



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

UNIVERSAL INTERNATIONAL G.R. No. 182201
INVESTMENT (BVI) LIMITED,
Petitioner,

- versus -

RAY BURTON DEVELOPMENT
CORPORATION,
Respondent.

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UNIVERSAL INTERNATIONAL G.R. No. 185815
INVESTMENT (BVI) LIMITED,
Petitioner,

Present:

- versus -

SERENO, *CJ*, Chairperson,
LEONARDO-DE CASTRO,
PERALTA,*
REYES,** and
CAGUIOA,*** *JJ*.

RAY BURTON DEVELOPMENT
CORPORATION,
Respondent.

Promulgated:

NOV 14 2016.

x ----- x

DECISION

SERENO, *CJ*:

At bench is a review of the damage claims for contractual breach sought by petitioner Universal International Investment (BVI) Limited (Universal) against respondent Ray Burton Development Corporation (RBDC). In G.R. No. 185815, Universal contests the Court of Appeals (CA)

* Designated additional member in lieu of Associate Justice Lucas P. Bersamin per raffle dated 28 September 2016, who concurred in the Court of Appeals Decision in CA-G.R. SP No. 89468.

** Designated additional member in lieu of Associate Justice Estela M. Perlas-Bernabe per raffle dated 28 September 2016, who concurred in the Court of Appeals Decision in CA-G.R. SP No. 89468.

*** On leave.

Decision and Resolution rejecting its demand for damages against RBDC.¹ Petitioner seeks damages for non-delivery of the properties it had purchased from respondent and the titles thereto. In G.R. No. 182201, Universal assails the CA Decision and Resolution, which affirmed the discharge of one of respondent's attached properties meant to secure petitioner's claims for damages.²

FACTUAL ANTECEDENTS

RBDC owned and developed Elizabeth Place, a condominium located at H.V. De la Costa St., Salcedo Village, Makati City. On 18 October 1996, respondent and petitioner entered into separate Contracts to Sell³ covering the purchase of 10 condominium units and 10 parking slots in the building. In February 1999, petitioner paid respondent the full purchase price of these properties amounting to ₱52,836,781.50.⁴

Universal issued a letter dated 23 August 2000 to RBDC demanding the cancellation of the sales transaction after the latter failed to deliver possession of the properties and reneged on its obligation to transfer the Condominium Certificates of Title (CCTs) to petitioner's name.⁵ On 6 August 2001, respondent sent a letter to Universal informing the latter that the construction of the subject properties had been completed.⁶ Several demand letters followed.⁷

RBDC ultimately failed to satisfy the demand of Universal to deliver the properties. Thereafter, petitioner discovered that the mother title to the lot of Elizabeth Place had been mortgaged to China Banking Corporation (China Bank) since 31 July 1991.⁸ Petitioner found that a Mortgage Clearance from the Housing and Land Use Regulatory Board (HLURB) had been issued on 17 October 1996⁹ and the securities foreclosed by China Bank on 18 May 2001.¹⁰

PROCEEDINGS BEFORE THE HLURB

On 29 May 2002, Universal filed with the Expanded National Capital Region Field Office (ENCRFO) of the HLURB a Complaint for Specific Performance or Rescission of Contract and Damages.¹¹ To secure its claims,

¹ *Rollo* (G.R. No. 185815), pp. 64-86. The CA Decision dated 31 July 2007 and Resolution dated 11 December 2008 in CA-G.R. SP No. 89468 were penned by Associate Justice Portia Aliño-Hormachuclos, with Associate Justices Lucas P. Bersamin and Estela M. Perlas-Bernabe (both now members of this Court) concurring.

² *Rollo* (G.R. No. 182201), pp. 53-78. The CA Decision dated 25 June 2007 and Resolution dated 14 March 2008 in CA-G.R. SP No. 89578 were penned by Associate Justice Lucenito N. Tagle, with Associate Justices Amelita G. Tolentino and Sixto Marella, Jr. concurring.

³ *Rollo* (G.R. No. 185815), pp. 88-343.

⁴ *Id.* at 344-358.

⁵ *Id.* at 1033.

⁶ *Id.* at 412; dated 1 August 2001.

⁷ *Id.* at 359-363.

⁸ *Id.* at 364-379.

⁹ *Id.* at 382.

¹⁰ *Id.* at 1575; Memorandum of respondents, p. 14.

¹¹ *Id.* at 383-393; dated 21 May 2002.

petitioner moved for the issuance of a writ of preliminary attachment against the properties of RBDC. Universal imputed fraud to respondent for concealing the mortgage with China Bank. On 3 June 2002, a Writ of Attachment was issued by the ENCRFO.¹²

Universal sought the delivery of (1) the condominium units and (2) their CCTs. In the event that delivery were to be proven impossible, it prayed for the rescission of the Contracts to Sell with a refund of the purchase price plus the penalty interest stipulated under Section 6 thereof. The contracts provide for a 1.5% monthly interest on the total purchase price, computed from the date of cancellation of the sale until full refund of the payments.

RBDC countered¹³ that Universal could not rightly demand delivery, for the latter had yet to pay transfer charges under the Contracts to Sell. In the alternative, respondent claimed that it had already delivered the properties when it sent a letter to petitioner on 6 August 2001.

