

THIRD DIVISION

**G.R. No. 222957 – ATTY. ROGELIO B. DE GUZMAN, *petitioner versus*
SPOUSES BARTOLOME AND SUSAN SANTOS, *respondents.***

Promulgated:

March 29, 2023

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SEPARATE OPINION

CAGUIOA, J.:

The *ponencia* in the above-captioned case grants the Petition¹ and reverses and sets aside the assailed Decision² dated December 18, 2014 and Resolution³ dated February 18, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 100706 finding that the Contract between the parties is a contract to sell and cannot be rescinded. While I agree with the grant of the Petition, I arrive at a different conclusion on the nature of the contract in this case.

To recall, respondents-spouses Bartolome and Susan Santos (respondents) agreed to purchase the property covered by Transfer Certificate of Title (TCT) No. 5788 registered under the name of petitioner Atty. Rogelio B. De Guzman (petitioner) for the price of ₱1,500,000.00 with a downpayment of ₱250,000.00 and monthly installment of ₱15,000.00.⁴ Thus, they entered into a Contract to Sell dated November 2000. However, after paying the downpayment, respondents changed their mind and sought the refund of ₱208,500.00 deducting therefrom what they considered as the reasonable amount of rent for their stay in the property as well as commission paid to the agent.⁵ Respondents filed a complaint for rescission, recovery of down payment plus damages against petitioner.⁶

The Regional Trial Court (RTC) initially dismissed respondents' complaint for lack of cause of action and ordered them to pay the balance of the house and lot with 9% interest.⁷ Respondents then filed a motion for new trial on the basis of their discovery that petitioner had sold the property to another person while the case was pending before the court.⁸ The RTC granted the motion. After trial, it issued an Order dated January 31, 2013 setting aside

¹ *Rollo*, pp. 8-36.

² *Id.* at 38-49. Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela concurring.

³ *Id.* at 57-58. Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Amy C. Lazaro-Javier (now a member of this Court) and Nina G. Antonio-Valenzuela concurring.

⁴ *Id.* at 14-15, Petition.

⁵ *Id.* at 45, CA Decision.

⁶ *Id.*

⁷ *Ponencia*, pp. 2-3.

⁸ *Id.* at 3.



its earlier decision and declared the Contract to Sell as rescinded. Petitioner was ordered to return the downpayment of respondents, less reasonable rent.⁹

On appeal, the CA affirmed the RTC's Order. The CA found that petitioner was guilty of bad faith, deception, and fraud when it sold the property to a third person during the pendency of the case without notifying the court and respondents.¹⁰ Such transfer rendered the enforcement of the Contract to Sell between the parties moot and academic.¹¹ The CA upheld the RTC's grant of new trial and held that its order of rescission and refund against petitioner was justified in the broader interest of justice and equity.¹²

Petitioner filed the instant Petition before the Court arguing that the remedy of rescission is not applicable to a contract to sell. Respondents' failure to pay the monthly installments rendered the contract ineffective.¹³ Moreover, the Contract to Sell provides for the automatic cancellation of the contract and forfeiture of all payments made upon default in three monthly installment payments.¹⁴

The *ponencia* grants the Petition and makes the following findings:

1. The contract between the parties is a contract to sell. Prevailing jurisprudence defines a contract to sell as a bilateral contract whereby a prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds himself or herself to sell the said property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, that is, full payment of the purchase price.¹⁵ In a contract to sell, full payment is a positive suspensive condition, the non-fulfillment of which does not constitute a breach of contract, but merely an event which prevents the seller from conveying title to the buyer. Thus, the remedies of specific performance or rescission is not available. The buyer's non-payment only renders the contract to sell ineffective and without force and effect.¹⁶
2. In a contract to sell, the seller has no obligation to transfer ownership over the property to the intending buyer until they execute a contract of sale after full payment of the purchase price, even if they have already entered into a contract to sell. The seller retains freedom and legal right to sell the property to a third person before the intending buyer's full payment of the purchase price. In such a situation, there is no defect in the seller's title *per se*.¹⁷

⁹ Id.

¹⁰ Id. at 5.

¹¹ Id. at 5-6.

¹² Id. at 6.

¹³ Id.

¹⁴ Id.

¹⁵ Id. at 7.

¹⁶ Id.

¹⁷ Id. at 8.



3. Based on the foregoing, the CA erred in affirming the rescission of the Contract to Sell and ordering petitioner to reimburse respondents. Petitioner's sale to a third party was legal because there was still no defect in his title at the time since respondents failed to pay the purchase price. Although petitioner may have acted in bad faith when he sold the property to another pending litigation, this was not a legal ground for rescission under Article 1381 of the New Civil Code (Code). Necessarily, the order of reimbursement is also erroneous.¹⁸
4. The parties first in bad faith were respondents as they failed to comply with the Contract to Sell when they occupied the property for four months and deliberately did not pay a single installment agreed upon. They then abandoned the property. Meanwhile, petitioner was similarly at fault when he sold the property to another buyer during the trial stage without any judicial authorization making the enforcement of the contract moot and academic. Since petitioner was also a lawyer, the unauthorized sale likewise constituted a violation of his duties to the court. Consequently, the parties are not entitled to seek protection from the courts as parties who come to court with unclean hands must not be allowed to profit from their own wrongdoings.¹⁹
5. The Contract to Sell provides that the dishonor of three checks covering payments of the installments due shall result in the automatic cancellation of the contract and forfeiture of all payments made. By clear provision of the contract and respondents' admission of default for four months, the Contract to Sell was automatically cancelled and the downpayment made by them was forfeited.²⁰

Again, while I agree with the application of the cancellation provision in the Contract, I believe the parties herein did not enter into a contract to sell. Contrary to the *ponencia's* finding, the contract herein is one of sale.

The contract between the parties is a contract of sale not a contract to sell.

The contract denominated as a "Contract to Sell" provides the following stipulations:

"WHEREAS, the Vendee is willing to purchase the afore-cited house and lot in installment in view of the flooding of their house and the consequential financial difficulties encountered therefrom.

WHEREAS, the Vendor took into consideration the reasons and immediate need of the Vendees."

¹⁸ Id. at 9.

¹⁹ Id. at 9-10.

²⁰ Id. at 10-11.



NOW, THEREFORE, for and in consideration of the foregoing premises, the Vendor hereby agrees to sell to the Vendees the above-described parcel of land, with all the improvements thereon, under the following terms and conditions:

1. The purchase price of the house and lot is ONE MILLION FIVE HUNDRED THOUSAND PESOS (P1,500,000.00), Philippine Currency, payable by the Vendees as follows:

a. Two Hundred Fifty Thousand Pesos (P250,000.00) upon the signing of this Contract;

b. The balance of One Million Two Hundred Fifty Thousand Pesos (P1,250,000.00) shall be paid in equal installment of FIFTEEN THOUSAND PESOS (P15,000.00) Philippine Currency, every month with an interest of Nine Percent (9%) per annum the total amount of which shall be computed and paid after full payment of the principal amount hereof;

c. The Vendees shall issue upon signing hereof twelve (12) checks as payment for every year installment of twelve (12) months encashable every last day of the month and every year thereafter until the total amount hereof is actually and fully paid;

d. The Vendees shall avoid dishonor of any of the checks they will issue in payment of the house and lot of the Vendor, otherwise, any three (3) successive dishonor of the said checks shall be a ground for automatic cancellation of this Contract and forfeiture of all payment made to the Vendor[;]

2. The Vendees can take immediate physical and peaceful possession of the property subject hereof upon signing of this Contract[;]

3. The Vendor warrants that the property subject hereof is free from any lien or encumbrance;

4. The Vendees shall comply with all laws and Municipal ordinances and all regulations of the Homeowner's Association of the subdivision;

