besides there was a delay in the approval of the contract or proposal. Lapaz further intimated that her request for refund shall be subject to the release of the fund within one (1) week from receipt thereof; otherwise, she would insist on purchasing the property subject to mutually agreed grace period x x x.

On October 16, 1984, PNB released in favor of Lapaz the amount of P550,000.00 representing the refund of deposit made on the offer to purchase the subject property x x x.

On August 30, 1985, [Lapaz] wrote a letter to the former President of the Philippines, Ferdinand E. Marcos, requesting for the lifting of the directive suspending the sale of the subject property, which letter was transmitted to the then President of the PNB for comment and/or action.

In its letter dated May 14, 1986, PNB advised Lapaz of the approval of her request for revival of the previously approved offer to purchase the subject property subject to the terms and conditions as follows:

'1. That the selling price shall be P5,135,599.17 (P200,000.00)

already deposited x x x

2. a. That upon your failure to pay the additional deposit of P827,119.83 upon receipt of advice of approval, your P200,000.00 deposit shall be forfeited and for this purpose, the Bank can sell the property to other interested parties;

x x x

3. That your previous deposit of P100,000.00 which was forfeited by the Bank due to your failure to consummate the previously-approved sale, shall not be considered as part of the purchase price;

4. That the Bank sells only whatever rights, interests and participation it may have in the property and you are charged with full knowledge of the nature and extent of said rights, interests and participation and waives [sic] your right to warranty against eviction;

x x x

6. That the property shall be cleared of its present tenants/occupants but all expenses to be incurred in connection with the ejectment proceedings shall be for your account;

7. That the sale shall be subject to all terms and conditions covering sale of similar acquired real estate properties;

8. That the sale shall also be subject to all terms and conditions that the Legal Department may impose to protect the interest of the Bank.' x x x

A copy of the said letter appears to have been received by the plaintiff [private respondent] herself on May 20, 1986 x x x.

In a letter dated May 23, 1986 x x x Lapaz informed the PNB management that the terms and conditions set forth in its letter of May 14, 1986 were acceptable to her except condition no. 6 which says:

'6 That the property shall be cleared of its present tenants/occupants but all expenses to be incurred in connection with the ejectment proceedings shall be for your account.'

She therefore requested for the deletion of the above condition because she had already defrayed the expenses for the ejectment of the previous occupants of the premises in compliance with the condition in the original approved offer to purchase. Besides, the present occupants are not squatters, but lessees of PNB x x x Lapaz's request for modification was not acceptable to the Bank; thus, she was given up to July 10, 1986 to submit, duly signed,

the letter-conforme dated May 14, 1986 and to remit the initial amount of P827,119.83 to comply with the approved terms and conditions; otherwise, the approved sale will be cancelled and her deposit of P200,000.00 forfeited x x x.

In a letter dated January 14, 1987, Lapaz through counsel informed PNB that she was willing to pay and remit the amount of P827,119.83 representing the balance of the 20% downpayment of the approved purchase price as soon as the subject property was cleared of its present tenants/occupants. However, the bank in its letter dated January 30, 1987 informed Lapaz that it could no longer grant her any extension to pay the abovestated amount, and cancelled on January 30, 1987 the approved sale in plaintiff's [private respondent's] favor for being stale and unimplemented and forfeited her deposit of P200,000.00 x x x.

To demonstrate her protest over the cancellation, Lapaz through counsel sent the letter dated February 6, 1987 asking for a reconsideration of bank's position on the matter by honoring the approved sale in plaintiff's [private respondent's] favor as well as her deposit x x x. In reply, the Bank denied any further extension in favor of the plaintiff [private respondent] and likewise informed her that it had already decided to sell the property for not less than P7,082,972.00 through negotiated or sealed bidding x x x.

As a consequence of the cancellation of the approved offer to purchase in her favor, Lapaz filed [an] action for Specific Performance and Damages with Prayer for a Writ of Preliminary Injunction and Temporary Restraining Order.

After trial, the lower court on November 15, 1990, rendered judgment in favor of the plaintiff [private respondent] x x x."^[6]

In the decretal portion of the trial court's judgment, petitioner was ordered to comply with the approved sale of the subject property but without the right to impose the condition that private respondent shall bear the expenses for ejecting the occupants of the subject property. Petitioner was also ordered to pay P610,000.00 as actual expenses, P100,000.00 as attorney's fees, plus P1,000.00 per appearance, and the costs of suit.

The aforecited judgment of the court a quo, totally unacceptable to petitioner, was appealed to the respondent court. Petitioner took exception to the following postulations of the trial court: (1) that there was a perfected contract of sale between herein private parties notwithstanding the suspensive condition imposed upon private respondent for her to bear the expenses for ejecting the occupants of the subject property; (2) that the deposit of P200,000.00 given by private respondent was earnest money which is proof of the perfection of the contract of sale albeit the said condition imposed thereon; and (3) that the cancellation of the second sale was baseless notwithstanding proof of private respondent's refusal to pay the balance of the 20% down payment of the purchase price of the subject property.