

JUSTA JOSIE MAILO, PLAINTIFF-APPELLANT, VS. FEDERICO R. AGUILAR, SR., ANICIA YU AGUILAR, ARLENE LLAGUNO & EDSEL B. LLAGUNO AND REGISTER OF DEEDS OF LEGAZPI, DEFENDANTS-APPELLEES.

Ponente: TAYAG, J.

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TAYAG, J.:

For this Court's consideration is an Appeal filed by plaintiff-appellant Justa Josie Mailo against defendants-appellees Federico R. Aguilar, Sr., Anicia Yu Aguilar, Arlene Llaguno, Edsel B. Llaguno and the Register of Deeds of Legazpi City seeking for the reversal of the Decision[1] dated 14 May 2003, rendered by the Regional Trial Court, Legazpi City, Branch 3 in a consolidated case for Specific Performance, Injunction with Preliminary Prohibitory Injunction and Restraining Order docketed as Civil Case No. 9606 and for Injunction with Prayer for Temporary Restraining Order and Writ of Preliminary Injunction docketed as Civil Case No. 9624.

The antecedent facts, are as follows:

“On November 3, 1998, Plaintiff/Appellant in this case filed a complaint for Specific Performance, Damages, Injunction with Preliminary Prohibitory Injunction against herein Defendants/Appellees before the Regional Trial Court, Branch 3, Legazpi City.

Defendant Federico Aguilar, Sr., also filed before the Regional Trial Court against Plaintiff/Appellant Mariano Quintanilla for Injunction and Writ of Preliminary Injunction docketed as Civil Case No. 9624.

Both cases were consolidated for trial before the Regional Trial Court, Branch 3, Legazpi City.”[2]

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“This is principally an action for specific performance (fulfillment of the obligation) and damages arising from contracts. In separate petitions, both parties asked for injunction.

In her complaint, plaintiff-alleged that she (DEVELOPER) and spouses Federico Aguilar, Sr., and Anicia Yu Aguilar (LANDOWNER) entered into a memorandum of agreement written in a public instrument for the development of property into a subdivision, Lot No. 875-A, containing an area of 2,264 square meters, situated at Cruzada, Legazpi City, covered by Transfer Certificate of Title No. 48250. The pertinent terms and conditions of the agreement read as follows:

“Whereas, the DEVELOPER is willing to buy and the LANDOWNER is willing to sell the aforementioned 2,264 square meters lot for a net price of EIGHT HUNDRED PESOS (800.00), Philippine currency per square meter – a price which is even below the Pph 980.00 per square meter zonal value – in an as-is-where-is basis or for the total net price of ONE MILLION EIGHT HUNDRED ELEVEN THOUSAND TWO HUNDRED PESOS (Pph 1,811,200) but the DEVELOPER is not ready yet to pay the outright cash value of the property, hence, offered to have the said land subdivided into 200 square meters per lot size for the purpose of meeting the parties' objective – that is – for the LANDOWNER to realize his selling price of Pph 1,811,200 net of any

expenses of sale and subdivision expenses and for the DEVELOPER to derive income after putting in a part of her personal funds for developmental expenses, among others, as it is easier to sell smaller size of lots:

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1. The above mentioned 2,264 square meter lot shall be subdivided by the DEVELOPER into smaller lots like 200 square meters per lot size for eventual sale to the final BUYER;

2. The DEVELOPER shall pay the LANDOWNER the agreed selling price of Pph 800.00 per square meter on the 2,264 square meters or the total selling price of ONE MILLION EIGHT HUNDRED ELEVEN THOUSAND TWO HUNDRED PESOS (Pph 1,811,200.00), net of expenses of sale and development expenses; xxx the DEVELOPER shall shoulder all expenses such as capital gains tax, documentary stamps, transfer tax, registration of sale, developmental expenses and other expenses to transfer title to final buyer's name without prejudice to DEVELOPER'S rights and option to pass on these expenses which are legally due and for the account of the final BUYER as the case may be:

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4. Because time is of the essence, in the sense that the LANDOWNER needs to be paid the sooner before the Pph 1,811,200.00 purchasing power is reduced, the DEVELOPER is given a period of six months counted from July 28, 1998 within which to fully execute the development of the land and close the sale to the final buyer to at least a 30% downpayment and the 70% as takeout of approved loan either through Pag-ibig or from any other financial institutions;

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6. The DEVELOPER to receive the consideration for said conveyances and whatever is collected from time to time from all and every conveyances – whether on installment or cash basis – fifty (50%) percent shall be paid by the lot buyer/s in the form and cashier's/manager's check payable to FEDERICO RODRIGUEZ AGUILAR, SR., at PNB, Libertad St., Pasay City Branch; while the other (50%) percent of the payments thereof shall be at the sole disposition of the DEVELOPER/attorney-in-fact – hence, can be collected by the DEVELOPER in her name or in cash as her sole option; xxx”

3. The period of six (6) months within which to pay the agreed consideration is hereby EXTENDED TO ONE (1) YEAR counted from July 28, 1998 and ending on July 28, 1999.” (p. 13, rollo)

She further alleged that she had already introduced partial development and made an initial sale of which Pph 20,000 was remitted to defendants (landowner).

She also alleged that defendants spouses unilaterally rescinded the agreement on September 18, 1998 and appointed a new attorney-in-fact in the person of defendant Arlene Llaguno to sell the subdivision lots.

Finally, she alleged that due to the revocation of the agreement, which resulted in the cessation of sales of the subdivision lots, she suffered financial losses in the amount of not less than Pph 200,000 and damages and, for being compelled to litigate, incurred expenses for litigation and attorney's fees.

In their Answer with Counterclaim and Affirmative Defenses, defendants spouses (landowner) averred that the plaintiff had never introduced any development on the said property and that, instead of remitting to them the total amount of Pph 50,000 the plaintiff only deposited Pph 20,000 and the balance of Pph 30,000 was used by the herein plaintiff for her own personal benefit in violation of the contract.

They averred that they revoked the contract because the plaintiff breached it.

They likewise averred that as owners, they have the right to subdivide their property and cause the issuance of titles of subdivided lots by the Register of Deeds of Legazpi City.

They finally averred that by reason of the filing of the complaint against them, they suffered damages and incurred expenses for litigation and for the services of counsel to protect their rights.

At the pre-trial, the following facts were admitted/stipulated by the parties:

- Identity of the parties;
- Identity of the property in question;
- Plaintiff and defendants spouses entered into a Memorandum of Agreement with Addendum;
- Under the contract, the plaintiff will develop the land into a subdivision and sell the subdivided lots within one (1) year from July 28, 1998 to July 28, 1999;
- In September, 1998, within the one year period, defendant Federico Aguilar, Sr. undertook the development of the property (TSN, p. 7, March 17, 1999);
- Plaintiff received Pph 40,000 from the first buyer, Mrs. Lopez (TSN, p. 8, March 17, 1999); and
- Margie Lopez gave Pph 10,000 to Arlene Llaguno (as part of the consideration of the lot) but said amount was not received by plaintiff Josie Mailo (p. 155, rollo).

On July 19, 2000, the court ordered defendants spouses (landowner) to cease and desist from developing and selling the land/lots in question and denied the injunction asked by the petitioner Federico Aguilar, Sr. (Civil Case No. 9606, pp. 152-156; Civil Case No. 9624, pp. 138-142, rollo). However, it was shown by the defendants spouses (landowner) in a motion to dismiss that the property was already subdivided and transferred to third persons and corresponding titles were issued (pp. 182-184, rollo), which was likewise denied by the court for the reason that the “plaintiff has several causes of action” (p. 192, rollo).”[3]

After the trial, a Decision was rendered by the Regional Trial Court dated 14 May 2003 in favor of defendants-appellants and against plaintiff-appellant. The dispositive portion of which states as follows:

“ACCORDINGLY, the writ of preliminary injunction is SET ASIDE and the above entitled cases are hereby DISMISSED.

SO ORDERED.”[4]

However, Civil Case No. 9624[5] was dismissed for failure on the part of Federico R. Aguilar, Sr. to prosecute.

Aggrieved, herein plaintiff-appellant filed the instant appeal assigning the single error on the part of the Regional Trial Court, to wit:

THE TRIAL COURT GRAVELY ERRED IN DISMISSING THE COMPLAINT DESPITE PREPONDERANCE OF EVIDENCE IN FAVOR OF PLAINTIFF/APPELLANT.

The basic issue to be resolved in this case is whether or not plaintiff-appellant committed a violation of any of the provisions in the Memorandum of Agreement (MOA) that would justify the act of defendants-appellees of rescinding the Special Power of Attorney (SPA) by appointing Arlene Llaguno to act as sales agent of the subject subdivision lots which authority was originally vested on herein plaintiff-appellant.

In imputing error on the part of the trial court, herein plaintiff-appellant argues that she presented evidence to substantiate her claim that defendants-appellees violated the Memorandum of Agreement during the period within which to develop subdivision lots despite the fact that the period had not yet expired. She further stressed that defendants-appellees acted in bad faith when she (plaintiff-appellant) was ousted to be the developer and as authorized agent, to sell the subdivision lots prior to the expiration of the period constituted in the MOA. She even

claims that the trial court has interpreted out of context the provision in the New Civil Code which states:

“The injured party may choose between the fulfillment and the rescission of the obligation, with payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.”

This Court is not persuaded.

This Court, after a careful analysis of the records of the case, resolves the above-said main issue in the AFFIRMATIVE.

Article 1191 of the New Civil Code speaks of obligations already existing, which may be rescinded in case one of the obligors fails to comply with what is incumbent upon him/her.[6] In the instant case, it is clearly established, as correctly found by the trial court, that plaintiff-appellant failed to contribute her personal funds for the development of the subject property into a subdivision and to develop and subdivide the said property into small lots. These are, among others, the principal obligations of the plaintiff-appellant under the subject MOA. While it may be argued that plaintiff-appellant caused the survey or plan of subdividing the property into small lots, this is not enough as may be said to be a compliance of what is incumbent upon her under the provisions contained in the MOA. In other words, plaintiff-appellant failed to comply in good faith with her primary obligations under the subject MOA. Such non-compliance, for Us, is a substantial breach contemplated under the law[7] warranting the propriety of the rescission made by defendant-appellee. This Court believes it to be substantial breach because said non-compliance of the primary obligations on the part of plaintiff-appellant defeats the object of the parties in entering into subject MOA. Suffice it to state that were it not for the inclusion of said provisions in the MOA, defendant-appellee would not have entered into such agreement with the plaintiff-appellant.

According to plaintiff-appellant, the trial court gravely erred in dismissing the complaint despite preponderance of evidence in her favor. We disagree.

It is worth to note the pertinent portion of the factual findings of the trial court which We find very essential in resolving the main issue in the instant case, to wit:

“While it is true that the plaintiff (developer) remitted Pph 20,000 of the first sale to Mr. Federico Aguilar, Sr. (landowner), yet, in reality, she did not actually undertake the development of the property in litigation as expressly provided in the contract. Webster defines a developer as “an individual who invests in and develops real estate”. The evidence showed that she did not procure a subdivision permit in the office concerned (TSN, p. 12, August 9, 2001). Did the plaintiff really comply with the 50% amount to be paid to the landowner for every sale or conveyance? How about the Pph 10,000 received by Arlene Llaguno which is part of the consideration? While the plaintiff may have began to perform her obligation to do under the contract, yet the evidence showed clearly and convincingly that: 1) she failed to contribute personal funds for the development of the property into a subdivision; and 2) she failed to develop and subdivide the property into small lots (a survey or plan is not enough). Under the contract, these two conditions were, inter alia, the principal obligations of the plaintiff.”[8] xxx

Having this in mind, there is thus a factual and legal basis for the exercise of the right to rescind by the defendants-appellees.

Settled is the rule that rescission, or more accurately, resolution, of a party to an obligation under Article 1191 of the New Civil Code is predicated on a breach of faith by the other party that violates the reciprocity between them.[9] Article 1191 of the New Civil Code, in full, provides:

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.

Meanwhile, pursuant to the 11 May 2006 directive^[10] of this court to inform the same of any subsequent facts or any matter which may affect the case for being moot and academic, a MANIFESTATION with MOTION^[11] dated 31 May 2006 was filed by the counsel for the defendant-appellee Federico R. Aguilar, Sr. manifesting upon inquiry for the purpose, that the said defendant-appellee died already as evidenced by his death certificate and consequently praying for the dismissal of the instant case.

WHEREFORE, premises considered, the instant appeal is hereby DISMISSED for lack of merit. Accordingly, the assailed Decision dated 14 May 2003 of the Regional Trial Court – Legazpi City, Branch 3 is hereby AFFIRMED.

The “Manifestation with Motion” filed by defendant-appellee Federico R. Aguilar, Sr. is hereby NOTED.

SO ORDERED.

Salazar Fernando, (Chairman) and Tijam, JJ., concur.

[1] Rollo, pp. 45-49

[2] Rollo, p. 36

[3] Rollo, pp. 45-47

[4] Ibid., p. 49

[5] Ibid., p. 48

[6] Cobia Hills Dev't. Corp. vs. Allan T. Uy, G.R. No. 165889, September 20, 2005

[7] Art. 1191 of the New Civil Code

[8] Rollo, pp. 48-49; Decision dated 14 May 2003, pp. 4-5)

[9] Sps. Felipe and Leticia Cannu vs. Sps. Galang, G.R. 139523, May 26, 2005

[10] Rollo, pp. 67-68

[11] Rollo, p. 70

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