

SECOND DIVISION

[G.R. No. 211175, January 18, 2017]

ATTY. REYES G. GEROMO, FLORENCIO BUENTIPO, JR., ERNALDO YAMBOT AND LYDIA BUSTAMANTE, PETITIONERS, V. LA PAZ HOUSING AND DEVELOPMENT CORPORATION AND GOVERNMENT SERVICE INSURANCE SYSTEM, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the September 26, 2013 Decision^[1] and the January 29, 2014 Resolution^[2] of the Court of Appeals (CA), in CA-G.R. SP No. 123139, which affirmed the January 11, 2012 Decision^[3] of the Office of the President (OP), dismissing the action for damages filed by the petitioners before the Housing and Land Regulatory Board (HLURB) against La Paz Housing and Development Corporation (*La Paz*) and the Government Service Insurance System (GSIS), on the ground of breach of warranty against hidden defects.

The Antecedents

Petitioners Atty. Reyes G. Geromo (*Geromo*), Florencio Buentipo, Jr. (*Buentipo*), Ernaldo Yambot (*Yambot*), and Lydia Bustamante (*Bustamante*) acquired individual housing units of Adelina 1-A Subdivision (*Adelina*) in San Pedro, Laguna from La Paz, through GSIS financing, as evidenced by their deeds of conditional sale.^[4] The properties were all situated along the old Litlit Creek.

In 1987, Geromo, Bustamante and Yambot started occupying their respective residential dwellings, which were all located along Block 2 (Pearl Street) of the said subdivision. Buentipo, on the other hand, opted to demolish the turned-over unit and build a new structure thereon. After more than two (2) years of occupation, cracks started to appear on the floor and walls of their houses. The petitioners, through the President of the Adelina 1-A Homeowners Association, requested La Paz, being the owner/developer, to take remedial action. They collectively decided to construct a riprap/retaining wall along the old creek believing that water could be seeping underneath the soil and weakening the foundation of their houses. Although La Paz was of the view that it was not required to build a retaining wall, it decided to give the petitioners P3,000.00 each for expenses incurred in the construction of the said riprap/retaining wall. The petitioners claimed that despite the retaining wall, the condition of their housing units worsened as the years passed. When they asked La Paz to shoulder the repairs, it denied their request, explaining that the structural defects could have been caused by the 1990 earthquake and the renovations/improvements introduced to the units that overloaded the foundation of the original structures.

In 1998, the petitioners decided to leave their housing units in Adelina.^[5]

In May 2002, upon the request of the petitioners, the Municipal Engineer of San Pedro and the Mines and Geosciences Bureau (*MGB*) of the Department of Environment and Natural Resources (*DENR*) conducted an ocular inspection of the subject properties. They found that there was "*differential settlement of the area where the affected units were constructed.*"^[6]

On the basis thereof, Geromo filed a complaint for breach of contract with damages against La Paz and GSIS before the HLURB.^[7] On May 3, 2003, Buentipo, Yambot and Bustamante filed a similar complaint against La Paz and GSIS.^[8] They all asserted that La Paz was liable for implied warranty against hidden defects and that it was negligent in building their houses on unstable land. Later on, the said complaints were consolidated.

La Paz, in its Answer, averred that it had secured the necessary permits and licenses for the subdivision project; that the houses thereon were built in accordance with the plans and specifications of the National Building Code and were properly delivered to the petitioners; that it did not violate Presidential Decree (*P.D.*) No. 957 as it was issued compliance documents, such as development permits, approved alteration plan, license to sell, and certificate of completion by HLURB; that the Philippine Institute of Volcanology and Seismology (*PHILVOLCS*), based on the serial photo interpretation of its field surveyors in 1996, reported that a portion of the topography of the subdivision developed an active fault line; and lastly, that there were unauthorized, irregular renovation/alteration and additional construction in the said units. Hence, it argued that it should not be held liable for any damage incurred and that the same should be for the sole account of the petitioners.^[9]

