

SOLID HOMES, INC., PETITIONER, VS. SPOUSES ARTEMIO JURADO AND CONSUELO O. JURADO, RESPONDENTS.

G.R. No. 219673. September 02, 2019

Ponente: REYES, J. JR., J.

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REYES, J. JR., J.:

This Petition for Review[1] under Rule 45 assails the Decision[2] dated March 13, 2015 of the Court of Appeals (CA) in CA-GR. SP No. 130627. Also assailed is the CA Resolution[3] dated July 22, 2015, which denied petitioner Solid Homes, Inc.'s (Solid Homes) motion for partial reconsideration.[4]

The assailed CA Decision essentially affirmed the Decision[5] dated May 9, 2012 of the Office of the President (OP) which, in turn, affirmed the Decision[6] dated May 22, 2008 of the Board of Commissioners of the Housing and Land Use Regulatory Board (HLURB Board), finding Solid Homes liable to herein respondents spouses Artemio and Consuelo O. Jurado (spouses Jurado) under the terms of a contract to sell covering a residential lot.

The Facts

In 1977, Solid Homes entered into a Contract to Sell covering a 1,241 square meter residential lot located at Loyola Grand Villas Subdivision, Marikina, Rizal (subject property) with spouses Violeta and Jesus Calica (spouses Calica) for the consideration of P434,350.00.[7] Spouses Calica paid P86,870.00 as downpayment and the balance was made payable in equal monthly installments of P5,646.55 for a period of eight years.[8]

In 1983, by virtue of a Deed of Assignment and Transfer of Rights, spouses Calica assigned and transferred their rights as vendees in the Contract to Sell to spouses Jurado for the amount of P130,352.00. Solid Homes prepared the standard printed form of the Deed of Assignment and Transfer of Rights and its officer, Rita Castillo Dumatay (Dumatay), attested and affixed her signature thereon. Spouses Jurado paid the transfer fee for which Solid Homes issued a provisional receipt. Solid Homes also issued to spouses Jurado a credit memorandum indicating that the latter paid P108,001.00. As of February 22, 1983, spouses Calica and spouses Jurado made the total payment of P480,262.95.[9]

Thereafter, spouses Jurado inquired as to the transfer of ownership over the subject property and were informed by Dumatay that Solid Homes had mortgaged the property and that the mortgage had been foreclosed.[10] Solid Homes undertook to replace the subject property with another lot and for this purpose, spouses Jurado submitted the required documents. Through letters dated October 23, 1992 and August 7, 1996, spouses Jurado followed-up on the promised substitute property but to no avail.[11]

In 2000, spouses Jurado filed a complaint for specific performance and damages before the HLURB. The HLURB dismissed the complaint without prejudice.[12] Said dismissal was affirmed by the HLURB Board on April 20, 2005.[13]

It appears that spouses Jurado no longer pursued any further appeal and instead in 2005, they refiled the complaint for specific performance and damages before the HLURB. They prayed that Solid Homes be ordered to replace

the lot, or to convey and transfer to them a substitute lot, or in the alternative, to pay the current value of the lot, or to return the payments made with interests.[14] In answer, Solid Homes argued that the assignment and transfer was void as it was made without Solid Homes' prior written consent. Solid Homes further raised the defenses of prescription and laches, *res judicata*, forum shopping and estoppel.[15] Because the complaint was allegedly unfounded, Solid Homes prayed for the award of damages and attorney's fees.[16]

The Ruling of the HLURB Arbiter

On June 13, 2007, the HLURB Arbiter issued a Decision dismissing the complaint for lack of merit. The HLURB Arbiter held that there was no right created in favor of spouses Jurado for lack of proof that Solid Homes gave its prior written consent to the assignment and transfer of rights; and that, in any case, spouses Jurado's cause of action had prescribed.[17]

The Ruling of the HLURB Board of Commissioners

On appeal, the HLURB Board reversed the ruling of the HLURB Arbiter. It ruled that there was substantial evidence showing that Solid Homes consented and even participated in the transfer of the property to spouses Jurado. It noted the following: (1) the standard form for the transfer and assignment of rights was prepared by Solid Homes; (2) Solid Homes required the payment of a transfer fee which was in fact paid by spouses Jurado in consideration for the transfer of the lot; (3) Solid Homes presented a subdivision plan to spouses Jurado showing a shaded area which was designated as a possible replacement lot. The subdivision plan presented in evidence by spouses Jurado was signed by a representative of Solid Homes; (4) Solid Homes wrote a letter to spouses Jurado requiring the latter to submit certain documents to facilitate the replacement; and (5) Solid Homes issued a credit memorandum in favor of spouses Jurado in the amount of P108,001.00 for the price of the subject property.[18]

The HLURB Board also brushed aside Solid Homes' argument of prescription and instead noted that extrajudicial demands were made by spouses Jurado. It likewise disregarded Solid Homes' defense of *res judicata* on the ground that the initial HLURB complaint was dismissed without prejudice.

Accordingly, the HLURB Board disposed as follows:

Wherefore, premises considered, the appeal is GRANTED. The [HLURB Arbiter] decision of June 13, 2007 is REVERSED and SET ASIDE and a new judgment is hereby rendered ordering:

1. Respondent to replace the foreclosed lot and to convey to complainants in absolute ownership a parcel of land of the same area, quality and location as the lot covered by the contract to sell in the event that respondent is unable to do so, respondent Solid Homes is ordered to pay to respondent the current fair market value of the foreclosed lot.
2. Respondent to pay attorney's fees in the amount of Thirty Thousand Pesos ([P]30,000.00) and moral damages in the amount of Thirty Thousand Pesos ([P]30,000.00), and the cost of the suit.

So ordered.[19]

Solid Homes moved for reconsideration, arguing that the HLURB Board erred in requiring that the subject lot be replaced, and in ordering that the same be conveyed to spouses Jurado without full payment of the purchase price. After examining the buyers' ledger which spouses Jurado themselves submitted in evidence, the HLURB Board confirmed that spouses Jurado still have a balance of P145,843.35, which they must pay to be entitled to the conveyance of the substitute property. The HLURB, thus, ordered spouses Jurado to pay the balance and imposed interest thereon to commence only from the time when Solid Homes shall make available to spouses Jurado a substitute lot.[20]

Thus, in a Resolution[21] dated October 2, 2009, the HLURB Board modified its earlier ruling and accordingly

disposed:

WHEREFORE, premises considered, our decision of May 22, 2008 is MODIFIED as follows:

1. Respondent is ordered to replace the foreclosed lot another of the same area, quality and location as the lot covered by the Contract to Sell. Thereupon, complainants are ordered to pay respondents the amount of [P] 145,843.35 with interest at the rate of 12% per annum in accordance with the contract reckoned from the time the lot is made available to them; upon such full payment, respondent is ordered to execute a deed of sale and deliver the title of the substitute lot in complainants' favor.
2. At complainant's option, or if the above is no longer possible, respondent is hereby ordered to pay the complainants the fair market value of the lot they lost with interest at the rate of 12% per annum reckoned from the filing of the complaint until fully paid.
3. Respondent is ordered to pay complainants moral damages of [P]30,000.00, attorney's fees of [P]30,000.00 and the cost of the suit.

SO ORDERED.[22]

Consequently, Solid Homes lodged an appeal to the OP.

The Ruling of the Office of the President

The OP adopted by reference the findings of facts and conclusions of law as contained in the HLURB Board's Decision and Resolution and held that the same were supported by the evidence on record. The OP also agreed with the HLURB Board that there was substantial evidence showing that Solid Homes consented to the transfer and assignment of the property and even recognized spouses Jurado as the buyers-assignees thereof. It similarly disregarded Solid Homes' argument that the complaint was barred by res judicata. Finally, the OP held that spouses Jurado are not guilty of laches for lack of proof that they abandoned their case,[23] disposing, thus:

WHEREFORE, premises considered, the appeal of [Solid Homes] is hereby DISMISSED.

SO ORDERED.[24]

Solid Homes' subsequent motion for reconsideration met similar denial from the OP.

Through a petition for review, Solid Homes elevated the case to the CA, arguing that the OP erred in adopting by reference the HLURB's findings of facts and conclusions of law; that the complaint was barred by res judicata and prescription; that there was no privity of contract between Solid Homes and spouses Jurado considering that the Deed of Assignment and Transfer of Rights between spouses Calica and spouses Jurado was void; and that the award of damages and attorney's fees was without basis.

The Court of Appeals' Ruling

Except as to the award of damages and attorney's fees, the CA affirmed the ruling of the OP.

The CA held that the OP's adoption by reference of the HLURB's findings of facts and conclusions of law was allowed considering that the administrative decision was based on evidence and expressed in a manner that sufficiently informed the parties of the bases of the decision.[25] The CA also dismissed Solid Homes' contention that the complaint was barred by res judicata, noting that the earlier complaint was dismissed by the HLURB without prejudice and as such, was not a final judgment on the merits. Considering that the complaint was not barred by res judicata, the imputation of forum shopping is consequently without basis.[26]

With regard to Solid Homes' contention that the complaint was barred by prescription and laches, the CA held that spouses Jurado's cause of action arose after February 22, 1983, when Solid Homes informed the spouses Jurado

that the subject property had been mortgaged and foreclosed. The CA observed that the written extrajudicial demands made by spouses Jurado in the meantime interrupted the running of the prescriptive period.[27]

As to whether Solid Homes consented to the assignment and transfer of rights to the Contract to Sell, the CA found that Solid Homes' consent was evident from the facts that: Solid Homes itself prepared the standard form of the Deed of Assignment and Transfer of Rights which was attested and signed by Dumatay; Solid Homes charged a transfer fee; Solid Homes issued a credit memorandum to spouses Jurado indicating that the amount of P108,001.00 was credited in favor of the latter as payment for the subject property; and Solid Homes, through Dumatay, received the documents from spouses Jurado which the former required to facilitate the replacement of the subject property.[28] The CA, thus, held that by Solid Homes' acts and representations, it led spouses Jurado to believe that Solid Homes consented to the Deed of Assignment and Transfer of Rights.[29]

Addressing finally the issue on the award of damages, the CA ruled that moral damages are recoverable only when proven and that the award of attorney's fees must have factual and legal bases which must be stated in the body of the decision. Noting that these requirements were not satisfied, the CA disallowed the award of moral damages and attorney's fees but sustained the imposition of the costs of suit against Solid Homes.

The fallo of the CA Decision reads:

We MODIFY the Decision dated 09 May 2012 of Office of the President in O.P. Case No. 09-K-581 (which affirmed the Resolution dated 02 October 2008 of the Housing and Land Use Regulatory Board in HLURB Case No. REM-A-070914-0423), as follows: we DELETE the award for moral damages in the amount of Php30,000.00 and the attorney's fees in the amount of Php30,000.00.

IT IS SO ORDERED.[30]

Solid Homes' motion for partial reconsideration met similar denial from the CA in its Resolution[31] dated July 22, 2015.

The Issues

Hence, Solid Homes resorts to the present petition raising the following issues:

- Whether or not the Honorable Office of the President as affirmed by the Honorable Court of Appeals seriously and gravely erred in adopting by reference the findings of fact and conclusion of law contained in the assailed Decision and Resolution of the HLURB Board of Commissioners;
- Whether or not the Honorable Office of the President as affirmed by the Honorable Court of Appeals seriously and gravely erred in not holding that res judicata has already set-in in the instant case;
- Whether or not the Honorable Office of the President as affirmed by the Honorable Court of Appeals seriously and gravely erred in not holding that prescription and laches have likewise set-in;
- Whether or not the Honorable Office of the President as affirmed by the Honorable Court of Appeals seriously and gravely erred in not holding that respondents are guilty of forum-shopping;
- Whether or not the Honorable Office of the President as affirmed by the Honorable Court of Appeals seriously and gravely erred in not holding that there was no privity of contract between respondents and petitioner;
- Whether or not the Honorable Office of the President as affirmed by the Honorable Court of Appeals seriously and gravely erred in not holding respondents were in estoppel;

- Whether or not the Honorable Office of the President as affirmed by the Honorable Court of Appeals seriously and gravely erred in ordering to replace the 'alleged' foreclosed lot covered by the Contract to Sell. Thereupon, respondents are ordered to pay petitioner the amount of [P]145,843.35 with interest at the rate of 12% per annum in accordance with the contract reckoned from the time the lot is made available to them; and upon such full payment, petitioner is ordered to execute a deed of sale and deliver title of the substitute lot in respondents['] favor;
- Whether or not the Honorable Office of the President as affirmed by the Honorable Court of Appeals seriously and gravely erred in ordering that at respondents['] option, or if the above is no longer possible, petitioner is hereby ordered to pay the respondents the fair market value of the lot they lost with interest at the rate of 12% per annum reckoned from the filing of the complaint until fully paid; and
- Whether or not the Honorable Office of the President as affirmed by the Honorable Court of Appeals seriously and gravely erred in not awarding petitioner to [sic] its counterclaim.[32]

Save for the issue on the propriety of the award for damages, the issues raised in the instant petition were a virtual copy of the issues raised by Solid Homes before the CA.

In essence, Solid Homes is asking the Court to review the correctness of the CA's ruling on the issues of whether: (a) the OP may adopt by reference the HLURB's findings of facts and conclusions of law; (b) the complaint should have been dismissed on the grounds of res judicata, prescription, laches, forum shopping and estoppel; (c) there was privity of contract between Solid Homes and spouses Jurado; and (d) Solid Homes' counterclaims should have been granted. Additionally, Solid Homes impugns the correctness of the imposition of a 12% interest rate on the fair market value of the property instead of 6% pursuant to *Nacar v. Gallery Frames*. [33]

The Court's Ruling

The petition is partly meritorious.

I

Compliance with Constitutional mandate of a memorandum decision

The question as to whether the OP may adopt by reference the findings and conclusions of the HLURB was priorly raised and squarely resolved by the Court in *Solid Homes, Inc. v. Laserna* [34] wherein we ruled:

The constitutional mandate that, no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based, does not preclude the validity of memorandum decisions, which adopt by reference the findings of fact and conclusions of law contained in the decisions of inferior tribunals. In fact, in *Yao v. Court of Appeals*, this Court has sanctioned the use of memorandum decisions, a specie of succinctly written decisions by appellate courts in accordance with the provisions of Section 40, B.P. Blg. 129, as amended, on the grounds of expediency, practicality, convenience and docket status of our courts. This Court likewise declared that memorandum decisions comply with the constitutional mandate. [35] (Emphasis and citations omitted)

Laserna, citing *Francisco v. Permskul*, [36] reiterated the conditions when incorporation by reference is allowed: (a) the memorandum decision must embody the findings of facts and conclusions of law of the lower court in an annex attached to and made an indispensable part of the decision; (b) the decision being adopted should, to begin with, comply with Article VIII, Section 14 of the Constitution; [37] and (c) resort to memorandum decision may be had only in cases where the facts are in the main accepted by both parties and easily determinable by the judge and there are no doctrinal complications involved that will require an extended discussion of the laws involved.

The OP's Decision satisfied these standards given that copies of the HLURB's Decision and Resolution were attached as annexes; the HLURB's Decision and Resolution itself complied with the requirements of the Constitution; the decision of the OP stated that it was convinced that the HLURB's Decision and Resolution were correct only after it evaluated and studied the case records; and that the case was an ordinary complaint for specific performance where Solid Homes' appeal was found to be without merit.

Further, in Laserna, we emphasized that the Constitutional requirement that no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based need not apply to decisions rendered in administrative proceedings. The administrative decision satisfies the requirement of due process for as long as it is supported by evidence, and expressed in a manner that sufficiently informs the parties of the factual and legal bases of the decision. At bar, the OP's Decision reviewed the evidence relied upon by the HLURB and even arrived at an independent conclusion that Solid Homes' defenses of lack of privity of contract, res judicata and laches are without merit.

II

Effect of non-assignment clause

In arguing that spouses Jurado's complaint should have been dismissed, Solid Homes insists that it did not give the prior written consent requisite to the assignment and transfer of rights under the Contract to Sell and as such, the assignment was void. Solid Homes invites attention to the non-assignment clause found in the Contract to Sell:

SECTION 10. THE VENDEE AGREES NOT TO SELL, CEDE, ENCUMBER, TRANSFER OR IN TANY1 MANNER DO ANY ACT WHICH WILL AFFECT HIS/HER RIGHT UNDER THIS CONTRACT WITHOUT THE PRIOR WRITTEN APPROVAL OF THE ENDOR AND UNTIL ALL STIPULATIONS OF THIS CONTRACT SHALL HAVE BEEN FULFILLED.[38] x x x (Underscoring in the original)

Disregarding this contention, the HLURB, the OP, as well as the CA, similarly held that the factual circumstances negate Solid Homes' disavowal of consent.

Whether or not Solid Homes consented to the transfer and assignment of rights is a question of fact.[39] To emphasize, the Court, under its power of review under Rule 45, generally addresses only questions of law and that factual findings of the CA, especially when such are not contradictory to that of the lower court's, are binding. While several exceptions[40] to these rules have been jurisprudentially recognized, such exceptions must be alleged, substantiated, and proved. Even then, as the Court held in Pascual v. Burgos,[41] the Court retains full discretion whether or not to review the CA's factual findings.

We find none of the exceptions working to Solid Homes' benefit. On the contrary, we sustain the identical findings of the lower courts that Solid Homes' undisputed acts of preparing a standard form of the Deed of Assignment and Transfer of Rights signed by one of its officers; charging a transfer fee; crediting payment in favor of spouses Jurado; and requiring and receiving from spouses Jurado the documents necessary to replace the subject property — all signify Solid Homes' consent to the transfer and assignment by spouses Calica of their rights under the Contract to Sell to spouses Jurado. As held by the CA, Solid Homes, by its acts and representations, is estopped from claiming otherwise. That Solid Homes gave its consent to spouses Calica's assignment and transfer of rights to spouses Jurado, is now an established fact that we find no reason to deviate from.

At any rate, the non-assignment clause could not be interpreted as affecting the validity of the transfer and assignment between spouses Calica and spouses Jurado.

Firstly, basic is the rule that the transfer of rights takes place upon the perfection of the contract, and the ownership of the right thereunder, including all appurtenant accessory rights, is acquired by the assignee,[42] who

steps into the shoes of the original creditor as subrogee,[43] the moment the contract is perfected. The debtor need not be notified of the assignment but becomes bound thereby upon acquiring knowledge of the assignment. Upon an assignment of a contract to sell, the assignee is effectively subrogated in place of the assignor and in a position to enforce the contract to sell to the same extent as the assignor could.[44]

Secondly, there is no express stipulation in the Contract to Sell that an assignment made by the vendee will give no right whatsoever to the assignee. Otherwise stated, the non-assignment clause invoked by Solid Homes does not say that any assignment of rights under the Contract to Sell shall be null and void. The logical implication, if at all, which may be derived from the wording of the non-assignment clause is that the Contract to Sell is forfeited should there be an assignment, but even then, the right to forfeit is susceptible to waiver.[45] Thus, when Solid Homes learned of the assignment, it could have treated the Contract to Sell with spouses Calica as having been breached, and yet, it opted not to do so and instead, by its own acts, recognized spouses Jurado as the buyers-assignees.

III

Defenses of *res judicata*, forum shopping, estoppel, prescription and laches

Solid Homes also repeatedly invokes the grounds of *res judicata*, forum shopping, estoppel, prescription and laches to defeat the claim of spouses Jurado. These arguments are, however, patently without merit.

The 1996 HLURB Rules of Procedure, as amended by Resolution No. R-660, series of 1999, the rules in force at the time the first complaint was filed, require that documentary evidence supporting the cause of action must be attached to the complaint and in the absence of which, the complaint shall be dismissed without prejudice. Dismissal with prejudice disallows and bars the refiling of the complaint; whereas, the same cannot be said of a dismissal without prejudice.[46]

Here, the HLURB Arbiter dismissed the first complaint for lack of documentary evidence and the dismissal was expressly made to be without prejudice to the refiling thereof. Since spouses Jurado did not appear to have further appealed from said dismissal as affirmed by the HLURB Board, their remedy was to refile the complaint, together with their documentary evidence supporting their cause of action, as they in fact did in 2005. Thus, Solid Homes' contentions that the second complaint was barred by *res judicata*,[47] that spouses Jurado committed forum shopping,[48] and that they were estopped from adducing additional documentary evidence, are erroneous.

There is likewise no reason to hold that the complaint was barred by prescription or by laches. Solid Homes postulates that the 10-year prescriptive period should be reckoned from September 17, 1977 when it executed the Contract to Sell with spouses Calica, or at the latest, from January, 1983, when the Deed of Assignment and Transfer of Rights was executed.

The Civil Code provides that an action based on a written contract, an obligation created by law, and a judgment must be brought within 10 years from the time the right of action accrues.[49] While the prescriptive period for bringing an action for specific performance, as in this case, prescribes in 10 years, the period of prescription is reckoned only from the date the cause of action accrued.[50]

A cause of action arises when that which should have been done is not done, or that which should not have been done is done.[51] A right of action does not necessarily accrue on the date of the execution of the contracts because it is the legal possibility of bringing the action that determines the reckoning point for the period of prescription.[52] Thus, it was only when Solid Homes mortgaged the subject property in February 1983 that spouses Jurado's cause of action accrued because it was only then that Solid Homes' obligation to replace the

mortgaged property arose.

Congruently, Article 1155 of the Civil Code explicitly provides that the prescriptive period is interrupted when an action has been filed in court; when there is a written extrajudicial demand made by the creditors; and when there is any written acknowledgment of the debt by the debtor. Interruption of the prescriptive period, as distinguished from mere suspension or tolling, by written extrajudicial demand means that the period would commence anew from the receipt of the demand.[53] In other words, "[a] written extrajudicial demand wipes out the period that has already elapsed and starts anew the prescriptive period." [54]

In this case, the uncontroverted fact is that spouses Jurado made extrajudicial demands upon Solid Homes to replace the property through letters dated October 23, 1992 and August 7, 1996, and then filed the complaint in 2000. Resultantly, when Spouses Jurado re-filed their complaint in 2005, their cause of action had not yet prescribed.

Neither do we find spouses Jurado guilty of laches as to deprive them of the remedy provided under the law.

Laches is defined as the failure or neglect, for an unreasonable and unexplained length of time, to do that which by the exercise of due diligence could or should have been done earlier. Its elements are:

- (1) conduct on the part of the defendant, or of one under whom the defendant claims, giving rise to the situation which the complaint seeks a remedy; (2) delay in asserting the complainant[']s rights, the complainant having had knowledge or notice of the defendant[']s conduct as having been afforded an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right in which the defendant bases the suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held barred.[55]

In 1983, when spouses Jurado were made aware that Solid Homes mortgaged the subject property, which mortgage was eventually foreclosed, the latter made representation that it will replace the lot. The factual findings of the HLURB, OP, and CA indicate that indeed such was the case. Relying on this representation, spouses Jurado submitted the required documents to facilitate the replacement and when no such replacement was forthcoming, they made repeated extrajudicial demands on Solid Homes until, eventually, they filed a complaint in the HLURB. By their actions, spouses Jurado could not be charged of having stalled in asserting their rights under the Contract to Sell.

It is further noted that since Solid Homes was factually determined to be the subdivision developer,[56] the provisions of Presidential Decree No. 957 (P.D. 957), or the Subdivision and Condominium Buyer's Protective Decree, as amended, should apply. With respect to mortgages over existing subdivision projects, Section 18 of P.D. 957 provides:

SEC. 18. Mortgages. - No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority. Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereto;

In *Philippine Bank of Communications v. Pridisons Realty Corporation*,[57] the Court held that the failure to secure the HLURB's approval results in the nullity of the mortgage but that, nevertheless, a contract of indebtedness still exists between the subdivision developer as mortgagor and the mortgagee. In this case,

however, considering the dearth of factual finding as to whether or not Solid Homes secured the clearance to mortgage before mortgaging the subject property, that neither of the parties raised this issue in the instant case, and that the parties were factually found to have instead, agreed on the replacement of the property, compel the Court to refrain from delving upon the applicability of Section 18 to the instant case. At any rate, the remedies provided under P.D. 957 are expressly made to be in addition to any and all other rights and remedies that may be available under existing laws.

IV

Obligations under a contract to sell

Based on the same argument that it did not give its consent to the transfer and assignment of rights under the Contract to Sell, Solid Homes contends that the CA erred in affirming the OP's and the HLURB's similar orders to replace the foreclosed lot and to convey title over the property, or in the alternative, to pay the current value of the property.

As above-discussed, the Deed of Assignment and Transfer of Rights between spouses Calica and spouses Jurado effectively subrogated the latter in place of the former; consequently, spouses Jurado had the right to enforce the Contract to Sell as spouses Calica could.

A contract to sell is textually defined as a "bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds himself to sell the said property exclusively to the prospective buyer upon fulfillment of the condition agreed upon." [58] The obligation of the prospective seller, which is in the nature of an obligation to do, is to sell the property to the prospective buyer upon the happening of the positive suspensive condition, that is, the full payment of the purchase price. [59]

Nabus v. Pacson [60] exhaustively explains the concept of a contract to sell:

In a contract to sell, the prospective seller explicitly reserves the transfer of title to the prospective buyer, meaning, the prospective seller does not as yet agree or consent to transfer ownership of the property subject of the contract to sell until the happening of an event, which for present purposes we shall take as 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. In other words, 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, thus, ownership is retained by the prospective seller without further remedies by the prospective buyer.

x x x x

Stated positively, upon the fulfillment of the suspensive condition which is the full payment of the purchase price, the prospective seller's obligation to sell the subject property by entering into a contract of sale with the prospective buyer becomes demandable x x x x.

x x x x

In a contract to sell, upon the fulfillment of the suspensive condition which is the full payment of the purchase price, 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.

The foregoing characters of a contract to sell are important in order to determine the laws and remedies applicable in case a party does not fulfill his or her obligations under the contract. [61] In *Olivarez Realty Corporation v.*

Castillo[62] we held that the prospective buyer's failure to fully pay the purchase price in a contract to sell is not a breach of contract under Article 1191 on the right to rescind reciprocal obligations. Citing Nabus, Olivarez held that "[t]his is because there can be no rescission of an obligation that is still non-existent, the suspensive condition not having happened." [63] Thus, in case the prospective buyer does not comply, the contract to sell is cancelled and the parties shall stand as if the obligation to sell never existed. [64] When a contract to sell is cancelled, the installments paid for the property are generally ordered reimbursed, especially if possession over the property has not been delivered to the prospective buyer. [65]

The pronouncement in Olivarez should, however, be reconciled with our ruling in *Gotesco Properties, Inc. v. Spouses Fajardo*, [66] wherein we upheld the buyer's right to rescind the contract to sell for failure of the seller to cause the transfer of the corresponding certificate of title upon full payment of the purchase price. Thus, a contract to sell is susceptible to rescission for substantial and fundamental breaches, [67] as when the seller fails to comply with his obligation to sell the property despite the happening of the suspensive condition, because 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. However, instead of rescission of the obligation, the injured party may choose that the contract be actually accomplished by the party bound to fulfill it. [68] Specific performance refers to the remedy of requiring exact performance of a contract in the specific form in which it was made, or according to the precise terms agreed upon.

In their complaint, spouses Jurado prayed that Solid Homes be ordered "to replace the foreclosed lot or to convey and transfer to complainants in absolute ownership, a parcel of land of the same area, volume, quality and location as the lot covered by the Contract to Sell and that in the event [Solid Homes] is unable to do so, that [Solid Homes] be ordered to pay [spouses Jurado] its current market value in the amount of P10 million; and that moreover, if found unwarranted that [Solid Homes] be ordered to return the amount [of] P480,262.95 to [spouses Jurado] and that [Solid Homes] be ordered to pay moral damages of P500,000.00 and attorney's fee of P200,000.00, all with legal interest until fully paid." [69]

Spouses Jurado opted to avail of the remedy of specific performance, i.e., to replace the property, when Solid Homes mortgaged the subject property without the former's knowledge, much less, consent. Notably, the facts that the subject property had been mortgaged and that said mortgage was eventually foreclosed, were never disputed by Solid Homes.

Consequently, rights to the lot should be restored to spouses Jurado or the same should be replaced by another acceptable lot. [70] The HLURB Board, as affirmed by the OP and the CA, therefore correctly ordered Solid Homes to replace the mortgaged and foreclosed property with another of the same area, quality, and location as the lot covered by the Contract to Sell. In case Solid Homes fails to comply, spouses Jurado can treat the contract to sell as cancelled and be entitled to a reimbursement of the installments paid. Spouses Jurado could not have rescinded the contract to sell as they have yet to pay the purchase price in full.

Considering that spouses Jurado have not yet paid the full purchase price, the HLURB's order, affirmed by the OP and the CA, for Solid Homes to convey title in favor of spouses Jurado or to pay the fair market value of the property is premature and consequently, erroneous.

We underscore that title and ownership over the replacement property remains with Solid Homes until spouses Jurado fully pay the balance of the purchase price which was factually determined to be in the amount of P145,843.35. It is only then that Solid Homes can be made to execute the corresponding deed of absolute sale and deliver the title in favor of spouses Jurado. As emphasized in *Gotesco*, [71] the seller's obligation to deliver the corresponding certificates of title is simultaneous and reciprocal to the buyer's full payment of the purchase price.

Pointedly, Section 25 of P.D. No. 957 states:

SEC. 25. Issuance of Title. The owner or developer shall deliver the title of the lot or unit to the buyer upon full payment of the lot or unit. No fee, except those required for the registration of the deed of sale in the Registry of Deeds, shall be collected for the issuance of such title. In the event a mortgage over the lot or unit is outstanding at the time of the issuance of the title to the buyer, the owner or developer shall redeem the mortgage or the corresponding portion thereof within six months from such issuance in order that the title over any fully paid lot or unit may be secured and delivered to the buyer in accordance herewith. (Emphasis supplied)

It must be emphasized that the obligation to pay the fair market value of the property, as the alternative to the transfer of ownership and delivery of title over the subject lot, becomes demandable only upon the full payment of the purchase price. Since spouses Jurado have yet to pay the purchase price in full, Solid Homes cannot be ordered to convey title over the replacement lot or to pay the value of the lot foreclosed at this point. Otherwise stated, without spouses Jurado's full payment, there can be no breach of the obligation to sell because Solid Homes has no obligation yet to turn over the title, or in the alternative, to pay its value.

Only in the event that Solid Homes fails to sell an acceptable replacement lot despite full payment of the purchase price that such may be considered a contractual breach which, under Article 1191 of the New Civil Code, gives rise to the remedy of rescission. Relatedly, rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interests.[72] While we are aware of our ruling in *Solid Homes, Inc. v. Spouses Tan*,[73] as reiterated in *Gotesco*, that for reasons of equity and justice and to prevent unjust enrichment, the injured party should be paid the market value of the lot,[74] such presupposes that the buyer already paid the purchase price in full. As held in *Gotesco*:

On this score, it is apt to mention that it is the intent of PD 957 to protect the buyer against unscrupulous developers, operators and/or sellers who reneged on their obligations. Thus, in order to achieve this purpose, equity and justice dictate that the injured party should be afforded full recompense and as such, be allowed to recover the prevailing market value of the undelivered lot which had been fully paid for. (Emphasis ours)[75]

But since in this case, spouses Jurado have yet to fully pay the purchase price, they should be entitled, not to the entire current market value of the property, but to a refund of the installments they paid with interest, in the event Solid Homes fails to replace the subject property with an acceptable lot.

With regard to the imposition of interest, *Nacar* held that in the absence of stipulation, whether or not the obligation constitutes a loan or forbearance of money, the rate of interest shall be 6% per annum which shall be reckoned from the time of judicial or extrajudicial demand.

Thus, in line with *Nacar* and in consonance with the circular of the Monetary Board of the Bangko Sentral ng Pilipinas No. 799, Series of 2013, effective July 1, 2013,[76] the prevailing rate of interest is 6% per annum, in the absence of an express contract as to such rate of interest. Accordingly, the interest rate of 12%[77] per annum should be imposed on the total payments made from the date of the demand to replace the property, or on February 22, 1983, until June 30, 2013 and the interest rate of 6% per annum is imposed from July 1, 2013 until fully paid.

WHEREFORE, the instant Petition is PARTLY GRANTED. Petitioner Solid Homes, Inc. is ordered to REPLACE the foreclosed lot with another of the same area, quality, and location as the lot covered by the Contract to Sell. Upon replacement of the property, spouses Artemio and Consuelo O. Jurado shall pay the remaining balance of P145,843.35 with interest at the rate of 6% per annum reckoned from the time the replacement lot is made available to them. In case of failure to replace the foreclosed lot with an acceptable lot,

Solid Homes is ordered to REIMBURSE to spouses Jurado the amount of P480,262.95 with interest at the rate of 12% per annum reckoned from February 22, 1983 until June 30, 2013, and interest at the rate of 6% per annum from July 1, 2013 until fully paid.

No pronouncement as to costs.

SO ORDERED.

Carpio, (Chairperson), Caguioa, Lazaro-Javier, and Zalameda, JJ., concur.

[1] Rollo, pp. 10-36.

[2] Penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Magdangal M. De Leon and Jane Aurora C. Lantion; id. at 81-99.

[3] Id. at 109-110.

[4] Id. at 100-104.

[5] Id. at 203-204.

[6] Id. at 195-198.

[7] Id. at 82.

[8] Id. at 12.

[9] Id. at 82.

[10] Id. at 164.

[11] Id.

[12] Id. at 39.

[13] Id. at 13.

[14] Id. at 211-212.

[15] Id. at 84.

[16] Id.

[17] Id.

[18] Supra note 6, at 196-197.

[19] Id. at 198.

[20] Id. at 201.

[21] Id. at 199-202.

[22] Id. at 202.

[23] Supra note 5.

[24] Id. at 204.

[25] Supra note 2, at 90.

[26] Id. at 93.

[27] Id. at 94.

[28] Id. at 95.

[29] Id.

[30] Supra note 2, at 98.

[31] Supra note 3.

[32] Supra note 1, at 17-19.

[33] 716 Phil. 267,281-283 (2013).

[34] 574 Phil. 69, 79-80 (2008).

[35] Id.

[36] 255 Phil. 311, 324-326 (1989).

[37] No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and law on which it is based.

[38] Supra note 1, at 12.

[39] Republic v. Sandiganbayan, 425 Phil. 752, 765-766 (2002), distinguishes a question of law from a question of fact in this wise:

A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.

[40] Pascual v. Burgos, 116 Phil. 167 (2016), citing Medina v. Mayor Asistio, Jr., 269 Phil. 225, 182-183 (1990), enumerates the following exceptions:

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.

[41] Id. at 181.

[42] Project Builders, Inc. v. Court of Appeals, 411 Phil. 264, 274 (2001).

[43] *South City Homes, Inc. v. BA Finance Corporation*, 423 Phil. 84, 95 (2001).

[44] *Project Builders*, *supra*, at 274.

[45] See ALLCOCK, B. (1983). RESTRICTIONS ON THE ASSIGNMENT OF CONTRACTUAL RIGHTS. THE CAMBRIDGE LAW JOURNAL, 42(2), 328-346. Allcock observes that the non-assignment clause had been given restrictive interpretation and admits of at least four possible constructions: (a) as a promise not to assign, in which case the assignment would make the assignor liable in damages but would not prevent the assignee from acquiring rights against the obligor; (b) as preventing an assignee from acquiring rights against the obligor; (c) as purporting to prevent the assignee from acquiring rights against the assignor; and (d) as giving the obligor the right to forfeit the contract. < <http://www.jstor.org/stable/450656> > (Visited September 2, 2019)

[46] *Strongworld Construction Corporation v. Hon. Perello*, 528 Phil. 1080, 1093 (2006).

[47] *Social Security Commission v. Rizal Poultry and Livestock Association, Inc.*, 665 Phil. 198, 206 (2011) enumerates the elements of *res judicata* as follows:

(1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action. Should identity of parties, subject matter, and causes of action be shown in the two cases, then *res judicata* in its aspect as a "bar by prior judgment" would apply. If as between the two cases, only identity of parties can be shown, but not identical causes of action, then *res judicata* as "conclusiveness of judgment" applies.

[48] In *Dy v. Mandy Commodities Co., Inc.*, 611 Phil. 74, 85-86 (2009), the Court reiterated the following test for determining whether there is forum shopping:

The test for determining the existence of forum shopping is whether a final judgment in one case amounts to *res judicata* in another or whether the following elements of *litis pendentia* are present: (a) identity of parties, or at least such parties as representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration. Said requisites are also constitutive of the requisites for *auter action pendant* or *lis pendens*.

[49] Article 1144. The following actions must be brought within ten years from the time the right of action accrues:

- (1) Upon a written contract;
- (2) Upon an obligation created by law;
- (3) Upon a judgment

[50] See *Solid Homes, Inc. v. Tan*, 503 Phil. 121, 128 (2005).

[51] *Id.*

[52] *Id.*, citing *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, 388 Phils. 27, 39-40 (2000).

[53] See *The Overseas Bank of Manila v. Hon. Germaldez*, 183 Phil. 493,495 (1979).

[54] *Id.* at 496.

[55] *Estate of the Late Encamacion Vda. de Panlilio v. Dizon*, 562 Phil. 518, 544 (2007).

[56] Supra note 2, at 82.

[57] 701 Phil. 178, 191 (2013).

[58] *Coronel v. Court of Appeals*, 331 Phil. 294, 310 (1996).

[59] Article 1479 of the New Civil Code provides:

A promise to buy and sell a determinate thing for a price certain is reciprocally demandable.

An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promisor if the promise is supported by a consideration distinct from the price.

[60] 620 Phil. 344, 361 -362 (2009), citing *Coronel v. Court of Appeals*, supra.

[61] 738 Phil. 737, 764 (2014).

[62] Id. at 765.

[63] Id.

[64] Id.

[65] Id. at 766.

[66] 705 Phil. 294, 300-304 (2013).

[67] As a general rule, "rescission will not be permitted for a slight or casual breach of the contract, but only for such breaches as are substantial and fundamental as to defeat the object of the parties in making the agreement." *Song Fo and Company v. Hawaiian-Philippine Co.*, 47 Phil. 821, 827 (1925).

[68] Article 1191 of the New Civil Code provides:

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 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, x x x x

[69] Rollo, pp. 211-212.

[70] See *Palay, Inc. v. Clave*, 124 SCRA 638, 647-648 (1983).

[71] Supra note 66, at 300.

[72] Article 1385 of the New Civil Code provides:

Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interests; consequently, it can be carried out only when he who demands rescission can return whatever he may be obliged to restore.

[73] 503 Phil. 1121, 133 (2005).

[74] In *Solid Homes, Inc., v. Spouses Tan*, the Court said:

Were we to follow the letter of Article 1385, we will in effect be paving the way to an absurd situation whereby subdivision developers who have reneged on their contractual and legal obligation to provide utility systems and facilities for the use of subdivision lot owners may themselves profit from their very own wrongs

and shortcomings; Id.

[75] Supra note 66, at 305.

[76] The pertinent portion of which reads:

The Monetary Board, in its Resolution No. 796 dated 16 May 2013, approved the following revisions governing the rate of interest in the absence of stipulation in loan contracts, thereby amending Section 2 of Circular No. 905, Series of 1982:

Section 1. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) per annum.

Section 2. In view of the above, Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions are hereby amended accordingly. This Circular shall take effect on 01 July 2013.

[77] CB Circular No. 905 which took effect on December 22, 1982, particularly Section 2 thereof states:

Sec. 2. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of express contract as to such rate of interest, shall continue to be twelve per cent (12%) per annum.

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