

SECOND DIVISION

[G.R. No. 165164, August 17, 2007]

FIL-ESTATE PROPERTIES, INC., PETITIONER, VS. SPOUSES GONZALO AND CONSUELO GO, RESPONDENTS.

R E S O L U T I O N

QUISUMBING, J.:

For review on certiorari are the Decision^[1] dated June 9, 2004 of the Court of Appeals in CA-G.R. SP No. 79624, and its Resolution^[2] dated August 3, 2004, denying the motion for reconsideration.

The basic facts in this case are undisputed.

On December 29, 1995, petitioner Fil-Estate Properties, Inc. (Fil-Estate) entered into a contract to sell a condominium unit to respondent spouses Gonzalo and Consuelo Go at "Eight Sto. Domingo Place," a condominium project of petitioner located on Sto. Domingo Avenue, Quezon City. The spouses paid a total of P3,439,000.07 of the full contract price set at P3,620,000.00.

Because petitioner failed to develop the condominium project, on August 4, 1999, the spouses demanded the refund of the amount they paid, plus interest. When petitioner did not refund the spouses, the latter filed a complaint against petitioner for reimbursement of P3,620,000 representing the lump sum price of the condominium unit, plus interest, P100,000 attorney's fees, and expenses of litigation before the Housing and Land Use Regulatory Board (HLURB).

In answer, petitioner claimed that respondents had no cause of action since the delay in the construction of the condominium was caused by the financial crisis that hit the Asian region, a fortuitous event over which petitioner had no control.

On July 18, 2000, the HLURB Regional Director approved the decision of the Housing and Land Use Arbiter in favor of the spouses Go. The HLURB ratiocinated that the Asian financial crisis that resulted in the depreciation of the peso is not a fortuitous event as any fluctuation in the value of the peso is a daily occurrence which is foreseeable and its deleterious effects avoided by economic measures. The HLURB went on to say that when petitioner discontinued the development of its condominium project, it failed to fulfill its contractual obligations to the spouses. And following Article 1475^[3] of the Civil Code, upon perfection of the contract, the parties, here the spouses Go, may demand performance. And under Article 1191^[4] of the same code, should one of the parties, in this instance Fil-Estate, fail to comply with the obligation, the aggrieved party may choose between fulfillment or rescission of the obligation, with damages in either case. Inasmuch as Fil-Estate could no longer fulfill its obligation, the spouses Go may ask for rescission of the contract with damages. The dispositive portion of the decision reads:

WHEREFORE, the foregoing considered, judgment is hereby rendered as follows:

1. Ordering the respondent, Fil-Estate Properties, Inc., to refund to the complainants, P3,439,000.07 (the amount proved) plus 12% interest thereon reckoned from 09 August 1999 (the date the respondent received the demand letter) until the same is fully paid.
2. Ordering the respondent to pay to the complainants P25,000.00 attorney's fees as and by way of damages.

All other claims and counterclaims are dismissed.

IT IS SO ORDERED.^[5]

The Board of Commissioners of the HLURB denied petitioner's petition for review and consequent motion for reconsideration.^[6] The Office of the President dismissed petitioner's appeal and denied its motion for reconsideration.^[7]

On appeal, asserting that both the HLURB and the Office of the President committed reversible errors, Fil-Estate asked the Court of Appeals to set aside the orders it is appealing.

The Court of Appeals affirmed the actions taken by the HLURB and the Office of the President and declared that the Asian financial crisis could not be considered a fortuitous event and that respondents' right is provided for in Section 23^[8] of Presidential Decree (P.D.) No. 957, otherwise known as "The Subdivision and Condominium Buyers' Protective Decree." The appellate court also noted that there was yet no crisis in 1995 and 1996 when the project should have been started, and petitioner cannot blame the 1997 crisis for failure of the project, nor for even not starting it, because the project should have been completed by 1997.

The appellate court denied petitioner's motion for reconsideration.

Hence, this petition raising two issues for our resolution as follows:

I.

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE ASIAN FINANCIAL CRISIS IS NOT A FORTUITOUS EVENT THAT WOULD EXCUSE THE DELIVERY BY PETITIONER OF THE SUBJECT CONDOMINIUM UNIT TO RESPONDENTS.

II.

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING PETITIONER LIABLE FOR THE PAYMENT OF ATTORNEY'S FEES.^[9]

On the first issue, did the Court of Appeals err in ruling that the Asian financial crisis was not a fortuitous event?

Petitioner, citing Article 1174^[10] of the Civil Code, argues that the Asian financial

crisis was a fortuitous event being unforeseen or inevitable. Petitioner likewise cites *Servando v. Philippine Steam Navigation Co.*,^[11] to bolster its case. Petitioner explains that the extreme economic exigency and extraordinary currency fluctuations could not have been reasonably foreseen and were beyond the contemplation of both parties when they entered the contract. Petitioner further asserts that the resultant economic collapse of the real estate industry was unforeseen by the whole Asia and if it was indeed foreseeable, then all those engaged in the real estate business should have foreseen the impending fiasco. Petitioner adds that it had not committed any fraud; that it had all the required government permits; and that it had not abandoned the project but only suspended the work. It also admits its obligation to complete the project. It says that it had in fact asked the HLURB for extension to complete it.^[12]

In their Comment, respondents submit that the instant petition be rejected outright for the reason that petitioner has not raised any question of law in the instant petition. The questions of whether or not the Asian financial crisis is a fortuitous event, and whether or not attorney's fees should be granted, are questions of facts which the Court of Appeals recognized as such.

Respondent spouses reiterate that contrary to what petitioner avers, the delay in the construction of the building was not attributable to the Asian financial crisis which happened in 1997^[13] because petitioner did not even start the project in 1995 when it should have done, so that it could have finished it in 1997, as stipulated in the contract.

Preliminarily, respondents bring to the attention of this Court the strange discrepancy in the dates of notarization of the Certification of Non-Forum Shopping and the Affidavit of Service both notarized on September 24, 2004, while the Secretary's Certification was notarized a day earlier on September 23, 2004. However, we shall not delve into technicalities, but we shall proceed with the resolution of the issues raised on the merits.

Indeed, the question of whether or not an event is fortuitous is a question of fact. As a general rule, questions of fact may not be raised in a petition for review for as long as there is no variance between the findings of the lower court and the appellate court, as in this case where the HLURB, the Office of the President, and the Court of Appeals were agreed on the fact.

Worthy of note, in a previous case, *Asian Construction and Development Corporation v. Philippine Commercial International Bank*,^[14] the Court had said that the 1997 financial crisis that ensued in Asia did not constitute a valid justification to renege on obligations. We emphatically stressed the same view in *Mondragon Leisure and Resorts Corporation v. Court of Appeals*,^[15] that the Asian financial crisis in 1997 is not among the fortuitous events contemplated under Article 1174 of the Civil Code.

Also, we cannot generalize that the Asian financial crisis in 1997 was unforeseeable and beyond the control of a business corporation. It is unfortunate that petitioner apparently met with considerable difficulty e.g. increase cost of materials and labor, even before the scheduled commencement of its real estate project as early as 1995. However, a real estate enterprise engaged in the pre-selling of condominium units is concededly a master in projections on commodities and currency