

THIRD DIVISION

[G.R. No. 230817, September 04, 2019]

VIVE EAGLE LAND, INC., PETITIONER, VS. NATIONAL HOME MORTGAGE FINANCE CORPORATION, JOSEPH PETER S. SISON, AND CAVACON CORPORATION, RESPONDENTS.

DECISION

PERALTA, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision^[1] dated August 23, 2016 and the Resolution^[2] dated March 30, 2017 of the Court of Appeals (CA) in CA-G.R. CV No. 105312, which affirmed the Decision^[3] dated September 18, 2014 of the Regional Trial Court (RTC), Branch 138, Makati City and the Order^[4] dated June 15, 2015 of the RTC, Branch 139, Makati City, in Civil Case No. 06-308.

The antecedent facts are as follows.

On April 18, 2006, petitioner Vive Eagle Land, Inc., a corporation engaged in the realty business and represented by its President, Virgilio O. Cervantes, filed a complaint for declaration of nullity of rescission, declaration of suspension of payment of purchase price and interest, and other reliefs against respondents National Home Mortgage Finance Corporation (*NHMFC*), a government corporation created by virtue of Presidential Decree No. 1267, Joseph Peter S. Sison, President of *NHMFC*, and Cavacon Corporation, a domestic corporation engaged in the business of construction. In its complaint, Vive alleged that on November 17, 1999, it entered into a Deed of Sale of Rights, Interests, and Participation Over Foreclosed Assets, whereby it agreed to purchase *NHMFC*'s rights, interests, and participation in the foreclosed property of *Alyansa ng mga Maka-Maralitang Asosasyon at Kapatirang Organisasyon, Inc.* located at Barangay Sta. Catalina, Angeles City, with an area of 73.5565 hectares covered by Transfer Certificate of Title (*TCT*) Nos. 86340 and 86341 for a total purchase price of P40,000,000.00 payable in the following manner: (1) the amount of P8,000,000.00 as 20% downpayment payable in two equal installments, the first of which shall be due on or before December 4, 1999, and the second, from the execution of the Deed of Conditional Sale, but in no case shall be later than January 4, 2000; and (2) the balance of P32,000,000.00 shall be paid in 10 equal installments in the amount of P3,200,000.00 per installment, plus 14% interest *per annum*, with the first installment due on July 4, 2000 and every 6 months thereafter until fully paid. Pursuant to the Deed of Sale, Vive paid the first installment of the downpayment in the amount of P4,000,000.00.

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Vive, however, did not pay the subsequent installments. According to Vive, it failed to pay because it was prevented from exercising its right to avail of a developmental loan under Section 8 of the Deed of Sale due to issues on the subject property, particularly: (1) the issuance of numerous certificates of land awards over the

same; and (2) the classification of the same as agricultural, subjecting it to the coverage of the Comprehensive Agrarian Reform Program (CARP).^[6] While awaiting the resolution of said issues, Vive requested NHMFC for a moratorium or suspension of the period of payment, the corresponding waiver of interest, and a 10% reduction of the purchase price for litigation costs it incurred. On June 17, 2004, NHMFC, through its then President, Atty. Angelico T. Salud, initially agreed on the moratorium but advised Vive to submit its request of waiver and interest reduction to the NHMFC's Board of Directors.^[7]

Notwithstanding the agreement, NHMFC, through Sison, notified Vive through a letter dated February 10, 2006 of the rescission/cancellation and/or revocation of the Deed of Sale due to the alleged non-payment of the balance of the purchase price. It reiterated its decision to rescind in another letter dated February 27, 2006. Said non-payment by Vive of the subsequent installments became NHMFC's defense in its Answer to Vive's complaint. According to NHMFC, its decision to rescind the Deed of Sale was valid in view of Vive's refusal to pay the subject installments. Moreover, since Vive was well aware of the condition of the property prior to its purchase, it was not justified in suspending its payment of the purchase price.

Vive amended its complaint arguing that without its knowledge and consent, NHMFC and Cavacon, in bad faith, entered into a Memorandum of Agreement on August 7, 2008 by virtue of which NHMFC sold the subject property on an "as is-where is" basis to Cavacon for P35,000,000.00 despite the pendency of the instant case and Cavacon's knowledge of the prior sale. NHMFC countered that by virtue of Section 5 of the Deed of Sale, it had the right to rescind the Deed of Sale due to Vive's continuous failure to pay the purchase price and to thereafter freely dispose of the subject property as if the Deed of Sale has never been made.^[8]

On September 18, 2014, the RTC of Makati City, Branch 138, dismissed Vive's complaint, finding NHMFC's rescission of the Deed of Sale to be valid.^[9] It disposed of the case as follows:

WHEREFORE, in view of the foregoing, finding the rescission of the Deed of Sale to be valid, the complaint filed by the plaintiff Vive Eagle Land, Inc. against defendants National Home Mortgage Finance Corporation, Joseph Peter S. Sison and defendant Cavacon for Declaration of Nullity of Rescission, Declaration of Suspension of Payment of Purchase Price and Interest and Other Reliefs is hereby DISMISSED for lack of merit.

SO ORDERED.^[10]

On Vive's motion, however, the Presiding Judge of Branch 138 inhibited himself and ordered the re-raffling of the case. Subsequently, the case was raffled to the RTC Branch 133 which, on January 13, 2015, granted Vive's motion for reconsideration, declaring null and void NHMFC's rescission of the Deed of Sale, declaring Vive as the owner of the property, declaring due and demandable the subsequent installments of the downpayment without interest, and ordering NHMFC to pay attorney's fees and litigation expenses. The dispositive portion of the Order provides:

WHEREFORE, foregoing considered, the Motion for Reconsideration of the plaintiff is GRANTED, the Decision dated September 18, 2014 is REVERSED and SET ASIDE, judgment is hereby rendered against the defendants and in favour of the plaintiff as follows:

- a. declaring NULL and VOID defendant NHMFC's rescission/cancellation of the Deed of Sale dated November 17, 1999 between plaintiff VELI and defendant NHMFC;
- b. declaring VALID and SUBSISTING the Deed of Sale dated November 17, 1999 between plaintiff VELI and defendant NHMFC;
- c. declaring plaintiff VELI as the OWNER of the subject properties covered by Deed of Sale dated November 17, 1999;
- d. declaring DUE and DEMANDABLE the second installment of the downpayment under Section 1.01 of the Deed of Sale without imposition of any interest or penalty within thirty (30) days from plaintiffs receipt of this Order;
- e. declaring VALID and SUBSISTING the schedule of payments under Section 1.02 of the Deed of Sale with the first ten (10) equal semi-annual installments in the amount of THREE MILLION TWO HUNDRED THOUSAND PESOS (P3,200,000.00) to be paid six (6) months after payment of the second installment of the downpayment under Section 1.01, and the subsequent ones every six (6) months thereafter without imposition of any interest or penalty; and
- f. ordering defendants, jointly and severally, to pay plaintiff attorney's fees and litigation expenses in the amount of FIVE HUNDRED THOUSAND PESOS (P500,000.00) and costs of suit.

SO ORDERED.^[11]

Pursuant to the court's Order, Vive tendered the second installment of the downpayment in the amount of P4,000,000.00 to NHMFC which refused to accept. Thereafter, on NHMFC's motion, the Presiding Judge of Branch 133 voluntarily inhibited himself and again ordered the re-raffling of the case, which was next raffled to RTC Branch 139. In an Order^[12] dated June 15, 2015, said court granted NHMFC's motion for reconsideration and reinstated the Decision of RTC Branch 138 finding NHMFC's rescission valid. Thus:

WHEREFORE, IN LIGHT OF THE FOREGOING, the defendants' Motions for Reconsideration both filed on 5 February 2015 are hereby GRANTED. The Order of this Court (Branch 133) dated 13 January 2015, which granted the Motion of Reconsideration filed by plaintiff VELI, reversed and set aside its (Branch 138) Decision dated 18 September 2014 and rendered judgment against the defendants and in favor of plaintiff, is RECONSIDERED AND SET ASIDE. The Decision of this Court (Branch 138) dated 18 September 2014 finding the rescission of the Deed of Sale to be valid and dismissing for lack of merit the complaint filed by the plaintiff Vive Eagle Land, Inc. against defendants National Home Mortgage Finance Corporation, Joseph Peter S. Sison and defendant Cavacon for Declaration of Nullity of Suspension of Payment of Purchase Price and Interest and Other Reliefs, is hereby REINSTATED.

Furnish copies of this Order to the plaintiff, the defendants and their respective counsels.

SO ORDERED."^[13]

In a Decision dated August 23, 2016, the CA affirmed the Decision of the RTC Branch 139. *First*, the appellate court held that Vive's failure to pay the purchase price on the date and in the manner prescribed by the Deed of Sale is an event of default giving NHMFC the right to annul/cancel the contract and forfeiting whatever right Vive may have acquired thereunder pursuant to Section 5 thereof.^[14] *Second*, it is clear from Section 7^[15] of the Deed of Sale that the parties intended their agreement to be a contract to sell or a conditional sale. The title to the property was not immediately transferred, through a formal deed of conveyance, in the name of Vive prior to or at the time of the first payment. Thus, since the title and ownership remains with NHMFC until Vive fully pays the balance of the purchase price, the Deed of Sale was merely a contract to sell. As such, NHMFC can validly exercise its right to annul and/or cancel the Deed of Sale upon failure of Vive to pay the purchase price on the date and manner prescribed. Thus, considering that the Deed of Sale was validly annulled and/or cancelled, the subsequent transaction and MOA entered into between NHMFC and Cavacon is valid.^[16]

Moreover, the appellate court, in its Resolution dated March 30, 2017, rejected Vive's contention that NHMFC's grant of the moratorium was proven through a letter dated June 17, 2004 when Atty. Salud, then President of NHMFC, initially agreed to the moratorium on the collection period for the balance of the purchase price.^[17] It found nothing in the records to indicate that the NHMFC Board of Directors approved the undertaking made by Atty. Salud. Thus, since it was unilaterally granted without board approval, the CA denied Vive's motion for reconsideration.^[18]

On May 22, 2017, Vive filed a Petition for Review on *Certiorari* before the Court assailing the Decision of the CA. It invoked the following arguments:

I.

