Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

TAGAYTAY REALTY CO., INC.,
Petitioner,

- versus -

ARTURO G. GACUTAN,
Respondent.

G.R. No. 160033

Present:

SERENO, *C.J.*,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:

JUL 0 1 2015

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D E C I S I O N

BERSAMIN, *J.*:

The Court reiterates the right of the installment buyer of a subdivision lot to withhold payment of his amortizations for the duration that the subdivision developer has not complied with its contractual undertaking to build the promised amenities in the subdivision.

The Case

On appeal by the subdivision developer is the decision promulgated on May 29, 2003,[1] whereby the Court of Appeals (CA) upheld the ruling in favor of the installment buyer issued on December 6, 2001 by the Office of the President (OP).[2] By such ruling, the OP affirmed the July 14, 1997 decision [3] rendered by the Housing and Land Use Regulatory

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1 *Rollo*, pp. 55-61; penned by Associate Justice Sergio L. Pestaño (retired/deceased), with the concurrence of Associate Justice Bernardo P. Abesamis (retired) and Associate Justice Noel G. Tijam.
2 Id. at 142-145.
3 Id. at 114-120.

Board (HLURB) Board of Commissioners adopting the HLURB Arbiter's decision dated March 22, 1995.[4]

Antecedents

On September 6, 1976, the respondent entered into a contract to sell with the petitioner for the purchase on installment of a residential lot with an area of 308 square meters situated in the Foggy Heights Subdivision then being developed by the petitioner.[5] Earlier, on June 30, 1976, the petitioner executed an express undertaking in favor of the respondent, as follows:[6]

> We hereby undertake to complete the development of the roads, curbs, gutters, drainage system, water and electrical systems, as well as all the amenities to be introduced in FOGGY HEIGHTS SUBDIVISION, such as, swimming pool, pelota court, tennis and/or basketball court, bath house, children's playground and a clubhouse within a period of two years from 15 July 1976, on the understanding that failure on their part to complete such development within the stipulated period shall give the VENDEE the option to suspend payment of the monthly amortization on the lot/s he/she purchased until completion of such development without incurring penalty interest.
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> It is clearly understood, however, that the period or periods during which we cannot pursue said development by reason of any act of God, any act or event constituting force majeure or fortuitous event, or any restriction, regulation, or prohibition by the government or any of its branches or instrumentalities, shall suspend the running of said 2-year period and the running thereof shall resume upon the cessation of the cause of the stoppage or suspension of said development.

In his letter dated November 12, 1979,[7] the respondent notified the petitioner that he was suspending his amortizations because the amenities had not been constructed in accordance with the undertaking. Despite receipt of the respondent's other communications requesting updates on the progress of the construction of the amenities so that he could resume his amortization,[8] the petitioner did not reply. Instead, on June 10, 1985, the petitioner sent to him a statement of account demanding the balance of the price, plus interest and penalty.[9] He refused to pay the interest and penalty.

On October 4, 1990, the respondent sued the petitioner for specific performance in the HLURB, praying that the petitioner be ordered to accept

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4 Id. at 101-109.
5 Id. at 75-76.
6 Id. at 77.
7 Id. at 78.
8 Id. at 79-80.
9 Id. at 100.

his payment of the balance of the contract without interest and penalty, and to deliver to him the title of the property.[10]

In its answer,[11] the petitioner sought to be excused from performing its obligations under the contract, invoking Article 1267 of the *Civil Code* as its basis. It contended that the depreciation of the Philippine Peso since the time of the execution of the contract, the increase in the cost of labor and construction materials, and the increase in the value of the lot in question were valid justifications for its release from the obligation to construct the amenities.

In its position paper,[12] the petitioner stated that it had purposely suspended the construction of the amenities which would have deteriorated at any rate because its lot buyers had not constructed their houses in the subdivision.

