PRYCE CORPORATION (FORMERLY PRYCE PROPERTIES CORPORATION), PETITIONER, VS. PHILIPPINE AMUSEMENT AND GAMING CORPORATION, RESPONDENT.

G.R. NO. 157480. May 06, 2005

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In legal contemplation, the termination of a contract is not equivalent to its rescission. When an agreement is terminated, it is deemed valid at inception. Prior to termination, the contract binds the parties, who are thus obliged to observe its provisions. However, when it is rescinded, it is deemed inexistent, and the parties are returned to their status quo ante. Hence, there is mutual restitution of benefits received. The consequences of termination may be anticipated and provided for by the contract. As long as the terms of the contract are not contrary to law, morals, good customs, public order or public policy, they shall be respected by courts. The judiciary is not authorized to make or modify contracts; neither may it rescue parties from disadvantageous stipulations. Courts, however, are empowered to reduce iniquitous or unconscionable liquidated damages, indemnities and penalties agreed upon by the parties.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, assailing the May 22, 2002 Decision[2] of the Court of Appeals (CA) in CA-GR CV No. 51629 and its March 4, 2003 Resolution[3] denying petitioner's Motion for Reconsideration. The assailed Decision disposed thus:

> "WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows: (1) In Civil Case No. 93-68266, the appealed decision[,] is AFFIRMED with MODIFICATION[,] ordering [Respondent] Philippine Amusement and Gaming Corporation to pay [Petitioner] Pryce Properties Corporation the total amount of P687,289.50 as actual damages representing the accrued rentals for the quarter September to November 1993 with interest and penalty at the rate of two percent (2%) per month from date of filing of the complaint until the amount shall have been fully paid, and the sum of P50,000.00 as attorney's fees; (2) In Civil Case No. 93-68337, the appealed decision is REVERSED and SET ASIDE and a new judgment is rendered ordering [Petitioner] Pryce Properties Corporation to reimburse [Respondent] Philippine Amusement and Gaming Corporation the amount of P687,289.50 representing the advanced rental deposits, which amount may be compensated by [Petitioner] Pryce Properties Corporation with its award in Civil Case No. 93-68266 in the equal amount of P687,289.50."[4]

The Facts

According to the CA, the facts are as follows:

> "Sometime in the first half of 1992, representatives from Pryce Properties Corporation (PPC for brevity) made representations with the Philippine Amusement and Gaming Corporation (PAGCOR) on the possibility of setting up a casino in Pryce Plaza Hotel in Cagayan de Oro City. [A] series of negotiations followed. PAGCOR

representatives went to Cagayan de Oro City to determine the pulse of the people whether the presence of a casino would be welcomed by the residents. Some local government officials showed keen interest in the casino operation and expressed the view that possible problems were surmountable. Their negotiations culminated with PPC's counter-letter proposal dated October 14, 1992.

"On November 11, 1992, the parties executed a Contract of Lease x x x involving the ballroom of the Hotel for a period of three (3) years starting December 1, 1992 and until November 30, 1995. On November 13, 1992, they executed an addendum to the contract x x x which included a lease of an additional 1000 square meters of the hotel grounds as living quarters and playground of the casino personnel. PAGCOR advertised the start of their casino operations on December 18, 1992.

"Way back in 1990, the Sangguniang Panlungsod of Cagayan de Oro City passed Resolution No. 2295 x x x dated November 19, 1990 declaring as a matter of policy to prohibit and/or not to allow the establishment of a gambling casino in Cagayan de Oro City. Resolution No. 2673 x x x dated October 19, 1992 (or a month before the contract of lease was executed) was subsequently passed reiterating with vigor and vehemence the policy of the City under Resolution No. 2295, series of 1990, banning casinos in Cagayan de Oro City. On December 7, 1992, the Sangguniang Panlungsod of Cagayan de Oro City enacted Ordinance No. 3353 x x x prohibiting the issuance of business permits and canceling existing business permits to any establishment for using, or allowing to be used, its premises or any portion thereof for the operation of a casino.

"In the afternoon of December 18, 1992 and just hours before the actual formal opening of casino operations, a public rally in front of the hotel was staged by some local officials, residents and religious leaders. Barricades were placed [which] prevented some casino personnel and hotel guests from entering and exiting from the Hotel. PAGCOR was constrained to suspend casino operations because of the rally. An agreement between PPC and PAGCOR, on one hand, and representatives of the rallyists, on the other, eventually ended the rally on the 20th of December, 1992.

