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Wilfredo V. Lapitan
 WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division

MAR 06 2018

Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION

VICTORIA N. RACELIS, in her G.R. No. 189609
capacity as administrator
 Petitioner,

Present:

VELASCO, JR., J., *Chairperson*,
 BERSAMIN,
 LEONEN,
 MARTIRES,* and
 GESMUNDO, JJ.

-versus-

SPOUSES GERMIL JAVIER and
REBECCA JAVIER
 Respondents.

Promulgated:

January 29, 2018

Wilfredo V. Lapitan

X-----X

DECISION

LEONEN, J.:

Lessees are entitled to suspend the payment of rent under Article 1658 of the Civil Code if their legal possession is disturbed. Acts of physical disturbance that do not affect legal possession is beyond the scope of this rule.

In a contract to sell, the payment of earnest money represents the seller's opportunity cost of holding in abeyance the search for other buyers or better deals. Absent proof of a clear agreement to the contrary, it should be forfeited if the sale does not happen without the seller's fault. The potential buyer bears the burden of proving that the earnest money was intended other than as part of the purchase price and to be forfeited if the

* On official leave as per Letter dated January 18, 2018.

1

sale does not occur without the seller's fault.

Through this Petition for Review,¹ petitioner Victoria N. Racelis (Racelis) challenges the Court of Appeals January 13, 2009 Decision² and September 17, 2009 Resolution,³ which ordered her to reimburse the sum of ₱24,000.00 to respondents Spouses Germil Javier and Rebecca Javier (the Spouses Javier).

Before his death, the late Pedro Nacu, Sr. (Nacu) appointed his daughter, Racelis,⁴ to administer his properties,⁵ among which was a residential house and lot located in Marikina City.⁶ Nacu requested his heirs to sell this property first.⁷ Acting on this request, Racelis immediately advertised it for sale.⁸

In August 2001, the Spouses Javier offered to purchase the Marikina property. However, they could not afford to pay the price of ₱3,500,000.00.⁹ They offered instead to lease the property while they raise enough money. Racelis hesitated at first but she eventually agreed.¹⁰ The parties agreed on a month-to-month lease and rent of ₱10,000.00 per month.¹¹ This was later increased to ₱11,000.00.¹² The Spouses Javier used the property as their residence and as the site of their tutorial school, the Niño Good Shepherd Tutorial Center.¹³

Sometime in July 2002, Racelis inquired whether the Spouses Javier were still interested to purchase the property. The Spouses Javier reassured her of their commitment and even promised to pay ₱100,000.00 to buy them more time within which to pay the purchase price.¹⁴

On July 26, 2002, the Spouses Javier tendered the sum of ₱65,000.00 representing "initial payment or goodwill money."¹⁵ On several occasions,

¹ *Rollo*, pp. 13–26.

² *Id.* at 27–32. The Decision, docketed as CA-G.R. SP No. 98928, was penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by Associate Justices Rebecca De Guia-Salvador and Romeo F. Barza of the Tenth Division, Court of Appeals, Manila.

³ *Id.* at 37. The Resolution was penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by Associate Justices Rebecca De Guia-Salvador and Romeo F. Barza of the Former Tenth Division, Court of Appeals, Manila

⁴ *See rollo*, p. 98, stating "... Pedro Nacu, deceased father of defendant Victoria N. Racelis ..."

⁵ *Rollo*, pp. 52–53.

⁶ *Id.* at 27.

⁷ *Id.* at 52.

⁸ *Id.* at 42, Complaint.

⁹ *Id.* at 104.

¹⁰ *Id.* at 14.

¹¹ *Id.* at 27.

¹² *Id.* at 83, MTC Decision.

¹³ *Id.* at 104.

¹⁴ *Id.* at 42.

¹⁵ *Id.* at 54.

they tendered small sums of money to complete the promised ₱100,000.00,¹⁶ but by the end of 2003, they only delivered a total of ₱78,000.00.¹⁷ Meanwhile, they continued to lease the property. They consistently paid rent but started to fall behind by February 2004.¹⁸

Realizing that the Spouses Javier had no genuine intention of purchasing the property, Racelis wrote to inform them that her family had decided to terminate the lease agreement and to offer the property to other interested buyers.¹⁹ In the same letter, Racelis demanded that they vacate the property by May 30, 2004.²⁰ Racelis also stated that:

It is a common practice that earnest money will be forfeited in favor of the seller if the buyer fails to consummate [the] sale after the lapse of a specified period for any reason so that we have the legal right to forfeit your P78,000 on account of your failure to pursue the purchase of the property you are leasing. However, as a consideration to you, we undertake to return to you the said amount after we have sold the property and received the purchase price from [the] prospective buyer.²¹

The Spouses Javier refused to vacate due to the ongoing operation of their tutorial business. They wrote Racelis on March 16, 2004, informing her of their inability to purchase the property at ₱3,500,000.00 because “Mrs. Rebecca Javier’s plan for overseas employment did not materialize.”²² They also informed her that they had “purchased a more affordable lot.”²³ They insisted that the sum of ₱78,000.00 was advanced rent and proposed that this amount be applied to their outstanding liability until they vacate the premises.²⁴

Disagreeing on the application of the ₱78,000.00, Racelis and the Spouses Javier brought the matter to the barangay for conciliation. Unfortunately, the parties failed to reach a settlement.²⁵ During the proceedings, Racelis demanded the Spouses Javier to vacate the premises by the end of April 30, 2004.²⁶ However, the Spouses Javier refused to give up possession of the property and even refused to pay rent for the succeeding months.²⁷

¹⁶ Id. at 55.

¹⁷ Id. at 28.

¹⁸ Id.

¹⁹ Id. at 56 and 14.

²⁰ Id.

²¹ Id. at 56.

²² Id. at 57.

²³ Id.

²⁴ Id.

²⁵ Id. at 14.

²⁶ Id. at 44–45.

²⁷ Id. at 45.

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On May 12, 2004, Racelis caused the disconnection of the electrical service over the property forcing the Spouses Javier to purchase a generator.²⁸ This matter became the subject of a complaint for damages filed by the Spouses Javier against Racelis.²⁹ Racelis was absolved from liability.³⁰ The Spouses Javier no longer interposed an appeal.³¹

Meanwhile, Racelis filed a complaint for ejectment against the Spouses Javier before the Metropolitan Trial Court in Marikina City. The case was docketed as Civil Case No. 04-7710.³²

In her Complaint,³³ Racelis alleged that she agreed to lease the property to the Spouses Javier based on the understanding that they would eventually purchase it.³⁴ Racelis also claimed that they failed to pay rent from March 2004 to September 2004³⁵ and the balance of ₱7,000.00 for the month of February, or a total of ₱84,000.00.³⁶ Racelis prayed that the Spouses Javier be ordered to: (1) vacate the leased premises; (2) pay accrued rent; and (3) pay moral and exemplary damages, and attorney's fees.³⁷

In their Answer,³⁸ the Spouses Javier averred that they never agreed to purchase the property from Racelis because they found a more affordable property at Greenheights Subdivision in Marikina City. They claimed that the amount of ₱78,000.00 was actually advanced rent.³⁹

During trial, the Spouses Javier vacated the property and moved to their new residence at Greenheights Subdivision⁴⁰ on September 26, 2004.⁴¹ The Metropolitan Trial Court then determined that the only issue left to be resolved was the amount of damages in the form of unpaid rentals to which Racelis was entitled.⁴²

On August 19, 2005, the Metropolitan Trial Court rendered a Decision⁴³ dismissing the complaint. It ruled that the Spouses Javier were entitled to suspend the payment of rent under Article 1658 of the Civil Code

²⁸ Id. at 98.

²⁹ Id. at 86.

³⁰ Id. at 103–104.

³¹ Id. at 17–18.

³² Id. at 83.

³³ Id. at 41–49.

³⁴ Id. at 42–44.

³⁵ Id. at 29.

³⁶ Id. at 44.

³⁷ Id. at 48.

³⁸ Id. at 63–69.

³⁹ Id. at 64.

⁴⁰ Id. at 86.

⁴¹ Id. at 29.

⁴² Id. at 88.

⁴³ Id. at 83–89. The Decision, docketed as Civil Case No. 04-7710, was penned by Judge Alex E. Ruiz of Branch 75, Metropolitan Trial Court, City of Marikina.

due to Racelis' act of disconnecting electric service over the property.⁴⁴ The Metropolitan Trial Court declared that the Spouses Javier's obligation had been extinguished. Their advanced rent and deposit were sufficient to cover their unpaid rent.⁴⁵

The Metropolitan Trial Court, however, did not characterize the ₱78,000.00 as advanced rent but as earnest money. Accordingly, Racelis was ordered to return the ₱78,000.00 due to her waiver in the Letter dated March 4, 2004.⁴⁶

On appeal, the Regional Trial Court rendered a Decision⁴⁷ reversing the Metropolitan Trial Court August 19, 2005 Decision. The Regional Trial Court held that the Spouses Javier were not justified in suspending rental payments.⁴⁸ However, their liability could not be offset by the ₱78,000.00. The Regional Trial Court explained that the parties entered into two (2) separate and distinct contracts—a lease contract and a contract of sale. Based on the evidence presented, the ₱78,000.00 was not intended as advanced rent, but as part of the purchase price of the property.⁴⁹ The Regional Trial Court ordered the Spouses Javier to pay accrued rent and declared that they may recover the ₱78,000.00 in a separate proceeding.⁵⁰

The Spouses Javier moved for reconsideration. In its April 24, 2007 Order,⁵¹ the Regional Trial Court reduced the Spouses Javier's unpaid rentals by their advanced rental deposit. They were ordered to pay ₱54,000.00 instead.⁵²

The Spouses Javier appealed the Regional Trial Court January 15, 2007 Decision and April 24, 2007 Order.

On January 13, 2009, the Court of Appeals rendered a Decision⁵³ declaring the Spouses Javier justified in withholding rental payments due to the disconnection of electrical service over the property.⁵⁴ Nevertheless, the Court of Appeals stated that they were not exonerated from their obligation to pay accrued rent. On the other hand, Racelis was bound to return the sum

⁴⁴ CIVIL CODE, art. 1658. The lessee may suspend the payment of the rent in case the lessor fails to make the necessary repairs or to maintain the lessee in peaceful and adequate enjoyment of the property leased.

⁴⁵ *Rollo*, p. 88.

⁴⁶ *Id.* at 89.

⁴⁷ *Id.* at 90–94. The Decision, docketed as SCA No. 05-626-MK and dated January 15, 2007, was penned by Judge Felix P. Reyes of Branch 272, Regional Trial Court, Marikina City.

⁴⁸ *Id.* at 92–93.

⁴⁹ *Id.* at 93–94.

⁵⁰ *Id.* at 94.

⁵¹ *Id.* at 95–96.

⁵² *Id.* at 96.

⁵³ *Id.* at 27–31.

⁵⁴ *Id.* at 30.

of ₱78,000.00 in view of her waiver. The Court of Appeals, by way of compensation, reduced the liability of the Spouses Javier by their advanced rent and the sum of ₱78,000.00. Accordingly, Racelis was ordered to reimburse the amount of ₱24,000.00 to the Spouses Javier.⁵⁵ The dispositive portion of this Decision stated:

WHEREFORE, in view of the foregoing, the petition is GRANTED. The assailed decision is REVERSED and SET ASIDE. Herein respondent RACELIS is ordered to reimburse herein petitioners in the amount of ₱24,000.00 on the counterclaim.

SO ORDERED.⁵⁶

Racelis moved for reconsideration but her motion was denied in the Court of Appeals September 17, 2009 Resolution.⁵⁷

On November 25, 2009, Racelis filed a Petition for Review⁵⁸ before this Court to which the Spouses Javier filed a Comment.⁵⁹ On July 1, 2010, Racelis filed a Reply.⁶⁰

Petitioner asserts that the Court of Appeals erred in applying Article 1658 of the Civil Code in favor of respondents. Respondents cannot invoke the right given to lessees under Article 1658 of the Civil Code. Petitioner claims that she was justified in causing the temporary disconnection of electrical service over the property because respondents were remiss in paying rent. However, assuming that respondents were entitled to suspend the payment of rent pursuant to Article 1658 of the Civil Code, petitioner argues that the suspension should only be temporary or for an intervening period.⁶¹

Petitioner likewise claims that she did not expressly waive her right over the initial payment of ₱78,000.00 but merely extended an offer to reimburse this amount, which respondents rejected. Hence, she is entitled to retain it and it cannot be used to offset respondents' accrued rent.⁶²

Respondents do not dispute their liability to pay accrued rent. However, they insist that their liability should be offset by the initial

⁵⁵ Id. at 30–31.

⁵⁶ Id. at 31.

⁵⁷ Id. at 37. The Resolution was penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by Associate Justices Rebecca De Guia-Salvador and Romeo F. Barza of the Former Tenth Division, Court of Appeals, Manila.

⁵⁸ Id. at 13–26.

⁵⁹ Id. at 144–148.

⁶⁰ Id. at 157–160.

⁶¹ Id. at 19–20.

⁶² Id. at 21–22.

payment of ₱78,000.00. Respondents argue that petitioner waived her right over this amount. Hence, it can be applied to pay their obligation.⁶³

The issues for this Court's resolution are:

First, whether or not respondents Spouses Germil and Rebecca Javier can invoke their right to suspend the payment of rent under Article 1658 of the Civil Code; and

Second, whether or not the ₱78,000.00 initial payment can be used to offset Spouses Germil and Rebecca Javier's accrued rent.

I

A contract of lease is a "consensual, bilateral, onerous and commutative contract by which the owner temporarily grants the use of his property to another who undertakes to pay rent therefor."⁶⁴

Article 1658 of the Civil Code allows a lessee to postpone the payment of rent if the lessor fails to either (1) "make the necessary repairs" on the property or (2) "maintain the lessee in peaceful and adequate enjoyment of the property leased." This provision implements the obligation imposed on lessors under Article 1654(3) of the Civil Code.⁶⁵

The failure to maintain the lessee in the peaceful and adequate enjoyment of the property leased does not contemplate all acts of disturbance.⁶⁶ Lessees may suspend the payment of rent under Article 1658 of the Civil Code only if their legal possession is disrupted.⁶⁷ In *Goldstein v. Roces*:⁶⁸

Nobody has in any manner disputed, objected to, or placed any difficulties in the way of plaintiff's peaceful enjoyment, or his quiet and peaceable possession of the floor he occupies. The lessors, therefore, have not failed to maintain him in the peaceful enjoyment of the floor leased to him and he continues to enjoy this status without the slightest change,

⁶³ Id. at 144–146.

⁶⁴ *Lim Si v. Lim*, 98 Phil 868, 870 (1956) [Per J. Labrador, First Division].

⁶⁵ *Madamba v. Araneta*, 106 Phil. 103, 106 (1959) [Per J. Concepcion, En Banc]; CIVIL CODE, art. 1654 (3) provides:
Art. 1654. The lessor is obliged:

....

(3) To maintain the lessee in the peaceful and adequate enjoyment of the lease for the entire duration of the contract.

⁶⁶ See *Goldstein v. Roces*, 34 Phil. 562 (1916) [Per C.J. Arellano, Second Division].

⁶⁷ *Chua Tee Dee v. Court of Appeals*, 473 Phil. 446, 467 (2004) [Per J. Callejo, Sr., Second Division].

⁶⁸ 34 Phil. 562 (1916) [Per C.J. Arellano, Second Division].

without the least opposition on the part of any one. *That there was a disturbance of the peace or order in which he maintained his things in the leased story does not mean that he lost the peaceful enjoyment of the thing rented.* The peace would likewise have been disturbed or lost had some tenant of the Hotel de Francia, living above the floor leased by plaintiff, continually poured water on the latter's bar and sprinkled his bar-tender and his customers and tarnished his furniture; or had some gay patrons of the hotel gone down into his saloon and broken his crockery or glassware, or stunned him with deafening noises. *Numerous examples could be given to show how the lessee might fail peacefully to enjoy the floor leased by him, in all of which cases he wo[u]ld, of course, have a right of action for the recovery of damages from those who disturbed his peace, but he would have no action against the lessor to compel the latter to maintain him in his peaceful enjoyment of the thing rented. The lessor can do nothing, nor is it incumbent upon him to do anything, in the examples or cases mentioned, to restore his lessee's peace.*

....

True it is that, pursuant to paragraph 3, of article 1554, the lessor must maintain the lessee in the peaceful enjoyment of the lease during all of the time covered by the contract, and that, in consequence thereof, he is obliged to remove such obstacles as impede said enjoyment; but, as in warranty in a case of eviction (to which doctrine the one we are now examining is very similar, since it is necessary, as we have explained, that the cause of eviction be in a certain manner imputable to the vendor, which must be understood as saying that it must be prior to the sale), *the obstacles to enjoyment which the lessor must remove are those that in some manner or other cast doubt upon the right by virtue of which the lessor himself executed the lease and, strictly speaking, it is this right that the lessor should guarantee to the lessee.*⁶⁹ (Citations omitted, emphasis supplied)

The principle in *Goldstein* was reiterated in *Chua Tee Dee v. Court of Appeals*.⁷⁰

In *Chua Tee Dee*, the lease contract stated that the lessor was obliged to "maintain the [lessee] in the quiet peaceful possession and enjoyment of the leased premises during the effectivity of the lease."⁷¹ The lessees were harassed by claimants of the leased property. Hence, the lessee withheld rental payments for the lessor's failure to comply with his contractual obligation.⁷²

Citing *Goldstein*, this Court in *Chua Tee Dee* struck down the lessee's argument and held that "[t]he duty 'to maintain the lessee in the peaceful and

⁶⁹ Id. at 563–566.

⁷⁰ 473 Phil. 446 (2004) [Per J. Callejo, Sr., Second Division].

⁷¹ Id. at 451.

⁷² Id. at 463–464.

adequate enjoyment of the lease for the duration of the contract' mentioned in [N]o. 3 of [Article 1654] is merely a warranty that the lessee shall not be disturbed in his legal, and not physical, possession." Furthermore, this Court found that there was no disturbance in the lessee's legal possession because her right to possess the property was neither questioned nor raised as an issue in any legal proceeding. Hence, she was not entitled to suspend the payment of rent.⁷³

In this case, the disconnection of electrical service over the leased premises on May 14, 2004⁷⁴ was not just an act of physical disturbance but one that is meant to remove respondents from the leased premises and disturb their legal possession as lessees. Ordinarily, this would have entitled respondents to invoke the right accorded by Article 1658 of the Civil Code.

However, this rule will not apply in the present case because the lease had already expired when petitioner requested for the temporary disconnection of electrical service. Petitioner demanded respondents to vacate the premises by May 30, 2004.⁷⁵ Instead of surrendering the premises to petitioner, respondents unlawfully withheld possession of the property. Respondents continued to stay in the premises until they moved to their new residence on September 26, 2004.⁷⁶ At that point, petitioner was no longer obligated to maintain respondents in the "peaceful and adequate enjoyment of the lease for the entire duration of the contract."⁷⁷ Therefore, respondents cannot use the disconnection of electrical service as justification to suspend the payment of rent.

Assuming that respondents were entitled to invoke their right under Article 1658 of the Civil Code, this does exonerate them from their obligation under Article 1657 of the Civil Code "to pay the price of the lease according to the terms stipulated."⁷⁸ Lessees who exercise their right under Article 1658 of the Civil Code are not freed from the obligations imposed by law or contract.

Moreover, respondents' obligation to pay rent was not extinguished when they transferred to their new residence. Respondents are liable for a reasonable amount of rent for the use and continued occupation of the property upon the expiration of the lease. To hold otherwise would unjustly enrich respondents at petitioner's expense.

⁷³ Id. at 467-471.

⁷⁴ *Rollo*, p. 29.

⁷⁵ Id. at 14.

⁷⁶ Id. at 29.

⁷⁷ CIVIL CODE, art. 1654, par. 3.

⁷⁸ CIVIL CODE, art. 1657, par. 1.



II

Respondents admit their liability to pay accrued rent for the continued use and possession of the property. However, they take exception to the proper treatment of the ₱78,000.00 initial payment. Throughout the proceedings, respondents insist that this amount was intended as advanced rent. Hence, it can be used to offset their obligation.⁷⁹

Respondents' argument is unmeritorious.

The ₱78,000.00 initial payment cannot be characterized as advanced rent. First, records show that respondents continued to pay monthly rent until February 2004 despite having delivered the ₱78,000.00 to petitioner on separate dates in 2003.⁸⁰ Second, as observed by the Metropolitan Trial Court, respondents indicated in the receipt that the ₱78,000.00 was initial payment or goodwill money. They could have easily stated in the receipt that the ₱78,000.00 was advanced rent instead of denominating it as "initial payment or goodwill money." Respondents even proposed that the initial payment be used to offset their accrued rent.⁸¹

Both the Metropolitan Trial Court and the Regional Trial Court rejected respondents' assertion that the ₱78,000.00 was advanced rent and characterized it as earnest money.⁸²

Under Article 1482 of the Civil Code, whenever earnest money is given in a contract of sale,⁸³ it shall be considered as "proof of the perfection of the contract."⁸⁴ However, this is a disputable presumption, which prevails in the absence of contrary evidence. The delivery of earnest money is not conclusive proof that a contract of sale exists.⁸⁵

The existence of a contract of sale depends upon the concurrence of the following elements: (1) consent or meeting of the minds; (2) a determinate subject matter; and (3) price certain in money or its equivalent.⁸⁶ The defining characteristic of a contract of sale is the seller's obligation to transfer ownership of and deliver the subject matter of the contract. Without this essential feature, a contract cannot be regarded as a sale although it may have been denominated as such.⁸⁷

⁷⁹ *Rollo*, p. 145.

⁸⁰ *Id.* at 54–55.

⁸¹ *Id.* at 57.

⁸² *Id.* at 89 and 94.

⁸³ *Chua v. Court of Appeals*, 449 Phil. 25, 43 (2003) [Per J. Carpio, First Division].

⁸⁴ CIVIL CODE, art. 1482.

⁸⁵ *Philippine National Bank v. Court of Appeals*, 330 Phil 1048, 1072–1073 (1996) [Per J. Hermosisima, Jr., First Division].

⁸⁶ *Coronel v. Court of Appeals*, 331 Phil. 294, 308–309 (1996) [Per J. Melo, Third Division].

⁸⁷ *Tan v. Benolirao*, 619 Phil. 35, 48–49 (2009) [Per J. Brion, Second Division].

In a contract of sale, title to the property passes to the buyer upon delivery of the thing sold. In contrast, in a contract to sell, ownership does not pass to the prospective buyer until full payment of the purchase price. The title of the property remains with the prospective seller.⁸⁸

In a contract of sale, the non-payment of the purchase price is a resolutive condition that entitles the seller to rescind the sale.⁸⁹ In a contract to sell, the payment of the purchase price is a positive suspensive condition that gives rise to the prospective seller's obligation to convey title.⁹⁰ However, non-payment is not a breach of contract but "an event that prevents the obligation of the vendor to convey title from becoming effective."⁹¹ The contract would be deemed terminated or cancelled, and⁹² the parties stand "as if the conditional obligation had never existed."⁹³

Based on the evidence on record, petitioner and respondents executed a contract to sell, not a contract of sale. Petitioner reserved ownership of the property and deferred the execution of a deed of sale until receipt of the full purchase price. In her Letter dated March 4, 2004, petitioner stated:

It was our understanding that pending your purchase of the property you will rent the same for the sum of P10,000.00 monthly. With our expectation that you will be able to purchase the property during 2002, we did not offer the property for sale to third parties. *We even gave you an extension verbally for another twelve months or the entire year of 2003 within which we could finalize the sale agreement and for you to deliver to us the amount of P3.5 Million, the agreed selling price of the property.* However, to this date, we are not certain whether or not you have the capacity to purchase the property. The earnest money of P100,000 that we initially agreed upon only reached P78,000 as of date accumulated through several installments during 2003. It is not our intention to wait for a long time to dispose the property since you are very much aware of the situation of my mother.⁹⁴ (Emphasis supplied)

In this case, since respondents failed to deliver the purchase price at the end of 2003, the contract to sell was deemed cancelled. The contract's cancellation entitles petitioner to retain the earnest money given by respondents.

⁸⁸ *Chua v. Court of Appeals*, 449 Phil. 25, 41–42 (2003) [Per J. Carpio, First Division] citing *Philippine National Bank v. Court of Appeals*, 330 Phil 1048, 1072–1073 (1996) [Per J. Hermosisima, Jr., First Division].

⁸⁹ *Ayala Life Assurance, Inc. v. Ray Burton Development Corp.*, 515 Phil. 431, 438 (2006) [Per J. Sandoval-Gutierrez, Second Division].

⁹⁰ *Chua v. Court of Appeals*, 449 Phil. 25, 42 (2003) [Per J. Carpio, First Division].

⁹¹ *Id.*

⁹² *Diego v. Diego*, 704 Phil. 373, 390–392 (2013) [Per J. Del Castillo, Second Division].

⁹³ *Cheng v. Genato*, 360 Phil. 891, 906 (1998) [Per J. Martinez, Second Division].

⁹⁴ *Rollo*, p. 56.

Earnest money, under Article 1482 of the Civil Code, is ordinarily given in a perfected contract of sale.⁹⁵ However, earnest money may also be given in a contract to sell.

In a contract to sell, earnest money is generally intended to compensate the seller for the opportunity cost of not looking for any other buyers. It is a show of commitment on the part of the party who intimates his or her willingness to go through with the sale after a specified period or upon compliance with the conditions stated in the contract to sell.

Opportunity cost is defined as “the cost of the foregone alternative.”⁹⁶ In a potential sale, the seller reserves the property for a potential buyer and foregoes the alternative of searching for other offers. This Court in *Philippine National Bank v. Court of Appeals*⁹⁷ construed earnest money given in a contract to sell as “consideration for [seller’s] promise to reserve the subject property for [the buyer].”⁹⁸ The seller, “in excluding all other prospective buyers from bidding for the subject property . . . [has given] up what may have been more lucrative offers or better deals.”⁹⁹

Earnest money, therefore, is paid for the seller’s benefit. It is part of the purchase price while at the same time proof of commitment by the potential buyer. Absent proof of a clear agreement to the contrary, it is intended to be forfeited if the sale does not happen without the seller’s fault. The potential buyer bears the burden of proving that the earnest money was intended other than as part of the purchase price and to be forfeited if the sale does not occur without the fault of the seller. Respondents were unable to discharge this burden.

There is no unjust enrichment on the part of the seller should the initial payment be deemed forfeited. After all, the owner could have found other offers or a better deal. The earnest money given by respondents is the cost of holding this search in abeyance.

This Court notes that respondents were even unable to meet their own promise to pay the full amount of the earnest money. Of the ₱100,000.00 that respondents committed to pay, only ₱78,000.00 was received in irregular tranches. To rule that the partial earnest money should even be returned is both inequitable and would have dire repercussions as a precedent.

⁹⁵ CIVIL CODE, art. 1482 provides:

Article 1482. Whenever earnest money is given in a contract of sale, it shall be considered as part of the price and as proof of the perfection of the contract.

⁹⁶ See *Reyes v. Valentin*, G.R. No. 194488, February 11, 2015 [Per J. Leonen, Second Division].

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

⁹⁸ Id. at 1073.

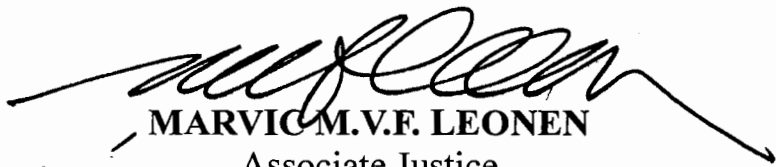
⁹⁹ Id.

Although petitioner offered to return the earnest money to respondents, it was conditioned upon the sale of the property to another buyer.¹⁰⁰ Petitioner cannot be said to have expressly waived her right to retain the earnest money. Petitioner's offer was even rejected by respondents, who proposed that the earnest money be applied instead to their unpaid rent.¹⁰¹


Therefore, respondents' unpaid rent amounting to ₱84,000.00¹⁰² cannot be offset by the earnest money. However, it should be reduced by respondents' advanced deposit of ₱30,000.00. As found by the Regional Trial Court, petitioner failed to establish that respondents' advanced deposit had already been consumed or deducted from respondents' unpaid rent.¹⁰³

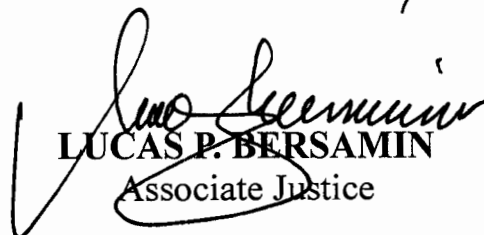
WHEREFORE, the Petition for Review is **GRANTED**. The January 13, 2009 Decision and September 17, 2009 Resolution of the Court of Appeals in CA-G.R. SP No. 98928 are **REVERSED** and **SET ASIDE**. Respondents Spouses Germil and Rebecca Javier are ordered to pay petitioner Vanessa N. Racelis the sum of ₱54,000.00, representing accrued rentals, with interest at the rate of six percent (6%) per annum from the date of the finality of this judgment until fully paid.

SO ORDERED.


MARVIC M.V.F. LEONEN
 Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
 Associate Justice
 Chairperson


LUCAS P. BERSAMIN
 Associate Justice

On official leave
SAMUEL R. MARTIRES
 Associate Justice

¹⁰⁰ *Rollo*, p. 56.

¹⁰¹ *Id.* at 57.

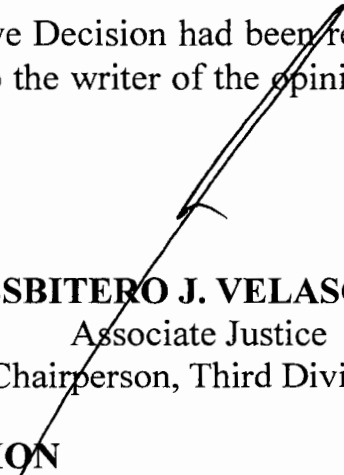
¹⁰² *Id.* at 29.

¹⁰³ *Id.* at 96.


ALEXANDER G. GESMUNDO
 Associate Justice


ATTESTATION

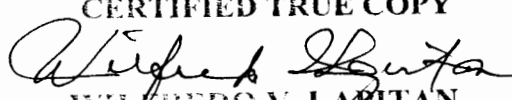
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
 Associate Justice
 Chairperson, Third Division

CERTIFICATION

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


MARIA LOURDES P. A. SERENO
 Chief Justice

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division

MAR 06 2018