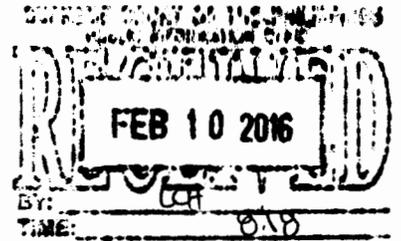




Republic of the Philippines  
**Supreme Court**  
 Manila

FIRST DIVISION



**ROGELIO S. NOLASCO,  
 NICANORA N. GUEVARA,  
 LEONARDA N. ELPEDES,  
 HEIRS OF ARNULFO S.  
 NOLASCO, and REMEDIOS M.  
 NOLASCO, represented by  
 ELENITA M. NOLASCO**  
 Petitioners,

**G.R. No. 210215**

Present:

SERENO, C.J., Chairperson,  
 LEONARDO-DE CASTRO,  
 BERSAMIN,  
 PEREZ, and  
 PERLAS-BERNABE, JJ.

- versus -

**CELERINO S. CUERPO,  
 JOSELITO ENCABO, JOSEPH  
 ASCUTIA, and DOMILO  
 LUCENARIO,**  
 Respondents.

Promulgated:

**DEC 09 2015**

X-----X

**DECISION**

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>1</sup> are the Decision<sup>2</sup> dated June 17, 2013 and the Resolution<sup>3</sup> dated November 19, 2013 of the Court of Appeals (CA) in CA-G.R. CV No. 95353, which affirmed *in toto* the Decision<sup>4</sup> dated March 1, 2010 of the Regional Trial Court of Quezon City, Branch 81 (RTC) in Civil Case No. Q-08-63860 ordering the rescission of the Contract to Sell executed by herein parties and the return of the amounts already paid by respondents Celerino S. Cuerpo, Joselito Encabo, Joseph Ascutia, and Domilo Lucenario (respondents) to petitioners Rogelio S. Nolasco, Nicanora N. Guevara, Leonarda N. Elpedes, Heirs of Arnulfo S. Nolasco, and Remedios M. Nolasco, represented by Elenita M. Nolasco (petitioners), as well as the remaining post-dated checks issued by

<sup>1</sup> *Rollo*, pp. 17-54.

<sup>2</sup> *Id.* at 55-62. Penned by Associate Justice Manuel M. Barrios with Associate Justices Remedios A. Salazar-Fernando and Normandie B. Pizarro concurring.

<sup>3</sup> *Id.* at 63-65.

<sup>4</sup> *Id.* at 122-128. Penned by Presiding Judge Ma. Theresa L. De La Torre-Yadao.

respondent Celerino S. Cuerpo representing the remaining monthly amortizations, all in connection with the said contract.

### The Facts

On July 22, 2008, petitioners and respondents entered into a Contract to Sell<sup>5</sup> (subject contract) over a 165,775-square meter parcel of land located in Barangay San Isidro, Rodriguez, Rizal covered by Original Certificate of Title No. 152 (subject land).<sup>6</sup> The subject contract provides, *inter alia*, that: (a) the consideration for the sale is ₱33,155,000.00 payable as follows: down payment in the amount of ₱11,604,250.00 inclusive of the amount of ₱2,000,000.00 previously paid by respondents as earnest money/reservation fee, and the remaining balance of ₱21,550,750.00 payable in 36 monthly installments, each in the amount of ₱598,632.00 through post-dated checks; (b) in case any of the checks is dishonored, the amounts already paid shall be forfeited in petitioners' favor, and the latter shall be entitled to cancel the subject contract without judicial recourse in addition to other appropriate legal action; (c) respondents are not entitled to possess the subject land until full payment of the purchase price; (d) petitioners shall transfer the title over the subject land from a certain Edilberta N. Santos to petitioners' names, and, should they fail to do so, respondents may cause the said transfer and charge the costs incurred against the monthly amortizations; and (e) upon full payment of the purchase price, petitioners shall transfer title over the subject land to respondents.<sup>7</sup> However, respondents sent petitioners a letter<sup>8</sup> dated November 7, 2008 seeking to rescind the subject contract on the ground of financial difficulties in complying with the same. They also sought the return of the amount of ₱12,202,882.00 they had paid to petitioners.<sup>9</sup> As their letter went unheeded, respondents filed the instant complaint<sup>10</sup> for rescission before the RTC.<sup>11</sup>

In their defense,<sup>12</sup> petitioners countered that respondents' act is a unilateral cancellation of the subject contract as the former did not consent to it. Moreover, the ground of financial difficulties is not among the grounds provided by law to effect a valid rescission.<sup>13</sup>

In view of petitioners' failure to file the required pre-trial brief, they were declared "as in default" and, consequently, respondents were allowed to present their evidence *ex-parte*.<sup>14</sup>

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<sup>5</sup> Id. at 81-85.

<sup>6</sup> See id. at 56 and 78.

<sup>7</sup> See id. at 82-83.

<sup>8</sup> Id. at 88-89.

<sup>9</sup> See id.

<sup>10</sup> Dated November 21, 2008. Id. at 66-77.

<sup>11</sup> See id. at 57 and 69.

<sup>12</sup> See Answer with Compulsory Counterclaim and Motion for Summary Judgment dated June 11, 2009; id. at 95-107.

<sup>13</sup> Id. at 95-96.

<sup>14</sup> Id. at 57.

### The RTC Ruling

In a Decision<sup>15</sup> dated March 1, 2010, the RTC ruled in favor of respondents and, accordingly, ordered: (a) the rescission of the subject contract; and (b) the return of the amounts already paid by respondents to petitioners, as well as the remaining post-dated checks issued by respondent Celerino S. Cuerpo representing the remaining monthly amortizations.<sup>16</sup>

It found petitioners to have substantially breached paragraph 7 of the subject contract which states that “[t]he [petitioners] shall, within ninety (90) days from the signing of [the subject contract] cause the completion of the transfer of registration of title of the property subject of [the said contract], from Edilberta N. Santos to their names, at [petitioners’] own expense.”<sup>17</sup> As such, respondents were entitled to rescission under Article 1191 of the Civil Code.<sup>18</sup>

Dissatisfied, petitioners appealed<sup>19</sup> to the CA.

### The CA Ruling

In a Decision<sup>20</sup> dated June 17, 2013, the CA affirmed the RTC ruling. It agreed with the RTC that petitioners substantially breached paragraph 7 of the subject contract when they did not effect the transfer of the subject land from Edilberta N. Santos to petitioners’ names within ninety (90) days from the execution of said contract, thus, entitling respondents to rescind the same. In this relation, the CA held that under the present circumstances, the forfeiture of the payments already made by respondents to petitioners is clearly improper and unwarranted.<sup>21</sup>

Aggrieved, petitioners moved for reconsideration,<sup>22</sup> which was denied in a Resolution<sup>23</sup> dated November 19, 2013; hence, this petition.

### The Issue Before the Court

The core issue for the Court’s resolution is whether or not the CA correctly affirmed the rescission of the subject contract and the return of the amounts already paid by respondents to petitioners, as well as the remaining

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<sup>15</sup> Id. at 122-128.

<sup>16</sup> Id. at 127-128.

<sup>17</sup> See id. at 126.

<sup>18</sup> Id. at 127.

<sup>19</sup> See Notice of Appeal dated April 23, 2010; id. at 130-131.

<sup>20</sup> Id. at 55-62.

<sup>21</sup> See id. at 59-61.

<sup>22</sup> Not attached to the *rollo*.

<sup>23</sup> *Rollo*, pp. 63-65.

post-dated checks issued by respondent Celerino S. Cuerpo representing the remaining monthly amortizations.

### The Court's Ruling

The petition is partially meritorious.

In reciprocal obligations, either party may rescind – or more appropriately, resolve – the contract upon the other party's substantial breach of the obligation/s he had assumed thereunder.<sup>24</sup> This is expressly provided for in Article 1191 of the Civil Code which states:

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

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

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

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

“More accurately referred to as resolution, the right of rescission under Article 1191 is predicated on a breach of faith that violates the reciprocity between the parties to the contract. This retaliatory remedy is given to the contracting party who suffers the injurious breach on the premise that it is ‘unjust that a party be held bound to fulfill his promises when the other violates his.’”<sup>25</sup> Note that the rescission (or resolution) of a contract will not be permitted for a slight or casual breach, but only for such substantial and fundamental violations as would defeat the very object of the parties in making the agreement.<sup>26</sup> Ultimately, the question of whether a breach of contract is substantial depends upon the attending circumstances.<sup>27</sup>

In the instant case, both the RTC and the CA held that petitioners were in substantial breach of paragraph 7 of the subject contract as they did

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<sup>24</sup> *Golden Valley Exploration, Inc. v. Pinkian Mining Company*, G.R. No. 190080, June 11, 2014, 726 SCRA 259, 265.

<sup>25</sup> *Id.* at 266; citations omitted.

<sup>26</sup> *EDS Manufacturing, Inc. v. Healthcheck International, Inc.*, G.R. No. 162802, October 9, 2013, 707 SCRA 133, 141.

<sup>27</sup> *Maglasang v. Northwestern University, Inc.*, G.R. No. 188986, March 20, 2013, 694 SCRA 128, 136.

not cause the transfer of the property to their names from one Edilberta N. Santos within 90 days from the execution of said contract.<sup>28</sup>

The courts *a quo* are mistaken.

