

**BRICKTOWN DEVELOPMENT CORP. (ITS NEW CORPORATE NAME
MULTINATIONAL REALTY DEVELOPMENT CORPORATION) AND
MARIANO Z. VERALDE, PETITIONERS, VS. AMOR TIERRA
DEVELOPMENT CORPORATION AN...**

G.R. No. 112182. December 12, 1994

Ponente: VITUG, J.

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VITUG, J.:

A contract, once perfected, has the force of law between the parties with which they are bound to comply in good faith and from which neither one may renege without the consent of the other. The autonomy of contracts allows the parties to establish such stipulations, clauses, terms and conditions as they may deem appropriate provided only that they are not contrary to law, morals, good customs, public order or public policy. The standard norm in the performance of their respective covenants in the contract, as well as in the exercise of their rights thereunder, is expressed in the cardinal principle that the parties in that juridical relation must act with justice, honesty and good faith.

These basic tenets, once again, take the lead in the instant controversy.

Private respondent reminds us that the factual findings of the trial court, sustained by the Court of Appeals, should be considered binding on this Court in this petition. We concede to this reminder since, indeed, there appears to be no valid justification in the case at bench for us to take an exception from the rule. We shall, therefore, momentarily paraphrase these findings.

On 31 March 1981, Bricktown Development Corporation (herein petitioner corporation), represented by its President and co-petitioner Mariano Z. Velarde, executed two Contracts to Sell (Exhs. "A" and "B") in favor of Amor Tierra Development Corporation (herein private respondent), represented in these acts by its Vice-President, Moises G. Petilla, covering a total of 96 residential lots, situated at the Multinational Village Subdivision, La Huerta, Parañaque, Metro Manila, with an aggregate area of 82,888 square meters. The total price of P21,639,875.00 was stipulated to be paid by private respondent in such amounts and maturity dates, as follows: P2,200,000.00 on 31 March 1981; P3,209,968.75 on 30 June 1981; P4,729,906.25 on 31 December 1981; and the balance of P11,500,000.00 to be paid by means of an assumption by private respondent of petitioner corporation's mortgage liability to the Philippine Savings Bank or, alternatively, to be made payable in cash. On even date, 31 March 1981, the parties executed a Supplemental Agreement (Exh. "C"), providing that private respondent would additionally pay to petitioner corporation the amounts of P55,364.68, or 21% interest on the balance of downpayment for the period from 31 March to 30 June 1981, and of P390,369.37 representing interest paid by petitioner corporation to the Philippine Savings Bank in updating the bank loan for the period from 01 February to 31 March 1981.

Private respondent was only able to pay petitioner corporation the sum of P1,334,443.21 (Exhs. "A" to "K"). In the meanwhile, however, the parties continued to negotiate for a possible modification of their agreement,

although nothing conclusive would appear to have ultimately been arrived at.

Finally, on 12 October 1981, petitioner corporation, through its legal counsel, sent private respondent a "Notice of Cancellation of Contract" (Exh. "D") on account of the latter's continued failure to pay the installment due 30 June 1981 and the interest on the unpaid balance of the stipulated initial payment. Petitioner corporation advised private respondent, however, that it (private respondent) still had the right to pay its arrearages within 30 days from receipt of the notice "otherwise the actual cancellation of the contract (would) take place."

Several months later, or on 26 September 1983, private respondent, through counsel, demanded (Exh. "E") the refund of private respondent's various payments to petitioner corporation, allegedly "amounting to P2,455,497.71," with interest within fifteen days from receipt of said letter, or, in lieu of a cash payment, to assign to private respondent an equivalent number of unencumbered lots at the same price fixed in the contracts. The demand, not having been heeded, private respondent commenced, on 18 November 1983, its action with the court a quo.^[1]

Following the reception of evidence, the trial court rendered its decision, the dispositive portion of which read:

"In view of all the foregoing, judgment is hereby rendered as follows:

"1. Declaring the Contracts to Sell and the Supplemental Agreement (Exhibits 'A', 'B' and 'C') rescinded;

"2. Ordering the [petitioner] corporation, Bricktown Development Corporation, also known as Multinational Realty Development Corporation, to return to the [private respondent] the amount of One Million Three Hundred Thirty Four Thousand Four Hundred Forty-Three Pesos and Twenty-One Centavos (P1,334,443.21) with interest at the rate of Twelve (12%) percent per annum, starting November 18, 1983, the date when the complaint was filed, until the amount is fully paid;

"3. Ordering the [petitioner] corporation to pay the [private respondent] the amount of Twenty-Five Thousand (P25,000.00) Pesos, representing attorney's fees;

"4. Dismissing [petitioners'] counterclaim for lack of merit; and

"5. With costs against the [petitioner] corporation.

SO ORDERED."^[2]

On appeal, the appellate court affirmed in toto the trial court's findings and judgment.

In their instant petition, petitioners contend that the Court of Appeals has erred in ruling that -

(1) By petitioners' acts, conduct and representation, they themselves delayed or prevented the performance of the contracts to sell and the supplemental agreement and were thus estopped from cancelling the same.

(2) Petitioners were not justified in resolving the contracts to sell and the supplemental agreement.

(3) The cancellation of the contract required a positive act on the part of petitioners giving private respondent the sixty (60) day grace period provided in the contracts to sell; and

(4) In not holding that the forfeiture of the P1,378,197.48 was warranted under the liquidated damages provisions of the contracts to sell and the supplemental agreement and was not iniquitous nor unconscionable.

The core issues would really come down to (a) whether or not the contracts to sell were validly rescinded or cancelled by petitioner corporation and, in the affirmative, (b) whether or not the amounts already remitted by private respondent under said contracts were rightly forfeited by petitioner corporation.

Admittedly, the terms of payment agreed upon by the parties were not met by private respondent. Of a total

selling price of P21,639,875.00, private respondent was only able to remit the sum of P1,334,443.21 which was even short of the stipulated initial payment of P2,200,000.00. No additional payments, it would seem, were made. A notice of cancellation was ultimately made months after the lapse of the contracted grace period. Paragraph 15 of the Contracts to Sell provided thusly:

“15. Should the PURCHASER fail to pay when due any of the installments mentioned in stipulation No. 1 above, the OWNER shall grant the purchaser a sixty (60)-day grace period within which to pay the amount/s due, and should the PURCHASER still fail to pay the due amount/s within the 60-day grace period, the PURCHASER shall have the right to ex-parte cancel or rescind this contract, provided, however, that the actual cancellation or rescission shall take effect only after the lapse of thirty (30) days from the date of receipt by the PURCHASER of the notice of cancellation of this contract or the demand for its rescission by a notarial act, and thereafter, the OWNER shall have the right to resell the lot/s subject hereof to another buyer and all payments made, together with all improvements introduced on the aforementioned lot/s shall be forfeited in favor of the OWNER as liquidated damages, and in this connection, the PURCHASER obligates itself to peacefully vacate the aforesaid lot/s without necessity of notice or demand by the OWNER.”[3]

A grace period is a right, not an obligation, of the debtor. When unconditionally conferred, such as in this case, the grace period is effective without further need of demand either calling for the payment of the obligation or for honoring the right. The grace period must not be likened to an obligation, the non-payment of which, under Article 1169 of the Civil Code, would generally still require judicial or extrajudicial demand before “default” can be said to arise.[4]

Verily, in the case at bench, the sixty-day grace period under the terms of the contracts to sell became ipso-facto operative from the moment the due payments were not met at their stated maturities. On this score, the provisions of Article 1169 of the Civil Code would find no relevance whatsoever.

The cancellation of the contracts to sell by petitioner corporation accords with the contractual covenants of the parties, and such cancellation must be respected. It may be noteworthy to add that in a contract to sell, the non-payment of the purchase price (which is normally the condition for the final sale) can prevent the obligation to convey title from acquiring any obligatory force (*Roque vs. Lapuz*, 96 SCRA 741; *Agustin vs. Court of Appeals*, 186 SCRA 375).

The forfeiture of the payments thus far remitted under the cancelled contracts in question, given the factual findings of both the trial court and the appellate court, must be viewed differently. While clearly insufficient to justify a foreclosure of the right of petitioner corporation to rescind or cancel its contracts with private respondent, the series of events and circumstances described by said courts to have prevailed in the interim between the parties, however, warrant some favorable consideration by this Court.

Petitioners do not deny the fact that there has indeed been a constant dialogue between the parties during the period of their juridical relation. Concededly, the negotiations that they have pursued strictly did not result in the novation, either extinctive or modificatory, of the contracts to sell; nevertheless, this Court is unable to completely disregard the following findings of both the trial court and the appellate court. Said the trial court:

"It has been duly established through the testimony of plaintiff's witnesses Marcosa Sanchez and Vicente Casas that there were negotiations to enter into another agreement between the parties, after March 31, 1981. The first negotiation took place before June 30, 1981, when Moises Petilla and Renato Dragon, Vice-President and president, respectively, of the plaintiff corporation, together with Marcosa Sanchez, went to the office of the defendant corporation and made some proposals to the latter, thru its president, the defendant Mariano Velarde. They told the defendant Velarde of the plaintiff's request for the division of the lots to be purchased into smaller lots and the building of town houses or smaller houses therein as these kinds of houses can be sold

easily than big ones. Velarde replied that subdivision owners would not consent to the building of small houses. He, however, made two counter-proposals, to wit: that the defendant corporation would assign to the plaintiff a number of lots corresponding to the amounts the latter had already paid, or that the defendant corporation may sell the corporation itself, together with the Multinational Village Subdivision, and its other properties, to the plaintiff and the latter's sister companies engaged in the real estate business. The negotiations between the parties went on for sometime but nothing definite was accomplished."[5]

For its part, the Court of Appeals observed:

"We agree with the court a quo that there is, therefore, reasonable ground to believe that because of the negotiations between the parties, coupled with the fact that the plaintiff never took actual possession of the properties and the defendants did not also dispose of the same during the pendency of said negotiations, the plaintiff was led to believe that the parties may ultimately enter into another agreement in place of the 'contracts to sell.' There was, evidently, no malice or bad faith on the part of the plaintiff in suspending payments. On the contrary, the defendants not only contributed, but had consented to the delay or suspension of payments. They did not give the plaintiff a categorical answer that their counter-proposals will not materialize."[6]

In fine, while we must conclude that petitioner corporation still acted within its legal right to declare the contracts to sell rescinded or cancelled, considering, nevertheless, the peculiar circumstances found to be extant by the trial court, confirmed by the Court of Appeals, it would be unconscionable, in our view, to likewise sanction the forfeiture by petitioner corporation of payments made to it by private respondent. Indeed, in the opening statement of this ponencia, we have intimated that the relationship between parties in any contract must always be characterized and punctuated by good faith and fair dealing. Judging from what the courts below have said, petitioners did fall well behind that standard. We do not find it equitable, however, to adjudge any interest payment by petitioners on the amount to be thus refunded, computed from judicial demand, for, indeed, private respondent should not be allowed to totally free itself from its own breach.

WHEREFORE, the appealed decision is **AFFIRMED** insofar as it declares valid the cancellation of the contracts in question but **MODIFIED** by ordering the refund by petitioner corporation of P1,334,443.21 with 12% interest per annum to commence only, however, from the date of finality of this decision until such refund is effected. No costs.

SO ORDERED.

Bidin, Romero, and Melo, JJ., concur.
Feliciano, J.,(Chairman)., on leave.

[1] Rollo, pp. 39-41.

[2] Rollo, p. 41.

[3] Rollo, p. 82.

[4] 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.

[5] Rollo, pp. 43-44.

[6] Rollo, p. 44.

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