TENTH DIVISION

[CA-G.R. CV. NO. 79318, August 10, 2006]

BUENAVISTA PROPERTIES, INC., PLAINTIFF-APPELLEE, VS. LA SAVOIE DEVELOPMENT CORPORATION, DEFENDANT-APPELLANT.

D E C I S I O N

REYES, JR., A. J.:

In this ordinary appeal, defendant-appellant La Savoie Development Corporation seeks to nullify and set aside the 12 June 2003 *Decision*[1] of the Regional Trial Court of Quezon City, Branch 217 in Civil Case No. Q-98-33682, the fallo of which reads:

> "WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant:
>
> 1. Terminating the Joint Venture Agreement and the Addendum to Joint Venture Agreement (Exhs. 'A' and 'B');
>
> 2. Ordering the defendant to deliver to the plaintiff possession of the Buenavista Park Subdivision together with all improvements thereon;
>
> 3. Ordering the defendant to pay the plaintiff the amount of Ten Thousand Pesos (10,000.00) a day representing the penalty for each day of delay computed from March 3, 1998 (when this case was filed) and until paid;
>
> 4. Ordering the defendant to pay plaintiff the amount of One Hundred Thousand Pesos (100,000.00) as and for attorney's fees.
>
> Costs against the defendant.
>
> SO ORDERED."

The antecedent facts:

Pursuant to the *Joint Venture Agreement*[2] dated 7 May 1992 voluntarily entered into by the contending parties, defendant-appellant La Savoie Development Corporation was tasked to develop into subdivision a real property owned by plaintiff-appellee Buenavista Properties, Inc. located in San Rafael, Bulacan which are covered by TCT Nos. RT-6424, RT-6550 and RT-6551.

For failure of the defendant-appellant to complete the project on 5 May 1995, the parties agreed to extend the same until 5 May 1997. However, despite the

extension, defendant-appellant still failed to comply with its contractual obligations prompting plaintiff-appellee, on 2 March 1998, to file a *Complaint for Termination of Contract, Recovery of Property plus Damages*[3] against the former before the court *a quo*.

After several incidents and postponements, the pre-trial was set on 22 November 2001 or after almost four (4) years from the filing of the *Complaint*. Yet, despite due notice, defendant-appellant and counsel failed to appear on the scheduled pre-trial conference, thus, the court a quo allowed plaintiff-appellee to present its evidence ex-parte on 8 January 2002.[4]

In resolving defendant-appellant's motion for reconsideration,[5] the court *a quo* set aside its 22 November 2001 Order and re-set the hearing on 18 April 2002.[6]

On 18 April 2002, the court *a quo* was compelled to re-set the pre-trial conference on 21 May 2002 since the "defendant corporation's representative could not present the Secretary's Certificate authorizing her to appear or to represent the corporation in this case."[7]

On 21 May 2002, defendant-appellant's counsel failed to appear despite prior notice. Consequently, the court a quo allowed plaintiff-appellee to present its evidence ex-parte on 18 July 2002.

On 17 July 2002, defendant-appellant interposed another motion for reconsideration[8] dated 12 July 2002, which was granted by the court *a quo* in an Order dated 10 October 2002;[9] and, set the hearing on the merits on 28 November 2002.

Plaintiff-appellee lodged a motion for reconsideration of the 10 October 2002 *Order* on the following grounds, to quote:

> "2. The motion was originally submitted to another branch of this court (Branch 103) and furnished plaintiff's counsel only on July 24, 2002 by mail, way past the hearing date of July 18, 2002, on which date counsel for defendant did not appear. In fact, the motion for reconsideration was resubmitted to this Court only on September 24, 2002 so that the same was resolved by this Court without any hearing or opportunity for plaintiff to oppose. Thus, the order of October 10, 2002 was attached to the rollo ahead of the Motion for Reconsideration x x x."[10]

Plaintiff-appellee's motion for reconsideration was granted by the court *a quo* when it issued another *Order* dated 19 December 2002,[11] the *fallo* of which reads:

> "WHEREFORE, premises considered, plaintiff's Motion for Reconsideration dated 21 November 2002 is hereby granted and the Order of this Court on October 10, 2002 which set aside its Order of May 21, 2002 is reconsidered and set aside.
>
> Let the presentation of plaintiff's evidence ex-parte be set on January 21, 2003 at 10:00 o'clock in the morning.

SO ORDERED."

On 21 January 2003, the hearing set for this day was cancelled and reset to 18 March 2003 as there was no showing that counsel for defendant was duly notified.

On 18 March 2003, plaintiff-appellee's lone witness, Mr. Delfin Cruz, testified which was summarized by the trial court as follows:

"xxx xxx xxx.

> [T]hat he is the consultant of plaintiff corporation; that he entered in behalf of the plaintiff into a joint venture agreement with the defendant wherein the latter undertook to develop plaintiff's property into a mixed commercial and residential subdivision (Exh. 'A'); that under the agreement the period of development of 0the said property was up to May 1995; that it was the parties' agreement that the defendant would build a commercial arcade in the frontage of the property and other amenities including a shopping arcade, clubhouse, swimming pool, basketball court, children's playground, church and a landscaped main entrance with guard house; that it was likewise agreed upon that defendant would be responsible for the advertisement, promotion and sale of the subdivision lots the pricing of which are to be determined jointly by both plaintiff and defendant; that it was also defendant's undertaking to secure permit for the development of the said property from the Housing and Land Use Regulatory Board; that after the expiration of the period to complete the subdivision project defendant failed to meet the deadline; that in order to rectify the violations committed by the defendant an addendum to the joint venture agreement was signed by the parties extending the period of development of the said project (Exh. 'B'); that again the defendant failed to accomplish within the extended period the many aspects of the project specified in the agreement including the construction of the arcade and other amenities which defendant advertised to do ((Exhs. 'C' to 'C-5'); that despite demands by the plaintiff to stop the sale of the subdivision lots at prices unilaterally fixed by defendant the latter proceeded with sale (Exh. 'C'); that per report and the certification issued by the HLURB had not fully completed the development of the subdivision project as of March 10, 1998 (Exh. 'E'); that in a letter certification issued by the HLURB dated August 29, 2001 it appears that defendant had not indeed completed the development of the subdivision (Exh. 'F'); that due to the non-compliance by the defendant of its contractual obligations under the joint venture agreement, plaintiff suffered financial losses resulting from the delay in the completion of the project which affected its expected cash flow; that the president of the plaintiff corporation experienced sleepless nights and anxiety and had to engage the services of counsel to file the instant case."

Based on the above testimony of Mr. Delfin Cruz, the trial court disposed the case in favor of plaintiff-appellee when it issued the herein assailed decision, ratiocinating as follows:

"xxx xxx xxx.

Upon consideration of the evidence adduced, the Court finds the uncontroverted evidence of the plaintiff to have preponderantly established its cause of action.

Undoubtedly, the project was not completed in violation of the joint venture agreement between the plaintiff and the defendant.

The well settled rule is that a contract has the force of law between the parties with which they are bound to comply in good faith and neither one without the consent of the other renege therefrom (Barons Marketing Corp. v. CA 286 SCRA 96). In case of breach the law gives the injured party the right to choose between the fulfillment and the recission of the obligation, with the payment of damaged in either case (Art. 1191 Civil Code of the Philippines).

What stands out is that not only did the defendant fail to complete on time the project it undertook to accomplish but also unilaterally proceeded with the sale of the subdivision lots in violation of the agreement that the pricing of the subjects lots was to be determined jointly by plaintiff and defendant. Worse, defendant resorted to unprofessional conduct and misrepresentation in the implementation of its promotional advertisement apparently to induce purchasers to believe that the subdivision lots offered for sale featured such amenities which in reality did not exist. The fact that the defendant did not apply with the HLURB for a permit to construct the commercial arcade and the other amenities of the subdivision clearly shows an intention on its part of not complying with the terms of the contract. Such an actuation of the defendant may indeed have been prompted by nothing more that the promotion of its self-interest. In legal contemplation, such conduct already amounts to action in bad faith. By the terms of the joint venture agreement the defendant is bound to pay the plaintiff the amount of Ten Thousand Pesos a day representing the penalty for every day of delay of the project.

xxx xxx xxx."

On 9 July 2003, defendant-appellant interposed a *Notice of Appeal*,[12] elevating the case before this Court wherein defendant-appellant made the following assignment of errors, to wit:

I.

THE DEFENDANT-APPELLANT WAS DENIED DUE PROCESS. THE HONORABLE TRIAL COURT GROSSLY ERRED IN DECLARING THAT THE MOTION FOR RECONSIDERATION DATED 12 JULY 2002 HAS NO MERITS;

II.

ASSUMING THAT THERE WERE PROCEDURAL LAPSES ON THE PART OF DEFENDANT'S FORMER COUNSEL, SUCH SHOULD NOT BIND