Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PRYCE PROPERTIES CORP. (now PRYCE CORPORATION),
Petitioner,

-versus-

NARCISO R. NOLASCO, JR.
Respondent.

G.R. No. 203990

Present:

PERLAS-BERNABE, *J.*,
Chairperson,
HERNANDO,
INTING,
DELOS SANTOS, and
BALTAZAR-PADILLA,* *JJ.*

Promulgated:

24 AUG 2020

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DECISION

HERNANDO, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to reverse and set aside the May 30, 2012 Decision[2] and the September 26, 2012 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 76091-MIN, which affirmed with modifications the June 7, 2002 Decision[4] of the Regional Trial Court (RTC), Branch 24 of Cagayan de Oro City and denied the Motion for Reconsideration of the May 30, 2012 CA Decision, respectively.

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* On official leave.
[1] *Rollo*, pp. 3-19.
[2] Id. at 21-36; penned by Associate Justice Marilyn B. Lagura-Yap and concurred in by Associate Justices Edgardo A. Camello and Melchor Q.C. Sadang.
[3] Id. at 38-39; penned by Associate Justice Marilyn B. Lagura-Yap and concurred in by Associate Justices Edgardo A. Camello and Renato C. Francisco.
[4] CA *rollo*, pp. 40-46.

Facts:

The case stemmed from a complaint for recovery of a sum of money (Complaint)[5] filed by Narciso R. Nolasco, Jr. (Nolasco) on January 22, 1999 before the RTC against Pryce Corporation, formerly Pryce Properties Corporation (Pryce).

Nolasco alleged the following in his Complaint: in 1995, he purchased three lots located in Cagayan de Oro City from Pryce; also in 1995, he deposited a total amount of ₱393,435.00 through check payments in favor of Pryce; the latter did not deliver to Nolasco the copies of the lots' certificates of title and their sales agreement; he was surprised, frustrated, and dismayed when he finally received the sales agreement, as it contained unacceptable conditions to which he conveyed his objections to Pryce; since he had not yet signed the sales agreement, there was still no meeting of the minds between him and Pryce; and that despite demands for refund of his deposit payments, Pryce failed to comply. Nolasco also sought the amounts of ₱100,000.00 as moral damages, ₱50,000.00 as exemplary damages, and ₱50,000.00 as attorney's fees.

Pryce filed an Answer with Counterclaims.[6] It countered that Nolasco could not yet be issued certificates of title since their transaction was not a contract of sale but a contract to sell. Nolasco was allegedly furnished a copy of the *Contract to Sell* as early as November 8, 1995, which he signed and even requested for an amended *Contract to Sell* to reflect a new amortization schedule. Nolasco, under Republic Act No. 6552 (RA 6552) or the Maceda Law, was not entitled to a refund of his deposits since he failed to complete the payments within the grace period provided by Pryce, resulting in their forfeiture and the rescission of the contract to sell. By way of counterclaims, Pryce held Nolasco liable for ₱2,000,000.00 as moral damages, at least ₱200,000.00 as exemplary damages, at least ₱100,000.00 as attorney's fees, and at least ₱200,000.00 as litigation costs.

During pre-trial, the parties stipulated on the following, as reflected in the Pre-Trial Order:[7]

> 1. That plaintiff has not signed a contract to sell with defendant Pryce, admitted;
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> 2. That in the month of September 1997, plaintiff wrote defendant Pryce that he is no longer proceeding with the contract and that he is withdrawing the amount of ₱393,000.00, admitted as to receipt;
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> 3. Receipt of the letter dated March 10, 1997 addressed to Saturnina Omandap, admitted;

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[5] Records, pp. 3-7.
[6] Id. at 49-57.
[7] Id. at 179-181.

4. As to the receipt of third letter, admitted;

5. Receipt of plaintiff's letter to defendant, admitted;

6. That plaintiff [gave] defendant Pryce ₱393,000.00 and signed the request for rescission on July 29, 1995 with a downpayment of ₱145,000.00, admitted;

7. That on August 1995 plaintiff made another reservation fee of ₱20,000.00, admitted;

8. That plaintiff was issued a provisional receipt of ₱20,000.00, admitted;

9. That on August 19, 1995, plaintiff again made a reservation of ₱40,000.00, admitted;

10. That plaintiff received from defendant Pryce a copy of title, Tax Declaration and sketches of the three (3) lots, admitted;

11. That plaintiff sent a letter dated November 8, 1995 to defendant informing the lat[t]er that the balance of the total lot price will be financed by one of its bank [*sic*], admitted as to the receipt of the latter;

12. That plaintiff received another letter dated November 10, 1995 advising him that the defendant is still processing the titles and that there is no need to amend the contract since a deed of absolute sale will be executed once the bank pays the balance of the total price, admitted as to receipt;

13. That in a letter dated March 21, 1996, Mr. M. Cinco Marketing [Manager] of defendant provided plaintiff the computation of the full payment of the lots. He also advised plaintiff that since he was already given six months to arrange his financing, he has only two weeks to effect complete payment, admitted as to receipt of the letter;

14. That in a letter dated April 16, 1996 Landbank informed defendant that the loan application of the plaintiff and his spouse is still on process, admitted as to receipt of letter;

1[5]. That plaintiff raised objections regarding heights of the houses and the 1.5 meter easement on February 12, 1997, admitted;

1[6]. That plaintiff was not able to secure a loan from Landbank of the Philippines for the financing of the subject subdivision lots, admitted;

1[7]. That plaintiff received a letter dated December 5, 1998 from defendant informing the former that he had failed to pay his installment payments since October 1995 and that he was given sixty (60) days from December 5, 1998 or until February 5, 1999 within which to pay his installment payment otherwise defendant will be constrained x x x to rescind the contract consistent with Sec. 4 of Rep. Act. No. 6552 (Maceda Law), admitted as to receipt of the latter;

1[8]. That plaintiff has not fully paid the total consideration of the subject lots despite demand, admitted as to receipt of the l[a]tter.

Finding that the sole issue for resolution is whether Pryce is liable to refund to Nolasco the amounts he deposited plus interest, the RTC forwent with the trial and ordered the parties to submit their respective memoranda.[8]

Ruling of the Regional Trial Court:

The RTC ruled in favor of Nolasco. It found that there had been a perfected contract of sale between Nolasco and Pryce pursuant to Article 1482 of the Civil Code. It also ruled that under RA 6552 or the Maceda Law, Pryce can rescind the contract of sale for failure of Nolasco to pay at least two (2) years of installments to Pryce. The latter, however, did not rescind the contract. As regards the issue of refund of the payments he made to Pryce, the RTC declared Nolasco as entitled thereto, citing jurisprudence and Article 1191 of the Civil Code. The June 7, 2002 RTC Decision[9] pronounced as follows:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff and against defendant PRYCE CORPORATION ordering the said PRYCE PROPERTIES CORPORATION to pay to plaintiff Narciso R. Nolasco, Jr. the sum of ₱393,435.00 with interest of 12% starting from the filing of this case on January 22, 1999 until fully paid.
>
> Prayer for moral damages in the sum of ₱100,000.00; ₱50,000.00 for exemplary damages and ₱50,000.00 for attorney's fee is hereby denied there being no proof that defendant was actuated with malice and evident bad faith in refusing to refund plaintiff of his deposits.
>
> SO ORDERED.[10]

Pryce appealed to the CA[11] asserting that the contract in issue was a contract to sell and not a contract of sale. It maintained that it had properly rescinded the contract in accordance with RA 6552 and that Nolasco was not entitled to a refund.

Ruling of the Court of Appeals:

The CA affirmed the RTC in part. The CA found that the contract entered into by Pryce and Nolasco was a contract to sell. The CA nonetheless upheld Nolasco's entitlement to a refund, as Pryce did not exercise the remedy of cancellation under RA 6552 and under equity considerations. The CA also updated the interest on the monetary award granted to Nolasco pursuant to the pronouncement in *Eastern Shipping Lines, Inc. v. Court of Appeals*.[12] The dispositive portion of the May 30, 2012 CA Decision reads:

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[8] Id. at 223.
[9] CA *rollo*, pp. 40-46.
[10] Id. at 46.
[11] Id. at 15-39.
[12] 304 Phil. 236 (1994).

> **WHEREFORE**, the appeal is **DENIED**. The Decision dated June 7, 2002 rendered by the Regional Trial Court of Cagayan de Oro City, Branch 24, is hereby **AFFIRMED** with **MODIFICATION**. Pryce Properties Corporation (now Pryce Corporation) is hereby **ORDERED** to return to Narciso Nolasco, Jr., the sum of P393,435.00 with interest at 6% per annum from the date of judicial demand or on January 22, 1999. Thereafter, upon the finality of the decision of this Court, the legal interest upon the award shall be 12% per annum until its satisfaction. Costs against appellant.
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> SO ORDERED.[13]

The CA denied Pryce's Motion for Reconsideration.[14] Pryce proceeds to Us for the review of the CA Decision and Resolution.

Petitioner's Arguments:

Petitioner Pryce maintains that respondent Nolasco impliedly agreed to the unsigned *Contract to Sell* and harks on the applicability of RA 6552 or the Maceda Law. It posits that Nolasco is not entitled to a refund of his installment payments because there was a valid rescission of the *Contract to Sell* when Pryce sent Nolasco its December 5, 1998 letter and raised the affirmative defense to deny Nolasco's claim for refund in its Answer with Counterclaims to the Complaint before the RTC. Pryce thus maintains that Nolasco has forfeited his deposit payments in favor of Pryce.

Respondent's Arguments:

Respondent Nolasco alleges that petitioner Pryce raised questions of fact, failed to interpose any question of law, and did not claim any of the exceptions favoring a generally-prohibited factual review under Rule 45. While admitting that he entered into a contract to sell with Pryce, Nolasco asserts that the CA correctly found that he did not sign a written *Contract to Sell* and that he is entitled to a refund of the down payments he made to Pryce.

Issues

We resolve whether the contract between Pryce and Nolasco was rescinded in accordance with RA 6552 and whether petitioner Pryce should refund respondent Nolasco.

The Court's Ruling

We affirm with modification the CA ruling.

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[13] *Rollo*, pp. 35-36.
[14] Id. at 38-39.

Factual issues improper in a Rule 45 petition.

Nolasco is accurate in ascribing technical infirmities upon Pryce's Petition for Review. It is long-settled that questions of fact have no place in petitions for review on *certiorari* under Rule 45 of the Rules of Court. By posing issues against the lower courts' appreciation of the contract between the parties and the manner of its rescission, Pryce necessarily invited a misplaced revisit of the factual issues of the case. As such, the petition at hand easily crumbles upon its faulty procedural foundation alone.

Even if these questions of fact would be entertained, the appeal remains unmeritorious.

Contract to sell between Pryce and Nolasco, not validly cancelled.

The Realty Installment Buyer Protection Act, otherwise known as RA 6552 or the Maceda Law, protects "buyers of real estate on installment payments against onerous and oppressive conditions." One of the legal features of RA 6552 is Section 4 thereof, which provides for the remedies of a defaulting buyer that has paid less than two years of installment amortizations for a purchase of real property:

> **Section 4.** In case where less than two years of installments were paid, the seller shall give the buyer a grace period of not less than sixty days from the date the installment became due.
>
> If the buyer fails to pay the installments due at the expiration of the grace period, the seller may cancel the contract after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act.

Section 4 of RA 6552 requires four (4) conditions before the seller may actually cancel the contract thereunder: *first*, the defaulting **buyer has paid less than two (2) years of installments**; *second*, the seller must give such defaulting buyer a **sixty (60)-day grace period**, reckoned from the date the installment became due; *third*, if the buyer fails to pay the installments due at the expiration of the said grace period, the seller must give the buyer a **notice of cancellation and/or a demand for rescission by notarial act**; and *fourth*, the seller may actually cancel the contract only after the **lapse of thirty (30) days from the buyer's receipt of the said notice** of cancellation and/or demand for rescission by notarial act.

In claiming that it had validly rescinded its contract to sell with Nolasco, Pryce relies on two documents: a written *Contract to Sell*, which sets out an automatic cancellation provision in case of default and which Pryce alleges that

Nolasco impliedly agreed to, and its denial of the refund as asserted in its Answer with Counterclaims against Nolasco's Complaint before the RTC.

Both documents, however, fail Pryce.

The written Contract to Sell *is ineffectual.*

Pryce insists on the application of the written *Contract to Sell*. We quote the pertinent stipulation thereunder, *viz.*:[15]

> 14. **AUTOMATIC CANCELLATION FOR FAILURE TO PAY ANY MONTHLY INSTALLMENT TOGETHER WITH INTEREST, TAXES OR ASSESSMENT.** Without prejudice to the rights of the SELLER to consider this contract as automatically cancelled under Paragraph 16 hereof, it is herein stipulated that should the BUYER fail for any reason to make payment of any of the monthly installments together with the interest, taxes and assessments thereon as provided in this contract, the rights and obligations of the parties hereto shall be as follows:
>
> (A) Where the BUYER shall have paid less than two years of installments prior to his default, he **shall have a grace period of sixty (60) days** from the date the monthly installment become due. **Should the SELLER not actually receive payment within the Sixty (60) day grace period, this contract shall be considered automatically cancelled thirty (30) days after service by SELLER to the BUYER of a notarized notice of cancellation or rescission**, in which event any and all sums of money paid under this contract together with all the improvements made on the premises shall become rentals of the property. **The sending of such notice by registered mail to the BUYER's above address shall be deemed sufficient service thereof for the purpose, irrespective of whether or not it was personally or actually received by the BUYER.**
>
> (Emphasis supplied.)

There is no dispute as to whether the parties herein have forged and perfected an unwritten contract to sell. The CA correctly decided this question in the affirmative. Contracts are created upon agreement between consenting parties and generally do not require it to be reduced into writing to validate its existence.

Nonetheless, Pryce must be enlightened that the written *Contract to Sell* did not and does not bind Nolasco for the following reasons.

First, the highlighted conditions in the *Contract to Sell* conflict with RA 6552, which dictates "receipt" and not "service" of the notice of rescission to the buyer as the reckoning point of the thirty (30)-day period before actual cancellation. Pryce's *Contract to Sell* even dispensed with this legal requirement of receipt by deeming mere service by registered mail as sufficient

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[15] Per Appellant's Brief before the CA, p. 16 thereof, CA *rollo*, p. 32.

proof of service and constructive receipt. For being contrary to Section 4 of RA 6552, these stipulations are rendered null and void,[16] and the general provisions governing a contract to sell under RA 6552 shall govern.

Moreover, it was not signed by Nolasco. Even if so signed, the *Contract to Sell* was not worded to effect its automatic cancellation upon Nolasco's default. While the word *automatic cancellation* implies unconditionality, the body of the above contractual stipulation betrays its title. The entire provision practically mirrored the demands of Section 4 of RA 6552: defaulting buyer paid less than two (2) years of installments, a grace period of sixty (60) days, a service of a notarial notice of cancellation or rescission, and a lapse of thirty (30) days from the said service of notice of cancellation or rescission.

There was compliance with the first and second requisites when Pryce sent Nolasco, a defaulting buyer whose payments did not amount to two years' worth of installments, its December 5, 1998 letter[17] giving him sixty (60) days to make good on his obligation. Pryce, however, did not meet the last two conditions. As properly determined by the CA, there was no notice of notarial rescission served upon Nolasco. Necessarily, thirty (30) days could not have lapsed from a non-existent service of such notice.

Pryce's Answer with Counterclaims cannot be deemed as a notarial rescission under RA 6552.

Pryce continues to argue that its Answer with Counterclaims to Nolasco's Complaint contained the notarial rescission required by law. There was allegedly no opportunity for Pryce to serve the same since Nolasco already filed his Complaint for refund even before the sixty (60)-day grace period expired. We disagree.

A notarial rescission contemplated under RA 6552 is a unilateral cancellation by a seller of a perfected contract thereunder acknowledged by a notary public and accompanied by competent evidence of identity.[18] This notarial notice of rescission has peculiar technical requirements. We find that Pryce violated all of them.

Orbe v. Filinvest Land, Inc.[19] (Orbe), an analogous case hereto, declared that the notarial act converting the private notice of cancellation into a public one must be an acknowledgment. "[A]n acknowledgment is the act of one who has executed a deed in going before some competent officer or court and declaring

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[16] Section 7 [of RA 6552]. Any stipulation in any contract hereafter entered into contrary to the provisions of Sections 3, 4, 5 and 6, shall be null and void.
[17] Records, p. 59.
[18] *Orbe v. Filinvest Land, Inc.*, 817 Phil. 934, 959-965 (2017).
[19] Id. at 958-960.

it to be his[/her] act or deed.[20] This is specially so if the rescinding seller is a juridical person acting through its officers, since acknowledgments, as defined under Section 1, Rule II of A.M. No. 02-8-13-SC or the 2004 Rules on Notarial Practice, particularly cover and validate such representative capacity, *viz.*:

> SECTION 1. *Acknowledgment.* - "Acknowledgment" refers to an act in which an individual on a single occasion:
>
> (a) appears in person before the notary public and presents an integrally complete instrument or document;
>
> (b) is attested to be personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; and
>
> (c) represents to the notary public that the signature on the instrument or document was voluntarily affixed by him for the purposes stated in the instrument or document, declares that he has executed the instrument or document as his free and voluntary act and deed, **and, if he acts in a particular representative capacity, that he has the authority to sign in that capacity.** (Emphasis supplied.)

