

**ECE REALTY & DEVELOPMENT, INC., EMILIO CHING AND
ROCHELLE GUANZON, PETITIONERS, VS. RODA CARLOS,
REPRESENTED BY CARMENCITA “BABY” SALES,
RESPONDENT.**

Ponente: SORONGON, J.

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SORONGON, J.:

This is a Petition for Review[1] under Rule 43 of the Rules of Court assailing the Decision[2] dated February 12, 2010 of the Office of the President (OP) in O.P. Case No. 08-B-051 ordering herein petitioners ECE Realty & Development, Inc. (ECE Realty), Emilio Ching (Ching) and Rochelle Guanzon (Guanzon) to refund respondent Roda Carlos (Roda) the amount of Five Hundred Seventy Three Thousand Sixty-One Pesos and Ninety-Eight Centavos (Php573,061.98).

Factual Antecedents

ECE Realty is the owner and developer of the residential condominium project called the Central Park Condominium Building (Central Park Condominium) located at D. Jorge Street, Pasay City,[3] while co-petitioners Emilio Ching (Ching) and Rochelle Guanzon (Guanzon) are its president and customer service officer[4], respectively.

During the process of the construction of Central Park Condominium, on May 20, 1997, ECE Realty, through its president, Ching, entered into a Contract to Sell[5] with spouses Jovencio and Carmencita Sales (spouses Sales) for the latter's purchase of a condominium unit, particularly described as Unit 801-B/II of the Central Park Condominium with an area of 27.21 square meters for a consideration of Seven Hundred Seven Thousand Four Hundred Sixty Pesos (Php707,460.00) payable in installments with a down payment of Ninety Thousand Pesos (Php90,000.00). The contract to sell also stipulates that the subject unit shall be delivered to the buyers and ready for their occupancy on April 30, 1999.

On June 7, 1999, spouses Sales transferred and assigned all their rights and interests pertaining to Unit 801 in favor of spouses Luisita and Roda Carlos (spouses Carlos), with the written conformity of ECE Realty.[6] Later on March 7, 2001, ECE Realty advised spouses Carlos that Unit 801 was ready for inspection.[7] On March 1, 2002, spouses Carlos inspected the same and found that it was not yet fit for occupancy.[8] Thus, they went to Guanzon and discussed with her the matter. They eventually agreed for the replacement of Unit 801 with Unit 815, containing an area of 28.96 square meters and for contract price of Seven Hundred Eighty One Nine Hundred Twenty Pesos (Php781,920.00). It was likewise agreed that the total payment made by spouses Carlos for Unit 801 amounting to Five Hundred Seventy Three Thousand Sixty One and Ninety Eight Centavos (Php573,061.98) will be applied to the new unit.[9] On same date, spouses Carlos were asked to sign a document entitled Release, Waiver & Quitclaim[10] stating that spouses Carlos for and in consideration of Five Hundred Seventy Three Thousand Sixty One and Ninety Eight Centavos (Php573,061.98)" do hereby release and forever discharge ECE Realty and Development, Inc. xxx from any and all actions, causes of action, claims and demands for, upon or by reason of any damage or loss which we may have sustained as a consequence of the purchase of Condominium

Unit 801 xxx." Thereafter, they signed a Reservation Agreement[11] for Unit 815.

The dispute arose when the parties had a misunderstanding on the amount that will serve as downpayment for Unit 815.

On July 8, 2003, respondent Roda filed before the Housing and Land Use Regulatory Board-Expanded National Capital Region Field Office (HLURB-ENCR) a Complaint[12] for specific performance and damages against ECE Realty alleging that spouses Carlos and Guanzon agreed that Unit 801 shall be replaced with Unit 815 and the total payments that she had made for the previous unit amounting to Php573,061.98 shall serve as their downpayment for the new unit. After she and her spouse signed the Release, Waiver & Quitclaim, another document entitled Reservation Agreement was handed to her by Guanzon. Pursuant to their understanding, she signed the Reservation Agreement even it had incomplete entries. However, when she was later furnished a copy of said Reservation Agreement she found that instead of Php573,061.98 only the amount of Four Hundred Thirty-Seven Thousand One Hundred Sixty-Two Pesos and Eighty Eight Centavos (Php437,162.88) was entered in the Reservation Agreement as downpayment. Spouses Carlos thereafter protested to Guanzon the amount declared in the Reservation Agreement and informed the latter that it was less than the agreed downpayment by more or less One Hundred Thirty-Five Thousand Eight Hundred Ninety-Nine Pesos and Ten Centavos (Php135,899.10) and demanded that the discrepancy be forthwith corrected. ECE Realty did not take heed, hence, spouses Carlos, thru counsel, sent the former a letter on March 4, 2002 demanding the application of the total amount of Php573,061.98 as the downpayment for Unit 815. Again on December 2, 2002, spouses Carlos sent another letter to ECE Realty reiterating their demand. But sometime in the second week of December 2002, their counsel received a letter from Guanzon informing them that the current price for Unit 815 is One Million Seventy-One Thousand Five Hundred Twenty Pesos (Php1,071,520.00) and based on their agreement, the old price of Php781,930.00 was given to spouses Carlos provided that "only the principal portion of the amortization made on the old unit of your client will be credited to the new unit."

Ultimately, Roda prayed[13] that petitioners be ordered to correct the amount of the downpayment appearing in the Reservation Agreement for Unit 815 from Php437,161.88 to Php573,061.98 and in the alternative, to rescind said Reservation Agreement and order them to refund the total amount paid by spouses Carlos amounting to Php573,061.98.

Petitioners, in their Answer with Compulsory Counterclaim,[14] alleged that they gave the spouses Carlos two (2) options for the replacement of Unit 801 with Unit 815, viz: the first option is that the price of the new unit, Unit 815, will be the old price (Php781,920.00) but only the principal portion of payments to the old unit, Unit 801(Php437,162.88) will be credited; and the second option is that the price of the new unit will be the current price (Php1,071,520.00) and all her payment, principal and interest, to the old unit (Php573,061.98) will be credited.

The rulings of the HLURB-ENCR, HLURB Board of Commissioners, and the Office of the President

By Decision[15] dated October 5, 2002, the HLURB-ENCR annulled the Release, Waiver and Quitclaim and the Reservation Agreement, and rescinded the Contract to Sell on the ground of non-meeting of minds between the parties when they entered into these agreements as both entered with "mistaken notions, each with tenable assumptions". Consequently, the HLURB-ENCR ruled that the parties are restored to their original situation, i.e. spouses Carlos remains to be buyers of Unit 801 under the Contract to Sell. However, the HLURB-ENCR found that petitioners have already incurred delay in the delivery of Unit 801 to Roda. Thus, rescission and refund pursuant to Section 23 of Presidential Decree No. 957 is in order. The HLURB disposed the case thuswise:

"WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Declaring the Release, Waiver and Quitclaim and the Reservation Agreement as annulled;
2. Declaring the Contract to Sell as rescinded; and
3. Respondent ECE Realty & Development, Inc. is hereby ordered to refund to complainant Roda Carlos the amount of Five Hundred Seventy Three Thousand Sixty One and 98/100 Pesos (P573,061.98) representing total payments made, with interest at 12% per annum reckoned from the finality of this decision until fully paid.

All other claims and counterclaims are hereby dismissed.

SO ORDERED."

Displeased, petitioners appealed to the Board of Commissioners of the HLURB (Board of Commissioners) alleging that the HLUB-ENCR erred in ordering the rescission of the Contract to Sell and refund of Php571,068.98[16].

In a Decision[17] dated November 20, 2007, the Board of Commissioners affirmed the factual and legal findings of the HLURB-ENCR in granting the rescission and refund. However, it modified the interest rate imposed and ruled that:

"WHEREFORE, premises considered, the instant appeal is PARTLY GRANTED. Accordingly, the decision of the ENCRFO dated October 5, 2005 is modified as to the rate on interest on the refundable amount which is hereby fixed at 6% per annum reckoned from the finality of this decision until fully paid. The decision, in all other aspects, is AFFIRMED.

SO ORDERED."