As regards the CCTs, RBDC argued that petitioner should demand these from China Bank. The CA summarized that contention of respondent in this wise:¹⁴

Moreover, RBDC claims that it was impeded from releasing the titles of Elizabeth Place to the deserving buyers because Chinabank had illegally foreclosed the mortgage over Elizabeth Place; that in fact, RBDC had instituted a case for delivery of titles before the HLURB entitled "*Ray Burton Development Corp. versus China Banking Corp.*" docketed as HLURB REM 121401-11726; **and that in a Judgment Upon Compromise dated August 1, 2002, HLURB directed Chinabank "to release the titles of all units in Elizabeth Place that are now fully paid and those that will in the future be fully paid to their respective buyers irrespective of who the seller is."** RBDC asserted that Universal should instead direct its claim for delivery of the titles of the properties to Chinabank. (Emphasis supplied)

On 25 March 2003, the ENCRFO issued a Decision¹⁵ in favor of Universal. The former found that petitioner had completed the payment of the total contract price of ₱52,836,781.50 in February 1999. At that point, said the ENCRFO, the reciprocal obligation of respondent to deliver possession of the properties and their CCTs became due and demandable.

On 12 May 2003, RBDC filed a Petition for Review¹⁶ before the Board of Commissioners (BOC) of the HLURB. Respondent also moved for the partial discharge¹⁷ of one of its attached properties: the lot in Lapu-Lapu City with Transfer Certificate of Title (TCT) No. T-29726.

¹² Id. at 394-395; issued by Jesse A. Obligacion, Regional Director of the ENCRFO.

¹³ Id. at 396-411; Answer dated 25 June 2002.

¹⁴ Id. at 67; CA Decision dated 31 July 2007, p. 4.

¹⁵ Id. at 450-456; The Decision docketed as HLURB Case No. REM-052902-11917 was penned by Housing and Land Use Arbiter Atty. Joselito F. Melchor.

¹⁶ Id. at 457-485; dated 12 May 2003.

¹⁷ Id. at 209-212; dated 16 May 2003.

RBDC reiterated its arguments below. Universal likewise echoed its earlier assertions, but additionally claimed that respondent's Petition for Review lacked the appeal bond needed to perfect an appeal.¹⁸

The BOC did not dismiss respondent's Petition for Review. Instead, on 10 October 2003, it issued an Order¹⁹ directing the remand of the case to the ENCRFO so that the latter could include China Bank in the proceedings. Universal moved for reconsideration, but to no avail.²⁰

The BOC did not rule upon the motion of RBDC for the discharge of its Lapu-Lapu City property. Therefore, respondents filed a second Motion for Partial Discharge.²¹ In its Resolution dated 29 June 2004, the BOC allowed the discharge of the Lapu-Lapu City property owned by respondent, since the latter was willing to put up a counterbond.²²

PROCEEDINGS BEFORE THE OP

Universal successfully appealed its case before the Office of the President (OP).²³ In its Decision dated 29 October 2004,²⁴ the OP reversed the ruling of the BOC and held that Universal had a right to rescind the Contracts to Sell, as well as to refund the purchase price of the properties with the liquidated damages specified in Section 6 of the contracts. Nonetheless, the OP maintained the validity of the discharge of the Lapu-Lapu City property.²⁵

PROCEEDINGS BEFORE THE CA

Universal assailed the discharge of the Lapu-Lapu City property via a Petition for Certiorari under Rule 65 of the Rules of Court in CA-G.R. SP No. 89578.²⁶ In its Decision dated 25 June 2007 and Resolution dated 14 March 2008, the CA dismissed the action for lack of merit. Anent the main controversy involving the non-delivery of the condominium units and parking slots, RBDC filed a Petition for Review²⁷ under Rule 43 of the Rules of Court in CA-G.R. SP No. 89468. In both proceedings, the parties repeated their arguments *a quo*.

During the pendency of the case before the CA, Universal manifested²⁸ that China Bank had released the subject properties, and that petitioner had already obtained their CCTs on 5 January 2005.

¹⁸ Id. at 486-504; Opposition to the Petition for Review dated 10 June 2003.

¹⁹ Id. at 506-508; the Order docketed as HLURB Case No. REM-A-030519-0118 was penned by the Second Division of the HLURB.

²⁰ Id. at 509-522; Motion for Reconsideration dated 5 November 2003.

²¹ Id. at 548-556; dated 19 November 2003.

²² Id. at 557-560; Resolution dated 29 June 2004.

²³ Id. at 561-562; Notice of Appeal dated 15 July 2004.

²⁴ Id. at 637-643.

²⁵ Id. at 691-693; Order dated 7 April 2005.

²⁶ *Rollo* (G.R. No. 182201), pp. 449-473; Petition for Certiorari dated 10 October 2005.

²⁷ *Rollo* (G.R. No. 185815), pp. 694-734; Petition for Review dated 10 May 2005.

²⁸ Id. at 1095-1101, 1120; Rejoinder with Manifestation re: Partial Satisfaction of Judgment dated 20 December 2005; Universal's Counter-Manifestation and Opposition dated 2 February 2006.

On account of this supervening event, RBDC moved that this case be considered moot and academic.²⁹

Universal responded that its acquisition of the condominium units from China Bank resulted only in the partial satisfaction of the former's claims against RBDC. Petitioner claimed before the CA that respondent must still pay for the damages specified in Section 6 of the Contracts to Sell on account of the latter's delayed delivery of the properties. Universal also claimed compensation for property losses amounting to ₱19,646,483.72, supposedly to cover the depreciation costs and expenses it had incurred for the release of the properties from China Bank.

