

SPECIAL TWELFTH DIVISION

[CA-G.R. SP. No. 112203, February 13, 2014]

ECE REALTY & DEVELOPMENT, INC., PETITIONER, V. SPS. MAY PAZ C. RODRIGUEZ AND EDUARDO M. RODRIGUEZ, RESPONDENTS.

D E C I S I O N

ELBINIAS, J.:

For disposition is a Petition for Review^[1] filed under Rule 43 of the Rules of Court. The Petition assails the Decision^[2] dated July 13, 2009 of the Office of the President ("OP" for brevity), which affirmed the Decision^[3] dated February 15, 2008 of the Housing and Land Use Regulatory Board ("HLURB" for brevity) in HLURB CASE NO. REM-A-071011-0486. The Petition also questions OP's Resolution^[4] dated December 9, 2009, which denied petitioner's eventual Motion for Reconsideration.^[5]

The antecedent facts are those as stated in the OP's Decision^[6] dated July 13, 2009 as follows:

"Appellees, **spouses May Paz and Eduardo Rodriguez (hereinafter 'Appellees') (respondents here)**, entered into a contract to sell with appellant (*petitioner here*) on November 5, 1996. The subject of the contract to sell is a condominium unit at Central Park Condominium II located at Jorge Street, Pasay City, a project owned and developed by the appellant (*petitioner*). The consideration for the condominium unit was One Million Two Hundred Eighty Six Thousand Eight Hundred Fifty Six (P 1,286,856.00), payable in installments. The contract stipulated that the condominium unit will be turned over to the appellees (*respondents*) in April 1999.

When the appellees (respondents) visited the condominium site, they saw that it would not be finished by April 1999. By reason thereof, appellees (respondents) suspended their payments to the appellant (petitioner). By that time, they have already paid a total of Five Hundred Forty Eight Thousand One Hundred Ninety Eight Pesos (P 548,198.00) to the appellant (petitioner).

April 1999 passed, and the condominium project was not finished. Appellees (respondents) sent demand letters on March 2000 and December 2000 to the appellant (petitioner) for refund of the amounts they have paid, but the latter did not heed their calls.

On March 2001, appellees (*respondents*) received a letter from the appellant (*petitioner*) saying that the subject condominium unit was

ready for inspection, but the issue of the demand for refund was not resolved.

Aggrieved with the delay on the refund, the appellees (respondents) lodged a complaint before the HLURB-ENCRFO.

Appellees (*respondents*) insisted that they suspended payment to the appellant (*petitioner*) because of the inevitable delay in the delivery of the subject property. On the other hand, appellant (*petitioner*) argued that the delay in the delivery was due to events beyond its control.”^[7] (*Emphasis supplied*)

On August 3, 2007, the HLURB-Expanded National Capital Region Field Office (“ENCRFO” for brevity) rendered a Decision^[8] in favor of respondents Spouses May Paz C. Rodriguez and Eduardo M. Rodriguez (“respondents” for brevity), and ordered petitioner ECE Realty & Development, Inc. (“petitioner” for brevity) to pay respondents the amount of Php 548,198.00 at legal interests reckoned from the date of respondents' demand, and Php 50,000.00 as Attorney's Fees.^[9]

Petitioner then filed an Appeal from ENCRFO's Decision^[10] of August 3, 2007 to the HLURB. On February 15, 2008, the HLURB rendered a Decision^[11] affirming the ENCRFO's Decision.^[12]

Upon petitioner's appeal, the OP rendered the assailed Decision^[13] dated July 13, 2009, which affirmed *in toto* the HLURB's Decision^[14] of February 15, 2008.^[15]

After petitioner's Motion for Reconsideration^[16] was denied by the OP in the assailed Resolution^[17] dated December 9, 2009, petitioner filed the Petition for Review^[18] at bench, praying that:

“WHEREFORE, in view of the foregoing, it is most respectfully prayed of this Honorable Court that a DECISION be rendered reversing the Decision of the Honorable Office of the President, Board of Commissioners and the HLU Arbiter and order the following:

1. Dismiss the complaint filed by the respondent;
2. Order the cancellation/rescission of the Contract to Sell and order the forfeiture of all payments made by respondent, or in the alternative, order the respondent to pay to the petitioner ECE the following: (a) All past due amortizations of the respondent on her condominium unit based on the schedule provided under respondent's Statement of Account and Contract to Sell in accordance with the other rulings of this Honorable Court; and (b) P100,000.00 as attorney's fees;

Other reliefs, just and equitable, are likewise prayed for.”^[19]

Petitioner raised the following assignment of errors:

“I

THE HONORABLE OFFICE OF THE PRESIDENT FATALLY ERRED IN FINDING THAT RESPONDENTS WERE ENTITLED TO RESCISSION AND REFUND.

II

THE HONORABLE OFFICE OF THE PRESIDENT LIKEWISE GRAVELY ERRED IN AWARDING LEGAL INTEREST STARTING FROM DATE OF DEMAND.

III

THE HONORABLE OFFICE OF THE PRESIDENT ERRED AS GRAVELY IN AFFIRMING THE RULING OF THE BOARD OF COMMISSIONERS IN AWARDING P50,000.00 AS ATTORNEY'S FEES IN FAVOR OF RESPONDENTS."^[20] (*Emphasis was made in the original*)

Contrary to petitioner's arguments in its *assignment of error I*, respondents were entitled to rescind the Contract to Sell^[21] with petitioner, and to claim refund for the amount that respondents paid to petitioner.

Petitioner had raised the following arguments:

"9. It must be stressed at this stage that the right to rescind is not absolute and is available only when there is no other remedy.

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10. It must be stressed likewise that respondents opted to exercise their right to rescind, not only under the above circumstances, but in disregard of the offer and constructive delivery of the unit sold.

11. Finally, from all the foregoing, **the chosen course of action of respondents should not have been allowed as the right to rescind was, at the very least, premature, when they availed of the same.**

In other words, respondents sought to rescind the contract when circumstances do not warrant for rescission. To reiterate, respondents stopped payment of their monthly amortizations in August 1998, a few months before the delivery date of the unit in April 1999 as specified in the Contract to Sell. In yet another case, though of an entirely different set of facts, but which is very relevant and enlightening in essence as it likewise referred to a wrongful exercise of a right, it was there said: 'It must be remembered that the exercise of a right ends when the right disappears, and it disappears when it is abused especially to the prejudice of others,' xxx

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13. **Respondents are not entitled to a rescission thereof because rescission cannot be availed of when the breach of contract is only slight or casual, and not so substantial and fundamental as to defeat the object of the parties in making the contract.**

Assuming, but without conceding, that there was delay in the delivery of the subject unit, the delay is not a substantial breach so as to warrant rescission ESPECIALLY IF THE CONDOMINIUM UNIT WAS IN FACT CONSTRUCTIVELY DELIVERED AND IS BEING IN THE EFFECTIVE CONTROL AND USE BY RESPONDENTS if they opt to do so because the essence and primordial reason of the contract to sell is not limited to the development of the project's amenities but for development of the

building, including the individual units which petitioner was able to effectively deliver to respondents.

14. Parenthetically, petitioner ECE substantially complied with what was incumbent upon it under the terms and conditions of the Contract to Sell, e.g. delivery of the subject condominium unit and development of the Project. The Project is not uninhabitable as to conclude and categorize petitioner as one of those contemplated under P.D. 957 as unscrupulous developers.

15. Rather, the essence of said Contract to Sell that impelled the parties into contracting into it is the delivery of a condominium unit to respondents complete with facilities and amenities and in this case, petitioner was not amiss in building and delivering the subject condominium unit. An inconsequential breach in the date of delivery of the subject condominium does not operate to defeat the object of the parties in making the agreement.^[22] (*Emphasis supplied; underlinings made in the original*)

Prevailing over petitioner's arguments however, is that petitioner breached its obligation to respondents. This is because, as the records revealed, petitioner failed to develop and to deliver the condominium unit ("subject unit" for brevity) to respondents on April 30, 1999, which was the date of delivery stated in the Contract to Sell^[23]. In fact, it was only on March 7, 2001, or almost two (2) years after April 30, 1999 that petitioner sent a Letter^[24] to respondents informing the latter that the subject unit was ready for inspection. That a party is entitled to rescind the Contract to Sell, such as respondents, when the other party, such as petitioner, breached its obligation is pursuant to the Supreme Court's declaration in ***Spouses Delfin O. Tumibay and Aurora T. Tumibay-deceased; Grace Julie Ann Tumibay Manuel, legal representative vs. Spouses Melvin A. Lopez and Rowena Gay T. Visitacion Lopez, G.R. No. 171692, June 3, 2013***, to wit:

"The contract to sell is rescissible.

Article 1191 of the Civil Code provides:

Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission even after he has chosen fulfillment, if the latter should become impossible. The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period. xxx

As a general rule, 'rescission will not be permitted for a slight or casual breach of the contract, but only for such breaches as are substantial and fundamental as to defeat the object of the parties in making the agreement.' (*Emphasis Supplied*)

Moreover, by petitioner's failure to complete the development of the condominium project within the period agreed by the parties, the payments made by respondents could not therefore be forfeited in favor of petitioner. That this is the consequence is