

## FIRST DIVISION

[ G. R. No. 118749, April 25, 2003 ]

**SPOUSES LORENZO G. FRANCISCO AND LORENZA D. FRANCISCO,  
PETITIONERS, VS. HONORABLE COURT OF APPEALS, AND  
BIENVENIDO C. MERCADO, RESPONDENTS.**

### D E C I S I O N

**CARPIO, J.:**

#### The Case

Before this Court is a petition for review<sup>[1]</sup> assailing the Decision<sup>[2]</sup> of 21 November 1994 as well as the Resolution of 17 January 1995 of the Court of Appeals in CA-G.R. CV No. 34084. The Court of Appeals upheld the Decision of 10 June 1991 of the Regional Trial Court<sup>[3]</sup> of San Fernando, Pampanga, in Civil Case No. 7909 rescinding the subdivision development contract between the parties and awarding damages to respondent Bienvenido C. Mercado.

#### Antecedent Facts

On 3 February 1984, the spouses Lorenzo and Lorenza Francisco ("petitioners") and Engineer Bienvenido C. Mercado ("respondent") entered into a Contract of Development<sup>[4]</sup> ("Contract") for the development into a subdivision of several parcels of land in Pampanga.

Under the Contract, respondent agreed to undertake at his expense the development work for the Franda Village Subdivision. Respondent committed to complete the construction within 27 months. Respondent also advanced P200,000.00 for the initial expenses of the development work. In return, respondent would receive 50% of the total gross sales of the subdivision lots and other income of the subdivision. Respondent also enjoyed the exclusive and irrevocable authority to manage, control and supervise the sales of the lots within the subdivision. The Contract required respondent to submit to petitioners, within the first 15 days of every month, a report on payments collected from lot buyers with copies of all the contracts to sell. However, respondent failed to submit the monthly report.

From 16 October 1985 to sometime in March 1986, within the 27-month period granted to respondent, petitioners also contracted a certain Nicasio Rosales, Sr. ("Rosales") to undertake the partial development of the subdivision. On 16 July 1986, Rosales submitted his accomplishment report. On the same day, petitioners demanded that respondent submit within 15 days an accounting of his operation of the subdivision from the beginning of the project up to 15 July 1986. Petitioners also requested for copies of contracts to sell, receipts of collections and receipts of disbursements for development expenses.

On 5 August 1986, respondent secured from the Human Settlements Regulatory Commission ("HSRC") an extension of time to finish the subdivision development until 30 July 1987. On 8 August 1986, petitioners instructed respondent to stop selling subdivision lots and collecting payments from lot buyers. Petitioners also demanded the turnover to them of all official receipts in the name of Franda Village Subdivision.<sup>[5]</sup> Nonetheless, respondent continued to collect payments from lot buyers until September 1986.

On 18 September 1986, petitioners wrote respondent that their accountant was not satisfied with respondent's report which did not include the necessary supporting documents. Petitioners required respondent to submit a proper statement of collections with supporting receipts and documents, and reiterated that respondent should stop selling subdivision lots and collecting payments from lot buyers. For the first time, petitioners also alleged that respondent violated certain provisions of the Contract. Petitioners mentioned the complaint of lot buyers that respondent was not developing the subdivision within the agreed period. Another complaint was that respondent issued two kinds of receipts, one in the name of B. C. Mercado and the other in the name of Franda Subdivision.<sup>[6]</sup>

On 7 October 1986, petitioners informed the HSRC of the lot buyers' complaints that respondent completed only 5% of the development work and that he was issuing two kinds of receipts. Petitioners also claimed that respondent was in serious violation of the Contract because he did not properly remit to petitioners the proceeds from the lot sales.

In a letter dated 25 November 1986,<sup>[7]</sup> respondent requested petitioners to provide him with the format of the statement of collections they wanted or, alternatively, to send an accountant to audit his records. He assured them that he could account for all the proceeds from the lot sales. He countered that he could have finished the development of the subdivision on time had petitioners not hampered him with their verbal demands to stop the development and "fill up" the lots first. Respondent suggested that he and petitioners settle their differences either by mutually canceling the Contract and giving to each party its corresponding share, or by continuing with the arrangement. In the meantime, respondent informed petitioners that he would continue the operation of the subdivision in accordance with the Contract.

On 20 January 1987, petitioners granted respondent an authority<sup>[8]</sup> to resume the sale of subdivision lots and the collection of payments subject to the following conditions: (1) all collections shall be deposited in a joint account with China Banking Corporation, San Fernando, Pampanga branch; (2) withdrawals shall be limited to 50% of the total collections or to respondent's share, which can only be used for development expenses, and any withdrawal shall be subject to the approval of petitioners; (3) only Franda Village Subdivision receipts, duly countersigned by petitioners, shall be used; (4) collections shall be subject to a weekly or monthly audit; and (5) any violation of these conditions shall result in the automatic cancellation of the authority.

On 28 January 1987, respondent informed HSRC that he had stopped development work on the subdivision because the conditional authority issued by petitioners violated the Contract. Specifically, respondent referred to the following provisions of

the Contract that the conditional authority contravened: (1) his exclusive and irrevocable right to manage, control, and supervise the sale of lots; (2) his authority to issue receipts as the developer without the participation of the landowners; and (3) his right to withdraw his 50% share without the approval of the landowners.<sup>[9]</sup> Respondent attributed the delay in the development of the subdivision to petitioners who contracted the services of another person during the effectivity of the Contract. Petitioners also stopped respondent, without justification, from selling the lots and collecting payments from lot buyers.

On 27 February 1987, respondent filed with the trial court an action to rescind the Contract with a prayer for damages. Petitioners countered that respondent breached the Contract by failing to finish the subdivision within the 27 months agreed upon, and therefore respondent was in delay. Petitioners also alleged that respondent sold one subdivision lot to two different buyers.

Subsequently, petitioners obtained permission from the Housing and Land Use Regulatory Board to takeover the development of the subdivision.

### **The Ruling of the Trial Court**

After trial on the merits, the trial court found for respondent. The trial court ruled that petitioners breached the Contract by: (1) hiring Rosales to do development work on the subdivision within the 27-month period exclusively granted to respondent; (2) interfering with the latter's development work; and (3) stopping respondent from managing the sale of lots and collection of payments.

Because petitioners were the first to breach the Contract and even interfered with the development work, the trial court declared that respondent did not incur delay even if he completed only 28% of the development work. Further, the HSRC extended the Contract up to July 1987. Since the Contract had not expired at the time respondent filed the action for rescission, petitioners' defense that respondent did not finish the development work on time was without basis.

The trial court also found that respondent did not fail to pay the 50% share of petitioners from the proceeds of the lot sales. The trial court viewed respondent's failure to submit the required report as only a slight infraction not warranting petitioners' interference with respondent's right to sell the lots and collect payments from sales pursuant to Article X (3) of the Contract. The trial court noted that petitioners had tolerated the non-submission of the monthly report until petitioners made the demand for accounting on 16 July 1986, which respondent readily complied. The trial court stressed that respondent's right under the Contract to sell lots and collect payments was exclusive and irrevocable.

The trial court found unproven the charge that respondent sold one subdivision lot to two buyers. The trial court considered the issue of a double sale immaterial, as respondent did not violate any provision of the Contract and the aggrieved parties in such event would be the buyers and not petitioners.

In its Decision<sup>[10]</sup> of 10 June 1991, the trial court decreed the rescission of the Contract and awarded damages to respondent, as follows:

Premises considered, judgement is hereby rendered in favor of plaintiff granting the rescission of the Contract of Development between him and defendants' and ordering defendants to pay unto plaintiff the following:

1. Expenses of operation of the subdivision in the total amount of P1,808,756.01 and return of advance payment of P200,000.00;
2. Attorney's fees of P25,000.00;
3. P50,000.00 and P30,000.00 as temperate and exemplary damages; and
4. Cost of suit.

SO ORDERED.

### **The Ruling of the Court of Appeals**

On appeal to the Court of Appeals, petitioners presented for the first time a supplemental Memorandum of Agreement dated 9 October 1985 allegedly entered into by petitioners and Rosales with the conformity of respondent. However, the appellate court refused to take cognizance of the Memorandum of Agreement, as petitioners did not formally offer it in evidence.

The Court of Appeals adopted the findings of fact of the trial court. Declaring that there was no reversible error, the appellate court in its Decision of 21 November 1994<sup>[11]</sup> affirmed the ruling of the trial court *in toto*.

Petitioners filed a motion for reconsideration, which the Court of Appeals denied in its Resolution of 17 January 1995.<sup>[12]</sup>

On 21 March 1995, petitioners filed with the Supreme Court a petition for review assailing the appellate court's decision and resolution. Petitioners prayed that the Court: (1) reverse the decision of the Court of Appeals; (2) award to petitioners P4,403,895.00 as additional cost of the development of the subdivision, P57,864.00 as their unremitted share, P304,152.00 to reimburse them for the amounts paid to Rosales, P50,000.00 as attorney's fees, P10,000.00 as appearance fees, and moral and exemplary damages; and (3) other equitable reliefs and remedies.<sup>[13]</sup>

### **The Issues**

Petitioners assign the following errors:

1. THE COURT OF APPEALS ERRED WHEN IT HELD THAT DELAY IS NOT AN ISSUE IN THIS CASE;
2. THE COURT OF APPEALS ERRED WHEN IT HELD THAT THE CONTRACT OF DEVELOPMENT HAS NOT EXPIRED AND WAS EXTENDED UP TO JULY 30, 1997 BY PETITIONER;
3. THE COURT OF APPEALS ERRED WHEN IT HELD THAT PRIVATE RESPONDENT WAS ENTITLED TO THE RESCISSION OF THE

CONTRACT OF DEVELOPMENT AND DAMAGES BECAUSE OF INTERVENTION OF NICASIO ROSALES, SR. IN THE DEVELOPMENT OF THE SUBDIVISION DURING THE EXISTENCE OF THE CONTRACT, AND THAT THE MEMORANDUM OF AGREEMENT OR SUPPLEMENTAL AGREEMENT WHICH BEARS THE CONFORMITY OF PLAINTIFF WAS NOT OFFERED OR PRODUCED IN THE TRIAL COURT AND THEREFORE COULD NOT BE CONSIDERED ON APPEAL, WHEN IN FACT IT WAS REFERENCED AND MADE PART OF THE EVIDENCE OF THE PRIVATE RESPONDENT;

4. THE COURT OF APPEALS ERRED WHEN IT HELD THAT PRIVATE RESPONDENT WAS ENTITLED TO THE RESCISSION OF THE CONTRACT AND DAMAGES BECAUSE PRIVATE RESPONDENT'S NON-SUBMISSION OF THE MONTHLY COLLECTION REPORT WAS NOT A SERIOUS AND SUBSTANTIAL BREACH OF THE CONTRACT OF DEVELOPMENT;
5. THE COURT OF APPEALS ERRED WHEN IT HELD THAT PRIVATE RESPONDENT WAS ENTITLED TO THE RESCISSION OF THE CONTRACT AND DAMAGES BECAUSE PRIVATE RESPONDENT'S EXECUTION OF DOUBLE SALE OF A LOT IN THE SUBDIVISION SUBJECT OF THE CONTRACT OF DEVELOPMENT IN FAVOR OF TWO DIFFERENT PERSONS IS AT BEST A PERIPHERAL ISSUE TO THE MAIN ISSUE OF RESCISSION.
6. THE COURT OF APPEALS ERRED WHEN IT HELD THAT IT AFFIRMED THE DECISION DATED JUNE 10, 1991 OF THE TRIAL COURT INSTEAD OF REVERSING THE SAME AND AWARDING DAMAGES TO PETITIONERS.<sup>[14]</sup>

### **The Ruling of the Court**

It is evident from the assigned errors that petitioners are asking the Court to reexamine certain findings of fact of the trial court. Petitioners submit that this case constitutes an exception to Rule 45 of the Rules of Court limiting to questions of law the issues that may be raised in an appeal by *certiorari* to this Court.

To bolster this argument, the petition for review, prepared by Atty. Pedro D. Diwa as counsel for petitioners, cited what is supposed to be the Court's ruling in ***Misa v. Court of Appeals***.<sup>[15]</sup> However, petitioner's counsel misquoted the ruling in ***Misa***. We reproduce the erroneous excerpt - which petitioner's counsel even underscored - as follows:

And finally, Mr. Justice Medialdea of this COURT in the case of Misa vs. Court of Appeals, G.R. No. 97291, August 5, 1992, by way of exception to the settled rule that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court, held as follows:

"It is firmly settled that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. However, there are several instances when findings of