

LAW 101

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AN ORAL RIGHT OF FIRST REFUSAL

(Part 1)

This is another of those Supreme Court decisions with its twists and turns that leaves a reader more confused after having read same.

A, B and C originally instituted a suit for annulment of sale against R Corp. (the buyer and its President, X) and Y (the Seller). The complaint was later amended to one for rescission of an absolute deed of sale.

A, B, and C claimed that as early as 1971 they have been the lessees of a two (2) storey residential apartment located in Quezon City which is owned by the Spouses T, predecessors in interest of Y. The lease was NOT covered by any contract. The lessees A, B and C were allegedly granted a verbal pre-emptive right to purchase the property by the Spouses T if they should decide to sell same.

Upon the death of lessors Spouses T, management of the property was assumed by Y as representative of the heirs. A, B, and C were allegedly promised the same pre-emptive right by the heirs of the Spouses T since they had knowledge that their predecessors had extended said right to A, B and C.

In 1990, Y caused to be served on them a demand to vacate advising that the building was to be demolished. A, B, and C refused to vacate. Thereafter, they received another letter from Y offering to sell them the building for P2M.

A, B and C counter offered for P1M. Since then, they never heard from Y until sometime November 1990 when a certain Mr. X came to the leased premises to announce that he and R Corp. were the new owners of same.

In March 1991, the lessees received another letter, this time from counsel of R Corp. and X advising that his clients had acquired the building from the Heirs of Spouses T.

After some time and more incidents arising from attempts of the new owners to demolish the building, lessees obtained a copy of the pertinent deed of sale whereat it was made to appear that the property was sold to R Corp. for only P726,000. So lessees offered to reimburse Y the said selling price of P726,000 plus an additional P274,000 reiterating their earlier offer of P1M. Their offer was refused. Hence, the suit for recession.

Plaintiffs A, B, and C prayed for: a) recession of the Deed of Absolute Sale between Y and R Corp. dated September 4, 1990; b) that R. Corp. and X be ordered to reconvey the property to Y and for Y to sell same to plaintiffs.

The RTC rendered a decision dismissing the complaint ruling that since the right of redemption on which the complaint was based was merely oral, the same was thus unenforceable under the law.

On appeal to the Court of Appeals, the Court of Appeals reversed the RTC decision. It also held that the statute of frauds (Art. 1403), Civil Code governs the right of first refusal claimed by the plaintiffs but that plaintiffs had duly proven same by reason of the defendant's waiver of the protection of the statute when they failed to timely object to the presentation of oral evidence of the said right. Hence, the petition to the Supreme Court.

The Supreme Court began by noting that while both the RTC and Court of Appeals relied on Art. 1403 of the Civil Code in coming out with their respective decisions, both courts failed to discuss the threshold issue of whether or not a right of first refusal is indeed covered by the Statute of Frauds. (Note: Obviously, both inferior courts assumed that said right of first refusal was covered by Art. 1403, Civil Code).

The term "statute of frauds" is descriptive of statutes which require certain classes of contracts to be in writing. This statute does not deprive the parties of the right to contract with respect to the matters therein involved, but merely regulates the formalities of the contract necessary to render it enforceable. Thus, they are included in the provisions of the New Civil Code regarding unenforceable contracts, more particularly Art. 1403, paragraph 2.

The purpose of the statute is to prevent fraud and perjury in the enforcement of obligations depending for their evidence on the unassisted memory of witnesses by requiring certain enumerated contracts and transactions to be evidenced by a writing signed by the party to be charged. Moreover, the statute of frauds refers to specific kinds of transactions and cannot apply to any other transaction that is not enumerated therein. The applications of such statute presuppose the existence of a perfected contract.

The question now is whether a "right of first refusal" is among those enumerated in the list of contracts covered by the Statute of Frauds. More specifically, is a right of first refusal akin to "an agreement for the leasing of a longer period than one year, or for the sale of real property or of an interest therein" as contemplated by Article 1403, par. 2(e) of the New Civil Code.

A right of refusal is not among those listed as unenforceable under the statute of frauds. Furthermore, the application of Article 1403, par. 2(e) of the New Civil Code presupposes the existence of a perfected, albeit unwritten, contract of sale. A right of first refusal, such as the one involved in the instant case, is not by any means a perfect contract of sale of real property. At best, it is a contractual grant, not of the sale of the real property involved, but of the right of first refusal over the property sought to be sold.

It is thus evident that the statute of frauds does not contemplate cases involving a right of first refusal. As such, a right of first refusal need not be written to be enforceable and may be proven by oral evidence.

(Rosencor Development Corp. and Rene Joaquin vs. Paterno Inquiring, et. al., G.R. No. 140479, Mar. 8, 2001)