

NINTH DIVISION

[CA-G.R. SP No. 126778, March 10, 2015]

**UNIONBANK OF THE PHILIPPINES, PETITIONER, VS. SPS.
HIPOLITO V. ODTOHAN AND CRISTINA R. ODTOHAN, AND ALL
PERSONS CLAIMING RIGHTS UNDER THEM, RESPONDENTS.**

DECISION

PAREDES, J.:

THE CASE

THIS PETITION FOR REVIEW^[1], filed by petitioner Unionbank of the Philippines (Unionbank), seeks to annul and set aside the Decision^[2] dated July 11, 2011 and Order^[3] dated August 28, 2012 issued by the Regional Trial Court, Branch 226, Quezon City (RTC), in Civil Case No. Q-10-67313 which affirmed the dismissal of the case for ejectment in the Decision^[4] dated April 26, 2010 of the Metropolitan Trial Court, Branch 38, Quezon City (MeTC), in Civil Case No. 38-38367.

THE ANTECEDENTS

IEB Premium Properties Corporation (IEB Corp.), a domestic corporation, constructed Garden Heights Condominium at E. Rodriguez Sr. Avenue, Quezon City. On the other hand, spouses Hipolito and Cristina Odtohan (spouses Odtohan) bought, on installment basis, four condominium units – units 210 (May 6, 2004), unit 220 (May 6, 2004), unit 222 (May 6, 2004), and unit 2205 (May 16, 2003); the purchases were evidenced by four Contracts to Sell (the contracts)^[5]. The contracts allowed spouses Odtohan to occupy the units, while IEB Corp. retained possession of the titles until full payment of the purchase price. The contracts contained similar provisions with regard to the payment of the contract price, that:

a. DOWN PAYMENT PESOS: THREE HUNDRED EIGHT THOUSAND FIVE HUNDRED SEVENTY SIX & 50/100 ONLY (P308,576.50) net of reservation fee payable in SIX (6) monthly installment starting May 15, 2004 to October 15, 2004, amounting to PESOS: FIFTY ONE THOUSAND FOUR HUNDRED TWENTY NINE & 42/100 (P51,429.42) ONLY.

b. REMAINING BALANCE PESOS: EIGHT HUNDRED THIRTY SIX THOUSAND SIX HUNDRED SEVENTY EIGHT & 50/100 (P836,678.50) payable in SIXTY (60) months, starting from November 15, 2004, to October 15, 2009. MONTHLY AMORTIZATION PESOS: TWENTY THOUSAND THREE HUNDRED TWENTY FOUR & 17/100 (P20,324.17) with an INTEREST RATE of FIFTEEN & 95/100 (15.95%) percent, inclusive of 10% VAT fixed for the entire term.^[6]

On December 22, 2003, IEB Corp. entered into a Deed of Assignment^[7] with International Exchange Bank assigning its receivables, rights and interest from the sale of condominium units of Garden Heights Condominium. On August 28, 2006, Unionbank became the surviving entity when it merged with International Exchange Bank^[8].

Unionbank alleged that sometime in 2007, spouses Odtohan defaulted^[9] in the payment of their amortization. On July 24, 2007, Unionbank sent demand letters^[10] to spouses Odtohan to pay their past obligations within 30 days, otherwise the contracts would be automatically cancelled/rescinded. Since spouses Odtohan failed to pay their obligations, Unionbank applied the payments made as rentals on the property; and, on September 10, 2007, demand letters^[11] were issued for spouses Odtohan to vacate the property. Spouses Odtohan did not heed the demand to pay nor to vacate; thus, on March 3, 2008, a complaint^[12] for ejectment was filed with the MeTC.

Unionbank summarized the obligations^[13] of spouses Odtohan as follows:

15. To this date, considering the unjustified failure of defendants to pay his (*sic*) past due monthly amortizations of the purchase price of the subject property and their refusal to vacate the same, they should be ordered to pay plaintiff the aggregate sum of PESOS: THREE MILLION SEVEN HUNDRED FORTY ONE THOUSAND THREE HUNDRED TWENTY FOUR [P3,741,324.78].

15.1. For Unit 210, PESOS: ONE MILLION THIRTY FOUR THOUSAND THREE HUNDRED NINETY SEVEN AND 58/100 (P1,034,397.58) as rentals in arrears for the period from 15 March 2006 to 14 December 2007, as shown in the attached Statement of Account dated 04 December 2007, copy of which is hereto attached as Annex "O" and PESOS: TWENTY THOUSAND TWO HUNDRED FIFTY AND 80/100 (P20,250.80) per month as reasonable rental for the use and occupancy of the subject property from said date until such time that the defendants and all persons claiming rights under them finally vacate and surrender the possession of the subject property to plaintiff bank plus interest.

