

## **EIGHTH DIVISION**

**[ CA-G.R. SP NO. 121286, March 31, 2014 ]**

**PRETINES REAL ESTATE AND MANAGEMENT CORPORATION,  
PETITIONER, VS. MA. EDITHA LEILANI LITAN-BRISTOL AND  
CARSON REAL ESTATE AND MANAGEMENT CORPORATION,  
RESPONDENTS.**

### **D E C I S I O N**

**REYES, JR., J.C., J.:**

Before this Court is a Petition for Review from the August 16, 2011 Order (Rollo, pp. 18-20) of the Office of the President, in O.P. Case No. 07-D-129, which denied the Motion for Reconsideration of its October 31, 2007 Decision (Rollo, pp. 21-24), the latter affirming the Decision and Resolution of the Housing and Land Use Regulatory Board (HLURB) dated July 18, 2005 and February 22, 2007, respectively (Rollo, pp. 27-30; 25-26).

The instant case involves the cancellation/revocation of a contract to sell between petitioner Pretines Real Estate and Management Corporation (Pretines Realty) and respondent Ma. Editha Leilani Litan-Bristol (Litan-Bristol) over a property located at the Southern Plains Subdivision in Canlubang, Calamba, Laguna designated as Lot 14, Block 48, Phase 1, with an area consisting of 230 square meters. Records show that petitioner Pretines Realty was the original land owner of Southern Plains. It entered into a joint venture agreement with respondent Carson Real Estate and Management Corporation (Carson Realty) for the development of the said property into a residential subdivision. Fil-Estate Sales, Inc. is the authorized broker.

On July 4, 1995, respondent Litan-Bristol paid Pretines Realty the sum of Php20,000.00 as reservation fee for the purchase of residential lot identified as Lot 14, Block 48 of Southern Plains Subdivision containing an area of 230 square meters. On August 17, 1995, respondent Litan-Bristol paid Pretines Realty the sum of Php159,400.00 representing the full down payment of the contract price of Php598,000.00. Provisional Receipt was issued by Fil-Estate and an Official Receipt was subsequently issued by Pretines Realty. On October 4, 1995, respondent Litan-Bristol formally entered into a contract to sell with Pretines Realty. The contract stipulates that respondent Litan-Bristol would pay the remaining balance in the amount of Php410,600.00 in 46 monthly installments of Php11,323.123 per month. Respondent Litan-Bristol had paid Pretines Realty the total amount of Php700,264.00, inclusive of reservation fee, down payment, 46 monthly installments and interests.

On October 26, 1995, respondent Litan-Bristol also entered into a similar Contract to Sell with Carson Realty under the same terms and conditions with Pretines Realty. Provisional receipt was also issued by Fil-estate and an official receipt was subsequently issued by Carson Realty. Respondent Litan-Bristol was also able to pay

Carson Realty the total amount of Php700,264.00, inclusive of reservation fee, down payment, 46 monthly installments and interests.

The last paragraph of Section 14 of the Contract to Sell entered into by and between respondent Litan-Bristol, Pretines Realty and Carson Realty provides that the construction of residential house on the property shall start not later than 36 months from the date of the contract to sell.

On June 17, 1996, respondent Litan-Bristol wrote the President of Fil-Estate inquiring when the title to the property would be available and the estimated completion date of the Clubhouse at Southern Plains. The Marketing Manager of Southern Plains informed respondent Litan-Bristol that individual titles to the property are being processed and completion of the Clubhouse would be by the end of 1996.

On June 6, 1999, respondent Litan-Bristol wrote a letter to Southern Plains noting the fact that after 4 years from the execution of the contract to sell, the development of the property is less than 50% complete. Respondent Litan-Bristol also stated that she already had architectural plans drawn up for a house that she should have built and should have been completed by September 1998.

After several exchanges of correspondence between the parties, the Southern Plains Subdivision project, to date, had remained substantially incomplete despite promises and undertakings to do so, making it impractical, unwise and unjustified to construct a residential house therein. Thus, the failure of Pretines Realty and Carson Realty to fully develop the project despite their promises to do so, has caused undue and unwarranted losses to herein respondent Litan-Bristol in terms of financial and other opportunities.

Thereafter, respondent Litan-Bristol filed a complaint for the cancellation and revocation of the contract to sell between the parties and for the refund of any and all amounts paid by respondent Litan-Bristol, inclusive of legal interest and for the payment of moral and exemplary damages, attorney's fees, appearance fees and litigation expenses. The said complaint was grounded on the alleged failure of Pretines Realty and Carson Realty to complete the development of the project within the period stipulated in the license to sell in violation of PD No. 957.

In their defense, Pretines Realty and Carson Realty explained that the delay in the completion of the project was due to the following: (1) legal impediments beyond their control; (2) the Asian financial crisis; (3) the increase in construction costs; and (4) change in the contractor. Fil Estate, on the other hand, denies any violation claiming that it merely acted as agent/broker for the project when it issued the provisional receipts.

In a Decision dated January 7, 2004, the HLURB, thru its Arbiter, Atty. Raymundo Foronda, ruled in favor of respondent Litan-Bristol and found no merit on the defense raised by Pretines Realty and Carson Realty as to the delay in the completion of the project. On the part of the Fil-Estate, he ruled that the former is not liable to respondent Litan-Bristol because it acted only as a mere sales agent in the transactions. The dispositive portion of the Decision reads as follows:

"WHEREFORE, premises considered, judgment is hereby rendered in favor of the complainant and against respondents' Pretines and Carson, to read as follows:

1. Ordering the rescission of the Contract to Sell between the complainant and Pretines Real Estate and Management Corporation;
2. Ordering the rescission of the Contract to Sell between the complainant and Carson Realty and Management Corporation;
3. Ordering Pretines Real Estate and Management Corporation to pay complainant the amount of SEVEN HUNDRED THOUSAND TWO HUNDRED SIXTY FOUR PESOS (Php700,264.00) by way of refund, plus legal interest at 12% per annum from August 28, 2002 until full payment;
4. Ordering Carson Realty and Management Corporation to pay complainant the amount of SEVEN HUNDRED THOUSAND TWO HUNDRED SIXTY FOUR PESOS (Php700,264.00) by way of refund, plus legal interest at 12% per annum from August 28, 2002 until full payment;
5. Ordering Pretines Real Estate and Management Corporation, Carson Realty and Management Corporation to jointly and severally pay complainant the following:
  - a) moral damages of P20,000.00
  - b) exemplary damages of P20,000.00
  - c) Attorney's fees of P20,000.00
6. Ordering Pretines and Carson to jointly and severally pay this Board P10,000.00 as administrative fine for violation of Section 20 of P.D. No. 957." (Rollo, pp. 92-93).

Pretines Realty and Carson Realty filed a Joint Petition for Review (Rollo, pp. 95-132) questioning the aforesaid January 7, 2004 Decision. Thus, in a Decision dated July 18, 2005, the HLURB affirmed the questioned decision but modified the portion with respect to the rate of interest on the refund (amending it to legal interest), and to the award of moral and exemplary damages, which was set aside.

Pretines Realty and Carson Realty moved for the reconsideration (See: Rollo, pp. 133-145) of the said Decision but said Motion was denied in HLURB Resolution dated February 22, 2007. Dissatisfied, Pretines Realty and Carson Realty filed an appeal with the Office of the President arguing in main that the construction and development of the project was already completed before the filing of the complaint with the HLURB.

The Office of the President is however not convinced, noting that the defense raised by Pretines Realty and Carson Realty is inconsistent with its previous defense before the HLURB wherein they impliedly admitted that there was indeed a delay in the development of the project. Thus, the Office of the President denied Pretines Realty