

SECOND DIVISION

[G.R. No.176289, April 08, 2013]

**MOLDEX REALTY, INC., PETITIONER, VS. FLORA A. SABERON,
RESPONDENT.**

D E C I S I O N

DEL CASTILLO, J.:

The lack of a license to sell or the failure on the part of a subdivision developer to register the contract to sell or deed of conveyance with the Register of Deeds does not result to the nullification or invalidation of the contract to sell it entered into with a buyer. The contract to sell remains valid and subsisting.

Petitioner Moldex Realty, Inc. (Moldex) comes to this Court *via* a Petition for Review on *Certiorari*^[1] to assail the October 31, 2006 Decision^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 79651, which denied due course and dismissed the Petition for Review^[3] it filed therewith. Also assailed is the January 23, 2007 Resolution^[4] of the CA which denied Moldex's Motion for Reconsideration^[5] of the said Decision.

Factual Antecedents

Interested in acquiring a 180-square meter lot known as Lot 2, Block 1 of Metrogate Subdivision in Dasmariñas, Cavite, respondent Flora A. Saberon (Flora) asked Moldex, the developer, to reserve the lot for her as shown by a Reservation Application^[6] dated April 11, 1992. While the cash purchase price for the land is P396,000.00, the price if payment is made on installment basis is P583,498.20 at monthly amortizations of P8,140.97 payable in five years with 21% interest *per annum* based on the balance and an additional 5% surcharge for every month of delay on the monthly installment due. Flora opted to pay on installment and began making aperiodical payments from 1992 to 1996^[7] in the total amount of P375,295.49.

In April, August, and October 1996,^[8] Moldex sent Flora notices reminding her to update her account. Upon inquiry, however, Flora was shocked to find out that as of July 1996, she owed Moldex P247,969.10. In November 1996, the amount ballooned to P491,265.91.

Moldex thus suggested to Flora to execute a written authorization for the sale of the subject lot to a new buyer and a written request for refund so that she can get half of all payments she made. However, Flora never made a written request for refund.

As of April 1997, Moldex computed Flora's unpaid account at P576,569.89. It then sent Flora a Notarized Notice of Cancellation of Reservation Application and/or Contract to Sell.^[9] Flora, on the other hand, filed before the Housing and Land Use

Regulatory Board (HLURB) Regional Field Office IV a Complaint^[10] for the annulment of the contract to sell, recovery of all her payments with interests, damages, and the cancellation of Moldex's license to sell.

Aside from imputing bad faith on the part of Moldex in bloating her unpaid balance, Flora alleged that the contract to sell between her and Moldex is void from its inception. According to Flora, Moldex violated Section 5 of Presidential Decree (PD) No. 957^[11] when it sold the subject lot to her on April 11, 1992 or before it was issued a license to sell on September 8, 1992.^[12] Flora likewise claimed that Moldex violated Section 17 of the same law because it failed to register the contract to sell in the Registry of Deeds.^[13]

In its defense, Moldex averred that Flora was only able to pay P228,201.03 and thereafter defaulted in her in payment from April 1994 to May 1997. Hence, Flora's subsequent payments were applied to her delinquencies. As regards the alleged bloating, Moldex explained that the amount reflected in Flora's Statement of Account included the arrears and surcharges incurred due to her non-payment of the monthly installments. And since Flora was not able to settle her account, Moldex exercised its right under Republic Act (RA) No. 6552,^[14] or the Maceda Law, by cancelling the reservation Agreement/Contract to Sell and forfeiting all payments made. Finally, Moldex alleged that since Flora was at fault, the latter cannot be heard to make an issue out of Moldex's lack of license or demand relief from it.

***Ruling of the Housing and Land Use
Regulatory Board Regional Field
Office IV***

In a Decision^[15] dated June 2, 1998, the HLURB Arbiter declared as void the Contract to Sell entered into by the parties because Moldex lacked the required license to sell at the time of the contract's perfection, in violation of Section 5 of PD 957, which provides, viz:

Section 5. *License to sell.* Such owner or dealer to whom has been issued a registration certificate shall not, however, be authorized to sell any subdivision lot or condominium unit in the registered project unless he shall have first obtained a license to sell the project within two weeks from the registration of such project.

The Authority, upon proper application therefor, shall issue to such owner or dealer of a registered project a license to sell the project if, after an examination of the registration statement filed by said owner or dealer and all the pertinent documents attached thereto, he is convinced that the owner or dealer is of good repute, that his business is financially stable, and that the proposed sale of the subdivision lots or condominium units to the public would not be fraudulent.

Hence, Moldex was ordered to refund everything Flora had paid, plus legal interest, and to pay attorney's fees. Moreover, Moldex was ordered to pay a fine for its violation of the above provision of PD 957, in accordance with Section 38^[16] of the

said law. Thus:

WHEREFORE, judgment is hereby rendered declaring the subject

Contract to Sell null and void and ordering Respondent to:

1. Reimburse to Complainant the amount of THREE HUNDRED SEVENTY-FIVE THOUSAND TWO HUNDRED NINETY-FIVE PESOS and 47/100 (P375,295.47) plus interest thereon at the legal rate to be computed from the time payment was actually received by Respondent;
2. Pay to this Board the sum of TEN THOUSAND PESOS (P10,000.00) as Administrative Fine for violation of Section 38, in relation to Section 5 of PD 957;
3. Pay to Complainant the sum of FIVE THOUSAND PESOS (P5,000.00) as attorney's fees.

IT IS SO ORDERED.^[17]

***Ruling of the Board of Commissioners of the
Housing and Land Use Regulatory Board***

In its Petition for Review^[18] before the HLURB Board of Commissioners (HLURB Board), Moldex argued that the absence of license at the time of the contract's perfection does not render it void. Otherwise, a subdivision or condominium developer may use it as a convenient excuse if it wants to back out from a contract.

Moldex also asserted that the purpose of the law in requiring a license is to ensure that the buying public will be dealing with HLURB-recognized subdivision and condominium developers. Here, Moldex has substantially complied with the said requirement of the law because at the time the contract to sell was perfected, its application for a license was already pending and subsequently granted.

Moldex likewise claimed that it was slapped with administrative fine without due process as it was not given the opportunity to defend itself anent its alleged violation of Section 5 of PD 957. Moreover, since the case was not an administrative complaint, the Arbiter has no power to impose an administrative fine. Finally, Moldex asserted that the award of attorney's fees in favor of Flora lacked basis.

Rejecting Moldex contentions, the HLURB Board, in a Decision^[19] dated July 29, 1999, dismissed the petition and affirmed in toto the Arbiter's Decision. It held that the law is clear on the prerequisite of a license to sell before a developer can sell lots. Since Moldex did not have a license to sell at the time it contracted to sell the subject lot to Flora, the Board agreed with the Arbiter in declaring the contract invalid and in ordering the refund of Flora's payments. The Board also found nothing wrong with the Arbiter's imposition of administrative fine and award of attorney's fees.

Moldex then appealed to the Office of the President (OP).^[20]

Ruling of the Office of the President

In its June 30, 2003 Decision^[21] and September 22, 2003 Order,^[22] the OP affirmed the finding that the contract to sell was a nullity. Citing Article 5 of the Civil Code, it held that acts executed against the provisions of mandatory or prohibitory laws, like Section 5 of PD 957, are void.

As regards the administrative fine, the OP decreed that Section 38 of PD 957 does not require the filing of an administrative complaint before a fine may be imposed. Also, the requirement of notice and hearing is not a condition *sine qua non* in the HLURB's exercise of its administrative power. Lastly, the OP agreed with the award of attorney's fees in favor of Flora as she was compelled to litigate.

Moldex thus sought relief with the CA *via* a Petition for Review.^[23]

Ruling of the Court of Appeals

In its Decision^[24] of October 31, 2006, the CA agreed with the findings of the tribunals below. It ratiocinated that Moldex's non-observance of the mandatory provision of Section 5 of PD 957 rendered the contract to sell void, notwithstanding Flora's payments and her knowledge that Moldex did not at that time have the requisite license to sell. It also held that the subsequent issuance by the HLURB of a license to sell in Moldex's favor did not cure the defect or result to the ratification of the contract. The CA also affirmed the imposition of administrative fine, holding that Moldex was never denied due process, having been afforded the opportunity to be heard. The dispositive portion of the CA Decision reads:

WHEREFORE, finding no reversible error, the instant petition is DENIED DUE COURSE and accordingly DISMISSED.

SO ORDERED.^[25]

With the denial of its plea for reconsideration in a Resolution^[26] dated January 23, 2007, Moldex elevated the case to this Court through this Petition for Review on *Certiorari*.

Issue

Moldex only raises the matter of the validity of the contract to sell it entered with Flora, contending that the same remains valid and binding.

Our Ruling

We grant the Petition.

The intrinsic validity of the contract to sell is not affected by the developer's violation of Section 5 of PD 957.