



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ECE REALTY AND DEVELOPMENT
INC.,

Petitioner,

G.R. No. 196182

Present:

VELASCO, JR., J., *Chairperson*,
PERALTA,
BERSAMIN,*
VILLARAMA, JR., and
REYES, JJ.

- versus -

RACHEL G. MANDAP,

Respondent.

Promulgated:

September 1, 2014

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DECISION

PERALTA, J.:

Before the Court is a petition for review on *certiorari* assailing the Decision¹ and Resolution² of the Court of Appeals (CA), dated July 21, 2010 and March 15, 2011, respectively, in CA-G.R. SP No. 100741.

The factual and procedural antecedents of the case are as follows:

Herein petitioner is a corporation engaged in the building and development of condominium units. Sometime in 1995, it started the construction of a condominium project called Central Park Condominium

* Designated Acting Member in lieu of Associate Justice Francis H. Jardeleza, per Special Order No. 1777 dated September 1, 2014.

¹ Penned by Associate Justice Stephen C. Cruz with Associate Justices Isaias P. Dicdican and Danton Q. Bueser concurring; Annex "1" to Petition, *rollo* pp. 28-37.

² Annex "2" to Petition, *id.* at 40-42.

Building located along Jorge St., Pasay City. However, printed advertisements were made indicating therein that the said project was to be built in Makati City.³ In December 1995, respondent, agreed to buy a unit from the above project by paying a reservation fee and, thereafter, downpayment and monthly installments. On June 18, 1996, respondent and the representatives of petitioner executed a Contract to Sell.⁴ In the said Contract, it was indicated that the condominium project is located in Pasay City.

More than two years after the execution of the Contract to Sell, respondent, through her counsel, wrote petitioner a letter dated October 30, 1998 demanding the return of ₱422,500.00, representing the payments she made, on the ground that she subsequently discovered that the condominium project was being built in Pasay City and not in Makati City as indicated in its printed advertisements.⁵

However, instead of answering respondent's letter, petitioner sent her a written communication dated November 30, 1998 informing her that her unit is ready for inspection and occupancy should she decide to move in.⁶

Treating the letter as a form of denial of her demand for the return of the sum she had paid to petitioner, respondent filed a complaint with the Expanded National Capital Region Field Office (*ENCRFO*) of the Housing and Land Use Regulatory Board (*HLURB*) seeking the annulment of her contract with petitioner, the return of her payments, and damages.⁷

On September 30, 2005, the ENCRFO dismissed respondent's complaint for lack of merit and directed the parties to resume the fulfillment of the terms and conditions of their sales contract. The ENCRFO held that respondent "failed to show or substantiate the legal grounds that consist of a fraudulent or malicious dealing with her by the [petitioner], such as, the latter's employment of insidious words or machinations which induced or entrapped her into the contract and which, without them, would not have encouraged her to buy the unit."⁸

Respondent filed a petition for review with the HLURB Board of Commissioners questioning the decision of the ENCRFO. On April 25, 2006, the HLURB Board of Commissioners rendered judgment dismissing respondent's complaint and affirming the decision of the ENCRFO.⁹ Giving

³ CA *rollo*, pp. 35-36.

⁴ *Id.* at 37-41.

⁵ *Id.* at 44-45.

⁶ *Id.* at 46.

⁷ *Id.* at 30-34.

⁸ *Id.* at 26-29.

⁹ *Id.* at 23-25.

credence to the Contract to Sell executed by petitioner and respondent, the Board of Commissioners held that when the parties reduced their contract in writing, their rights and duties must be found in their contract and neither party can place a greater obligation than what the contract provides.

Aggrieved, respondent filed an appeal with the Office of the President. On June 21, 2007, the Office of the President dismissed respondent's appeal and affirmed *in toto* the decision of the HLURB Board of Commissioners.¹⁰ Respondent filed a Motion for Reconsideration,¹¹ but the Office of the President denied it in a Resolution¹² dated August 29, 2007.

