

## SECOND DIVISION

[ G.R. NO. 163075, January 23, 2006 ]

**AYALA LIFE ASSURANCE, INC., PETITIONER, VS. RAY BURTON  
DEVELOPMENT CORPORATION, RESPONDENT.**

### DECISION

**SANDOVAL-GUTIERREZ, J.:**

Before us for resolution is the petition for review on certiorari<sup>[1]</sup> assailing the Decision<sup>[2]</sup> dated January 21, 2004 of the Court of Appeals in CA-G.R. CV No. 74635,<sup>[3]</sup> as well as its Resolution dated April 2, 2004 denying petitioner's motion for reconsideration.

The facts are:

On December 22, 1995, Ayala Life Assurance, Inc., petitioner, and Ray Burton Development Corporation, respondent, entered into a contract denominated as a "Contract to Sell," with a "Side Agreement" of even date. In these contracts, petitioner agreed to sell to respondent a parcel of land, with an area of 1,691 square meters, situated at Madrigal Business Park, Ayala Alabang Village, Muntinlupa City, covered by Transfer Certificate of Title No. 186485 of the Registry of Deeds of Makati City. The purchase price of the land is P55,000.00 per square meter or a total of P93,005,000.00, payable as follows:

- (a) On contract date – P24,181,300.00 representing 26 percent of the purchase price, inclusive of the P1,000,000.00 option money;
- (b) Not later than January 6, 1996 – P3,720,200.00 representing 4 percent of the purchase price to complete 30 percent down payment; and
- (c) In consecutive quarterly installments for a period of 5 years from December 22, 1995 – P65,103,500.00 representing the 70 percent balance of the purchase price.

The contract contains a stipulation in paragraphs 3 and 3.1 for an "Event of Default." It provides that in case the purchaser (respondent) fails to pay any installment for any reason not attributable to the seller (petitioner), the latter has the right to assess the purchaser a late penalty interest on the unpaid installment at two (2%) percent per month, computed from the date the amount became due until full payment thereof. And if such default continues for a period of six (6) months, the seller has the right to **cancel** the contract without need of court declaration by giving the purchaser a written notice of cancellation. In case of such cancellation, the seller shall **return** to the purchaser the amount he received, less penalties, unpaid charges and dues on the property.

Respondent paid thirty (30%) down payment and the quarterly amortization, including the one that fell due on June 22, 1998.

However, on August 12, 1998, respondent notified petitioner in writing that it will no longer continue to pay due to the adverse effects of the economic crisis to its business. Respondent then asked for the immediate cancellation of the contract and for a refund of its previous payments as provided in the contract.

Petitioner refused to cancel the contract to sell. Instead, on November 25, 1999, it filed with the Regional Trial Court, Branch 66, Makati City, a complaint for specific performance against respondent, docketed as Civil Case No. 99-2014, demanding from the latter the payment of the remaining unpaid quarterly installments beginning September 21, 1999 in the total sum of P33,242,382.43, inclusive of interest and penalties.

Respondent, in its answer, denied any further obligation to petitioner, asserting that on August 12, 1998, it (respondent) notified the latter of its inability to pay the remaining installments. Respondent invoked the provisions of paragraphs 3 and 3.1 of the contract to sell providing for the refund to it of the amounts paid, less interest and the sum of 25% of all sums paid as liquidated damages.

After pre-trial, petitioner moved for a summary judgment on the ground that respondent's answer failed to tender any genuine issue as to any material fact, except as to the amount of damages. The trial court granted the motion and ordered the parties to submit their memoranda.

On December 10, 2001, the trial court rendered a Decision holding that respondent transgressed the law in obvious bad faith. The dispositive portion reads:

WHEREFORE, defendant (now respondent) is hereby sentenced and ordered to pay plaintiff (now petitioner) the sum of P33,242,383.43, representing the unpaid balance of the principal amount owing under the contract, interest agreed upon, and penalties. Defendant is further ordered to pay plaintiff the sum of P200,000.00 as attorney's fees and the costs of suit.

Upon full payment of the aforementioned amounts by defendant, plaintiff shall, as it is hereby ordered, execute the appropriate deed of absolute sale conveying and transferring full title and ownership of the parcel of land subject of the sale to and in favor of defendant.

On appeal, the Court of Appeals rendered a Decision dated January 21, 2004 in CA-G.R. CV No. 74635, reversing the trial court's Decision, thus:

**WHEREFORE**, the decision appealed from is hereby **REVERSED** and **SET ASIDE**. Ayala Life is hereby ordered to refund all sums paid under the Contract to Sell, with interest of twelve percent (12%) per annum from 12 August 1998 until fully paid, less the amount equivalent to 25% of the total amount paid as liquidated damages.

**SO ORDERED.**

The Court of Appeals ruled that the parties' transaction in question is in the nature of a contract to sell, as distinguished from a contract of sale. Under their contract, ownership of the land is retained by petitioner until respondent shall have fully paid the purchase price. Its failure to pay the price in full is not a breach of contract but merely an event that prevents petitioner from conveying the title to respondent. Under such a situation, a cause of action for specific performance does not arise. What should govern the parties' relation are the provisions of their contract on the "Event of Default" stated earlier.

Hence, the instant petition for review on certiorari.

Petitioner contends that the Court of Appeals committed a reversible error in holding that: (a) the remedy of specific performance is not available in a contract to sell, such as the one at bar; and (b) petitioner is liable to refund respondent all the sums the latter paid under the contract to sell, with interest at 12% per annum from August 12, 1998 until fully paid, less the amount equivalent to 25% of the total amount paid as liquidated damages.

Petitioner argues that by virtue of the contract to sell, it has the right to choose between fulfillment and rescission of the contract, with damages in either case. Thus, it is immaterial to determine whether the parties' subject agreement is a contract to sell or a contract of sale.

In its comment, respondent disputed petitioner's allegations and prayed that the petition be denied for lack of merit.

The issues are:

1. Whether respondent's non-payment of the balance of the purchase price gave rise to a cause of action on the part of petitioner to demand full payment of the purchase price; and
2. Whether petitioner should refund respondent the amount the latter paid under the contract to sell.

At the outset, it is significant to note that petitioner does not dispute that its December 22, 1995 transaction with respondent is a **contract to sell**. It bears stressing that the exact nature of the parties' contract determines whether petitioner has the remedy of specific performance.

It is thus imperative that we first determine the nature of the parties' contract.

The real nature of a contract may be determined from the express terms of the written agreement and from the contemporaneous and subsequent acts of the contracting parties.<sup>[4]</sup> In the construction or interpretation of an instrument, the intention of the parties is primordial and is to be pursued.<sup>[5]</sup> If the terms of the contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.<sup>[6]</sup> If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former.<sup>[7]</sup> The denomination or title given by the parties in their contract is not conclusive of the nature of its contents.<sup>[8]</sup>