

FIL-ESTATE GOLF & DEVELOPMENT (FEGDI), INC., FIL-ESTATE MARKETING ASSOCIATES, INC., (FEMA) AND FIL-ESTATE PROPERTIES, INC. (FEPI), PETITIONERS, VS. SPS. BENJAMIN G. HERBOSA AND ...

Ponente: BATO, JR., J.

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BATO, JR., J.:

Before this Court is a petition for review to set aside the June 30, 2003 Order[1] of the Office of the President and its Resolution[2] dated November 24, 2003. The Office of the President upheld the April 17, 2002 Decision[3] of the Housing and Land Use Regulatory Board (HLURB) which ordered petitioner Fil-estate Golf and Development Incorporated (FEGDI) to refund private respondents' money with legal interest.

The facts are as follows:

Petitioners Fil-estate Golf and Development Incorporated (FEGDI), Fil-estate Marketing Associates Incorporated (FEMA) and Fil-estate Properties, Incorporated (FEPI), collectively known as the Fil-estate Group of Companies, are owners, developers and sellers of a certain land development project known as the Nasugbu Harbor Town Subdivision (hereinafter referred to as "Project") in the Municipality of Nasugbu, Province of Batangas. On March 28, 1996, herein respondents, spouses Benjamin and Valerie Herbosa, purchased from the petitioners a lot and a golf share in the project which is more particularly described as Lot 1, Block 9 and containing an area of 952 square meters, more or less. Respondents and petitioners executed a contract denominated as a Reservation Application[4] as an evidence of their transaction. Thereafter, respondents paid the full down payment for the lot amounting to two million, one hundred fifty-four thousand pesos (P2,154,000.00).

On January 25, 1998, respondent Benjamin Herbosa wrote to the vice president of the legal division of the petitioners stating therein that two years have past since he and his wife made their full down payment but upon their investigation, there was virtually no development in the project site. As such, respondent Benjamin Herbosa demanded an explanation from the petitioners or the refund of their down payment. Petitioners did not reply to respondent Benjamin Herbosa's letter. So the latter again wrote to petitioners on July 2, 1999 and reiterated his demand for the refund of two million, one hundred fifty-four thousand pesos (P2,154,000.00). On July 20, 1999, respondent Benjamin Herbosa, this time acting through a counsel, sent a final demand letter to petitioners for the return of the two million, one hundred fifty-four thousand pesos (P2,154,000.00) since nothing was happening in the project site. But petitioners refused to refund respondents' down payment.

On September 21, 1999, respondents finally filed a complaint with the Regional Office IV of the HLURB praying for the refund of their down payment with damages and attorney's fees.

For their part, petitioners alleged that their failure to complete the project was because of the 1997 economic recession that hit the East Asian Region. Another factor that contributed to the delay was the cease and desist order previously issued by the Department of Agrarian Reform (DAR) in a case instituted by a group of farmers known as the UMALPAS-KA sometime in January 1997. Petitioners also argued that respondent-spouses have no

cause of action against them because there was no stipulation as to the date of delivery of the title of the lot and the date of completion of the project in the Reservation Application.

On June 15, 2001, the Regional Office IV of the HLURB rendered a decision in favor of the respondents. The dispositive portion of the said decision reads:

“WHEREFORE, Respondents are hereby ordered, jointly and severally, to refund to Complainants the sum of TWO MILLION ONE HUNDRED FIFTY-FOUR THOUSAND (Php2,154,000.00) PESOS with interest thereon at the legal rate to commence from September 21, 1999 until fully paid.”[5]

Petitioners then filed a petition for review with the HLURB Board of Commissioners. On April 17, 2002, the second division of the HLURB modified the decision of the Regional Office IV and held that only petitioner FEGDI is accountable to the respondents. The dispositive portion of the April 17, 2002 decision of the HLURB reads:

“WHEREFORE, premises considered, the decision of the Office below dated June 15, 2001 is hereby MODIFIED: hence respondent FEGDI is hereby ordered to refund to the complainants the sum of P2,154,000.00 with interest at 12% per annum reckoned from (sic) September 21, 1999.

The complaint as against respondent FEMA and FEPI is hereby DISMISSED.

SO ORDERED.”[6]

Petitioner FEGDI received the April 17, 2002 decision of the HLURB on May 3, 2002. It then filed a motion for reconsideration on May 20, 2002 which was denied by the second division of the HLURB in a Resolution[7] dated July 22, 2002, ratiocinating that FEGDI’s motion was filed beyond the fifteen-day reglementary period provided in the Rules of Procedure of the HLURB.

Petitioners elevated the matter to the Office of the President by filing a Notice of Appeal on August 16, 2002. On June 30, 2003, the Office of the President issued an Order[8] dismissing petitioners’ appeal disposing as follows:

“In the aforequoted resolution, the HLURB denied the motion for reconsideration of FEGDC (sic) for having been filed beyond the 15-day reglementary period provided under Section 1, Rule XVIII of the 1996 HLURB Rules of Procedure. FEGDC (sic) having failed to file a timely motion for reconsideration, the HLURB Decision dated July 22, 2002 is now considered final and executory. Accordingly, the Office is now bereft of jurisdiction to entertain the instant appeal, much less, alter a final judgment (Javier vs. Madamba, Jr., 174 SCRA 495). WHEREFORE, premises considered, the instant appeal is hereby DISMISSED.”[9]

Petitioners moved for a reconsideration of the said Order but the same was denied by the Office of the President in a Resolution dated November 24, 2003.[10]

Hence, petitioners filed a petition for review before this Court with the following assignment of errors:

A.

The Honorable Office of the President erred in sustaining the refund to private respondents of the amount of P2,154,000.00 with interest at 12% per annum reckoned from 21 September 1999 considering that:

a: There is not cause of action for rescission of the Reservation Application, because the economic crisis partook of the nature of a fortuitous event.

b: Interest payments cannot be awarded because the suspension of development in the project is not petitioners’ fault.

c: Even assuming that private respondents are entitled to refund of payments, the amount representing a refund

of payments may earn legal interest only from the time of finality of rendition of judgment.

B.

The Honorable Office of the President erred in sustaining the finding of the Board of Commissioners of the HLURB that petitioners' Motion for reconsideration before the Board was filed beyond the reglementary period.

For purposes of an orderly discussion, this Court shall delve into the second assigned error first. Contrary to the ruling of the Office of the President in its Resolution dated November 24, 2003 that petitioners never raised as an error in their appeal the denial by the HLURB of their motion for reconsideration for having been filed allegedly beyond the 15-day reglementary period, this Court notes that petitioners indeed raised the issue of the timeliness of their motion for reconsideration in their appeal memorandum before the said office.[11] As correctly pointed out by the petitioners, the Office of the President erred in sustaining the finding of the HLURB that their motion for reconsideration filed on May 20, 2002, was filed beyond the reglementary period. Section 1, Rule 22 of the 1997 Rules of Civil Procedure, which is also applicable to proceedings in the HLURB, provides:

“Section 1. How to compute time.- In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or of a legal holiday in the place where the court sits, the time shall not run until the next working day.”

Applying the aforequoted provisions of the Rules of Civil Procedure, the Supreme Court in the case of *Labad vs. University of Southeastern Philippines*[12] ruled as follows:

“Based on Section 1, Rule 22 of the Rules of Court and as applied in several cases, where the last day of doing any act required or permitted by law falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day. In this case, petitioner still had until December 28, 1998, a Monday and the next business day to move for a 15-day extension considering that December 26, 1998, the last day for petitioner to file her petition for review fell on a Saturday.”[13]

In the case at bar, petitioners received the April 17, 2002 decision of the HLURB on May 3, 2002. They then had fifteen (15) days or until May 18, 2002, to file a motion for reconsideration. Since May 18, 2002 fell on a Saturday, they were entitled to file their motion for reconsideration on the next working day, which was May 20, 2002.

