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*Wilfredo V. Luptan*  
**WILFREDO V. LAPTAN**  
 Division Clerk of Court  
 Third Division  
 DEC 20 2018

Republic of the Philippines  
**Supreme Court**  
 Manila

**THIRD DIVISION**

**ROYAL PLAINS VIEW, INC.**  
**and/or RENATO PADILLO,**  
 Petitioners,

**G.R. No. 230832**

**Present:**

PERALTA, J., *Chairperson*,  
 LEONEN,  
 GISMUNDO,\*  
 REYES, J. JR., and  
 HERNANDO,\* *JJ.*

**- versus -**

**Promulgated:**

**NESTOR C. MEJIA,**  
 Respondent.

November 12, 2018

*Wilfredo V. Luptan*

X ----- X

**DECISION**

**REYES, J. JR., J.:**

*The Case*

This resolves the Petition for Review on *Certiorari*<sup>1</sup> questioning the Decision<sup>2</sup> dated May 26, 2016 and the Resolution<sup>3</sup> dated February 7, 2017 of the Court of Appeals (CA)-Cagayan de Oro City, in CA-G.R. CV No. 03284-MIN which reversed and set aside the Decision<sup>4</sup> dated April 12, 2013 of the Regional Trial Court (RTC) of Tagum City, Davao del Norte, Branch 31 that dismissed with prejudice Civil Case No. 4263, for Declaration of Nullity of the Instrument denominated as Rescission of Conditional Sale, Specific Performance, Sums of Money, etc.<sup>5</sup>

\* On wellness leave.

<sup>1</sup> *Rollo*, pp. 3-19.

<sup>2</sup> Penned by Associate Justice Edgardo A. Camello, with Associate Justices Maria Filomena D. Singh and Perpetua T. Atal-Paño, concurring; id. at 21-30.

<sup>3</sup> Id. at 32-34.

<sup>4</sup> Penned by Acting Presiding Judge Ma. Susana T. Baua; id. at 47-53.

<sup>5</sup> Id. at 23.

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### *The Facts*

Subject of the present controversy is a parcel of land in Magdum, Tagum City, Davao del Norte known as Lot No. 371 with an original area of 123,099 square meters, more or less, covered by Original Certificate of Title (OCT) No. (P-1324) P-232<sup>6</sup> of the Register of Deeds of the Province of Davao. The late Dominador Ramones (Dominador) was the registered owner of the said parcel of land.<sup>7</sup>

During his lifetime, Dominador executed a Contract of Sale in favor of Blas Mejia (Blas), father of respondent Nestor C. Mejia (Nestor), involving the western portion of the subject land, consisting of 7,309 square meters.<sup>8</sup> The parties however, agreed to reduce the area of the purchased lot to six hectares.<sup>9</sup> Despite the sale, the title over the property remained in the name of Dominador married to Maria Ramones (spouses Ramones).<sup>10</sup> The remaining portion of the lot was sold to a certain Pablo Benitez (Pablo) on February 17, 1965 through a Deed of Absolute Sale of Land.<sup>11</sup>

After that transaction, Blas died and he was survived by his son, Nestor. Sometime in 2005, Nestor met petitioner Renato Padillo (Renato), the President of petitioner Corporation, Royal Plains View, Inc., a real estate company. At that time, Nestor was in actual physical occupation of a parcel of land with an entire area of 12.3 hectares covered by OCT No. (P-1324) P-232, registered in the name of spouses Ramones.<sup>12</sup> Nestor had in his possession, too, of an ancient instrument denominated as Contract of Sale executed on September 17, 1960 by the parties then alive (Dominador in favor of Blas, for the six hectares) and another Deed of Sale dated February 17, 1965, in favor of Pablo, for the other 6.3 hectares.<sup>13</sup>

Renato and Nestor agreed to split the entire lot (OCT No. [P-1324] P-232) into two titles resulting to the issuance of Transfer Certificates of Title (TCT) Nos. T-225549 and T-225550.<sup>14</sup> Both titles were still under the name of spouses Ramones.<sup>15</sup> As agreed upon, petitioner Corporation (through Renato) retained TCT No. T-225549 while TCT No. T-225550 was delivered to a person named Casimiro Benitez.<sup>16</sup>

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<sup>6</sup> Also referred to as OCT No. (P-1324) P-282 in some parts of the *rollo*.

<sup>7</sup> *Rollo*, p. 22.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 48.

<sup>11</sup> *Supra* note 7.

<sup>12</sup> *Id.* at 5.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Supra* note 7.

On March 23, 2005, Nestor and petitioner Corporation, represented by Renato's wife, Rosemarie Padillo, entered into a contract denominated as Deed of Conditional Sale involving that said parcel of land covered by TCT No. T-225549 and registered in the name of Dominador.<sup>17</sup> Under that contract, petitioner Corporation bound itself to pay Nestor the sum of ₱8,000,000.00 of which ₱500,000.00 was for down payment. The balance was to be paid in 36 equal monthly installments of ₱208,333.30 beginning June 30, 2005 up to May 30, 2008.<sup>18</sup>

The March 23, 2005 Deed of Conditional Sale was later revoked and a new deed was executed on April 11, 2007 between Nestor and petitioner Corporation, represented by Renato.<sup>19</sup> The new Deed of Conditional Sale<sup>20</sup> stated that petitioner Corporation had paid respondent the amount of ₱1,972,000.00 and the remaining balance was to be paid in 40 equal monthly installments of ₱150,000.00 starting on July 1, 2007 and ending in June 2010.