Paragraph 7 of the subject contract state in full:

7. [Petitioners] shall, within ninety (90) days from the signing of [the subject contract], cause the completion of the transfer of registration of title of the property subject of [the subject contract], from Edilberta N. Santos to their names, at [petitioners'] own expense. **Failure on the part of [petitioners] to undertake the foregoing within the prescribed period shall automatically authorize [respondents] to undertake the same in behalf of [petitioners] and charge the costs incidental to the monthly amortizations upon due date.** (Emphasis and underscoring supplied)

A plain reading of paragraph 7 of the subject contract reveals that while the RTC and the CA were indeed correct in finding that petitioners failed to perform their obligation to effect the transfer of the title to the subject land from one Edilberta N. Santos to their names within the prescribed period, said courts erred in concluding that such failure constituted a substantial breach that would entitle respondents to rescind (or resolve) the subject contract. To reiterate, for a contracting party to be entitled to rescission (or resolution) in accordance with Article 1191 of the Civil Code, the other contracting party must be in substantial breach of the terms and conditions of their contract. A substantial breach of a contract, unlike slight and casual breaches thereof, is a fundamental breach that defeats the object of the parties in entering into an agreement.<sup>29</sup> Here, it cannot be said that petitioners' failure to undertake their obligation under paragraph 7 defeats the object of the parties in entering into the subject contract, considering that the same paragraph provides respondents contractual recourse in the event of petitioners' non-performance of the aforesaid obligation, that is, to cause such transfer themselves in behalf and at the expense of petitioners.

Indubitably, there is no substantial breach of paragraph 7 on the part of petitioners that would necessitate a rescission (or resolution) of the subject contract. As such, a reversal of the rulings of the RTC and the CA is in order.

The foregoing notwithstanding, the Court cannot grant petitioners' prayer in the instant petition to order the cancellation of the subject contract and the forfeiture of the amounts already paid by respondents on account of

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<sup>28</sup> See *rollo*, pp. 59-61 and 126-127.

<sup>29</sup> See *Maglasang v. Northwestern University, Inc.*, *supra* note 27, at 135-136; citations omitted.

the latter's failure to pay its monthly amortizations,<sup>30</sup> simply because in their Answer with Compulsory Counterclaim and Motion for Summary Judgment<sup>31</sup> filed before the RTC, petitioners neither prayed for this specific relief nor argued that they were entitled to the same. Worse, petitioners were declared "as in default" for failure to file the required pre-trial brief and, thus, failed to present any evidence in support of their defense.<sup>32</sup> It is settled that "[w]hen a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party."<sup>33</sup> The Court's pronouncement in *Peña v. Spouses Tolentino*<sup>34</sup> is instructive on this matter, to wit:

Indeed, the settled rule in this jurisdiction, according to *Mon v. Court of Appeals*, is that a party cannot change his theory of the case or his cause of action on appeal. This rule affirms that "courts of justice have no jurisdiction or power to decide a question not in issue." Thus, a judgment that goes beyond the issues and purports to adjudicate something on which the court did not hear the parties is not only irregular but also extrajudicial and invalid. **The legal theory under which the controversy was heard and decided in the trial court should be the same theory under which the review on appeal is conducted. Otherwise, prejudice will result to the adverse party. We stress that points of law, theories, issues, and arguments not adequately brought to the attention of the lower court will not be ordinarily considered by a reviewing court, inasmuch as they cannot be raised for the first time on appeal. This would be offensive to the basic rules of fair play, justice, and due process.**<sup>35</sup> (Emphasis and underscoring supplied)

**WHEREFORE**, the petition is **PARTIALLY GRANTED**. Accordingly, the Decision dated June 17, 2013 and the Resolution dated November 19, 2013 of the Court of Appeals in CA-G.R. CV No. 95353 are hereby **REVERSED** and **SET ASIDE**. The Contract to Sell executed by the parties on July 22, 2008 remains **VALID** and **SUBSISTING**.

**SO ORDERED.**

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

<sup>30</sup> See *rollo*, pp. 33 and 45-51.

<sup>31</sup> *Id.* at 92-107.

<sup>32</sup> *Id.* at 57.

<sup>33</sup> *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*, 535 Phil. 481, 490 (2006), citing *Carantes v. CA*, 167 Phil. 232, 240 (1977).

<sup>34</sup> 657 Phil. 312 (2011).

<sup>35</sup> *Id.* at 328-329; citations omitted.

**WE CONCUR:**



**MARIA LOURDES P. A. SERENO**

Chief Justice

Chairperson

*Teresita Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

*Lucas P. Bersamin*  
**LUCAS P. BERSAMIN**  
Associate Justice

*Jose Portugal Perez*  
**JOSE PORTUGAL PEREZ**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, 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.



**MARIA LOURDES P. A. SERENO**

Chief Justice