

## FIRST DIVISION

[ G.R. No. 151821, April 14, 2004 ]

**BANK OF THE PHILIPPINE ISLANDS, AS SUCCESSOR-IN-INTEREST OF BPI INVESTMENT CORPORATION, PETITIONER, VS. ALS MANAGEMENT & DEVELOPMENT CORP., RESPONDENT.**

### D E C I S I O N

#### **PANGANIBAN, J.:**

Factual findings of the lower courts are entitled to great respect, but may be reviewed if they do not conform to law and to the evidence on record. In the case at bar, a meticulous review of the facts compels us to modify the award granted by the Court of Appeals.

#### **The Case**

Before us is a Petition for Review<sup>[1]</sup> under Rule 45 of the Rules of Court, seeking to set aside the November 24, 2000 Decision<sup>[2]</sup> and the January 9, 2002 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-GR CV No. 25781. The assailed Decision disposed as follows:

**"WHEREFORE**, premises considered, the assailed decision is hereby **AFFIRMED** *in toto* and the instant appeal **DISMISSED**."<sup>[4]</sup>

The assailed Resolution denied reconsideration.

#### **The Facts**

The facts of the case are narrated by the appellate court as follows:

"On July 29, 1985, [petitioner] BPI Investment Corporation filed a complaint for a Sum of Money against ALS Management and Development Corporation, alleging *inter alia* that on July 22, 1983, [petitioner] and [respondent] executed at Makati, Metro Manila a Deed of Sale for one (1) unfurnished condominium unit of the Twin Towers Condominium located at Ayala Avenue, corner Apartment Ridge Street, Makati, Metro Manila designated as Unit E-4A comprising of 271 squares [sic] meters more or less, together with parking stalls identified as G022 and G-63. The Condominium Certificate of Title No. 4800 of the Registry of Deeds for Makati, Metro Manila was issued after the execution of the said Deed of Sale. [Petitioner] advanced the amount of P26,300.45 for the expenses in causing the issuance and registration of the Condominium Certificate of Title. Under the penultimate paragraph of the Deed of Sale, it is stipulated that the VENDEE [respondent] shall pay all the expenses for the preparation and registration of this Deed of Sale and such other documents as may be necessary for the issuance of the

corresponding Condominium Certificate of Title. After the [petitioner] complied with its obligations under the said Deed of Sale, [respondent], notwithstanding demands made by [petitioner], failed and refused to pay [petitioner] its legitimate advances for the expenses mentioned above without any valid, legal or justifiable reason.

"In its Answer with Compulsory Counterclaim, [respondent] averred among others that it has just and valid reasons for refusing to pay [petitioner's] legal claims. In clear and direct contravention of Section 25 of Presidential Decree No. 957 which provides that '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', the [petitioner] has jacked-up or increased the amount of its alleged advances for the issuance and registration of the Condominium Certificate of Title in the name of the [respondent], by including therein charges which should not be collected from buyers of condominium units. [Petitioner] made and disseminated brochures and other sales propaganda in and before May 1980, which made warranties as to the facilities, improvements, infrastructures or other forms of development of the condominium units (known as 'The Twin Towers') it was offering for sale to the public, which included the following:

'The Twin Towers is destined to reflect condominium living at its very best.'

'While the twin tower design and its unusual height will make the project the only one of its kind in the Philippines, the human scale and proportion [are] carefully maintained.'

'To be sure, modern conveniences are available as in the installation of an intercom system and a closed-circuit TV monitor through which residents from their apartments can see their guests down at the lobby call station.'

'Some of the features of each typical apartment unit are: x x x A bar x x x Three toilets with baths x x x.'

'The penthouse units are privileged with the provision of an all-around balcony. x x x'

"[Respondent] further averred that [petitioner] represented to the [respondent] that the condominium unit will be delivered completed and ready for occupancy not later than December 31, 1981. [Respondent] relied solely upon the descriptions and warranties contained in the aforementioned brochures and other sales propaganda materials when [respondent] agreed to buy Unit E-4A of the Twin Tower(s) for the hefty sum of P2,048,900.00 considering that the Twin Towers was then yet to be built. In contravention of [petitioner's] warranties and of good engineering practices, the condominium unit purchased by [respondent] suffered from the following defects and/or deficiencies:

'1. The clearance in the walkway at the balcony is not sufficient for passage;

- '2. The anodized aluminum used in the door and windows were damaged;
- '3. The kitchen counter tops/splashboard suffered from cracks and were mis-cut and misaligned;
- '4. The partition between living and master's bedroom was unpainted and it had no access for maintenance due to aluminum fixed glass cover;
- '5. The varifold divider, including the bar and counter top cabinet were not installed;
- '6. The toilets had no tiles;
- '7. No closed circuit TV was installed;
- '8. Rainwater leaks inside or into the condominium unit.'"<sup>[5]</sup>

