

FILINVEST ALABANG, INC., PETITIONER, VS. MA. DANELI S. FAJARDO, RESPONDENT.

Ponente: GARCIA-FERNANDEZ, J.

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GARCIA-FERNANDEZ, J.:

This is a consolidated petition for review^[1] under Rule 43 of the Revised Rules of Court, as amended seeking to nullify and set aside the decision dated February 7, 2011, promulgated by the Office of the President (OP) through Executive Secretary Paquito S. Ochoa, Jr. in OP Case No. 08-J-419.

The facts of the case are as follows:

Petitioner Filinvest Alabang, Inc. (FAI) is engaged in the business of real estate development while petitioner East West Banking Corporation (EWBC) is its affiliate bank. Filinvest Development Corporation is the common parent company of the petitioners.

In July 2002, an agent of FAI approached respondent Ma. Daneli Fajardo and proposed a condominium project called Pioneer Pointe, a 28-storey condominium building located on a land along Pioneer Street, Mandaluyong City and owned by EWBC. Its promotional fact sheet stated that Pioneer Pointe has a "shared development concept", wherein the buyers are considered investors, co-developers and co-owners of the condominium project who can acquire units therein at a price equivalent to the cost used for building them; that the investors shall pool their capital contributions to finance the construction of the condominium project; and that its estimated year of completion is in 2005.

In August 2002, respondent entered into a Project Investment Agreement with FAI for the purchase of Unit UGF-02 of the condominium project at the price of P1,611,200.00, payable in 37 monthly installments to EWBC as the trustee bank starting August 25, 2002. These monthly installments were denominated as "capital contributions". FAI was designated as the Project Manager of the condominium project.

On March 24, 2004, or more than one year after respondent started paying her monthly capital contributions, FAI informed her that the number of investors was still insufficient to enable it to purchase the land from EWBC.

On March 31, 2005, FAI distributed invitations for the groundbreaking rites of the condominium project. Convinced that the condominium project would not be finished by 2005 as represented by FAI in its fact sheet, respondent demanded the refund of all her payments plus interest, amounting to P1,049,119.34. EWBC refunded to respondent the amount of P524,559.67 while the remaining P560,283.67 was remitted to FAI. This prompted respondent to file a complaint^[2] for full refund of payment against petitioners with the Housing and Land Use Regulatory Board-Expanded National Capital Region Field Office (HLURB-ENCRFO).

On October 16, 2007, the HLURB-ENCRFO Arbiter rendered a decision^[3] dismissing the complaint for lack of merit but ordering FAI to immediately apply for and secure a Certificate of Registration and License to Sell for the subject condominium project.

Respondent appealed the decision of the HLURB-ENCRFO Arbiter to the Housing and Land Use Regulatory

Board-Board of Commissioners (HLURB-BOC). On September 25, 2008, the HLURB-BOC rendered a decision[4], the dispositive portion of which reads:

"WHEREFORE, the instant appeal is GRANTED. The decision of the ENCRFO dated October 16, 2007 is MODIFIED. Hence, the respondents are ordered to refund to the complainant the sum of Php560,283.67, with interest at the rate of 6% per annum reckoned from July 21, 2005, the date of the filing of the complaint. Respondent FAI is also ordered to immediately apply for and secure a Certificate of Registration and License to Sell for the subject Pioneer Pointe condominium project.

Let a copy of the decision be furnished the ENCRFO's Monitoring Unit for further monitoring action on the subject project.

SO ORDERED."

FAI and EWBC appealed separately to the Office of the President (OP). On February 7, 2011, the OP rendered a decision[5] finding no reversible error in the decision of the HLURB-BOC, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, the instant appeals separately filed by appellants Filinvest Alabang, Inc. and East West Banking Corp. are hereby DISMISSED for lack of merit.

SO ORDERED."

Aggrieved by the aforementioned decision, EWBC filed a motion for reconsideration,[6] which was denied by the OP. On the other hand, FAI did not file a motion for reconsideration but filed a petition for review[7] with the Court of Appeals under Rule 43 of the Rules of Court, as amended. EWBC also filed a petition for review[8] with this Court under Rule 43 of the Rules of Court, as amended.

On November 21, 2011, respondent filed a motion For consolidation[9] which was granted by this Court on December 21, 2011[10] of the two petitions.