It was also alleged that petitioner Corporation (through Renato) and Nestor entered into a verbal gentlemen's agreement that they would divide the 60,000-square meter lot (covered by TCT No. T-225549) into two, such that half will be given to petitioner Corporation and the other half would be retained by Nestor.<sup>21</sup> Since petitioner Corporation handled the splitting of the title, it had in its possession TCT No. T-225549 covering the portion sold to Blas.<sup>22</sup>

One day, Nestor asked petitioner Renato to give him the original owner's duplicate copy of TCT No. T-225549.<sup>23</sup> Petitioner Renato found out that Nestor had sold the whole property to the spouses Harris and Caroline Egina (spouses Egina) for the sum of ₱12,000,000.00.<sup>24</sup> As a consequence, eight TCTs were issued by the Register of Deeds of Davao del Norte in the name of the spouses Egina.<sup>25</sup> These eight TCTs were later on cancelled and the Court reinstated the derivative titles which are TCT Nos. T-225549 and T-225550. Because of legal controversies besetting TCT No. T-225549, it is now in the custody of the Registry of Deeds of Tagum City.<sup>26</sup>

Renato attempted several times to contact Nestor, but the latter did not take his calls and simply vanished.<sup>27</sup> Instead, Renato received a document

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<sup>17</sup> Supra note 10.

<sup>18</sup> Id.

<sup>19</sup> Supra note 5.

<sup>20</sup> *Rollo*, p.43.

<sup>21</sup> Supra note 10.

<sup>22</sup> Id.

<sup>23</sup> Supra note 5.

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> *Rollo*, p. 7.

<sup>27</sup> Id. at 49.

entitled “Rescission of Deed of Conditional Sale”<sup>28</sup> dated February 5, 2010 from Nestor whereby the latter rescinded the April 11, 2007 Deed of Conditional Sale alleging that petitioners (Renato and the Corporation) had defaulted in the payment of the monthly installments agreed upon.<sup>29</sup> Renato alleged that since the time when TCT No. T-225549 was gone, petitioner Corporation already stopped its marketing business.<sup>30</sup> Also, no one who bought the individual lot had entered the subject property yet, as they were barred by respondent Nestor.<sup>31</sup> Because of this, petitioners are now facing various cases in court filed by some disgruntled lot buyers.<sup>32</sup>

On October 12, 2011, petitioners filed a Complaint for Declaration of Nullity of the Instrument denominated as Rescission of Conditional Sale, Specific Performance, Sums of Money, etc. against respondent Nestor and the heirs of the spouses Ramones, represented by Remedios Ramones-Emperado, docketed with the RTC as Civil Case No. 4263.<sup>33</sup> Nestor did not file an Answer.<sup>34</sup> Hence, he was declared in default in an Order<sup>35</sup> dated May 31, 2012.

On November 20, 2012, the RTC issued an Order<sup>36</sup> dropping the heirs of the spouses Ramones as defendants in Civil Case No. 4263. Petitioners were allowed to present their evidence *ex parte*.<sup>37</sup>

#### *Ruling of the RTC*

On April 12, 2013, the RTC issued a Decision<sup>38</sup> dismissing petitioners’ complaint with prejudice. The RTC found that the whole transaction between petitioners and Nestor was tainted with badges of fraud. It ruled that respondent Nestor could not have been the owner of the subject property because his father’s (Blas’) contract with Dominador was a conditional sale and there was yet no conveyance of the same in Blas’ favor. There was also nothing on record which shows that Dominador’s OCT No. (P-1324) P-232 was cancelled with the issuance of TCT Nos. T-225549 and T-225550. Petitioners, knowing that the subject property was still registered in the name of Dominador, should not have paid a hefty amount to Nestor. The RTC concluded that there was an attempt by petitioners and Nestor to deprive Dominador’s heirs of their rights to the subject property. Thus, the RTC found it difficult to sympathize with petitioners’ predicament as they did not come to court with clean hands. Aggrieved, petitioners filed an

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<sup>28</sup> Id. at 44.

<sup>29</sup> Supra note 27.

<sup>30</sup> *Rollo*, p. 15.

<sup>31</sup> Id.

<sup>32</sup> Id.

<sup>33</sup> Supra note 5.

<sup>34</sup> Id.

<sup>35</sup> *Rollo*, p. 45.

<sup>36</sup> Id. at 46.

<sup>37</sup> Id. at 50.

<sup>38</sup> Id. at 53.

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appeal with the CA. Notwithstanding that Nestor was already declared in default in the RTC, the CA required him to file his Appellee's Brief.

### *Ruling of the Court of Appeals*

In reversing the RTC, the CA, in its Decision<sup>39</sup> dated May 26, 2016, ruled that from the intent of the parties, the Deed of Conditional Sale entered into by them is a Contract to Sell. As explicitly stated in the contract, upon full payment of the purchase price, Nestor would be bound to execute the Deed of Absolute Sale. The CA made no doubt that the intention of the contract is to reserve the ownership of the land to the seller (Nestor) until the buyers (petitioners) made full payment of the purchase price. Since petitioners had already paid at least two years of installments then the provisions of Republic Act (R.A.) No. 6552 or the Maceda Law should be applied. When Nestor cancelled the contract, he failed to comply with the requirement under the Maceda Law, that is, the refund of the cash surrender value.

The CA concluded that since there was no valid rescission of the contract to sell, petitioners have not lost the statutory grace period within which to pay. Hence, the CA ordered as follows: (1) the petitioners may pay Nestor the amount of ₱4,432,500.00 as balance of the purchase price plus interest at 6% per annum from December 2009 until full payment within 60 days from finality of this Decision; (2) upon payment, Nestor shall execute a Deed of Absolute Sale of the land and deliver the certificate of title in favor of petitioners; and (3) in case of failure to pay within 60 days from finality of this Decision, petitioners shall immediately vacate the premises without need of further demand, and the down payment and installment payments thus far made by them shall serve as rental for their use and enjoyment of the subject property.

Petitioners filed a Motion for Reconsideration of the aforesaid CA Decision. In a Resolution<sup>40</sup> dated February 7, 2017, the CA denied the said motion for lack of merit. Hence, the instant petition.

### *The Issues*

In their appeal with this Court, petitioners argue that the CA erred as follows:

1. [In] ordering/requiring respondent Nestor x x x who was already declared in default to file and thereafter admit his Appellee's Brief; and for the CA to give full faith and credence to Mejia's version;

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<sup>39</sup> Supra note 2.

<sup>40</sup> Supra note 3.

2. By applying the provisions of [R.A. No.] 6552 otherwise known as the Maceda Law in resolving the main issue of the original case which is “the nullification of that instrument denominated as Rescission and Cancellation of Deed of Conditional Sale, etc.”[;]
3. Not considering the entirety of the original complaint, in which the plaintiffs also prayed for Specific Performance and Damages[; and]
4. In not accepting the alternative way to dispose the case based on the principle of equity, in view of petitioner’s inability to perform his obligation at present, that is: to pay the balance of ₱4.4 Million. Too, the CA erred in not sustaining the agreement of the parties to divide the property covered by TCT No. T-225549[.]<sup>41</sup>

Petitioners prayed as follows: (1) to return to them the owner’s duplicate copy of TCT No. T-225549 and all its derivative titles; (2) to honor the Deed of Conditional Sale which they entered into with respondent Nestor; (3) should the return of TCT No. T-225549 and its derivative titles could no longer be possible or since they could no longer pay the balance, to split the title between both of them as per their gentlemen’s agreement; (4) to order the return of the sum already paid for by petitioners if the transaction between the parties finds its demise; and (5) to grant such other relief as justice and equity will allow.

Two main issues were formed from the assigned errors of the petitioners: *First*, the propriety of filing an appellee’s brief by respondent Nestor despite the fact that he was declared in default in the trial court; and *second*, the propriety of the rescission and cancellation of the conditional sale executed by the parties.

### *The Court’s Ruling*

#### I.

Preliminarily, we found nothing irregular when the CA required respondent Nestor, who has been declared in default in the trial court, to submit his appellee’s brief.

While, concededly, a defending party declared in default loses his standing in the trial court and his right to adduce evidence and to present his defense,<sup>42</sup> this, however, does not impliedly suggest a loss of all his/her rights in the stages of the case after the default judgment. This can be clearly inferred from the wordings of Section 3, Rule 9 of the 1997 Rules of Court. Thus:

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<sup>41</sup> *Rollo*, pp. 9-10.

<sup>42</sup> *Rural Bank of Sta. Catalina, Inc. v. Land Bank of the Philippines*, 479 Phil. 43, 52 (2004).

SEC. 3. *Default; declaration of.* — If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.

(a) *Effect of order of default.* — A party in default shall be entitled to notice of subsequent proceedings but not to take part in the trial.

It is evident from the foregoing rule that even when a defendant is already declared in default, he is entitled to notice of subsequent proceedings.<sup>43</sup>

Default, therefore, is not meant to punish the defendant, but to enforce the prompt filing of the answer to the complaint.<sup>44</sup> Its existence is justified on the ground that it is the one final expedient to induce defendant to join issue upon the allegations tendered by the plaintiff, and to do so without unnecessary delay.<sup>45</sup>

The provision that the defaulting party cannot take part in the trial only meant that he/she has already lost his/her standing in the trial court. In other words, the effect of the judgment of default is limited only to those stages in the prosecution of the case which terminated with and included in the judgment of the trial court on the merits.<sup>46</sup>

In *Lina v. Court of Appeals*,<sup>47</sup> the Court discussed the remedies available to a defendant declared in default, one of which is to appeal from the judgment under Section 1, Rule 41 of the 1997 Rules of Court, even if no petition to set aside the order of default has been resorted to.<sup>48</sup>

There is no question that a defaulted party may appeal from the judgment rendered against him. And concomitant with the said right is the filing of the appellant's brief in order to be heard. The defaulting party can appeal the judgment by default on the ground that the plaintiff failed to prove the material allegations of the complaint, or that the decision is contrary to law, even without need of the prior filing of a motion to set aside the order of default.<sup>49</sup> However, a defaulting party is proscribed from

<sup>43</sup> *Alcaraz v. Judge Lindo*, 471 Phil. 39, 44 (2004).

