

## FIRST DIVISION

[ G.R. No. 141205, May 09, 2002 ]

**ACTIVE REALTY & DEVELOPMENT CORPORATION, PETITIONER,  
VS. NECITA G. DAROYA, REPRESENTED BY ATTORNEY-IN-FACT  
SHIRLEY DAROYA-QUINONES, RESPONDENTS.**

### D E C I S I O N

**PUNO, J.:**

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court which seeks to reverse and set aside the Resolution of the Court of Appeals, dated August 3, 1999, denying due course to petitioner's appeal for insufficiency of form and substance.

Petitioner ACTIVE REALTY & DEVELOPMENT CORPORATION is the owner and developer of Town & Country Hills Executive Village in Antipolo, Rizal. On January 2, 1985, it entered into a Contract to Sell<sup>[1]</sup> with respondent NECITA DAROYA, a contract worker in the Middle East, whereby the latter agreed to buy a 515 sq. m. lot for **P224,025.00** in petitioner's subdivision.

The contract to sell stipulated that the respondent shall pay the initial amount of P53,766.00 upon execution of the contract and the balance of P170,259.00 in sixty (60) monthly installments of P4,893.35. Adding the down payment and installment payments, it would appear that the total amount is **P346,367.00**, a figure higher than that stated as the contract price.

On May 5, 1989, petitioner accepted respondent's amortization in the amount of P40,000.00. By August 8, 1989, respondent was **in default of P15,282.85 representing three (3) monthly amortizations. Petitioner sent respondent a notice of cancellation<sup>[2]</sup> of their contract to sell**, to take effect thirty (30) days from receipt of the letter. It does not appear from the records, however, when respondent received the letter. Nonetheless, when respondent offered to pay for the balance of the contract price, petitioner refused as it has allegedly sold the lot to another buyer.

On August 26, 1991, respondent filed a complaint for specific performance and damages<sup>[3]</sup> against petitioner before the Arbitration Branch of the Housing and Land Use Regulatory Board (HLURB). It sought to compel the petitioner to execute a final Deed of Absolute Sale in respondent's favor after she pays any balance that may still be due from her. Respondent claimed that she is entitled to the final deed of sale after she offered to pay the balance of P24,048.47, considering that **she has already paid the total sum of P314,816.76, which amount is P90,835.76 more than the total contract price of P224,025.00.**

On June 14, 1993, HLURB Arbiter Alfredo M. Tan II found for the respondent. He

ruled that the cancellation of the contract to sell was void as petitioner failed to pay the cash surrender value to respondent as mandated by law. However, as the subject lot was already sold to a third party and the respondent had agreed to a full refund of her installment payments, petitioner was ordered to **refund to respondent all her payments in the amount of P314,816.70, with 12% interest per annum from August 26, 1991 (the date of the filing of the complaint) until fully paid and to pay P10,000.00 as attorney's fees.**<sup>[4]</sup>

On appeal, the HLURB **Board of Commissioners** set aside the Arbiter's Decision. The Board refused to apply the remedies provided under the Maceda Law and instead deemed it fit to formulate an "equitable" solution to the case. It ruled that, as both parties were at fault, *i.e.*, respondent incurred in delay in her installment payments and respondent failed to send a notarized notice of cancellation, **petitioner was ordered to refund to the respondent one half of the total amount she has paid or P157,408.35**, which was allegedly akin to the remedy provided under the Maceda Law.<sup>[5]</sup>

**Respondent appealed to the Office of the President.** On June 2, 1998, then Chief Presidential Counsel Renato C. Corona, acting by authority of the President, **modified the Decision of the HLURB** as he found that it was not in accord with the provisions of the Maceda Law. He held that as petitioner did not comply with the legal requisites for a valid cancellation of the contract, the contract to sell between the parties subsisted and concluded that respondent was entitled to the lot after payment of her outstanding balance. However, as the petitioner disclosed that the lot was already sold to another person and that the actual value of the lot as of the date of the contract was P1,700.00 per square meter, **petitioner was ordered to refund to the respondent the amount of P875,000.00, the true and actual value of the lot as of the date of the contract, with interest at 12% per annum computed from August 26, 1991 until fully paid, or to deliver a substitute lot at the choice of respondent.**<sup>[6]</sup>

Upon denial of its motion for reconsideration, petitioner assailed the Decision in the Court of Appeals. However, its petition for review<sup>[7]</sup> was denied due course for insufficiency in form and substance,<sup>[8]</sup> because: 1) no affidavit of service was attached to the petition; 2) except for certified true copies of the decision and resolution of the Office of the President, no other material portions of the record, as would support the allegations in the petition, were attached; and, 3) the certification of forum-shopping was signed by the head counsel and vice-president of the petitioner corporation who was not authorized by a Board Resolution to represent petitioner.

Petitioner moved for reconsideration. The Court of Appeals denied it on an entirely new ground, *i.e.*, for untimely filing of the petition for review.<sup>[9]</sup>

Petitioner now impugns the decision of the Court of Appeals and raises the following procedural issues:

THEREBY DENYING PETITIONER OF ITS RIGHT TO DUE PROCESS.

## II

THE HONORABLE COURT OF APPEALS ANCHORED THE DENIAL OF PETITIONER'S MOTION FOR RECONSIDERATION ON INCONSISTENT AND CONFLICTING RULINGS NOT BORNE BY THE FACTS AND THE RECORDS OF THE CASE.

On the procedural points raised, we find for the petitioner.

Our perusal of the record reveals that petitioner substantially complied with the formal requirements of Rule 43 of the Rules of Court.<sup>[10]</sup> **First**, as to the **non-attachment of the affidavit of service**, the records bear that the petition was accompanied by the original registry receipts issued by the post office, showing that the petition and its annexes were served upon the parties. Moreover, respondent's counsel of record, Atty. Sergio Guadiz, actually received a copy of the petition.<sup>[11]</sup> **Second**, petitioner likewise complied with Section 6 (c) of Rule 43 requiring the submission of copies of the award, judgment, final order and resolution appealed from. Its petition was accompanied by the duplicate original of the appealed Decision of the Chief Presidential Legal Counsel and his Resolution denying petitioner's motion for reconsideration, the Decision of the HLURB Board of Commissioners and that of the HLURB arbiter. A perusal of these documents will reveal that they contained all the relevant facts of the case from which the appellate body can form its own decision. Its failure to submit the other documents, like the Complaint, Answer, Position Papers and Appeal Memoranda of the parties before the HLURB, was due to the refusal of the Office of the President to give them a certified true copy of these documents which were submitted with said Office. **Third**, as to the lack of Board Resolution by petitioner corporation authorizing Atty. Rene Katigbak, its Chief Legal Counsel and Vice-President for Legal Affairs, to represent it in the filing of the appeal, petitioner admits that this was due to its honest belief that such authority is not required as it was not mentioned in Section 6(c) of Rule 43.<sup>[12]</sup> To make up for such omission, petitioner submitted a Secretary's Certificate<sup>[13]</sup> confirming and ratifying the authority of Atty. Katigbak to represent petitioner. **Finally**, we find that the Court of Appeals erred in denying petitioner's motion for reconsideration due to untimely filing as the records clearly show that it was filed on June 25, 1999, a day before the expiration of the period to appeal granted by the Court of Appeals.<sup>[14]</sup>

In denying due course to the petition, the appellate court gave premium to form and failed to consider the important rights of the parties in the case at bar.<sup>[15]</sup> At the very least, petitioner **substantially complied** with the procedural requirements for appeal, hence, it is best to give due course to the petition at bar to clarify the rights and duties of a buyer in contracts to sell real estate on installment basis.

The issue to be resolved is whether or not the petitioner can be compelled to refund to the respondent the value of the lot or to deliver a substitute lot at respondent's option.

We find for the respondent and rule in the affirmative.