G.R. No. 210209 – Cathay Land, Inc., et al. *versus* Ayala Land, Inc., et al.

Promulgated:

AUG 09 2017

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CONCURRING AND DISSENTING OPINION

CAGUIOA, *J.*:

The *ponencia* grants the petition and reverses the Decision of the Regional Trial Court, Branch 18, Tagaytay City (RTC) which had ordered the issuance of a writ of execution to enforce the terms and conditions of the Compromise Agreement between petitioners (Cathay Group) and respondents (Ayala Group) and a writ of injunction prohibiting the Cathay Group from constructing buildings with a height of 15 meters or more, and the Court of Appeals (CA) Decision which found no grave abuse of discretion on the part of the RTC.

The *ponencia* posits that the Ayala Group prematurely moved for execution of the Compromise Agreement based on "*mere development and structural plans, and marketing materials* x x x for 'the construction of x x x 97 x x x high-rise residential and commercial buildings having as much as x x 12 x x x floors.'"[1] Under the Compromise Agreement, the Ayala Group must first notify the Cathay Group of the breach and the latter has 30 days to rectify the breach. It is only after the failure of the Cathay Group to rectify the breach within 30 days from notice that execution can be availed of.

The *ponencia* also concludes that a "review of the records shows that the parties never agreed on the definition of the term 'high-rise buildings' when they entered into the Compromise Agreement on July 4, 2003."[2] The parties continued to discuss the matter through exchange of letters from August 2005 up until April 2008, right before the filing of the motion for execution. The matter was not resolved.

To my mind, the granting of the petition and the finding that the parties have not agreed on the definition of "high-rise buildings" have the effect, firstly, of overturning the ruling of the RTC, and upheld by the CA, that the said term is to be construed in accordance with the laws and ordinances then applicable at the time of the execution of the Compromise Agreement. Per the narration of proceedings in the *ponencia*, "the CA ruled that the proper interpretation of the term 'high-rise building' should be in

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[1] Decision, p. 9.

[2] Id.

accordance with the laws and ordinance enforced when the parties executed the Compromise Agreement, which, at the time, limited the permissible building height to only three storeys."[3] Secondly, such finding — *"[t]he parties did not agree on what constitutes a 'high-rise building'"*[4] — means that since there was no meeting of the parties' minds on the definition of the said term or "that it cannot be known what may have been the intention or will of the parties [upon a principal object of]"[5] the Compromise Agreement, then the contract should be deemed as null and void. However, the *ponencia* does not rule that the Compromise Agreement is void, but holds only that "[t]he matter x x x was *never* resolved."[6]

I believe otherwise. The matter was, in fact, resolved —by the RTC and the CA. It now behooves the Court to rule on the correctness of their interpretation of the term "high-rise buildings." What did the parties intend by that term? Surely, the parties could not have intended a meaning that would be contrary to or violate the laws and ordinances that were in effect when they executed the Compromise Agreement. Both parties are into property development and are expected to know the laws and ordinances applicable to their business. The ordinance of Silang, Cavite at the time the Compromise Agreement was executed "limited the permissible building height to only three storeys."[7] I believe that the parties could not have contemplated a meaning of "high-rise building" contrary to the said ordinance.

With the meaning of the term in dispute resolved, the Court can then proceed to determine whether the Cathay Group committed a breach of the Compromise Agreement.

The *ponencia* finds that "**there is likewise no sufficient proof that the Cathay Group had violated the terms of the Compromise Agreement**"[8] because the Ayala Group based the purported breach of the Cathay Group "on *mere development and structural plans, and marketing materials* for the Cathay Group's South Forbes Golf City project."[9] Thus, the Ayala Group "**prematurely** moved for execution of the Compromise Agreement."[10] This finding is inconsistent with the pronouncements that "the Cathay Group had already applied for and was granted a variance which exempted it from the coverage of the subject Municipal Zoning Ordinance"[11] and "[i]t was then issued all the necessary development permits for its South Forbes Golf City project, including a Building Permit from the Office of the

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3 Id. at 6.
4 Id. at 9.
5 CIVIL CODE, Art. 1378.
6 Decision, p. 10.
7 Id. at 6.
8 Id. at 9.
9 Id.
10 Id.
11 Id. at 11-12.

Municipal Engineer of Silang, Cavite."[12] The Ayala Group had even called the attention of the Cathay Group on the latter's plan to construct high-rise buildings, but to no avail.

Given the foregoing, I believe that a pronouncement of breach on the part of the Cathay Group is justified. There is breach of the obligation when a party in any manner contravenes its tenor;[13] and this kind of non-performance refers to any illicit act which impairs the strict and faithful fulfillment of the obligation, or every kind of defective performance.[14] A strict and faithful fulfillment of the Compromise Agreement by the Cathay Group could no longer be expected because of its aforesaid acts showing a clear intention to build "high-rise buildings" beyond the contemplation of the Compromise Agreement.

If the said acts do not amount to actual breach, then they should at the very least constitute anticipatory breach. An anticipatory breach may occur, for example, when there is a definite or unconditional repudiation of the contract by a party thereto communicated to the other even though it takes place before the time prescribed for the promised performance and before conditions specified in the promise have even occurred.[15] For the Ayala Group to wait until the Cathay Group had built beyond the height of "high-rise buildings" contemplated in the Compromise Agreement before it filed suit would be ludicrous. Given the Cathay Group's anticipatory breach — *evident from the development and structural plans, and marketing materials for the Cathay Group's South Forbes Golf Project; the issuance of all the necessary development permits for the Project, including a Building Permit from the Office of the Municipal Engineer of Silang, Cavite; the granting of a variance for the Project which exempted it from the coverage of the subject Municipal Zoning Ordinance; the Cathy Group's insistence of its definition of "high-rise buildings" when the Ayala Group called its attention on the alleged breach of the Compromise Agreement*[16] — the Ayala Group was well within its rights to already act thereon based on the Compromise Agreement, that is, either to withdraw or suspend the grant of the easement of right of way. In fact, the Civil Code obligates every party to a contract with the duty to minimize its damages.[17] Hence, when it became clear that Cathay was intent on building edifices beyond what the Ayala Group believed the Compromise Agreement prohibited, then it was the Ayala Group's duty to file suit.

I agree that the Compromise Agreement does not sanction the issuance of a restraining order or a writ of injunction against the Cathay

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[12] Id. at 12.

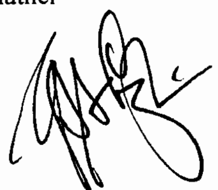
[13] CIVIL CODE, Art. 1170.

[14] Eduardo P. Caguioa, Comments and Cases on Civil Law Civil Code of the Philippines, Vol. IV (1968 First Ed.), p. 67.

[15] Eduardo P. Caguioa, id. at 66.

[16] See *Jison and Javellana v. Hernaez*, No. 47632, December 31, 1942, O.G., Vol. 2, No. 5, p. 492.

[17] CIVIL CODE, Art. 2203. The party suffering loss or injury must exercise the diligence of a good father of a family to minimize the damages resulting from the act or omission in question.



Group's plan to construct high-rise buildings not contemplated in the Compromise Agreement. What the Compromise Agreement sanctions is that in case of breach by the Cathay Group and its failure to rectify the same within 30 days from receipt of notice, the Ayala Group's recourse is only to withdraw or suspend the grant of the easement of right of way.

Accordingly, I concur that the petition should be granted and the assailed CA Decision and Resolution as well as the assailed Order of the RTC should be set aside and reversed. However, there should be, at the same time, a declaration that the Cathay Group had violated the Compromise Agreement and that the Ayala Group could act conformably therewith.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice