

SECOND DIVISION

[G.R. No. 118347, October 24, 1996]

VICENTE LIM AND MICHAEL LIM, PETITIONERS, VS. COURT OF APPEALS AND LIBERTY H. LUNA, RESPONDENTS.

DECISION

MENDOZA, J.:

Private respondent Liberty Luna is the owner of a piece of land located at the corner of G. Araneta Avenue and Quezon Avenue in Quezon City. The land, consisting of 1,013.6 square meters, is covered by TCT No. 193230 of Registry of Deeds of Quezon City. On September 2, 1988 private respondent sold the land to petitioners Vicente and Michael Lim for P3,547,600.00. As prepared by petitioners' broker, Atty. Rustico Zapata of the Zapata Realty Company, the receipt embodying the agreement^[1] read as follows:

RECEIPT

RECEIVED from ZAPATA REALTY CO. INC., through Mr. Edmundo Kaimo of 101 Kaimo Building, Metrobank Cashier's Check No. 020583, Dasmariñas branch, in the sum of TWO HUNDRED THOUSAND (P200,000.00) PESOS, as earnest money for the purchase of a parcel of land at the corner of G. Araneta Avenue and Quezon Avenue, Quezon City, with an area of 1,013.6 sq. m. covered by TCT 193230, Registry of Deeds for Quezon City, at the price of P3,547,600.00, subject to the following conditions:

1. This sum of P200,000.00 shall form part of the purchase price;
2. The balance of P3,347,600.00 shall be paid in full after the squatters/occupants have totally vacated the premises;
3. The seller assumes full responsibility to eject the squatters/occupants within a period of sixty (60) days from the date of receipt of the earnest money; and in case the seller shall fail in her commitment to eject the squatters/occupants within said period, the seller shall refund to the buyer this sum of P200,000.00 [plus another sum of ONE HUNDRED THOUSAND (P100,000.00) PESOS as liquidated damages]; however, if the buyer shall fail to pay the balance after the seller has ejected the squatters/occupants, this sum of P200,000.00 shall be forfeited by the seller;
4. Capital gains tax, documentary stamps tax and broker's commission shall be for seller's account while transfer and registration fees shall be for buyer's account.

5. That Zapata Realty Co. Inc. and Edmundo F. Kaimo are the exclusive brokers of the buyers Vicente & Michael Lim.

6. Buyer assumes responsibility of the premises immediately upon eviction of the squatters.

Quezon City, September 2, 1988.

(SGD.) LIBERTY H. LUNA
(Seller)

WITNESSED BY:
(SGD.) EDMUNDO KAIMO

However, when private respondent signed the receipt, she crossed out the bracketed portion in paragraph 3 providing for the payment by private respondent of the amount of P100,000.00 as liquidated damages in the event she failed to eject the squatters sixty (60) days after the signing of the agreement. Thereafter, a check for P200,000.00 was given to private respondent as earnest money, leaving a balance of P3,347,600.00 to be paid in full after the squatters are ejected.

Private respondent Luna failed to eject the squatters from the land despite her alleged efforts to do so. It appears that private respondent asked the help of a building official and a city engineers to effect ejection.^[2] Nonetheless, petitioners did not demand the return of their earnest money.

On January 17, 1989, the parties met at the office of Edmundo Kaimo to negotiate a price increase to facilitate the ejection of the squatters. The parties agreed to an increase of P500.00 per square meter, by rounding off the total purchase price to P4,000,000.00, with the remaining 13.6 square meters of the 1.013.6 square meters given as a discount. Less the P200,000.00 given as earnest money, the balance to be paid by petitioners was P3,800,000.00.

After a few days, private respondent tried to return the earnest money alleging her failure to eject the squatters. She claimed that as a result of her failure to remove the squatters from the land, the contract of sale ceased to exist and she no longer had the obligation to sell and deliver her property to petitioners. As petitioners had refused to accept the refund of the earnest money, private respondent wrote them on February 22, 1989 that the amount would be deposited in court by consignment. On March 10, 1989, private respondent filed a complaint for consignment against petitioners.

Private respondent alleged that it was her obligation to return the earnest money under paragraph 3 of the receipt since the condition of ejecting the squatters had not been fulfilled but petitioners unjustly refused to accept the refund. She claimed that although she tried her best to eject the squatters, she failed in her efforts.

Petitioners, on the other hand, argued in their answer that the legal requisites for a valid consignment were not present and, therefore the consignment was improper. They claimed that private respondent never really intended to eject the squatters, as evidence by the absence of a case for ejection. Petitioners charged that private respondent has used her own failure as an excuse to get out of her contract.

Private respondent testified that she had wanted to return the earnest money after realizing that she could not successfully eject the squatters but that she was not able to do so because petitioners' broker, Zapata Realty Company, refused to give her petitioners' address.^[3] In her cross examination, she claimed that the primary reason for the January 17, 1989 meeting was for her to return the money and to withdraw from the sale and that the idea of increasing the price came from petitioners to convince her to continue with the sale.^[4] She later admitted, however, that the price increase and decision to proceed with the sale were mutually agreed upon by her and petitioner Vicente Lim.^[5] Her admission was confirmed by her broker, Edmundo Kaimo, who testified^[6] that the purpose of the meeting was to discuss ways of carrying out the sale, considering that private respondent was having difficulty ejecting the squatters and that what he private respondent proposed to petitioners was to increase the purchase price to facilitate the ejection.

