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THIRD DIVISION

[G.R. NO. 164136, January 25, 2006]

CARLOS R. TAMAYO, PETITIONER, VS. MILAGROS HUANG, JOSEFINO HUANG, HUANG SUI SIN, MIGUEL HUANG AND IAP TONG HA, RESPONDENTS.

D E C I S I O N

CARPIO MORALES, J.:

On August 14, 1978, respondents Huang Sui Sin, Josefino Huang, Miguel Huang and Milagros Huang, four of five registered owners of four parcels of land located in Barangay Matina, Davao City and covered by Transfer Certificates of Title Nos. T-20694, T-20704, T-20717 and a portion of TCT No. T-20729, executed a contract of "Indenture" with EAP Development Corporation (EAP) under which EAP undertook to mana ge and develop said parcels of land into a first class subdivision and sell the lots therein in consideration for which EAP would retain 55% percent of the sales proceeds.[1] The parcels of land were later known as Doña Luisa Village (the subdivision).

On or about April 30, 1981, Carlos R. Tamayo (petitioner) entered into a contract to sell[2] (the contract) with respondents through their Attorney-in-Fact and Manager, EAP, for the purchase of Lot No. 15, Block No. 11 (the lot) of the subdivision, covered by TCT No. T-74582 (a transfer from TCT-20717) with an area of 1,424 square meters at P170.00 per square meter or for the total price of P242,080.00.

Under the contract, petitioner was to pay upon execution P35,749.60 and the balance, including interest at the rate of 14% per annum, in 60 monthly installments of P4,791.40, without necessity of demand; and if petitioner failed to pay the installments, respondents were given the right to demand interest thereon at the rate of 14% per annum, to be computed on the same day of the month the installments became due.

Petitioner did make the down payment alright and paid monthly installments up to June 1982 after which he stopped paying. At that time, petitioner had paid a total of P59,706.60.

In the meantime, as EAP had abandoned the development of the subdivision, respondents filed on June 27, 1985 a complaint against EAP for rescission of their "Indenture" contract before the Regional Trial Court (RTC) of Davao, docketed as Civil Case No. 17625.[3]

More than five years after the parties executed the contract on April 30, 1981,[4] respondents appear to have sent petitioner a letter demanding payment of the lot, for in a letter[5] dated December 24, 1986 addressed to respondents, petitioner

stated that he intentionally desisted from paying further monthly installments due to non-development of the subdivision as agreed upon in the contract.

Nothing had been heard from the parties until January 2, 1991 when, after noting that the development of the subdivision was in progress, petitioner issued Prudential Bank Check No. 023014[6] dated January 2, 1991 in the amount of P270,527.00 purportedly representing full payment of the purchase price of the lot, for which he was issued a receipt.[7]

Respondents immediately returned the check to petitioner, however, by letter of January 9, 1991, they claiming that their employee had committed a mistake in receiving it. Respondents' letter bearing the check was returned unopened, drawing respondents to return it again, by letter[8] dated February 28, 1991 addressed to and received by petitioner's son.

Petitioner later filed a complaint[9] on July 24, 1997 against respondents, for specific performance and delivery of title with damages, before the Housing and Land Use Regulatory Board (HLURB), Region XI, Davao City, the subject of the petition at bar, anchoring his rights under Presidential Decree No. 957 (the subdivision and condominium buyers' protective decree).

In his complaint before the HLURB, petitioner posited that from the execution of the contract up to the time he sent his above-said letter dated December 24, 1986, respondents failed to develop the subdivision, in support of which he submitted the January 31, 1990 decision[10] of Branch 14 of the RTC Davao City in Civil Case No. 17625 rescinding the "Indenture" forged by respondents and EAP for the latter's failure to develop the subdivision. Petitioner also submitted a Certification[11] dated November 24, 1997 of the President of Homeowners Association of the subdivision that the entrance road of the subdivision connecting to the Quimpo Boulevard was concreted only about two years earlier, and that as of said date, the drainage system was not completed and some of the roads were not yet concreted.