On March 22, 1995, the HLURB Arbiter ruled in favor of the respondent,[13] to wit:

> WHEREFORE, premises considered, respondents are hereby ordered to accept the payment of the balance of the contract price in the amount of Eight Thousand Five Hundred Eighty Seven and 80/100 Pesos (₱8,587.80) without regular and penalty interest and, thereafter, to execute and deliver to complainant the absolute deed of sale covering the sale of property subject of this complaint, together with the valid title over the said lot.[14]

The petitioner appealed, but the HLURB Board of Commissioners affirmed the ruling of the HLURB Arbiter on July 14, 1997.[15] Upon the denial of its motion for reconsideration, the petitioner appealed to the OP.[16]

On December 6, 2001, the OP upheld the decision of the HLURB Board of Commissioners.[17] The OP later denied the petitioner's motion for reconsideration.[18]

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10 Id. at 73-74.
11 Id. at 83-85.
12 Id. at 86- 99.
13 Id. at 101-109.
14 Id. at 108-109.
15 Id. at 114-120.
16 Id. at 121-133
17 Id. at 142-145.
18 Id. at 152.

On appeal, the CA affirmed the OP through the assailed decision promulgated on May 29, 2003,[19] disposing:

> **WHEREFORE**, premises considered and finding no reversible error in the challenged Decision and Order dated December 6, 2001, and July 1, 2002, respectively, of the Office of the President in OP Case No. 98-C-8261 said Decision and Order are **AFFIRMED** and **UPHELD**, and the petition is **DISMISSED** for lack of merit.
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> **SO ORDERED**.[20]

The CA denied the petitioner's motion for reconsideration.[21]

Issues

In this appeal by petition for review on *certiorari*, the petitioner contends that the CA erred in affirming the incorrect findings of the OP in a way probably not in accord with law; and in declaring that the respondent was not guilty of laches.

The petitioner submits that the CA, by observing that the petitioner did not fulfill its obligation to finish the subdivision project and that it had itself admitted not having finished the project, did not consider that it must be discharged because extraordinary and unforeseeable circumstances had rendered its duty to perform its obligation so onerous that to insist on the performance would have resulted in its economic ruin; that the Court should consider the practical circumstances surrounding the construction of the luxurious amenities of the project; that the luxurious amenities of the project would only be exposed to the elements, resulting in wastage and loss of resources, because none of the lot buyers had constructed any house in the subdivision; that delaying the construction for that reason was reasonable on its part considering that no one would have benefited from the amenities anyway, and was also a sound business practice because the construction would be at great cost to it as the developer; that another justification for the non-construction was its having suffered extreme economic hardships during the political and economic turmoil of the 1980s that the parties did not foresee at the time they entered into their contract; that under Article 1267 of the *Civil Code*, equity demanded a certain economic equilibrium between the prestation and the counter-prestation, and did not permit the unlimited impoverishment of one party for the benefit of the other by the excessive rigidity of the principle of the obligatory force of contracts; that as the debtor, it should be partially excused or altogether released from its

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19 Supra note 1.
20 Id. at 60.
21 *Rollo*, p. 72.

obligations due to the extraordinary obstacles to the prestation, which could be overcome only by a sacrifice that would be absolutely disproportionate, or with very grave risks, or by violating some important duties; and that the CA thereby erred in closing its eyes to the realities, and in opting not to apply the principles of equity in favor of applying the terms of the agreement even if doing so would cause the economic ruin of one of the parties.

The petitioner further submits that the CA erred in declaring that it was apparent that there was no "unreasonable failure" on the part of the respondent because he had made timely written demands on November 12, 1979, February 11, 1983, March 20, 1984, June 24, 1985 and November 16, 1988. It urges that the CA's error consisted in its confusing laches as the failure to assert a right, notwithstanding that jurisprudence has considered laches to be the unreasonable failure to assert a claim that, by exercising due diligence, could or should be done earlier; that laches was not, in legal significance, mere delay, but a delay that worked a disadvantage to another; that the letters of the respondent could hardly be construed as motivated by prudence and good faith; that the economy had worsened between 1979 and 1988, and such worsening became a factor that raised the cost of real estate development by leaps and bounds; and that the respondent, whose actuations smacked of bad faith and opportunism at its expense, had then appeared out of nowhere to seize the opportunity presented by the real estate boom of the early 1990s, despite having been silent and having failed to act for a long time, evincing his belief of not having any right at all.

