

SECOND DIVISION

[G.R. No. 132869, October 18, 2001]

**GREGORIO DE VERA, JR., PETITIONER, VS. COURT OF APPEALS,
Q. P. SAN DIEGO CONSTRUCTION, INC., ASIATRUST
DEVELOPMENT BANK, SECOND LAGUNA DEVELOPMENT BANK,
CAPITOL CITY DEVELOPMENT BANK, EX-OFFICIO SHERIFF OF
QUEZON CITY AND/OR HIS DEPUTY, RESPONDENTS.**

D E C I S I O N

BELLOSILLO, J.:

This is a *Petition for Review*, under Rule 45 of the Revised Rules of Court, of the *Decision* of the Court of Appeals in CA-G.R. CV No. 37281, "*Gregorio de Vera, Jr. v. Court of Appeals, QP San Diego Construction, Inc., Asiatruster Development Bank, Second Laguna Development Bank, Capitol City Development Bank, Ex-Officio Sheriff of Quezon City and/or his Deputy*," and of its Resolution of 18 February 1998 denying petitioner's *Manifestation with Motion for Reconsideration*.

Respondent Q. P. San Diego Construction, Inc. (QPSDCI), owned a parcel of land located at 101 Panay Avenue, Quezon City, on which it built *Lourdes I Condominium*. On 10 June 1983, to finance its construction and development, QPSDCI entered into a *Syndicate Loan Agreement*^[1] with respondents Asiatruster Development Bank (ASIATRUST) as lead bank, and Second Laguna Development Bank (LAGUNA) and Capitol City Development Bank (CAPITOL) as participating banks (hereafter collectively known as FUNDERS). QPSDCI mortgaged to the creditor banks as security the herein mentioned Panay Avenue property and the condominium constructed thereon. The mortgage deed was registered with the Register of Deeds of Quezon City and annotated on the individual condominium certificates of title (CCT) of each condominium unit.^[2]

On 23 June 1983 petitioner Gregorio de Vera Jr. and QPSDCI, through its authorized agent Fil-Estate Realty Corporation (FIL-ESTATE), entered into a *Condominium Reservation Agreement*^[3] where petitioner undertook to buy Unit 211-2C of the condominium for P325,000.00 under the following agreed terms of payment: (a) an option money of P5,000.00 payable upon signing of the agreement to form part of the purchase price; (b) a full downpayment of P175,675.00 broken down into the reservation fee of P5,000.00 and three (3) equal monthly installments payable beginning the month after the signing of the contract; and, (c) the remaining balance of P160,000.00 to be secured through petitioner's Pag-IBIG and Open-Housing Loan. Pending release of the loan, petitioner was to avail of a bridge financing loan with ASIATRUST or any accredited originating bank of the Pag-IBIG program.

On 2 June 1983 petitioner paid the reservation fee of P5,000.00, and on 11 July 1983 the balance of the downpayment of P167,000.00, thus completing the

downpayment of P175,675.00 well before the due date. As incentive, petitioner was given a full discount on cash payment by QPSDCI to bring the total payment to P184,040.00.

Pursuant to their *Condominium Reservation Agreement*, petitioner submitted through FIL-ESTATE his application for the Pag-IBIG loan. On 28 December 1983 ASIATRUST as originating bank notified FIL-ESTATE that petitioner's Pag-IBIG loan application had been approved.^[4] In a letter dated 18 January 1984 QPSDCI President Quintin P. San Diego forwarded the letter to petitioner. However, the amount approved was only P139,100.00 and not P160,000.00. Additional charges further reduced the amount to P117,043.33.

Petitioner De Vera Jr. approached QPSDCI to have the P12,040.00 discount credited to his additional equity. Since the resultant net loan of P117,043.33 was insufficient to cover the balance of the purchase price, De Vera Jr. negotiated with QPSDCI to defer payment of the P23,916.67 deficiency until the project was completed and the unit was ready for turnover. QPSDCI agreed.^[5]

The condominium project was substantially completed in June 1984 and the unit was turned over to De Vera Jr. the following month. Accordingly, petitioner paid QPSDCI the P23,916.67 shortfall between the balance and the granted loan.

On 26 June 1984 ASIATRUST through its Vice-President Pedro V. Lucero and Manager Nicanor T. Villanueva wrote to QPSDCI asking the unit buyers to pay in advance the costs of the transfer of titles and registration of their Pag-IBIG loan mortgages.^[6] QPSDCI forwarded the letter to De Vera Jr. and requested that he pay the amount to QPSDCI.^[7] As ASIATRUST indicated that the amount be paid directly to it, De Vera Jr. went to the bank for clarification. On 23 August 1983, after learning that ASIATRUST was in possession of the certificate of title, De Vera Jr. paid the transfer expenses directly to ASIATRUST.

On 17 September 1984 ASIATRUST sent another notice of approval^[8] to QPSDCI and De Vera Jr. with the notation, "additional equity of all accounts have (sic) to be paid directly to the Bank."

On 3 October 1984 ASIATRUST wrote another letter^[9] asking QPSDCI to advise the unit buyers, among others, to pay all additional and remaining equities on 10 October 1984; that their Pag-IBIG loan mortgages would be registered only upon payment of those equities; and, that loan mortgages registered after 31 October 1984 would be subject to the increased Pag-IBIG interest rates.

On 12 October 1984 ASIATRUST also wrote a letter to petitioner and signed by its Assistant Manager Leticia R. de la Cruz informing him that his housing loan would only be implemented upon the following conditions: (a) Payment of the remaining equity directly to ASIATRUST Development Bank; and (b) Signing of all Pag-IBIG documents not later than 20 October 1984, so his mortgages could be registered on or before 31 October 1984. Mortgages registered beyond said date shall subject the Pag-IBIG loan to the increased interest rates of the National Home Mortgage Finance Corp. (per Circular #27 dated June 21, 1984).

According to petitioner, the letter came as a total surprise to him; all the while he

thought that his loan had already been released to QPSDCI and the titles transferred to his name; he promptly wrote ASIATRUST to seek clarification; ASIATRUST responded by informing De Vera Jr. that the developmental loan agreement between QPSDCI and the three (3) banks, under which the individual titles of the condominium units were mortgaged in favor of the FUNDERS to secure the loan, shall be paid out of the net proceeds of the Pag-IBIG loans of the buyers; that the total amount of loan from the FUNDERS was distributed among all condominium units such that each unit had to bear a certain portion of the total loan, or a "loan value;" that per agreement with QPSDCI, ASIATRUST would only grant the Pag-IBIG Housing Loan with the release of the mortgage liens, which could not be released unless the buyers fully paid their respective loan values; and that petitioner's equity payments to QPSDCI had not been remitted to the bank.

On 30 May 1985 ASIATRUST informed QPSDCI that it could no longer extend the bridge financing loan to some of the buyers, including petitioner, for various reasons,^[10] among which was that petitioner had already exceeded the age limit, hence, he was disqualified.^[11]

After learning of the disapproval of his loan, petitioner wrote the president of QPSDCI to make arrangements to settle his balance. Since petitioner had already invested a substantial amount in remodelling and improving his unit, rescinding the sale was no longer a viable option. Consequently, he only asked the president of QPSDCI for some assurance that the title would be turned over to him upon full payment.

In response, QPSDCI suggested that petitioner deal directly with ASIATRUST for any matter regarding the sale of the unit.^[12] President San Diego explained that "as far as we are concerned we have sold to you our property at a certain price and we have correspondingly issued to your goodself, thru the Bank, a Deed of Absolute Sale for the unit we sold to you taking into consideration that the Bank has approved your loan per their advice dated December 28, 1983 and presumably credited us for the approved amount of loan."

As petitioner failed to obtain the housing loan, he was not able to pay the balance of the purchase price. QPSDCI sent him a letter^[13] dated 6 August 1987 presenting him with two options: (a) to pay the remaining balance of the purchase price, with interest, which had already ballooned to P263,751.63, on or before 15 August 1987; or, (b) to pay rent for the use of the unit from 28 July 1984 to June 1987.

On 20 May 1988 petitioner, upon discovering that the FUNDERS had already published a notice^[14] of extrajudicial foreclosure of the mortgage, filed a complaint against respondents for damages and injunction with urgent prayer for issuance of a writ of preliminary injunction, annulment of mortgage based on fraud, with urgent prayer for the issuance of a writ of preliminary attachment and specific performance. The complaint was docketed as Civil Case No. Q-53737 and subsequently raffled to Branch 107 of the Regional Trial Court of Quezon City.

Meanwhile, QPSDCI failed to pay its obligations to the FUNDERS. On 23 May 1988 ASIATRUST extrajudicially foreclosed the mortgage on twenty-seven (27) condominium units, including that of petitioner De Vera Jr. The units were sold at public auction, with the FUNDERS as the highest bidder. The certificate of sale was

issued and annotated on the CCTs.

On 3 March 1992 the trial court rendered judgment "directing the defendants (herein respondents) to pay to the plaintiff (herein petitioner) jointly and severally the sum equivalent to the penalties and charges plus whatever amount may be necessary to redeem Unit 211-2C from any lien and encumbrances so that the title may be released and delivered to the plaintiff, free from any lien and encumbrances, subject only to the deduction of his unpaid balance of P139,000.00, which the plaintiff should pay out of his own funds, plus exemplary damages of P100,000.00 each and to pay plaintiff attorney's fees jointly and severally x x x P50,000.00 plus the expenses of litigation." The lower court denied plaintiff's prayer for moral damages and dismissed defendants' counterclaim against the plaintiff and cross-claims against each other.^[15]

The Court of Appeals affirmed the decision of the trial court with the modification that respondents were ordered solidarily to pay petitioner P50,000.00 as nominal damages, but the award for actual and exemplary damages was deleted.

On 9 July 1997 petitioner filed a "*Compliance with Manifestation and Motion for Extension of Time to File Motion for Reconsideration*" alleging that he received the decision of the Court of Appeals on 4 July 1997 and requesting a thirty (30)-day extension within which to file a motion for reconsideration. The motion was denied by respondent appellate court.

On 8 August 1997 petitioner filed a "*Manifestation with Motion for Reconsideration*," and on 6 February 1998 a "*Compliance with Motion to Resolve Manifestation with Motion for Reconsideration*," with respondent court. Reckoning the deadline of the period to file a motion for reconsideration at 19 July 1997, the Court of Appeals denied petitioner's *Motion for Reconsideration* for having been filed out of time. Hence, the instant petition for review on certiorari.

Petitioner assails the 18 February 1998 *Resolution* denying his *Motion for Reconsideration*, asserting that the Court of Appeals should not have denied his motion on mere technicality. Petitioner claims that his counsel was not notified of the Court of Appeals' decision. The Notice of Judgment^[16] of the decision of the Court of Appeals shows that the same was served on petitioner Gregorio de Vera himself and not on his counsel. Petitioner asserts that service to a party is allowed only if the party is not represented by counsel. But if he is represented by a counsel, then service shall be made upon his counsel unless service upon the party himself is ordered by the court. Unless so ordered, service on the party himself who is represented by counsel is not notice in law, hence, invalid.^[17]

Furthermore, justice will be better served by entertaining this petition than by dismissing it outright. It is always in the power of this Court to suspend its own rules, or to except a particular case from its operation, whenever the purposes of justice require it.^[18]

The trial court found that petitioner's failure to pay the balance of the price of Unit 211-2C was not his fault. It also found that petitioner was a real party in interest to annul the loan agreement between QPSDCI and the FUNDERS, and that he had priority in right to the unit over the FUNDERS. The trial court rejected QPSDCI's

counterclaim against petitioner for rentals and sustained petitioner's claim for damages against private respondents.

The Court of Appeals ruled that the regular courts had no jurisdiction over the subject matter of the case, the proper venue being the Housing and Land Use Regulatory Board (HLURB). However, respondents were estopped from questioning jurisdiction because they filed counterclaims in the lower court.

As to the issue of who had superior right over the Unit 211-2C, the Court of Appeals ruled in favor of petitioner, holding that the mortgage in favor of ASIATRUST, which was the basis for its title, did not bind petitioner inasmuch as the same was not registered with the National Housing Authority (NHA), contrary to the mandate of Sec. 18 of PD 957, or "*The Subdivision and Condominium Buyers' Protective Decree*."^[19] The appellate court further found that QPSDCI breached its warranties as seller under Art. 1547, and also violated its obligation to deliver to petitioner a clean title as required by Sec. 4 of PD 957. It declared that delivery of the unit to petitioner operated to transfer ownership to him from QPSDCI.

Respondents did not appeal. Petitioner contests the decision of the Court of Appeals only insofar as it deleted the award of actual and exemplary damages and attorney's fees. The only issue to be addressed by this Court therefore is the propriety of the award of damages in favor of petitioner.

In finding QPSDCI liable for damages, the trial court held -

x x x it (QPSDCI) has not exerted any reasonable diligence or effort to procure the issuance of the title to the plaintiff. All that it did was to refer the plaintiff to the Funder(s), alleging that he (plaintiff) should transact business with them as the matter of loan is between the plaintiff and the Funder(s), and they had nothing to do with it. However, it collected the additional equity and never forwarded the same to the Funder(s) nor informed the latter of plaintiff's payment thereof. Thus, to the mind of Asiatrust, plaintiff never paid the additional equity, although per records of the Seller, he already had.

All these show negligence on the part of the Seller to perform its obligations under the contract -- to the detriment of the plaintiff, for which it should be liable for damages under Art. 2201 of the Civil Code, for the natural and probable consequences of the breach of the obligation which the parties, specially the Seller, should have foreseen or could have reasonably foreseen at the time the obligation was contracted.

As to respondent ASIATRUST, the trial court held that its failure to notify petitioner of the required steps to be taken after the approval of the loan, of the requirement that additional equity be paid directly to the bank and other important aspects of the bridging loan, made it liable for damages under the general provisions on torts under Art. 2176 of the Civil Code, in relation to Art. 2202.

In deleting the award for damages, the respondent Court of Appeals explained -