

## **FIRST DIVISION**

**[ G.R. No. 125447, August 14, 1998 ]**

**MARINA PROPERTIES CORPORATION, PETITIONER, VS. COURT OF APPEALS AND H.L. CARLOS CONSTRUCTION, INC., RESPONDENTS.**

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**H.L. CARLOS CONSTRUCTION, INC., PETITIONER, VS. COURT OF APPEALS AND MARINA PROPERTIES CORPORATION, RESPONDENTS.**

### **D E C I S I O N**

**DAVIDE, JR., J.:**

We resolve here two (2) separate appeals from the decision<sup>[1]</sup> of the Court of Appeals of 27 June 1996 in CA-G.R. SP No. 37927, which affirmed with modification the 15 March 1995 Order<sup>[2]</sup> of the Office of the President in O.P. Case No. 5462 which, in turn, affirmed in toto the 14 June 1993 decision<sup>[3]</sup> of the Housing and Land Use Regulatory Board (HLURB) in the case filed by H.L. Carlos Construction, Inc. (hereafter H.L. CARLOS) against MARINA Properties Corporation (hereafter MARINA) for Specific Performance with Damages and docketed as REM-A-1179.<sup>[4]</sup>

The factual antecedents, as summarized by the Court of Appeals, are as follows:

Petitioner Marina Properties Corporation (MARINA for short) is a domestic corporation engaged in the business of real estate development. Among its projects is a condominium complex project, known as the "MARINA BAYHOMES CONDOMINIUM PROJECT" consisting of 10 building clusters with 31 housing units to be built on a parcel of land at Asiaworld City, Coastal Road in Paranaque, Metro Manila. The area is covered by T.C.T. No. (121211) 42201 of the Registry of Deeds of the same municipality.

The construction of the project commenced sometime in 1988, with respondent H.L. Carlos Construction, Inc. (H.L. CARLOS for brevity) as the principal contractor, particularly of Phase III.

As an incentive to complete the construction of Phase III, MARINA allowed H.L. CARLOS to purchase a condominium unit therein known as Unit B-121. Thus, on October 9, 1988, the parties entered into a Contract to Purchase and to Sell covering Unit B-121 for P3,614,000.00. H.L. CARLOS paid P1,034,200.00 as downpayment, P50,000.00 as cash deposit and P67,024.22 equivalent to 13 monthly amortizations.

After paying P1,810,330.70, which was more than half of the contract price, H.L.

CARLOS demanded for the delivery of the unit, but MARINA refused. This prompted H.L. CARLOS to file with the Regional Trial Court of Makati, Branch 61 a complaint for damages against MARINA, docketed as Civil Case No. 89-5870.

Meanwhile, on April 20, 1990, MARINA wrote H.L. CARLOS that it was exercising its option under their Contract to Purchase and to Sell to take over the completion of the project due to its (H.L. CARLOS') abandonment of the construction of the Phase III project.

In a letter dated March 15, 1991, H.L. CARLOS inquired from MARINA about the "turn-over status" of the condominium unit. MARINA replied that it was cancelling the Contract to Purchase and Sell due to H.L. CARLOS' abandonment of the construction of the Phase III Project and its filing of baseless and harassment suits against MARINA and its officers.

Forthwith, H.L. CARLOS filed the instant complaint for specific performance with damages against MARINA with the Housing and Land Use Regulatory Board (HLURB), alleging among others, that it has substantially complied with the terms and conditions of the Contract to Purchase and Sell, having paid more than 50% of the contract price of the condominium unit; and that MARINA's act of cancelling the contract was done with malice and bad faith. H.L. CARLOS prays that MARINA be ordered to deliver to it the subject unit, accept the monthly amortizations on the remaining balance, execute the final deed of sale and deliver the title of the unit upon full payment of the contract price. Also, H.L. CARLOS prays for the award of actual and exemplary damages as well as attorney's fees.

In its answer, MARINA claimed that its cancellation of the Contract to Purchase and Sell is justified since H.L. CARLOS has failed to pay its monthly installment since October 1989 or for a period of almost two (2) years; that H.L. CARLOS abandoned its work on the project as of December 1989; and that the instant case should have been suspended in view of the pendency of Civil Case No. 89-5870 for damages in the Makati RTC involving the same issues.

On February 21, 1992, the HLURB, through Atty. Abraham N. Vermudez, Arbiter, rendered a decision, the dispositive portion of which reads:

"WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered declaring the cancellation of the subject Contract to Sell as null and void and ordering respondent Marina Properties Corporation as follows:

1. To turn over the subject condominium unit to herein complainant, accept monthly amortization[s] on the remaining balance and to execute the final deed of sale and deliver title/ownership of the subject property to the complainant upon full payment of the contract price.
2. To pay complainant actual damages of P30,000.00 per month commencing from March 1990 until the delivery of the subject property and the amount of P50,000.00 as exemplary damages.
3. To pay complainant the amount of P50,000.00 as and by way of attorney's fees.

4. To pay to this Board the amount of P5,000.00 as [an] administrative fine.

IT IS SO ORDERED."

In ruling for H.L. CARLOS, the HLURB Arbiter held:

x x x.

Respondent's position that the case is a complex one is more imaginary than real. Clearly, the cancellation of the subject 'Contract to Purchase and to Sell' was in violation of Republic Act No. 6552, otherwise known as the 'Realty Installment Buyers' Protection Act,' which prescribes the procedure for cancellation of installment contracts for the purchase of subdivision lots and/or condominium units.

In the case at bar, the complainant had already paid P1,810,330.70 or more than 50% of the contract price of P3,614,000.00 and more than the total of two years (24 months) installments computed at the monthly installment of P67,024.22, inclusive of the downpayment, which is more than 24 installments. Under R.A. 6552, notarial cancellation of the installment contract becomes effective only upon payment of the cash surrender value to the purchaser, which however respondent did not do.

Respondent's cancellation of the subject contract was clearly illegal, void and cannot be sanctioned.

Neither can this Office find merit in respondent's contention that this case should be suspended because of the pending civil case between the parties, said pending case, Civil Case No. 89-5870 in the Regional Trial Court, Branch 61, Makati, Metro Manila, was filed by the same complainant herein against the same respondent for collection of unpaid billings in the amount of about P10,000,000.00.

On the other hand, this Office finds that respondent's act in cancelling the subject installment sales contract without following the provisions of R.A. 6552 is an unsound real estate business practice for which respondent is fined the sum of P5,000.00.

As to damages and attorney's fees claimed by complainant and borne out by the records, this Office finds that respondent should be held liable for unearned rental income of P30,000.00 per month, commencing from March 1990 when the condominium unit should have been delivered until actual delivery thereof, and attorney's fees of P50,000.00, both amounts to be deducted from the unpaid balance due on the subject condominium unit.

Likewise, for its wanton breach of the subject contract, respondent is ordered to pay exemplary damages in the amount of P50,000.00 as an example for the public good, deductible from the balance due on the subject condominium unit.

x x x."

Whereupon, MARINA interposed an appeal to the Board of Commissioners of HLURB (First Division) which affirmed the assailed decision.

On further appeal to the Office of the President, the decision of the Board of Commissioners (First Division) was affirmed.

MARINA filed a motion for reconsideration but was denied.<sup>[5]</sup>

MARINA filed a petition for review with the Court of Appeals ascribing the following errors to the Office of the President:

(1) In sustaining the award of actual damages for unrealized profits in favor of private respondent H.L. CARLOS which were unliquidated, speculative and patently unreasonable;

(2) In declaring the motion for reconsideration filed by MARINA "pro-forma" and depriving it of the right of appeal; and

(3) In not dismissing the case on the grounds of *litis pendentia*, forum-shopping and splitting a single cause of action.<sup>[6]</sup>

The Court of Appeals sustained MARINA as regards the award of actual damages, finding that no evidence was presented to prove the P30,000.00 award as monthly rental for the condominium unit. However, as to the pronouncement of the Office of the President that MARINA's motion for reconsideration was merely pro-forma, the Court of Appeals noted that MARINA did not raise any new issue in its motion for reconsideration. In the same vein, respondent court ruled that MARINA was not deprived of its right to appeal.

The Court of Appeals likewise brushed aside MARINA's assertion that the complaint should have been dismissed on the ground of *litis pendentia* thus:

The requisites of *lis pendens* as a ground for dismissal of a complaint are: (1) identity of parties or at least such representing the same interest in both actions; (2) identity of rights asserted as prayed for, the reliefs being founded on the same facts; and (3) identity in both cases is such that the judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* to the other case.

There is no dispute that the case at bench and Civil Case No. 89-5870 for damages at the Makati RTC involves the same parties although in the civil case, the officers of MARINA have been impleaded as co-defendants. While the first requisite obtains in this case, the last two are conspicuously absent.

It will be observed that the two cases involve distinct and separate causes of action or rights asserted. Civil Case No. 89-5870 is for the collection of sums of money corresponding to unpaid billings and labor costs incurred by H.L. CARLOS in the construction of the project under the Construction Contract agreed upon by the

parties. Upon the other hand, the case at bench is for specific performance (delivery of the condominium unit) and damages arising from the unilateral cancellation of the Contract to Purchase and to Sell by MARINA.

Moreover, the reliefs sought are also different. In the civil case, H.L. CARLOS prays for the award of P7,065,885.03 representing unpaid labor costs, change orders and price escalations including the sum of P2,000,000.00 as additional compensatory damages. In the instant case, H.L. CARLOS seeks not only the award of actual and exemplary damages but also the delivery of the condominium unit upon MARINA's acceptance of the monthly amortization on the remaining balance, the execution of a final deed of sale and the delivery of the title to the said private respondent.

MARINA's claim that the present complaint should be dismissed on the ground of splitting a cause of action, deserves scant consideration. The two complaints did not arise from a single cause of action but from two separate causes of action. It bears emphasis that H.L. CARLOS' cause of action in the civil case stemmed from the breach by MARINA of its contractual obligation under the Construction Contract, while in the case at bench, H.L. CARLOS' cause of action is premised on the unilateral cancellation of the Contract to Purchase and Sell by MARINA.<sup>[7]</sup>

Accordingly, the Court of Appeals affirmed the Order of the Office of the President but deleted the award of actual damages. As such, the parties sought redress from this Court by way of separate petitions.

In G.R. No. 125447, MARINA asserts that the Court of Appeals erred: (1) in finding that petitioner should turn over the subject condominium unit to H.L. CARLOS and accept monthly amortizations on the remaining balance; and (2) in not ordering the dismissal of the case on the grounds of *litis pendentia*, forum-shopping and splitting of a single cause of action.

On the other hand, in G.R. No. 125475, H.L. CARLOS contends that the Court of Appeals gravely erred in: (1) finding that the award of actual damages equivalent to P30,000.00 in unearned monthly rentals was not sustained by evidence; (2) in not declaring that the petition for review was filed out of time and fatally defective for lack of verification and certification by MARINA Properties, and in not declaring the decision of the Office of the President final and executory; and 3) in not dismissing MARINA's appeal as without merit.

MARINA's motion to consolidate both cases was granted in a resolution dated 27 January 1997.<sup>[8]</sup>

We first address the lone procedural issue of the timeliness of the petition for review filed by MARINA with the Court of Appeals and the supposed lack of verification and certification.

We find without merit the allegation that MARINA's petition for review before the Court of Appeals was filed out of time as MARINA's motion for reconsideration (of the order of the Office of the President) was found to be pro forma and, therefore, did not stop the running of its period to appeal.

MARINA filed its Motion for Reconsideration<sup>[9]</sup> on the last day of its period to appeal,