

SPOUSES LORENZO G. FRANCISCO AND LORENZA D. FRANCISCO, PETITIONERS, VS. HONORABLE COURT OF APPEALS, AND BIENVENIDO C. MERCADO, RESPONDENTS.

G.R. No. 118749. April 25, 2003

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before this Court is a petition for review[1] assailing the Decision[2] of 21 November 1994 as well as the Resolution of 17 January 1995 of the Court of Appeals in CA-G.R. CV No. 34084. The Court of Appeals upheld the Decision of 10 June 1991 of the Regional Trial Court[3] of San Fernando, Pampanga, in Civil Case No. 7909 rescinding the subdivision development contract between the parties and awarding damages to respondent Bienvenido C. Mercado.

Antecedent Facts

On 3 February 1984, the spouses Lorenzo and Lorenza Francisco (“petitioners”) and Engineer Bienvenido C. Mercado (“respondent”) entered into a Contract of Development[4] (“Contract”) for the development into a subdivision of several parcels of land in Pampanga.

Under the Contract, respondent agreed to undertake at his expense the development work for the Franda Village Subdivision. Respondent committed to complete the construction within 27 months. Respondent also advanced P200,000.00 for the initial expenses of the development work. In return, respondent would receive 50% of the total gross sales of the subdivision lots and other income of the subdivision. Respondent also enjoyed the exclusive and irrevocable authority to manage, control and supervise the sales of the lots within the subdivision. The Contract required respondent to submit to petitioners, within the first 15 days of every month, a report on payments collected from lot buyers with copies of all the contracts to sell. However, respondent failed to submit the monthly report.

From 16 October 1985 to sometime in March 1986, within the 27-month period granted to respondent, petitioners also contracted a certain Nicasio Rosales, Sr. (“Rosales”) to undertake the partial development of the subdivision. On 16 July 1986, Rosales submitted his accomplishment report. On the same day, petitioners demanded that respondent submit within 15 days an accounting of his operation of the subdivision from the beginning of the project up to 15 July 1986. Petitioners also requested for copies of contracts to sell, receipts of collections and receipts of disbursements for development expenses.

On 5 August 1986, respondent secured from the Human Settlements Regulatory Commission (“HSRC”) an extension of time to finish the subdivision development until 30 July 1987. On 8 August 1986, petitioners instructed respondent to stop selling subdivision lots and collecting payments from lot buyers. Petitioners also demanded the turnover to them of all official receipts in the name of Franda Village Subdivision.[5] Nonetheless,

respondent continued to collect payments from lot buyers until September 1986.

On 18 September 1986, petitioners wrote respondent that their accountant was not satisfied with respondent's report which did not include the necessary supporting documents. Petitioners required respondent to submit a proper statement of collections with supporting receipts and documents, and reiterated that respondent should stop selling subdivision lots and collecting payments from lot buyers. For the first time, petitioners also alleged that respondent violated certain provisions of the Contract. Petitioners mentioned the complaint of lot buyers that respondent was not developing the subdivision within the agreed period. Another complaint was that respondent issued two kinds of receipts, one in the name of B. C. Mercado and the other in the name of Franda Subdivision.[6]

On 7 October 1986, petitioners informed the HSRC of the lot buyers' complaints that respondent completed only 5% of the development work and that he was issuing two kinds of receipts. Petitioners also claimed that respondent was in serious violation of the Contract because he did not properly remit to petitioners the proceeds from the lot sales.

In a letter dated 25 November 1986,[7] respondent requested petitioners to provide him with the format of the statement of collections they wanted or, alternatively, to send an accountant to audit his records. He assured them that he could account for all the proceeds from the lot sales. He countered that he could have finished the development of the subdivision on time had petitioners not hampered him with their verbal demands to stop the development and "fill up" the lots first. Respondent suggested that he and petitioners settle their differences either by mutually canceling the Contract and giving to each party its corresponding share, or by continuing with the arrangement. In the meantime, respondent informed petitioners that he would continue the operation of the subdivision in accordance with the Contract.

On 20 January 1987, petitioners granted respondent an authority[8] to resume the sale of subdivision lots and the collection of payments subject to the following conditions: (1) all collections shall be deposited in a joint account with China Banking Corporation, San Fernando, Pampanga branch; (2) withdrawals shall be limited to 50% of the total collections or to respondent's share, which can only be used for development expenses, and any withdrawal shall be subject to the approval of petitioners; (3) only Franda Village Subdivision receipts, duly countersigned by petitioners, shall be used; (4) collections shall be subject to a weekly or monthly audit; and (5) any violation of these conditions shall result in the automatic cancellation of the authority.

On 28 January 1987, respondent informed HSRC that he had stopped development work on the subdivision because the conditional authority issued by petitioners violated the Contract. Specifically, respondent referred to the following provisions of the Contract that the conditional authority contravened: (1) his exclusive and irrevocable right to manage, control, and supervise the sale of lots; (2) his authority to issue receipts as the developer without the participation of the landowners; and (3) his right to withdraw his 50% share without the approval of the landowners.[9] Respondent attributed the delay in the development of the subdivision to petitioners who contracted the services of another person during the effectivity of the Contract. Petitioners also stopped respondent, without justification, from selling the lots and collecting payments from lot buyers.

On 27 February 1987, respondent filed with the trial court an action to rescind the Contract with a prayer for damages. Petitioners countered that respondent breached the Contract by failing to finish the subdivision within the 27 months agreed upon, and therefore respondent was in delay. Petitioners also alleged that respondent sold one subdivision lot to two different buyers.

Subsequently, petitioners obtained permission from the Housing and Land Use Regulatory Board to takeover the development of the subdivision.

The Ruling of the Trial Court

After trial on the merits, the trial court found for respondent. The trial court ruled that petitioners breached the Contract by: (1) hiring Rosales to do development work on the subdivision within the 27-month period exclusively granted to respondent; (2) interfering with the latter's development work; and (3) stopping respondent from managing the sale of lots and collection of payments.

Because petitioners were the first to breach the Contract and even interfered with the development work, the trial court declared that respondent did not incur delay even if he completed only 28% of the development work. Further, the HSRC extended the Contract up to July 1987. Since the Contract had not expired at the time respondent filed the action for rescission, petitioners' defense that respondent did not finish the development work on time was without basis.

The trial court also found that respondent did not fail to pay the 50% share of petitioners from the proceeds of the lot sales. The trial court viewed respondent's failure to submit the required report as only a slight infraction not warranting petitioners' interference with respondent's right to sell the lots and collect payments from sales pursuant to Article X (3) of the Contract. The trial court noted that petitioners had tolerated the non-submission of the monthly report until petitioners made the demand for accounting on 16 July 1986, which respondent readily complied. The trial court stressed that respondent's right under the Contract to sell lots and collect payments was exclusive and irrevocable.

The trial court found unproven the charge that respondent sold one subdivision lot to two buyers. The trial court considered the issue of a double sale immaterial, as respondent did not violate any provision of the Contract and the aggrieved parties in such event would be the buyers and not petitioners.

In its Decision[10] of 10 June 1991, the trial court decreed the rescission of the Contract and awarded damages to respondent, as follows:

Premises considered, judgement is hereby rendered in favor of plaintiff granting the rescission of the Contract of Development between him and defendants' and ordering defendants to pay unto plaintiff the following:

- Expenses of operation of the subdivision in the total amount of P1,808,756.01 and return of advance payment of P200,000.00;
- Attorney's fees of P25,000.00;
- P50,000.00 and P30,000.00 as temperate and exemplary damages; and
- Cost of suit.

SO ORDERED.

The Ruling of the Court of Appeals

On appeal to the Court of Appeals, petitioners presented for the first time a supplemental Memorandum of Agreement dated 9 October 1985 allegedly entered into by petitioners and Rosales with the conformity of respondent. However, the appellate court refused to take cognizance of the Memorandum of Agreement, as petitioners did not formally offer it in evidence.

The Court of Appeals adopted the findings of fact of the trial court. Declaring that there was no reversible error, the appellate court in its Decision of 21 November 1994[11] affirmed the ruling of the trial court in toto.

Petitioners filed a motion for reconsideration, which the Court of Appeals denied in its Resolution of 17 January 1995.[12]

On 21 March 1995, petitioners filed with the Supreme Court a petition for review assailing the appellate court's decision and resolution. Petitioners prayed that the Court: (1) reverse the decision of the Court of Appeals; (2) award to petitioners P4,403,895.00 as additional cost of the development of the subdivision, P57,864.00 as their unremitted share, P304,152.00 to reimburse them for the amounts paid to Rosales, P50,000.00 as attorney's fees, P10,000.00 as appearance fees, and moral and exemplary damages; and (3) other equitable reliefs and remedies.[13]

The Issues

Petitioners assign the following errors:

- THE COURT OF APPEALS ERRED WHEN IT HELD THAT DELAY IS NOT AN ISSUE IN THIS CASE;
- THE COURT OF APPEALS ERRED WHEN IT HELD THAT THE CONTRACT OF DEVELOPMENT HAS NOT EXPIRED AND WAS EXTENDED UP TO JULY 30, 1997 BY PETITIONER;
- THE COURT OF APPEALS ERRED WHEN IT HELD THAT PRIVATE RESPONDENT WAS ENTITLED TO THE RESCISSION OF THE CONTRACT OF DEVELOPMENT AND DAMAGES BECAUSE OF INTERVENTION OF NICASIO ROSALES, SR. IN THE DEVELOPMENT OF THE SUBDIVISION DURING THE EXISTENCE OF THE CONTRACT, AND THAT THE MEMORANDUM OF AGREEMENT OR SUPPLEMENTAL AGREEMENT WHICH BEARS THE CONFORMITY OF PLAINTIFF WAS NOT OFFERED OR PRODUCED IN THE TRIAL COURT AND THEREFORE COULD NOT BE CONSIDERED ON APPEAL, WHEN IN FACT IT WAS REFERENCED AND MADE PART OF THE EVIDENCE OF THE PRIVATE RESPONDENT;
- THE COURT OF APPEALS ERRED WHEN IT HELD THAT PRIVATE RESPONDENT WAS ENTITLED TO THE RESCISSION OF THE CONTRACT AND DAMAGES BECAUSE PRIVATE RESPONDENT'S NON-SUBMISSION OF THE MONTHLY COLLECTION REPORT WAS NOT A SERIOUS AND SUBSTANTIAL BREACH OF THE CONTRACT OF DEVELOPMENT;
- THE COURT OF APPEALS ERRED WHEN IT HELD THAT PRIVATE RESPONDENT WAS ENTITLED TO THE RESCISSION OF THE CONTRACT AND DAMAGES BECAUSE PRIVATE RESPONDENT'S EXECUTION OF DOUBLE SALE OF A LOT IN THE SUBDIVISION SUBJECT OF THE CONTRACT OF DEVELOPMENT IN FAVOR OF TWO DIFFERENT PERSONS IS AT BEST A PERIPHERAL ISSUE TO THE MAIN ISSUE OF RESCISSION.
- THE COURT OF APPEALS ERRED WHEN IT HELD THAT IT AFFIRMED THE DECISION DATED JUNE 10, 1991 OF THE TRIAL COURT INSTEAD OF REVERSING THE SAME AND AWARDED DAMAGES TO PETITIONERS.[14]

The Ruling of the Court

It is evident from the assigned errors that petitioners are asking the Court to reexamine certain findings of fact of the trial court. Petitioners submit that this case constitutes an exception to Rule 45 of the Rules of Court limiting to questions of law the issues that may be raised in an appeal by certiorari to this Court.

To bolster this argument, the petition for review, prepared by Atty. Pedro D. Diwa as counsel for petitioners, cited what is supposed to be the Court's ruling in *Misa v. Court of Appeals*.^[15] However, petitioner's counsel misquoted the ruling in *Misa*. We reproduce the erroneous excerpt - which petitioner's counsel even underscored - as follows:

And finally, Mr. Justice Medialdea of this COURT in the case of *Misa vs. Court of Appeals*, G.R. No. 97291, August 5, 1992, by way of exception to the settled rule that only questions of law may be raised in a petition

for review on certiorari under Rule 45 of the Rules of Court, held as follows:

“It is firmly settled that only questions of law may be raised in a petition for review on certiorari under Rule 45 of the Rules of Court. However, there are several instances when findings of fact may be passed upon and reviewed by the Supreme Court, to wit: xxx”[16]

Contrary to the quotation made in the petition for review, the Court in *Misa* refused to review the factual findings of the lower court. There the Court merely acknowledged the exceptional circumstances which may warrant such a review, thus:

It is readily discernible that petitioners are asking Us to re-examine all the evidence already presented before the respondent court and trial court and evaluated by them. These evidence served as basis in arriving at their findings of fact. We shall not analyze such evidence all over again. Instead, We put finis to the factual findings in this case. It is firmly settled that only questions of law may be raised in a petition for review on certiorari under Rule 45 of the Rules of Court. Certainly, We recognize exceptions to this rule. The case of *Medina, et. al. v. Asistio, etc., et al.*, G.R. No. 75450, November 8, 1990, 191 SCRA 218, 223-224 enumerates several instances when findings of fact may be passed upon and reviewed by this Court, none of which obtain herein:

“(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjecture (*Joaquin v. Navarro*, 93 Phil. 257 [1953]; (2) When the inference made is manifestly mistaken, absurd or impossible (*Luna v. Linatok*, 74 Phil. 14 [1942]; (3) Where there is a grave abuse of discretion (*Buyco v. People*, 95 Phil. 453 [1955]; (4) When judgment is based on a misapprehension of facts (*Cruz v. Sosing*, L-4875, Nov. 27, 1953); (5) When the findings of fact are conflicting (*Casica v. Villaseca*, L-9590 Ap. 30, 1957; unrep.);** (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee (*Evangelista v. Alto Surety and Insurance Co.*, 103 Phil. 401 [1958]; (7) The findings of the Court of Appeals are contrary to those of the trial court (*Garcia v. Court of Appeals*, 33 SCRA 622 [1970]; *Sacay v. Sandiganbayan*, 142 SCRA 593 [1986]) ** (8) When the findings of fact are conclusions without citation of specific evidence on which they are based (*Ibid.*); (9) When the facts set forth in the petition as well as in the petitioners’ main and reply briefs are not disputed by the respondents (*Ibid.*); and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record (*Salazar v. Gutierrez*, 33 SCRA 242 [1970]).[17] (Emphasis and italics supplied)

We frown on the obvious carelessness of Atty. Diwa. Since only decisions of the Court establish jurisprudence and doctrines in this jurisdiction,[18] it is the duty of all officers of the court to cite the rulings and decisions of the Supreme Court accurately, even “word-for-word and punctuation mark-for-punctuation mark.”[19] Otherwise, “if not faithfully and exactly quoted, the decisions and rulings of this Court may lose their proper and correct meaning, to the detriment of other courts, lawyers and the public who may thereby be misled.”[20]

In any event, the issues about the alleged extension of the Contract, the double sale, the interference with the development of the subdivision, are matters requiring the introduction and evaluation of evidence. They are questions of fact, which arise when doubt or difference exists about the truth or falsehood of alleged facts.[21]

As a rule, only questions of law may be appealed to the Court by certiorari. The Court is not a trier of facts, its jurisdiction being limited to errors of law.[22] Moreover, where as in this case the Court of Appeals affirms the factual findings of the trial court, such findings generally become conclusive and binding upon the Court.[23] The Court will not disturb the factual findings of the trial and appellate courts unless there are compelling or exceptional reasons, and there is none in the instant petition.

The trial and appellate courts found that the HSRC granted respondent an extension of up to 30 July 1987 to complete the development work under the Contract. Petitioners did not contest HSRC’s extension of time to respondent. Thus, the Court finds no merit in petitioner’s claim that respondent incurred delay in the performance

of his obligation under the Contract. At that time, the law authorized HSRC to grant extensions of time for completion of subdivision projects.[24]

The law provides that delay may exist when the obligor fails to fulfill his obligation within the time expressly stipulated.[25] In this case, the HSRC extended the period for respondent to finish the development work until 30 July 1987. Respondent did not incur delay since the period granted him to fulfill his obligation had not expired at the time respondent filed the action for rescission on 27 February 1987.

Petitioners argue the Court of Appeals naively assumed that respondent could complete the development work in five months when he only finished 28.67% of the work in some 36 months.[26] This argument is speculative and deserves scant consideration. It cannot prevail over the express grant to respondent of a period within which to fulfill his obligation.

Moreover, as the trial and appellate courts found, petitioners hampered and interfered with respondent's development work. Petitioners also stopped respondent from selling lots and collecting payments from lot buyers, which was the primary source of development funds. In effect, petitioners rendered respondent incapable, or at least made it difficult for him, to develop the subdivision within the allotted period. In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply with what is incumbent upon him. It is only when one of the parties fulfills his obligation that delay by the other begins.[27]

Petitioners argue that the alleged Memorandum of Agreement may be treated as a judicial admission in accordance with *Geagonia v. Court of Appeals*. [28] We do not agree. In *Geagonia*, the Court of Appeals considered a letter written by *Geagonia*, although not formally offered in evidence, because it was originally annexed to *Geagonia's* initial complaint filed with the Insurance Commissioner. The Court upheld the appellate court's reversal of the Insurance Commissioner's decision on the ground that the letter constituted a judicial admission by *Geagonia*. Findings of the Insurance Commissioner and the Court of Appeals were divergent in *Geagonia*, an exceptional circumstance that allowed the Court to reexamine the factual findings of the Insurance Commissioner.

In the instant case, petitioners never presented the Memorandum of Agreement before the trial court. Petitioners merely annexed to their petition for review before the Court of Appeals an unauthenticated photocopy of the alleged Memorandum of Agreement. Petitioners argue that this agreement was "referenced and testified to" by respondent during his cross-examination on 1 August 1989 before the trial court. However, in that testimony, respondent merely admitted to signing an amended or supplemental agreement, the contents of which he could not recall.[29] Respondent's testimony does not identify or admit that the Memorandum of Agreement presented by petitioners was the agreement or contract respondent had signed. Atty. Gorospe, then counsel for petitioners, even manifested during the cross-examination of respondent that no supplemental agreement or contract was appended to the complaint.[30]

Further, petitioners failed to explain adequately why the alleged Memorandum of Agreement was never presented before the trial court. As succinctly explained by the Court of Appeals:

Appellants' advertence to an alleged supplemental Memorandum of Agreement (Annex "A", Appellant's brief) to prop up their cause deserves scant consideration. The said document was neither produced nor offered in evidence in the proceedings below, although it could have been easily produced in court by compulsory process. This lapse has not been satisfactorily explained by appellants. xxx[31] (*Italics supplied*)

On the fourth assigned error, we find no reversible error in the ruling of the trial and appellate courts that respondent's non-submission of the monthly report was merely a slight infraction of the Contract. Respondent's failure to submit the monthly report cannot serve as sufficient basis for the cancellation of the Contract. The

cancellation of a contract will not be permitted for a slight or casual breach. Only a substantial and fundamental breach, which defeats the very object of the parties in making the contract, will justify a cancellation.[32] In the instant case, the development work continued for more than two years despite the lack of a monthly report.

Petitioners further contend that, considering respondent's non-submission of collection reports, they were merely enforcing their rights under Article X (3) of the Contract[33] in demanding that respondent stop selling the subdivision lots and collecting payments from lot buyers.

Whether petitioners could have justifiably invoked Article X (3) of the Contract based on respondent's failure to submit the required reports is beside the point. It is clear from the records that petitioners did not seek to stop respondent's activities due to the latter's failure to submit the required reports. The non-submission of the required reports was never mentioned in any of petitioners' letters. Indeed, petitioners' letter of 8 August 1986, which first instructed respondent to stop selling the lots and collecting payments, did not mention any violation at all,[34] while the subsequent letters referred only to the complaints of lot buyers. Article X (3) of the Contract required the "innocent party" to serve a written notice of "a violation of the terms and conditions of this contract." [35] Absent such written notice, this provision cannot be invoked, much less enforced.

On the fifth assigned error, it is unnecessary for this Court to rule on the materiality of the alleged double sale in the face of the trial and appellate courts' finding that no double sale took place.

On the award of damages, however, we find some modification is in order. The trial court awarded P50,000.00 in temperate damages to respondent for his "besmirched reputation on his goodwill and image as a good and able engineer and contractor." [36] Under the law, however, moral and not temperate damages may be awarded for besmirched reputation and similar injury.[37] Temperate damages may be awarded only when pecuniary loss has been suffered but the amount cannot be proved with certainty from the nature of the case.[38] Hence, the award of P50,000.00 in temperate damages should be deleted for lack of legal basis.

We likewise find without basis the trial court's award of exemplary damages. In contracts, exemplary damages may be awarded if the defendant acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.[39] Nothing in the trial and appellate courts' decisions indicates that petitioners behaved in such manner as to warrant the grant of exemplary damages.

On the award of attorney's fees, the general rule is that attorney's fees cannot be recovered as part of damages because no premium should be placed on the right to litigate.[40] Article 2208 of the Civil Code provides that attorney's fees and expenses of litigation should not be granted unless stipulated, except in certain cases where "the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim." [41]

That petitioners required respondent to submit a statement of collection on the same day that Rosales submitted his accomplishment report does not sufficiently show, by itself, gross and evident bad faith. The Contract itself required the submission of a collection report. Although early on petitioners may have tolerated the non-submission of the report, they should not be penalized for demanding later on that respondent comply with a condition of the Contract.

WHEREFORE, the Decision of 21 November 1994 of the Court of Appeals in CA-G.R. CV No. 34084 upholding the Decision of 10 June 1991 of the Regional Trial Court of San Fernando, Pampanga, Branch XLV, in Civil Case No. 7909 is **AFFIRMED**, with the **MODIFICATION** that the award of attorney's fees, temperate and exemplary damages is

DELETED.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Vitug, and Azcuna, JJ., concur.

Ynares-Santiago, J., no part.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Consuelo Ynares-Santiago (now an Associate Justice of the Supreme Court) with Associate Justices Emeterio C. Cui and Conchita Carpio-Morales (now an Associate Justice of the Supreme Court) concurring.

[3] Branch XLV.

[4] Records of Civil Case No. 7909, Exhibits "A", "A-1" to "A-8".

[5] Ibid., Exhibit "B".

[6] Ibid., Exhibit "D".

[7] Ibid., Exhibit "C".

[8] Ibid., Exhibit "E".

[9] The salient provisions of the Contract state:

I. GENERAL PROVISIONS

x x x x x x x x

- That the DEVELOPER shall be entitled, as their share in the project, to fifty per cent (50%) of the gross proceeds from sale of the lots in cash, on installments and on all other incidental income actually paid to, and received by the DEVELOPER. It being agreed and understood that commissions due to agents or brokers shall be at the exclusive account of the DEVELOPER; xxx

IV. SALES, TERMS AND CONDITIONS THEREOF

- That the DEVELOPER shall, at his exclusive expense, control, supervision and responsibility, develop, administer and manage the subdivision project and the sales of all lots within the subdivision to the buying public;

- That the authority of the DEVELOPER to managed (sic), control, supervise and administer the sales of the lots shall be exclusive and irrevocable, unless this contract is rescinded by agreement of the parties or in accordance with provisions or RESCISION (sic) AND PENAL CLAUSE of this contract; xxx

VI. COLLECTIONS AND REMITTANCES

- That the DEVELOPER shall be in charge of all collection of proceed of sales, in cash or in installments, and all collections shall be duly receipted and in all cases the DEVELOPER shall issue the corresponding official receipts; xxx

X. RESCISION AND PENAL CLAUSE

- That the LANDOWNERS shall have the right to ask for the recession (sic) of this contract on failure of the

DEVELOPER to remit whatever gross collections due to the LANDOWNERS within the period herein stipulated, or to comply with their commitments and obligations contained with this contract xxx

- That should the LANDOWNERS be unable or fail to comply with their commitments and obligations under this contract, the DEVELOPER shall have the right to retain whatever amount due to the LANDOWNERS to answer for whatever damages that the former may suffer, or the said DEVELOPER may ask for the rescision (sic) of this contract xxx

- That should there be a violation of the terms and conditions of this contract, the innocent party can stop any erring party by serving the latter a written notice to that effect, from retaining collections, from collecting proceeds, and from further selling the lots of the subdivision, and all such collections made after such notice by either party shall be deposited in a bank in the joint name of both parties; and withdrawals from such deposits can be made only upon the mutual written agreement of both parties, or after the condition violated is complied with; xxx

[10] Rollo of CA-G.R. CV No. 34084, p. 17.

[11] Rollo, p. 45.

[12] Ibid., p. 54.

[13] Ibid., p. 9.

[14] Ibid.

[15] G.R. No. 972941, 5 August 1992, 212 SCRA 217 (1992).

[16] Rollo, p. 9.

[17] Ibid.

[18] Commissioner of Internal Revenue v. Court of Appeals, 312 Phil. 337 (1995); Insular Life Assurance Co., Ltd., Employees Association-Natu v. Insular Life Assurance Co., Ltd., G.R. No. L-25291, 30 January 1971, 37 SCRA 244 citing Miranda v. Imperial, 77 Phil 1066 (1947).

[19] Insular Life Assurance Co., Ltd., Employees Association-Natu v. Insular Life Assurance Co., Ltd., *ibid.*

[20] Ibid.

[21] Tirol v. Commission on Audit, G.R. No. 133954, 3 August 2000, 337 SCRA 198.

[22] Ibid.

[23] Tiongco v. Deguma, G.R. No. 133619, 26 October 1999, 317 SCRA 527.

[24] Executive Order No. 648, "Reorganizing the Human Settlements Regulatory Commission" (1981) provides:

Article VII. GENERAL PROVISIONS

Sec. 8. Transfer of Functions. The regulatory functions of the National Housing Authority pursuant to Presidential Decrees No. 957, 1216, 1344 and other related laws are hereby transferred to the Commission, together with such applicable personnel, appropriation, records, equipment and property necessary for the enforcement and implementation of such functions. Among these regulatory functions are: x x x (8) Granting of permits for the alteration of plans and the extension of period for completion of subdivision or condominium projects; xxx

[25] Civil Code, Article 1169.

[26] See note 9.

[27] See note 25.

[28] 311 Phil. 152 (1995). The petitioner therein was Armando Geagonia, not “Geogonia” as cited in petitioners’ Reply, Rollo, p. 144.

[29] TSN of Civil Case No. 7909, August 1, 1989 on the cross-examination of Engr. Mercado, states:

Atty. Gorospe: Your Honor, I do not know of any amended agreement. According to him they have. We, as far as we are concerned (sic), we do not have any amended or supplemental agreement or contract appended to the Complaint.

A:

I know that there was such an agreement, sir, but I do not have a copy of it.

Q:

If you do not have the copy now, could you remember what are included in that amended or supplemental agreement since you said you have.

A:

I am not familiar with the content but there is such a document.

Q:

Could you produce it?

A:

I do not have the copy, sir.

Q:

Who prepared that?

A:

I am not sure who prepared it.

Q:

You are not sure but you signed that amended agreement?

A:

Yes, sir.

Q:

Or is it because there is none that is why you do not remember anything about it?

A:

There is, sir.

Q:

That document which you said is an amended or supplemental agreement, was it notarized?

A:

I am not familiar with the contents, sir. x x x

[30] Ibid.

[31] See note 11.

[32] Laforteza v. Machuca, G.R. No. 137552, 16 June 2000, 333 SCRA 643.

[33] See note 9.

[34] See note 5.

[35] See note 9.

[36] See note 10.

[37] Civil Code, Art. 2217.

[38] Ibid., Art. 2224.

[39] Ibid., Art. 2232.

[40] American Home Assurance Co. v. Chua, 368 Phil. 555 (1999).

[41] Civil Code, Art. 2208 (5).

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