

CEBU WINLAND DEVELOPMENT CORPORATION, PETITIONER, VS ONG SIAO HUA, RESPONDENT.

G.R. No. 173215. May 21, 2009

Ponente: PUNO, C.J.

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PUNO, C.J.:

Before us is a Petition for Review[1] filed under Rule 45 of the Rules of Court assailing the Decision[2] dated February 14, 2006 of the Court of Appeals and its Resolution[3] dated June 2, 2006 denying petitioner's motion for reconsideration of the said decision.

The facts are undisputed.

Petitioner, Cebu Winland Development Corporation, is the owner and developer of a condominium project called the Cebu Winland Tower Condominium located in Juana Osmeña Extension, Cebu City.

Respondent, Ong Siao Hua, is a buyer of two condominium units and four parking slots from petitioner.

Sometime before January 6, 1995 while the Cebu Winland Tower Condominium was under construction, petitioner offered to sell to respondent condominium units at promotional prices. As an added incentive, petitioner offered a 3% discount provided 30% of the purchase price is paid as down payment and the balance paid in 24 equal monthly installments.

On January 6, 1995, respondent accepted the offer of petitioner and bought two condominium units designated as Unit Nos. 2405 and 2406, as well as four parking slots designated as slots 91, 99, 101 and 103 (subject properties).

The area per condominium unit as indicated in petitioner's price list is 155 square meters and the price per square meter is P22,378.95. The price for the parking slot is P240,000 each. Respondent, therefore, paid P2,298,655.08 as down payment and issued 24 postdated checks in the amount of P223,430.70 per check for the balance of the purchase price in the total amount of P5,362,385.19 computed as follows:[4]

155 sq.m./unit x 2 units x P22,378.95/sq.m.

P6,937,474.50

4 parking slots at P240,000/slot

960,000.00

Sub-total

P 7,897,474.50

Less: 3% discount

(236,924.23)

Net purchase price

P 7,660,550.27

30% down payment

(2,298,165.08)

Balance at P223,430.70 per month for 24 months

P 5,362,385.19

The parties did not execute any written document setting forth the said transaction.

On October 10, 1996, possession of the subject properties was turned over to respondent.[5]

After the purchase price was fully paid with the last check dated January 31, 1997, respondent requested petitioner for the condominium certificates of title evidencing ownership of the units. Petitioner then sent to respondent, for the latter's signature, documents denominated as Deeds of Absolute Sale for the two condominium units.

Upon examination of the deed of absolute sale of Unit No. 2405 and the identical document for Unit No. 2406, respondent was distressed to find that the stated floor area is only 127 square meters contrary to the area indicated in the price list which was 155 square meters. Respondent caused a verification survey of the said condominium units and discovered that the actual area is only 110 square meters per unit. Respondent demanded from petitioner to refund the amount of P2,014,105.50 representing excess payments for the difference in the area, computed as follows:[6]

$155 \text{ sq.m.} - 110 = 45 \times 2 \text{ units} = 90 \text{ sq.m.} \times \text{P}22,378.95 = \text{P}2,014,105.50$

Petitioner refused to refund the said amount to respondent. Consequently, respondent filed a Complaint[7] on August 7, 1998 in the Regional Office of the Housing and Land Use Regulatory Board (HLURB) in Cebu City, praying for the refund of P2,014,105.50 plus interest, moral damages and attorney's fees, including the suspension of petitioner's license to sell. The case was docketed as HLURB Case No. REM-0220-080798.

On December 6, 1999, the Housing and Land Use Arbiter (the Arbiter) rendered a Decision[8] dismissing the complaint. The Arbiter found petitioner not guilty of misrepresentation. Considering further that the subject properties have been delivered on October 10, 1996 and respondent filed his complaint only on August 7, 1998, the Arbiter further ruled that respondent's action had already prescribed pursuant to Article 1543,[9] in relation to Articles 1539 and 1542,[10] of the Civil Code. The dispositive portion of the said decision reads:

WHEREFORE, Premises Considered, judgment is hereby rendered DISMISSING this Complaint, and ordering the parties to do the following, to wit:

- For the Complainant to SIGN the two (2) Deed[s] of Absolute Sale which this Board finds to be in order within 30 days from finality of this decision; and
- For the Respondent to DELIVER the corresponding condominium certificate of title for the two units namely units 2405 and 2406 free from all liens and encumbrances.

Consequently, the counterclaim is likewise dismissed for it finds no evidence that Complainant acted in bad faith in filing this complaint.

Cost against the parties.

SO ORDERED.[11]

Aggrieved, respondent filed a Petition for Review of said decision with the Board of Commissioners of the HLURB (the Board). In the course of its proceedings, the Board ordered that an ocular inspection of Unit Nos. 2405 and 2406 be conducted by an independent engineer. The Board further ordered that there should be two measurements of the areas in controversy, one based on the master deed and another based on the internal surface of the perimeter wall. After the ocular inspection, the independent geodetic engineer found the following measurements:

Unit 2405- Based on internal face of perimeter wall = 109 sq. m.

Based on master deed = 115 sq. m.

Unit 2406- Based on internal face of perimeter wall = 110 sq. m.

Based on master deed = 116 sq. m.[12]

Thereafter, the Board rendered its Decision[13] dated June 8, 2004 affirming the Arbiter's finding that respondent's action had already prescribed. However, the Board found that there was a mistake regarding the object of the sale constituting a ground for rescission based on Articles 1330 and 1331[14] of the Civil Code. Hence, the Board modified the decision of the Arbiter as follows:

Wherefore[,] the decision of the [O]ffice below is hereby modified with the following additional directive:

In the alternative, and at the option of the complainant, the contract is rescinded and the respondent is directed to refund to (sic) P7,660,550[.]²⁷ while complainant is directed to turn over possession of the units 2405, 2406 and the four parking lots to the respondent.

So ordered.[15]

Not satisfied with the decision of the Board, petitioner filed an appeal to the Office of the President arguing that the Board erred in granting relief to respondent considering that the latter's action had already prescribed. On March 11, 2005, the Office of the President rendered a Decision[16] finding that respondent's action had already prescribed pursuant to Article 1543 of the Civil Code. The dispositive portion of said decision reads as follows:

WHEREFORE, premises considered, the Decision dated June 8, 2004 of the HLURB is hereby MODIFIED and the Decision dated December 6, 1999 of the Housing and Land Use Arbiter is hereby REINSTATED.

SO ORDERED.[17]

Respondent filed a Motion for Reconsideration but the same was denied by the Office of the President in a Resolution[18] dated June 20, 2005. Hence, respondent filed a Petition for Review before the Court of Appeals.

On February 14, 2006, the Court of Appeals rendered the assailed Decision finding that respondent's action has not prescribed. The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us GRANTING the petition filed in this case, REVERSING and SETTING ASIDE the assailed Decision and Resolution of the Office of the President dated March 11, 2005 and June 20, 2005, respectively, and reinstating the Decision promulgated by the Board of Commissioners of the HLURB on June 8, 2004.

SO ORDERED.[19]

Petitioner's Motion for Reconsideration[20] of the assailed decision having been denied in the Resolution dated June 2, 2006, petitioner is now before us, in this petition for review raising the following grounds:

I.

The Court of Appeals Erred in Holding That in A Contract of Sale Ownership Is Not Transferred by Delivery[.]

II.

The Court of Appeals Erred in Holding That Respondent's Action Has Not Prescribed.

III.

The Court of Appeals Erred And Exceeded Its Jurisdiction When It Found Petitioner Guilty Of Misrepresentation As The Decision Of The HLURB Board of Commissioners On The Same Matter Is Final With Respect To Respondent Who Did Not Appeal Said Decision That Petitioner Did Not Commit Misrepresentation.[21]

The issue before us is whether respondent's action has prescribed pursuant to Article 1543, in relation to Articles 1539 and 1542 of the Civil Code, to wit:

ARTICLE 1539. The obligation to deliver the thing sold includes that of placing in the control of the vendee all that is mentioned in the contract, in conformity with the following rules:

If the sale of real estate should be made with a statement of its area, at the rate of a certain price for a unit of measure or number, the vendor shall be obliged to deliver to the vendee, if the latter should demand it, all that may have been stated in the contract; but, should this be not possible, the vendee may choose between a proportional reduction of the price and the rescission of the contract, provided that, in the latter case, the lack in the area be not less than one-tenth of that stated.

The same shall be done, even when the area is the same, if any part of the immovable is not of the quality specified in the contract.

The rescission, in this case, shall only take place at the will of the vendee, when the inferior value of the thing sold exceeds one-tenth of the price agreed upon.

Nevertheless, if the vendee would not have bought the immovable had he known of its smaller area or inferior quality, he may rescind the sale. (1469a) [Emphasis supplied]

ARTICLE 1542. In the sale of real estate, made for a lump sum and not at the rate of a certain sum for a unit of measure or number, there shall be no increase or decrease of the price, although there be a greater or lesser area or number than that stated in the contract.

The same rule shall be applied when two or more immovables are sold for a single price; but if, besides mentioning the boundaries, which is indispensable in every conveyance of real estate, its area or number should be designated in the contract, the vendor shall be bound to deliver all that is included within said boundaries, even when it exceeds the area or number specified in the contract; and, should he not be able to do so, he shall suffer a reduction in the price, in proportion to what is lacking in the area or number, unless the contract is rescinded because the vendee does not accede to the failure to deliver what has been stipulated. (1471) [Emphasis supplied]

ARTICLE 1543. The actions arising from Articles 1539 and 1542 shall prescribe in six months, counted from the day of delivery. (1472a) [Emphasis supplied]

Petitioner argues that it delivered possession of the subject properties to respondent on October 10, 1996, hence,

respondent's action filed on August 7, 1998 has already prescribed.

Respondent, on the one hand, contends that his action has not prescribed because the prescriptive period has not begun to run as the same must be reckoned from the execution of the deeds of sale which has not yet been done.

The resolution of the issue at bar necessitates a scrutiny of the concept of "delivery" in the context of the Law on Sales or as used in Article 1543 of the Civil Code. Under the Civil Code, the vendor is bound to transfer the ownership of and deliver the thing which is the object of the sale. The pertinent provisions of the Civil Code on the obligation of the vendor to deliver the object of the sale provide:

ARTICLE 1495. The vendor is bound to transfer the ownership of and deliver, as well as warrant the thing which is the object of the sale. (1461a)

ARTICLE 1496. The ownership of the thing sold is acquired by the vendee from the moment it is delivered to him in any of the ways specified in Articles 1497 to 1501, or in any other manner signifying an agreement that the possession is transferred from the vendor to the vendee. (n)

ARTICLE 1497. The thing sold shall be understood as delivered, when it is placed in the control and possession of the vendee. (1462a)

ARTICLE 1498. When the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred.

xxxx

Under the Civil Code, ownership does not pass by mere stipulation but only by delivery.[22] Manresa explains, "the delivery of the thing . . . signifies that title has passed from the seller to the buyer." [23] According to Tolentino, the purpose of delivery is not only for the enjoyment of the thing but also a mode of acquiring dominion and determines the transmission of ownership, the birth of the real right. The delivery under any of the forms provided by Articles 1497 to 1505 of the Civil Code signifies that the transmission of ownership from vendor to vendee has taken place.[24]

Article 1497 above contemplates what is known as real or actual delivery, when the thing sold is placed in the control and possession of the vendee. Article 1498, on the one hand, refers to symbolic delivery by the execution of a public instrument. It should be noted, however, that Article 1498 does not say that the execution of the deed provides a conclusive presumption of the delivery of possession. It confines itself to providing that the execution thereof is equivalent to delivery, which means that the presumption therein can be rebutted by means of clear and convincing evidence. Thus, the presumptive delivery by the execution of a public instrument can be negated by the failure of the vendee to take actual possession of the land sold.[25]

In *Equatorial Realty Development, Inc. v. Mayfair Theater, Inc.*, [26] the concept of "delivery" was explained as follows:

Delivery has been described as a composite act, a thing in which both parties must join and the minds of both parties concur. It is an act by which one party parts with the title to and the possession of the property, and the other acquires the right to and the possession of the same. In its natural sense, delivery means something in addition to the delivery of property or title; it means transfer of possession. In the Law on Sales, delivery may be either actual or constructive, but both forms of delivery contemplate "the absolute giving up of the control and custody of the property on the part of the vendor, and the assumption of the same by the vendee." (Emphasis supplied)

In light of the foregoing, "delivery" as used in the Law on Sales refers to the concurrent transfer of two things: (1)

possession and (2) ownership. This is the rationale behind the jurisprudential doctrine that presumptive delivery via execution of a public instrument is negated by the reality that the vendee actually failed to obtain material possession of the land subject of the sale.[27] In the same vein, if the vendee is placed in actual possession of the property, but by agreement of the parties ownership of the same is retained by the vendor until the vendee has fully paid the price, the mere transfer of the possession of the property subject of the sale is not the "delivery" contemplated in the Law on Sales or as used in Article 1543 of the Civil Code.

In the case at bar, it appears that respondent was already placed in possession of the subject properties. However, it is crystal clear that the deeds of absolute sale were still to be executed by the parties upon payment of the last installment. This fact shows that ownership of the said properties was withheld by petitioner. Following case law, it is evident that the parties did not intend to immediately transfer ownership of the subject properties until full payment and the execution of the deeds of absolute sale.[28] Consequently, there is no "delivery" to speak of in this case since what was transferred was possession only and not ownership of the subject properties.

We, therefore, hold that the transfer of possession of the subject properties on October 10, 1996 to respondent cannot be considered as "delivery" within the purview of Article 1543 of the Civil Code. It follows that since there has been no transfer of ownership of the subject properties since the deeds of absolute sale have not yet been executed by the parties, the action filed by respondent has not prescribed.

The next issue is whether the sale in the case at bar is one made with a statement of its area or at the rate of a certain price for a unit of measure and not for a lump sum. Article 1539 provides that "If the sale of real estate should be made with a statement of its area, at the rate of a certain price for a unit of measure or number, the vendor shall be obliged to deliver to the vendee...all that may have been stated in the contract; but, should this be not possible, the vendee may choose between a proportional reduction of the price and the rescission of the contract..." Article 1542, on the one hand, provides that "In the sale of real estate, made for a lump sum and not at the rate of a certain sum for a unit of measure or number, there shall be no increase or decrease of the price, although there be a greater or lesser area or number than that stated in the contract."

The distinction between Article 1539 and Article 1542 was explained by Manresa[29] as follows:

. . . If the sale was made for a price per unit of measure or number, the consideration of the contract with respect to the vendee, is the number of such units, or, if you wish, the thing purchased as determined by the stipulated number of units. But if, on the other hand, the sale was made for a lump sum, the consideration of the contract is the object sold, independently of its number or measure, the thing as determined by the stipulated boundaries, which has been called in law a determinate object.

This difference in consideration between the two cases implies a distinct regulation of the obligation to deliver the object, because, for an acquittance delivery must be made in accordance with the agreement of the parties, and the performance of the agreement must show the confirmation, in fact, of the consideration which induces each of the parties to enter into the contract.

In *Rudolf Lietz, Inc. v. Court of Appeals*,[30] we held:

Article 1539 governs a sale of immovable by the unit, that is, at a stated rate per unit area. In a unit price contract, the statement of area of immovable is not conclusive and the price may be reduced or increased depending on the area actually delivered. If the vendor delivers less than the area agreed upon, the vendee may oblige the vendor to deliver all that may be stated in the contract or demand for the proportionate reduction of the purchase price if delivery is not possible. If the vendor delivers more than the area stated in the contract, the vendee has the option to accept only the amount agreed upon or to accept the whole area, provided he pays for the additional area at the contract rate.

In some instances, a sale of an immovable may be made for a lump sum and not at a rate per unit. The parties agree on a stated purchase price for an immovable the area of which may be declared based on an estimate or where both the area and boundaries are stated.

In the case where the area of the immovable is stated in the contract based on an estimate, the actual area delivered may not measure up exactly with the area stated in the contract. According to Article 1542 of the Civil Code, in the sale of real estate, made for a lump sum and not at the rate of a certain sum for a unit of measure or number, there shall be no increase or decrease of the price although there be a greater or lesser area or number than that stated in the contract. However, the discrepancy must not be substantial. A vendee of land, when sold in gross or with the description "more or less" with reference to its area, does not thereby ipso facto take all risk of quantity in the land. The use of "more or less" or similar words in designating quantity covers only a reasonable excess or deficiency.

Where both the area and the boundaries of the immovable are declared, the area covered within the boundaries of the immovable prevails over the stated area. In cases of conflict between areas and boundaries, it is the latter which should prevail. What really defines a piece of ground is not the area, calculated with more or less certainty, mentioned in its description, but the boundaries therein laid down, as enclosing the land and indicating its limits. In a contract of sale of land in a mass, it is well established that the specific boundaries stated in the contract must control over any statement with respect to the area contained within its boundaries. It is not of vital consequence that a deed or contract of sale of land should disclose the area with mathematical accuracy. It is sufficient if its extent is objectively indicated with sufficient precision to enable one to identify it. An error as to the superficial area is immaterial. Thus, the obligation of the vendor is to deliver everything within the boundaries, inasmuch as it is the entirety thereof that distinguishes the determinate object.

In the case at bar, it is undisputed by the parties that the purchase price of the subject properties was computed based on the price list prepared by petitioner, or P22,378.95 per square meter. Clearly, the parties agreed on a sale at a rate of a certain price per unit of measure and not one for a lump sum. Hence, it is Article 1539 and not Article 1542 which is the applicable law. Accordingly, respondent is entitled to the relief afforded to him under Article 1539, that is, either a proportional reduction of the price or the rescission of the contract, at his option. Respondent chose the former remedy since he prayed in his Complaint for the refund of the amount of P2,014,105.50 representing the proportional reduction of the price paid to petitioner.

In its decision, the Court of Appeals held that the action filed by respondent has not prescribed and reinstated the decision of the Board. It is an error to reinstate the decision of the Board. The Board, in its decision, held that there was a mistake regarding the object of the sale constituting a ground for rescission based on Articles 1330 and 1331 of the Civil Code. It then granted the relief of rescission at the option of respondent. Articles 1330 and 1331 of the Civil Code provide:

ARTICLE 1330. A contract where consent is given through mistake, violence, intimidation, undue influence, or fraud is voidable. (1265a)

ARTICLE 1331. In order that mistake may invalidate consent, it should refer to the substance of the thing which is the object of the contract, or to those conditions which have principally moved one or both parties to enter into the contract.

We find that these articles are inapplicable to the case at bar. In order that mistake may invalidate consent and constitute a ground for annulment of contract based on Article 1331, the mistake must be material as to go to the essence of the contract; that without such mistake, the agreement would not have been made.[31] The effect of error must be determined largely by its influence upon the party. If the party would have entered into the contract

even if he had knowledge of the true fact, then the error does not vitiate consent.[32]

In the case at bar, the relief sought by respondent was for a refund and he continued to occupy the subject properties after he found out that the same were smaller in area. All these show that respondent did not consider the error in size significant enough to vitiate the contract. Hence, the Court of Appeals erred in affirming the Board's decision to grant rescission based on Articles 1330 and 1331 of the Civil Code.

IN VIEW WHEREOF, the petition is DENIED. The decision of the Court of Appeals is AFFIRMED but with the MODIFICATION that the decision of the HLURB is not reinstated. Petitioner is ordered to refund the amount of Two Million Fourteen Thousand One Hundred Five Pesos and Fifty Centavos (P2,014,105.50) to respondent with legal interest of six percent (6%) per annum from August 7, 1998, the date of judicial demand. A twelve percent (12%) interest per annum, in lieu of six percent (6%), shall be imposed on such amount from the date of promulgation of this decision until the payment thereof. Costs against petitioner.

SO ORDERED.

Carpio, Corona, Leonardo-De Castro, and Bersamin, JJ., concur.

[1] Rollo, pp. 4-14.

[2] Id. at 16-24; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Ramon M. Bato, Jr. and Apolinario D. Bruselas, Jr.

[3] Id. at 31-32.

[4] CA rollo, p. 62.

[5] Id. at 42.

[6] Id. at 63.

[7] Id. at 49-54.

[8] Id. at 61-76.

[9] ARTICLE 1543. The actions arising from Articles 1539 and 1542 shall prescribe in six months, counted from the day of delivery. (1472a)

[10] ARTICLE 1539. The obligation to deliver the thing sold includes that of placing in the control of the vendee all that is mentioned in the contract, in conformity with the following rules:

If the sale of real estate should be made with a statement of its area, at the rate of a certain price for a unit of measure or number, the vendor shall be obliged to deliver to the vendee, if the latter should demand it, all that may have been stated in the contract; but, should this be not possible, the vendee may choose between a proportional reduction of the price and the rescission of the contract, provided that, in the latter case, the lack in the area be not less than one-tenth of that stated.

The same shall be done, even when the area is the same, if any part of the immovable is not of the quality specified in the contract.

The rescission, in this case, shall only take place at the will of the vendee, when the inferior value of the thing sold exceeds one-tenth of the price agreed upon.

Nevertheless, if the vendee would not have bought the immovable had he known of its smaller area or inferior quality, he may rescind the sale. (1469a)

ARTICLE 1542. In the sale of real estate, made for a lump sum and not at the rate of a certain sum for a unit of measure or number, there shall be no increase or decrease of the price, although there be a greater or lesser area or number than that stated in the contract.

The same rule shall be applied when two or more immovables are sold for a single price; but if, besides mentioning the boundaries, which is indispensable in every conveyance of real estate, its area or number should be designated in the contract, the vendor shall be bound to deliver all that is included within said boundaries, even when it exceeds the area or number specified in the contract; and, should he not be able to do so, he shall suffer a reduction in the price, in proportion to what is lacking in the area or number, unless the contract is rescinded because the vendee does not accede to the failure to deliver what has been stipulated. (1471)

[11] CA rollo, p. 76.

[12] Rollo, p. 38.

[13] Id. at 36-41.

[14] ARTICLE 1330. A contract where consent is given through mistake, violence, intimidation, undue influence, or fraud is voidable. (1265a)

ARTICLE 1331. In order that mistake may invalidate consent, it should refer to the substance of the thing which is the object of the contract, or to those conditions which have principally moved one or both parties to enter into the contract.

Mistake as to the identity or qualifications of one of the parties will vitiate consent only when such identity or qualifications have been the principal cause of the contract.

A simple mistake of account shall give rise to its correction. (1266a)

[15] Rollo, p. 40.

[16] Id. at 42-49.

[17] Id. at 49.

[18] CA rollo, p. 48.

[19] Supra note 2 at 23-24.

[20] Rollo, pp. 25-29.

[21] Supra note 1 at 7.

[22] Danguilan v. Intermediate Appellate Court, G.R. No. L-69970, November 28, 1999, 168 SCRA 22, 31, citing Gachitorena v. Almeda, 48 O.G. 3432.

[23] Commentaries on the Civil Code, Vol. 10, p. 120, cited in Ocejo v. International Banking Corporation, 37 Phil. 631, 636 (1918).

[24] Tolentino, Civil Code of the Philippines, Vol. V, 51 (1999).

[25] Id. at 52-54.

[26] G.R. No. 133879, November 21, 2001, 370 SCRA 56, 70-71.

[27] Pasagui v. Villablanca, G.R. No. L-21998, November 10, 1975, 68 SCRA 18, 21.

[28] Roque v. Lapuz, G.R. No. L-32811, March 31, 1980, 96 SCRA 741, 758; Adelfa Properties, Inc. v. Court of Appeals, G.R. No. 111238, January 25, 1995, 240 SCRA 565, 577-578.

[29] Cited in Azarraga v. Gay, 52 Phil. 599, 605-606 (1928).

[30] G.R. No. 122463, December 19, 2005, 478 SCRA 451, 457-459.

[31] Asiain v. Jalandoni, 45 Phil. 296, 310-313 (1923).

[32] Tolentino, Civil Code of the Philippines, Vol. IV, 481 (1985).

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