

THIRD DIVISION

[G.R. No. 117501, July 08, 1997]

**SOLID HOMES, INC., PETITIONER, VS. HON. COURT OF APPEALS,
STATE FINANCING CENTER, INC., AND REGISTER OF DEEDS FOR
RIZAL, RESPONDENTS.**

DECISION

PANGANIBAN, J.:

Is the failure to annotate the vendor a retro's right of repurchase in the certificates of title of the real estate properties subject of dacion en pago conclusive evidence of the vendee a retro's malice and bad faith, entitling the former to damages? In a sale with pacto de retro, is the repurchase price limited by Article 1616 of the Civil Code?

These are the basic questions raised in this petition for review on certiorari under Rule 45 of the Rules of Court assailing the Court of Appeals^[1] Decision^[2] promulgated on April 25, 1994 and Resolution^[3] of September 26, 1994 in CA-G.R. CV No. 39154, affirming the decision^[4] of the Regional Trial Court of Pasig, Branch 157 in Civil Case No. 51214. The said RTC decision sustained the validity of the subject dacion en pago agreement and declared the same as "a true sale with right of repurchase."

The Facts

The facts of the case as narrated by the trial court and reproduced in the assailed Decision of the Court of Appeals are undisputed by the parties. These are the relevant portions:

"It appears that on June 4, 1979, Solid Homes executed in favor of State Financing (Center, Inc.) a Real Estate Mortgage (Exhibit '3') on its properties embraced in Transfer Certificate of Title No. 9633 (Exhibit '9') and Transfer Certificate of Title No. (492194) -11938 (Exhibit '8') of the Registry of Deeds in Pasig, Metro Manila, in order to secure the payment of a loan of P10,000,000.00 which the former obtained from the latter. A year after, Solid Homes applied for and was granted an additional loan of P1,511,270.03 by State Financing, and to secure its payment, Solid Homes executed the Amendment to Real Estate Mortgage dated June 4, 1980 (Exhibit '4') whereby the credits secured by the first mortgage on the abovementioned properties were increased from P10,000,000.00 to P11,511,270.03. Sometime thereafter, Solid Homes obtained additional credits and financing facilities from State Financing in the sum of P1,499,811.97, and to secure its payment, Solid Homes executed in favor of State Financing the Amendment to Real Estate Mortgage dated March 5, 1982 (Exhibit '5') whereby the mortgage executed on its

properties on June 4, 1979 was again amended so that the loans or credits secured thereby were further increased from P11,511,270.03 to P13,011,082.00.

"When the loan obligations abovementioned became due and payable, State Financing made repeated demands upon Solid Homes for the payment thereof, but the latter failed to do so. So, on December 16, 1982, State Financing filed a petition for extrajudicial foreclosure of the mortgages abovementioned with the Provincial Sheriff of Rizal, who, in pursuance of the petition, issued a Notice of Sheriff's Sale dated February 4, 1983 (Exhibit '6'), whereby the mortgaged properties of Solid Homes and the improvements existing thereon, including the V.V. Soliven Towers II Building, were set for public auction sale on March 7, 1983 in order to satisfy the full amount of Solid Homes' mortgage indebtedness, the interest thereon, and the fees and expenses incidental to the foreclosure proceedings.

"Before the scheduled public auction sale x x x, the mortgagor Solid Homes made representations and induced State Financing to forego with the foreclosure of the real estate mortgages referred to above. By reason thereof, State Financing agreed to suspend the foreclosure of the mortgaged properties, subject to the terms and conditions they agreed upon, and in pursuance of their said agreement, they executed a document entitled MEMORANDUM OF AGREEMENT/DACION EN PAGO ('Memorandum') dated February 28, 1983 (Exhibits 'C' and '7') x x x. Among the terms and conditions that said parties agreed upon were x x x:

'1. (Solid Homes) acknowledges that it has an outstanding obligation due and payable to (State Financing) and binds and obligates to pay (State Financing) the totality of its outstanding obligation in the amount of P14,225,178.40, within one hundred eighty (180) days from date of signing of this instrument. However, it is understood and agreed that the principal obligation of P14,225,178.40 shall earn interest at the rate of 14% per annum and penalty of 16% per annum counted from March 01, 1983 until fully paid.

'2. The parties agree that should (Solid Homes) be able to pay (State Financing) an amount equivalent to sixty per centum (60%) of the principal obligation, or the amount of P8,535,107.04, within the first one hundred eighty (180) days, (State Financing) shall allow the remaining obligation of (Solid Homes) to be restructured at a rate of interest to be mutually agreed between the parties.

'3. It is hereby understood and agreed that in the event (Solid Homes) fails to comply with the provisions of the preceding paragraphs, within the said period of one hundred eighty (180) days, this document shall automatically operate to be an instrument of dacion en pago without the need of executing any document to such an effect and (Solid Homes) hereby obligates and binds itself to transfer, convey and assign to (State Financing), by way of dacion en pago, its heirs, successors and assigns, and (State Financing) does hereby accept the conveyance and transfer of the above-described real properties, including all the improvements thereon, free from all liens and encumbrances, in full payment of the outstanding indebtedness of

(Solid Homes) to (State Financing) x x x.

x x x

x x x

x x x

'6. (State Financing) hereby grants (Solid Homes) the right to repurchase the aforesaid real properties, including the condominium units and other improvements thereon, within ten (10) months counted from and after the one hundred eighty (180) days from date of signing hereof at an agreed price of P14,225,178.40, or as reduced pursuant to par. 5 (d), plus all cost of money equivalent to 30% per annum, registration fees, real estate and documentary stamp taxes and other incidental expenses incurred by (State Financing) in the transfer and registration of its ownership via dacion en pago x x x.'

xxx

xxx

xxx

"Subsequently, Solid Homes failed to pay State Financing an amount equivalent to 60% (or P8,535,107.04) of the principal obligation of P14,225,178.40 within 180 days from the signing of the (Memorandum) on February 28, 1983, as provided under paragraph 2 of the said document. Hence, and in pursuance of paragraph 3 thereof which provided that 'this document shall automatically operate to be an instrument of dacion en pago without the need of executing any document to such an effect x x x(,)' State Financing registered the said (Memorandum) with the Register of Deeds in Pasig, Metro Manila on September 15, 1983. Consequently, the said Register of Deeds cancelled TCT No. 9633 and TCT No. (492194) 11938 in the name of Solid Homes which were the subject matter of the (Memorandum) abovementioned, and in lieu thereof, the said office issued Transfer Certificate of Title No. 40533 (Exhibits 'J' and '11') and Transfer Certificate of Title No. 40534 (Exhibits 'K' and '12') in the name of State Financing. x x x

"In a letter dated October 11, 1983 (Exhibit '16'), State Financing informed Solid Homes of the transfer in its name of the titles to all the properties subject matter of the (Memorandum) and demanded among other things, that Solid Homes turn over to State Financing the possession of the V.V. Soliven Towers II Building erected on two of the said properties. Solid Homes replied with a letter dated October 14, 1983, (Exhibit '20') asking for a period of ten (10) days within which to categorize its position on the matter; and in a subsequent letter dated October 24, 1983, Solid Homes made known to State Financing its position that the (Memorandum) is null and void because the essence thereof is that State Financing, as mortgagee creditor, would be able to appropriate unto itself the properties mortgaged by Solid Homes which is in contravention of Article 2088 of the Civil Code. State Financing then sent to Solid Homes another letter dated November 3, 1983 (Exhibit '17'), whereby it pointed out that Art. 2088 of the Civil Code is not applicable to the (Memorandum) they have executed, and also reiterated its previous demand that Solid Homes turn over to it the possession of the V.V. Soliven Towers II Building within five (5) days, but Solid Homes did not comply with the said demand.

"x x x and within that period of repurchase, Solid Homes wrote to State

Financing a letter dated April 30, 1984 containing its proposal for repayment schemes under terms and conditions indicated therein for the repurchase of the properties referred to. In reply to said letter, State Financing sent a letter dated May 17, 1984 (Exhibit '18') advising Solid Homes that State Financing's management was not amenable to its proposal, and that by way of granting it some concessions, said management made a counter-proposal requiring Solid Homes to make an initial payment of P10 million until 22 May 1984 and the balance payable within the remaining period to repurchase the properties as provided for under the (Memorandum) x x x. Thereafter, a number of conferences were held among the corporate officers of both companies wherein they discussed the payment arrangement of Solid Home's outstanding obligation, x x x. In a letter dated June 7, 1984 (Exhibit '19'), State Financing reiterated the counter-proposal in its previous letter dated May 17, 1984 to Solid Homes as a way of making good its account, and at the same time reminded Solid Homes that it has until 27 June 1984 to exercise its right to repurchase the properties pursuant to the terms and conditions of the (Memorandum), otherwise, it will have to vacate and turn over the possession of said properties to State Financing. In return, Solid Homes sent to State Financing a letter dated June 18, 1984 (Exhibits 'N' and '22') containing a copy of the written offer made by C.L. Alma Jose & Sons, Inc. (Exhibits 'M' and '22-A') to avail of Solid Homes' right to repurchase the V.V. Soliven Towers II pursuant to the terms of the Dacion En Pago. The letter also contained a request that the repurchase period under said Dacion En Pago which will expire on June 27, 1984 be extended by sixty (60) days to enable Solid Homes to comply with the conditions in the offer of Alma Jose & Sons, Inc. referred to, and thereafter, to avail of the one year period to pay the balance based on the verbal commitment of State Financing's President. x x x

"However, on June 26, 1984, a day before the expiry date of its right to repurchase the properties involved in the (Memorandum) on June 27, 1984, Solid Homes filed the present action against defendants State Financing and the Register of Deeds for Metro Manila District II (Pasig), seeking the annulment of said (Memorandum) and the consequent reinstatement of the mortgages over the same properties; x x x"[5]

As earlier stated, the trial court held that the Memorandum of Agreement/Dacion En Pago executed by the parties was valid and binding, and that the registration of said instrument in the Register of Deeds was in accordance with law and the agreement of the parties. It disposed of the case thus:

"WHEREFORE, this Court hereby renders judgment, as follows:

"1. Declaring that the Memorandum of Agreement/Dacion En Pago entered into by and between plaintiff Solid Homes and defendant State Financing on February 28, 1983 is a valid and binding document which does not violate the prohibition against pactum commisorium under Art. 2088 of the Civil Code;

"2. Declaring that the said Memorandum of Agreement/Dacion En Pago is a true sale with right of repurchase, and not an equitable mortgage;

"3. Declaring that the registration of the said Memorandum of Agreement/Dacion En Pago with the defendant Register of Deeds in Pasig, Metro Manila by defendant State Financing on September 15, 1983 is in accordance with law and the agreement of the parties in the said document; but the annotation of the said document by the said Register of Deeds on the certificates of title over the properties subject of the Memorandum of Agreement/Dacion En Pago without any mention of the right of repurchase and the period thereof, is improper, and said Register of Deeds' cancellation of the certificates of title in the name of Solid Homes over the properties referred to and issuance of new titles in lieu thereof in the name of State Financing - during the period of repurchase and without any judicial order - is in violation of Art. 1607 of the Civil Code, which renders said titles null and void;

"4. Ordering the defendant State Financing to surrender to the defendant Register of Deeds in Pasig, Metro Manila for the cancellation thereof, all the certificates of title issued in its name over the properties subject of the Memorandum of Agreement/Dacion En Pago, including those titles covering the fully paid condominium units and the substitute collateral submitted in exchange for said condominium units;

"5. Ordering the said defendant Register of Deeds to cancel all the titles in the name of State Financing referred to and to reinstate the former titles over the same properties in the name of Solid Homes, with the proper annotation thereon of the Memorandum of Agreement/Dacion En Pago together with the right of repurchase and the period thereof - as provided in said document - and to return the said reinstated former titles (owner's copies) in the name of Solid Homes to State Financing;

"6. Ordering the defendant State Financing to release to plaintiff Solid Homes all the certificates of title over the fully paid condominium units in the name of Solid Homes, free from all liens and encumbrances by releasing the mortgage thereon;

"7. Granting the plaintiff Solid Homes the opportunity to exercise its right to repurchase the properties subject of the Memorandum of Agreement/Dacion En Pago within thirty (30) days from the finality of this Decision, by paying to defendant State Financing the agreed price of P14,225,178.40 plus all cost of money equivalent to 30% (interest of 14% and penalty of 16% from March 1, 1983) per annum, registration fees, real estate and documentary stamp taxes and other incidental expenses incurred by State Financing in the transfer and registration of its ownership via the Dacion En Pago, as provided in the said document and in pursuance of Articles 1606 and 1616 of the Civil Code; and

"8. Ordering the defendant Register of Deeds in Pasig, Metro Manila - should plaintiff Solid Homes fail to exercise the abovementioned right to repurchase within 30 days from the finality of this judgment - to record the consolidation of ownership in State Financing over the properties subject of the Memorandum of Agreement/Dacion En Pago in the Registry of Property, in pursuance of this Order, but excluding therefrom the fully paid condominium units and their corresponding titles to be released by State Financing.

"For lack of merit, the respective claims of both parties for damages, attorney's fees, expenses of litigation and costs of suit are hereby denied."^[6]