Apropos to the first assigned error, the question that needs to be answered is whether or not the 1997 Asian economic crisis was a fortuitous event?

We rule in the negative. In *Mondragon Leisure and Resorts Corporation vs. Court of Appeals*,[14] the Supreme Court ruled as follows:

“Petitioner's claim, that the respondents could not be held in default because of a fortuitous event, is untenable. Said event, the Asian financial crisis of 1997, is not among the fortuitous events contemplated under Article 1174 of the Civil Code. To exempt the obligor from liability for a breach of an obligation by reason of a fortuitous event, the following requisites 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 unforeseeable 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.”[15]

Although the contract entered into by the petitioners and the respondent-spouses happened sometime in 1996 unlike in the *Mondragon* case wherein the parties thereto entered into a contract sometime in 1997, while the

Asian economic crisis had already started, just the same, petitioner FEGDI cannot claim that it is exempt from liability due to a fortuitous event. Every business venture involves risks. Stated otherwise, risks are not unforeseeable, they are inherent in a business. In the Mondragon case, the Supreme Court further ruled as follows:

“Worthy of note, risk is an exception to the general rule on fortuitous events. Under the law, these exceptions are: (1) when the law expressly so specifies; (2) when it is otherwise declared by the parties; and (3) when the nature of the obligation requires the assumption of risks. We find that in the Omnibus Agreement, the parties expressly agreed that any enactment, official action, act of war, act of nature or other force majeure or other similar circumstances shall in no way affect the obligation of the borrowers to make payments.”[16] [emphasis supplied]

Going now into the legal interest that should be imposed, this Court is in accord with the petitioners that in as much as the instant case involves an obligation arising from a contract of sale and not a loan or forbearance of money, the proper rate of legal interest should be six percent (6%) per annum of the amount demanded. Such interest shall be reckoned from September 21, 1999, the date of the filing of the complaint and shall continue to run until the finality of this decision. However, pursuant to the guidelines set by the Supreme Court in *Eastern Shipping Lines, Inc. vs. Court of Appeals*,^[17] when the judgment of the court awarding a sum of money, as in this case, becomes final and executory, the rate of interest shall increase to twelve percent (12%) per annum from such finality until its satisfaction, this interim period being deemed to be equivalent to a forbearance of credit.^[18]

WHEREFORE, the June 30, 2003 Order^[19] of the Office of the President and its Resolution^[20] dated November 24, 2003, affirming the Decision of the HLURB is hereby **AFFIRMED** with the modification that the rate of legal interest which shall apply is six percent (6%) per annum of the amount demanded from September 21, 1999, until finality of this decision. After this decision becomes final and executory, the applicable rate shall be twelve percent (12%) per annum until its satisfaction.

SO ORDERED.

Cruz, (Chairman) and Roxas[*], JJ., concur.

[1] Rollo, p. 29.

[2] Rollo, p. 30.

[3] Rollo, pp. 35-37.

[4] Rollo, p. 47.

[5] Rollo, pp. 32-33.

[6] Rollo, pp. 35-37.

[7] Rollo, pp. 38-39.

[8] Rollo, p. 29.

[9] Ibid.

[10] Rollo, pp. 30-31.

[11] Rollo, pp. 53-73, 70.

[12] 362 SCRA 510 [2001].

[13] Ibid, p. 519.

[14] 460 SCRA 279 [2005].

[15] Ibid, pp. 289-290.

[16] Ibid, p. 290.

[17] 234 SCRA 78 [1994].

[18] Tropical Homes, Inc., vs. Court of Appeals, 272 SCRA 428, 442 [1997].

[19] Rollo, p. 29.

[20] Rollo, p. 30.

[*] Acting Senior Member vice J. Brion.

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