

BANK OF THE PHILIPPINE ISLANDS, AS SUCCESSOR-IN-INTEREST OF BPI INVESTMENT CORPORATION, PETITIONER, VS. ALS MANAGEMENT & DEVELOPMENT CORP., RESPONDENT.

G.R. No. 151821. April 14, 2004

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Factual findings of the lower courts are entitled to great respect, but may be reviewed if they do not conform to law and to the evidence on record. In the case at bar, a meticulous review of the facts compels us to modify the award granted by the Court of Appeals.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, seeking to set aside the November 24, 2000 Decision[2] and the January 9, 2002 Resolution[3] of the Court of Appeals (CA) in CA-GR CV No. 25781. The assailed Decision disposed as follows:

“WHEREFORE, premises considered, the assailed decision is hereby AFFIRMED in toto and the instant appeal DISMISSED.”[4]

The assailed Resolution denied reconsideration.

The Facts

The facts of the case are narrated by the appellate court as follows:

“On July 29, 1985, [petitioner] BPI Investment Corporation filed a complaint for a Sum of Money against ALS Management and Development Corporation, alleging inter alia that on July 22, 1983, [petitioner] and [respondent] executed at Makati, Metro Manila a Deed of Sale for one (1) unfurnished condominium unit of the Twin Towers Condominium located at Ayala Avenue, corner Apartment Ridge Street, Makati, Metro Manila designated as Unit E-4A comprising of 271 squares [sic] meters more or less, together with parking stalls identified as G022 and G-63. The Condominium Certificate of Title No. 4800 of the Registry of Deeds for Makati, Metro Manila was issued after the execution of the said Deed of Sale. [Petitioner] advanced the amount of P26,300.45 for the expenses in causing the issuance and registration of the Condominium Certificate of Title. Under the penultimate paragraph of the Deed of Sale, it is stipulated that the VENDEE [respondent] shall pay all the expenses for the preparation and registration of this Deed of Sale and such other documents as may be necessary for the issuance of the corresponding Condominium Certificate of Title. After the [petitioner] complied with its obligations under the said Deed of Sale, [respondent], notwithstanding demands made by [petitioner], failed and refused to pay [petitioner] its legitimate advances for the expenses mentioned above without any valid, legal or justifiable reason.

“In its Answer with Compulsory Counterclaim, [respondent] averred among others that it has just and valid reasons for refusing to pay [petitioner’s] legal claims. In clear and direct contravention of Section 25 of

Presidential Decree No. 957 which provides that ‘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’, the [petitioner] has jacked-up or increased the amount of its alleged advances for the issuance and registration of the Condominium Certificate of Title in the name of the [respondent], by including therein charges which should not be collected from buyers of condominium units. [Petitioner] made and disseminated brochures and other sales propaganda in and before May 1980, which made warranties as to the facilities, improvements, infrastructures or other forms of development of the condominium units (known as ‘The Twin Towers’) it was offering for sale to the public, which included the following:

‘The Twin Towers is destined to reflect condominium living at its very best.’

‘While the twin tower design and its unusual height will make the project the only one of its kind in the Philippines, the human scale and proportion [are] carefully maintained.’

‘To be sure, modern conveniences are available as in the installation of an intercom system and a closed-circuit TV monitor through which residents from their apartments can see their guests down at the lobby call station.’

‘Some of the features of each typical apartment unit are: x x x A bar x x x Three toilets with baths x x x.’

‘The penthouse units are privileged with the provision of an all-around balcony. x x x’

“[Respondent] further averred that [petitioner] represented to the [respondent] that the condominium unit will be delivered completed and ready for occupancy not later than December 31, 1981. [Respondent] relied solely upon the descriptions and warranties contained in the aforementioned brochures and other sales propaganda materials when [respondent] agreed to buy Unit E-4A of the Twin Tower(s) for the hefty sum of P2,048,900.00 considering that the Twin Towers was then yet to be built. In contravention of [petitioner’s] warranties and of good engineering practices, the condominium unit purchased by [respondent] suffered from the following defects and/or deficiencies:

- ‘1. The clearance in the walkway at the balcony is not sufficient for passage;
- ‘2. The anodized aluminum used in the door and windows were damaged;
- ‘3. The kitchen counter tops/splashboard suffered from cracks and were mis-cut and misaligned;
- ‘4. The partition between living and master’s bedroom was unpainted and it had no access for maintenance due to aluminum fixed glass cover;
- ‘5. The varifold divider, including the bar and counter top cabinet were not installed;
- ‘6. The toilets had no tiles;
- ‘7. No closed circuit TV was installed;
- ‘8. Rainwater leaks inside or into the condominium unit.’”[5]

Respondent’s Answer prayed that “judgment be rendered ordering [petitioner] to correct such defects/deficiencies in the condominium unit,”[6] and that the following reliefs be granted:

- “1. The sum of P40,000.00 plus legal interest thereon from the date of extra-judicial demand, representing the amount spent by the defendant for the completion works it had undertaken on the premises.
- “2. The sum of U.S.\$6,678.65 (or its equivalent in the Philippine currency) representing the unearned rental of the premises which the defendant did not realize by reason of the late delivery to him of the condominium unit;
- “3. Twenty-four percent (24%) interest per annum on the agreed one (1) year advance rental and one (1) month

deposit (totaling U.S.\$15,785.00) corresponding to the period January 1, 1982 to June 17, 1982, which [petitioner] would have earned had he deposited the said amount in a bank;

“4. The sum of U.S.\$1,214.30 per month, commencing from May 1, 1985, which the [respondent] no longer earns as rental on the premises because the lessee vacated the same by reason of defects and/or deficiencies;

“5. The sum of P50,000.00 plus appearance fees of P300.00 per court hearing, as attorney’s fees;

“6. Litigation expenses and costs of suit.”[7]

On February 6, 1990, the trial court issued this judgment:

“1. Ordering the [respondent] to pay [petitioner] the sum of P26,300.45, with legal interest from the filing of the complaint up to full payment thereof, representing the amount spent for the registration of the title to the condominium unit in [respondent’s] name;

“2. Ordering [petitioner] to deliver, replace or correct at [petitioner’s] exclusive expense/cost or appoint a licensed qualified contractor to do the same on its behalf, the following defects/deficiencies in the condominium unit owned by the [respondent]:

a)

KITCHEN

i)

The sides of the kitchen sink covered with sealants as well as miscut marble installed as filler at the right side of the sink;

ii)

Miscut marble installed on both sides of the side wall above the gas range;

b)

FOYERS

Water marks at the parquet flooring, near the main water supply room;

c)

MAIDS ROOM

Ceiling cut off about one (1) square foot in size and left unfinished

d)

DINING ROOM

i)

Water damaged parquet up to about one (1) meter from the wall underneath the open shelves and directly behind the plant box;

ii)

Plant box directly behind the dining room;

iii)

The water damaged parquet flooring near the door of the dining room to the passage way

e)

MASTER'S BEDROOM

i)

Falling off paint layers at the bathroom wall behind the bathtub/faucet along the passageway of the master's bedroom;

ii)

Falling off water-damaged plywood ceiling in the master's bedroom bathroom;

iii)

Grinders mark damage at the bathtub;

f)

BALCONY WALKWAY

i)

PVC pipes installed two (2) inches above floor level causing water to accumulate;

ii)

Cracks on level of wash out flooring;

iii)

14-inches passageway going to the open terrace not sufficient as passageway;

iv)

PVC pipe installed on the plant box water drained directly on the balcony floor;

g)

BALCONY (OPEN) TERRACE

i)

Two (2) concrete cement measuring about 6 x 4 inches with protruding live wires, purportedly lamp posts which were not installed;

h)

BOYS BEDROOM

i)

Water mark on the parquet flooring due to water seepage;

ii)

Asphalt plastered at the exterior wall/floor joints to prevent water seepage;

i)

ANALOC FINISH of the aluminum frames of doors and windows all around the condominium were painted with dark gray paint to cover dents and scratches;

j)

LIVING ROOM

Intercom equipment installed without the TV monitor;

k)

STORAGE FACILITIES at the ground floor

“3. Ordering [petitioner] to pay [respondent] the following:

- a) The sum of P40,000.00 representing reimbursement for expenses incurred for the materials/labor in installing walls/floor titles in 2 bathrooms and bar counter cabinet.
- b) The sum of P136,608.75, representing unearned income for the five-month period that the defendant had to suspend a lease contract over the premises.
- c) The sum of P27,321.75 per month for a period of twenty-one (21) months (from May 1985 to January 1987), representing unearned income when defendant’s lessee had to vacate the premises and condominium unit remained vacant, all with legal interest from the filing of the counterclaim until the same are fully paid.”[8]

Ruling of the Court of Appeals

On appeal, after “a thorough review and examination of the evidence on record,”[9] the CA found “no basis for disbelieving what the trial court found and arrived at.”[10]

The appellate court sustained the trial court’s finding that “while [petitioner] succeeded in proving its claim against the [respondent] for expenses incurred in the registration of [the latter’s] title to the condominium unit purchased, x x x for its part [respondent] in turn succeeded in establishing an even bigger claim under its counterclaim.”[11]

Hence, this Petition.[12]

The Issues

Petitioner raises the following issues for our consideration:

“I. Whether or not the Honorable Court of Appeals erred in not holding that the trial court had no jurisdiction over the respondent’s counterclaims.

“II. Whether or not the decision of the Court of Appeals is based on misapprehension of facts and/or manifestly mistaken warranting a review by this Honorable Court of the factual findings therein.

“III. Whether or not the award of damages by the Honorable Court of Appeals is conjectural warranting a review by this Honorable Court of the factual findings therein.”[13]

The Court’s Ruling

The Petition is partly meritorious.

First Issue:

Jurisdiction

Contending that it was the Housing and Land Use Regulatory Board (HLURB) -- not the RTC -- that had jurisdiction over respondent's counterclaim, petitioner seeks to nullify the award of the trial court.

Promulgated on July 12, 1976, PD No. 957 -- otherwise known as "The Subdivision and Condominium Buyers' Protective Decree" -- provides that the National Housing Authority (NHA) shall have "exclusive authority to regulate the real estate trade and business."^[14] Promulgated later on April 2, 1978, was PD No. 1344 entitled "Empowering the National Housing Authority to Issue Writs of Execution in the Enforcement of Its Decisions Under Presidential Decree No. 957." It expanded the jurisdiction of the NHA as follows:

"SECTION 1. In the exercise of its function to regulate the real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority shall have exclusive jurisdiction to hear and decide cases of the following nature:

- Unsound real estate business practices;
- Claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman; and
- Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lot or condominium unit against the owner, developer, broker or salesman." (Italics ours.)

On February 7, 1981, by virtue of Executive Order No. 648, the regulatory functions of the NHA were transferred to the Human Settlements Regulatory Commission (HSRC). Section 8 thereof provides:

"SECTION 8. Transfer of Functions. -The regulatory functions of the National Housing Authority pursuant to Presidential Decree Nos. 957, 1216, 1344 and other related laws are hereby transferred to the Commission (Human Settlements Regulatory Commission). x x x. Among these regulatory functions are: 1) Regulation of the real estate trade and business; x x x 11) Hear and decide cases of unsound real estate business practices; claims involving refund filed against project owners, developers, dealers, brokers, or salesmen; and cases of specific performance."

Pursuant to Executive Order No. 90 dated December 17, 1986, the functions of the HSRC were transferred to the HLURB.

As mandated by PD No. 957, the jurisdiction of the HLURB is encompassing. Hence, we said in *Estate Developers and Investors Corporation v. Sarte*:^[15]

"x x x. While PD 957 was designed to meet the need basically to protect lot buyers from the fraudulent manipulations of unscrupulous subdivision owners, sellers and operators, the 'exclusive jurisdiction' vested in the NHA is broad and general - 'to regulate the real estate trade and business' in accordance with the provisions of said law."

Furthermore, the jurisdiction of the HLURB over cases enumerated in Section 1 of PD No. 1344 is exclusive. Thus, we have ruled that the board has sole jurisdiction in a complaint of specific performance for the delivery of a certificate of title to a buyer of a subdivision lot;^[16] for claims of refund regardless of whether the sale is perfected or not;^[17] and for determining whether there is a perfected contract of sale.^[18]

In *Solid Homes v. Payawal*,^[19] we declared that the NHA had the competence to award damages as part of the exclusive power conferred upon it -- the power to hear and decide "claims involving refund and any other claims filed by subdivision lot or condominium unit buyers against the project owner, developer, dealer, broker or salesman."^[20]

Clearly then, respondent's counterclaim -- being one for specific performance (correction of defects/deficiencies

in the condominium unit) and damages -- falls under the jurisdiction of the HLURB as provided by Section 1 of PD No. 1344.