Petitioners FAI and EWBC raised the following issues for the determination of this Court:

I

WHETHER THE OFFICE OF THE PRESIDENT GRAVELY ERRED WHEN IT AFFIRMED THE HLURB'S ORDER NOTWITHSTANDING THE LACK OF JURISDICTION OF THE HLURB OVER THE SUBJECT MATTER OF THE COMPLAINT.

II

WHETHER THE OFFICE OF THE PRESIDENT GRAVELY ERRED WHEN IT AFFIRMED THE HLURB'S ORDER FOR PETITIONERS TO REFUND ALL PAYMENTS MADE BY RESPONDENT, THEREBY DISREGARDING THE PROVISIONS OF THE INVESTMENT AND TRUST AGREEMENTS EXECUTED BY THE PARTIES.

FAI contends that the HLURB had no jurisdiction over the case which does not involve sale of a condominium unit; that respondent is not a buyer but a project investor who participated in the contribution of capital to finance the condominium project; that respondent's complaint should have been lodged in the regular courts; that since respondent paid P990,887.94 only or less than the committed investment, FAI had no obligation to deliver and process the transfer of ownership of the subject condominium unit to her; that respondent had no right to demand ownership of the subject condominium unit until full payment of her agreed capital contribution; and that it has no obligation to refund to respondent the total amount of her capital contributions because the latter's withdrawal from the project constitutes an act of default which entitles her to 50% only of all her cash contributions minus any amount due to FAI.

For its part, EWBC contends that it cannot be held liable with FAI for the refund of respondent's contributions; that respondent cannot invoke the provisions of the Investment Agreement against it because it was not a party to it; that it had complied its obligations under the Trust Agreement completely when it released to respondent the amount equivalent to 50% of her total contributions; and that the scope of the regulatory and adjudicatory functions of the HLURB does not include the power to regulate and supervise banking operations.

The petition is devoid of merit.

It is a settled rule that the jurisdiction of the HLURB to hear and decide cases is determined by the nature of the cause of action, the subject matter or property involved and the parties.[11]

Section 2 (b) of Presidential Decree (P.D.) No. 957[12] provides:

Section 2. Definition of Terms When Used in this Decree, the following terms shall, unless the context otherwise indicates, have the following respective meanings:

xxx

(b) Sale or sell. "Sale" or "sell" shall include every disposition, or attempt to dispose, for a valuable consideration, of a subdivision lot, including the building and other improvements thereof, if any, in a subdivision project or a condominium unit in a condominium project. "Sale" and "sell" shall also include a contract to sell, a contract of purchase and sale, an exchange, an attempt to sell, an option of sale or purchase, a solicitation of a sale, or an offer to sell, directly or by an agent, or by a circular, letter, advertisement or otherwise.

A privilege given to a member of a cooperative, corporation, partnership, or any association and/or the issuance of a certificate or receipt evidencing or giving the right of participation in, or right to, any land in consideration of payment of the membership fee or dues, shall be deemed a sale within the meaning of this definition.

This Court finds no error in the conclusion of the OP that the transaction involved in this case is considered a sale under the abovesited provision.

Based on the record, FAI disposed of the Pioneer Pointe condominium project by offering units thereof to investors in the guise of shared investments. FAI pre-sold units of the Pioneer Pointe condominium project to investors, whose contributions were used to construct and develop the same. Respondent, as one of the investors, paid monthly capital contributions in exchange for a specific condominium unit. In essence, ownership and title over the condominium unit were reserved to FAI as developer and EWBC as owner of the land where the condominium is built, until respondent, the buyer pays the purchase price in full. Clearly, the subject transaction is one of sale within the meaning and intention of Section 2(b) of P.D. No. 957. It is of no moment that the subject transaction was denominated as an investment agreement. Contracts are not defined by the name or title given by the parties thereto but by principles of law.[13]

In *Maria Luisa Park Association, Inc. vs. Almendras*[14], the Supreme Court ruled:

The provisions of P.D. No. 957 were intended to encompass all questions regarding subdivisions and condominiums. The intention was aimed at providing for an appropriate government agency, the HLURB, to which all parties aggrieved in the implementation of provisions and the enforcement of contractual rights with respect to said category of real estate may take recourse. The business of developing subdivisions and corporations being imbued with public interest and welfare, any question arising from the exercise of that prerogative should be brought to the HLURB which has the technical know-how on the matter. In the exercise of its powers, the HLURB must commonly interpret and apply contracts and determine the rights of private parties under such contracts. This ancillary power is no longer a uniquely judicial function, exercisable only by

the regular courts.[15]

