

FIRST DIVISION

[G.R. NO. 167071, October 31, 2006]

**RUDY S. AMPELOQUIO, SR., PETITIONER, VS. ROMEO NAPIZA,
RESPONDENT.**

D E C I S I O N

CHICO-NAZARIO, J.:

This Petition for Review under Rule 45 of the Rules of Court, filed by petitioner Rudy S. Ampeloquio, Sr., seeks to nullify and set aside the 26 October 2004 Decision^[1] and 3 February 2005 Resolution of the Court of Appeals in CA-G.R. CV No. 69206 which affirmed, albeit with a reduction of the attorney's fees from P50,000.00 to P20,000.00, the Decision of the Regional Trial Court (RTC), Branch 27, Santa Cruz, Laguna, in Civil Case No. SC-3294.

It is undisputed that respondent Romeo Napiza, Julio Napiza, Tomas Faller, Justina Dayahan, Andalicia Maderal, Luisa Maderal, Ursula Maderal, Marcelina Maderal, Pablo Maderal, Marte Maderal, Myrna Maderal, Fernando Maderal and Rosalinda Maderal are the owners of a 23,030 square meter parcel of land situated at Barangay Palola (Malapit), Lucban, Quezon, and covered by Original Certificate of Title No. P-10786. This lot is referred to as Lot No. 3424 in the Lucban Cadastral Survey with Tax Declaration No. 4675 (Palolang Malapit property). They are also co-owners of another parcel of land known as Lot No. 3445 with Tax Declaration No. 4630, situated at Barangay Palola (Malayo), Lucban, Quezon (Palolang Malayo property).

Another unquestionable fact is that petitioner Rudy S. Ampeloquio, Sr., a real estate developer, and respondent executed a written contract known as Assignment of Rights dated 11 September 1981 which reads as follows:

ASSIGNMENT OF RIGHTS

KNOW ALL MEN BY THESE PRESENTS:

This instrument made and executed by and between: RUDY AMPELOQUIO, of legal age, Filipino citizen, residing and with postal address at Mulanay, Quezon, hereafter called FIRST PARTY; and ROMEO NAPIZA, likewise of legal age, Filipino citizen, residing and with postal address at Sta. Cruz, Laguna, hereafter called SECOND PARTY;

W I T N E S S E T H

That FIRST PARTY is the subdivider of that certain parcel of land, known as Lot No. 4685 of the Cadastral Survey of Lucban; while SECOND PARTY is one of the owners of the said property;

That to facilitate early development of the property involved, FIRST PARTY solicited the help of SECOND PARTY to persuade and induce his other co-owners in the development thereof, with a gratuity of giving SECOND PARTY a portion of the disposable area of the property to be developed equivalent to 5/100 or 5% thereof;

That the 5% area mentioned in the preceding paragraph shall be deducted from the share of the FIRST PARTY and not from the whole disposable portion;

That FIRST PARTY is obligated to turn over the said 5/100 or 5% portion of his share to the SECOND PARTY, simultaneously with the selection of respective shares of the co-owners of the property.

That this contract shall have the force of law upon signing this instrument and as amendment to the Subdivision Agreement entered into by the FIRST PARTY and CO-OWNERS of the property.

IN TESTIMONY WHEREOF, we affixed our signatures this 11th day of September 1981 at Santa Cruz, Laguna.^[2]

The established facts end there. Both petitioner and respondent's versions of how they arrived at the contract embodied in the Assignment of Rights and the subject matter of the same are at variance with each other.

According to respondent, on 5 September 1981, Andalicia Maderal invited petitioner Rudy Ampeloquio, Sr., a real estate developer, to her house at Lucban, Quezon, where she, along with Luisa Maderal and respondent, discussed the development of the Palolang Malapit property into a residential subdivision. It was agreed upon that the landowners would retain 45% of the lot area while 55% would go to petitioner as developer. This agreement was put into writing as evidenced by an unnotarized handwritten instrument denominated as "Kasunduan sa Pagde-develop ng Lupa na natatayo sa Palolang Malapit Lot No. 3424, Title No. P-10786" signed by Andalicia Maderal, Luisa Maderal and respondent.

To facilitate the early development of the same property, petitioner allegedly sought the help of respondent on 11 September 1981. On the same date, petitioner and respondent executed an Assignment of Rights whereby the latter would persuade and induce his co-owners to agree to the development of the subject property in consideration of which he shall be given 5% of the disposable portion appertaining to petitioner's share as developer.

Although the Assignment of Rights shows that the subject matter of the same is Lot No. 4685, petitioner explained that there was a typographical error in the number indicated in said instrument which should have been Lot No. 4675 representing the Tax Declaration covering the Palolang Malapit property.

On 20 October 1981, respondent was able to persuade his co-owners with the proposed development of the Palolang Malapit property which culminated in the execution of an Extra-judicial Partition with Waiver by the co-owners thereof. Pursuant to Section 1, Rule 74 of the Rules of Court, the co-owners adjudicated and

partitioned among themselves the subject property. They further assigned their rights and interests over a 12,666 square meter portion of the subject property to petitioner in consideration of the latter's services in the development and improvement of said property.

On 26 October 1981, the co-owners of the subject property and petitioner formalized the "Kasunduan sa Pagde-develop ng Lupa na natatayo sa Palolang Malalapit Lot No. 3424, Title No. P-10786" dated 5 September 1981 and executed a notarized "Contract of Development" whereby they agreed that 45% of the lot area shall be retained by the owners while 55% thereof shall be allotted to Ampeloquio as compensation for his efforts in pursuing the development of the subject property. Petitioner forthwith began the development of the property dubbed as the Maderal Subdivision Project.

By way of commission for the Maderal Subdivision Project, petitioner gave respondent the amount of P20,000.00 together with a land title covering a parcel of land registered in petitioner's name. No formal deed of conveyance, however, was executed in respondent's favor.

Faulting petitioner for his failure to comply with his undertaking under the Assignment of Rights, respondent made numerous demands, both verbal and written, for the settlement of petitioner's unpaid obligations. He also referred the matter to the barangay authorities, but no settlement materialized between the parties. Accordingly, respondent wrote Ampeloquio a Final Demand Letter dated 2 March 1995.

In a Reply Letter dated 31 March 1995, petitioner denied having any unpaid obligation to respondent and even reminded him of the sum of P20,000.00 and the title to the parcel of land he had given him.

His demands for settlement having fallen on deaf ears, respondent, on 22 June 1995, filed a complaint for "Specific Performance" against petitioner before the RTC, Branch 27, Santa Cruz, Laguna. Docketed as Civil Case No. SC-3294, the complaint alleged, *inter alia*, that respondent was entitled to 5% commission from petitioner which constituted 891.4 square meters portion of the subject property valued at P1,335,000.00. Accordingly, Napiza prayed that judgment be rendered ordering the delivery/conveyance of the 891.4 square meter portion of the subject property to be taken from Ampeloquio's share as well as the payment of attorney's fees, necessary expenses, and damages.

On the other hand, petitioner averred that during the month of August 1981, he had several meetings with Andalicia Maderal and Luisa Maderal. During the meeting held on the last week of August, Andalicia Maderal and Luisa Maderal agreed with petitioner for the latter to develop the Palolang Malapit property. They agreed that 55% of the lots to be developed and sold will accrue to petitioner as the developer while 45% of the same will be the share of the co-owners of the said property.

On 5 September 1981, the agreement was later put into writing in a handwritten unnotarized instrument "Kasunduan sa Pagde-develop ng Lupa na natatayo sa Palolang Malapit Lot No. 3424, Title No. P-10786" signed by Andalicia Maderal, Luis Maderal and respondent. Immediately after the signing, petitioner started the development of the property until it was finished.

Aware that the Maderals have a bigger lot which is the Palolang Malayo property, petitioner entered into an agreement "Assignment of Rights" with respondent on 11 September 1981, with the latter undertaking to convince his co-owners to award to petitioner the development of the Palolang Malayo property. As compensation for respondent's undertaking, he would be entitled to 5% commission to be taken from petitioner's share. To help respondent start with his undertaking, petitioner gave him an advance commission of P20,000.00 on 8 December 1981 plus a title of a property registered under petitioner's name.

However, respondent failed to convince his co-owners to have petitioner developed the Palolang Malayo property.

Thus, according to petitioner, respondent has no cause of action against him as his alleged obligation based on the Assignment of Rights did not come into existence for failure of respondent to comply with his undertaking of convincing his co-owners to confer the development of Palolang Malayo property in his (petitioner) favor.

In other words, while petitioner admitted that he executed with respondent the Assignment of Rights, he claimed that the subject matter of the same was not the Palolang Malapit property but the Palolang Malayo.

In fact, he insisted that there was no need to seek the services of respondent to secure the consent of the co-owners to the Palolang Malapit project because as early as 5 September 1991, or 6 days before the execution of the Assignment of Rights, the co-owners of the Palolang Malapit property already agreed to the development project.

He stressed that if it was really their intention to make the Assignment of Rights apply to Palolang Malapit property, they should have mentioned the same in the Contract of Development dated 26 October 1981.

Petitioner further proffered the defense of prescription of action. He asserted that the prescriptive period to enforce a written contract is 10 years pursuant to Article 1144 of the Civil Code. Since the Assignment of Rights from which respondent based his claim was executed on 11 September 1981 and the demand was made only on 2 March 1995, any action based on the assignment contract is barred by prescription and/or laches.

Parenthetically, petitioner raised additional defenses of lack of jurisdiction and improper venue.

After trial, the RTC in a Decision dated 5 April 1999, rendered a judgment in favor of respondent.

The RTC ruled that the respondent's cause of action has not yet prescribed and that laches has not yet set in against respondent.

It likewise declared that the venue was properly laid since the Assignment of Rights which was the basis of the action was executed in Santa Cruz, Laguna.

On the issue of whether or not petitioner is liable to respondent based on the