



Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

MOLDEX REALTY, INC.,
Petitioner,

G.R. No. 176289

Present:

- versus -

CARPIO, *Chairperson,*
VELASCO, JR.,^{*}
BRION,
DEL CASTILLO, *and*
PEREZ, *JJ.*

FLORA A. SABERON,
Respondent.

Promulgated:
APR 08 2013

X ----- X

DECISION

DEL CASTILLO, *J.:*

The lack of a license to sell or the failure on the part of a subdivision developer to register the contract to sell or deed of conveyance with the Register of Deeds does not result to the nullification or invalidation of the contract to sell it entered into with a buyer. The contract to sell remains valid and subsisting.

Petitioner Moldex Realty, Inc. (Moldex) comes to this Court *via* a Petition for Review on *Certiorari*¹ to assail the October 31, 2006 Decision² of the Court of Appeals (CA) in CA-G.R. SP No. 79651, which denied due course and dismissed the Petition for Review³ it filed therewith. Also assailed is the January 23, 2007 Resolution⁴ of the CA which denied Moldex's Motion for Reconsideration⁵ of the said Decision.

^{*} Per Special Order No. 1437 dated March 25, 2013.

¹ *Rollo*, pp. 23-45.

² *CA rollo*, pp. 311-319, penned by Associate Justice Roberto A. Barrios and concurred in by Associate Justices Mario L. Guariña III and Lucenito N. Tagle.

³ *Id.* at 14-44.

⁴ *Id.* at 352-353.

⁵ *Id.* at 320-332.

Factual Antecedents

Interested in acquiring a 180-square meter lot known as Lot 2, Block 1 of Metrogate Subdivision in Dasmariñas, Cavite, respondent Flora A. Saberon (Flora) asked Moldex, the developer, to reserve the lot for her as shown by a Reservation Application⁶ dated April 11, 1992. While the cash purchase price for the land is ₱396,000.00, the price if payment is made on installment basis is ₱583,498.20 at monthly amortizations of ₱8,140.97 payable in five years with 21% interest *per annum* based on the balance and an additional 5% surcharge for every month of delay on the monthly installment due. Flora opted to pay on installment and began making aperiodical payments from 1992 to 1996⁷ in the total amount of ₱375,295.49.

In April, August, and October 1996,⁸ Moldex sent Flora notices reminding her to update her account. Upon inquiry, however, Flora was shocked to find out that as of July 1996, she owed Moldex ₱247,969.10. In November 1996, the amount ballooned to ₱491,265.91.

Moldex thus suggested to Flora to execute a written authorization for the sale of the subject lot to a new buyer and a written request for refund so that she can get half of all payments she made. However, Flora never made a written request for refund.

As of April 1997, Moldex computed Flora’s unpaid account at ₱576,569.89. It then sent Flora a Notarized Notice of Cancellation of Reservation Application and/or Contract to Sell.⁹ Flora, on the other hand, filed before the Housing and Land Use Regulatory Board (HLURB) Regional Field Office IV a

⁶ Id. at 86.

⁷ Id. at 54-70, as follows:

4/11/92	—	Php5,000.00	7/14/94	—	Php8,140.97
4/26/92	—	Php10,000.00	10/12/94	—	Php8,140.97
5/27/92	—	Php25,000.00	2/3/95	—	Php10,000.00
6/23/92	—	Php15,000.00	3/7/95	—	Php10,000.00
8/8/92	—	Php21,000.00	4/6/95	—	Php10,000.00
12/9/92	—	Php19,040.00	5/12/95	—	Php10,000.00
1/14/93	—	Php8,140.96	6/14/95	—	Php10,000.00
2/15/93	—	Php16,281.92	12/12/95	—	Php8,140.97
5/14/93	—	Php16,281.94	2/20/96	—	Php10,000.00
11/10/93	—	Php8,140.97	3/14/96	—	Php10,000.00
12/14/93	—	Php8,140.97	5/13/96	—	Php10,000.00
1/14/94	—	Php8,140.97	7/15/96	—	Php20,000.00
2/14/94	—	Php8,140.97	7/18/96	—	Php10,000.00
3/14/94	—	Php8,140.97	7/18/96	—	Php10,000.00
4/14/94	—	Php8,140.97	7/18/96	—	Php10,000.00
5/13/94	—	Php8,140.97	7/18/96	—	Php10,000.00
6/14/94	—	Php8,140.97	7/19/96	—	Php10,000.00

⁸ Id. at 87-89.

⁹ Id. at 90-91.

Complaint¹⁰ for the annulment of the contract to sell, recovery of all her payments with interests, damages, and the cancellation of Moldex's license to sell.

Aside from imputing bad faith on the part of Moldex in bloating her unpaid balance, Flora alleged that the contract to sell between her and Moldex is void from its inception. According to Flora, Moldex violated Section 5 of Presidential Decree (PD) No. 957¹¹ when it sold the subject lot to her on April 11, 1992 or before it was issued a license to sell on September 8, 1992.¹² Flora likewise claimed that Moldex violated Section 17 of the same law because it failed to register the contract to sell in the Registry of Deeds.¹³

In its defense, Moldex averred that Flora was only able to pay ₱228,201.03 and thereafter defaulted in her in payment from April 1994 to May 1997. Hence, Flora's subsequent payments were applied to her delinquencies. As regards the alleged bloating, Moldex explained that the amount reflected in Flora's Statement of Account included the arrears and surcharges incurred due to her non-payment of the monthly installments. And since Flora was not able to settle her account, Moldex exercised its right under Republic Act (RA) No. 6552,¹⁴ or the Maceda Law, by cancelling the reservation Agreement/Contract to Sell and forfeiting all payments made. Finally, Moldex alleged that since Flora was at fault, the latter cannot be heard to make an issue out of Moldex's lack of license or demand relief from it.

***Ruling of the Housing and Land Use
Regulatory Board Regional Field
Office IV***

In a Decision¹⁵ dated June 2, 1998, the HLURB Arbiter declared as void the Contract to Sell entered into by the parties because Moldex lacked the required license to sell at the time of the contract's perfection, in violation of Section 5 of PD 957, which provides, viz:

Section 5. *License to sell.* Such owner or dealer to whom has been issued a registration certificate shall not, however, be authorized to sell any subdivision lot or condominium unit in the registered project unless he shall have first obtained a license to sell the project within two weeks from the registration of such project.

¹⁰ Id. at 45-53; Docketed as HLRB Case No. RIV-041497-0722.

¹¹ Known as "The Subdivision and Condominium Buyers' Protective Decree."

¹² CA rollo, p. 190.

¹³ Id. at 227-229, wherein the instrument evidencing the contract to sell was not annotated on the certificate of title.

¹⁴ Also known as the "Realty Installment Buyer Act."

¹⁵ CA rollo, pp. 120-123; penned by Housing and Land Use Arbiter Atty. Gerardo L. Dean.

The Authority, upon proper application therefor, shall issue to such owner or dealer of a registered project a license to sell the project if, after an examination of the registration statement filed by said owner or dealer and all the pertinent documents attached thereto, he is convinced that the owner or dealer is of good repute, that his business is financially stable, and that the proposed sale of the subdivision lots or condominium units to the public would not be fraudulent.

