



**Republic of the Philippines
Supreme Court
Manila**

SECOND DIVISION

**GOTESCO PROPERTIES,
INC., JOSE C. GO, EVELYN
GO, LOURDES G. ORTIGA,
GEORGE GO, and VICENTE
GO,**

Petitioners,

- versus -

**SPOUSES EUGENIO and
ANGELINA FAJARDO,**

Respondents.

G.R. No. 201167

Present:

CARPIO, J., Chairperson,
DEL CASTILLO,
PEREZ,
MENDOZA,* and
PERLAS-BERNABE, JJ.

Promulgated:

FEB 27 2013

Manila

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DECISION

PERLAS-BERNABE, J.:

Assailed in this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court is the July 22, 2011 Decision¹ and February 29, 2012 Resolution² of the Court of Appeals (CA) in CA-G.R. SP No. 112981, which affirmed with modification the August 27, 2009 Decision³ of the Office of the President (OP).

The Facts

On January 24, 1995, respondent-spouses Eugenio and Angelina Fajardo (Sps. Fajardo) entered into a Contract to Sell⁴ (contract) with petitioner-corporation Gotesco Properties, Inc. (GPI) for the purchase of a 100-square meter lot identified as Lot No. 13, Block No. 6, Phase No. IV of Evergreen Executive Village, a subdivision project owned and developed by

* Designated Acting Member per Special Order No. 1421 dated February 20, 2013.

¹ *Rollo*, pp. 42-50. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Mario V. Lopez and Socorro B. Inting, concurring.

² *Id.* at 53-54.

³ *Id.* at 195-198. Penned by Deputy Executive Secretary for Legal Affairs Natividad G. Dizon, by authority of the Executive Secretary.

⁴ *Id.* at 101-104.

GPI located at Deparo Road, Novaliches, Caloocan City. The subject lot is a portion of a bigger lot covered by Transfer Certificate of Title (TCT) No. 244220⁵ (mother title).

Under the contract, Sps. Fajardo undertook to pay the purchase price of ₱126,000.00 within a 10-year period, including interest at the rate of nine percent (9%) per annum. GPI, on the other hand, agreed to execute a final deed of sale (deed) in favor of Sps. Fajardo upon full payment of the stipulated consideration. However, despite its full payment of the purchase price on January 17, 2000⁶ and subsequent demands,⁷ GPI failed to execute the deed and to deliver the title and physical possession of the subject lot. Thus, on May 3, 2006, Sps. Fajardo filed before the Housing and Land Use Regulatory Board-Expanded National Capital Region Field Office (HLURB-ENCRFO) a complaint⁸ for specific performance or rescission of contract with damages against GPI and the members of its Board of Directors namely, Jose C. Go, Evelyn Go, Lourdes G. Ortiga, George Go, and Vicente Go (individual petitioners), docketed as HLURB Case No. REM-050306-13319.

Sps. Fajardo averred that GPI violated Section 20⁹ of Presidential Decree No. 957¹⁰ (PD 957) due to its failure to construct and provide water facilities, improvements, infrastructures and other forms of development including water supply and lighting facilities for the subdivision project. They also alleged that GPI failed to provide boundary marks for each lot and that the mother title including the subject lot had no technical description and was even levied upon by the Bangko Sentral ng Pilipinas (BSP) without their knowledge. They thus prayed that GPI be ordered to execute the deed, to deliver the corresponding certificate of title and the physical possession of the subject lot within a reasonable period, and to develop Evergreen Executive Village; or in the alternative, to cancel and/or rescind the contract and refund the total payments made plus legal interest starting January 2000.

For their part, petitioners maintained that at the time of the execution of the contract, Sps. Fajardo were actually aware that GPI's certificate of title had no technical description inscribed on it. Nonetheless, the title to the subject lot was free from any liens or encumbrances.¹¹ Petitioners claimed

⁵ Id. at 56-57.

⁶ Id. at 105. Certificate of Full Payment.

⁷ Id. at 108-112. Letters dated September 16, 2002 and February 10, 2006.

⁸ Id. at 94-100.

⁹ Sec. 20. *Time of Completion*. Every owner or developer shall construct and provide the facilities, improvements, infrastructures and other forms of development, including water supply and lighting facilities, which are offered and indicated in the approved subdivision or condominium plans, brochures, prospectus, printed matters, letters or in any form of advertisement, within one year from the date of the issuance of the license for the subdivision or condominium project or such other period of time as may be fixed by the Authority.

¹⁰ Otherwise known as "The Subdivision and Condominium Buyers' Protective Decree."