5. Upon full payment of the agreed considerations hereof, the Vendor hereby warrants to transfer and convey title in fee simple over the property subject hereof in the name of the Vendees." x x x²¹ (Emphasis and citation omitted)

The *ponencia* is accurate in describing current jurisprudence as defining a contract to sell as a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite its delivery to the prospective buyer, commits to sell the property exclusively to the prospective buyer upon full payment of the purchase price.²² Full payment is deemed a positive suspensive condition.²³ In *Coronel v. CA*,²⁴ the Court provides an extensive discussion of the nature of a contract to sell as follows:

²¹ *Rollo*, pp. 22-23, Petition.

²² *Ponencia*, p. 7.

²³ *Platinum Plans Phil. Inc. v. Cucueco*, 522 Phil. 133, 144 (2006).

²⁴ 331 Phil. 294 (1996).



A contract to sell may thus be defined as a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds himself to sell the said property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, that is, full payment of the purchase price.

A contract to sell as defined hereinabove, may not even be considered as a conditional contract of sale where the seller may likewise reserve title to the property subject of the sale until the fulfillment of a suspensive condition, because in a conditional contract of sale, the first element of consent is present, although it is conditioned upon the happening of a contingent event which may or may not occur. If the suspensive condition is not fulfilled, the perfection of the contract of sale is completely abated (cf. *Homesite and Housing Corp. vs. Court of Appeals*, 133 SCRA 777 [1984]). However, if the suspensive condition is fulfilled, the contract of sale is thereby perfected, such that if there had already been previous delivery of the property subject of the sale to the buyer, ownership thereto automatically transfers to the buyer by operation of law without any further act having to be performed by the seller.

In a contract to sell, upon the fulfillment of the suspensive condition which is the full payment of the purchase price, ownership will not automatically transfer to the buyer although the property may have been previously delivered to him. The prospective seller still has to convey title to the prospective buyer by entering into a contract of absolute sale.²⁵ (Italics in the original)

Applying the foregoing discussion, the contract between the parties herein indeed falls under the current jurisprudential definition of a contract to sell. However, I believe that it is high time for the Court to revisit the concept of a contract to sell as it is presently understood.

According to Article 1458 of the Code, “[b]y the contract of sale, one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent. A contract of sale may be absolute or conditional.” In determining the true nature of a contract, the denomination given by the parties is not controlling.²⁶

As to the perfection of a contract of sale, Article 1475 of the Code provides:

Art. 1475. The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.

From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts. (1450a)

²⁵ Id. at 310-311.

²⁶ *Romero v. CA*, 320 Phil. 269, 280 (1995).



Based on the above-mentioned provision of law, contracts of sale are perfected as soon as the parties agree upon the object of the contract and the price thereof. These two codal provisions find their root in the Spanish Civil Code provisions on Purchase and Sale. Specifically, Articles 1458 and 1475 of the Code were adopted from Articles 1445 and 1450 of the Spanish Civil Code, respectively, to wit:

ARTICLE 1445. By the contract of purchase and sale one of the contracting parties binds himself to deliver a determinate thing and the other to pay a certain price therefor in money or in something representing the same.

x x x x

ARTICLE 1450. The sale shall be perfected between vendor and purchaser and shall be binding upon both of them if they have agreed upon the thing which is the subject-matter of the contract and upon the price, even if neither has been delivered.

Thus, a contract of sale in both the Spanish Civil Code and the present Code is consensual in nature.²⁷ It is perfected at the moment there is a meeting of the minds upon the thing which is the object of the contract and upon the price.²⁸ The seller is not even required to have the right to transfer ownership of the object of the sale at the time of its perfection.²⁹ What is required is that the owner must have a right to transfer the ownership thereof at the time it is delivered.³⁰

Applying Articles 1458 and 1475 of the Code to the present case, and mindful of their Spanish origins, all the elements of a perfected contract of sale are present. Here, the parties consented to the transfer of a house and lot under TCT No. 5788 registered in the name of petitioner for the purchase price of ₱1,500,000.00. Clearly, there is already a meeting of the minds of the parties as to the thing which is the object of the contract as well as the price thereof. The provision on transfer of ownership until full payment did not make the contract anything less than a sale. After all, Article 1478 of the Code allows parties in a contract of sale to stipulate that ownership shall not pass until the purchaser has fully paid the price, *viz.*:

Art. 1478. The parties may stipulate that ownership in the thing shall not pass to the purchaser until he has fully paid the price. (n)

Thus, the stipulation providing for transfer of title only after full payment did not make the contract anything other than a contract of sale as defined by the foregoing provisions. I therefore question the current understanding of a contract to sell. For one, as mentioned, perfection of a contract of sale does

²⁷ See *Heirs of Villeza v. Aliangan*, G.R. No. 244667-69 (formerly UDK 16373-75), December 2, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67034>>; see also *J. Barredo, Dissenting Opinion in Luzon Brokerage Co., Inc. v. Maritime Building Co., Inc.*, 150-B Phil. 264, 349-350 (1972).

²⁸ *Heirs of Villeza v. Aliangan*, *id.*

²⁹ *Id.*

³⁰ NEW CIVIL CODE, Art. 1459.



not require the transfer of ownership. Moreover, how can payment of the price be deemed a positive suspensive condition in the perfection of a contract of sale when it is the very prestation of the buyer?

The proposition pushed forth herein is not new as this was the very argument of Justice Antonio Barredo (Justice Barredo) in his Dissenting Opinion in *Luzon Brokerage Co., Inc. v. Maritime Building Co., Inc.*³¹ (*Luzon Brokerage*). In the said case, what was involved was a contract, denominated as a “Deed of Conditional Sale,” for the sale of property paid in installment with reservation of title until full payment of the purchase price, and with automatic cancellation in case of non-payment of any installment. The Court therein, speaking through Justice Benedicto Luis L. “J.B.L.” Reyes, determined that the agreement between the parties was a contract to sell. However, contrary to the majority, Justice Barredo, with concurrence from Justice Calixto O. Zaldivar and Justice Felix Q. Antonio, believed that the contract was one of sale.³² Justice Barredo likewise put into issue the conceptualization of a contract to sell, *viz.*:

The stipulation providing for transfer of title only after full payment did not stamp the transaction with the character of a mere promise to sell — full payment was a suspensive condition for the execution of the final deed as the form of tradition of title while non-payment was a resolutory condition with confiscation as a penalty clause.

I must state at this juncture that what makes the case at bar difficult and seemingly complicated is the long line of decisions We have to reexamine if We must straighten out once and for all the juridical conceptualization We have attached to the nature of the agreement embodied in the “Deed” in question. At least inferentially, if not directly, We refer to it as “a promise to sell immovable property, where title remains with the vendor until fulfillment to a positive suspensive condition, such as the full payment of the price,” citing apparently in support of such conceptualization the cases of *Santero and Inquimboy, supra*, and *Jocson vs. Capitol*, G.R. No. L-6573, February 28, 1955; *Miranda vs. Caridad*, G.R. No. L-2077 and *Aspuria vs. Caridad*, G.R. No. L-2721, both of October 3, 1950.

As I have said, I have read and studied all these decisions, for no other reason than that I have always been intrigued by what is meant by a promise to sell an immovable with reservation of title and I naturally checked if the cited decisions have indeed formulated such a rather vague juridical concept which to my mind implies a juridically inconceivable

³¹ See *supra* note 27.

³² Note that the case was later the subject of a second motion for reconsideration (2nd MR) under a 15-Member Court (with four remaining Members who originally voted on the case). The denial of the 2nd MR was penned by Justice Claudio O. Teehankee, but with a divided Court (seven voting to grant the 2nd MR, including Justice Barredo).



notion. **What I mean is simply that when one talks of a promise to sell with reservation of title, it is as if it were possible to have a promise to sell with delivery of title.** Unless I am gravely mistaken, I am afraid that juridically it is quite absurd to think of a promise to sell with the title of the property promised to be sold being delivered immediately. It is very common to come across promises to sell where possession is transferred simultaneously upon the perfection or execution of the agreement, but I have yet to know of a case where title itself is so transferred.

What renders the idea of a promise to sell with reservation more perplexing to me is that in the Spanish law on sales, as contradistinguished from the concept of sales in American law, a contract of sale is purely consensual and does not necessarily involve the transfer of title except when it is so stipulated or when the sale is made in a public instrument, since the latter is in itself a form of delivery or tradition of title over immovable property. Very explicit in this respect are the provisions of Article 1450 of the Old Civil Code which says: "The sale shall be perfected between vendor and vendee and shall be binding on both of them if they have agreed upon the thing which is the subject matter of the contract and upon the price, even if neither has been delivered." Perhaps, the Spanish text is even more emphatic as to non-delivery of the thing and the non-payment of the price, as it provides: "La venta se perfeccionara entre comprador y vendedor, y sera obligatoria para ambos, si hubieren convenido en la cosa objeto del contrato, y en el precio, aunque ni una ni el otro se hayan entregado." And to bring out the point in bolder relief, I would add the pertinent comment of Manresa to the following effect:

"Expresamente dice el articulo que comentamos, que no es menester que se hayan entregado ni la cosa ni el precio para que el contrato de compra y venta se tenga por perfecto. Si alguno de esos requisitos fuese preciso, la compra y venta seria un contrato real en vez de consensual.

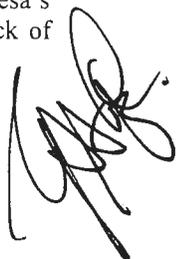
"Desde que se consiente, y sin necesidad de ninguna otra circunstancia, el contrato, repetimos, esta perfecto y nacen las obligaciones; pero la transmision de la propiedad no existe hasta que la cosa no ha sido entregada. La entrega de la cosa se refiere al periodo de consumacion; en el articulo que estudiamos se trata tan solo de fijar el momento de la perfeccion." (10 Manresa 56, id.)

x x x x³³

To fully comprehend the point under discussion, from a point of view which is not Manresa's, We only have to read the pertinent portion of the Report of the Code Commission on the Proposed Civil Code of the Philippines:

"The name of Title VI has been simplified by calling it 'sales', and the name of the contract has been changed, for the same reason, to 'contract of sale.'

³³ The omitted portion from Justice Barredo's Dissenting Opinion cites José Mariá Manresa's *Commentarios Al Codigo Civil Español* which is in the Spanish language and excluded for lack of official translation.



“It is required in the proposed Code that the seller transfer the ownership of the thing sold (arts. 1478, 1479, 1515, 1567). In the present Code (art. 1445), his obligation is merely to deliver the thing, so that even if the seller is not the owner, he may validly sell, subject to the warranty (art. 1474) to maintain the buyer in the legal and peaceful possession of the thing sold. The Commission considers the theory of the present law unsatisfactory from the moral point of view.” (*At p. 141*)

and consider that Article 1478, a new provision of the New Civil Code, specifically authorizes the parties to stipulate “that the ownership in the thing shall not pass to the purchaser until he has fully paid the price”, which makes the sale what Laurent calls a “venta a la romana”, and which precisely is the nature of the contract We have before us in this case. Thus, it is my humble view that, contrary to what seems to be implied from the portion of Manuel quoted in Our decision and resolution of denial in this case, **the reservation of the title does not strip or divest the agreement of its character as a sale and much less does it make it a promise to sell. I reiterate, the reservation of title is irrelevant in a promise to sell for the simple reason that it is in its very nature that transfer of title is not involved and cannot even be contemplated.**³⁴ (Emphasis supplied; italics in the original)

Justice Barredo likewise argued that the suspensive condition (*i.e.*, full payment of the purchase price) affecting the transfer of the sale does not affect the character of the contract as a perfected contract of sale.³⁵ In fact, the delivery of possession of the property to the buyer in the *Luzon Brokerage* shows that it was a partially consummated sale.³⁶ He also argued that it was only in the Second Division case of *Manuel v. Rodriguez*³⁷ that the Court created the concept of a “contract to sell or promise to sell,” where title remains with the vendor until fulfillment of a positive suspensive condition, such as full payment of the price, *viz.*:

It was only in Manuel vs. Rodriguez, 109 Phil. 1, that this Court “created” the concept of a “a contract to sell or promise to sell”, where title remains with the vendor until fulfillment to a positive suspensive condition, such as full payment of the price.

I have taken pains to analyze all the decisions cited in Manuel, to verify whether or not there is really in the earlier jurisprudence such a concept of a promise to sell wherein title is reserved by the vendor. The result of the foregoing discussion, as can be seen, is that it was only in Manuel that this Court spoke first of such a concept, which it is suggested We should apply in the case at bar. I regret I cannot accede to the suggestion. The concept proposed does not conform with my studies of the juridical

³⁴ J. Barredo, Dissenting Opinion in *Luzon Brokerage Co., Inc. v. Maritime Building Co., Inc.*, supra note 27, at 348-354.

³⁵ *Id.* at 358.

³⁶ *Id.*

³⁷ 109 Phil. 1, 9 (1960).



nature of a promise to sell as distinguished from a contract of sale. I insist that the so-called suspensive condition affecting the transfer of title only after full payment of the price, an admittedly licit one, does not detract from the character of the contract here in question as a perfected contract of sale — indeed, partially consummated by the delivery of possession of “the thing” (per Manresa), if We may borrow the characterization made by Justice Imperial of the contract in the Ah Sing case, *supra*. For that matter, neither does the condition that upon failure of Maritime to pay any installment, the contract would be cancelled, all past payments forfeited and Myers would be entitled to recover possession — vary a bit the real nature of the contract. In fact, it is my considered view that it is this condition as to breach that is determinative of the rights of the parties in this case, since what is in issue here, as I see it, is not the right of Maritime to compel delivery of title, but only whether or not the whole contract should be held to have been properly and legally cancelled by Myers, thus depriving Maritime of further opportunity to continue paying the balance of the stipulated purchase price.

My understanding of the contract of sale, known before the New Civil Code as “Purchase and Sale”, is that it is a bilateral contract which is a composite of various obligations, depending on the terms agreed upon by the parties regarding the payment of the price, on the one hand, and the delivery of the thing sold and the title thereto, all of which are reciprocal, as distinguished from correlative ones. Thus, once the parties have agreed upon the thing and the price, the contract of sale comes juridically into being as fully as any other perfected contract, without prejudice to the parties laying down as they may agree the terms of payment, on the one hand, and the delivery of the thing and the title thereof, on the other. Of course, these conditions are reciprocally obligatory or binding; the sale is consummated upon fulfillment by both parties of their respective obligations; but, pending such consummation, in the event of breach by anyone of them, the corresponding rules established by law come into play, among them, Article 1234 (new), as applied in Javier, *supra*, and Article 1124, as applied to sales of movables, and, of course, Article 1504 which is the variant of Article 1124 applicable to sales of immovables (per Justice J.B.L. Reyes in *Gabuya vs. Cui*, 38 SCRA 85, at p. 97).³⁸ (*Italics in the original*)

I believe there is merit in the comprehensive arguments of Justice Barredo. Thus, similar to his finding, the contract subject of the present case is a contract of sale as it has all the attributes of a perfected contract of sale under the Code. It appears too that petitioner, a lawyer, treated the contract as one of sale considering that in his Answer with Counterclaim, he prayed that respondents be adjudged to pay ₱1,250,000.00 to him as unpaid balance of the purchase price of the property with 9% interest as stipulated in the contract.³⁹ In fact, the RTC had initially ruled in his favor ordering respondents to pay the remaining balance with interest. Later, when respondents’ motion for new trial was granted, and in order to escape liability for the subsequent sale of the property, he asserted that what he and respondents entered into was merely a contract to sell wherein he had no obligation to transfer ownership until full payment of the purchase price and for which reason, the remedy of rescission was unavailable.

³⁸ J. Barredo, Dissenting Opinion in *Luzon Brokerage Co., Inc. v. Maritime Building Co., Inc.*, *supra* note 27, at 357-359.

³⁹ *Rollo*, p. 42, CA Decision citing RTC Order.



Respondents are not entitled to rescind the Contract.

Since the contract herein is a one of sale, the remedy of rescission is available. Under Articles 1191 and 1192 of the Code, the right of resolution of a party to an obligation is predicated on a breach of faith by the other party which violates the reciprocity between them, *viz.*:

Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with articles 1385 and 1388 and the Mortgage Law. (1124)

Art. 1192. In case both parties have committed a breach of the obligation, the liability of the first infractor shall be equitably tempered by the courts. If it cannot be determined which of the parties first violated the contract, the same shall be deemed extinguished, and each shall bear his own damages. (n)

It is also noted that Article 1592 expressly provides that even if it has been stipulated by the parties that rescission of the contract shall take place upon failure to pay the price at the time agreed upon, the vendee may still pay even after the expiration of the period as long as there is no judicial or notarial demand for rescission made by the vendor, *viz.*:

Art. 1592. In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by a notarial act. After the demand, the court may not grant him a new term. (1504a)

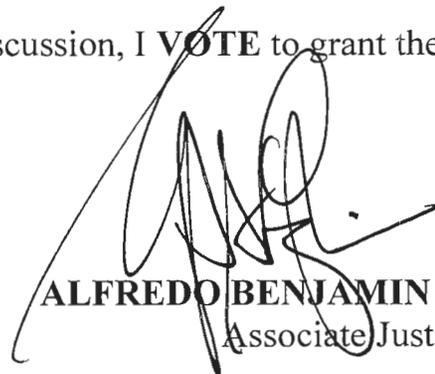
In the present case it is the vendees who first sought the rescission of the contract. Thus, Article 1592 cannot be applied as it is clear that they no longer wished to pay any of the installments and were in fact demanding the refund of their downpayment. Likewise, respondents are the first infractors in this case and cannot be deemed the injured party under Article 1191 to whom the choice of fulfillment or rescission of the contract is given. To be sure, respondents unilaterally abandoned the property and failed to pay any of the installment payments. Meanwhile, petitioner is equally at fault when he sold the property to a third person without informing the court or respondents while



the case was pending litigation. To stress, petitioner prayed that the RTC order respondents to pay the balance of the purchase price in accordance with their agreement. Thus, he acted in bad faith in negotiating the sale of the property while the case was being litigated in court.

Considering that the contract between the parties provides for the automatic cancellation thereof and forfeiture of all payments made in case of three successive dishonors of the post-dated checks representing monthly installments, the *ponencia* correctly rules that the said stipulation shall apply to the parties. Since respondents themselves admitted that they failed to pay four monthly installments and have no intentions of pursuing the sale whatsoever, then the contract is deemed cancelled and all previous payments made are to be forfeited. In other words, by reason of respondents' default in three successive installment payments, the contract was *ipso facto* rescinded.⁴⁰

Based on the foregoing discussion, I **VOTE** to grant the Petition.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

⁴⁰ See *Torralba v. De los Angeles*, 185 Phil. 40 (1980).