

XYST CORPORATION, PETITIONER, VS. DMC URBAN PROPERTIES DEVELOPMENT INC., Respondent, FE AURORA C. CASTRO, INTERVENOR,

G.R. No. 171968. July 31, 2009

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us is a petition for review assailing the September 26, 2005 Decision[1] and the March 13, 2006 Order[2] of the Regional Trial Court (RTC) of Makati City, Branch 64 in Civil Case No. 95-063.

The facts are as follows:

DMC Urban Properties Development, Inc. and Citibank N.A. entered into an agreement whereby they agreed to take part in the construction of the Citibank Tower, an office condominium building located at Villar corner Valero Streets, Makati City. In said agreement, DMC was allocated the 18[th] floor of the Citibank Tower subject to the condition that DMC shall not transfer any portion of its allocated floor or rights or interests thereto prior to the completion of the building without the written consent of Citibank N.A.

Subsequently, DMC gave authority to sell to several brokers, one of which is herein intervenor, Fe Aurora Castro. Through her effort, Castro found a prospective buyer, Saint Agen Et Fils Limited (SAEFL for brevity), a foreign corporation represented by William Seitz. Notwithstanding the fact that the construction of the Citibank Tower was not yet completed, DMC negotiated with Seitz for the sale of its allocated floor to SAEFL.

In a letter dated September 14, 1994,[3] SAEFL accepted DMC's offer to sell. The terms of said letter are reproduced below:

(1)

Property Description

Location

:

18[th] Floor, Citibank Tower Paseo de Roxas, Makati Metro Manila

Gross Floor Area

:

2,034 sq m

Net Saleable Area

:

1,866 sq m

Net Usable Area

:

1,678 sq m

Selling Price

:

P53,500/ - psm of saleable area

Total Price

:

P99,831,000/-*

Parking Slots

:

22

*

VAT tax for the account of the buyer, except that if payment of 26% of the total price is made before 30 September 1994, then VAT, if any, shall be for the account of the seller. The balance of P6,822,552.97 due to Citibank is included and, hence, is to be deducted from the amount due to DMC-UPDI.

(2)

Payment Terms *

Reservation Fee

:

P1,000,000/ - good [until]

26 September 1994

Non-refundable but applicable to the down payment.

26% -

Upon signing of agreement but not later than first banking hour of the 28[th] of September 1994.

:

P24,956,060/ -

24% -

Due on 31 October 1994 (via post-dated check)

:

P23,959,440/ -

50% -

Due on 30 November 1994 (via post-dated check)

:

P43,092,947.03

* For the Account of the Seller

:

Expanded Withholding Tax with BIR clearance to the buyer stating that the seller has paid capital gains tax

For the Account of the Buyer

:

Doc stamps; registration; and notarial and all other [similar] fees.

On September 16, 1994,[4] SAEFL, knowing that the consent of Citibank N.A. must first be obtained, sent another letter obliging DMC to cause Citibank N.A. to enter into a Contract to Sell with SAEFL as an additional condition to the payment of the P1,000,000.00 reservation fee.

Soon after, Seitz was informed that the 18[th] floor is not available for foreign acquisition, so Seitz told DMC that he would instead use XYST Corporation, a domestic corporation of which he is a director and shareholder, to purchase the subject property. XYST then paid the reservation fee. However, DMC advised XYST that the signing of the formal document will not take place since Citibank N.A. opted to exercise its right of first refusal. Hence, the parties agreed that should Citibank N.A. fail to purchase the 18[th] floor on the agreed date, the same should be sold to XYST.

Eventually, Citibank N.A. did not exercise its right of first refusal, but it reminded DMC that should the sale of the floor to any party materialize, it should be consistent with the documents adopted by the co-founders of the project. Hence, a copy of a pro-forma Contract to Sell was given to DMC, a copy of which was then forwarded to XYST.

DMC then undertook to obtain the conformity of Citibank N.A. to the intended sale but DMC encountered problems getting Citibank N.A. to accept the amendments that XYST wanted on the pro-forma contract. For such failure, DMC allowed XYST and Citibank N.A. to negotiate directly with one another to facilitate the transaction, but to no avail. Citibank N.A. refused to concur with the amendments imposed by XYST on the pro-forma contract. Hence, DMC decided to call off the deal and return the reservation fee of P1,000,000.00 to XYST.

A complaint for specific performance with damages was then filed by XYST against DMC. Trial ensued and on September 26, 2005, the RTC dismissed XYST's complaint. The dispositive portion of said decision reads:

WHEREFORE, in view of the foregoing, judgment is rendered as follows:

- The Complaint for Specific Performance and Damages filed by plaintiff XYST CORPORATION against defendant DMC-URBAN PROPERTIES DEVELOPMENT, INC., is DISMISSED. Plaintiff XYST CORPORATION is hereby ordered to pay defendant DMC-URBAN PROPERTIES DEVELOPMENT, INC. the amount of P1,000,000.00 as attorney's fees; and
- The counterclaim of defendant DMC-URBAN PROPERTIES DEVELOPMENT, INC. against the Intervenor Fe Aurora Castro is DISMISSED.

SO ORDERED.[5]

XYST's motion for reconsideration was likewise denied. Hence, the instant petition where XYST raises the following issues:

I.

DID THE TRIAL COURT ERR IN FINDING THAT THERE WAS NO PERFECTED CONTRACT TO SELL BETWEEN XYST AND DEFENDANT DMC BASED ON THE SEPTEMBER 14 AND 16, 1994 LETTER AGREEMENTS, AND THAT DMC CANNOT BE COMPELLED TO PERFORM ITS OBLIGATIONS UNDER THE AGREEMENT?

