

## SECOND DIVISION

[ G.R. No. 201167, February 27, 2013 ]

**GOTESCO PROPERTIES, INC., JOSE C. GO, EVELYN GO, LOURDES G. ORTIGA, GEORGE GO, AND VICENTE GO, PETITIONERS, VS. SPOUSES EUGENIO AND ANGELINA FAJARDO, RESPONDENTS.**

### DECISION

**PERLAS-BERNABE, J.:**

Assailed in this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court is the July 22, 2011 Decision<sup>[1]</sup> and February 29, 2012 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 112981, which affirmed with modification the August 27, 2009 Decision<sup>[3]</sup> of the Office of the President (OP).

### The Facts

On January 24, 1995, respondent-spouses Eugenio and Angelina Fajardo (Sps. Fajardo) entered into a Contract to Sell<sup>[4]</sup> (contract) with petitioner-corporation Gotesco Properties, Inc. (GPI) for the purchase of a 100-square meter lot identified as Lot No. 13, Block No. 6, Phase No. IV of Evergreen Executive Village, a subdivision project owned and developed by GPI located at Deparo Road, Novaliches, Caloocan City. The subject lot is a portion of a bigger lot covered by Transfer Certificate of Title (TCT) No. 244220<sup>[5]</sup> (mother title).

Under the contract, Sps. Fajardo undertook to pay the purchase price of P126,000.00 within a 10-year period, including interest at the rate of nine percent (9%) per annum. GPI, on the other hand, agreed to execute a final deed of sale (deed) in favor of Sps. Fajardo upon full payment of the stipulated consideration. However, despite its full payment of the purchase price on January 17, 2000<sup>[6]</sup> and subsequent demands,<sup>[7]</sup> GPI failed to execute the deed and to deliver the title and physical possession of the subject lot. Thus, on May 3, 2006, Sps. Fajardo filed before the Housing and Land Use Regulatory Board-Expanded National Capital Region Field Office (HLURB-ENCRFO) a complaint<sup>[8]</sup> for specific performance or rescission of contract with damages against GPI and the members of its Board of Directors namely, Jose C. Go, Evelyn Go, Lourdes G. Ortega, George Go, and Vicente Go (individual petitioners), docketed as HLURB Case No. REM-050306-13319.

Sps. Fajardo averred that GPI violated Section 20<sup>[9]</sup> of Presidential Decree No. 957<sup>[10]</sup> (PD 957) due to its failure to construct and provide water facilities, improvements, infrastructures and other forms of development including water supply and lighting facilities for the subdivision project. They also alleged that GPI failed to provide boundary marks for each lot and that the mother title including the subject lot had no technical description and was even levied upon by the Bangko Sentral ng Pilipinas (BSP) without their knowledge. They thus prayed that GPI be

ordered to execute the deed, to deliver the corresponding certificate of title and the physical possession of the subject lot within a reasonable period, and to develop Evergreen Executive Village; or in the alternative, to cancel and/or rescind the contract and refund the total payments made plus legal interest starting January 2000.

For their part, petitioners maintained that at the time of the execution of the contract, Sps. Fajardo were actually aware that GPI's certificate of title had no technical description inscribed on it. Nonetheless, the title to the subject lot was free from any liens or encumbrances.<sup>[11]</sup> Petitioners claimed that the failure to deliver the title to Sps. Fajardo was beyond their control<sup>[12]</sup> because while GPI's petition for inscription of technical description (LRC Case No. 4211) was favorably granted<sup>[13]</sup> by the Regional Trial Court of Caloocan City, Branch 131 (RTC-Caloocan), the same was reversed<sup>[14]</sup> by the CA; this caused the delay in the subdivision of the property into individual lots with individual titles. Given the foregoing incidents, petitioners thus argued that Article 1191 of the Civil Code (Code) – the provision on which Sps. Fajardo anchor their right of rescission – remained inapplicable since they were actually willing to comply with their obligation but were only prevented from doing so due to circumstances beyond their control. Separately, petitioners pointed out that BSP's adverse claim/levy which was annotated long after the execution of the contract had already been settled.

### **The Ruling of the HLURB-ENCRFO**

On February 9, 2007, the HLURB-ENCRFO issued a Decision<sup>[15]</sup> in favor of Sps. Fajardo, holding that GPI's obligation to execute the corresponding deed and to deliver the transfer certificate of title and possession of the subject lot arose and thus became due and demandable at the time Sps. Fajardo had fully paid the purchase price for the subject lot. Consequently, GPI's failure to meet the said obligation constituted a substantial breach of the contract which perforce warranted its rescission. In this regard, Sps. Fajardo were given the option to recover the money they paid to GPI in the amount of P168,728.83, plus legal interest reckoned from date of extra-judicial demand in September 2002 until fully paid. Petitioners were likewise held jointly and solidarily liable for the payment of moral and exemplary damages, attorney's fees and the costs of suit.

### **The Ruling of the HLURB Board of Commissioners**

On appeal, the HLURB Board of Commissioners affirmed the above ruling in its August 3, 2007 Decision,<sup>[16]</sup> finding that the failure to execute the deed and to deliver the title to Sps. Fajardo amounted to a violation of Section 25 of PD 957 which therefore, warranted the refund of payments in favor of Sps. Fajardo.

### **The Ruling of the OP**

On further appeal, the OP affirmed the HLURB rulings in its August 27, 2009 Decision.<sup>[17]</sup> In so doing, it emphasized the mandatory tenor of Section 25 of PD 957 which requires the delivery of title to the buyer upon full payment and found that GPI unjustifiably failed to comply with the same.

## The Ruling of the CA

On petition for review, the CA affirmed the above rulings with modification, fixing the amount to be refunded to Sps. Fajardo at the prevailing market value of the property<sup>[18]</sup> pursuant to the ruling in *Solid Homes v. Tan (Solid Homes)*.<sup>[19]</sup>

## The Petition

Petitioners insist that Sps. Fajardo have no right to rescind the contract considering that GPI's inability to comply therewith was due to reasons beyond its control and thus, should not be held liable to refund the payments they had received. Further, since the individual petitioners never participated in the acts complained of nor found to have acted in bad faith, they should not be held liable to pay damages and attorney's fees.

## The Court's Ruling

The petition is partly meritorious.

### ***A. Sps. Fajardo's right to rescind***

It is settled that in a contract to sell, the seller's obligation to deliver the corresponding certificates of title is simultaneous and reciprocal to the buyer's full payment of the purchase price.<sup>[20]</sup> In this relation, Section 25 of PD 957, which regulates the subject transaction, imposes on the subdivision owner or developer the obligation to cause the transfer of the corresponding certificate of title to the buyer upon full payment, to wit:

*Sec. 25. Issuance of Title. The owner or developer shall deliver the title of the lot or unit to the buyer upon full payment of the lot or unit.* 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. In the event a mortgage over the lot or unit is outstanding at the time of the issuance of the title to the buyer, the owner or developer shall redeem the mortgage or the corresponding portion thereof within six months from such issuance in order that the title over any fully paid lot or unit may be secured and delivered to the buyer in accordance herewith. (Emphasis supplied.)

In the present case, Sps. Fajardo claim that GPI breached the contract due to its failure to execute the deed of sale and to deliver the title and possession over the subject lot, notwithstanding the full payment of the purchase price made by Sps. Fajardo on January 17, 2000<sup>[21]</sup> as well as the latter's demand for GPI to comply with the aforementioned obligations per the letter<sup>[22]</sup> dated September 16, 2002. For its part, petitioners proffer that GPI could not have committed any breach of contract considering that its purported non-compliance was largely impelled by circumstances beyond its control i.e., the legal proceedings concerning the subdivision of the property into individual lots. Hence, absent any substantial breach, Sps. Fajardo had no right to rescind the contract.

The Court does not find merit in petitioners' contention.

A perusal of the records shows that GPI acquired the subject property on March 10, 1992 through a Deed of Partition and Exchange<sup>[23]</sup> executed between it and Andres Pacheco (Andres), the former registered owner of the property. GPI was issued TCT No. 244220 on March 16, 1992 but the same did not bear any technical description.<sup>[24]</sup> However, no plausible explanation was advanced by the petitioners as to why the petition for inscription (docketed as LRC Case No. 4211) dated January 6, 2000,<sup>[25]</sup> was filed only after almost eight (8) years from the acquisition of the subject property.

Neither did petitioners sufficiently explain why GPI took no positive action to cause the immediate filing of a new petition for inscription within a reasonable time from notice of the July 15, 2003 CA Decision which dismissed GPI's earlier petition based on technical defects, this notwithstanding Sps. Fajardo's full payment of the purchase price and prior demand for delivery of title. GPI filed the petition before the RTC-Caloocan, Branch 122 (docketed as LRC Case No. C-5026) only on November 23, 2006,<sup>[26]</sup> following receipt of the letter<sup>[27]</sup> dated February 10, 2006 and the filing of the complaint on May 3, 2006, alternatively seeking refund of payments. While the court a quo decided the latter petition for inscription in its favor,<sup>[28]</sup> there is no showing that the same had attained finality or that the approved technical description had in fact been annotated on TCT No. 244220, or even that the subdivision plan had already been approved.

Moreover, despite petitioners' allegation<sup>[29]</sup> that the claim of BSP had been settled, there appears to be no cancellation of the annotations<sup>[30]</sup> in GPI's favor. Clearly, the long delay in the performance of GPI's obligation from date of demand on September 16, 2002 was unreasonable and unjustified. It cannot therefore be denied that GPI substantially breached its contract to sell with Sps. Fajardo which thereby accords the latter the right to rescind the same pursuant to Article 1191 of the Code, viz:

ART. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with articles 1385 and 1388 and the Mortgage Law.

## ***B. Effects of rescission***