

THIRD DIVISION

[G.R. NO. 167213, October 31, 2006]

DARREL CORDERO, EGMEDIO BAUTISTA, ROSEMAY BAUTISTA, MARION BAUTISTA, DANNY BOY CORDERO, LADYLYN CORDERO AND BELEN CORDERO, PETITIONERS, VS. F.S. MANAGEMENT & DEVELOPMENT CORPORATION, RESPONDENT.

DECISION

CARPIO-MORALES, J.:

Assailed via petition for review are issuances of the Court of Appeals in CA-G.R. CV No. 66198, Decision^[1] dated April 29, 2004 which set aside the decision of Branch 260 of the Regional Trial Court (RTC) of Parañaque in Civil Case No. 97-067, and Resolution dated February 21, 2005 denying petitioners' motion for reconsideration.

On or about October 27, 1994,^[2] petitioner Belen Cordero (Belen), in her own behalf and as attorney-in-fact of her co-petitioners Darrel Cordero, Egmedio Bautista, Rosemay Bautista, Marion Bautista, Danny Boy Cordero and Ladylyn Cordero, entered into a contract to sell^[3] with respondent, F.S. Management and Development Corporation, through its chairman Roberto P. Tolentino over five (5) parcels of land located in Nasugbu, Batangas described in and covered by TCT Nos. 62692, 62693, 62694, 62695 and 20987. The contract to sell contained the following terms and conditions:

1. That the BUYER will buy the whole lots above described from the OWNER consisting of 50 hectares more or less at P25/sq.m. or with a total price of P12,500,000.00;
2. That the BUYER will pay the OWNER the sum of P500,000.00 as earnest money which will entitle the latter to enter the property and relocate the same, construct the necessary paths and roads with the help of the necessary parties in the area;
3. The BUYER will pay the OWNER the sum of THREE MILLION FIVE HUNDRED THOUSAND PESOS ONLY (P3,500,000.00) on or before April 30, 1995 and the remaining balance will be paid within 18 mons. (sic) from the date of payment of P3.5 Million pesos in 6 equal quarterly payments or P1,411,000.00 every quarter;
4. The title will be transferred by the OWNER to the BUYER upon complete payment of the agreed purchase price. Provided that any obligation by the OWNER brought about by encumbrance or mortgage with any bank shall be settled by the OWNER or by the BUYER which shall be deducted the total purchase price;

5. Provided, the OWNER shall transfer the titles to the BUYER even before the complete payment if the BUYER can provide post dated checks which shall be in accordance with the time frame of payments as above stated and which shall be guaranteed by a reputable bank;
6. Upon the payment of the earnest money and the down payment of 3.5 Million pesos the BUYER can occupy and introduce improvements in the properties as owner while owner is guaranteeing that the properties will have no tenants or squatters in the properties and cooperate in the development of any project or exercise of ownerships by the BUYER;
7. Delay in the payment by the BUYER in the agreed due date will entitle the SELLER for the legal interest.^[4]

Pursuant to the terms and conditions of the contract to sell, respondent paid earnest money in the amount of P500,000 on October 27, 1994.^[5] She likewise paid P1,000,000 on June 30, 1995 and another P1,000,000 on July 6, 1995. No further payments were made thereafter.^[6]

Petitioners thus sent respondent a demand letter dated November 28, 1996^[7] informing her that they were revoking/canceling the contract to sell and were treating the payments already made as payment for damages suffered as a result of the breach of contract, and demanding the payment of the amount of P10 Million Pesos for actual damages suffered due to loss of income by reason thereof. Respondent ignored the demand, however.

Hence, on February 21, 1997, petitioner Belen, in her own behalf and as attorney-in-fact of her co-petitioners, filed before the RTC of Parañaque a complaint for rescission of contract with damages^[8] alleging that respondent failed to comply with its obligations under the contract to sell, specifically its obligation to pay the downpayment of P3.5 Million by April 30, 1995, and the balance within 18 months thereafter; and that consequently petitioners are entitled to rescind the contract to sell as well as demand the payment of damages.

In its Answer,^[9] respondent alleged that petitioners have no cause of action considering that they were the first to violate the contract to sell by preventing access to the properties despite payment of P2.5 Million Pesos; petitioners prevented it from complying with its obligation to pay in full by refusing to execute the final contract of sale unless additional payment of legal interest is made; and petitioners' refusal to execute the final contract of sale was due to the willingness of another buyer to pay a higher price.

In its Pre-trial Order^[10] of June 9, 1997, the trial court set the pre-trial conference on July 8, 1997 during which neither respondent's representative nor its counsel failed to appear. And respondent did not submit a pre-trial brief, hence, it was declared as in default by the trial court which allowed the presentation of evidence ex parte by petitioners.^[11]

Petitioners presented as witnesses petitioner Belen and one Ma. Cristina Cleofe. Belen testified on the execution of the contract to sell; the failure of respondent to make the necessary payments in compliance with the contract; the actual and moral damages sustained by petitioners as a result of the breach, including the lost opportunity to sell the properties for a higher price to another buyer, Ma. Cristina Cleofe; and the attorney's fees incurred by petitioners as a result of the suit.^[12] Ma. Cristina Cleofe, on the other hand, testified on the offer she made to petitioners to buy the properties at P35.00/sq.m.^[13] which was, however, turned down in light of the contract to sell executed by petitioners in favor of the respondent.^[14]

Respondent filed a motion to set aside the order of default^[15] which was denied by the trial court by Order dated September 12, 1997.^[16] Via petition for *certiorari*, respondent challenged the said order, but it was denied by the Court of Appeals.^[17]

Meanwhile, the trial court issued its decision^[18] on November 18, 1997, finding for petitioners and ordering respondent to pay damages and attorney's fees. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the contract to sell between the Plaintiffs and the Defendant is hereby declared as rescinded and the defendant is likewise ordered to pay the plaintiff:

(1) P4,500,000.00 computed as follows: P5,000,000.00 in actual damages and P2,000,000.00 in moral and exemplary damages, less defendant's previous payment of P2,500,000.00 under the contract to sell; and

(2) P800,000.00 by way of attorney's fees as well as the costs of suit.

SO ORDERED. (Underscoring supplied)

Before the Court of Appeals to which respondent appealed the trial court's decision, it raised the following errors:

3.01. The Regional Trial Court erred when it awarded plaintiffs-appellees Five Million Pesos (P5,000,000.00) as actual damages. Corollary thereto, the Regional Trial Court erred in declaring defendant-appellant to have acted in wanton disregard of its obligations under the Contract to Sell.

3.02. The Regional Trial Court erred when it awarded plaintiffs-appellees Two Million Pesos (P2,000,000.00) as moral and exemplary damages.

3.03. The Regional Trial Court erred when it awarded plaintiffs-appellees Eight Hundred Thousand Pesos (P800,000.00) as attorney's fees.^[19]

In the assailed decision,^[20] the Court of Appeals set aside the contract to sell, it finding that petitioners' obligation thereunder did not arise for failure of respondent to pay the full purchase price. It also set aside the award to petitioners of damages for not being duly proven. And it ordered petitioners to return "the amount received from [respondent]." Thus the dispositive portion of the appellate court's decision reads:

WHEREFORE, the Decision dated 18 November 1997 of the Regional Trial Court, Branch 260 of Parañaque City in Civil Case No. 97-067 is hereby VACATED. A NEW DECISION is ENTERED ordering the SETTING-ASIDE of the Contract to Sell WITHOUT payment of damages. Plaintiffs-appellees are further ORDERED TO RETURN THE AMOUNTS RECEIVED from defendant-appellant. (Underscoring supplied)

SO ORDERED.

Their motion for reconsideration having been denied, petitioners filed the present petition for review which raises the following issues:

1. Whether the Court of Appeals erred in ruling on the nature of the contract despite the fact that it was not raised on appeal.
2. Whether or not a contract to sell may be subject to rescission under Article 1191 of the Civil Code.
3. Whether or not the Court of Appeals erred in setting aside the award of damages.

Petitioners contend that the Court of Appeals erred in ruling on the nature of the contract to sell and the propriety of the remedy of rescission under Article 1191 of the Civil Code, these matters not having been raised by respondents in the assigned errors. In any event, petitioners claim that the contract to sell involves reciprocal obligations, hence, it falls within the ambit of Article 1191.^[21]

While a party is required to indicate in his brief an assignment of errors and only those assigned shall be considered by the appellate court in deciding the case, appellate courts have ample authority to rule on matters not assigned as errors in an appeal if these are indispensable or necessary to the just resolution of the pleaded issues.^[22] Thus this Court has allowed the consideration of other grounds or matters not raised or assigned as errors, to wit: 1) grounds affecting jurisdiction over the subject matter; 2) matters which are evidently plain or clerical errors within the contemplation of the law; 3) matters the consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interest of justice or to avoid dispensing piecemeal justice; 4) matters of record which were raised in the trial court and which have some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; 5) matters closely related to an error assigned; and 6) matters upon which the determination of a question properly assigned is dependent.^[23]

In the present case, the nature as well as the characteristics of a contract to sell is determinative of the propriety of the remedy of rescission and the award of damages. As will be discussed shortly, the trial court committed manifest error in applying Article 1191 of the Civil Code to the present case, a fundamental error which "lies at the base and foundation of the proceeding, affecting the judgment necessarily," or, as otherwise expressed, "such manifest error as when removed destroys the foundation of the judgment."^[24] Hence, the Court of Appeals correctly ruled on these matters even if they were not raised in the appeal briefs.

Under a contract to sell, the seller retains title to the thing to be sold until the purchaser fully pays the agreed purchase price. The full payment is a positive suspensive condition, the non-fulfillment of which is not a breach of contract but