

## FIRST DIVISION

[ G.R. No. 107992, October 08, 1997 ]

**ODYSSEY PARK, INC., PETITIONER, VS. HONORABLE COURT OF  
APPEALS AND UNION BANK OF THE PHILIPPINES,  
RESPONDENTS.  
D E C I S I O N**

**VITUG, J.:**

Assailed in the instant petition for review on *certiorari* is the decision, dated 07 September 1992, of the Court of Appeals affirming that of the Regional Trial Court, Branch 152, of Pasig, Metro Manila, which has adjudged the contract to sell entered into between petitioner and private respondent as having been validly rescinded.

The Court adopts the factual findings, hereunder narrated, of the appellate court:

1. On November 4, 1981, Bancom Development Corporation and plaintiff-appellant Odyssey Park, Inc., entered into a Contract to Sell (Exhibit B-1), whereby the former agreed to sell to the latter the parcel of land with an area of 8,499 square meters situated in Baguio City and the structure constructed thereon identified as the Europa Clubhouse.

"2. Subsequently on February 11, 1982, in a document entitled 'Separate Deed of Conveyance' (Annex F of the Affidavit of Carmelito A. Montano, pages 152-154 of the Record), Bancom confirmed and acknowledged that it has ceded, transferred and conveyed in favor of defendant-appellee Union Bank all the rights, title and interest it has over the property.

"3. The purchase price of P3,500,000.00 was, per Section 2 of the Contract to Sell, agreed to be paid as follows:

"`a) SEVEN HUNDRED THOUSAND PESOS (P700,000.00) as down payment, to be paid by Odyssey as follows:

(i) ONE HUNDRED THOUSAND (P100,000.00) PESOS upon signing of this Contract;

(ii) TWO HUNDRED THOUSAND PESOS (P200,000.00), sixty (60) days from and after the date of this Contract. The said amount shall be covered by a check postdated sixty (60) days after the date of this Contract issued and delivered by Odyssey to Bancom upon the signing of this Contract; and

(iii) FOUR HUNDRED THOUSAND PESOS (P400,000.00), ninety (90) days from and

after the date of this Contract. The said amount shall be covered by a check postdated ninety (90) days after the date of this Contract issued and delivered by Odyssey to Bancom upon signing of this Contract.

` b) The balance of TWO MILLION EIGHT HUNDRED THOUSAND PESOS (P2,800,000.00) shall be paid by Odyssey to Bancom within a period of three (3) years by twelve (12) equal quarterly amortizations of P298,346.08 each, inclusive of the interest and service charge set forth in Section 3 hereof, the first amortization to become due and payable four (4) months and fifteen (15) days after the date of this Contract, and the succeeding amortizations at the end of each quarter thereafter until the balance of the purchase price of the Property is paid in full.'

"4. It was also agreed in Section 5 of the Contract to Sell that:

"` Section 5: In the event Odyssey fails to pay any portion of the purchase price of the Property or the interest and service charge thereon as and when it falls due, or otherwise fails to comply with or violate any of the provisions of this Contract, Bancom may at its absolute discretion cancel and rescind this Contract and declare the same as null, void and no further force and effect by serving on Odyssey a written notice of cancellation and rescission thirty (30) days in advance.

` In the event this Contract is cancelled and rescinded as provided in this Section, all the amounts which the Odyssey may have paid to Bancom pursuant to and in accordance with this Contract shall be forfeited in favor of Bancom as rentals for the use and occupancy of the Property and as penalty for the breach and violation of this Contract. Furthermore, all the improvements which Odyssey may have introduced on the Property shall form part thereof and belong to Bancom without right of reimbursements to Odyssey; Provided, that Bancom may at its absolute discretion instead require Odyssey to remove such improvements from the Property at expense of Odyssey.'

5. On November 26, 1981, twenty-two (22) days after the execution of the contract plaintiff-appellant paid the amount of P100,000.00. Other payments, also beyond the stipulated period, (see Odyssey Park, Inc., Statement of Application of Payment, Annex A of the Supportive Affidavit of Nicefero S. Agaton, p. 309 of the record) in the total sum of P110,000.00 were made as follows:

September 22, 1982

P20,000.00

April 13, 1983

10,000.00

April 30, 1983

10,000.00

July 20, 1983

50,000.00

September 19, 1983

20,000.00

6. On December 23, 1981, Mr. Vicente A. Araneta, President of Europa Condominium Villas, Inc., wrote defendant-appellee Union Bank, a letter, Exhibit E, stating that the Europa Center was reported to prospective buyers as well as government authorities as part of common areas and amenities under the condominium concept of selling to the public and for that reason wants to make it of record that Europa Condominium Villas, Inc., questions the propriety of the contract to sell.

"7. On January 4, 1982, plaintiff-appellant Odyssey Park, Inc., through its Chairman of the Board, Mr. Carmelito A. Montano, wrote Bancom Development Corp. a letter, Exhibit F, stating that it acknowledges receipt of a copy of the letter-protest from the Europa Condominium Villas, Inc., and that in the meantime that there is a question on the propriety of the sale, it is stopping/withholding payments of the amortization.

"8. On the same date, January 4, 1982, Bancom, through its Senior Vice-President, wrote Europa Condominium Villas, Inc. a letter, Exhibit H, explaining that the Europa Center and the parcel of land on which it is built are not part of the Europa Condominium Villas, Inc.

"9. On March 29, 1983, defendant-appellee Union Bank wrote plaintiff-appellant Odyssey Park, Inc., a letter (Annexes F, F-1 of the Supportive Affidavit of Nicefero S. Agaton, pp. 317-318 of the record) demanding payment of the overdue account of P2,193,720.91, inclusive of interest and service charges, otherwise the contract to sell would be cancelled and rescinded;

"10. On April 12, 1983, plaintiff-appellant Odyssey wrote defendant-appellee Union Bank a letter (Annex F-2 of the Supportive Affidavit of Nicefero S. Agaton, pp. 319-320 of the record) proposing a manner of settlement which defendant-appellee Union Bank answered (Annex F-3, p. 321 of the record) asking for more details of the proposal. The series of communications led to the drafting of a Memorandum of Agreement (Exhibit N) which was not, however, signed by the parties.

"11. On January 6, 1984, defendant-appellee Union Bank, through counsel, wrote plaintiff-appellant Odyssey Park, Inc., a letter (Exhibit O) formally rescinding and/or cancelling the contract to sell and demanding that plaintiff-appellant vacate and peaceably surrender possession of the premises.

"12. On or about August 20, 1984, for failure of plaintiff-appellant to