ECE REALTY & DEVELOPMENT, INC., PETITIONER, VS. SPS. ROGELIO AND RUTH DE PERALTA, RESPONDENTS.

Ponente: YBAÑEZ, J.

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YBAÑEZ, J.:

This Petition for Review under Rule 43 of the 1997 Rules of Court seeks to reverse the 10 January 2011 Decision of the Office of the President[1] rendered in O.P Case No. 08-F-234 (HLURB Case No. REM-A-071126-0596) the fallo of which reads:

> "WHEREFORE, in view of the foregoing, the instant appeal is hereby DISMISSED for utter lack of merit.
>
> SO ORDERED."

The Antecedents

The Housing and Land Use Regulatory Board (HLURB for brevity) found in its decision of 9 October 2007[2] that petitioner ECE Realty & Development, Inc. (hereinafter referred to as ECE) is the owner and developer of a condominium/subdivision project known as Wyndham Hills Project, located at Lemery, Batangas. On 2 August 1999, respondents Spouses Rogelio and Ruth de Peralta (the Spouses de Peralta likewise for brevity) purchased from petitioner Condominium Unit No. 209-A with an area of 25.2 square meters for a contract price of Five Hundred Sixty-Seven Thousand Pesos (P567,000.00). Respondents paid the corresponding reservation fee of Five Thousand Pesos (P5,000.00) on the same date and the full purchase amount was made on 30 September 1999.[3]

The contract to sell[4] was formally executed by the parties on 12 October 1999. Under the contract, the unit would be completed and delivered to the spouses by 30 December 2000.[5] On 9 September 2002, however, petitioners filed a complaint against ECE before the HLURB Regional Field Office No. IV-A on 9 September 2002 for Rescission of Contract and Damages with Prayer for Writ of Preliminary Attachment[6] alleging that the condominium project remained unfinished in total disregard of the terms and conditions embodied in their contract. Likewise alleged was that because the petitioner repeatedly ignored their attempts to be refunded of their payments, the contract to sell should be rescinded.[7]

In their Answer with Compulsory Counterclaim,[8] petitioner blamed the delay in the completion of the Wyndham Hills Project on three (3) factors: (1) the closure of a portion of the Diokno Highway to delivery trucks due to a landslide that slowed down the delivery of materials to the project site; (2) the Asian financial crisis which triggered the escalation of prices of goods and the resulting increase of interest rates charged by financial institutions; and (3) the failure of the project's contractors to deliver the needed construction materials and equipment on schedule.[9] It also claimed that by then, the subject unit was ready for inspection and turnover to the respondents.[10]

On 9 October 2007, Housing and Land Use Arbiter Raymundo A. Foronda rendered a decision, viz:

> "WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> 1. Declaring the rescission of the contract as valid;
>
> 2. Ordering the respondent to refund complainant the amount of Php572,000.00 with interest of 12% per annum from the filing of the complaint until full payment;
>
> 3. Ordering the respondent to pay complainant moral damages of Php5,000.00, exemplary damages of Php5,000.00 and Php10,000.00 as attorney's fees and costs of suit;
>
> 4. Respondents to pay this Board administrative fine of Php10,000.00 for violation of Section 23 in relation to Section 38 of P.D. 957.
>
> **SO ORDERED.[11]"**

Respondent appealed the decision of the HLURB Regional Office before the HLURB Board of Commissioners which rendered its decision on 18 March 2008,[12] viz:

> "WHEREFORE, premises considered, the decision appealed from is hereby MODIFIED by fixing the rate of interest under directive No. 2 of the said decision at 6% per annum.
>
> Further, the complaint against respondent Ching is dismissed.
>
> The decision, in all other aspects, is AFFIRMED.
>
> SO ORDERED."

Still unconvinced, ECE appealed the decision before the Office of the President (OP). On 10 January 2011, the OP dismissed the appeal as follows:

> "WHEREFORE, in view of the foregoing, the instant appeal is hereby DISMISSED for utter lack of merit.

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SO ORDERED.[13]”

The motion for reconsideration filed by petitioner was likewise dismissed by the OP in its two-page resolution of 29 November 2011. Hence, the instant petition with the following issues submitted for resolution:

Issues

I

WHETHER THE RESPONDENTS WERE ENTITLED TO THE RESCISSION OF THE SUBJECT CONTRACT TO SELL;

II

WHETHER IT WAS PROPER TO AWARD 6% INTEREST STARTING FROM THE DATE OF THE FILING OF THE COMPLAINT, ASSUMING, BUT WITHOUT CONCEDING, THAT PETITIONER IS LIABLE FOR REFUND;

III

WHETHER IT WAS PROPER TO AWARD P5,000.00 EXEMPLARY DAMAGES, P5,000.00 MORAL DAMAGES, P10,000.00 AS AND FOR ATTORNEY’S FEES PLUS ADMINISTRATIVE FINE OF P10,000.00.[14]

The Ruling of This Court

The petition has no merit.

Anent the first issue, petitioner argues that rescission of a contract is available only when there is no other remedy. A slight delay in the delivery of the condominium unit should not have paved the way for the immediate rescission especially when the unit was subsequently delivered within a reasonable time from the date of the expected delivery. It noted that respondents opted to exercise their right to rescind despite its offer to deliver the subject unit.[15] Petitioner characterized the delay it incurred in the delivery of the unit as slight, negligible and inconsequential and that there was no substantial breach of the terms and conditions of the Contract to Sell.

The target completion date of the condominium unit according to the Contract to Sell entered into by the parties is as follows:

COMPLETION

> The developer (herein petitioner) of the PROJECT undertakes to finish the construction of the residential townhouse/condominium building on or before December 30, 2000 unless prevented by force majeure. The term "force majeure" as used herein, besides meaning an Act of God, shall include strikes, lockouts or other industrial disturbances, unavoidable accidents, blow-outs, acts of the public enemy, war, blockade, public riot, fire, flood, explosion, government or municipal restraint, shortage or unavailability of equipment, restrictions on materials or labor or limitations upon the use thereof, delays in transportation and any other cause, whether of the kind specifically enumerated above or otherwise, which is not reasonably within the control of the SELLER; Provided, that, if on account of the aforementioned conditions there is an impossibility of completing the Project, the SELLER may consider itself relieved of any obligation arising out of this contract and it shall reimburse without interest, all payments received from the BUYER under and by virtue of this Contract. In any event, all construction on or of the PROJECT shall remain the property of the SELLER.[16]

On 24 July 2002, respondents, through counsel, sent a letter to the petitioner demanding the delivery of condominium unit number 209-A or the return of the money paid for its purchase plus fifteen percent (15%) interest.[17]

Petitioner avers that it has substantially complied with its obligation since it was able to deliver the subject condominium unit and development of the project, thus, it would be an injustice if rescission of the contract is allowed despite the subsequent delivery since an inconsequential breach in its delivery did not operate to defeat the object of the parties in making the agreement. It submits that having been granted by the HLURB an extension of time until 31 January 2003 to finish the project,[18] it follows that the delivery date of the unit was also extended to within a reasonable time from its completion.[19]

From the time of the petitioner's original projection that the condominium unit in question would be completed on 30 December 2000 until the new target completion date of 31 January 2003, the period constituted twenty-five (25) months. Despite its averment that it has completed the project and ready to turn the same over to the respondents, a scrutiny of the record failed to show exactly when petitioner made this offer to the latter.

Likewise important is the fact that the Asian financial crisis which directly and adversely affected mainly the construction and real estate industry, proffered by the petitioner as one of the reasons for its failure to complete its Wyndham Hills Project as originally scheduled, occurred in 1997. The contract to sell subject of the rescission was entered into by the parties only on 12 October 1999. Clearly therefore the crisis was on the wane if not completely over when the parties entered into the said contract. Even granting that the financial crisis was still prevalent at that time, the Supreme Court has already ruled that the same did not constitute a valid justification to renege on obligations.[20] The same view was emphatically stressed in the earlier case of Mondragon Leisure and Resorts Corporation vs. Court of Appeals, et. al.[21] when it was held that the Asian financial crisis in 1997 is not among the fortuitous events contemplated under Article 1174 of the Civil Code which provides:

> Art. 1174. Except in cases expressly specified by the law, or when it is otherwise declared by stipulation or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which though foreseen, were inevitable.

Under this Article, to exempt the obligor from liability for a breach of an obligation due to an act of God or force majeure, the following must concur: (a) the cause of the breach of the obligation must be independent of the will of the debtor; (b) the event must be either unforseeable or unavoidable; (c) the event must be such as to render it impossible for the debtor to fulfill his obligation in a normal manner; and (d) the debtor must be free from any participation in, or aggravation of the injury to the creditor.[22]

While it is quite unfortunate that petitioner may have met difficulty meeting its self-imposed schedule in

completing its real estate project, there is no denying the conceded fact that a real estate enterprise engaged in the pre-selling of condominium units is a master in projections on commodities and currency movements and business risks. The fluctuating movement of the Philippine peso in the foreign exchange market is an everyday occurrence, and fluctuations in currency exchange rates happens everyday, thus, not an instance of caso fortuito.[23]

In ruling against the petitioner, Arbiter Foronda held that the temporary closure of roads due to typhoon cannot justify the project's delay for an unreasonable length of time.[24] As the arbiter further observed in his 9 October 2007 decision, viz:

> To substantiate the complainant's argument that the project indeed is incomplete, the Ocular Inspection conducted by this Office reveals that project's facilities such as roads, curbs & gutters, drainage & sewerage system, electrical distribution system, housing/condominium remain incomplete (Emphasis supplied.

It will be noted that the afore-quoted decision was rendered more than four (4) years after the 31 January 2003 new target completion date of the Wyndham Hills Project. This delay was described by the petitioner as slight, negligible and inconsequential without adducing any evidence at all, other than its self-serving allegations, to prove that it has complied with its obligation to complete its project.

In the 2007 case of Fil-Estate Properties, Inc. vs. Spouses Gonzalo and Consuelo Go,[25] a nearly identical case with the one at bar, the Supreme Court ruled in favor of the respondents and upheld the ruling of the HLURB, viz:

> The HLURB went on to say that when petitioner discontinued the development of its condominium project, it failed to fulfill its contractual obligations to the spouses. And following Article 1475 of the Civil Code, upon perfection of the contract, the parties, here the spouses Go, may demand performance. And under Article 1191 of the same code, should one of the parties, in this instance Fil-Estate, fail to comply with the obligation, the aggrieved party may choose between fulfillment or rescission of the obligation, with damages in either case. Inasmuch as Fil-Estate could no longer fulfill its obligation, the spouses Go may ask for rescission of the contract with damages.

In the instant case, petitioner utterly failed to provide a convincing argument that would persuade this Court to rule otherwise.

Thus, to paraphrase, when petitioner ECE was unable to complete its condominium project, it failed to fulfill its contractual obligations to the de Peralta spouses. Under Article 1475[26] of the Civil Code, upon perfection of the contract, the parties, here respondents Spouses de Peralta, may demand performance. And under Article 1191[27] of the same code, should one of the parties, in this instance petitioner ECE, fail to comply with the obligation, the aggrieved party may choose between fulfillment or rescission of the obligation, with damages in either case. Considering that petitioner was not able to fulfill its obligation, the spouses de Peralta are well within their right to ask for rescission of the contract with damages.

On the second issue, petitioner assails the order of the HLURB Board of Commissioners for it to refund the amount of P572,000.00 to the respondents with 6% interest starting from the date of the filing of the complaint.

We rule against the petitioner.

Section 23 of Presidential Decree No. 957, otherwise known as The Subdivision and Condominium Buyers' Protective Decree, is clear on this point:

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> Sec. 23. Non-Forfeiture of Payments. — No installment payment made by a buyer in a subdivision or condominium project for the lot or unit he contracted to buy shall be forfeited in favor of the owner or developer when the buyer, after due notice to the owner or developer, desists from further payment due to the failure of the owner or developer to develop the subdivision or condominium project according to the approved plans and within the time limit for complying with the same. Such buyer may, at his option, be reimbursed the total amount paid including amortization interests but excluding delinquency interests, with interest thereon at the legal rate."

P.D. 957 was enacted to provide a protective mantle over citizens who may fall prey to the manipulations and machinations of 'unscrupulous subdivision and condominium sellers.'[28]

Recall that respondents, through counsel, sent a demand letter dated 24 July 2002[29] to ECE the relevant portion of which reads:

> In this connection, we have already prepared the appropriate complaint to be filed in court anytime soon, but we will hold the filing if you are able to deliver Condominium Unit No. 209-A within fifteen (15) days from the receipt of this letter or to return the money paid by our client plus Fifteen (15%) percent interest. If you fail, we will be force (sic) to file the complaint in court.
>
> Give this matter your urgent and most preferential attention.[30]

When petitioner repeatedly ignored the respondents' attempts to be refunded of their payments, the spouses filed a complaint seeking the declaration of the contract to sell as rescinded or cancelled for failure of the petitioner to complete and deliver the subject condominium unit, demanding the reimbursement of P572,000 representing the lump sum price of the condominium unit as shown by ECE Realty & Development, Inc. Official Receipts No. 227528 dated 2 June 1999 in the amount of P5,000.00 and No. 203271 dated 30 July 1999 for P567,000.00 plus 21% interest per annum from 30 December 1999 until fully paid or refunded, payment of P100,000.00 as exemplary damages, P50,000.00 litigation expenses and attorney's fees equivalent to 25% of the amount collectible plus appearance fees of P5,000.00.

Doctrinally, mutual restitution must follow rescission. Under Article 1385 of the Civil Code, "rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interests x x x."[31] Moreover, to rescind is to declare a contract void at its inception and to put an end to it as though it never was.[32] Hence, rescission restores the parties to their relative positions, as if no contract has been made.[33]

Conformably with the decision in the Fil-Estate case, the order of the HLURB reducing the interest rate to be paid by the petitioner from 12% to 6% is proper. However, the period must be reckoned from the date of the extrajudicial demand in order to be in accord with current jurisprudence.[34] Petitioner is thus mandated to refund to respondent their full payment of P572,000.00 plus legal interest of 6 percent per annum.

On the matter of the award of moral and exemplary damages to the respondents, it has long been established that moral damages may be awarded to compensate one for manifold injuries such as physical suffering, mental anguish, serious, anxiety, besmirched reputation, wounded feelings and social humiliation calculated to compensate the claimant for the injury suffered. Although incapable of exactness and no proof of pecuniary loss is necessary in order that moral damages may be awarded, the amount of indemnity being left to the discretion of the court, it is imperative, nevertheless, that (1) injury must have been suffered by the claimant, and (2) such injury

must have sprung from any of the cases expressed in Article 2219[35] and Article 2220[36] of the Civil Code. A causal relation, in fine, must exist between the act or omission referred to in the Code which gives rise to the case or proceeding, on the one hand, and the resulting injury, on the other hand; i.e., the first must be the proximate cause and the latter the direct consequence thereof.[37] There being a clear showing that there was failure on the part of the petitioner to perform its obligation under its contract with the respondents, moral damages should be awarded to respondents pursuant to Article 2220.

The award of attorney's fees as part of damages is also deemed just and equitable considering that by the petitioner's unjustified acts, the respondents were obviously compelled to litigate and incur expenses to protect their interests over the subject property due to petitioner's delay in the performance of their clear obligation.

On the imposition of a P10,000.00 administrative fine, the same is likewise in order under Section 38 of P.D. No. 957, which provides the HLURB the authority to impose such fines, viz:

> Sec. 38. Administrative Fines. — The Authority may prescribe and impose fines not exceeding ten thousand pesos for violations of the provisions of this Decree or of any rule or regulation thereunder. Fines shall be payable to the Authority and enforceable through writs of execution in accordance with the provisions of the Rules of Court.

WHEREFORE, premises considered, the instant petition for review is DENIED for lack of merit. The assailed 10 January 2011 Decision of the Office of the President in OP Case No. 08-F-234 and its Resolution of 29 November 2011 are hereby AFFIRMED with the MODIFICATION that the refund of the P572,000.00 with legal interest of 6% per annum shall be reckoned from 24 July 2002, the date of the extrajudicial demand.

SO ORDERED.

Dimaampao, (Chairperson), and Sadang, JJ., concur.

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[1] Rollo, Annex “C,” pp. 36-38.

[2] Id., pp. 94-97.

[3] Id., p. 94.

[4] Id., Annex “C,” pp. 136-141.

[5] Id., pp. 138.

[6] Id., Annex “K,” pp. 127-134.

[7] Id., pp. 128-129.

[8] Id., pp. 120-125.

[9] Id., pp. 122.

[10] Id.

[11] Id., pp. 96-97.

[12] Id., pp. 55-58.

[13] Id., pp. 36-38, 38.

[14] Id., pp. 152-153.

[15] Id., p. 154

[16] Id., p. 88.

[17] Id., pp. 142-143.

[18] Id., p. 92.

[19] Id., p. 152.

[20] Asian Construction and Development Corporation vs. Philippine Commercial International Bank, G.R. No. 153827, 25 April 2006, 488 SCRA 192, 206.

[21] G.R. No. 154188, 15 June 2005, 460 SCRA 279, 289.

[22] Philippine Realty and Holdings Corporation vs. Ley Construction and Development Corporation, G.R. No. 165548, 13 June 2011, 651 SCRA 719; Ley Construction and Development Corporation vs. Philippine Realty and Holdings Corporation, G.R. No. 167879, 13 June 2011, 651 SCRA 719.

[23] Fil-Estate Properties, Inc. vs. Spouses Gonzalo and Consuelo Go, G.R. No. 165164, 17 August 2007, 530 SCRA 621.

[24] Id., p. 96.

[25] Supra, see Note 23.

[26] Art. 1475. The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.

From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts.

[27] 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.

[28] Florencio Eugenio, doing business under the name E & S Delta Village vs. Executive Secretary Franklin M. Drilon, Housing and Land Use Regulatory Board (HLURB) and Prospero Palmiano, G.R. No. 109404, 22 January 1996, 252 SCRA 106.

[29] Rollo, pp. 142-143.

[30] Id., p. 143.

[31] Republic of the Philippines, Represented by the Social Security System vs. Jerry V. David, G.R. No. 155634,

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16 August 2004, 436 SCRA 577.

[32] Mariano Z. Velarde and Avelina D. Velarde vs. CA, et al., G.R. No. 108346, 11 July 2001, 413 Phil. 360, 375, per Panganiban, J.

[33] Id., pp. 131-132.

[34] Eastern Shipping Lines, Inc. vs. Court of Appeals, et. al., G.R. No. 97412, 12 July 1994, 234 SCRA 78, 96-97; Oceaneering Contractors (Phils.), Inc. vs. Nestor N. Barretto, doing business as N.N.B. Lighterage, G.R. No. 184215, 9 February 2011, 642 SCRA 596.

[35] Art. 2219. Moral damages may be recovered in the following and analogous cases:

(1) A criminal offense resulting in physical injuries;

(2) Quasi-delicts causing physical injuries;

(3) Seduction, abduction, rape, or other lascivious acts;

(4) Adultery or concubinage;

(5) Illegal or arbitrary detention or arrest;

(6) Illegal search;

(7) Libel, slander or any other form of defamation;

(8) Malicious prosecution;

(9) Acts mentioned in article 309;

(10) Acts and actions referred to in articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

xxx xxx xxx

[36] Art. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

[37] Mariano L. del Mundo vs. Hon. Court of Appeals, Jose U. Francisco and Genoveva V. Rosales, G.R. No. 104576, 20 January 1995, 240 SCRA 348.

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