SEGOVIA DEVELOPMENT CORPORATION, PETITIONER, VS. AND J. L. DUMATOL REALTY AND DEVELOPMENT CORPORATION, RESPONDENT.

G.R. No. 141283. August 30, 2001

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This is a Petition for Review on Certiorari under Rule 45 seeking the reversal and nullification of the Decision of the Court of Appeals[1] and the reinstatement and affirmance in toto of the decision of the Office of the President, as well as the nullification and reversal of the Resolution of the appellate court which denied its Motion for Reconsideration.

Petitioner SEGOVIA DEVELOPMENT CORPORATION (SEGOVIA for brevity) and respondent J. L. DUMATOL REALTY AND DEVELOPMENT CORPORATION (DUMATOL for brevity) are domestic corporations engaged in the business of real estate development.

On 2 March 1989 petitioner SEGOVIA and respondent DUMATOL entered into three (3) separate but identical contracts to sell involving three (3) condominium units, namely, Units Nos. 703, 704 and 904, of the Heart Tower Condominium located at Lot 5, Block 2, Valero Street, Salcedo Village, Makati City. The total contract price for the three (3) units was P6,050,000.00 under the following terms and conditions:

Unit 703 Unit 704 Unit 904

Reservation Deposit

P 50,000.00

P 50,000.00

P 50,000.00

Downpayment

770,000.00

770,000.00

820,000.00

12 Monthly Installments

90,000.00

90,000.00

90,000.00

Beginning 25 April 1989

Parking Lot

100,000.00

100,000.00

100,000.00

Total Contract

P2,000,000.00

P2,000,000.00

P2,050,000.00

Price

The contracts, which were in standard form approved by the Housing and Land Use Regulatory Board (HLURB), contained the following provisions:

a. Escalation Clause

2.5 Should there be an increase or decrease in the total Consumer Price Index (CPI) (as set forth by the Central Bank of the Philippines or by any agency of the government), of more that FIFTEEN (15%) PERCENT, from the time this Contract is executed, a corresponding adjustment in the unpaid balance or remaining installment under this Contract shall be made. The amount of adjustment shall be the net percentage of change in excess of FIFTEEN (15%) PERCENT. The Buyer has the option to accelerate payments or pay the balance in full without interest to avoid upward adjustments.

b. Cancellation by the Seller

4.1 x x x x Where less than 2 years of installments were paid, the SELLER shall give the BUYER a grace period of 60 days but a penalty of 3% per month shall be levied upon unpaid installments. If the BUYER fails to comply, the SELLER may cancel the Contract after 30 days from receipt by the BUYER of the Notice of Cancellation or the Demand of Rescission of the Contract by a notarial act without need of judicial action.

Out of the total contract price of P6,050,000.00, respondent DUMATOL was able to pay only the amount of P4,500,000.00 for the three (3)units as follows:

Date of Payment

Mode of Payment

Amount Paid
(In Pesos)

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23 February 1989	
PSB Check No. 242943	
P 150,000.00	
15 June 1989	
PSB Check No. 257286	
2,000,000.00	
17 August 1989	
PSB Check No. 318839	
1,000,000.00	
17 August 1989	
PSB Check No. 337265	
500,000.00	
28 December 1989	
PSB Check No. 396410	
250,000.00	
30 January 1990	
PSB Check No. 396468	
500,000.00	
31 January 1990 (thru respondent's agent Julius Stracham	
UDB Check No. 125417	
100,000.00	
Total	
P4,500,000.00	

However, the check paid by respondent DUMATOL through Julius Stracham was dishonored by the bank so that only P4,400,000.00 was credited to the account of respondent DUMATOL.

Since respondent DUMATOL had been in default in updating its accounts, petitioner SEGOVIA sent on 5 November 1990 a Notice of Rescission officially notifying respondent that the contract to sell for Unit 904 was being rescinded.[2]

On 15 November 1990 a meeting was held between the two (2) contracting parties whereby it was approved in principle that petitioner would withdraw the action for rescission subject to the condition that respondent would pay for the following: (a) the total balance for the three (3) condominium units, together with interest and the related charges amounting to P2,808,699.00, would be settled not later than 12:00 o'clock noon of 7 December 1990; and, (b) liquidated damages amounting to P700,000.00.[3]

In its reply dated 23 November 1990 respondent DUMATOL disputed the computation made by petitioner and informed the latter that it was prepared to pay the remaining balance of the purchase price plus interests, which amounted to only P1,977,200.00.

