



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

SPOUSES NOEL JOHN M.
KAW** and JOSEPHINE
CASERES-KAW,**

Petitioners,

- versus -

G.R. No. 263047

Present:

CAGUIOA, J., *Chairperson*,
INTING,
GAERLAN,
DIMAAMPAO, and
SINGH,* JJ.

HEIRS OF MARILYN
NODALO, MANUEL S.
OLASO, MANUEL S. OLASO
III, LEA LIM-TIDMA,
NERISSA S. OREJO,
ZENAIDA CHIQUILLO, IVY
OROLFO, RONNIE GOMEZ,
and GINA NUARIN,

Respondents.

Promulgated:

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DECISION

INTING, J.:

Before the Court is a Petition for Review on *Certiorari*¹ (Petition) filed by spouses Noel John M. Kaw (Noel) and Josephine Caseres-Kaw

* On official business.

** "Noel Jhon M. Kaw" in some parts of the *rollo*.

*** "Josephine Caseres-Kaw" in some parts of the *rollo*.

¹ *Rollo*, pp. 9-38.

(Josephine) (collectively, Spouses Kaw) assailing the Decision² dated July 14, 2021, and Resolution³ dated August 8, 2022, of the Court of Appeals (CA) in CA-G.R. CV No. 113795 that affirmed with modification as to the award of moral damages, the Decision⁴ dated June 3, 2019 of Branch 12, Regional Trial Court (RTC), Ligao City, Albay in Civil Case No. 2833. The RTC dismissed the Complaint for Rescission of Contract with Prayer for Preliminary Injunction filed by Spouses Kaw for lack of merit.

The Antecedents

Spouses Kaw are the owners of a parcel of land located in Cagmanaba, Oas, Albay, with an area of 3,040 square meters and designated as Lot F in Transfer Certificate of Title (TCT) No. T-158628. Lot F is covered by Tax Declaration No. 02-12-012-00000 with an assessed value of PHP 24,830.00.⁵

Spouses Kaw and Ivy Orolfo (Orolfo) were dentists and colleagues.⁶ Orolfo introduced Spouses Kaw to the other respondents, who were interested in buying a portion of Lot F. Thus, sometime in February 2014, Spouses Kaw, together with Orolfo, Marilyn Nodalo (Nodalo), Manuel S. Olaso III (Olaso III), Lea Lim-Tidma (Lim-Tidma), Nerissa S. Orejo (Orejo), Zenaida Chiquillo (Chiquillo), Ronnie Gomez (Gomez), and Gina Nuarin (Nuarin) (collectively, respondents), visited Lot F. Spouses Kaw informed respondents that they were only selling the 2,000 square meter undetermined portion of Lot F (subject property) for PHP 1,200,000.00. Josephine then showed respondents a copy of a sketch plan prepared by a geodetic engineer for the right of way. Respondents then offered to purchase the subject property in two equal portions of 1,000 square meters at the purchase price of PHP 600,000.00 each, to be paid in two parts, with PHP 300,000.00 advance payment for each part. The balance shall be payable in six months.⁷

² Rollo, pp. 42–53. Penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Emily R. Aliño-Geluz and Carlito B. Calpatura of the Sixteenth Division, Court of Appeals, Manila.

³ *Id.* at 67–71. Penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Emily R. Aliño-Geluz and Carlito B. Calpatura the Former Sixteenth Division, Court of Appeals, Manila.

⁴ *Id.* at 78–100. Penned by Presiding Judge Annielyn B. Medes-Cabelis.

⁵ *Id.* at 43, *see* CA Decision.

⁶ *Id.* at 82–84, RTC Decision.

⁷ *Id.* at 43.

On March 10, 2014, the first Deed of Conditional Sale was executed between Spouses Kaw and Nodalo, Olaso III, Lim-Tidma, and Orejo, covering the 1,000 square meters unsegregated and undesignated portion of the subject property. The parties agreed to bind themselves reciprocally to sell and buy said portion in consideration of PHP 600,000.00.⁸

On March 29, 2014, a second Deed of Conditional Sale, with provisions similar to the first deed, was executed between Spouses Kaw and Chiquillo, Orolfo, Gomez, and Nuarin. However, Spouses Kaw received only the amount of PHP 265,000.000, while the remainder of PHP 35,000.00 was paid to Orolfo. Orolfo stated that she acted as an agent in the sale transactions with Spouses Kaw; hence, it was her internal arrangement with Spouses Kaw that the PHP 35,000.00 would serve as her commission.⁹

The First and Second Deeds of Conditional Sale (collectively, Deeds of Conditional Sale) contained uniform provisions, as follows:

- a) Upon the execution of this instrument[,] the Vendees have shall [*sic*] jointly and severally pay (and in fact, have paid and delivered to) the Vendor the cash sum of THREE HUNDRED THOUSAND PESOS ([PHP] 300,000.00), Philippine Currency, as and for INITIAL/DOWN PAYMENT, the receipt whereof is hereby acknowledged by the Vendor to their entire satisfaction; Provided that, upon full payment of this initial/ down payment of [PHP] 300,000.00, the vendee shall have the right to enter into/ take beneficial possession and enjoyment or introduce improvements on the above described property even as the same is herein conditionally sold; provide moreover that, in the event of unilateral rescission by the Vendors of the herein sale agreement/transaction, for reasons or causes attributable to the Vendees (such as, but not limited to default in payment of the net balance or subsequent installment payments or violations of the terms of this agreement, among other grounds), the said down payment or any other subsequent advance/ installment payments shall be treated as and for EARNEST MONEY, which the Vendors at their option, may forfeited [*sic*] in their favor without further recourse or right of reimbursement by the Vendees; and provided finally that, in such event of rescission of the sale transaction/agreement any and all improvements introduced by the Vendees on the premises subject matter herein, agreed to be sold, may be appropriated by and at the option of the Vendors likewise without further recourse expectancy or payment of its value in favor of the Vendees.

⁸ *Id.* at 43-44.

⁹ *Id.* at 44.

- b) The remaining balance of THREE HUNDRED THOUSAND PESOS ([PHP] 300,000.00), Philippine Currency, is hereby mutually agreed to be due and payable jointly and severally by the Vendees to the Vendors (their heirs, assigns), ON INSTALLMENT OR IN LUMP SUM within SIX (6) MONTHS from and after the date of the execution of this instrument; provided that, in the event of failure by the Vendee to SEASONABLY AND SATISFACTORILY pay such NET BALANCE ([PHP] 300,000.00), the Vendees shall immediately vacate and peacefully restore the herein sold premises to the Vendors;
- c) Upon full and satisfactory payment by the Vendees to the Vendors of the said net balance of PHP 300,000.00 (or the agreed total consideration of PHP 600,000.00), the Vendors shall forthwith execute and deliver in favor of the Vendees the (Final) Deed of Absolute Sale of the property above described and herein sold, together with its muniments of title;
- d) For all the time that this agreement is in full force and effect, the Vendors, shall not sell, lease or encumber or in any manner dispose of the above described property or any portion thereof, without the prior written consent of the Vendees, nor reciprocally, shall the Vendees assign, transfer, convey or in any manner hypothecate their rights under this agreement to third parties without the prior written consent of the Vendors; any such transaction entered into by either parties herein without the prior written consent of the other as herein provided, shall be null and void as to the offended party, as the case may be;
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- f) In the meantime, upon execution of this instrument and pending full and satisfactory payment by the Vendees of the said agreed total consideration of the sale, or its outstanding balance (WITH ZERO INTEREST), the Vendees (their heirs or assigns) shall remain in the exclusive beneficial possession and enjoyment of the above described parcel of land, subject of this agreement;¹⁰

Sometime in the second week of April 2014, Spouses Kaw visited the subject property and were surprised when they saw the following: (1) cottages surrounded by fence; (2) comfort room and an irrigation pump made of concrete materials; (3) eight cottage-like houses and several small cottages and concrete barriers near the seashore; (4) "DIWATA IMACOTO BEACH RESORT" signboard; and (5) a destroyed padlock in Spouses Kaw's own cottage. When Spouses Kaw confronted Orolfo, the latter explained that the fence was constructed for their protection, while the cottages were built for their convenience and were not being rented out to other people. However, Spouses Kaw learned from the neighbors

¹⁰ *Id.* at 90-91, *see* RTC Decision.

that respondents were indeed renting out the cottages for a fee of PHP 500.00 to PHP 1,000.00.¹¹

Thus, on September 29, 2015, Spouses Kaw filed with the RTC their Complaint for Rescission of Contract with Prayer for Preliminary Injunction against respondents. The Complaint was docketed by the RTC as Civil Case No. 2833 (Rescission Case).¹²

Spouses Kaw cited paragraph A of the Deeds of Conditional Sale, which states that the contracts may be unilaterally rescinded by the vendors Spouses Kaw in the event that respondents violated any of the terms of the agreements. Supposedly, by converting the subject property into a beach resort and renting out cottages to third persons without the prior written consent of Spouses Kaw, respondents violated paragraph D of the Deeds of Conditional Sale, which states that respondents, as vendees, cannot “assign, transfer, convey or in any manner hypothecate their rights under [the] agreement to third parties without the prior written consent of the Vendors [Spouses Kaw].”¹³

Spouses Kaw further asserted that respondents violated paragraph A of the Deeds of Conditional Sale by causing the construction of permanent improvements on the subject property. Purportedly, there were verbal agreements concomitant to the execution of the Deeds of Conditional Sale, wherein respondents agreed that they will only introduce temporary improvements made of light materials in the subject property. Further, after the Deeds of Conditional Sale were executed by the parties, Josephine reminded Orolfo that respondents could only build cottages made of light materials considering that they had not fully paid the contract price and there was no subdivision survey yet. She also told Orolfo not to fence the property pending the resolution of the issue on the right of way with the adjoining owners.¹⁴

In their Answer, respondents denied that they violated any of the provisions of the Deeds of Conditional Sale. By way of counterclaim, respondents prayed that the RTC order the Spouses Kaw: to accept payment of the balance of the purchase price (balance price) under the Deeds of Conditional Sale; to execute the deeds of absolute sale over the subject property; to surrender all documents necessary for the transfer of

¹¹ *Id.* at 44–45, *see* CA Decision.

¹² *Id.* at 78, *see* RTC Decision.

¹³ *Id.* at 44–45, *see* CA Decision.

¹⁴ *Id.* at 44.

title to respondents; and to pay respondents moral damages and costs of suit.¹⁵

Respondents argued that the operation of a beach resort over the subject property cannot be construed as an assignment, transfer, conveyance, or hypothecation of their rights over the subject property under paragraph D of the Deeds of Conditional Sale. They further maintained that paragraph A of the Deeds did not impose any limitation on the kind of improvements that they may introduce in the subject property.¹⁶

Respondents also denied any verbal agreement with Spouses Kaw that prohibited them from using the subject property as a beach resort and from constructing permanent improvements thereon. Supposedly, Spouses Kaw were aware that the property was purchased for the purpose of engaging in a beach resort business.¹⁷ During the negotiations for the sale, Spouses Kaw even encouraged respondents to develop the property into a beach resort and suggested the amount of rental fees that they could charge against visitors.¹⁸ Further, Spouses Kaw knew that permanent improvements were being introduced on the subject property as Noel attended the birthday party of Orolfo's daughter while constructions were on-going. Respondents further asserted that they could already fence the portions sold to them because the boundaries have already been identified in the subdivision plan presented by the Spouses Kaw, who even helped them in locating the landmarks or *mohon*.¹⁹

Respondents argued that Spouses Kaw merely changed their mind as regards the Deeds of Conditional Sale after Josephine and Nodaló had a heated verbal spat about the improvements on the subject property. Josephine felt disrespected by Nodaló and wanted her to be excluded as a buyer.²⁰ Purportedly, on several occasions, respondents brought cash as payment for the balance price under the Deeds of Conditional Sale when they went to the Spouses Kaw, but the latter refused to accept their payment.²¹ They also made a surprise visit at Josephine's dental clinic to pay the balance price, but Josephine angrily told them that she does not want their money.²²

¹⁵ *Id.* at 47.

¹⁶ *Id.* at 48-49.

¹⁷ *Id.*

¹⁸ *Id.* at 45-46.

¹⁹ *Id.* at 45.

²⁰ *Id.*

²¹ *Id.* at 45.

²² *Id.* at 86, *see* RTC Decision.

Respondents also insisted that the Complaint was filed by Spouses Kaw on September 29, 2015, only as a countersuit to the Consignation Cases previously instituted by some of the respondents against the Spouses Kaw.²³ It turned out that on September 5 and 19, 2014, Nodalo and Chiquillo separately filed with the Municipal Circuit Trial Court (MCTC), Polangui-Libon-Oas, Albay, two Complaints²⁴ for Consignation against the Spouses Kaw. The MCTC docketed the consignation complaints of Nodalo and Chiquillo as Civil Case No. 1712-P and Civil Case No. 1714-P (collectively, Consignation Cases), respectively. Nodalo and Chiquillo alleged that Spouses Kaw unjustifiably refused to accept payment of the balance price under the Deeds of Conditional Sale. Both respondents averred that they tendered payment of the balance price to Spouses Kaw under the Deeds of Conditional Sale, but the Spouses unjustifiably refused to accept their payment.²⁵

The Ruling of the RTC

In the Decision²⁶ dated June 3, 2019, the RTC dismissed the Complaint for Rescission filed by Spouses Kaw for failing to prove their allegations. The RTC found that respondents did not violate the conditions stated in the Deeds of Conditional Sale. The dispositive portion of the RTC Decision states:

WHEREFORE, premises considered, judgment is rendered in favor of defendants Heirs of Marilyn Nodalo, Manuel Olaso III, Lea Lim-Tidma, Gina Nuarin, Nerissa S. Orejo, Zenaida Chiquillo, Ivy Orolfo, and Manuel Gomez and against plaintiffs Spouses Noel Jhon M. Kaw and Josephine Caseres-Kaw, as follows:

1. The Complaint is DISMISSED for lack of merit;
2. The Counter-Claim is GRANTED. Plaintiffs are ORDERED to: a) ACCEPT the payments from the defendants amounting to [PHP] 300,000.00 for each of the Deed of Conditional Sale or a total of [PHP] 600,000.00; b) EXECUTE the corresponding deeds of absolute sale in favor of defendants as Vendees concerning the 2,000.00 square meters of Lot F covered by TCT No. T-158628 located at Cagmanaba, Oas, Albay; c) PAY the real estate taxes concerning the subject property; and d) SURRENDER to the defendants all documents necessary for the transfer of title of the portion of Lot F that defendants bought from plaintiffs; and

²³ *Id.* at 79.

²⁴ *Id.* at 101-105 and 106-110, respectively.

²⁵ *Id.* at 102-103 and 107-108, respectively.

²⁶ *Id.* at 78-100.

3. Plaintiffs are ORDERED to solidarily pay the defendants moral damages amounting to [PHP] 100,000.00 and costs of suit, which shall earn interest at the rate of 6% *per annum* from the finality of this Decision until full payment. The award of moral damages is WITHOUT PREJUDICE to the liquidated damages which are stated in the two Deeds of Conditional Sale.
SO ORDERED.²⁷

Aggrieved, Spouses Kaw appealed to the CA.²⁸

The Ruling of the CA

In its Decision²⁹ dated July 14, 2021, the CA partly granted the appeal. The CA found that respondents did not violate the terms of the Deeds of Conditional Sale. It declared that rescission is not a remedy available to Spouses Kaw as to justify their refusal to accept payment of the balance of the purchase price.³⁰ However, it deleted the award of moral damages for lack of basis.³¹ The dispositive portion of the CA's Decision provides:

WHEREFORE, premises considered, the Appeal is PARTLY GRANTED. The Decision dated June 3, 2019 of the Regional Trial Court, Branch 12, Ligao City, Albay in Civil Case No. 2833 is Affirmed with the Modification that the award of moral damages is DELETED.

SO ORDERED.³²

Aggrieved, Spouses Kaw filed a Motion for Partial Reconsideration³³ before the CA arguing that the RTC was without jurisdiction when it ordered them to: (1) execute a deed of absolute sale in favor of respondents; (2) accept the payment for the subject property; and (3) to surrender all the necessary documents to respondents for the transfer of the subject property in their names. Spouses Kaw also averred that they were able to establish a substantial breach in the obligation as to warrant the rescission of the Deeds of Conditional Sale.³⁴

²⁷ *Id.* at 99–100.

²⁸ *Id.* at 48, *see* CA Decision.

²⁹ *Id.* at 42–52.

³⁰ *Id.* at 51.

³¹ *Id.* at 52.

³² *Id.* at 52–53.

³³ *Id.* at 54–64.

³⁴ *Id.* at 68, *see* CA Resolution dated August 8, 2022.

In a Resolution³⁵ dated August 8, 2022, the CA denied the Motion for Partial for Reconsideration. It reiterated that the acts committed by respondents did not constitute substantial breach; hence, the rescission of the Deeds of Conditional Sale was unwarranted.³⁶

Thus, the present Petition.³⁷

Petitioners' Arguments

In their Petition, Spouses Kaw insist that, *first*, the CA erred in finding that the breach committed by respondents is merely slight or casual, which does not justify rescission.³⁸ They maintain that there are verbal agreements concomitant to the execution of the Deeds of Conditional Sale, wherein respondents agreed that they can only construct temporary improvements made of light materials on the subject property, and that respondents violated this undertaking.³⁹

Second, Spouses Kaw aver that the RTC had no jurisdiction to grant respondents' counterclaims because the same matters are already being litigated in the consignment cases. They point out that in the Consignment Cases, respondents sought a judicial declaration that they made a valid consignment of the balance price under the Deeds of Conditional Sale and prayed for the MCTC to direct Spouses Kaw to accept the amount deposited with the court.⁴⁰ Spouses Kaw thus argues that respondents committed forum-shopping.⁴¹

Third, Spouses Kaw insist that the CA erred in finding respondents' counterclaims as compulsory and not merely permissive.⁴² Supposedly, respondents will not be precluded from asserting their claims against the Spouses Kaw in a separate proceeding.⁴³

Finally, Spouses Kaw assert that the CA erred in compelling them to execute Deeds of Absolute Sale over the subject property because the matter is not the subject of their Complaint. They point out that they filed

³⁵ *Id.* at 67-71.

³⁶ *Id.* at 68.

³⁷ *Id.* at 9-38.

³⁸ *Id.* at 19.

³⁹ *Id.* at 20-21.

⁴⁰ *Id.* at 29.

⁴¹ *Id.* at 30.

⁴² *Id.*

⁴³ *Id.* at 33.

the Complaint for the Rescission of the Deeds of Conditional Sale; hence, it was error for the CA to compel the performance of undertakings under the same contracts that they seek to rescind.⁴⁴

Respondents' Arguments

In their Comment,⁴⁵ respondents aver that, *first*, they did not commit any breach or violation in the Deeds of Conditional Sale. Supposedly, paragraph A of both contracts is clear and explicit in that it allowed respondents to introduce improvements in the subject property upon payment of the initial down payment, without any limitation on the kind of material that they may use. Likewise, there was no condition or stipulation in the Deeds which prohibits respondents from leasing or sub-leasing the subject property to third parties.⁴⁶

Second, respondents assert that there is no forum shopping to speak of because there is no identity of parties in the Consignation Cases and Rescission Case, given that only Chiquillo and Nodalo instituted their respective Complaints for Consignation with the MCTC against Spouses Kaw, while the rest of the respondents did not. Further, they assert that actions for consignation and rescission of contracts are of different nature. Respondents insists that Chiquillo and Nodalo had no choice but to raise their compulsory counterclaims with the RTC; otherwise, the counterclaims will be considered barred.⁴⁷

Third, respondents aver that it was correct for the CA to rule that their counterclaims are compulsory because there is a logical relation between the claims of the parties, being based on the same Deeds of Conditional Sale.⁴⁸

Finally, respondents allege that the RTC has jurisdiction over their compulsory counterclaims; hence, it acted within its authority when it granted the counterclaims.⁴⁹

⁴⁴ *Id.* at 34.

⁴⁵ *Id.* at 125-134.

⁴⁶ *Id.* at 131-132.

⁴⁷ *Id.* at 132-133.

⁴⁸ *Id.* at 133.

⁴⁹ *Id.* at 133-134.

The Issues

The issues before the Court are: (1) whether the CA erred in dismissing the Complaint for Rescission of the Deeds of Conditional Sale; and (2) whether respondents committed forum shopping, warranting the dismissal of their counterclaims in the Rescission Case.

The Ruling of the Court

The Petition is denied for lack of merit. The CA correctly ruled that Spouses Kaw failed to establish valid grounds for the rescission of the Deeds of Conditional Sale. However, the Court agrees with Spouses Kaw that Chiquillo and Nodalo committed forum shopping.

The Deeds of Conditional Sale are contracts to sell

Preliminarily, the Court notes that the written agreements over the subject property were denominated by the parties as a “Deed of Conditional Sale.” However, after a careful reading of the terms and conditions of the two agreements in issue, the Court finds that the real intention of the parties is to enter into contracts to sell, not conditional sale. In *Nabus v. Sps. Pacson*,⁵⁰ the Court explained the difference between a contract to sell and a conditional sale in this wise:

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. 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

⁵⁰ 620 Phil. 344 (2009).

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.*⁵¹ (Emphasis supplied)

In a contract to sell, the prospective seller reserves title to the subject property despite previous delivery thereof to the prospective buyer. Thus, in a case,⁵² the Court held that an agreement denominated as a “Deed of Conditional Sale” was, in truth, a contract to sell because the vendor promised to execute a deed of absolute sale only upon the vendee’s completion of the payment of the full purchase price. The Court has also held that a contract pertains to an *absolute sale* if there is no stipulation granting the vendor the right to *unilaterally cancel* the contract the moment that the vendee fails to pay within a fixed period.⁵³ Conversely, an agreement is considered a *contract to sell* if there is a stipulation therein giving the vendor the right to *unilaterally rescind* the contract the moment that the vendee fails to pay within a fixed period.⁵⁴

In the case at hand, the Deeds of Conditional Sale contain several stipulations on rescission and execution of the deed of absolute sale, to wit:

- a) . . . provide moreover that, in the event of *unilateral rescission* by the Vendors of the herein sale agreement/transaction, for reasons or causes attributable to the Vendees (such as, but not limited to *default in payment of the net balance* or subsequent installment payments or *violations of the terms of this agreement*, among other grounds), the said down payment or any other subsequent advance/instalment payments shall be treated as and for EARNEST MONEY, which the Vendors at their option, may forfeited in their favor without further recourse or right of reimbursement by the Vendees; and provided finally that, in such *event of rescission of the sale transaction/agreement* any and all improvements introduced by the Vendees on the premises subject matter herein, agreed to be sold, may be appropriated by and at the option of the Vendors likewise without further recourse expectancy or payment of its value in favor of the Vendees.

⁵¹ *Id.* at 362.

⁵² *See Reyes v. Tuparan*, 665 Phil. 425, 441–442 (2011).

⁵³ *Nabus v. Sps. Pacson*, 620 Phil. 344, 360 (2009). *See also Heirs of Bernabe v. Court of Appeals*, 581 Phil. 48, 57 (2008).

⁵⁴ *Sps. Reyes v. Salvador, Sr.*, 586 Phil. 391, 413 (2008), *citing Philippine National Bank v. Court of Appeals*, 330 Phil. 1048, 1070–1071 (1996).

- c) Upon full and satisfactory payment by the Vendees to the Vendors of the said net balance of PHP 300,000.00 (or the agreed total consideration of PHP 600,000.00), the *Vendors shall forthwith execute and deliver* in favor of the Vendees the (Final) *Deed of Absolute Sale* of the property above described and herein sold, together with its muniments of title[.]⁵⁵ (Emphasis supplied)

The foregoing supports the conclusion that the Deeds of Conditional Sale are *contracts to sell*. *First*, paragraph A of the Deeds grants Spouses Kaw the right to *unilaterally* rescind the agreements in the event that respondents fail to pay the full purchase price within the period fixed in the contracts. *Second*, paragraph C of the Deeds expressly state that Spouses Kaw shall execute the Deeds of Absolute Sale only upon full and satisfactory payment of the total consideration for the subject property, even though it had already been delivered to respondents after the initial down payment and pending completion of the full purchase price.

The remedy of rescission was available to Spouses Kaw

Given that the Deeds of Conditional Sale are contracts to sell, an issue arises on the availability of the remedy of rescission to Spouses Kaw.

The power to rescind obligations in the event of breach is provided in Article 1191 of the Civil Code, to wit:

ARTICLE 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 article 1385 and 1388 and the Mortgage Law.

⁵⁵ Rollo, pp. 90-91. See RTC Decision.

The remedy of rescission under Article 1191 of the Civil Code in case of breach applies only to *reciprocal* obligations.⁵⁶ The availability of the remedy of a rescission in a contract to sell has been distinguished by the Court in *Solid Homes, Inc. v. Sps. Jurado*,⁵⁷ to wit:

The foregoing characters of a contract to sell are important in order to determine the laws and remedies applicable in case a party does not fulfill his or her obligations under the contract. In *Olivarez Realty Corporation v. Castillo*, we held that *the prospective buyer's failure to fully pay the purchase price in a contract to sell is not a breach of contract under Article 1191 on the right to rescind reciprocal obligations*. Citing *Nabus*, *Olivarez* held that “[t]his is because *there can be no rescission of an obligation that is still non-existent, the suspensive condition not having happened*.” Thus, in case the prospective buyer does not comply, the contract to sell is cancelled and the parties shall stand as if the obligation to sell never existed. When a contract to sell is cancelled, the installments paid for the property are generally ordered reimbursed, especially if possession over the property has not been delivered to the prospective buyer.

The pronouncement in *Olivarez* should, however, be reconciled with our ruling in *Gotesco Properties, Inc. v. Spouses Fajardo*, wherein we upheld the buyer's right to rescind the contract to sell for failure of the seller to cause the transfer of the corresponding certificate of title upon full payment of the purchase price. Thus, *a contract to sell is susceptible to rescission for substantial and fundamental breaches, as when the seller fails to comply with his obligation to sell the property despite the happening of the suspensive condition, because 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*. However, instead of rescission of the obligation, the injured party may choose that the contract be actually accomplished by the party bound to fulfill it. Specific performance refers to the remedy of requiring exact performance of a contract in the specific form in which it was made, or according to the precise terms agreed upon.⁵⁸ (Emphasis supplied; citations omitted)

Following *Solid Homes*, the availability of rescission as a remedy in favor of Spouses Kaw will depend on whether the action is based on respondents' failure to pay the full purchase price within the period fixed by the parties, *or* whether it is based on a substantial or fundamental breach of the contracts on grounds *other than* non-payment of the full purchase price. In the first case, the remedy of rescission is *not* available because the *non-fulfillment* of the *suspensive* condition for failure to pay

⁵⁶ *Chanelay Development Corp. v. Government Service Insurance System*, 906 Phil. 620, 635 (2021).

⁵⁷ 861 Phil. 36 (2019).

⁵⁸ *Id.* at 61-63.

the full purchase price simply prevents the obligation to sell the subject property from arising, and there can be no rescission of an obligation that is non-existent.⁵⁹ In the second case, the remedy of rescission is available because it would involve a substantial breach of a reciprocal obligation, which then authorizes the injured party to demand either rescission or specific performance of the obligation under Article 1191 of the Civil Code.⁶⁰

Upon review of the records, the Court finds that the remedy of rescission was available to Spouses Kaw pursuant to Article 1191 of the Civil Code in relation to paragraph A of the Deeds of Conditional Sale.

As seen above, paragraph A of the Deeds of Conditional Sale expressly authorizes Spouses Kaw, as vendors, to *unilaterally rescind* the contracts in the event that respondents, as vendees: (1) defaulted in the payment of the balance price or subsequent installment payments therefor; or (2) *violated the terms of the said agreements*. Although the contracts provide for unilateral rescission in favor of Spouses Kaw, it is settled that judicial validation of such unilateral rescission is necessary, for it is only the final judgment of a court that will conclusively settle whether the action taken was correct in law.⁶¹

Here, Spouses Kaw instituted the Complaint for Rescission because respondents supposedly *violated* the terms of the Deeds of Conditional Sale when the latter leased the subject property as part of their beach resort business and introduced permanent improvements thereon. Simply, Spouses Kaw's action was based on a fundamental or substantial breach of obligations *other than payment of the purchase price* under the Deeds of Conditional Sale. Hence, the remedy of rescission under Article 1191 of the Civil Code was available to Spouses Kaw.

Spouses Kaw failed to prove that respondents violated the terms of the Deeds of Conditional Sale or committed a substantial breach thereof

Having resolved the question of whether rescission was available as a remedy to Spouses Kaw, the Court proceeds to rule on the issue of

⁵⁹ See *Royal Plains View, Inc. v. Mejia*, 843 Phil. 70, 90–91 (2018). (Emphasis supplied)

⁶⁰ See *Sps. Beltran v. Sps. Cangayda*, 838 Phil. 935, 948–949 (2018).

⁶¹ *Royal Plains View, Inc. v. Mejia*, *supra* at 92.

whether the CA erred in finding that respondents did not commit a substantial breach of the agreements as to warrant their rescission.

As a rule, rescission is not permitted for a slight or casual breach of the contract, but only for such breaches that are substantial and fundamental as to *defeat* the object of the parties in making the agreement.⁶² Hence, as correctly pointed out by the RTC and CA, rescission will *not* be granted in the following: (1) where the breach is only slight or casual; (2) where there has been substantial compliance; and (3) where the court finds valid reason for giving a period of fulfillment of the obligation.⁶³

In the case at hand, Spouses Kaw argue that respondents committed a fundamental or substantial breach of the Deeds of Conditional Sale when they (1) introduced permanent improvements on the subject property, contrary to paragraph A of the Deeds regarding improvements and (2) leased cottages located on the subject property to third persons, in violation of paragraph D of the Deeds. The Court disagrees with Spouses Kaw and affirms the CA's finding that respondents did not commit a fundamental or substantial breach of their obligations under the Deeds of Conditional Sale.

- A. Respondents did not violate paragraph A of the Deeds of Conditional Sale when they introduced permanent improvements on the subject property

As to the alleged violation of paragraph A of the Deeds of Conditional Sale, Spouses Kaw maintain that there are concomitant verbal agreements concerning the kind of improvements that respondents are allowed to construct on the subject property. Supposedly, these concomitant verbal agreements must be referred to in defining the term "improvements" in paragraph A of the Deeds of Conditional Sale. Spouses Kaw assert that the terms of the agreements must be interpreted based on the "*intention* of the contracting parties" which may be

⁶² See *Estate of Rodriguez v. Republic*, 922 Phil. 775, 792 (2022), citing *Camarines Sur Teachers and Employees Association, Inc. v. Province of Camarines Sur*, 864 Phil. 344, 374 (2019), and further citing *Song Fo & Co. v. Hawaiian Philippine Co.*, 47 Phil. 821 (1925).

⁶³ *Id.*

determined by looking at *all* the words used in the contracts in their proper context.⁶⁴

The Court is not persuaded.

The Parol Evidence Rule under Rule 130, Section 10 the Rules of Court, states:

SECTION 10. *Evidence of written agreements.* — When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, as between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.

However, a party may present evidence to modify, explain or add to the terms of the written agreement if he or she puts in issue in a verified pleading:

- (a) An intrinsic ambiguity, mistake or imperfection in the written agreement;
- (b) The failure of the written agreement to express the true intent and agreement of the parties thereto;
- (c) The validity of the written agreement; or
- (d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

The term “agreement” includes wills.

The Parol Evidence Rule dictates that once an agreement has been reduced to writing, the written agreement stands as the *sole* repository and memorial of everything that the parties have agreed upon, and that whatever is not found in the writing must be understood to have been *waived or abandoned* by the parties.⁶⁵ The rule against the modification of a written agreement through parol evidence is well-founded on “long experience that written evidence is so much more certain and accurate than that which rests in fleeting memory only, that it would be unsafe, when parties have expressed the terms of their contract in writing, to admit *weaker evidence* to control and vary the stronger and to show that the

⁶⁴ *Rollo*, p. 22.

⁶⁵ See *Rizal Commercial Banking Corp. v. Bernardino*, 795 Phil. 666, 685 (2016), citing *Sps. Edrada v. Sps. Ramos*, 505 Phil. 672, 677–678 (2005). See also *Sps. Agbada v. Inter-Urban Developers, Inc.*, 438 Phil. 168, 191 (2002)

parties intended a different contract from that expressed in the writing signed by them.”⁶⁶

In accordance with the Parol Evidence Rule, “[e]vidence of a prior or contemporaneous *verbal agreement* is generally *not admissible* to vary, contradict, or defeat the operation of a valid contract.”⁶⁷ While parol evidence may be admitted to explain the terms used in an agreement, it cannot serve the purpose of *incorporating* into the contract *additional contemporaneous conditions* which are not mentioned at all in the writing, unless there has been fraud or mistake.⁶⁸ Thus, in several cases, the Court disregarded parol evidence introduced by a party to prove *oral conditions* relating to deeds of sale that were not found in the contracts themselves.⁶⁹

Here, Spouses Kaw insist that there were concomitant verbal agreements, which essentially modify the Deeds of Conditional Sale by imposing additional conditions or limitations that are not found in the written agreements themselves. Clearly, these purported concomitant verbal agreements must be *deemed waived and abandoned* when Spouses Kaw executed and signed the Deeds of Conditional Sale despite the absence of any stipulation therein concerning the alleged limitations on the improvements that respondents may introduce into the subject property pending full payment of the purchase price.

Moreover, Spouses Kaw essentially aver that parol evidence may be considered by the Court because the Deeds of Conditional Sale failed to express the *true intent* or agreement of the parties. However, it is settled that the foregoing exception to the Parol Evidence Rule applies only when “the written contract is *ambiguous or obscure* in terms that the contractual intention of the parties cannot be understood from a mere reading of the instrument.”⁷⁰ This is not the case insofar as the Deeds of Conditional Sale are concerned. Paragraph A of the Deeds merely states that “upon full payment of this initial/ down payment of [PHP] 300,000.00, the vendee shall have the right to enter into/ take beneficial possession and enjoyment or *introduce improvements* on the above described property even as the same is herein conditionally sold[.]”⁷¹ The afore-cited provision is not

⁶⁶ See *Roble v. Sps. Arbasa*, 414 Phil. 343, 356 (2001).

⁶⁷ See *Republic v. Roque, Jr.*, 797 Phil. 33, 54 (2016), citing *Seaoil Petroleum Corp. v. Autocorp Group*, 590 Phil. 410, 418 (2008).

⁶⁸ See *Taok v. Conde*, G.R. No. 254248, November 6, 2023, citing *Ortañez v. Court of Appeals*, 334 Phil. 514, 517 (1997). See also *Heirs of Del Rosario v. Santos*, 194 Phil 670, 685–686 (1981).

⁶⁹ *Heirs of Del Rosario v. Santos*, *id.* at 686.

⁷⁰ See *Taok v. Conde*, *id.* See also *Sps. Amoncio v. Benedicto*, 582 Phil. 217, 227–228 (2008).

⁷¹ Rollo, p. 90.

ambiguous or obscure to the point that the contractual intention of the parties cannot be ascertained therefrom.

Contrary to Spouses Kaw's postulation, jurisprudence dictates that a contract must be interpreted based on the language used therein and according to its *plain and ordinary meaning*.⁷² If the contract itself does *not* make any *distinctions* as regards the terms used therein, then courts must likewise refrain from making such distinctions.⁷³ Considering that paragraph A of the Deeds of Conditional Sale does not make any distinction as regards the kind of improvements that may be introduced on the property or the types of materials that respondents may use for such improvements, then the Court must likewise refrain from making such distinctions.

Next, Spouses Kaw aver that *after* the Deeds of Conditional Sale have been executed, the parties verbally agreed on the limited improvements that respondents may introduce into the subject property. The argument fails to persuade.

While an exception to the Parol Evidence Rule is when there are other terms agreed upon by the parties *after* the execution of the written agreement, the purported verbal agreements *after* the execution of the Deeds of Conditional Sale were *not sufficiently substantiated* by Spouses Kaw. Josephine merely alleged that she "reminded" Orolfo not to introduce permanent improvements or fence the subject property. Although Orolfo admitted that she received text messages from Josephine about the alleged limitations on the improvements that respondents may construct on the subject property, Orolfo was clear that the limitations are *not* part of their agreement as embodied in the Deeds.⁷⁴ Plainly, there is no evidence showing that respondents *accepted* the purported limitations imposed by Spouses Kaw that may modify the express terms of the Deeds.

Importantly, *consent* of the contracting parties is an essential requisite in any contract, pursuant to Articles 1305⁷⁵ and 1318⁷⁶ of the

⁷² *LICOMCEN, Inc. v. Foundation Specialists, Inc.*, 622 Phil. 441, 471 (2011).

⁷³ *Id.*

⁷⁴ *Rollo*, p. 85, RTC Decision.

⁷⁵ CIVIL CODE, art. 1305 states:

ARTICLE 1305. A contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service.

⁷⁶ CIVIL CODE, art. 1318 states:

ARTICLE 1318. There is no contract unless the following requisites concur:

Civil Code. Naturally, therefore, *any modification* made in the contract must still be with or upon the *consent* of the contracting parties,⁷⁷ and the minds of *all parties* must meet as to the proposed modification.⁷⁸ Simply, *any change* in a contract must be made with the consent of the contracting parties, and must be mutually agreed upon; otherwise, *it has no binding effect*.⁷⁹ Further, a contractual party who receives a proposal to change or vary a contract is under no obligation to respond; hence, his or her silence *cannot* be construed as an acceptance or consent to the proposed contract changes.⁸⁰

Thus, the mere fact that Josephine sent text messages or reminders to Orolfo about the limitations on the improvements that respondents may introduce to the subject property is *insufficient* to conclude that respondents agreed to such limitation and modification of the Deeds of Conditional Sale. Neither may respondents' silence be construed as consent to the proposed contract changes. There should be proof showing that respondents consented to or accepted the proposed changes to the contracts, which Spouses Kaw failed to provide. Besides, Orolfo is just one of the buyers under the Deeds of Conditional Sale, and it has not been shown that she represents all the other respondents or that she *alone* may consent to any modification in the Deeds of Conditional Sale.

- B. Respondents did not violate paragraph D of the Deeds of Conditional Sale when they rented out to customers the cottages constructed on the subject property

Spouses Kaw further insist that respondents violated paragraph D of the Deeds of Conditional Sale when they leased the premises of the subject property by renting out cottages to customers as part of their beach resort business.⁸¹ Paragraph D of the Deeds of Conditional Sale states that respondents cannot “assign, transfer, convey or in any manner

(1) Consent of the contracting parties;

(2) Object certain which is the subject matter of the contract;

(3) Cause of the obligation which is established.

⁷⁷ See *Gotesco Properties, Inc. v. Cua*, G.R. Nos. 228513 & 228552, February 15, 2023; *Villa Crista Monte Realty & Development Corp. v. Equitable PCI Bank*, 843 Phil. 658, 673 (2018).

⁷⁸ See *Mendoza v. Court of Appeals*, 412 Phil. 14, 32–33 (2001).

⁷⁹ See *Security Bank Corp. v. Spouses Mercado*, 834 Phil. 286, 305 (2018), citing *Silos v. Philippine National Bank*, 738 Phil. 156, 181 (2014).

⁸⁰ See *Mendoza v. Court of Appeals*, *supra* at 33.

⁸¹ *Rollo*, pp. 82–83.

hypothecate their rights under this agreement to third parties without the prior written consent of the Vendors [Spouses Kaw].”

In relation thereto, paragraph A of the Deeds of Conditional Sale provides that respondents shall have the right to enter into or take beneficial *possession* and enjoyment of, or introduce improvements on, the subject property after the initial down payment. Similarly, paragraph F of the Deed states that upon execution of the contracts and pending full payment of purchase price, the respondents as vendees and their heirs or assigns shall remain in the exclusive beneficial *possession* and enjoyment of the subject property.

The foregoing demonstrates that the Deeds of Conditional Sale conferred upon respondents the right to *possess* the subject property, after they have paid the initial downpayment and pending completion of the payment of the full purchase price. Thus, for respondents to breach paragraph D of the Deeds of Conditional Sale, it must be shown that they assigned, conveyed, transferred, or in any way hypothecated their possessory rights over the subject property.

Upon review of the records, the Court agrees with the RTC and CA that respondents did not violate paragraph D of the Deeds.

First, as aptly pointed out by the lower courts, paragraph D of the Deeds of Conditional Sale prohibits respondents from assigning, conveying, transferring, or hypothecating their rights over the subject property. The act of leasing was *not* included in the enumeration of prohibited acts. Hence, it cannot be said that paragraph D of the Deeds of Conditional Sale prohibits respondents from leasing cottages on the subject property for their beach resort business.

Second, the act of leasing or renting out cottages found on the subject property is *not subsumed* in any of the acts that respondents are prohibited from doing under Paragraph D of the Deeds of Conditional Sale. The terms “assign,” “convey,” and “transfer” are synonymous with each other.⁸² “Assign” means to “transfer” title, ownership, or property, or some interest therein.⁸³ “Convey” means “to pass or transmit the title or property from one to another; to transfer title to property by deed or instrument under seal.” “Transfer” refers to “an act of the parties, or of

⁸² Black’s Law Dictionary (1968), Revised Fourth Edition, p. 402.

⁸³ *Id.* at 152.

the law, by which the title to property is conveyed from one person to another.”⁸⁴ Meanwhile, the term “hypothecate” refers to a mortgage or pledge of a thing without delivering possession of the property to the mortgagee or pledgee.⁸⁵

Third, the records show that respondents did *not* assign, convey, transfer, or hypothecate their possessory rights over the subject property to a third person.

Relatively, the issue of actual possession was raised in *Pajuyo v. Court of Appeals*.⁸⁶ In that case, therein petitioner and respondent entered into an agreement wherein respondent was allowed to occupy petitioner’s house, subject to certain conditions imposed in their contract. Later, therein petitioner instituted an action for ejectment against respondent. In defense, respondents asserted that petitioner was not in *prior physical possession* of the property. In holding that petitioner had cause to eject respondent, the Court explained that *actual possession* over real property remained with petitioner because he retained *control* over it, as evidenced by the fact that therein respondent had to seek petitioner’s *permission* to temporarily hold the property and also had to follow the conditions imposed by petitioner in using the property. The Court emphasized that possession may be acquired not only by physical occupation, but also by the fact that *a thing is subject to the action of one’s will, viz.:*

Pajuyo’s withdrawal of his permission to Guevarra terminated the *Kasunduan*. Guevarra’s transient right to possess the property ended as well. Moreover, it was Pajuyo who was in *actual possession* of the property because Guevarra had to seek Pajuyo’s permission to temporarily hold the property and Guevarra had to follow the conditions set by Pajuyo in the *Kasunduan*. *Control over the property still rested with Pajuyo and this is evidence of actual possession.*

Pajuyo’s absence did not affect his actual possession of the disputed property. *Possession in the eyes of the law does not mean that a man has to have his feet on every square meter of the ground before he is deemed in possession. One may acquire possession not only by physical occupation, but also by the fact that a thing is subject to the action of one’s will.* Actual or physical occupation is not always necessary.⁸⁷ (Emphasis supplied; citations omitted)

⁸⁴ *Id.* at 1669.

⁸⁵ *Id.* at 877.

⁸⁶ 474 Phil. 557 (2004).

⁸⁷ *Id.* at 592–543.

Applying *Pajuyo*, it cannot be said that respondents were no longer in *actual possession* of the subject property when they leased out cottages as part of their beach resort business. Obviously, respondents *remained in possession and control* of the property by using it as a beach resort, and their customers could not have occupied the cottages therein without their permission. Plainly, respondents retained *control* over the beach resort in the subject property, which serves as evidence of their *actual and continuing possession* thereof. Hence, respondents' act of renting out to customers the cottages found on the subject property as part of their beach resort operations *cannot* be considered as an assignment, conveyance, transfer, or hypothecation of their possessory rights over the subject property.

At any rate, the Court reiterates the RTC's statement that the Deeds of Conditional Sale "were indisputably drafted by the plaintiffs [Spouses Kaw]." ⁸⁸ Relevantly, Article 1377 of the Civil Code states that "[t]he interpretation of obscure words or stipulations in a contract shall not favor the party who *caused the obscurity*." Otherwise said, when several interpretations of a contractual provision are otherwise equally proper, the interpretation or construction to be adopted is the one that is *most favorable* to the party in whose favor the provision was made and who did *not* cause the ambiguity. ⁸⁹ The rule applies against Spouses Kaw as the drafters of the Deeds of Conditional Sale. Hence, any purported obscurity in Paragraphs A and D of the written agreements must be construed against them as they are presumed to have confirmed and reviewed the contracts before their execution. ⁹⁰

*Respondents Chiquillo and Nodalo
committed forum shopping*

While the Court agrees with the RTC and CA that Spouses Kaw's Complaint in the Rescission Case must be dismissed for lack of merit, the Court, nevertheless, agrees with the Spouses Kaw that respondents Chiquillo and Nodalo committed *forum shopping*.

There is forum shopping when the following elements are present, namely: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts;

⁸⁸ *Id.* at 93.

⁸⁹ See *Orient Air Services & Hotel Representatives v. Court of Appeals*, 274 Phil. 927, 938 (1991), citing *Equitable Banking Corporation v. Intermediate Appellate Court*, 244 Phil. 525, 534 (1988).

⁹⁰ See *Horrigan v. Troika Commercial Inc.*, 512 Phil. 782, 785 (2005).

and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amounts to *res judicata* in the action under consideration.⁹¹

Forum shopping may be committed not only through the institution of simultaneous or successive *complaints* against the same or similar parties, but also by pleading the same reliefs and causes of action by way of *counterclaim* in several cases. This is because a counterclaim partakes of a nature of a complaint or a cause of action against a plaintiff.⁹² It is in itself a distinct cause of action against the plaintiff; thus, *a defendant is a plaintiff with respect to his counterclaim*.⁹³

To illustrate, in *ABS-CBN Corp. v. Revillame*,⁹⁴ therein petitioner was found guilty of forum shopping when, in the first case for annulment of contract filed by respondent, it filed its *answer with counterclaim* for damages against the respondent for breach of contract; thereafter, petitioner filed a second complaint for copyright infringement against respondent based on the same cause of action relating to a breach of the same contract. Likewise, in *Korea Exchange Bank v. Judge Gonzales*,⁹⁵ therein respondents were found guilty of forum shopping when they filed a complaint against therein Korea Exchange Bank for damages arising from fraud in connection with a loan from the Bank; thereafter, *as defendants* in a collection suit filed by the Bank, respondents filed a *counterclaim* for damages based on the same allegations of fraud in the same loan transaction with the Bank.

In the case at hand, all the elements of forum shopping are present. Following *Korea Exchange Bank* and *Revillame*, respondents Chiquillo and Nodalo violated the rule against forum shopping when they simultaneously sought the same reliefs based on the same causes of action by filing their counterclaims with the RTC in the Rescission Case despite the pendency of the Consignation Cases that they earlier instituted with the MCTC for payment of the balance price under the same Deeds of Conditional Sale.

As to *identity of parties*, it is undisputed that Chiquillo and Nodalo, as *vendees* in the Deeds of Conditional Sale, filed the Consignation Cases

⁹¹ See *Grace Park International Corp. v. Eastwest Banking Corp.*, 791 Phil. 570, 577 (2016), citing *Hrs. of Sotto v. Palicte*, 726 Phil. 651, 654 (2014).

⁹² See *Villaroman v. Estate of Arciaga*, 905 Phil. 622, 637 (2021).

⁹³ See *Chan v. Court of Appeals*, 300 Phil. 739, 750 (1994).

⁹⁴ G.R. Nos. 221781, 225095 & 236167, April 17, 2023.

⁹⁵ 496 Phil. 127 (2005).

against the vendors Spouses Kaw. Indubitably, Chiquillo and Nodalo are the same respondents in the present case and they were impleaded in the same capacity, i.e., as vendees in the Deeds of Conditional Sale. Although not all respondents were included in the Consignation Cases, it is elementary that *absolute identity* of parties is not required for there to be forum shopping, and it is enough that there is a *community of interest* between a party in the first and second case, which is present in the case at hand.⁹⁶ In fact, in the Consignation Cases,⁹⁷ Chiquillo and Nodalo stated that respondents share a *solidary* obligation under their respective Deeds of Conditional Sale to pay the purchase price for the subject property, which confirms the community of interest among all respondents.

There is *also identity of the causes of action and reliefs* prayed for in the Consignation Cases and the Rescission Case, as evidenced by respondents' prayer for reliefs in the two cases, to wit:

Reliefs prayed for in Civil Case No. 1712-P (Consignation Case by Nodalo)	Respondents' Counterclaims in the Rescission Case ⁹⁸
<p>WHEREFORE, premises considered, plaintiff [Nodalo] respectfully pray to this Honorable Court, that after due hearing, judgment be rendered in as follows,</p> <p>a) To make a judicial declaration that plaintiff made a valid consignation and <i>direct the defendants [Spouses Kaw] [to] accept the amount deposited by the plaintiff before the Honorable Court.</i></p> <p>b) <i>Ordering that the obligation of the vendees under the subject deed of conditional sale to have been fully paid.</i></p> <p>c) Ordering the defendant to pay Attorney's Fees in the amount of [PHP] 10,000.00 pesos (<i>sic</i>) and other litigation expenses such as filing fee, appearance fee and etc., in the amount of not less than [PHP] 10,000.00</p> <p>Plaintiff further pray for such other reliefs as the Honorable Court may deem just and equitable in the premise.⁹⁹ (Emphasis supplied)</p>	<p>Defendants [Respondents] prayed for the following:</p> <ol style="list-style-type: none"> 1. Denying the application for writ of preliminary injunction for lack of merit; 2. Dismissing plaintiff's [Spouses Kaw's] complaint for lack of merit; 3. <i>Ordering plaintiffs to accept payment from any of the defendants of the remaining balance of the purchase price as stated in the subject contracts;</i> 4. Ordering plaintiffs to execute deeds of absolute sale and to surrender all documents necessary for the transfer of title of the subject properties in favor of the defendants; 5. Ordering plaintiffs to pay defendants the amount of [PHP]100,000.00 as moral damages; 6. Ordering the plaintiffs to pay the cost of the suit; and 7. Other reliefs. (Emphasis supplied)

⁹⁶ *Id.*

⁹⁷ *Rollo*, pp. 104 and 109.

⁹⁸ *Id.* at 80.

⁹⁹ *Id.* at 104.

Reliefs prayed for in Civil Case No. 1714-P (Consignation Complaint of Chiquillo)	
<p>WHEREFORE, premises considered, plaintiff [Chiquillo] most respectfully pray to this Honorable Court, that after due hearing, judgment be rendered as follows,</p> <p>a) to make a judicial declaration that plaintiff made a valid consignation and <i>direct the defendants [Spouses Kaw] [to] accept the amount deposited by the plaintiff before this Honorable Court.</i></p> <p>b) <i>Ordering that the obligation of the vendees under the subject deed of conditional sale have been fully paid.</i></p> <p>Plaintiff further pray for such other reliefs as the Honorable Court may deem just and equitable in the premise.¹⁰⁰ (Emphasis supplied)</p>	

“Hornbook is the rule that identity of causes of action does not mean absolute identity; otherwise, a party could easily escape the operation of *res judicata* by changing the form of the action or the relief sought. *The test to determine whether the causes of action are identical is to ascertain whether the same evidence will sustain both actions, or whether there is an identity in the facts essential to the maintenance of the two actions.* If the same facts or evidence would sustain both, the two actions are considered the same, and a judgment in the first case is a bar to the subsequent action.”¹⁰¹ (Emphasis supplied)

Here, respondents seek a declaration for Spouses Kaw to accept payment of the balance price under the Deeds of Conditional Sale in *both* the Consignation Cases and the Rescission Case. Even respondents’ allegations in the Consignation Cases and Rescission Case are the same, i.e., that they repeatedly tendered payment of the balance price to Spouses Kaw; that Spouses Kaw refused to accept payment of the balance price without giving any valid reason therefor; that Spouses Kaw should be directed to accept payment of the balance price from respondents; and that accordingly, it should be declared that respondents have fully paid the

¹⁰⁰ *Id.* at 109.

¹⁰¹ *See Cruz v. Court of Appeals*, 517 Phil. 572, 585 (2006), citing *Luzon Development Bank v. Conquilla*, 507 Phil. 509, 534 (2005).

purchase price for the subject property. Because the complaints in the Consignation Cases and the counterclaims in the Rescission Case are based on the same allegations, necessarily, the evidence to support them would be the same. Irrefragably, there is identity of causes of action and relief sought between the Consignation Cases and the counterclaims in the Rescission Case.

Finally, a judgment in either the Consignation Cases or on the counterclaims of respondents in the Rescission Case will serve as *res judicata* to the other. Certainly, if either the MCTC or the RTC declares that Spouses Kaw should accept payment of the balance price from respondents, then the matter would already be adjudged and any declaration from the other court on the same issue may simply be a superfluity or worse, in direct conflict with the ruling of the earlier court. It matters not that the MCTC and RTC may concur in their judgments; what matters is that our justice system suffers in a situation where the same action is pending in two separate courts and therefore gives rise to *vexatious* complications in the proceedings and to the possibility of *conflicting* rulings.¹⁰²

Respondents insist that they cannot be guilty of forum shopping as they had no choice but to institute their *compulsory* counterclaims with the RTC; otherwise, their counterclaims would be barred if not set up in the Rescission Case. The argument fails to persuade.

When an anomalous situation arises where a party is able to simultaneously or successively avail of remedies over the same issue or subject matter, it is necessary for the litigant to *correct* the situation upon becoming aware thereof.¹⁰³ A party who *sincerely* seeks to avoid the pernicious practice of forum shopping would cause the *dismissal* of other actions that replicated those that already cover the same matters.¹⁰⁴

Hence, a party was *not* found guilty of forum shopping when it filed three separate cases for the same action in the courts of Makati, Manila, and Pasig, but then *immediately withdrew* the pending cases in Manila and Pasig *even before filing any responsive pleadings* therein after it had determined that the proper venue was Makati.¹⁰⁵ In another case, the litigant was not found guilty of forum shopping when it instituted a

¹⁰² See *Madara v. Perello*, 584 Phil. 613, 630 (2008).

¹⁰³ See *Imperial v. Cruz III*, G.R. No. 254166, February 17, 2021 [Notice].

¹⁰⁴ See *Heirs of Sotto v. Palicte*, *supra* note 91.

¹⁰⁵ See *Quiambao v. Sumbilla*, G.R. Nos. 192901 & 192903, February 1, 2023.

petition directly with the Court but then later on, filed a *notice of withdrawal* of the petition *before* filing a similar complaint with the RTC of Olongapo City.¹⁰⁶

On the other hand, in *Pilipino Telephone Corporation v. Radiomarine Network, Inc.*,¹⁰⁷ therein petitioner was found *guilty* of forum shopping when it pursued an appeal without withdrawing its pending petition for *certiorari* against a summary judgment issued in the same case from which it appealed. In holding that petitioner was guilty of forum shopping, the Court explained that it was *imperative* on the part of petitioner to withdraw its petition for *certiorari* when it likewise availed of the remedy of appeal against the same matters that were already the subject of the petition for *certiorari*. Similarly, in the *Heirs of Sotto*,¹⁰⁸ therein petitioners and their counsel were found guilty of forum shopping because they instituted several cases for the same cause of action, without causing the *dismissal* of the action that replicated those already ruled against petitioners.

Pilipino Telephone Corporation and *Heirs of Sotto* are analogous to the present case. Certainly, when Chiquillo and Nodalo respectively instituted the Consignation Cases on September 5 and 19, 2014, no other action was pending between the same parties based on the same Deeds of Conditional Sale; hence, they cannot be guilty of forum shopping at that time. Neither may it be said that Spouses Kaw committed forum shopping upon the filing of their Complaint for Rescission on *September 29, 2015*, because the MCTC had *no jurisdiction* over matters that are incapable of pecuniary estimation, such as actions for rescission of contracts.¹⁰⁹ Thus, Spouses Kaw's only recourse was to file a separate complaint for rescission with the RTC.

It may be that respondents' counterclaims in the Rescission Case are compulsory because they arise out of, or are necessarily connected with, the Deeds of Conditional Sale.¹¹⁰ Certainly, Spouses Kaw's action for rescission and respondents' counterclaims are based on the same Deeds of Conditional Sale and would raise the same issue on which of the

¹⁰⁶ See *Executive Secretary v. Gordon*, 359 Phil. 266, 272-273 (1998).

¹⁰⁷ 641 Phil. 15 (2010).

¹⁰⁸ *Supra* note 91, at 657.

¹⁰⁹ See *Villena v. Payoyo*, 550 Phil. 686, 692 (2007); *Sps. De Leon v. Court of Appeals*, 350 Phil. 535 (1998); *Russel v. Vestil*, 364 Phil. 392 (1999).

¹¹⁰ See *Metals Engineering Resources Corp. v. Court of Appeals*, 280 Phil. 298 (1991).

two parties breached their respective obligations under their agreements.¹¹¹

Still, when Chiquillo and Nodalo filed the counterclaims with the RTC, *knowing* that the same action is already pending with the MCTC, they should have *immediately withdrawn* the Consignation Cases *before* filing their responsive pleadings with the RTC in the Rescission Case, but they failed to do the same.¹¹² On the contrary, it appears that they simultaneously pursued their remedies in both courts, as the records show that when trial was being conducted in the Rescission Case, the Consignation Cases had already reached the *appeal* stage and was then pending with the RTC.¹¹³ Clearly, by their action, Chiquillo and Nodalo treated litigation as simply a game of chance where parties may hedge their position by betting on both sides of the case, or by filing several cases involving the same issue, subject matter, and parties, in the hope of securing victory in at least one of them.¹¹⁴ This is the very essence of forum shopping, which Chiquillo and Nodalo are guilty of.

Effects of forum shopping

The Rule 7, Section 5 of the Revised Rules of Civil Procedure provides the effects of forum shopping, to wit:

SECTION 5. *Certification against forum shopping.* — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: a) that he [or she] has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his [or her] knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he [or she] should thereafter learn that the same or similar action or claim has been filed or is pending, he [or she] shall report that fact within five (5) calendar days therefrom to the court wherein his [or her] aforesaid complaint or initiatory pleading has been filed.

¹¹¹ See *Sps. Meliton v. Court of Appeals*, 290-A Phil. 257 (1992); *Supreme Investment Corp. v. Engineering Equip., Inc.*, 150-A Phil. 15 (1972).

¹¹² See *Quiambao v. Sumbilla*, G.R. Nos. 192901 & 192903, February 1, 2023; *Pilipino Telephone Corporation v. Radiomarine Network, Inc.*, 641 Phil. 15 (2010); *Executive Secretary v. Gordon*, 359 Phil. 266 (1998).

¹¹³ *Rollo*, p. 47, CA Decision.

¹¹⁴ See *Orpiano v. Sps. Tomas*, 701 Phil. 388 (2013).

The authorization of the affiant to act on behalf of a party, whether in the form of a secretary's certificate or a special power of attorney, should be attached to the pleading.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

From the foregoing, when a party commits willful and deliberate forum shopping, the "*twin dismissal*" rule applies, i.e., the penalty to be imposed is summary dismissal *with prejudice* of *all* pending cases involving the same subject matter.¹¹⁵ The same rule provides that willful and deliberate forum shopping shall also constitute direct contempt of court.¹¹⁶ On the other hand, if the forum shopping is *not* considered willful and deliberate, the appropriate case shall be dismissed *without prejudice* on the ground of either *litis pendentia* or *res judicata*.¹¹⁷

A. Respondents Chiquillo and Nodalo committed willful and deliberate forum shopping

Pertinently, in *Heirs of Mampo v. Morada*,¹¹⁸ the Court explained that a party commits forum shopping on the supposition that one or the other court would make a favorable disposition, in an attempt to obtain a *favorable opinion* from any or all courts in which the actions over the same subject matter involving the same parties for the same reliefs are pending. In such a case, it may be concluded that *forum shopping is always willful and deliberate on the part of the litigant*.

¹¹⁵ *Heirs of Mampo v. Morada*, 88 Phil. 583, 603 (2020); *Fontana Development Corp. v. Vukasinovic*, 795 Phil. 913, 923 (2016); *Ching v. Cheng*, 745 Phil. 93, 115 (2014).

¹¹⁶ *Heirs of Mampo v. Morada*, *supra* at 593; *Heirs of Naya v. Naya*, 801 Phil. 160, 170 (2016); *Chua v. Metropolitan Bank and Trust Co.*, 613 Phil. 143, 153 (2009).

¹¹⁷ *Id.*

¹¹⁸ *Supra.*

Yet, there have also been cases where a party was *not* found to have willfully and deliberately committed forum shopping. In those cases, the parties were able to present circumstances showing that they did *not* willfully and deliberately violate the rule against forum shopping, e.g., good faith belief that the first case could no longer be revived;¹¹⁹ mistaken belief by the party that separate actions may be instituted on the basis of different patents, and where the party was candid enough to inform the trial court of the pendency of the earlier action;¹²⁰ filing of a second action based on an erroneous resolution issued by the CA, stating that the first action was dismissed without prejudice, and where the party likewise disclosed the similar cases with candor and honesty;¹²¹ and where the law itself provided that the party's remedy was to file separate cases before different fora, and the party disclosed in the verification the pendency of the earlier case.¹²²

Under the circumstances of the present case, the Court is convinced that the principle laid out in *Heirs of Mampo* is the one that must be applied to respondents Chiquillo and Nodalo. Certainly, when they filed their counterclaims with the RTC in the Rescission Case *despite* the pendency of the Consignation Cases with the MCTC, they shopped for a "friendlier" forum from which they may obtain reliefs against Spouses Kaw. The identity of parties, rights asserted, and reliefs sought in both the Consignation Cases and the Rescission Case are too *glaring* to have been innocently ignored by Chiquillo and Nodalo.¹²³

The fact that Chiquillo and Nodalo disclosed to the RTC the pendency of the Consignation Cases cannot save them. In *Heirs of Sotto*,¹²⁴ counsel for therein petitioners argued that deliberate forum shopping was negated by the fact that he disclosed the pending cases involving the same parties, subject matters, and reliefs sought. In disagreeing with the lawyer, the Court explained that disclosure alone of the pendency of a similar case does *not negate* willful and deliberate forum shopping, for if the erring parties were sincere in their aversion to forum shopping, then they would have caused the *dismissal* of the other similar action, but they failed to do so. Hence, therein petitioners and their counsel were found guilty of willful and deliberate forum shopping.¹²⁵

¹¹⁹ See *Daswani v. Banco De Oro Universal Bank*, 765 Phil. 88, 98 (2015).

¹²⁰ See *Phil Pharmawealth, Inc. v. Pfizer, Inc.*, 649 Phil. 423, 445–446 (2010).

¹²¹ See *Heirs of Valdez v. Court of Appeals*, 584 Phil. 85, 91 (2008).

¹²² See *Consolidated Broadcasting System, Inc. v. Oberio*, 551 Phil. 802, 811–812 (2007).

¹²³ *Id.*

¹²⁴ *Supra* note 91.

¹²⁵ *Id.* at 662–663.

The Court's ruling in *Heirs of Sotto* equally applies to Chiquillo and Nodalo. Although they disclosed to the RTC the pending Consignation Cases with the MCTC, they nonetheless filed their counterclaims with the RTC for same subject matter, *without* causing the dismissal of the Consignation Cases. Had they truly acted without any intent to commit deliberate forum shopping, then they would have immediately withdrawn their consignation complaints with the MCTC, yet the records disclose that they *simultaneously* pursued their cause arising from the same Deeds of Conditional Sale before the MCTC and the RTC. Their conduct precludes any finding that the forum shopping was *not* willful and deliberate.

Worse, Chiquillo and Nodalo did not act with utmost *candor* when confronted with the issue of forum shopping. Indeed, in their Comment, instead of presenting circumstances showing *good faith*, they even argued that "there is no forum shopping to speak of" because the parties in the Consignation Cases and Rescission Case, as well as the nature thereof, are allegedly different, even though a simple perusal of the records readily belied the assertion.¹²⁶ While the said respondents insisted that they had "no choice" but to institute their compulsory counterclaims with the RTC, they still should have withdrawn the earlier Consignation Cases,¹²⁷ as previously discussed.

B. Twin Dismissal Rule does not apply

Strictly speaking, a finding that a party committed willful and deliberate forum shopping must suffer the penalty of dismissal of *all* pending actions involving the same parties, rights asserted, and reliefs sought, in accordance with the twin dismissal rule under Rule 7, Section 5 of Rules of Court.

Still, even the Court has recognized that the twin dismissal rule is a *severe* penalty for forum shopping.¹²⁸ Hence, the Court has resolved *not* to apply the twin dismissal rule despite a finding that the party committed forum shopping when it can be shown that: (1) the original case has been dismissed upon request of the plaintiff for valid procedural reasons; (2) the only pending matter is a motion for reconsideration; and (3) *there are*

¹²⁶ *Rollo*, pp. 132-138.

¹²⁷ See *Heirs of Sotto v. Palicte*, *supra* note 91; *Pilipino Telephone Corporation v. Radiomarine Network, Inc.*, *supra* note 112.

¹²⁸ See *Dy v. Yu*, 763 Phil. 491 (2015); *Ching v. Cheng*, 745 Phil. 93 (2014).

*valid procedural reasons that serve the goal of substantial justice for the case to proceed.*¹²⁹ The exceptions are based on the well-established principle that the rule against forum shopping “should never be used to defeat the substantive rights” of a party and “should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective or the goal of all rules of procedure – which is *to achieve substantial justice as expeditiously as possible.*”¹³⁰

To the mind of the Court, the *third exception* applies to the present case. Indeed, while Chiquillo and Nodalo may have willfully and deliberately committed forum shopping, the records likewise show that they have a valid cause against Spouses Kaw, who unjustifiably refused to accept their payment of the balance price under the Deeds of Conditional Sale. As discussed above, Spouses Kaw utterly failed to prove that respondents violated paragraphs A and D of the Deeds of Conditional Sale. The alleged provisions of the Deeds that respondents supposedly violated are not even expressly stated in the contracts themselves.

Clearly, Spouses Kaw had no valid reason to refuse payment of the balance price from respondents. It was therefore correct for the RTC to order Spouses Kaw to accept payment of the balance price from respondents and to comply with their obligations under the Deeds of Conditional Sale. Indubitably, at this point of the proceedings where trial in the Rescission Case has already been completed, the application of the twin dismissal rule against respondents would only *cause injustice*, contrary to the lofty goals of the rule against forum shopping to expeditiously achieve substantial justice. Hence, the Court shall not apply the twin dismissal rule.

C. The Consignation Cases
must be dismissed pursuant
to the more appropriate
action test

The non-application of the twin dismissal rule does not dispense with the fact that there are now two pending actions in two separate proceedings where the issue of respondents’ payment of the balance price under the Deeds of Conditional Sale is being litigated, i.e., the present Petition that originates from the Rescission Case, *and* the Consignation

¹²⁹ *Dy v. Yu, id.* at 496.

¹³⁰ *Id.* at 521, *citing Barcelona v. Court of Appeals*, 458 Phil. 626, 641 (2003).

Cases. Thus, there is still an issue on *litis pendentia* that must be resolved by the Court.

Undeniably, *litis pendentia* is a ground for the dismissal of an action.¹³¹ When there is *litis pendentia*, such that the same subject matter is pending in two separate proceedings before different courts, the *later* or second case is ordinarily the one that must be dismissed.¹³² However, the rule is *not* absolute. It is settled that several factors must be considered in determining which of the cases must be dismissed, to wit: (1) the *date of filing*, with preference generally given to the first action filed to be retained, or the “*priority in time rule*”; (2) whether the action sought to be dismissed was filed merely to *preempt* the later action or to *anticipate* its filing and lay the basis for its dismissal, or the “*anticipatory test*”; and (3) whether the action is the *appropriate* vehicle for litigating the issues between the parties, or the “*more appropriate action test*.”¹³³ These factors were explained by the Court, as follows:

Early on, we applied the principle of *Qui prior est tempore, potior est jure* (literally, *he who is before in time is better in right*) in dismissing a case on the ground of *litis pendentia*[.]

