

THIRD DIVISION

[G.R. No. 142440, February 17, 2003]

**EL REYNO HOMES, INC., PETITIONER, VS. ERNESTO ONG AND
MA. SONIA TAN SOON HA, RESPONDENTS.**

DECISION

CORONA, J.:

The instant petition under Rule 45 of the Rules of Court seeks a review of the Resolution^[1] dated December 15, 1999 of the Court of Appeals (Third Division) in CA-G.R. SP No. 55988 denying petitioner's motion for extension of time to file a petition for review, thereby dismissing the case, and the Resolution^[2] dated March 10, 2000 which denied the subsequent motion for reconsideration.

It appears that private respondents, Ernesto Ong and Ma. Sonia Tan Soon Ha purchased from petitioner, El Reyno Homes, Inc., Lot 2, Block 9 of subdivision plan PSD-04-001498 situated at the Loyola Grand Villas W-2, Quezon City containing an area of 1,000 square meters initially covered by Transfer Certificate of Title (TCT) No. 261758. For its failure to develop and deliver the title to the property, the private respondents filed an action against the petitioner for specific performance and for violation of Sections 19, 20, 25 and 29 of Presidential Decree No. 957^[3] on March 22, 1991 with the Housing and Land Use Regulatory Board (HLURB for brevity). After conducting the required hearings and an ocular inspection of the property, HLURB Arbiter Cesar A. Manuel, found that:

To this date, the parcel of land, Lot No. 2, Block No. 9 under Transfer Certificate of Title No. 261758 of the Registry of Deeds for Metro Manila District II, sold by the respondent to complainants, is still registered in the name of one Antonio Tuazon, Jr., despite full payment of the lot by the buyers, complainants herein, in violation of Section 25 of PD 957. We are not persuaded by the respondent's argument that complainants are not entitled to delivery of title pending their payment of taxes and other assessments (Respondent's Answer Par. II). This is in contravention with Section 26 of PD 957 which provides that "Real Estate (sic) Tax and assessment on a lot x x x shall be paid by the owner or developer with out (sic) recourse to the buyer for as long as the title has not passed to the buyer; x x x". The only exception to this rule is when the title has passed to the buyer and the latter took possession of and occupied the lot. This is not obtaining in the instant case.

As to the issue of non-development, the above quoted ocular inspection speaks for itself.

We are not also convinced with the argument of respondent that it "is physically and legally impossible for it at this point in time to force before

the development of the property as it may result in violence and bloodshed x x x" (Respondent's Opposition par. 1, sub-par. b, citing its par. 7 of its Answer). This principle which is enriched under Articles 1266 and 1267 of the Civil Code does not apply in the instant case for the simple reason that in order for the said principle to apply, it is a condition sine qua non that the prestation constituting the object of the obligation must have become legally or physically impossible of compliance without the fault of the obligor and before he has incurred in delay. (Jurado, Comments and Jurisprudence on Obligations and Contracts, 1983 Edition, p. 249)^[4]

Hence, the HLURB arbiter rendered the following judgment:

WHEREFORE, judgment is hereby rendered ordering the respondent EL REYNO HOMES, INC., within thirty (30) days from finality hereof to:

1. To deliver immediately the title to the complainants;
2. Complete the development of the said subdivision in accordance with the approved subdivision plan such as to:
 - a. construct the road going to the property of the complainants;
 - b. construct the drainage and/or sewer pipe serving the said subject lot;
 - c. provide and/or construct water distribution line;
 - d. provide electrical power supply;
3. Pay to this Board an administrative fine of P10,000.00 for violation of Sections 20 and 25 in relation to Section 38 of PD 957.
4. Pay to the complainant the sum of P20,000.00 as attorney's fees.

Finding the respondent's counterclaim without merit, the same is hereby dismissed.

IT IS SO ORDERED.^[5]

From the said decision, the petitioner filed a notice of appeal with the HLURB Board of Commissioners (Board for brevity) on March 11, 1992 which subsequently issued an Order on April 3, 1992 requiring the parties to file their respective memoranda within 10 days from receipt thereof.

In an urgent motion filed on April 30, 1992, petitioner El Reyno Homes, Inc. requested that it be given an extension of 15 days from May 1, 1992, or until May 16, 1992, to file its memorandum of appeal which was granted by the Board on May 8, 1992.

However, the petitioner failed to file its memorandum of appeal within the extended period prompting the private respondents to file a motion to dismiss the appeal. Despite the filing of a memorandum of appeal^[6] by the petitioner on May 22, 1992, or six (6) days after the expiration of the period of extension on May 16, 1992, the

Board issued an Order^[7] on December 16, 1992 dismissing the appeal of the petitioner, the dispositive portion of which reads:

Considering the foregoing, respondent's (herein petitioner) appeal is hereby declared ABANDONED and hence DISMISSED.

SO ORDERED.

On January 26, 1993, the petitioner filed a motion for reconsideration which was denied by the Board in an Order^[8] dated May 4, 1993.

On May 24, 1993, the petitioner timely filed a notice of appeal with the Office of the President which subsequently issued an Order dated May 28, 1993 requiring the said petitioner to file its memorandum of appeal.

The petitioner filed its memorandum of appeal on July 20, 1993 while the respondents filed their reply memorandum on August 10, 1993.

On October 27, 1999, the Office of the President rendered a decision^[9] dismissing the appeal of the petitioner. On November 25, 1999, the petitioner filed with the Court of Appeals a motion for an extension^[10] of 15 days within which to file a petition for review counted from December 1, 1999, or until December 16, 1999.

On December 9, 1999, which was within the requested period of extension, the petitioner filed a petition for review^[11] with the Court of Appeals.

In the questioned Resolution dated December 15, 1999 however, the Court of Appeals denied petitioner's motion for extension of time to file a petition for review for not having been accompanied by an affidavit of service, consequently dismissing the case. The motion for reconsideration of the questioned resolution was denied by the appellate court on March 10, 2000.

Hence, the instant petition^[12] with the following assignments of error:

1. THE COURT OF APPEALS COMMITTED AN ERROR IN DISMISSING THE CASE ON PURE TECHNICALITY THEREBY DENYING THE PETITIONER ITS DAY IN COURT AND IN EFFECT AFFIRMING THE DECISION OF THE HOUSING AND LAND USE REGULATORY BOARD WHICH GROSSLY ERRED IN CONSIDERING THE APPEAL AS HAVING BEEN ABANDONED INSTEAD OF DECIDING THE CASE.
2. THE AWARD OF ATTORNEY'S FEES WAS MANIFESTLY EXCESSIVE AND WITHOUT LEGAL OR FACTUAL BASIS.

The petitioner claims that the delay in filing its memorandum of appeal with the Board was due to the sudden and unexpected absence without official leave of Attorney Herenio Martinez on May 15, 1992 to whom the instant case was allegedly assigned. The absence of Attorney Martinez, who remained in possession of the records of this case, was beyond the control of the petitioner, such that a rigid application of the rules would defeat substantial justice especially since the said petitioner filed its memorandum of appeal, albeit 6 days after the expiration of the extended period. Besides, Section 2 of the HLURB rules provides for a liberal

construction thereof "in order to promote public interest and to assist the parties in obtaining just, speedy and inexpensive determination of every action, application or other proceedings".

Likewise, according to petitioner, the Court of Appeals erred when it denied petitioner's motion for extension of time to file a petition for review because of its failure to attach an affidavit of service. The private respondents were furnished a copy of the motion for extension of time to file a petition for review by registered mail posted on November 24, 1999 at Greenhills Post Office, San Juan, Metro Manila under Registry Receipt No. 15088 addressed to their counsel, Atty. Edito A. Rodriguez, at 16 CRM Rhia Street, BF Almanza, Las Piñas City. The pleading was actually received by the counsel of private respondents on November 29, 1999 per certification^[13] of the Las Piñas Post Office dated January 5, 2000. The purpose of the rule on service of pleadings, to ensure that the other party was properly notified of the pleading, had thus been served. Moreover, petitioner filed the petition for review with the Court of Appeals on December 9, 1999 which was well within the extended period prayed for in its motion for extension of time to file a petition. Invoking the ruling of this Court in the case of *Republic vs. Court of Appeals*, ^[14] the petitioner opined that the Court of Appeals should have decided the petition on the merits rather than on mere technicality in order to promote substantial justice.

Additionally, petitioner argues that the award of attorney's fees by the HLURB arbiter had no factual nor legal basis. It alleges that the private respondents still had obligations to settle under the contract, thus, the petitioner was not yet in default nor bound to deliver the title to the lot to the said private respondents.

In their comment,^[15] the private respondents contend that, while the rules of procedure may be liberally construed, such liberality should not apply in case of wanton disregard of said rules or if it will only cause needless delay. Respondents point out that petitioner was silent until the motion for extension of time to file its petition for review was denied and the case was dismissed by the appellate court, before it exerted effort to comply with the requirements. They claim that the petitioner was advised of its failure to attach the affidavit of service on the same day that it filed its said motion.^[16] They also maintain that the award of attorney's fees is justified by the circumstances of the case, praying that it be increased because the case is now on appeal to the Supreme Court.

By way of reply,^[17] the petitioner insists that its failure to attach the required affidavit of service to its motion was not a wanton disregard of the rules nor intended to cause needless delay in the administration of justice. It also reiterates the alleged lack of factual or legal basis for the award of attorney's fees in favor of the private respondents.

We deny the instant petition.

In not a few instances, we relaxed the rigid application of the rules of procedure to afford the parties the opportunity to fully ventilate their cases on the merits. This is in line with the time-honored principle that cases should be decided only after giving all parties the chance to argue their causes and defenses. Technicality and procedural imperfection should thus not serve as basis of decisions. In that way, the ends of justice would be better served.^[18] For, indeed, the general objective of