Respondent's Answer prayed that "judgment be rendered ordering [petitioner] to correct such defects/deficiencies in the condominium unit,"<sup>[6]</sup> and that the following reliefs be granted:

- "1. The sum of P40,000.00 plus legal interest thereon from the date of extra-judicial demand, representing the amount spent by the defendant for the completion works it had undertaken on the premises.
- "2. The sum of U.S.\$6,678.65 (or its equivalent in the Philippine currency) representing the unearned rental of the premises which the defendant did not realize by reason of the late delivery to him of the condominium unit;
- "3. Twenty-four percent (24%) interest per annum on the agreed one (1) year advance rental and one (1) month deposit (totaling U.S.\$15,785.00) corresponding to the period January 1, 1982 to June 17, 1982, which [petitioner] would have earned had he deposited the said amount in a bank;
- "4. The sum of U.S.\$1,214.30 per month, commencing from May 1, 1985, which the [respondent] no longer earns as rental on the premises because the lessee vacated the same by reason of defects and/or deficiencies;
- "5. The sum of P50,000.00 plus appearance fees of P300.00 per court hearing, as attorney's fees;
- "6. Litigation expenses and costs of suit."<sup>[7]</sup>

On February 6, 1990, the trial court issued this judgment:

"1. Ordering the [respondent] to pay [petitioner] the sum of P26,300.45, with legal interest from the filing of the complaint up to full payment thereof, representing the amount spent for the registration of the title to the condominium unit in [respondent's] name;

"2. Ordering [petitioner] to deliver, replace or correct at [petitioner's] exclusive expense/cost or appoint a licensed qualified contractor to do the same on its behalf, the following defects/deficiencies in the condominium unit owned by the [respondent]:

a) KITCHEN

- i) The sides of the kitchen sink covered with sealants as well as miscut marble installed as filler at the right side of the sink;
- ii) Miscut marble installed on both sides of the side wall above the gas range;

b) FOYERS

Water marks at the parquet flooring, near the main water supply room;

c) MAIDS ROOM

Ceiling cut off about one (1) square foot in size and left unfinished

d) DINING ROOM

- i) Water damaged parquet up to about one (1) meter from the wall underneath the open shelves and directly behind the plant box;
- ii) Plant box directly behind the dining room;
- iii) The water damaged parquet flooring near the door of the dining room to the passage way

e) MASTER'S BEDROOM

- i) Falling off paint layers at the bathroom wall behind the bathtub/faucet along the passageway of the master's bedroom;
- ii) Falling off water-damaged plywood ceiling in the master's bedroom bathroom;
- iii) Grinders mark damage at the bathtub;

f) BALCONY WALKWAY

- i) PVC pipes installed two (2) inches above floor level causing water to accumulate;
- ii) Cracks on level of wash out flooring;
- iii) 14-inches passageway going to the open terrace not sufficient as passageway;
- iv) PVC pipe installed on the plant box water drained directly on the balcony floor;

g) BALCONY (OPEN) TERRACE

i) Two (2) concrete cement measuring about 6 x 4 inches with protruding live wires, purportedly lamp posts which were not installed;

h) BOYS BEDROOM

i) Water mark on the parquet flooring due to water seepage;

ii) Asphalt plastered at the exterior wall/floor joints to prevent water seepage;

i) ANALOC FINISH of the aluminum frames of doors and windows all around the condominium were painted with dark gray paint to cover dents and scratches;

j) LIVING ROOM

Intercom equipment installed without the TV monitor;

k) STORAGE FACILITIES at the ground floor

"3. Ordering [petitioner] to pay [respondent] the following:

a) The sum of P40,000.00 representing reimbursement for expenses incurred for the materials/labor in installing walls/floor titles in 2 bathrooms and bar counter cabinet.

b) The sum of P136,608.75, representing unearned income for the five-month period that the defendant had to suspend a lease contract over the premises.

c) The sum of P27,321.75 per month for a period of twenty-one (21) months (from May 1985 to January 1987), representing unearned income when defendant's lessee had to vacate the premises and condominium unit remained vacant, all with legal interest from the filing of the counterclaim until the same are fully paid."<sup>[8]</sup>

### **Ruling of the Court of Appeals**

On appeal, after "a thorough review and examination of the evidence on record,"<sup>[9]</sup> the CA found "no basis for disbelieving what the trial court found and arrived at."<sup>[10]</sup>

The appellate court sustained the trial court's finding that "while [petitioner] succeeded in proving its claim against the [respondent] for expenses incurred in the registration of [the latter's] title to the condominium unit purchased, x x x for its part [respondent] in turn succeeded in establishing an even bigger claim under its counterclaim."<sup>[11]</sup>

Hence, this Petition.<sup>[12]</sup>

### **The Issues**