

FIRST DIVISION

[G.R. No. 140468, January 16, 2003]

OLYMPIA HOUSING, INC., PETITIONER, VS. PANASIATIC TRAVEL CORPORATION AND MA. NELIDA GALVEZ-YCASIANO, RESPONDENTS.

D E C I S I O N

VITUG, J.:

The petition for review on *certiorari* before the Court assails the decision, promulgated on 11 June 1999, and the resolution, promulgated on 14 October 1999, of the Court of Appeals in CA-G.R. CV Case No. 53516.

The case originated from a complaint for Recovery of Possession (*Accion Publiciana*) filed by Olympia Housing, Inc., against Panasiatic Travel Corporation, Maria Nelida Ycasiano and the latter's husband. The object in litigation is a condominium unit sold at the price of P2,340,000.00 payable on installments at the rate of P33,657.40 per month.

On the basis of the facts encapsulated by the trial court, it would appear that –

“On August 8, 1984, plaintiff and defendant Ma. Nelida Galvez-Ycasiano entered into a Contract to Sell, whereby the former agreed to sell to the latter condominium unit no. D-12, comprising an area of 160.50 square meters, more or less, situated on the ground floor of Olympia Condominium located at Makati, Metro Manila, covered by Condominium Certificate of Title No. 6711, for the agreed price of P2,340,000.00 payable in installments of P33,657.40 per month.

“The schedule of payments [were] as follows:

<u>Date</u>	<u>Particulars</u>	<u>Amount</u>
July 17, 1984	Reservation/Deposit	P100,000.00
July 19, 1984	50% Down payment	P1,070,000.00

“Balance of 50% payable in sixty (60) monthly installments at 24% per annum base on diminishing balance.

“Monthly amortization to commence on Sept. 17,

1984.....P33,657.40/month

“Interest of 2% is included in regular monthly amortization, past due amortization shall bear interest of 2% per month plus penalty charge of 2% per month.

"Pursuant to the Contract to Sell, defendant Ma. Nelida Galvez-Ycasiano made a reservation/deposit in the amount of P100,000.00 on July 17, 1984 and 50% down payment in the amount of P1,070,000.00 on July 19, 1984.

"Defendants made several payments in cash and thru credit memos issued by plaintiff representing plane tickets bought by plaintiff from defendant Panasiatic Travel Corp., which is owned by defendant Ma. Nelida Galvez-Ycasiano, who credited/offset the amount of the said plane tickets to defendant's account due to plaintiff.

"Plaintiff alleged that far from complying with the terms and conditions of said Contract to Sell, defendants failed to pay the corresponding monthly installments which as of June 2, 1988 amounted to P1,924,345.52. Demand to pay the same was sent to defendant Ma. Nelida Galvez-Ycasiano, but the latter failed to settle her obligation.

"For failure of defendant to pay her obligation plaintiff allegedly rescinded the contract by a Notarial Act of Rescission.

"At present, the subject condominium unit is being occupied by defendant Panasiatic Travel Corp., hence the suit for Recovery of Possession (Accion Publiciana) with prayer for attorney's fees, exemplary damages and reasonable rentals for the unit from July 28, 1988 at the rate of P32,100.00 per month until the condominium unit is finally vacated.

"Defendant Ma. Nelida Galvez-Ycasiano, while admitting the existence of the contract to sell, interposed the defense that she has made substantial payments of the purchase price of the subject condominium unit amounting to P1,964,452.82 in accordance with the provisions of the contract to sell; that she decided to stop payment of the purchase price in the meantime because of substantial differences between her and the plaintiff in the computation of the balance of the purchase price.

"xxx xxx xxx

"Evidence adduced by plaintiff such as the statement of account of defendant Ma. Nelida Galvez-Ycasiano (Exh. 'C') has been established by plaintiff's witness, Mrs. Isabelita Rivera, which indeed shows that on several occasions defendant either failed to pay on time or was completely in default in the payment of the monthly installment of the subject condominium unit.

"It can be deduced from said documentary evidence that defendant should start paying the installment on September 17, 1984, but defendant paid on September 21, 1984 the amount of P51,238.00 thru credit memo. Witness claimed that a credit memo is a document issued by Olympia Housing Inc. to Panasiatic Travel Corp. for the amount of ticket purchased instead of paying in cash they just issued credit memo in order that it would be offset on the monthly amortization due to Olympia Housing Corp. She claimed that they based it on the invoice that they [were] sending them.

"Witness further claimed that since the amount due was only P33,657.40 what she did to the excess of P51,238.00 was to apply it to the next installment. The next

installment was due on October 12, 1984 in the amount of P26,158.00 representing the excess. It was paid thru credit memo no. 031 on October 17, 1984. In fact, there was still an excess of P10,081.20. The third installment was due on November 17, 1984. Defendant made partial payment because the excess payment of P10,081.20 was applied to the third installment. The 4th installment was due on December 17, 1984; the defendant did not pay instead she paid On January 9, 1985 the amount of P51,619.08 in cash per O.R. No. 295. Before this payment on January 9, 1985 defendant owed plaintiff P59,931.81 based on the amortization. The basis [was] the unpaid amortization due and payable plus 2% interest and 2% penalty charges per month. After payment, the amount due was P8,312.73. The 5th installment was due on January 17, 1985. No payment was made on the 6th, 7th 8th installments which were due on January, February, March, April 17, 1985 respectively. The 9th installment was due on May 17, 1985, it was not paid. Defendant made a payment on June 1985 for P33,231.90 in cash per O.R. No. 439. The next payment was made on June 8, 1985 for P25,574.59. After these two payments, there was still an outstanding amount due of P32,552.44. No payment was made on the 10th and 11th installments. The next payment was made on July 24, 1985 for P60,000.00. After this payment the outstanding amount due was P43,881.76. She made payment on August 16, 1985 for P30,067.00 thru credit memo no. 045. After this payment the outstanding amount due was P15,160.46. She did not on the 12th installment, instead she paid on August 28, 1985 for P26,043.00 thru credit memo no. 046. After this payment the outstanding amount due was P23,511.07. She did not pay on the 13th installment, instead she paid on October 10, 1985 for P20,830.00 thru credit memo no. 006. After this payment the outstanding amount due was P38,728.61. She did not pay on the 14th installment, instead payment was made on November 10, 1985 for P16,212.00 thru credit memo no. 010. After this payment the outstanding amount due was P58,851.83. No payments were made on the 15th, 16th and 17th installments. She paid on January 30, 1986 for P33,657.40 in cash per O.R. No. 842. After this payment the outstanding balance was P138,233.23. No payment was made on the 18th and 19th installment which fell due on February 17 and March 17, 1986. The next payment was made on April 15, 1986 for P25,263.23. After this payment the outstanding balance was P198,425.88. She did not pay for six (6) consecutive months from April 17 to September 17, 1986 corresponding to the 20th up to the 25th installment. The next payment was made on October 14, 1986 for P82,780.33 in cash per O.R. No. 1628. After this payment the outstanding amount due was P350,712.73. The 26th and 27th installments were not paid. She paid on November 24, 1986 for P134,629.60. After this payment the outstanding balance was P306,306.66. Witness claimed that the basis for the computation was the unpaid amortization due payable for the particular period plus 2% interest and 2% penalty charge per month. In computing the interest she used the simple method. The 28th up to the 31st installments were not paid. The next payment was made on April 30, 1987 for P22,213.00 thru credit memo no. 134. After this payment the outstanding balance was P471,317.60. The basis for this computation is the unpaid amortization due plus 2% interest and 2% penalty charge per month. The 33rd, 34th and 35th installments were not paid. The next payment was made on July 22, 1987 for P19,752.00 thru credit memo no. 146. After this payment the outstanding balance was P664,822.78. The 36th and 37th installments were not paid.”^[1]

On 31 January 1995, the Regional Trial Court, Branch V, of Makati City ruled thusly-

"WHEREFORE, premises considered, judgment is hereby rendered as follows:

- "1. As the complaint has been prematurely filed without complying with the mandate of Republic Act No. 6552, the complaint is hereby dismissed;
- "2. That the obligation of defendant Maria Nelida Galvez Ycasiano has now become due and demandable, said defendant is hereby ordered to pay the sum of P4,007,473.49 as of November 30, 1994 plus 18% interest per annum, computed from 1 December 1994, but within sixty days from receipt of a copy of this decision;
- "3. Upon payment thereof, for plaintiff to issue the corresponding certificate of title in favor of defendant;
- "4. In the event that said amount in full is not paid including the current amount due including the interest sans penalties, then immediately thereafter, without necessity of demand, the defendants must vacate the premises and all payments will be charged as rentals to the property.

"No award of damages and attorney's fees for any parties is being adjudged.

"No costs."^[2]

Thereupon, respondents tendered the amount of P4,304,026.53 to petitioner *via* Metrobank Cashier's Check No. CC008857. Petitioner refused to accept the payment, constraining respondents to consign at the disposal of the court *a quo* the check on 26 April 1995. In an order, dated 05 June 1996, the check was allowed to be substituted by another cashier's check payable to the Clerk of Court of the Makati Regional Trial Court. Complying with yet another court order of 04 January 1996, respondents deposited the amount of P4,304,026.53 with the Land Bank of the Philippines and subsequently submitted to the court the corresponding bank book as well as the bank's verification.

Meanwhile, both parties appealed the judgment of the trial court. In its now questioned decision of 11 June 1999, the appellate court sustained the trial court.

The denial of the motion for reconsideration prompted petitioner to file the instant petition for review on *certiorari*, raising the following assignment of errors, to wit:

"I

"THE COURT OF APPEALS ACTED IN A MANNER NOT IN ACCORD WITH LAW AND APPLICABLE JURISPRUDENCE OF THE SUPREME COURT WHEN IT FAILED AND/OR REFUSED TO RULE UPON THE EFFECT OF THE FILING

OF THE COMPLAINT AND THE NOTARIAL ACT OF RESCISSION ATTACHED THERETO VIS-À-VIS THE REQUIREMENTS OF R.A. 6552.

“II

“THE COURT OF APPEALS ACTED IN A MANNER NOT IN ACCORD WITH LAW AND APPLICABLE JURISPRUDENCE OF THE SUPREME COURT IN REFUSING TO DECREE THE RESCISSION OF THE SUBJECT CONTRACT TO SELL ON THE GROUND THAT PETITIONER FAILED TO PAY THE CASH SURRENDER VALUE PRIOR TO THE FILING OF THE COMPLAINT.

“III

“THE COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT’S DECISION ALLOWING RESPONDENT YCASIANO TO PAY ON HER ALREADY-DEFAULTED OBLIGATIONS AND, UPON SUCH PAYMENT, ORDERING PETITIONER TO ISSUE THE CERTIFICATE OF TITLE TO HER.”

[3]

Respondents, upon the other hand, would insist that the petition should be held devoid of merit considering that: *first*, the issues raised in the petition would strike at fundamentally factual questions beyond the province of a petition for review on *certiorari* with this Court; *second*, there was no valid rescission of the contract to sell on account of the failure of petitioner to give notice of rescission by notarial act, a requisite laid down in Republic Act No. 6552; *third*, the oft-invoked *Layug vs. IAC*^[4] case would scarcely find application, it being a case for annulment of contract, not one for the recovery of possession; *fourth*, no effective rescission had taken place on account of the failure of petitioner to pay the cash surrender value, conformably with the terms of the law; and *fifth*, there being no valid rescission, the contract remained valid and subsisting, still thereby obligating respondents to pay the outstanding balance of the purchase price.

In its Reply Brief, petitioner asseverated that, while not categorically made, the Court, in *Layug*,^[5] had held to be sufficiently anchored, nevertheless, an action for judicial rescission even if no notarial act of rescission was priorly executed and the non-payment of the cash surrender value before the filing of the complaint.^[6] Moreover, petitioner argued that while the complaint before the trial court was denominated as one for “recovery of possession,” the suit could still be considered as a case for judicial rescission considering that the issue of whether or not it was entitled to recover possession over the property subject matter of the contract to sell would require, for its resolution, passing upon the initial issue of whether or not the contract was in fact rescinded by virtue of a notarial act.^[7]

The petition must be denied.

The action for reconveyance filed by petitioner was predicated on an assumption that its contract to sell executed in favor of respondent buyer had been validly cancelled or rescinded. The records would show that, indeed, no such cancellation took place at any time prior to the institution of the action for reconveyance. What had been sent by petitioner to respondent was a letter, dated 02 June 1988, that read: