



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

FIL-ESTATE PROPERTIES, INC., G.R. No. 231936
Petitioner,

Members:

- versus-

PERLAS-BERNABE, J., *Chairperson,*
GESMUNDO,
LAZARO-JAVIER,
LOPEZ, and
ROSARIO, JJ.

Promulgated:

HERMANA REALTY, INC.,
Respondent.

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DECISION

LAZARO-JAVIER, J.:

On October 11, 1997, Jose C. Alvarez, chairperson of respondent Hermana Realty, Inc. (HRI), placed an option to purchase one (1) condominium unit in Fil-Estate Properties, Inc.'s (FEPI) West Tower Condominium Corporation, denominated as "Ground Retail Unit B, West Tower."¹

¹ Rollo, p. 37.

On March 20, 2000, FEPI and HRI executed a contract to sell the unit for ₱20,998,400.00. Following HRI's full payment,² FEPI executed an undated and unnotarized Deed of Absolute Sale in favor of HRI pending the latter's transmittal to the former of the amount for payment of the Documentary Stamp Tax (DST) and other taxes on the sale and a final agreement with the Makati City Assessor's Office on the valuation cost of the common areas and individual units of the condominium building for real estate taxation purposes.³

HRI asserted though that upon full payment of the purchase price, it became rightfully entitled to the execution of an absolute deed of sale in its favor and delivery of the owner's duplicate copy of the Condominium Certificate of Title (CCT). FEPI's refusal to perform its obligation caused Century Properties, Inc. (CPI) to withdraw its offer to buy from HRI the condominium unit for ₱24,500,000.00.⁴

Consequently, HRI filed with the Housing and Land Use Regulatory Board Expanded National Capital Region Field Office (HLURB-ENCRFO) a complaint against FEPI for specific performance with damages and attorney's fees, docketed as HLURB Case No. REM-A-020401-0052.

After due proceedings, the HLURB-ENCRFO ruled in favor of HRI under Decision dated June 11, 2001, *viz.*:⁵

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered ordering respondent FEPI the following:

1. To immediately execute a dated and notarized Deed of Absolute Sale covering Ground Floor Retail B West Tower Condominium in favor of the herein complainant and deliver the corresponding CCT in complainant's name;
2. To pay complainant the following:
 - a. Actual Damages of ₱3,501,400.00;
 - b. Exemplary Damages of ₱50,000.00;
 - c. Attorney's Fees of ₱50,000.00;
 - d. The costs of the suit.
3. To pay this office an administrative fine of ₱10,000.00 for violation of Section 17 and 25 in relation to Section 38 of [Presidential Decree (P.D.) No. 957].

IT IS SO ORDERED.⁶

² *Id.*

³ *Id.* at 13-14.

⁴ *Id.* at 37.

⁵ *Id.* at 37-38.

⁶ *Id.*

On FEPI's appeal, the HLURB Board of Commissioners, through its Decision dated June 24, 2004, affirmed with modification the HLURB-ENCRFO ruling. It deleted the award of actual and exemplary damages for alleged lack of proof that HRI accepted CPI's offer to purchase the condominium unit.⁷

The Office of the President's Ruling

On further appeal, the Office of the President (OP), by Decision⁸ dated January 21, 2014, also affirmed with modification the HLURB Board of Commissioner's Ruling. It deleted the award of attorney's fees and cost of litigation.⁹

Through Resolution dated August 13, 2014, FEPI's motion for reconsideration was denied.¹⁰

Proceedings Before the Court of Appeals

Undaunted, FEPI filed a petition for review on *certiorari* with the Court of Appeals (CA) which, under Decision¹¹ dated November 29, 2016, too, found in favor of HRI.

It held that under Section 25 of Presidential Decree No. 957 (PD 957),¹² the buyer, in this case, HRI, has the unmistakable right to demand for delivery of title upon full payment of the purchase price. Although the contract to sell obliged HRI to pay the DST, value-added tax, and transfer taxes as part of its monetary obligation, nothing therein specifically states that payment of these expenses is a prerequisite to the delivery of the title.¹³ It also rejected FEPI's claim of *force majeure* brought about by the failure of the Makati City Assessor's Office to release the current valuation cost of the common areas and individual units of the condominium structure.

Under Resolution¹⁴ dated May 26, 2017, the CA denied FEPI's motion for reconsideration.

The Present Petition

FEPI now seeks affirmative relief from the Court. It posits anew that HRI's payment of DST and local transfer taxes is a *condition sine qua non* to

⁷ *Id.* at 38.

⁸ *Id.* at 38-39.

⁹ *Id.* at 38.

¹⁰ *Id.* at 39.

¹¹ *Id.* at 36-44.

¹² REGULATING THE SALE OF SUBDIVISION LOTS AND CONDOMINIUMS, PROVIDING PENALTIES FOR VIOLATIONS THEREOF.

¹³ *Rollo*, p. 41.

¹⁴ Penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Sesinando L. Villon and Now Supreme Court Associate Justice Rodil V. Zalameda, *id.* at 46-47.

the delivery of the owner's duplicate copy of the CCT per the parties' contract to sell. Thus, without the payment of taxes and other expenses, HRI's right to demand the delivery of the owner's duplicate copy of the CCT has not arisen and consequently, it has no cause of action for specific performance.

Following Section 200 of the National Internal Revenue Code of 1997 (NIRC), a CCT may not be issued without proof of payment of DST. Further, under Section 135 of the Local Government Code (LGC), the Registry of Deeds requires for registration the official receipt of the transfer tax payment, the Certificate Authorizing Registration (CAR) from the Bureau of Internal Revenue (BIR), and official receipts of DST and Capital Gains Tax (CGT) payments, among others.

Thus, unless HRI complies with its monetary obligations, its right to demand the owner's duplicate copy of the CCT will not arise.

By Comment¹⁵ dated August 12, 2019, HRI counters that FEPI's obligation to execute a notarized Deed of Absolute Sale and deliver the owner's duplicate copy of the CCT is completely independent of its (HRI's) possible tax liabilities. As found by the tribunals below, there is no provision in the Contract to Sell which requires remittance of the tax payments to FEPI as a condition precedent to the execution of the notarized Deed of Absolute Sale and the delivery of the owner's duplicate copy of the CCT. The contract to sell simply bears HRI's obligation to pay the DST and other taxes – an obligation which HRI may only comply with once a notarized Deed of Sale has been executed, and the appropriate taxes, assessed.¹⁶

FEPI's refusal to deliver the owner's duplicate copy of the CCT despite the buyer's full payment makes it liable under Section 25 of PD 957. Also, while it may be true that certain taxes must be paid for the CCT to be transferred to HRI's name, the same would not even be possible if the seller, FEPI, refuses to execute the Deed of Absolute Sale.¹⁷

It is of common knowledge that one of the requirements for processing tax payments on the sale of real properties is the Deed of Absolute Sale itself. Likewise, the City Treasurer's Office where the property is located requires the aforesaid deed for assessment of transfer taxes.¹⁸

The Deed of Absolute Sale itself is a prerequisite to the tax payment on the sale and transfer of real property. Thus, if the seller does not execute a Deed of Absolute Sale even after full payment of the purchase price, the BIR and the City Treasurer's Office will not be able to compute the taxes and fees due.¹⁹

¹⁵ *Id.* at 113-124.

¹⁶ *Id.* at 116.

¹⁷ *Id.* at 119.

¹⁸ *Id.* at 118.

¹⁹ *Id.*

Threshold Issue

Is payment of the DST and other local taxes a condition precedent to FEPI's execution of a notarized Deed of Absolute Sale and the subsequent delivery to HRI of the owner's duplicate copy of the CCT?

Ruling

Upon full payment of the contract price, HRI became rightfully entitled to the execution of a Deed of Absolute Sale in its favor.

A contract to sell has been defined as “a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds itself to sell the property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, that is, full payment of the purchase price.” In a contract to sell, “ownership is retained by the seller and is not to pass until the full payment of the price.”²⁰ Consequently, once the buyer has paid the purchase price in full, the contract to sell is converted to an absolute sale and the buyer has the right to demand the execution of a Deed of Absolute Sale in its favor.

Here, there is no question that HRI has paid in full the contract price in the amount of ₱20,998,400.00. There is no question either that by operation of law, HRI as the buyer has become rightfully entitled to the execution of a Deed of Absolute Sale in its favor.

HRI may demand as a matter of right a notarized Deed of Absolute Sale in its favor.

While FEPI did execute a Deed of Absolute Sale upon HRI's full payment of the purchase price, the same was undated and unnotarized. FEPI asserts that the document will stay that way until HRI remits the corresponding payment for the DST and other taxes on the sale.

Article 1358 of the Civil Code reads:

Article 1358. The following must appear in a public document:

- (1) Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights

²⁰ *Sps. Tumibay v. Sps. Lopez*, 710 Phil. 19, 31 (2013).

over immovable property; sales of real property or of an interest therein are governed by articles 1403, No. 2, and 1405;

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In *Cenido v. Spouses Apacionado*,²¹ the Court ruled that contrary to petitioner's claim, the "*Pagpapatunay*" is a valid contract of sale despite being unnotarized since under Article 1358, a private document, though not reduced to a public one, remains to be valid and is merely unenforceable. So that after the existence of the contract has been admitted, a party to the sale, if he or she is so minded, has the right to compel the other party to execute the proper document following Article 1357²² of the Civil Code.

Section 135 of the Local Government Code (LGC) further speaks of the requirements for registration of deeds on transfer of real property and the corresponding duty of notaries public who notarized the deeds, thus:

SECTION 135. *Tax on Transfer of Real Property Ownership.* –

- a. X X X
- b. For this purpose, the Register of Deeds of the province concerned shall, before registering any deed, require the presentation of the evidence of payment of this tax. The provincial assessor shall likewise make the same requirement before canceling an old tax declaration and issuing a new one in place thereof. **Notaries public shall furnish the provincial treasurers with a copy of any deed transferring ownership or title to any real property within thirty (30) days from the date of notarization.** (Emphasis supplied)

On the strength of Article 1357 of the Civil Code and relevant jurisprudence, in relation to Section 135 of the LGC, therefore, HRI has the right to compel FEPI to execute a notarized Deed of Absolute Sale in its favor for purposes of registration.

Presentation of the owner's duplicate certificate of title and proof of payment of taxes and fees are conditions sine qua non to the transfer of title before the Register of Deeds

Under Section 135 of the LGC, proof of payment of taxes and fees is a requirement before the Register of Deeds may initiate the transfer of title over a property, *viz.*:

²¹ 376 Phil. 801, 821 (1999).

²² **Art. 1357.** If the law requires a document or other special form, as in the acts and contracts enumerated in the following article [Article 1358], the contracting parties may compel each other to observe that form, once the contract has been perfected. This right may be exercised simultaneously with the action upon the contract.

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SECTION 135. *Tax on Transfer of Real Property Ownership.* –

X X X X

- (b) For this purpose, the Register of Deeds of the province concerned shall, **before registering any deed, require the presentation of the evidence of payment of this tax.** The provincial assessor shall likewise make the same requirement before canceling an old tax declaration and issuing a new one in place thereof. Notaries public shall furnish the provincial treasurers with a copy of any deed transferring ownership or title to any real property within thirty (30) days from the date of notarization. (Emphasis supplied)

Here, HRI recognizes its obligation to pay the taxes and registration expenses as buyer of the condominium unit pursuant to paragraph 4 (b) of the Contract to Sell.²³ It also does not dispute the common fact that it needs to pay the relevant taxes and fees for registration of a new title under its name. The only thing HRI demands from FEPI, which the latter has persistently refused to deliver, is copy of the owner's duplicate certificate of title on the premise that HRI must first present proof that it had already paid the required taxes and fees.

FEPI is mistaken.

Section 41 Presidential Decree No. 1529, otherwise known as the "Property Registration Decree," provides:

Section 41. *Owner's duplicate certificate of title.* The owner's duplicate certificate of title shall be delivered to the registered owner or to his duly authorized representative. If two or more persons are registered owners, one owner's duplicate certificate may be issued for the whole land, or if the co-owners so desire, a separate duplicate may be issued to each of them in like form, but all outstanding certificates of title so issued shall be surrendered whenever the Register of Deeds shall register any subsequent voluntary transaction affecting the whole land or part thereof or any interest therein. The Register of Deeds shall note on each certificate of title a statement as to whom a copy thereof was issued.

Section 53 of the same law expounds:

Section 53. *Presentation of owner's duplicate upon entry of new certificate.* No voluntary instrument shall be registered by the Register of Deeds, unless the owner's duplicate certificate is presented with such

²³ 4. **OTHER MONETARY OBLIGATIONS OF BUYER.** The *BUYER* further agrees to pay, in addition to the LUMP SUM PRICE and interest thereon mentioned in Section 2, the following:

X X X X

b. Taxes and Registration Expenses

Documentary stamp tax, value added tax, transfer tax, and other related taxes and expenses due and payable in connection with the transfer of the title of the UNIT to the BUYER shall be for the account of the BUYER.

instrument, except in cases expressly provided for in this Decree or upon order of the court, for cause shown.

The production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the Register of Deeds to enter a new certificate or to make a memorandum of registration in accordance with such instrument, and the new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under him, in favor of every purchaser for value and in good faith.

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Thus, it is clear that for purposes of registration of any voluntary transactions before the Register of Deeds and the subsequent issuance of a new certificate of title,²⁴ the owner's duplicate copy of the certificate of title must be surrendered by the parties to the Register of Deeds.

To emphasize, upon HRI's full payment of the purchase price, not only has it acquired the right to a notarized Deed of Absolute Sale but the right as well to the owner's duplicate CCT. For without these documents, HRI may not possibly cause the registration of a new title under its name.

FEPI is liable under Sections 17 and 25 of PD 957.

We now tackle Sections 17 and 25 of PD 957, viz.:

Section 17. Registration. All contracts to sell, deeds of sale and other similar instruments relative to the sale or conveyance of the subdivision lots and condominium units, **whether or not the purchase price is paid in full**, shall be registered by the seller in the Office of the Register of Deeds of the province or city where the property is situated.

X X X X

Section 25. Issuance of Title. The owner or developer shall deliver the title of the lot or unit to the buyer **upon full payment of the lot or unit**. No fee, except those required for the registration of the deed of sale in the Registry of Deeds, shall be collected for the issuance of such title. In the event a mortgage over the lot or unit is outstanding at the time of the issuance of the title to the buyer, the owner or developer shall redeem the mortgage or the corresponding portion thereof within six months from such issuance in order that the title over any fully paid lot or unit

²⁴ **Section 43. Transfer Certificate of Title.** The subsequent certificate of title that may be issued by the Register of Deeds pursuant to any voluntary or involuntary instrument relating to the same land shall be in like form, entitled "Transfer Certificate of Title", and likewise issued in duplicate. The certificate shall show the number of the next previous certificate covering the same land and also the fact that it was originally registered, giving the record number, the number of the original certificate of title, and the volume and page of the registration book in which the latter is found.

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may be secured and delivered to the buyer in accordance herewith.
(Emphases supplied)

The registration of the final deed of sale here is the obligation of FEPI under Section 17. On the other hand, issuance of title under Section 25 should be construed to mean delivery by FEPI of the owner's duplicate copy of the CCT, again for purposes of causing the registration of the property in the buyer's name.

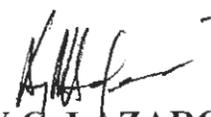
As it was, FEPI violated both provisions of law. Not only did it fail to register the deed of absolute sale before the Register of Deeds, it also refused to deliver to HRI the owner's duplicate copy of the CCT.

Notably, FEPI's obligations to register the final deed of sale (Section 17) and deliver the owner's duplicate copy of the CCT (Section 25) are distinct from the obligation of HRI, as buyer, to legally process the transfer of the CCT in its name as the now registered owner.

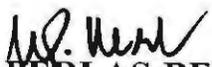
ACCORDINGLY the petition for review is **PARTLY GRANTED**. The Decision dated November 29, 2016 and Resolution dated May 26, 2017 of the Court of Appeals in CA-G.R. SP No. 137086 are **MODIFIED**, as follows:

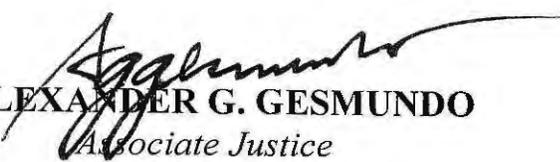
- 1) Petitioner Fil-Estate Properties, Inc. is **ORDERED** to immediately **EXECUTE** a notarized Deed of Absolute Sale covering Ground Retail Unit B, West Tower in favor of respondent Hermana Realty, Inc., **PROVIDE** an original copy thereof to respondent Hermana Realty, Inc., and **CAUSE** its registration pursuant to Section 17 of PD 957;
- 2) Petitioner Fil-Estate Properties, Inc. is **DIRECTED** to **DELIVER** the owner's duplicate copy of the Condominium Certificate of Title to respondent Hermana Realty, Inc.; and
- 3) Respondent Hermana Realty, Inc. is **ORDERED** to directly settle the taxes and registration expenses with the government within the periods prescribed under the law and take charge of causing the issuance of a new Condominium Certificate of Title in its name.

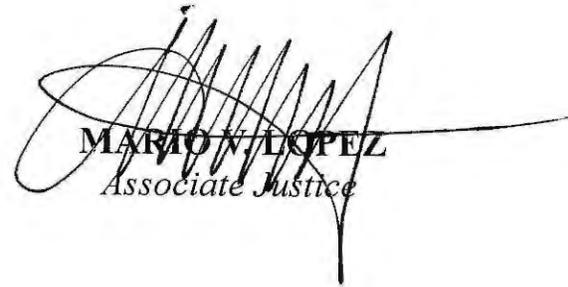
SO ORDERED.


AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice


MARIO N. LOPEZ
Associate Justice


RICARDO R. ROSARIO
Associate Justice

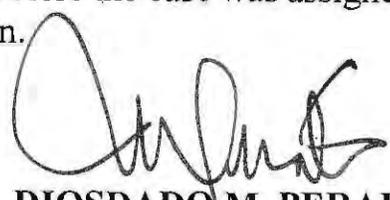
ATTESTATION

I attest that the conclusion in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


DIOSDADO M. PERALTA
Chief Justice

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