In the meantime, in November 1990 respondent received from one Edilberto Bravo an offer to buy Units 703 and 704 at the price of P3,700,000.00 each. However, after being informed of petitioner's letter to respondent dated 16 November 1990, Mr. Bravo, fearful of being embroiled in the dispute, withdrew his offer.

On 29 November 1990 respondent DUMATOL lodged a complaint[4] with the HLURB praying among others that the three percent (3%) interest rate being assessed by petitioner on the defaulted payments be declared erroneous and that petitioner be likewise ordered to pay P3,400,000.00 as compensatory damages.

On 4 December 1990, the settlement of the outstanding balance of the purchase price not having materialized, respondent received another notice of cancellation from petitioner, this time officially informing respondent that the Contracts to Sell for Units 703, 704 and 904 were being cancelled without need of judicial action.[5]

On 5 December 1990 respondent consigned[6] with the HLURB the amount of P1,977,220.00 in the form of Philippine Savings Bank Check No. 203331 which represented what it believed to be its remaining accountability to petitioner SEGOVIA.

On 24 May 1991, after due consideration of the respective position papers of the contending parties, the HLURB Arbiter rendered a judgment: (a) ordering DUMATOL to pay SEGOVIA the amount of P2,559,900.00 which represented the balance due on Units 703, 704 and 904 of the Heart Tower Condominium; (b) ordering DUMATOL to pay the outstanding association dues, utility bills and 1990 real estate taxes for the three (3) units; (c) ordering SEGOVIA to pay DUMATOL P2,746,773.05 as compensatory damages; and, (d) dismissing the case against SEGOVIA for lack of merit.[7]

On appeal, the HLURB increased the account liability of respondent DUMATOL to P3,275,202.40 representing the principal balance, accrued interests and penalties as of 25 June 1991, as well as an additional three percent (3%) penalty per month for each delayed payment with six percent (6%) interest per annum beyond that date until fully paid. The Board likewise ordered respondent DUMATOL to pay petitioner SEGOVIA P30,000.00 as attorney's fees.[8]

Not satisfied with the decision, both parties elevated the controversy to the Office of the President which dismissed the appeal of respondent but partly gave due course to that of petitioner. In its judgment, the Office of the President modified the decision of the HLURB by ordering respondent DUMATOL: (a) to pay petitioner SEGOVIA the amount of P3,275,487.56, instead of P3,275,202.40, representing the principal balance, accrued interests and penalties as of 25 June 1991, as well as an additional three percent (3%) per month for each delayed payment, with six percent (6%) interest per annum beyond that date until fully paid; and, (b) to pay fifty percent (50%) of the amount of P3,126,372.11 as contract price adjustment, with six percent (6%) interest per annum from 15 November 1990 until fully paid.

On 12 January 1999 respondent DUMATOL filed before the Court of Appeals a petition seeking to annul and set aside the decision of the Office of the President. In its appeal, respondent prayed that the decision of 24 May 1991

rendered by the HLURB Arbiter in the proceeding below be reinstated. Respondent argued that the three percent (3%) penalty charge was iniquitous and unconscionable and therefore unjustified; that its acts of tendering and consigning the sum of P1,977,200.00 with the HLURB suspended the running of such interest charges; that its constitutional right to due process was violated by the Office of President when it adopted the computation submitted by petitioner on appeal to the HLURB Commissioners; and, that there was no basis for the imposition of the six percent (6%) interest per annum.

The Court of Appeals granted the petition and nullified the decision rendered by the Office of the President. It opined that respondent's act of consigning to the HLURB the amount of P1,977,200.00 by way of check after tender of payment was refused by petitioner amounted to substantial compliance with the requirements of a valid consignation. Although the appellate court deemed it pointless to pass upon the propriety of imposing the penalty charge, nonetheless, it noted that under the circumstances of the case the three percent (3%) penalty charge was indeed iniquitous and unconscionable. According to the Court of Appeals[9] -

> x x x it bears considering that the petitioner (respondent herein) stands to lose all three condominium units, notwithstanding the fact that the total payments made by it in the amount of P4,400,000.00 would have been enough to pay for two (2) condominium units x x x x Petitioner (herein respondent) may lose all three units because of the unconscionable penalty charges, which are evidently disproportionate to the principal obligation.

On the matter of the additional six percent (6%) per annum as damages, the court a quo held that there was no legal basis for its imposition. The record shows that this matter was raised for the first time on appeal as a claim for the twelve percent (12%) interest which was subsequently reduced by the HLURB Commissioners to six percent (6%) per annum.

The pivotal issue to be resolved is whether the Decision of the Court of Appeals which set aside the decision of the Office of the President and reinstated that of the HLURB is sufficiently supported by law and the facts of the case.

To give finality to the main issue, we have to resolve certain equally contentious points which have bewildered the parties at the very outset, specifically: (a) whether the computation of respondent's unpaid obligation to petitioner by the Office of the President is correct; (b) whether there is valid consignation of payment by respondent which therefore justified the suspension of the imposition of the three percent (3%) penalty interest provided under the contract; (c) whether petitioner is entitled to the six percent (6%) interest per annum as damages; (d) whether petitioner is liable to pay respondent compensatory damages for unrealized profits; (e) whether petitioner is entitled to the fifty percent (50%) contract price adjustment; and, (f) whether petitioner is entitled to recover attorney's fees.

For clarity, we shall proceed with the first issue by setting forth certain established facts, namely: (a) that the contract price for the three (3) condominium units purchased by respondent is P6,050,000.00; and, (b) under each contract to sell respondent (buyer) committed to pay P90,000.00 for each unit or a total of P270,000.00 for twelve (12) months for the three (3) units, beginning 25 April 1989. Simply stated, by 25 March 1990, respondent-buyer should have already completed the payment of the three (3) condominium units othewise the unpaid installments would be subject to a penalty of three percent (3%) interest; and, (c) respondent-buyer had not paid its account balance and had been in arrears from month to month.

We observe that the contending realty firms, and even the tribunals below, are not in agreement as to the liability of respondent DUMATOL. In its decision, the HLURB Arbiter ordered respondent to pay petitioner the sum of P2,559,900.00 representing the balance on the units subject of the contracts to sell. The HLURB however noted

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that the computation made by the HLURB Arbiter should have taken into consideration the date when the contract was executed, the installments due, the penalties and interests, the payments made and the application of payments. The Office of the President, for its part, claimed that respondent incurred arrearages as of 25 June 1991 in the amount of P3,275,487.56. This last computation was adopted by the Court of Appeals in its assailed Decision.

Petitioner now assails before us the Arbiter's determination of respondent's account balance for being erroneous. Petitioner contends that the computation showed nineteen (19) monthly installments of P270,000.00 instead of the agreed twelve (12) months of P270,000.00 for the three (3) units. Further, petitioner points out that the HLURB Arbiter erroneously considered the downpayment for the three (3) units in the amount of P2,360,000.00 as part of the unpaid balance, contrary to the explicit and express provisions of the contracts to sell.

On the other hand, respondent begrudges the adoption by the Office of the President and the HLURB Commissioners of a computation entirely based on the computation made by petitioner which, according to respondent, is violative of its right to due process for it deprives respondent of the opportunity to contest the document, to cross-examine the person who prepared it, and to present countervailing evidence.

Given the inconsistent and contradictory claims by the contending parties, exacerbated by the discrepant figures of the courts below, it is imperative that a more accurate determination of respondent's accountability be made by a lower body in order to settle the question with finality.

On the second issue, it is crucial to rule upon the validity of respondent's consignation in order to determine its effect on the running of the three percent (3%) interest. Consignation to be valid and effective must comply with the following requisites, namely:

> (a) Tender of payment and refusal to accept without reason;[10]
>
> (b) Previous notice of consignation to the persons interested in its fulfillment;[11]
>
> (c) After the deposit or consignation has been made, the persons interested shall be notified thereof.[12]

The factual milieu of this case reveals that on 10 December 1990, respondent consigned with the HLURB Philippine Savings Bank Check No. 203331 for P1,977,220.00 after it received from petitioner the Notice of Cancellation of the three (3) contracts. Patently, the consignment was made only to forestall an action for rescission which petitioner might take. Be that as it may, respondent never made any prior tender of payment to petitioner notwithstanding respondent's submission that there was substantial compliance with the requirements of consignation in light of our ruling in Licuanan v. Diaz[13] -

