

## FIRST DIVISION

**[ G.R. NO. 165724, November 02, 2006 ]**

**ZAMORA REALTY AND DEVELOPMENT CORPORATION AND/OR  
ERNESTO ZAMORA, PETITIONERS, VS. OFFICE OF THE  
PRESIDENT OF THE PHILIPPINES AND EDILBERTO C. GALLARDO,  
RESPONDENTS.**

### D E C I S I O N

**CALLEJO, SR., J.:**

This is a petition for review on *certiorari* of the Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 78319 and its Resolution<sup>[2]</sup> denying the motion for reconsideration thereof.

On October 8, 1985, respondent Edilberto C. Gallardo entered into a contract to sell with Amlac Development Corporation (Amlac). The property

subject of the contract is Lot 1, Block 3 of Amlac-Ville Subdivision. Under the contract, Gallardo was to pay a downpayment of P26,058.00, upon execution, the balance to be paid in installments of P1,987.50 until full settlement of the purchase price of P130,290.00. Gallardo delivered the downpayment upon the signing of the contract, and several months later, on March 11, 1987,<sup>[3]</sup> the initial installment. Gallardo later informed the owner/developer of his intention to stop further payments due to the latter's non-compliance with its obligation to complete the development of the subdivision project. The owner/developer nevertheless made several demands for him to pay the monthly amortizations, which the latter ignored, insisting that he would suspend payment until the completion of the subdivision project.

Thereafter, Zamora Realty and Development Corporation (Zamora Realty) sent a letter<sup>[4]</sup> dated January 22, 1990, addressed to Jaime dela Rosa, copy furnished to all Amlac-Ville Subdivision buyers, advising them to defer payment of monthly amortization due to a pending case between it and Amlac. On November 5, 1991, Gallardo sent a letter<sup>[5]</sup> to the Amlac-Ville Subdivision reiterating his stand to suspend the amortization payments. The realty firm still made demands on Gallardo to pay his back arrears which, per its second notice dated January 28, 1992, amounted to P147,075.00. A final notice of demand was also sent to Gallardo, stating that his arrears already amounted to P153,037.50.<sup>[6]</sup> Finally, on May 14, 1992, Amlac/Zamora Realty sent Gallardo a notarial notice of cancellation of the contract.<sup>[7]</sup>

On June 3, 1992, Gallardo filed a complaint with the Housing and Land Use Regulatory Board (HLURB) against Zamora Realty and Development Corporation and/or Ernesto Zamora, assailing the notarial rescission of the contract to sell.<sup>[8]</sup> In

his complaint, he averred that his suspension of the amortization payment was justified by the non-development of the subdivision project.

For their part, defendants countered that the subject project was almost substantially complete; the centralized water distribution system had been installed, and the concreting of sidewalks had been concluded. They likewise argued that plaintiff failed to observe the provision of Section 23 of Presidential Decree (P.D.) No. 957 before suspending payments.<sup>[9]</sup>

The HLURB Arbiter conducted an ocular inspection of the project and found that development of the project was still ongoing.<sup>[10]</sup> Thus, the HLURB Arbiter rendered a decision in favor of Gallardo. The *fallo* reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Declaring the complainant's suspension of payment beginning November 21, 1991, as legal and valid;
2. As a consequence of the foregoing, holding respondent's rescission of contract over the controverted lot as illegal; and
3. Ordering the complainant to pay the whole balance of his obligations sans penalty interest or interest of this nature except the legal interest as stipulated in their contract conditioned upon respondent's substantial compliance with his obligation as certified by the Board.<sup>[11]</sup>

Aggrieved, defendants appealed to the HLURB Board of Commissioners. On May 29, 1995, the Board dismissed the appeal and affirmed *in toto* the decision of the HLURB Arbiter.<sup>[12]</sup> It noted that Amlac-Ville subdivision was registered as early as 1985, and under applicable laws, a subdivision owner/developer must complete the

development of the project within one year from the date of issuance of the license of the subdivision.<sup>[13]</sup> The Board gave credence to the ocular inspection report which stated that the development of the subject subdivision was still ongoing as of 1992. It concluded that since there was no request for extension, the project remained incomplete, and Gallardo was justified in withholding his payments.

Zamora Realty elevated the matter to the Office of the President (OP), which, however, dismissed the appeal in its Resolution<sup>[14]</sup> dated March 6, 2003. It then filed a motion for reconsideration, which was likewise denied in an Order<sup>[15]</sup> dated June 18, 2003.

Unsatisfied, Zamora Realty filed before the CA a petition for review<sup>[16]</sup> under Rule 43 of the Revised Rules of Court. It relied on the following grounds:

1. We firmly submit to this Honorable Court that the Public Respondent OPP had grossly erred in not finding that the herein Private Respondent clearly violated the Contract to Sell dated October 8,

1998 (sic);

2. The same Office likewise erred in not holding that Petitioners validly and lawfully rescinded already the said Contract to Sell dated October 8, 1998; and
3. The said Public Respondent OPP also erred in not just requiring the herein Petitioners to reimburse any payments already made therein by the herein Private Respondent plus the lawful rate of interest thereof or in the alternative for the herein Petitioners to just give the herein Private Respondent a similar lot that can still be transferred to the said Private Respondent granting that the latter is entitled to affirmative relief from it.<sup>[17]</sup>

On May 31, 2004, the CA rendered a Decision<sup>[18]</sup> dismissing the petition. It sustained the validity of respondent Gallardo's suspension of payments, and ruled that it was in accordance with Sections 20 and 23 of Presidential Decree (P.D.) No. 957. The CA stated that the development of the subdivision was still ongoing as of 1992, way beyond 1985 when it was first registered, and that such delay justified the buyer's act of suspending payment. The CA, likewise, gave weight to Gallardo's letter<sup>[19]</sup> to Amlac-Ville Subdivision, dated November 5, 1991, where he stated that after March 11, 1987, he was stopping payment of his amortization due to non-development of the project.

After its motion for reconsideration was denied, petitioner sought recourse to the Court via petition for review on *certiorari*, anchored on the following grounds:

- I. THE HONORABLE COURT OF APPEALS CLEARLY ERRED IN NOT HOLDING THAT RESPONDENT EDILBERTO C. GALLARDO VIOLATED HIS CONTRACT TO SELL WITH THE HEREIN PETITIONER;
- II. THE HONORABLE COURT OF APPEALS LIKEWISE ERRED IN NOT HOLDING THAT RESPONDENT EDILBERTO C. GALLARDO ALREADY VIOLATED THE SAID CONTRACT TO SELL WHEN HE OPTED TO SUSPEND HIS MONTHLY AMORTIZATION THEREIN; and
- III. THE HONORABLE COURT OF APPEALS ERRED IN NOT REQUIRING INSTEAD THE HEREIN PETITIONER TO JUST REIMBURSE [PAYMENTS OF] THE RESPONDENT EDILBERTO C. GALLARDO OR CHANGE THE SAID LOT WITH AN EQUIVALENT ONE.<sup>[20]</sup>

Petitioner avers that respondent is in bad faith; by his failure to pay the monthly amortization as agreed upon, he flagrantly violated the contract to sell.<sup>[21]</sup> It likewise claims that respondent is not an ordinary buyer of the property as he was, in fact, a broker who could not simply feign ignorance of the stages of the development works.<sup>[22]</sup> After the contract to sell was cancelled by notarial rescission, the subject property was already sold to another person. Consequently, it should have instead been directed to reimburse payments made by respondent, or to sell an equivalent lot to him.<sup>[23]</sup>

In his Comment<sup>[24]</sup> on the petition, respondent insists that he is not in bad faith

because the suspension of payment is the direct result of petitioner's failure to develop the subdivision. In fact, it had advised all Amlac buyers to suspend amortization payments because of the issue of non-development. He insists that there is no showing that the lot in question had already been sold.

After petitioner submitted its Reply,<sup>[25]</sup> the parties were required to submit their respective Memoranda. Petitioner reiterated that the contract between it and respondent was a contract to sell, and as such, ownership was reserved to it until after respondent had fully paid. In fact, even after full payment, ownership is not automatically vested in the buyer as a Deed of Absolute Sale is yet to be executed.<sup>[26]</sup> Lastly, petitioner asserts that the belated suspension of payment by respondent is nothing but a mere afterthought.<sup>[27]</sup>

The issues for determination can be summed up as follows: (a) whether respondent violated the contract to sell by his failure to pay the monthly amortizations, and, if in the negative, whether he was justified to suspend payment due to incomplete development of petitioner's project; and (b) whether the CA erred in not directing petitioner either to reimburse respondent's payments, together with interests, or require it to sell to respondent a different lot equivalent to the subject property.

The petition is bereft of merit.

At the outset, the Court noted that the instant petition is erroneously captioned as one filed against the "Office of the President and Edilberto Gallardo." However, as correctly pointed out by the Office of the Solicitor General, the petition is an offshoot of respondent's complaint against the HLURB assailing the rescission of his contract with petitioner. As such, a purely private interest is involved. In light of the provisions of Section 6,<sup>[28]</sup> Rule 43 of the Revised Rules of Court, the agency which issued the assailed order should not have been impleaded, whether in the petition before the CA or in this Court.

The contract entered into between petitioner and respondent is a contract to sell a subdivision lot. It bears stressing that a contract to sell is 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, that is, full payment of the purchase price.<sup>[29]</sup> In a contract to sell, the payment of the purchase price is a positive suspensive condition, the failure of which is not a breach, casual or serious, but a situation that prevents the obligation of the vendor to convey title from acquiring an obligatory force. Thus, for its non-fulfillment, there will be no contract to speak of, the obligor having failed to perform the suspensive condition which enforces a juridical relation.<sup>[30]</sup>

The subject matter of the contract being a subdivision lot, the applicable law is P.D. No. 957 or "The Subdivision and Condominium Buyers' Protective Decree." As such, the right of the seller to consider the contract to sell ineffectual in case of failure of the prospective buyer to pay the amortization, is limited. Sections 20 and 23 of P.D. No. 957 read as follows:

Section 20. *Time of Completion.* – Every owner or developer shall construct and provide the facilities, improvements, infrastructures and

other forms of development, including water supply and lighting facilities, which are offered and indicated in the approved subdivision or condominium plans, brochures, prospectus, printed matters, letters or in any form of advertisement, within one year from the date of the issuance of the license for the subdivision or condominium project or such other period of time as may be fixed by the Authority.

Section 23. *Non-forfeiture of Payments.* – No installment payment made by a buyer in a subdivision or condominium project for the 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.

Thus, the only requirement under the law is to give due notice to the owner or developer of the buyer's intention to suspend payment.

It is undisputed that respondent had refused to pay the monthly amortizations on the property after the March 11, 1987 payment. Per findings of the HLURB, as of 1992, the development of the project was still ongoing. Since the development of the subdivision was registered as early as 1985 and there is no showing that petitioner had been granted an extension by the HLURB, petitioner in effect failed to complete the project within one year from the date of the issuance of the license therefor, and as such is guilty of incomplete development of the subdivision project. Thus, petitioner could not have validly exercised its right to cancel the contract to sell in favor of respondent.

A careful perusal of the records also show that respondent had refused to make payment as early as 1987, and sent a letter to Amlac-Ville Subdivision only on November 5, 1991 with the following statement: "After paying your office last March 11, 1987, (please refer to the attached xeroxed receipt) *I said that I would suspend further payments until such time that your office shall have complied with some of your development commitments to your lot buyers, e.g., centralized water system, concrete curbs and gutters, etc. because I had then planned to construct a house on the lot I had contracted to buy from you (Lot 1 Block 3 Contract to Sell No. 017).*" While the written notice of suspension of payment was belatedly given, the above-quoted portion of the letter shows that petitioner was *verbally notified* of respondent's intention to suspend payment as early as 1987.

The law does not specifically provide the form of notice to be given to the owner/developer. Considering the purpose of the law and the evil sought to be prevented, the Court holds that a verbal notice of the intention to suspend remittance of payment is sufficient. Such a holding is consistent with our ruling in *Francel Realty Corporation v. Sycip*,<sup>[31]</sup> where the requirement of an HLURB clearance under Section 23, Rule VI of the Rules Implementing P.D. No. 957 before the buyer of a subdivision lot or a home could lawfully withhold monthly payments was declared void. The Court explained: