

**GALERIA DE MAGALLANES ASSOCIATION, INC.,
PLAINTIFF-APPELLEE, VS. NILO H. RAYMUNDO, APPLE CLIENTELE,
INC., AND OTHER PERSONS CLAIMING RIGHTS UNDER UNIT AB-122
OF GALERIA DE MAGAL...**

Ponente: ROXAS, J.

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ROXAS, J.:

Legal Principles in this Case:

Deed restrictions, incorporated in the deed of sale and duly annotated on the title of the property for a variety of reasons such as for aesthetic consideration or for the preservation of the peace, beauty, tranquility, and serenity of living in a village or subdivision, are valid restraint on one's ownership over the property.

The Case

The condominium corporation sued the tenant and the condominium unit owner for specific performance when the tenant refused to remove the glass panels installed by a tenant at the balcony of a condominium unit. The condominium corporation alleged that the glass panels at the balcony substantially altered the structure, architecture, and façade of the building, making the subject condominium unit look different from the outside from the other condominium units, in violation of the deed of restrictions in the title. The trial court ruled in favor of the condominium corporation and ordered that the structures be removed. The tenant and the condominium unit owner appealed to this Court.

The Facts

This is an Appeal under Rule 41 of the Revised Rules of Court, from the November 7, 2001 Decision[1] of the Regional Trial Court of Makati City, Branch 133, in Civil Case No. 90-490, in an action for specific performance, filed by plaintiff-appellee Galeria de Magallanes Association, Inc. (GALERIA), against defendants-appellants Nilo H. Raymundo (RAYMUNDO), Apple Clientele, Inc. (APPLE), and other persons claiming rights under Unit AB-122 of Galeria de Magallanes Condominium.

Plaintiff-appellee GALERIA alleged that it was the condominium corporation which was tasked to enforce the Master Deed and Declaration of Restrictions[2] (master deed) of Galeria de Magallanes Condominium (CONDOMINIUM).

Defendant-appellant APPLE was the owner of Unit AB-122 (subject unit) of the CONDOMINIUM by virtue of a Deed of Absolute Sale dated February 13, 1989,[3] while defendant-appellant RAYMUNDO was the president of APPLE, an occupant of the subject condominium unit.

On July 5, 1989, during his regular inspection, plaintiff-appellee GALERIA's administrator, Jose P. Trajano (TRAJANO) noticed that the façade of the subject unit was considerably altered as compared to how it originally was, because glass panels had been installed at the balcony of the subject unit. TRAJANO reported the same to

the board of directors of plaintiff-appellee GALERIA.

In a special board meeting[4] of plaintiff-appellee GALERIA, held on July 8, 1989, TRAJANO was authorized to notify the occupant/owner of the subject unit to remove the unauthorized glass panels at the balcony of said unit, or to initiate appropriate legal action to abate the unauthorized structures.

Defendant-appellant RAYMUNDO was requested by TRAJANO, in a letter[5] dated July 12, 1989, to remove the glass panels installed, citing that the Deed of Restrictions, the Master Deed, Articles of Incorporation, and By-laws of plaintiff-appellee GALERIA, prohibited such unauthorized structures.

Failure of defendant-appellant RAYMUNDO to heed the request for removal of the glass panels prompted plaintiff-appellee GALERIA to sue defendant-appellant RAYMUNDO, the tenant in the condominium unit, in an action for specific performance dated February 21, 1990,[6] docketed as Civil Case No. 90-490, with the Regional Trial Court (RTC) of Makati, Branch 133. Plaintiff-appellee GALERIA then filed, on March 19, 1993, an Amended Complaint,[7] to include defendant-appellant APPLE, the owner of the condominium unit, as additional defendant.

In its complaint, plaintiff-appellee GALERIA averred that defendant-appellant RAYMUNDO, the tenant who installed the glass panels at the balcony of the subject condominium unit, had violated Article 4, Section 3, paragraph 4 of the Master Deed and Declaration of Restrictions[8] of the Association, which provided, to wit:

“d. Nothing shall be done or placed in any unit or in the common areas which is beyond or will impair the structural strength of the buildings or alter the original architecture, appearance and specifications of the buildings, including the external façade thereof.”

Plaintiff-appellee GALERIA asserted its right to abate the unauthorized installations for the safety and welfare of the residents. It further averred that it had the power to abate violations made by members or his tenants/lessees to enforce deed restrictions and limitations under the master deed; and that defendant-appellant RAYMUNDO had refused to heed plaintiff-appellee GALERIA’s demands to have the glass panels at the subject unit’s balcony removed to date.

On March 23, 1990, defendant-appellant RAYMUNDO moved to dismiss[9] plaintiff-appellee GALERIA’s complaint, alleging that the RTC had no jurisdiction over the subject matter of the action, considering that only the amount of Php10,000.00 had been demanded by plaintiff-appellee GALERIA, and hence, jurisdiction lay with the Metropolitan Trial Court under BP Blg. 129. The trial court denied defendant-appellant RAYMUNDO’s motion to dismiss in an Order[10] dated June 1, 1990.

Trial on the merits ensued following the pre-trial dated April 22, 1997.[11]

Assailed Decision of the RTC

On November 7, 2001, the Regional Trial Court of Makati City, Branch 133, in Civil Case No. 90-490, rendered its decision,[12] the dispositive portion of which reads, to wit:

“Wherefore, judgment is hereby rendered in favor of plaintiff and against defendants, ordering the latter, jointly and severally, as follows:

- To remove the illegal and unauthorized glass panels installed at the balcony of Unit AB 122 of the Galeria de Magallanes Condominium at defendants’ expense, within 5 days from receipt of the decision;
- To pay attorney’s fees in the amount of P10,000.00; and
- To pay the costs of suit.

SO ORDERED.”

A notice of appeal[13] was filed by defendants-appellants on November 29, 2001.

Assignment of Errors

In the Brief[14] filed by defendants-appellants RAYMUNDO and APPLE on April 23, 2002, they assigned the following errors:

- THE COURT A QUO ERRED IN ADMITTING THE AMENDED COMPLAINT DATED MARCH 19, 1993 OF THE PLAINTIFF-APPELLEE WHICH DEFENDANTS HAD OPPOSED ON THE GROUND THAT DEFENDANT-APPELLANT NILO H. RAYMUNDO SHOULD NOT HAVE BEEN MADE A DEFENDANT IN THE CASE NOT BEING THE OWNER OF CONDOMINIUM UNIT AB-122.
- THE COURT A QUO ERRED IN ITS ORDER DATED JUNE 9, 1998 DENYING THE DEFENDANTS-APPELLANTS MOTION FOR DISMISSAL (DEMURRER TO EVIDENCE) DATED APRIL 25, 1998.
- THE COURT A QUO ERRED IN ORDERING DEFENDANT-APPELLANT NILO RAYMUNDO TO PAY PLAINTIFF-APPELLEE ATTORNEY’S FEES IN THE SUM OF P10,000.00.
- THE COURT A QUO ERRED IN ORDERING THE DEFENDANTS-APPELLANTS REMOVE THE ALLEGED ILLEGAL AND UNAUTHORIZED CONDOMINIUM UNIT AB-122 IN QUESTION BECAUSE SAID RULING IS NOT SUPPORTED BY ANY COMPETENT AND PREPONDERANT EVIDENCE.

The Ruling of this Court

Appeal is bereft of merit.

The primordial issue in this case at bench is whether or not there was violation of the Deed Restrictions as to the use and occupancy of the subject unit. We find that there was indeed a violation of the deed of restrictions by defendant-appellant RAYMUNDO in installing the glass panels at the balcony of the subject unit occupied by him.

Deed restrictions, incorporated in the deed of sale[15] and duly annotated on the title[16] of the property for a variety of reasons such as for aesthetic consideration or for the preservation of the health, safety, and welfare of all the residents of the CONDOMINIUM[17] or for the preservation of the peace, beauty, tranquility, and serenity of living in a village or subdivision or condominium, are valid restraint on one’s ownership over the property.

In this case at bench, culled from the evidence proffered by plaintiff-appellee GALERIA, the original architecture, structure, appearance, and specification of the façade of the subject unit had been substantially altered by the glass panels installed by defendant-appellant RAYMUNDO at the balcony of the subject unit.

The award of attorney’s fees in favor of plaintiff-appellee GALERIA is in accord with Article 2208[18] of the New Civil Code in view of defendant-appellant RAYMUNDO’s refusal to comply with the Deed Restrictions despite repeated requests and demands after such construction.

The Fallo

WHEREFORE, premises considered, the November 7, 2001 Decision of the Regional Trial Court of Makati City, Branch 133, in Civil Case No. 90-490, is hereby AFFIRMED.

SO ORDERED.

Reyes, (Chairman) and De Guia-Salvador, JJ., concur.

[1] Original Records. Page 739

[2] Original Records. Page 46

[3] Original records. Page 333

[4] Original Records. Page 10

[5] Original Records. Page 11

[6] Original Records. Page 1

[7] Original Records. Page 278

[8] Original Records, page 40

[9] Original Records. Page 26

[10] Original Records. Page 60

[11] Original Records. Page 287

[12] Original Records. Page 739

[13] Original Records. Page 742

[14] Rollo. Page 19

[15] Original Records. Page 333

[16] Original Records. Page 36

[17] South Pachem Development, Inc. vs Court of Appeals, GR#126260, December 16, 2004, 447 SCRA 85 citing Cariday Investment Corporation vs. Court of Appeals, G.R. No. 83358, August 2, 1989, 176 SCRA 31.

[18] “ART. 2208. In the absence of stipulation, attorney’s fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

xxx xxx xxx

(11) In any other case where the court deems it just and equitable that attorney’s fees and expenses of litigation should be recovered.

In all cases, the attorney’s fees and expenses of litigation must be reasonable.”

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