The Applicability of Estoppel

The general rule is that any decision rendered without jurisdiction is a total nullity and may be struck down at any time, even on appeal before this Court.[21] Indeed, the question of jurisdiction may be raised at any time, provided that such action would not result in the mockery of the tenets of fair play.[22] As an exception to the rule, the issue may not be raised if the party is barred by estoppel.[23]

In the present case, petitioner proceeded with the trial, and only after a judgment unfavorable to it did it raise the issue of jurisdiction. Thus, it may no longer deny the trial court's jurisdiction, for estoppel bars it from doing so. This Court cannot countenance the inconsistent postures petitioner has adopted by attacking the jurisdiction of the regular court to which it has voluntarily submitted.[24]

The Court frowns upon the undesirable practice of submitting one's case for decision, and then accepting the judgment only if favorable, but attacking it for lack of jurisdiction if it is not.[25]

We also find petitioner guilty of estoppel by laches for failing to raise the question of jurisdiction earlier. From the time that respondent filed its counterclaim on November 8, 1985, the former could have raised such issue, but failed or neglected to do so. It was only upon filing its appellant's brief[26] with the CA on May 27, 1991, that petitioner raised the issue of jurisdiction for the first time.

In *Tijam v. Sibonghanoy*,[27] we declared that the failure to raise the question of jurisdiction at an earlier stage barred the party from questioning it later. Applying the rule on estoppel by laches, we explained as follows:

"A party may be estopped or barred from raising a question in different ways and for different reasons. Thus, we speak of estoppel in pais, of estoppel[l] by deed or by record, and of estoppel by laches.

"Laches, in general sense, is failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.

"The doctrine of laches or of 'stale demands' is based upon grounds of public policy which requires, for the peace of society, the discouragement of stale claims and, unlike the statute of limitations, is not a mere question of time but is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted." [28]

Thus, we struck down the defense of lack of jurisdiction, since the appellant therein failed to raise the question at an earlier stage. It did so only after an adverse decision had been rendered.

We further declared that if we were to sanction the said appellant's conduct, "we would in effect be declaring as useless all the proceedings had in the present case since it was commenced x x x and compel the judgment creditors to go up their Calvary once more. The inequity and unfairness of this is not only patent but revolting." [29]

Applicable herein is our ruling in *Gonzaga v. Court of Appeals*,[30] in which we said:

"Public policy dictates that this Court must strongly condemn any double-dealing by parties who are disposed to trifle with the courts by deliberately taking inconsistent positions, in utter disregard of the elementary principles of justice and good faith. There is no denying that, in this case, petitioners never raised the issue of jurisdiction throughout the entire proceedings in the trial court. Instead, they voluntarily and willingly

submitted themselves to the jurisdiction of said court. It is now too late in the day for them to repudiate the jurisdiction they were invoking all along.”[31]

Second and Third Issues:

Appreciation of Facts

It is readily apparent that petitioner is raising issues of fact that have been ruled upon by the RTC and sustained by the CA. The factual findings of lower courts are generally binding upon this Court and will not be disturbed on appeal, especially when both sets of findings are the same.[32] Nevertheless, this rule has certain exceptions,[33] as when those findings are not supported by the evidence on record.

We have carefully scrutinized the records of this case and found reason to modify the award to conform to law and the evidence. We thus address the arguments of petitioner seriatim.

Warranties and Representations in the Brochure

The brochure that was disseminated indicated features that would be provided each condominium unit; and that, under Section 19 of PD No. 957, would form part of the sales warranties of petitioner.[34] Respondent relied on the brochure in its decision to purchase a unit.[35] Since the former failed to deliver certain items stated therein, then there was a clear violation of its warranties and representations.

The brochure says that “[t]he particulars stated x x x as well as the details and visuals shown x x x are intended to give a general idea of the project to be undertaken, and as such, are not to be relied [upon] as statements or representations of fact.”[36] This general disclaimer should apply only to the general concept of the project that petitioner aptly characterizes thus:

“‘x x x [D]estined to reflect condominium living at its very best’ and ‘its design x x x will make the project the only one of its kind in the Philippines.’”[37]

This disclaimer, however, should not apply to the features and the amenities that the brochure promised to provide each condominium unit. Petitioner was thus in breach when it failed to deliver a “closed-circuit TV monitor through which residents from their apartments can see their guests x x x.”[38]

Storage Facilities

The trial court erred, though, in requiring petitioner to provide storage facilities on the ground floor, as the non-delivery had not been alleged in respondent’s Answer with Counterclaim.[39]

It is elementary that a judgment must conform to and be supported by both the pleadings and the evidence, and that it be in accordance with the theory of the action on which the pleadings were framed and the case was tried.[40] Indeed, issues in each case are limited to those presented in the pleadings.[41]

We are aware that issues not alleged in the pleadings may still be decided upon, if tried with the parties’ express or implied consent.[42] Trial courts are not precluded from granting reliefs not specifically claimed in the pleadings -- notwithstanding the absence of their amendment -- upon the condition that evidence has been presented properly, with full opportunity on the part of the opposing parties to support their respective contentions and to refute each other’s evidence.[43] This exception is not present in the case at bar.

Moreover, a cursory reading of the brochure shows that there is no promise to provide individual storage facilities on the ground floor for each condominium unit. The brochure reads: “Storage facilities in the apartment units and

the ground floor.”[44] Apparent from the letter of petitioner dated June 18, 1982,[45] was its compliance with its promise of storage facilities on the ground floor. In that letter, respondent was also informed that it may cause a reservation of those facilities through the building superintendent.

Damages for Delay in Delivery

It is undisputed that petitioner sent respondent a “Contract to Sell”[46] declaring that the construction would be finished on or before December 31, 1981.[47] The former delivered the condominium unit only in June 1982;[48] thus, the latter claims that there was a delay in the delivery.

Because of this delay, the trial court ordered petitioner to pay damages of P136,608.75 representing unearned income for the period that respondent had to suspend a lease contract. We find a dearth of evidence to support such award.

To recover actual damages, the amount of loss must not only be capable of proof, but also be proven with a reasonable degree of certainty.[49] The lone evidence for this award was the self-serving testimony of respondent’s witness that a lease contract had indeed been intended to commence in January 1982, instead of the actual implementation on June 18, 1982.[50] Without any other evidence, we fail to see how the amount of loss was proven with a reasonable degree of certainty.

Condominium Defects

The rule is that a party’s case must be established through a “preponderance of evidence.”[51] By such term of evidence is meant simply evidence that is of greater weight, or is more convincing than that which is offered in opposition to it.[52] Respondent was able to establish through its witness’ testimony that the condominium unit suffered from defects.[53] This testimony was confirmed by an inspection report[54] noted and signed by petitioner’s representative, as well as by a commissioner’s report[55] prepared after an ocular inspection by the clerk of court acting as a commissioner. Furthermore, this conclusion is supported by the circumstances that occurred during the lease period, as evidenced by the complaint and the update letters[56] of respondent’s lessee.

Petitioner’s contention that the claim arising from the alleged defects has already prescribed must fail for being raised for the first time only on appeal.[57] Well-settled is the rule that issues not raised below cannot be resolved on review in higher courts.[58]

We agree, however, that the lower courts erred in finding that there was a defect in a portion of the balcony, which respondent alleges to be a “walkway x x x [that] is not sufficient for passage.”[59] Petitioner was able to prove, however, that the specifications thereof conformed to the building plan.

Respondent contends that this portion should have been 65 to 80 centimeters wide, so that it would be sufficient as a passageway.[60] The building plan[61] had not specified the width, however. Architect Leo Ramos of W.V. Coscolluela & Associates, the architectural firm that prepared the building plan, testified thus:

“Q

I am directing your attention xxx to a certain portion in this condominium unit x x x it appears x x x [that] there is no measurement indicated therein, do you know why the measurement of said portion was not indicated in the building plan?

A

Normally, it is variable.

Q

What do you mean by variable?

A

It depends on the actual measurement of the building construction.

Q

Could you please tell the Court, what x x x the purpose of the said portion of the condominium unit [is]?

A

It is used for watering the plants and the servicing of some area[s].

Q

How much measurement is made to affix the portion of watering the plants?

A

Approximately .50 [m].”[62]

Respondent maintains that this portion should have been .80 meters (or 80 centimeters), similar to another area in the building plan that it offered as Exhibit “2-A.”[63] But an analysis of this plan reveals that the latter area has a different width from that of the former.

It is readily apparent from the foregoing facts that the portion in controversy was not intended to be a walkway. Thus, there was no deviation from the building plan. Because it has not been shown that this section was insufficient to serve the purpose for which it was intended, the lower courts erred in considering it as defective.

Reimbursement of P40,000
for Completion Work

The lower courts did not err in ordering petitioner to correct the defects in the condominium unit, but in requiring it to reimburse respondent in the amount of P40,000 for completion work done.

Petitioner argues that the trial court’s Decision encompassed the areas beyond those alleged in respondent’s Answer.[64] This contention is not convincing, because the allegations in the latter were broad enough to cover all the defects in the condominium unit. In fact, respondent prayed that “judgment be rendered ordering [petitioner] to correct such defects x x x in the condominium unit as may be prove[d] during the trial.”[65]

Petitioner further challenges the award of P40,000 as reimbursement for completion work done by respondent, on the ground that this claim was not proven during the trial. The latter’s evidence partook of a witness’ testimony[66] and of a demand letter[67] sent to petitioner requesting reimbursement for completion work done. Petitioner argues that respondent should have presented receipts to support the expenses.[68]

We agree with petitioner. While respondent may have suffered pecuniary losses for completion work done, it failed to establish with reasonable certainty the actual amount spent. The award of actual damages cannot be based on the allegation of a witness without any tangible document, such as receipts or other documentary proofs to support such claim.[69] In determining actual damages, courts cannot rely on mere assertions, speculations, conjectures or guesswork, but must depend on competent proof and on the best obtainable evidence of the actual amount of loss.[70]

Unearned Lease Income

Respondent entered into a lease contract with Advanced Micro Device on May 18, 1982, for the period June 18, 1982 to June 17, 1983, with option to renew.[71] The lease -- which was for an agreed monthly rental of P17,000 -- was renewed for a period ending May 1, 1985, when Advanced Micro Device vacated the unit.[72] On the basis of these facts, the trial court ordered petitioner to pay damages by way of unrealized income for twenty-one months or from May 1, 1985, until January 1987 -- when respondent decided to move into the condominium unit, which was unoccupied by then.

Despite the defects of the condominium unit, a lessee stayed there for almost three years.[73] The damages claimed by respondent is based on the rent that it might have earned, had Advanced Micro Device chosen to stay and renew the lease. Such claim is highly speculative, considering that respondent failed to adduce evidence that the unit had been offered for lease to others, but that there were no takers because of the defects therein. Speculative damages are too remote to be included in an accurate estimate thereof.[74] Absent any credible proof of the amount of actual damage sustained, the Court cannot rely on speculations as to its existence and amount.[75]

We recognize, however, that respondent suffered damages when its lessee vacated the condominium unit on May 1, 1985, because of the defects therein. Respondents are thus entitled to temperate damages.[76] Under the circumstances, the amount equivalent to three monthly rentals of P17,000 -- or a total of P51,000 -- would be reasonable.

WHEREFORE, this Petition is PARTLY GRANTED, and the assailed Decision and Resolution of the Court of Appeals MODIFIED, as follows:

Hereby DELETED is the requirement on the part of petitioner to (1) deliver storage facilities on the ground floor; (2) pay P136,608.75 for unearned income for the five-month period that the lease contract was allegedly suspended; (3) correct the alleged passageway in the balcony; (4) pay P40,000.00 as reimbursement for completion work done by respondent; (5) pay P27,321.75 per month for a period of twenty-one months for the alleged unearned income during the period when the condominium unit remained vacant. Petitioner, however, is ORDERED to pay P51,000 as temperate damages for the termination of the lease contract because of the defects in the condominium unit. All other awards are AFFIRMED.

No pronouncement as to costs.

SO ORDERED.

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

[1] Rollo, pp. 9-50.

[2] Id., pp. 51-63. Tenth Division. Penned by Justice Ramon A. Barcelona (Division chairman), with the concurrence of Justices Rodrigo V. Cosico and Bienvenido L. Reyes (members).

[3] Id., pp. 64-66.

[4] CA Decision, p. 12; rollo, p. 62.

[5] Id., pp. 5-7 & 55-57.

[6] Respondent's Answer with Counterclaim, p. 5; records, p. 17.

[7] Ibid.

[8] RTC Decision, pp. 8-11; rollo, pp. 75-78.

[9] Ibid.

[10] Rollo, p. 59.

[11] Id., p. 61.

[12] This case was deemed submitted for resolution on May 12, 2003, upon this Court's receipt of respondent's Memorandum signed by Atty. George H. Yarte Jr. Petitioner's Memorandum, signed by Atty. Emmanuel Ruben T. Malto Jr., was received by this Court on May 9, 2003.

[13] Petitioner's Memorandum, pp. 12-13; rollo, pp. 145-146. Original in upper case.

[14] Section 3, PD No. 957.

[15] GR No. 93646, August 13, 1990. Penned by Justice Emilio A. Gancayco and concurred in by Justices Isagani A. Cruz, Carolina Griño-Aquino, Leo D. Medialdea and (later Chief Justice) Andres R. Narvasa, as quoted in Estate Developers and Investors Corp. v. CA, 213 SCRA 353, 358, September 2, 1992. See also Francel Realty Corporation v. CA, 322 Phil. 138, January 22, 1996, in which we held that the failure of a real property buyer to pay the agreed installment, based on the right to stop paying monthly amortizations under PD 957, involves a determinative question cognizable by the HLURB -- the question of what rights and obligations parties have in a sale of real estate under PD 957, not PD 1344 (as explained in Roxas v. CA, 391 SCRA 351, 360, October 29, 2002).

[16] C.T. Torres Enterprises, Inc. v. Hibionada, 191 SCRA 268, 274, November 9, 1990.

[17] Tejada v. Homestead Property Corporation, 178 SCRA 164, 167, September 29, 1989.

[18] Spouses Raet v. CA, 356 Phil. 979, 989, September 17, 1998.

[19] 177 SCRA 72, August 29, 1989.

[20] Id., p. 78, per Cruz, J.

[21] Solid Homes, Inc. v. Payawal, supra, p. 80; Trinidad v. Yatco, 111 Phil. 466, 470, March 21, 1961; Corominas Jr. and Corominas & Co. v. Labor Standard Commission, 112 Phil. 551, 562, June 30, 1961; Roxas v. CA, supra, p. 358.

[22] Roxas v. CA, supra.

[23] Solid Homes, Inc. v. Payawal, supra, p. 80; TCL Sales Corp. v. CA, 349 SCRA 35, 44, January 5, 2001; National Steel Corporation v. CA, 362 Phil. 150, 160, February 2, 1999; ABS-CBN Supervisors Employees Union Members v. ABS-CBN Broadcasting Corporation, 364 Phil. 133, 141, March 11, 1999.

[24] Roxas v. CA, supra.

[25] Sta. Lucia Realty & Development, Inc. v. Cabrigas, 411 Phil. 369, 390, June 19, 2001.

[26] Appellant's Brief filed with the CA by petitioner, p. 30; CA rollo, p. 64.

[27] 131 Phil. 556, April 15, 1968.

[28] Id., p. 563, per Dizon, J.

[29] Id., p. 565.

[30] 394 SCRA 472, December 27, 2002.

[31] *Id.*, p. 477, per Corona, J.

[32] *Lubos v. Galupo*, 373 SCRA 618, 622 January 16, 2002; *Gonzales v. CA*, 358 Phil. 806, 817, October 30, 1998; *Xentrex Automotive, Inc. v. CA*, 353 Phil. 258, 263, June 18, 1998.

[33] See *CIR v. Embroidery and Garments Industries (Phil.), Inc.*, 364 Phil. 541, 546, March 22, 1999.

[34] Section 19 of PD No. 957 provides:

“Sec. 19. Advertisements. - Advertisements that may be made by the x x x developer x x x about the condominium x x x must reflect the real fact and must be presented in such manner that will not tend to mislead or deceive the public.

The x x x developer shall be answerable and liable for the facilities, improvements, infrastructures or other forms of development represented or promised in brochures, advertisements and other sales propaganda disseminated by the x x x developer x x x and the same shall form part of the sales warranties enforceable against said x x x developer x x x.”

[35] TSN, May 21, 1996, pp. 19-21.

[36] Petitioner’s Exhibit “I-2a”; records, p. 118.

[37] Petitioner’s Memorandum, p. 16; rollo, p. 149; citing Petitioner’s Exhibit “I-2.”

[38] Respondent’s Exhibit “1”; records, p. 112.

[39] Respondent’s Answer with Counterclaim, dated November 8, 1985, p. 5; records, p. 17.

[40] *Jose Clavano, Inc. v. Housing & Land Use Regulatory Board*, 378 SCRA 172, 184, February 27, 2002.

[41] *Liang Lumber Company v. Liang Timber Co., Inc.*, 76 SCRA 197, 222, March 31, 1977.

[42] §5, Rule 10 of the Rules of Court.

[43] *Northern Cement Corp. v. Intermediate Appellate Court*, 158 SCRA 408, 717, February 29, 1988.

[44] Respondent’s Exhibit “1-A-1”; records, p. 118.

[45] Petitioner’s Exhibit “J”; records, p. 197.

[46] Respondent’s Exhibit “3”; records, p. 119.

[47] Respondent’s Exhibit “3-A”; records, p. 122.

[48] TSN, May 21, 1986, p. 31.

[49] *Magat Jr. v. CA*, 337 SCRA 298, 308, August 4, 2000.

[50] TSN, February 11, 1987, pp. 17-19, 35-36.

[51] §1, Rule 133 of the Rules of Court.

[52] *Republic v. CA*, 204 SCRA 160, 168, November 21, 1991; citing 32 CJS 1051.

[53] TSN, May 21, 1986, pp. 14-23, 31-36.

[54] Respondent’s Exhibit “5”; records, p. 127.

- [55] Records, p. 218.
- [56] Respondent's Exhibits "7" and "8"; records, pp. 135-138.
- [57] Appellant's Brief filed with the CA by petitioner, p. 29; CA rollo, p. 63.
- [58] *Magellan Capital Management Corporation v. Zosa*, 355 SCRA 157, 170, March 26, 2001.
- [59] Respondent's Answer with Counterclaim, p. 3; records, p. 15.
- [60] TSN, May 21, 1986, p. 14; TSN, February 11, 1987, p. 4.
- [61] Respondent's Exhibit "2"; records, p. 150.
- [62] TSN, July 11, 1988, pp. 4-5.
- [63] TSN, August 12, 1987, pp. 3-8.
- [64] Petitioner's Memorandum, p. 30; rollo, p. 163.
- [65] Respondent's Answer with Counterclaim, p. 5; records, p. 17.
- [66] TSN, May 21, 1996, pp. 23-28.
- [67] Respondent's Exhibit "4"; records, pp. 125-126.
- [68] Petitioner's Memorandum, p. 31; rollo, p. 164.
- [69] *David v. CA*, 353 Phil. 170, 189, June 17, 1998; *Magat Jr. v. CA*, *supra*, p. 308.
- [70] *Barzaga v. CA*, 335 Phil. 568, 578, February 12, 1997; *Citytrust Banking Corporation v. Villanueva*, 413 Phil. 776, 787, July 19, 2001.
- [71] Respondent's Exhibit "6"; records, p. 128.
- [72] TSN, February 11, 1987, p. 35.
- [73] *Id.*, pp. 23-29, 35-42; Exhibits "7," "8," "10"; records, pp. 135-138, 144-146.
- [74] *Sun Life Insurance Co. of Canada v. Rueda Hermanos & Co.*, 37 Phil. 844, 849, March 21, 1918.
- [75] *Manufacturers Building, Inc. v. CA*, 354 SCRA 521, 533, March 16, 2001.
- [76] Under Art. 2224 of the Civil Code, temperate damages are recoverable when some pecuniary loss has been suffered, but its amount cannot -- from the nature of the case -- be proved with certainty.

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