II.

DID THE TRIAL COURT ERR IN ORDERING XYST TO PAY DMC ATTORNEY'S FEES?

III.

IS XYST ENTITLED TO ATTORNEY'S FEES AND EXEMPLARY DAMAGES.[6]

Simply stated, in our view, there is one major legal issue for our resolution: whether there is a perfected contract between DMC and XYST. This issue of a legal nature assumes primordial significance because it justified direct resort by petitioner to this Court in a petition for review.

XYST argues that there exists a perfected contract of sale between the parties. This was perfected from the moment there was a meeting of the minds upon the thing which is object of the contract and upon the price as manifested by the September 14, 1994 letter. Hence, upon the perfection of the contract, the parties may reciprocally demand performance. Further, XYST avers that the P1,000,000.00 reservation fee it paid is actually in the nature of earnest money or down payment and shall be considered as part of the price and as proof of the perfection of the contract.

Conversely, DMC insists that a contract to sell was entered into by the parties. It avers that in the contract to sell, the element of consent is lacking, and since the acceptance made by XYST is not absolute, no contract of sale existed between the parties. It claims that the terms, conditions and amendments which XYST tried to impose upon DMC and Citibank N.A. were proof that indeed XYST had qualifiedly accepted DMC's offer.

We find the petition of XYST Corporation bereft of merit.

It is a fundamental rule that, being consensual, a contract is perfected by mere consent.[7] From the moment of a meeting of the offer and the acceptance upon the object and the cause that would constitute the contract, consent arises.[8] The essence of consent is the conformity of the parties on the terms of the contract, that is, the acceptance by one of the offer made by the other.[9] However, the acceptance must be absolute; otherwise, the same constitutes a counter-offer[10] and has the effect of rejecting the offer.[11]

Equally important are the three stages of a contract: (1) preparation or negotiation, (2) perfection, and (3) consummation. Negotiation begins from the time the prospective contracting parties manifest their interest in the contract and ends at the moment of agreement of the parties. The perfection or birth of the contract takes place when the parties agree upon the essential elements of the contract. The last stage is the consummation of the contract wherein the parties fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof.[12]

XYST and DMC were still in the negotiation stage of the contract when the latter called off the deal. The facts show that DMC as agreed undertook to obtain the conformity of Citibank N.A. However, Citibank N.A.'s consent

to the intended sale cannot be obtained since it does not conform to the amendments made by XYST on the pro-forma Contract to Sell. By introducing amendments to the contract, XYST presented a counter-offer to which DMC did not agree. Clearly, there was only an offer and a counter-offer that did not sum up to any final arrangement containing the elements of a contract. No meeting of the minds was established. The rule on the concurrence of the offer and its acceptance did not apply because other matters or details-in addition to the subject matter and the consideration-would still be stipulated and agreed upon by the parties.[13]

Therefore, since the element of consent is absent, there is no contract to speak of. Where the parties merely exchanged offers and counter-offers, no agreement or contract is perfected.

As to XYST's claim that the P1,000,000.00 reservation fee it paid is earnest money, we hold that it is not. Earnest money applies to a perfected sale. Here, no contract whatsoever was perfected since the element of consent was lacking. Therefore, the reservation fee paid by XYST could not be earnest money.

Coming now to the issue of whether DMC is entitled to attorney's fees, the Court finds that the award of attorney's fees to DMC is not proper. Article 2208 of the Civil Code states that in the absence of a stipulation, attorney's fees cannot be recovered, except in any of the following circumstances:

(1)

When exemplary damages are awarded;

(2)

When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3)

In criminal cases of malicious prosecution against the plaintiff;

(4)

In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5)

Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6)

In actions for legal support;

(7)

In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8)

In actions for indemnity under workmen's compensation and employer's liability laws;

(9)

In a separate civil action to recover civil liability arising from a crime;

(10)

When at least double judicial costs are awarded;

(11)

In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In the instant case, none of the enumerated grounds for recovery of attorney's fees is present.

WHEREFORE, this petition is DENIED. The September 26, 2005 Decision and March 13, 2006 Order of the Regional Trial Court of Makati City, Branch 64 in Civil Case No. 95-063 are hereby AFFIRMED with the modification that the award of attorney's fees in favor of DMC is deleted. Costs against petitioner.

SO ORDERED.

Carpio Morales, Chico-Nazario,[*] Leonardo-De Castro,**] and Peralta,***] JJ., concur.

[*] Designated member of the Second Division per Special Order No. 658.

[**] Designated member of the Second Division per Special Order No. 635.

[***] Designated member of the Second Division per Special Order No. 664.

[1] Rollo, pp. 9-29. Penned by Judge Delia H. Panganiban.

[2] Id. at 30-31.

[3] Id. at 105-106.

[4] Id. at 107.

[5] Id. at 29.

[6] Id. at 436-437.

[7] Civil Code, Art. 1315.

[8] Insular Life Assurance Company, Ltd. v. Asset Builders Corporation, G.R. No. 147410, February 5, 2004, 422 SCRA 148, 160.

[9] Salonga v. Farrales, No. L-47088, July 10, 1981, 105 SCRA 359, 368.

[10] Civil Code,

Art. 1319. Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer. (Emphasis supplied.)

x x x x

[11] III J.C. Vitug, Civil Law, Obligations and Contracts, 116 (2003).

[12] Gateway Electronics Corporation v. Land Bank of the Philippines, G.R. Nos. 155217 and 156393, July 30, 2003, 407 SCRA 454, 459.

[13] Insular Life Assurance Company, Ltd. v. Asset Builders Corporation, supra at 161-162.

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