Thereafter, petitioners elevated the case to the Office of the President (OP) insisting that there was no basis for granting the rescission and refund in favor of Roda. In the assailed Decision, the OP affirmed the ruling of the Board of Commissioners but modified the interest imposed in this manner:

"WHEREFORE, premises considered, the judgment appealed from is hereby MODIFIED as to the interest to be imposed. Accordingly, appellants are hereby ordered to refund the appellee Five Hundred Seventy Three Thousand Sixty One and 98/100 Pesos (P573,061.98) with interest at 6% per annum from the date of demand until the finality of this Decision and 12% per annum from the finality of this Decision until fully paid.

SO ORDERED."

Not to give up, petitioners filed the instant petition for review ascribing the following errors:

ASSIGNMENT OF ERRORS

I

THE HONORABLE OFFICE OF THE PRESIDENT FATALLY ERRED IN FINDING THAT RESPONDENT WAS ENTITLED TO RESCISSION AND REFUND

II

THE HONORABLE OFFICE OF THE PRESIDENT LIKewise GRAVELY ERRED IN AWARDING LEGAL INTEREST STARTING FROM DATE OF DEMAND.[18]

OUR RULING

In the instant petition, petitioners insist that Roda is not entitled to rescission and refund as she assumed responsibility, including risks thereon, when she entered in a Deed of Transfer of Rights and assumed the Contract to Sell on June 7, 1999 with knowledge that the subject unit was not yet finished at the time of the original delivery date, i.e. April 30, 1999. By reason of said assumption of responsibility and risk, petitioners

argue that she waived her right to question the delay in the delivery of Unit 801.

The instant petition fails.

At the outset, this Court notes that for failure of the parties to have a meeting of minds as regards to the Release, Waiver and Quitclaim and the Reservation Agreement involving Unit 815, the HLURB, as affirmed by the Board of Commissioners and OP, effectively annulled the same. Thus, the parties are restored to their original contract, i.e. Contract to Sell over Unit 801 which was transferred and assigned by the original buyer spouses Sales to spouses Carlos.

Article 1169 of the Civil Code provides:

Art. 1169. Those obliged to deliver or to do something, incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

- (1) When the obligation or the law expressly so declares; or
- (2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or
- (3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins. (Emphasis Ours)

Here, it is undisputed that the original delivery date of Unit 801 stated in the Contract to Sell was on April 30, 1999 and that the original buyers, spouses Sales, transferred and assigned all their rights pertaining to said unit in favor of spouses Carlos by virtue of a Deed of Transfer of Rights on June 7, 1999. As such, petitioners banked their assertion that Roda had waived her right to question any delay in the delivery of said unit on the fact that she and her husband entered into Deed of Transfer of Rights notwithstanding that at that time, petitioners were already delayed in delivering the same.

We are not convinced.

Firstly, the HLURB-ENCR as affirmed by the Board of Commissioners and OP, found that as early as February 8, 1999, ECE Realty already informed spouses Sales of the revised schedule of the completion of the project and the delivery date of the unit, which was expected to be finished by the end of December 1999. On this note, it is well to stress that findings of facts of administrative agencies are generally accorded great respect, if not finality, by the courts because of the special knowledge and expertise over matters falling under their jurisdiction.[19]

Thus, petitioners' assertion is clearly misplaced. Petitioners had no basis in fact and in law in contending that by reason of spouses Carlos' execution of Deed of Transfer of Rights they are deemed to have waived their right to question any delay since it appears that the date of delivery of Unit 801 has been moved from April 30, 1999 to December 1999. Clearly, ECE Realty already incurred in delay in the performance of its obligation to deliver the subject unit within the period of time provided under the Contract to Sell.

Moreover, it must likewise be stressed that the extension granted by the HLURB was without prejudice to any right of action that buyers may exercise, nor absolve ECE Realty from any liability by reason of the delay, thus:

Please be advised further notwithstanding the grant of said extension the same does not absolve the project

from the liability that may have been incurred and/or on any case that is pending investigation before this Board. Likewise, said extension is without prejudice to the right of the buyers that they may exercise pursuant to the provision of existing laws.[20]

Notably, Roda, as transferee of the rights which spouses Sales had over the property, merely stepped into the shoes of the latter. As such, whatever rights the spouses Sales had over the property, including legal actions they could initiate, may be validly exercised by Roda. Apropos thereto, the provisions of the Contract to Sell executed by and between ECE Realty and spouses Sales, apply with equal force to Roda. Moreso since, the Deed of Transfer of Rights was with the conformity of ECE Realty.

Second, as discussed earlier, records show that ECE Realty themselves stated that the HLURB granted extensions of time for the completion of Central Park Condominium. In a notice dated September 23, 1998, the HLURB granted ECE Realty's request for extension of time until July 30, 1999. In another notice dated October 8, 1999, the HLURB ordered ECE Realty to complete the condominium project "within one (1) year from date of issuance of this Notice".[21]

Third, this Court observes that in the same notice dated October 8, 1999, the HLURB had already found that as per site inspection conducted on August 27, 1999, the overall accomplishment was only 81% of the total completion of project.[22] This alone already indicates that ECE Realty was already delayed in the completion of the Central Park Condominium.

Fourth, even if this Court disregards the extensions of time granted to ECE Realty, the fact remains that on March 7, 2001 it advised spouses Carlos that the subject Unit 801-B/II was ready for inspection[23] but when the latter ocularized the place they found it to be not yet fit for occupancy.

Due to ECE Realty's failure to comply with its obligation to deliver the subject unit, the Contract to Sell must be rescinded. As a general rule, "rescission will not be permitted or a slight or casual breach of contract, but only for such breaches as are substantial and fundamental as to defeat the object of the parties in making the agreement." [24] Here, ECE Realty's unreasonable delay of delivering the subject unit to spouses Carlos constitutes a substantial and fundamental breach of the Contract to Sell.

Finally, anent the payment of legal interest, We deem it proper to modify the same by reverting to the six percent (6%) interest rate previously adjudged by HLURB Board of Commissioners. As provided by Bangko Sentral ng Pilipinas (BSP) Circular No. 799, Series of 2013, effective July 1, 2013, the rate of interest for loan or forbearance of money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall no longer be twelve percent (12%) per annum as reflected in the case of Eastern Shipping Lines, Inc. vs. Court of Appeals[25] before its amendment by BSP-MB Circular No. 799 but will now be six percent (6%) per annum effective July 1, 2013[26]. Hence, there is no basis in imposing the penalty of twelve percent (12%) per annum from the finality of the OP's Decision.

WHEREFORE, premises considered, the instant petition for review is DENIED. Accordingly, the February 12, 2010 Decision of the Office of the President is hereby AFFIRMED with the MODIFICATION that petitioners ECE Realty and Development, Inc., Emilio Ching and Rochelle Guanzon shall refund respondent Roda Carlos the sum of Five Hundred Seventy Three Thousand Pesos Sixty One and 98/100 (P573,061.98), with interest at six percent (6%) per annum from the date of demand until fully paid.

SO ORDERED.

Carandang, (Chairperson), and Gonzales-Sison, JJ., concur.

- [1] Rollo, pp. 8-24.
- [2] Id., pp. 25-32, Decision penned by Deputy Executive Secretary for Legal Affairs Natividad G. Dizon.
- [3] Rollo, p. 122.
- [4] Id., p. 10.
- [5] Id., pp. 60-64.
- [6] Id., pp. 219-220.
- [7] Rollo, p. 162.
- [8] Id., p. 190.
- [9] Id., pp. 180 & 190.
- [10] Id., p. 200.
- [11] Id., p. 201.
- [12] Id., pp. 189-194.
- [13] Rollo, pp. 193-194.
- [14] Rollo, pp. 178-184.
- [15] Id., pp. 51-56.
- [16] See Petitioners'Appeal Memorandum; Rollo, pp. 103-112.
- [17] Rollo, pp. 57-59.
- [18] Rollo, p. 14.
- [19] Hon. Heherson Alvarez, et al. v. PICOP Resources, Inc. G.R. No. 162243, November 29, 2006.
- [20] Records, p. 215.
- [21] Rollo, p. 216.
- [22] Rollo, p. 216.
- [23] Id., p. 162.
- [24] Spouses Tumibay vs. Spouses Lopez, G.R. No. 171692, June 3, 2013.

[25] 234 SCRA 78 (1994)

- [26] Nacar vs. Gallery Framer, 703 SCRA 439 (2013).

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