

SACOBIA HILLS DEVELOPMENT CORPORATION AND JAIME C. KOA, PETITIONERS, VS. ALLAN U. TY, RESPONDENT.

G.R. NO. 165889. September 20, 2005

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for review on certiorari[1] assails the August 19, 2004 decision of the Court of Appeals in CA-G.R. CV No. 76987,[2] which reversed and set aside the November 29, 2002 decision[3] of the Regional Trial Court of Manila, Branch 46, and its October 28, 2004 resolution[4] denying reconsideration thereof.

The antecedent facts show that petitioner Sacobia Hills Development Corporation (Sacobia) is the developer of True North Golf and Country Club (True North) located inside the Clark Special Economic Zone in Pampanga which boasts of amenities that include a golf course, clubhouse, sports complex and several vacation villas.

On February 12, 1997, respondent Allan U. Ty wrote to Sacobia a letter expressing his intention to acquire one (1) Class A share of True North and accordingly paid the reservation fee of P180,000.00 as evidenced by PCI Bank Check No. 0038053.[5]

Through letters dated May 28, 1997 and July 4, 1997, Sacobia assured its shareholders that the development of True North was proceeding on schedule; that the golf course would be playable by October 1999; that the Environmental Clearance Certificate (ECC) by the Department of Environment and Natural Resources (DENR) as well as the Permit to Sell from the Securities and Exchange Commission (SEC) should have been released by October 1997; and that their registration deposits remained intact in an escrow account.[6]

On September 1, 1997, Sacobia approved the purchase application and membership of respondent for P600,000.00, subject to certain terms and conditions. The notice of approval provided, *inter alia*:[7]

Terms and Conditions

- Approval of an application to purchase golf/country club shares is subjected to the full payment of the total purchase price. Should the buyer opt for the deferred payment scheme, approval is subject to our receipt of a down payment of at least 30% and the balance payable in installments over a maximum of eleven (11) months from the date of application, and covered by postdated cheques.
- Your reserved share shall be considered withdrawn and may be deemed cancelled should you fail to settle your obligation within fifteen (15) days from due date, or failure to cover the value of the postdated cheques upon their maturity, or your failure to issue the required postdated cheques. In which case, we shall reserve the right to offer the said shares to other interested parties. This also means forfeiture of 50% of the total amount you have already paid.
- We will undertake to execute the corresponding sales documents/ Deed of Absolute Sale covering the reserved shares upon full payment of the total purchase price. The Certificate of Membership shall be issued thereafter.

...

However, on January 12, 1998, respondent notified Sacobia that he is rescinding the contract and sought refund of the payments already made due to the latter's failure to complete the project on time as represented.

In an effort to assure the respondent that the project would soon be operational, Sacobia wrote him a letter dated March 10, 1998, stating that the DENR had issued the required ECC only on March 5, 1998, and that the golf course would be ready for use by end of 1998.[8]

On April 3, 1998, Sacobia again wrote the respondent advising him that the 18-hole golf course would be fully operational by summer of 1999. Sacobia also sought to collect from respondent the latter's outstanding balance of P190,909.08 which was covered by five (5) post dated checks.

Notwithstanding, respondent notified Sacobia on April 17, 1998 that he had stopped payment on the five (5) post dated checks and reiterated his demand for the refund of his payments which amounted to P409,090.92.

On June 16, 1999, respondent sent Sacobia a letter formally rescinding the contract and demanding for the refund of the P409,090.92 thus far paid by him.

By way of reply, Sacobia informed respondent that it had a no-refund policy, and that it had endorsed respondent to Century Properties, Inc. for assistance on the resale of his share to third persons.

Thus, on July 21, 1999, respondent filed a complaint for rescission and damages before the SEC but the case was eventually transferred to the Regional Trial Court of Manila, Branch 46, pursuant to Administrative Circular AM No. 00-11-03.[9]

On April 13, 2002, the trial court personnel conducted an on-site ocular inspection and in their report, they made the following observations:

... We went up and down the hills on board the golf cart, and have seen the entire golf course. The 9 holes area are already operational and playable, we have seen the tee bank (mount soil) color coded flags, blue for regular golfers, white for senior golfers and red for ladies golfers. We have seen all their playing areas which all appeared in order except the main clubhouse which is undergoing finishing touches. Likewise the road leading to the clubhouse area is undergoing pavement works and concreting.

We learned from our tour guide Mr. Gerry Zoleta, Site Supervisor, that the timetable in finishing all remaining things (eg. Clubhouse and the road leading to it) to be done, are influenced or rather, hampered by the prevailing weather condition. Such that when it rain, (which often happens in the area during afternoon or early morning) they cannot really push thru with the construction due to the soil condition (easily eroded) and sloping terrain of the place. Except, the clubhouse, all seem prim and proper for golf playing. In fact, according to Mr. Zoleta, the site has been operational since January 2002. The first tournament was conducted on October 2000 and there were three tournaments already took place in the area.

...

In summary, we found nothing amiss for one not to be able to play and enjoy golf to the fullest, except as earlier said the clubhouse.[10]

On November 29, 2002, the trial court rendered judgment in favor of petitioners, the decretal portion of which reads:

WHEREFORE, the complaint is hereby dismissed without pronouncement as to costs.

If the plaintiff desires to continue with the acquisition of the share, he may do so by paying the balance of the

acquisition price of One Hundred Ninety Thousand Ninety Pesos and Ten Centavos (P190,090.10) without interest within thirty (30) days from the finality of this decision, otherwise, he forfeits his payments.

IT IS SO ORDERED.[11]

The trial court found that the contract between the parties did not warrant that the golf course and clubhouse would be completed within a certain period of time to entitle respondent to rescind. It also noted that the completion of the project was subject to the issuance of an ECC and the approval by the SEC of the registration of non-proprietary golf club shares, which is beyond Sacobia's control.

The appellate court, in its decision dated August 19, 2004, disposed of the appeal as follows:

WHEREFORE, the appealed November 29, 2002 decision of the Regional Trial Court of Manila, Branch 46, is hereby REVERSED and SET ASIDE, and a new one is hereby entered with this Court hereby CONFIRMING the RESCISSION of the contract of purchase of one (1) Class A proprietary share of True North Golf and Country Club as elected choice by plaintiff-appellant Ty, the aggrieved party, and hereby DIRECTING defendant-appellee SACOBIA to:

(1)

Refund to the plaintiff-appellant Allan U. Ty the amount of P409,090.20 and all payments made by him thus far on the TRUE NORTH share, with legal interest of 12% per annum from July 21, 1999, the date of the filing of the complaint with the SEC, until fully paid;

(2)

Return the five post-dated checks of the plaintiff-appellant amounting to P190,908.08;

(3)

Pay costs of the suit.

SO ORDERED.[12]

The Court of Appeals agreed with the trial court that Sacobia was in delay in the performance of its obligation to respondent. As such, Ty could properly rescind the contract, or demand specific performance with damages, or demand for damages alone. It held though that the failure of the DENR to issue the ECC on time is a valid ground to reduce the damages claimed by Ty. It also ruled that Sacobia is estopped from asserting that there was no completion date for the project as no less than its chairman announced the projected completion dates.

Petitioners' motion for reconsideration was denied, hence the instant petition for review on certiorari which raises the issue of whether the contract entered into by the parties may be validly rescinded under Article 1191 of the Civil Code.

Sacobia contends that it was not in breach of the contract as the Intent to Purchase, the Contract of Purchase, and the Notice of Approval to Purchase Shares of True North, do not contain any specific date as to when the golf course and country club would be completed. It argues that respondent should have known the risks involved in this kind of project; the construction being contingent on the issuance of the ECC by the DENR and the payment of the buyers of their share.

On the other hand, respondent claims that Sacobia's arguments raise new matters which would warrant the reversal of the decision rendered by the Court of Appeals. He insists that Sacobia failed to complete the project on time which entitles him to rescind the contract in accordance with Article 1191 of the Civil Code. He further argues that the delay in the completion of the project is clearly established by the fact that there have been no

substantial work done on the site, particularly on the clubhouse, despite the lapse of nearly 4-years from the issuance of the ECC on March 5, 1998.

The petition is meritorious.

In resolving the present controversy, the lower courts merely assumed that the delay in the completion of the golf course was the decisive factor in determining the propriety or impropriety of rescinding the contract. Yet, confusion could have been avoided had there been a more thorough scrutiny of the nature of the contract entered into by the contending parties.

In the notice of approval, which embodies the terms and conditions of the agreement, Sacobia signified its intent to retain the ownership of the property until such time that the respondent has fully paid the purchase price. This condition precedent is characteristic of a contract to sell. The intention of the contracting parties is inferable from the following provisions, to wit:

TERMS AND CONDITIONS

- Approval of an application to purchase golf/country club shares is subjected to the full payment of the total purchase price. Should the buyer opt for the deferred payment scheme, approval is subject to our receipt of a down payment of at least 30% and the balance payable in installments over a maximum of eleven (11) months from the date of application, and covered by postdated cheques.
- Your reserved share shall be considered withdrawn and may be deemed cancelled should you fail to settle your obligation within fifteen (15) days from due date, or failure to cover the value of the postdated cheques upon their maturity, or your failure to issue the required postdated cheques. In which case, we shall reserve the right to offer the said shares to other interested parties. This also means forfeiture of 50% of the total amount you have already paid.
- We shall undertake to execute the corresponding sales documents/Deed of Absolute Sale covering the reserved shares upon full payment of the total purchase price. The Certificate of Membership shall be issued thereafter.

Clearly, the approval of the application hinged on the full payment of the total purchase price. In fact, Sacobia explicitly reserved the right to retain title over the share pending full satisfaction of the purchase price.

The notice of approval likewise stipulated that the reservation shall be deemed withdrawn or cancelled in case respondent fails to settle his obligation within 15 days from the due date or cover the value of the checks upon their maturity. Thus, Sacobia reserved the right to unilaterally rescind the contract in the event the respondent fails to comply with his obligation of remitting the full purchase price within the deadline. In fact, Sacobia, after having cancelled the agreement, can offer the share to other interested parties.

In addition, the execution of the deed of absolute sale and other pertinent documents shall be made only upon full payment of the purchase price. The terms of the agreement between Sacobia and Ty can be deduced, not on a formal document like a deed of sale, but from a series of correspondence and acts signifying the parties' intention to enter into a contract. The absence of a formal deed of conveyance is a strong indication that Sacobia did not intend to transfer title until respondent shall have completely complied with his correlative obligation of paying the contract price.

Since the agreement between Sacobia and Ty is a contract to sell, the full payment of the purchase price partakes of a suspensive condition, the non-fulfillment of which prevents the obligation to sell from arising and ownership is retained by the seller without further remedies by the buyer. In *Cheng v. Genato*,^[13] we explained the nature of a contract to sell and its legal implications in this wise:

In a Contract to Sell, the payment of the purchase price is a positive suspensive condition, the failure of which is not a breach, casual or serious, but a situation that prevents the obligation of the vendor to convey title from acquiring an obligatory force. It is one where the happening of the event gives rise to an obligation. Thus, for its non-fulfillment there will be no contract to speak of, the obligor having failed to perform the suspensive condition which enforces a juridical relation. In fact with this circumstance, there can be no rescission of an obligation that is still non-existent, the suspensive condition not having occurred as yet. Emphasis should be made that the breach contemplated in Article 1191 of the New Civil Code is the obligor's failure to comply with an obligation already extant, not a failure of a condition to render binding that obligation.

In a contract to sell, the prospective seller does not consent to transfer ownership of the property to the buyer until the happening of an event, which for present purposes, is the full payment of the purchase price. What the seller agrees or obliges himself to do is to fulfill his promise to sell the subject property when the entire amount of the purchase price is delivered to him. Upon the fulfillment of the suspensive condition, ownership will not automatically transfer to the buyer although the property may have been previously delivered to him. The prospective seller still has to convey title to the prospective buyer by entering into a contract of absolute sale.[14]

According to True North Payment Schedule,[15] respondent's checks dated from October 12, 1997 until January 12, 1998 were marked as stale. His failure to cover the value of the checks and by issuing a stop payment order effectively abated the perfection of the contract. For it is understood that when a sale is made subject to a suspensive condition, perfection is had only from the moment the condition is fulfilled.[16]

As shown, Ty did not pay the full purchase price which is his obligation under the contract to sell, therefore, it cannot be said that Sacobia breached its obligation. No obligations arose on its part because respondent's non-fulfillment of the suspensive condition rendered the contract to sell ineffective and unperfected. Indeed, there can be no rescission under Article 1191[17] of the Civil Code because until the happening of the condition, i.e. full payment of the contract price, Sacobia's obligation to deliver the title and object of the sale is not yet extant. A non-existent obligation cannot be subject of rescission. Article 1191 speaks of obligations already existing, which may be rescinded in case one of the obligors fails to comply with what is incumbent upon him.

As earlier discussed, the payment by Ty of the reservation fee as well as the issuance of the postdated checks is subject to the condition that Sacobia was reserving title until full payment, which is the essence of a contract to sell. The perfection of this kind of contract would give rise to two distinct obligations, namely, 1) the buyer's obligation to fulfill the suspensive condition, i.e. the full payment of the contract price as in the instant case, and, 2) the correlative obligation of the seller to convey ownership upon compliance of the suspensive condition.

In the present case, respondent's failure to fulfill this suspensive condition prevented the perfection of the contract to sell. With an ineffective contract, Ty had not acquired the status of a shareholder but remained, at most, a prospective investor. In the absence of a juridical tie between the parties, Ty cannot claim the rights and privileges accorded to Sacobia's full-fledged members and shareowners, including the full enjoyment of the amenities being offered. Unfortunately for Ty, he cannot avail of rescission as envisioned by Article 1191 of the Civil Code. However, he can withdraw his investment subject to the restrictions under the terms and conditions pertinent to a reneging investor.

Even assuming *arguendo* that the delay in the completion of the golf course and clubhouse was attributable to Sacobia, respondent had not refuted to this Court's satisfaction the trial court's denial of such claim upon its finding that, among other things, the parties did not warrant the completion of the project within a certain period of time.

As early as January 12, 1998, respondent had notified Sacobia of his intention to rescind the contract on the ground that there was unreasonable delay in the completion of the golf course and clubhouse. Yet, evidence

shows that even prior thereto, or on May 28, 1997, Sacobia already informed its investors, including the respondent, that the full completion of the project was expected by mid-1999. Patently, respondent's claim is premature by one year and a half, if reckoned from the expected time of completion as foreseen by Sacobia. Moreover, respondent was well aware of the risk of delay in the completion of the project considering that he was apprised beforehand of such delay due to the belated issuance of the proper documents.

It appears, however, that Sacobia is not really intent on cancelling Ty's reservation. Even after it was notified by Ty that he was intending to rescind the contract, and had in fact issued a stop-payment order, Sacobia merely deferred the deposit of Ty's checks in an effort to resolve the issue, instead of cancelling the reservation in accordance with the terms of the notice of approval. Subsequently, it sought to collect from Ty his remaining obligations. It also referred Ty to its marketing arm if Ty is so minded to sell his rights to third parties. To this extent, the trial court correctly ordered Ty to pay the remaining balance if he so desires, otherwise, he forfeits half of his payments, pursuant to the terms of the notice of approval.

WHEREFORE, the petition is GRANTED. The decision dated August 19, 2004 of the Court of Appeals in CA-G.R. CV No. 76987 and its resolution dated October 28, 2004, are REVERSED and SET ASIDE. Respondent's complaint for rescission of contract and damages in Civil Case No. 01-99696 is DISMISSED. He is ORDERED to PAY to Sacobia Hills Development Corporation the amount of Pesos: One Hundred Ninety Thousand Nine Hundred Nine and Eight Centavos (P190,909.08) without interest within thirty (30) days from finality of this decision; otherwise, fifty percent (50%) of his total payments shall be forfeited.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Quisumbing, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 10-23.

[2] Id. at 24-42. Penned by Associate Justice Vicente Q. Roxas with Associate Justices Salvador J. Valdez, Jr. and Juan Q. Enriquez, Jr., concurring.

[3] Id. at 84-92. Penned by Judge Artemio S. Tipon.

[4] Id. at 43.

[5] Id. at 61.

[6] Id. at 65-68.

[7] Id. at 63.

[8] Id. at 28.

[9] Id. at 31.

[10] Id. at 88-89.

[11] Id. at 92.

[12] Id. at 41-42.

[13] 360 Phil. 891, 904-905 (1998).

[14] Coronel, et al. v. CA, 331 Phil. 294, 309 (1996).

[15] Rollo, p. 49-B.

[16] Tolentino, citing 2 Castan 26 in the Commentaries and Jurisprudence on the Civil Code of the Philippines, p. 18. See also, Paras, Civil Code of the Philippines, Vol. IV, p. 37.

[17] 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.

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