

## FIRST DIVISION

[ G.R. No. 104769, March 03, 2000 ]

**AFP MUTUAL BENEFIT ASSOCIATION, INC., PETITIONER, VS. COURT OF APPEALS, SOLID HOMES, INC., INVESTCO, INC., AND REGISTER OF DEEDS OF MARIKINA, RESPONDENTS.**

[G.R. No. 135016]

**SOLID HOMES, INC., PETITIONER, VS. INVESTCO, INC. SUBSTITUTED BY AFP MUTUAL BENEFIT ASSOCIATION, INC., RESPONDENT.**

### D E C I S I O N

**PARDO, J.:**

The above cases were consolidated<sup>[1]</sup> and are thus jointly decided. The first case (G. R. No. 104769) is an appeal via certiorari taken by AFP Mutual Benefit Association, Inc. (AFP MBAI for short) from the decision of the Court of Appeals the dispositive portion of which reads as follows:

"WHEREFORE, the Decision appealed from is hereby REVERSED and SET ASIDE insofar as it orders appellant AFP Mutual Benefit Association, Inc. to pay plaintiff appellee exemplary damages; and AMENDED by reducing the nominal damages to P10,000.00, and ordering the private defendants to pay the costs instead of treble costs. Furthermore, the Clerk of the Court a quo is hereby instructed to reassess and determine the additional filing fee that should be paid by plaintiff considering the total amount awarded and to require plaintiff-appellee to pay the deficiency, if any.

"In all other respect, the decision is hereby AFFIRMED.

"SO ORDERED."<sup>[2]</sup>

The second case (G. R. No. 135016), is an appeal *via* certiorari interposed by Solid Homes, Inc. (hereafter Solid Homes) from the decision of the Court of Appeals, the dispositive portion of which reads as follows:

"WHEREFORE, premises considered, the petition for review is hereby DISMISSED. The appealed order of the Regional Trial Court of Pasig City is hereby AFFIRMED in toto."

"SO ORDERED."<sup>[3]</sup>

The facts are as follows:

Prior to September 7, 1976, Investco, Inc. was the owner of six (6) parcels of raw

land, located in Quezon City and Marikina (Metro Manila, now a City), registered under titles in the names of its predecessors-in-interests, Angela Perez-Staley and Antonio Perez, Jr.

On September 7, 1976, Investco, Inc. agreed to sell the six (6) parcels of land to Solid Homes for P10,211,075.00, payable in installments from July 22, 1977 to January 22, 1983. Among other terms, the parties agreed that Solid Homes would pay the amount of P100,000.00 as down payment upon execution of the contract; that Solid Homes would pay P1,942,215.00 as additional down payment on July 22, 1977, October 22, 1977, and January 22, 1978; and that Solid Homes would pay the balance of P8,188,860.00 in ten (10) semi-annual installments for a period of five (5) years, with interest at twelve (12%) percent per annum. The first installment was due on July 22, 1978. Paragraph 2 of the contract stipulates that:

"Should the (Vendee) fail to pay any of the installments on the due date thereof, he shall pay interest on the installment due at the rate of 1% per month for a total period of only two months or pro rata thereof, and should the (Vendee) still fail to pay the installment due including interest after the grace period of two months, the entire balance of the purchase price agreed upon shall become immediately due and demandable, and the (Vendee) shall pay the same within a period of thirty (30) days from the expiration of the grace period, without the need for judicial action on the part of the (Vendor)."

The parties further agreed that Solid Homes would evict the squatters in the property or obtain a waiver from them, that it would cause the original titles to be cancelled and new ones issued in the name of Investco, Inc. and that Investco, Inc. would contribute one-half of the expenses in clearing the property of occupants, in an amount not exceeding P350,000.00. On or about March 28, 1979, the Register of Deeds of Marikina issued in favor of Investco, Inc. Transfer Certificate of Title Nos. 36518, 36680, 36681, 36682, 36683 and 36684 covering the Marikina portion of the property. The contract of sale to Solid Homes was not registered with the Registry of Deeds of Marikina nor annotated on the original titles issued in the name of Investco, Inc.

However, after paying the amount of P2,042,215.00 corresponding to the downpayment, and the amount of P4,084,430.00 representing the first four (4) semi-annual installments and a portion of the fifth installment, Solid Homes made no further payment to Investco, Inc. after February 19, 1981. The postdated checks issued by Solid homes to Investco, Inc. intended for the remaining installments were dishonored, leaving a balance of P4,300,282.91 due under the contract in Investco, Inc.'s favor.

On March 13, 1981, Investco, Inc. and its predecessors-in-interests Angela Perez-Staley and Antonio Perez, Jr. filed with the Court of First Instance of Rizal, Pasig, Branch 26 an action for specific performance and damages against Solid Homes, Inc.<sup>[4]</sup> In the complaint, Investco, Inc. and co-plaintiffs sought to collect from Solid Homes, Inc. the sum of P4,800,282.91 representing the balance on the purchase price due under the contract, reimbursement of P350,000.00 representing Investco, Inc.'s contribution to the expenses for eviction of squatters and the further sum of P99,559.00 for science and transfer taxes, and actual and moral damages, including attorney's fees.

On April 20, 1981, Solid Homes filed with the trial court an answer to Investco, Inc.'s complaint alleging that the purchase price under the contract was "not yet due" and that the former, in fact, exceeded the installment payments due thereon. Solid Homes prayed for dismissal of Investco, Inc.'s complaint, and interposed a counterclaim for the refund of its excess payments, moral damages in the sum of P500,000.00, and attorney's fees of P20,000.00 "or in the sum equivalent to 10% of whatever amount is awarded in favor of defendant."<sup>[5]</sup>

On September 20, 1984, Solid Homes filed with the Register of Deeds of Marikina a notice of *lis pendens* with reference to Civil Case No. 40615 requesting that the same be annotated on the titles in Investco, Inc.'s name. On the same date, the notice of *lis pendens* was recorded as Entry No. 117191 of the primary Entry Book, Volume 14 of the Office of the Register of Deeds of Marikina, Metro Manila.

However, the notice of *lis pendens* was not actually annotated on the titles in the name of Investco, Inc.

On February 14, 1985, the trial court rendered judgment in favor of Investco, Inc. ordering solid Homes to pay plaintiffs P4,800,282.91, representing the balance of the purchase price due under the contract, with interest thereon from February 23, 1981 until paid; P99,559.00 representing science and transfer taxes advanced by Investco to Solid Homes and P250,000.00 as attorney's fees and expenses of litigation.<sup>[6]</sup>

On May 27, 1985, the trial court ordered the original record transmitted to the appellate court in view of Solid Home's filing of a notice of appeal.<sup>[7]</sup>

In the meantime, on April 23, 1984, Investco, Inc. offered to sell the property to AFP Mutual Benefit Association, Inc. for P27,079,767.00, subsequently reduced to P24,000,000.00, payable in installments. Investco, Inc. furnished AFP MBAI with certified true copies of the titles covering the Marikina property.

In June, 1984, AFP MBAI verified the titles with the Register of Deeds of Marikina, Metro Manila and found that copies of the titles that Investco, Inc. gave were genuine and faithful reproductions of the original titles on file with the Register of Deeds. AFP MBAI noted that there were no liens or encumbrances annotated on the titles.

Moreover, AFP MBAI, through its Real Estate Committee, made an ocular inspection of the property sometime in June and July, 1984 "to determine the nature of the property and its (metes) and bounds." During the inspection, AFP MBAI found that the Investco, Inc. property was underdeveloped raw land "which is mostly cogonal, (with) few trees and shrubs x x x and bounded on one side by the Marikina River."<sup>[8]</sup> AFP MBAI confirmed the presence of squatter shanties numbering about twenty (20) to thirty (30). Except for a foot path used by the squatters, there was no development on the property.

After determining that the Investco property was suitable for the housing project of the Armed Forces of the Philippines and that the titles covering the same were "clean" and "genuine," AFP MBAI agreed to purchase the same from Investco, Inc.

for the price of P24,000,000.00, payable in installments for a period of one (1) year.

On October 10, 1984, Investco, Inc. executed a "Deed of Absolute Sale" conveying the property to AFP MBAI for the price of P24,000,000.00, payable in installments until October 10, 1985.<sup>[9]</sup> Among other terms, Investco, Inc. warranted to AFP MBAI that "it has good and valid title over the properties subject of (the) sale and (that it ) shall hold (AFP MBAI) free from any adverse claim of whatever nature and from liens an encumbrances of third parties."<sup>[10]</sup>

In November, 1984, AFP MBAI again verified the records of the Register of Deeds of Marikina, Metro Manila and confirmed "(t)he absence of any *lis pendens*, adverse claims or any liens or encumbrance (on) the originals of the title(s) x x x." AFP MBAI also inquired from the Malacañang Legal Office, the Land Registration Commission, and the Metropolitan Trial Court of Marikina if there were cases and other problems concerning the property, but found no case involving either Investco, Inc. or the property pending with said court and offices.<sup>[11]</sup> AFP MBAI also obtained a certification from the Clerk of the Metropolitan Trial Court of Marikina that Investco, Inc. "has no pending case before (that) court."<sup>[12]</sup>

In April, 1985, AFP MBAI completed its payments of the purchase price.

On April 26, 1985, the Register of Deeds of Marikina issued Transfer Certificates of Title Nos. N-104941, N-104942, N-104943, N-104944, N-104945 and N-104946 in the name of AFP MBAI. The titles issued were "clean" and contained no annotation of any lien, encumbrance, or adverse claim by a third party.

On November 28, 1985, Solid Homes commenced action<sup>[13]</sup> before the Regional Trial Court, Marikina, against the Register of Deeds, AFP MBAI and Investco, Inc. for "annotation of *lis pendens* and damages" with temporary restraining order and preliminary injunction. In its verified complaint, Solid Homes prayed that (a) the Register of Deeds be ordered to annotate on the titles registered in the name of Investco, Inc. the notice of *lis pendens* dated September 19, 1984 in relation to civil Case No. 40615, and to carry over the same to the titles in the name of AFP MBAI; (b) alternatively, to declare AFP MBAI as a buyer in bad faith, bound by the judgment to be rendered in Civil Case No. 40615; and (c) AFP MBAI and Investco, Inc. be ordered to pay Solid Homes jointly and severally, unspecified amount of actual, moral and exemplary damages, as well as attorney's fees of P100,000.00 plus "ten (10%) percent of the total amount to be awarded to plaintiff." Solid Homes also prayed for an order to enjoin provisionally the Register of Deeds from registering any deed affecting the titles in derogation of solid Home's rights under the contract executed between itself and Investco, Inc.

In due time, AFP MBAI and Investco, Inc. filed with the trial court an answer to the complaint. After pre-trial and trial, on April 25, 1990, the trial court rendered decision holding that:

"Accordingly, judgment is hereby rendered as follows:

1. Ordering defendant Register of Deeds for (sic) Marikina to annotate the Notice of Lis Pendens, dated September 19, 1984 regarding Civil Case No. 40615 on the titles registered in the name of

defendant AFP MBAI, that is TCT Nos. 104941,104942, 104943, 104944 and 104945 and 104946.

2. Declaring defendant AFP MBAI as a buyer in bad faith and accordingly bound by the final judgment in Civil Case No. 40615, RTC, Pasig, now CA-G.R. No. 13400.
3. Ordering defendant Investco, Inc. to pay plaintiff nominal damages in the amount of P200,000.00 and exemplary damages in the amount of P100,000.00.
4. Ordering defendant AFP Mutual Benefit Association, Inc., to pay plaintiff the amount of P50,000.00 as nominal damages and P50,000.00 as exemplary damages.
5. Ordering defendants Investco and AFP MBAI to pay attorney's fees of P50,000.00 jointly and severally.
6. Dismissing the counterclaim of defendants.
7. Ordering private defendants to pay treble costs.
8. On the cross-claim of defendant AFP MBAI against defendant Investco, Inc., ordering the latter to reimburse the former the amount of P11,000.00 paid pursuant to the Deed of Absolute Sale presented for registration, Exhibit "7".

"SO ORDERED."<sup>[14]</sup>

Aggrieved thereby, AFP MBAI appealed the decision to the Court of Appeals.<sup>[15]</sup>

On November 29, 1992, the Court of Appeals rendered decision the dispositive portion of which is quoted in the opening paragraph of this decision.

On December 24, 1991, AFP MBAI filed with the Court of Appeals a motion for reconsideration of the decision, which Solid Homes opposed. On March 17, 1991, the Court of Appeals denied the motion.<sup>[16]</sup>

Hence, this petition.<sup>[17]</sup>

The issue raised is whether Solid Homes is entitled to the annotation of its notice of *lis pendens* on the titles of Investco, Inc. and AFP Mutual Benefit Association, Inc., in relation to Civil Case No. 40615 of the Regional Trial Court, Pasig and thereby be bound by the final judgment therein.

Basically, Solid Home's complaint was one for "annotation of *lis pendens* and other matters with prayer for restraining order and writ of preliminary injunction" against Investco, Inc. AFP MBAI and the Register of Deeds of Marikina, to cause the annotation of *lis pendens* in the titles of Investco, Inc. and AFP MBAI. Actually, therefore, the suit is to compel the Register of Deeds of Marikina to annotate the notice of *lis pendens* on the titles of AFP MBAI with a claim for damages against Investco, Inc. and AFP MBAI for depriving Solid Homes of its rights to the property