Pryce's Answer with Counterclaims, however, was notarized through a *jurat*. A *jurat* is that part of an affidavit in which the notary certifies that before him or her, the document was subscribed and sworn to by the executor.[21] Rule II, Section 6 of the 2004 Rules on Notarial Practice more particularly defines it as follows:

> SECTION 6. *Jurat.* - "*Jurat*" refers to an act in which an individual on a single occasion:
>
> (a) appears in person before the notary public and presents an instrument or document;
>
> (b) is personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules;
>
> (c) signs the instrument or document in the presence of the notary; and
>
> (d) takes an oath or affirmation before the notary public as to such instrument or document.

Rescission is an act or a deed, directly or impliedly done, where a contract is cancelled, annulled, or abrogated by the parties, one of them, or by the court.[22] An act or a deed of rescission is distinct and separate from an allegation of rescission, an allegation being an assertion, declaration, or statement of a party

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[20] *Malvar v. Baleros*, 807 Phil. 16, 29 (2017), citing *In-N-Out Burger, Inc., v. Sehwani, Incorporated*, 595 Phil. 1119, 1139 (2008).

[21] Id. at 960-961.

[22] *See* Black's Law Dictionary, Eighth Edition (2004) and Bouvier's Law Dictionary and Concise Encyclopedia, Volume II, Third Revision (1914).

to an action, contained generally in an affidavit or a legal pleading, setting out what is yet to be proven.[23] Under notarial rules, acknowledgments cover written deeds and acts, whereas *jurat*s confirm affidavits and pleadings.

The foregoing thus defined, a deed of rescission notarized *via* acknowledgment is already a piece of evidence all on its own. On the other hand, an allegation of rescission contained in an affidavit or a pleading and confirmed by a notarial *jurat* still remains to be proved; it merely implies that the signatory thereof sets out to prove the fact of the rescission before a notary public.

Here, Pryce only alleged the fact of rescission in its Answer with Counterclaims without further evidence that would adequately determine its truth. It is not the independent notarial rescission contemplated by RA 6552.

Even if We deem the Answer with Counterclaims as a deed of rescission, *jurat*s will not suffice for its conversion into a notarial act of rescission under RA 6552. Pryce, through its Senior Vice-President, had its Answer with Counterclaims notarized *via* a *jurat*:

> SUBSCRIBED AND SWORN to before me this [June 11, 1999] at Makati City, affiant/counterclaimant exhibited to me his Community Tax Certificates as above indicated.[24]

Following *Orbe*, the delegated function of the Senior Vice President of executing a purported notice of rescission in behalf of Pryce cannot be verified by a mere *jurat*, simply because the wordings of *jurat*s, unlike that of acknowledgments, do not allow or recognize representative capacities.

Another fault is readily apparent from the immediately foregoing – the affiant for Pryce's Answer with Counterclaims presented a Community Tax Certificate as his competent evidence of identity. Community Tax Certificates, or *cedula*s, are documents issued by a local government to every person or corporation upon payment of the community tax, or to any person or corporation not subject to the community tax upon payment of one peso (₱1.00).[25] Citing *Baylon v. Almo*,[26] *Orbe* condemned *cedula*s as impermissible proof of identity for its established unreliability and the considerable ease in securing its issuance, thereby justifying their eventual exclusion from the list of competent evidence of identity[27] that notaries public should use in ascertaining the identity of persons appearing before them.[28]

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[23] *Orbe v. Filinvest Land, Inc.*, supra note 18 at 959-964.
[24] Records, p. 57.
[25] Section 162, Republic Act No. 7160 or the Local Government Code.
[26] 578 Phil. 238 (2008).
[27] *Orbe v. Filinvest Land, Inc.*, supra note 18 at 962.
[28] *Id.* at 962-963.

Having secured a mere *jurat* to notarize the supposed "notice of rescission" as embodied in its Answer with Counterclaims and verifying the same upon an incompetent proof of identity, Pryce executed a fatally infirm notarial rescission.

Even if these formal delinquencies were to be overlooked, the mode of rescission itself as claimed by Pryce remains questionable.

As earlier discussed, the allegations contained in Pryce's Answer with Counterclaims cannot constitute as substantial notice of rescission of its contract to sell with Nolasco. Suffice it to state that nothing in the said pleading elicited a clear and positive notification to Nolasco that Pryce was rescinding the contract to sell.

Moreover, allegations in a pleading must be proved. While Pryce appended to its Answer with Counterclaims its December 5, 1998 letter to Nolasco, its wordings do not firmly establish such claim of rescission:

> We wish to inform you that the installment payment on your lot is due every first five (5) days of the month. In view of this schedule, your installment payment for the month is due on the first week of the current month, December 1998.
>
> We are, however, disheartened by your payment history because you have consistently failed to pay your installment payments since October 1995. In this regard, you are hereby given sixty (60) days from December 05, 1998 or until February 05, 1999 within which to pay your installment payment. **Should you fail to tender said installment payment within the sixty (60) day period, we will be constrained to rescind the oral contract you entered into with Pryce**, consistent with Section 4 of Rep. Act No. 9552 (the "Maceda Law").[29] (Emphasis supplied.)

The CA properly dismissed this letter as devoid of a rescinding tenor, as follows:

> The only demand made by Pryce following Nolasco's default was contained in the letter dated December 5, 1998. In the said letter, Pryce warned Nolasco that it shall be constrained to rescind the oral contract Nolasco has entered with Pryce, consistent with Section 4 of the Maceda law. This letter did not comply with the Notarial Act as expressly required by the Maceda law. It is established that a demand letter is not the same as the notice of cancellation or demand for rescission by a notarial act required by R.A. No. 6552. It bears to note that even in its Answer to the instant Complaint for recovery of sum of money, Pryce failed to raise as counterclaim its right to cancel the contract to sell.[30]

Rescission unmakes a contract. Necessarily, the rights and obligations emanating from a rescinded contract are extinguished. Being a mode of nullifying contracts and their correlative rights and obligations, rescission thus

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[29] Records, p. 59.
[30] *Rollo*, p. 33.

must be conveyed in an unequivocal manner and couched in unmistakable terms. This is so as not to restrict the parties therein to mere guesswork in determining their contractual status, in mapping out their causes of action, if any, against each other, in deciding on their remedies should they be aggrieved by the rescission and find the need for redress, and in estimating the prescriptive periods of such legal remedies. Basic fairness empowers this rule.

Here, both Nolasco and Pryce were left in a legal haze due to the vagueness of their standing under the contract to sell. The effects of an absent notice of rescission are predictably messy – Nolasco did not wait or expect to receive any notice of cancellation from Pryce and immediately filed a claim for recovery of his deposit payments, and Pryce now struggles in futility to establish a rescission that has actually failed to properly materialize under RA 6552.

In the same vein, Pryce cannot assert that the service of its notice of rescission to Nolasco was pre-empted when the latter filed his Complaint for recovery of a sum of money before the lapse of the grace period in order to justify the use of the Answer with Counterclaims as its notice of rescission to Nolasco. Worth noting is the timeline of the relevant documents and events:

Letter informing Nolasco of the 60-day grace period	December 5, 1998
Nolasco's Complaint for recovery of a sum of money	January 22, 1999
Lapse of the 60-day grace period	February 5, 1999
Pryce's Answer with Counterclaims	June 11, 1999

The Answer with Counterclaims containing the alleged notice of rescission to Nolasco had been filed more than four (4) months after the lapse of the sixty (60)-day grace period. The more prudent action that Pryce should have undertaken was to send Nolasco an actual and clear notice of rescission, executed separately from the Answer with Counterclaims and served on February 6, 1999 at the earliest, which was the first day after the expiration of the grace period for payment granted to Nolasco. Alternatively, Pryce could have even appended a separate notice of rescission to the Answer with Counterclaims at the latest. This is not the situation at hand. Pryce's complacency and negligence cost its case.

Basic remedies of a defaulting buyer under Section 6 of RA 6552: Claim refund or pay in advance or in full.

It has been held that in the absence of a lawful rescission of a contract

governed by RA 6552, the same remains valid and subsisting.[31]

We affirm the courts below in directing the refund of the deposit payments made by Nolasco to Pryce. While this buyer's option to claim refund is not explicitly mentioned in RA 6552, equity considerations have already filled up this legal vacuum as declared in *Orbe*. In the said case, the buyer therein failed to make at least two years of installment payments in consideration of a purchase of a lot. The seller, however, failed to cancel their contract through a valid notarial act and sold the lot in issue to a third person. The Court, finding the provisions of RA 6552 applicable to the transaction, ordered the refund of the amounts actually paid by the buyer, justifying the same with equitable reasons as laid out by relevant jurisprudence.[32]

It bears mentioning, however, that RA 6552 grants the following rights to real property buyers on installment upon default, whether or not he/she has paid two (2) years' worth of installment payments, as contained in Section 6:

> **Section 6.** The buyer shall have the right to pay in advance any installment or the full unpaid balance of the purchase price any time without interest and to have such full payment of the purchase price annotated in the certificate of title covering the property.

The courts *a quo* left out the discussion of this option of the defaulting buyer to pay advance installments or the full unpaid balance of the purchase price. Rightly so, since Nolasco was firm in his choice to claim a refund by filing at the outset a case for recovery of sum of money against Pryce.

In summary and only for purposes of brevity, We point out that a defaulting buyer of real property on installments, whether or not she or he has paid two (2) years of installments, has three (3) common legal remedies in the absence of a valid rescission, granted by Section 6 of RA 6552 and jurisprudence:

> (a) Pay in advance any installment at any time, necessarily without interest;
>
> (b) Pay the full unpaid balance of the purchase price at any time without interest, and to have such full payment of the purchase price annotated in the certificate of title covering the real property subject of the transaction under RA 9552; or
>
> (c) Claim an equitable refund of prior payments and/or deposits made by the defaulting buyer to the seller pertinent to their transaction under RA 9552, if any.

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[31] *Orbe v. Filinvest Land, Inc.*, supra note 18 at 965.

[32] Id. at 965-971 citing *Gotchalian Realty v. Angeles*, 722 Phil. 407 (2013) and *Active Realty Development v. Daroya*, 431 Phil. 753 (2002).

A defaulting buyer enjoys other rights in addition to the foregoing, depending on the status of her or his payments and of the contract:

Under Section 3 of RA 6552, a defaulting buyer that has paid at least two years of installments has the following options:

> (a) To pay, without additional interest, the unpaid installments due within the total grace period earned by him, which is hereby fixed at the rate of one month grace period for every one year of installment payments made: *Provided*, That this right shall be exercised by the buyer only once in every five years of the life of the contract and its extensions, if any.
>
> (b) If the contract is cancelled, the seller shall refund to the buyer the cash surrender value of the payments on the property equivalent to fifty per cent of the total payments made and, after five years of installments, an additional five per cent every year but not to exceed ninety per cent of the total payments made: *Provided*, That the actual cancellation of the contract shall take place after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer.[33]

Under Section 4 of RA 6552, a defaulting buyer that has paid less than two years of installments is entitled to the following:

(a) The seller shall give the buyer a sixty-day grace period of not less than sixty (60) days to be reckoned from the date the installment became due;

(b) The seller must give the buyer a notice of cancellation/demand for rescission by notarial act if the buyer fails to pay the installments due at the expiration of the said grace period; and

(c) The seller may actually cancel the contract only after thirty (30) days from the buyer's receipt of the said notice of cancellation/demand for rescission by notarial act.[34]

Finally, a modification of the interest imposed on the amount of refund is proper. Pursuant to *Nacar v. Gallery Frames,*[35] the amount of ₱393,435.00 shall be subject to legal interest at the rate of twelve percent (12%) per *annum* reckoned from the date of judicial demand on January 22, 1999 until June 30, 2013; and six percent (6%) per *annum* from July 1, 2013 until fully paid.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The assailed May 30, 2012 Decision and the September 26, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 76091-MIN are **AFFIRMED** with **MODIFICATION** in that the amount of ₱393,435.00 shall be subject to legal interest at the rate of twelve percent (12%) per *annum* reckoned from the date of judicial demand on January 22, 1999 until June 30, 2013; and six percent (6%) per *annum* from July 1, 2013 until fully paid.

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[33] See *Orbe v. Filinvest Land, Inc.*, supra note 18 at 952-953.
[34] Id.
[35] 716 Phil. 267 (2013).

SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

HENRI JEAN PAUL B. INTING
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

On official leave
PRISCILLA J. BALTAZAR-PADILLA
Associate Justice

ATTESTATION

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

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

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

DIOSDADO M. PERALTA
Chief Justice