680 Phil. 395

FIRST DIVISION

[G.R. No. 154670, January 30, 2012]

FONTANA RESORT AND COUNTRY CLUB, INC. AND RN DEVELOPMENT CORP., PETITIONERS, VS. SPOUSES ROY S. TAN AND SUSAN C. TAN, RESPONDENTS.

D E C I S I O N

LEONARDO-DE CASTRO, J.:

For review under Rule 45 of the Rules of Court is the Decision[1] dated May 30, 2002 and Resolution[2] dated August 12, 2002 of the Court Appeals in CA-G.R. SP No. 67816. The appellate court affirmed with modification the Decision[3] dated July 6, 2001 of the Securities and Exchange Commission (SEC) *En Banc* in SEC AC Case No. 788 which, in turn, affirmed the Decision[4] dated April 28, 2000 of Hearing Officer Marciano S. Bacalla, Jr. (Bacalla) of the SEC Securities Investigation and Clearing Department (SICD) in SEC Case No. 04-99-6264.

Sometime in March 1997, respondent spouses Roy S. Tan and Susana C. Tan bought from petitioner RN Development Corporation (RNDC) two class "D" shares of stock in petitioner Fontana Resort and Country Club, Inc. (FRCCI), worth P387,300.00, enticed by the promises of petitioners' sales agents that petitioner FRCCI would construct a park with first-class leisure facilities in Clark Field, Pampanga, to be called Fontana Leisure Park (FLP); that FLP would be fully developed and operational by the first quarter of 1998; and that FRCCI class "D" shareholders would be admitted to one membership in the country club, which entitled them to use park facilities and stay at a two-bedroom villa for "five (5) ordinary weekdays and two (2) weekends every year for free."[5]

Two years later, in March 1999, respondents filed before the SEC a Complaint[6] for refund of the P387,300.00 they spent to purchase FRCCI shares of stock from petitioners. Respondents alleged that they had been deceived into buying FRCCI shares because of petitioners' fraudulent misrepresentations. Construction of FLP turned out to be still unfinished and the policies, rules, and regulations of the country club were obscure.

Respondents narrated that they were able to book and avail themselves of free accommodations at an FLP villa on September 5, 1998, a Saturday. They requested that an FLP villa again be reserved for their free use on October 17, 1998, another Saturday, for the celebration of their daughter's 18th birthday, but were refused by petitioners. Petitioners clarified that respondents were only entitled to free accommodations at FLP for "one week annually consisting of five (5) ordinary days, one (1) Saturday and one (1) Sunday[,]" and that respondents had already exhausted their free Saturday pass for the year. According to respondents, they were not informed of said rule regarding their free accommodations at FLP, and had

they known about it, they would not have availed themselves of the free accommodations on September 5, 1998. In January 1999, respondents attempted once more to book and reserve an FLP villa for their free use on April 1, 1999, a Thursday. Their reservation was confirmed by a certain Murphy Magtoto. However, on March 3, 1999, another country club employee named Shaye called respondents to say that their reservation for April 1, 1999 was cancelled because the FLP was already fully booked.

Petitioners filed their Answer[7] in which they asserted that respondents had been duly informed of the privileges given to them as shareholders of FRCCI class "D" shares of stock since these were all explicitly provided in the promotional materials for the country club, the Articles of Incorporation, and the By-Laws of FRCCI. Petitioners called attention to the following paragraph in their ads:

> GUEST ROOMS
>
> As a member of the Fontana Resort and Country Club, you are entitled to 7 days stay consisting of 5 weekdays, one Saturday and one Sunday. A total of 544 elegantly furnished villas available in two and three bedroom units.[8]

Petitioners also cited provisions of the FRCCI Articles of Incorporation and the By-Laws on class "D" shares of stock, to wit:

> Class D shares may be sold to any person, irrespective of nationality or Citizenship. Every registered owner of a class D share may be admitted to one (1) Membership in the Club and subject to the Club's rules and regulations, shall be entitled to use a Two (2) Bedroom Multiplex Model Unit in the residential villas provided by the Club for one week annually consisting of five (5) ordinary days, one (1) Saturday and one (1) Sunday. (Article Seventh, Articles of Incorporation)
>
> Class D shares – which may be sold to any person, irrespective of nationality or Citizenship. Every registered owner of a class D share may be admitted to one (1) Membership in the Club and subject to the Club's rules and regulations, shall be entitled to use a Two (2) Bedroom Multiplex Model Unit in the residential villas provided by the Club for one week annually consisting of five (5) ordinary days, one (1) Saturday and one (1) Sunday. [Section 2(a), Article II of the By-Laws.][9]

Petitioners further denied that they unjustly cancelled respondents' reservation for an FLP villa on April 1, 1999, explaining that:

> 6. There is also no truth to the claim of [herein respondents] that they were given and had confirmed reservations for April 1, 1998. There was no reservation to cancel since there was no confirmed reservations to speak of for the reason that April 1, 1999, being Holy Thursday, all reservations for the Holy Week were fully booked as early as the start of

> the current year. The Holy Week being a peak season for accommodations, all reservations had to be made on a priority basis; and as admitted by [respondents], they tried to make their reservation only on January 4, 1999, a time when all reservations have been fully booked. The fact of [respondents'] non-reservation can be attested by the fact that no confirmation number was issued in their favor.
>
> If at all, [respondents] were "wait-listed" as of January 4, 1999, meaning, they would be given preference in the reservation in the event that any of the confirmed members/guests were to cancel. The diligence on the part of the [herein petitioners] to inform [respondents] of the status of their reservation can be manifested by the act of the Club's personnel when it advised [respondents] on March 3, 1999 that there were still no available villas for their use because of full bookings.[10]

Lastly, petitioners averred that when respondents were first accommodated at FLP, only minor or finishing construction works were left to be done and that facilities of the country club were already operational.

SEC-SICD Hearing Officer Bacalla conducted preliminary hearings and trial proper in the case. Respondents filed separate sworn Question and Answer depositions.[11] Esther U. Lacuna, a witness for respondents, also filed a sworn Question and Answer deposition.[12] When petitioners twice defaulted, without any valid excuse, to present evidence on the scheduled hearing dates, Hearing Officer Bacalla deemed petitioners to have waived their right to present evidence and considered the case submitted for resolution.[13]

Based on the evidence presented by respondents, Hearing Officer Bacalla made the following findings in his Decision dated April 28, 2000:

> To prove the merits of their case, both [herein respondents] testified. Ms. Esther U. Lacuna likewise testified in favor of [respondents].
>
> As established by the testimonies of [respondents'] witnesses, Ms. Esther U. Lacuna, a duly accredited sales agent of [herein petitioners] who went to see [respondents] for the purpose of inducing them to buy membership shares of Fontana Resort and Country Club, Inc. with promises that the park will provide its shareholders with first class leisure facilities, showing them brochures (Exhibits "V", "V-1" and "V-2") of the future development of the park.
>
> Indeed [respondents] bought two (2) class "D" shares in Fontana Resort and Country Club, Inc. paying P387,000.00 to [petitioners] as evidenced by provisional and official receipts (Exhibits "A" to "S"), and signing two (2) documents designated as Agreement to Sell and Purchase Shares of Stock (Exhibits "T" to "U-2").
>
> It is undisputed that many of the facilities promised were not completed within the specified date. Ms. Lacuna even testified that less than 50% of what was promised were actually delivered.

> What was really frustrating on the part of [respondents] was when they made reservations for the use of the Club's facilities on the occasion of their daughter's 18th birthday on October 17, 1998 where they were deprived of the club's premises alleging that the two (2) weekend stay which class "D" shareholders are entitled should be on a Saturday and on a Sunday. Since [respondents] have already availed of one (1) weekend stay which was a Saturday, they could no longer have the second weekend stay also on a Saturday.
>
> Another occasion was when [respondents] were again denied the use of the club's facilities because they did not have a confirmation number although their reservation was confirmed.
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> All these rules were never communicated to [respondents] when they bought their membership shares.
>
> It would seem that [petitioners], through their officers, would make up rules as they go along. A clever ploy for [petitioners] to hide the lack of club facilities to accommodate the needs of their members.
>
> [Petitioners'] failure to finish the development works at the Fontana Leisure Park within the period they promised and their failure or refusal to accommodate [respondents] for a reservation on October 17, 1998 and April 1, 1999, constitute gross misrepresentation detrimental not only to the [respondents] but to the general public as well.
>
> All these empty promises of [petitioners] may well be part of a scheme to attract, and induce [respondents] to buy shares because surely if [petitioners] had told the truth about these matters, [respondents] would never have bought shares in their project in the first place.[14]

Consequently, Hearing Officer Bacalla adjudged:

> WHEREFORE, premises considered, judgment is hereby rendered directing [herein petitioners] to jointly and severally pay [herein respondents]:
>
> > 1) The amount of P387,000.00 plus interest at the rate of 21% per annum computed from August 28, 1998 when demand was first made, until such time as payment is actually made.[15]

Petitioners appealed the above-quoted ruling of Hearing Officer Bacalla before the SEC *en banc*. In its Decision dated July 6, 2001, the SEC en banc held:

> WHEREFORE, the instant appeal is hereby DENIED and the Decision of Hearing Officer Marciano S. Bacalla, Jr. dated April 28, 2000 is hereby

AFFIRMED.[16]

In an Order[17] dated September 19, 2001, the SEC *en banc* denied petitioners' Motion for Reconsideration for being a prohibited pleading under the SEC Rules of Procedure.

Petitioners filed before the Court of Appeals a Petition for Review under Rule 43 of the Rules of Court. Petitioners contend that even on the sole basis of respondents' evidence, the appealed decisions of Hearing Officer Bacalla and the SEC en banc are contrary to law and jurisprudence.

The Court of Appeals rendered a Decision on March 30, 2002, finding petitioners' appeal to be partly meritorious.

The Court of Appeals brushed aside the finding of the SEC that petitioners were guilty of fraudulent misrepresentation in inducing respondents to buy FRCCI shares of stock. Instead, the appellate court declared that:

> What seems clear rather is that in "inducing" the respondents to buy the Fontana shares, RN Development Corporation merely repeated to the spouses the benefits promised to all holders of Fontana Class "D" shares. These inducements were in fact contained in Fontana's promotion brochures to prospective subscribers which the spouses must obviously have read.[18]

Nonetheless, the Court of Appeals agreed with the SEC that the sale of the two FRCCI class "D" shares of stock by petitioners to respondents should be rescinded. Petitioners defaulted on their promises to respondents that FLP would be fully developed and operational by the first quarter of 1998 and that as shareholders of said shares, respondents were entitled to the free use of first-class leisure facilities at FLP and free accommodations at a two-bedroom villa for "five (5) ordinary weekdays and two (2) weekends every year."

The Court of Appeals modified the appealed SEC judgment by ordering respondents to return their certificates of shares of stock to petitioners upon the latter's refund of the price of said shares since "[t]he essence of the questioned [SEC] judgment was really to declare as rescinded or annulled the sale or transfer of the shares to the respondents."[19] The appellate court additionally clarified that the sale of the FRCCI shares of stock by petitioners to respondents partakes the nature of a forbearance of money, since the amount paid by respondents for the shares was used by petitioners to defray the construction of FLP; hence, the interest rate of 12% per annum should be imposed on said amount from the date of extrajudicial demand until its return to respondents. The dispositive portion of the Court of Appeals judgment reads:

> WHEREFORE, premises considered, the appealed judgment is MODIFIED:
> a) petitioner Fontana Resort and Country Club is hereby ordered to refund and pay to the respondents Spouses Roy S. Tan and Susana C.