THE COURT OF APPEALS COMMITTED MANIFEST ERROR AND DEVIATED FROM ESTABLISHED LAW AND JURISPRUDENCE WHEN IT FOUND THAT THE DEED OF SALE OF RIGHTS, INTERESTS, AND PARTICIPATION OVER FORECLOSED ASSETS DATED 17 NOVEMBER 1999 EXECUTED BETWEEN PETITIONER AND RESPONDENT [NHMFC] WAS A CONTRACT TO SELL AND NOT A CONTRACT OF SALE CONSIDERING THAT THERE WAS AN ABSOLUTE TRANSFER OF OWNERSHIP OF THE SUBJECT MATTER OF THE SALE TO PETITIONER UPON EXECUTION THEREOF.

II.

THE COURT OF APPEALS COMMITTED MANIFEST ERROR AND DEVIATED FROM ESTABLISHED LAW AND JURISPRUDENCE WHEN IT FOUND PETITIONER IN DEFAULT CONSIDERING THAT THERE WAS A MORATORIUM ON THE COLLECTION ON THE BALANCE OF THE PURCHASE PRICE OF THE AMAKO PROPERTY.

III.

THE COURT OF APPEALS COMMITTED MANIFEST ERROR AND DEVIATED FROM ESTABLISHED LAW AND JURISPRUDENCE WHEN IT UPHELD THE RESCISSION OF THE DEED OF SALE OF RIGHTS, INTERESTS, AND PARTICIPATION OVER FORECLOSED ASSETS DATED 17 NOVEMBER 1999 CONSIDERING THAT THERE WAS NO SUBSTANTIAL BREACH THEREOF.

IV.

THE COURT OF APPEALS COMMITTED MANIFEST ERROR AND DEVIATED FROM ESTABLISHED LAW AND JURISPRUDENCE WHEN IT EFFECTIVELY UPHELD THE VALIDITY OF THE MEMORANDUM OF AGREEMENT DATED 07 AUGUST 2008 ENTERED INTO BY RESPONDENT [NHMFC] AND [RESPONDENT] CAVACON CORPORATION AND WAS NOT ENTERED INTO IN BAD FAITH.

V.

THE COURT OF APPEALS COMMITTED MANIFEST ERROR AND DEVIATED FROM ESTABLISHED LAW AND JURISPRUDENCE WHEN IT EFFECTIVELY UPHELD THE DISMISSAL OF PETITIONER'S CLAIM FOR ATTORNEY'S FEES.^[19]

First, Vive alleged that the Deed of Sale is a valid contract of sale which absolutely transferred to Vive all of NHMFC's rights, interests, and participation over the property. The fact that the contract is bereft of any provision requiring NHMFC to execute a Deed of Absolute Sale in order to transfer ownership to Vive indicates that there was no intention to retain ownership by NHMFC. Had the parties intended on a contract to sell, there would not have been a necessity to annul/cancel a Deed of Sale to allow NHMFC to dispose the property upon default for basic is the rule that contracts to sell need not be annulled for non-payment since such payment is a positive suspensive condition, failure of which is not really a breach, but an event that prevents the obligation of NHMFC to convey title from arising.

Second, even assuming that the Deed of Sale is a contract to sell, Vive was never in default to pay the balance of the purchase price. It was an essential consideration of the contract for Vive to be able to use the property as collateral for a loan to develop the same into a residential subdivision. But Vive discovered issues, such as the coverage of the CARP, affecting the property after the execution of the Deed of Sale rendering it impossible for Vive to use the same as intended. Thus, further payments are suspended pending resolution of the DARAB of the issues affecting the property. Vive added that since NHMFC itself, in failing to assist Vive with the litigation on the subject property, prevented Vive from obtaining the loan to pay the balance of the purchase price, Vive should be considered as having constructively fulfilled its obligation in view of Article 1186 of the Civil Code which provides that the condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfilment.^[20]

Third, Vive further argued that it could not have been in default as it was validly granted a moratorium. Contrary to the CA's finding that there is nothing in the June 17, 2004 letter that would indicate NHMFC's acquiescence to said moratorium, Vive cited the portion of said letter which states that "*In line with our discussion, we initially agreed for a moratorium on the collection period, we cannot, however, favorably consider your request for discount on purchase price and waiver of*