FIL-ESTATE PROPERTIES, INC., PETITIONER, VS. SPOUSES GONZALO AND CONSUELO GO, RESPONDENTS.

G.R. No. 165164. August 17, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review on certiorari are the Decision[1] dated June 9, 2004 of the Court of Appeals in CA-G.R. SP No. 79624, and its Resolution[2] dated August 3, 2004, denying the motion for reconsideration.

The basic facts in this case are undisputed.

On December 29, 1995, petitioner Fil-Estate Properties, Inc. (Fil-Estate) entered into a contract to sell a condominium unit to respondent spouses Gonzalo and Consuelo Go at "Eight Sto. Domingo Place," a condominium project of petitioner located on Sto. Domingo Avenue, Quezon City. The spouses paid a total of P3,439,000.07 of the full contract price set at P3,620,000.00.

Because petitioner failed to develop the condominium project, on August 4, 1999, the spouses demanded the refund of the amount they paid, plus interest. When petitioner did not refund the spouses, the latter filed a complaint against petitioner for reimbursement of P3,620,000 representing the lump sum price of the condominium unit, plus interest, P100,000 attorney's fees, and expenses of litigation before the Housing and Land Use Regulatory Board (HLURB).

In answer, petitioner claimed that respondents had no cause of action since the delay in the construction of the condominium was caused by the financial crisis that hit the Asian region, a fortuitous event over which petitioner had no control.

On July 18, 2000, the HLURB Regional Director approved the decision of the Housing and Land Use Arbiter in favor of the spouses Go. The HLURB ratiocinated that the Asian financial crisis that resulted in the depreciation of the peso is not a fortuitous event as any fluctuation in the value of the peso is a daily occurrence which is foreseeable and its deleterious effects avoided by economic measures. The HLURB went on to say that when petitioner discontinued the development of its condominium project, it failed to fulfill its contractual obligations to the spouses. And following Article 1475[3] of the Civil Code, upon perfection of the contract, the parties, here the spouses Go, may demand performance. And under Article 1191[4] of the same code, should one of the parties, in this instance Fil-Estate, fail to comply with the obligation, the aggrieved party may choose between fulfillment or rescission of the obligation, with damages in either case. Inasmuch as Fil-Estate could no longer fulfill its obligation, the spouses Go may ask for rescission of the contract with damages. The dispositive portion of the decision reads:

> WHEREFORE, the foregoing considered, judgment is hereby rendered as follows:
>
> - Ordering the respondent, Fil-Estate Properties, Inc., to refund to the complainants, P3,439,000.07 (the amount proved) plus 12% interest thereon reckoned from 09 August 1999 (the date the respondent received the

demand letter) until the same is fully paid.

- Ordering the respondent to pay to the complainants P25,000.00 attorney's fees as and by way of damages.

All other claims and counterclaims are dismissed.

IT IS SO ORDERED.[5]

The Board of Commissioners of the HLURB denied petitioner's petition for review and consequent motion for reconsideration.[6] The Office of the President dismissed petitioner's appeal and denied its motion for reconsideration.[7]

On appeal, asserting that both the HLURB and the Office of the President committed reversible errors, Fil-Estate asked the Court of Appeals to set aside the orders it is appealing.

The Court of Appeals affirmed the actions taken by the HLURB and the Office of the President and declared that the Asian financial crisis could not be considered a fortuitous event and that respondents' right is provided for in Section 23[8] of Presidential Decree (P.D.) No. 957, otherwise known as "The Subdivision and Condominium Buyers' Protective Decree." The appellate court also noted that there was yet no crisis in 1995 and 1996 when the project should have been started, and petitioner cannot blame the 1997 crisis for failure of the project, nor for even not starting it, because the project should have been completed by 1997.

The appellate court denied petitioner's motion for reconsideration.

Hence, this petition raising two issues for our resolution as follows:

I.

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE ASIAN FINANCIAL CRISIS IS NOT A FORTUITOUS EVENT THAT WOULD EXCUSE THE DELIVERY BY PETITIONER OF THE SUBJECT CONDOMINIUM UNIT TO RESPONDENTS.

II.

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING PETITIONER LIABLE FOR THE PAYMENT OF ATTORNEY'S FEES.[9]

On the first issue, did the Court of Appeals err in ruling that the Asian financial crisis was not a fortuitous event?

Petitioner, citing Article 1174[10] of the Civil Code, argues that the Asian financial crisis was a fortuitous event being unforeseen or inevitable. Petitioner likewise cites Servando v. Philippine Steam Navigation Co.,[11] to bolster its case. Petitioner explains that the extreme economic exigency and extraordinary currency fluctuations could not have been reasonably foreseen and were beyond the contemplation of both parties when they entered the contract. Petitioner further asserts that the resultant economic collapse of the real estate industry was unforeseen by the whole Asia and if it was indeed foreseeable, then all those engaged in the real estate business should have foreseen the impending fiasco. Petitioner adds that it had not committed any fraud; that it had all the required government permits; and that it had not abandoned the project but only suspended the work. It also admits its obligation to complete the project. It says that it had in fact asked the HLURB for extension to complete it.[12]

In their Comment, respondents submit that the instant petition be rejected outright for the reason that petitioner has not raised any question of law in the instant petition. The questions of whether or not the Asian financial crisis is a fortuitous event, and whether or not attorney's fees should be granted, are questions of facts which the Court

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of Appeals recognized as such.

Respondent spouses reiterate that contrary to what petitioner avers, the delay in the construction of the building was not attributable to the Asian financial crisis which happened in 1997[13] because petitioner did not even start the project in 1995 when it should have done, so that it could have finished it in 1997, as stipulated in the contract.

Preliminarily, respondents bring to the attention of this Court the strange discrepancy in the dates of notarization of the Certification of Non-Forum Shopping and the Affidavit of Service both notarized on September 24, 2004, while the Secretary's Certification was notarized a day earlier on September 23, 2004. However, we shall not delve into technicalities, but we shall proceed with the resolution of the issues raised on the merits.

Indeed, the question of whether or not an event is fortuitous is a question of fact. As a general rule, questions of fact may not be raised in a petition for review for as long as there is no variance between the findings of the lower court and the appellate court, as in this case where the HLURB, the Office of the President, and the Court of Appeals were agreed on the fact.

Worthy of note, in a previous case, Asian Construction and Development Corporation v. Philippine Commercial International Bank,[14] the Court had said that the 1997 financial crisis that ensued in Asia did not constitute a valid justification to renege on obligations. We emphatically stressed the same view in Mondragon Leisure and Resorts Corporation v. Court of Appeals,[15] that the Asian financial crisis in 1997 is not among the fortuitous events contemplated under Article 1174 of the Civil Code.

Also, we cannot generalize that the Asian financial crisis in 1997 was unforeseeable and beyond the control of a business corporation. It is unfortunate that petitioner apparently met with considerable difficulty e.g. increase cost of materials and labor, even before the scheduled commencement of its real estate project as early as 1995. However, a real estate enterprise engaged in the pre-selling of condominium units is concededly a master in projections on commodities and currency movements and business risks. The fluctuating movement of the Philippine peso in the foreign exchange market is an everyday occurrence, and fluctuations in currency exchange rates happen everyday, thus, not an instance of caso fortuito.

Are respondents entitled to reimbursement of the amount paid, plus interest and attorney's fees?

Yes. Section 23 of P.D. No. 957 is clear on this point.

It will be noted that respondents sent a demand letter dated August 4, 1999 to Fil-Estate asking for the return of "the total amount paid including amortization interests" and "legal interest due thereon."[16] The latter did not respond favorably, and so the spouses filed a complaint demanding the reimbursement of P3,620,000 representing the lump sum price of the condominium unit with interest at the legal rate, and P100,000 attorney's fees. But the respondents actually sought the refund of P3,620,000.00, the lump sum cost of the condominium, more than their actual payment of P3,439,000.07. We are thus constrained to award only P3,439,000.07, representing the sum of their actual payments plus amortization interests and interest at legal rate which is 6% per annum from the date of demand on August 4, 1999. We are not unaware that the appellate court pegged the interest rate at 12% on the basis of Resolution No. R-421, Series of 1988 of the HLURB. But, conformably with our ruling in Eastern Shipping Lines, Inc. v. Court of Appeals,[17] the award of 12% interest on the amount of refund must be reduced to 6%.

Moreover, we are constrained to modify the Court of Appeals' grant of attorney's fees from P25,000 to P100,000 as just and equitable since respondents were compelled to secure the services of counsel over eight years to protect their interest due to petitioner's delay in the performance of their clear obligation.

WHEREFORE, the petition is DENIED for lack of merit. Petitioner is hereby ordered (1) to reimburse respondents P3,439,000.07 at 6% interest starting August 4, 1999 until full payment, and (2) to pay respondents P100,000.00 attorney's fees. Costs against petitioner.

SO ORDERED.

Carpio, Carpio-Morales, Tinga, and Velasco, Jr., JJ., concur.

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[1] Rollo, pp. 26-31. Penned by Associate Justice Renato C. Dacudao, with Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao concurring.

[2] Id. at 33.

[3] Art. 1475. The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.

From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts.

[4] 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.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.

[5] Rollo, p. 40.

[6] Id. at 59-63.

[7] Id. at 92 and 97.

[8] SEC. 23. Non-Forfeiture of Payments. - No installment payment made by a buyer in a subdivision or condominium project for the lot or unit he contracted to buy shall be forfeited in favor of the owner or developer when the buyer, after due notice to the owner or developer, desists from further payment due to the failure of the owner or developer to develop the subdivision or condominium project according to the approved plans and within the time limit for complying with the same. Such buyer may, at his option, be reimbursed the total amount paid including amortization interest[s] but excluding delinquency interests, with interest thereon at the legal rate.

[9] Rollo, p. 16.

[10] Art. 1174. Except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which though foreseen, were inevitable.

[11] Nos. L-36481-2, October 23, 1982, 117 SCRA 832.

[12] Rollo, pp. 16-20.

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[13] Id. at 30.

[14] G.R. No. 153827, April 25, 2006, 488 SCRA 192, 206.

[15] G.R. No. 154188, June 15, 2005, 460 SCRA 279, 289.

[16] Rollo, p. 26.

[17] G.R. No. 97412, July 12, 1994, 234 SCRA 78, 96-97. The rule partly reads:

- When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

- When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest ... shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

See also Schmitz Transport & Brokerage Corporation v. Transport Venture, Inc., G.R. No. 150255, April 22, 2005, 456 SCRA 557, 575; V.V. Soliven Realty Corp. v. Ong, G.R. No. 147869, January 26, 2005, 449 SCRA 339, 350; Heirs of Ignacia Aguilar-Reyes v. Mijares, G.R. No. 143826, August 28, 2003, 410 SCRA 97, 110-111.

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