

ORTIGAS & CO. LTD., PETITIONER, VS. THE COURT OF APPEALS AND ISMAEL G. MATHAY III, RESPONDENTS.

G.R. No. 126102. December 04, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition seeks to reverse the decision of the Court of Appeals, dated March 25, 1996, in CA-G.R. SP No. 39193, which nullified the writ of preliminary injunction issued by the Regional Trial Court of Pasig City, Branch 261, in Civil Case No. 64931. It also assails the resolution of the appellate court, dated August 13, 1996, denying petitioner's motion for reconsideration.

The facts of this case, as culled from the records, are as follows:

On August 25, 1976, petitioner Ortigas & Company sold to Emilia Hermoso, a parcel of land known as Lot 1, Block 21, Psd-66759, with an area of 1,508 square meters, located in Greenhills Subdivision IV, San Juan, Metro Manila, and covered by Transfer Certificate of Title No. 0737. The contract of sale provided that the lot:

- ...(1) be used exclusively...for residential purposes only, and not more than one single-family residential building will be constructed thereon,...

x x x

- The BUYER shall not erect...any sign or billboard on the roof...for advertising purposes...

x x x

- No single-family residential building shall be erected...until the building plans, specification...have been approved by the SELLER...

x x x

- ...restrictions shall run with the land and shall be construed as real covenants until December 31, 2025 when they shall cease and terminate...[1]

These and the other conditions were duly annotated on the certificate of title issued to Emilia.

In 1981, the Metropolitan Manila Commission (now Metropolitan Manila Development Authority) enacted MMC Ordinance No. 81-01, also known as the Comprehensive Zoning Area for the National Capital Region. The ordinance reclassified as a commercial area a portion of Ortigas Avenue from Madison to Roosevelt Streets of Greenhills Subdivision where the lot is located.

On June 8, 1984, private respondent Ismael Mathay III leased the lot from Emilia Hermoso and J.P. Hermoso Realty Corp.. The lease contract did not specify the purposes of the lease. Thereupon, private respondent constructed a single story commercial building for Greenhills Autohaus, Inc., a car sales company.

On January 18, 1995, petitioner filed a complaint against Emilia Hermoso with the Regional Trial Court of Pasig, Branch 261. Docketed as Civil Case No. 64931, the complaint sought the demolition of the said commercial structure for having violated the terms and conditions of the Deed of Sale. Complainant prayed for the issuance of a temporary restraining order and a writ of preliminary injunction to prohibit petitioner from constructing the commercial building and/or engaging in commercial activity on the lot. The complaint was later amended to implead Ismael G. Mathay III and J.P. Hermoso Realty Corp., which has a ten percent (10%) interest in the lot.

In his answer, Mathay III denied any knowledge of the restrictions on the use of the lot and filed a cross-claim against the Hermosos.

On June 16, 1995, the trial court issued the writ of preliminary injunction. On June 29, 1995, Mathay III moved to set aside the injunctive order, but the trial court denied the motion.

Mathay III then filed with the Court of Appeals a special civil action for certiorari, docketed as CA-G.R. SP No. 39193, ascribing to the trial court grave abuse of discretion in issuing the writ of preliminary injunction. He claimed that MMC Ordinance No. 81-01 classified the area where the lot was located as commercial area and said ordinance must be read into the August 25, 1976 Deed of Sale as a concrete exercise of police power.

Ortigas and Company averred that inasmuch as the restrictions on the use of the lot were duly annotated on the title it issued to Emilia Hermoso, said restrictions must prevail over the ordinance, specially since these restrictions were agreed upon before the passage of MMC Ordinance No. 81-01.

On March 25, 1996, the appellate court disposed of the case as follows:

WHEREFORE, in light of the foregoing, the petition is hereby GRANTED. The assailed orders are hereby nullified and set aside.

SO ORDERED.[2]

In finding for Mathay III, the Court of Appeals held that the MMC Ordinance No. 81-01 effectively nullified the restrictions allowing only residential use of the property in question.

Ortigas seasonably moved for reconsideration, but the appellate court denied it on August 13, 1996.

Hence, the instant petition.

In its Memorandum, petitioner now submits that the "principal issue in this case is whether respondent Court of Appeals correctly set aside the Order dated June 16, 1995 of the trial court which issued the writ of preliminary injunction on the sole ground that MMC Ordinance No. 81-01 nullified the building restriction imposing exclusive residential use on the property in question." [3] It also asserts that "Mathay III lacks legal capacity to question the validity of conditions of the deed of sale; and he is barred by estoppel or waiver to raise the same question like his principals, the owners." [4] Lastly, it avers that the appellate court "unaccountably failed to address" several questions of fact.

Principally, we must resolve the issue of whether the Court of Appeals erred in holding that the trial court committed grave abuse of discretion when it refused to apply MMC Ordinance No. 81-01 to Civil Case No. 64931.