In its defense, GSIS moved for the dismissal of the complaint for lack of cause of action. It asserted that the deeds of conditional sale were executed between La Paz and the petitioners only and that its only participation in the transactions was to grant loans to the petitioners for the purchase of their respective properties.^[10]

The Decision of the HLURB Arbiter

In its August 9, 2004 Decision,^[11] the HLURB Arbiter found La Paz liable for the structural damage on the petitioners' housing units, explaining that the damage was caused by its failure to properly fill and compact the soil on which the houses were built and to maintain a three (3) meter easement from the edge of the creek as required by law. As to GSIS, the HLURB ruled that there was no cogent reason to find it liable for the structural defects as it merely facilitated the financing of the affected units. The decretal portion of the decision of the HLURB Arbiter reads:

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

- 1) Ordering respondent La Paz Housing and Dev't. Corp. to immediately undertake and cause the necessary repairs/construction of the subject units to make it suitable for human habitation for which it was originally intended for;
- 2) In the alternative, if it is no longer possible for the said units to be repaired to make it suitable for human habitation, respondent LPHDC is

hereby ordered to give each complainant a substitute property of the same nature and area, more or less, within the subdivision project or in any project owned and developed by LPHDC within the vicinity of San Pedro, Laguna;

3) Ordering respondent LPHDC to pay complainants:

- a. the equivalent sum of what each complainant may prove by documentary evidence such as receipts and the like, as actual damages;
- b. the sum of P15,000.00 each as moral damages;
- c. the sum of P10,000.00 each as exemplary damages;
- d. the sum of P10,000.00 as attorney's fees.;
- e. cost of suit.

SO ORDERED.^[12]

*The Decision of the HLURB
Board of Commissioners*

In its September 12, 2005 Decision,^[13] the HLURB Board of Commissioners *set aside* the Arbiter's decision, explaining that there was no concrete evidence presented to prove that the houses of the petitioners were indeed damaged by the failure of La Paz to comply with the building standards or easement requirements.

The petitioners moved for reconsideration, but the HLURB Board of Commissioners denied their motion in its Resolution,^[14] dated January 31, 2006.

The Decision of the OP

Aggrieved, the petitioners elevated the case to the OP which initially dismissed the appeal on December 18, 2006 for late filing.^[15] The petitioners questioned the dismissal before the CA and, in its Decision,^[16] dated March 31, 2009, the appellate court reversed the resolution of the OP and ordered the latter to resolve the appeal on the merits.

On January 11, 2012, the OP finally rendered a decision dismissing the appeal for lack of merit. It found that on the culpability of La Paz, the petitioners merely relied on the report submitted by the team that conducted the "ocular inspection" of the subject properties. It wrote that "[w]hat is visual to the eye, though, is not always reflective of the real cause behind, xxx other than the ocular inspection, no investigation was conducted to determine the real cause of damage on the housing units." According to the OP, the petitioners "did not even show that the plans, specifications and designs of their houses were deficient and defective." It concluded that the petitioners failed to show that La Paz was negligent or at fault in the construction of the houses in question or that improper filing and compacting of the soil was the proximate cause of damage.^[17]

The CA Decision

Not in conformity, the petitioners appealed the OP decision, dated January 11, 2012, before the CA. On September 26, 2013, the CA affirmed the ruling of the OP and found that the petitioners had no cause of action against La Paz for breach of warranty against hidden defects as their contracts were merely contracts to sell, the

titles not having been legally passed on to the petitioners. It likewise ruled that La Paz could not be held liable for damages as there was not enough evidence on record to prove that it acted fraudulently and maliciously against the petitioners.^[18]

On January 29, 2014, the CA denied the motion for reconsideration^[19] filed by the petitioners.

Hence, the present petition raising the following

ISSUES

The CA gravely erred in the issuance of the assailed Decision and challenged Resolution which affirmed in toto the Decision of the O.P. [dismissing the petition for lack of merit] despite the conclusive:

A. Findings of the MGB, DENR, Engineer's Office, San Pedro, Laguna and HLURB Director that petitioners' housing are unfit for human habitation. Hence, they are entitled to the protective mantle of PD 957 which was enacted to protect the subdivision lot buyers against the commission of fraud or negligence by the developer/contractor like La Paz.

B. The contractual relationship between the parties is not governed by Articles 1477 or 1478, the New Civil Code as the correct issue is the liability of La Paz as the contractor/developer to the petitioners' housing units declared by government agencies unfit for human habitation. What governs are Art. 2176 in relation to Art. 1170, 1173 and Art. 19 in relation to Art. 20 and Art. 21, the Civil Code of the Philippines.

C. La Paz is liable for warranty against hidden defects when it sold to the petitioners the housing units declared unfit for human habitation. La Paz's defense of force majeure will not lie.

D. GSIS' privity to the Contract (Deed of Conditional Sale) executed by and between the petitioners and La Paz for the housing loans which it financed makes it jointly and severally liable for the petitioners' defective housing units.^[20]

The central issue in this case is whether La Paz should be held liable for the structural defects on its implied warranty against hidden defects.

The petitioners assert that La Paz was grossly negligent when it constructed houses over a portion of the old Litlit Creek. They claim that La Paz merely covered the old creek with backfilled materials without properly compacting the soil.^[21] They argue that they, or any buyer for that matter, could not have known that the soil beneath the cemented flooring of their housing units were not compacted or leveled properly and that the water beneath continuously seeped, causing the soil foundation to soften resulting in the differential settlement of the area.^[22]

The Court's Ruling

After a judicious review of the records of this case, the Court finds merit in the petition.

Under the Civil Code, the vendor shall be answerable for warranty against hidden defects on the thing sold under the following circumstances:

Art. 1561. The vendor shall be responsible for warranty against the hidden defects which the thing sold may have, should they render it unfit for the use for which it is intended, or should they diminish its fitness for such use to such an extent that, had the vendee been aware thereof, he would not have acquired it or would have given a lower price for it; but said vendor shall not be answerable for patent defects or those which may be visible, or for those which are not visible if the vendee is an expert who, by reason of this trade or profession, should have known them. (Emphasis supplied)

Art. 1566. The vendor is responsible to the vendee for any hidden faults or defects in the thing sold, even though he was not aware thereof.

This provision shall not apply if the contrary has been stipulated and the vendor was not aware of the hidden faults or defects in the thing sold.

For the implied warranty against hidden defects to be applicable, the following conditions must be met:

- a. Defect is Important or Serious
 - i. The thing sold is unfit for the use which it is intended
 - ii. Diminishes its fitness for such use or to such an extent that the buyer would not have acquired it had he been aware thereof
- b. Defect is Hidden
- c. Defect Exists at the time of the sale
- d. Buyer gives Notice of the defect to the seller within reasonable time

Here, the petitioners observed big cracks on the walls and floors of their dwellings within two years from the time they purchased the units. The damage in their respective houses was substantial and serious. They reported the condition of their houses to La Paz, but the latter did not present a concrete plan of action to remedy their predicament. They also brought up the issue of water seeping through their houses during heavy rainfall, but again La Paz failed to properly address their concerns. The structural cracks and water seepage were evident indications that the soil underneath the said structures could be unstable. Verily, the condition of the soil would not be in the checklist that a potential buyer would normally inquire about from the developer considering that it is the latter's prime obligation to ensure suitability and stability of the ground.

Furthermore, on June 11, 2002, HLURB Director Belen G. Ceniza, after confirming the cracks on the walls and floors of their houses, requested MGB-DENR and the Office of the Municipal Mayor to conduct a geological/geohazard assessment and thorough investigation on the entire Adelina subdivision.^[23] Thus, in its August 8, 2002 Letter-Report,^[24] MGB reported that there was evident ground settlement in