

FORTUNE COMMODITIES, INC., PETITIONER, VS. DOMINION CONDOMINIUM CORPORATION, RESPONDENT.

Ponente: GAERLAN, S.H., J.

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GAERLAN, S.H., J.:

For consideration of this Court is a Petition for Review[1] pursuant to Rule 43 of the 1997 Rules of Civil Procedure, in relation to A.M. No. 04-9-07-SC (Mode of Appeal in cases formerly cognizable by the SEC), to seek the review and reversal of the 19 July 2012 Decision[2] of Branch 149 of the Regional Trial Court of Makati City, sitting as a Special Commercial Court, in Civil Case No. 06-991 involving an intra-corporate controversy. The dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered directing that (1) plaintiff be restored its parking spaces allocation, particularly parking space nos. 5, 6, 7, 8, 9, 10 and 11, as distributed and allocated under Section 6 (a) of the Master Deed with Declaration of Restrictions of the Dominion Office Condominium Building; (2) plaintiff must pay defendant the total amount of outstanding condominium dues minus the interests and penalties thereon as of June 28, 2011, including the current year's condominium dues and for the successive years; and interest and penalties will accrue after ten (10) days from receipt of this decision, until the subject matter of condominium dues be fully paid. Hence, plaintiff must pay the subject condominium dues within ten (10) days from receipt of this decision, otherwise the interest and penalties will accrue.

Finally, the issue of the decrease of appurtenant interest in the condominium building is hereby dismissed for insufficiency of evidence.

The counterclaim is likewise dismissed for insufficiency of evidence.

Cost de oficio.

SO ORDERED.

The factual antecedents of the case are as follows:

Petitioner Fortune Commodities, Inc. (Fortune), represented by its Director and Chairman Ramon Y. Gonzales, Jr. (Gonzales), is a domestic corporation duly organized and existing under and by virtue of Philippine laws with principal place of business located at the 5/F Dominion Condominium Building, 833 A. Arnaiz Avenue, Makati City.[3]

The respondent on the other hand is Dominion Condominium Corporation (Dominion) also a domestic corporation duly organized and existing under and by virtue of Philippine laws with principal place of business located at the Ground Floor of the Dominion Building, No. 833 A. Arnaiz Avenue, Makati City. It may be served, however, with any and all processes of the Honorable Court through its counsel of record, Balane Tamase & Alampay with office address at the 12/F PDCP Bank Centre Corner Rufino and Leviste Streets, Salcedo Village, Makati City.[4]

The Dominion Building has been constituted into a condominium under R.A. No. 1459 as amended, otherwise

known as the Condominium Act, and the Master Deed with Declaration of Restrictions was executed for the purpose.[5]

On 16 September 1982, Fortune acquired for valuable consideration, Units E-1 and E-2 which comprise the entire Fifth Floor of the Dominion Building as evidenced by Condominium Certificate of Title (CCT) No. 3538[6].

On 05 August 1983, herein respondent has taken over as the sole management body charged with the operation, general administration and maintenance of the Dominion Building, where it presently holds office and where title to both the common and limited common areas thereof is held by it.[7]

By virtue of its ownership of the said units, Fortune automatically became and still remains to date, a member of the respondent according to Section 8 of the Master Deed with Declaration of Restrictions, which clearly states:

(b) All Unit owners shall automatically become members of the Condominium Corporation, to the exclusion of others.[8]

CCT No. 3538 covers not only Units E-1 and E-2 but also seven (7) parking spaces with a total area of One Hundred Five (105) square meters. The Master Deed particularly Section 6(a) thereof specifically provides -

Section 6. x x x

(a) Exclusive use of the parking spaces within the project, as is now existing or as may hereafter exist, shall be allocated as equally as possible among all the Unit owners in the Project. Of the forty six (46) parking spaces presently existing, each Unit owner shall be entitled to exclusive use of the following parking spaces as follows:

Floor Unit Area No. Parking Space No.

x x x x x x x x

Fifth Floor E 1 6, 7, 8

" " E 2 9, 10, 11, 5

x x x x x x x x

On 8 October 2004, the Housing and Land Use Regulatory Board (HLURB), in its letter[9] in response to respondent's prior request for advice on the matter of the unequal allocation of parking spaces in the condominium, stated that the allocation was the most equitable under the situation or circumstance prevailing when the Master Deed was crafted in 1976 by the proponent of the condominium project[10] and that under the circumstances, the provisions stated in the Master Deed should prevail.[11]

While herein petitioner has been assigned and is in actual use of parking spaces nos. 5, 6, 8, 9 and 10, it has also been assigned parking space no. 32. This was assigned to it in lieu of its allocated parking space no. 11 which was set aside and assigned by the respondent to another unit owner, Philippine Advertising Counsellors, Inc. (PACI). Based on Entry No. 48467/S-2325[12] annotated on the Transfer Certificate of Title (TCT) No. S-50568[13], which covers the parcel of land on which the Dominion Building stands, as far back as 14 September 1981 an Absolute Sale was entered into by herein respondent with PACI covering Units G, 7[th] Floor and H, 8[th] Floor of the Dominion Building which also included parking spaces nos. 1, 2, 3, 4, 11, 25, 27, 29, 30, 31, 33 and 34.[14] The petitioner alleged that this is the reason for the respondent's failure to turn over parking space no. 11 to

petitioner.[15]

Further, the petitioner averred that one of the parking spaces allotted to it, particularly parking space no. 7, is in fact non-existent.[16] The respondent, however, claimed that the same is existent but it is small compared to the required minimum size of 12.5 square meters, and its location does not provide unimpeded ingress and egress to a motor vehicle. It is located in a tight corner in the basement not suitable for parking.[17] Nevertheless, Fortune has been paying since 1990 the realty taxes due on all the parking spaces assigned to it.[18]

Petitioner repeatedly called respondent's attention through its Board of Directors, Building Administrator and Corporate Secretary on the issue on parking spaces nos. 7 and 11.[19] Fortune likewise reiterated its request and demands in its letter dated 27 June 2005[20] and 25 January 2006[21] to respondent. The same however remained unheeded and no resolution on the issues were arrived at.

Thus, in protest over respondent's inaction, petitioner was constrained to withhold the payment of the association/condominium dues and other charges beginning in the late 1990's.[22] Unfortunately, however, in order to reach out to respondent for an amicable resolution of the issue on the parking spaces, Fortune should settle and update its account up until 2002 for both Units E-1 and E-2.[23] Respondent, however, continued to refuse Fortune's requests and even imposed penalties and interest charges on its accounts.[24]

Fortune attempted to update its account initially for Unit E-2, pending resolution of the issue on the parking spaces.[25] According to Gonzales, in a discussion he had with the then building administrator Jose Francisco Rivero sometime in 2005, respondent impressed upon him that a waiver of the interest and penalties charged would not be a problem.[26] Thus, in its 23 May 2005[27] letter to the respondent, Fortune through Gonzales tendered its payment in full for its account on Unit E-2 as of 18 March 2005[28] by way of a check in the amount of P438,498.58 which did not include the interest and penalty charges. However, the respondent in its reply letter dated 12 May 2005[29], rejected the tender of payment and returned the check and cited Board Resolution No. 04-03[30] passed on 25 November 2004 which adopted a policy on the imposition of interest and penalty charges on delayed payments. Attached to the same reply letter is a Summary of Interest Payments[31] for the period of January to April 2005 and the 14 December 2004 Memorandum from the Corporate Secretary stating the same Board Resolution. In his 13 May 2005[32] response letter, Gonzales again tendered payment for its current account for the month of June 2005 by way of another check in the amount of P13,310.76, excluding interest and penalty charges. In its 18 May 2005[33] letter, respondent's corporate secretary assured Gonzales that the latter's request for waiver of the interest and penalties will be included in the agenda for the next Board meeting.[34] Thereafter, respondent accepted the check payments for the account of Unit E-2 for the months of June, July, August and September 2005 without any interest and penalty being charged. However, the respondent returned the checks and insisted on the settlement as well of the supposed accrued interest and penalty charges. The respondent also successively rejected and returned to the petitioner check payments for the account of Unit E-2 for the months of October, November and December 2005. In its 19 January 2006 letter[35], respondent through its external counsel, demanded the payment of the alleged total outstanding amount of P608,049.69, inclusive of all interest and penalty charges.[36]

Gonzales then met and conferred with respondent's Chairman of the Board of Directors, Rodolfo V. Cruz, where they arrived at some understanding about petitioner's issues, thus, on 23 March 2006, Fortune tendered to Dominion two (2) checks in the amounts of P150,000.00[37] and P388,561.36[38] in full settlement of the account of Unit E-2 up to 31 December 2005. However, these checks were also returned with its 30 March 2006[39] letter reiterating Dominion's policy on the imposition of interests and penalty charges on late payments. Despite the said rejection, petitioner on 31 May 2006[40] still tendered a check in the amount of P614,990.66 as full payment excluding interest. In a letter reply dated 20 July 2006, the respondent's corporate secretary, upon

authority of the Board of Directors, pursuant to its Special Meeting on 19 July 2006, accepted the said check as partial payment and informed the petitioner that the association will still collect unpaid dues on the entire 5th floor and that petitioner remains delinquent until the full payment thereof.[41] This prompted Fortune to write Dominion and inform the latter that it is withdrawing its check. Further stated in the said letter was that the conditions set forth in the 20 July 2006 letter were complicating the issues in its attempt to update the outstanding account of Unit E-2.[42]

Petitioner alleged that in order to defeat its claims to the subject parking spaces, Dominion and its Board of Directors for the term 2003-2004 did not call for and hold the annual General Membership meeting for the same term. Gonzales claimed that Fortune was not served any notice of any scheduled General Membership meeting where presumably a new Board of Directors was elected and also where Board Resolution No. 04-03 may have been passed which authorized the imposition of interest and penalty charges on delayed payments.[43] Further, for the term 2005-2006, if one had been set and actually held where a new Board could and should have been elected, there was no such notice as well.[44] For the 2006 Annual General Membership meeting, the same was postponed for three (3) times, until finally it was held on 1 September 2006.[45] Respondent served the notice to petitioner a few hours before the scheduled meeting which is in violation of the provision in the By-Laws that notice therefor be given at least seven (7) days prior to the scheduled meeting, so much so that the petitioner failed to attend.[46]

Fortune averred that it could have raised in the meeting the matter of its parking spaces and the reduction of its appurtenant interests in the entire condominium property from 6.648% and 6.493% for Unit E-1 and Unit E-2, respectively, to 5.875% for Unit E-1 and 5.74% for Unit E-2, as shown in the billings sent by respondent to the petitioner for dues and charges from year 2000 to 2003.[47] In its 25 January 2006 letter, Fortune protested against the reduction of its interest. The same was, however, ignored by the respondent.[48]

Thus, the petitioner was forced to commence the case and filed a Complaint. The case was referred to mediation but the same proved to be futile.[49]

The assailed Decision[50] was rendered by the trial court on 19 July 2012. Not satisfied with the said Decision, herein petitioner filed a Motion for (1) Partial Reconsideration; and (2) to Deposit Check Payment which was resolved by the said court in its 4 October 2012 Resolution, the decretal portion thereof:

WHEREFORE, plaintiff's motion for partial consideration is hereby denied for utter lack of merit.

As to the prayer to allow deposit of the check to court in the meantime that plaintiff is yet to determine the outstanding condominium dues to be paid to defendant as ordered by the court in the Decision dated July 19, 2012, the resolution of the same is hereby held in abeyance. Instead, plaintiff and defendant are hereby ordered to appear before this court for reconciliation and exact determination of the amount due and payable to defendant on October 30, 2012 at 2:00 P.M.

SO ORDERED.

Feeling aggrieved with the Resolution, petitioner is now before this Court laying the following issues[51] set forth in the petition:

I. WHETHER OR NOT PARKING SPACE NO. 7 HAD BEEN NON-EXISTENT EVEN AS AT THE FILING OF THE COMPLAINT BELOW ON NOVEMBER 27, 2006, AND THAT RESPONDENT'S ATTEMPT TO MAKE IT APPEAR THAT IT HAS EXISTED FOR SOME TIME IS A MERE AFTERTHOUGHT TO HAVE KNOWN OF ITS CONDITION WHEN IT ACQUIRED IN 1982, UNITS E-1 AND E-2 OF THE FIFTH FLOOR OF THE DOMINION CONDOMINIUM, AS ERRONEOUSLY CONCLUDED BY THE TRIAL;

II. WHETHER OR NOT PETITIONER SHOULD BE ASSIGNED, AND RESPONDENT SHOULD SET ASIDE FOR THE FORMER'S EXCLUSIVE USE, ANOTHER PARKING SPACE OF ITS OWN CHOICE, BUT AWARDED TO IT ON ACCOUNT OF ITS NON-USE/ENJOYMENT OF ITS LOST OR MISSING PARKING SPACE COVERING A CERTAIN PERIOD OF TIME, NOMINAL OR TEMPERATE DAMAGES IN SUCH AMOUNT WHICH THE HONORABLE COURT MAY DEEM PROPER, FAIR AND JUST, WOULD BE JUSTIFIABLE, OR IN THE ALTERNATIVE, FOR RESPONDENT TO PAY THE CURRENT MARKET COST OF THE MISSING PARKING SPACE NO. 7 AS ACTUAL DAMAGES PLUS LEGAL INTEREST;

III. WHETHER OR NOT RESPONDENT SHOULD BE HELD LIABLE TO REIMBURSE PETITIONER FOR ALL REALTY TAXES IT HAD PAID ALREADY FOR PARKING SPACE NO. 7 SINCE 1990;

IV. WHETHER OR NOT THE TRIAL COURT SERIOUSLY ERRED IN ARRIVING AT ITS INFERENCE THAT PETITIONER'S EVIDENCE ON RECORD APPEARED TO BE, ALLEGEDLY, INSUFFICIENT, ON THE ISSUE OF THE REDUCTION OF ITS APPURTENANT INTERESTS IN THE ENTIRE PROPERTY CONSTITUTED AS A CONDOMINIUM, FROM 6.648% AND 6.493% TO 5.875% AND 5.74% FOR UNIT E-1 AND UNIT E-2, RESPECTIVELY.

THIS COURT'S RULING

Parking Space No. 7

The existence of parking space no. 7 is a matter of fact which this Court cannot determine without a proper examination of the evidence presented by the litigants. Thus, this Court has conducted a thorough perusal of the Petition, the documents attached to it, the Comment as well as the Reply.

Resultant to the said review is the finding of the following facts as supported by evidence:

- (1) the Master Deed[52] with Declaration of Restrictions (Master Deed) clearly states in Section 6 (a) thereof that Unit E-1 is allotted parking spaces nos. 6, 7 and 8 while Unit E-2 is assigned parking spaces nos. 9, 10, 11 and 5;
- (2) Gonzales admitted that as far as the plaintiff is concerned, it is non-existent to the present because the space that appears to be allotted for it by the respondent is small compared to the required minimum size of 12.5 square meters, and its location does not provide unimpeded ingress and egress to a motor vehicle because it is in a tight corner in the basement of the Dominion Building that is not suitable for parking;[53]
- (3) prior to 8 October 2004, Dominion inquired with the HLURB on the matter of the unequal allocation of parking lots in the condominium building and that the latter replied that the provisions in the Master Deed should prevail[54];
- (4) Condominium Certificate of Title No. 3538 expressly states that Units E – 1 & 2, Floor 5, with an area of 595 square meters, more or less, and its assigned parking space of 105 square meters;[55]
- (5) Dominion entered into a Contract of Absolute Sale with Philippine Advertising Counsellors, Inc. (PACI) on 14 September 1981 which included an assignment of parking space no. 11 to the latter[56].

From this finding of facts, this Court now rules that parking space no. 7 is physically existent[57] but does not serve its purpose considering that it is not in a condition to provide an unimpeded ingress and egress to a motor vehicle[58] being too small that one has to maneuver his vehicle through parking space no. 8 in order to get into parking space 7.[59] This Court finds the alleged refusal of the petitioner to use the very parking space justified.

Moreover, the petitioner, under Condominium Certificate of Title 3538[60], being the owner of Units E- 1 & 2 is entitled to a total parking space of 105 square meters. It is also under the Master Deed that petitioner is entitled of parking spaces nos. 5, 6, 7, 8, 9, 10 and 11. Ergo, this Court agrees with the trial court that the petitioner must be

restored its parking spaces allocation as a compliance to the provisions of the Master Deed. This Court, however, in addition to the trial court's ruling, finds it proper to order the respondent to comply with the total allocated area of 105 square meters as parking space to the petitioner as indicated in the CCT No. 3538.

Moving on, this Court concurs with the trial court that nowhere in the record does it appear that the Master Deed was ever amended to conform to such intent to have the parking slots distributed differently from the allocation stated in the Master Deed.[61] Further, the assailed Decision in resolving the case applied and quoted Section 4 of Republic Act No. 7899 which amended Republic Act No. 4726, to wit:

“SECTION 4. x x x

“The enabling or master deed may be amended or revoked upon registration of an instrument executed by a simple majority of the registered owners of the property: Provided, that in a condominium project exclusively for either residential or commercial use, simple majority shall be on a per unit of ownership basis and that in the case of mixed use, simple majority shall be on a floor area of ownership basis: Provided, further, that prior notifications to all registered owners are done: and Provided, finally, that any amendment or revocation already decided by a simple majority of all registered owners shall be submitted to the Housing and Land Use Regulatory Board and the city/municipal engineer for approval before it can be registered. Until registration of a revocation, the provisions of this Act shall continue to apply to such property”.

Accordingly, the trial court was correct in its ruling that since Dominion failed to show that the intended changes to the Master Deed, particularly on the re-distribution of the parking slots allocation embodied in Resolution No. 04-06 were indeed registered, nor submitted to the HLURB as a requirement before registration[62], the plaintiff shall be restored its parking spaces allocation as provided under Section 6(a) of the Master Deed. Thus, this Court finds it equitable to affirm this portion of the decision of the trial court.

Award for Damages

In the case at bar, the petitioner prays for an award for nominal or temperate damages for not being able to use or enjoy parking space 7.[63] Verily, this Court cannot deny petitioner's property right over the parking space because it was expressly granted under the Master Deed. Its exclusive right over the said parking space was clearly violated or invaded by herein respondent Dominion when it failed to make parking space no. 7 conducive for its intended use. There being a property right violated, this Court deems it proper to award damages to the petitioner.

Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.[64] The court may award nominal damages in every obligation arising from any source enumerated in Article 1157, or in every case where any property right has been invaded.[65]

Likewise, when nominal damages are granted by the courts, these are not treated as an equivalent of a wrong inflicted but simply a recognition of the existence of a technical injury.[66] A violation of the plaintiff's right, even if only technical, is sufficient to support an award of nominal damages.[67] Conversely, so long as there is a showing of a violation of the right of the plaintiff, an award of nominal damages is proper.[68] Thus, this Court deems it proper to award P150,000 as nominal damages for the violation of its property right on parking space no. 7 by the respondent.

Reimbursement of Realty Taxes

Fortune, in its petition, averred that the respondent should be held liable to reimburse petitioner for all realty taxes it had paid for parking space no. 7 since 1990, when the latter started paying the realty taxes thereon.[69] This

fact, according to the petitioner, may be inferred from the Certificate of Non-Delinquency on Real Property Tax dated 30 October 2006[70].

This Court begs to disagree.

Section 1 of Rule 131 of the Rules of Court expressly provides that -

SECTION 1. Burden of Proof. - Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.

Accordingly, the petitioner has the burden of proof to establish his claim for reimbursement of real property taxes it paid since 1990 and support the same with evidence. Petitioner in its attempt to prove its case presented its Certificates of Non-Delinquency on Real Property Tax (Tax Clearance)[71] and Record of Payments[72]. However, this Court cannot ascertain as to which real property was the taxes being paid for. There is no indication as to whether it was only for the condominium units owned by the petitioner or the parking spaces or both.

Noteworthy at this juncture is the provision of the Master Deed on payment of real property taxes of common areas -

Section 5. Real Property Taxes and Assessments. Each Unit owner or purchaser shall execute such instrument and take such action as may reasonably be specified by the Condominium Corporation to obtain a separate assessment of his respective Unit for purposes of taxation and special assessments of his real property. Nevertheless, if there is any Project or any part of the Common or Limited Common Area, the same may be paid by the Condominium Corporation and assessed by the latter against the Unit owner or owners concerned as Separate Expenses, together with such rate of interest and cost as may be determined by the Corporation. Such assessment shall constitute a lien on the Unit or Units assessed, pursuant to Section 4 (c) hereof. (Emphasis supplied.)

Thus, what is expected by this Court to be presented as proof of payment of realty taxes on the parking spaces being part of the common areas under Section 6 of the Master Deed held by the condominium corporation is a billing from the respondent of the assessment as referred to under Section 5 of the Master Deed.

This Court could have considered the allegation that the petitioner paid the realty taxes for parking space no. 7, unfortunately, however, based on the evidence at hand, there is nothing in those pieces of evidence from which this Court could infer that a particular amount was specifically paid for parking space no. 7. Thus, an order from this Court granting this prayer is improper for being insufficiently supported by evidence.

Reduction of petitioner's appurtenant interests

The petitioner now prays before this Court that the assailed Decision in part be reversed and set aside and direct the respondent to restore its appurtenant interests in the entire property constituted as a condominium which, as per Section 7 (c) of the Master Deed, should correspond to 6.648% and 6.493% respectively, for Unit E-1 and E-2 thereof.[73]

In the assailed Decision, the trial court, dismissed the issue on the reduction of the appurtenant interest of the petitioner in the condominium building for insufficiency of evidence.

To petitioner's mind, however, the trial court could have reached the correct resolution of the issue involving the reduction of the former's appurtenant interests if it considered and taken into account these sub-issues[74] which were delineated in its 20 October 2009 Pre-Trial Order, to wit:

a. Was the plaintiff afforded notice of the plan to construct a 9[th] floor and as to its actual implementation;

- b. Were there meetings called and were members of the respondent afforded the opportunity to discuss such plan to construct a 9th floor?
- c. Was the petitioner furnished with copies of all building/architectural plans, requisite applications for permits/approvals for the construction of a 9th floor?

Simply put, the issue being raised by the petitioner is that Fortune should be restored with its appurtenant interests in the condominium corporation despite the sale of the roof deck to PACI.

The petitioner further claims that neither does Fortune recall having attended, through an authorized representative, of any Annual Membership meeting or Board of Directors' meeting where the documents, Contract to Sell^[75] and the subsequent Deed of Absolute Sale^[76] covering the sale of the roof deck, were taken up, let alone discussed.^[77]

In the course of the consideration of the arguments of both parties, Section 36 of the Corporation Code crossed the mind of this Court which expressly provides:

Sec. 36. Corporate powers and capacity. - Every corporation incorporated under this Code has the power and capacity:

1. To sue and be sued in its corporate name;
2. Of succession by its corporate name for the period of time stated in the articles of incorporation and the certificate of incorporation;
3. To adopt and use a corporate seal;
4. To amend its articles of incorporation in accordance with the provisions of this Code;
5. To adopt by-laws, not contrary to law, morals, or public policy, and to amend or repeal the same in accordance with this Code;
6. In case of stock corporations, to issue or sell stocks to subscribers and to sell stocks to subscribers and to sell treasury stocks in accordance with the provisions of this Code; and to admit members to the corporation if it be a non-stock corporation;
7. To purchase, receive, take or grant, hold, convey, sell, lease, pledge, mortgage and otherwise deal with such real and personal property, including securities and bonds of other corporations, as the transaction of the lawful business of the corporation may reasonably and necessarily require, subject to the limitations prescribed by law and the Constitution;
8. To enter into merger or consolidation with other corporations as provided in this Code;

9. To make reasonable donations, including those for the public welfare or for hospital, charitable, cultural, scientific, civic, or similar purposes: Provided, That no corporation, domestic or foreign, shall give donations in aid of any political party or candidate or for purposes of partisan political activity;

10. To establish pension, retirement, and other plans for the benefit of its directors, trustees, officers and employees; and

11. To exercise such other powers as may be essential or necessary to carry out its purpose or purposes as stated in the articles of incorporation.

Section 23 of the same code followed which particularly states:

Sec. 23. The board of directors or trustees. - Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year until their successors are elected and qualified.

Verily, the Board of Directors exercises the powers of the corporation. Accordingly, it has the power and capacity to enter into a contract of sale involving a corporate property, which in this case is the roof deck of the condominium building.

Now, the question on whether the sale was validly contracted by respondent Dominion is, in the opinion of this Court apparently valid based on the very provisions of Section 36 in relation to Section 23 of the Corporation Code. Further, the same act of the Board of Directors involving the sale of the roof deck was ratified in the Annual Membership Meeting on 1 September 2006.[78] The same having been ratified by the majority of the members of the corporation, the same is binding on the petitioner as a member. Hence, this Court agrees with the trial court that there is indeed insufficiency of evidence to resolve the issue on the appurtenant interests of the petitioner in the entire condominium.

The petitioner claims that since the President of the respondent admitted that there had not been any meetings where the requisite architectural or electrical plans or the application for a Building Permit covering the construction of the 9[th] floor were shown or discussed,[79] the sale is void and consequently, it should be restored to his interests of 6.648% and 6.493% respectively, for Unit E-1 and Unit E-2.

This Court begs to disagree.

This alleged admission by the President of the respondent is not necessary in the determination of the validity of the contract of sale between respondent and PACI. The sale could be valid even if there were no meetings held for the intended construction of the 9[th] floor. There being no other evidence to prove that the contract of sale is void, the same will stand as valid and its effects will bind the members of the corporation.

Moreover, the petitioner also failed to prove its allegation that respondent failed to comply with the procedure provided by the By-Laws in giving notice to members.[80] A careful perusal of the records of this case reveals that the petitioner failed to present the By-Laws of the corporation, thus, the alleged procedure to be followed in giving notice to members of the respondent remained unsubstantiated.

WHEREFORE, premises considered, the petition is PARTLY GRANTED only in so far as Dominion Condominium Corporation is hereby ordered to pay Fortune Commodities, Inc. One Hundred Thousand Pesos

(P150,000.00) as nominal damages.

SO ORDERED.

Pizarro, N.B., Chairperson, and [*]Galapate-Laguilles, Z.T., JJ., concur.

[*] Acting Junior Member, per Office Order No. 15-15-ABR, dated January 20, 2015.

[1] Rollo, pp. 10-30.

[2] Rollo, pp. 213- 228.

[3] Rollo, p. 11.

[4] Rollo, p. 12.

[5] Ibid.

[6] Rollo, pp. 41-46.

[7] Rollo, pp. 47-65.

[8] Rollo, p. 53.

[9] Rollo, p. 66.

[10] Ibid.

[11] Id.

[12] Rollo, p. 69.

[13] Rollo, pp. 67-72.

[14] Rollo, p. 71.

[15] Rollo, p. 14.

[16] Rollo, p. 73.

[17] Rollo, p. 215.

[18] Rollo, pp. 296-298.

[19] Rollo, p. 215.

[20] Rollo, p. 74.

[21] Rollo, pp. 76-78.

[22] Rollo, p. 215.

[23] Ibid.

[24] Id.

[25] Id.

[26] Id.

- [27] Rollo, p. 79.
- [28] Rollo, p. 80.
- [29] Rollo, p. 83.
- [30] Rollo, p. 85.
- [31] Rollo, p. 84.
- [32] Rollo, p. 86.
- [33] Rollo, p. 87.
- [34] Rollo, p. 216.
- [35] Rollo, pp. 88-90
- [36] Rollo, p. 216.
- [37] Rollo, p. 90.
- [38] Ibid.
- [39] Rollo, p. 91.
- [40] Rollo, p. 92.
- [41] Rollo, p. 93.
- [42] Rollo, p. 94.
- [43] Rollo, p. 217.
- [44] Ibid.
- [45] Id.
- [46] Id.
- [47] Id.
- [48] Id.
- [49] Supra, note 2.
- [50] Ibid.
- [51] Rollo, pp. 22-23.
- [52] Rollo, p. 51.
- [53] Rollo, p. 156.
- [54] Rollo, p. 74.
- [55] Rollo, p. 41.
- [56] Rollo, p. 71.
- [57] Rollo, p. 156.

- [58] Rollo, p. 156.
- [59] Rollo, p. 327.
- [60] Rollo, p. 41.
- [61] Rollo, p. 225.
- [62] Rollo, p. 225.
- [63] Rollo, p. 31.
- [64] Article 2221, Civil Code.
- [65] Article 2222, Civil Code.
- [66] Almeda vs. Cariño, et al., G.R. No. 152143, January 13, 2003.
- [67] Ibid.
- [68] Id.
- [69] Rollo, p. 33.
- [70] Rollo, p. 291.
- [71] Rollo, pp. 291-296.
- [72] Rollo, pp. 297-298.
- [73] Rollo, p. 37.
- [74] Rollo, pp. 33-34.
- [75] Rollo, pp. 99-103.
- [76] Rollo, pp. 104-106.
- [77] Rollo, p. 34.
- [78] Rollo, pp. 212.
- [79] Rollo, p. 19.
- [80] Supra, note 43.

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