

**AYALA CORPORATION, PETITIONER, VS. RAY BURTON
DEVELOPMENT CORPORATION, RESPONDENT.***G.R. No. 126699. August 07, 1998*

Ponente: MARTINEZ, J.

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Petitioner Ayala Corporation (AYALA) is the owner of the Ayala estate located in Makati City. The said estate was originally a raw land which was subdivided for sale into different lots devoted for residential, commercial and industrial purposes. The development of the estate consisted of road and building construction and installation of a central sewerage treatment plant and drainage system which services the whole Ayala Commercial Area.

On March 20, 1984, Karamfil Import-Export Company Ltd. (KARAMFIL) bought from AYALA a piece of land identified as Lot 26, Block 2 consisting of 1,188 square meters, located at what is now known as H.V. de la Costa Street, Salcedo Village, Makati City. The said land, which is now the subject of this case, is more particularly described as follows:

"A parcel of land (Lot 26, Block 2, of the subdivision plan [LRC] Psd-6086, being a portion of Block D, described as plan [LRC] Psd-5812 LRC [GLRO] Rec. No. 2029) situated in the Municipality of Makati, Province of Rizal, Is. of Luzon. Bounded on the NE., points 2 to 3 by Lot 31, Block 2 (Creek 6.00 m. wide) of the subdivision plan, on the SE., points 3 to 4 by Lot 27, Block 2 of the Subdivision plan; on the SW, points 4 to 5, by proposed Road, 17.00 m. wide (Block C[LRC] Psd-5812); points 5 to 1 by Street Lot 2 (17.00 m. wide) of the subdivision plan. On the NW, points 1 to 2 by Lot 25, Block 2 of the subdivision plan. x x x beginning, containing an area of ONE THOUSAND ONE HUNDRED EIGHTY EIGHT (1,188) SQUARE METERS."

The transaction was documented in a Deed of Sale[1] of even date, which provides, among others, that the vendee would comply with certain special conditions and restrictions on the use or occupancy of the land, among which are -

Deed Restrictions:[2]

- a) The total height of the building to be constructed on the lot shall not be more than forty-two (42) meters, nor shall it have a total gross floor area of more than five (5) times the lot area; and
- b) The sewage disposal must be by means of connection into the sewerage system servicing the area.

Special Conditions:[3]

- a) The vendee must obtain final approval from AYALA of the building plans and specifications of the proposed structures that shall be constructed on the land;
- b) The lot shall not be sold without the building having been completed; and
- c) Any breach of the stipulations and restrictions entitles AYALA to rescission of the contract.

As a result of the sale, a Transfer Certificate of Title No. 132086[4] was issued in the name of KARAMFIL. The said special conditions and restrictions were attached as an annex to the deed of sale and incorporated in the "Memorandum of Encumbrances" at the reverse side of the title of the lot as Entry No. 2432/T-131086.

On February 18, 1988, KARAMFIL sold the lot to Palmcrest Development and Realty Corporation (PALMCREST) under a Deed of Absolute Sale[5] of even date. This deed was submitted to AYALA for approval in order to obtain the latter's waiver of the special condition prohibiting the resale of the lot until after KARAMFIL shall have constructed a building thereon. AYALA gave its written conformity to the sale but reflecting in its approval the same special conditions/restrictions as in the previous sale. AYALA's conformity was annotated on the deed of sale.[6] PALMCREST did not object to the stipulated conditions and restrictions.[7]

PALMCREST in turn sold the lot to Ray Burton Development Corporation (RBDC), now respondent, on April 11, 1988, with the agreement that AYALA retains possession of the Owner's Duplicate copy of the title until a building is erected on said parcel of land in accordance with the requirements and/or restrictions of AYALA.[8] The Deed of Absolute Sale[9] executed on the said date was also presented to AYALA for approval since no building had yet been constructed on the lot at the time of the sale. As in the KARAMFIL-PALMCREST transaction, AYALA gave its conformity to the sale, subject to RBDC's compliance with the special conditions/restrictions which were annotated in the deed of sale, thus:

"With our conformity, subject to the compliance by the Vendees of the Special Conditions of Sale on the reverse side of the Deed of Sale dated March 20, 1984 per Doc. No. 140, Page No. 29, Book No. 1, Series of 1984 of the Notary Public Silverio Aquino."[10]

The conditions and restrictions of the sale were likewise entered as encumbrances at the reverse side of the Transfer Certificate of Title No. 155384 which was later issued in the name of RBDC.[11] Like PALMCREST, RBDC was not also averse to the aforesaid conditions and restrictions.[12]

Sometime in June of 1989, RBDC submitted to AYALA for approval a set of architectural plans for the construction of a 5-storey office building on the subject lot, with a height of 25.85 meters and a total gross floor area of 4,989.402 square meters.[13] The building was to be known as "Trafalgar Tower" but later renamed "Trafalgar Plaza." Since the building was well within the 42-meter height restriction, AYALA approved the architectural plans.

Upon written request[14] made by RBDC, AYALA likewise agreed to release the owner's copy of the title covering the subject lot to the China Banking Corporation as guarantee of the loan granted to RBDC for the construction of the 5-storey building.

Meanwhile, on November 28, 1989, RBDC, together with the Makati Developers Association, Inc. (MADAI), of which RBDC is a member, and other lot owners, filed a complaint against AYALA before the Housing and Land Use Regulatory Board (HLRB), docketed as HLRB Case No. REM-A-0818 (OAALA-REM-111489-4240). The complaint sought the nullification of the very same Deed Restrictions incorporated in the deeds of sale of the lots purchased by the complainants from AYALA and annotated on their certificates of title, on the grounds, inter alia, that said restrictions purportedly: (a) place unreasonable control over the lots sold by AYALA, thereby depriving the vendees of the full enjoyment of the lots they bought, in violation of Article 428 of the Civil Code; (b) have been superseded by Presidential Decree No. 1096 (the National Building Code) and Metro Manila Commission Zoning Ordinance No. 81-01; (c) violate the constitutional provision on equal protection of the laws, since the restrictions are imposed without regard to reasonable standards or classifications; and (d) are contracts of adhesion[15] since AYALA would not sell the lots unless the buyers agree to the deed restrictions. The complaint also alleged that AYALA is in estoppel from enforcing the restrictions in question when it allowed the

construction of other high-rise buildings in Makati City beyond the height and floor area limits. AYALA was further charged with unsound business practice.

Early in June of 1990, RBDC made another set of building plans for "Trafalgar Plaza" and submitted the same for approval, this time to the Building Official of the Makati City Engineer's Office,[16] not to AYALA. In these plans, the building was to be 26-storey high, or a height of 98.60 meters, with a total gross floor area of 28,600 square meters. After having obtained the necessary building permits from the City Engineer's Office, RBDC began to construct "Trafalgar Plaza" in accordance with these new plans.

On July 11, 1990, the majority of the lot owners in the Makati City area, including the Salcedo and Legaspi Village areas, in a general assembly of the Makati Commercial Estate Association, Inc. (MACEA), approved the revision of the Deed Restrictions, which revision was embodied in the "Consolidated and Revised Deed Restrictions"[17] (Revised Deed Restrictions) wherein direct height restrictions were abolished in favor of floor area limits computed on the basis of "floor area ratios" (FARs). In the case of buildings devoted solely to office use in Salcedo Village " such as the "Trafalgar Plaza" " the same could have a maximum gross floor area of only eight (8) times the lot area. Thus, under the Revised Deed Restrictions, "Trafalgar Plaza" could be built with a maximum gross floor area of only 9,504 square meters (1,188 sq. m. " the size of the subject lot " multiplied by 8). Even under the Revised Deed Restrictions, Trafalgar would still exceed 19,065 square meters of floor area on the basis of a FARs of 8:1. RBDC did not vote for the approval of the Revised Deed Restrictions and, therefore, it continued to be bound by the original Deed Restrictions.

In the meantime, on August 22, 1990, the HLRB En Banc rendered a decision[18] (a) upholding the Deed Restrictions; (b) absolving AYALA from the charge of unsound business practice; and (c) dismissing HLRB Case No. REM-A-0818. MADAI and RBDC separately appealed the decision to the Office of the President, which appeal was docketed as O.P. Case No. 4476.

While the appeal was pending before the Office of the President, the September 21, 1990 issue of the Business World magazine[19] featured the "Trafalgar Plaza" as a modern 27-storey structure which will soon rise in Salcedo Village, Makati City. Stunned by this information, AYALA, through counsel, then sent a letter[20] to RBDC demanding the latter to cease the construction of the building which dimensions do not conform to the previous plans it earlier approved. RBDC, through counsel, replied with a series of letters[21] requesting for time to assess the merits of AYALA's demand.

For failing to heed AYALA's bidding, RBDC was sued on January 25, 1991 before the Regional Trial Court of Makati City (Branch 148). AYALA's complaint for Specific Performance or Rescission, docketed as Civil Case No. 91-220, prayed inter alia that judgment be rendered -

"x x x x x x x x

b. Ordering the defendant to comply with its contractual obligations and to remove or demolish the portions or areas of the Trafalgar Tower/Plaza Building constructed beyond or in excess of the approved height as shown by building plans approved by the plaintiff, including any other portion of the building constructed not in accordance with the building plans and specifications submitted to and approved by plaintiff.

c. Alternatively, in the event specific performance becomes impossible:

i) Ordering the cancellation and rescission of the Deed of Sale dated March 20, 1984 (Annex 'A' hereof) and ordering defendant to return to plaintiff Lot 26, Block 2 of Salcedo Village;

ii) Ordering the cancellation of Transfer Certificate of Title No. 155384 (in the name of defendant) and directing

the Makati Register of Deeds to issue a new title over the Lot in the name of plaintiff; and

d. Ordering defendant to pay plaintiff attorney's fees in the amount of P500,000.00, exemplary damages in the amount of P5,000.00 and the costs of the instant suit.."[22]

In its answer (with counterclaim) to the complaint, RBDC denied having "actual or constructive notice of the Deed Restrictions" imposed by AYALA on the subject lot. RBDC alleged in essence that even if said deed restrictions exist, the same are not economically viable and should not be enforced because they constitute unreasonable restrictions on its property rights and are, therefore, contrary to law, morals, good customs, public order or public policy. Moreover, RBDC claimed that the enforcement of the deed restrictions has also been arbitrary or discriminatory since AYALA has not made any action against a number of violators of the deed restrictions.

Meantime, the appeal of MADAI in O.P. Case No. 44761 was considered resolved when it entered into a compromise agreement with AYALA wherein the latter adopted and acknowledged as binding the Revised Deed Restrictions of July 11, 1990.[23] On the other hand, RBDC's appeal was dismissed in an Order dated February 13, 1992, for the reason that, "insofar as the disposition of the appealed (HLRB) decision is concerned, there is virtually no more actual controversy on the subject of the 'Deed Restrictions' because the same has been overridden by the 'Revised (Deed) Restrictions' which the appellee Ayala Corporation has in fact acknowledged as binding and in full force and effect x x x." [24] Accordingly, aside from dismissing RBDC's appeal, the Order of February 13, 1992 also "set aside" the appealed HLRB decision. From this order, AYALA sought a reconsideration or clarification, noting, inter alia, that while the said order has ruled that AYALA can no longer enforce the Deed Restrictions against RBDC, it does not expressly state that RBDC is bound by the Revised Deed Restrictions. Clarifying this matter, the Office of the President issued a Resolution dated April 21, 1992,[25] modifying the February 13, 1992 order, ruling: (1) that RBDC is bound by the original Deed Restrictions, but it has the option to accept and be bound by the Revised Deed Restrictions in lieu of the former; and (2) that the "HLRB decision dated 22 August 1990, to the extent that it absolved Ayala from the charge of unsound business practice, subject of the basic complaint, is affirmed." This time RBDC moved for a reconsideration of the April 21, 1992 Order, but the motion was denied in a Resolution dated October 15, 1993.[26] Another Resolution of March 21, 1994[27] was issued denying with finality RBDC's second motion for reconsideration.

AYALA then filed a Manifestation[28] in Civil Case No. 91-220, informing the trial court of the pertinent rulings/resolutions in the proceedings before the HLRB and the Office of the President, which rulings, AYALA suggested, amount to res judicata on the issue of the validity and enforceability of the Deed Restrictions involved in the said civil case.

After trial on the merits, the trial court rendered a Decision on April 28, 1994 in favor of RBDC, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered in favor of the defendant and against the plaintiff, and as a consequence:

1. The instant case is hereby dismissed;
2. The motion/application for the annotation of the lis pendens is hereby DENIED;
3. The motion/application to hold defendant in continuing contempt is hereby also DENIED;
4. No damages is awarded to any of the parties;
5. Plaintiff is hereby ordered to pay the defendant P30,000.00 for and as attorney's fees and litigation

expenses;

"With costs against plaintiff.

"SO ORDERED." [29]

The trial court's decision is based on its findings that: (1) RBDC had neither actual nor constructive notice of the 42-meter height limitation of the building to be constructed on the subject lot; (2) even if the Deed Restrictions did exist, AYALA is estopped from enforcing the same against RBDC by reason of the former's failure to enforce said restrictions against other violators in the same area; (3) the Deed Restrictions partake of the nature of a contract of adhesion; (4) since the Trafalgar Plaza building is in accord with the minimum requirements of P.D. No. 1096 (The National Building Code), the Deed Restrictions may not be followed by RBDC; and (5) the rulings of the HLRB and the Office of the President do not have binding effect in the instant case.

Dissatisfied, AYALA appealed to the Court of Appeals which affirmed the judgment of the trial court in a Decision [30] dated February 27, 1996 in CA-G.R. CV No. 46488. AYALA's motion for reconsideration was likewise denied in the Resolution [31] of October 7, 1996.

AYALA now interposes the present petition for review on certiorari, citing several errors in the decision of the Court of Appeals, some of which involve questions of fact.

The resolution of factual issues raised in the petition would certainly call for a review of the Court of Appeals' findings of fact. As a rule, the re-examination of the evidence proffered by the contending parties during the trial of the case is not a function that this Court normally undertakes inasmuch as the findings of fact of the Court of Appeals are generally binding and conclusive on the Supreme Court. [32] The jurisdiction of this Court in a petition for review on certiorari under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law. [33] A reevaluation of factual issues by this Court is justified when the findings of fact complained of are devoid of support by the evidence on record, or when the assailed judgment is based on misapprehension of facts. [34]

The present petition has shown that certain relevant facts were overlooked by the Court of Appeals, which facts, if properly appreciated, would justify a different conclusion from the one reached in the assailed decision.

The principal error raised here by petitioner AYALA pertains to the Court of Appeals' finding that RBDC did not have actual or constructive notice of the 42-meter height restriction, since what was annotated on its (RBDC's) title is the erroneous 23-meter height limit which, according to AYALA's own witness, Jose Cuaresma, was not applicable to RBDC. [35] Thus, the Court of Appeals concluded, RBDC "has the right to enjoy the subject property as if no restrictions and conditions were imposed thereon." [36]

The above finding and conclusion of the Court of Appeals, AYALA submits, are based on "surmises and conjectures" which are "contrary to the evidence on record and (RBDC's) own admissions." [37]

There is merit in AYALA's submission.

The erroneous annotation of the 23-meter height restriction in RBDC's title was explained by Jose Cuaresma, AYALA's Assistant Manager for Marketing and Sales. Cuaresma testified that when the deed of sale between PALMCREST and RBDC was submitted to the Register of Deeds of Makati and the corresponding title was issued in the name of RBDC, the Register of Deeds annotated the wrong height limit in Entry No. 2432 on the said title, but he emphasized that the incorrect annotation does not apply to RBDC. [38]

Jose Cuaresma further clarified that the correct height restriction imposed by AYALA on RBDC was 42 meters. [39] This height ceiling, he said, is based on the deed of restrictions attached as annex to the deed of

sale,[40] and the same has been uniformly imposed on the transferees beginning from the original deed of sale between AYALA and KARAMFIL.[41]

This clarificatory statement of Jose Cuaresma should have cautioned the Court of Appeals from making the unfounded and sweeping conclusion that RBDC can do anything it wants on the subject property "as if no restrictions and conditions were imposed thereon," on the mistaken premise that RBDC was unaware of the correct 42-meter height limit. It must be stressed that Cuaresma's testimony is bolstered by documentary evidence and circumstances of the case which would show that RBDC was put on notice about the 42-meter height restriction.

The record reveals that the subject Lot 26 was first sold by AYALA to KARAMFIL under a deed of sale (Exhibit "A") dated March 20, 1984 and duly notarized by Notary Public Silverio Aquino. Attached to the deed of sale is an appendix of special conditions/restrictions (deed restrictions), which provides, inter alia, that the building to be constructed on the lot must have a total height of not more than 42 meters, and that any building plans and specifications of the proposed structures must have the approval of AYALA. The deed restrictions were incorporated in the memorandum of encumbrances at the reverse side of the title of the lot as Entry No. 2432. When the lot was sold by KARAMFIL to PALMCREST, the deed of sale (Exhibit "B") on this transaction bears an annotation of AYALA's conformity to the transfer, with the condition that the approval was "subject to the compliance by the vendee of the special conditions of sale on the reverse side of the deed of sale dated March 20, 1984, per Doc. No. 140, Page No. 29, Book No. 1, Series of 1984 of Notary Public Silverio F. Aquino" (Exhibit "B-1"). PALMCREST later resold the lot to RBDC by virtue of a deed of sale (Exhibit "C"), to which AYALA's approval was also annotated therein (Exhibit "C-1"), but with the same explicit inscription that RBDC, as vendee, must comply with the special deed restrictions appended to the AYALA-KARAMFIL deed of sale of March 20, 1984. All these three (3) deeds of sale and the accompanying special deed restrictions imposing a 42-meter height limit, were duly registered with the Register of Deeds. Thus, RBDC cannot profess ignorance of the 42-meter height restriction and other special conditions of the sale.

Verily, the deed restrictions are integral parts of the PALMCREST-RBDC deed of sale, considering that AYALA's required conformity to the transfer, as annotated therein, was conditioned upon RBDC's compliance of the deed restrictions. Consequently, as a matter of contractual obligation, RBDC is bound to observe the deed restrictions which impose a building height of not more than 42 meters.

Moreover, RBDC was fully aware that it was bound by the 42-meter height limit. This is shown by the fact that, pursuant to the special conditions/restrictions of the sale, it submitted to AYALA, for approval, building plans for a 5-storey structure with a height of 25.85 meters. Certainly, RBDC would not have submitted such plans had it truly believed that it was restricted by a lower 23-meter height ceiling, in the same manner that RBDC did not seek AYALA's approval when it later made another set of building plans for the 26-storey "Trafalgar Plaza," knowing that the same would be disapproved for exceeding the 42-meter height restriction. The fact that RBDC was later issued a building permit from the Makati City Engineer's Office for the construction of the "Trafalgar Plaza" is not a valid justification to disregard the stipulated contractual restriction of 42 meters.

Another error which AYALA claims to have been committed by the Court of Appeals is the latter's finding that AYALA, under the principle of estoppel, is now barred from enforcing the deed restrictions because it had supposedly failed to act against other violators of the said restrictions. AYALA argues that such finding is baseless and is contrary to the Civil Code provisions on estoppel and applicable jurisprudence.

We agree with the petitioner.

In support of its finding that estoppel operates against AYALA, the Court of Appeals merely cited its decision

dated November 17, 1993, in CA-G.R. SP No. 29157, entitled Rosa-Diana Realty and Development Corporation, Petitioner vs. Land Registration Authority and Ayala Corporation, Respondents, and reiterated its findings therein, to wit:

"Also, Ayala is barred from enforcing the deed of restrictions in question, pursuant to the doctrines of waiver and estoppel. Under the terms of the deed of sale, the vendee Sy Ka Kieng assumed faithful compliance with the special conditions of sale and with the Salcedo Village deed of restrictions. One of the conditions was that a building would be constructed within one year. Ayala did nothing to enforce the terms of the contract. In fact, it even agreed to the sale of the lot by Sy Ka Kieng in favor of the petitioner realty in 1989, or thirteen (13) years later. We, therefore, see no justifiable reason for Ayala to attempt to enforce the terms of the conditions of the sale against the petitioner. It should now be estopped from enforcing the said conditions through any means.

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"Even assuming that petitioner RDR violated the floor area and height restrictions, it is markedly significant that Ayala disregarded the fact that it had previously allowed and tolerated similar and repeated violations of the same restrictive covenants by property owners which it now seeks to enforce against the herein petitioner. Some examples of existing buildings in Salcedo Village that greatly exceeded the gross floor area (5 times lot area) and height (42 meters) limitations are (Rollo, p. 32):

- (1) Pacific Star (Nauru Center Building - 29 stories and 112.5 meters high)
- (2) Sagittarius Building - 16 stories
- (3) Shell House Building - 14 stories
- (4) Eurovilla Building - 15 stories
- (5) LPL Plaza Building - 18 stories
- (6) LPL Tower Building - 24 stories." [42]

An examination of the decision in the said Rosa Diana case reveals that the sole issue raised before the appellate court was the propriety of the *lis pendens* annotation. However, the appellate court went beyond the sole issue and made factual findings bereft of any basis in the record to inappropriately rule that AYALA is in estoppel and has waived its right to enforce the subject restrictions. Such ruling was immaterial to the resolution of the issue of the propriety of the annotation of the *lis pendens*. The finding of estoppel was thus improper and made in excess of jurisdiction.

Moreover, the decision in CA-G.R. SP No. 29157 is not binding on the parties herein, simply because, except for Ayala, RBDC is not a party in that case. Section 49, Rule 39 of the Revised Rules of Court (now Sec. 47, Rule 39 of the 1997 Rules of Civil Procedure) provides in part:

Sec. 49. Effect of judgments. The effect of a judgment or final order rendered by a court or judge of the Philippines, having jurisdiction to pronounce the judgment or order, may be as follows:

- (a) x x x;
- (b) In other cases the judgment or order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of action or special proceeding, litigating for the same thing and under the same title and in the same capacity; (emphasis supplied)
- (c) x x x."

The clear mandate of the above-quoted rule is that a final judgment or order of a court is conclusive and binding only upon the parties to a case and their successors in interest. Both the present case and the Rosa-Diana case,

however, involve different parties who are not litigating "for the same thing" nor "under the same title and in the same capacity." Hence, the Rosa-Diana decision cannot have binding effect against either party to the instant case.

In any case, AYALA asserts that a few gross violators of the deed restrictions "have been, or are being, proceeded against." [43] AYALA admits, though, that there are other violations of the restrictions but these are of a minor nature which do not detract from substantial compliance by the lot owners of the deed restrictions. AYALA submits that minor violations are insufficient to warrant judicial action, thus:

"As a rule, non-objection to trivial breaches of a restrictive covenant does not result in loss of the right to enforce the covenant by injunction, and acquiescence in violations of a restrictive covenant which are immaterial and do not affect or injure one will not preclude him from restraining violations thereof which would so operate as to cause him to be damaged." (20 Am Jur. 2d Sec. 271, p. 835; underscoring provided).

"Occasional and temporary violations by lot owners of a covenant forbidding the use of property for mercantile purposes are not sufficient as a matter of law to warrant a finding of a waiver or abandonment of the right to enforce the restriction. A waiver in favor of one person and for a limited purpose is not a waiver as to all persons generally." (id., at 836; underscoring provided). [44]

It is the sole prerogative and discretion of AYALA to initiate any action against violators of the deed restrictions. This Court cannot interfere with the exercise of such prerogative/discretion.

How AYALA could be considered in estoppel as found by both the trial court and the Court of Appeals, was not duly established. "Under the doctrine of estoppel, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon. A party may not go back on his own acts and representations to the prejudice of the other party who relied upon them." [45] Here, we find no admission, false representation or concealment that can be attributed to AYALA relied upon by RBDC.

What is clear from the record, however, is that RBDC was the party guilty of misrepresentation and/or concealment when it resorted to the fraudulent scheme of submitting two (2) sets of building plans, one (1) set conformed to the Deed Restrictions, which was submitted to and approved by AYALA, [46] while another set violated the said restrictions, and which it presented to the Makati City Building Official in order to secure from the latter the necessary building permit. [47] It is noteworthy that after the submission of the second set of building plans to the Building Official, RBDC continued to make representations to AYALA that it would build the five-storey building in accordance with the first set of plans approved by AYALA, obviously for the purpose of securing the release of the title of the subject lot to obtain bank funding. AYALA relied on RBDC's false representations and released the said title. Hence, RBDC was in bad faith.

AYALA further assigns as error the finding of the respondent court that, "while the Deed of Sale to Ray Burton (RBDC) did not appear to be a contract of adhesion," however, "the subject Deed Restrictions annotated therein appeared to be one." [48] The only basis for such finding is that the Deed Restrictions and Special Conditions were "pre-printed" and "prepared" by AYALA, and that RBDC's participation thereof was "only to sign the Deed of Sale with the said restrictions and conditions." [49]

The respondent court erred in ruling that the Deed Restrictions is a contract of adhesion.

A contract of adhesion in itself is not an invalid agreement. This type of contract is as binding as a mutually executed transaction. We have emphatically ruled in the case of *Ong Yiu vs. Court of Appeals, et. al.* [50] that "contracts of adhesion wherein one party imposes a ready-made form of contract on the other x x x are contracts not entirely prohibited. The one who adheres to the contract is in reality free to reject it entirely; if he adheres he gives his consent." This ruling was reiterated in *Philippine American General Insurance Co., Inc. vs. Sweet Lines,*

Inc., et. al.,[51] wherein we further declared through Justice Florenz Regalado that "not even an allegation of ignorance of a party excuses non-compliance with the contractual stipulations since the responsibility for ensuring full comprehension of the provisions of a contract of carriage (a contract of adhesion) devolves not on the carrier but on the owner, shipper, or consignee as the case may be."

Contracts of adhesion, however, stand out from other contracts (which are bilaterally drafted by the parties) in that the former is accorded inordinate vigilance and scrutiny by the courts in order to shield the unwary from deceptive schemes contained in ready-made covenants. As stated by this Court, speaking through Justice J.B.L. Reyes, in *Qua Chee Gan vs. Law Union and Rock Insurance Co., Ltd.*:[52]

"The courts cannot ignore that nowadays, monopolies, cartels and concentration of capital, endowed with overwhelming economic power, manage to impose upon parties dealing with them cunningly prepared 'agreements' that the weaker party may not change one whit, his participation in the 'agreement' being reduced to the alternative to 'take it or leave it' labeled since Raymond Saleilles 'contracts by adherence' (contracts d' adhesion) in contrast to those entered into by parties bargaining on an equal footing. Such contracts (of which policies of insurance and international bill of lading are prime examples) obviously call for greater strictness and vigilance on the part of the courts of justice with a view to protecting the weaker party from abuses and imposition, and prevent their becoming traps for the unwary."[53] (Emphasis supplied)

The stringent treatment towards contracts of adhesion which the courts are enjoined to observe is in pursuance of the mandate in Article 24 of the New Civil Code that "(i)n all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age or other handicap, the courts must be vigilant for his protection."

Thus, the validity and/or enforceability of a contract of adhesion will have to be determined by the peculiar circumstances obtaining in each case and the situation of the parties concerned.

In the instant case, the stipulations in the Deed Restrictions and Special Conditions are plain and unambiguous which leave no room for interpretation. Moreover, there was even no attempt on the part of RBDC to prove that, in the execution of the Deed of Sale on the subject lot, it was a weaker or a disadvantaged party on account of its moral dependence, ignorance, mental weakness or other handicap. On the contrary, as testified to by Edwin Ngo, President of RBDC, the latter is a realty firm and has been engaged in realty business,[54] and that he, a businessman for 30 years,[55] represented RBDC in the negotiations and in the eventual purchase of the subject lot from PALMCREST.[56] Edwin Ngo's testimony proves that RBDC was not an unwary party in the subject transaction. Instead, Edwin Ngo has portrayed RBDC as a knowledgeable realty firm experienced in real estate business.

In sum, there is more than ample evidence on record pinpointing RBDC's violation of the applicable FAR restrictions in the Consolidated and Revised Deed Restrictions (CRDRs) when it constructed the 27-storey Trafalgar Plaza. The prayer of petitioner is that judgment be rendered as follows:

"a. Ordering Ray Burton to comply with its contractual obligations in the construction of 'Trafalgar Plaza' by removing or demolishing the portions of areas thereof constructed beyond or in excess of the approved height, as shown by the building plans submitted to, and approved by, Ayala, including any other portion of the building constructed not in accordance with the said building plans;

b. Alternatively, in the event specific performance becomes impossible:

(1) ordering the cancellation and rescission of the March 20, 1984 'Deed of Sale' and all subsequent 'Deeds of Sale' executed in favor of the original vendee's successors-in-interest and ordering Ray Burton to return to Ayala Lot 26, Lot 2 of Salcedo Village;

(2) ordering the cancellation of Transfer Certificate of Title No. 155384 (in the name of defendant) and directing the Office of the Register of Deeds of Makati to issue a new title over the lot in the name of Ayala; and

x x x x x x x x."[57]

However, the record reveals that construction of Trafalgar Plaza began in 1990, and a certificate of completion thereof was issued by the Makati City Engineer's Office per ocular inspection on November 7, 1996.[58] Apparently Trafalgar Plaza has been fully built, and we assume, is now fully tenanted. The alternative prayers of petitioner under the CRDRs, i.e., the demolition of excessively built space or to permanently restrict the use thereof, are no longer feasible.

Thus, we perforce instead rule that RBDC may only be held alternatively liable for substitute performance of its obligations - the payment of damages. In this regard, we note that the CRDRs impose development charges on constructions which exceed the estimated Gross Limits permitted under the original Deed Restrictions but which are within the limits of the CRDRs.

In this regard, we quote hereunder pertinent portions of The Revised Deed Restrictions, to wit:

"3. DEVELOPMENT CHARGE

For any building construction within the Gross Floor Area limits defined under Paragraphs C-2.1 to C-2.4 above, but which will result in a Gross Floor Area exceeding certain standards defined in Paragraphs C-3.1-C below, the OWNER shall pay MACEA, prior to the start of construction of any new building or any expansion of an existing building, a DEVELOPMENT CHARGE as a contribution to a trust fund to be administered by MACEA. This trust fund shall be used to improve facilities and utilities in the Makati Central Business District.

3.1 The amount of the development charge that shall be due from the OWNER shall be computed as follows:

DEVELOPMENT CHARGE = A x (B - C - D)

where:

A - is equal to the Area Assessment which shall be set at Five Hundred Pesos (P500.00) until December 31, 1990. Each January 1st thereafter, such amount shall increase by ten percent (10%) over the Area Assessment charged in the immediately preceding year; provided that, beginning 1995 and at the end of every successive five-year period thereafter, the increase in the Area Assessment shall be reviewed and adjusted by the VENDOR to correspond to the accumulated increase in the construction cost index during the immediately preceding five years as based on the weighted average of wholesale price and wage indices of the National Census and Statistics Office and the Bureau of Labor Statistics.

B - is equal to the total Gross Floor Area of the completed or expanded building in square meters.

C - is equal to the estimated Gross Floor Area permitted under the original deed restrictions, derived by multiplying the lot area by the effective original FAR shown below for each location:"[59]

Accordingly, in accordance with the unique, peculiar circumstance of the case at hand, we hold that the said development charges are a fair measure of compensatory damages which RBDC has caused in terms of creating a disproportionate additional burden on the facilities of the Makati Central Business District.

As discussed above, Ray Burton Development Corporation acted in bad faith in constructing Trafalgar Plaza in excess of the applicable restrictions upon a double submission of plans and exercising deceit upon both AYALA

and the Makati Engineer's Office, and thus by way of example and correction, should be held liable to pay AYALA exemplary damages in the sum of P2,500,000.00.

Finally, we find the complaint to be well-grounded, thus it is AYALA which is entitled to an award of attorney's fees, and while it prays for the amount of P500,000.00, we award the amount of P250,000.00 which we find to be reasonable under the circumstances.

WHEREFORE, premises considered, the assailed Decision of the Court of Appeals dated February 27, 1996, in CA-G.R. CV No. 46488, and its Resolution dated October 7, 1996 are hereby REVERSED and SET ASIDE, and in lieu thereof, judgment is hereby rendered finding that:

- (1) The Deed Restrictions are valid and petitioner AYALA is not estopped from enforcing them against lot owners who have not yet adopted the Consolidated and Revised Deed Restrictions;
- (2) Having admitted that the Consolidated and Revised Deed Restrictions are the applicable Deed Restrictions to Ray Burton Development Corporation's Trafalgar Plaza, RBDC should be, and is, bound by the same;
- (3) Considering that Ray Burton Development Corporation's Trafalgar Plaza exceeds the floor area limits of the Deed Restrictions, RBDC is hereby ordered to pay development charges as computed under the provisions of the Consolidated and Revised Deed Restrictions currently in force.
- (4) Ray Burton Development Corporation is further ordered to pay AYALA exemplary damages in the amount of P2,500,000.00, attorney's fees in the amount of P250,000.00, and the costs of suit.

SO ORDERED.

Regalado (Chairman), Melo, Puno, and Mendoza, JJ., concur

[1] Exhibit "A," RTC record, pp. 782-784.

[2] Exhibit "A-1," *ibid.*, p. 784.

[3] Exhibit "A-2," *ibid.*, p. 783.

[4] Exhibit "P," *ibid.*, p. 795.

[5] Exhibit "B," RTC record, p. 785.

[6] Exhibit "B-1," *ibid.*, p. 785.

[7] See Transcript of Stenographic Notes, January 18, 1993, pp. 24-27.

[8] Exhibit "C-2," RTC record, p. 788.

[9] Exhibit "C," *ibid.*, pp. 788-791.

[10] Exhibit "C-1," RTC record, p. 791.

[11] Exhibit "D," *ibid.*, pp. 792-794.

[12] Transcript of Stenographic Notes, January 18, 1993, pp. 28-32; TSN, July 16, 1993, pp. 17-23.

[13] Exhibits "E," "E-1" to "E-6;" RTC record, pp. 798-804.

[14] Exhibit "R," *ibid.*, p. 908, vis-à-vis Exhibits "EE" & "FF."

- [15] Petition, par. 15; Rollo, p. 47.
- [16] Exhibits "Z," "Z-1" to "Z-14."
- [17] Exhibit "F," RTC record, pp. 805-821.
- [18] RTC record, pp. 1342-1354.
- [19] Exhibit "G," RTC record, pp. 822-823
- [20] Exhibit "H," *ibid.*, pp. 824-825.
- [21] Exhibits "I" to "O," *ibid.*, pp. 826-839.
- [22] RTC record, pp. 17-18.
- [23] See Resolution, *ibid.*, p. 1356.
- [24] RTC record, p. 1357.
- [25] *Ibid.*, pp. 1358-1361.
- [26] *Ibid.*, pp. 1362-1366.
- [27] *Ibid.*, pp. 1339-1341.
- [28] *Ibid.*, pp. 1336-1338.
- [29] Rollo, pp. 197-232.
- [30] *Ibid.*, pp. 9-25.
- [31] Rollo, p. 27.
- [32] *De la Serna vs. Court of Appeals*, 233 SCRA 325, 329 [1994]; *Net Testament Church of God vs. Court of Appeals*, 246 SCRA 266, 270 [1995].
- [33] Section 1, Rule 45, Revised Rules of Court.
- [34] *New Testament Church of God vs. Court of Appeals*, *supra*.
- [35] CA Decision, p. 14; Rollo, p. 22.
- [36] *Ibid.* (Emphasis supplied).
- [37] Petition, p. 31; Rollo, p. 64.
- [38] Transcript of Stenographic Notes, January 18, 1993, pp. 53-54.
- [39] *Ibid.*, p. 52.
- [40] *Ibid.*, pp. 53-54.
- [41] *Ibid.*, pp. 51-54.
- [42] CA Decision in CA-G.R. SP No. 29157, pp. 6-8; Rollo, p. 21.
- [43] Petition, p. 29; Rollo, p. 62.
- [44] *Ibid.*, p. 28; Rollo, p. 61.

[45] Laureano Investment & Development Corp. vs. Court of Appeals, 272 SCRA 253, 263 [1997].

[46] Exhibits "E", "E-1" to "E-6".

[47] Exhibits "Z", "Z-1" to "Z-14".

[48] CA Decision, p. 14; Rollo, p. 22.

[49] Ibid., p. 15; Rollo, p. 23.

[50] 91 SCRA 223, 231 [1979].

[51] 212 SCRA 194, 212-213 [1992].

[52] 98 Phil. 95 [1955].

[53] Cited also in Fieldmen's Insurance Co., Inc. vs. Vda. de Songco, et al., 25 SCRA 70, 75 [1968], and in Sweet Lines, Inc. vs. Teves, et al., 83 SCRA 361, 369 [1978].

[54] TSN, July 16, 1993, p. 24.

[55] Ibid., pp. 23-24.

[56] Ibid., pp. 6-8.

[57] Petition, pp.59-60; Rollo, pp. 92-93.

[58] See p. 299, rollo.

[59] Rollo, p. 173.

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