In his comment, the respondent asserts that the submissions of the petitioner did not warrant the non-construction of the amenities; that Article 1159 of the *Civil Code* provides that obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith; that neither party could unilaterally and upon his own exclusive volition escape his obligations under the contract unless for causes sufficient in law and pronounced adequate by a competent tribunal; that correlative to Article 1159 is Article 1308 of the *Civil Code* which holds that the validity or compliance of a contract cannot be left to the will of one party; that a party could not revoke or renounce a contract without the consent of the other, nor could a party have a contract set aside on the ground that he had made a bad bargain; that he was not liable for the interest because it was not expressly stipulated in the contract pursuant to Article 1956 of the *Civil Code*; that no penalty should be imposed on him by virtue of the undertaking clearly stating that the two-year period for the completion of the amenities would be suspended only if the development could not be pursued "by reason of any act God, any act or event constituting force majeure or fortuitous event; or any restriction, regulation, or prohibition by the government or any of its branches or instrumentalities;" that the reason given by the petitioner that "the contemplated amenities

could not be constructed as they would have only been left exposed to the elements and would have come to naught on account of the fact that there are no persons residing thereat" did not justify or excuse the non-construction of the amenities; that the petitioner could not seek refuge in Article 1267 of the *Civil Code* by merely alleging inflation without laying down the legal and factual basis to justify the release from its obligation; that his written extrajudicial demands negated the defense of laches; that he did not fail to assert his right, or abandon it; and that his written extrajudicial demands wiped out the period that had already lapsed and started the prescriptive period anew.

In short, was the petitioner released from its obligation to construct the amenities in the Foggy Heights Subdivision?

Ruling of the Court

The appeal is partly meritorious.

1.
Petitioner was not relieved from its statutory and contractual obligations to complete the amenities

The arguments of the petitioner to be released from its obligation to construct the amenities lack persuasion.

To start with, the law is not on the side of the petitioner.

Under Section 20 of Presidential Decree No. 957, all developers, including the petitioner, are mandated to complete their subdivision projects, including the amenities, within one year from the issuance of their licenses. The provision reads:

> Section 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 maybe fixed by the Authority.

Pursuant to Section 30 of Presidential Decree No. 957,[22] the amenities, once constructed, are to be maintained by the developer like the petitioner until a homeowners' association has been organized to manage the amenities.

There is no question that the petitioner did not comply with its legal obligation to complete the construction of the subdivision project, including the amenities, within one year from the issuance of the license. Instead, it unilaterally opted to suspend the construction of the amenities to avoid incurring maintenance expenses. In so opting, it was not driven by any extremely difficult situation that would place it at any disadvantage, but by its desire to benefit from cost savings. Such cost-saving strategy dissuaded the lot buyers from constructing their houses in the subdivision, and from residing therein.

Considering that the petitioner's unilateral suspension of the construction of the amenities was intended to save itself from costs, its plea for relief from its contractual obligations was properly rejected because it would thereby gain a position of advantage at the expense of the lot owners like the respondent. Its invocation of Article 1267 of the *Civil Code*, which provides that "(w)hen the service has become so difficult as to be manifestly beyond the contemplation of the parties, the obligor may also be released therefrom in whole or in part," was factually unfounded. For Article 1267 to apply, the following conditions should concur, namely: (*a*) the event or change in circumstances could not have been foreseen at the time of the execution of the contract; (*b*) it makes the performance of the contract extremely difficult but not impossible; (*c*) it must not be due to the act of any of the parties; and (*d*) the contract is for a future prestation.[23] The requisites did not concur herein because the difficulty of performance under Article 1267 of the *Civil Code* should be such that one party would be placed at a disadvantage by the unforeseen event.[24] Mere inconvenience, or unexepected impediments, or increased expenses did not suffice to relieve the debtor from a bad bargain.[25]

And, secondly, the unilateral suspension of the construction had preceded the worsening of economic conditions in 1983; hence, the latter could not reasonably justify the petitioner's plea for release from its statutory and contractual obligations to its lot buyers, particularly the respondent. Besides, the petitioner had the legal obligation to complete the

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[22] Section 30. Organization of Homeowners Association.- The owner or developer of a subdivision project or condominium project shall initiate the organization of a homeowners association among the buyers and residents of the projects for the purpose of promoting and protecting their mutual interest.

[23] IV Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, p. 347-348.

[24] Id. at 347-348.

[25] IV Paras, *Civil Code of the Philippines Annotated*, 2008, 17th Edition, citing *Castro v. Longa*, G.R. No. L-2152 and L-2153, July 31, 1951.

amenities within one year from the issuance of the license (under Section 20 of Presidential Decree No. 957), or within two years from July 15, 1976 (under the express undertaking of the petitioner). Hence, it should have complied with its obligation by July 15, 1978 at the latest, long before the worsening of the economy in 1983.

2.
Respondent as instalment buyer should pay the annual interest but not the penalty

The respondent insists that his unpaid obligation was only the balance of the contract price amounting to ₱8,587.80.[26] He declines to pay the interest and the penalty on the ground that the petitioner had not constructed the amenities as promised under the undertaking.

The Court holds that the respondent was liable for the stipulated annual interest of 12% but not the penalty.

Paragraph 2.b, first sentence, of the contract to sell stipulated the 12% annual interest, as follows:

> x x x x
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> 2.) The VENDEE/S hereby agree/s to pay the purchase price of TWENTY SEVEN THOUSAND SEVEN HUNDRED TWENTY ONLY PESOS (₱27,720.00), Philippine Currency, at the office of the VENDOR at Makati, Rizal, without necessity of demand or the services of a collector in the following manner:
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> a.) As downpayment, the amount of FOUR THOUSAND ONE HUNDRED FIFTY EIGHT ONLY PESOS (₱4,158.00) upon the execution of the contract.
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> b.) The balance of TWENTY THREE THOUSAND FIVE HUNDRED SIXTY TWO ONLY PESOS (₱23,562.00) in eighty four (84) consecutive monthly installments of FOUR HUNDRED FIFTEEN & 95/100 PESOS (₱415.95) each installment, **including interest at the rate of twelve (12%) percent per annum on all outstanding balances, the first of such monthly installment to be paid on or before the 6th day of each month, beginning October, 1976**. It is understood that unpaid installments or installments in arrears shall earn a penalty interest of one (1%) percent per month until fully paid.[27] (Bold underscoring supplied for emphasis of the relevant portion)
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> x x x x

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[26] ₱8,587.80 by subtracting from the total contract price of ₱27,720.00 the sum of his paid downpayment of ₱4,158.00 and the three-year paid installments of ₱14,974.20.

[27] *Rollo*, p. 75.

Accordingly, the parties agreed to an 84-month or seven-year term of installment on the net contract price of ₱23,562.00 at the monthly rate of ₱415.95, the monthly rate being inclusive of the 12% interest *per annum*. Such monthly installment of ₱415.95 included the principal and the annual interest, the latter being legally termed the amortization interest. The annual interest was designed to compensate the petitioner for waiting seven years before receiving the total principal amount. As such, the total cost of the lot purchased by the respondent for the seven-year term would be ₱39,097.80, which amount would be inclusive of the contract price of the lot and the amortization interest.[28]

The imposition of the annual or amortization interest on the price for the purchase of a lot on installment was valid and enforceable. As the Court has explained in *Relucio v. Brillante-Garfin*:[29]

> x x x The contract price of ₱10,800.00 may thus be seen to be the cash price of the subdivision lots, that is, the amount payable if the price of the lots were to be paid in *cash* and in *full* at the execution of the contract; it is *not* the amount that the vendor will have received in the aggregate after fifteen (15) years if the vendee shall have religiously paid the monthly installments. The *installment price,* upon the other hand, of the subdivision lots-the sum total of the monthly installments (*i.e.*, ₱16,101.00) typically, as in the instant case, has an interest component which compensates the vendor for waiting fifteen (15) years before receiving the total principal amount of ₱10,600.00. Economically or financially, ₱10,600.00 delivered in full today is simply worth much more than a long series of small payments totalling, after fifteen (15) years, ₱10,600.00. For the vendor, upon receiving the full cash price, could have deposited that amount in a bank, for instance, and earned interest income which at six percent (6%) per year and for fifteen (15) years, would precisely total ₱5,501.00 (the difference between the installment price of ₱16,101.00 —and the cash price of ₱10,600.00) To suppose, as private respondent argues, that mere prompt payment of the monthly installments as they fell due would obviate application of the interest charge of six percent (6%) per annum, is to ignore that simple economic fact. That economic fact is, of course, recognized by law, which authorizes the payment of interest when contractually stipulated for by the parties or when implied in recognized commercial custom or usage.
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> Vendor and vendee are legally free to stipulate for the payment of either the cash *price* of a subdivision lot or its installment price. Should the vendee opt to purchase a subdivision lot via the installment payment system, he is in effect paying interest on the cash price, whether the fact and rate of such interest payment is disclosed in the contract or not. The contract for the purchase and sale of a piece of land on the installment

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28 ₱415.95 monthly amortization x 84 months = ₱34,939.80 + ₱4,158.00 downpayment.

29 G.R. No. 76518, July 13, 1990, 187 SCRA 405.

> payment system in the case at bar is not only quite lawful; it also reflects a very wide spread usage or custom in our present day commercial life.[30]

In view of the foregoing, the respondent's insistence on condoning his liability for the contractually-stipulated 12% annual amortization interest is unwarranted. The condonation will impose a harsh burden upon the petitioner, even as it will result in the unjust enrichment of the respondent. We cannot ignore that the former has waited for a very long period of time before it would be able to use the proceeds of the lot sold to the respondent.

The 1% monthly penalty sought to be charged on the arrears for failure to pay the amortizations on time until the arrears would be fully paid was also stipulated in paragraph 2.b, second sentence, of the contract to sell, *supra*. But such stipulation could not be enforced against the respondent because the petitioner waived the penalty should the subdivision development not be completed by July 15, 1978. The waiver should stand considering that the suspension of the amortization payment in 1979 was excusable on account of the failure to construct the amenities by July 15, 1978, and considering further that the petitioner did not contest the suspension of payment of the monthly amortization.[31]

Under *Tamayo v. Huang*,[32] the buyer has the option to demand the reimbursement of the total amounts paid, or to await the further development of the subdivision; when the buyer opts for the latter alternative, he may suspend the payment of his installments until the time when the developer has fulfilled its obligation to him; should the developer persist in refusing to complete the facilities, the National Housing Authority may take over or cause the development and completion of the subdivision at the expense of the developer.[33]

In this case, the respondent initially opted to suspend the payment of his amortizations, but then offered to complete the payment upon realizing that the petitioner did not anymore intend to build the amenities. His payments from October 6, 1976 to October 6, 1979 corresponded to 36 monthly amortizations totaling ₱14,974.20, leaving 48 installments unpaid totaling ₱19,965.60.[34]

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30 Id. at 408-409.

31 *Rollo*, p. 88.

32 G.R. No. 164136, January 25, 2006, 480 SCRA 156, 165-166.

33 Section 35 of Presidential Decree No. 957 provides:

Section 35. Take-Over Development.- The Authority, may take over or cause the development and completion of the subdivision or condominium project at the expense of the owner or developer, jointly or severally, in cases where the owner or developer has refused or failed to develop or complete the development of the project as provided for in this Decree.

34 48 months x ₱415.95 monthly amortization = ₱19, 965.60.

3.
Claim of respondent was not barred by laches

Laches is the failure of or neglect for an unreasonable and unexplained length of time to do that which by exercising due diligence could or should have been done earlier, or to assert a right within a reasonable time. It warrants a presumption that the party entitled thereto has either abandoned it or declined to assert it.[35]

The CA correctly declared that laches did not set in to bar the claim of the respondent because he had made periodic written demands upon the petitioner that indicated that he had not abandoned or declined to assert the claim. In 1979, he manifested the intention to avail himself of his right to suspend the payment of his amortizations pursuant to the undertaking. Since then until 1984, he had continuously requested the petitioner for updates on the progress of the construction of the amenities so that he could resume his amortizations. The petitioner did not respond to his requests. His efforts to have the petitioner construct the amenities so that he would already pay for the lot demonstrated his prudence and alacrity in insisting on his rights, negating any hint of bad faith or of lack of diligence on his part.

WHEREFORE, the Court **AFFIRMS** the judgment promulgated on May 29, 2003 subject to the **MODIFICATIONS**, as follows: (1) the respondent shall pay to the petitioner the amount of ₱19,965.60; (2) the petitioner shall execute the deed of absolute sale covering the property, and shall deliver the property to the respondent together with the pertinent certificate of title in accordance with the terms of their contract; and (3) the petitioner shall pay the costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

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[35] *Philgreen Trading Construction Corp. v. Court of Appeals*, G.R. No. 120408, April 18, 1997, 271 SCRA 719.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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