15.2. For Unit 220, PESOS: ONE MILLION ONE HUNDRED THIRTEEN THOUSAND SIXTEEN AND 10/100 (P1,113,016.10) as rentals in arrears for the period from 15 March 2006 to 14 December 2007, as shown in the attached Statement of Account dated 04 December 2007, copy of which is hereto attached as Annex "P" and PESOS: TWENTY THOUSAND THREE HUNDRED TWENTY FOUR AND 17/100 (P20,324.17) per month as reasonable rental for the use and occupancy of the subject property from said date until such time that the defendants and all persons claiming rights under them finally vacate and surrender the possession of the subject property to plaintiff bank plus interest.

15.3. For Unit 222, PESOS: ONE MILLION SEVENTY FIVE THOUSAND SIX HUNDRED TWENTY THREE AND 60/100 (P1,075,623.60) as rentals in arrears for the period from 15 March 2006 to 14 December 2007, as shown in the attached Statement of Account dated 04 December 2007,

copy of which is hereto attached as Annex "Q" and PESOS: TWENTY ONE THOUSAND FIFTY SEVEN and 90/100 (P21,057.90) per month as reasonable rental for the use and occupancy of the subject property from said date until such time that the defendants and all persons claiming rights under them finally vacate and surrender the possession of the subject property to plaintiff bank plus interest.

15.4. For Unit 2205, PESOS: FIVE HUNDRED EIGHTEEN THOUSAND TWO HUNDRED EIGHTY SEVEN AND 50/100 (P518,287.50) as rentals in arrears for the period from 15 March 2006 to 14 December 2007, as shown in the attached Statement of Account dated 04 December 2007, copy of which is hereto attached as Annex "R" and PESOS: SEVENTY FOUR THOUSAND SEVEN HUNDRED FIFTY FIVE and 36/100 (P74,755.36) per month as reasonable rental for the use and occupancy of the subject property from said date until such time that the defendants and all persons claiming rights under them finally vacate and surrender the possession of the subject property to plaintiff bank plus interest.

Unionbank prayed that spouses Odtohan and all persons claiming rights under them be ejected from the subject properties; that the subject properties be turned over to it; and, that spouses Odtohan be ordered to pay the following amounts: (a) rentals in arrears in the amount of PESOS: NINE HUNDRED THIRTY SIX THOUSAND FOUR HUNDRED & 36/100 (P936,400.36) for the period 15 March 2006 to 31 July 2007; (b) reasonable rentals of PESOS: TWENTY THOUSAND THREE HUNDRED TWENTY FOUR AND 17/100 (P20,324.17) per month as reasonable rental for the use and occupancy of the subject properties from 31 July 2007 until such time that possession is returned and surrendered to it; (c) 25% of the total amount due as attorney's fees; and, (d) interest on the total amount due from the time it accrued until full payment.

Spouses Odtohan denied the allegations in the complaint and aver that they are not in default in their obligations; that statements of account issued by Unionbank are disputed for these did not properly reflect the payments made by the buyers; and that a case between them is pending with the HLURB. As such, Unionbank's filing of the complaint is premature^[14].

After the conduct of a preliminary conference, the MeTC directed the filing of position papers, affidavits of witnesses, and other documentary evidence^[15].

Applying the provisions of Section 3, RA 6552 (otherwise known as the "Realty Installment Buyer Act")^[16], and finding that Unionbank had violated the provisions thereof, the MeTC issued a decision dismissing^[17] the case without prejudice.

Not satisfied with the decision, Unionbank appealed to the RTC. On July 11, 2011, the RTC issued the assailed Decision, the dispositive portion of which reads as follows:

WHEREFORE, in view of all the foregoing, the judgment appealed from is hereby AFFIRMED in toto.

Upon finality of this decision, let the entire record of the case be remanded to the court of origin.

SO ORDERED.^[18]

Unionbank's subsequent motion for reconsideration was denied^[19]; hence, this petition for review.

THE ISSUE

The lone issue raised by Unionbank is whether or not the Regional Trial Court is correct when it affirmed the dismissal of its complaint.

THE COURT'S RULING

The petition is without merit.

Unionbank argues that:

THE ASSAILED DECISION AND ORDER ISSUED BY THE REGIONAL TRIAL COURT ARE BOTH UTTERLY DEVOID OF BASIS IN FACT AND IN LAW, HAVING BEEN ISSUED CONTRARY TO THE DOCUMENTS ON RECORD, AND IN VIOLATION OF SETTLED LAW AND JURISPRUDENCE, IN THAT:

I. AS TO FACT, THE DOCUMENTARY EXHIBITS SUBMITTED BY RESPONDENTS SPS. ODOHAN BELOW DO NOT SUPPORT THE CONCLUSION OF THE REGIONAL TRIAL COURT THAT THEY HAD MADE SUBSTANTIAL PAYMENTS OR "EQUAL TO AT LEAST THIRTY (30) MONTHLY INSTALLMENT PAYMENTS" ON CONDOMINIUM UNITS 210, 220 AND 222 AND THAT UNIT 2205 HAD BEEN PAID FOR IN FULL ON THE CONTRARY, THE VERY SAME DOCUMENTARY EXHIBITS OF RESPONDENTS SUPPORT PETITIONER UBP'S ASSERTION THAT THE FORMER HAD DEFAULTED ON THEIR OBLIGATION AS EARLY AS FEBRUARY 2006.

II. AS TO LAW, THE REGIONAL TRIAL COURT ERRED IN APPLYING THE PROVISIONS OF RA 6552 OR THE REALTY INSTALLMENT BUYER'S PROTECTION ACT IN THIS CASE CONSIDERING THAT:

A. SAID LAW DOES NOT APPLY TO PETITIONER UBP, WHICH IS A BANKING INSTITUTION AND IS NOT THE DEVELOPER OF THE CONDOMINIUM PROJECT BUT IS MERELY THE ASSIGNEE OF THE RECEIVABLES ON THE SUBJECT CONDOMINIUM UNITS.

B. CONDOMINIUM UNITS 210, 220 AND 222 ARE NOT RESIDENTIAL UNITS, AND ARE THEREFORE, EXCLUDED FROM THE COVERAGE OF SAID LAW.

III. RESPONDENTS' ADMITTED DEFAULT IN MAKING INSTALLMENT PAYMENTS ON CONDOMINIUM UNITS 210, 220, 222, COUPLED WITH THE FACT THAT THIS CASE HAS BEEN PENDING BEFORE COURTS FOR THE LAST 4 YEARS SHOULD AT THE VERY LEAST WARRANT A RULING FROM THIS HONORABLE COURT DIRECTING RESPONDENTS TO NOW PAY IN FULL THE REMAINING BALANCE ON THE PURCHASE PRICE, PLUS LEGAL INTEREST THEREON. THIS IS WARRANTED UNDER PETITIONERS

GENERAL PRAYER BELOW FOR OTHER RELIEFS JUST AND EQUITABLE IN THE PREMISES, AND CONSIDERING FURTHER THAT RESPONDENTS HAVE BEEN IN CONTINUOUS POSSESSION OF THE SUBJECT UNITS WITHOUT PAYING ANY RENT THEREON TO THE DAMAGE AND PREJUDICE OF PETITIONER.^[20]

The complaint filed by Unionbank before the MeTC is for ejectment or unlawful detainer. Unlawful detainer is one of the three actions available for the recovery of possession of real property. This kind of action presupposes that the possession of the defendant is legal at the beginning but became illegal due to the expiration or termination of the right to possess, thus^[21]:

In a complaint for unlawful detainer, the following key jurisdictional facts must be alleged and sufficiently established:

(1) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff;

(2) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession;

(3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and

(4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.

Spouses Odtohan possessed the subject properties by virtue of the contracts to sell they executed with IEB Corp.; the contracts uniformly provide that the provisions of RA 6552 applies. Unionbank asserts its right to take possession of the subject properties claiming that the rights of IEB Corp. were transferred to it. Since spouses Odtohan defaulted in several monthly installments, it decided to apply the default provision in the contracts and demanded payment from spouses Odtohan; no payment having been forthcoming, Unionbank informed spouses Odtohan that the contracts were cancelled/rescinded and demanded that they vacate the subject properties. Spouses Odtohan resisted the demand; hence, Unionbank filed the complaint for ejectment.

The MeTC and the RTC both ruled that Unionbank had no cause of action against spouses Odtohan. The lower courts found that spouses Odtohan have presented proof of installment payment of at least two years and, under *Section 3(b) of RA 6552*^[22], *the actual cancellation of the contract shall take place after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer.*

According to the 2004 Rules on Notarial Practice, a notarial act refers to any act that a notary public is empowered to perform under these Rules. The notary public is empowered to perform the following:

RULE IV POWERS AND LIMITATIONS OF NOTARIES PUBLIC