¹¹ *Rollo*, p. 114. Answer.

that the failure to deliver the title to Sps. Fajardo was beyond their control¹² because while GPI's petition for inscription of technical description (LRC Case No. 4211) was favorably granted¹³ by the Regional Trial Court of Caloocan City, Branch 131 (RTC-Caloocan), the same was reversed¹⁴ by the CA; this caused the delay in the subdivision of the property into individual lots with individual titles. Given the foregoing incidents, petitioners thus argued that Article 1191 of the Civil Code (Code) – the provision on which Sps. Fajardo anchor their right of rescission – remained inapplicable since they were actually willing to comply with their obligation but were only prevented from doing so due to circumstances beyond their control. Separately, petitioners pointed out that BSP's adverse claim/levy which was annotated long after the execution of the contract had already been settled.

The Ruling of the HLURB-ENCRFO

On February 9, 2007, the HLURB-ENCRFO issued a Decision¹⁵ in favor of Sps. Fajardo, holding that GPI's obligation to execute the corresponding deed and to deliver the transfer certificate of title and possession of the subject lot arose and thus became due and demandable at the time Sps. Fajardo had fully paid the purchase price for the subject lot. Consequently, GPI's failure to meet the said obligation constituted a substantial breach of the contract which perforce warranted its rescission. In this regard, Sps. Fajardo were given the option to recover the money they paid to GPI in the amount of ₱168,728.83, plus legal interest reckoned from date of extra-judicial demand in September 2002 until fully paid. Petitioners were likewise held jointly and solidarily liable for the payment of moral and exemplary damages, attorney's fees and the costs of suit.

The Ruling of the HLURB Board of Commissioners

On appeal, the HLURB Board of Commissioners affirmed the above ruling in its August 3, 2007 Decision,¹⁶ finding that the failure to execute the deed and to deliver the title to Sps. Fajardo amounted to a violation of

¹² Id. at 131. Position Paper.

¹³ Id. at 61-63. Amended Decision dated October 8, 2001.

¹⁴ Id. at 64-72. Decision dated July 15, 2003 in CA-G.R. CV No. 72187. The petition for inscription was dismissed for GPI's failure: (a) to implead the adverse claimant, Andres Rustia (representative of BSP); (b) to notify the adjoining owners; and (c) to show why the technical description was in the name of one Andres Pacheco, the averred predecessor-in-interest, whose ownership was not sufficiently established.

¹⁵ Id. at 147-151. Penned by Housing and Land Use Arbitrator Atty. Ma. Lorina J. Rigor.

¹⁶ Id. at 153-154. Signed by Commissioner Romulo Q. Fabul, with Presiding Commissioner Jesus Yap Pang and Ex-Officio Commissioner Joel I. Jacob.

Section 25 of PD 957 which therefore, warranted the refund of payments in favor of Sps. Fajardo.

The Ruling of the OP

On further appeal, the OP affirmed the HLURB rulings in its August 27, 2009 Decision.¹⁷ In so doing, it emphasized the mandatory tenor of Section 25 of PD 957 which requires the delivery of title to the buyer upon full payment and found that GPI unjustifiably failed to comply with the same.

The Ruling of the CA

On petition for review, the CA affirmed the above rulings with modification, fixing the amount to be refunded to Sps. Fajardo at the prevailing market value of the property¹⁸ pursuant to the ruling in *Solid Homes v. Tan (Solid Homes)*.¹⁹

The Petition

Petitioners insist that Sps. Fajardo have no right to rescind the contract considering that GPI's inability to comply therewith was due to reasons beyond its control and thus, should not be held liable to refund the payments they had received. Further, since the individual petitioners never participated in the acts complained of nor found to have acted in bad faith, they should not be held liable to pay damages and attorney's fees.

The Court's Ruling

The petition is partly meritorious.

A. *Sps. Fajardo's right to rescind*

It is settled that in a contract to sell, the seller's obligation to deliver the corresponding certificates of title is simultaneous and reciprocal to the

¹⁷ Id. at 195-198

¹⁸ Id. at 42-50.

¹⁹ G.R. Nos. 145156-57, July 29, 2005, 465 SCRA 137.

buyer's full payment of the purchase price.²⁰ In this relation, Section 25 of PD 957, which regulates the subject transaction, imposes on the subdivision owner or developer the obligation to cause the transfer of the corresponding certificate of title to the buyer upon full payment, to wit:

Sec. 25. Issuance of Title. The owner or developer shall deliver the title of the lot or unit to the buyer upon full payment of the lot or unit. No fee, except those required for the registration of the deed of sale in the Registry of Deeds, shall be collected for the issuance of such title. In the event a mortgage over the lot or unit is outstanding at the time of the issuance of the title to the buyer, the owner or developer shall redeem the mortgage or the corresponding portion thereof within six months from such issuance in order that the title over any fully paid lot or unit may be secured and delivered to the buyer in accordance herewith. (Emphasis supplied.)

In the present case, Sps. Fajardo claim that GPI breached the contract due to its failure to execute the deed of sale and to deliver the title and possession over the subject lot, notwithstanding the full payment of the purchase price made by Sps. Fajardo on January 17, 2000²¹ as well as the latter's demand for GPI to comply with the aforementioned obligations per the letter²² dated September 16, 2002. For its part, petitioners proffer that GPI could not have committed any breach of contract considering that its purported non-compliance was largely impelled by circumstances beyond its control *i.e.*, the legal proceedings concerning the subdivision of the property into individual lots. Hence, absent any substantial breach, Sps. Fajardo had no right to rescind the contract.

The Court does not find merit in petitioners' contention.

A perusal of the records shows that GPI acquired the subject property on March 10, 1992 through a Deed of Partition and Exchange²³ executed between it and Andres Pacheco (Andres), the former registered owner of the property. GPI was issued TCT No. 244220 on March 16, 1992 but the same did not bear any technical description.²⁴ However, no plausible explanation was advanced by the petitioners as to why the petition for inscription (docketed as LRC Case No. 4211) dated January 6, 2000,²⁵ was filed only after almost eight (8) years from the acquisition of the subject property.

²⁰ *Cantemprate v. CRS Realty Development Corporation*, G.R. No. 171399, May 8, 2009, 587 SCRA 492, 513.

²¹ *Rollo*, p. 105.

²² *Id.* at 108-110.

²³ *Id.* at 58-60.

²⁴ *Id.* at 56-57.

²⁵ *Id.* at 61.

Neither did petitioners sufficiently explain why GPI took no positive action to cause the immediate filing of a new petition for inscription *within a reasonable time* from notice of the July 15, 2003 CA Decision which dismissed GPI's earlier petition based on technical defects, this notwithstanding Sps. Fajardo's full payment of the purchase price and prior demand for delivery of title. GPI filed the petition before the RTC-Calocan, Branch 122 (docketed as LRC Case No. C-5026) only on *November 23, 2006*,²⁶ following receipt of the letter²⁷ dated February 10, 2006 and the filing of the complaint on May 3, 2006, alternatively seeking refund of payments. While the court *a quo* decided the latter petition for inscription in its favor,²⁸ there is no showing that the same had attained finality or that the approved technical description had in fact been annotated on TCT No. 244220, or even that the subdivision plan had already been approved.

Moreover, despite petitioners' allegation²⁹ that the claim of BSP had been settled, there appears to be no cancellation of the annotations³⁰ in GPI's favor. Clearly, the long delay in the performance of GPI's obligation from date of demand on September 16, 2002 was unreasonable and unjustified. It cannot therefore be denied that GPI substantially breached its contract to sell with Sps. Fajardo which thereby accords the latter the right to rescind the same pursuant to Article 1191 of the Code, *viz*:

ART. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with articles 1385 and 1388 and the Mortgage Law.

B. Effects of rescission

At this juncture, it is noteworthy to point out that rescission does not merely terminate the contract and release the parties from further obligations to each other, but abrogates the contract from its inception and restores the

²⁶ Id. at 73.

²⁷ Id. at 111-112.

²⁸ Id. at 160-162. Decision dated June 7, 2007.

²⁹ Id. at 130.

³⁰ Id. at 57.

parties to their original positions as if no contract has been made.³¹ Consequently, mutual restitution, which entails the return of the benefits that each party may have received as a result of the contract, is thus required.³² To be sure, it has been settled that the effects of rescission as provided for in Article 1385 of the Code are equally applicable to cases under Article 1191, to wit:

X X X X

Mutual restitution is required in cases involving rescission under Article 1191. This means bringing the parties back to their original status prior to the inception of the contract. Article 1385 of the Civil Code provides, thus:

ART. 1385. Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest; consequently, it can be carried out only when he who demands rescission can return whatever he may be obligated to restore.

Neither shall rescission take place when the things which are the object of the contract are legally in the possession of third persons who did not act in bad faith.

In this case, indemnity for damages may be demanded from the person causing the loss.

This Court has consistently ruled that this provision applies to rescission under Article 1191:

[S]ince Article 1385 of the Civil Code expressly and clearly states that "rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest," the Court finds no justification to sustain petitioners' position that said Article 1385 does not apply to rescission under Article 1191. x x x³³ (Emphasis supplied; citations omitted.)

