

V.V. SOLIVEN REALTY CORP., PETITIONER, VS. LUIS KUNG BENG T. ONG., RESPONDENT.

G.R. NO. 147869. January 26, 2005

Ponente: CARPIO, J.

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CARPIO, J.:

Before this Court is a petition for review[1] to set aside the 17 January 2001 Decision[2] of the Court of Appeals in CA-G.R. SP No. 58391. The Court of Appeals denied the petition of V.V. Soliven Realty Corp. assailing the decision of the Office of the President. The Office of the President upheld the Housing and Land Use Regulatory Board ordering V.V. Soliven Realty Corp. to execute a deed of absolute sale of a parcel of land, which Luis Kung Beng T. Ong purchased, and to refund P3,744.96 representing his excess payment.

The Facts

On 18 July 1979, petitioner V.V. Soliven Realty Corp. (“petitioner”),[3] and respondent Luis Kung Beng T. Ong (“respondent”)[4] signed a Contract to Sell covering Lot No. 28, Block No. 7, Phase VIII, Pasig Green Park Village, Pasig City (“lot”). The contract price of the lot was P45,320 with down payment of P6,798. The balance was payable within 10 years with monthly installments of P552.79.

On 20 July 1989, after 10 years from the signing of the Contract to Sell, respondent paid a total amount of P77,987.76 representing his down payment, monthly installments and payment for MERALCO shares.

Despite respondent’s full payment of the purchase price, petitioner failed and refused to execute the deed of absolute sale and to deliver to respondent the certificate of title over the lot.

On 4 April 1990, respondent filed a letter-complaint with the Housing and Land Use Regulatory Board (“HLURB”) praying for the delivery of the certificate of title over the lot and the refund of his excess payment.

Petitioner denied respondent’s allegation of full payment of the purchase price of the lot and the excess payment on the amortization.

After hearing, the HLURB’s Office of Arbitration, Adjudication and Legal Affairs (“OAALA”) found that respondent had already fully paid the purchase price of the lot and that he had an excess payment of P3,744.96.[5] The dispositive portion of the Decision dated 5 December 1990 of the OAALA reads:

PREMISES CONSIDERED, judgment is hereby rendered as follows:

1. Ordering [petitioner] to execute a deed of sale in favor of the [respondent] preparatory to the issuance of title for the lot in dispute within 30 days from finality hereof;
2. Directing same [petitioner] to refund [respondent] of his overpayment amounting to P3,744.96 within the aforesaid period as in the preceding paragraph.

IT IS SO ORDERED.[6]

Petitioner filed a petition for review with the HLURB Board of Commissioners which affirmed in toto the decision of the OAALA.[7]

Thereafter, petitioner appealed the decision of the HLURB Board of Commissioners to the Office of the President. Petitioner claimed that respondent had “no cause of action because the subject lot was levied [on] execution in connection with Civil Case No. Q-42625,[8] hence the same should be deemed lost through fortuitous event.”

Unknown to respondent, the lot was levied on execution on 2 July 1985 in Civil Case No. Q-42625. Subsequently, a certificate of sale was annotated on the certificate of title. However, petitioner was able to redeem the lot on 12 November 1999.

Before its redemption, petitioner subdivided the lot into two. Consequently, the certificate of title to the lot, Transfer Certificate of Title (“TCT”) No. 503974, was cancelled and two certificates of title were issued, TCT Nos. 654466 and 654467, consisting of 103 square meters each. On 13 March 2000, petitioner sold the property covered by TCT No. 654467 to a certain Rogelio Vizon Carpio, Jr. for P350,000.

Meanwhile, the Office of the President dismissed petitioner’s appeal on 22 February 2000 and affirmed the decision of the HLURB Board of Commissioners.

Thereafter, petitioner filed a petition with the Court of Appeals questioning the decision of the Office of the President. Petitioner reiterated its argument that the lot should be considered lost when it was levied on execution in Civil Case No. Q-42625. Petitioner further claimed that it could no longer transfer ownership to respondent because the title to the lot was already transferred to Rogelio Vizon Carpio, Jr. who was a buyer in good faith. Petitioner insisted that respondent’s cause of action be converted to a claim for refund of payments.

The Court of Appeals denied the petition and disposed as follows:

WHEREFORE, the petition is DENIED, and we hereby condemn the petitioner, thusly –

- 1) To return to respondent the sum of P350,000.00 plus legal interest reckoned from the commencement of the complaint, representing the value of the 103 square meters lot sold to Rogelio Vizon Carpio, Jr.;
- 2) To execute a Deed of Absolute Sale over the remaining 103 square meters covered by TCT No. 654466 and to deliver the title thereof to the respondent, now his heirs;
- 3) To refund of (sic) the sum of P3,744.96 plus interest at the legal rate, reckoned from the date of the institution of the complaint in this case;
- 4) To pay respondent, now his heirs, the sum of P300,000.00 for exemplary and moral damages;
- 5) To pay the sum of P50,000.00 as attorney’s fees.

Costs against petitioners (sic).

SO ORDERED.[9]

Hence, this petition.

The Court of Appeals’ Ruling

The Court of Appeals rejected petitioner’s contention that the lot should be deemed lost when it was levied on execution in Civil Case No. Q-42625. There is no evidence that petitioner had lost its right of redemption and that the title to the lot had been transferred to a buyer in good faith on 18 July 1979, the date of perfection of the sale. Therefore, petitioner could not invoke Article 1262[10] of the Civil Code.

The Court of Appeals awarded respondent P300,000 as moral and exemplary damages. The Court of Appeals based the award on petitioner's willful and unlawful failure to deliver the title to the lot upon respondent's full payment of the purchase price. The Court of Appeals further opined that in insisting with its theory of extinguishment of obligation due to the loss of the thing sold, petitioner acted contrary to morals, good customs and public policy. The Court of Appeals also noted that respondent died at a relatively young age of 52 due to hypertension, without obtaining the title to the lot.

The Court of Appeals also awarded respondent P50,000 as attorney's fees because he was "compelled to litigate to vindicate his rights and interests which petitioner had wantonly trampled [upon]."

The Issues

Petitioner raises the following issues for resolution:

- THE COURT OF APPEALS ERRED IN AWARDING DAMAGES AND ATTORNEY'S FEES WHEN THE SAME WAS NOT SPECIFICALLY PRAYED FOR IN THE COMPLAINT. EVEN GRANTING THAT THERE WAS A PRAYER FOR DAMAGES AND ATTORNEY'S FEES, RESPONDENT FAILED TO FURNISH SUFFICIENT BASIS FOR [SUCH] AWARD.
- THE COURT OF APPEALS ERRED IN HOLDING THAT THE COMPUTATION OF THE LEGAL INTEREST ON THE PURCHASE PRICE OF ONE-HALF OF THE LOT TO BE REFUNDED TO THE RESPONDENT SHOULD COMMENCE FROM THE FILING OF THE COMPLAINT AND NOT FROM THE DATE OF THE SECOND SALE.[11]

The Court's Ruling

The petition is meritorious.

Petitioner no longer questions the part of the Court of Appeals' decision ordering petitioner to execute a deed of absolute sale in favor of respondent and to deliver the title covering the remaining 103 square meters of the lot. Petitioner also accepts the Court of Appeals' directive to pay respondent P350,000, representing the selling price of one-half of the lot. Petitioner also agrees to pay respondent P3,754.96, including interest, representing respondent's excess payment.

Therefore, this petition mainly concerns the award of damages and attorney's fees and the commencement of the computation of the interest on the P350,000 due to respondent.

On the award of damages and attorney's fees

Petitioner faults the Court of Appeals for awarding damages and attorney's fees to respondent. Petitioner contends that respondent failed to allege in the complaint or in the position paper filed with the HLURB his claim for damages and attorney's fees.

Assuming respondent claimed for damages and attorney's fees, petitioner argues that there was no basis for such award. No bad faith is allegedly attributable to petitioner. Petitioner claims that its president redeemed the lot in the execution sale for the sole purpose of delivering the title to respondent. However, the petitioner's sales officers sold the other half of the lot to Rogelio Vizon Carpio, Jr. without their president's knowledge. Moreover, petitioner's president offered respondent's heirs another lot, as a compromise, on learning of the decision of the Office of the President.

True, respondent failed to allege specifically in the complaint his claim for damages and attorney's fees. This lack of specific allegation is understandable because no counsel assisted respondent at the time. It was only when the instant case reached the Court of Appeals when respondent's substitute (Ma. Dolores T. Ong), who was already

represented by counsel,[12] expressly pleaded for damages and attorney's fees.

Respondent's substitute attached an affidavit[13] ("affidavit") to her comment to the petition before the Court of Appeals stating that respondent's death was "partly due to the stress, frustration over the lot as he had suffered sleepless nights, mental anguish and anxiety." The affidavit further stated that "petitioner has caused [her] family great anxiety, mental anguish and injury."

However, respondent's substitute insists that respondent prayed for damages in the complaint and position paper filed with the HLURB. Respondent's substitute cites the following statements in the complaint and position paper to support her claim for moral damages.

This is to advise your good office, the pains and sufferings that my family and I are undergoing, due to the refusal and failure to release the Transfer Certificate of Title to the lot that I have already fully paid last July 20, 1989.

xxx[14]

8. That [respondent] will file and ask for an additional damages amounting to not less than P500,000.00 but not more than P2,000,000.00 Philippine currency if the above entitled case will not be resolved this year 1990.[15]

Although the statements in the complaint, position paper and affidavit would suffice as a claim for damages, neither respondent nor his heirs as substitutes adequately proved their entitlement to moral damages. Mere allegation is not proof.[16] It is elementary that to recover moral damages, there must be pleading and proof of moral suffering, mental anguish, fright and the like.[17]

Nevertheless, this Court can award nominal damages to respondent's heirs. Nominal damages are not intended for indemnification of loss suffered but for the vindication or recognition of a right violated or invaded.[18] Nominal damages are recoverable where the plaintiff has suffered some injury the amount of which the evidence fails to show.[19] The court has the discretion to assess the nominal damages according to the circumstances of the case.[20]

There is no question that petitioner failed to comply with its statutory[21] and contractual[22] obligation of delivering the title to the lot within a reasonable time upon respondent's full payment of the purchase price. The Court notes that respondent bought the lot from petitioner on 18 July 1979, and paid in full his installments on 20 July 1989. However, petitioner failed to deliver the title to the lot because it was then levied on execution. Hence, petitioner could no longer deliver the title then.

However, instead of delivering the title to respondent in 1999 after redeeming the lot in the execution sale, petitioner subdivided the lot into two and sold the other half to another buyer. Petitioner's claim that its president redeemed the lot purposely to deliver the title to respondent is self-serving. And petitioner's allegation that its sales officers sold the other half of the lot to another buyer without its president's knowledge is immaterial. Besides, petitioner's offer of a larger lot to respondent's heirs came rather too late. Petitioner offered the property upon the rendition of the decision of the Office of the President, or after almost a decade from the filing of the complaint. Respondent died during the pendency of the case without obtaining the title to the lot. The Court views an award of P100,000 in nominal damages fair and reasonable under the circumstances.

Since respondent failed to show that he is entitled to moral damages, the Court of Appeals erred in awarding exemplary damages.[23]

The Court also sets aside the award of attorney's fees for lack of basis. The amount of attorney's fees recoverable as actual damages is subject to judicial discretion. However, it must have some factual, legal and equitable bases.

It cannot be left to speculation and conjectures.[24]

On the computation of interest

The Court sustains petitioner's argument that the legal interest on the P350,000 due to respondent should commence from the date when one-half of the lot was sold to Rogelio Vizon Carpio, Jr., and not from the filing of the complaint. There is no basis to compute the interest from the filing of the complaint because petitioner's obligation to pay P350,000 arose only at the time of the second sale. Moreover, there is no evidence that the value of one-half of the lot was already P350,000 when the complaint was filed.

However, respondent is entitled to legal interest on the value of one-half of the lot from the filing of the complaint on 4 April 1990 until the sale of one-half of the lot on 13 March 2000. For this purpose, the value of one-half of the lot is 50% of the P77,987.76 total payment respondent made to petitioner. As of 13 March 2000, this legal interest had accumulated to P23,279.35.[25]

WHEREFORE, the Decision of the Court of Appeals dated 17 January 2001 in CA-G.R. SP No. 58391 is AFFIRMED with modification. The award of moral and exemplary damages and attorney's fees is deleted. However, the Court awards nominal damages of P100,000 to respondent. The Court also awards respondent P23,279.35, the accumulated legal interest as of 13 March 2000. The legal interest on the P350,000 to be paid by petitioner to respondent shall commence on 13 March 2000. The Court affirms the assailed decision in all other respects. Costs against petitioner.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, Ynares-Santiago, and Azcuna, JJ., concur.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Renato C. Dacudao, with Associate Justices Romeo J. Callejo, Sr. (now Associate Justice of this Court) and Josefina Guevara-Salonga, concurring.

[3] In the Contract to Sell, however, the vendor is Solid Homes, Inc.

[4] Substituted before the Court of Appeals by his wife Maria Dolores Ong.

[5] This should be P3,754.96. The computation made by respondent shows that he overpaid petitioner the amount of P3,754.96.

Actual Payment As per Contract to Sell

Downpayment 6,798 6,798

Installment payments 70,089.76 66,334.80 [P552.79 x 120 months]

MERALCO shares 1,100

Sum total of payments 77,987.76 73,132.80

*Overpayment P77,987.76 – P74,232.80 [P73,132.80 + P1,100 (Meralco shares)] = P3,754.96

[6] Rollo, p. 33.

[7] Ibid., p. 34.

[8] This civil case involves petitioner and Pacific Premier Realty and Development Corporation.

[9] Rollo, pp. 70-71.

[10] Art. 1262. An obligation which consists in the delivery of a determinate thing shall be extinguished if it should be lost or destroyed without the fault of the debtor, and before he has incurred in delay.

When by law or stipulation, the obligor is liable even for fortuitous events, the loss of the thing does not extinguish the obligation, and he shall be responsible for damages. The same rule applies when the nature of the obligation requires the assumption of risk.

[11] Rollo, p. 17.

[12] CA Rollo, p. 71.

[13] Ibid., p. 96.

[14] Rollo, p. 27.

[15] Ibid., p. 29.

[16] See *Workers of Antique Electric Coop., Inc. v. NLRC*, 388 Phil. 847 (2000).

[17] Article 2217 of the Civil Code provides:

Art. 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

See *People v. Olita*, 414 Phil. 827 (2001). See also *Citytrust Banking Corporation v. Villanueva*, 413 Phil. 776 (2001); *Francisco v. Ferrer, Jr.*, G.R. No. 142029, 28 February 2001, 353 SCRA 261.

[18] Article 2221 of the Civil Code provides:

Art. 2221. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

[19] Article 2216 of the Civil Code provides:

Art. 2216. No proof of pecuniary loss is necessary in order that moral, nominal, temperate, liquidated or exemplary damages, may be adjudicated. The assessment of such damages, except liquidated ones, is left to the discretion of the court, according to the circumstances of each case.

[20] Ibid.

[21] Section 25 of Presidential Decree No. 957, otherwise known as The Subdivision and Condominium Buyers' Protective Decree, 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 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. (Emphasis supplied)

[22] Section 3 of the parties' Contract to Sell reads:

SEC. 3. Soon after completion of all the payments herein stipulated, the VENDOR agrees to execute a Deed of Absolute Sale in favor of the VENDEE and deliver the corresponding Torrens Title to said parcel of land after VENDEE has paid the costs of documentary stamps, science stamps, transfer taxes or fees, and expenses for registration of said document.

[23] Article 2234 of the Civil Code provides:

Art. 2234. While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. xxx

[24] *Mirasol v. De la Cruz*, No. L-32552, 31 July 1978, 84 SCRA 337.

[25] Computation of legal interest from 4 April 1990 to 13 March 2000:

Legal interest: 6% per annum

Period from 4 April 1990 (filing of complaint) to 13 March 2000 (second sale): 9.95 years

Interest Due = (Principal)(Interest Rate)(Period or Number of Years)

= (.5 x P77,987.76)(.06)(9.95)

= P23,279.35

See *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, 12 July 1994, 234 SCRA 78.

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