Respondent then filed a petition for review with the CA.¹³

On July 21, 2010, the CA promulgated its assailed Decision, the dispositive portion of which reads, thus:

WHEREFORE, premises considered, We hereby **REVERSE** and **SET ASIDE** the Decision and the Resolution dated June 21, 2007 and August 29, 2007, respectively, issued by the Office of the President in **OP Case No. 06-F-224**. Accordingly, the contract between Rachel G. Mandap and ECE Realty is hereby **ANNULLED**. Consequently, ECE Realty is ordered to return the total amount of ₱422,500.00 representing payments made by Rachel G. Mandap on reservation fee, [downpayment] and monthly installments on the condominium unit, with legal interest thereon at twelve percent (12%) *per annum* from the date of filing of action until fully paid.

No costs.

SO ORDERED.¹⁴

The CA held that petitioner employed fraud and machinations to induce respondent to enter into a contract with it. The CA also expressed doubt on the due execution of the Contract to Sell between the parties.

Petitioner filed a Motion for Reconsideration, but the CA denied it in its March 15, 2011 Resolution.

Hence, the present petition for review on *certiorari* with the following Assignment of Errors:

¹⁰ *Id.* at 18-22.

¹¹ *Id.* at 13-17.

¹² *Id.* at 12.

¹³ *Id.* at 2-11.

¹⁴ *Rollo*, p. 36. (Emphasis in the original)

I

The Court of Appeals gravely erred in ruling that there was fraud in the execution of the subject contract to sell and declaring the same as annulled and ordering petitioner ECE to refund all payments made by respondent.

II

The Court of Appeals erred in ordering the award of legal interest at the rate of 12% per annum starting from the filing of the complaint until fully paid when legal interest should have been pegged at 6%.¹⁵

The Court finds the petition meritorious.

The basic issue in the present case is whether petitioner was guilty of fraud and if so, whether such fraud is sufficient ground to nullify its contract with respondent.

Article 1338 of the Civil Code provides that “[t]here is fraud when through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to.”

In addition, under Article 1390 of the same Code, a contract is voidable or annulable “where the consent is vitiated by mistake, violence, intimidation, undue influence or fraud.”

Also, Article 1344 of the same Code provides that “[i]n order that fraud may make a contract voidable, it should be serious and should not have been employed by both contracting parties.”

Jurisprudence has shown that in order to constitute fraud that provides basis to annul contracts, it must fulfill two conditions.

First, the fraud must be *dolo causante* or it must be fraud in obtaining the consent of the party.¹⁶ This is referred to as causal fraud. The deceit must be serious. The fraud is serious when it is sufficient to impress, or to lead an ordinarily prudent person into error; that which cannot deceive a prudent person cannot be a ground for nullity.¹⁷ The circumstances of each case should be considered, taking into account the personal conditions of the victim.¹⁸

¹⁵ *Id.* at 17.

¹⁶ *Tankeh v. Development Bank of the Philippines*, G.R. No. 171428, November 11, 2013, 709 SCRA 19, 50.

¹⁷ *Viloria v. Continental Airlines, Inc.*, G.R. No. 188288, January 16, 2012, 663 SCRA 57, 81 citing *Sierra v. Court of Appeals*, G.R. No. 90270, July 24, 1992, 211 SCRA 785, 793.

¹⁸ *Id.* at 81-82.

Second, the fraud must be proven by clear and convincing evidence and not merely by a preponderance thereof.¹⁹

In the present case, this Court finds that petitioner is guilty of false representation of a fact. This is evidenced by its printed advertisements indicating that its subject condominium project is located in Makati City when, in fact, it is in Pasay City. The Court agrees with the Housing and Land Use Arbiter, the HLURB Board of Commissioners, and the Office of the President, in condemning petitioner's deplorable act of making misrepresentations in its advertisements and in issuing a stern warning that a repetition of this act shall be dealt with more severely.

However, insofar as the present case is concerned, the Court agrees with the Housing and Land Use Arbiter, the HLURB Board of Commissioners, and the Office of the President, that the misrepresentation made by petitioner in its advertisements does not constitute causal fraud which would have been a valid basis in annulling the Contract to Sell between petitioner and respondent.

In his decision, the Housing and Land Use Arbiter found that respondent failed to show that "the essential and/or moving factor that led the [respondent] to give her consent and agree to buy the unit was precisely the project's advantageous or unique location in Makati [City] – to the exclusion of other places or city x x x." Both the HLURB Board of Commissioners and the Office of the President affirmed the finding of the Arbiter and unanimously held that respondent failed to prove that the location of the said project was the causal consideration or the principal inducement which led her into buying her unit in the said condominium project. The Court finds no cogent reason to depart from the foregoing findings and conclusion of the above agencies.

Indeed, evidence shows that respondent proceeded to sign the Contract to Sell despite information contained therein that the condominium is located in Pasay City. This only means that she still agreed to buy the subject property regardless of the fact that it is located in a place different from what she was originally informed. If she had a problem with the property's location, she should not have signed the Contract to Sell and, instead, immediately raised this issue with petitioner. But she did not. As correctly observed by the Office of the President, it took respondent more than two years from the execution of the Contract to Sell to demand the return of the amount she paid on the ground that she was misled into believing that the subject property is located in Makati City. In the meantime, she continued to make payments.

¹⁹ *Tankeh v. Development Bank of the Philippines*, *supra* note 16, at 51; *Viloria v. Continental Airlines*, *supra* note 17.

The Court is not persuaded by the ruling of the CA which expresses doubt on the due execution of the Contract to Sell. The fact remains that the said Contract to Sell was notarized. It is settled that absent any clear and convincing proof to the contrary, a notarized document enjoys the presumption of regularity and is conclusive as to the truthfulness of its contents.²⁰ Neither does the Court agree that the presumption of regularity accorded to the notarized Contract to Sell was overcome by evidence to the contrary. Respondent's allegation that she signed the said Contract to Sell with several blank spaces, and which allegedly did not indicate the location of the condominium, was not supported by proof. The basic rule is that mere allegation is not evidence and is not equivalent to proof.²¹ In addition, the fact that respondent made several payments prior to the execution of the subject Contract to Sell is not the kind of evidence needed to overcome such presumption of regularity.

With respect to the foregoing discussions, the Court quotes with approval the disquisition of the Office of the President on the credibility of the claims of petitioner and respondent, to wit:

x x x x

We give credence to the version of [petitioner] ECE Realty considering that there is no cogent reason why this Office could not rely on the truth and veracity of the notarized Contract to Sell. "Being a notarized document, it had in its favor the presumption of regularity, and to overcome the same, there must be evidence that is clear, convincing and more than merely preponderant; otherwise, the document should be upheld. [Respondent] Mandap failed to overcome this presumption.

The contention that Mandap signed the Contract to Sell in-blank, and [that] it was ECE Realty that supplied the details on it is remarkably threadbare for no evidence was submitted to support such claim in all the proceedings before the ENCRFO and the Board of Commissioners. It is only now that Mandap has belatedly submitted the Affidavit of Lorenzo G. Tipon. This cannot be done without running afoul with the well-settled principle barring a party from introducing fresh defenses and facts at the appellate stage. Moreover, the infirmity of affidavits as evidence is a matter of judicial experience. It is settled that no undue importance shall be given to a sworn statement or affidavit as a piece of evidence because being taken *ex parte*, an affidavit is almost always incomplete and inaccurate. Thus, absent, as here, of (sic) any controverting evidence, it is reasonable to presume that Mandap knew the contents of the Contract to Sell which was executed with legal formalities. The ruling in *Bernardo vs. Court of Appeals* is enlightening in this wise:

x x x. The rule that one who signs a contract is presumed to know its contents has been applied even to contract of illiterate persons on the ground that if such persons are unable to read, they are negligent if they fail to

²⁰ *Palada v. Solidbank Corporation*, G.R. No. 172227, June 29, 2011, 653 SCRA 10, 21.

²¹ *Villanueva v. Philippine Daily Inquirer, Inc.*, 605 Phil. 926, 937 (2009).

have the contract read to them. If a person cannot read the instrument, it is as much his duty to procure some reliable persons to read and explain it to him, before he signs it, as it would be to read it before he signed it if he were able to do so and his failure to obtain a reading and explanation of it is such gross negligence as will estop him from avoiding it on the ground that he was ignorant of its contents.²²

In any case, even assuming that petitioner's misrepresentation consists of fraud which could be a ground for annulling their Contract to Sell, respondent's act of affixing her signature to the said Contract, after having acquired knowledge of the property's actual location, can be construed as an implied ratification thereof.

Ratification of a voidable contract is defined under Article 1393 of the Civil Code as follows:

Art. 1393. Ratification may be effected expressly or tacitly. It is understood that there is a tacit ratification if, with knowledge of the reason which renders the contract voidable and such reason having ceased, the person who has a right to invoke it should execute an act which necessarily implies an intention to waive his right.

Implied ratification may take diverse forms, **such as by silence or acquiescence; by acts showing approval or adoption of the contract;** or by acceptance and retention of benefits flowing therefrom.²³

Under Article 1392 of the Civil Code, "ratification extinguishes the action to annul a voidable contract." In addition, Article 1396 of the same Code provides that "[r]atification cleanses the contract from all its defects from the moment it was constituted."


Hence, based on the foregoing, the findings and conclusions of the Housing and Land Use Arbiter, the HLURB Board of Commissioners and the Office of the President, should be sustained.

WHEREFORE, the instant petition is **GRANTED**. The Decision and Resolution of the Court of Appeals, dated July 21, 2010 and March 15, 2011, respectively, are **REVERSED** and **SET ASIDE**. The September 30, 2005 Decision of the Expanded National Capital Region Field Office of the Housing and Land Use Regulatory Board, which dismisses respondent's complaint and directs petitioner and respondent to resume the fulfillment of their sales contract, is **REINSTATED**.


²² CA rollo, p. 20. (Citations omitted)

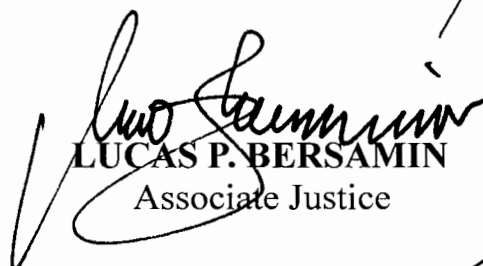
²³ *Viloria v. Continental Airlines, Inc.*, *supra*, note 17, at 83.

SO ORDERED.

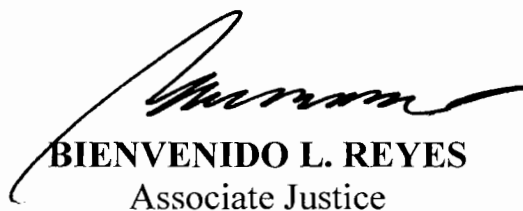

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

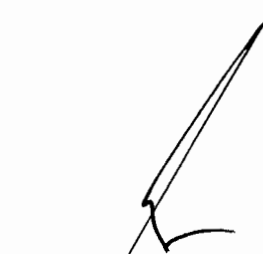

LUCAS P. BERSAMIN
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


BIENVENIDO L. REYES
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.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

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.

A handwritten signature in black ink, appearing to read 'Antonio T. Carpio', with a stylized, cursive script.

ANTONIO T. CARPIO
Acting Chief Justice