

SECOND DIVISION

[G.R. No. 169501, June 08, 2007]

**B.E. SAN DIEGO, INC., PETITIONER, VS. ROSARIO T. ALZUL,
RESPONDENT.**

DECISION

VELASCO, JR., J.:

The Case

This Petition for Review on Certiorari^[1] under Rule 45 questions the February 18, 2005 Decision^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 81341, which granted respondent Alzul the right to pay the balance of the purchase price within five (5) days from receipt of the CA Decision despite the lapse of the original period given to said party through the final Resolution of this Court in an earlier case. The CA ruling reversed the September 18, 2003 Resolution^[3] and December 2, 2003 Order^[4] of the Office of the President (OP) in O.P. Case No. 01-1-097, which upheld the dismissal of respondent Alzul's complaint for consignment and specific performance before the Housing and Land Use Regulatory Board (HLURB) in HLURB Case No. REM-A-99097-0167. Likewise challenged is the August 31, 2005 CA Resolution^[5] rejecting petitioner's Motion for Reconsideration.

The Facts

The facts culled by the CA are as follows:

On February 10, 1975, [respondent] Rosario T. Alzul purchased from [petitioner] B.E. San Diego, Inc. four (4) subdivision lots with an aggregate area of 1,275 square meters located at Aurora Subdivision, Maysilo, Malabon. These lots, which are now subject of this petition, were bought through installment under Contract to Sell No. 867 at One Hundred Pesos (P100.00) per square meter, with a downpayment [sic] of Twelve Thousand Seven Hundred Fifty Pesos (P12,750.00), and monthly installments of One Thousand Two Hundred Forty-Nine Pesos (P1,249.50). The interest agreed upon was 12 percent (12%) per annum until fully paid, thus, the total purchase price was Two Hundred Thirty Seven Thousand Six Hundred Sixty Pesos (P237,660.00).

[Respondent] took immediate possession of the subject property, setting up a perimeter fence and constructing a house thereon.

On July 25, 1977, [respondent] signed a "Conditional Deed of Assignment and Transfer of Rights" which assigned to a certain Wilson P. Yu her rights under the Contract to Sell. [Petitioner] was notified of the execution of such deed. Later on, the Contract to Sell in [respondent's]

name was cancelled, and [petitioner] issued a new one in favor of Yu although it was also denominated as "Contract to Sell No. 867".

On July 4, 1979, [respondent] informed [petitioner] about Yu's failure and refusal to pay the amounts due under the conditional deed. She also manifested that she would be the one to pay the installments due to respondent on account of Yu's default.

On August 25, 1980, [respondent] commenced an action for rescission of the conditional deed of assignment against Yu before the Regional Trial Court of Caloocan City. Subsequently, on September 30, 1985, [respondent] caused the annotation of notices of lis pendens on the titles covering the subject lots.

The trial court ruled in [respondent's] favor in the rescission case. The decision was even affirmed by this [appellate] Court. Yu brought his cause before the Supreme Court in a Petition for Review, but this was likewise denied.

On February 17, 1989, [petitioner] notified [respondent] that Contract to Sell No. 867 was declared rescinded and cancelled. On April 28, 1989, the subject lots were sold to spouses Carlos and Sandra Ventura who were allegedly surprised to find the annotation of lis pendens in their owner's duplicate title.

On May 8, 1990, the Ventura spouses filed an action for Quieting of Title with Prayer for Cancellation of Annotation and Damages before the Regional Trial Court of Malabon. The trial court ruled in favor of the Ventura spouses. On appeal before this [appellate] Court, however, the decision was reversed on November 27, 1992, as follows:

"WHEREFORE, the appealed decision is hereby REVERSED and SET ASIDE, and the complaint therein is ordered dismissed. Transfer Certificates of Title Nos. N-1922, N-1923, N-1924, and N-1925, all of the Register of Deeds of Metro Manila, District III, Malabon Branch, in the names of plaintiffs-appellees Carlos N. Ventura and Sandra L. Ventura are hereby declared null and void, and the titles of ownership reinstated in the name of B.E. San Diego, Inc. with the corresponding notices of lis pendens therein annotated in favor of defendant-appellant until such time that ownership of the subject parcels of land is transferred to herein defendant-appellant Rosario Alzul. Costs against plaintiff-appellees.

SO ORDERED."

Upon filing of an appeal to the Supreme Court docketed as GR No. 109078, the above decision was affirmed on December 26, 1995. A motion for reconsideration was filed, but this was denied by the Highest Tribunal on February 5, 1996.

On June 17, 1996, a resolution was issued by the Supreme Court, ordering, as follows:

"We, however, agree with the observation made by movants that no time limit was set by the respondent Court of Appeals in its assailed Decision for the private respondent herein, Rosario Alzul, to pay B.E. San Diego, Inc. the original owner of the properties in litigation. **To rectify such oversight, private respondent Rosario T. Alzul is hereby given a non- extendible period of thirty (30) days from entry of judgment, within which to make full payment for the properties in question.** xxx" (Emphasis supplied.)

On July 12, 1996, an Entry of Judgment was issued. In an attempt to comply with the Supreme Court's directive, herein [respondent] tried to serve payment upon [petitioner] on August 29, 1996, August 30, 1996 and September 28, 1996. On all these dates, however, [petitioner] allegedly refused to accept payment from [respondent].

On November 11, 1996, [respondent] filed a Manifestation in GR No. 109078 informing the Supreme Court that [petitioner], on three (3) occasions, refused to accept [her] payment of the balance in the amount of P187,380.00. On January 29, 1997, a Resolution was issued by the Supreme Court referring the case to the court of origin for appropriate action, on account of [respondent's] manifestation.

On October 21, 1997, [respondent's] counsel wrote a letter to [petitioner] citing the latter's refusal to accept her payment on several occasions. It was also mentioned therein that due to its refusal, [respondent] would just consign the balance due to [petitioner] before the proper judicial authority.

On January 14, 1998, a reply was sent by [petitioner] through a certain Flora San Diego. [Respondent's] request was rejected on account of the following:

1. We have long legally rescinded the sale in her favor in view of her failure to pay the monthly amortization as per contract.
2. She sold her rights to Mr. Wilson Yu who failed to pay his monthly amortizations, too.
3. We are not and have never been a part of the case you are alluding to hence we cannot be bound by the same.
4. The property in question is now under process to be reconveyed to us as ordered by the court by virtue of a compromised (sic) agreement entered into in Civil Case No. 2655 MN of the Malabon RTC Branch entitled Spouses Carlos Ventura and Sandra Ventura vs. B.E. San Diego, Inc. xxx

Thinking that an action for consignment alone would not be sufficient to allow for the execution of a final judgment in her favor, [respondent]

decided to file an action for consignment and specific performance against [petitioner] before the Housing and Land Use Regulatory Board on March 12, 1998. The complaint, docketed as REM-031298-10039, prayed that a) [respondent] be considered to have fully paid the total purchase price of the subject properties; b) TCT Nos. N-155545 to 48 which were declared void in CA GR No. L-109078 be cancelled; c) new certificates of title over the subject properties be issued in the name of [respondent]; and d) [petitioner] be ordered to reimburse [respondent] the sum of Fifty Thousand Pesos (P50,000.00) as attorney's fees and litigation expenses.

On July 12, 1999, a decision was rendered by the HLURB through Housing and Land Use Arbiter Dunstan T. San Vicente. It was held, thus:

"The purported "consignation" in this case is thus of no moment, inasmuch as the amount allegedly due was not even deposited or placed at the disposal of this Office by the complainant.

In any event, we agree with [petitioner] that even if the complainant had actually made the consignment of the amount, such consignment is still ineffective and void for having been done long after the expiration of the non-extendible period set forth in the 17 June 1996 Supreme Court Resolution that expired on 20 September 1996.

WHEREFORE, Premises Considered, a judgment is hereby rendered DISMISSING the complaint. Cost against complainant.

IT (sic) SO ORDERED."

Aggrieved by the above decision, [respondent] filed a Petition for Review before the HLURB's First Division. On March 17, 2000, a decision was rendered dismissing the petition for lack of merit, and affirming the decision dated July 12, 1999. [Respondent] filed a Motion for Reconsideration, but this was denied on July 31, 2001.

[Respondent] then filed an appeal to the Office of the President. This was, however, dismissed on June 2, 2003 for having been filed out of time. Again, [respondent] moved for its reconsideration. On September 18, 2003, the Office of the President gave due course to [respondent's] motion, and resolved the motion according to its merits. The single question resolved was whether or not [respondent's] offer of consignment was correctly denied by the HLURB. Said office ruled in the affirmative, and We quote:

"From the foregoing, it is evident that there was no valid consignment of the balance of the purchase price. The 30-day non-extendible period set forth in the 17 June 1996 resolution had already expired on 20 September 1996. The HLURB is therefore justified in refusing the consignment, otherwise it would be accused of extending the period beyond that

provided by the Supreme Court. A valid consignation is effected when there is an actual consignation of the amount due within the prescribed period (St. Dominic Corporation vs. Intermediate Appellate Court, 138 SCRA 242). x x x

WHEREFORE, premises considered, the appeal is hereby DISMISSED for lack of merit. x x x"

[Respondent] filed a Motion for Reconsideration [of] the above Resolution, but this was denied with finality on December 2, 2003.^[6]

The Ruling of the Court of Appeals

Respondent Alzul brought before the CA a petition for certiorari docketed as CA-G.R. SP No. 67637, ascribing grave abuse of discretion to the OP in dismissing her appeal in O.P. Case No. 01-1-097 and affirming the March 17, 2000 Decision^[7] and July 31, 2001 Resolution^[8] of the HLURB First Division in HLURB Case No. REM-A-990907-0167.

On February 18, 2005, the CA rendered its assailed Decision reversing the September 18, 2003 Resolution and December 2, 2003 Order of the OP, the *fallo* of which reads:

WHEREFORE, in the higher interest of justice, the assailed Decision, Resolution and Order dated March 17, 2000, September 18, 2003 and December 2, 2003, respectively, are hereby **REVERSED and SET ASIDE**. Accordingly, [respondent Alzul] is hereby ordered to payh [petitioner B.E. San Diego, Inc.] the balance due for the sale of the subject four parcels of land within five (5) days from receipt of this decision. [Petitioner B.E. San Diego, Inc.], on the other hand, is ordered to accept such payment from [respondent Alzul], after which, the corresponding Deed of Sale must be issued.

SO ORDERED.^[9]

The CA agreed with the HLURB that no valid consignation was made by respondent but found that justice would be better served by allowing respondent Alzul to effect the consignation, albeit belatedly. It cited the respondent's right over the disputed lots as confirmed by this Court in G.R. No. 109078, which, if taken away on account of the delay in completing the payment, would amount to a grave injustice.

Moreover, the CA pointed out that respondent's counsel concededly lacked the vigilance and competence in defending his client's right when he failed to consign the balance on time; nonetheless, such may be disregarded in the interest of justice. It considered the failure of respondent's counsel to avail of the remedy of consignation as a procedural lapse, citing the principle that where a rigid application of the rules will result in a manifest failure or miscarriage of justice, technicalities can be ignored.

A copy of the February 18, 2005 CA Decision was received by respondent Alzul through her counsel on February 24, 2005.