

THIRD DIVISION

[G.R. No. 155680, July 02, 2012]

**FIRST LEVERAGE AND SERVICES GROUP, INC., PETITIONER, VS.
SOLID BUILDERS, INC., RESPONDENT.**

DECISION

PERALTA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision^[1] and Resolution^[2] dated June 17, 2002 and October 21, 2002, respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 47218.

The instant petition arose from a Complaint for Annulment of Promise to Sell, Mandamus and Prohibitory Injunction filed with the Regional Trial Court (RTC) of Manila by herein petitioner First Leverage and Services Group, Inc. (First Leverage) against PNB Republic Bank (PNB Republic).

In its Amended Complaint,^[3] wherein it impleaded herein respondent Solid Builders, Inc. (Solid Builders) as additional defendant, dated April 11, 1996, First Leverage alleged the following:

x x x

x x x

x x x

2. [PNB] Republic is the owner of two (2) parcels of land situated in Kaybagal South, Tagaytay City, covered by Transfer Certificate of Title No. T-4211 with an area of 1,906,710 square meters and Transfer Certificate of Title No. T-4050 with an area of 369,234 square meters. Both parcels of land are part of the acquired assets of [PNB] Republic.

3. Sometime in the mid-1980's, [PNB] Republic put up the aforementioned parcels of land for sale by public bidding. Two (2) public biddings were conducted but both were considered failed public biddings for failure to meet certain requirements. Hence, [PNB] Republic put up the two (2) parcels of land for negotiated sale.

4. [The total appraised value of the said parcels of land as of June 16, 1994 was P73,817,000.00]

5. On June 20, 1994, the Loan Recovery and Acquired Assets Division (LRAAD, for brevity) of [PNB] Republic received a formal offer from Solid [Builders] for the purchase of the parcel of land covered by TCT No. T-4050, for P12,500,000.00 with thirty percent (30%) down payment and with the balance payable in five (5) years at nineteen percent (19%)

interest per annum.

6. On June 23, 1994, the LRAAD received another formal offer from Solid [Builders] for the purchase of the parcel of land covered by TCT No. T-4211 for P47,000,000.00 with twenty percent (20%) down and with the balance payable in five (5) years at nineteen percent (19%) interest per annum.

7. In a letter dated July 7, 1994, Jeremias Dimla II, LRAAD's Senior Manager, informed Solid [Builders] that the latter's offer of P47,000,000.00 for the parcel of land covered by TCT No. 4211 was unacceptable but suggested that it improve its offer.

8. On August 2, 1994, LRAAD received a letter from Solid [Builders] proposing a package price for the two (2) parcels of land x x x for P61,000,000.00 with P1,000,000.00 option/earnest money, twenty-five percent (25%) downpayment within ninety (90) days from date of acceptance/approval and with the balance payable quarterly for three (3) years at primary market interest rates.

9. On August 17, 1994, the LRAAD received a letter from [First Leverage] offering to purchase the two (2) parcels x x x for P70,000,000.00 in cash. Although none of the LRAAD employees admitted having received [First Leverage's] letter-offer, x x x Dimla admitted having received a copy thereof on August 18, 1994. x x x

10. The reason given by Jeremias Dimla II as regards the non-official receipt of the letter-offer of [First Leverage] was at the time the offer was made LRAAD had already received Solid [Builders'] acceptance letter dated August 15, 1994, as regards the APPROVAL by the LRAAD of Solid [Builder's] offer, contained in its letter dated August 2, 1994, subject to certain terms and conditions. Allegedly, the APPROVAL was communicated to Solid by a letter dated August 12, 1994, of the LRAAD through Jeremias Dimla II. Under this package the price for the two (2) parcels of land was P67,000,000.00 payable as follows: 30% downpayment payable within 90 days from receipt of approval; the balance payable within three (3) years by monthly amortization covered by postdated checks with interest at prevailing non-prime rate. Accordingly, [PNB] Republic refused to receive petitioner's letter-offer.

11. In a letter dated September 1, 1994, [First Leverage], through Atty. Ariel F. Aguirre, reiterated [its] offer to buy the two (2) parcels of land for P70,000,000.00 in CASH. Atty. Aguirre likewise demanded that Solid [Builders'] offer be rejected on the ground that Solid [Builders'] offer as against that of [First Leverage] was: first, prejudicial to [PNB] Republic; and secondly, would subject [PNB] Republic's officers to anti-graft charges. x x x

12. In reply to Atty. Aguirre's letter, [PNB] Republic x x x replied that [it] did not officially receive [First Leverage's] letter-offer of August 17, 1994, since as of August 17, 1994, [PNB] Republic had already contracted to sell the two (2) parcels of land to Solid [Builders]. x x x

13. Notwithstanding said [PNB] Republic's reply letter dated September 6, 1994, Atty. Aguirre persisted by forwarding another letter dated September 7, 1994, reiterating [First Leverage's] offer to buy the two (2) parcels of land for P70,000,000.00 in CASH. Atty. Aguirre, in addition, demanded that First Leverage be furnished copies of documents relative to [PNB] Republic's transaction with Solid [Builders].

14. Because of [PNB] Republic's failure to properly respond to Atty. Aguirre's letter, Atty. Aguirre forwarded a further letter dated September 14, 1994, again reiterating [First Leverage's] offer to purchase the two (2) parcels of land for P70,000,000.00 in CASH. x x x

15. On September 19, 1994, [PNB] Republic, despite the better offer of [First Leverage] and through the *ultra vires* acts of its officers, executed with Solid [Builders] a Deed of Promise to Sell covering the two (2) parcels of land. x x x

16. By reason of the threat of Atty. Aguirre of taking administrative, criminal and/or civil action against Republic and its officers by refusing to accept [First Leverage's] offer and [accepting] Solid [Builder's] offer, [PNB] Republic referred Atty. Aguirre's letter of September 14, 1994, to the Office of the Government Corporate Counsel [OGCC] for legal opinion.

17. The OGCC rendered an opinion, x x x, dated December 7, 1994, the thrust of which is as follows:

a) The Loans and Assets Recovery Committee, (Committee for brevity) to which LRAAD referred Solid [Builders'] offer for approval was not authorized to approve said offer for under existing policies any sale or disposition of acquired assets whose value exceeds P3,000,000.00 must be approved by [PNB] Republic's Board of Directors.

b) One of the essential requisites of a valid contract, insofar as [PNB] Republic and Solid [Builders are concerned], is missing, namely consent as provided for in Art. 1318 of the Civil Code.

x x x

x x x

x x x

18. There are no existing offers within the period of negotiation except those submitted by [First Leverage] and Solid [Builders]. The period to negotiate the sale of the aforescribed two (2) parcels of land had already lapsed as clearly indicated by the alleged (though invalid) acceptance of Solid [Builders'] offer.

19. By letter dated December 13, 1994, [First Leverage] demanded that its offer be calendared for approval by [PNB] Republic's Board of Directors x x x. However, the Board of Directors, without any justifiable,

valid or lawful reason, refused to approve [First Leverage's] valid, legal and subsisting offer which, as against Solid [Builders'] offers is definitely more advantageous to [PNB] Republic in particular and to the Government in general.

x x x x^[4]

In its Answer to the Amended Complaint, PNB Republic denied the material allegations in the said Amended Complaint and contended that the Complaint states no cause of action; that the sale of the subject properties to Solid Builders was validly approved or thereafter ratified and confirmed by its board of directors; that PNB Republic was justified in selling the subject properties to Solid Builders because at that time, the latter's offer was the highest and most advantageous; at the time that First Leverage submitted its offer to buy the subject properties, the offer of Solid Builders was already approved.^[5]

On the other hand, Solid Builders filed its Amended Answer asserting, in the same manner as PNB Republic, that the Complaint states no cause of action; that several months before First Leverage even thought of buying the disputed properties, Solid Builders and PNB Republic had already been negotiating the sale thereof which later led to the execution of a Deed of Promise to Sell the same; as of the time of execution of the said Deed, Republic had never known of any intention on the part of First Leverage to offer to buy the litigated properties; that First Leverage had not acquired any right over the said properties which can be protected; that the contract between Solid Builders and PNB Republic was legal and not *ultra vires*, and in accordance with the rules and regulations of the Bank. In its cross-claim against PNB Republic, Solid Builders prays that, if the disputed Deed of Promise to Sell is declared null and void, it shall be given the right to recover the amounts it had already paid to and received by PNB Republic, the value of the improvements it introduced on the subject property as well as compensatory and exemplary damages and attorney's fees.^[6]

After Pre-Trial Conference was concluded, First Leverage filed a Motion for Judgment on the Pleadings and/or Resolution of Case Based on Admissions and Stipulations of Facts of the Parties. Solid Builders opposed the said Motion.

On December 23, 1996, the RTC rendered Judgment, the dispositive portion of which reads as follows:

WHEREFORE, in the interest of speedy and substantial justice, judgment is hereby rendered in favor of the plaintiff and against the two (2) defendants PNB Republic Bank and Solid Builders, Inc.:

(a) Granting the plaintiff's instant Motion for Judgment on the Pleadings, etc., dated September 30, 1996;

(b) Declaring null and void the alleged approval by the Loans and Assets Recovery Board Committee (LARBC) of the defendant Solid's verbal offer supposedly made on August 11,

1994 to buy the two (2) properties in question;

(c) Declaring null and void the Deed of Promise to Sell, dated September 19, 1994, executed by and between the two (2) defendants;

(d) Ordering the issuance of a Writ of Mandamus commanding the defendant Bank, thru its Board of Directors, to approve within a period of ten (10) days from receipt hereof, the plaintiff's superior and written offer of August 17, 1994 to purchase the two (2) parcels of land involved herein for the cash price of P70,000,000.00 over that of the alleged verbal and inferior offer of the defendant Solid, payable in three (3) years on installment basis, in order to protect the public interest.

(e) Ordering the defendants to pay the costs of suit.

SO ORDERED.^[7]

Solid Builders and PNB Republic filed their respective Motions for Reconsideration, but the RTC denied them in its Order^[8] dated February 10, 1997.

Aggrieved, PNB Republic filed a special civil action for *certiorari* with this Court which case was referred to the CA. Subsequently, PNB Republic's petition for *certiorari* was subsequently denied due course and dismissed by the appellate court on the ground that the petition was resorted to as a substitute for a lost appeal.

Solid Builders, on the other hand, filed an appeal with the CA.

On June 17, 2002, the CA rendered its assailed Decision, which disposed as follows:

WHEREFORE, premises considered, as to defendant-appellant Solid Builders, the assailed decision of the lower court is hereby **ANNULLED** and **SET ASIDE**. The case is **REMANDED** to the lower court for further proceedings, and the lower court is (1) **DIRECTED** to **SET** for preliminary hearing the special and affirmative defenses of Solid Builders as grounds for the dismissal of the amended complaint of plaintiff-appellee First Leverage, (2) to **RESOLVE** with dispatch this particular incident, and (3) to **PROCEED** to trial on the merits, if warranted.

No pronouncement as to costs.

SO ORDERED.^[9]

First Leverage filed a Motion for Reconsideration,^[10] but the same was denied by the CA in its Resolution^[11] dated October 21, 2002.