

[**G.R. No. 181206, October 09, 2009**]

MEGAWORLD GLOBUS ASIA, INC., PETITIONER, VS. MILA S. TANSECO, RESPONDENT.

D E C I S I O N

CARPIO MORALES, J.:

On July 7, 1995, petitioner Megaworld Globus Asia, Inc. (Megaworld) and respondent Mila S. Tanseco (Tanseco) entered into a Contract to Buy and Sell^[1] a 224 square-meter (more or less) condominium unit at a pre-selling project, "The Salcedo Park," located along Senator Gil Puyat Avenue, Makati City.

The purchase price was P16,802,037.32, to be paid as follows: (1) 30% less the reservation fee of P100,000, or P4,940,611.19, by postdated check payable on July 14, 1995; (2) P9,241,120.50 through 30 equal monthly installments of P308,037.35 from August 14, 1995 to January 14, 1998; and (3) the balance of P2,520,305.63 on October 31, 1998, the stipulated delivery date of the unit; provided that if the construction is completed earlier, Tanseco would pay the balance within seven days from receipt of a notice of turnover.

Section 4 of the Contract to Buy and Sell provided for the construction schedule as follows:

4. **CONSTRUCTION SCHEDULE** - The construction of the Project and the unit/s herein purchased shall be completed and delivered not later than October 31, 1998 with additional grace period of six (6) months within which to complete the Project and the unit/s, barring delays due to fire, earthquakes, the elements, acts of God, war, civil disturbances, strikes or other labor disturbances, government and economic controls making it, among others, impossible or difficult to obtain the necessary materials, acts of third person, or any other cause or conditions beyond the control of the SELLER. In this event, the completion and delivery of the unit are deemed extended accordingly without liability on the part of the SELLER. The foregoing notwithstanding, the SELLER reserves the right to withdraw from this transaction and refund to the BUYER without interest the amounts received from him under this contract if for any reason not attributable to SELLER, such as but not limited to fire, storms, floods, earthquakes, rebellion, insurrection, wars, coup de etat, civil disturbances or for other reasons beyond its control, the Project may not be completed or it can only be completed at a financial loss to the SELLER. In any event, all construction on or of the Project shall remain the property of the SELLER. (Underscoring supplied)

Tanseco paid all installments due up to January, 1998, leaving unpaid the balance of

P2,520,305.63 pending delivery of the unit.^[2] Megaworld, however, failed to deliver the unit within the stipulated period on October 31, 1998 or April 30, 1999, the last day of the six-month grace period.

A few days shy of three years later, Megaworld, by notice dated April 23, 2002 (notice of turnover), informed Tanseco that the unit was ready for inspection preparatory to delivery.^[3] Tanseco replied through counsel, by letter of May 6, 2002, that in view of Megaworld's failure to deliver the unit on time, she was demanding the return of P14,281,731.70 representing the total installment payment she had made, with interest at 12% per annum from April 30, 1999, the expiration of the six-month grace period. Tanseco pointed out that none of the excepted causes of delay existed.^[4]

Her demand having been unheeded, Tanseco filed on June 5, 2002 with the Housing and Land Use Regulatory Board's (HLURB) Expanded National Capital Region Field Office a complaint against Megaworld for rescission of contract, refund of payment, and damages.^[5]

In its Answer, Megaworld attributed the delay to the 1997 Asian financial crisis which was beyond its control; and argued that default had not set in, Tanseco not having made any judicial or extrajudicial demand for delivery before receipt of the notice of turnover.^[6]

By Decision of May 28, 2003,^[7] the HLURB Arbiter dismissed Tanseco's complaint for lack of cause of action, finding that Megaworld had effected delivery by the notice of turnover before Tanseco made a demand. Tanseco was thereupon ordered to pay Megaworld the balance of the purchase price, plus P25,000 as moral damages, P25,000 as exemplary damages, and P25,000 as attorney's fees.

On appeal by Tanseco, the HLURB Board of Commissioners, by Decision of November 28, 2003,^[8] sustained the HLURB Arbiter's Decision on the ground of laches for failure to demand rescission when the right thereto accrued. It deleted the award of damages, however. Tanseco's Motion for Reconsideration having been denied,^[9] she appealed to the Office of the President which dismissed the appeal by Decision of April 28, 2006^[10] for failure to show that the findings of the HLURB were tainted with grave abuse of discretion. Her Motion for Reconsideration having been denied by Resolution dated August 30, 2006,^[11] Tanseco filed a Petition for Review under Rule 43 with the Court of Appeals.^[12]

By Decision of September 28, 2007,^[13] the appellate court granted Tanseco's petition, disposing thus:

WHEREFORE, premises considered, petition is hereby **GRANTED** and the assailed May 28, 2003 decision of the HLURB Field Office, the November 28, 2003 decision of the HLURB Board of Commissioners in HLURB Case No. REM-A-030711-0162, the April 28, 2006 Decision and August 30, 2006 Resolution of the Office of the President in O.P. Case No. 05-I-318, are hereby **REVERSED** and **SET ASIDE** and a new one entered: (1) **RESCINDING**, as prayed for by TANSECO, the aggrieved

party, the contract to buy and sell; (2) **DIRECTING MEGAWORLD TO PAY TANSECO** the amount she had paid totaling P14,281,731.70 with *Twelve (12%)* Percent interest per annum *from October 31, 1998*; (3) **ORDERING MEGAWORLD TO PAY TANSECO** P200,000.00 by way of exemplary damages; (4) **ORDERING MEGAWORLD TO PAY TANSECO** P200,000.00 as attorney's fees; and (5) **ORDERING MEGAWORLD TO PAY TANSECO** the cost of suit. (Emphasis in the original; underscoring supplied)

The appellate court held that under Article 1169 of the Civil Code, no judicial or extrajudicial demand is needed to put the obligor in default if the contract, as in the herein parties' contract, states the date when the obligation should be performed; that time was of the essence because Tanseco relied on Megaworld's promise of timely delivery when she agreed to part with her money; that the delay should be reckoned from October 31, 1998, there being no *force majeure* to warrant the application of the April 30, 1999 alternative date; and that specific performance could not be ordered in lieu of rescission as the right to choose the remedy belongs to the aggrieved party.

The appellate court awarded Tanseco exemplary damages on a finding of bad faith on the part of Megaworld in forcing her to accept its long-delayed delivery; and attorney's fees, she having been compelled to sue to protect her rights.

Its Motion for Reconsideration having been denied by Resolution of January 8, 2008, [14] Megaworld filed the present Petition for Review on Certiorari, echoing its position before the HLURB, adding that Tanseco had not shown any basis for the award of damages and attorney's fees. [15]

Tanseco, on the other hand, maintained her position too, and citing Megaworld's bad faith which became evident when it insisted on making the delivery despite the long delay, [16] insisted that she deserved the award of damages and attorney's fees.

Article 1169 of the Civil Code provides:

Art. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

(1) When the obligation or the law expressly so declares; or

(2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or

(3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins. (Underscoring supplied)

The Contract to Buy and Sell of the parties contains reciprocal obligations, *i.e.*, to complete and deliver the condominium unit on October 31, 1998 or six months thereafter on the part of Megaworld, and to pay the balance of the purchase price at or about the time of delivery on the part of Tanseco. Compliance by Megaworld with its obligation is determinative of compliance by Tanseco with her obligation to pay the balance of the purchase price. Megaworld having failed to comply with its obligation under the contract, it is liable therefor.^[17]

That Megaworld's sending of a notice of turnover preceded Tanseco's demand for refund does not abate her cause. For demand would have been useless, Megaworld admittedly having failed in its obligation to deliver the unit on the agreed date.

Article 1174 of the Civil Code provides:

Art. 1174. Except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which, though foreseen, were inevitable.^[18]

The Court cannot generalize the 1997 Asian financial crisis to be unforeseeable and beyond the control of a business corporation. A real estate enterprise engaged in the pre-selling of condominium units is concededly a master in projections on commodities and currency movements, as well as business risks. The fluctuating movement of the Philippine peso in the foreign exchange market is an everyday occurrence, hence, not an instance of *caso fortuito*.^[19] Megaworld's excuse for its delay does not thus lie.

As for Megaworld's argument that Tanseco's claim is considered barred by laches on account of her belated demand, it does not lie too. Laches is a creation of equity and its application is controlled by equitable considerations.^[20] It bears noting that Tanseco religiously paid all the installments due up to January, 1998, whereas Megaworld reneged on its obligation to deliver within the stipulated period. A circumspect weighing of equitable considerations thus tilts the scale of justice in favor of Tanseco.

Pursuant to Section 23 of Presidential Decree No. 957^[21] which reads:

Sec. 23. Non-Forfeiture of Payments. - No installment payment made by a buyer in a subdivision or condominium project for the lot or unit he contracted to buy shall be forfeited in favor of the owner or developer when the buyer, after due notice to the owner or developer, desists from