> In addition, it must be stated that in the case of Soco v. Militante (123 SCRA 160, 166-167 [1983]), this Court ruled that the codal provisions of the Civil Code dealing with consignation (Articles 1252 - 1261) should be accorded mandatory construction -
>
> We do not agree with the questioned decision. We hold that the essential requisites of a valid consignation must be complied with fully and strictly in accordance with the law. Articles 1256-1261, New Civil Code. That these Articles must be accorded a mandatory construction is clearly evident and plain from the very language of the codal provisions themselves which require absolute compliance with the essential requisites therein provided. Substantial compliance is not enough for that would render only directory construction of the law. The use of the words "shall" and "must" which are imperative, operating to impose a duty which may be enforced, positively indicated that all the essential requisites of a valid consignation must be complied with. The Civil Code Articles expressly and explicitly direct what must be essentially done in order that consignation shall be valid and effectual x x x x

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In opposing the three percent (3%) penalty interest, respondent, as sustained by the Court of Appeals, invokes Art. 1229 of the Civil Code which provides -

> The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.

Respondent also claims that the spirit of the above provision is re-echoed in Art. 2227 of the Civil Code which provides -

> Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable.

We agree. The three percent (3%) penalty interest is patently iniquitous and unconscionable as to warrant the exercise by this Court of its judicial discretion. A close reading of the contracts to sell will show that the three percent (3%) penalty interest on unpaid installments on a monthly basis (per Sec. 4.1) would translate to a yearly penalty interest of thirty-six percent (36%). Assuming that respondent has an outstanding balance which runs into millions (P2,559,900.00 per HLURB Arbiter's computation), the payments respondent made (amounting to P4.4 million out of the P6.05 million contract price) would be virtually wiped out if the three percent (3%) penalty interest were imposed on the account balance.

With more reason should we question the wisdom of such stipulated provision considering that respondent DUMATOL stands to lose the three (3) condominium units notwithstanding the fact that it has substantially complied with its contractual obligations. Pending determination of the actual liability of respondent, we could only speculate on how staggering the increase in the unpaid installments of the respondent would now be after more than a decade of litigation.

Although this Court on various occasions has eliminated altogether the three percent (3%) penalty interest for being unconscionable,[14] we are not inclined to do the same in this case. A reduction is more consistent with fairness and equity. We should not lose sight of the fact that petitioner remains an unpaid seller and that it has suffered, one way or another, from respondent's non-performance of its contractual obligations. In view of such glaring reality, we invoke the authority granted to us by Art. 1229 of the Civil Code, and as equity dictates, the penalty interest is accordingly reimposed on a reduced rate of one percent (1%) interest per month or twelve percent (12%) per annum.

With respect to the six percent (6%) interest per annum imposed as damages, we disallow the same for lack of legal basis. As correctly pointed out by the Court of Appeals, the contracts to sell do not provide for a six percent (6%) interest on the unpaid principal and accumulated penalty and interest charges. The interest was raised for the first time on appeal as a claim for twelve percent (12%) interest which was subsequently reduced to six percent (6%) by the HLURB. In disallowing the interest, we quote with approval the observation of the appellate court[15] -

> x x x x We hold that there is no legal basis for its imposition. It is a basic legal principle that parties may not raise a new cause of action on appeal x x x x This matter was raised for the first time on appeal as a claim for 12% interest which was subsequently reduced by the HULRB Commissioners to 6% per annum. Respondents (petitioner herein) never made a counterclaim for these amounts in their answer and position paper during the proceedings at the arbiter's level x x x x

Neither can we find statutory justification for the imposition of the six percent (6%) interest in Art. 1226[16] of the Civil Code. An obligation with a penal clause is one that contains an accessory undertaking, primarily intended to induce faithful performance of the principal prestation. Such cannot be true in this case because there

is no stipulation in the contracts to sell imposing the six percent (6%) interest as penalty for the non-performance of the contractual obligations.

The Court of Appeals next invokes Art. 2212 of the Civil Code -

> Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point.

Nonetheless, the court a quo deleted the six percent (6%) legal interest in view of the failure of petitioner to comply with the requirement of judicial demand. We recall that the matter of the six percent (6%) interest was not demanded by petitioner in its counterclaim but was imposed only at the instance of the HLURB in its decision on appeal.

Apropos the fourth issue, we do not agree with the appellate court that respondent DUMATOL is entitled to actual damages for unrealized profits. The sworn affidavit of Mr. Edilberto Bravo shows that he offered to buy for a definite price two (2) condominium units from respondent. The sale did not materialize however when Mr. Bravo withdrew his offer after perusing petitioner's letter dated 16 November 1990 for fear of getting involved in a litigation over the units. A cursory reading of the letter however will show that it contains basically a mere confirmation of an agreement by both parties during a meeting the previous day for the settlement of the total account balance. If indeed damages were sustained by respondent as a result of the aborted sale, it was not directly attributable to petitioner. What is undeniable is that respondent is in arrears in the payment of its accounts and petitioner, by sending a letter, was merely trying to enforce an agreement which it should not be denied of. In fine, we find the evidence grossly anemic to support respondent's claim for actual damages.

Anent the fifth issue, we agree with the Court of Appeals that the award of a fifty percent (50%) contract price adjustment in favor of petitioner should be disallowed. We note that as early as in the proceedings before the HLURB Arbiter, the "Consumer Price Index for All Income Households" (supposedly the basis for the adjustment of the contract price per Sec. 2.5 of the Contracts to Sell) as part of petitioner's evidence, was not admitted for lack of proper authentication by the National Statistical Coordination Board. An authenticated copy subsequently submitted by petitioner was likewise not admitted by the HLURB on the ground that the rules of evidence demand that documents should have been presented and proved at the trial stage. It is elementary that documents forming no part of the evidence before the appellate court shall not be considered in the disposition of the issues.

On the last question, we agree with the observation of the Office of the President and the Court of Appeals that petitioner is not entitled to attorney's fees for lack of legal and factual basis. Mere filing of a complaint does not ipso facto entitle a party to attorney's fees. Respondent disputed the amount being levied against it in the belief that petitioner's computation is not in accordance with the terms of the contracts to sell. The filing of the complaint was a means sanctioned by law to protect its rights and interests.

WHEREFORE, the assailed Decision of the Court of Appeals dated 30 July 1999 insofar as it (a) deleted for lack of basis the six percent (6%) interest per annum imposed on the unpaid installments and penalty; (b) disallowed a fifty percent (50%) contract price adjustment; and, (c) did not award attorney's fees in favor of petitioner Segovia Development Corporation, is AFFIRMED.

The Decision however is MODIFIED in that (a) the penalty interest per month on the unpaid installments is reimposed on a reduced rate of one percent (1%) penalty interest per month or twelve percent (12%) per annum; and, (b) the award of actual or compensatory damages in favor of respondent J. L. Dumatol Realty and Development Corporation for unrealized profits is deleted.

Let this case be remanded to the HLURB Arbiter for proper computation of respondent's liability consistent with

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the guidelines set forth in the body of this Decision. No costs.

SO ORDERED.

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

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[1] Decision penned by Associate Justice Demetrio G. Demetria with Associate Justices Ramon A. Barcelona and Mercedes Gozo-Dadole concurring.

[2] Annex "F;" Rollo, p. 122.

[3] Id., p. 148.

[4] HLURB Case No. REM-112990-4657, entitled "J.L. Dumatol Realty Development Corp. v. Segovia Development Corp.;" Rollo, p. 127.

[5] Annex "G;" id. p. 124.

[6] Annex "G;" id. p. 296.

[7] Decision penned by Atty. Abraham M. Vermudez, Housing and Land Use Arbiter, HLURB, in HLRB Case No. REM-112990-4657, id., p. 152.

[8] Id., p. 165.

[9] Id., p. 62.

[10] Art. 1256, par. 1, New Civil Code.

[11] Art. 1257, par. 1, id.

[12] Art. 1258, par. 2, Id.

[13] G.R. No. 59805, 21 July 1989, 175 SCRA 530.

[14] Estrella Palmares v. Court of Appeals, 288 SCRA 422, 445; Magallanes v. Court of Appeals, G.R. No. 112614, 16 May 1994.

[15] Rollo, p. 64.

[16] In obligations with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interests in case of non-compliance, if there is no stipulation to the contrary. Nevertheless, damages shall be paid if the obligor refuses to pay the penalty or is guilty of fraud in the fulfillment of the obligation.

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