GREGORIO DE VERA, JR., PETITIONER, VS. COURT OF APPEALS, Q. P. SAN DIEGO CONSTRUCTION, INC., ASIATRUST DEVELOPMENT BANK, SECOND LAGUNA DEVELOPMENT BANK, CAPITOL CITY DEVELOPMENT...

G.R. No. 132869. October 18, 2001

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This is a Petition for Review, under Rule 45 of the Revised Rules of Court, of the Decision of the Court of Appeals in CA-G.R. CV No. 37281, "Gregorio de Vera, Jr. v. Court of Appeals, QP San Diego Construction, Inc., Asiatrust Development Bank, Second Laguna Development Bank, Capitol City Development Bank, Ex-Officio Sheriff of Quezon City and/or his Deputy," and of its Resolution of 18 February 1998 denying petitioner's Manifestation with Motion for Reconsideration.

Respondent Q. P. San Diego Construction, Inc. (QPSDCI), owned a parcel of land located at 101 Panay Avenue, Quezon City, on which it built Lourdes I Condominium. On 10 June 1983, to finance its construction and development, QPSDCI entered into a Syndicate Loan Agreement[1] with respondents Asiatrust Development Bank (ASIATRUST) as lead bank, and Second Laguna Development Bank (LAGUNA) and Capitol City Development Bank (CAPITOL) as participating banks (hereafter collectively known as FUNDERS). QPSDCI mortgaged to the creditor banks as security the herein mentioned Panay Avenue property and the condominium constructed thereon. The mortgage deed was registered with the Register of Deeds of Quezon City and annotated on the individual condominium certificates of title (CCT) of each condominium unit.[2]

On 23 June 1983 petitioner Gregorio de Vera Jr. and QPSDCI, through its authorized agent Fil-Estate Realty Corporation (FIL-ESTATE), entered into a Condominium Reservation Agreement[3] where petitioner undertook to buy Unit 211-2C of the condominium for P325,000.00 under the following agreed terms of payment: (a) an option money of P5,000.00 payable upon signing of the agreement to form part of the purchase price; (b) a full downpayment of P175,675.00 broken down into the reservation fee of P5,000.00 and three (3) equal monthly installments payable beginning the month after the signing of the contract; and, (c) the remaining balance of P160,000.00 to be secured through petitioner's Pag-IBIG and Open-Housing Loan. Pending release of the loan, petitioner was to avail of a bridge financing loan with ASIATRUST or any accredited originating bank of the Pag-IBIG program.

On 2 June 1983 petitioner paid the reservation fee of P5,000.00, and on 11 July 1983 the balance of the downpayment of P167,000.00, thus completing the downpayment of P175,675.00 well before the due date. As incentive, petitioner was given a full discount on cash payment by QPSDCI to bring the total payment to P184,040.00.

Pursuant to their Condominium Reservation Agreement, petitioner submitted through FIL-ESTATE his application for the Pag-IBIG loan. On 28 December 1983 ASIATRUST as originating bank notified

FIL-ESTATE that petitioner's Pag-IBIG loan application had been approved.[4] In a letter dated 18 January 1984 QPSDCI President Quintin P. San Diego forwarded the letter to petitioner. However, the amount approved was only P139,100.00 and not P160,000.00. Additional charges further reduced the amount to P117,043.33.

Petitioner De Vera Jr. approached QPSDCI to have the P12,040.00 discount credited to his additional equity. Since the resultant net loan of P117,043.33 was insufficient to cover the balance of the purchase price, De Vera Jr. negotiated with QPSDCI to defer payment of the P23,916.67 deficiency until the project was completed and the unit was ready for turnover. QPSDCI agreed.[5]

The condominium project was substantially completed in June 1984 and the unit was turned over to De Vera Jr. the following month. Accordingly, petitioner paid QPSDCI the P23,916.67 shortfall between the balance and the granted loan.

On 26 June 1984 ASIATRUST through its Vice-President Pedro V. Lucero and Manager Nicanor T. Villanueva wrote to QPSDCI asking the unit buyers to pay in advance the costs of the transfer of titles and registration of their Pag-IBIG loan mortgages.[6] QPSDCI forwarded the letter to De Vera Jr. and requested that he pay the amount to QPSDCI.[7] As ASIATRUST indicated that the amount be paid directly to it, De Vera Jr. went to the bank for clarification. On 23 August 1983, after learning that ASIATRUST was in possession of the certificate of title, De Vera Jr. paid the transfer expenses directly to ASIATRUST.

On 17 September 1984 ASIATRUST sent another notice of approval[8] to QPSDCI and De Vera Jr. with the notation, "additional equity of all accounts have (sic) to be paid directly to the Bank."

On 3 October 1984 ASIATRUST wrote another letter[9] asking QPSDCI to advise the unit buyers, among others, to pay all additional and remaining equities on 10 October 1984; that their Pag-IBIG loan mortgages would be registered only upon payment of those equities; and, that loan mortgages registered after 31 October 1984 would be subject to the increased Pag-IBIG interest rates.

On 12 October 1984 ASIATRUST also wrote a letter to petitioner and signed by its Assistant Manager Leticia R. de la Cruz informing him that his housing loan would only be implemented upon the following conditions: (a) Payment of the remaining equity directly to ASIATRUST Development Bank; and (b) Signing of all Pag-IBIG documents not later than 20 October 1984, so his mortgages could be registered on or before 31 October 1984. Mortgages registered beyond said date shall subject the Pag-IBIG loan to the increased interest rates of the National Home Mortgage Finance Corp. (per Circular #27 dated June 21, 1984).

According to petitioner, the letter came as a total surprise to him; all the while he thought that his loan had already been released to QPSDCI and the titles transferred to his name; he promptly wrote ASIATRUST to seek clarification; ASIATRUST responded by informing De Vera Jr. that the developmental loan agreement between QPSDCI and the three (3) banks, under which the individual titles of the condominium units were mortgaged in favor of the FUNDERS to secure the loan, shall be paid out of the net proceeds of the Pag-IBIG loans of the buyers; that the total amount of loan from the FUNDERS was distributed among all condominium units such that each unit had to bear a certain portion of the total loan, or a "loan value;" that per agreement with QPSDCI, ASIATRUST would only grant the Pag-IBIG Housing Loan with the release of the mortgage liens, which could not be released unless the buyers fully paid their respective loan values; and that petitioner's equity payments to QPSDCI had not been remitted to the bank.

On 30 May 1985 ASIATRUST informed QPSDCI that it could no longer extend the bridge financing loan to some of the buyers, including petitioner, for various reasons,[10] among which was that petitioner had already exceeded the age limit, hence, he was disqualified.[11]

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After learning of the disapproval of his loan, petitioner wrote the president of QPSDCI to make arrangements to settle his balance. Since petitioner had already invested a substantial amount in remodelling and improving his unit, rescinding the sale was no longer a viable option. Consequently, he only asked the president of QPSDCI for some assurance that the title would be turned over to him upon full payment.

In response, QPSDCI suggested that petitioner deal directly with ASIATRUST for any matter regarding the sale of the unit.[12] President San Diego explained that "as far as we are concerned we have sold to you our property at a certain price and we have correspondingly issued to your goodself, thru the Bank, a Deed of Absolute Sale for the unit we sold to you taking into consideration that the Bank has approved your loan per their advice dated December 28, 1983 and presumably credited us for the approved amount of loan."

As petitioner failed to obtain the housing loan, he was not able to pay the balance of the purchase price. QPSDCI sent him a letter[13] dated 6 August 1987 presenting him with two options: (a) to pay the remaining balance of the purchase price, with interest, which had already ballooned to P263,751.63, on or before 15 August 1987; or, (b) to pay rent for the use of the unit from 28 July 1984 to June 1987.

On 20 May 1988 petitioner, upon discovering that the FUNDERS had already published a notice[14] of extrajudicial foreclosure of the mortgage, filed a complaint against respondents for damages and injunction with urgent prayer for issuance of a writ of preliminary injunction, annulment of mortgage based on fraud, with urgent prayer for the issuance of a writ of preliminary attachment and specific performance. The complaint was docketed as Civil Case No. Q-53737 and subsequently raffled to Branch 107 of the Regional Trial Court of Quezon City.

Meanwhile, QPSDCI failed to pay its obligations to the FUNDERS. On 23 May 1988 ASIATRUST extrajudicially foreclosed the mortgage on twenty-seven (27) condominium units, including that of petitioner De Vera Jr. The units were sold at public auction, with the FUNDERS as the highest bidder. The certificate of sale was issued and annotated on the CCTs.

On 3 March 1992 the trial court rendered judgment "directing the defendants (herein respondents) to pay to the plaintiff (herein petitioner) jointly and severally the sum equivalent to the penalties and charges plus whatever amount may be necessary to redeem Unit 211-2C from any lien and encumbrances so that the title may be released and delivered to the plaintiff, free from any lien and encumbrances, subject only to the deduction of his unpaid balance of P139,000.00, which the plaintiff should pay out of his own funds, plus exemplary damages of P100,000.00 each and to pay plaintiff attorney's fees jointly and severally x x x P50,000.00 plus the expenses of litigation." The lower court denied plaintiff's prayer for moral damages and dismissed defendants' counterclaim against the plaintiff and cross-claims against each other.[15]

The Court of Appeals affirmed the decision of the trial court with the modification that respondents were ordered solidarily to pay petitioner P50,000.00 as nominal damages, but the award for actual and exemplary damages was deleted.

On 9 July 1997 petitioner filed a "Compliance with Manifestation and Motion for Extension of Time to File Motion for Reconsideration" alleging that he received the decision of the Court of Appeals on 4 July 1997 and requesting a thirty (30)-day extension within which to file a motion for reconsideration. The motion was denied by respondent appellate court.

On 8 August 1997 petitioner filed a "Manifestation with Motion for Reconsideration," and on 6 February 1998 a "Compliance with Motion to Resolve Manifestation with Motion for Reconsideration," with respondent court. Reckoning the deadline of the period to file a motion for reconsideration at 19 July 1997, the Court of Appeals denied petitioner's Motion for Reconsideration for having been filed out of time. Hence, the instant petition for

review on certiorari.

Petitioner assails the 18 February 1998 Resolution denying his Motion for Reconsideration, asserting that the Court of Appeals should not have denied his motion on mere technicality. Petitioner claims that his counsel was not notified of the Court of Appeals' decision. The Notice of Judgment[16] of the decision of the Court of Appeals shows that the same was served on petitioner Gregorio de Vera himself and not on his counsel. Petitioner asserts that service to a party is allowed only if the party is not represented by counsel. But if he is represented by a counsel, then service shall be made upon his counsel unless service upon the party himself is ordered by the court. Unless so ordered, service on the party himself who is represented by counsel is not notice in law, hence, invalid.[17]

Furthermore, justice will be better served by entertaining this petition than by dismissing it outright. It is always in the power of this Court to suspend its own rules, or to except a particular case from its operation, whenever the purposes of justice require it.[18]

The trial court found that petitioner's failure to pay the balance of the price of Unit 211-2C was not his fault. It also found that petitioner was a real party in interest to annul the loan agreement between QPSDCI and the FUNDERS, and that he had priority in right to the unit over the FUNDERS. The trial court rejected QPSDCI's counterclaim against petitioner for rentals and sustained petitioner's claim for damages against private respondents.

The Court of Appeals ruled that the regular courts had no jurisdiction over the subject matter of the case, the proper venue being the Housing and Land Use Regulatory Board (HLURB). However, respondents were estopped from questioning jurisdiction because they filed counterclaims in the lower court.

As to the issue of who had superior right over the Unit 211-2C, the Court of Appeals ruled in favor of petitioner, holding that the mortgage in favor of ASIATRUST, which was the basis for its title, did not bind petitioner inasmuch as the same was not registered with the National Housing Authority (NHA), contrary to the mandate of Sec. 18 of PD 957, or "The Subdivision and Condominium Buyers' Protective Decree."[19] The appellate court further found that QPSDCI breached its warranties as seller under Art. 1547, and also violated its obligation to deliver to petitioner a clean title as required by Sec. 4 of PD 957. It declared that delivery of the unit to petitioner operated to transfer ownership to him from QPSDCI.

Respondents did not appeal. Petitioner contests the decision of the Court of Appeals only insofar as it deleted the award of actual and exemplary damages and attorney's fees. The only issue to be addressed by this Court therefore is the propriety of the award of damages in favor of petitioner.

In finding QPSDCI liable for damages, the trial court held -

> x x x it (QPSDCI) has not exerted any reasonable diligence or effort to procure the issuance of the title to the plaintiff. All that it did was to refer the plaintiff to the Funder(s), alleging that he (plaintiff) should transact business with them as the matter of loan is between the plaintiff and the Funder(s), and they had nothing to do with it. However, it collected the additional equity and never forwarded the same to the Funder(s) nor informed the latter of plaintiff's payment thereof. Thus, to the mind of Asiatrust, plaintiff never paid the additional equity, although per records of the Seller, he already had.
>
> All these show negligence on the part of the Seller to perform its obligations under the contract -- to the detriment of the plaintiff, for which it should be liable for damages under Art. 2201 of the Civil Code, for the natural and probable consequences of the breach of the obligation which the parties, specially the Seller, should have forseen or could have reasonably forseen at the time the obligation was contracted.

As to respondent ASIATRUST, the trial court held that its failure to notify petitioner of the required steps to be taken after the approval of the loan, of the requirement that additional equity be paid directly to the bank and other important aspects of the bridging loan, made it liable for damages under the general provisions on torts under Art. 2176 of the Civil Code, in relation to Art. 2202.

In deleting the award for damages, the respondent Court of Appeals explained -

> As earlier found, QPSDCI failed to comply with its warranties as seller. Unfortunately, plaintiff-appellee posits the propriety of the award of actual damages only in the probable sense: that such award is to the amount of interests, penalties and other charges as plaintiff may stand liable for by reason of the non-payment of the purchase price. In other words, plaintiff-appellee admits not having suffered damages in consequence of non-compliance of seller's warranties. Since actual damages are predicated on such pecuniary loss as duly proved, the award of the lower court therefor is plainly not in order x x x (citations omitted).

We agree with the respondent Court of Appeals on this point. Petitioner did not present any proof that he suffered any damage as a result of the breach of seller's warranty. He did not lose possession of his condominium unit, although the same had not yet been registered in his name. In his Consolidated Reply, petitioner came up with this feeble argument for claiming actual damages, a rehash of his motion for reconsideration with the Court of Appeals -

> Petitioner reiterates that the compensatory damages awarded is to the amount of interests, penalties and other charges as (he) may stand liable for by reason of the non-payment of the balance of the purchase price of Unit #211 in consequence of the respondent's fault or negligence as evidenced by Exhs. S and S-1. The compensation is the same amount as whatever the liability may be and therefore merely offsets the liability x x x x
>
> The cost of clearing the CCT of liens and encumbrances and transferring it to the name of the petitioner are also part of the actual or compensatory damages and are its own proof.

Article 2199 of the Civil Code provides that one is entitled to adequate compensation only for such pecuniary loss suffered by him as is "duly proved."[20] This provision denies the grant of speculative damages, or such damage not actually proved to have existed and to have been caused to the party claiming the same.[21] Actual damages, to be recoverable, must not only be capable of proof, but must actually be proved with reasonable degree of certainty. Courts cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages.[22]

This does not mean however that petitioner is liable to private respondents for penalties, interests and other charges that accrued by reason of non-payment of the balance of the purchase price. Respondent ASIATRUST had made several representations to petitioner that his loan had been approved. The tenor of the letters sent by ASIATRUST would lead a reasonable man to believe that there was nothing left to do but await the release of the loan. ASIATRUST cannot hide behind the pithy excuse that the grant of the bridge financing loan was subject to the release of the Pag-IBIG loan. The essence of bridge financing loans is to obtain funds through an interim loan while the Pag-IBIG funds are not yet available. To await the release of the Pag-IBIG loan would render any bridge financing nugatory. Thus, we agree with the trial court when it said that "the conclusion is inevitable that although the plaintiff was not able to pay, he was a victim of circumstances and his failure was not due to his own fault."

Furthermore, Sec. 25 of PD 957 provides:

> Sec. 25. Issuance of Title. - The owner or developer shall deliver the title of the lot or unit to the buyer upon full payment of the lot or unit. No fee, except those required for the registration of the deed of sale in the

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> Registry of Deeds, shall be collected for the issuance of such title. In the event a mortgage over the lot or unit is outstanding at the time of the issuance of the title to the buyer, the owner or developer shall redeem the mortgage or the corresponding portion thereof within six months from such issuance in order that the title over any fully paid lot or unit may be secured and delivered to the buyer in accordance herewith.

From the foregoing it is clear that upon full payment, the seller is duty-bound to deliver the title of the unit to the buyer. Even with a valid mortgage over the lot, the seller is still bound to redeem said mortgage without any cost to the buyer apart from the balance of the purchase price and registration fees. It has been established that respondent QPSDCI had been negligent in failing to remit petitioner's payments to ASIATRUST. If QPSDCI had not been negligent, then even the possibility of charges, liens or penalties would not have arisen. Therefore, as between QPSDCI and petitioner, the former should be held liable for any charge, lien or penalty that may arise. However, it was error for the trial court to remedy the situation in the form of an award for damages because, as discussed earlier, the basis for the same does not appear indubitable.

Part of the confusion lies in the deficiency of the trial court's decision. It had found that petitioner had superior right to the unit over the FUNDERS and the mortgage in favor of the FUNDERS was contrary to Condominium laws. Therefore, the proper remedy was to annul the mortgage foreclosure sale and the CCT issued in favor of ASIATRUST, and not merely decree an award for damages. We held in Union Bank of the Philippines v. HLURB -[23]

> Clearly, FRDC's act of mortgaging the condominium project to Bancom and FEBTC, without the knowledge and consent of David as buyer of a unit therein, and without the approval of the NHA (now HLURB) as required by P.D. No. 957, was not only an unsound real estate business practice but also highly prejudicial to the buyer David, (who) has a cause of action for annulment of the mortgage, the mortgage foreclosure sale, and the condominium certificate of title that was issued to the UBP and FEBTC as highest bidders of the sale.

These remedies were clearly within those sought for in petitioner's complaint. The trial court should have also ordered QPSDCI to credit petitioner's payments to his outstanding balance and deliver to petitioner a clean CCT upon full payment of the purchase price as mandated by Sec. 25 of PD 957.

We note that petitioner, believing that he won, did not appeal the trial court's decision. Petitioner is partly to blame for the difficult situation he is in, having filed his complaint with the regular courts instead of the HLURB. Nevertheless, both trial court and the Court of Appeals found that petitioner had superior rights over the condominium unit, that petitioner was not bound by the mortgage in favor of the FUNDERS and, that QPSDCI violated its contract with petitioner by its failure to remit the latter's payments. Such findings are uncontested before us and provide enough ground to warrant the modification of the ruling, so that full relief may be accorded to petitioner. The general rule that an appellate court may only pass upon errors assigned may be waived, and the appellate court may consider matters not assigned when consideration of which is necessary in arriving at a just decision and complete resolution of the case or serve the interests of justice or to avoid dispensing piecemeal justice.[24]

WHEREFORE, the assailed Decision of the Court of Appeals in CA-G.R. CV No. 37281 is MODIFIED thus -

(a) The mortgage over Unit 211-2C of Lourdes I Condominium covered by CCT No. 2307 as well as its foreclosure sale is declared NULL and VOID. The Ex-Officio Sheriff of Quezon City is ordered to cancel the certificate of sale in favor of ASIATRUST Development Bank over the aforesaid Unit 211-2C and the Register of Deeds of Quezon City to cancel the Annotation of the Real Estate Mortgage (Entry No. 7714) and the Annotation of the Certificate of Sale (Entry No. 8087); and

(b) Respondents Q. P. San Diego Construction, Inc., and ASIATRUST are ordered to credit all payments made by

petitioner Gregorio de Vera Jr., to his outstanding balance, and to deliver to petitioner the certificate of title over Unit 211-2C, Lourdes I Condominium, upon full payment of the purchase price, free from all penalties, liens, charges, except those accruing after finality of this Decision.

The award of nominal damages in favor of petitioner in the amount of P50,000.00 is AFFIRMED.

SO ORDERED.

Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Exh."4," Original Records, p. 358.

[2] Exhs. "1-A," "1-B," "2-A," "2-B," id., pp. 348-352.

[3] Exh. "G," id., p. 166.

[4] Exh. "J," id., p. 178.

[5] "Affidavit Re: Direct Testimony of Plaintiff Gregorio de Vera Jr.," p.3, id., p. 212.

[6] Exh. "K-1," id., p. 180.

[7] Exh. "K-3," id., p. 182.

[8] Exh. "C-2," id., p. 162.

[9] Exh. "L," id., p. 183.

[10] Exh "R-1," id., pp. 199-201.

[11] Exh. "R-2," id., p. 200.

[12] Exh "Q," id., p. 197.

[13] Exh "S," id., pp. 202-203.

[14] Exh. "F," id., p. 165.

[15] Decision penned by Judge Delilah Vidallon Magtolis, RTC-Br. 107, Quezon City, now an Associate Justice of the Court of Appeals, p. 19; Rollo, p. 79.

[16] Annex "A," Petition; Rollo, p. 34.

[17] Philippine National Bank v. Court of Appeals, G.R. No. 108870, 14 July 1995, 246 SCRA 304.

[18] Ibid.

[19] Sec. 18. Mortgages. -- No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority. Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer, thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereof.

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[20] Marina Properties Corporation v. Court of Appeals, G.R. No. 125447, 14 August 1998, 294 SCRA 273.

[21] Basilan Lumber Company v. Cagayan Timber Export Company, People's Surety and Insurance Co., and the Court of Appeals (Third Division), No. L-15908, 30 June 1961, 2 SCRA 766.

[22] Ibid.

[23] G.R. No. 95364, 29 June 1992, 210 SCRA 558.

[24] Diamonon v. Department of Labor and Employment, G.R. No. 108951, 7 March 2000, 327 SCRA 283.

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