

**ACTIVE REALTY & DEVELOPMENT CORPORATION,
PETITIONER, VS. NECITA G. DAROYA, REPRESENTED BY
ATTORNEY-IN-FACT SHIRLEY DAROYA-QUINONES, RESPONDENTS.**

G.R. No. 141205. May 09, 2002

Ponente: PUNO, J.

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PUNO, J.:

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court which seeks to reverse and set aside the Resolution of the Court of Appeals, dated August 3, 1999, denying due course to petitioner's appeal for insufficiency of form and substance.

Petitioner ACTIVE REALTY & DEVELOPMENT CORPORATION is the owner and developer of Town & Country Hills Executive Village in Antipolo, Rizal. On January 2, 1985, it entered into a Contract to Sell[1] with respondent NECITA DAROYA, a contract worker in the Middle East, whereby the latter agreed to buy a 515 sq. m. lot for P224,025.00 in petitioner's subdivision.

The contract to sell stipulated that the respondent shall pay the initial amount of P53,766.00 upon execution of the contract and the balance of P170,259.00 in sixty (60) monthly installments of P4,893.35. Adding the down payment and installment payments, it would appear that the total amount is P346,367.00, a figure higher than that stated as the contract price.

On May 5, 1989, petitioner accepted respondent's amortization in the amount of P40,000.00. By August 8, 1989, respondent was in default of P15,282.85 representing three (3) monthly amortizations. Petitioner sent respondent a notice of cancellation[2] of their contract to sell, to take effect thirty (30) days from receipt of the letter. It does not appear from the records, however, when respondent received the letter. Nonetheless, when respondent offered to pay for the balance of the contract price, petitioner refused as it has allegedly sold the lot to another buyer.

On August 26, 1991, respondent filed a complaint for specific performance and damages[3] against petitioner before the Arbitration Branch of the Housing and Land Use Regulatory Board (HLURB). It sought to compel the petitioner to execute a final Deed of Absolute Sale in respondent's favor after she pays any balance that may still be due from her. Respondent claimed that she is entitled to the final deed of sale after she offered to pay the balance of P24,048.47, considering that she has already paid the total sum of P314,816.76, which amount is P90,835.76 more than the total contract price of P224,025.00.

On June 14, 1993, HLURB Arbiter Alfredo M. Tan II found for the respondent. He ruled that the cancellation of the contract to sell was void as petitioner failed to pay the cash surrender value to respondent as mandated by law. However, as the subject lot was already sold to a third party and the respondent had agreed to a full refund of her installment payments, petitioner was ordered to refund to respondent all her payments in the amount of P314,816.70, with 12% interest per annum from August 26, 1991 (the date of the filing of the complaint) until fully paid and to pay P10,000.00 as attorney's fees.[4]

On appeal, the HLURB Board of Commissioners set aside the Arbitrator's Decision. The Board refused to apply the remedies provided under the Maceda Law and instead deemed it fit to formulate an "equitable" solution to the case. It ruled that, as both parties were at fault, i.e., respondent incurred in delay in her installment payments and respondent failed to send a notarized notice of cancellation, petitioner was ordered to refund to the respondent one half of the total amount she has paid or P157,408.35, which was allegedly akin to the remedy provided under the Maceda Law.[5]

Respondent appealed to the Office of the President. On June 2, 1998, then Chief Presidential Counsel Renato C. Corona, acting by authority of the President, modified the Decision of the HLURB as he found that it was not in accord with the provisions of the Maceda Law. He held that as petitioner did not comply with the legal requisites for a valid cancellation of the contract, the contract to sell between the parties subsisted and concluded that respondent was entitled to the lot after payment of her outstanding balance. However, as the petitioner disclosed that the lot was already sold to another person and that the actual value of the lot as of the date of the contract was P1,700.00 per square meter, petitioner was ordered to refund to the respondent the amount of P875,000.00, the true and actual value of the lot as of the date of the contract, with interest at 12% per annum computed from August 26, 1991 until fully paid, or to deliver a substitute lot at the choice of respondent.[6]

Upon denial of its motion for reconsideration, petitioner assailed the Decision in the Court of Appeals. However, its petition for review[7] was denied due course for insufficiency in form and substance,[8] because: 1) no affidavit of service was attached to the petition; 2) except for certified true copies of the decision and resolution of the Office of the President, no other material portions of the record, as would support the allegations in the petition, were attached; and, 3) the certification of forum-shopping was signed by the head counsel and vice-president of the petitioner corporation who was not authorized by a Board Resolution to represent petitioner.

Petitioner moved for reconsideration. The Court of Appeals denied it on an entirely new ground, i.e., for untimely filing of the petition for review.[9]

Petitioner now impugns the decision of the Court of Appeals and raises the following procedural issues:

I

THE HONORABLE COURT OF APPEALS GROSSLY ERRED IN RELYING TOO MUCH ON FORM RATHER THAN ON THE MERITS OF THE PETITION THEREBY DENYING PETITIONER OF ITS RIGHT TO DUE PROCESS.

II

THE HONORABLE COURT OF APPEALS ANCHORED THE DENIAL OF PETITIONER'S MOTION FOR RECONSIDERATION ON INCONSISTENT AND CONFLICTING RULINGS NOT BORNE BY THE FACTS AND THE RECORDS OF THE CASE.

On the procedural points raised, we find for the petitioner.

Our perusal of the record reveals that petitioner substantially complied with the formal requirements of Rule 43 of the Rules of Court.[10] First, as to the non-attachment of the affidavit of service, the records bear that the petition was accompanied by the original registry receipts issued by the post office, showing that the petition and its annexes were served upon the parties. Moreover, respondent's counsel of record, Atty. Sergio Guadiz, actually received a copy of the petition.[11] Second, petitioner likewise complied with Section 6 (c) of Rule 43 requiring the submission of copies of the award, judgment, final order and resolution appealed from. Its petition was accompanied by the duplicate original of the appealed Decision of the Chief Presidential Legal Counsel and his Resolution denying petitioner's motion for reconsideration, the Decision of the HLURB Board of Commissioners

and that of the HLURB arbiter. A perusal of these documents will reveal that they contained all the relevant facts of the case from which the appellate body can form its own decision. Its failure to submit the other documents, like the Complaint, Answer, Position Papers and Appeal Memoranda of the parties before the HLURB, was due to the refusal of the Office of the President to give them a certified true copy of these documents which were submitted with said Office. Third, as to the lack of Board Resolution by petitioner corporation authorizing Atty. Rene Katigbak, its Chief Legal Counsel and Vice-President for Legal Affairs, to represent it in the filing of the appeal, petitioner admits that this was due to its honest belief that such authority is not required as it was not mentioned in Section 6(c) of Rule 43.[12] To make up for such omission, petitioner submitted a Secretary's Certificate[13] confirming and ratifying the authority of Atty. Katigbak to represent petitioner. Finally, we find that the Court of Appeals erred in denying petitioner's motion for reconsideration due to untimely filing as the records clearly show that it was filed on June 25, 1999, a day before the expiration of the period to appeal granted by the Court of Appeals.[14]

In denying due course to the petition, the appellate court gave premium to form and failed to consider the important rights of the parties in the case at bar.[15] At the very least, petitioner substantially complied with the procedural requirements for appeal, hence, it is best to give due course to the petition at bar to clarify the rights and duties of a buyer in contracts to sell real estate on installment basis.

The issue to be resolved is whether or not the petitioner can be compelled to refund to the respondent the value of the lot or to deliver a substitute lot at respondent's option.

We find for the respondent and rule in the affirmative.

The contract to sell in the case at bar is governed by Republic Act No. 6552 -- "The Realty Installment Buyer Protection Act," or more popularly known as the Maceda Law -- which came into effect in September 1972. Its declared public policy is to protect buyers of real estate on installment basis against onerous and oppressive conditions.[16] The law seeks to address the acute housing shortage problem in our country that has prompted thousands of middle and lower class buyers of houses, lots and condominium units to enter into all sorts of contracts with private housing developers involving installment schemes. Lot buyers, mostly low income earners eager to acquire a lot upon which to build their homes, readily affix their signatures on these contracts, without an opportunity to question the onerous provisions therein as the contract is offered to them on a "take it or leave it" basis.[17] Most of these contracts of adhesion, drawn exclusively by the developers, entrap innocent buyers by requiring cash deposits for reservation agreements which oftentimes include, in fine print, onerous default clauses where all the installment payments made will be forfeited upon failure to pay any installment due even if the buyers had made payments for several years.[18] Real estate developers thus enjoy an unnecessary advantage over lot buyers who they often exploit with iniquitous results. They get to forfeit all the installment payments of defaulting buyers and resell the same lot to another buyer with the same exigent conditions. To help especially the low income lot buyers, the legislature enacted R.A. No. 6552 delineating the rights and remedies of lot buyers and protect them from one-sided and pernicious contract stipulations.

More specifically, Section 3 of R.A. No. 6552 provided for the rights of the buyer in case of default in the payment of succeeding installments, where he has already paid at least two (2) years of installments, thus:

"(a) To pay, without additional interest, the unpaid installments due within the total grace period earned by him, which is hereby fixed at the rate of one month grace period for every one year of installment payments made; x x x

(b) If the contract is cancelled, the seller shall refund to the buyer the cash surrender value of the payments on the property equivalent to fifty per cent of the total payments made; provided, that the actual cancellation of

the contract shall take place after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer.”

In this case, respondent has already paid in four (4) years a total of P314,860.76 or P90,835.76 more than the contract price of P224,035.00. In April 1989, petitioner decided to cancel the contract when the respondent incurred in delay in the payment of P15,282.85, representing three (3) monthly amortizations. Petitioner refused to accept respondent’s subsequent tender of payment of the outstanding balance alleging that it has already cancelled the contract and sold the subject lot to another buyer. However, the records clearly show that the petitioner failed to comply with the mandatory twin requirements for a valid and effective cancellation under the law,[19] i.e., he failed to send a notarized notice of cancellation and refund the cash surrender value. At no time, from the date it gave a notice of cancellation up to the time immediately before the respondent filed the case against petitioner, did the latter exert effort to pay the cash surrender value. In fact, the records disclose that it was only during the preliminary hearing of the case before the HLURB arbiter when petitioner offered to pay the cash surrender value. Petitioner justifies its inaction on the ground that the respondent was always out of the country. Even then, the records are bereft of evidence to show that petitioner attempted to pay the cash surrender value to respondent through her last known address. The omission is surprising considering that even during the times respondent was out of the country, petitioner has been sending her written notices to remind her to pay her installment arrears through her last known address. Clearly, had respondent not filed a case demanding a final deed of sale in her favor, petitioner would not have lifted a finger to give respondent what was due her – actual payment of the cash surrender value, among others. In disregard of basic equitable principles, petitioner’s stance would enable it to resell the property, keep respondent’s installment payments, not to mention the cash surrender value which it was obligated to return. The Layug[20] case cited by petitioner is inapropos. In Layug, the lot buyer did not pay for the outstanding balance of his account and the Court found that notarial rescission or cancellation was no longer necessary as the seller has already filed in court a case for rescission of the contract to sell. In the case at bar, respondent offered to pay for her outstanding balance of the contract price but respondent refused to accept it. Neither did petitioner adduce proof that the respondent’s offer to pay was made after the effectivity date stated in its notice of cancellation. Moreover, there was no formal notice of cancellation or court action to rescind the contract. Given the circumstances, we find it illegal and iniquitous that petitioner, without complying with the mandatory legal requirements for canceling the contract, forfeited both respondent’s land and hard-earned money after she has paid for, not just the contract price, but more than the consideration stated in the contract to sell.

Thus, for failure to cancel the contract in accordance with the procedure provided by law, we hold that the contract to sell between the parties remains valid and subsisting. Following Section 3(a) of R.A. No. 6552, respondent has the right to offer to pay for the balance of the purchase price, without interest, which she did in this case. Ordinarily, petitioner would have had no other recourse but to accept payment. However, respondent can no longer exercise this right as the subject lot was already sold by the petitioner to another buyer which lot, as admitted by the petitioner, was valued at P1,700.00 per square meter. As respondent lost her chance to pay for the balance of the P875,000.00 lot, it is only just and equitable that the petitioner be ordered to refund to respondent the actual value of the lot resold, i.e., P875,000.00, with 12% interest per annum computed from August 26, 1991 until fully paid or to deliver a substitute lot at the option of the respondent.

On a final note, it would not be amiss to stress that the HLURB Board Decision ordering petitioner to refund to respondent one half of her total payments is not an equitable solution as it punished the respondent for her delinquent payments but totally disregarded petitioner’s failure to comply with the mandatory requisites for a valid cancellation of the contract to sell. The Board failed to consider that the Maceda law was enacted to remedy

the plight of low and middle-income lot buyers, save them from the exacting default clauses in real estate sales and assure them of a home they can call their own. Neither would the Decision of the HLURB Arbiter ordering a full refund of the installment payments of respondent in the amount of P314,816.70 be justified as, under the law, respondent is entitled to the lot she purchased after payment of her outstanding balance which she was ready and willing to do. Thus, to penalize the petitioner for failing in its obligation to deliver the subject lot and to give the respondent what is rightly hers, the petitioner was correctly ordered to refund to the respondent the actual value of the land (P875,000.00) she lost to another buyer, plus interest at the rate of 12% per annum from August 26, 1991 until fully paid or to deliver a substitute lot at the choice of the respondent.

IN VIEW WHEREOF, the Decision of then Chief Presidential Legal Assistant Renato Corona, Office of the President, dated June 2, 1998, is AFFIRMED in toto. Costs against petitioner.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, Ynares-Santiago, and Austria-Martinez, JJ., concur.

[1] Rollo, pp. 28-31.

[2] Ibid., p. 32.

[3] Ibid., pp. 33-38.

[4] See Decision, Rollo, pp. 39-42.

[5] Decision, dated August 10, 1994, penned by Commissioner and Chief Executive Officer Ernesto C. Mendiola and concurred in by DPWH Asst. Secretary Jose L. Altea and Commissioner Luis T. Tungpalan; Rollo, pp. 44-48.

[6] Decision, dated June 2, 1998; Rollo, pp. 49-56.

[7] Rollo, pp. 62-73.

[8] Resolution, dated August 3, 1999; Rollo, 59-60.

[9] Rollo, p. 61.

[10] Appeals from quasi-judicial agencies to the Court of Appeals.

[11] Certification of Postmaster Cipriano Pagaduan; Rollo, p. 76.

[12] "SEC. 6. Contents of the petition. – The petition for review shall (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents; (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers; and (d) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42. The petition shall state the specific material dates showing that it was filed within the period fixed herein."

[13] Rollo, p. 78.

[14] See Annex "N", Resolution of the Court of Appeals extending the time to file its petition for review; Rollo, pp. 79-80.

[15] Yao vs. Court of Appeals, 344 SCRA 202 (2000).

[16] Section 3, R.A. 6552.

[17] Angeles vs. Calsanz, 135 SCRA 323 (1985).

[18] Realty Exchange Venture Corporation vs. Sendino, 233 SCRA 665, 668 (1994).

[19] Section 3 (b), R.A. 6552; Siska Development Corporation vs. Office of the President of the Philippines, 231 SCRA 674 (1994); Jison vs. Court of Appeals, 164 SCRA 339, 345 (1988).

[20] 167 SCRA 227 (1988).

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