

## **SECOND DIVISION**

**[ G.R. No. 231936, November 25, 2020 ]**

**FIL-ESTATE PROPERTIES, INC., PETITIONER, VS. HERMANA REALTY, INC., RESPONDENT.**

### **D E C I S I O N**

#### **LAZARO-JAVIER, J.:**

On October 11, 1997, Jose C. Alvarez, chairperson of respondent Hermana Realty, Inc. (HRI), placed an option to purchase one (1) condominium unit in Fil-Estate Properties, Inc.'s (FEPI) West Tower Condominium Corporation, denominated as "Ground Retail Unit B, West Tower."<sup>[1]</sup>

On March 20, 2000, FEPI and HRI executed a contract to sell the unit for P20,998,400.00. Following HRI's full payment,<sup>[2]</sup> FEPI executed an undated and unnotarized Deed of Absolute Sale in favor of HRI pending the latter's transmittal to the former of the amount for payment of the Documentary Stamp Tax (DST) and other taxes on the sale and a final agreement with the Makati City Assessor's Office on the valuation cost of the common areas and individual units of the condominium building for real estate taxation purposes.<sup>[3]</sup>

HRI asserted though that upon full payment of the purchase price, it became rightfully entitled to the execution of an absolute deed of sale in its favor and delivery of the owner's duplicate copy of the Condominium Certificate of Title (CCT). FEPI's refusal to perform its obligation caused Century Properties, Inc. (CPI) to withdraw its offer to buy from HRI the condominium unit for P24,500,000.00.<sup>[4]</sup>

Consequently, HRI filed with the Housing and Land Use Regulatory Board Expanded National Capital Region Field Office (HLURB-ENCRFO) a complaint against FEPI for specific performance with damages and attorney's fees, docketed as HLURB Case No. REM-A-020401-0052.

After due proceedings, the HLURB-ENCRFO ruled in favor of HRI under Decision dated June 11, 2001, viz.:<sup>[5]</sup>

WHEREFORE, PREMISES CONSIDERED Judgment is hereby rendered ordering respondent FEPI the following:

1. To immediately execute a dated and notarized Deed of Absolute Sale covering Ground Floor Retail B West Tower Condominium in favor of the herein complainant and deliver the corresponding CCT in complainant's name;
2. To pay complainant the following:

- a. Actual Damages of P3,501,400.00;
- b. Exemplary Damages of P50,000.00;
- c. Attorney's Fees of P50,000.00;
- d. The costs of the suit.

- 3. To pay this office an administrative fine of P10,000.00 for violation of Section 17 and 25 in relation to Section 38 of [Presidential Decree (P.D.) No. 957].

IT IS SO ORDERED.<sup>[6]</sup>

On FEPI's appeal, the HLURB Board of Commissioners, through its Decision dated June 24, 2004, affirmed with modification the HLURB-ENCRFO ruling. It deleted the award of actual and exemplary damages for alleged lack of proof that HRI accepted CPI's offer to purchase the condominium unit.<sup>[7]</sup>

### **The Office of the President's Ruling**

On further appeal, the Office of the President (OP), by Decision<sup>[8]</sup> dated January 21, 2014, also affirmed with modification the HLURB Board of Commissioner's Ruling. It deleted the award of attorney's fees and cost of litigation.<sup>[9]</sup> Through Resolution dated August 13, 2014, FEPI's motion for reconsideration was denied.<sup>[10]</sup>

### **Proceedings Before the Court of Appeals**

Undaunted, FEPI filed a petition for review on *certiorari* with the Court of Appeals (CA) which, under Decision<sup>[11]</sup> dated November 29, 2016, too, found in favor of HRI. It held that under Section 25 of Presidential Decree No. 957 (PD 957),<sup>[12]</sup> the buyer, in this case, HRI, has the unmistakable right to demand for delivery of title upon full payment of the purchase price. Although the contract to sell obliged HRI to pay the DST, value-added tax, and transfer taxes as part of its monetary obligation, nothing therein specifically states that payment of these expenses is a prerequisite to the delivery of the title.<sup>[13]</sup> It also rejected FEPI's claim of *force majeure* brought about by the failure of the Makati City Assessor's Office to release the current valuation cost of the common areas and individual units of the condominium structure.

Under Resolution<sup>[14]</sup> dated May 26, 2017, the CA denied FEPI's motion for reconsideration.

### **The Present Petition**

FEPI now seeks affirmative relief from the Court. It posits anew that HRI's payment of DST and local transfer taxes is a *condition sine qua non* to the delivery of the owner's duplicate copy of the CCT per the parties' contract to sell. Thus, without the payment of taxes and other expenses, HRI's right to demand the delivery of the

owner's duplicate copy of the CCT has not arisen and consequently, it has no cause of action for specific performance.

Following Section 200 of the National Internal Revenue Code of 1997 (NIRC), a CCT may not be issued without proof of payment of DST. Further, under Section 135 of the Local Government Code (LGC), the Registry of Deeds requires for registration the official receipt of the transfer tax payment, the Certificate Authorizing Registration (CAR) from the Bureau of Internal Revenue (BIR), and official receipts of DST and Capital Gains Tax (CGT) payments, among others.

Thus, unless HRI complies with its monetary obligations, its right to demand the owner's duplicate copy of the CCT will not arise.

By Comment<sup>[15]</sup> dated August 12, 2019, HRI counters that FEPI's obligation to execute a notarized Deed of Absolute Sale and deliver the owner's duplicate copy of the CCT is completely independent of its (HRI's) possible tax liabilities. As found by the tribunals below, there is no provision in the Contract to Sell which requires remittance of the tax payments to FEPI as a condition precedent to the execution of the notarized Deed of Absolute Sale and the delivery of the owner's duplicate copy of the CCT. The contract to sell simply bears HRI's obligation to pay the DST and other taxes - an obligation which HRI may only comply with once a notarized Deed of Sale has been executed, and the appropriate taxes, assessed.<sup>[16]</sup>

FEPI's refusal to deliver the owner's duplicate copy of the CCT despite the buyer's full payment makes it liable under Section 25 of PD 957. Also, while it may be true that certain taxes must be paid for the CCT to be transferred to HRI's name, the same would not even be possible if the seller, FEPI, refuses to execute the Deed of Absolute Sale.<sup>[17]</sup>

It is of common knowledge that one of the requirements for processing tax payments on the sale of real properties is the Deed of Absolute Sale itself. Likewise, the City Treasurer's Office where the property is located requires the aforesaid deed for assessment of transfer taxes.<sup>[18]</sup>

The Deed of Absolute Sale itself is a prerequisite to the tax payment on the sale and transfer of real property. Thus, if the seller does not execute a Deed of Absolute Sale even after full payment of the purchase price, the BIR and the City Treasurer's Office will not be able to compute the taxes and fees due.<sup>[19]</sup>

### **Threshold Issue**

Is payment of the DST and other local taxes a condition precedent to FEPI's execution of a notarized Deed of Absolute Sale and the subsequent delivery to HRI of the owner's duplicate copy of the CCT?

### **Ruling**

***Upon full payment of the contract price, HRI became rightfully entitled to the execution of a Deed of Absolute Sale in its favor.***

A contract to sell has been defined as "a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds itself to sell the property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, that is, full payment of the purchase price." In a contract to sell, "ownership is retained by the seller and is not to pass until the full payment of the price."<sup>[20]</sup> Consequently, once the buyer has paid the purchase price in full, the contract to sell is converted to an absolute sale and the buyer has the right to demand the execution of a Deed of Absolute Sale in its favor.

Here, there is no question that HRI has paid in full the contract price in the amount of P20,998,400.00. There is no question either that by operation of law, HRI as the buyer has become rightfully entitled to the execution of a Deed of Absolute Sale in its favor.

***HRI may demand as a matter of right a notarized Deed of Absolute Sale in its favor.***

While FEPI did execute a Deed of Absolute Sale upon HRI's full payment of the purchase price, the same was undated and unnotarized. FEPI asserts that the document will stay that way until HRI remits the corresponding payment for the DST and other taxes on the sale.

Article 1358 of the Civil Code reads:

**Article 1358.** The following must appear in a public document:

- (1) Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property; sales of real property or of an interest therein are governed by articles 1403, No. 2, and 1405;

x x x x

In ***Cenido v. Spouses Apacionado***,<sup>[21]</sup> the Court ruled that contrary to petitioner's claim, the "*Pagpapatunay*" is a valid contract of sale despite being unnotarized since under Article 1358, a private document, though not reduced to a public one, remains to be valid and is merely unenforceable. So that after the existence of the contract has been admitted, a party to the sale, if he or she is so minded, has the right to compel the other party to execute the proper document following Article 1357<sup>[22]</sup> of the Civil Code.

Section 135 of the Local Government Code (LGC) further speaks of the requirements for registration of deeds on transfer of real property and the corresponding duty of notaries public who notarized the deeds, thus:

**SECTION 135.** *Tax on Transfer of Real Property Ownership.* -

a. x x x