

THIRD DIVISION

[G.R. No. 196182, September 01, 2014]

ECE REALTY AND DEVELOPMENT INC., PETITIONER, VS. RACHEL G. MANDAP, RESPONDENT.

DECISION

PERALTA, J.:

Before the Court is a petition for review on *certiorari* assailing the Decision^[1] and Resolution^[2] of the Court of Appeals (CA), dated July 21, 2010 and March 15, 2011, respectively, in CA-G.R. SP No. 100741.

The factual and procedural antecedents of the case are as follows:

Herein petitioner is a corporation engaged in the building and development of condominium units. Sometime in 1995, it started the construction of a condominium project called Central Park Condominium Building located along Jorge St., Pasay City. However, printed advertisements were made indicating therein that the said project was to be built in Makati City.^[3] In December 1995, respondent, agreed to buy a unit from the above project by paying a reservation fee and, thereafter, downpayment and monthly installments. On June 18, 1996, respondent and the representatives of petitioner executed a Contract to Sell.^[4] In the said Contract, it was indicated that the condominium project is located in Pasay City.

More than two years after the execution of the Contract to Sell, respondent, through her counsel, wrote petitioner a letter dated October 30, 1998 demanding the return of P422,500.00, representing the payments she made, on the ground that she subsequently discovered that the condominium project was being built in Pasay City and not in Makati City as indicated in its printed advertisements.^[5]

However, instead of answering respondent's letter, petitioner sent her a written communication dated November 30, 1998 informing her that her unit is ready for inspection and occupancy should she decide to move in.^[6]

Treating the letter as a form of denial of her demand for the return of the sum she had paid to petitioner, respondent filed a complaint with the Expanded National Capital Region Field Office (ENCRFO) of the Housing and Land Use Regulatory Board (HLURB) seeking the annulment of her contract with petitioner, the return of her payments, and damages.^[7]

On September 30, 2005, the ENCRFO dismissed respondent's complaint for lack of merit and directed the parties to resume the fulfillment of the terms and conditions of their sales contract. The ENCRFO held that respondent "failed to show or substantiate the legal grounds that consist of a fraudulent or malicious dealing with

her by the [petitioner], such as, the latter's employment of insidious words or machinations which induced or entrapped her into the contract and which, without them, would not have encouraged her to buy the unit.”^[8]

Respondent filed a petition for review with the HLURB Board of Commissioners questioning the decision of the ENCRFO. On April 25, 2006, the HLURB Board of Commissioners rendered judgment dismissing respondent's complaint and affirming the decision of the ENCRFO.^[9] Giving credence to the Contract to Sell executed by petitioner and respondent, the Board of Commissioners held that when the parties reduced their contract in writing, their rights and duties must be found in their contract and neither party can place a greater obligation than what the contract provides.

Aggrieved, respondent filed an appeal with the Office of the President. On June 21, 2007, the Office of the President dismissed respondent's appeal and affirmed *in toto* the decision of the HLURB Board of Commissioners.^[10] Respondent filed a Motion for Reconsideration,^[11] but the Office of the President denied it in a Resolution^[12] dated August 29, 2007.

Respondent then filed a petition for review with the CA.^[13]

On July 21, 2010, the CA promulgated its assailed Decision, the dispositive portion of which reads, thus:

WHEREFORE, premises considered, We hereby **REVERSE** and **SET ASIDE** the Decision and the Resolution dated June 21, 2007 and August 29, 2007, respectively, issued by the Office of the President in **OP Case No. 06-F-224**. Accordingly, the contract between Rachel G. Mandap and ECE Realty is hereby **ANNULLED**. Consequently, ECE Realty is ordered to return the total amount of P422,500.00 representing payments made by Rachel G. Mandap on reservation fee, [downpayment] and monthly installments on the condominium unit, with legal interest thereon at twelve percent (12%) *per annum* from the date of filing of action until fully paid.

No costs.

SO ORDERED.^[14]

The CA held that petitioner employed fraud and machinations to induce respondent to enter into a contract with it. The CA also expressed doubt on the due execution of the Contract to Sell between the parties.

Petitioner filed a Motion for Reconsideration, but the CA denied it in its March 15, 2011 Resolution.

Hence, the present petition for review on *certiorari* with the following Assignment of Errors:

I

The Court of Appeals gravely erred in ruling that there was fraud in the execution of the subject contract to sell and declaring the same as annulled and ordering petitioner ECE to refund all payments made by respondent.

II

The Court of Appeals erred in ordering the award of legal interest at the rate of 12% per annum starting from the filing of the complaint until fully paid when legal interest should have been pegged at 6%.^[15]

The Court finds the petition meritorious.

The basic issue in the present case is whether petitioner was guilty of fraud and if so, whether such fraud is sufficient ground to nullify its contract with respondent.

Article 1338 of the Civil Code provides that “[t]here is fraud when through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to.”

In addition, under Article 1390 of the same Code, a contract is voidable or annulable “where the consent is vitiated by mistake, violence, intimidation, undue influence or fraud.”

Also, Article 1344 of the same Code provides that “[i]n order that fraud may make a contract voidable, it should be serious and should not have been employed by both contracting parties.”

Jurisprudence has shown that in order to constitute fraud that provides basis to annul contracts, it must fulfill two conditions.

First, the fraud must be *dolo causante* or it must be fraud in obtaining the consent of the party.^[16] This is referred to as causal fraud. The deceit must be serious. The fraud is serious when it is sufficient to impress, or to lead an ordinarily prudent person into error; that which cannot deceive a prudent person cannot be a ground for nullity.^[17] The circumstances of each case should be considered, taking into account the personal conditions of the victim.^[18]

Second, the fraud must be proven by clear and convincing evidence and not merely by a preponderance thereof.^[19]

In the present case, this Court finds that petitioner is guilty of false representation of a fact. This is evidenced by its printed advertisements indicating that its subject condominium project is located in Makati City when, in fact, it is in Pasay City. The Court agrees with the Housing and Land Use Arbiter, the HLURB Board of Commissioners, and the Office of the President, in condemning petitioner's deplorable act of making misrepresentations in its advertisements and in issuing a stern warning that a repetition of this act shall be dealt with more severely.

However, insofar as the present case is concerned, the Court agrees with the Housing and Land Use Arbiter, the HLURB Board of Commissioners, and the Office of the President, that the misrepresentation made by petitioner in its advertisements does not constitute causal fraud which would have been a valid basis in annulling the Contract to Sell between petitioner and respondent.

In his decision, the Housing and Land Use Arbiter found that respondent failed to show that "the essential and/or moving factor that led the [respondent] to give her consent and agree to buy the unit was precisely the project's advantageous or unique location in Makati [City] – to the exclusion of other places or city x x x." Both the HLURB Board of Commissioners and the Office of the President affirmed the finding of the Arbiter and unanimously held that respondent failed to prove that the location of the said project was the causal consideration or the principal inducement which led her into buying her unit in the said condominium project. The Court finds no cogent reason to depart from the foregoing findings and conclusion of the above agencies.

Indeed, evidence shows that respondent proceeded to sign the Contract to Sell despite information contained therein that the condominium is located in Pasay City. This only means that she still agreed to buy the subject property regardless of the fact that it is located in a place different from what she was originally informed. If she had a problem with the property's location, she should not have signed the Contract to Sell and, instead, immediately raised this issue with petitioner. But she did not. As correctly observed by the Office of the President, it took respondent more than two years from the execution of the Contract to Sell to demand the return of the amount she paid on the ground that she was misled into believing that the subject property is located in Makati City. In the meantime, she continued to make payments.

The Court is not persuaded by the ruling of the CA which expresses doubt on the due execution of the Contract to Sell. The fact remains that the said Contract to Sell was notarized. It is settled that absent any clear and convincing proof to the contrary, a notarized document enjoys the presumption of regularity and is conclusive as to the truthfulness of its contents.^[20] Neither does the Court agree that the presumption of regularity accorded to the notarized Contract to Sell was overcome by evidence to the contrary. Respondent's allegation that she signed the said Contract to Sell with several blank spaces, and which allegedly did not indicate the location of the condominium, was not supported by proof. The basic rule is that mere allegation is not evidence and is not equivalent to proof.^[21] In addition, the fact that respondent made several payments prior to the execution of the subject Contract to Sell is not the kind of evidence needed to overcome such presumption of regularity.

With respect to the foregoing discussions, the Court quotes with approval the disquisition of the Office of the President on the credibility of the claims of petitioner and respondent, to wit:

x x x x

We give credence to the version of [petitioner] ECE Realty considering