"On January 4, 1993, Ordinance No. 3375-93 x x x was passed by the Sangguniang Panlungsod of Cagayan de Oro City, prohibiting the operation of casinos and providing for penalty for violation thereof. On January 7, 1993, PPC filed a Petition for Prohibition with Preliminary Injunction x x x against then public respondent Cagayan de Oro City and/or Mayor Pablo P. Magtajas x x x before the Court of Appeals, docketed as CA G.R. SP No. 29851 praying inter alia, for the declaration of unconstitutionality of Ordinance No. 3353. PAGCOR intervened in said petition and further assailed Ordinance No. 4475-93 as being violative of the non-impairment of contracts and equal protection clauses. On March 31, 1993, the Court of Appeals promulgated its decision x x x, the dispositive portion of which reads:
"IN VIEW OF ALL THE FOREGOING, Ordinance No. 3353 and Ordinance No. 3375-93 are hereby DECLARED UNCONSTITUTIONAL and VOID and the respondents and all other persons acting under their authority and in their behalf are PERMANENTLY ENJOINED from enforcing those ordinances.

"SO ORDERED."

"Aggrieved by the decision, then public respondents Cagayan de Oro City, et al. elevated the case to the Supreme Court in G.R. No. 111097, where, in an En Banc Decision dated July 20, 1994 x x x, the Supreme Court denied the petition and affirmed the decision of the Court of Appeals.

"In the meantime, PAGCOR resumed casino operations on July 15, 1993, against which, however, another public rally was held. Casino operations continued for some time, but were later on indefinitely suspended due to the incessant demonstrations. Per verbal advice x x x from the Office of the President of the Philippines, PAGCOR decided to stop its casino operations in Cagayan de Oro City. PAGCOR stopped its casino operations in the hotel prior to September, 1993. In two Statements of Account dated September 1, 1993 x x x, PPC apprised PAGCOR of its outstanding account for the quarter September 1 to November 30, 1993. PPC sent PAGCOR another Letter dated September 3, 1993 x x x as a follow-up to the parties' earlier conference. PPC sent PAGCOR another Letter

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dated September 15, 1993 x x x stating its Board of Directors' decision to collect the full rentals in case of pre-termination of the lease.

"PAGCOR sent PPC a letter dated September 20, 1993 x x x [stating] that it was not amenable to the payment of the full rentals citing as reasons unforeseen legal and other circumstances which prevented it from complying with its obligations. PAGCOR further stated that it had no other alternative but to pre-terminate the lease agreement due to the relentless and vehement opposition to their casino operations. In a letter dated October 12, 1993 x x x, PAGCOR asked PPC to refund the total of P1,437,582.25 representing the reimbursable rental deposits and expenses for the permanent improvement of the Hotel's parking lot. In a letter dated November 5, 1993 x x x, PAGCOR formally demanded from PPC the payment of its claim for reimbursement.

"On November 15, 1993 x x x, PPC filed a case for sum of money in the Regional Trial Court of Manila docketed as Civil Case No. 93-68266. On November 19, 1993, PAGCOR also filed a case for sum of money in the Regional Trial Court of Manila docketed as Civil Case No. 93-68337.

"In a letter dated November 25, 1993, PPC informed PAGCOR that it was terminating the contract of lease due to PAGCOR's continuing breach of the contract and further stated that it was exercising its rights under the contract of lease pursuant to Article 20 (a) and (c) thereof.

"On February 2, 1994, PPC filed a supplemental complaint x x x in Civil Case No. 93-68266, which the trial court admitted in an Order dated February 11, 1994. In an Order dated April 27, 1994, Civil Case No. 93-68377 was ordered consolidated with Civil Case No. 93-68266. These cases were jointly tried by the court a quo. On August 17, 1995, the court a quo promulgated its decision. Both parties appealed."[5]

In its appeal, PPC faulted the trial court for the following reasons: 1) failure of the court to award actual and moral damages; 2) the 50 percent reduction of the amount PPC was claiming; and 3) the court's ruling that the 2 percent penalty was to be imposed from the date of the promulgation of the Decision, not from the date stipulated in the Contract.

On the other hand, PAGCOR criticized the trial court for the latter's failure to rule that the Contract of Lease had already been terminated as early as September 21, 1993, or at the latest, on October 14, 1993, when PPC received PAGCOR's letter dated October 12, 1993. The gaming corporation added that the trial court erred in 1) failing to consider that PPC was entitled to avail itself of the provisions of Article XX only when PPC was the party terminating the Contract; 2) not finding that there were valid, justifiable and good reasons for terminating the Contract; and 3) dismissing the Complaint of PAGCOR in Civil Case No. 93-68337 for lack of merit, and not finding PPC liable for the reimbursement of PAGCOR'S cash deposits and of the value of improvements.

Ruling of the Court of Appeals

First, on the appeal of PAGCOR, the CA ruled that the PAGCOR'S pretermination of the Contract of Lease was unjustified. The appellate court explained that public demonstrations and rallies could not be considered as fortuitous events that would exempt the gaming corporation from complying with the latter's contractual obligations. Therefore, the Contract continued to be effective until PPC elected to terminate it on November 25, 1993.

Regarding the contentions of PPC, the CA held that under Article 1659 of the Civil Code, PPC had the right to ask for (1) rescission of the Contract and indemnification for damages; or (2) only indemnification plus the continuation of the Contract. These two remedies were alternative, not cumulative, ruled the CA.

As PAGCOR had admitted its failure to pay the rentals for September to November 1993, PPC correctly exercised

the option to terminate the lease agreement. Previously, the Contract remained effective, and PPC could collect the accrued rentals. However, from the time it terminated the Contract on November 25, 1993, PPC could no longer demand payment of the remaining rentals as part of actual damages, the CA added.

Denying the claim for moral damages, the CA pointed out the failure of PPC to show that PAGCOR had acted in gross or evident bad faith in failing to pay the rentals from September to November 1993. Such failure was shown especially by the fact that PPC still had in hand three (3) months advance rental deposits of PAGCOR. The former could have simply applied this deposit to the unpaid rentals, as provided in the Contract. Neither did PPC adequately show that its reputation had been besmirched or the hotel's goodwill eroded by the establishment of the casino and the public protests.

Finally, as to the claimed reimbursement for parking lot improvement, the CA held that PAGCOR had not presented official receipts to prove the latter's alleged expenses. The appellate court, however, upheld the trial court's award to PPC of P50,000 attorney's fees.

Hence this Petition.[6]

Issues

In their Memorandum, petitioner raised the following issues:

> "MAIN ISSUE:
>
> "Did the Honorable Court of Appeals commit x x x grave and reversible error by holding that Pryce was not entitled to future rentals or lease payments for the unexpired period of the Contract of Lease between Pryce and PAGCOR?
>
> "Sub-Issues:
>
> "1. Were the provisions of Sections 20(a) and 20(c) of the Contract of Lease relative to the right of PRYCE to terminate the Contract for cause and to moreover collect rentals from PAGCOR corresponding to the remaining term of the lease valid and binding?
>
> "2. Did not Article 1659 of the Civil Code supersede Sections 20(a) and 20(c) of the Contract, PRYCE having "rescinded" the Contract of Lease?
>
> "3. Do the case of Rios, et al. vs. Jacinto Palma Enterprises, et al. and the other cases cited by PAGCOR support its position that PRYCE was not entitled to future rentals?
>
> "4. Would the collection by PRYCE of future rentals not give rise to unjust enrichment?
>
> "5. Could we not have "harmonized" Article 1659 of the Civil Code and Article 20 of the Contract of Lease?
>
> "6. Is it not a basic rule that the law, i.e. Article 1659, is deemed written in contracts, particularly in the PRYCE-PAGCOR Contract of Lease?"[7]

The Court's Ruling

The Petition is partly meritorious.

Main Issue:Collection of Remaining Rentals

PPC anchors its right to collect future rentals upon the provisions of the Contract. Likewise, it argues that termination, as defined under the Contract, is different from the remedy of rescission prescribed under Article 1659 of the Civil Code. On the other hand, PAGCOR contends, as the CA ruled, that Article 1659 of the Civil

Code governs; hence, PPC is allegedly no longer entitled to future rentals, because it chose to rescind the Contract.