In this light, it cannot be denied that only GPI benefited from the contract, having received full payment of the contract price plus interests as early as January 17, 2000, while Sps. Fajardo remained prejudiced by the persisting non-delivery of the subject lot despite full payment. As a necessary consequence, considering the propriety of the rescission as earlier discussed, Sps. Fajardo must be able to recover the price of the property

³¹ *Unlad Resources Development Corporation v. Dragon*, G.R. No. 149338, July 28, 2008, 560 SCRA 63, 79.

³² *Goldloop Properties Inc. v. Government Service Insurance System*, G.R. No. 171076, August 1, 2012.

³³ *Supra* note 31, citing *Laperal v. Solid Homes, Inc.*, G.R. No. 130913, June 21, 2005, 460 SCRA 375, 385-387.

pegged at its prevailing market value consistent with the Court's pronouncement in *Solid Homes*,³⁴ viz:

Indeed, there would be unjust enrichment if respondents *Solid Homes, Inc. & Purita Soliven* are made to pay only the purchase price plus interest. It is definite that the value of the subject property already escalated after almost two decades from the time the petitioner paid for it. **Equity and justice dictate that the injured party should be paid the market value of the lot, otherwise, respondents Solid Homes, Inc. & Purita Soliven would enrich themselves at the expense of herein lot owners when they sell the same lot at the present market value.** Surely, such a situation should not be countenanced for to do so would be contrary to reason and therefore, unconscionable. Over time, courts have recognized with almost pedantic adherence that what is inconvenient or contrary to reason is not allowed in law. (Emphasis supplied.)

On this score, it is apt to mention that it is the intent of PD 957 to protect the buyer against unscrupulous developers, operators and/or sellers who reneged on their obligations.³⁵ Thus, in order to achieve this purpose, equity and justice dictate that the injured party should be afforded full recompense and as such, be allowed to recover the prevailing market value of the undelivered lot which had been fully paid for.

C. Moral and exemplary damages, attorney's fees and costs of suit

Furthermore, the Court finds that there is proper legal basis to accord moral and exemplary damages and attorney's fees, including costs of suit. Verily, GPI's unjustified failure to comply with its obligations as above-discussed caused Sps. Fajardo serious anxiety, mental anguish and sleepless nights, thereby justifying the award of moral damages. In the same vein, the payment of exemplary damages remains in order so as to prevent similarly minded subdivision developers to commit the same transgression. And finally, considering that Sps. Fajardo were constrained to engage the services of counsel to file this suit, the award of attorney's fees must be likewise sustained.

D. Liability of individual petitioners

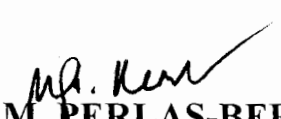
³⁴ Supra note 19.

³⁵ PD 957 states: WHEREAS, numerous reports reveal that many real estate subdivision owners, developers, operators, and/or sellers have reneged on their representations and obligations to provide and maintain properly subdivision roads, drainage, sewerage, water systems, lighting systems, and other similar basic requirements, thus endangering the health and safety of home and lot buyers.

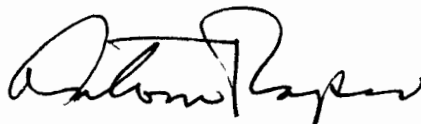
However, the Court finds no basis to hold individual petitioners solidarily liable with petitioner GPI for the payment of damages in favor of Sps. Fajardo since it was not shown that they acted maliciously or dealt with the latter in bad faith. Settled is the rule that in the absence of malice and bad faith, as in this case, officers of the corporation cannot be made personally liable for liabilities of the corporation which, by legal fiction, has a personality separate and distinct from its officers, stockholders, and members.³⁶


WHEREFORE, the assailed July 22, 2011 Decision and February 29, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 112981 are hereby **AFFIRMED WITH MODIFICATION**, absolving individual petitioners Jose C. Go, Evelyn Go, Lourdes G. Ortega, George Go, and Vicente Go from personal liability towards respondent-spouses Eugenio and Angelina Fajardo.

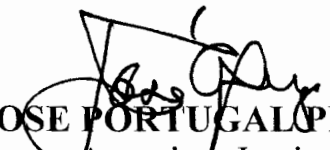
SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


MARIANO C. DEL CASTILLO
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice

³⁶ See *Alert Security and Investigation Agency, Inc. v. Pasawilan*, G.R. No. 182397, September 14, 2011, 657 SCRA 655, 670-671.

ATTESTATION

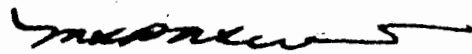
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

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