

CASA FILIPINA REALTY CORPORATION, PETITIONER, VS. OFFICE OF THE PRESIDENT AND SPOUSES DENNIS AND REBECCA SEVILLA, RESPONDENTS.

G.R. No. 99346. February 07, 1995

Ponente: ROMERO, J.

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ROMERO, J.:

This is a motion for the reconsideration of the Resolution of August 5, 1991[1] dismissing the instant petition for certiorari for failure of herein petitioner Casa Filipina Realty Corporation to sufficiently show that respondent public officials have committed any reversible error in their decision which is unfavorable to the petitioner.

The records show that sometime in May or June 1984, spouses Dennis and Rebecca Sevilla agreed to purchase from Casa Filipina Realty Corporation (CFRC) a parcel of land with an area of about 264 square meters located in Barrio San Dionisio, Parañaque, Metro Manila and identified as Lot 7, Block 6, Phase IV, Casa Filipina II Subdivision. The parties agreed that the purchase price of P150,480.00 would be paid on installment basis with P36,115.20 as downpayment and P3,560.86 as monthly installment for five (5) years at 28% amortization interest per annum. The agreement was embodied in a contract to sell executed on November 15, 1984.

In the ensuing months after the execution of the contract, the Sevilla spouses failed to pay the amortizations on time. The last installments they paid were for April to July 1985, which they paid, including penalties, on September 25, 1985.

On November 5, 1985, Dennis Sevilla wrote a letter to CFRC calling its attention to the absence of any improvement in the subdivision and his discovery that, upon checking with the Register of Deeds of Pasay City, the mother title of the subdivision was under lis pendens and mortgaged to ComSavings Bank (formerly Royal Savings Bank). Sevilla, therefore, requested a refund of all installment payments made on account of the contract. [2]

On November 19, 1985, the Sevilla spouses filed a complaint against CFRC with the Office of Appeals, Adjudication and Legal Affairs (OAALA) of the Human Settlements Regulatory Commission. They prayed for the refund of P70,431.12 which was the total amount they had paid CFRC on account of the contract, plus legal interest thereon from the date of the reservation or from the date of the contract to sell, whichever is applicable, attorney's fees of P5,000.00, and moral/liquidated damages in the amount of P20,000.00 and the costs of the suit.

After due hearing, the OAALA rendered the decision of October 13, 1987 finding CFRC to be without license to sell the subdivision involved. OAALA held that, even assuming that CFRC had a license to sell, it was still liable for violation of Sec. 20 of Presidential Decree No. 957 as it had failed to develop the subdivision. In so holding, the OAALA took judicial notice of the report of Danilo B. Agus on the ocular inspection he had conducted on December 5, 1986 in the same subdivision project in "Ernesto Ola v. Casa Filipina Realty and Development Corporation", HLURB Case No. REM-0102386-3013, for non-development. Hence, the OAALA ordered CFRC to refund the Sevilla couple the amount of P70,431.12 with 28% interest per annum computed from November 19,

1985, the date of the filing of the complaint, until fully paid and to pay P4,000.00 as attorney's fees and P3,000.00 as administrative fine for violation of Sec. 20 of P.D. No. 957.

Said decision was affirmed by the Housing and Land Use Regulatory Board (HLURB) on June 21, 1988 with the modification that instead of the 28% interest charged upon CFRC by the OAALA on the refundable amount, HLURB imposed only 6%.

On January 31, 1990, the Office of the President dismissed for lack of merit the appeal taken by CFRC and affirmed the June 21, 1988 decision of the HLURB. [3] CFRC filed a motion for the reconsideration of the decision of the Office of the President but it was denied on May 7, 1991. [4]

Hence, CFRC filed the instant petition [5] which, as earlier stated, was dismissed by this Court on August 5, 1991.

Petitioner's motion for reconsideration is anchored on the contention that the petition should not have been dismissed as it involves the "interpretation and/or application" [6] of provisions of law as the Court has to determine whether it is Sec. 23 or 24 of P.D. No. 957 which should be applied in the instant case. Petitioner argues that since private respondents desisted from paying the agreed installments, they should have notified the CFRC of such desistance in accordance with Sec. 23. Moreover, since private respondents' desistance from further paying the amortization was due to *litis pendens* and the mortgage of the mother title of the subdivision, Sec. 24 should have been applied in the case.

As regards the interest charged on the refundable amount, petitioner contends that while it is not averse to making a refund, the 3% delinquency interest charged upon private respondents for their late amortizations should not be included in the amount refundable and the refund should be in accordance with P.D. No. 957.

For a clear resolution of the motion for reconsideration, the provisions of P.D. No. 957 involved herein must be noted:

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

SEC. 24. Failure to pay installments. - The rights of the buyer in the event of his failure to pay the installments due for reasons other than failure of the owner or developer to develop the project shall be governed by Republic Act No. 6552."

In arguing for the reconsideration of the Resolution of August 5, 1991 dismissing the petition, petitioner underscores the holding of the Office of the President that Sec. 23 "does not require that a notice be given first before a demand for refund can be made" as the notice and demand "can be made in the same letter or communication" which was exactly what private respondents did. [7] While petitioner agrees that the notice and demand for reimbursement may be made in one communication, it avers that Sec. 23 clearly provides that there can be no forfeiture of payments made by a buyer only if such buyer has first given notice to the developer that he will not pay the installments anymore on the ground that the subdivision where the lot being bought is located has not been developed.

Petitioner's contention is premised on its misleading statement that the private respondents' desistance from further paying the amortization was based merely on the notice of *lis pendens* and the mortgage annotated on the

mother title of subject property [8] or on "reasons other than nondevelopment." [9] This is belied by the letter itself which, for clarity, we quote in full:

"November 5, 1985

MR. AUGUSTO S. PARCERO
Vice President
CASA FILIPINA REALTY CORP.
3rd Flr., Corinthian Plaza
Legaspi Vill., Makati, Metro Manila

Dear Sir:

This is in connection of our lot we purchased at CASA FILIPINA SUBDIVISION, more particularly described as follows:

Phase IV Block #6 Lot #7

As we see and understand that the property mentioned has no development improvements even on the project features. Since we convinced to pay the reservation and the full down payment and now the amortization, we keep on visiting the place for construction x x x (illegible) and we don't even know where our lot is exactly located, nor we go over the place because of the overhead growth of the cogon grass.

The last time I arrived from Saudi Arabia, we decided to check at the Register of Deeds of Pasay regarding the said lot, and we found out that the mother title has a Less Pendins case and we also found out that the said title was under mortgage to Com Savings Bank formerly Royal Saving Bank.

In behalf of this unexpected circumstances, we are requesting for a refund for the money we paid up to Casa Filipina Realty Corporation.

Hoping for your kind consideration regarding this matter.

Thank you.

Very truly yours,

(Sgd.)
DENNIS S. SEVILLA
(Buyer)" [10]

Private respondents' refusal to continue paying the amortization is thus based on two principal grounds: nondevelopment of the subdivision and encumbrance of the property subject of the sale which became apparent to the buyer only after conducting his own investigation. As such, the case falls squarely within the purview of both Secs. 23 and 24 of P.D. No. 957.

Considering, however, the peculiar circumstances of this case, we agree with the Solicitor General that the requirements of Sec. 23 have been complied with by the private respondents. In this regard, public respondent, after conceding the petitioner's argument that Sec. 23 requires the buyer to notify the developer or subdivision owner of his intention not to remit further payments on the property on account of nondevelopment of the subdivision, states:

"Appellant's reading of Section 23 elicits our concurrence. However, its claim that appellees had failed to give the required notice before demanding for refund, is not borne out by the evidence. Records show that in a letter of November 5, 1985, Dennis Sevilla already gave notice to appellant regarding, among other things, the nondevelopment of the subdivision, and therein demanded for refund. To our mind, Section 23 does not

require that a notice be given first before a demand for refund can be made. The notice and the demand can be made in the same letter or communication, and this is what the appellees did.

But appellant would insist that, when appellees demanded a refund of installments paid in their letter of November 5, 1985, they were already in default as of August 30, 1985, and that their said demand had 'the sound of belated and hindsight attempt to cover up the default for which contract cancellation would be the necessary consequence.' We find the contention untenable.

The general rule is that an obligor incurs in delay (default) only after a demand, judicial or extrajudicial, has been made from him for the fulfillment of his obligation. Thus, Article 1169 of the Civil Code provides that 'Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.' Here, there was no such demand by the appellant. The letters it sent to appellees were the usual remind letters that are ordinarily sent by creditors to late-paying debtors. They are not the demand contemplated by law." [11]

Being in accord with the spirit behind P.D. No. 947, public respondent's conclusions are hereby affirmed. This decree, aptly entitled "The Subdivision and Condominium Buyers' Protective Decree", was issued in the wake of numerous reports that many real estate subdivision owners, developers, operators and/or sellers "have reneged on their representations and obligations to provide and maintain properly subdivision roads, drainage, sewerage, water systems, lighting systems and other basic requirements" for the health and safety of home and lot buyers.[12] It was designed to stem the tide of "fraudulent manipulations perpetrated by unscrupulous subdivision and condominium sellers and operators, such as failure to deliver titles to buyers or titles free from liens and encumbrances." [13] Should the notice requirement provided for in Sec. 23 be construed as required to be given before a buyer desists from further paying amortizations as in this case, the intent of the law to protect subdivision lot buyers, such as private respondents, will tend to be defeated.

It should be noted that the petitioner did not only fail to develop the subdivision it was selling but had also encumbered the property prior to selling the same. The inscription of acts and transactions relating to the ownership and other rights over immovable property, even as it serves as a constructive notice to the whole world, is intended to protect the person in whose favor the entry is made and the public in general against any possible undue prejudice due to ignorance on the status of the realty. The rule on constructive notice is not so designed, however, as to allow a person to escape from a lawfully incurred liability. Thus, a vendor of real estate whereon an adverse claim is validly annotated cannot invoke such registration to avoid his own obligation to make a full disclosure to the vendee of adverse claims affecting the property. The registration protects the adverse claimant because of the rule on constructive notice but not the person who makes the conveyance. It behooves such real estate developer and dealers to make proper arrangements with the financial institutions to allow the release of titles to buyers upon their full payment of the purchase price.

Moreover, the HLURB found that petitioner had not secured a license prior to the sale of the subject lot [14] which is a requirement of Sec. 5 of P.D. No. 957. These factual findings of the administrative bodies which are equipped with expertise as far as their jurisdiction is concerned, should be accorded, not only respect but even finality as they are supported by substantial evidence even if not overwhelming or preponderant. [15] Thus, a stringent application of the law is demanded as far as petitioner is concerned.

On the issue of delinquency interest which Sec. 23 of P.D. No. 957 explicitly excludes from the amount to be reimbursed to lot buyers, the Solicitor General avers that since the matter has been belatedly raised, the same should be deemed waived. [16] However, while the rule is that no error which does not affect jurisdiction will be considered unless stated in the assignment of errors, the trend in modern-day procedure is to accord the courts broad discretionary power such that the appellate court may consider matters bearing on the issues submitted for

resolution which the parties failed to raise or which the lower court ignored. Since rules of procedure are mere tools designed to facilitate the attainment of justice, their strict and rigid application which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be avoided. [17] Technicality should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties. [18]

ACCORDINGLY, petitioner's motion for reconsideration of the resolution of August 5, 1991 dismissing the instant petition for certiorari is hereby DENIED and the decision of the Office of the President is AFFIRMED. This Resolution is immediately executory. No costs.

SO ORDERED.

Feliciano, (Chairman), Melo, Vitug, and Francisco, JJ., concur.

[1] Rollo, p. 76.

[2] Ibid., p. 75.

[3] Ibid., pp. 57-63. Acting Deputy Executive Secretary Mariano Sarmiento II signed the decision by authority of the President.

[4] Ibid., pp. 72-73.

[5] Petition, p. 1; Ibid., p. 6. The petitioner erroneously labelled its petition as a "petition for review on certiorari".

[6] Ibid., p. 77.

[7] Ibid., p. 76.

[8] Motion for Reconsideration; p. 3, Ibid., p. 79.

[9] Reply to Comment on the Motion for Reconsideration, p. 2; Rollo, p. 118.

[10] Rollo, p. 75.

[11] Rollo, p. 61.

[12] Second paragraph of the "whereas clause" of the decree.

[13] Third paragraph of the same "whereas clause". See: Estate Developers and Investors Corporation v. Court of Appeals, G.R. No. 92461, September 2, 1992, 213 SCRA 353, 358.

[14] Rollo, p. 45.

[15] Sesbreno v. Ala, G.R. No. 95393, May 5, 1992, 208 SCRA 359; Leano v. Domingo, G.R. No. 84378, July 4, 1991, 198 SCRA 800.

[16] Comment on the Motion for Reconsideration, pp. 9-10; Rollo, pp. 114-115.

[17] Radio Communications of the Phils., Inc. v. NLRC, G.R. No. 101181-84, June 22, 1992, 210 SCRA 222.

[18] Rapid Manpower Consultants, Inc. v. NLRC, G.R. No. 88683, October 18, 1990, 190 SCRA 747.

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