....

The “more appropriate action test” *considers the real issue raised by the pleadings and the ultimate objective of the parties; the more appropriate action is the one where the real issues raised can be fully and completely settled.* In *Teodoro*, the lessee filed an action for declaratory relief to fix the period of the lease, but the lessor moved for its dismissal because he had subsequently filed an action for ejectment against the lessee. We noted that the unlawful detainer suit was the more appropriate action to resolve the real issue between the parties — whether or not the lessee should be allowed to continue occupying the land under the terms of the lease contract; this was the subject matter of the second suit for unlawful detainer, and was also the main or principal purpose of the first suit for declaratory relief.

In the “anticipatory test”, the *bona fides* or good faith of the parties is the critical element. If the first suit is filed merely to preempt the later action or to anticipate its filing and lay the basis for its dismissal, then the first suit should be dismissed. In *Teodoro*, we noted that the first action, declaratory relief, was filed by the lessee to

¹³¹ See *City of Makati v. Municipality of Taguig*, 578 Phil. 773 (2008).

¹³² See *Allied Banking Corp. v. Court of Appeals*, 328 Phil. 710, 718 (1996).

¹³³ See *Medado v. Heirs of Consing*, 681 Phil. 536, 552 (2012); *Dotmatrix Trading v. Legaspi*, 619 Phil. 421, 432 (2009); *Sps. Calo v. Sps. Tan*, 512 Phil. 786, 800–801 (2005); *Cruz v. Court of Appeals*, 369 Phil. 161 (1999); *Allied Banking Corp. v. Court of Appeals*, 328 Phil. 710, 170–171 (1996).

anticipate the filing of the second action, unlawful detainer, considering the lessor's letter informing the lessee that the lease contract had expired.¹³⁴ (Emphasis supplied; citations omitted)

In the case at bench, although the Consignation Cases were filed earlier, the Rescission Case before the RTC is the *more appropriate action* concerning the parties' respective obligations under the Deeds of Conditional Sale, and where the controversies between the parties may be *fully and completely* settled.

First, the RTC has jurisdiction over *all* the indispensable parties in the present case, i.e., Spouses Kaw, as vendors, and *all* respondents, as vendees, in the Deeds of Conditional Sale. On the other hand, in the Consignation Cases, the MCTC acquired jurisdiction only over Spouses Kaw, on one hand, and respondents Chiquillo and Nodalo, on the other.

Second, the RTC affords a *complete and full* resolution of the extant issues between the parties, i.e., respondents' alleged violation of the terms of the agreements as grounds for the rescission of the Deeds of Conditional Sale, respondents' tender and full payment of the purchase price, and Spouses Kaw's unjust refusal to accept the payment. Meanwhile, the only issue before the MCTC is Chiquillo and Nodalo's tender of payment of the balance price, the existence of a due and demandable obligation, and the consignation of the balance price.¹³⁵

Third, the RTC has *general* jurisdiction over actions for specific performance, rescission, and cancellation of the Deeds of Conditional Sale; on the other hand, the MCTC cannot act upon the issue of rescission or cancellation of the Deeds of Conditional Sale, as the matter is incapable of pecuniary estimation and therefore, outside the MCTC's jurisdiction.¹³⁶

Further, while the Court has ruled that an action for consignation is capable of pecuniary estimation,¹³⁷ it has also recognized that a complaint may ostensibly be filed as one for consignation, yet the *ultimate objective* of the plaintiff may be intertwined with a matter that is *incapable* of pecuniary estimation, e.g., the continuing validity or effectivity of a contract and the plaintiff's rights thereunder.¹³⁸

¹³⁴ See *Dotmatrix Trading v. Legaspi*, *id.* at 428-430 (2009).

¹³⁵ See *Ascue v. Court of Appeals*, 274 Phil. 214, 218 (1991).

¹³⁶ See *Spouses De Leon v. Court of Appeals*, 350 Phil. 535, 539 (1998); *Russell v. Vestil*, 364 Phil. 392, 400 (1999).

¹³⁷ See *Ascue v. Court of Appeals*, *supra*.

¹³⁸ *Ramos v. Peralta*, 280 Phil. 445 (1991).

In *Ramos v. Peralta*,¹³⁹ therein petitioner earlier filed a complaint against respondent for consignation of rentals under a lease contract. He was later on impleaded as a defendant in an action instituted by respondent for quieting of title over the same parcel of land covered by the same lease contract. The Court ruled that the consignation case must be dismissed even though it was filed earlier, and the matter therein should instead be litigated in the quieting of title case. Although the consignation case was ostensibly limited to an action to compel the lessor to accept the rentals, the Court noted that its ultimate objective was for therein respondent to recognize the continuing validity and effectivity of the lease contract, the same matter that was also raised as an issue in the quieting of title case. All the elements of *litis pendentia* were therefore present as between the two cases; hence, to obviate the possibility of conflicting rulings, the Court ordered the dismissal of the consignation case.

The present case is similar to *Ramos*, in that the Consignation Cases were filed by Chiquillo and Nodalo essentially to compel Spouses Kaw to accept payment of the balance price under paragraph B of the Deeds of Conditional Sale. Nonetheless, the Consignation Cases were *inseparably intertwined* with the issue on rescission of the contracts, for the MCTC may only compel Spouses Kaw to accept payment of the balance price if, in the first place, the contracts have *not* been unilaterally rescinded under paragraph A of the Deeds of Conditional Sale due to respondents' alleged violations of the terms of the agreements. In fact, Spouses Kaw precisely invoked rescission of the Deeds of Conditional Sale when they filed their answer in the Consignation Cases, but it was understandably dismissed by the MCTC for lack of jurisdiction.

Plainly, although the complaints filed with the MCTC were ostensibly for consignation, the Court is convinced that under the circumstances of the case, the issues before the MCTC required it to act upon matters that are *intimately related* to the rescission of the Deeds of Conditional Sale, a matter that is incapable of pecuniary estimation and hence, *outside* its jurisdiction. Given the situation, the MCTC's only recourse would have been to *suspend* its proceedings and await the outcome of the Rescission Case with the RTC, where the issue on rescission of the Deeds is being litigated.¹⁴⁰

¹³⁹ *Id.*

¹⁴⁰ See *Alsons Development and Investment Corp. v. Heirs of Confesor*, 840 Phil. 342, 352 (2018); *Sps. Tabino v. Tabino*, 740 Phil. 158, 174 (2014); *Quiambao v. Osorio*, 242 Phil. 441 (1988).



Consequently, the Consignation Cases warrant dismissal not only to avoid the possibility of conflicting rulings, but also because the MCTC had no jurisdiction to act upon the issue of rescission of the Deeds of Conditional Sale, a matter that is inseparably linked or intimately related to the issue on the validity of the consignation. Undoubtedly, as between the MCTC and the RTC, the latter is in a better position to fully settle the controversy between the parties. Hence, instead of dismissing the counterclaims of respondents that they filed with the RTC in Civil Case No. 2833, the more appropriate action is to *dismiss* the Consignation Cases before the MCTC, recognize the RTC's jurisdiction over respondents' counterclaims, and affirm the RTC and CA's action on the matter. While the Consignation Cases have not been elevated to the Court, the Court may nonetheless order their dismissal on the ground of forum shopping.¹⁴¹

As a final note, the Court reiterates that under the Rules of Court, Rule 7, Section 5, willful and deliberate forum shopping constitutes *direct contempt* of court, for which the litigants *and* their counsel may be held liable.¹⁴² In relation thereto, the Rules of Court, Rule 71, Section 1¹⁴³ provides that direct contempt committed against a Regional Trial Court or a court of equivalent or higher rank is punishable by imprisonment not exceeding 10 days and/or a fine not exceeding PHP 2,000.00.

In the case at hand, respondents Chiquillo and Nodalo were found guilty of willful and deliberate forum shopping. Importantly, their counsel in both the Rescission Case¹⁴⁴ and in the present proceedings¹⁴⁵ is Atty. Rudyard Anthony M. Trinidad, who is also the *same* lawyer who signed the Complaints¹⁴⁶ for consignation filed by the same respondents with the MCTC. It thus appears that for both the Consignation Cases and the Rescission Case, Atty. Rudyard Anthony M. Trinidad assisted respondents Chiquillo and Nodalo as their counsel.

¹⁴¹ See *Buan v. Lopez, Jr.*, 229 Phil. 65 (1986).

¹⁴² See *Heirs of Mampo v. Morada*, *supra* note 115, at 593.

¹⁴³ SECTION 1. *Direct contempt punished summarily.* — A person guilty of misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so, may be summarily adjudged in contempt by such court and punished by a fine not exceeding two thousand pesos or imprisonment not exceeding ten (10) days, or both, if it be a Regional Trial Court or a court of equivalent or higher rank, or by a fine not exceeding two hundred pesos or imprisonment not exceeding one (1) day, or both, if it be a lower court.

¹⁴⁴ *Rollo*, p. 100, RTC Decision.

¹⁴⁵ *Id.* at 134, Comment.

¹⁴⁶ *Id.* at 104, 109.

M 7

Notably, in several cases¹⁴⁷ where a party and its counsel were found guilty of willful and deliberate forum shopping, the Court proceeded to impose the appropriate penalties for direct contempt under Rule 7, Section 5 in relation to Rule 71, Section 1 of the Rules of Court. In those cases, the issue of forum shopping was squarely raised in the pleadings submitted to the Court, such that the guilty party was provided the opportunity to address the allegations of forum shopping.

The same situation obtains in the case at bar. Certainly, Spouses Kaw specifically put in issue the matter of forum shopping, to which respondents replied by way of Comment. However, in line with prevailing jurisprudence,¹⁴⁸ and in the interest of due process, respondents Nodalo, Chiquillo and Atty. Rudyard Anthony M. Trinidad are hereby directed to show cause within 10 days from receipt of this Decision why they should not be cited for contempt.

In addition, following the language of Rule 7, Section 5 of the Rules of Court that an administrative action against respondents' lawyer may be instituted, referral to the Integrated Bar of the Philippines for the appropriate action in committing deliberate act of forum shopping is proper.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The Decision dated July 14, 2021, and Resolution dated August 8, 2022, of the Court of Appeals in CA-G.R. CV No. 113795 are **AFFIRMED with MODIFICATION** in that:

- (1) Civil Case No. 1712-P and Civil Case No. 1714-P filed before the Fifth Municipal Circuit Trial Court, Polangui-Libon-Oas, Albay, and all appeals and/or interlocutory proceedings emanating therefrom, are **ORDERED DISMISSED** on the ground of forum shopping; and
- (2) Respondents Heirs of Marilyn Nodalo, Zenaida Chiquillo, and Atty. Rudyard Anthony M. Trinidad who are **GUILTY** of forum shopping are **DIRECTED to SHOW CAUSE** within 10 days from receipt of this Decision why they should not be cited for contempt; and

¹⁴⁷ See *Heirs of Arania v. Intestate Estate of Sangalang*, 833 Phil. 643, 659–660 (2017); *City of Taguig v. City of Makati*, 787 Phil. 367, 401–402 (2016).

¹⁴⁸ *Heirs of Mampo v. Morada*, *supra* note 115.

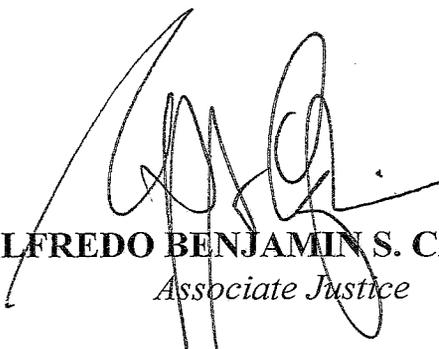
- (3) The case is **REFERRED** to the Integrated Bar of the Philippines for appropriate administrative action against Atty. Rudyard Anthony M. Trinidad for his deliberate act of forum shopping.

The Decision dated July 14, 2021, and Resolution dated August 8, 2022 of the Court of Appeals in CA-G.R. CV No. 113795 **STAND** in all other respects.

SO ORDERED.

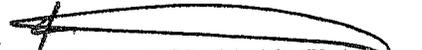

HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

*See Concurring
Opinion*

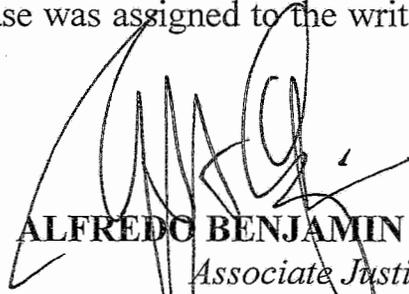

SAMUEL H. GAERLAN
Associate Justice


JAFAR B. DIMAAMPAO
Associate Justice

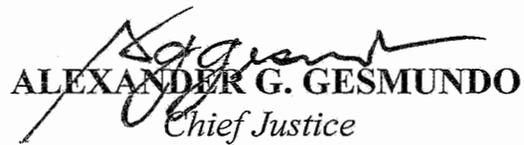
(On official business)
MARIA FILOMENA D. SINGH
Associate Justice

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.

**ALFREDO BENJAMIN S. CAGUIOA***Associate Justice**Chairperson, Third Division***CERTIFICATION**

Pursuant to Article VIII, Section 13 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.

**ALEXANDER G. GESMUNDO***Chief Justice*

THIRD DIVISION

G.R. No. 263047 – SPOUSES NOEL JOHN M. KAW* and JOSEPHINE CASERES-KAW,** Petitioners, v. HEIRS OF MARILYN NODALO, MANUEL S. OLASO, MANUEL S. OLASO III, LEA LIM-TIDMA, NERISSA S. OREJO, ZENAIDA CHIQUILLO, IVY OROLFO, RONNIE GOMEZ, and GINA NUARIN, Respondents.