Testifying in their turn, petitioner Vicente Lim denied that the January 17, 1989 meeting was held at their instance.^[7] He said that he was reluctant to agree to the price increase but was prevailed upon to do so by his broker, Zapata Realty Company, and by Edmundo Kaimo. This testimony was corroborated by Atty. Rustico Zapata and Francisco Zapata of the Zapata Realty Company.

On December 28, 1992 the trial court^[8] rendered a decision holding that there was a perfected contract of sale between the parties and that pursuant to Art. 1545 of the Civil Code, although the failure of private respondent to eject the squatters was a breach of warranty, the performance of warranty could be waived by the buyer, as petitioners did in this case. It found private respondent to have acted in bad faith by not exerting earnest efforts to eject the squatters, in order to get out of the contract. The dispositive portion of its decision reads:

WHEREFORE, under cool reflection and prescinding from the foregoing, judgment is rendered in favor of the defendants and against plaintiff:

1. The complaint is dismissed.
2. Perforce, plaintiff is ordered to comply with the Receipt Agreement dated September 02, 1988 regarding the sale to the defendants of the property covered by Transfer Certificate of Title No. T-193230 of the Registry of Deeds of Quezon City, upon payment by the defendants of the balance of P3,800,000.00.
3. Plaintiff is ordered to pay the defendants the sum of P500,000.00 as moral damages.
4. Plaintiff to pay defendants the sum of P50,000.00 by way of attorney's fees.
5. Plaintiff to pay the cost.

SO ORDERED.

The private respondent appealed to the Court of Appeals, which reversed^[9] the trial court and allowed the complaint for consignation. It held that as a result of the non-fulfillment of the condition of ejecting the squatters, petitioners lost the right to demand from the private respondent the sale of the land to them. The appellate court described the sale in this case as a "contract with a conditional obligation" whereby the private respondent's obligation to sell and deliver and the petitioners' obligation to pay the balance of the purchase price depended on the fulfillment of the condition that the squatters be removed within 60 days.

The Court of Appeals held:

Under such conditions, upon the ejectment of the squatters plaintiff would acquire the right to demand that defendants proceed with the sale and pay the balance of the purchase price; and, on the other hand, should the event not happen, defendants would lose the right they had acquired by giving the earnest money to plaintiff to demand that the latter sell said land to them.

It also ruled that consignation was proper as the obligation to refund earnest money was a clear debt and that contrary to the finding of the trial court, the facts show that private respondent exerted earnest efforts to eject the squatters and was, therefore, not in bad faith.

The petitioners filed this petition for review on the following grounds.

I. THE RULING OF THE COURT OF APPEALS THAT "THE NON-FULFILLMENT OF THE CONDITION OF EJECTING THE SQUATTERS RESULTED IN DEFENDANTS' LOSING THE RIGHT (ACQUIRED BY VIRTUE OF THE EARNEST MONEY) TO DEMAND THAT PLAINTIFF SELL THE LAND TO THEM" IS PATENTLY AGAINST THE SPECIFIC LAW ON SALES, AND IS A DISTORTED AND CLEARLY ERRONEOUS APPLICATION OF THE GENERAL PROVISIONS OF THE LAW ON OBLIGATIONS AND CONTRACTS.

II. THE RULING OF THE COURT OF APPEALS IS A DISTORTION OF THE CONTRACT BETWEEN THE PARTIES, WAY OF JUSTICE ITSELF BECAUSE IT REWARDS RATHER THAN SANCTIONS THE NON-PERFORMANCE OF A CONTRACTED OBLIGATION.

III. THE QUESTION OF WHETHER OR NOT RESPONDENT LUNA EXERTED EARNEST EFFORTS TO EJECT THE SQUATTERS DOES NOT PERTAIN TO THE ISSUE OF THE PROPRIETY OF CONSIGNATION BUT REFERS TO THE MATTER OF WHETHER OR NOT RESPONDENT LUNA WAS IN BAD FAITH AND IS THEREFORE LIABLE FOR DAMAGES INFLICTED UPON THE PETITIONERS; AND THE RULING THAT SUCH EARNEST EFFORTS WAS PRESENT IS CONTRARY TO UNCONTRADICTED EVIDENCE.

The petition is well taken. The first question is whether as a result of private respondent's failure to eject the squatters from the land, petitioners, as the Court of Appeals ruled, lost the right to demand that the land be sold to them. We hold that they did not and that the appellate court erred in holding otherwise. The agreement, as quoted, shows a perfected contract of sale. Under Art. 1475 of the Civil Code, there is a perfected contract of sale if there is a meeting of the minds on the subject and the price. A sale is a consensual contract requiring only the consent