A perusal of the record shows that what respondent principally seeks is refund of all payments she already made to petitioners. This intent, amply articulated in her complaint,[16] clearly falls under the actions contemplated by Paragraph (b), Section 1 of PD No. 1344[17], which reads:

Section 1. In the exercise of its functions to regulate the real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority (now HLURB) shall have exclusive jurisdiction to hear and decide cases of the following nature:

xxx

B. Claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman;

This provision must be read in the light of the law's preamble, which explains the reasons for enactment of the law or the contextual basis for its interpretation. The law's introductory clause states that the HLURB exercises regulatory authority over cases of swindling and fraudulent manipulations perpetrated by unscrupulous subdivision sellers and operators, such as failure to deliver titles to the buyers or titles free from liens and encumbrances.[18] Thus, respondent properly filed her complaint before the HLURB, the body with proper jurisdiction.[19]

Anent the issue on whether respondent is entitled to a refund of payments already made by her for the subject condominium unit, this Court answers in the affirmative. Respondent should be allowed refund of the total value of her capital contributions.

Since FAI reneged with its promise to develop the Pioneer Pointe condominium project in 2005, respondent has the right to sever her ties from the project by desisting from further payment of her monthly contributions under Section 2.14 (A) of the Project Investment Agreement (PIA).[20] Consequently, respondent is entitled to the return of her qualifying contributions and any subsequent contributions deposited in the trust, together with all interest and other income which in the meantime may have accrued thereon, after deducting therefrom all fees and other charges due to the trustee pursuant to the trust agreement.[21]

Significantly, Section 23 of P.D. No. 957 provides:

Section 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.

Anent the liability of EWBC to respondent regarding the refund of her capital contributions, this Court finds that the former is not liable to the latter.

Section 3.03 of the subject Project Investment Agreement (PIA)[22] expressly provides that the "PIA shall be binding upon and shall be enforceable against the Investor and FAI and their respective permitted successors and assigns." Clearly, the said PIA is binding only against respondent and FAI. EWBC, which is neither a party to the PIA nor an assignee or successor-in-interest of any of the parties, may not be held accountable for any of the obligations or liabilities provided therein. Pursuant to the principle of freedom of contract embodied in Article 1306 of the New Civil Code, contracting parties may establish such stipulations, clauses, terms and conditions as

they may deem convenient, provided that they are not contrary to law, morals, good customs, public order, or public policy.[23]

Section V.D(1) and (2) of the Trust Agreement[24] reads:

"D. Liability of the Trustee

- The Trustee shall look after the safety of the Trust in the same manner and with the same degree of diligence as the Trustee would keep and protect its own property of a similar nature. In the absence of fault, willful misconduct, fraud, evident bad faith or gross negligence on the part of the Trustee or any person acting on its behalf, the Trustee shall not be liable for any loss or impairment of the Trust arising out of or in connection with any act done or performed or caused to be done or performed by the Trustee pursuant to the terms and conditions contained in this Trust Agreement and in carrying out the powers, duties and purposes for which this Trust Agreement is executed.

- Moreover, the Trustee shall have no duty or liability beyond the duty to faithfully perform its obligations under this Trust Agreement and shall have no obligation to enforce payment by the Trustor of the Capital Contribution, the interest on the Trustor's availment of the Construction Credit Line, or of the Trustor's proportionate share in the Miscellaneous Expenses. Neither shall the Trustee have the obligation to inquire whether or not the person or persons to whom disbursements from the Trust were paid were entitled thereto, or whether any disbursement is proper under the terms of the development of the Project or whether the amount of the disbursement has been computed properly. Reliance on the information submitted by FAI, as Project Manager, or any of its authorized representatives absolves the Trustee from any such liability. The Trustee shall not be responsible for the adequacy of the Trust Fund to meet and discharge any obligation of the Trustor under the PIA and/or the Loan Agreement.

For this purpose, the Trustee may seek the advice of legal counsel, and any action taken or suffered in good faith by the Trustee as a consequence of the opinion of the said counsel, shall be conclusive and binding upon the Trustor, and the Trustee shall be fully protected from any liability suffered or caused to be suffered by the Trustor by virtue thereof."

A perusal of the record shows that EWBC was not at fault in carrying out its powers and duties as trustee under the subject Trust Agreement. It was established that EWBC promptly caused the issuance of a manager's check to respondent in the amount of Five Hundred Twenty-Four Thousand, Five Hundred Fifty-Nine Pesos and 67/100 centavos (P524,559.67), representing fifty percent (50%) of her total cash contributions, income and earned interest after deducting therefrom payments made or due to FAI after it received notice from the latter regarding respondent's withdrawal from the project. Further, EWBC remitted the amount of Five Hundred Sixty Thousand, Two Hundred Eighty-Three and 67/100 Pesos (P560,283.67), representing the other fifty percent (50%) of respondent's cash contributions to FAI. Respondent was in fact aware that the latter amount was no longer in EWBC's possession as can be gleaned from the former's allegations in her complaint.[25]

Since the amount sought to be collected by respondent had already been remitted by EWBC to FAI without bad faith, the recourse of respondent is to seek refund of the said amount from FAI directly.

WHEREFORE, the petition is DISMISSED. The decision dated February 7, 2011, promulgated by the Office of the President through Executive Secretary Paquito S. Ochoa, Jr. in OP Case No. 08-J-419 is AFFIRMED with MODIFICATION to the effect that petitioner East West Banking Corporation is not held liable.

SO ORDERED.

Lampas Peralta, (Chairperson), and Acosta, JJ., concur.

[1] Rollo (1), pp. 12-48; Rollo (2), pp. 15-37.

[2] Rollo (1), pp. 97-107.

[3] Rollo (1), pp. 58-64.

[4] Rollo (1), pp. 54-57.

[5] Rollo (1), pp. 49-52.

[6] Rollo (2), pp. 607-617.

[7] Rollo (1), pp. 12-48

[8] Rollo (2), pp. 15-37.

[9] Rollo (1), pp. 772-778.

[10] Rollo (2), p. 653.

[11] Romulo R. Peralta vs. Hon. Raul E. De Leon, Presiding Judge, Regional Trial Court of Parañaque, Branch 258, Hon. Arbiter Dunstan San Vicente, in his capacity as Housing and Land Use Regulatory Arbiter and Lucas Eloso Eje, in his capacity as Sheriff, Regional Trial Court, Parañaque City and Concepts and System Development Inc., as represented by its Chairman Kasuo Noro, G.R. No. 187978, November 24, 2010.

[12] Regulating The Sale of Subdivision Lots and Condominiums, Providing Penalties for Violations Thereof

[13] Cavite Development Bank and Far East Bank and Trust Company vs. Spouses Cyrus Lim and Lolita Chan Lim and Court Of Appeals, G.R. No. 131679, February 1, 2000.

[14] G.R. No. 171763, June 5, 2009.

[15] Ibid.

[16] Christian General Assembly, Inc. vs. Sps. Avelino C. Ignacio and Priscilla T. Ignacio, G.R. No. 164789, August 27, 2009.

[17] Empowering the National Housing Authority to Issue Writ of Execution in the Enforcement of its Decision under Presidential Decree No. 957

[18] Spouses Ernesto Lim and Zenaida Lim vs. Ruby Shelter Builders and Realty Development Corporation, G.R. No. 182707, September 1, 2010.

[19] Christian General Assembly, Inc. vs. Sps. Avelino C. Ignacio and Priscilla T. Ignacio, G.R. No. 164789, August 27, 2009.

[20] In the event that the number of Investors who have committed to participate in the Project by signing PIAs similar hereto on or before the Target Commencement Date falls short of the number of Investors needed to proceed with the Project as required under Section 2.08 (A), this PIA shall be terminated immediately upon service by FAI of written notice thereof the Investor. In such case, the Qualifying Contributions and any subsequent Contributions deposited in the Trust shall be returned to the Investor, together with all interest and

other income which in the meantime may have accrued thereon, after deducting therefrom all fees and other charges due to the trustee pursuant to the trust agreement.

[21] Section 2.14 (A) of the Project Investment Agreement (PIA), Rollo (No. 2), p. 53.

[22] Rollo (2), p. 243.

[23] Spouses David B. Carpo and Rechilda S. Carpo vs. Eleanor Chua and Elma Dy Ng, G.R. Nos. 150773 & 153599, September 30, 2005.

[24] Rollo (2), p. 251.

[25] "18. However, when plaintiff proceeded to collect her refund, she was given the amount of only Five Hundred Fifty Nine Pesos and 67/100 centavos (Php524,559.57), which represents less than half of her total amount of contributions inclusive of net interest proceeds. It was revealed that upon FAI's instructions, Petitioner BANK withheld and remitted to FAI the total amount of Five Hundred Sixty Thousand Two Hundred Eighty-Three Pesos and 67/100 centavos (P560,283.67)."

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