

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
THIRD DIVISION**

**ELAINE A. DEL ROSARIO,**  
*Petitioner,*

*-versus-*

**G.R. No. 136308  
January 23, 2001**

**MELINDA F. BONGA,**  
*Respondent.*

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**DECISION**

**PANGANIBAN, J.:**

Issues and arguments not presented before the trial court cannot be raised for the first time on appeal. Basic considerations of due process impel this rule.

**The Case**

The Court applies this principle in resolving the present Petition for Review, which assails the March 20, 1998 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-GR CV No. 41040, as well as the November 17, 1998 CA Resolution<sup>[2]</sup> denying reconsideration. Modifying the August 3, 1992 Decision of the Regional Trial Court of Pasig, the appellate court disposed as follows:

“WHEREFORE, the appealed Decision is MODIFIED as follows:

- “a) The Deed of Conditional Sale (Exhibit A) is hereby rescinded;
- b) [Petitioner] is hereby ordered to immediately surrender to plaintiff the subject property covered by the Conditional Deed of Sale as well as the apartment unit actually occupied by the former;
- c) [Respondent] is directed to reimburse [petitioner in] the amount of P81,250.00 representing 50% of the total payment of P162,500.00 with legal interest from date hereof;
- d) [Petitioner] is commanded to pay [respondent] the amount of P1,500.00 per month as reasonable compensation for the use of the 3rd-door apartment unit, from February 1990 until the former fully vacates the premises;
- e) [Petitioner] is required to pay [respondent] the sum of P15,000.00 as and by way of attorney’s fees; and
- f) The writ of preliminary injunction issued on September 13, 1991 is made permanent.”<sup>[3]</sup>

### **The Facts**

The facts, as summarized by the CA, are as follows:

“In her Amended Complaint, [herein Respondent] Melinda F. Bonga alleged that she is the owner of a two-door residential apartment and another unfinished apartment unit and a lot situated at Coronado St., Hulo, Mandaluyong, Metro Manila. On February 9, 1990, she sold her 2-door residential apartment to [petitioner] for a price of P330,000.00 This agreement was embodied in a Deed of Conditional Sale. The contract specifically states that [petitioner] pays a down-payment of

P130,000.00 and [the] balance of P200,000.00 shall be paid within twelve months from execution thereof to [respondent] alone. The down payment was paid by [petitioner]. In the absence of [respondent] who was then abroad, [petitioner] occupied the other vacant door of the former's apartment, which was not the subject of the contract, and rented out the unit or apartment door which [petitioner] was supposed to occupy per contract. Aside from this violation, [petitioner] also failed and refused to pay the balance of P200,000.00 to [respondent] despite repeated demands. For failure to pay, [respondent] was constrained to engage the services of a lawyer whom she agreed to pay P20,000.00 as and by way of attorney's fees, plus P1,000.00 per appearance; that in order to prevent [petitioner] from further introducing improvements in the subject property, [respondent] prayed for the issuance of a writ of preliminary injunction; that over and above this claim, [respondent] sought to recover a total amount of P60,000.00 moral and exemplary damages.

“Answering the Complaint, [petitioner] denied that [respondent] owned the unfurnished apartment unit. She also denied that she refused to pay the balance of the purchase price of the property in question asserting that she made payments [for] the balance to [respondent]'s husband who insisted that he was the real owner of the property.

“During the pre-trial, the parties agreed on the only two issues to be resolved by the [trial] court. These were so stated in the Pre-trial Order dated October 11, 1991, to wit:

- “1. Whether or not [respondent] has the right to rescind the Contract; and”
- “2. Damages suffered by the prevailing party.”

“The lower court made the following findings of fact which this Court found to be supported by the evidence and borne by the records of this case.

“It appears from the evidence presented by plaintiff, Melinda Bonga, that the property located at 579 Coronado St., Hulo, Mandaluyong, Metro Manila, particularly the 2-door residential apartment was a subject of a Conditional Deed of Sale (Exhibit “A”) dated February 9, 1990, entered into between Bonga, vendor, with the marital consent of his wife, herein plaintiff, and Elaine del Rosario, vendee, also with her husband’s consent, for a consideration of three hundred thirty thousand (P330,000.00) pesos; that the balance of P200,000.00 to be paid within a period of twelve (12) months beginning February 9, 1990 shall be payable only to Melinda Bonga. It was the parties’ agreement that upon the signing of the contract, defendant may take physical possession of one of the 2-door residential apartment units subject of the contract, free of any rent until full payment of the purchase price; that in the event vendee fails to pay the balance, 50% of whatever amount defendant has paid by way of down-payment shall be forfeited in favor of the vendor, thereby declaring the contract null and void.

“On February 15, 1990, plaintiff left for Saudi Arabia arriving during the second week of February 1991. On February 23, 1991, when [respondent] verbally demanded from defendant the balance of P200,000.00, the latter offered her old jeep as payment thereof, but which the former did not accept (TSN, Nov. 25, 1991, p. 9, and TSN February 3, 1992, p. 5). On February 24, 1991, she sent a demand letter (Exhibit E) to defendant, thru registered mail, received on June 28, 1991 by Catherine Asejo, sister-in-law of defendant.

“Plaintiff also testified that subject contract allowed [petitioner] to occupy one door of the 2-door residential units subject of the Deed of Conditional Sale, free from any rent. It was their agreement, that pending payment in full of the balance of the purchase price, plaintiff will collect the rent of the other unit. However during the absence of [respondent], defendant finished the construction of the third-door unit apartment, which was not included in the Deed of Conditional Sale. And when the construction was finally finished defendant occupied

the same, and rented out that door which she used to occupy, in complete breach of the parties' express stipulations.

“On the other hand, defendant's evidence tend to show that on November 21, 1989, a Deed of Mortgage (Exhibit ‘H’) was entered into between Deodato Bonga, plaintiff's husband, and herein defendant for a sum of P70,000.00 involving the same property subject of this action. Before this indebtedness could be paid, Mr. Bonga, with the conformity of his wife, herein plaintiff, decided to sell the 2-door residential apartment units to herein defendant in the total amount of P330,000.00. Defendant testified that when the subject Deed of Conditional Sale was being prepared, only plaintiff was present (TSN, Dec. 6, 1991, p. 6). When she queried about the whereabouts of plaintiff's husband, the latter answered that he went somewhere and intimated that she [would] just request her husband to sign the same. However, when the document was presented to defendant, the same already bore the signature of Mr. Deodato Bonga, plaintiff's husband.

“Defendant on direct examination testified that she began to doubt the authenticity of Mr. Bonga's signature when [respondent] wrote her from Abu Dhabi, on March 1, 1990 telling her to just ignore any claim of Mr. Bonga that he never signed the subject agreement of his denial of any knowledge of the same (Exhibits ‘2’ and ‘2-A’). She further testified that during the absence of plaintiff, the latter's husband went to see defendant informing her that he [did] not know anything about the sale and kept on insisting that he was the absolute owner of the subject property as evidenced by a Deed of Sale earlier executed between him and one Rogelio Morales under [the] date of December 7, 1984 denominated as Kasunduan sa Pagbibili (Exhibit ‘12’). Because of said document, and plaintiff's husband's intimation that he [would] only recognize the subject sale [i]f payment [would be] made to him directly, defendant made the following payment, to wit: P15,000.00, on March 7, 1990 (Exhibit ‘4’); P5,000.00 on August 1990 (Exhibit ‘4-A’); P10,000.00 on April 11, 1991 (Exhibit ‘5’); and, P2,500.00 on May 16, 1991 (Exhibit ‘4-B’).

“When plaintiff arrived from Middle East and demanded payment of the balance, defendant testified that she told the former that she [would] pay only in the presence of Mr. Bonga. She likewise testified that defendant was supposed to see plaintiff the following day but the former instead received a subpoena.

“On the alleged construction of the unfinished apartment unit, not the subject of the contract, defendant husband permitted her to do so. (TSN, Dec. 9, 1991, p. 9) Defendant also admitted that she transferred to the newly finished apartment right upon the completion and leased out that unit which she used to occupy on November 1990, receiving a monthly rent of P1,500.00; that she stopped receiving the rental payment from the time this case was filed (TSN, Dec. 9, 1991, p. 11).