<sup>44</sup> *Lui Enterprises, Inc. v. Zuellig Pharma Corp.*, 729 Phil. 440, 468 (2014).

<sup>45</sup> *Momarco Import Co., Inc. v. Villamena*, 791 Phil. 457, 464 (2016), citing *Coombs v. Santos*, 24 Phil. 446, 449-450 (1913).

<sup>46</sup> See: Dissenting Opinion of Justice Hilado in the old case *Lim Toco v. Go Fay*, 81 Phil. 258 (1948), which ruling was already abandoned under the 1997 Rules of Court.

<sup>47</sup> 220 Phil. 311, 316-317 (1985).

<sup>48</sup> *Indiana Aerospace University v. Commission on Higher Education*, 408 Phil. 483, 496 (2001).

<sup>49</sup> *Id.*

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seeking a modification or reversal of the assailed decision on the basis of the evidence submitted by him in the CA, for if it were otherwise, he would thereby be allowed to regain his right to adduce evidence, a right which he lost in the trial court when he was declared in default, and which he failed to have vacated.<sup>50</sup>

Verily, if the defaulting party appealed his case and filed his appellant's brief in the process then there is no reason to proscribe a defaulting party, who is an appellee, from filing an appellee's brief. There was nothing from our present rules which provides that a party in default shall also lose his right to appeal if the judgment should be favorable to him. As such, even if he is the winning party in the court below, he is not precluded to file his appellee's brief on the same grounds as available to the losing party that was declared in default by the trial court.

Thus, in this case, whether or not respondent Nestor (a party in default) can file an appellee's brief is a question which should obviously not be decided by any order or judgment by default of the trial court, but by the appellate court. To hold otherwise would result to the detestable consequence that the trial court has the power by its default order or judgment to interfere with or to control the procedure in the appellate court.

## II.

In order to fully pass upon the validity and propriety of the Rescission of the Deed of Conditional Sale executed by respondent Nestor, it is vital to characterize the nature of the agreement between the parties — whether the same is a contract of sale or a contract to sell. The courts have repeatedly recognized the distinction between the two concepts.

The ruling of the Supreme Court in *Lim v. Court of Appeals* (182 SCRA 564 [1990]) is most illuminating. In the said case, a contract to sell and a contract of sale were clearly and thoroughly distinguished from each other, with the High Tribunal stressing that in a contract of sale, the title passes to the buyer upon the delivery of the thing sold. In a contract to sell, the ownership is reserved in the seller and is not to pass until the full payment of the purchase price is made. In the first case, non-payment of the price is a negative resolutive condition; in the second case, full payment is a positive suspensive condition. In the first case, the vendor has lost and cannot recover the ownership of the property until and unless the contract of sale is itself resolved and set aside. In the second case, the title remains in the vendor if the vendee does not comply with the

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<sup>50</sup> *Rural Bank of Sta. Catalina, Inc. v. Land Bank of the Philippines*, supra note 42.



condition precedent of making payment at the time specified in the contract.<sup>51</sup>

This Court agrees with the CA that the April 11, 2007 Deed of Conditional Sale executed between the parties is a contract to sell. Pertinent portion of the agreement indicative that it is a contract to sell reads:

That for and in consideration of the sum of EIGHT MILLION PESOS (₱8,000,000.00) Philippine currency, receipt of which is hereby acknowledged from the VENDEE, the VENDOR does hereby SELL, CEDE, TRANSFER and CONVEY unto the said VENDEE, its heirs[,] successors, executors and assigns, the above-mentioned property subject to the terms and conditions herein set forth:

X X X X

e. And upon full payment of the agreed consideration the Vendor shall execute the deed of absolute sale in favor of the Vendee.<sup>52</sup>

As worded, the Deed of Conditional Sale dated April 11, 2007 (which substitutes the earlier Deed of Conditional Sale dated March 23, 2005 except that there was already a down payment made) provides that upon full payment of the agreed consideration, the vendor shall execute the deed of absolute sale in favor of the vendee.<sup>53</sup> This stipulation evinces the intention of the parties for the vendor (respondent) to reserve ownership of the land and the same is not to pass until the remaining balance (payable in 40 monthly installments) has been fully paid by the vendee (petitioners). As fortified by this Court in the case of *Diego v. Diego*:<sup>54</sup>

It is settled jurisprudence, to the point of being elementary, that an agreement which stipulates that the seller shall execute a deed of sale only upon or after full payment of the purchase price is a contract to sell, not a contract of sale. In *Reyes v. Tuparan*, this Court declared in categorical terms that where the vendor promises to execute a deed of absolute sale upon the completion by the vendee of the payment of the price, the contract is only a contract to sell. The aforesaid stipulation shows that the vendors reserved title to the subject property until full payment of the purchase price.

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<sup>51</sup> *Ayala Life Assurance, Inc. v. Ray Burton Development Corp.*, 515 Phil. 431, 438 (2006); See also: *Heirs of Atienza v. Espidol*, 642 Phil. 408, 416 (2010).