But first, we must address petitioner's allegation that the Court of Appeals "unaccountably failed to address" questions of fact. For basic is the rule that factual issues may not be raised before this Court in a petition for review and this Court is not duty-bound to consider said questions. [5] CA-G.R. SP No. 39193 was a special civil action for certiorari, and the appellate court only had to determine if the trial court committed grave abuse of discretion amounting to want or excess of jurisdiction in issuing the writ of preliminary injunction. Thus, unless

vital to our determination of the issue at hand, we shall refrain from further consideration of factual questions.

Petitioner contends that the appellate court erred in limiting its decision to the cited zoning ordinance. It avers that a contractual right is not automatically discarded once a claim is made that it conflicts with police power. Petitioner submits that the restrictive clauses in the questioned contract is not in conflict with the zoning ordinance. For one, according to petitioner, the MMC Ordinance No. 81-01 did not prohibit the construction of residential buildings. Petitioner argues that even with the zoning ordinance, the seller and buyer of the re-classified lot can voluntarily agree to an exclusive residential use thereof. Hence, petitioner concludes that the Court of Appeals erred in holding that the condition imposing exclusive residential use was effectively nullified by the zoning ordinance.

In its turn, private respondent argues that the appellate court correctly ruled that the trial court had acted with grave abuse of discretion in refusing to subject the contract to the MMC Ordinance No. 81-01. He avers that the appellate court properly held the police power superior to the non-impairment of contract clause in the Constitution. He concludes that the appellate court did not err in dissolving the writ of preliminary injunction issued by the trial court in excess of its jurisdiction.

We note that in issuing the disputed writ of preliminary injunction, the trial court observed that the contract of sale was entered into in August 1976, while the zoning ordinance was enacted only in March 1981. The trial court reasoned that since private respondent had failed to show that MMC Ordinance No. 81-01 had retroactive effect, said ordinance should be given prospective application only,[6] citing *Co vs. Intermediate Appellate Court*, 162 SCRA 390 (1988).

In general, we agree that laws are to be construed as having only prospective operation. *Lex prospicit, non respicit*. Equally settled, only laws existing at the time of the execution of a contract are applicable thereto and not later statutes, unless the latter are specifically intended to have retroactive effect.[7] A later law which enlarges, abridges, or in any manner changes the intent of the parties to the contract necessarily impairs the contract itself[8] and cannot be given retroactive effect without violating the constitutional prohibition against impairment of contracts.[9]

But, the foregoing principles do admit of certain exceptions. One involves police power. A law enacted in the exercise of police power to regulate or govern certain activities or transactions could be given retroactive effect and may reasonably impair vested rights or contracts. Police power legislation is applicable not only to future contracts, but equally to those already in existence.[10] Nonimpairment of contracts or vested rights clauses will have to yield to the superior and legitimate exercise by the State of police power to promote the health, morals, peace, education, good order, safety, and general welfare of the people.[11] Moreover, statutes in exercise of valid police power must be read into every contract.[12] Noteworthy, in *Sangalang vs. Intermediate Appellate Court*,[13] we already upheld MMC Ordinance No. 81-01 as a legitimate police power measure.

The trial court's reliance on the *Co vs. IAC*,[14] is misplaced. In *Co*, the disputed area was agricultural and Ordinance No. 81-01 did not specifically provide that "it shall have retroactive effect so as to discontinue all rights previously acquired over lands located within the zone which are neither residential nor light industrial in nature,"[15] and stated with respect to agricultural areas covered that "the zoning ordinance should be given prospective operation only." [16] The area in this case involves not agricultural but urban residential land. Ordinance No. 81-01 retroactively affected the operation of the zoning ordinance in Greenhills by reclassifying certain locations therein as commercial.

Following our ruling in *Ortigas & Co., Ltd. vs. Feati Bank & Trust Co.*, 94 SCRA 533 (1979), the contractual stipulations annotated on the Torrens Title, on which Ortigas relies, must yield to the ordinance. When that stretch

of Ortigas Avenue from Roosevelt Street to Madison Street was reclassified as a commercial zone by the Metropolitan Manila Commission in March 1981, the restrictions in the contract of sale between Ortigas and Hermoso, limiting all construction on the disputed lot to single-family residential buildings, were deemed extinguished by the retroactive operation of the zoning ordinance and could no longer be enforced. While our legal system upholds the sanctity of contract so that a contract is deemed law between the contracting parties,[17] nonetheless, stipulations in a contract cannot contravene "law, morals, good customs, public order, or public policy." [18] Otherwise such stipulations would be deemed null and void. Respondent court correctly found that the trial court committed in this case a grave abuse of discretion amounting to want of or excess of jurisdiction in refusing to treat Ordinance No. 81-01 as applicable to Civil Case No. 64931. In resolving matters in litigation, judges are not only duty-bound to ascertain the facts and the applicable laws,[19] they are also bound by their oath of office to apply the applicable law.[20]

As a secondary issue, petitioner contends that respondent Mathay III, as a mere lessee of the lot in question, is a total stranger to the deed of sale and is thus barred from questioning the conditions of said deed. Petitioner points out that the owners of the lot voluntarily agreed to the restrictions on the use of the lot and do not question the validity of these restrictions. Petitioner argues that Mathay III as a lessee is merely an agent of the owners, and could not override and rise above the status of his principals. Petitioner submits that he could not have a higher interest than those of the owners, the Hermosos, and thus had no locus standi to file CA-G.R. SP No. 39193 to dissolve the injunctive writ issued by the RTC of Pasig City.

For his part, private respondent argues that as the lessee who built the commercial structure, it is he and he alone who stands to be either benefited or injured by the results of the judgment in Civil Case No. 64931. He avers he is the party with real interest in the subject matter of the action, as it would be his business, not the Hermosos', which would suffer had not the respondent court dissolved the writ of preliminary injunction.

A real party in interest is defined as "the party who stands to be benefited or injured by the judgment or the party entitled to the avails of the suit." "Interest" within the meaning of the rule means material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest.[21] By real interest is meant a present substantial interest, as distinguished from a mere expectancy or a future, contingent, subordinate, or consequential interest.[22]

Tested by the foregoing definition, private respondent in this case is clearly a real party in interest. It is not disputed that he is in possession of the lot pursuant to a valid lease. He is a possessor in the concept of a "holder of the thing" under Article 525 of the Civil Code.[23] He was impleaded as a defendant in the amended complaint in Civil Case No. 64931. Further, what petitioner seeks to enjoin is the building by respondent of a commercial structure on the lot. Clearly, it is private respondent's acts which are in issue, and his interest in said issue cannot be a mere incidental interest. In its amended complaint, petitioner prayed for, among others, judgment "ordering the demolition of all improvements illegally built on the lot in question." [24] These show that it is petitioner Mathay III, doing business as "Greenhills Autohaus, Inc.," and not only the Hermosos, who will be adversely affected by the court's decree.

Petitioner also cites the rule that a stranger to a contract has no rights or obligations under it,[25] and thus has no standing to challenge its validity.[26] But in seeking to enforce the stipulations in the deed of sale, petitioner impleaded private respondent as a defendant. Thus petitioner must recognize that where a plaintiff has impleaded a party as a defendant, he cannot subsequently question the latter's standing in court.[27]

WHEREFORE, the instant petition is DENIED. The challenged decision of the Court of Appeals dated March 25, 1996, as well as the assailed resolution of August 13, 1996, in CA-G.R. SP No. 39193 is AFFIRMED. Costs

against petitioner.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Rollo, p. 92.

[2] Rollo, p. 52.

[3] Id. at 227.

[4] Ibid.

[5] First Nationwide Assurance Corp. vs. Court of Appeals, et al., G.R. No. 128797, November 18, 1999, p. 1.

[6] CA Rollo, p. 26.

[7] Phil. Virginia Tobacco Administration vs. Gonzales, 92 SCRA 172, 185 (1979).

[8] US vs. Diaz Conde, 42 Phil. 766, 769 (1922).

[9] CONST., Art. III, Sec. 10.

[10] Melchor, Jr. vs. Moya, 121 SCRA 1, 6 (1983); Co Chiong vs. Cuaderno, 83 Phil. 242 (1949); Santos vs. Alvarez, 78 Phil. 503 (1947).

[11] Presley vs. Bel-Air Village Association, Inc., 201 SCRA 13, 18-19 (1991).

[12] Phil. American Life Insurance Co. vs. Auditor General, 22 SCRA 135, 136-137 (1968).

[13] 168 SCRA 634, 669 (1988).

[14] 162 SCRA 390 (1988).

[15] Id. at 396.

[16] Ibid.

[17] CIVIL CODE, Art. 1159.

[18] Supra, Art. 1306.

[19] Parada vs. Veneration, 269 SCRA 371, 378 (1997).

[20] Caram Resources Corp. vs. Contreras, 237 SCRA 724, 734 (1994).

[21] 1997 RULES OF CIVIL PROCEDURE, Rule 3, Sec. 2; Republic vs. Sandiganbayan, 203 SCRA 310, 324 (1991) citing Samahan ng mga Nangungupahan sa Azcarraga Textile Market, Inc., et al. vs. Court of Appeals, 165 SCRA 598 (1988).

[22] De Leon vs. Court of Appeals, 277 SCRA 478, 486-487 (1997); Barfel Development Corp. vs. Court of Appeals, 223 SCRA 268 (1993).

[23] CIVIL CODE, Art. 525. The possession of things or rights may be had in one of two concepts; either in the concept of owner, or in that of the holder of the thing or right to keep or enjoy it, the ownership pertaining to

another person.

[24] Rollo, p. 61.

[25] CIVIL CODE, Art. 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation, or by provision of law...

[26] Ibañez vs. Hongkong and Shanghai Banking Corp., 22 Phil. 572, 584 (1912); Wolfson vs. Estate of Martinez, 20 Phil. 340, 344 (1911).

[27] Lao vs. Court of Appeals, 275 SCRA 237, 256 (1997).

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