

## SECOND DIVISION

**[ G.R. No. 171165, February 14, 2011 ]**

**CAROLINA HERNANDEZ-NIEVERA, DEMETRIO P. HERNANDEZ, JR., AND MARGARITA H. MALVAR, PETITIONERS, VS. WILFREDO HERNANDEZ, HOME INSURANCE AND GUARANTY CORPORATION, PROJECT MOVERS REALTY AND DEVELOPMENT CORPORATION, MARIO P. VILLAMOR AND LAND BANK OF THE PHILIPPINES, RESPONDENTS.**

### DECISION

**PERALTA, J.:**

This Rule 45 petition for review assails the October 19, 2005 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CV No. 83852,<sup>[2]</sup> as well as the January 11, 2006 Resolution<sup>[3]</sup> in the same case which denied reconsideration. The said decision had reversed and set aside the August 30, 2004 judgment<sup>[4]</sup> rendered by the Regional Trial Court (RTC) of San Pablo City, Laguna, Branch 32 in Civil Case No. SP-5742(2000) - one for rescission of a memorandum of agreement and declaration of nullity of a deed of assignment and conveyance, with prayer for preliminary injunction and damages.

The facts follow.

Project Movers Realty & Development Corporation (PMRDC), one of the respondents herein, is a duly organized domestic corporation engaged in real estate development. Sometime in 1995, it entered through its president, respondent Mario Villamor (Villamor), into various agreements with co-respondents Home Insurance & Guaranty Corporation (HIGC)<sup>[5]</sup> and Land Bank of the Philippines (LBP), in connection with the construction of the Isabel Homes housing project in Batangas and of the Monumento Plaza commercial and recreation complex in Caloocan City. In its Asset Pool Formation Agreement, PMRDC conveyed to HIGC the constituent assets of the two projects,<sup>[6]</sup> whereas LBP agreed to act as trustee of the resulting Asset Pool<sup>[7]</sup> for a consideration.<sup>[8]</sup> The execution of the projects would be funded largely through securitization, a method of sourcing development funds by the issuance of participation certificates against the direct backing assets of the projects,<sup>[9]</sup> whereby LBP would act as the nominal issuer of such certificates with the Asset Pool itself acting as the real issuer.<sup>[10]</sup> HIGC, in turn, would provide guaranty coverage to these participation certificates in accordance with its Contract of Guaranty with PMRDC and LBP. <sup>[11]</sup>

On November 13, 1997, PMRDC entered into a Memorandum of Agreement (MOA) whereby it was given the option to buy pieces of land owned by petitioners Carolina Hernandez-Nievera (Carolina), Margarita H. Malvar (Margarita) and Demetrio P.

Hernandez, Jr. (Demetrio). Demetrio, under authority of a Special Power of Attorney to Sell or Mortgage,<sup>[12]</sup> signed the MOA also in behalf of Carolina and Margarita. In the aggregate, the realty measured 4,580,451 square meters and was segregated by agreement into Area I and Area II, respectively pertaining to the parcels covered by Transfer Certificate of Title (TCT) Nos. T-3137, T-3138, T-3139 and T-3140 on the one hand, and on the other by TCT Nos. T-3132, T-3133, T-3134, T-3135 and T-3136, all issued by the Register of Deeds of Laguna. The MOA materially provides:

1. THAT, the consideration for the sale of the parcels of land (Areas I and II) shall be TWENTY-FIVE PESOS (Php 25.00) per square meter or a total of PESOS: ONE HUNDRED FOURTEEN MILLION FIVE HUNDRED ELEVEN TWO HUNDRED SEVENTY (Php114,511,270.00);

**1. THAT, the VENDEE shall have the option to purchase the above-described parcels of land within a period of twelve (12) months from the date of this instrument and that the VENDEE shall pay the vendor option money in the following amounts and on the dates herein specified:**

**Area I**

**PESOS: SIX MILLION (Php6,000,000.00) payable in two (2) equal installments of PESOS: THREE MILLION (Php3,000,000.00), the first installment due on or before November 20, 1997; the second installment due on or before December 15, 1997, both installments to be covered by postdated checks upon signing of this Agreement.**

**Area II**

**Option money of PESOS: EIGHT MILLION FIVE HUNDRED THOUSAND (Php8,500,000.00) payable within thirty (30) days after conveyance to the Isabel Homes Asset Pool.**

2. THAT, should the VENDEE exercise the option to purchase the parcels of land within the stipulated period, the VENDEE shall complete the TWENTY-FIVE (25%) PERCENT downpayment inclusive of the option money within the said stipulated period. Balance of the TWENTY FIVE (25%) PERCENT downpayment exclusive of the option money for Area I is PESOS: TEN MILLION FOUR HUNDRED EIGHTY-TWO THOUSAND TWO HUNDRED SIXTY-TWO (Php10,482,262.00) and for Area II is PESOS: THREE MILLION SIX HUNDRED FORTY-FIVE THOUSAND FIVE HUNDRED FIFTY- SIX (Php3,645,556.00).

The balance of the purchase price in the amount of PESOS: EIGHTY-FIVE MILLION EIGHT HUNDRED EIGHTY-THREE FOUR HUNDRED FIFTY-SIX

(Php85,883,456.00) shall be payable within two (2) years in eight (8) quarterly installments covered by postdated checks. Schedule of payments shall be as follows:

January 31, 1999	Php 10,735,432.00
April 30, 1999	10,735,432.00
July 31, 1999	10,735,432.00
October 31, 1999	10,735,432.00
January 31, 2000	10,735,432.00
April 30, 2000	10,735,432.00
July 30, 2000	10,735,432.00
October 31, 2000	10,735,432.00

3. THAT, **should the VENDEE fail to exercise its option to purchase the said described parcels of land within the stipulated period, the option money shall be forfeited in favor of the VENDOR and that the VENDEE shall return to the VENDOR all the Transfer Certificates of Title covering the said described parcels of land within a period of THIRTY (30) DAYS from the stipulated period, FREE FROM ALL LIENS AND ENCUMBRANCES;**

4. THAT, the VENDOR, at the request of the VENDEE, shall agree to convey the parcels of land to any bank or financial institution by way of mortgage or to a Trustee by way of a Trust Agreement at any time from the date of this instrument, PROVIDED, HOWEVER, that the VENDOR is not liable for any mortgage or loans or obligations that will be incurred by way of mortgage of Trust Agreement that the VENDEE might enter into;

5. It is agreed that the VENDOR shall have the sole responsibility in the settlement of the tenants and eviction of the tenants and eviction of the occupants of the described parcels of land after all consideration have been fully paid by the VENDEE to the VENDOR;

6. THAT, all taxes including capital gains tax, transfer tax and documentary stamps tax shall be for the account of the VENDOR;

7. THAT, the VENDOR hereby warrants valid title to, and peaceful possession of the said described parcels of land after all considerations have been fully paid.<sup>[13]</sup>

As an implementation of the MOA, the lands within Area I were then mortgaged to Solid Bank for which petitioners received consideration from PMRDC.<sup>[14]</sup>

Later on, PMRDC saw the need to convey additional properties to and augment the value of its Asset Pool to support the collateralization of additional participation certificates to be issued.<sup>[15]</sup> Thus, on March 23, 1998, it entered with LBP and Demetrio - the latter purportedly acting under authority of the same special power of attorney as in the MOA - into a Deed of Assignment and Conveyance (DAC)<sup>[16]</sup> whereby the lands within Area II covered by TCT Nos. T-3132, T-3133, T-3134, T-

3135 and T-3136 were transferred and assigned to the Asset Pool in exchange for a number of shares of stock which supposedly had already been issued in the name and in favor of Demetrio. These pieces of land are the subject of the present controversy as far as they are affected by the explicit provision in the DAC which dispensed with the stipulated obligation of PMRDC in the MOA to pay option money should it opt to buy the properties.<sup>[17]</sup>

PMRDC admittedly did not avail of its option to purchase the lands in Area II in the twelve months that passed after the execution of the MOA. Although PMRDC delivered to petitioners certain checks representing the money, the same however allegedly bounced.<sup>[18]</sup> Hence, on January 8, 1999, petitioners demanded the return of the corresponding TCTs.<sup>[19]</sup> In its January 21, 1999 letter to Demetrio, however, PMRDC, through Villamor, stated that the TCTs could no longer be delivered back to petitioners as the covered properties had already been conveyed and assigned to the Asset Pool pursuant to the March 23, 1998 DAC. In the correspondence that ensued, petitioners disowned Demetrio's signature in the DAC and labeled it a mere forgery. They explained that Demetrio could not have entered into the said agreement as his power of attorney was limited only to selling or mortgaging the properties and not conveying the same to the Asset Pool. Boldly, they asserted that the fraudulent execution of the DAC was made possible through the connivance of all the respondents.<sup>[20]</sup>

With that final word, petitioners instituted an action before the RTC of San Pablo City, Laguna, Branch 32 for the rescission of the MOA, as well as for the declaration of nullity of the DAC. They prayed for the issuance of a writ of preliminary injunction and for the payment of damages.<sup>[21]</sup>

Ruling for petitioners, the trial court, on August 30, 2004, declared the MOA to be an option contract and ordered its rescission. It, likewise, declared the DAC null and void as it made a definite finding of forgery of Demetrio's signature as well as fraud in its execution, and accordingly, adjudged respondents PMRDC and Villamor liable to petitioner for damages.<sup>[22]</sup> The dispositive portion of the decision reads:

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered in the favor of the plaintiffs and against the defendants as follows:

1. Rescinding the Memorandum of Agreement (MOA) executed between the plaintiffs and Project Movers Realty [&] Development Corporation (PMRDC);
2. Declaring null and void the Deed of Assignment and Conveyance (DAC) executed between Project Movers Realty [&] Development Corporation, Land Bank of the Philippines and Demetrio Hernandez whose signature is forged;
3. Ordering Transfer Certificate of Title Nos. T-3132, T-3133, T-3134 and T-3135, all in the names of the plaintiffs, which are in the custody of the Court, to be delivered to plaintiffs immediately and the plaintiffs are ordered to issue a corresponding receipt of said certificates of title signed by all the plaintiffs to be submitted to the OIC-Branch Clerk of Court of

this Court within five (5) days from receipt of said titles;

4. Ordering defendants Mario Villamor and Wilfredo Hernandez to pay plaintiffs, jointly and severally, the following:

- a. Actual damages of P500,000.00;
- b. Moral damages of P200,000.00;
- c. Exemplary damages of P200,000.00;
- d. Attorney's fees in the amount of P300,000.00;
- e. And the costs of the suit.

SO ORDERED.<sup>[23]</sup>

Aggrieved, respondents filed a notice of appeal and elevated the matter to the Court of Appeals. On October 19, 2005, the Court of Appeals issued the assailed Decision reversing and setting aside the trial court's decision as follows:

WHEREFORE, based on the foregoing, the appeal is GRANTED. The decision dated August 30, 2004 of the Regional Trial Court, Branch 32, San Pablo City in Civil Case No. SP-5742 (2000) is REVERSED and SET ASIDE and a new one is entered declaring the Deed of Conveyance valid and thus, the Transfer Certificates of Title subject of this case are ordered returned to HIGC. No costs.

SO ORDERED.<sup>[24]</sup>

Central to the ruling of the Court of Appeals is its contrary finding that the allegation of forgery of Demetrio's signature in the DAC was not established by the evidence and, hence, following the legal presumption of regularity in the execution of notarized deeds, it upheld the validity of the DAC.<sup>[25]</sup> The Court of Appeals noted that the incompatibility in the terms of the MOA and the DAC clearly signified the intention of the parties to have the MOA novated by subsequent agreement and have the properties conveyed to the Asset Pool in exchange for PMRDC shares to be issued to Demetrio. This, according to the appellate court, completely changed the original obligations of PMRDC as provided in the MOA. It noted further that it was premature to order the release of the subject TCTs to petitioners at this stage of the proceedings, because that would amount to an execution of the decision.<sup>[26]</sup>

With the denial of their motion for reconsideration,<sup>[27]</sup> petitioners filed the instant petition for review attributing error to the Court of Appeals in declining to rescind the MOA and declare the DAC null and void.

Petitioners insist that the obligation of PMRDC to deliver back the TCTs arises on its failure to exercise the option to purchase the lands according to the terms of the MOA, and that the deliberate refusal of PMRDC to perform such obligation gives ground for the rescission of the MOA. This thesis is perched on petitioners' argument that the MOA could not have possibly been novated by the DAC because *first*, Demetrio's signature therein has been forged, and *second*, Demetrio could not have validly assented to the DAC in behalf of Carolina and Margarita because his