

NINTH DIVISION

[CA-G.R. CV No. 99899, March 31, 2014]

**SABINO E. ACUT, JR. AND EUSEBIA A. ACUT, PLAINTIFFS-
APPELLANTS, VS. AFP RETIREMENT AND SEPARATION BENEFITS
SYSTEM, DEFENDANT-APPELLANT.**

DECISION

LAMPAS PERALTA, J.:

This treats of the separate appeals of both parties from the Order dated July 27, 2012^[1] in Civil Case No. 08-0418 of Branch 196, Regional Trial Court, Parañaque City which (i) declared null and void the Reservation to Purchase dated January 16, 1996,^[2] Notice of Approval of the Reservation to Purchase dated February 23, 1996,^[3] and Deed of Absolute Sale dated April 14, 1998^[4] involving proprietary shares in the Riviera Golf Club, Inc. and Riviera Sports and Country Club, Inc., and (ii) ordered defendant-appellant to return to plaintiffs-appellants the amount of P660,000.00 representing the total purchase price of said shares, and also to pay them attorney's fees and costs.

THE ANTECEDENTS

Defendant-appellant AFP-RSBS is a pension fund created by Presidential Decree (PD) No. 361,^[5] as amended by PD No. 1656.^[6] It is the developer of the Riviera Golf Club, Inc. and Riviera Sports and Country Club, Inc., a 312-hectare property located at Aguinaldo Highway, Silang, Cavite.^[7]

In January 1996, plaintiffs-appellants Sabino E. Acut, Jr. and Eusebia A. Acut purchased from defendant-appellant one (1) share in the Riviera Golf Club, Inc. for P600,000.00 and one (1) share in the Riviera Sports and Country Club, Inc. for P60,000.00, or a total purchase price of P660,000.00. However, on May 3, 2001, plaintiffs-appellants demanded from defendant-appellant the return of the total purchase price of P660,000.00 plus damages, as plaintiffs-appellants claimed that at the time the subject shares were sold to them, defendant-appellant did not have the authority to sell the same. Defendant-appellant did not heed plaintiffs-appellants' demand.

Thus, on November 14, 2008 plaintiffs-appellants filed with the trial court a complaint against defendant-appellant for *Declaration of Nullity of Void/Inexistent Contract and Damages with Ex-Parte Application for Preliminary Attachment*, alleging that (i) in January 1996, defendant-appellant offered for sale to the general public the proprietary shares in the Riviera Golf Club, Inc. and the Riviera Sports and Country Club, Inc.;^[8] (ii) in January 1996, defendant-appellant offered to sell to plaintiffs-appellants one (1) golf club share for P600,000.00 and one (1) country club share for P60,000.00, or a total price of P660,000.00; (iii) although the shares were priced separately, defendant-appellant made it clear that it would not sell the

golf club share without the country club share; (iv) in January 1996, defendant-appellant sold to plaintiffs-appellants one (1) golf club share for P600,000.00 and one (1) country club share for P60,000.00, or a total price of P660,000.00, with downpayment of P198,000.00 payable immediately, and the balance of P462,000.00 to be paid in 12 monthly amortizations of P38,500.00; (v) on January 16, 1996, plaintiffs-appellants paid defendant-appellant the stipulated downpayment of P198,000.00 and on February 21, 1996, plaintiffs-appellants paid the balance of P462,000.00 thru twelve (12) postdated checks; (vi) on April 14, 1998, the parties formally executed a Deed of Absolute Sale with Restrictive Conditions pertaining to the shares; (vii) subsequently, plaintiffs-appellants discovered that at the time defendant-appellant sold to them the subject golf club share and country club share, the Securities and Exchange Commission (SEC) had not authorized the sale or the offer for sale of the subject shares; (viii) the SEC authorized the sale of the golf club share only on January 7, 1997 and the country club share on June 26, 2000; (ix) since defendant-appellant's sale of the subject shares to plaintiffs-appellants was without prior approval and permit from the SEC, it was void *ab initio* and of no force and effect; (x) plaintiffs-appellants demanded from defendant-appellant the return of the purchase price of P660,000.00 plus consequential damages; and, (xi) despite demand, defendant-appellant failed and refused, without legal cause, to return to plaintiffs-appellants the purchase price plus damages.^[9] Thus, plaintiffs-appellants prayed for the return of their payment of P660,000.00 and the award of moral damages, exemplary damages, attorney's fees and litigation expenses. Plaintiffs-appellants also prayed for the issuance of a writ of preliminary attachment.^[10]

On January 26, 2009, defendant-appellant, through the Office of the Government Corporate Counsel (OGCC), filed with the trial court an *Answer with Counterclaim*^[11] alleging that (i) plaintiffs-appellants were fully aware that when they bought the shares in 1996, the permit or authority was still being worked out by defendant-appellant; (ii) plaintiffs-appellants had been utilizing the privileges and playing rights without questioning defendant-appellant's alleged lack of authority or permit to sell the subject check; (iii) any perceived irregularity arising from the alleged lack of authority or permit was cured with the eventual issuance by the SEC of the authority or permit; and, (iv) as the action was based on fraud, the same had already prescribed. By way of counterclaim, defendant-appellant also prayed for payment of attorney's fees and litigation expenses.

In an Order dated April 2, 2009,^[12] the trial court ordered that the entire record be forwarded to the Executive Clerk of Court, Parañaque City for raffle to a special commercial court for the reason that from the allegations, the sale appeared to be "a form of fraudulent scheme in the distribution of corporate stock." Plaintiffs-appellants' motion for reconsideration of the aforesaid Order was denied by the trial court in an Order dated August 24, 2009.^[13] The case was re-raffled to Branch 258, RTC, Parañaque City which, on October 28, 2009, issued an Order^[14] granting plaintiffs-appellants' application for a writ of preliminary attachment upon filing of a bond.

On November 11, 2009, plaintiffs-appellants filed with the Court of Appeals a *Petition for Certiorari and Injunction*,^[15] docketed as CA-GR SP No. 111176, praying that the aforementioned Orders dated April 2, 2009 and August 24, 2009 be nullified, and Branch 258, RTC, Parañaque City, be ordered to cease and desist from hearing the case. In a Decision dated February 2, 2011,^[16] the then Tenth (10th)

Division^[17] of the Court of Appeals granted the petition based on the finding that the issue was not an intra-corporate dispute. Consequently, the case was remanded to the trial court (Branch 196).

On February 21, 2012, defendant-appellant, through the OGCC, filed a *Motion for Leave to Amend Answer and Admit Attached Amended Answer*.^[18] The motion was granted by the trial court in an Order dated February 21, 2012.^[19] In its *Amended Answer with Counterclaim*,^[20] defendant-appellant alleged that (i) defendant-appellant, a government institution, was not required to seek the SEC's approval for the disposition of its shares; (ii) plaintiffs-appellants cannot feign ignorance of the fact that when they bought the shares in 1996, the permit or authority was still being worked out by defendant-appellant; (iii) plaintiffs-appellants cannot unilaterally withdraw from their obligations arising from a valid contract of sale of shares considering that they had in fact utilized and enjoyed the privileges and playing rights as members of the club; and, (iv) the action had prescribed because it was filed only in 2008, or after seven (7) years from the discovery in May 2000 of the alleged fraud. By way of counterclaim, defendant-appellant reiterated their prayer for payment of attorney's fees and litigation expenses.

During the pre-trial, plaintiffs-appellants' counsel manifested that they will file a motion for summary judgment.^[21] Thus, on June 14, 2012, plaintiffs-appellants filed a *Motion for Summary Judgment*^[22] based on the following grounds:

"GROUNDS FOR SUMMARY JUDGMENT

THERE BEING NO GENUINE ISSUE AS TO ANY MATERIAL FACT,
PLAINTIFFS ARE ENTITLED TO A SUMMARY JUDGMENT AS A MATTER OF
LAW.

I

DEFENDANT OFFERED TO SELL AND SUBSEQUENTLY SOLD
THE PROPRIETARY SHARES TO PLAINTIFFS WITHOUT
AUTHORITY FROM THE SEC, IN VIOLATION OF THE REVISED
SECURITIES ACT.

II

CONTRARY TO DEFENDANT'S CLAIMS, THE DEED OF
ABSOLUTE SALE IS VOID AS IT WAS ENTERED INTO IN
VIOLATION OF LAW.

III

THE PLAINTIFFS HAVE THE RIGHT TO THE DECLARATION OF NULLITY OF THE DEED OF ABSOLUTE SALE AND TO THE RETURN OF THE FULL PURCHASE PRICE THEY PAID FOR THE GOLF CLUB SHARE AND COUNTRY CLUB SHARE EQUIVALENT TO SIX HUNDRED SIXTY THOUSAND PESOS (P660,000.00) PLUS LEGAL INTEREST FROM DATE OF EXTRAJUDICIAL DEMAND UNTIL FULL PAYMENT.

IV

DEFENDANT, IN DENYING THE ALLEGATIONS OF FACTS SUPPORTING PLAINTIFFS' CLAIM FOR MORAL AND EXEMPLARY DAMAGES, ATTORNEY'S FEES, AND EXPENSES OF LITIGATION, MERELY STATED A GENERAL DENIAL. THUS, PLAINTIFFS ARE ENTITLED, AS A MATTER OF LAW, TO A JUDGMENT ORDERING DEFENDANT TO PAY PLAINTIFFS MORAL AND EXEMPLARY DAMAGES, ATTORNEY'S FEES, AND EXPENSES OF LITIGATION AS PRAYED FOR."^[23]

On July 7, 2012, defendant-appellant, through the OGCC, filed with the trial court an *Opposition to the Motion for Summary Judgment*, alleging that there were genuine issues on certain material and relevant facts, to wit:

"1. WHETHER OR NOT AFP-RSBS' SALE OF THE GOLF CLUB AND COUNTRY CLUB SHARES TO PLAINTIFFS IS FRAUDULENT OR MADE IN BAD FAITH.

2. WHETHER OR NOT PLAINTIFFS HAD KNOWLEDGE OF AFP-RSBS' PENDING APPLICATION FOR PERMIT OR AUTHORITY FROM THE SECURITIES AND EXCHANGE COMMISSION (SEC) FOR THE SALE OF THE GOLF CLUB AND COUNTRY CLUB SHARES AND WHETHER OR NOT THEY ARE ESTOPPED TO QUESTION THE SALE.

3. WHETHER OR NOT PLAINTIFFS ARE ENTITLED TO THE RETURN OF THE FULL PURCHASE PRICE PAID FOR THE GOLF CLUB AND COUNTRY CLUB SHARES EQUIVALENT TO Ph660.000.00."^[24]

During the hearing on July 17, 2012, the parties presented their respective arguments on the propriety of a summary judgment. Thereafter, the motion for summary judgment was submitted for resolution.^[25]

In an Order dated July 27, 2012, the trial court rendered a summary judgment and granted the complaint as follows:

"WHEREFORE, premises considered, finding merit to the Complaint dated October 22, 2008, this Court hereto order, as follows:

1. that, the Reservation for Purchase dated January 16, 1996 and Notice of Approval dated February 23, 1996, alongside the Deed of Absolute Sale dated April 14, 1998 between plaintiffs, Atty. Sabino E. Acut, Jr. married to Eusebia A. Acut and defendant, AFP Retirement and Separation Benefits System is declared **NULL and VOID**;

2. Defendant, AFP Retirement and Separation Benefits System is ordered to pay plaintiffs, Atty. Sabino E. Acut, Jr. married to Eusebia A. Acut the amount of Six Hundred Sixty Thousand pesos (P660,000.00) representing the amount of money delivered in connection to the ineffective contract executed between the parties;

3. and to further pay the amount of Fifty Thousand pesos (P50,000.00) representing attorney's fees, and costs.

SO ORDERED."^[26]

Plaintiffs-appellants filed a partial appeal from said Order dated July 27, 2012 for failure of the trial court to award interest. Thus:

ASSIGNMENT OF ERRORS

1. The Trial Court, in issuing the partially appealed Order, erred in disregarding the extrajudicial demand of Spouses Acut.

2. The Trial Court, in issuing the partially appealed Order, erred in not awarding interest on the amounts due Spouses Acut.^[27]

For its part, defendant-appellant, through the OGCC, filed its appeal raising this lone error: