

THIRD DIVISION

[G.R. No. 126745, July 26, 1999]

**ARMED FORCES OF THE PHILIPPINES MUTUAL BENEFIT
ASSOCIATION, INC., PETITIONER, VS. THE HONORABLE COURT
OF APPEALS AND EBR REALTY, INC., RESPONDENTS.**

D E C I S I O N

VITUG, J.:

Presented for resolution in the instant petition before the Court is the issue, in main, of whether or not an order of the Regional Trial Court denying a motion to set aside a partial judgment based on a compromise agreement may be appealed to the Court of Appeals on a petition for review on *certiorari* by a party to the court proceedings although he did not take part in the compromise agreement.

B.E. Ritz Mansion International Corporation ("B.E. Ritz"), a corporation involved in real estate projects, contracted to sell to private respondent EBR Realty, Inc. ("EBRRI"), an office building, also identified as Building E, still then under construction along E. Rodriguez Avenue, Bagong Bayan, Quezon City, for P22,050,000.00. EBRRI paid B.E. Ritz the aggregate sum of P17,640,000.00 leaving a balance of P4,410,000.00 payable upon the completion and turnover of the building to EBRRI. The two firms additionally executed contracts to sell covering ten condominium units, still then under construction, at the Phoenix Subdivision in Pasig City for which purchase EBRRI paid to B.E. Ritz the sum of P20,415,682.75. In July 1991, B.E. Ritz demanded from EBRRI the payment of the P4,410,000.00 balance in its purchase of Building E. Instead of paying the amount, EBRRI filed a complaint, docketed HLRB Case No. REM-120992-5304, before the Housing and Land Use Regulatory Board ("HLURB") for specific performance and/or rescission plus damages against B.E. Ritz premised on the latter's failure to finish the construction of Building E on the date agreed upon for its completion. EBRRI also sought to rescind the contracts to sell over the ten condominium units in the Phoenix Subdivision for a similar failure on the part of B.E. Ritz to timely complete the construction thereof. EBRRI prayed for the refund of the amounts paid buy it to B.E. Ritz plus damages and interests.

Meanwhile, on 10 August 1991, EBRRI and Eurotrust Capital Corporation ("Eurotrust"), allegedly with the prior consent of B.E. Ritz, executed a deed of assignment whereby EBRRI assigned and conveyed to petitioner Armed Forces of the Philippines Mutual Benefit Association, Inc. ("AFPMBAI"), **by way of security**, all rights, interests and participation^[1] in Building E and the condominium units at the Phoenix Subdivision.

On 27 January 1992, AFPMBAI instituted Civil Case No. Q-92-11198 against Eurotrust, Elsa B. Reyes, Digna Blanca, Fernando C. Francisco and Maria Cristina C. Cornista with the Regional Trial Court of Quezon City, seeking to recover from the

defendants treasury notes worth P73,000,000.00 and the payment of P35,157,637.72 plus interest, attorney's fees and litigation expenses. Later, the complaint was amended to include EBRI and B.E. Ritz party defendants and to pray for the issuance of a writ of preliminary attachment.

In a decision, dated 19 November 1993, in HLRB Case No. REM-120992-5304, Housing and Land Use Arbitrator Teresita R. Alferez declared rescinded the contracts to sell covering the ten condominium units and ordered B.E. Ritz to execute a deed of absolute sale of Building E in favor of EBRI. Arbitrator Alferez held that EBRI's obligation to B.E. Ritz in the amount of P4,410,000.00, the balance of the purchase price of Building E, should simply be deducted from the obligation of B.E. Ritz to refund the P20,415,682.75 sum remitted to it by EBRI under the rescinded contracts to sell (covering the ten condominium units) or, in fine, a net amount of P16,005,682.72 still to be paid by B.E. Ritz to EBRI.

In Civil Case No. Q-92-11198, the trial court issued on 11 July 1994 a writ of attachment levying the assets of B.E. Ritz that included Building E and the ten condominium units. On 13 December 1994, petitioner **AFPMBAI** and **B.E. Ritz** entered into a compromise agreement that, among other things, provided:

"1.1. B.E. RITZ admits and acknowledges that it borrowed funds from EUROTRUST CAPITAL CORPORATION and/or ELSA B. REYES.

"1.2. B.E. RITZ admits and acknowledges that a portion of the funds it borrowed from EUROTRUST CAPITAL CORPORATION came from AFP-MBAI. B.E. Ritz represents that Twenty Four Million Pesos (P24,000,000.00) more or less, of the funds it borrowed from EUROTRUST CAPITAL CORPORATION came from AFP-MBAI.

"1.3. B.E. RITZ has agreed to return to AFP-MBAI the amounts received from EUROTRUST CAPITAL CORPORATION, which actually belong to AFP-MBAI.

"1.4. B.E. RITZ shall be absolved from any and all claims, obligations and indebtedness in relation to or in connection with the funds borrowed from EUROTRUST CAPITAL CORPORATION and which came from AFP-MBAI.

"1.5. AFP-MBAI reserves and retains its rights to hold ELSA B. REYES, EUROTRUST CAPITAL CORPORATION and other defendants in the above-entitled case, liable to the full extent of their obligation.

"1.6. Any consideration to be paid to AFP-MBAI under this Agreement shall be considered as settlement of the amount belonging to AFP-MBAI, which B.E. RITZ represents to have received from EUROTRUST CAPITAL CORPORATION."^[2]

Relative to the mode of settlement, petitioner AFPMBAI and B.E. RITZ agreed that-

"2.1. B.E. RITZ and its financiers (named below) shall jointly and severally pay AFP-MBAI the amount of Twenty Million Pesos (P20,000,000.00), payable within the period stated in the promissory note to be executed as provided in paragraphs 2.2 and 2.2.1. **In**

addition, B.E. RITZ shall sell Building `E' standing on a parcel of land covered by Transfer Certificate of Title No. 23247, Registry of Deeds for Quezon City, located on E. Rodriguez, Jr. Avenue, Bagong Bayan, Quezon City, Metro Manila and shall pay AFP-MBAI the amount of Ten Million Pesos (P10,000,000.00) from the proceeds of the sale thereof.

"2.2. Within forty-five (45) days from the execution, and as a condition precedent to the effectivity, of this Agreement.

"2.2.1 B.E. RITZ and its financiers composed of TERRA PHILIPPINES CORPORATION, RICHVILLE RESOURCES & DEV. CORP., and STANFORD RESOURCES & DEV. CORP. acting through a duly authorized representative, shall issue and deliver a Promissory Note in the aforesaid amount of P20,000,000.00 in favor of AFP-MBAI committing to pay the said amount to the latter or its order, within one (1) year from date of said Promissory Note. The liability of B.E. RITZ and its financiers shall be joint and several.

"2.2.2 In payment of said Promissory Note, B.E. RITZ shall, in addition, issue and deliver a check for the same amount with the same maturity date as the said Promissory Note.

"It is hereby understood and agreed that failure to issue and deliver the said Promissory Note and postdated check shall render this Agreement ineffective and without effect from the beginning.

"2.3. Within one (1) year from the execution of this Agreement, **B.E. RITZ shall sell Building `E'**, and shall pay AFP-MBAI the aforesaid sum of P10,000,000.00 from the proceeds thereof, provided that the period of one-year may be extended by agreement of the parties. **B.E. RITZ shall be solely responsible for complying with all requirements in connection with the sale of Building `E' and shall take sole responsibility for the sale, holding as it hereby holds AFP-MBAI free and harmless from any liability or obligation that may arise from the said sale of Building `E'.**

"2.4. Immediately upon the execution of this Agreement, AFP-MBAI shall cause the lifting of the writ of preliminary attachment on the condominium project located at cor. Javier St. and Canley Road, Phoenix Subdivision, Pasig, M.M.

"2.5. In exchange for the Promissory Note and postdated check as provided in the preceding paragraphs, AFP-MBAI shall deliver to B.E. RITZ a MOTION FOR PARTIAL JUDGMENT BASED ON COMPROMISE AGREEMENT with MOTION TO LIFT WRIT OF ATTACHMENT duly signed by AFP-MBAI to be filed in Court praying for the approval of this Agreement and the lifting of the writ of attachment on all the remaining properties pertaining to B.E. RITZ and/or its assigns or successors-in-interest, except **the attachment over Building `E' located at E. Rodriguez, Jr. Avenue, Bagong Bayan, Quezon City, Metro Manila, which shall**

be maintained and remain in full force and effect until the same is disposed by B.E. RITZ and the Ten Million Pesos (P10,000,000.00) from the proceeds thereof paid to AFP-MBAI."^[3] (Underscoring ours.)

AFPMBAI waived, consistently with the compromise agreement, all its rights and interests in the ten (10) condominium units, two units in a condominium project and Building `E' in favor of B.E. Ritz.^[4]

AFPMBAI and B.E. Ritz filed on 14 March 1995 a joint omnibus motion, dated 16 February 1995, praying for the approval of the compromise agreement and the rendition of a partial judgment based thereon. The motion also included a prayer for the partial lifting of the writ of preliminary attachment over the levied property with the exception of Building `E'.^[5] The following day, 15 March 1995, the trial court^[6] rendered a "partial decision" approving the compromise agreement and lifting the writ of attachment and notice of garnishment upon all property and assets of B.E. Ritz except Building `E'.

EBRRI was not furnished with a copy of the compromise agreement nor notified of the partial decision. When EBRRI ultimately learned of these incidents, EBRRI promptly filed a motion to partially set aside the judgment predicated on the compromise agreement **insofar as it had referred to Building E**, pointing out that Building E was the subject matter of litigation before the HLURB which, in its decision of 19 November 1993, had directed B.E. Ritz to execute a deed of absolute sale over the building and to deliver to EBRRI the corresponding transfer certificate of title. EBRRI contended that the projected disposition of Building E was in violation of paragraph 4 of Article 1381 of the Civil Code that would consider rescissible, "contracts which referred to things under litigation if entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority." EBRRI added that the proposed sale of Building E would be in fraud of creditors under Article 1387(2) of the Civil Code there being, in fact, a previous judgment in the HLURB case.^[7]

B.E. Ritz, in turn, averred that in executing the compromise agreement, petitioner AFPMBAI was simply implementing the deed of assignment executed between private respondent EBRRI and Eurotrust. In its case, AFPMBAI stated that it was only interested, at all events, in the expeditious recovery of the amount covered by the compromise agreement. EBRRI responded by stressing that B.E. Ritz should not be allowed to dispose of the property owned by EBRRI to pay an obligation due from B.E. Ritz to AFPMBAI.

The trial court refused to set aside its judgment on the compromise agreement; in its order, dated 07 September 1995, it held:

"A judgment rendered in accordance with a compromise agreement is immediately executory unless a motion is filed to set aside the agreement on the ground of fraud, mistake or duress x x x' (Arkoncel, Jr. vs. Lagamon, 204 SCRA 560). None of the above-mentioned grounds is present in the contract in question.

"Be it noted that Building `E' is not the subject of the main case. These properties were levied on attachment as properties registered in the

name of defendant B.E. Ritz against whom a writ of attachment was issued. There is no reason why the parties concerned cannot come up with a compromise agreement involving the same. While it may be true that Building 'E' is the subject of litigation between EBR Realty and B.E. Ritz before HLURB, absence is a showing that EBR Realty was declared with finality to be the absolute owner of the said building.

"Moreover, a compromise agreement is a contract and, therefore, cannot affect third persons who are not parties to it (University of the East vs. Secretary of Labor and Employment, 204 SCRA 254), defendant EBR Realty in this case.

"Well-settled is the rule that a compromise agreement, once approved by the Court, cannot and should not be disturbed except for vices of consent or forgery, it being the obvious purpose of such compromise agreement to settle, once and for all, the claims of the parties, and bar all future disputes and controversies thereon. A compromise agreement cannot bind persons who are not parties thereto. Neither would a person not party to a compromise agreement be entitled to enforce the same. Similarly, a person who is not a party to an agreement cannot seek the amendment or modification of the same. Neither can a Court of law rule that the compromise agreement be amended and modified pursuant only to the wishes of a person not party to said agreement (cited in Periquet, Jr. vs. Intermediate Appellate Court, G.R. No. 69996, December 5, 1994)."^[8]

From the foregoing order, EBRRI filed with this Court a petition for review on *certiorari*, docketed G.R. No. 121988, which immediately drew a motion to dismiss from AFPMBAI. On 27 November 1995, the Court referred the petition to the Court of Appeals for appropriate action.^[9]

In the Court of Appeals, the petition was docketed C.A. G.R. SP No. 39496. On 29 May 1996, the appellate court promulgated the herein questioned decision^[10] granting the petition of EBRRI, setting aside the Order of 07 September 1995 of the Regional Trial court, and partially setting aside the compromise agreement insofar as it covered Building E. The appellate court held that the assailed Order, dated 07 September 1995, of the trial court was a final order since it had practically adjudicated substantial rights of the parties, leaving nothing much to be done by the trial court except to implement the judgment, and that, therefore, a petition for review could be a proper remedy. As regards the assailed order of the trial court, the Court of Appeals ruled that a non-party to a compromise agreement could ask for its rescission by reason of injury or prejudice that said person might suffer as a result of an execution of the judgment based on that compromise agreement. The Court of Appeals held:

"It must be stressed that the compromise agreement was executed after an adverse decision had been rendered against the respondent B.E. Ritz. While the HLURB decision awarding building 'E' to the petitioner may not yet be final, the fact that a decision has been rendered against respondent B.E. Ritz gives rise to the presumption that the compromise agreement, insofar as it includes building 'E' therein, is fraudulent and thus rescissible under paragraph 3 of Article 1381."^[11]