Hence, Moldex was ordered to refund everything Flora had paid, plus legal interest, and to pay attorney's fees. Moreover, Moldex was ordered to pay a fine for its violation of the above provision of PD 957, in accordance with Section 38¹⁶ of the said law. Thus:

WHEREFORE, judgment is hereby rendered declaring the subject Contract to Sell null and void and ordering Respondent to:

1. Reimburse to Complainant the amount of THREE HUNDRED SEVENTY-FIVE THOUSAND TWO HUNDRED NINETY-FIVE PESOS and 47/100 (₱375,295.47) plus interest thereon at the legal rate to be computed from the time payment was actually received by Respondent;

2. Pay to this Board the sum of TEN THOUSAND PESOS (₱10,000.00) as Administrative Fine for violation of Section 38, in relation to Section 5 of PD 957;

3. Pay to Complainant the sum of FIVE THOUSAND PESOS (₱5,000.00) as attorney's fees.

IT IS SO ORDERED.¹⁷

***Ruling of the Board of
Commissioners of the Housing
and Land Use Regulatory Board***

In its Petition for Review¹⁸ before the HLURB Board of Commissioners (HLURB Board), Moldex argued that the absence of license at the time of the contract's perfection does not render it void. Otherwise, a subdivision or condominium developer may use it as a convenient excuse if it wants to back out from a contract.

Moldex also asserted that the purpose of the law in requiring a license is to ensure that the buying public will be dealing with HLURB-recognized subdivision

¹⁶ **Section 38. Administrative Fines.** The Authority may prescribe and impose fines not exceeding ten thousand pesos for violations of the provisions of this Decree or of any rule or regulation thereunder. Fines shall be payable to the Authority and enforceable through writs of execution in accordance with the provisions of the Rules of Court.

¹⁷ CA rollo, pp. 122-123.

¹⁸ Id. at 124-137; Docketed as HLURB Case No. REM-A-980730-0099.

and condominium developers. Here, Moldex has substantially complied with the said requirement of the law because at the time the contract to sell was perfected, its application for a license was already pending and subsequently granted.

Moldex likewise claimed that it was slapped with administrative fine without due process as it was not given the opportunity to defend itself anent its alleged violation of Section 5 of PD 957. Moreover, since the case was not an administrative complaint, the Arbiter has no power to impose an administrative fine. Finally, Moldex asserted that the award of attorney's fees in favor of Flora lacked basis.

Rejecting Moldex contentions, the HLURB Board, in a Decision¹⁹ dated July 29, 1999, dismissed the petition and affirmed *in toto* the Arbiter's Decision. It held that the law is clear on the prerequisite of a license to sell before a developer can sell lots. Since Moldex did not have a license to sell at the time it contracted to sell the subject lot to Flora, the Board agreed with the Arbiter in declaring the contract invalid and in ordering the refund of Flora's payments. The Board also found nothing wrong with the Arbiter's imposition of administrative fine and award of attorney's fees.

Moldex then appealed to the Office of the President (OP).²⁰

Ruling of the Office of the President

In its June 30, 2003 Decision²¹ and September 22, 2003 Order,²² the OP affirmed the finding that the contract to sell was a nullity. Citing Article 5 of the Civil Code, it held that acts executed against the provisions of mandatory or prohibitory laws, like Section 5 of PD 957, are void.

As regards the administrative fine, the OP decreed that Section 38 of PD 957 does not require the filing of an administrative complaint before a fine may be imposed. Also, the requirement of notice and hearing is not a condition *sine qua non* in the HLURB's exercise of its administrative power. Lastly, the OP agreed with the award of attorney's fees in favor of Flora as she was compelled to litigate.

Moldex thus sought relief with the CA *via* a Petition for Review.²³

¹⁹ Id. at 151-153; issued by Commissioners Romulo Q. Fabul, Teresita A. Desierto, and Francisco L. Dagnalan.

²⁰ Id. at 154-170.

²¹ Id. at 6-9; rendered by then Executive Secretary Alberto G. Romulo.

²² Id. at 10.

²³ Id. at 14-44.

Ruling of the Court of Appeals

In its Decision²⁴ of October 31, 2006, the CA agreed with the findings of the tribunals below. It ratiocinated that Moldex's non-observance of the mandatory provision of Section 5 of PD 957 rendered the contract to sell void, notwithstanding Flora's payments and her knowledge that Moldex did not at that time have the requisite license to sell. It also held that the subsequent issuance by the HLURB of a license to sell in Moldex's favor did not cure the defect or result to the ratification of the contract. The CA also affirmed the imposition of administrative fine, holding that Moldex was never denied due process, having been afforded the opportunity to be heard. The dispositive portion of the CA Decision reads:

WHEREFORE, finding no reversible error, the instant petition is DENIED DUE COURSE and accordingly DISMISSED.

