558 Phil. 683

THIRD DIVISION

[G.R. NO. 156364, September 03, 2007]

JACOBUS BERNHARD HULST, VS. PR BUILDERS, INC., RESPONDENT.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court assailing the Decision[1] dated October 30, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 60981.

The facts:

Jacobus Bernhard Hulst (petitioner) and his spouse Ida Johanna Hulst-Van Ijzeren (Ida), Dutch nationals, entered into a Contract to Sell with PR Builders, Inc. (respondent), for the purchase of a 210-sq m residential unit in respondent's townhouse project in *Barangay* Niyugan, Laurel, Batangas.

When respondent failed to comply with its verbal promise to complete the project by June 1995, the spouses Hulst filed before the Housing and Land Use Regulatory Board (HLURB) a complaint for rescission of contract with interest, damages and attorney's fees, docketed as HLRB Case No. IV6-071196-0618.

On April 22, 1997, HLURB Arbiter Ma. Perpetua Y. Aquino (HLURB Arbiter) rendered a Decision[2] in favor of spouses Hulst, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the complainant, rescinding the Contract to Sell and ordering respondent to:
>
> 1) Reimburse complainant the sum of P3,187,500.00, representing the purchase price paid by the complainants to P.R. Builders, plus interest thereon at the rate of twelve percent (12%) per annum from the time complaint was filed;
>
> 2) Pay complainant the sum of P297,000.00 as actual damages;
>
> 3) Pay complainant the sum of P100,000.00 by way of moral damages;
>
> 4) Pay complainant the sum of P150,000.00 as exemplary damages;
>
> 5) P50,000.00 as attorney's fees and for other litigation expenses; and
>
> 6) Cost of suit.

SO ORDERED.[3]

Meanwhile, spouses Hulst divorced. Ida assigned her rights over the purchased property to petitioner.[4] From then on, petitioner alone pursued the case.

On August 21, 1997, the HLURB Arbiter issued a Writ of Execution addressed to the Ex-Officio Sheriff of the Regional Trial Court of Tanauan, Batangas directing the latter to execute its judgment.[5]

On April 13, 1998, the Ex-Officio Sheriff proceeded to implement the Writ of Execution. However, upon complaint of respondent with the CA on a Petition for *Certiorari* and Prohibition, the levy made by the Sheriff was set aside, requiring the Sheriff to levy first on respondent's personal properties.[6] Sheriff Jaime B. Ozaeta (Sheriff) tried to implement the writ as directed but the writ was returned unsatisfied.[7]

On January 26, 1999, upon petitioner's motion, the HLURB Arbiter issued an Alias Writ of Execution.[8]

On March 23, 1999, the Sheriff levied on respondent's 15 parcels of land covered by 13 Transfer Certificates of Title (TCT)[9] in Barangay Niyugan, Laurel, Batangas.[10]

In a Notice of Sale dated March 27, 2000, the Sheriff set the public auction of the levied properties on April 28, 2000 at 10:00 a.m..[11]

Two days before the scheduled public auction or on April 26, 2000, respondent filed an Urgent Motion to Quash Writ of Levy with the HLURB on the ground that the Sheriff made an overlevy since the aggregate appraised value of the levied properties at P6,500.00 per sq m is P83,616,000.00, based on the Appraisal Report[12] of Henry Hunter Bayne Co., Inc. dated December 11, 1996, which is over and above the judgment award.[13]

At 10:15 a.m. of the scheduled auction date of April 28, 2000, respondent's counsel objected to the conduct of the public auction on the ground that respondent's Urgent Motion to Quash Writ of Levy was pending resolution. Absent any restraining order from the HLURB, the Sheriff proceeded to sell the 15 parcels of land. Holly Properties Realty Corporation was the winning bidder for all 15 parcels of land for the total amount of P5,450,653.33. The sum of P5,313,040.00 was turned over to the petitioner in satisfaction of the judgment award after deducting the legal fees.[14]

At 4:15 p.m. of the same day, while the Sheriff was at the HLURB office to remit the legal fees relative to the auction sale and to submit the Certificates of Sale[15] for the signature of HLURB Director Belen G. Ceniza (HLURB Director), he received the Order dated April 28, 2000 issued by the HLURB Arbiter to suspend the proceedings on the matter.[16]

Four months later, or on August 28, 2000, the HLURB Arbiter and HLURB Director

issued an Order setting aside the sheriff's levy on respondent's real properties,[17] reasoning as follows:

> While we are not making a ruling that the fair market value of the levied properties is PhP6,500.00 per square meter (or an aggregate value of PhP83,616,000.00) as indicated in the Hunter Baynes Appraisal Report, we definitely cannot agree with the position of the Complainants and the Sheriff that the aggregate value of the 12,864.00-square meter levied properties is only around PhP6,000,000.00. The disparity between the two valuations are [sic] so egregious that the Sheriff should have looked into the matter first before proceeding with the execution sale of the said properties, especially when the auction sale proceedings was seasonably objected by Respondent's counsel, Atty. Noel Mingoa. However, instead of resolving first the objection timely posed by Atty. Mingoa, Sheriff Ozaete totally disregarded the objection raised and, posthaste, issued the corresponding Certificate of Sale even prior to the payment of the legal fees (pars. 7 & 8, Sheriff's Return).
>
> While we agree with the Complainants that what is material in an execution sale proceeding is the amount for which the properties were bidded and sold during the public auction and that, mere inadequacy of the price is not a sufficient ground to annul the sale, the court is justified to intervene where the inadequacy of the price shocks the conscience (Barrozo vs. Macaraeg, 83 Phil. 378). The difference between PhP83,616,000.00 and Php6,000,000.00 is PhP77,616,000.00 and it definitely invites our attention to look into the proceedings had especially so when there was only one bidder, the HOLLY PROPERTIES REALTY CORPORATION represented by Ma, Chandra Cacho (par. 7, Sheriff's Return) and the auction sale proceedings was timely objected by Respondent's counsel (par. 6, Sheriff's Return) due to the pendency of the Urgent Motion to Quash the Writ of Levy which was filed prior to the execution sale.
>
> **Besides, what is at issue is not the value of the subject properties as determined during the auction sale, but the determination of the value of the properties levied upon by the Sheriff taking into consideration Section 9(b) of the 1997 Rules of Civil Procedure x x x.**
>
> x x x x
>
> It is very clear from the foregoing that, even during levy, the Sheriff has to consider the fair market value of the properties levied upon to determine whether they are sufficient to satisfy the judgment, and any levy in excess of the judgment award is void (Buan v. Court of Appeals, 235 SCRA 424).
>
> x x x x[18] (Emphasis supplied).
>
> The dispositive portion of the Order reads:
>
> WHEREFORE, the levy on the subject properties made by the Ex-Officio

> Sheriff of the RTC of Tanauan, Batangas, is hereby SET ASIDE and the said Sheriff is hereby directed to levy instead Respondent's real properties that are reasonably sufficient to enforce its final and executory judgment, this time, taking into consideration not only the value of the properties as indicated in their respective tax declarations, but also all the other determinants at arriving at a fair market value, namely: the cost of acquisition, the current value of like properties, its actual or potential uses, and in the particular case of lands, their size, shape or location, and the tax declarations thereon.
>
> SO ORDERED.[19]

A motion for reconsideration being a prohibited pleading under Section 1(h), Rule IV of the 1996 HLURB Rules and Procedure, petitioner filed a Petition for Certiorari and Prohibition with the CA on September 27, 2000.

On October 30, 2002, the CA rendered herein assailed Decision[20] dismissing the petition. The CA held that petitioner's insistence that *Barrozo v. Macaraeg*[21] does not apply since said case stated that "when there is a right to redeem inadequacy of price should not be material" holds no water as what is obtaining in this case is not "mere inadequacy," but an inadequacy that shocks the senses; that *Buan v. Court of Appeals*[22] properly applies since the questioned levy covered 15 parcels of land posited to have an aggregate value of P83,616,000.00 which shockingly exceeded the judgment debt of only around P6,000,000.00.

Without filing a motion for reconsideration,[23] petitioner took the present recourse on the sole ground that:

> THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE ARBITER'S ORDER SETTING ASIDE THE LEVY MADE BY THE SHERIFF ON THE SUBJECT PROPERTIES.[24]

Before resolving the question whether the CA erred in affirming the Order of the HLURB setting aside the levy made by the sheriff, it behooves this Court to address a matter of public and national importance which completely escaped the attention of the HLURB Arbiter and the CA: petitioner and his wife are foreign nationals who are disqualified under the Constitution from owning real property in their names.

Section 7 of Article XII of the 1987 Constitution provides:

> ..

The capacity to acquire private land is made dependent upon the capacity to acquire or hold lands of the public domain. Private land may be transferred or conveyed only to individuals or entities "qualified to acquire lands of the public domain." The 1987 Constitution reserved the right to participate in the disposition, exploitation, development and utilization of lands of the public domain for Filipino citizens[25] or corporations at least 60 percent of the capital of which is owned by Filipinos.[26] Aliens, whether individuals or corporations, have been disqualified from acquiring public lands; hence, they have also been disqualified from acquiring private lands.[27]

Since petitioner and his wife, being Dutch nationals, are proscribed under the Constitution from acquiring and owning real property, it is unequivocal that the Contract to Sell entered into by petitioner together with his wife and respondent is void. Under Article 1409 (1) and (7) of the Civil Code, all contracts whose cause, object or purpose is contrary to law or public policy and those expressly prohibited or declared void by law are inexistent and void from the beginning. Article 1410 of the same Code provides that the action or defense for the declaration of the inexistence of a contract does not prescribe. A void contract is equivalent to nothing; it produces no civil effect.[28] It does not create, modify or extinguish a juridical relation.[29]

Generally, parties to a void agreement cannot expect the aid of the law; the courts leave them as they are, because they are deemed *in pari delicto* or "in equal fault." [30] *In pari delicto* is "a universal doctrine which holds that no action arises, in equity or at law, from an illegal contract; no suit can be maintained for its specific performance, or to recover the property agreed to be sold or delivered, or the money agreed to be paid, or damages for its violation; and where the parties are *in pari delicto,* no affirmative relief of any kind will be given to one against the other." [31]

This rule, however, is subject to exceptions[32] that permit the return of that which may have been given under a void contract to: (a) the innocent party (Arts. 1411-1412, Civil Code);[33] (b) the debtor who pays usurious interest (Art. 1413, Civil Code);[34] **(c) the party repudiating the void contract before the illegal purpose is accomplished or before damage is caused to a third person and if public interest is subserved by allowing recovery (Art. 1414, Civil Code);** [35] (d) the incapacitated party if the interest of justice so demands (Art. 1415, Civil Code);[36] (e) the party for whose protection the prohibition by law is intended if the agreement is not illegal *per se* but merely prohibited and if public policy would be enhanced by permitting recovery (Art. 1416, Civil Code);[37] and (f) the party for whose benefit the law has been intended such as in price ceiling laws (Art. 1417, Civil Code)[38] and labor laws (Arts. 1418-1419, Civil Code).[39]

It is significant to note that the agreement executed by the parties in this case is a Contract to Sell and not a contract of sale. A distinction between the two is material in the determination of when ownership is deemed to have been transferred to the buyer or vendee and, ultimately, the resolution of the question on whether the constitutional proscription has been breached.

In a contract of sale, the title passes to the buyer upon the delivery of the thing sold. The vendor has lost and cannot recover the ownership of the property until and unless the contract of sale is itself resolved and set aside.[40] On the other hand, a contract to sell is akin to a conditional sale where the efficacy or obligatory force of the vendor's obligation to transfer title is subordinated to the happening of a future and uncertain event, so that if the suspensive condition does not take place, the parties would stand as if the conditional obligation had never existed.[41] In other words, in a contract to sell, the prospective seller agrees to transfer ownership of the property to the buyer upon the happening of an event, which normally is the full payment of the purchase price. But even upon the fulfillment of the suspensive