

FIRST DIVISION

[G.R. NO. 167379, June 27, 2006]

**PRIMELINK PROPERTIES AND DEVELOPMENT CORPORATION
AND RAFAELITO W. LOPEZ, PETITIONERS, VS. MA. CLARITA T.
LAZATIN-MAGAT, JOSE SERAFIN T. LAZATIN, JAIME TEODORO T.
LAZATIN AND JOSE MARCOS T. LAZATIN, RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. CV No. 69200 and its Resolution^[2] denying petitioners' motion for reconsideration thereof.

The factual and procedural antecedents are as follows:

Primelink Properties and Development Corporation (Primelink for brevity) is a domestic corporation engaged in real estate development. Rafaelito W. Lopez is its President and Chief Executive Officer.^[3]

Ma. Clara T. Lazatin-Magat and her brothers, Jose Serafin T. Lazatin, Jaime T. Lazatin and Jose Marcos T. Lazatin (the Lazatins for brevity), are co-owners of two (2) adjoining parcels of land, with a combined area of 30,000 square meters, located in Tagaytay City and covered by Transfer Certificate of Title (TCT) No. T-10848^[4] of the Register of Deeds of Tagaytay City.

On March 10, 1994, the Lazatins and Primelink, represented by Lopez, in his capacity as President, entered into a Joint Venture Agreement^[5] (JVA) for the development of the aforementioned property into a residential subdivision to be known as "*Tagaytay Garden Villas*." Under the JVA, the Lazatin siblings obliged themselves to contribute the two parcels of land as their share in the joint venture. For its part, Primelink undertook to contribute money, labor, personnel, machineries, equipment, contractor's pool, marketing activities, managerial expertise and other needed resources to develop the property and construct therein the units for sale to the public. Specifically, Primelink bound itself to accomplish the following, upon the execution of the deed:

- a.) Survey the land, and prepare the projects master plans, engineering designs, structural and architectural plans, site development plans, and such other need plans in accordance with existing laws and the rules and regulations of appropriate government institutions, firms or agencies;
- b.) Secure and pay for all the licenses, permits and

clearances needed for the projects;

- c.) Furnish all materials, equipment, labor and services for the development of the land in preparation for the construction and sale of the different types of units (single-detached, duplex/twin, cluster and row house);
- d.) Guarantee completion of the land development work if not prevented by *force majeure* or fortuitous event or by competent authority, or other unavoidable circumstances beyond the DEVELOPER'S control, not to exceed three years from the date of the signing of this Joint Venture Agreement, except the installation of the electrical facilities which is solely MERALCO'S responsibility;
- e.) Provide necessary manpower resources, like executive and managerial officers, support personnel and marketing staff, to handle all services related to land and housing development (administrative and construction) and marketing (sales, advertising and promotions).^[6]

The Lazatins and Primelink covenanted that they shall be entitled to draw allowances/advances as follows:

1. During the first two years of the Project, the DEVELOPER and the LANDOWNER can draw allowances or make advances not exceeding a total of twenty percent (20%) of the net revenue for that period, on the basis of sixty percent (60%) for the DEVELOPER and forty percent (40%) for the LANDOWNERS.

The drawing allowances/advances are limited to twenty percent (20%) of the net revenue for the first two years, in order to have sufficient reserves or funds to protect and/or guarantee the construction and completion of the different types of units mentioned above.

2. After two years, the DEVELOPER and the LANDOWNERS shall be entitled to drawing allowances and/or advances equivalent to sixty percent (60%) and forty percent (40%), respectively, of the total net revenue or income of the sale of the units.^[7]

They also agreed to share in the profits from the joint venture, thus:

1. The DEVELOPER shall be entitled to sixty percent (60%) of the net revenue or income of the Joint Venture project, after deducting all expenses incurred in connection with the land development (such as administrative management and construction expenses), and marketing (such as sales, advertising and promotions), and

2. The LANDOWNERS shall be entitled to forty percent (40%) of the net revenue or income of the Joint Venture project, after deducting all the above-mentioned expenses.^[8]

Primelink submitted to the Lazatins its Projection of the Sales-Income-Cost of the project:

SALES-INCOME-COST PROJECTION			
SELLING PRICE	COST PRICE	DIFFERENCE	INCOME
CLUSTER:			
A1 3,200,000	- A2 1,260,000	= 1,940,000	=P 46,560,000.00
		x 24	
TWIN:			
B1 2,500,000	- B2 960,000	= 1,540,000	=
		x 24	36,960,000.00
SINGLE:			
C1 3,500,000	- C2 1,400,000	= 2,100,000	=
		x 16	33,600,000.00
ROW-TYPE TOWNHOMES:			
D1 1,600,000-	D2 700,000	= 900,000	x = <u>21,600,000.00</u>
		24	
			P138,720,000.00

(GROSS) Total Cash Price (A1+B1+C1+D1)	= P231,200,000.00
Total Building Expense (A2+B2+C2+D2)	= 92,480,000.00

COMPUTATION OF ADD'L. INCOME ON INTEREST

TCP x 30% D/P = P 69,360,000	P 69,360,000.00
Balance = 70% = 161,840,000	
x .03069 x 48 = P238,409,740	<u>238,409,740.00</u>
Total Amount (TCP + int. earn.)	P307,769,740.00

EXPENSES:

less: A Building expenses	P 92,480,000.00
B Commission (8% of TCP)	18,496,000.00
C Admin. & Mgmt. expenses (2% of TCP)	4,624,000.00
D Advertising & Promo exp. (2% of TCP)	4,624,000.00
E Building expenses for the open spaces and Amenities (Development cost not incl. Housing) 400 x 30,000 sqms.	<u>12,000,000.00</u>
TOTAL EXPENSES (A+B+C+D+E)	P132,224,000.00

RECONCILIATION OF INCOME VS. EXPENSES

Total Projected Income (incl. income from interest earn.)	P307,769,740.00
less:	<u>132,224,000.00</u>
Total Expenses	P175,545,740.00 ^[9]

The parties agreed that any unsettled or unresolved misunderstanding or conflicting opinions between the parties relative to the interpretation, scope and reach, and the enforcement/implementation of any provision of the agreement shall be referred to Voluntary Arbitration in accordance with the Arbitration Law.^[10]

The Lazatins agreed to subject the title over the subject property to an escrow agreement. Conformably with the escrow agreement, the owner's duplicate of the title was deposited with the China Banking Corporation.^[11] However, Primelink failed to immediately secure a Development Permit from Tagaytay City, and applied the permit only on August 30, 1995. On October 12, 1995, the City issued a Development Permit to Primelink.^[12]

In a Letter^[13] dated April 10, 1997, the Lazatins, through counsel, demanded that Primelink comply with its obligations under the JVA, otherwise the appropriate action would be filed against it to protect their rights and interests. This impelled the officers of Primelink to meet with the Lazatins and enabled the latter to review its business records/papers. In another Letter^[14] dated October 22, 1997, the Lazatins informed Primelink that they had decided to rescind the JVA effective upon its receipt of the said letter. The Lazatins demanded that Primelink cease and desist from further developing the property.

Subsequently, on January 19, 1998, the Lazatins filed, with the Regional Trial Court (RTC) of Tagaytay City, Branch 18, a complaint for rescission accounting and damages, with prayer for temporary restraining order and/or preliminary injunction against Primelink and Lopez. The case was docketed as Civil Case No. TG-1776. Plaintiffs alleged, among others, that, despite the lapse of almost four (4) years from the execution of the JVA and the delivery of the title and possession of the land to defendants, the land development aspect of the project had not yet been completed, and the construction of the housing units had not yet made any headway, based on the following facts, namely: (a) of the 50 housing units programmed for Phase I, only the following types of houses appear on the site in these condition: (aa) single detached, one completed and two units uncompleted; (bb) cluster houses, one unit nearing completion; (cc) duplex, two units completed and two units unfinished; and (dd) row houses, two units, completed; (b) in Phase II thereof, all that was done by the defendants was to grade the area; the units so far constructed had been the object of numerous complaints by their owners/purchasers for poor workmanship and the use of sub-standard materials in their construction, thus, undermining the project's marketability. Plaintiffs also alleged that defendants had, without justifiable reason, completely disregarded previously agreed accounting and auditing procedures, checks and balances system installed for the mutual protection of both parties, and the scheduled regular meetings were seldom held to the detriment and disadvantage of plaintiffs. They averred that they sent a letter through counsel, demanding compliance of what was agreed upon under the agreement but defendants refused to heed said demand.

After a succession of letters with still no action from defendants, plaintiffs sent a letter on October 22, 1997, a letter formally rescinding the JVA.

Plaintiffs also claimed that in a sales-income-costs projection prepared and submitted by defendants, they (plaintiffs) stood to receive the amount of P70,218,296.00 as their net share in the joint venture project; to date, however, after almost four (4) years and despite the undertaking in the JVA that plaintiffs shall initially get 20% of the agreed net revenue during the first two (2) years (on the basis of the 60%-40% sharing) and their full 40% share thereafter, defendants had yet to deliver these shares to plaintiffs which by conservative estimates would amount to no less than P40,000,000.00.^[15]

Plaintiffs prayed that, after due proceedings, judgment be rendered in their favor, thus:

WHEREFORE, it is respectfully prayed of this Honorable Court that a temporary restraining order be forthwith issued enjoining the defendants to immediately stop their land development, construction and marketing of the housing units in the aforesaid project; after due proceedings, to issue a writ of preliminary injunction enjoining and prohibiting said land development, construction and marketing of housing units, pending the disposition of the instant case.

After trial, a decision be rendered:

1. Rescinding the Joint Venture Agreement executed between the plaintiffs and the defendants;
2. Immediately restoring to the plaintiffs possession of the subject parcels of land;
3. Ordering the defendants to render an accounting of all income generated as well as expenses incurred and disbursement made in connection with the project;
4. Making the Writ of Preliminary Injunction permanent;
5. Ordering the defendants, jointly and severally, to pay the plaintiffs the amount Forty Million Pesos (P40,000,000.00) in actual and/or compensatory damages;
6. Ordering the defendants, jointly and severally, to pay the plaintiffs the amount of Two Million Pesos (P2,000,000.00) in exemplary damages;
7. Ordering the defendants, jointly and severally, to pay the plaintiffs the amount equivalent to ten percent (10%) of the total amount due as and for attorney's fees; and
8. To pay the costs of this suit.

Other reliefs and remedies as are just and equitable are likewise being prayed for.^[16]

Defendants opposed plaintiffs' plea for a writ of preliminary injunction on the ground that plaintiffs' complaint was premature, due to their failure to refer their complaint to a Voluntary Arbitrator pursuant to the JVA in relation to Section 2 of Republic Act No. 876 before filing their complaint in the RTC. They prayed for the dismissal of the complaint under Section 1(j), Rule 16 of the Rules of Court:

WHEREFORE, it is respectfully prayed that an Order be issued:

a) dismissing the Complaint on the basis of Section 1(j), Rule 16 of the aforesaid Rules of Court, or, in the alternative,