In their Answer to the complaint,[12] respondents averred that the EAP stopped the development of the subdivision only by the end of 1983; petitioner had no factual or legal basis for not paying his monthly installment beginning July 1982 since the development of the subdivision was then in progress; the contract was deemed rescinded on April 30, 1986 five (5) years after its execution, and if petitioner wanted to go on with the purchase of the lot, it would be under terms different from those executed in the contract; petitioner was not entitled to the provisions of Republic Act No. 6552 (the realty installment buyer act) as the therein prescribed condition of two-year continuous payment of monthly installments for entitlement to rights thereunder was not complied with; and if petitioner had any right at all, it was only to a refund of what he had already paid.

In the interim, petitioner consigned on September 4, 1997 with the HLURB two checks, one dated August 29, 1997, and the other dated September 2, 1997, in the amounts of P270,000.00 and P527.00, respectively.[13]

By a Counter-Manifestation,[14] respondents informed that they were refusing to accept petitioner's checks as these were issued and consigned long after the

expiration of the contract on April 30, 1986.

By Decision[15] of February 16, 1998, HLRUB Arbiter Atty. Joselito F. Melchor dismissed petitioner's complaint, holding that payment by tender and consignation was not legally effected, the check dated January 9, 1991 having been sent back to petitioner's son, and the consignation of the two checks dated 1997 having failed to meet the requirements set forth by law for a valid consignation.

And so the HLURB decision disposed:

> WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered ordering:
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> 1. The DISMISSAL of the instant case for lack of merit.
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> 2. The complainant to immediately pay in full his account with the payment of corresponding interest and penalty under the terms and conditions of his contract with the respondents. In the event cancellation procedures of the contract between the parties have already been effected by respondents in accordance with RA 6552, the respondent shall give the complainant a grace period of not less than sixty days from finality of this judgment to pay his unpaid obligations as stated above. Failure on the part of the complainant to pay said unpaid obligations at the expiration of the grace period, the respondents may cancel the contract after thirty days from receipt by the complainant of the notice of cancellation or demand for rescission of the contract by notarial act;
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> 3. The complainant to pay respondents the amount of P100,000.00 as damages because of former's breach of obligation and P50,000.00 as attorney's fee; and
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> 4. The complainant to pay the cost of litigation.
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> SO ORDERED.[16] (Underscoring supplied)

Petitioner thereupon filed a petition for review before the HLURB Board of Commissioners questioning the award of damages and attorney's fee to respondents, and praying that respondents be ordered to receive the amount of P270,527.00 consigned with the HLURB Davao City and execute the final deed of sale and deliver the title.

By Decision of August 25, 1998, the HLURB Board of Commissioners affirmed the Arbiter's decision, but deleted the award to respondents of damages and costs.

Respondents appealed the HLURB Board of Commissioners' decision to the Office of the President (OP).

During the pendency of the appeal before the OP, respondents filed on October 13, 2000 a "Manifestation and Motion,"[17] averring for the first time that on April 1997, they sold the disputed lot to one Nene Abijar in whose favor a "Deed of Absolute Sale" was executed on November 2, 1997, and to whom was issued on November

11, 1997 TCT No. T-292279[18] which cancelled respondents' TCT No. T-74582.[19] The records disclose that on September 3, 2001, Abijar oddly filed an Answer with Counter-claim against petitioner and Cross-claim against respondents in HLURB REM-A-980316-0042 before the HLURB Davao after the said case had been resolved by the HLURB Davao and while it was on appeal before the OP.[20]

By Decision of December 12, 2001, the OP upheld the HLURB finding that there was no effective cancellation of the contract, but nevertheless ruled that Abijar's right as an innocent purchaser for value must be accorded preference over that of petitioner, without prejudice to the right of petitioner to recover what he had paid under the contract.[21] Thus the OP held:

> x x x M[s]. Abijar, three (3) months before the appellee[-herein petitioner] instituted the present action, bought the property from the appellants[-herein respondents] apparently without notice that some other person has a right to, or has interest over the same. Fact is, M[s]. Abijar was able to register title to the property under h[er] name, and there appears nothing in h[er] title which indicates any encumbrance, lien or inchoate right which may subsequently defeat h[er] right thereto. A person dealing with a registered land is not, as a rule, required to go behind the register to determine the condition of the property, and is only charged with notice of the burdens on the property which are noted on the face of the register or certificate of title *[Radiowealth Finance Company v. Manuelito S. Palileo, 197 SCRA 245].* It thus strikes us as rather unconscionable, if not legally impossible, to take the literal application of RA 6552. Otherwise, we shall be asking the appellants to surrender the subject property to the appellee after its sale to, and registration under the name of, M[s]. Abijar. If that would be the case, then our judgment would run counter to the doctrine on the efficacy and conclusiveness of the certificate of title which the Torrens system seeks to ensure and protect.[22] (Underscoring supplied)

The OP thus reversed the decision of the HLURB Board of Commissioners, the dispositive portion of which reads:

> WHEREFORE, premises considered judgment is hereby MODIFIED to wit:
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> 1) Ordering appellants[-herein respondents] to refund to appellee the amount of P59,706.00, the sum total of the amortizations paid by the appellee, with legal interest from the date of conveyance by appellants of the subject parcel of land to Mr. Nene Abijar;
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> 2) Ordering the release to appellee Carlos R. Tamayo of the amount of P270,537.00 which he consigned to the HLURB; and
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> 3) Ordering the appellants[-herein respondents] to pay to HLURB the amount of P 20,000 as administrative fine.
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> SO ORDERED. (Underscoring supplied)

His motion for reconsideration having been denied by Order[23] of June 17, 2003, petitioner filed a petition for review with the appellate court before which he argued,

inter alia, that the OP erred in applying equity in favor of Abijar who was not a party to the case.

By decision[24] rendered on January 23, 2004, the appellate court dismissed the petition for lack of merit. Petitioner's motion for reconsideration having been denied by resolution of June 29, 2004, he filed the present petition.

It is not disputed that EAP, acting as the Attorney-in-Fact and Manager of respondents, totally abandoned the development of the subdivision in 1983,[25] thus prompting respondents to continue development thereof on May 22, 1985[26] and to even file a complaint to rescind its contract of "Indenture" with EAP which the RTC Davao granted.

Paragraph 8 of the contract between petitioner and respondents through EAP provides:

> Eight. – SUBDIVISION IMPROVEMENTS: - To insure the beauty of the subdivision in line with the modern trend of urban development, EAP Development Corporation hereby obligates itself to provide the subdivision with:
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> (a) Concrete Paved road or asphalt when price of cement becomes prohibitive
> (b) Concrete curbs and gutters
> (c) Underground drainage system
> (d) Water distribution system
> (e) Electrical lighting system
> (f) 24 hour Security Guard Service
>
> x x x x (Underscoring supplied)

The SUBDIVISION AND CONDOMINIUM BUYER'S PROTECTIVE DECREE directs every owner and developer of real property to provide the necessary facilities, improvements, infrastructures and other forms of development, failure to carry out which is sufficient cause for the buyer to suspend payment, and any sums of money already paid shall not be forfeited.

Sections 20 and 23 of P.D. 957 of the same decree further direct as follows:

> Sec. 20. *Time of Completion*. - Every owner or developer shall construct and provide the facilities, improvements, infrastructures and other forms of development, including water supply and lighting facilities, which are offered and indicated in the approved subdivision or condominium plans, brochures, prospectus, printed matters, letters or in any form of advertisement, within one year from the date of the issuance of the license for the subdivision or condominium project or such other period of time as may be fixed by the Authority. (Underscoring supplied)
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> Sec. 23. *Non-Forfeiture of Payments*. – No installment payment made by a buyer in a subdivision or condominium project for the lot or unit he contracted to buy shall be forfeited in favor of the owner or developer