Promulgated:

NOV 27 2024

~~MISDEC 11~~

X-----X

CONCURRING OPINION

CAGUIOA, J.:

The *ponencia* in the above-captioned case denies the petition and affirms with modification the assailed Decision dated July 14, 2021 and Resolution dated August 8, 2022 of the Court of Appeals in CA-G.R. CV No. 113795.¹ The *ponencia* rules that petitioners-vendors Spouses Noel John M. Kaw and Josephine Caseres-Kaw (Spouses Kaw) cannot exercise their right of rescission under the subject Deeds of Conditional Sale upon a finding that respondents-vendees Heirs of Marilyn Nodalo, Manuel S. Olaso, Manuel S. Olaso III, Lea Lim-Tidma, Nerissa S. Orejo, Zenaida Chiquillo, Ivy Orolfo, Ronnie Gomez, and Gina Nuarin (collectively, respondents) did not commit any fundamental or substantial breach of their obligations thereunder.²

In arriving at the foregoing conclusion, the *ponencia* characterizes the two Deeds of Conditional Sale as contracts to sell because their uniform provisions provide that: (i) Spouses Kaw have the right of unilateral rescission upon non-payment of the full purchase price within the stipulated period; and (ii) Spouses Kaw's obligation to execute the corresponding deeds of absolute sale arise only upon the full and satisfactory payment of the consideration.³

I concur in the *ponencia*, and find it opportune to briefly discuss how the concept of a contract to sell, as presently understood, was introduced and has evolved in Philippine jurisprudence.

Civil Code provisions on Sales

If one were to strictly follow the provisions of the Civil Code on Sales and Obligations and Contracts, what is jurisprudentially defined as a “contract

* “Noel Jhon M. Kaw” in some parts of the *rollo*.

** “Josephine Caceres-Kaw” in some parts of the *rollo*.

¹ *Ponencia*, pp. 38–39.

² *Id.* at 15–16.

³ *Id.* at 12–13.

to sell” is actually a perfected contract of sale as defined under Article 1458 of the Civil Code, which defines a contract of sale as an agreement where “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.” In turn, Article 1475 of the Civil Code provides that, “[a] 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.*”⁴

In accordance with the above provisions of the Civil Code, the Court has repeatedly emphasized that “the nature of a sale is a consensual contract because it is *perfected by mere consent*”⁵ and that the essential elements of a contract of sale are:

- (i) Consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price;
- (ii) Determinate subject matter; and
- (iii) Price certain in money or its equivalent.⁶

Based on the foregoing, it is evident that all the elements of a perfected contract of sale are present in each of the Deeds of Conditional Sale in the subject case—(i) Spouses Kaw and respondents consented to the transfer of (ii) a 1,000-square-meter portion of the subject property for (iii) the purchase price of PHP 600,000.00.⁷

Further, owing to the consensual nature of a contract of sale, a stipulation that the buyer must first comply with his obligation to pay before the seller shall comply with his obligation to cause the transfer of the ownership of the thing, would not divest an agreement of its character as a contract of sale. After all, Article 1478 of the Civil Code expressly allows parties in a contract of sale to stipulate that ownership shall not pass until the purchaser has fully paid the price, *viz.*:

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

Professor Araceli Baviera, a noted civil law professor, distinguished the definition of a contract of sale under Article 1445⁸ of the Spanish Civil Code and Article 1458⁹ of the New Civil Code, advancing the view that the latter

⁴ Emphasis supplied.

⁵ *The Heirs of Zenaida B. Gonzales v. Spouses Dominador and Estefania Basas*, 923 Phil. 95, 108 (2022) [Per J. Hernando, First Division]. (Emphasis supplied)

⁶ *Pasco v. Cuenca*, 889 Phil. 68, 78 (2020) [Per J. Inting, Third Division].

⁷ *Ponencia*, pp. 12–13.

⁸ 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. (Emphasis supplied)

⁹ ARTICLE 1458. By 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. (Emphasis supplied)

now contemplates a contract of sale where reservation of ownership may be made by the seller despite delivery of the property to the buyer:

The Spanish Civil Code defined a contract of purchase and sale as one where a contracting party obligates himself to deliver a determinate thing and the other to pay a certain price therefor in money or in something representing it. *The New Civil Code defines a contract of sale as a contract where one of the parties obligates himself to transfer the ownership of and to deliver a determinate thing*, and the other party to pay therefor a price certain in money or its equivalent. The Uniform Sales Act defines a *sale of goods* as an agreement whereby the seller *transfers* the property in goods to the buyer for a consideration called the price, while a *contract to sell goods* is a contract whereby the seller *agrees to transfer* the property in goods to the buyer for a consideration called the price. Under the Uniform Commercial Code, a “contract for sale” includes both a present sale of goods and a contract to sell goods at a future time, and a “sale” consists in the passing of title from seller to the buyer for a price.

The Spanish Civil Code followed the Roman law definition imposing a duty on the seller to deliver, but the seller was not bound to make the buyer owner immediately and directly. According to the Code Commission, the definition in the Spanish Civil Code is unsatisfactory because even if the seller is not the owner of the thing sold, he may validly sell, subject to the warranty against eviction. *The present definition is similar to the definition in the German Civil Code imposing two obligations on the seller. The implication of these separate obligations is that the seller may reserve ownership over the thing sold, notwithstanding delivery to the buyer.*¹⁰ (Citations omitted; emphasis supplied)

Despite the foregoing, the *ponencia*'s characterization of the agreements as contracts to sell is in accord with prevailing jurisprudence, i.e., that a contract to sell is 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.”¹¹

As such understanding of a contract to sell is not inscribed in the Civil Code, it is imperative to ask—how was this concept ushered into our body of law?

Introduction of a “contract to sell” in Philippine jurisprudence

Upon review of its jurisprudential roots, it appears that it was in the 1960 case of *Manuel v. Rodriguez, Sr.*¹² where the Court, under the pen of the esteemed civilist Associate Justice J. B. L. Reyes, first introduced the concept

¹⁰ *Heirs of Corazon Villeza v. Aliangan*, 891 Phil. 443, 459–460 (2020) [Per J. Caguioa, First Division], citing ARACELI T. BAVIERA, SALES 3–4 (2005).

¹¹ *Coronel v. Court of Appeals*, 331 Phil. 294, 310 (1996) [Per J. Melo, Third Division].

¹² 109 Phil. 1 (1960) [Per J. Reyes, J. B. L., Second Division].



of a contract to sell as one where title remains with the vendor until full payment of the price, *viz.*:

Plaintiff-appellant, however, argues (Errors I–IV; VI; VIII) that the Payatas Subdivision had no right to cancel the contract, as there was no demand by suit or notarial act, as provided by Article 1504 of the Old Code (Art. 1592, N. C. C.). This is without merit, because Article 1504 requiring demand by suit or notarial act in case the vendor of realty wants to rescind, does not apply to *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*. . .¹³ (Citations omitted; emphasis supplied)

Manuel cites several decisions in support of its definition of a contract to sell, the earliest of which is the 1940 case of *The Caridad Estates, Inc. v. Santero*.¹⁴ In said case, Pablo Santero (Santero) was the lessee of cadastral lots owned by Caridad Estates, Inc. (CEI). Before the lease ended, CEI sold the lots to Santero for PHP 30,000.00—the PHP 10,000.00 portion of which was payable in three installments on or before March 1936. The contract of sale included a stipulation that Santero’s failure to pay any installment immediately gives CEI the option to cancel the contract and demand the recovery of possession of the property. In March 1936, Santero was still PHP 2,446.20 short of the agreed installments. As such, CEI refused Santero’s belated attempt to deliver the installment arrears in September 1936, arguing that the contract of sale had already been cancelled through prior formal notice to Santero. Santero, however, refused to surrender possession of the lands, prompting CEI to file a complaint for illegal detainer and recovery of rentals. One of the issues which the Court *En Banc* resolved was whether Article 1504¹⁵ of the Spanish Civil Code—which allows a vendee in default of payment to still proceed to pay, as long as there is no judicial or notarial demand for resolution made by the vendor—applies to the subject agreement. The Court ruled that Article 1504 is inapplicable in the case on account of the express stipulation of the parties allowing for cancellation of contract and recovery of possession upon demand for non-compliance with the terms of payment:

[P]aragraph 4 [of the contract] gives the vendor, if the vendee fails to make the specified payments, the option of (1) considering the total remaining purchase price due and payable and recoverable by an action at law or (2) recovering the possession of the property in which case any and all sums paid by the vendee shall be regarded as rental for the use and occupancy of the property. On the other hand, paragraph 3 obligates the vendee to deliver the possession of the property and the improvements thereon in good condition and repair in the event that the vendor should demand the return of the same on account of noncompliance with the terms and conditions of

¹³ *Id.* at 9.

¹⁴ 71 Phil. 114 (1940) [Per J. Laurel, *En Banc*].

¹⁵ ARTICLE 1504. In the sale of real property, even though it may have been stipulated that in default of the payment of the price within the time agreed upon, the resolution of the contract shall take place *ipso jure*, the purchaser may pay even after the expiration of the period, at any time before demand has been made upon him either by suit or by notarial act. After such demand has been made the judge cannot grant him further time.



payment. It is quite plain, therefore, that *the course followed by the vendor in cancelling the contract and demanding the repossession of the property was well supported by, and employed in consonance with, the covenants embodied in their agreement. As the stipulations in question do not violate the prohibitive provisions of the land or defeat morals and public order, they constitute the law between the parties, binding and effectual upon them.* (Arts. 1255 and 1278, Civil Code; Jimeno vs. Gacilago, 12 Phil., 16.)

Appellant, however, gives full reliance on article 1504 of the Civil Code, and vigorously argues that whatever be the provision of the contract, resolution may not be declared in the absence of a demand upon the vendee “either judicially or by a notarial act.” A cursory reading of the provision would be the best refutation of the appellant’s argument, as it leaves no doubt as to its inapplicability in the present instance. *The contract (Exhibit A) is a sale in installment, in which the parties have laid down the procedure to be followed in the event the vendee failed to fulfill his obligation. There is, consequently, no occasion for the application of the requirements of article 1504.*¹⁶ (Emphases supplied)

At this juncture, it must be emphasized that in *Caridad Estates*, the Court did not rule on the nature of the agreement between the parties and still consistently referred to the same as a contract of sale—there is no mention at all of a “contract to sell.” The Court’s recognition of the vendor’s right to unilaterally cancel the subject contract was rooted on the parties’ freedom to stipulate, which stipulations in turn negated the application of Article 1504 of the Spanish Civil Code. Additionally, the vendor’s reservation of ownership of the properties was also not discussed but may be surmised based on the nature of the action filed by CEI, i.e., ejectment as opposed to an *accion reivindicatoria*.¹⁷

It is only in the 1950 case of *Albea v. Inquimboy and Court of Appeals*¹⁸ that the subject contract in *Caridad Estates* was denominated as a “contract to sell.” *Albea* likewise involved a contract of sale on installment, a stipulation by the parties that failure to pay the first installment on the agreed date would *ipso facto* renders the deed of sale cancelled and rescinded, and the subsequent default in payment by the vendee.¹⁹ However, in ruling that Article 1504 of the Spanish Civil Code applies to the contract in *Albea*, the Court took the opportunity to distinguish the same from the contract in *Caridad Estates*. What is peculiar in *Albea* is that the subject deed contains a stipulation where the vendee undertook to “execute and give the corresponding deed of cancellation and rescission”²⁰ should the deed be deemed rescinded on account of the vendee’s default. The Court interpreted this provision as a badge that the contract in *Albea* is one of absolute sale, i.e., that ownership of the subject property passed to the vendee by virtue of the deed, hence, the need to execute a separate document reconveying the property to the vendor. In contrast, the Court characterized the contract in *Caridad Estates* as one

¹⁶ *The Caridad Estates, Inc. v. Santero*, *supra* note 14, at 120–121.

¹⁷ *Id.* at 122.

¹⁸ 86 Phil. 477 (1950) [Per J. Ozaeta, Second Division].

¹⁹ *Id.* at 482.

²⁰ *Id.*

where “title had not passed to [the vendee],”²¹ and denominated such agreement as a “mere contract to sell,” *viz.*:

The contract Exhibit A involved in the present case, was one of absolute sale whereby the vendor Inquimboy transferred and conveyed his title to the land in question to the vendee Albea to enable the latter to mortgage it together with his other properties to the Agricultural and Industrial Bank and thereby secure the necessary amount with which to pay the purchase price to the vendor. In a separate document (Exhibit B) he agreed to pay that price as follows: [PHP] 2,500[.00] on or about November 15, 1941, and [PHP] 500[.00] in May, 1942, with the proviso that should he fail to pay the said sum of [PHP] 2,500[.00] on or before November 15, 1941, the deed of absolute sale Exhibit A “shall ipso facto be deemed cancelled and rescinded and that I shall execute and give the corresponding deed of cancellation and rescission.” In other words, the vendee agreed to retransfer or reconvey the property to the vendor should the former fail to pay the first sum of P2,500 on the date stipulated.

That contract is different from the one involved in the Caridad Estates case, in that the latter was not an absolute deed of sale but a mere contract to sell whereby the vendee agreed to pay the purchase price in various installments with the stipulation that, upon failure to pay any installment within 60 days after due date, the vendor may, at his option, recover possession of the property and consider any and all amounts already paid as rental for the use and occupancy of the property. In that case *there was no need for the vendee to execute any deed of reconveyance to the vendor because by the said contract to sell the title had not passed to him.*

The contract involved in the present case is similar to that involved in Villaruel vs. Tan King, in that both contracts were absolute sales which passed title to the vendee, although the purchase price was not fully paid. As in the Villaruel case, article 1504 of the Civil Code is applicable to the present case. Inasmuch as Cenon Albea, the vendee, offered to pay the purchase price to the vendor before the latter made a demand upon him for the resolution of the contract either by suit or by notarial act, the court is empowered under said article to grant him further time.²² (Emphases supplied)

Albea, thus, set forth the distinct attribute of the present juridical conception of a contract to sell—the reservation of title over the property by the vendor pending the vendee’s full payment of the purchase price. This characteristic was later adopted in formulating the definition of a contract to sell in Manuel, and would later become established in jurisprudence as the hallmark of a contract to sell.

Notably, however, the subject contracts in *Caridad Estates*, *Albea*, and *Manuel* were all executed before August 30, 1950 or before the New Civil Code came into effect.²³ The subject contracts were, thus, governed by, and interpreted in the context of the Spanish Civil Code. Accordingly, the Court, in these cases, had no occasion to assess and consider: (i) the amendments to

²¹ *Id.* at 483.

²² *Id.* at 482–483.

²³ *Lara v. Del Rosario, Jr.*, 94 Phil. 778, 783 (1954) [Per J. Montemayor, *En Banc*].

the definition of a contract of sale embodied in Article 1458 of the New Civil Code; and (ii) Article 1478—a new provision in the New Civil Code—which expressly allows contracting parties to “stipulate that ownership in the thing shall not pass to the purchaser until he has fully paid the price,” without divesting the agreement of its nature as a contract of sale.

Contract of Sale vis-à-vis Contract to Sell

Since its introduction to Philippine jurisprudence, the concept of a “contract to sell”—where ownership of the property is retained by the owner-vendor until full payment of the purchase price by the vendee—has been upheld even in subsequent cases involving contracts governed by the New Civil Code.²⁴ By definition, pivotal in the Court’s determination that an agreement is a contract to sell—and verily distinguishing it from a contract of sale—is the finding of an *evident intent* of the parties to reserve the seller’s ownership of the property pending the buyer’s payment. So it must be, for as a general rule, with the seller’s delivery or tradition of the object, ownership is acquired by the buyer, i.e., satisfying the obligations of the seller in a contract of sale as set forth in Article 1495²⁵ of the Civil Code.

In this connection, it must be remembered that under Article 712²⁶ of the Civil Code, ownership and other real rights over property are acquired and transmitted by tradition, in consequence of certain contracts, such as sale. Specifically, Articles 1477 and 1496 of the Civil Code on Sales state that:

ARTICLE 1477. The ownership of the thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof.

....

ARTICLE 1496. The ownership of the thing sold is acquired by the vendee from the moment it is delivered to him in any of the ways specified in articles 1497 to 1501, or in any other manner signifying an agreement that the possession is transferred from the vendor to the vendee.

Furthermore, Article 1498 of the Civil Code provides that the execution of a public instrument is equivalent to the delivery of the object of the sale: “[w]hen the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary *does not appear or cannot clearly be inferred.*”²⁷

²⁴ See *Visayan Sawmill Company, Inc. v. Court of Appeals*, 292 Phil. 382 (1993) [Per J. Davide, Jr., *En Banc*]; *Ang Yu Asuncion v. Court of Appeals*, 308 Phil. 624 (1994) [Per J. Vitug, *En Banc*].

²⁵ ARTICLE 1495. The vendor is bound to transfer the ownership of and deliver, as well as warrant the thing which is the object of the sale.

²⁶ ARTICLE 712. Ownership is acquired by occupation and by intellectual creation. Ownership and other real rights over property are acquired and transmitted by law, by donation, by testate and intestate succession, and in consequence of certain contracts, by tradition. They may also be acquired by means of prescription.

²⁷ Emphasis supplied.

From the foregoing, to take an agreement out of the ambit of a contract of sale—which is perfected by mere consent and under which the seller’s prestation is performed by either actual or constructive delivery—the *reservation of ownership pending full payment must be expressly provided for, or should be capable of being clearly construed from the terms of the agreement.*

The question of whether or not there is reservation of ownership is easily resolved where the agreement of the parties itself provides for the same. Such is the circumstance in the case of *People’s Industrial and Commercial Corp. v. Court of Appeals*,²⁸ where the Court ruled that the subject agreements are contracts to sell in light of the express provision therein which read:

“3. Title to said parcel of land shall remain in the name of the OWNER until complete payment by the PURCHASER of all obligations herein stipulated, at which time the OWNER agrees to execute a final deed of sale in favor of the PURCHASER and cause the issuance of a certificate of title in the name of the latter, free from liens and encumbrances except those provided in the Land Registration Act, those imposed by the authorities, and those contained in Clauses Nos. Five (5) and Six (6) of this agreement.”²⁹ (Emphasis supplied)

Where, however, no such categorical reservation is set forth in the parties’ contract, it becomes crucial to scrutinize if, indeed—from the very language of the terms agreed upon by the parties—the parties do not intend to immediately transfer ownership over the object of the sale.

Most prevalent in jurisprudence categorizing an agreement as a contract to sell is the existence of a provision that a separate deed of absolute sale shall be executed upon full payment of the consideration. Indeed, the necessity of executing another instrument for purposes of conveying ownership implies that no such transfer is yet intended by the parties. In *Diego v. Diego*,³⁰ the Court pronounced such stipulation as “a unique and distinguishing characteristic of a contract to sell,”³¹ evidently implying the reservation of title in the vendor until the vendee has completed the payment:

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 “[w]here 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.”

²⁸ 346 Phil. 189 (1997) [Per J. Romero, Third Division].

²⁹ *Id.* at 203. (Emphasis supplied)

³⁰ 704 Phil. 373 (2013) [Per J. Del Castillo, Second Division].

³¹ *Id.* at 384.

In this case, it is not disputed as in fact both parties agreed that the deed of sale shall only be executed upon payment of the remaining balance of the purchase price. Thus, pursuant to the abovestated jurisprudence, we similarly declare that the transaction entered into by the parties is a contract to sell.³² (Citation omitted; emphasis in the original)

For another, granting the seller the right to unilaterally cancel the agreement upon the buyer's failure to pay the purchase price or a portion thereof within the period agreed upon, has likewise been repeatedly interpreted as in the nature of a reservation of title in favor of the seller, consistent with the early case of *Caridad Estates*. In *Philippine National Bank v. Court of Appeals*,³³ the Court reiterated:

Under both letter-agreements, the consequences of private respondent's failure to remit the additional deposit, are unequivocal and plainly comprehensible: ". . . deposit shall be forfeited and for this purpose, the Bank can sell the property to other interested parties . . . due to your [private respondent's] failure to consummate the previously-approved sale . . ."

This right reserved in the petitioner to in effect cancel the agreement to sell upon failure of petitioner to remit the additional deposit and to consequently open the subject property anew to purchase offers, is in the nature of a stipulation reserving title in the vendor until full payment of the purchase price or giving the vendor the right to unilaterally rescind the contract the moment the vendee fails to pay within a fixed period.³⁴ (Emphasis supplied)

In addition to stipulations requiring the execution of a separate deed of absolute sale or allowing for the seller's unilateral cancellation of the agreement, the Court has likewise looked into other terms in the agreement which evince the intent of the parties to reserve title over the property in favor of the seller.

In *People's Industrial*,³⁵ the Court took into consideration the understanding of the parties as to the nature in which the buyer was granted possession of the property pending full payment of the purchase price. In said case, the parties explicitly indicated in the agreement that the buyer, despite taking possession of the subject property upon payment of the first installment, shall be considered a mere "*tenant or lessee* and subject to ejectment proceedings during all the period of [the] agreement."³⁶ Evidently, by qualifying that the buyer shall only stand as a lessee of the property until full payment shall have been made, it can be clearly inferred that ownership had been retained by the seller, rendering the agreement a contract to sell.

In *Gomez v. Court of Appeals*,³⁷ the subject agreement contained several clauses that preserved specific attributes of ownership in favor of the

³² *Id.* at 377.

³³ 330 Phil. 1048 (1996) [Per J. Hermosisima, Jr., First Division].

³⁴ *Id.* at 1069-1070.

³⁵ *Supra* note 28.

³⁶ *Id.* at 204. (Emphasis supplied)

³⁷ 395 Phil. 115 (2000) [Per J. Buena, Second Division].

seller such as the right to dispose of the property. In said case, the parties stipulated that while the buyer may occupy and use the subject property, “the residential house or improvement thereon shall not be leased, sold, transferred or otherwise alienated by the vendee without the written consent of the owner”³⁸ until complete payment of the purchase price. In retaining these ownership rights, the seller patently did not vest title in the buyer upon the execution of the agreement, which the Court properly upheld as a contract to sell.

On the other hand, it is also settled in jurisprudence that the mere denomination of an agreement as a “contract to sell” is not conclusive as to its nature. In *Laforteza v. Machuca*,³⁹ the Court emphasized that despite being labelled by the parties as a “contract to sell,” the subject agreement is actually a contract of sale—bearing all the essential elements of such, and lacking any reservation of title until full payment of the price:

We do not subscribe to the petitioners’ view that the Memorandum Agreement was a contract to sell. *There is nothing contained in the Memorandum Agreement from which it can reasonably be deduced that the parties intended to enter into a contract to sell, i.e. one whereby the prospective seller would explicitly reserve 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 full payment of the price, such payment being a positive suspensive condition, the failure of which is not considered a breach, casual or serious, but simply an event which prevented the obligation from acquiring any obligatory force. There is clearly no express reservation of title made by the petitioners over the property, or any provision which would impose non-payment of the price as a condition for the contract’s entering into force. Although the memorandum agreement was also denominated as a “Contract to Sell,” we hold that the parties contemplated a contract of sale.* A deed of sale is absolute in nature although denominated a conditional sale in the absence of a stipulation reserving title in the petitioners until full payment of the purchase price. In such cases, ownership of the thing sold passes to the vendee upon actual or constructive delivery thereof. The mere fact that the obligation of the respondent to pay the balance of the purchase price was made subject to the condition that the petitioners first deliver the reconstituted title of the house and lot does not make the contract a contract to sell for such condition is not inconsistent with a contract of sale.⁴⁰ (Citations omitted; emphases supplied)

Indeed, a contract is what the law defines it to be, taking into consideration its essential elements, and not what the contracting parties call it.⁴¹ To be sure, and as demonstrated in the above cases, the real nature of a contract may only be determined from the express terms of the parties’ written agreement and from their contemporaneous and subsequent acts.⁴²

³⁸ *Id.* at 127

³⁹ 389 Phil. 167 (2000) [Per J. Gonzaga-Reyes, Third Division].

⁴⁰ *Id.* at 180.

⁴¹ *Ace Foods, Inc. v. Micro Pacific Technologies Co., Ltd.*, 723 Phil. 742, 750 (2013) [Per J. Perlas-Bernabe, Second Division]. (Citation omitted)

⁴² *Id.*

All told, it can be deduced that as a *general rule*, where an agreement contains all the essential elements of a contract of sale under Article 1475⁴³ of the Civil Code (i.e., consent, determinate subject matter, price certain), such agreement is a contract of sale. Jurisprudence, however, establishes an *exception*: if the contracting parties further stipulate that the transfer of ownership to the buyer is conditioned upon the full payment of the purchase price—which arrangement may be instituted through an express provision or may be clearly inferred from the other terms of the agreement—the deed takes the nature of a contract to sell.

Applying the foregoing to the present petition, I concur that the subject Deeds of Conditional Sale fall within the jurisprudential exception and are indeed contracts to sell. Both deeds contain a clause that only “upon full and satisfactory payment by the Vendees to the Vendors of the [agreed total consideration]”⁴⁴ shall the vendors be obligated to “execute and deliver in favor of the Vendees the Final Deed of Absolute Sale . . . , together with its muniments of title.”⁴⁵ The necessity for Spouses Kaw to execute a separate deed of conveyance evinces the parties’ intent that no transfer of title in favor of respondents shall yet occur until the latter have completely paid the purchase price. Consistent with prevailing jurisprudence, an agreement with such reservation of ownership is in the nature of a contract to sell.

Admittedly, however, there may be room to further examine the above “general rule-exception” formulation which, as assessed herein, is rooted solely in jurisprudence prior the effectivity of the New Civil Code.

To reiterate, if one were to adhere *exclusively* to the provisions of the New Civil Code, any meeting of the minds as to the delivery and the transfer of ownership of a determinate thing in exchange for a price certain is defined as a contract of sale,⁴⁶ and any stipulation that ownership shall not pass unless the price has been fully paid⁴⁷ should not negate its character as such.

Nonetheless, and as also demonstrated herein, decades of jurisprudence has tightly woven the concept of a contract to sell into Philippine law, which may now prove exceedingly intricate to untangle.

⁴³ ARTICLE 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.

.....
⁴⁴ *Ponencia*, p. 13.

⁴⁵ *Id.*

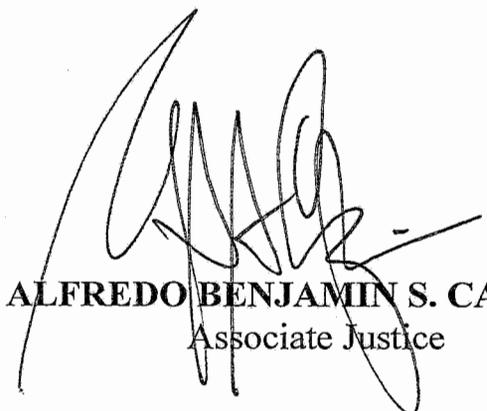
⁴⁶ See Art. 1458 of the Civil Code, the relevant portion of which provides:

ARTICLE 1458. By 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.

.....
⁴⁷ See Art. 1478 of the Civil Code, which provides:

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

ACCORDINGLY, I CONCUR with the *ponencia* and vote to **GRANT** the Petition.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice