

SECOND DIVISION

[G.R. No. 142310, September 20, 2004]

**ARRA REALTY CORPORATION AND SPOUSES CARLOS ARGUELLES
AND REMEDIOS DELA RAMA ARGUELLES, PETITIONERS, VS.
GUARANTEE DEVELOPMENT CORPORATION AND INSURANCE
AGENCY AND ENGR. ERLINDA PEÑALOZA, RESPONDENTS.**

DECISION

CALLEJO, SR., J.:

Arra Realty Corporation (ARC) was the owner of a parcel of land, located in Alvarado Street, Legaspi Village, Makati City, covered by Transfer Certificate of Title (TCT) No. 112269 issued by the Register of Deeds.^[1] Through its president, Architect Carlos D. Arguelles, the ARC decided to construct a five-story building on its property and engaged the services of Engineer Erlinda Peñaloza as project and structural engineer. In the process, Peñaloza and the ARC, through Carlos Arguelles, agreed on November 18, 1982 that Peñaloza would share the purchase price of one floor of the building, consisting of 552 square meters for the price of ₱3,105,838: ₱901,738, payable within sixty (60) days from November 20, 1982, and the balance payable in twenty (20) equal quarterly installments of ₱110,205. The parties further agreed that the payments of Peñaloza would be credited to her account in partial payment of her stock subscription in the ARC's capital stock.^[2] Sometime in May 1983, Peñaloza took possession of the one-half portion of the second floor, with an area of 552 square meters^[3] where she put up her office and operated the St. Michael International Institute of Technology. Unknown to her, ARC had executed a real estate mortgage over the lot and the entire building in favor of the China Banking Corporation as security for a loan on May 12, 1983.^[4] The deed was annotated at the dorsal portion of TCT No. 112269 on June 3, 1983.^[5] From February 23, 1983 to May 31, 1984, Peñaloza paid ₱1,175,124.59 for the portion of the second floor of the building she had purchased from the ARC.^[6] She learned that the property had been mortgaged to the China Banking Corporation sometime in July 1984. Thereafter, she stopped paying the installments due on the purchase price of the property.

Peñaloza wrote the China Banking Corporation on August 1, 1984 informing the bank that the ARC had conveyed a portion of the second floor of the building to her, and that she had paid ₱1,175,124.59 out of the total price of ₱3,105,838. She offered to open an account with the bank in her name in the amount of ₱300,000, and to make monthly deposits of ₱50,000 each, to serve as payments of the equivalent loan of the ARC upon the execution of the appropriate documents. She also proposed for the bank to assist her in requesting the ARC to execute a deed of absolute sale over the portion of the second floor she had purchased and the issuance of the title in her name upon the payment of the purchase price.^[7] However, the bank rejected her proposal.^[8] She then wrote the ARC on August 31,

1984 informing it of China Banking Corporation's rejection of her offer to assume its equivalent loan from the bank and reminded it that it had conformed to her proposal to assume the payment of its loan from the bank up to the equivalent amount of the balance of the purchase price of the second floor of the building as agreed upon, and the consequent execution by the ARC of a deed of absolute sale over the property in her favor.^[9] Peñaloza then sent a copy of a deed of absolute sale with assumption of mortgage for the ARC's consideration, and informed the latter that, in the meantime, she was withholding installment payments.^[10] On October 3, 1984, Peñaloza transferred the school to another building she had purchased, but retained her office therein. She later discovered that her office had been padlocked.^[11] She had the office reopened and continued holding office thereat. To protect her rights as purchaser, she executed on November 26, 1984 an affidavit of adverse claim over the property which was annotated at the dorsal portion of TCT No. 112269 on November 27, 1984.^[12] However, the adverse claim was cancelled on February 11, 1985.^[13]

When the ARC failed to pay its loan to China Banking Corporation, the subject property was foreclosed extrajudicially, and, thereafter, sold at public auction to China Banking Corporation on August 13, 1986 for ₱13,953,171.07.^[14] On April 29, 1987, the ARC and the Guarantee Development Corporation and Insurance Agency (GDCIA) executed a deed of conditional sale covering the building and the lot for ₱22,000,000, part of which was to be used to redeem the property from China Banking Corporation.^[15] With the money advanced by the GDCIA, the property was redeemed on May 4, 1987.^[16] On May 14, 1987, the petitioner executed a deed of absolute sale over the lot and building in favor of the GDCIA for ₱22,000,000.^[17] The ARC obliged itself under the deed to deliver possession of the property without any occupants therein. The Register of Deeds, thereafter, issued TCT No. 147846 in favor of the GDCIA over the property without any liens or encumbrances on May 15, 1987.^[18] Of the purchase price of ₱22,000,000, the GDCIA retained ₱1,000,000 to answer for any damages arising from any suits of the occupants of the building.

On May 28, 1987, Peñaloza filed a complaint against the ARC, the GDCIA, and the Spouses Arguelles, with the Regional Trial Court of Makati, Branch 61, for "specific performance or damages" with a prayer for a writ of preliminary injunction.

Peñaloza prayed for the following reliefs:

WHEREFORE, it is most respectfully prayed of this Honorable Court that –

- 1.- Before hearing, a temporary restraining order immediately issue;
- 2.- After notice and hearing, and the filing of an injunction bond, a preliminary injunction be issued forthwith enjoining and restraining the defendant Register of Deeds for Makati, Metro Manila, from receiving and registering any document transferring, conveying, encumbering or, otherwise, alienating the land and edifice covered by Transfer Certificate of Title No. 112269 of said Registry of Deeds and from issuing a new title therefor;

3.- After hearing and trial –

- (a) Ordering defendants ARRA and Arguelles to execute a deed of sale in favor of plaintiff over the second floor of that 5-storey edifice built on 119 Alvarado Street, Legaspi Village, Makati, Metro Manila, simultaneously with the tender of the remaining balance on the purchase price thereon;
- (b) Ordering defendants ARRA and Arguelles, jointly and severally, to pay the plaintiff such moral damages as may be proved during the trial;
- (c) Ordering defendants ARRA and Arguelles, jointly and severally, to pay the plaintiff exemplary damages in such amount as may be deem (*sic*) just, sufficient and equitable as exempary (*sic*) damages;
- (d) Ordering defendants ARRA and Arguelles, jointly and severally, to pay the plaintiff an amount equivalent to 20% of whatever she may recover herein as and for attorney's fees; P500.00 per appearance of counsel in Court; and miscellaneous litigation expenses and cost of suit;

4.- On the Alternative Cause of Action, in the event that specific performance cannot be effected for any reason, to render judgment in favor of the plaintiff and against the defendants –

- (a) Ordering the defendants, jointly and reveraaly (*sic*), to restitute to the plaintiff the sum of P1,444,124.59 with interest thereon at bank borrowing rate from August 1984 until the same is finally wholly returned;
- (b) Ordering the defendants, jointly and severally, to pay the plaintiff the difference between the selling price on the second floor of the 5-storey edifice after deducting P1,444,124.59 therefrom;
- (c) Directing defendant Guarantee Development Corporation & Insurance Agency to deposit with the Honorable Court any amount still in its possession on the purchase price of the land and the 5-storey edifice in question;

- (d) Ordering the defendants, jointly and severally, to pay the plaintiff moral and exemplary damages as may be proved during the trial and/or as this Honorable Court may deem just, adequate and equitable in the premises;
- (e) Ordering the defendants, jointly and severally, to pay the plaintiff an amount equivalent to 20% of whatever she may recover from the defendants in this suit as and for attorney's fees, litigation expenses and costs.

PLAINTIFF further prays for such other reliefs and remedies as may be just and equitable in the premises.^[19]

On her first cause of action, Peñaloza alleged, *inter alia*:

- 2.- That on or about November 18, 1982, the plaintiff and defendant ARRA represented by its President and General Manager, defendant Arguelles, entered into an agreement whereby for and in consideration of the amount of P3,105,828.00 on a deferred payment plan payable in five (5) years, defendants ARRA and Arguelles agreed to sell to the plaintiff one (1) whole floor of a prospective 5-storey building which said defendants planned to build on a 992 square meter lot located at 119 Alvarado Street, Legaspi Village, Makati, Metro Manila, covered by Transfer Certificate of Title No. 112269 of the Registry of Deeds for Makati, Metro Manila, copy of which agreement is hereto attached as Annex "A" and made integral part hereof ;
- 3.- That consonant with the aforementioned agreement between the plaintiff and defendants ARRA and Arguelles, the former paid to said defendants the total amount of P1,377,124.59 as evidenced by receipts and cash vouchers copies of which are hereto attached as Annexes "B," "B-1" to "B-10" and made integral parts hereof;
- 4.- That upon completion of the 5-storey edifice on May 31, 1984, the plaintiff made her choice of the second floor thereof as the subject matter or object of the sale in her favor, and with the express knowledge and consent of defendants ARRA and Arguelles, she immediately took possession and occupied the same as contained in a certification to said effect of the defendants, and where they further certified that the certificate of condominium corresponding to the second floor "is presently under process," copy of said certification is hereto attached as Annex "C" hereof;
- 5.- That sometime in August 1984, the plaintiff learned that the defendants ARRA and Arguelles, conspiring with one another

in a clear and unmistakeably (*sic*) scheme to defraud the plaintiff of her investment on the second floor of the 5-storey edifice, mortgaged the land and the building covered by Transfer Certificate of Title No. 112269 of the Registry of Deeds for Makati, Metro Manila, with the China Banking Corporation in order to secure the payment of their loan in the total sum of ₱6,500,000.00 without the knowledge and/or consent of the plaintiff;

- 6.- That after verifying the fact of mortgage with the China Banking Corporation and realizing the risk of loss of her investment of ₱1,377,124.59 she had so far paid on the purchase price of the second floor of the 5-storey edifice, the plaintiff wrote the defendants ARRA and Arguelles on August 31, 1984 proposing to defendants ARRA and Arguelles the execution of a deed of sale with assumption of mortgage in her favor of the portion of the loan corresponding to the second floor of the said edifice and informing them of her resolve to hold further payments on the purchase price of the second floor until her rights and interest over the same shall have been adequately and properly secured, copy of said letter is hereto attached as Annex "D" hereof;
- 7.- That in order to facilitate the transaction and expeditious execution of the sale over the second floor in her favor, the plaintiff had a Deed of Sale with Assumption of Mortgage prepared and forwarded the same to defendants ARRA and Arguelles for their consideration and signature with an accompanying letter therefor dated September 25, 1984, copy of said draft of a deed of sale with assumption of mortgage and the accompanying letter therefor are hereto attached as Annexes "E" and "E-1," respectively;
- 8.- That by reason of the unjustified, unwarranted and malicious inaction and/or refusal and failure of the defendants ARRA and Arguelles to comply with plaintiff's perfectly valid and legal demand for the execution of a document of sale over the second floor of the 5-storey edifice, and in order to protect her rights and interest in said transaction, the plaintiff caused to be prepared and executed an affidavit of Adverse Claim and effected the annotation thereof on Transfer Certificate of Title No. 112269 of the Registry of Deeds for Makati, M.M., copy of said Adverse Claim is hereto attached as Annex "F" hereof.
[20]

On her second cause of action, Peñaloza alleged, as follows:

- 9.- That after her occupation and taking possession of the second floor of the said 5-storey edifice, the plaintiff caused the installation of a water tank and water pumps thereto;
- 10.- That the water tank installed on the second floor of the 5-storey edifice involved an outlay of ₱15,000.00 as evidenced