



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **September 21, 2022**, which reads as follows:

“**G.R. No. 257815 (Naresh Jainani vs. Shangrila Realty Corporation)**. — After an assiduous study of the instant Petition for Review on *Certiorari*,¹ this Court resolves to **DENY** the same and **AFFIRM** the *Decision*² dated 4 December 2020 and the *Resolution*³ dated 28 October 2021 of the Court of Appeals (CA) in CA-G.R. CV No. 113843. The impugned *Decision* upheld the *Decision*⁴ dated 6 May 2019 of the Regional Trial Court (RTC) of Pasig City, Branch 67, in Civil Case No. 72456, dismissing the Complaint⁵ for specific performance with damages filed by Naresh Jainani (petitioner) against Shangrila Realty Corporation (respondent) while the challenged *Resolution* denied his motion for reconsideration thereof.

Prefatorily, it is not within the province of the Court to review the factual findings of the RTC, especially when affirmed by the CA. While this rule admits of exceptions, none of them are extant in the present case.⁶

In any event, the Court finds no cogent reason to brush aside the rulings of the courts *a quo*.

Specific performance is defined as “(t)he remedy of requiring exact performance of a contract in the specific form in which it was made or

¹ *Rollo*, pp. 19-40.

² *Id.* at 42-51. Penned by Associate Justice Edwin D. Sorongon, with the concurrence of Associate Justices Gabriel T. Robeniol and Bonifacio S. Pascua.

³ *Id.* at 53-55.

⁴ *Id.* at 170-182. Penned by Presiding Judge Ira Fritzie C. Cruz-Rojo.

⁵ *Id.* at 56-63.

⁶ See *Atok Gold Mining Company, Inc. vs. Felix*, G.R. No. 222637, 20 April 2022.

according to the precise terms agreed upon.” It pertains to “(t)he actual accomplishment of a contract by a party bound to fulfill it.”⁷

To ascertain whether petitioner is entitled to the remedy of specific performance, it is imperative to first determine the nature of the contract entered into by and between him and respondent. Indubitably, a perusal of the Deed of Conditional Sale⁸ readily reveals that both parties executed a contract to sell, the terms and conditions of which provide—

NOW THEREFORE, for in and consideration of the foregoing premises, the SELLER by these presents, hereby SELL, CEDE, TRANSFER AND CONVEY to the herein BUYER, the above-described condominium unit by way of Conditional Sale, subject to the following terms and conditions, as follows:

1. The purchase price agreed upon shall be the sum of SEVEN MILLION FIVE HUNDRED THOUSAND (P7,500,000.00) PESOS, Philippine Currency, for the whole property, payable in the manner as follows:

x x x x

- i. The SELLER hereby undertakes to transfer the title in the name of the BUYER within 2005 upon approval and consent by UCPB.

x x x x

4. Should the BUYER (fail) to pay any amount as scheduled in Section 2 hereof, the SELLER has the right to rescind this contract and forfeit in its favor the payments made by the BUYER as liquidated damages.⁹

As can be gleaned from the preceding stipulations, the title over the subject unit remains with respondent (seller), who shall only convey it in favor of petitioner (buyer) upon the full payment of the purchase price, and with the approval and consent of the United Coconut Planters Bank (UCPB). Along this grain, the disquisition of the Court in *Solid Homes, Inc. vs. Spouses Jurado*¹⁰ is quite illuminating:

In a contract to sell, the prospective seller explicitly reserves the transfer of title to the prospective buyer, meaning, the prospective seller does not as yet agree or consent to transfer ownership of the property subject of the contract to sell until the happening of an event, which for present purposes we shall take as the full payment of the purchase price. What the

⁷ See *Chanelay Development Corporation vs. GSIS*, G.R. No. 210423, 5 July 2021.

⁸ *Rollo*, pp. 113-116.

⁹ *Id.* at 113-115.

¹⁰ G.R. No. 219673, 2 September 2019.

seller agrees or obliges himself to do is to fulfill his promise to sell the subject property when the entire amount of the purchase price is delivered to him. In other words, the full payment of the purchase price partakes of a suspensive condition, the non-fulfillment of which prevents the obligation to sell from arising and, thus, ownership is retained by the prospective seller without further remedies by the prospective buyer.¹¹

Relevantly, in a plethora of cases involving contracts to sell, the Court has consistently treated specific performance as an improper remedy to compel the seller to execute the deed of sale before the full payment of the purchase price.¹² In the seminal case of *Nabus, et al. vs. Spouses Pacson, et al.*,¹³ the Court elucidated—

Evidently, before the remedy of specific performance may be availed of, there must be a breach of the contract.

Under a contract to sell, the title of the thing to be sold is retained by the seller until the purchaser makes full payment of the agreed purchase price. Such payment is a positive suspensive condition, the non-fulfillment of which is not a breach of contract but merely an event that prevents the seller from conveying title to the purchaser. The non-payment of the purchase price renders the contract to sell ineffective and without force and effect. Thus, **a cause of action for specific performance does not arise.**¹⁴

Taking cue from the foregoing, petitioner is not entitled to the remedy of specific performance. Likewise, while he avers that he already paid the full amount of the purchase price through the issuance of postdated checks, his averment is enfeebled by his own admission that he knew that the UCPB did not accept his checks for encashment.¹⁵ Verily, the following avowals pull the rug from under petitioner's feet:

Q: So you were aware as early as 2004 that UCPB will not accept check which you directly issued in their favor instead you were required to issue manager's check so that they will accept those checks?

A: That was in the initial stage.

x x x x

Q: The P7.5 Million consideration for the sale was never fully paid, is that correct?

A: As far as I am concerned, I issued all the checks completing the P7.5 Million as per the contract payable to Shangrila as well as payable to UCPB. As far as I am concerned, I have given all the payments.

¹¹ Id.

¹² See *Spouses Desiderio vs. Spouses Manzano*, 800 Phil. 109-110 (2016).

¹³ 620 Phil. 365 (2009).

¹⁴ Id. Emphasis supplied.

¹⁵ *Rollo*, p. 181.

Q: Yes, but only the checks payable to Shangrila in the amount of P3,606,122.41 were cleared?

A: Yes.¹⁶

Jurisprudence teems with pronouncements that the mere delivery of a check does not by itself operate as payment. Such doctrine is in consonance with Article 1249 of the Civil Code, which expressly states that “the delivery of promissory notes payable to order or bills of exchange or other mercantile documents shall produce the effect of payment only when they have been cashed or when through the fault of the creditor they have been impaired.”¹⁷ Considering that petitioner knew that his checks were not accepted for encashment, he could not therefore feign ignorance and insist on his claim of full payment of the purchase price.

Finally, the Court affirms the ruling of the court *a quo* that petitioner is not entitled to damages given his failure to prove that respondent acted fraudulently and maliciously against him or was negligent in the presentment of the checks before the UCPB. *Au contraire*, the record is replete with evidence showing respondent’s earnest efforts to reach petitioner to inform him about the disapproval of the checks, and to demand from him the issuance of replacement checks and the payment of the remaining balance of the purchase price.¹⁸

All told, the Court finds no justification to reverse the findings of the CA as they are in accord with jurisprudence and applicable laws.

WHEREFORE, the Petition for Review on *Certiorari* is hereby **DENIED**. The *Decision* dated 4 December 2020 and the *Resolution* dated 28 October 2021 of the Court of Appeals in CA-G.R. CV No. 113843 are **AFFIRMED**.

SO ORDERED.”

By authority of the Court:

Misael Domingo C. Battung III
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court *MS 12/2/22*

¹⁶ Id.

¹⁷ See *Bendecio vs. Mascarinas*, G.R. No. 242087, 7 December 2021.

¹⁸ *Rollo*, pp. 131 and 133.

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COURT OF APPEALS
CA G.R. CV No. 113843
1000 Manila

The Presiding Judge
REGIONAL TRIAL COURT
Branch 67, Pasig City
(Civil Case No. 72456)

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