In its Decision dated 31 July 2007, which was maintained in its Resolution dated 11 December 2008, the CA wholly denied Universal's entreaty for damages.

PROCEEDINGS BEFORE THIS COURT

The consolidated Petitions for Review on Certiorari filed by Universal under Rule 45 of the Rules of Court, docketed as G.R. Nos. 182201 and 185815, collectively raise three points.³⁰

First, Universal contends that the CA gravely erred when the latter sustained the OP's discharge of the Lapu-Lapu City property, notwithstanding the irregularities in the proceedings below.

Second, Universal argues that because RBDC failed to attach an appeal bond when the latter elevated the ENCRFO Decision to the BOC, that ruling had become final and executory and can no longer be reviewed by the BOC, the OP, the CA, or this Court.


Third, petitioner claims that the CA gravely erred in refusing to award damages and property losses. Petitioner seeks damages on account of the contractual breaches of respondent consisting of the latter's failure to deliver the properties and to transfer their CCTs to the name of Universal. Petitioner also narrates that RBDC concealed the mortgage of the properties to China Bank.

RBDC stands by the validity of the partial discharge of its Lapu-Lapu City property. In the main, it denies committing any breach of contract against Universal. Absent any dereliction on its part, respondent claims that petitioner should not be awarded damages.³¹

²⁹ Id. at 1103; Manifestation of Lack of Cause of Action with Motion to Declare Respondent in Indirect Contempt dated 12 January 2006.

³⁰ *Rollo* (G.R. No. 182201), pp. 16-51; Petition for Review dated 8 May 2008. *Rollo* (G.R. No. 185815), pp. 9-62 and 1495-1546; Petition for Review dated 19 February 2009 and Memorandum dated 29 June 2010.

³¹ *Rollo* (G.R. No. 182201), pp. 593-611; Comment dated 11 September 2008. *Rollo* (G.R. No. 185815), pp. 1370-1401 and 1562-1600; Comment dated 24 June 2009 and Memorandum dated 18 June 2010.



ISSUES

Given the developments in this case, this Court adjudges that the main issues to be resolved are as follows:

- I. Whether the CA incorrectly affirmed the discharge of the Lapu-Lapu City property of RBDC
- II. Whether the CA gravely erred in denying the demand of petitioner for the liquidated damages specified in Section 6 of the Contracts to Sell
- III. Whether the CA committed a grievous error in not granting the claims of petitioner for losses amounting to ₱19,646,483.72
- IV. Whether petitioner is entitled to damages on account of the contractual breaches committed by respondent

RULING OF THE COURT

At the outset, this Court outrightly rejects the argument of Universal regarding the failure of RBDC to attach an appeal bond when the latter elevated the ENCRFO Decision to the BOC for being moot and academic. To recall, the appealed ENCRFO Decision required RBDC to deliver the purchased properties and pay damages to Universal; and if that delivery was no longer possible, to refund the purchase price plus interests thereon.

The properties and the titles thereto were finally delivered to Universal on 5 January 2005. Hence, its only existing claim in this case is for damages, which an appeal bond does not secure under Section 3 (c), Rule XII of the 1996 HLURB Rules of Procedure.³² Since interests, damages, and attorney's fees need not be covered by an appeal bond, that controversy has come to an end with no practical and effective relief to be given to petitioner.³³

The Discharge of the Lapu-Lapu City Property

Universal highlights the irregularities that supposedly attended the discharge of the Lapu-Lapu City property owned by RBDC. First, the BOC Order dated 10 October 2003, which did not rule upon the issue of the

³² The provision reads:

SECTION 3. Contents of the Petition for Review –

x x x x

In addition, the appellant shall attach to the petition the following:

x x x x

c. In case of an award of a money judgment in the complainant's favor, an appeal bond satisfactory to the Board equivalent to the amount of the award excluding interests, damages and attorney's fees.

³³ *Ruiz v. Court of Appeals*, 164 Phil. 87 (1976).

discharge, was improvidently modified by its Resolution dated 29 June 2004. The Order was modified upon respondent's filing of a second Motion for Partial Discharge, instead of a proper Motion for Reconsideration. Second, since the BOC had directed the remand of the case to the ENCRFO, the former lost the jurisdiction to order the discharge. Third, the discharge transpired without notice and hearing.

On the first infirmity, we hold that the CA did not exceed its jurisdiction when it sustained the BOC Resolution dated 29 June 2004 granting the discharge, even if not through a motion for reconsideration but via a second Motion for Partial Discharge. The second Motion for Partial Discharge may very well take the place of a motion for reconsideration, considering that it also sought the reconsideration of the BOC's failure to resolve the first Motion for Partial Discharge. It is basic that the caption should not be the governing factor, but rather the allegations contained in the motion or pleading, that should determine the nature of the action.³⁴

As regards the second and the third irregularities, this Court finds no justification for the exercise of its discretionary power of appellate review. The CA, which heard the issues under the framework of a special civil action for certiorari, has thoroughly explained the purported irregularities. We quote with approval the following excerpt from the assailed CA Decision:³⁵

It is absurd to assume that the ENCRFO, a subordinate of the HLURB Board of Commissioners, is the only agency that can discharge the writ of attachment it previously issued. As the Board is the reviewing body of the entire HLURB, it definitely has the power to overturn, revise or modify the ruling handed down by its subordinate. To rule otherwise would render the appeal before the Board nugatory and irrelevant.

x x x x

As for the alleged lack of hearing, petitioner's filing of an Opposition to respondent's motion for partial discharge before the HLURB Board sufficiently satisfies said requirement. x x x.

Universal's Claim for Liquidated Damages under Section 6 of the Contracts to Sell

Proceeding to the main controversy of these consolidated cases, Universal asserts that because RBDC failed to transfer possession of the properties, and their CCTs, petitioner-buyer is entitled to damages by way of the interest specified in Section 6 of the Contracts to Sell, viz:

³⁴ *Sps. Munsalud v. National Housing Authority*, 595 Phil. 750 (2008).

³⁵ *Rollo* (G.R. No. 182201), pp. 66-67.

SECTION 6. BREACH AND/OR VIOLATIONS OF THE CONTRACT.

This agreement shall be deemed cancelled, at the option of the BUYER, in the event that SELLER, for the reasons of **force majeure**, decide not to continue with the Project **or** the Project has been **substantially delayed**. In such a case, the BUYER shall be entitled to refund all the payments made with **interest at one-and-a-half (1 ½) percent per month on the amount paid computed from the date of cancellation until the payments have been fully refunded**. Substantial delay is defined as six (6) months from date of estimated date of completion. The parties agree that the estimated date of completion shall be December 31, 1998. (Emphasis supplied)

RBDC counters that it cannot be considered in breach of the agreement, since Universal failed to pay the transfer charges. The CA agreed with respondent's reasoning and thus rejected petitioner's demand for liquidated damages. This Court concurs with the CA's rejection of liquidated damages, but for a different reason.

If the terms of the contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.³⁶ In this case, the very words of Section 6 of the Contracts to Sell refer only to situations of (1) force majeure or (2) substantial delay in the condominium project, Elizabeth Place.

Universal is not alleging either of these two circumstances. Rather, it is claiming damages for RBDC's failure to deliver possession of the condominium units, parking slots, and their CCTs. Hence, Section 6 of the Contracts to Sell is clearly inapplicable to petitioner's cause of action.

***The Demand of Universal to Recover
Losses amounting to ₱19,646,483.72***

Universal reiterates its claims for actual damages based on the losses it suffered amounting to ₱19,646,483.72. This amount represents the depreciation between the ₱57,146,483.72 **purchase price** of the properties in 1996 and the ₱37,500,000 **market value** of the properties appraised at the time that petitioner obtained the titles from China Bank in 2005.³⁷

Petitioner computes that the purchase price in 1996 totals ₱57,146,483.72, which is the summation of the following amounts: ₱52,836,781.50 total contract price; ₱770,613.68 condominium dues, ₱368,881.63 real estate taxes, and the ₱3,170,206.91 expenses paid to China Bank for the release of the properties. In effect, petitioner seeks to recover the depreciation costs **and** the additional sums it paid to obtain the release of

³⁶ CIVIL CODE OF THE PHILIPPINES, Article 1370.

³⁷ CA *rollo*, pp. 1350-1375; Valuation of CB Richard Ellis of Elizabeth Place Condominium dated 31 August 2006. Using the Market Value Approach, it opined that the market value of the 10 residential condominium units and 10 parking slots amounted to ₱37,500,000 as of 5 January 2005.

the properties from China Bank. For lack of legal basis, the CA entirely rejected petitioner's claims for losses.

Universal now seeks refuge under Article 2200 of the Civil Code to justify its claim for damages:

ARTICLE 2200. Indemnification for damages shall comprehend not only the value of the loss suffered, but also that of the profits which the obligee failed to obtain.

To adjudicate petitioner's claims, this Court looks into the fundamental elements in recovering damages. In *MEA Builders Inc. v. Court of Appeals*,³⁸ We defined damages as follows:

In legal contemplation, the term "damages" is the sum of money which the law awards or imposes as a pecuniary compensation, a recompense or satisfaction for an injury done or a wrong sustained as a consequence either of a breach of a contractual obligation or a tortuous act.

Based on the above definition, in order to recover damages, the claimant must prove (1) an injury or a wrong sustained (2) as a consequence of a breach of contract or tort and (3) caused by the party chargeable with a wrong.³⁹ As Universal claims actual damages, it is only entitled to such pecuniary loss as it has duly proved.⁴⁰

Losses Sustained by Universal

Petitioner cites Article 2200 of the Civil Code to support its claim for losses equivalent to a ₱19,646,483.72 reduction in the market value of the condominium units. This provision speaks of indemnification for *lost profits* that would have been obtained by the claimant if not for the injury caused by the erring party.⁴¹ In the present case, however, Universal does not even allege that it is marketing the properties for profit, either by lease or by sale. Thus, Article 2200 cannot serve as the proper basis for recovering the value of the condominium units.

In the alternative, assuming that the condominium units were utilized for profit, this Court finds no iota of evidence as to the *amount* of profits that Universal would have earned from the properties. To justify a grant of compensatory damages, it is necessary that the actual amount of loss to be proved with a reasonable degree of certainty, premised upon competent proof and the best evidence obtainable by the injured party.⁴²

³⁸ 490 Phil. 565, 577 (2005).

³⁹ *Garrido v. Dela Paz*, G.R. No. 183967, 11 December 2013.

⁴⁰ CIVIL CODE OF THE PHILIPPINES, Article 2199. "Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages."

⁴¹ *Uy v. Puzon*, 169 Phil. 581 (1977).

⁴² *Integrated Packaging Corp. v. Court of Appeals*, 388 Phil. 835 (2000).

We cannot consider as unearned profits the ₱19,646,483.72 difference between the total contract price and the present market value of the properties. That conclusion presupposes that Universal has (1) successfully marketed the properties (2) at a favorable retail price that would allow it to recover its original investment. In *National Power Corp. v. Philipp Brothers Oceanic, Inc.*,⁴³ this Court explained that in order to recover actual damages, the alleged unearned profits must not be conjectural or based on contingent transactions. Speculative damages are too remote to be included in an accurate estimate of damages.⁴⁴

Breach of Contract by RBDC

Both parties entered into a contract to sell, not a contract of sale. In the former agreement, ownership is reserved by the vendor.⁴⁵ Upon full payment of the purchase price, the resulting duties of RBDC as vendor are found in Section 3 of the subject agreement, *viz*:

SECTION 3. TITLE AND OWNERSHIP OF UNIT.

a) Upon full payment of the BUYER of the above purchase price, including any and all payments as provided herein, and upon full compliance by the BUYER of all his obligation as contained in this contract, the SELLER shall deliver to the BUYER a **Deed of Absolute Sale** conveying its rights, interests and title to the UNIT and the appurtenant undivided interest in the common areas of the Project, and the **corresponding Condominium Certificate of Title**. The BUYER shall give the SELLER reasonable time from date of completion of the Project to secure the title to the UNIT. A copy of the Deed of Absolute Sale is attached as Annex A. x x x. (Emphasis supplied)

RBDC only has two obligations specified by Section 3: (1) to deliver deeds of absolute sale; and (2) to deliver the corresponding CCTs. Contrary to the demands of petitioner, respondent did not have any contractual obligation to surrender possession of the properties. Neither did the latter have to cause the transfer of the CCTs to petitioner's name.

In *Chua v. Court of Appeals*,⁴⁶ we explained the nature and the incidents of a contract to sell as follows:

In a contract to sell, the obligation of the seller to sell becomes demandable only upon the happening of the suspensive condition. In this case, the suspensive condition is the full payment of the purchase price by Chua. Such full payment gives rise to Chua's right to demand the **execution of the contract of sale**.

It is **only upon the existence of the contract of sale** that the seller becomes obligated to transfer the ownership of the thing sold to the buyer.

⁴³ 421 Phil. 532 (2001).

⁴⁴ *Coca Cola Bottlers, Phils., Inc. v. Roque*, 367 Phil. 493 (1999).

⁴⁵ *Go v. Pura V. Kalaw, Inc.*, 529 Phil. 150 (2006).

⁴⁶ 449 Phil. 25, 45-46 (2003).

x x x x

In the sale of real property, the seller is **not obligated to transfer in the name of the buyer a new certificate of title**, but rather to transfer ownership of the real property. There is a difference between transfer of the certificate of title in the name of the buyer, and transfer of ownership to the buyer. The buyer may become the owner of the real property even if the certificate of title is still registered in the name of the seller. (Emphasis supplied)

Universal does not base its claim for damages on grounds supported by the Contracts to Sell. Instead, it argues that respondent's failure to transfer the CCTs and convey possession of the properties caused the depreciation of their market value. Hence, this Court rules that petitioner's premise for its recovery of depreciation losses is misplaced.⁴⁷

Proximate Cause of Universal's Losses

The act or omission of respondent must have been the proximate cause, as distinguished from the remote cause, of the loss sustained by the claimant.⁴⁸ Proximate cause – determined by a mixed consideration of logic, common sense, policy, and precedent⁴⁹ – is that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.⁵⁰

Applying that definition to the case at bar, Universal must demonstrate that the breaches of RBDC caused the depreciation of the condominium units; or conversely, that had respondent performed its contractual obligations, the properties would not have diminished in value.

Universal does not specify how RBDC's non-delivery of the properties resulted in the depreciation of their value. Neither does petitioner prove that had it possessed the properties, it could have avoided their decline in the real estate market. At most, it has only been able to show that with the **passage of time**, its ₱57,146,483.72 investment in 1996 was reduced to ₱37,500,000 in 2005. Therefore, considering the dearth of proof of causality in this case, this Court cannot justly exact the supposed ₱19,646,483.72 depreciated value of the 10 condominium units and 10 parking slots from RBDC.

Recovery from RBDC of Sums Paid by Universal to China Bank

As mentioned above, Universal seeks to recover from RBDC the additional sums paid by the former to obtain the release of the properties

⁴⁷ See *Bueno v. La Compania Minas de Carbon de Batan*, 5 Phil. 210 (1905).

⁴⁸ See *Manila Electric Co. v. Remonquillo*, 99 Phil. 117 (1956).

⁴⁹ *Land Bank of the Philippines v. Kho*, G.R. Nos. 205839 & 205840, 7 July 2016.

⁵⁰ *Ramos v. C.O.L. Realty Corp.*, 614 Phil. 169 (2009).

from China Bank. Respondent counters that it should not be made to pay the ₱770,613.68 condominium dues, ₱368,881.63 real estate taxes, and ₱3,170,206.91 expenses, given that China Bank was the one obliged by the HLURB to release the condominium units.

