

**JRB REALTY, INC., PETITIONER, VS. COURT OF APPEALS,
SECURITIES AND EXCHANGE COMMISSION, MAKATI COMMERCIAL
ESTATE ASSOCIATION, INC. AND AYALA LAND, INC., RESPONDENTS.**

G.R. No. 119043. April 14, 1997

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

MAKATI COMMERCIAL ESTATE ASSOCIATION, INC. (MACEA), respondent herein, is an association of owners, lessees and occupants of various lots situated within the so-called Makati Central Business District (MCBD). JRB REALTY, INC., petitioner herein, as owner of two (2) lots in MCBD, is a member of the MACEA. AYALA LAND, INC. (ALI), in its capacity as successor-in-interest of Ayala Corporation in the ownership and development of said lots, is also a member of MACEA.

For every Deed of Sale concerning the lots within MCBD a Deed Restrictions was attached as an essential part of the consideration. The restrictions were then annotated on the corresponding Certificates of Title as voluntary liens and encumbrances. One of the restrictions refers to the construction of the buildings and the architectural designs thereon -

x x x x

2. The building proper must have a total gross floor area of not more than five (5) times the lot area x x x x x

3. The building x x x must have a total height of not more than forty-two (42) meters x x x x

As of the end of 1988 the owners of 80.57% of the lots including petitioner had already erected buildings thereon in compliance with the height and floor area ratio (FAR) restrictions.

Sometime in 1989, within the term of the effectivity of the Deed Restrictions, respondent ALI submitted to respondent MACEA through its Board of Governors a proposal for the revision of the restrictions relating to the construction and use of structures to be built on the MCBD lots. The proposal sought the abolition of direct height restrictions to be replaced with FAR, in effect allowing lot owners to increase the total floor areas of their present buildings or to construct buildings with floor areas greater than those stated in the existing Deed Restrictions.

On 15 May 1989 respondent MACEA distributed to its members Memorandum Circular No. 89-05 requesting written comments, suggestions and other actions on the proposed revisions.

Petitioner submitted its written opposition dated 26 May 1989 based on the grounds that the proposal would have an unfair effect on the members who have already built structures on their lots in compliance with the Deed Restrictions and that no less than the consent of all the parties to the Deeds of Sale was needed in order to carry the revisions into effect.

The Board of Governors of respondent MACEA then decided to endorse the matter to its members for their direct approval. On 22 March 1990 it sent out notices of an annual meeting set for 5 April 1990 with the proposal to

abolish the direct height restrictions as one of the items in the agenda. However said meeting was reset to 14 June 1990.

On 7 June 1990 petitioner filed before respondent Securities and Exchange Commission (SEC) a petition to enjoin respondent MACEA from submitting the proposal in question for consideration and/or approval of its members. On 8 June 1990 the Hearing Officer of respondent SEC issued a temporary restraining order against MACEA. For no apparent reason however the scheduled meeting was cancelled. Subsequently respondent ALI intervened in the proceeding before the Hearing Officer. On 23 June 1990 the application for a preliminary injunction was denied. Consequently the meeting was held on 11-12 July 1990. Out of 476 members, 403 voted in favor of the proposal.

On 14 August 1990 petitioner filed a supplemental petition seeking nullification of the approval of the Revised Deed Restrictions on the basis of, among other things, being an ultra vires act of respondent MACEA and rampant irregularities which attended the meeting. On 17 August 1990 respondent MACEA issued Memorandum Circular No. 90-04 regarding Initial Guidelines for the annotation of the Revised Deed Restrictions on the titles of the lots of members who voted for its adoption and of those who subsequently accepted it.

In the Order dated 28 February 1991 issued in connection with the Preliminary Conference, the Hearing Officer defined the genuine issue as whether respondent MACEA was empowered or could legally and validly change/amend and/or revise the Deed Restrictions.

On 28 February 1994 the Hearing Officer dismissed the petition as well as the supplemental petition.[1] He expressed the opinion that respondent MACEA's action of adopting the Deed Restrictions could not successfully be attacked as an ultra vires act because -

x x x (it) is expressly vested by its Articles with the general power of promoting the "general welfare, property, service and reputation" of the Makati Central Business District, as well as the "best interest and well-being" of its members x x x x Insofar as a revision of the original Deed Restrictions has the effect of promoting the "general welfare, property, service and reputation" of the area under MACEA's jurisdiction, as well as of furthering the "welfare . . . best interest and well being" of the lot owners, lessees and occupants in the same area, the same is validly exercised by the Association as an implied power necessary to carry out its aforesaid express, general purposes x x x x It is significant to note that in the May 22, 1990 letter of the MACEA President indorsing the approval of (Deed Restrictions) and in the "Summary and Rationale" (updated May 21, 1990) attached thereto x x x x it was stated that the revision of the Deed Restrictions was intended "to promote the continuing economic development of Makati" and that it would "promote the general welfare, property, service and reputation" of the area under its jurisdiction (underscoring supplied).[2]

As regards petitioner's claim that there were rampant irregularities in the ascertainment of the quorum at the meeting and voting, the Hearing Officer declared that it was beyond the issue agreed upon by the parties to be resolved in the case. Besides, petitioner failed to show how the alleged irregularities affected the ascertainment of the quorum and the outcome of the voting at the meeting.

On 5 December 1994 respondent SEC affirmed the appealed decision.[3] On 10 January 1995 respondent Court of Appeals denied due course to the petition for review for failure to show prima facie that respondent SEC had committed errors of fact or law that would warrant a reversal or modification of the assailed decision.[4] On 14 February 1995 the motion for reconsideration was denied.[5]

The issues are: (1) whether respondent court violated Sec. 14, second par., Art. VIII, of the Constitution when it refused to give due course to the petition for review and subsequently denied the motion for reconsideration; (2) whether respondent MACEA had the power to change/amend/revise the Deed Restrictions; and, (3) whether the functions of the Corporate Secretary in a stockholders/members' meeting could be performed, without his control

and supervision, by another.

Petitioner alleges that respondent court refused to give due course to its petition and denied reconsideration without indicating the legal basis therefor. It is clear then that subject resolutions did not comply with Sec. 14, second par., Art. VIII, of the Constitution which provides that "no petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor."

Contrary to the protestation of petitioner, respondent court actually stated the legal basis for refusing to give due course to the petition thus[6]-

A perusal of the Petition for Review filed before Us reveals that based on the facts narrated and issues assigned vis-a-vis the assailed decision, the petition has failed to show prima facie that the Securities and Exchange Commission has committed errors of fact or law that would warrant a reversal or modification of the assailed decision.[7]

In effect, respondent court adopted as its own the factual findings of SEC as well as the evidence and law which supported the conclusion. Notably, as contended by respondent ALI, the alleged non-compliance with the Constitutional provision is merely an afterthought because petitioner did not raise such issue in seeking reconsideration. Respondent court likewise stated the legal basis for denying the motion for reconsideration[8]

x x x x The act being complained of, i.e., revision of the Deed of Restrictions, is pursuant to the general welfare clause and should not be taken as an interference with the lot owners' contracts. Besides, the MACEA should not be considered as a third party between petitioner lot owner and the developer Ayala Corporation.

A perusal of the assailed decision of the SEC dated December 5, 1994, reveals that the SEC decided the case on the basis of correct facts and the law on the matter.[9]

Petitioner asserts next that respondent MACEA is without legal capacity to change/ amend/ revise/ the Deed Restrictions attached to the contracts of sale entered into between Ayala Corporation and the lot owners. The only power that respondent MACEA can exercise pursuant to its Amended Articles of Incorporation is to enforce the Deed Restrictions. In addition, petitioner invokes Sec. 22 of P.D. No. 957 which empowers a home/lot owners' association to give its written conformity to alterations of roads, open spaces, infrastructures and facilities but not to alter the use and occupancy of the lots.

An analysis of the factual situations leads to the conclusion that petitioner's attack on the power of respondent MACEA to change/ alter/ revise the Deed Restrictions springs from misapprehension. As correctly articulated by the Office of the Solicitor General (OSG), respondent MACEA -

x x x x did not enter into a new or amendatory contract with respondent ALI, regarding the revision of the Deed Restrictions. As may be recalled, respondent ALI submitted the revision proposal to respondent MACEA obviously for purposes of expediency and facility, inasmuch as it involved not only a favored few, but of a large community of lot owners within respondent MACEA's jurisdiction. Respondent MACEA, in turn, indorsed the proposal to its members - the lot owners themselves, to determine whether such proposal merited their consideration and approval, in a general membership meeting called for such purpose x x x x[10]

In other words, respondent MACEA's participation in the revision was merely limited to acting as an intermediary between its members on one hand and respondent ALI on the other. This being the case, it was not even necessary for public respondents to resolve the matter of whether respondent MACEA had an implied power of revision. The observation of the OSG is apt -

x x x x (MACEA) never did exercise any such implied power. In fact, if any revision is made or done, the

same is being effected principally by and between the parties to the Deed of Sale, the developer ALI and the lot owners themselves x x x x

The proposed revision of the Deed Restrictions is indisputably a matter of general concern to the members of MACEA. The fact that an overwhelming majority voted for its approval shows that it will promote the general welfare of the community.[11]

Finally, petitioner questions the performance by another of the functions of the Corporate Secretary without his control and supervision in the meeting of stockholders/members.

Suffice it to state that the claim was not an issue agreed upon by the parties to be resolved in the proceeding before the Hearing Officer. Section 6, Rule VIII, of the SEC Rules of Procedure allows confinement of issues only to those not disposed of by admission or agreement of counsel which, when entered, controls the subsequent course of the action.

WHEREFORE, the petition is DENIED. The resolutions of respondent Court of Appeals dated 10 January 1995 denying due course to the petition for review, and 14 February 1995 sustaining its denial are AFFIRMED.

SO ORDERED.

Vitug and Kapunan, JJ., concur.

Padilla (Chairman), J., no part in view of interest in ALI.

Hermosisima, Jr., on leave.

[1] Issued by Hearing Officer Juanito B. Almosa Jr.; Court of Appeals Rollo, p. 43.

[2] Court of Appeals Rollo, pp. 36-38.

[3] SEC was then headed by Chairman Rosario N. Lopez with Associate Commissioners Rodolfo L. Samarista, Fe-Eloisa C. Gloria (did not participate), Merle O. Manuel and Perfecto R. Yasay Jr. as members; Court of Appeals Rollo, p. 29.

[4] Penned by Justice Asaali S. Isnani with Justices Corona Ibay Somera and Celia Lipana Reyes concurring; Rollo, p. 22.

[5] Id., p. 25.

[6] *Nunal v. Commission on Audit*, G.R. No. 78648, 24 January 1989, 169 SCRA 356.

[7] Rollo, p. 22.

[8] *San Luis v. Court of Appeals*, G.R. No. 80160, 26 June 1989, 174 SCRA 258.

[9] Id., pp. 24-25.

[10] Rollo, p. 304.

[11] Rollo, pp. 305-306.

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