

SECOND DIVISION

[G.R. NO. 154630, May 06, 2005]

**BERMAN MEMORIAL PARK, INC.^[1] AND LUISA CHONG,
PETITIONERS, VS. FRANCISCO CHENG, RESPONDENT.**

D E C I S I O N

CALLEJO, SR., J.:

Berman Memorial Park, Inc. (BMPI) is the owner and operator of the Iloilo Memorial Park (IMP) located in Jaro, Iloilo City. One of the sales counselors of the corporation was Luisa Chong.

Francisco Cheng had been a businessman for 50 years, engaged in the purchase and sale of salt, monggo, soya and other commodities under the business name "Timberland Native Products and Supplies."^[2] Among his employees was an accountant.

On January 18, 1994, Conchita Cheng, Francisco Cheng's wife, died. On January 20, 1994, Cheng purchased from BMPI a memorial lot, identified as 12-Lot Family Estate, Jr., in the IMP for the interment of his wife. He and BMPI executed, on the said date, At-Need Purchase Agreement No. 2280 in which he bound and obliged himself to pay its purchase price of P150,000.00, thus: P50,000.00 as downpayment; P50,000.00 on or before March 7, 1994; and P50,000.00 on or before April 22, 1994.^[3] The remains of Conchita were interred in the said lot.

Cheng made a downpayment of P50,000.00 and executed a promissory note, obliging himself to pay the balance of P100,000.00 on or before the said due date.^[4] Cheng was able to pay the P100,000.00 via postdated check,^[5] less P1,000.00 representing Chong's cash offer for the deceased which she and BMPI had agreed would be deducted from her future commissions.^[6] However, Cheng remitted to BMPI, on April 22, 1994, the amount of P49,750.00 as additional payment of the said lot although he had already paid the price in full.^[7]

Sometime in May 1994, Cheng purchased from the BMPI a bigger lot in the IMP where the remains of his wife would be transferred. He was shown a price list of the lots in the said park, including 24-Lot Family Estate, Sr., with an at-need price of P350,000.00, inclusive of the cost of perpetual care. BMPI offered to sell the said lot to Cheng at a pre-need price of P250,000.00, less P110,000.00 of his payment of P150,000.00 for Lot 12, or in the net price of P140,000.00. He was given a computation of the price for his consideration and approval. Cheng agreed to purchase 24-Lot Family Estate, Sr. for the price of P250,000.00, inclusive of P8,100.00 for perpetual care, less P110,000.00 of the P150,000.00 paid by him for 12-Lot, or the net price of P140,000.00, inclusive of the cost of perpetual care for the lot. Cheng and BMPI executed, on May 11, 1994, Pre-Need Purchase Agreement

No. 2318 covering the transaction.^[8] Cheng bound and obliged himself to pay on the following terms: P50,000.00 as downpayment, the balance payable in 24 monthly installments of P4,625.00, commencing on May 31, 1994, with 21% interest on the unpaid balance. Cheng remitted the downpayment of P50,000.00, and was able to pay 17 of the 24 monthly installments due from June 30, 1994 to November 17, 1995, or in the total amount of P78,625.00.^[9]

Subsequently, Cheng received a statement of account from BMPI showing that he still had a balance of P32,375.00.^[10] In a Letter dated January 3, 1996, Cheng, through counsel, informed BMPI that he had, in fact, made an overpayment of P77,375.00 for the two lots, demanded that the excess payment be refunded to him, and that the Certificate of Ownership for 24-Lot be issued to him.^[11] In a statement of account Cheng prepared, he declared that he had a net balance due from BMPI in the amount of P57,414.82, inclusive of interest of P12,414.82.^[12] He stated therein that the cost of the two lots was P250,000.00, and that he had made a total payment of P327,375.00.

BMPI came out with its statement of account dated March 22, 1996, showing that the purchase price of 24-Lot was P140,000.00^[13] and that Cheng had an outstanding account of P33,875.62 for the said lot. In his Reply-Letter dated April 2, 1996, Cheng insisted that even if the two lots cost P311,000.00, he still had a balance, in his favor, amounting to P26,375.00.^[14] In an effort to reconcile their differences, a conference among Cheng, Chong and the accountant of BMPI was held, to no avail.

On July 24, 1996, Cheng filed a Complaint against the IMP, not against BMPI, and Luisa Chong in the Regional Trial Court (RTC) of Iloilo City, for specific performance with damages. He alleged that the IMP was a corporation duly organized and existing in the Philippines and that he had purchased 24-Lot from the IMP for P250,000.00, less the amount of P150,000.00 he had paid for 12-Lot, or a net price of P100,000.00. He asserted that he had made an overpayment of P77,375.00 for the said lot. He prayed that, after due proceedings, judgment be rendered in his favor:

WHEREFORE, it is most respectfully prayed of this Honorable Court that, after due notice and hearing, judgment be rendered, to wit:

1. Declaring that the 24-Lot Family Estate, Sr. (an interest space) as having been fully paid and ordering defendant to convey to plaintiff the Certificate of Ownership over it;
2. Ordering defendant to return to plaintiff the total sum of P77,375.00 representing overpayment made by plaintiff on his purchase of the aforescribed interment space plus interest at the legal rate;
3. Ordering defendant to pay plaintiff the sum of P5,000.00 as actual expenses, P30,000.00 as attorney's fees, and P20,000.00 as exemplary damages;

4. Ordering defendant to pay plaintiff the sum of P100,000.00 as moral damages;
5. To pay the costs of suit;
6. For such other reliefs and remedies that are just deemed and equitable in the premises.^[15]

In her answer with counterclaim, Chong admitted the allegation in the complaint that the IMP was a corporation duly registered and organized in the Philippines (although it was not). She further alleged that the price of 24-Lot was actually P350,000.00, but that the IMP had agreed to sell the lot to Cheng for P250,000.00, less P110,000.00 of the P150,000.00 price of 12-Lot; as was the standard operating procedure, out of the amount of P150,000.00 which was the total price of 12-Lot, only P110,000.00 was to be credited to Cheng because the said amount was the pre-need price. Chong alleged that the difference of P40,000.00 (P150,000.00 less P110,000.00) belonged to the IMP.^[16] Appended to their answer was a copy of the Pre-Need Purchase Agreement of the parties as Annex "1" thereof.

During the pre-trial, the parties agreed to reset the same to give time to Atty. Florecita B. Gelvezon, a certified public accountant, to determine whether or not Cheng had overpaid, or whether he still had a balance due for the purchase of the two lots.^[17] On January 22, 1997, the trial court granted the motion and gave Atty. Gelvezon two weeks to submit her report.^[18] She submitted her report on February 6, 1997, showing that Cheng still had a balance of P32,375.00 due in favor of BMPI for 24-Lot, based on the purchase price of P140,000.00 for the said lots.^[19] Cheng filed his comments/observations/objections to the report. He appended thereto the handwritten computation of BMPI on the cost of the two lots and the computations thereof.^[20] For their part, Chong and BMPI agreed to the report of Atty. Gelvezon.^[21]

During the trial, Cheng testified that he purchased 24-Lot for P250,000.00 and that he discovered his overpayment during the first week of November 1994.^[22] He signed a blank document in printed form which turned out to be the Pre-Need Purchase Agreement because he was sick with hernia and had to be operated on in five days.^[23] He was not given a copy of the Pre-Need Purchase Agreement.^[24] He knew that the purchase price of a lot under a Pre-Need Purchase Agreement was P250,000.00.^[25]

Carmen S. Majarocon, the bookkeeper and accountant of BMPI, testified that on January 19, 1994, Cheng and his brother Santiago Cheng arrived in the office to buy a lot at the IMP.^[26] She showed them the price list of the lots.^[27] She explained to them that the at-need price of 12-Lot was P150,000.00, while the at-need price of 24-Lot, which was bigger than Lot 12, was P350,000.00. Cheng opted to buy 12-Lot, and signed the At-Need Purchase Agreement^[28] and Promissory Note.^[29] Cheng then returned to BMPI on May 11, 1994 and agreed to purchase 24-Lot at the pre-need price of P250,000.00, less P110,000.00 of the P150,000.00 he had paid for 12-Lot, or the net price of P140,000.00.^[30] She averred that the difference of P40,000.00 between the price of P150,000.00 for 12-Lot and the price of P110,000.00 credited to Cheng belonged to BMPI. She also testified that Cheng

signed the Pre-Need Purchase Agreement on May 11, 1994,^[31] and was given a copy of the contract, and her computations of the purchase price of 24-Lot.^[32] As of September 1996, Cheng had a balance on his account in the amount of P38,634.75.^[33] Chong corroborated Majarocon's testimony.

On January 8, 1998, the trial court rendered judgment in favor of Cheng. The *fallo* of the decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the plaintiff and against the defendants.

1. Ordering defendants to return or reimburse plaintiff the amount of P28,625.00 representing the overpayment that the latter made in purchasing the 24-Lot Family Estate, Sr. to earn legal interest from the filing of the complaint until fully paid or returned.
2. Ordering defendants to pay plaintiff, jointly and severally:
 - a) P20,000.00 as and for attorney's fees;
 - b) P30,000.00 as moral damages;
 - c) Dismissing the counterclaim.

Costs against the defendants.

SO ORDERED.^[34]

The trial court ruled that since Cheng purchased 24-Lot to upgrade 12-Lot where the remains of his wife were interred, the total amount of P150,000.00 which he paid for 12-Lot should be deducted from P250,000.00 (the purchase price of 24-Lot), instead of only P110,000.00 as claimed by Chong and BMPI.

The decision was appealed by Chong and BMPI to the Court of Appeals (CA), which rendered judgment on January 18, 2001 affirming the decision of the RTC.^[35] Their motion for reconsideration was also denied by the appellate court.^[36]

Chong and BMPI, now the petitioners, filed their petition for review on *certiorari* of the decision and resolution of the CA. The petitioners aver that:

I.

RESPONDENT KNEW AND UNDERSTOOD THE TWO (2) TRANSACTIONS HE ENTERED INTO AND WAS BENEFITED BY THE PROCESS CALLED UPGRADING.

II.

THERE IS BASIS FOR THE PETITIONERS TO CREDIT ONLY P110,000.00 OUT OF THE P150,000.00 PAYMENTS MADE BY RESPONDENT AT THE TIME HE DECIDED TO PURCHASE THE BIGGER LOT.

III.

THERE IS NO BASIS FOR DECLARING THAT RESPONDENT HAS ALREADY MADE AN OVERPAYMENT OF P28,625.00. ON THE CONTRARY, HE IS STILL LIABLE TO PAY PETITIONERS THE SUM OF P38,634.75 REPRESENTING THE BALANCE OF HIS PRINCIPAL ACCOUNT PLUS SURCHARGES AS OF SEPTEMBER 11, 1996.^[37]

The petitioners assert that the at-need price of 12-Lot was P150,000.00, while that of 24-Lot was P350,000.00. BMPI sold 24-Lot for the pre-need price of P250,000.00, less P110,000.00 of his payment for 12-Lot, or the net price of P140,000.00 inclusive of costs for perpetual care, and to which the respondent agreed. The petitioners explained why only P110,000.00 of the price of P150,000.00 for 12-Lot was credited to the respondent for the purchase price of 24-Lot, thus:

Under this practice of upgrading which the petitioner corporation allows, when a client purchases an At-Need 12-Lot Family Estate, Jr. and after paying the price he upgrades it to a 24-Lot Family Estate, Sr., the former labels it not as an At-Need 24-Lot Family Estate, Sr. but a Pre-Need 24-Lot Family Estate, Sr. which has a lower price of P250,000.00. However, since at the time of the purchase, he gets it at the at-need price, his payment of P150,000.00 is not fully credited to his next purchase. He is charged the at-need cost of P40,000.00 because the at-need price of a 12-Lot Family Estate, Jr. is P150,000.00 while its pre-need price is P110,000.00. The P40,000.00 serves as a cost for the burden imposed on the corporation which is in charge for all these arrangements and predicaments for the change of burial lot from a smaller At-Need 12-Lot Family Estate, Jr. to Pre-Need 24-Lot Family Estate, Sr., a different burial lot. It should be noted that when a client made his first purchase, it was at an at-need price. When he made his second purchase in a process called upgrading, the price is already a pre-need one.

It would have been different should a client made (sic) his first purchase of the lot at a pre-need price and after payment of the pre-need price, he changes the lot to a bigger one at a pre-need price because, by then, there would be no at-need cost. The whole pre-need price paid by him in the contract is credited to his second upgraded contract. However, he pays a bigger price with a total of P350,000.00.

Respondent was benefited by this upgrading of the contract from At-Need 12-Lot Family Estate, Jr. to Pre-Need 24-Lot Family Estate, Sr.^[38]

The petitioners maintained that the CA failed to consider the evidence on record, including the acts of the parties, simultaneously with and subsequent to their execution of the Pre-Need Purchase Agreement on May 11, 1994, and the incredibility of the respondent's lone testimony.

In his comment on the petition, the respondent alleged that the issues raised by the petitioners are factual; hence, improper under Rule 45 of the Rules of Court. Moreover, the respondent pointed out, the issues presented by the petitioners are unsubstantial matters.

The petition is meritorious.