

FIRST DIVISION

[G.R. No. 202947, December 09, 2015]

ASB REALTY CORPORATION, PETITIONER, VS. ORTIGAS & COMPANY LIMITED PARTNERSHIP, RESPONDENT.

D E C I S I O N

BERSAMIN, J.:

This appeal seeks the review and reversal of the amended decision promulgated on January 9, 2012,^[1] whereby the Court of Appeals (CA) disposed thusly:

WHEREFORE, premises considered, judgment is rendered:

1. Granting the appeal of plaintiff-appellant and herein movant Ortigas and Company Limited Partnership, and reversing the Decision of the court *a quo* dated December 14, 2009;
2. Rescinding the June 24, 1994 Deed of Sale between Ortigas and Company Limited Partnership and Amethyst Pearl Corporation in view of the material breached (sic) thereof by AMETHYST;
3. Ordering ASB Realty Corporation, by way of mutual restitution, the RECONVEYANCE to ORTIGAS of the subject property covered by TCT No. PT-105797 upon payment by ORTIGAS to ASB of the amount of Two Million Twenty Four Thousand Pesos (Php 2,024,000.00) plus legal interest at the rate of 6% per annum from the time of the finality of this judgment until the same shall have been fully paid; and
4. Ordering the Register of Deeds of Pasig City to cancel TCT No. PT-105797 and issue a new title over the subject property under the name of ORTIGAS & COMPANY LIMITED PARTNERSHIP.

No pronouncement as to cost.

SO ORDERED.^[2]

The petitioner also assails the resolution promulgated on July 26, 2012,^[3] whereby the CA denied its *Motion for Reconsideration*.

Antecedents

On June 29, 1994, respondent Ortigas & Company Limited Partnership (Ortigas) entered into a *Deed of Sale* with Amethyst Pearl Corporation (Amethyst) involving the parcel of land with an area of 1,012 square meters situated in Barrio Oranbo, Pasig City and registered under Transfer Certificate of Title (TCT) No. 65118 of the

Register of Deeds of Rizal^[4] for the consideration of P2,024,000.00. *The Deed of Sale*^[5] contained the following stipulations, among others:

COVENANTS, CONDITIONS AND RESTRICTIONS

This lot has been segregated by ORTIGAS from its subdivisions to form part of a zonified BUILDING AREA pursuant to its controlled real estate development project and subdivision scheme, and is subject to the following covenants which form part of the consideration of ORTIGAS' sale to VENDEE and its assigns, namely:

x x x x

B. BUILDING WORKS AND ARCHITECTURE:

1. The building to be constructed on the lot shall be of reinforced concrete, cement hollow blocks and other high-quality materials and shall be of the following height of not more than: fourteen (14) storeys plus one penthouse.

x x x x

L. SUBMISSION OF PLANS:

The final plans and specifications of the said building shall be submitted to ORTIGAS for approval not later than six (6) months from date hereof. Should ORTIGAS object to the same, it shall notify and specify to the VENDEE in writing the amendments required to conform with its building restrictions and VENDEE shall submit the amended plans within sixty (60) days from receipt of said notice.

M. CONSTRUCTION AND COMPLETION OF BUILDING:

The VENDEE shall finish construction of its building within four (4) years from December 31, 1991.^[6]

As a result, the Register of Deeds of Rizal cancelled TCT No. 65118 and issued TCT No. PT-94175 in the name of Amethyst.^[7] The conditions contained in the *Deed of Sale* were also annotated on TCT No. PT-94175 as encumbrances.^[8]

On December 28, 1996, Amethyst assigned the subject property to its sole stockholder, petitioner ASB Realty Corporation (the petitioner), under a so-called *Deed of Assignment in Liquidation* in consideration of 10,000 shares of the petitioner's outstanding capital stock.^[9] Thus, the property was transferred to the petitioner free from any liens or encumbrances except those duly annotated on TCT No. PT-94175.^[10] The Register of Deeds of Rizal cancelled TCT No. PT-94175 and issued TCT No. PT-105797 in the name of the petitioner with the same encumbrances annotated on TCT No. PT-94175.^[11]

On July 7, 2000, Ortigas filed its complaint for specific performance against the petitioner,^[12] which was docketed as Civil Case No. 67978 of the Regional Trial

Court (RTC) in Pasig City.^[13] Ortigas amended the complaint, and alleged,^[14] among others, that:

5. Defendant has violated the terms of the Deed of Absolute Sale (Annex "A") in the following manner:

a. While the lot may be used only "for office and residential purposes", defendant introduced constructions on the property which are commercial in nature, like restaurants, retail stores and the like (see par. A, Deed of Absolute Sale, Annex "A").

b. The commercial structures constructed by defendant on the property extend up to the boundary lines of the lot in question violating the setbacks established in the contract (see par. B.A., *ibid*).

c. Defendant likewise failed to submit the final plans and specifications of its proposed building not later than six (6) months from June 29, 1994 and to complete construction of the same within four (4) years from December 31, 1991. (see pars. L and M, *ibid*).

d. Being situated in a first-class office building area, it was agreed that no advertisements or any kind of commercial signs shall be allowed on the lot or the improvements therein but this was violated by defendant when it put up commercial signs and advertisements all over the area, (see par. F, *ibid*).

6. Any of the afore-described violations committed by the defendant empower the plaintiff to sue under paragraph "N. Unilateral Cancellation", plaintiff may have the Deed of Absolute Sale (Annex "A") cancelled and the property reverted to it by paying the defendant the amount it has paid less the items indicated therein.^[15]

For reliefs, Ortigas prayed for the reconveyance of the subject property, or, alternatively, for the demolition of the structures and improvements thereon, plus the payment of penalties, attorney's fees and costs of suit.^[16]

During the pendency of the proceedings in the RTC, the petitioner amended its Articles of Incorporation to change its name to St. Francis Square Realty Corporation.^[17]

After trial on the merits, the RTC rendered its decision on December 14, 2009,^[18] and dismissed the complaint, pertinently holding as follows:

Ortigas sold the property [to] Amethyst on 29 June 1994. Amethyst was supposed to finish construction on 31 December 1995. Yet, up to the time the property was transferred to ASB on 28 December 1996, Ortigas never initiated any action **against Amethyst** to enforce said provision. Ortigas is therefore guilty of laches or negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.

(Tijam v. Sibonghanoy, L-21450, 15 April 1968, 23 SCRA 29).

It is worth mentioning that the restrictions annotated in TCT No. 94175 (in the name of Amethyst Pearl Corporation) and TCT No. PT-105797 (in the name of ASB) repeatedly and consistently refer to the VENDEE. The term VENDEE in the said restrictions obviously refer to Amethyst Pearls Corporation considering the fact that the date referred to in Paragraph N thereof (Construction and Completion of Building), which is four (4) years from December 31, 1991, obviously refer to the plaintiff's VENDEE Amethyst Pearl Corporation. Definitely, it cannot refer to the defendant ASB which is not a vendee of the plaintiff. Therefore, all references to VENDEE in the restrictions evidently refer to Amethyst Pearl Corporation, the VENDEE in the sale from the plaintiff. Such explanation is more consistent with logic than the plaintiffs convoluted assertions that the said restrictions apply to the defendant ASB.

Reconveyance of the property to Ortigas necessarily implies rescission of the sale or transfer from Amethyst to ASB **and** from Ortigas to Amethyst. But Amethyst was not made a party to the case. Reconveyance of the property to the original seller (Ortigas) applies only on the sale to the original vendee (Amethyst) and not to subsequent vendees to whom the property was sold (Ayala Corp. v. Rosa Diana Realty and Dev. Corp., G.R. No. 134284, Dec. 1, 2000, 346 SCRA 663).

The non-compliance by the plaintiff with the requisites of its own restrictions further proves that it had no intention whatsoever to enforce or implement the same. If at all, this evinces an afterthought of the plaintiff to belatedly and unjustifiably single out the defendant for alleged non compliance of the said restrictions which are not applicable to it anyway.

WHEREFORE, foregoing premises considered, the present complaint is hereby **dismissed** for lack of basis.

SO ORDERED.^[19]

Ortigas appealed to the CA, which initially affirmed the RTC under the decision promulgated on September 6, 2011,^[20] ruling thusly:

x x x x ORTIGAS can no longer enforce the said restrictions as against ASB.

The "*Covenants, Conditions and Restrictions*" of ORTIGAS with respect to the property clearly states the following purpose:

"This lot has been segregated by ORTIGAS from its subdivisions to form part of a zonified BUILDING AREA pursuant to its controlled real estate development project and subdivision scheme. x x x"

However, it appears from the circumstances obtaining in this case that ORTIGAS failed to pursue the aforequoted purpose. It never filed a complaint against its vendee, AMETHYST, notwithstanding that it required

the latter to complete construction of the building within four (4) years from the execution of the *Deed of Sale*. Neither did it make a demand to enforce the subject restriction. Moreover, while it imposed a restriction on the registration and issuance of title in the name of the vendee under Paragraph "P" on "*Registration of Sale*", to wit:

"P. REGISTRATION OF SALE:

The VENDEE hereby agrees that, for the time being, this Deed will not be registered and that its title shall not be issued until the satisfactory construction of the contemplated Office Building and VENDEE's compliance with all conditions therein. x x x"

AMETHYST was nonetheless able to procure the title to the property in its name, and subsequently, assigned the same to ASB.

Besides, records show that there are registered owner-corporations of several properties within the Ortigas area, where the subject property is located, that have likewise failed to comply with the restriction on building construction notwithstanding the fact of its annotation on the titles covering their properties. In fact, the tax declarations covering these properties in the respective names of UNIMART INC., CHAILEASE DEVELOPMENT CO. INC., CANOGA PARK DEVELOPMENT CORPORATION, and MAKATI SUPERMARKET CORPORATION reveal that no improvements or buildings have been erected thereon.

Notwithstanding such blatant non-compliance, however, records are bereft of evidence to prove that ORTIGAS took steps to demand observance of the said restriction from these corporations, or that it opted to institute any case against them in order to enforce its rights as seller. Thus, while ORTIGAS effectively tolerated the non-compliance of these other corporations, it nonetheless proceeded with the filing of the Complaint *a quo* against ASB, seeking the rescission of the original *Deed of Sale* on the ground of non-compliance of the *very same restriction* being violated by other property owners similarly situated.

On the basis of the foregoing acts or omissions of ORTIGAS, and the factual milieu of the present case, it cannot be pretended that it failed to actively pursue the attainment of its objective of having a "controlled real estate development project and subdivision scheme". The Court thus concurs with the ratiocinations of the RTC when it posited that the restrictions imposed by ORTIGAS on ASB have been "rendered obsolete and inexistent" for failure of ORTIGAS to enforce the same *uniformly and indiscriminately* against all non-complying property owners. If the purpose of ORTIGAS for imposing the restrictions was for its "controlled real estate development project and subdivision scheme", then it should have sought compliance from *all property owners* that have violated the restriction on building completion. As things stand, ASB would appear to have been singled out by ORTIGAS, rendering the present action highly suspect and a mere afterthought.

Consequently, while it may be true that ASB was bound by the