SO ORDERED.²⁵

With the denial of its plea for reconsideration in a Resolution²⁶ dated January 23, 2007, Moldex elevated the case to this Court through this Petition for Review on *Certiorari*.

Issue

Moldex only raises the matter of the validity of the contract to sell it entered with Flora, contending that the same remains valid and binding.

Our Ruling

We grant the Petition.

The intrinsic validity of the contract to sell is not affected by the developer's violation of Section 5 of PD 957.

In *Spouses Co Chien v. Sta. Lucia Realty and Development Corporation, Inc.*²⁷ this Court has already ruled that the lack of a certificate of registration and a

²⁴ Id. at 311-319.

²⁵ Id. at 318.

²⁶ Id. at 352-353.

²⁷ 542 Phil. 558 (2007).

license to sell on the part of a subdivision developer does not result to the nullification or invalidation of the contract to sell it entered into with a buyer. The contract to sell remains valid and subsisting. In said case, the Court upheld the validity of the contract to sell notwithstanding violations by the developer of the provisions of PD 957. We held that nothing in PD 957 provides for the nullity of a contract validly entered into in cases of violation of any of its provisions such as the lack of a license to sell. Thus:

A review of the relevant provisions of P.D. 957 reveals that while the law penalizes the selling of subdivision lots and condominium units without prior issuance of a Certificate of Registration and License to Sell by the HLURB, it does not provide that the absence thereof will automatically render a contract, otherwise validly entered, void. The penalty imposed by the decree is the general penalty provided for the violation of any of its provisions. It is well-settled in this jurisdiction that the clear language of the law shall prevail. This principle particularly enjoins strict compliance with provisions of law which are penal in nature, or when a penalty is provided for the violation thereof. With regard to P.D. 957, nothing therein provides for the nullification of a contract to sell in the event that the seller, at the time the contract was entered into, did not possess a certificate of registration and license to sell. Absent any specific sanction pertaining to the violation of the questioned provisions (Secs. 4 and 5), the general penalties provided in the law shall be applied. The general penalties for the violation of any provisions in P.D. 957 are provided for in Sections 38 and 39. As can clearly be seen in the aforequoted provisions, the same do not include the nullification of contracts that are otherwise validly entered.²⁸

The *Co Chien* ruling has been reiterated in several cases and remains to be the prevailing jurisprudence on the matter.²⁹ Thus, the contract to sell entered into between Flora and Moldex remains valid despite the lack of license to sell on the part of the latter at the time the contract was entered into.

Moreover, Flora claims that the contract she entered into with Moldex is void because of the latter's failure to register the contract to sell/document of conveyance with the Register of Deeds, in violation of Section 17³⁰ of PD 957. However, just like in Section 5 which did not penalize the lack of a license to sell with the nullification of the contract, Section 17 similarly did not mention that the developer's or Moldex's failure to register the contract to sell or deed of conveyance with the Register of Deeds resulted to the nullification or invalidity of

²⁸ Id. at 566-567.

²⁹ *Cantemprate v. CRS Realty Development Corporation*, G.R. No. 171399, May 8, 2009, 587 SCRA 492, 510-511; *G.G. Sportswear Manufacturing Corporation v. World Class Properties, Inc.*, G.R. No. 182720, March 2, 2010, 614 SCRA 75, 92-93.

³⁰ Section 17. *Registration*. All contracts to sell, deeds of sale and other similar instruments relative to the sale or conveyance of the subdivision lots and condominium units, whether or not the purchase price is paid in full, shall be registered by the seller in the Office of the Register of Deeds of the province or city where the property is situated.

Whenever a subdivision plan duly approved in accordance with Section 4 hereof, together with the corresponding owner's duplicate certificate of title, is presented to the Register of Deeds for registration, the Register of Deeds shall register the same in accordance with the provisions of the Land Registration Act, as amended x x x

the said contract or deed. Extrapolating the *ratio decidendi* in *Co Chien*, thus, non-registration of an instrument of conveyance will not affect the validity of a contract to sell. It will remain valid and effective between the parties thereto as under PD 1529 or The Property Registration Decree, registration merely serves as a constructive notice to the whole world to bind third parties.³¹

Respondent is nevertheless entitled to a 50% refund under the Maceda Law.

Under the Maceda Law, the defaulting buyer who has paid at least two years of installments has the right of either to avail of the grace period to pay or, the cash surrender value of the payments made:

Section 3. In all transactions or contracts involving the sale or financing of real estate on installment payments, including residential condominium apartments but excluding industrial lots, commercial buildings and sales to tenants under Republic Act Numbered Thirty-eight Hundred Forty-four, as amended by Republic Act Numbered Sixty-three Hundred Eighty-nine, where the buyer has paid at least two years of installments, the buyer is entitled to the following rights in case he defaults in the payment of succeeding installments:

(a) To pay, without additional interest, the unpaid installments due within the total grace period earned by him which is hereby fixed at the rate of one month grace period for every one year of installment payments made: Provided, That this right shall be exercised by the buyer only once in every five years of the life of the contract and its extensions, if any.

(b) If the contract is canceled, the seller shall refund to the buyer the cash surrender value of the payments on the property equivalent to fifty per cent of the total payments made, and, after five years of installments, an additional five per cent every year but not to exceed ninety per cent of the total payments made: Provided, That 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.

Down payments, deposits or options on the contract shall be included in the computation of the total number of installment payments made.

³¹ Section 51. *Conveyance and other dealings by registered owner.* – An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. He may use such forms of deeds, mortgages, leases or other voluntary instruments as are sufficient in law. But no deed, mortgage, lease or other voluntary instrument, except a will purporting to convey or affect registered land shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Register of Deeds to make registration.

The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned, and in all cases under this Decree, the registration shall be made in the Office of the Register of Deeds for the province or city where the land lies. (Emphasis supplied)

It is on record that Flora had already paid more than two years of installments (from March 11, 1992 to July 19, 1996³²) in the aggregate amount of ₱375,295.49. Her last payment was made on July 19, 1996. It is also shown that Flora has defaulted in her succeeding payments. Thereafter, Moldex sent notices to Flora to update her account but to no avail. She could thus no longer avail of the option provided in Section 3(a) of the Maceda Law which is to pay her unpaid installments within the grace period. Besides, Moldex already sent Flora a Notarized Notice of Cancellation of Reservation Application and/or Contract to Sell. Hence, the only option available is Section 3(b) whereby the seller, in this case, Moldex shall refund to the buyer, Flora, the cash surrender value of the payments on the property equivalent to 50% of the total payments made, or ₱187,647.75.³³

WHEREFORE, the Petition is **GRANTED**. The assailed October 31, 2006 Decision and January 23, 2007 Resolution of the Court of Appeals in CA-G.R. SP No. 79651 are hereby **ANNULLED and SET ASIDE**. The contract to sell between petitioner Moldex Realty, Inc. and respondent Flora A. Saberon is declared **CANCELLED** and petitioner Moldex Realty, Inc. is ordered to **REFUND** to respondent Flora A. Saberon the cash surrender value of the amortizations she made equivalent to ₱187,647.75 pursuant to Section 3(b) of Republic Act No. 6552 within 15 days from date of finality of this Decision.

SO ORDERED.



MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson

³² See note 7.

³³ *Active Realty and Development Corporation v. Daroya*, 431 Phil. 753 (2002).



PRESBITERO J. VELASCO, JR.
Associate Justice


ARTURO D. BRION
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice

