

SECOND DIVISION

[G.R. NO. 167452, January 30, 2007]

**JESTRA DEVELOPMENT AND MANAGEMENT CORPORATION,
PETITIONER, VS. DANIEL PONCE PACIFICO, REPRESENTED BY
HIS ATTORNEY-IN-FACT JORDAN M. PIZARRAS, RESPONDENT.**

D E C I S I O N

CARPIO MORALES, J.:

On June 5, 1996, Daniel Ponce Pacifico (Pacifico) signed a Reservation Application^[1] with Fil-Estate Marketing Association for the purchase of a house and lot located at Lot 28, Block 3, Phase II, Jestra Villas, Barangay La Huerta, Municipality of Parañaque, Metro Manila (the property), and paid the reservation fee of P20,000.

Under the Reservation Application, the total purchase price of the property was P2,500,000, and the down payment equivalent to 30% of the purchase price or P750,000 was to be paid interest-free in six monthly installments due every fifth of the month starting July 1996 until December 1996. As the P20,000 reservation fee formed part of the down payment, the monthly installment on the down payment was fixed at P121,666.66.

Also under the Reservation Application, upon full payment of the 30% down payment by Pacifico, he was to sign a contract to sell with the owner and developer of the property, Joprest Development and Management Corporation (now Jestra Development and Management Corporation, hereafter Jestra). And the 70% balance on the purchase price or P1,750,000 was to be payable in 10 years, to bear interest at 21% per annum, at a monthly installment of P34,982.50. When the payment of the installments on the 70% balance should commence, the Reservation Application was silent.

Unable to comply with the schedule of payments, Pacifico requested Jestra to allow him to make periodic payments on the down payment "in an amount that he could afford," to which Jestra acceded provided that late payment penalties/surcharges^[2] are paid.

With still a remaining balance of P260,000 on the down payment, Pacifico and Jestra executed on March 6, 1997, Contract to Sell No. 83^[3] over the property. The said contract was silent on the unsettled balance on the down payment.

Under the Contract to Sell, Pacifico should have had on November 5, 1996, or one month prior to the deadline stated under the Reservation Application, fully paid the 30% down payment, and that the 120 monthly installments for the 70% balance or P1,750 should have had commenced on December 7, 1996, viz:

SECTION 2. TERMS OF PAYMENT. The PURCHASER agrees to pay the aforesaid purchase price [of P2,500,000.00] in the following manner, namely:

2.1 The total amount of SEVEN HUNDRED FIFTY THOUSAND PESOS ONLY (P750,000.00) Philippine Currency as down payment on or before November 5, 1996.

2.2 The balance of ONE MILLION SEVEN HUNDRED FIFTY THOUSAND PESOS ONLY (P1,750,000.00), Philippine Currency, shall be paid in One Hundred Twenty (120) equal monthly installments at THIRTY FOUR THOUSAND NINE HUNDRED EIGHT THREE PESOS ONLY (P34,983.00) Philippine Currency, to commence on December 7, 1996, with interest at the rate of Twenty One Percent (21%) per annum. The PURCHASER shall issue One Hundred Twenty (120) postdated checks in favor of the OWNER/DEVELOPER for each of the monthly installments, which checks shall be delivered to the latter upon signing of this CONTRACT. The PURCHASER shall be subject to the pre-qualification requirements of COCOLIFE for the Mortgage Redemption Insurance (MRI) and the Building Insurance on the UNIT. Interest re-pricing shall be effected on the 6th Year, to commence on December 7, 2001.

x x x x (Underscoring supplied)

By letter^[4] of November 12, 1997, Pacifico requested Jestra that "the balance be restructured" in light of the "present business condition."

By November 27, 1997, Pacifico had fully paid the 30% down payment, and by December 4, 1997, he had paid a total of P846,600, P76,600 of which Jestra applied as penalty charges for the belated settlement of the down payment.

By letter of December 11, 1997, Jestra, through counsel, sent Pacifico a final demand for the payment of P444,738.88^[5] representing the total of 11 installments due on the 70% balance of the purchase price, inclusive of 21% interest per annum and add-on interest at the rate of P384.81 per day, counted from January 7, 1997. Further, Jestra demanded the payment of P73,750 representing "penalties for the [belated settlement of the] down payment." And it reminded Pacifico that "as provided in Section 5 of the said contract, [Jestra] reserves its right to automatically cancel or rescind the same on account of [his] failure/refusal to comply with the terms thereof."^[6]

Pacifico later requested Jestra, by letter of November 12, 1997, for a restructuring of his unsettled obligation. His request was granted on the condition that the interest for the period from December 1996 to November 1997 amounting to P224,396.37 would be added to the 70% balance on the purchase price; and that Pacifico issue 12 postdated checks beginning each year to cover his amortization payments.

In light of the restructured scheme, the monthly amortization on the 70% balance was from P34,982.50 increased to P39,468, to commence on January 5, 1998.

Pacifico thus issued to Jestra 12 postdated Security Bank checks to cover his monthly amortizations from January to December 1998. The checks for January and February 1998 were, however, dishonored due to insufficiency of funds.^[7]

By letter of March 24, 1998, Pacifico informed Jestra that due to sudden financial difficulties, he was suspending payment of his obligation during the 10-month period, and that he wanted to dispose of the property to recover his investment.^[8] And he requested that the postdated checks he issued be returned to him.

Jestra, by letter^[9] of March 31, 1998, denied Pacifico's request to suspend payment and for the return of the postdated checks. It, however, gave him until April 15, 1998 to sell the property failing which it warned him that it would be constrained to re-open it for sale.

Thereafter, Jestra sent Pacifico a notarial Notice of Cancellation, dated May 1, 1998, notifying him that it was, within 30 days after his receipt thereof, exercising its right to cancel the Contract to Sell. Pacifico received the notice on May 13, 1998.

In a separate move, Jestra through its Credit and Collection Manager sent Pacifico a letter dated May 27, 1998, demanding payment of the total amount of P209,377.75 covering monthly amortizations from January 30 to May 30, 1998 inclusive of penalties. And it gave him until June 1, 1998 to settle his account, failing which the Contract to Sell would be automatically cancelled and it would re-open the property for sale.^[10]

On February 24, 1999, Pacifico filed a complaint before the Housing and Land Use Regulatory Board (HLURB) against Jestra, docketed as HLURB Case No. REM-122499-10378, claiming that despite his full payment of the down payment, Jestra failed to deliver to him the property within 90 days as provided in the Contract to Sell dated March 6, 1997, and Jestra instead sold the property to another buyer in October of 1998.^[11]

Pacifico further claimed in his complaint that upon learning of the double sale, he, through his lawyer, demanded that Jestra deliver the property to him but it failed to do so without just and valid cause.

Pacifico thus prayed that, among others things, judgment be rendered declaring the second sale a nullity, ordering Jestra to deliver the property to him and to pay him P11,000 a month from July 1997 until delivery.

By Decision^[12] of March 15, 2000, the Housing and Land Use Arbiter held Jestra liable for failure to comply with Section 3 of Republic Act (RA) No. 6552 (Realty Installment Buyer Protection Act) requiring payment by the seller of the cash surrender value of the buyer's payments and Section 17 of Presidential Decree No. 957 (REGULATING THE SALE OF SUBDIVISION LOTS AND CONDOMINIUMS, PROVIDING PENALTIES FOR VIOLATIONS THEREOF) requiring it to register the Contract to Sell in the Office of the Register of Deeds.

The Arbiter found that while Pacifico had paid a total amount of P846,600 which is "more or less equivalent to 24 monthly installments under the contract to sell . . .

wherein the monthly amortization is P34,983,"^[13] he could no longer demand the delivery of the property, its title having already been transferred in the name of another buyer.

Thus the Arbiter disposed:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the complainant and ordering respondent:

1. To pay and/or reimburse to the complainant the total payments made amounting to Eight Hundred Forty Six Thousand Six Hundred Pesos (P846,600.00) with interest thereon at twelve percent (12%) per annum to be computed from the filing of the complaint on 24 February 1999 until fully paid; and
2. To pay complainant the amount of Fifty Thousand Pesos (P50,000.00) as damages and attorney's fees plus the costs of litigation.^[14] (Underscoring supplied)

On appeal, the Board of Commissioners of the HLURB modified the decision of the Arbiter by deleting the award of P50,000 damages and ordering Jestra to pay P20,000 as attorney's fees and P10,000 administrative fine for failure to register the Contract to Sell in the Office of the Register of Deeds.

By Resolution of January 27, 2003, the HLURB Board of Commissioners denied^[15] Jestra's motion for reconsideration.

By Order^[16] of December 9, 2003, the Office of the President (OP), to which the case was elevated, adopted "by reference the findings of facts and conclusions of law" contained in the HLURB Board Resolution of January 27, 2003. And by Order^[17] dated March 18, 2004, it denied Jestra's motion for reconsideration.

On Jestra's petition for review under Rule 43 of the Rules of Court, the Court of Appeals (CA), by Decision^[18] dated January 31, 2005, affirmed the Orders of the OP.

Its motion for reconsideration having been denied by CA Resolution^[19] of March 16, 2005, Jestra (hereafter petitioner) comes before this Court on a petition for review, faulting the appellate court for:

- I. . . . adopting the OP's conclusion that penalty payments should be included in computing the total number of installment payments made by a buyer (in relation to the payment of a cash surrender value upon cancellation of a contract to sell) in spite of its exclusion from the items to be included in computing the two (2) years installment payments as provided in RA 6552
- II. . . . adopting the OP's conclusion that petitioner failed to deliver possession of the subject property to respondent upon his full payment of the downpayment [sic] and that petitioner's act of canceling the contract to sell was unconscionable despite being allowed under RA 6552.