“On the basis of those factual findings, the lower court in effect concluded that [respondent] successfully established her cause of action and so rendered judgment on August 3, 1992 in her favor, the dispositive part of which reads:

“WHEREFORE, in view of all the foregoing, judgment is hereby rendered declaring the Conditional Deed of Sale (Exhibit ‘A’) under [the] date of February 9, 1990 RESCINDED[; and]

- (a) Ordering defendant to immediately surrender to plaintiff the subject property covered by the Conditional Deed of Sale as well as the apartment unit actually occupied by the former;
- (b) Ordering plaintiff to reimburse defendant the amount of P65,000.00 representing the 50% of the down payment of P130,000.00, with legal rate of interest from date hereof.
- (c) Ordering defendant to pay plaintiff the amount of P1,500.00 per month as reasonable compensation for the use of the 3<sup>d</sup>-door

apartment unit, from February 1990 until the former fully vacates the premises; and

- (d) Ordering defendant to pay plaintiff the sum of P15,000.00 as and by way of attorney's fees.

The writ of preliminary injunction earlier issued on September 13, 1991 is made permanent.”<sup>[4]</sup>

### **The CA Ruling**

The Court of Appeals rejected the claim of petitioner that respondent had no right to ask for the rescission of the Deed of Conditional Sale, because the latter had no title to the subject property. Petitioner argued that since respondent's husband had acquired the property from an awardee of the National Housing Authority (NHA) within five years from the award without the NHA's prior written consent and authority, the acquisition was void and transferred no title to respondent. And because respondent had no title to the property, the Deed of Conditional Sale in favor of petitioner was also void. Hence, respondent had no right to ask for its rescission. The CA held that such argument had not been presented before the trial court and could not be raised for the first time on appeal.

The appellate court agreed with the trial court that the suit filed by respondent to rescind the Deed of Conditional Sale was supported by evidence and law, but ordered that payment that had been made to her husband be credited to petitioner's favor.

Hence, this recourse.<sup>[5]</sup>

### **The Alleged Errors**

In her Memorandum,<sup>[6]</sup> petitioner imputes to the Court of Appeals the following alleged errors:

- “a. The Honorable Court of Appeals ERRED when it ruled that no question [could] be entertained on appeal unless it ha[d] been raised below.

- “b. The Honorable Court of Appeals ERRED when it ruled that respondent was the rightful and legal owner of the subject lot covered by Exh. A, as well as the apartment unit occupied by the petitioner.
- “c. The Honorable Court of Appeals ERRED when it ruled that petitioner was a purchaser for value and a builder in good faith.
- “d. The Honorable Court of Appeals ERRED when it ruled that Petitioner del Rosario was raising new issues as Annexes 2, 3, 4 and 5-Appeal (Annexes C, D, E and F, herein) were not presented or formally offered in evidence below and were not pleaded [or] agreed upon in the pre-trial and therefore, a non- issue.
- “e. The Honorable Court of Appeals ERRED when it ruled that equity takes precedence over the protective policy of the State AND.

IN THE RESOLUTION OF THE HONORABLE COURT OF APPEALS DENYING PETITIONER’S MOTION FOR RECONSIDERATION,

- “f. The Honorable Court of Appeals ERRED when it ruled that there [was] no statute or jurisprudence which support[ed] the alienation of the housing unit and lot within five (5) years, and that it [was] not a State or a government policy.
- “g. The Honorable Court of Appeals ERRED when it concluded that the five (5) year prohibition as a Protective Policy of the State applie[d] only to “patented lands” belonging to the disposable lands of the public domain, and that it [was] not applicable to patrimonial lands “originally held by the National Housing Authority, an agency of the government in pursuit of its patrimonial objectives.”
- “h. The Honorable Court of Appeals ERRED when it ruled that the violation of the “contractual” prohibition of alienation



within the five (5) year period [was] merely voidable and not void *ab initio*.

- “i. The Honorable Court of Appeals ERRED when it ruled that the respondent had the right to rescind Exhibit “A”.
- “j. Corollary to all the above, the Honorable Court of Appeals ERRED when it ruled that the rulings in Heirs of Zambales and Artates [were] limited to agricultural lands and [could] not be applied to urban or urbanizable lands.”

The main issue is whether the CA erred in ruling that petitioner could not, on appeal, be allowed to present and rely on a theory that had not been presented before the trial court.

### **The Court’s Ruling**

The Petition is not meritorious.

#### ***Main Issue: Change of Theory***

As a rule, no question will be entertained on appeal unless it has been raised in the court below. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of due process impel this rule.<sup>[7]</sup>

In this case, the records show that the theory of petitioner before the trial court was different from that before the appellate court. In the lower court, she had argued that rescission may be invoked only by both Spouses Deodato and Melinda Bonga, and not by the latter alone. Likewise, she said that since there was a dispute between the spouses about the subject property, she was justified in suspending the payment of the balance of the purchase price. Furthermore, she manifested her willingness to settle her obligation, urging the court to fix a period for, and to determine to whom to give, the payment.<sup>[8]</sup>

However, on appeal, she abandoned such legal theories and adopted a different stance, relying instead on the alleged nullity of the

transaction between respondent's husband and one Renato Morales, an NHA awardee. The invalid agreement supposedly conferred no title to respondent and, consequently, rendered the subject Deed of Conditional Sale void. It should be stressed that this matter had not been presented or discussed in the trial court and involved personalities not parties to the case. Petitioner's posturing before the CA was not a mere shift of emphasis or an elaboration of a priorly argued defense; it was a new and different theory altogether.

In this light, we agree with the following disquisition of the CA rejecting petitioner's maneuver:

“The appeal is not convincing. The appellant tries to pull this Court from the delimited field of inquiry in which she knows her position to be shoddy and weak to a forbidden ground where she thinks she can make a good stand. This Court will not accommodate her on that maneuver. It is a fundamental rule that no question will be entertained on appeal unless it has been raised below. (Manila Bay Club Corporation vs. Court of Appeals, 245 SCRA 715; Hizon Realty Inc. vs. Fonteha, 246 SCRA 183). Stated differently, issues of fact and arguments not adequately brought to the attention of the lower courts will not be considered by the reviewing courts as they cannot be raised for the first time on appeal. (First Phil. International Bank vs. Court of Appeals, 252 SCRA 259; Phil. Airline, Inc. vs. NLRC, 259 SCRA 459). In fact, the determination of issues at the pre-trial bars consideration of other issues or questions on appeal. (Son vs. Son, 251 SCRA 556).

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“She claims that she is not really raising a new issue but merely shifting emphasis. She in effect claims that the seed of the issue of ownership is embedded in the Deed of Conditional Sale (Exhibit A) and KASUNDUAN SA PAGBILI (Exhibit 12). This Court examined the two documents and found no such seed — not even a pebble of such issue. But even if one should see a seed where there is none, the end result would not change because such a question was not pleaded [or] agreed upon in the pre-trial and, therefore, a non-issue in this appeal. In trying

hard not to substantiate her position *vis-a-vis* said non-issue, the appellant had attached documents (Annexes 2,3,4 and 5-Appeal) in her brief and wants them to be examined and evaluated by this Court. These documents however, were not presented, much less offered in evidence in the court below and so they cannot be admitted, much less given probative value in this appeal. *Servicewide Specialists, Inc. vs. Court of Appeals*, 257 SCRA 643 is authority for the rule that evidence not formally offered before the trial court cannot be considered on appeal, for to consider them at this stage will deny the other party her right to rebut them.<sup>[9]</sup>

### **Petitioner's Argument**

#### **Not an Exception to the Rule**

Indeed, there are exceptions to the aforesaid rule that no question may be raised for the first time on appeal. Though not raised below, the issue of lack of jurisdiction over the subject matter may be considered by the reviewing court, as it may be raised at any stage. The said court may also consider an issue not properly raised during trial when there is plain error.<sup>[10]</sup> Likewise, it may entertain such arguments when there are jurisprudential developments affecting the issues, or when the issues raised present a matter of public policy.<sup>[11]</sup>

Petitioner insists that the present case is an exception because it involves a matter of public policy — socialized housing. The NHA had allegedly awarded the subject property to Rogelio Morales, who in turn conveyed the same to respondent's husband. Petitioner points out, however, that the Deed of Sale with Mortgage<sup>[12]</sup> between Morales and the NHA expressly prohibited the alienation, transfer or encumbrance of said lot, within five years from the grant without the prior written consent and authority of the NHA.<sup>[13]</sup> She contends that such prohibition is akin to the provisions in the Public Land Act<sup>[14]</sup> nullifying certain conveyances within five years from the grant. Invoking public policy, she concludes that the violation of the aforesaid provision in the award made by the NHA should also nullify the subsequent conveyance to respondent's husband. Because the claim of respondent was rooted on a void transaction — the sale of the subject property by Morales to Bonga within the prohibited

period — petitioner posits that the former did not have title to the subject property at the time of their transaction.

This argument does not persuade. There is a substantial difference between the terms of the Public Land Act and the aforementioned Deed. The former expressly provides that the prohibited transaction was void and thus had the effect of nullifying the grant or award. The latter, on the other hand, provided merely for the rescission of the Deed of Sale with Mortgage at the option of the NS in case of an unauthorized alienation, transfer or encumbrance.<sup>[15]</sup> There is no showing that the NHA had exercised this option.

The foregoing considered, we find it unnecessary to discuss petitioner's other arguments. Legal nitpicking unduly clog the Court's docket and are not encouraged.

**WHEREFORE**, the Petition is hereby **DENIED** and the assailed Decision **AFFIRMED**. Costs against petitioner.

**SO ORDERED.**

**Melo, Vitug, Gonzaga-Reyes and Sandoval-Gutierrez, JJ., concur.**

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[1] Rollo, pp. 50-61. The Decision was penned by Justice Hilario L. Aquino, with the concurrence of Justices Emeterio C. Cui (Division chairman) and Ramon U. Mabutias Jr.

[2] Rollo, pp. 11-17.

[3] Rollo, p. 60.

[4] Rollo, pp. 50-56.

[5] The case was deemed submitted for decision on December 3, 1999, upon receipt by the Court of respondent's Memorandum signed by Attys. Arceli A. Rubin, Bartolome P. Reus and Tofel C. Garcia-Austria of the Public Attorney's Office. Filed earlier, on September 22, 1999, was petitioner's Memorandum signed by Atty. Stephen C. Cruz.

[6] Rollo, pp. 112-155.

[7] *Keng Hua vs. Court of Appeals*, 286 SCRA 257, February 12, 1998; *Arcelona vs. Court of Appeals*, 280 SCRA 20, October 2, 1997; *Mendoza vs. Court of Appeals*, 274 SCRA 527, June 20, 1997; *Remman Enterprises, Inc., vs. Court of Appeals*, 268 SCRA 688, February 26, 1997. See also Section 15, Rule 44 of the 1997 Rules of Civil Procedure, which reads as follows:

“Questions that may be raised on appeal. Whether or not the appellant has filed a motion for new trial in the court below, he may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties.

[8] RTC Records, pp. 193-204.

[9] Rollo, pp. 56-57.

[10] Section 8, Rule 51 of the 1997 Rules of Civil Procedure, provides:

“Questions that may be decided. No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered, unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors.”

[11] Bersamin, Appeal and Review in the Philippines, 2nd ed., p. 176.

[12] Rollo, p. 63.

[13] Ibid. The pertinent stipulation in the Deed of Sale with Mortgage reads:

“5. Except by hereditary succession, the lot herein sold and conveyed, or any part thereof, cannot be alienated, transferred or encumbered within five (5) years from the date of release of herein mortgage without the prior written consent and authority from the **VENDOR-MORTGAGEE.**”

[14] Sections 118 and 124 of the Public Land Act, as follows:

“Sec. 118. Except in favor of the government or any of its branches, units or institutions or legally constituted banking corporations, lands acquired under free patent or homestead provisions shall not be subject to encumbrances or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period, but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations or corporations.

“Sec. 124. Any acquisition, conveyance, alienation, transfer or other contract made or executed in violation of any of the provisions of . . . shall be unlawful and null and void from its execution and shall produce the effect of annulling or canceling the grant, title, patent or permit originally issued, recognized or confirmed, actually or presumptively, and cause the reversion of the property and its improvements to the State.”

[15] Rollo, p. 63. The stipulation reads:

“6. These encumbrances, restrictions and limitations shall be annotated on the corresponding new certificate of title and violation of which shall entitle the **VENDOR-MORTGAGEE** to rescind this **DEED OF SALE**, seek the cancellation of the title issued as a result thereof and to repossess the property and dispose of the same as if there has been previous sale thereof;”