606 Phil. 103

FIRST DIVISION

[G.R. No. 173215, May 21, 2009]

CEBU WINLAND DEVELOPMENT CORPORATION, PETITIONER, VS ONG SIAO HUA, RESPONDENT.

D E C I S I O N

PUNO, C.J.:

Before us is a Petition for Review[1] filed under Rule 45 of the Rules of Court assailing the Decision[2] dated February 14, 2006 of the Court of Appeals and its Resolution[3] dated June 2, 2006 denying petitioner's motion for reconsideration of the said decision.

The facts are undisputed.

Petitioner, Cebu Winland Development Corporation, is the owner and developer of a condominium project called the Cebu Winland Tower Condominium located in Juana Osmeña Extension, Cebu City.

Respondent, Ong Siao Hua, is a buyer of two condominium units and four parking slots from petitioner.

Sometime before January 6, 1995 while the Cebu Winland Tower Condominium was under construction, petitioner offered to sell to respondent condominium units at promotional prices. As an added incentive, petitioner offered a 3% discount provided 30% of the purchase price is paid as down payment and the balance paid in 24 equal monthly installments.

On January 6, 1995, respondent accepted the offer of petitioner and bought two condominium units designated as Unit Nos. 2405 and 2406, as well as four parking slots designated as slots 91, 99, 101 and 103 (subject properties).

The area per condominium unit as indicated in petitioner's price list is 155 square meters and the price per square meter is P22,378.95. The price for the parking slot is P240,000 each. Respondent, therefore, paid P2,298,655.08 as down payment and issued 24 postdated checks in the amount of P223,430.70 per check for the balance of the purchase price in the total amount of P5,362,385.19 computed as follows:[4]

155 sq.m./unit x 2 units x P22,378.95/sq.m.	P6,937,474.50
4 parking slots at P240,000/slot	960,000.00
Sub-total	P 7,897,474.50
Less: 3% discount	(236,924.23)

Net purchase price	P 7,660,550.27
30% down payment	(2,298,165.08)
Balance at P223,430.70 per month for 24 months	P 5,362,385.19

The parties did not execute any written document setting forth the said transaction.

On October 10, 1996, possession of the subject properties was turned over to respondent.[5]

After the purchase price was fully paid with the last check dated January 31, 1997, respondent requested petitioner for the condominium certificates of title evidencing ownership of the units. Petitioner then sent to respondent, for the latter's signature, documents denominated as Deeds of Absolute Sale for the two condominium units.

Upon examination of the deed of absolute sale of Unit No. 2405 and the identical document for Unit No. 2406, respondent was distressed to find that the stated floor area is only 127 square meters contrary to the area indicated in the price list which was 155 square meters. Respondent caused a verification survey of the said condominium units and discovered that the actual area is only 110 square meters per unit. Respondent demanded from petitioner to refund the amount of P2,014,105.50 representing excess payments for the difference in the area, computed as follows:[6]

155 sq.m.-110 = 45 x 2 units = 90 sq.m. x P22,378.95 = P2,014,105.50

Petitioner refused to refund the said amount to respondent. Consequently, respondent filed a Complaint[7] on August 7, 1998 in the Regional Office of the Housing and Land Use Regulatory Board (HLURB) in Cebu City, praying for the refund of P2,014,105.50 plus interest, moral damages and attorney's fees, including the suspension of petitioner's license to sell. The case was docketed as HLURB Case No. REM-0220-080798.

On December 6, 1999, the Housing and Land Use Arbiter (the Arbiter) rendered a Decision[8] dismissing the complaint. The Arbiter found petitioner not guilty of misrepresentation. Considering further that the subject properties have been delivered on October 10, 1996 and respondent filed his complaint only on August 7, 1998, the Arbiter further ruled that respondent's action had already prescribed pursuant to Article 1543,[9] in relation to Articles 1539 and 1542,[10] of the Civil Code. The dispositive portion of the said decision reads:

> **WHEREFORE, Premises Considered,** judgment is hereby rendered **DISMISSING** this Complaint, and ordering the parties to do the following, to wit:
>
> 1. For the Complainant to SIGN the two (2) Deed[s] of Absolute Sale which this Board finds to be in order within 30 days from finality of this decision; and

2. For the Respondent to DELIVER the corresponding condominium certificate of title for the two units namely units 2405 and 2406 free from all liens and encumbrances.

Consequently, the counterclaim is likewise dismissed for it finds no evidence that Complainant acted in bad faith in filing this complaint.

Cost against the parties.

SO ORDERED.[11]

Aggrieved, respondent filed a Petition for Review of said decision with the Board of Commissioners of the HLURB (the Board). In the course of its proceedings, the Board ordered that an ocular inspection of Unit Nos. 2405 and 2406 be conducted by an independent engineer. The Board further ordered that there should be two measurements of the areas in controversy, one based on the master deed and another based on the internal surface of the perimeter wall. After the ocular inspection, the independent geodetic engineer found the following measurements:

Unit 2405-	Based on internal face of perimeter wall	= 109 sq. m.
	Based on master deed	= 115 sq. m.
Unit 2406-	Based on internal face of perimeter wall	= 110 sq. m.
	Based on master deed	= 116 sq. m.[12]

Thereafter, the Board rendered its Decision[13] dated June 8, 2004 affirming the Arbiter's finding that respondent's action had already prescribed. However, the Board found that there was a mistake regarding the object of the sale constituting a ground for rescission based on Articles 1330 and 1331[14] of the Civil Code. Hence, the Board modified the decision
of the Arbiter as follows:

Wherefore[,] the decision of the [O]ffice below is hereby modified with the following additional directive:

In the alternative, and at the option of the complainant, the contract is rescinded and the respondent is directed to refund to (sic) P7,660,550[.]27 while complainant is directed to turn over possession of the units 2405, 2406 and the four parking lots to the respondent.

So ordered.[15]

Not satisfied with the decision of the Board, petitioner filed an appeal to the Office of the President arguing that the Board erred in granting relief to respondent considering that the latter's action had already prescribed. On March 11, 2005, the Office of the President rendered a Decision[16] finding that respondent's action had already prescribed pursuant to Article 1543 of the Civil Code. The dispositive portion of said decision reads as follows:

WHEREFORE, premises considered, the Decision dated June 8, 2004 of the HLURB is hereby **MODIFIED** and the Decision dated December 6,

1999 of the Housing and Land Use Arbiter is hereby **REINSTATED**.

SO ORDERED.[17]

Respondent filed a Motion for Reconsideration but the same was denied by the Office of the President in a Resolution[18] dated June 20, 2005. Hence, respondent filed a Petition for Review before the Court of Appeals.

On February 14, 2006, the Court of Appeals rendered the assailed Decision finding that respondent's action has not prescribed. The dispositive portion of the Decision reads:

> **WHEREFORE**, in view of the foregoing premises, judgment is hereby rendered by us **GRANTING** the petition filed in this case, **REVERSING and SETTING ASIDE** the assailed Decision and Resolution of the Office of the President dated March 11, 2005 and June 20, 2005, respectively, and reinstating the Decision promulgated by the Board of Commissioners of the HLURB on June 8, 2004.
>
> **SO ORDERED.**[19]

Petitioner's Motion for Reconsideration[20] of the assailed decision having been denied in the Resolution dated June 2, 2006, petitioner is now before us, in this petition for review raising the following grounds:

I.

> The Court of Appeals Erred in Holding That in A Contract of Sale Ownership Is Not Transferred by Delivery[.]

II.

> The Court of Appeals Erred in Holding That Respondent's Action Has Not Prescribed.

III.

> The Court of Appeals Erred And Exceeded Its Jurisdiction When It Found Petitioner Guilty Of Misrepresentation As The Decision Of The HLURB Board of Commissioners On The Same Matter Is Final With Respect To Respondent Who Did Not Appeal Said Decision That Petitioner Did Not Commit Misrepresentation.[21]

The issue before us is whether respondent's action has prescribed pursuant to Article 1543, in relation to Articles 1539 and 1542 of the Civil Code, *to wit*:

> ARTICLE 1539. The obligation to deliver the thing sold includes that of placing in the control of the vendee all that is mentioned in the contract, in conformity with the following rules:
>
> If the sale of real estate should be made **with a statement of its area**, **at the rate of a certain price for a unit of measure or number**, the

vendor shall be obliged to deliver to the vendee, if the latter should demand it, all that may have been stated in the contract; but, should this be not possible, the vendee may choose between a proportional reduction of the price and the rescission of the contract, provided that, in the latter case, the lack in the area be not less than one-tenth of that stated.

The same shall be done, even when the area is the same, if any part of the immovable is not of the quality specified in the contract.

The rescission, in this case, shall only take place at the will of the vendee, when the inferior value of the thing sold exceeds one-tenth of the price agreed upon.

Nevertheless, if the vendee would not have bought the immovable had he known of its smaller area or inferior quality, he may rescind the sale. (1469a) [Emphasis supplied]

ARTICLE 1542. In the sale of real estate, made for a **lump sum** and not at the rate of a certain sum for a unit of measure or number, there shall be no increase or decrease of the price, although there be a greater or lesser area or number than that stated in the contract.

The same rule shall be applied when two or more immovables are sold for a single price; but if, besides mentioning the boundaries, which is indispensable in every conveyance of real estate, its area or number should be designated in the contract, the vendor shall be bound to deliver all that is included within said boundaries, even when it exceeds the area or number specified in the contract; and, should he not be able to do so, he shall suffer a reduction in the price, in proportion to what is lacking in the area or number, unless the contract is rescinded because the vendee does not accede to the failure to deliver what has been stipulated. (1471) [Emphasis supplied]

ARTICLE 1543. The actions arising from Articles 1539 and 1542 shall **prescribe in six months, counted from the day of delivery**. (1472a) [Emphasis supplied]

Petitioner argues that it delivered possession of the subject properties to respondent on October 10, 1996, hence, respondent's action filed on August 7, 1998 has already prescribed.

Respondent, on the one hand, contends that his action has not prescribed because the prescriptive period has not begun to run as the same must be reckoned from the execution of the deeds of sale which has not yet been done.

The resolution of the issue at bar necessitates a scrutiny of the concept of "delivery" in the context of the Law on Sales or as used in Article 1543 of the Civil Code. Under the Civil Code, the vendor is bound to transfer the ownership of and deliver the thing which is the object of the sale. The pertinent provisions of the Civil Code on the obligation of the vendor to deliver the object of the sale provide: