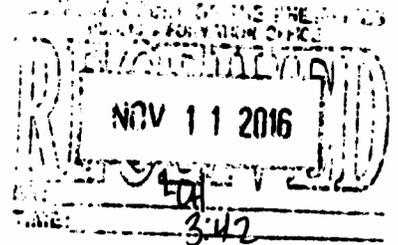




Republic of the Philippines  
**Supreme Court**  
 Manila  
**FIRST DIVISION**



**DR. RESTITUTO C. G.R. No. 216023**  
**BUENVIAJE,**

Petitioner, Present:

- versus -

SERENO, C.J.,\*  
 LEONARDO-DE CASTRO,\*\*  
 Acting Chairperson,  
 BERSAMIN,  
 PERLAS-BERNABE, and  
 CAGUIOA, JJ.

**SPOUSES JOVITO R. and**  
**LYDIA B. SALONGA, JEBSON**  
**HOLDINGS CORPORATION**  
**and FERDINAND JUAT BAÑEZ,**  
 Respondents.

Promulgated:

**OCT 05 2016**

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**DECISION**

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>1</sup> are the Decision<sup>2</sup> dated November 29, 2013 and the Resolution<sup>3</sup> dated December 15, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 93422, essentially upholding the Decision<sup>4</sup> dated September 16, 2004 and the Resolution<sup>5</sup> dated January 25, 2005 of the Housing and Land Use Regulatory Board (HLURB) Board of Commissioners (HLURB-BOC) which, *inter alia*: (a) ordered respondent Jebson Holdings Corporation (Jebson) to comply with its obligations under the Contract to Sell it entered into with petitioner Dr. Restituto C. Buenviaje (Buenviaje); (b) declared respondents Spouses Jovito R. Salonga and Lydia B. Salonga (Sps. Salonga) not solidarily liable with Jebson and respondent

\* On official business.

\*\* Per Special Order No. 2383 dated September 27, 2016.

<sup>1</sup> *Rollo*, pp. 18-119.

<sup>2</sup> *Id.* at 122-145. Penned by Associate Justice Ramon A. Cruz with Associate Justices Hakim S. Abdulwahid and Romeo F. Barza concurring.

<sup>3</sup> *Id.* at 146-149.

<sup>4</sup> *Id.* at 212-234. Signed by HLURB Commissioner and Chief Executive Officer Romulo Q. Fabul, Commissioner Jesus Y. Pang, and DPWH-Representative Ex-Officio Commissioner Joel I. Jacob.

<sup>5</sup> *Id.* at 235-237.

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Ferdinand Juat Bañez (Bañez) with regard to such Contract to Sell; (c) rescinded the “swapping arrangement” entered into by Buenviaje, Jebson, and Bañez with regard to the Contract to Sell; and (d) ordered Buenviaje to pay Sps. Salonga moral damages and attorney’s fees in the amounts of ₱50,000.00 and ₱25,000.00, respectively.

### The Facts

On May 29, 1997, Jebson, an entity engaged in the real estate business, through its Executive Vice President, Bañez, entered into a Joint Venture Agreement<sup>6</sup> (JVA) with Sps. Salonga. Under the JVA, Sps. Salonga, who owned three (3) parcels of land with an area of 2,935 square meters situated in Tagaytay City, and covered by Transfer Certificate of Title (TCT) No. T-9000, agreed for Jebson to construct thereon ten (10) high-end single detached residential units, to be known as Brentwoods Tagaytay Villas (Brentwoods).<sup>7</sup> They likewise assumed to subdivide the property into individual titles upon which Jebson shall assume the liability to pay their mortgage loan with the Metropolitan Bank and Trust Company.<sup>8</sup> On the other hand, Jebson undertook to construct the units at its own expense, secure the building and development permits, and the license to sell from the HLURB, as well as the other permits required. Out of the ten (10) units, seven (7) units, *i.e.*, Units 3, 4, 5, 6, 8, 9, and 10, will belong to Jebson while the remaining three (3) units, *i.e.*, Units 1, 2, and 7, will correspond to Sps. Salonga’s share.<sup>9</sup> The units allocated to Sps. Salonga were to be delivered within six (6) months after Jebson’s receipt of the down payment for the units allocated to it.<sup>10</sup> Jebson was also allowed to sell its allocated units under such terms as it may deem fit, subject to the condition that the price agreed upon was with the conformity of Sps. Salonga.<sup>11</sup>

On June 9, 1997, Jebson entered into a Contract to Sell<sup>12</sup> (subject CTS) with Buenviaje over Unit 5 for a total consideration of ₱10,500,000.00, without the conformity of Sps. Salonga.<sup>13</sup> Out of the purchase price, ₱7,800,000.00 was paid through a “swapping arrangement,” whereby Buenviaje conveyed to Jebson a house and lot located in Garden Villas, Tagaytay valued at ₱5,800,000.00 (house and lot) and Tagaytay Highlands Golf share No. 0722 (golf share) worth ₱2,000,000.00 on July 1, 1997, while the remaining balance was paid periodically. An additional sum of ₱125,000.00 for the retaining wall (₱70,000.00) and air-conditioning system (₱55,000.00) was likewise paid for by Buenviaje.<sup>14</sup>

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<sup>6</sup> Id. at 151-157.

<sup>7</sup> Id. at 123.

<sup>8</sup> Id. at 155.

<sup>9</sup> Id. at 123.

<sup>10</sup> Id. at 153.

<sup>11</sup> Id. at 155.

<sup>12</sup> Id. at 164-170.

<sup>13</sup> Id. at 124.

<sup>14</sup> Id. at 124-125.

However, despite full payment of the contract price, Jebson was unable to complete Unit 5 in violation of its contractual stipulation to finish the same within twelve (12) months from the date of issuance of the building permit. Thus, in April 1999, Buenviaje formally demanded the immediate completion and delivery of Unit 5, to which Jebson cited the 1997 financial crisis as the reason for the delay. Accordingly, Jebson asked to be given until the early part of the year 2000 to complete the same but still failed to do so.<sup>15</sup>

On May 27, 2002, Buenviaje filed before the HLURB Regional Field Office IV (HLURB-RIV) a Complaint for Specific Performance with Damages and Attorney's Fees, against Jebson, Bañez, and Sps. Salonga (respondents), praying for the (a) completion of Unit 5, (b) partition and subdivision of the property, (c) delivery of the title to Unit 5, and (d) payment of damages and attorney's fees. *In the alternative*, he prayed for the rescission of the subject CTS, and the return of all payments made thereunder, with interest at 24% per annum (p.a.), as well as the house and lot, and golf share pursuant to the "swapping arrangement."<sup>16</sup>

The complaint was consolidated with those filed by other parties, *i.e.*, Beliz Realty and Development Corporation (Beliz Realty) and Spouses George and Valentina Co (Sps. Co; collectively, complainants), who similarly entered into contracts to sell with Jebson, and sought the completion of the units they purchased.<sup>17</sup>

In their defense, Jebson and Bañez claimed that they were ready to comply with all their contractual obligations but were not able to secure the necessary government permits because Sps. Salonga stubbornly refused to cause the consolidation of the parcels of land covered by TCT No. T-9000, and their partition into ten (10) individual lots.<sup>18</sup>

For their part, Sps. Salonga averred that they were not liable to the complainants since there was no privity of contract between them, adding that the contracts to sell were unenforceable against them as they were entered into by Jebson without their conformity, in violation of the JVA. They maintained that they were ready to cause the subdivision and individual titling of the subject property. They also filed a cross-claim against Jebson for the latter's failure to complete and deliver to them the three (3) units corresponding to their share in Brentwoods, and for representing to the buyers that it owned the land where Brentwoods was located.<sup>19</sup>

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<sup>15</sup> Id. at 125-126.

<sup>16</sup> Id. at 126.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Id. at 126-127.

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### The HLURB-RIV Ruling

In a Decision<sup>20</sup> dated December 5, 2002, the HLURB-RIV: (a) rescinded the respective contracts to sell entered into by Jebson with the complainants; (b) found respondents solidarily liable for (i) the return of the payments made by the complainants, with interest of 12% per annum (p.a.), and (ii) the payment of moral and exemplary damages, attorney's fees, and litigation expenses; and (c) ordered respondents to (i) return to Buenviaje and Beliz Realty the properties conveyed to Jebson through their respective "swapping arrangements," and (ii) pay an administrative fine of ₱30,000.00 for violation of Sections 4, 5, 20, and 25 of Presidential Decree No. (PD) 957.<sup>21</sup>

The HLURB-RIV found that respondents were not legally authorized to sell Brentwoods as they have not secured the necessary Registration Certificate and License to Sell. Furthermore, they failed to complete the construction of the units as well as to deliver the units to the complainants on time, entitling the latter to the refund of their payments, including interests. It further found Sps. Salonga solidarily liable with Jebson and Bañez as joint venture partners liable to the general buying public.<sup>22</sup>

Aggrieved, Sps. Salonga appealed to the HLURB-BOC.<sup>23</sup>

### The HLURB-BOC Ruling

In a Decision<sup>24</sup> dated September 16, 2004, the HLURB-BOC reversed and set aside the HLURB-RIV's ruling, and (a) upheld the validity of the respective contracts to sell of Jebson with Buenviaje<sup>25</sup> and Beliz Realty; (b) rescinded the "swapping arrangements" under the said CTS, and ordered Jebson and Bañez, jointly and severally, to return the properties received thereunder to Buenviaje and Beliz Realty, who shall, in turn, pay the cash values thereof; (c) fixing a period of six (6) months for the completion of the construction of Units 3, 5, 6 and 7; and (d) ordered the complainants to pay respondents Sps. Salonga moral damages and attorney's fees.<sup>26</sup>

The HLURB-BOC held that there was no substantial breach but only a slight or casual one, which did not justify a rescission of the contracts to sell, especially in view of the fact that the residential units covered by the

<sup>20</sup> Id. at 187-211. Signed by Housing and Land Use Arbiter Atty. Ma. Perpetua Y. Aquino and HLURB Director Alfredo M. Tan II.

<sup>21</sup> Entitled "REGULATING THE SALE OF SUBDIVISION LOTS AND CONDOMINIUMS, PROVIDING PENALTIES FOR VIOLATIONS THEREOF," approved on July 12, 1976. Id. at 208-210.

<sup>22</sup> Id. at 205-207.

<sup>23</sup> Id. at 129.

<sup>24</sup> Id. at 212-234.

<sup>25</sup> Id. at 164-170.

<sup>26</sup> Id. at 232-234.

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said contracts were already at their finishing stages. Considering the accomplishment level of the work done on the said units, and further noting that the primary relief sought in the complaints of Buenviaje and Beliz Realty was specific performance, the HLURB-BOC ruled that the proper remedy, instead, was to fix the period for completion of the concerned units.<sup>27</sup>

Nonetheless, it invalidated the “swapping arrangements” in the respective contracts to sell of Jebson with Buenviaje and Beliz Realty, which allowed the use of non-cash assets as substantial downpayment, leaving Jebson with insufficient funds to complete their units, and to construct and deliver the units allocated to Sps. Salonga who were prejudiced thereby.<sup>28</sup>

It also found no basis to hold Sps. Salonga solidarily liable with Jebson and Bañez under the subject CTS, considering that: (a) the JVA does not provide for solidarity for any act or omission of either party and, in fact, expressly provides that Sps. Salonga shall be free of any liability from any third party as regards non-compliance with HLURB Rules and Regulations;<sup>29</sup> (b) the legal obligation to procure the required development, permit, license to sell, and certificate of registration from the HLURB devolved entirely and exclusively on Jebson and Bañez;<sup>30</sup> (c) Sps. Salonga were not the ones in control of the project, but Bañez;<sup>31</sup> and (d) even assuming Sps. Salonga directly or indirectly controlled Jebson, Section 40 of PD 957 exempts from its rule of solidary liability one who has acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.<sup>32</sup>

Buenviaje and complainants moved for reconsideration but the same were denied in a Resolution<sup>33</sup> dated January 25, 2005. Dissatisfied, Buenviaje elevated the matter to the Office of the President (OP).<sup>34</sup>

### **The OP’s Ruling**

In a Decision<sup>35</sup> dated November 30, 2005, the OP affirmed the ruling of the HLURB-BOC, finding: (a) no factual basis to hold Sps. Salonga solidarily liable with Jebson, pointing out that under the JVA, Jebson, as the developer, holds Sps. Salonga free from liability to third parties for non-compliance with HLURB rules and regulations;<sup>36</sup> (b) the contracts to sell

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<sup>27</sup> Id. at 223-225.

<sup>28</sup> Id. at 226.

<sup>29</sup> Id. at 227. See also clause 4.6 of the JVA; id. at 155.

<sup>30</sup> Id. See also clause 4.1 of the JVA; id. at 154.

<sup>31</sup> Id. at 229.

<sup>32</sup> Id.

<sup>33</sup> Id. at 235-237.

<sup>34</sup> Id. at 130.

<sup>35</sup> Id. at 238-250. Penned by Deputy Executive Secretary for Legal Affairs Manuel B. Gaité.

<sup>36</sup> Id. at 248.

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between Jebson and the complainants to be unenforceable against Sps. Salonga whose conformity thereto was not secured in violation of the JVA;<sup>37</sup> (c) the rescission of the contracts to sell was not the most economical solution to the problem confronting the parties considering that the units have already reached the finishing stage;<sup>38</sup> and (d) the rescission of the “swapping arrangements” entered into by Jebson and the buyers to be proper.<sup>39</sup>

Complainants separately moved for reconsideration, all of which were denied in an Order<sup>40</sup> dated January 31, 2006. Unperturbed, Buenviaje and Beliz Realty filed a petition for review before the CA.<sup>41</sup> However, in the course of the proceedings, Beliz Realty withdrew all its claims against Sps. Salonga.<sup>42</sup>

### The CA Ruling

In a Decision<sup>43</sup> dated November 29, 2013, the CA affirmed the OP ruling. It found that Jebson violated the terms of the JVA when it failed to secure the pertinent government permits for the development of Brentwoods, and sold its allocated units without the conformity of Sps. Salonga.<sup>44</sup> Considering that the primary prayer of Buenviaje and Beliz Realty was for specific performance, *i.e.*, the completion of the construction of their units, which are almost finished, it ruled that the OP correctly (a) sustained the HLURB Decision holding the rescission of the contracts to sell to be impractical; and (b) ordered that the said units be finished and delivered to Buenviaje and Beliz Realty, rescinding only the “swapping arrangement” in their respective contracts to sell with Jebson.<sup>45</sup> Anent Buenviaje’s liability for moral damages and attorney’s fees to Sps. Salonga, the CA opined that the OP’s *in toto* affirmation of the HLURB-BOC ruling is equivalent to an affirmation of the ratio of said finding of liability, *i.e.*, that Buenviaje connived with Jebson in diluting the cash portion of its payments to the prejudice of the spouses.<sup>46</sup>

Buenviaje, Jebson, and Bañez, respectively filed their motions for reconsideration, but the same were denied by the CA in a Resolution<sup>47</sup> dated December 15, 2014; hence, the present petition filed by Buenviaje.<sup>48</sup>

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<sup>37</sup> Id.

<sup>38</sup> Id. at 249.

<sup>39</sup> Id. at 248-249.

<sup>40</sup> Id. at 251-253.

<sup>41</sup> Id. at 131.

<sup>42</sup> Id. at 137. See also Manifestation (With Motion for total Waiver or Withdrawal of Any Claim by Beliz Realty and Development Corporation Against Spouses Jovito R. Salonga and Lydia B. Salonga) dated February 11, 2013; *id.* at 322-323.

<sup>43</sup> Id. at 122-145.

<sup>44</sup> Id. at 139.

<sup>45</sup> Id. at 139-140.

<sup>46</sup> Id. at 140-142.

<sup>47</sup> Id. at 146-150.

<sup>48</sup> Id. at 18-119.

## The Issues Before the Court

The essential issues for the Court's resolution are whether or not the CA correctly ruled that: (a) the grant of the remedy of specific performance in Buenviaje's favor was proper under the prevailing circumstances of the case; (b) Sps. Salonga are not solidarily liable with Jebson and Bañez to Buenviaje for the completion of the construction and delivery of the unit; (c) the "swapping arrangement" was invalid; and (d) Buenviaje is liable to Sps. Salonga for moral damages and attorney's fees.

## The Court's Ruling

The petition is partly meritorious.

### I.

**Specific performance** and "rescission" (more accurately referred to as **resolution**) are alternative remedies available to a party who is aggrieved by a counter-party's breach of a reciprocal obligation. This is provided for in Article 1191 of the Civil Code, which partly reads:

Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

**The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.**

x x x x (Emphasis supplied)

Specific performance is defined as "[t]he remedy of requiring exact performance of a contract in the specific form in which it was made, or according to the precise terms agreed upon."<sup>49</sup> It pertains to "[t]he actual accomplishment of a contract by a party bound to fulfill it."<sup>50</sup>

On the other hand, resolution is defined as the "unmaking of a contract for a legally sufficient reason x x x."<sup>51</sup> "[Resolution] does not merely terminate the contract and release the parties from further obligations to each other, but abrogates the contract from its inception and restores the parties to their original positions as if no contract has been made. Consequently, mutual restitution, which entails the return of the benefits that

<sup>49</sup> *Ayala Life Assurance, Inc. v. Ray Burton Development Corporation*, 515 Phil. 431, 438 (2006).

<sup>50</sup> *Id.*

<sup>51</sup> Black's Law Dictionary, Eighth Edition, p. 1332.

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each party may have received as a result of the contract, is thus required.”<sup>52</sup> Notably, resolution under Article 1191 of the Civil Code “will not be permitted for a slight or casual breach, but only for such substantial and fundamental violations as would defeat the very object of the parties in making the agreement. Ultimately, the question of whether a breach of contract is substantial depends upon the attending circumstances.”<sup>53</sup>

In this case, the HLURB-BOC, the OP, and the CA all pointed out that Buenviaje primarily prayed for the remedy of specific performance – *i.e.*, the completion of Unit 5, the subdivision of Sps. Salonga’s property into individual lots per unit, and the turn-over of Unit 5 as well as the subdivided lot portion allocated to such unit to him – and only prayed for the remedy of rescission as an alternative remedy.<sup>54</sup> Thus, it remains apparent that as between the two remedies made available to him, Buenviaje, had, in fact, chosen the remedy of specific performance and therefore, ought to be bound by the choice he had made. To add, “[t]he fundamental rule is that reliefs granted a litigant are limited to those specifically prayed for in the complaint; other reliefs prayed for may be granted only when related to the specific prayer(s) in the pleadings and supported by the evidence on record.”<sup>55</sup> Hence, based on this postulate, the lower tribunals could hardly be faulted for granting the proper relief in accordance with what Buenviaje himself had claimed.

Relatedly, it is observed that Buenviaje’s alternative prayer for resolution is textually consistent with that portion of Article 1191 of the Civil Code which states that an injured party “may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.” Nevertheless, the impossibility of fulfillment was not sufficiently demonstrated in the proceedings conducted in this case. As the HLURB-BOC pointed out, “[t]here is no finding that specific performance has become impossible or that there are insuperable legal obstacles to the completion of the constructed units so as to justify [resolution].”<sup>56</sup> In fact, as the CA contrarily remarked, Buenviaje’s “main prayer [for specific performance] x x x appears to be the more plausible course of action”<sup>57</sup> “[s]ince the units covered by the disputed Contracts To Sell are almost finished, and [have] most likely [been] complete[d].”<sup>58</sup>

With these in mind, the CA therefore correctly upheld the directive for Jebson to comply with its obligations under the subject CTS with Buenviaje as prayed for by the latter. Failing to show any cogent reason to hold

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<sup>52</sup> *Gotesco Properties, Inc. v. Sps. Fajardo*, 705 Phil. 294, 303 (2013); citations omitted.

<sup>53</sup> See *Nolasco v. Cuerpo*, G.R. No. 210215, December 9, 2015; citations omitted.

<sup>54</sup> See *rollo*, pp. 139-140, 220, and 248

<sup>55</sup> *PCIC v. PNCC*, 617 Phil. 940, 948 (2009).

<sup>56</sup> *Rollo*, p. 224.

<sup>57</sup> *Id.* at 139.

<sup>58</sup> *Id.* at 140.

otherwise, Buenviaje can no longer recant his primary choice of relief. His prayer for resolution in the instant petition must perforce fail.

## II.

With the propriety of specific performance having been decreed, Buenviaje's claim to be restituted the alleged purchase price of ₱10,625,000.00 – for which Sps. Salonga were claimed to be solidarily liable – thus, holds no basis. As above-intimated, mutual restitution is the proper consequence of the remedy of resolution. It cannot arise – as it is, in fact, theoretically incompatible – with the remedy of specific performance, which is the relief prayed for and consequently, granted to the injured party herein.

In this relation, it is fitting to clarify that the obligations to be fulfilled, *i.e.*, the completion of Unit 5, the subdivision of Sps. Salonga's property into individual lots per unit, and the turn-over of Unit 5, as well as the subdivided lot portion allocated to such unit, are obligations of Jebson to Buenviaje under the subject CTS dated June 1997. These obligations are subsumed in the general provisions of Articles 3 and 4, which respectively read:

### ARTICLE 3. POSSESSION

3.1. Upon execution of this contract and the payment of the amounts stated in Article 1.2 are in good standing and the housing unit is completed hereof, the BUYER may take possession of the subject house and lot of this contract, in the concept of a lessee or tenant until such time as the housing unit have been fully paid. BUYER's right of possession shall continue so long as he complies with all the terms and conditions hereof.

### ARTICLE 4. TRANSFER OF OWNERSHIP

4.1 It is hereby agreed and understood that title to the above-described lot subject of this contract shall remain with the SELLER and shall pass to and be transferred to the BUYER only upon complete payment by the BUYER of all his obligations herein stipulated, at which time the SELLER agrees to execute a final Deed of Absolute Sale in favor of the BUYER.<sup>59</sup>

In this case, it is undisputed that Sps. Salonga were not parties to the above-mentioned contract. Under Article 1311<sup>60</sup> of the Civil Code, it is a basic principle in civil law on relativity of contracts, that contracts can only bind the parties who had entered into it and it cannot favor or prejudice third

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<sup>59</sup> Id. at 166.

<sup>60</sup> Article 1311 of the Civil Code reads:

Article 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.

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persons. Contracts take effect only between the parties, their successors in interest, heirs and assigns. Thus, absent any privity of contract as to them, there is no basis to hold Sps. Salonga liable for any of the obligations stated under the said contract to sell.

At this juncture, it should be further made clear that the imputation of joint or solidary liability against a particular person – such as that insistently claimed against Sps. Salonga by Buenviaje – first presupposes the existence of that person’s obligation. On the active side, the joint or solidary nature of an obligation is an aspect of demandability; it pertains to the extent of a creditor’s entitlement to demand fulfillment against any or all of his debtors under one particular obligation. Based on case law, a solidary obligation is one in which each of the debtors is liable for the entire obligation, and each of the creditors is entitled to demand the satisfaction of the whole obligation from any or all of the debtors. On the other hand, a joint obligation is one in which each debtors is liable only for a proportionate part of the debt, and the creditor is entitled to demand only a proportionate part of the credit from each debtor.<sup>61</sup>

As already mentioned, no source of obligation under the subject CTS can be traced to Sps. Salonga as they were clearly non-parties thereto. Therefore, without such extant obligation, the possibility of holding them liable *in solidum* with Jebson under the said contract is out of the question.

Neither has Buenviaje persuasively argued that Sps. Salonga may be held solidarily liable pursuant to law, which is a distinct source of obligation.<sup>62</sup> More particularly, Buenviaje attempts to establish that Section 40 of PD 957 as well as Articles 1822 and 1824 of the Civil Code, are legal provisions which render Sps. Salonga solidarily liable together with Jebson:

Section 40 of PD 957 reads:

**Section 40.** *Liability of controlling persons.* Every person who directly or indirectly controls any person liable under any provision of this Decree or of any rule or regulation issued thereunder shall be liable jointly and severally with and to the same extent as such controlled person unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.

In this case, records are bereft of any showing that Sps. Salonga had direct or indirect control over Jebson throughout the course of the entire Brentwoods Project. In fact, even if it is assumed that they had some sort of control over Jebson, it was not shown that they acted in bad faith and had a

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<sup>61</sup> See *Spouses Berot v. Siapno*, 738 Phil. 673, 690 (2014), citing *PH Credit Corporation v. CA*, 421 Phil. 821, 832 (2001).

<sup>62</sup> See Article 1157 of the Civil Code.

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hand in inducing Jebson's acts from which Buenviaje's cause of action arose. As such, the foregoing provision cannot be invoked to hold Sps. Salonga solidarily liable with Jebson.

Similarly, there is no perceptible legal basis to hold them solidarily liable under Articles 1822 and 1824 of the Civil Code. These provisions, which are found under Section 3, Chapter 2, Title IX, Book IV of the Civil Code on Partnership, respectively state:

Article 1822. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his co-partners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act.

x x x x

Article 1824. All partners are liable solidarily with the partnership for everything chargeable to the partnership under Articles 1822 and 1823.

Evidently, the foregoing legal provisions pertain to the obligations of a co-partner in the event that the partnership to which he belongs is held liable. In this case, Buenviaje never dealt with any partnership constituted by and between Jebson and Sps. Salonga. As previously mentioned, the subject CTS, which was the source of the obligations relative to the completion and delivery of Unit 5, solely devolved upon the person of Jebson. As there was no partnership privity to any obligation to which Buenviaje is a creditor, Articles 1822 and 1824 of the Civil Code do not apply.

While Jebson, as developer, and Sps. Salonga, as land owner, entered into a joint venture, which – based on case law – may be considered as a form of partnership,<sup>63</sup> the fact remains that their joint venture was never privity to any obligation with Buenviaje; hence, liability cannot be imputed against the joint venture based on the same principle of relativity as above-mentioned. Besides, it should be pointed out that the JVA<sup>64</sup> between Jebson and Sps. Salonga was limited to the construction of the residential units under the Brentwoods Project and that Jebson had the sole hand in marketing the units allocated to it to third persons, such as Buenviaje. In fact, under the express terms of the JVA, Jebson, as the developer, had even stipulated to hold Sps. Salonga free from any liability to third parties for non-compliance with HLURB rules and regulations. As things stand, only Jebson should be held liable for its obligations to Buenviaje under the subject CTS.

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<sup>63</sup> See *J. Tiosejo Investment Corp. v. Sps. Ang*, 644 Phil. 601 (2010).

<sup>64</sup> See JVA, rollo, pp. 151-157.

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### III.

Pursuant to Articles 1177<sup>65</sup> and 1313<sup>66</sup> of the Civil Code, creditors are given remedies whenever their debtors perform acts or omissions or enter into contracts that tend to defraud the former of what is due them. Such remedy comes in the form of rescission under Articles 1381(3)<sup>67</sup> in relation to Articles 1383<sup>68</sup> and 1384<sup>69</sup> of the Civil Code. Rescission (as contemplated in Articles 1380 to 1389 of the Civil Code) is a remedy granted by law to the contracting parties and even to third persons, to secure the reparation of damages caused to them by a contract, even if this should be valid, by restoration of things to their condition at the moment prior to the celebration of the contract. It implies a contract, which even if initially valid, produces a *lesion* or a pecuniary damage to someone.<sup>70</sup> In the rescission by reason of *lesion* or economic prejudice, the cause of action is subordinated to the existence of that prejudice, because it is the *raison d'être* as well as the measure of the right to rescind. Hence, where the defendant makes good the damages caused, the action cannot be maintained or continued, as expressly provided in Articles 1383 and 1384.<sup>71</sup>

In this case, it must be recapitulated that under the JVA, Sps. Salonga are supposed to receive a total of three (3) Brentwoods residential units from Jebson, who in turn, is obligated to construct these units at its own expense. Jebson bound itself to deliver the same within six (6) months after receipt of the downpayment for the units allocated to it. Meanwhile, Jebson – through Bañez – entered into “swapping arrangements” with its buyers (among others, Buenviaje), whereby it accepted various non-cash assets as suitable payments for the said units. Sps. Salonga assailed the property swaps as they purportedly deprived the funding for the Brentwoods project to the tune of ₱13,000,000.00. Specifically, they asked that the swapped properties be ordered

<sup>65</sup> Article 1177 of the Civil Code reads:

Article 1177. The creditors, after having pursued the property in possession of the debtor to satisfy their claims, may exercise all the rights and bring all the actions of the latter for the same purpose, save those which are inherent in his person; they may also impugn the acts which the debtor may have done to defraud them.

<sup>66</sup> Article 1313 of the Civil Code reads:

Article 1313. Creditors are protected in cases of contracts intended to defraud them.

<sup>67</sup> Article 1381 (3) of the Civil Code reads:

Article 1381. The following contracts are rescissible:

x x x x

(3) Those undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them; x x x x

<sup>68</sup> Article 1383 of the Civil Code reads:

Article 1383. The action for rescission is subsidiary; it cannot be instituted except when the party suffering damage has no other legal means to obtain reparation for the same.

<sup>69</sup> Article 1384 of the Civil Code reads:

Article 1384. Rescission shall be only to the extent necessary to cover the damages caused.

<sup>70</sup> *The Wellex Group, Inc. v. U-Land Airlines Co., Ltd.*, G.R. No. 167519, January 14, 2015, 745 SCRA 563, 620, citing *Ong v. CA*, 369 Phil. 243, 251-252 (1999).

<sup>71</sup> See *The Wellex Group, Inc. v. U-Land Airlines Co., Ltd.*, *id.* at 623, citations omitted.

returned to the buyers concerned and that their values be paid in cash by the latter to be utilized for the completion of the corresponding units.<sup>72</sup> The HLURB-BOC, which was later affirmed by the OP and then by the CA, found Sps. Salonga's supplication to be meritorious, holding that the latter were prejudiced by the property swaps inasmuch as these arrangements ate up more than 80% of the down payments which would have been utilized to complete the units. Moreover, it was observed that the said arrangements were done without the conformity of Sps. Salonga as required in their JVA with Jebson, and thus, were entered into to defraud them.<sup>73</sup> As a result, the HLURB-BOC ordered the rescission of the "swapping arrangement" entered into by Jebson with Buenviaje and instead, ordered him to pay in cash the sum of ₱7,200,000.00 as part of his down payment under the subject CTS.

After a careful study of this case, the Court, however, finds no basis to rescind the aforesaid "swapping arrangement." Although the same was admittedly entered into by Jebson with Buenviaje without the conformity of Sps. Salonga, the records do not support the HLURB-BOC's finding that this separate arrangement was entered into in order to defraud Jebson's creditor under the JVA, *i.e.*, Sps. Salonga, and hence, should not be rescinded. As aptly observed by Justice Alfredo Benjamin S. Caguioa during the deliberations on this case, the act of Jebson in accepting non-cash assets as suitable payments was a business decision made by it. While such may have been the cause of Jebson's inability to timely complete the Brentwoods project (possibly due to the lack of immediate access to liquid capital at that time), the soundness or unsoundness of that business decision is not enough for the Court to conclude that the said swaps were entered into to defraud Sps. Salonga, notwithstanding the resulting "economic prejudice" to them. As the records show, Jebson was, in fact, able to receive both cash and non-cash asset payments made by Buenviaje,<sup>74</sup> and hence, could have properly managed the same to meet its obligations in light of its financial position. In *Union Bank Philippines v. Sps. Ong*,<sup>75</sup> the Court explained the requirement of fraud relative to rescissible contracts under Article 1381 of the Civil Code:

Essentially, petitioner anchors its case on Article 1381 of the Civil Code which lists as among the rescissible contracts "[T]hose undertaken in fraud of creditors when the latter cannot in any other manner collect the claim due them."

**Contracts in fraud of creditors are those executed with the intention to prejudice the rights of creditors.** They should not be confused with those entered into without such mal-intent, even if, as a direct consequence thereof, the creditor may suffer some damage. **In determining whether or not a certain conveying contract is fraudulent, what comes to mind first is the question of whether the conveyance was a *bona fide* transaction or a trick and contrivance to**

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<sup>72</sup> *Rollo*, pp. 220, 226

<sup>73</sup> *Id.* at 226.

<sup>74</sup> *Id.* at 124-125.

<sup>75</sup> 525 Phil. 58 (2006).

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**defeat creditors. To creditors seeking contract rescission on the ground of fraudulent conveyance rest the onus of proving by competent evidence the existence of such fraudulent intent on the part of the debtor,** albeit they may fall back on the disputable presumptions, if proper, established under Article 1387 of the Code.<sup>76</sup> (Emphases supplied)

Here, the *onus* of proving that the “swapping arrangement” was a fraudulent conveyance, or a trick and contrivance to defeat creditor rights, was not sufficiently discharged by Sps. Salonga. Thus, absent such proof of fraud, the Court concludes that the “swapping arrangement” was a *bona fide* transaction freely entered into between Jebson and Buenviaje, and therefore, valid and binding. As such, the HLURB-BOC’s directive to rescind the “swapping arrangement” entered into by Jebson with Buenviaje and the consequent order for the latter to pay Jebson the sum of ₱7,200,000.00 in cash as part of his down payment under the subject CTS, is hereby reversed. If at all, Sps. Salonga’s remedy is to compel Jebson to honor its obligations under its contract with them, and not the rescission of the afore-discussed property swap, which is part and parcel of the consideration underlying the subject CTS between Jebson and Buenviaje, a distinct and independent contract from the JVA altogether.

#### IV.

In order that moral damages under Article 2219<sup>77</sup> of the Civil Code may be awarded, there must be pleading and proof of moral suffering, mental anguish, fright and the like.<sup>78</sup> In *Mahinay v. Velasquez*,<sup>79</sup> the Court explained:

While no proof of pecuniary loss is necessary in order that moral damages may be awarded, the amount of indemnity being left to the discretion of the court, **it is nevertheless essential that the claimant should satisfactorily show the existence of the factual basis of damages**

<sup>76</sup> Id. at 70.

<sup>77</sup> Article 2219 of the Civil Code reads:

Article 2219. Moral damages may be recovered in the following and analogous cases:

- (1) A criminal offense resulting in physical injuries;
- (2) Quasi-delicts causing physical injuries;
- (3) Seduction, abduction, rape, or other lascivious acts;
- (4) Adultery or concubinage;
- (5) Illegal or arbitrary detention or arrest;
- (6) Illegal search;
- (7) Libel, slander or any other form of defamation;
- (8) Malicious prosecution;
- (9) Acts mentioned in Article 309;
- (10) Acts and actions referred to in articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

<sup>78</sup> *Mahinay v. Velasquez*, 464 Phil. 146, 149 (2004), citing *San Miguel Brewery, Inc. vs. Magno*, 128 Phil. 328, 336 (1967).

<sup>79</sup> Id.

**and its causal connection to defendant's acts.** This is so because moral damages, though incapable of pecuniary estimation, are in the category of an award designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer. In *Francisco vs. GSIS*, the Court held that **there must be clear testimony on the anguish and other forms of mental suffering. Thus, if the plaintiff fails to take the witness stand and testify as to his/her social humiliation, wounded feelings and anxiety, moral damages cannot be awarded.** In *Cocoland Development Corporation vs. National Labor Relations Commission*, the Court held that **“additional facts must be pleaded and proven to warrant the grant of moral damages under the Civil Code, these being, x x x social humiliation, wounded feelings, grave anxiety, etc. that resulted therefrom.”**<sup>80</sup> (Emphases and underscoring supplied)

As to attorney's fees, the general rule is that the same cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208<sup>81</sup> of the Civil Code demands factual, legal, and equitable justification. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.<sup>82</sup>

In this case, the tribunals *a quo* grounded Buenviaje's liability for moral damages and attorney's fees to Sps. Salonga on his alleged connivance with Jebson and Bañez in diluting the cash portion of his down payments to the prejudice of Sps. Salonga. However, a judicious perusal of the record reveals that aside from Buenviaje's actual payment of non-cash

<sup>80</sup> Id. at 149-150, citing *Kierulf v. CA*, 336 Phil. 414, 431-432 (1997).

<sup>81</sup> Article 2208 of the Civil Code reads:

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;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

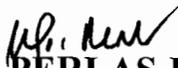
<sup>82</sup> In all cases, the attorney's fees and expenses of litigation must be reasonable. *Vergara v. Sonkin*, G.R. No. 193659, June 15, 2015, 757 SCRA 442, 457, citing *The President of the Church of Jesus Christ of Latter Day Saints v. BTL Construction Corporation*, 724 Phil. 354, 372 (2014).

assets as part of the purchase price of Unit 5, no other evidence shows that such connivance exists. In the absence of such proof, it cannot be concluded that Buenviaje had some ulterior purpose in paying non-cash assets as part of the consideration. As the Court views it, Buenviaje honestly thought that he could partially pay the purchase price of Unit 5 with the said non-cash assets amounting to ₱7,200,000.00 as anyway Jebson and Bañez accepted the offer. “Good faith is always presumed, and upon him who alleges bad faith rests the burden of proof,”<sup>83</sup> which was not overcome in this case.

Thus, there was no factual basis to declare Buenviaje liable to Sps. Salonga for moral damages and attorney’s fees; consequently, such awards must be deleted. While factual findings of quasi-judicial agencies, especially when affirmed by the CA, are binding on the Court, such findings may be overturned when, *inter alia*, they are grounded on mere speculation,<sup>84</sup> as in this instance.

**WHEREFORE**, the petition is **PARTLY GRANTED**. The Decision dated November 29, 2013 and the Resolution dated December 15, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 93422 are hereby **AFFIRMED** with **MODIFICATION**, **DELETING** the following directives: (a) the rescission of the “swapping arrangement” entered into by respondent Jebson Holdings Corporation (Jebson) with petitioner Dr. Restituto C. Buenviaje (Buenviaje) and the consequent order for the latter to pay Jebson the sum of ₱7,200,000.00 in cash as part of his down payment under their Contract to Sell; and (b) the order for Buenviaje to pay respondents Spouses Jovito R. Salonga and Lydia B. Salonga moral damages and attorney’s fees in the amounts of ₱50,000.00 and ₱25,000.00, respectively. The rest of the CA Decision **STANDS**.

**SO ORDERED.**

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

**WE CONCUR:**

On official business  
**MARIA LOURDES P. A. SERENO**  
Chief Justice

<sup>83</sup> *Balbuena v. Sabay*, 614 Phil. 402, 414 (2009), citation omitted.

<sup>84</sup> See *NGEI Multi-Purpose Cooperative, Inc. v. Filipinas Palmoil Plantation, Inc.*, 697 Phil. 433 (2012).

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

*Lucas P. Bersamin*  
**LUCAS P. BERSAMIN**  
 Associate Justice

*Alfredo Benjamin S. Caguioa*  
**ALFREDO BENJAMIN S. CAGUIOA**  
 Associate Justice

**ATTESTATION**

I attest 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.

*Teresita Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
 Associate Justice  
 Acting Chairperson, First Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting 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.

*Antonio T. Carpio*  
**ANTONIO T. CARPIO**  
 Acting Chief Justice