Contract ProvisionsClear and Binding

Article 1159 of the Civil Code provides that "obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith."[8] In deference to the rights of the parties, the law[9] allows them to enter into stipulations, clauses, terms and conditions they may deem convenient; that is, as long as these are not contrary to law, morals, good customs, public order or public policy. Likewise, it is settled that if the terms of the contract clearly express the intention of the contracting parties, the literal meaning of the stipulations would be controlling.[10]

In this case, Article XX of the parties' Contract of Lease provides in part as follows:

> "XX. BREACH OR DEFAULT
>
> "a) The LESSEE agrees that all the terms, conditions and/or covenants herein contained shall be deemed essential conditions of this contract, and in the event of default or breach of any of such terms, conditions and/or covenants, or should the LESSEE become bankrupt, or insolvent, or compounds with his creditors, the LESSOR shall have the right to terminate and cancel this contract by giving them fifteen (15 days) prior notice delivered at the leased premises or posted on the main door thereof. Upon such termination or cancellation, the LESSOR may forthwith lock the premises and exclude the LESSEE therefrom, forcefully or otherwise, without incurring any civil or criminal liability. During the fifteen (15) days notice, the LESSEE may prevent the termination of lease by curing the events or causes of termination or cancellation of the lease.
>
> "b) x x x x x x x x x
>
> "c) Moreover, the LESSEE shall be fully liable to the LESSOR for the rentals corresponding to the remaining term of the lease as well as for any and all damages, actual or consequential resulting from such default and termination of this contract.
>
> "d) x x x x x x x x x." (Italics supplied)

The above provisions leave no doubt that the parties have covenanted 1) to give PPC the right to terminate and cancel the Contract in the event of a default or breach by the lessee; and 2) to make PAGCOR fully liable for rentals for the remaining term of the lease, despite the exercise of such right to terminate. Plainly, the parties have voluntarily bound themselves to require strict compliance with the provisions of the Contract by stipulating that a default or breach, among others, shall give the lessee the termination option, coupled with the lessor's liability for rentals for the remaining term of the lease.

For sure, these stipulations are valid and are not contrary to law, morals, good customs, public order or public policy. Neither is there anything objectionable about the inclusion in the Contract of mandatory provisions concerning the rights and obligations of the parties.[11] Being the primary law between the parties, it governs the adjudication of their rights and obligations. A court has no alternative but to enforce the contractual stipulations in the manner they have been agreed upon and written.[12] It is well to recall that courts, be they trial or appellate, have no power to make or modify contracts.[13] Neither can they save parties from disadvantageous provisions.

Termination or Rescission?

Well-taken is petitioner's insistence that it had the right to ask for "termination plus the full payment of future rentals" under the provisions of the Contract, rather than just rescission under Article 1659 of the Civil Code. This Court is not unmindful of the fact that termination and rescission are terms that have been used loosely and

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interchangeably in the past. But distinctions ought to be made, especially in this controversy, in which the terms mean differently and lead to equally different consequences.

The term "rescission" is found in 1) Article 1191[14] of the Civil Code, the general provision on rescission of reciprocal obligations; 2) Article 1659,[15] which authorizes rescission as an alternative remedy, insofar as the rights and obligations of the lessor and the lessee in contracts of lease are concerned; and 3) Article 1380[16] with regard to the rescission of contracts.

In his Concurring Opinion in Universal Food Corporation v. CA,[17] Justice J. B. L. Reyes differentiated rescission under Article 1191 from that under Article 1381 et seq. as follows:

> "x x x. The rescission on account of breach of stipulations is not predicated on injury to economic interests of the party plaintiff but on the breach of faith by the defendant, that violates the reciprocity between the parties. It is not a subsidiary action, and Article 1191 may be scanned without disclosing anywhere that the action for rescission thereunder is subordinated to anything other than the culpable breach of his obligations to the defendant. This rescission is a principal action retaliatory in character, it being unjust that a party be held bound to fulfill his promises when the other violates his. As expressed in the old Latin aphorism: "Non servanti fidem, non est fides servanda." Hence, the reparation of damages for the breach is purely secondary.
>
> "On the contrary, in rescission by reason of lesion or economic prejudice, the cause of action is subordinated to the existence of that prejudice, because it is the raison d'etre as well as the measure of the right to rescind. x x x."[18]

Relevantly, it has been pointed out that resolution was originally used in Article 1124 of the old Civil Code, and that the term became the basis for rescission under Article 1191 (and, conformably, also Article 1659).[19]

Now, as to the distinction between termination (or cancellation) and rescission (more properly, resolution), Huibonhoa v. CA[20] held that, where the action prayed for the payment of rental arrearages, the aggrieved party actually sought the partial enforcement of a lease contract. Thus, the remedy was not rescission, but termination or cancellation, of the contract. The Court explained:

> "x x x. By the allegations of the complaint, the Gojoccos' aim was to cancel or terminate the contract because they sought its partial enforcement in praying for rental arrearages. There is a distinction in law between cancellation of a contract and its rescission. To rescind is to declare a contract void in its inception and to put an end to it as though it never were. It is not merely to terminate it and release parties from further obligations to each other but to abrogate it from the beginning and restore the parties to relative positions which they would have occupied had no contract ever been made.
>
> "x x x. The termination or cancellation of a contract would necessarily entail enforcement of its terms prior to the declaration of its cancellation in the same way that before a lessee is ejected under a lease contract, he has to fulfill his obligations thereunder that had accrued prior to his ejectment. However, termination of a contract need not undergo judicial intervention. x x x."[21] (Italics supplied)

Rescission has likewise been defined as the "unmaking of a contract, or its undoing from the beginning, and not merely its termination." Rescission may be effected by both parties by mutual agreement; or unilaterally by one of them declaring a rescission of contract without the consent of the other, if a legally sufficient ground exists or if a decree of rescission is applied for before the courts.[22] On the other hand, termination refers to an "end in time or existence; a close, cessation or conclusion." With respect to a lease or contract, it means an ending, usually before the end of the anticipated term of such lease or contract, that may be effected by mutual agreement or by one party exercising one of its remedies as a consequence of the default of the other.[23]

Thus, mutual restitution is required in a rescission (or resolution), in order to bring back the parties to their

original situation prior to the inception of the contract.[24] Applying this principle to this case, it means that PPC would re-acquire possession of the leased premises, and PAGCOR would get back the rentals it paid the former for the use of the hotel space.

In contrast, the parties in a case of termination are not restored to their original situation; neither is the contract treated as if it never existed. Prior to its termination, the parties are obliged to comply with their contractual obligations. Only after the contract has been cancelled will they be released from their obligations.

In this case, the actions and pleadings of petitioner show that it never intended to rescind the Lease Contract from the beginning. This fact was evident when it first sought to collect the accrued rentals from September to November 1993 because, as previously stated, it actually demanded the enforcement of the Lease Contract prior to termination. Any intent to rescind was not shown, even when it abrogated the Contract on November 25, 1993, because such abrogation was not the rescission provided for under Article 1659.

Future Rentals

As to the remaining sub-issue of future rentals, Rios v. Jacinto[25] is inapplicable, because the remedy resorted to by the lessors in that case was rescission, not termination. The rights and obligations of the parties in Rios were governed by Article 1659 of the Civil Code; hence, the Court held that the damages to which the lessor was entitled could not have extended to the lessee's liability for future rentals.

Upon the other hand, future rentals cannot be claimed as compensation for the use or enjoyment of another's property after the termination of a contract. We stress that by abrogating the Contract in the present case, PPC released PAGCOR from the latter's future obligations, which included the payment of rentals. To grant that right to the former is to unjustly enrich it at the latter's expense.

However, it appears that Section XX (c) was intended to be a penalty clause. That fact is manifest from a reading of the mandatory provision under subparagraph (a) in conjunction with subparagraph (c) of the Contract. A penal clause is "an accessory obligation which the parties attach to a principal obligation for the purpose of insuring the performance thereof by imposing on the debtor a special prestation (generally consisting in the payment of a sum of money) in case the obligation is not fulfilled or is irregularly or inadequately fulfilled."[26]

Quite common in lease contracts, this clause functions to strengthen the coercive force of the obligation and to provide, in effect, for what could be the liquidated damages resulting from a breach.[27] There is nothing immoral or illegal in such indemnity/penalty clause, absent any showing that it was forced upon or fraudulently foisted on the obligor.[28]

In obligations with a penal clause, the general rule is that the penalty serves as a substitute for the indemnity for damages and the payment of interests in case of noncompliance; that is, if there is no stipulation to the contrary,[29] in which case proof of actual damages is not necessary for the penalty to be demanded.[30] There are exceptions to the aforementioned rule, however, as enumerated in paragraph 1 of Article 1226 of the Civil Code: 1) when there is a stipulation to the contrary, 2) when the obligor is sued for refusal to pay the agreed penalty, and 3) when the obligor is guilty of fraud. In these cases, the purpose of the penalty is obviously to punish the obligor for the breach. Hence, the obligee can recover from the former not only the penalty, but also other damages resulting from the nonfulfillment of the principal obligation. [31]

In the present case, the first exception applies because Article XX (c) provides that, aside from the payment of the rentals corresponding to the remaining term of the lease, the lessee shall also be liable "for any and all damages, actual or consequential, resulting from such default and termination of this contract." Having entered into the Contract voluntarily and with full knowledge of its provisions, PAGCOR must be held bound to its obligations. It

cannot evade further liability for liquidated damages.

Reduction of Penalty

In certain cases, a stipulated penalty may nevertheless be equitably reduced by the courts.[32] This power is explicitly sanctioned by Articles 1229 and 2227 of the Civil Code, which we quote:

> "Art. 1229. 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."
>
> "Art. 2227. Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable."

The question of whether a penalty is reasonable or iniquitous is addressed to the sound discretion of the courts. To be considered in fixing the amount of penalty are factors such as -- but not limited to -- the type, extent and purpose of the penalty; the nature of the obligation; the mode of the breach and its consequences; the supervening realities; the standing and relationship of the parties; and the like.[33]

In this case, PAGCOR's breach was occasioned by events that, although not fortuitous in law, were in fact real and pressing. From the CA's factual findings, which are not contested by either party, we find that PAGCOR conducted a series of negotiations and consultations before entering into the Contract. It did so not only with the PPC, but also with local government officials, who assured it that the problems were surmountable. Likewise, PAGCOR took pains to contest the ordinances[34] before the courts, which consequently declared them unconstitutional. On top of these developments, the gaming corporation was advised by the Office of the President to stop the games in Cagayan de Oro City, prompting the former to cease operations prior to September 1993.

Also worth mentioning is the CA's finding that PAGCOR's casino operations had to be suspended for days on end since their start in December 1992; and indefinitely from July 15, 1993, upon the advice of the Office of President, until the formal cessation of operations in September 1993. Needless to say, these interruptions and stoppages meant that PAGCOR suffered a tremendous loss of expected revenues, not to mention the fact that it had fully operated under the Contract only for a limited time.

While petitioner's right to a stipulated penalty is affirmed, we consider the claim for future rentals to the tune of P7,037,835.40 to be highly iniquitous. The amount should be equitably reduced. Under the circumstances, the advanced rental deposits in the sum of P687,289.50 should be sufficient penalty for respondent's breach.

WHEREFORE, the Petition is GRANTED in part. The assailed Decision and Resolution are hereby MODIFIED to include the payment of penalty. Accordingly, respondent is ordered to pay petitioner the additional amount of P687,289.50 as penalty, which may be set off or applied against the former's advanced rental deposits. Meanwhile, the CA's award to petitioner of actual damages representing the accrued rentals for September to November 1993 -- with interest and penalty at the rate of two percent (2%) per month, from the date of filing of the Complaint until the amount shall have been fully paid -- as well as the P50,000 award for attorney's fees, is AFFIRMED. No costs.

SO ORDERED.

Sandoval-Gutierrez, Corona, Carpio-Morales, and Garcia, JJ., concur.

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[1] Rollo, pp. 39-85.

[2] Id., pp. 88-106. Sixth Division. Penned by Justice Sergio L. Pestaño and concurred in by Justices Delilah Vidallon-Magtolis (Division chair) and Candido V. Rivera (member).

[3] Id., pp. 108-109.

[4] CA Decision, pp. 18-19; rollo, pp. 105-106.

[5] Id., pp. 2-6 & 89-93. Citations omitted.

[6] The Petition was deemed submitted for decision on March 8, 2004, upon the Court's receipt of petitioner's Memorandum signed by Attys. Ramon R. Torralba Jr. and Geoffrey G. Cagakit. Respondent's Memorandum, signed by Assistant Government Corporate Counsels Efren B. Gonzales and Herman R. Cimafranca and Government Corporate Attorney Achilles A. A. C. Bulauitan, was received by the Court on February 20, 2004.

[7] Petitioner's Memorandum, pp. 11-12; rollo, pp. 188-189. Original in upper case.

[8] See Premiere Development Bank v. CA, 427 SCRA 686, 696, April 14, 2004; National Housing Authority v. Grace Baptist Church, 424 SCRA 147, 151-152, March 1, 2004; Philippine National Construction Corp. v. CA, 338 Phil. 691, 699, May 5, 1997.

[9] Article 1306 of the Civil Code.

[10] Article 1370 of the Civil Code. See also Henson v. Intermediate Appellate Court, 148 SCRA 11, 16, February 19, 1987; Gonzales v. Court of Appeals, 209 Phil. 515, 521, September 21, 1983; Matienzo v. Servidad, 194 Phil. 263, 269, September 10, 1981.

[11] Heirs of the Late Justice Jose B. L. Reyes v. CA, 392 Phil. 827, 842, August 16, 2000; People's Industrial and Commercial Corp. v. CA, 346 Phil. 189, 202, October 24, 1997; Manila Bay Club Corp. v. CA, 315 Phil. 805, 826, July 11, 1995.

[12] Valarao v. CA, 363 Phil. 495, 506, March 3, 1999; Luzon Brokerage Co., Inc. v. Maritime Building Co., Inc., 150-B Phil. 264, 275, August 18, 1972; Manila Racing Club v. Manila Jockey Club, 69 Phil. 55, 57, October 28, 1939.

[13] Top-Weld Manufacturing, Inc. v. ECED, S.A., 138 SCRA 118, 133, August 9, 1985.

[14] Art. 1191 of the Civil Code states:

> "Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.
>
> "The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.
>
> "The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period."

[15] Article 1659 of the Civil Code provides as follows:

> "Art. 1659. If the lessor or the lessee should not comply with the obligations set forth in articles 1654 and 1657, the aggrieved party may ask for the rescission of the contract and indemnification for damages, or only the latter, allowing the contract to remain in force."

[16] Art. 1380 of the Civil Code reads thus:

"Art. 1380. Contracts validly agreed upon may be rescinded in the cases established by law."

[17] 144 Phil. 1, May 28, 1970.

[18] Id., pp. 21-22, per Castro, J.

[19] Rivera v. Del Rosario, 419 SCRA 626, 637, January 15, 2004; Ong v. CA, 369 Phil. 243, 252, July 6, 1999.

[20] 378 Phil. 386, December 14, 1999.

[21] Id., pp. 422-423, per Purisima, J. See also Spouses Velarde v. CA, 413 Phil. 360, 375, July 11, 2001; Ocampo v. CA, 233 SCRA 551, 561, June 30, 1994.

[22] Black's Law Dictionary, 6[th] ed., p. 1306.

[23] Id., p. 1471.

[24] Spouses Velarde v. CA, supra; Asuncion v. Evangelista, 375 Phil. 328, 356, October 13, 1999.

[25] 49 Phil. 7, March 23, 1926.

[26] Ligutan v. CA, 427 Phil. 42, 52, February 12, 2002, per Vitug, J.; Social Security System v. Moonwalk Development & Housing Corporation, 221 SCRA 119, 124 & 127, April 7, 1993; Country Bankers Insurance Corporation v. CA, 201 SCRA 458, 465, September 9, 1991.

[27] Ibid.

[28] Azcuna Jr. v. CA; 325 Phil. 500, 504, March 20, 1996.

[29] Article 1226, par. 1 of the Civil Code

[30] Article 1228 of the Civil Code.

[31] Ligutan v. CA, supra, p. 53.

[32] Lo v. CA, 411 SCRA 523, September 23, 2003; Asia Trust Development Bank v. Concepts Trading Corporation, 404 SCRA 449, June 20, 2003; Ruiz v. CA, 401 SCRA 410, April 22, 2003; First Metro Investment Corp. v. Este Del Sol Mountain Reserve, Inc., 420 SCRA 902, November 15, 2001; Segovia Development Corp. v. J.L. Dumatol Realty and Development Corp., 416 Phil. 528, August 30, 2001; State Investment House, Inc. v. CA, 413 Phil. 518, July 12, 2001.

[33] Ligutan v. CA, supra; Rizal Commercial Banking Corp. v. CA, 352 Phil. 101, 126, April 20, 1998.

[34] Ordinance Nos. 3353 and 3375-93.

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