

FIRST DIVISION

[G.R. NO. 165889, September 20, 2005]

SACOBIA HILLS DEVELOPMENT CORPORATION AND JAIME C. KOA, PETITIONERS, VS. ALLAN U. TY, RESPONDENT.

D E C I S I O N

YNARES-SANTIAGO, J.:

This petition for review on certiorari^[1] assails the August 19, 2004 decision of the Court of Appeals in CA-G.R. CV No. 76987,^[2] which reversed and set aside the November 29, 2002 decision^[3] of the Regional Trial Court of Manila, Branch 46, and its October 28, 2004 resolution^[4] denying reconsideration thereof.

The antecedent facts show that petitioner Sacobia Hills Development Corporation (Sacobia) is the developer of True North Golf and Country Club (True North) located inside the Clark Special Economic Zone in Pampanga which boasts of amenities that include a golf course, clubhouse, sports complex and several vacation villas.

On February 12, 1997, respondent Allan U. Ty wrote to Sacobia a letter expressing his intention to acquire one (1) Class A share of True North and accordingly paid the reservation fee of P180,000.00 as evidenced by PCI Bank Check No. 0038053.^[5]

Through letters dated May 28, 1997 and July 4, 1997, Sacobia assured its shareholders that the development of True North was proceeding on schedule; that the golf course would be playable by October 1999; that the Environmental Clearance Certificate (ECC) by the Department of Environment and Natural Resources (DENR) as well as the Permit to Sell from the Securities and Exchange Commission (SEC) should have been released by October 1997; and that their registration deposits remained intact in an escrow account.^[6]

On September 1, 1997, Sacobia approved the purchase application and membership of respondent for P600,000.00, subject to certain terms and conditions. The notice of approval provided, *inter alia*:^[7]

Terms and Conditions

1. Approval of an application to purchase golf/country club shares is subjected to the full payment of the total purchase price. Should the buyer opt for the deferred payment scheme, approval is subject to our receipt of a down payment of at least 30% and the balance payable in installments over a maximum of eleven (11) months from the date of application, and covered by postdated cheques.

2. Your reserved share shall be considered withdrawn and may be deemed cancelled should you fail to settle your obligation within fifteen (15) days from due date, or failure to cover the value of the postdated cheques upon their maturity, or your failure to issue the required postdated cheques. In which case, we shall reserve the right to offer the said shares to other interested parties. This also means forfeiture of 50% of the total amount you have already paid.
3. We will undertake to execute the corresponding sales documents/ Deed of Absolute Sale covering the reserved shares upon full payment of the total purchase price. The Certificate of Membership shall be issued thereafter.

...

However, on January 12, 1998, respondent notified Sacobia that he is rescinding the contract and sought refund of the payments already made due to the latter's failure to complete the project on time as represented.

In an effort to assure the respondent that the project would soon be operational, Sacobia wrote him a letter dated March 10, 1998, stating that the DENR had issued the required ECC only on March 5, 1998, and that the golf course would be ready for use by end of 1998.^[8]

On April 3, 1998, Sacobia again wrote the respondent advising him that the 18-hole golf course would be fully operational by summer of 1999. Sacobia also sought to collect from respondent the latter's outstanding balance of P190,909.08 which was covered by five (5) post dated checks.

Notwithstanding, respondent notified Sacobia on April 17, 1998 that he had stopped payment on the five (5) post dated checks and reiterated his demand for the refund of his payments which amounted to P409,090.92.

On June 16, 1999, respondent sent Sacobia a letter formally rescinding the contract and demanding for the refund of the P409,090.92 thus far paid by him.

By way of reply, Sacobia informed respondent that it had a no-refund policy, and that it had endorsed respondent to Century Properties, Inc. for assistance on the resale of his share to third persons.

Thus, on July 21, 1999, respondent filed a complaint for rescission and damages before the SEC but the case was eventually transferred to the Regional Trial Court of Manila, Branch 46, pursuant to Administrative Circular AM No. 00-11-03.^[9]

On April 13, 2002, the trial court personnel conducted an on-site ocular inspection and in their report, they made the following observations:

... We went up and down the hills on board the golf cart, and have seen the entire golf course. The 9 holes area are already operational and playable, we have seen the tee bank (mount soil) color coded flags, blue for regular golfers, white for senior golfers and red for ladies golfers. We have seen all their playing areas which all appeared in order except the

main clubhouse which is undergoing finishing touches. Likewise the road leading to the clubhouse area is undergoing pavement works and concreting.

We learned from our tour guide Mr. Gerry Zoleta, Site Supervisor, that the timetable in finishing all remaining things (eg. Clubhouse and the road leading to it) to be done, are influenced or rather, hampered by the prevailing weather condition. Such that when it rain, (which often happens in the area during afternoon or early morning) they cannot really push thru with the construction due to the soil condition (easily eroded) and sloping terrain of the place. Except, the clubhouse, all seem prim and proper for golf playing. In fact, according to Mr. Zoleta, the site has been operational since January 2002. The first tournament was conducted on October 2000 and there were three tournaments already took place in the area.

...

In summary, we found nothing amiss for one not to be able to play and enjoy golf to the fullest, except as earlier said the clubhouse.^[10]

On November 29, 2002, the trial court rendered judgment in favor of petitioners, the decretal portion of which reads:

WHEREFORE, the complaint is hereby dismissed without pronouncement as to costs.

If the plaintiff desires to continue with the acquisition of the share, he may do so by paying the balance of the acquisition price of One Hundred Ninety Thousand Ninety Pesos and Ten Centavos (P190,090.10) without interest within thirty (30) days from the finality of this decision, otherwise, he forfeits his payments.

IT IS SO ORDERED.^[11]

The trial court found that the contract between the parties did not warrant that the golf course and clubhouse would be completed within a certain period of time to entitle respondent to rescind. It also noted that the completion of the project was subject to the issuance of an ECC and the approval by the SEC of the registration of non-proprietary golf club shares, which is beyond Sacobia's control.

The appellate court, in its decision dated August 19, 2004, disposed of the appeal as follows:

WHEREFORE, the appealed November 29, 2002 decision of the Regional Trial Court of Manila, Branch 46, is hereby REVERSED and SET ASIDE, and a new one is hereby entered with this Court hereby CONFIRMING the RESCISSION of the contract of purchase of one (1) Class A proprietary share of True North Golf and Country Club as elected choice by plaintiff-appellant Ty, the aggrieved party, and hereby DIRECTING defendant-appellee SACOBIA to:

(1) Refund to the plaintiff-appellant Allan U. Ty the amount of

- P409,090.20 and all payments made by him thus far on the TRUE NORTH share, with legal interest of 12% per annum from July 21, 1999, the date of the filing of the complaint with the SEC, until fully paid;
- (2) Return the five post-dated checks of the plaintiff-appellant amounting to P190,908.08;
 - (3) Pay costs of the suit.

SO ORDERED. ^[12]

The Court of Appeals agreed with the trial court that Sacobia was in delay in the performance of its obligation to respondent. As such, Ty could properly rescind the contract, or demand specific performance with damages, or demand for damages alone. It held though that the failure of the DENR to issue the ECC on time is a valid ground to reduce the damages claimed by Ty. It also ruled that Sacobia is estopped from asserting that there was no completion date for the project as no less than its chairman announced the projected completion dates.

Petitioners' motion for reconsideration was denied, hence the instant petition for review on certiorari which raises the issue of whether the contract entered into by the parties may be validly rescinded under Article 1191 of the Civil Code.

Sacobia contends that it was not in breach of the contract as the Intent to Purchase, the Contract of Purchase, and the Notice of Approval to Purchase Shares of True North, do not contain any specific date as to when the golf course and country club would be completed. It argues that respondent should have known the risks involved in this kind of project; the construction being contingent on the issuance of the ECC by the DENR and the payment of the buyers of their share.

On the other hand, respondent claims that Sacobia's arguments raise new matters which would warrant the reversal of the decision rendered by the Court of Appeals. He insists that Sacobia failed to complete the project on time which entitles him to rescind the contract in accordance with Article 1191 of the Civil Code. He further argues that the delay in the completion of the project is clearly established by the fact that there have been no substantial work done on the site, particularly on the clubhouse, despite the lapse of nearly 4-years from the issuance of the ECC on March 5, 1998.

The petition is meritorious.

In resolving the present controversy, the lower courts merely assumed that the delay in the completion of the golf course was the decisive factor in determining the propriety or impropriety of rescinding the contract. Yet, confusion could have been avoided had there been a more thorough scrutiny of the nature of the contract entered into by the contending parties.

In the notice of approval, which embodies the terms and conditions of the agreement, Sacobia signified its intent to retain the ownership of the property until such time that the respondent has fully paid the purchase price. This condition precedent is characteristic of a contract to sell. The intention of the contracting parties is inferable from the following provisions, to wit:

TERMS AND CONDITIONS