<sup>52</sup> Supra note 20.

<sup>53</sup> See: Deed of Conditional Sale; id.

<sup>54</sup> 704 Phil. 373, 377 (2013).

However, contrary to the findings of the CA, the protection<sup>55</sup> provided under R.A. No. 6552 (Maceda Law) is not applicable. Notwithstanding the parties' stipulation for installment payments, wherein the payment of the price is more than one, the parties' contract to sell does not automatically fall under the coverage of the Maceda Law. R.A. No. 6552 provides exclusions for its application. Thus:

**Section 3.** In all transactions or contracts involving the sale or financing of real estate on installment payments, including residential condominium apartments but excluding industrial lots, commercial buildings and sales to tenants under Republic Act Numbered Thirty-eight hundred forty-four, as amended by Republic Act Numbered Sixty-three hundred eighty-nine, where the buyer has paid at least two years of installments, the buyer is entitled to the following rights in case he defaults in the payment of succeeding installments. (Underscoring supplied)

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<sup>55</sup> SECTION 3. x x x [W]here the buyer has paid at least two years of installments, the buyer is entitled to the following rights in case he defaults in the payment of succeeding installments:

(a) To pay, without additional interest, the unpaid installments due within the total grace period earned by him, which is hereby fixed at the rate of one month grace period for every one year of installment payments made: *Provided*, That this right shall be exercised by the buyer only once in every five years of the life of the contract and its extensions, if any.

(b) If the contract is cancelled, the seller shall refund to the buyer the cash surrender value of the payments on the property equivalent to fifty per cent of the total payments made and, after five years of installments, an additional five per cent every year but not to exceed ninety per cent of the total payments made: *Provided*, That the actual cancellation of the contract shall take place after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer.

Down payments, deposits or options on the contract shall be included in the computation of the total number of installments made.

SECTION 4. In case where less than two years of installments were paid, the seller shall give the buyer a grace period of not less than sixty days from the date the installment became due. If the buyer fails to pay the installments due at the expiration of the grace period, the seller may cancel the contract after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act.

SECTION 5. Under Sections 3 and 4, the buyer shall have the right to sell his rights or assign the same to another person or to reinstate the contract by updating the account during the grace period and before actual cancellation of the contract. The deed of sale or assignment shall be done by notarial act.

SECTION 6. The buyer shall have the right to pay in advance any installment or the full unpaid balance of the purchase price any time without interest and to have such full payment of the purchase price annotated in the certificate of title covering the property.

SECTION 7. Any stipulation in any contract hereafter entered into contrary to the provisions of Sections 3, 4, 5 and 6, shall be null and void.

SECTION 8. If any provision of this Act is held invalid or unconstitutional, no other provision shall be affected thereby. (Realty Installment Buyer Protection Act, Republic Act No. 6552, [September 14, 1972]).

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It is clear that the buyer's protection under R.A. No. 6552 only applies to contracts of sale of real estate on installment payments, including residential condominium apartments, but excluding industrial lots, commercial buildings and sales to tenants. A purchase by a company involved in the real estate business, just like the petitioners in this case, of a six-hectare lot can hardly be considered as residential. This is the same interpretation conveyed in the case of *Spouses Garcia v. Court of Appeals*,<sup>56</sup> when this Court held that the subject lands, comprising five parcels and aggregating 69,028 square meters, do not comprise residential real estate within the contemplation of the Maceda Law. Moreso in this case where it was shown that petitioner Corporation is already engaged in the selling of the portions of the said lots to individual buyers.

But this is not to say that sellers in a contract to sell of industrial and commercial lots are precluded to cancel the contract when buyers defaulted in one installment. The old case of *Luzon Brokerage Co., Inc. v. Maritime Building Co., Inc.*<sup>57</sup> made it clear that R.A. No. 6552 or the Maceda Law expressly recognizes the vendor's right of cancellation of sale on installments of industrial and commercial properties with full retention of previous payments. In the said case, the Supreme Court *En Banc* held:

The enactment on September 14, 1972 by Congress of Republic Act No. 6552 entitled "An Act to Provide Protection to Buyer[s] of Real Estate on Installment Payments" which *inter alia* compels the seller of real estate on installments (but *excluding industrial lots, commercial buildings* among others from the Act's coverage) to grant one month's grace period for every one year of installments made before the contract to sell may be cancelled for non-payment of the installments due forecloses any overturning of this Court's long-established jurisprudence. Republic Act 6552 recognizes in conditional sales of *all* kinds of real estate (industrial and commercial as well as residential) the non-applicability of Article 1592 (1504) Civil Code to such contracts to sell on installments and the right of the seller to cancel the contract (in accordance with the established doctrine of this Court) upon non-payment "which is simply an event that *prevents the obligation of the vendor to convey title from acquiring binding force.*" (*Manuel v. Rodriguez*, 109 Phil. 1, 10, per Reyes, J.B.L.). The Act in modifying the terms and application of *Art. 1592 Civil Code reaffirms the vendor's right to cancel unqualifiedly in the case of industrial lots and commercial buildings (as in the case at bar) and requires a grace period in other cases, particularly residential lots, with a refund of certain percentages of payments made on account of the cancelled contract.*<sup>58</sup> (Underscoring supplied)

In other words, whether the property is residential, commercial or industrial, Maceda Law does not make any distinction insofar as the availability of the remedy of cancellation by the seller in case of

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<sup>56</sup> 633 Phil. 294, 302-303 (2010).

<sup>57</sup> 175 Phil. 476 (1978).

<sup>58</sup> *Id.* at 501-502.

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nonpayment of installments is concerned. The only distinction lies on the added protection given by the law to residential buyers, which is not enjoyed by commercial and industrial lot buyers. Indeed, the Maceda Law addressed the predicament of thousands upon thousands of residential property buyers who, in the words of this Court, are hounded to suffer the loss of their life earnings only because of an oversight or difficulty in paying one or two installments.<sup>59</sup> This is not the case for industrial or commercial lot buyers, who, the law perceives to have deep pockets. To quote the verbatim pronouncement of this Court:

The Act even in *residential* properties recognizes and reaffirms the vendor's right to cancel the contract to sell upon breach and [nonpayment] of the stipulated installments but requires a grace period after at least two years of regular installment payments (of one month for every one year of installment payments made, but to be exercise[d] by the buyer only once in every five years of the life of the contract) with a refund of certain percentages of payments made on account of the cancelled contract (starting with fifty percent with gradually increasing percentages after five years of installments). In case of *industrial and commercial properties*, as in the case at bar, the Act *recognizes and reaffirms* the Vendor's right *unqualifiedly* to cancel the sale upon the buyer's default.<sup>60</sup>

It is clear by the said provision that in case of industrial and commercial properties, the seller can unqualifiedly cancel the sale upon the buyer's default.

A careful reading of the notarized "Rescission of Deed of Conditional Sale" executed by respondent Nestor reveals that he availed of the remedy of rescission apparently because petitioners defaulted in the payment of their monthly installment in the amount of ₱150,000.00.<sup>61</sup> Obviously, respondent Nestor used the word "rescission" in a loose sense. To say that a contract to sell is rescissible is quite misplaced. Jurisprudence abounds with rulings that the remedies of rescission, under Articles 1191<sup>62</sup> and 1592<sup>63</sup> of the Civil Code, are not available in contracts to sell. This Court succinctly explains:

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<sup>59</sup> Id. at 503.

<sup>60</sup> Id. at 504.

<sup>61</sup> Supra note 28.

<sup>62</sup> 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.

<sup>63</sup> 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. (Emphasis supplied)

The respondent court did not err when it did not apply Articles 1191 and 1592 of the Civil Code on rescission to the case at bar. The contract between the parties is not an absolute conveyance of real property but a contract to sell. In a contract to sell real property on installments, the full payment of the purchase price is a positive suspensive condition, the failure of which is not considered a breach, casual or serious, but simply an event which prevented the obligation of the vendor to convey title from acquiring any obligatory force. The transfer of ownership and title would occur after full payment of the purchase price.<sup>64</sup>

The breach contemplated in Article 1191 of the Civil Code is the obligor's failure to comply with an obligation already extant, not a failure of a condition to render binding that obligation.<sup>65</sup> Article 1592, on the other hand, speaks of nonpayment of the purchase price as a resolutive condition.<sup>66</sup> It permits the buyer to 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 notarial act. However, Article 1592 does not apply to a contract to sell where the seller reserves the ownership until full payment of the price.<sup>67</sup>

This only lends credence to the rule that rescission in its technical sense is not proper in a contract to sell. Such that failure to pay the price agreed upon is not a mere breach, casual or serious, rather, nonpayment is a condition that prevents the obligation from acquiring an obligatory force.<sup>68</sup> This is entirely different from the situation in a contract of sale, where nonpayment of the price is a negative resolutive condition. The effects in law are not identical. In a contract of sale, the vendor has lost ownership of the thing sold and cannot recover it, unless the contract of sale is rescinded and set aside. In a contract to sell, however, the vendor remains the owner for as long as the vendee has not complied fully with the condition of paying the purchase price.<sup>69</sup> Strictly speaking, in a contract to sell, there can be no rescission or resolution of an obligation that is still non-existent due to the non-happening of the suspensive condition.<sup>70</sup>

Considering the foregoing, as well as the pronouncement by this Court in the *Luzon Brokerage* case, it follows then that respondent Nestor's act of rescinding the Deed of Conditional Sale, or, more correctly, canceling it, is theoretically valid and the parties shall stand as if the obligation to sell never existed.<sup>71</sup> The reason is not that respondent Nestor has the

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<sup>64</sup> *Rillo v. Court of Appeals*, 340 Phil. 570, 577 (1997).

<sup>65</sup> *Padilla v. Spouses Paredes*, 385 Phil. 128, 141 (2000), cited case omitted.

<sup>66</sup> *Diego v. Diego*, supra note 54, at 391.

<sup>67</sup> *Chua v. Court of Appeals*, 449 Phil. 25, 43-44 (2003).

<sup>68</sup> *Heirs of Pangan v. Spouses Perreras*, 613 Phil. 615, 626-627 (2009).

<sup>69</sup> *Spouses Santos v. Court of Appeals*, 391 Phil. 739, 751-752 (2000).

<sup>70</sup> *Spouses Garcia v. Court of Appeals*, supra note 56, at 300.

<sup>71</sup> *Olivarez Realty Corp. v. Castillo*, 738 Phil. 737, 765 (2014).

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power to rescind such contract, but because their obligation thereunder did not arise.<sup>72</sup>

However, while we recognize the seller's right to unqualifiedly cancel the contract to sell (of industrial or commercial properties) upon the buyer's default, as pronounced in the earlier cited case of *Luzon Brokerage*,<sup>73</sup> such cancellation must be made with notice to the other party who failed to perform his end part of the bargain. This gives the opportunity to the other party to question the cancellation made on account of error, abuse or any other grounds. Such that this time, the burden of instituting an action is shifted from the injured party to the defaulter.

Indeed, the act of a party in treating a contract as cancelled or resolved on account of infractions by the other contracting party must be made known to the other and is always provisional, being ever subject to scrutiny and review by the proper court.<sup>74</sup> Thus, in the old case of *University of the Philippines v. De Los Angeles*,<sup>75</sup> the Court, through Justice Jose B.L. Reyes, underscored the necessity of judicial validation of unilateral rescission, to wit:

In other words, the party who deems the contract violated may consider it resolved or rescinded, and act accordingly, without previous court action, but it *proceeds at its own risk*. For it is only the final judgment of the corresponding court that will conclusively and finally settle whether the action taken was or was not correct in law. But the law definitely does not require that the contracting party who believes itself injured must first file suit and wait for a judgment before taking extrajudicial steps to protect its interest. Otherwise, the party injured by the other's breach will have to passively sit and watch its damages accumulate during the pendency of the suit until the final judgment of rescission is rendered when the law itself requires that he should exercise due diligence to minimize its own damages.

In the same manner that in unilateral cancellation of contracts to sell, notice to the other party is important. If the other party perceives that the cancellation of the contract is not proper, he/she is free to question and raise his/her objection to the court. It is the court who will settle once and for all if the cancellation is warranted. Thus:

[I]n every case where the extrajudicial resolution is contested only the final award of the court of competent jurisdiction can conclusively settle whether the resolution was proper or not. It is in this sense that judicial action will be necessary, as without it, the extrajudicial resolution will

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<sup>72</sup> *Padilla v. Spouses Paredes*, supra note 65.

<sup>73</sup> Supra note 57.

<sup>74</sup> *University of the Philippines v. De Los Angeles*, 146 Phil. 108, 114-115 (1970).

<sup>75</sup> Id. at 115.

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remain contestable and subject to judicial invalidation, unless attack thereon should become barred by acquiescence, estoppel or prescription.<sup>76</sup>

Guided by the foregoing pronouncements, respondent Nestor's action in canceling (through a notarized Rescission of Conditional Sale) the contract to sell is unjustified.

First. There was no showing that respondent Nestor made a demand (judicially or extrajudicially) to pay the remaining balance at the moment petitioners failed to pay the monthly installment due for December 2009. Technically speaking, petitioners have not incurred in delay, and thus, were not yet in default. Under Article 1169 of the Civil Code, one incurs in delay or is in default from the time the obligor demands the fulfillment of the obligation from the obligee.<sup>77</sup> The circumstances upon which demand is no longer necessary do not obtain in the instant case. Nowhere from the contract between the parties did they stipulate on waiver of demand.

Second. It appearing that payment was still not made, there is no showing that respondent Nestor sent a notice to petitioners informing them that he is already canceling the contract to sell or, at the very least, his intent to cancel the said contract. Then again, notice will now give petitioners the opportunity either to agree with the cancellation or question it before the courts.

Considering that the Deed of Conditional Sale was not validly cancelled, it follows then that the same subsists and remains effective.

In the given case, the contract price involved is ₱8,000,000.00 and the petitioners already paid the substantial amount of ₱3,567,500.00 as found by the CA.<sup>78</sup> This is almost half of the purchase price. Thus, for equitable consideration, this Court will give leeway to petitioners to pay the balance of the unpaid purchase price within a reasonable period of time. In the case of *Reyes v. Tuparan*,<sup>79</sup> the Court was likewise confronted with the situation where there has already been payment of a substantial amount and thus, it deemed it right and just to allow the respondent therein to settle, within a reasonable period of time, the balance of the unpaid purchase price.

In a normal setting, this Court would have entrusted to the trial court the determination of the proper amount to be paid and the period within which to pay. However, by doing so, this Court will merely prolong the proceedings and delay the relief that the parties are duly entitled to. As such, this Court finds it proper to set the date wherein petitioners should tender the amount due. Therefore, petitioners are given a period of 60 days from

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<sup>76</sup> Id.

<sup>77</sup> *Cabanting v. BPI Family Savings Bank, Inc.*, 781 Phil. 164, 170 (2016).

<sup>78</sup> See *rollo*, p. 29.

<sup>79</sup> 665 Phil. 425, 445-446 (2011).

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finality of this Decision<sup>80</sup> to settle the amount of ₱4,432,500.00 representing the unpaid balance of the ₱8,000,000.00 contract price, less the payments already made. Damages in the form of interest pursuant to Article 2209 of the Civil Code, *viz.*:

If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six percent *per annum*,

is not warranted. Article 2209 governs transactions involving the payment of indemnity in the concept of damages arising from delay in the discharge of obligations consisting of the payment of a sum of money.<sup>81</sup> There was no showing that petitioners incurred in delay. As discussed, records show that respondent Nestor never made a demand for petitioners to pay.

Neither are petitioners entitled to damages. In the case of *Reyes v. Tuparan*,<sup>82</sup> this Court denied petitioner's prayer for moral, temperate, liquidated or compensatory damages, and exemplary damages for the reason that the case involves a contract to sell, wherein full payment of the purchase price 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.<sup>83</sup> Since there was no breach of contract in this case, there can be no damages to speak of.

Petitioners, however, are not entirely fault-free. It is undisputed that petitioners were remiss in their obligation to pay the remaining balance as of December 2009. Because of petitioners' failure to fully pay the purchase price, respondent Nestor is under no obligation, and may not be compelled, to convey title to petitioners and receive the full purchase price.<sup>84</sup> Hence, their prayer for specific performance (to deliver the title to them) cannot be granted.

The remedy of refund prayed for by petitioners is also not proper. Since the Deed of Conditional Sale remains valid and subsisting, the amount paid by petitioners cannot be returned as this option is not part of the parties' stipulation under the said Deed.

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<sup>80</sup> As per award given in *Heirs of Antonio F. Bernabe v. Court of Appeals*, 581 Phil. 48, 61-62 (2008).

<sup>81</sup> *Castelo v. Court of Appeals*, 314 Phil. 1, 20 (1995).

<sup>82</sup> *Supra* note 79.

<sup>83</sup> *Id.* at 446, citing *Nabus v. Spouses Pacson*, 620 Phil. 344, 366-367 (2009).

<sup>84</sup> *Padilla v. Spouses Paredes*, *supra* note 65.



The prayer of petitioners for this Court to honor their gentlemen's agreement of dividing the subject lots between them, since they could no longer pay the balance, cannot likewise be granted. Apart from the fact that said gentlemen's agreement was not sufficiently established by clear and competent evidence, the amount paid is still not sufficient to cover the portion of the lot being prayed for. Besides, mere inability to pay is not a justifiable reason to renege on one's contractual obligation.

**WHEREFORE**, the instant petition is **PARTLY GRANTED**. Accordingly, the appealed Decision dated May 26, 2016 of the Court of Appeals-Cagayan de Oro City in CA-G.R. CV No. 03284-MIN is **MODIFIED** as follows:

1. The Complaint for the Nullification of the document denominated as Rescission of the Deed of Conditional Sale is **GRANTED**.
2. The Deed of Conditional Sale between the parties is declared **VALID and SUBSISTING**, and the parties are enjoined to comply with the other stipulations embodied therein.
3. Petitioners Royal Plains View, Inc. and/or Renato Padillo are **ORDERED to PAY** respondent Nestor Mejia in the amount of **₱4,432,500.00** as remaining balance of the agreed purchase price within sixty (60) days from finality of this Decision.
4. Upon full payment of the purchase price, respondent Nestor Mejia shall **EXECUTE** the corresponding Deed of Absolute Sale over the property covered by TCT No. T-225549.
5. In case of failure of petitioners to pay the sum as herein adjudged, the Deed of Conditional Sale is deemed cancelled and the payments they had already paid will be considered rentals for the use of the property.

No pronouncement as to costs.

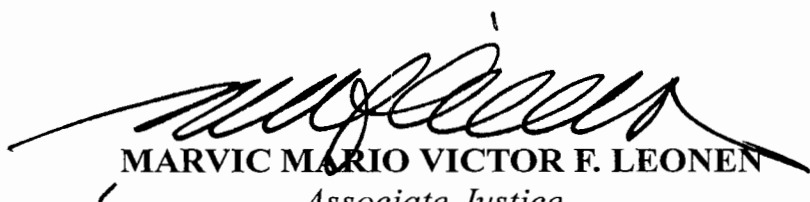
**SO ORDERED.**

  
**JOSE C. REYES, JR.**  
*Associate Justice*

**WE CONCUR:**



**DIOSDADO M. PERALTA**  
*Associate Justice*  
*Chairperson*



**MARVIC MARIO VICTOR F. LEONEN**  
*Associate Justice*

**(On Wellness Leave)**  
**ALEXANDER G. GESMUNDO**  
*Associate Justice*

**(On Wellness Leave)**  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

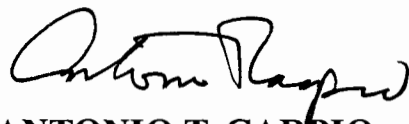


**DIOSDADO M. PERALTA**  
*Associate Justice*  
*Chairperson, Third Division*



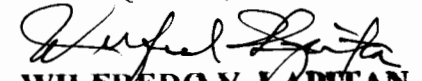
**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ANTONIO T. CARPIO**  
Senior Associate Justice  
(Per Section 12, Republic Act  
No. 296, The Judiciary Act of  
1948, as amended)

**CERTIFIED TRUE COPY**



**WILFREDO V. LAPITAN**  
Division Clerk of Court  
Third Division

**DEC 20 2018**

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