We agree with RBDC. Respondent correctly argues that it is not chargeable for the alleged expense items. Clearly – and logically – the HLURB did not require any additional payment for the fully paid buyers of the condominium units. Hence, Universal should not have paid any additional amount to China Bank. In the final *Judgment Upon Compromise* dated 1 August 2002, the HLURB directed the bank to release the titles to all the units without qualification.⁵¹

The affidavits of undertaking of the mortgagee bank are requirements in the issuance of a clearance to mortgage as provided for under Section 18 of Presidential Decree No. 957 for the protection of the buyers.

It is clear from the affidavits that the mortgagee bank undertook to cancel/release the mortgage to fully paid units notwithstanding the non-payment of the total mortgage loan incurred by the mortgagor. The mortgagee bank has to abide by this undertaking.

Moreover, Section 25 of Presidential Decree No. 957 substantially provides that the titles to fully paid condominium units should be secured and delivered to the buyers.

Therefore, the China Banking Corporation should release the titles to all fully paid condominium units to the buyers whether they are its buyers or the buyers of Ray Burton Development Corporation or Mercantile Investment Company, Inc.

Given that the sums expended by Universal should not have been incurred in the first place, this Court finds no just reason for petitioner to demand the payment of the expenses, association dues, and realty taxes from RBDC. Notably, as regards the payment of association dues and realty taxes, the Contracts to Sell provide that these shall not be shouldered by respondent seller.⁵²

Universal's Entitlement to Damages on Account of RBDC's Breaches

As discussed, respondent had two obligations specified in Section 3 of the Contracts to Sell: (1) to deliver the deeds of absolute sale; and (2) to give the corresponding CCTs. RBDC admittedly failed to perform these obligations, but invoked the excuse that Universal had defaulted on the payment of transfer charges under Section 5(a) of the Contracts to Sell. The provision reads as follows:⁵³

⁵¹ *Rollo* (G.R. No. 185815), pp. 441-442.

⁵² *Id.* at 91-92; Contract to Sell dated 18 October 1996, Sections 5 and 7, pp. 5-6.

⁵³ *Id.* at 91; Contract to Sell dated 18 October 1996, p. 5.

SECTION 5. TAXES ASSESSMENTS AND EXPENSES.

a) Documentary stamp taxes, registration fees, taxes and assessments on transfer of real properties and other necessary and incidental expenses and **all other forms of taxes as imposed by the government related to the acquisition of the property** as well as other expenses that may be incurred **in connection with the execution of the Absolute Deed of Sale and the conveyance/transfer of Title to the BUYER**, shall be for the sole account and responsibility of the BUYER.

In the event the SELLER agrees to handle the registration of the Deed of Sale and effect title transfer in the name of the BUYER, the amount of taxes, fees, and expenses covering the same shall be paid by the BUYER to the SELLER within five (5) days from receipt of the Notice of Completion and Delivery of the Unit issued by the SELLER. (Emphasis supplied)

The excuse given by RBDC deserves scant consideration. In order that the debtor may be held to be in default, the following requisite conditions must be present: (1) the obligation is demandable and already liquidated; (2) the debtor delays performance of the obligation; and (3) the creditor requires the performance judicially or extrajudicially.⁵⁴

Nowhere in the records does this Court find a demand from RBDC for Universal to pay any sum under the above provision. None of the letters of respondent to petitioner resembles a notice requiring the latter to tender any payment for government charges and expenses connected with the execution of the Deed of Absolute Sale or the transfer of titles. Moreover, there is no liquidated demand to speak of, as there is no itemized final computation.⁵⁵ All in all, this Court does not consider Universal to have defaulted on the payment of transfer charges.

Section 5(a) must be construed as a whole. Its first paragraph refers to the payment for (1) government-imposed taxes, fees, and expenses related to the acquisition of the property; and (2) expenses that may be incurred in connection with the execution of the Deeds of Absolute Sale and the conveyance or transfer of titles to the buyer.

The second paragraph of Section 5 specifies that in the event the seller handles the registration of the Deed of Absolute Sale and effects title transfer in the name of the buyer, then that is the time that the buyer would have to give the seller the payment for those transactions. Specifically, the buyer must tender payment within five days from receipt of the seller's notice of completion and delivery of the unit.

We appreciate that the charges under Section 5(a) are sums to be expended for the titling of the properties. However, the obligation to pay

⁵⁴ *Social Security System v. Moonwalk Development & Housing Corp.*, G.R. No. 73345, 7 April 1993, 221 SCRA 119.

⁵⁵ *Rollo* (G.R. No. 185815), pp. 1089-1091; letter dated 21 August 2001. This correspondence from Carol N. Co of RBDC to Mr. S.K. Tang of Universal stated the estimate of expenses related to the transfer of title and other charges. Both items contained the annotation "to be determined later."

these charges – specifically to the seller – arises only “in the event” that the latter elects to handle the titling of the properties. In this case, RBDC has not averred that it has undertaken that responsibility. Consequently, Universal cannot be obliged to pay the transfer charges to respondent. RBDC cannot demand performance by Universal without offering to comply with its own prestation.⁵⁶

RBDC is then left with no just reason not to perform its obligations to Universal. As early as February 1999, respondent should have (1) executed deeds of absolute sale; and (2) given the CCTs of the properties to petitioner. RBDC has not at all complied with its duties despite the fact that Universal has already fully paid the purchase price of the properties.

Temperate Damages in lieu of Actual Damages

As explained above, Universal failed to prove its claims for actual damages, both as regards the liquidated damages under Section 6 of the Contracts to Sell and the alleged losses amounting to ₱19,646,483.72.

Nonetheless, petitioner may still be awarded damages in the concept of temperate or moderate damages. Temperate damages may be recovered when the court finds that some pecuniary loss has been suffered but the amount cannot, from the nature of the case, be proven with certainty.⁵⁷ In this case, there is no doubt that Universal sustained pecuniary loss, albeit difficult to quantify, arising from RBDC’s failure to execute deeds of absolute sale and to deliver the CCTs of the properties.

Had RBDC fulfilled these obligations, its transaction with Universal under the Contracts to Sell would have been complete.⁵⁸ After an absolute deed of sale has been signed by the parties, notarized and hence, turned into a public instrument, then the delivery of the real property is deemed made by the seller to the buyer.⁵⁹ Consequently, the buyer would have right away enjoyed the possession of the realties. Likewise, the titles thereto would have permitted the use of the properties as collateral for further investments. Universal lost all of these opportunities after RBDC failed to perform the latter’s duties as a seller.

Hence, this Court is empowered to calculate moderate damages, rather than let the aggrieved party suffer without redress from RBDC’s wrongful act.⁶⁰

⁵⁶ ARTURO M. TOLENTINO, CIVIL CODE OF THE PHILIPPINES, VOL. IV. 109 (1991); see *Consolidated Industrial Gases, Inc. v. Alabang Medical Center*, 721 Phil. 155 (2013).

⁵⁷ *Canada v. All Commodities Marketing Corp.*, 590 Phil. 342 (2008).

⁵⁸ *Chua v. Court of Appeals*, 449 Phil. 25 (2003).

⁵⁹ CIVIL CODE OF THE PHILIPPINES, Article 1498. “When the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred. x x x.”

⁶⁰ *Spouses Hernandez v. Spouses Dolor*, 479 Phil. 593 (2004).

The calculation of temperate damages is usually left to the sound discretion of the courts.⁶¹ We observe the limit that in giving recompense, the amount must be reasonable, bearing in mind that the same should be more than nominal, but less than compensatory.⁶² In jurisprudence, this Court has pegged temperate damages to an amount equivalent to a certain percentage of the actual damages claimed by the injured party.⁶³

The plight of the petitioner in *Pacific Basin Securities Co., Inc. v. Oriental Petroleum*⁶⁴ is parallel to that of Universal. In that case, the petitioner was also not given transfer documents for the properties it had purchased, and the respondent unjustifiably refused to record the transfer of the ₱17,727,000 worth of shares purchased by the former. As a result, the petitioner therein was prevented from reselling the subject shares in the stock market. For that dereliction, this Court awarded the petitioner therein ₱1 million for temperate damages equivalent to 5% of the actual damages claimed.

Anent the failure to deliver the titles to a purchased property, *Government Service Insurance System v. Spouses Labung-Deang*⁶⁵ is instructive. Similar to petitioners herein, Spouses Labung-Deang were deprived by the bank of copies of the title to the property that they had purchased. Consequently, the spouses failed to mortgage it as security for a ₱50,000 loan that they could have utilized to renovate their house. As recompense, this Court awarded them ₱20,000 temperate damages equivalent to 40% of the amount of their alleged injury.

Aside from those two analogous cases, this Court has reviewed other cases involving the award of temperate damages for breaches of contract. We have considered the: (1) investment to be lost by the injured party;⁶⁶ (2) duration of suffering of the injured party;⁶⁷ and (3) urgent action undertaken by the party in breach to remedy the situation.⁶⁸ Thus, we take into account the following: (1) in 1999, Universal invested ₱52,836,781.50 for 10 condominium units and 10 parking slots of Elizabeth Place in Makati City; (2) Universal asked RBDC about the monthly rental rates of each of the properties, which turned out to be in the range of ₱20,000 to ₱48,000;⁶⁹ (3) for six years, petitioner had no titles to or possession of the properties; and (4)

⁶¹ *Bacolod v. People*, 714 Phil. 90 (2013).

⁶² *International Container Terminal Services, Inc. v. Chua*, 730 Phil. 475 (2014).

⁶³ In *Dueñas v. Guce-Africa*, 618 Phil. 10 (2009), this Court specifically calculated that the temperate damages were equivalent to 20% of the original price of the subject of the breached contract. In *Iron Bulk Shipping Phil. Co. Ltd. v. Remington Industrial Sales Corp.*, 462 Phil. 694 (2003), we specified that 30% of the alleged cost of actual damages was reasonable enough for temperate damages.

⁶⁴ 558 Phil. 425 (2007).

⁶⁵ 417 Phil. 662 (2001).

⁶⁶ *Adrian Wilson International Associates, Inc. v. TMX Philippines, Inc.*, 639 Phil. 335 (2010); *Canada v. All Commodities Marketing Corp.*, 590 Phil. 342 (2008); *College Assurance Plan v. Belfranlt Development, Inc.*, 563 Phil. 355 (2007).

⁶⁷ *Caritas Health Shielá, Inc. v. MRL Cybertech Corp.*, G.R. Nos. 221651 & 221691, 11 July 2016.

⁶⁸ *Araneta v. Bank of America*, 148-B Phil. 124 (1971).

⁶⁹ *Rollo* (G.R. No. 185815), p. 1091; table of rates given to Universal on 27 July 2000.

RBDC could have easily executed deeds of absolute sale as the templates of these contracts had already been attached to the Contracts to Sell.⁷⁰

Having laid down all the circumstances obtaining in this case, this Court is of the view that an award for temperate damages equivalent to 15% of the ₱52,836,781.50 purchase value of the properties, or ₱7,925,517.23, is just and reasonable.

Exemplary Damages and Attorney's Fees

Since petitioner is entitled to temperate damages, then the courts may also examine the propriety of imposing exemplary damages on respondent.⁷¹ Exemplary damages are corrective damages imposed by way of example or correction for the public good.⁷² The grant thereof is intended to serve as a deterrent to or negative incentive for curbing socially deleterious actions.⁷³ Relevant to this case, this Court highlights that the State has an avowed policy to protect innocent buyers in real estate transactions.⁷⁴

Article 2232 of the Civil Code of the Philippines provides that in contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner. In this case, we find that respondent indeed acted in that manner when, despite demand for and full payment of the properties,⁷⁵ it refused to execute deeds of absolute sale and release the CCTs to petitioner without any sound basis.⁷⁶ As already discussed, Universal's nonpayment of transfer charges does not even serve as a potent excuse for RBDC's refusal to execute deeds of absolute sale and to deliver the titles of the purchased properties.

Moreover, there was no impediment to RBDC's issuance of deeds of absolute sale. As the owner, it could have still sold the properties even if it mortgaged them to China Bank.⁷⁷ As for the CCTs, respondent need not cause their transfer to the name of petitioners. RBDC could have simply turned them over to Universal in 1999, two years prior the foreclosure of the securities by China Bank in 2001. To make matters worse, respondent did not categorically deny that it had failed to disclose to petitioner that the lot of Elizabeth Place had been mortgaged to China Bank prior the execution of the Contracts to Sell.⁷⁸ This Court holds that the totality of these circumstances justify the imposition of exemplary damages on RBDC.

⁷⁰ Id. at 95-97. The last sentence of Section 3 (a) of the Contracts to Sell reads: "A copy of the Deed of Absolute Sale is attached as Annex A."

⁷¹ CIVIL CODE OF THE PHILIPPINES, Article 2229. "Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages."

⁷² *Zenith Insurance Corp. v. Court of Appeals*, 263 Phil. 1120 (1990).

⁷³ *Del Rosario v. Court of Appeals*, 334 Phil. 812 (1997).

⁷⁴ SUBDIVISION AND CONDOMINIUM BUYER'S PROTECTIVE DECREE, Presidential Decree No. 957 (1976); see *United Overseas Bank of the Phils., Inc. v. Board of Commissioners-HLURB*, G.R. No. 182133, 23 June 2015; *Casa Filipina Realty Corp. v. Office of the President*, 311 Phil. 170 (1995).

⁷⁵ *Republic Flour Mills Corp. v. Forbes Factors, Inc.*, 675 Phil. 599 (2011).

⁷⁶ *Metrobank v. Rosales*, 724 Phil. 66 (2014).

⁷⁷ *Ranjo v. Salmon*, 15 Phil. 436 (1910).

⁷⁸ SUBDIVISION AND CONDOMINIUM BUYER'S PROTECTIVE DECREE, Presidential Decree No. 957, Section 18 commands:

In *Cantemprate v. CRS Realty Development Corporation*,⁷⁹ which is fairly akin to the case at bar, the developer did not deliver the titles to the buyers of the fully paid properties. For failing to comply with its unequivocal duty, this Court affirmed the HLURB's award of ₱30,000 exemplary damages and ₱20,000 attorney's fees to each of the buyers. Considering that ruling vis-à-vis the dereliction of RBDC in the present case, which also involves the violation of a straightforward obligation to execute the deeds of absolute sale and to deliver the CCTs for the 10 condominium units and 10 parking slots, an award of ₱300,000 as exemplary damages is justified to set an example.

Given the award of exemplary damages, this Court likewise finds it just and equitable under the circumstances to award ₱200,000 as attorney's fees.⁸⁰ In addition, all damages awarded shall earn interest at the rate of 6% per annum from the date of finality of this judgment until full payment.

WHEREFORE, premises considered, in G.R. No. 182201, the Court of Appeals Decision dated 25 June 2007 and Resolution dated 14 March 2008 in CA-G.R. SP No. 89578 are **AFFIRMED**. In G.R. No. 185815, the Court of Appeals Decision dated 31 July 2007 and Resolution dated 11 December 2008 in CA-G.R. SP No. 89468 are **AFFIRMED** with the **MODIFICATION** that ₱7,925,517.23 as temperate damages, ₱300,000 as exemplary damages, and ₱200,000 as attorney's fees are awarded to petitioner Universal International Investment (BVI) Limited. All damages awarded shall earn interest at the rate of 6% per annum from the date of finality of this judgment until full payment.

SO ORDERED.



MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

cont.

No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority. Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. **The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan.** The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereof. (Emphasis supplied)

⁷⁹ 605 Phil. 574 (2009).

⁸⁰ CIVIL CODE OF THE PHILIPPINES, Article 2208. "In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except: (1) When exemplary damages are awarded; x x x x"; see *PhilTranco Service Enterprises, Inc. v. Court of Appeals*, 340 Phil. 98 (1997); *Air France v. Carrascoso*, 124 Phil. 722 (1966).

WE CONCUR:

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Diosdado M. Peralta
DIOSDADO M. PERALTA
Associate Justice

Bienvenido L. Reyes
BIENVENIDO L. REYES
Associate Justice

(On leave)
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.

Maria Lourdes P. A. Sereno
MARIA LOURDES P. A. SERENO
Chief Justice