

HOME BANKERS SAVINGS & TRUST CO., PETITIONER, VS. THE HONORABLE COURT OF APPEALS, PABLO N. AREVALO, FRANCISCO A. UY, SPOUSES LEANDRO A. SORIANO, JR. AND LILIAN SORIANO, ALFREDO ...

G.R. NO. 128354. April 26, 2005

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a petition for review on certiorari under Rule 45 of the Rules of Court seeking to annul the Decision[1] of the Court of Appeals (CA) dated November 28, 1996 in CA-G.R. SP No. 40892 and its Resolution dated February 19, 1997 denying petitioner's motion for reconsideration.

Each of private respondents entered into separate contracts to sell with TransAmerican Sales and Exposition (TransAmerican) through the latter's Owner/General Manager, Engr. Jesus Garcia, involving certain portions of land covered by Transfer Certificate of Title (TCT) No. 19155, located at No. 45 Gen. Lim Street, Heroes Hill, Quezon City, together with one unit three-storey townhouse to be built on each portion, as follows:

Respondent Pablo N. Arevalo purchased the portion of land denominated as Unit No. 5[2] for the amount of P750,000.00 on August 21, 1988 and had already fully paid the purchase price on September 3, 1988;

Respondent Alfredo Lim purchased the portion of land denominated as Unit No. 1[3] for the amount of P800,000.00 on December 22, 1988 and fully paid the same upon execution of the agreement on the same day;

Respondent Francisco A. Uy purchased the portion of land denominated as Unit No. 6[4] on October 29, 1988 in the amount of P800,000.00 payable in installments and had allegedly made a total payment of P581,507.41. He ordered to stop the payment of all [postdated] checks from September 1990 to November 1995 on the ground of non-completion of his unit and had later learned of the foreclosure of the property;

Respondent spouses Leandro A. Soriano, Jr. and Lilian Soriano purchased the portion of land denominated as Unit No. 3[5] on February 15, 1990 in the amount of P1,600,000.00 and had allegedly made a payment of P669,960.00. They had stopped paying because of non-completion of the project and had later learned of the foreclosure of the property;

Respondents Alfredo Lim and Santos Lim purchased the portion of land denominated as Unit No. 7[6] for P700,000.00 on October 1988 and had been fully paid as of March 18, 1989; Santos Lim subsequently sold and assigned his share of the property to private respondent Felisa Chi Lim on May 12, 1989.

It is stipulated in their respective contracts that their individual townhouses will be fully completed and constructed as per plans and specifications and the respective titles thereto shall be delivered and transferred to private respondents free from all liens and encumbrances upon their full payment of the purchase price. However, despite repeated demands, Garcia/TransAmerican failed to comply with their undertakings.

On May 30, 1989, Engr. Garcia and his wife Lorelie Garcia obtained from petitioner Home Bankers Savings and

Trust Company (formerly Home Savings Bank and Trust Company) a loan in the amount of P4,000,000.00 and without the prior approval of the Housing and Land Use Regulatory Board (HLURB), the spouses mortgaged[7] eight lots covered by TCT Nos. 3349 to 3356 as collateral. Petitioner registered its mortgage on these titles without any other encumbrance or lien annotated therein. The proceeds of the loan were intended for the development of the lots into an eight-unit townhouse project. However, five out of these eight titles turned out to be private respondents' townhouses subject of the contracts to sell with Garcia/TransAmerican.

When the loan became due, Garcia failed to pay his obligation to petitioner. Consequently, petitioner instituted an extrajudicial foreclosure[8] on the subject lots and being the highest bidder in the public auction, a certificate of sale[9] in its favor was issued by the sheriff on February 26, 1990. Subsequently, the sheriff's certificate of sale was registered and annotated on the titles of the subject lots in the Register of Deeds of Quezon City.

On November 8, 1990, private respondents filed a complaint with the Office of Appeals, Adjudication and Legal Affairs (OAALA), HLURB, against Garcia/TransAmerican as seller/developer of the property and petitioner, as indispensable party, for non-delivery of titles and non-completion of the subdivision project.[10] They prayed for the completion of the units, annulment of the mortgage in favor of petitioner, release of the mortgage on the lots with fully paid owners and delivery of their titles, and for petitioner to compute individual loan values of amortizing respondents and to accept payments from them and damages.

Petitioner filed its Answer contending that private respondents have no cause of action against it; that at the time of the loan application and execution of the promissory note and real estate mortgage by Garcia, there were no known individual buyers of the subject land nor annotation of any contracts, liens or encumbrances of third persons on the titles of the subject lots; that the loan was granted and released without notifying HLURB as it was not necessary.

Private respondents filed their Reply and a motion for the judgment on the pleadings. Petitioner did not file a rejoinder. Private respondents filed a manifestation reiterating for a judgment on their pleadings and asked that the reliefs prayed for be rendered as far as petitioner was concerned. Upon motion of private respondents, the case against Garcia/TransAmerican was archived for failure to serve summons on him/it despite efforts to locate his whereabouts or its office. The case was then considered submitted for decision.

On August 16, 1991, OAALA rendered its Decision,[11] the dispositive portion of which reads:

WHEREFORE, Judgment is hereby rendered as follows:

- Declaring the mortgage executed by and between respondents Engr. Jesus Garcia/TransAmerican Sales and Exposition and Home Bankers Savings and Trust Company (formerly Home Savings Bank and Trust Company) to be unenforceable as against all the complainants;
- Ordering the Register of Deeds of Quezon City to cancel the annotations of the mortgage indebtedness between respondents Engr. Jesus Garcia and Home Bankers Savings and Trust Company (formerly Home Savings Bank and Trust Company);
- Ordering, likewise the Register of Deeds of Quezon City to cancel the annotation of the Certificate of Sale in favor of the respondent Home Bankers Savings and Trust Company on the following Transfer Certificates of Title to wit:

- 1) TCT No. 3350
- 2) TCT No. 3351
- 3) TCT No. 3352
- 4) TCT No. 3354
- 5) TCT No. 3356

- Ordering respondent Home Bankers Savings and Trust Company (formerly Home Savings Bank and Trust Company) to:

4.1. AS TO THE FIRST CAUSE OF ACTION

Deliver to Complainant Pablo N. Arevalo TCT No. 3352 free from all liens and encumbrances.

4.2. AS TO THE SECOND CAUSE OF ACTION

Deliver to Complainant Alfredo Lim TCT No. 3356 free from all liens and encumbrances.

4.3. AS TO THE THIRD CAUSE OF ACTION

To compute and/or determine the loan value of complainant Francisco A. Uy who was not able to complete or make full payment and to accept payment and/or receive amortization from said complainant Francisco A. Uy and upon full payment to deliver TCT No. 3351 free from all liens and encumbrances.

4.4. AS TO THE FOURTH CAUSE OF ACTION

To compute and/or determine the loan value of Complainant Spouses Leandro A. Soriano, Jr. and Lilian Soriano who were not able to complete or make full payment and to accept and/or receive amortization from said Complainants Soriano and upon full payment to deliver TCT No. 3354 free from all liens and encumbrances.

4.5. AS TO THE FIFTH CAUSE OF ACTION

Deliver to complainant Alfredo Lim and Felisa Chi Lim TCT No. 3350 free from all liens and encumbrances.

without prejudice to its right to require respondent Engr. Jesus Garcia/TransAmerican to constitute new collaterals in lieu of the said titles sufficient in value to cover the mortgage obligation.[12]

Petitioner filed an appeal with the Board of Commissioners of the HLURB which dismissed the same in a decision dated June 15, 1992.[13] Petitioner then elevated the case to the Office of the President which rendered a decision dated June 30, 1995[14] dismissing the appeal and affirming the June 15, 1992 decision of the HLURB. Petitioner's motion for reconsideration was also denied in a Resolution dated May 7, 1996.[15]

Petitioner filed a petition for review with the CA which, in the herein assailed decision dated November 28, 1996, denied the petition and affirmed the decision of the Office of the President. The CA applied the case of Union Bank of the Philippines vs. HLURB, et al.,[16] where it was held that the act of a subdivision developer of mortgaging the subdivision without the knowledge and consent of a unit buyer and without the approval of the National Housing Authority (NHA, now HLURB) is violative of Section 18 of P.D. No. 957 thus, falling under the exclusive jurisdiction of HLURB.

The CA upheld the findings of the OAALA, HLURB that private respondents had already entered into separate contracts to sell with TransAmerican as early as 1988 while it was only in 1989 that spouses Garcia applied for a loan with petitioner and executed a mortgage contract over the subject lots; that the proceeds of the loan were purposely intended for the development of a property which was the same property subject of the contracts to sell; that despite the contracts to sell, Garcia/TransAmerican did not apprise petitioner of the existence of these contracts nor did petitioner exhaust any effort to inquire into their existence since petitioner merely relied on the purported clean reconstituted titles in the name of Garcia; that the mortgage of the subject lots without the consent of the buyers and the authorization of the HLURB is a clear violation of P.D. No. 957; that the mortgage contract is void and unenforceable against private respondents.

Petitioner's motion for reconsideration was denied by the CA in its Resolution dated February 19, 1997.[17]

Petitioner is now before us raising the following grounds in support of its petition:

- THE OFFICE OF THE PRESIDENT ERRED IN RULING THAT THE HLURB HAS JURISDICTION TO NULLIFY OR DECLARE UNENFORCEABLE THE REAL ESTATE MORTGAGE VALIDLY CONSTITUTED BY THE OWNER.
- ASSUMING ARGUENDO THAT THE HLURB HAS JURISDICTION, RESPONDENT COURT MANIFESTLY ERRED IN FINDING THE REAL ESTATE MORTGAGE IN FAVOR OF HOME AS INVALID AND UNENFORCEABLE AGAINST RESPONDENTS.
- IN THE EVENT THAT THE DECISION OF THE RESPONDENT COURT FINDING THE REAL ESTATE MORTGAGE IN FAVOR OF HOME AS INVALID AND UNENFORCEABLE AGAINST RESPONDENTS IS UPHeld, THE UNREGISTERED CONTRACTS TO SELL IN FAVOR OF RESPONDENTS SHOULD ALSO BE HELD VALID ONLY AS TO THE PARTIES THERETO BUT UNENFORCEABLE AGAINST PETITIONER.

Private respondents filed their Comment and petitioner filed its Reply thereto.

In a Resolution dated February 23, 2004, we gave due course to the petition and required the parties to submit their respective memoranda which they complied with.

The petition is devoid of merit.

Notably, the issues raised are mere rehash of the issues already passed upon by the HLURB, the Office of the President and the CA which we uphold as we find no reversible errors committed.

Petitioner claims that HLURB has no power to declare the mortgage contract over real property executed between a real estate developer and petitioner, a banking institution, void or unenforceable, as it is properly within the jurisdiction of the Regional Trial Court. Petitioner asserts that being a mortgagee of the subject lots and a purchaser in good faith, it is not a project owner, developer, or dealer contemplated under P.D. No. 1344, the law which expanded the jurisdiction of the NHA; and that since there is no seller-buyer relationship existing between it and private respondents, HLURB has no jurisdiction to rule on the validity of the mortgage and to annul foreclosure proceedings.

The argument is untenable.

The CA did not err in affirming the decision of the Office of the President that HLURB has jurisdiction to declare invalid the mortgage contract executed between Garcia/TransAmerican and petitioner over the subject lots insofar as private respondents are concerned. It correctly relied on *Union Bank of the Philippines vs. HLURB, et al.*[18] where we squarely ruled on the question of HLURB's jurisdiction to hear and decide a condominium buyer's complaint for: (a) annulment of a real estate mortgage constituted by the project owner without the consent of the buyer and without the prior written approval of the NHA; (b) annulment of the foreclosure sale; and (c) annulment of the condominium certificate of title that was issued to the highest bidder at the foreclosure sale, thus:

. . . The issue in HLURB Case No. REM-062689-4077 is the validity of the real estate mortgage of David's condominium unit that FRDC executed in favor of the Union Bank and Far East Bank without prior approval of the National Housing Authority and the legality of the title which the mortgage banks acquired as highest bidder therefore in the extrajudicial foreclosure sale. The applicable provisions of P.D. No. 957, otherwise known as "The Subdivision and Condominium Buyer's Protective Decree" are quoted hereunder as follows: Sec. 3. NATIONAL HOUSING AUTHORITY. – The National Housing Authority shall have exclusive jurisdiction to regulate the real estate trade and business in accordance with the provisions of this Decree.

Section 18. Mortgages – No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the authority. Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof if any shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereof.

P.D. No. 1344 of April 2, 1978 expanded the jurisdiction of the National Housing Authority to include the following:

Sec. 1. In the exercise of its function to regulate the real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority shall have exclusive jurisdiction to hear and decide cases of the following nature:

- Unsound real estate business practices;
- Claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman; and
- Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lot or condominium unit against the owner, developer, broker or salesman.

On February 7, 1981, Executive Order No. 648 transferred the regulatory and quasi-judicial functions of the NHA to the Human Settlements Regulatory Commission.

Sec. 8. TRANSFER OF FUNCTIONS. – The regulatory functions of the National Housing Authority pursuant to Presidential Decree Nos. 957, 1216, 1344 and other related laws are hereby transferred to the Commission, together with such applicable personnel, appropriation, records, equipment and property necessary for the enforcement and implementation of such functions. Among these regulatory functions are:

1. Regulation of the real estate trade and business:

...

7. Approval of mortgage on any subdivision lot or condominium unit made by the owner or developer;

...

11. Hear and decide cases on unsound real estate business practices; claims involving refund filed against project owners, developers, dealers, brokers, or salesmen; and cases of specific performance.

Executive Order No. 90 dated December 17, 1986 changed the name of the Human Settlements Regulatory Commission to Housing and Land Use Regulatory Board (HLURB).

Clearly, FRDC's act of mortgaging the condominium project to Bancom and FEBTC, without the knowledge and consent of David as buyer of a unit therein, and without the approval of the NHA (now HLURB) as required by P.D. No. 957, was not only an unsound real estate business practice but also highly prejudicial to the buyer. David, who has a cause of action for annulment of the mortgage, the mortgage foreclosure sale, and the condominium certificate of title that was issued to the UBP and FEBTC as the highest bidders at the sale. The case falls within the exclusive jurisdiction of the NHA (now HLURB) as provided in P.D. No. 957 of 1976 and P.D. No. 1344 of 1978.

...

We hold that the jurisdiction of the HLURB to regulate the real estate trade is broad enough to include jurisdiction over complaints for specific performance of the sale, or annulment of the mortgage, of a condominium unit, with damages.[19]

Petitioner avers that the Union Bank ruling is not applicable in its case, since it had no knowledge of any buyer of the subject lots at the time the mortgage was constituted; that there was no construction in the subject lots at the time petitioner accepted the same as collateral; that the title to the subject property was still in the process of being reconstituted and the loan was in fact meant for the development of the subject lots into an eight-unit townhouse project.

We are not persuaded.

Contrary to petitioner's claim that there were no buyers of the subject lots at the time of the constitution of the mortgage, records show that private respondents Arevalo, Uy, Alfredo Lim and Santos Lim had entered into contracts to sell with Garcia/TransAmerican as early as 1988 for their respective lots. In fact, they, except for Uy, had already fully paid their townhouse units in 1988 without the certificates of title being delivered to them. Garcia mortgaged the subject lots without their knowledge and consent.

While private respondents spouses Soriano bought the subject lots after the constitution of the mortgage in favor of petitioner, the subject lots are, as early as 1988, subdivision lots which as defined under Section 2(e) of P.D. No. 957 to mean any of the lots, whether residential, commercial, industrial, or recreational in a subdivision project[20] are entitled to the protection of P.D. No. 957.

Under Section 18 of P.D. No. 957, it is provided that no mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the authority. Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. As in the Union Bank, the mortgage was constituted on the subject lots in favor of petitioner without the prior written approval from the HLURB, thus HLURB has jurisdiction to rule on the validity of the mortgage.

Notwithstanding that petitioner became the owner of the subject lots by being the highest bidder in the extrajudicial foreclosure sale, it must be remembered that it was first a mortgagee of the same. Since the lot was mortgaged in violation of Section 18 of P.D. No. 957, HLURB has jurisdiction to declare the mortgage void insofar as private respondents are concerned and to annul the foreclosure sale. In *Far East Bank and Trust Co. vs. Marquez*,[21] we held that Section 18 of P.D. No. 957 is a prohibitory law, and acts committed contrary to it are void. We said:

In determining whether a law is mandatory, it is necessary to ascertain the legislative intent, as stated by Sen. Arturo M. Tolentino, an authority on civil law: There is no well-defined rule by which a mandatory or prohibitory law may, in all circumstances, be distinguished from one which is directory, suppletory, or permissive. In the determination of this question, the prime object is to ascertain the legislative intention. Generally speaking, those provisions which are mere matter of form, or which are not material, do not affect any substantial right, and do not relate to the essence of the thing to be done, so that compliance is a matter of convenience rather than substance, are considered to be directory. On the other hand, statutory provisions which relate to matters of substance, affect substantial rights and are the very essence of the thing required to be done, are regarded as mandatory.

In *Philippine National Bank vs. Office of the President*, we had occasion to mull over the intent of P.D. No. 957 thus:

. . . [T]he unmistakable intent of the law [is] to protect innocent lot buyers from scheming subdivision

developers. As between these small lot buyers and the gigantic financial institutions which the developers deal with, it is obvious that the law – as an instrument of social justice – must favor the weak. Indeed, the petitioner Bank had at its disposal vast resources with which it could adequately protect its loan activities, and therefore is presumed to have conducted the usual “due diligence” checking and ascertaining (whether thru ocular inspection or other modes of investigation) the actual status, condition, utilization and occupancy of the property offered as collateral, . . . On the other hand, private respondents obviously were powerless to discover attempt of the land developer to hypothecate the property being sold to them. It was precisely in order to deal with this kind of situation that P.D. No. 957 was enacted, its very essence and intendment being to provide a protective mantle over helpless citizens who may fall prey to the razzmatazz of what P.D. No. 957 termed “unscrupulous subdivision and condominium sellers.”

Concededly, P.D. No. 957 aims to protect innocent lot buyers. Section 18 of the decree directly addresses the problem of fraud committed against buyers when the lot they have contracted to purchase, and which they have religiously paid for, is mortgaged without their knowledge. The avowed purpose of P.D. No. 957 compels the reading of Section 18 as prohibitory – acts committed contrary to it are void. Such construal ensures the attainment of the purpose of the law: to protect lot buyers, so that they do not end up still homeless despite having fully paid for their home lots with their hard-earned cash.[22]

Since the mortgage is void, HLURB’s orders of the cancellation of the sheriff’s certificate of sale, release of the mortgaged lots and delivery of the corresponding titles to respondents who had fully paid the purchase price of the units are but the necessary consequences of the invalidity of the mortgage for the protection of private respondents.

Anent the second issue, petitioner contends that since the titles on their face were free from any claims, liens and encumbrances at the time of the mortgage, it is not obliged under the law to go beyond the certificates of title registered under the Torrens system and had every reason to rely on the correctness and validity of those titles.

We are not convinced.

While the cases[23] cited by petitioner held that the mortgagee is not under obligation to look beyond the certificate of title when on its face, it was free from lien or encumbrances, the mortgagees therein were considered in good faith as they were totally innocent and free from negligence or wrongdoing in the transaction. In this case, petitioner knew that the loan it was extending to Garcia/TransAmerican was for the purpose of the development of the eight-unit townhouses. Petitioner’s insistence that prior to the approval of the loan, it undertook a thorough check on the property and found the titles free from liens and encumbrances would not suffice. It was incumbent upon petitioner to inquire into the status of the lots which includes verification on whether Garcia had secured the authority from the HLURB to mortgage the subject lots. Petitioner failed to do so. We likewise find petitioner negligent in failing to even ascertain from Garcia if there are buyers of the lots who turned out to be private respondents. Petitioner’s want of knowledge due to its negligence takes the place of registration, thus it is presumed to know the rights of respondents over the lot. The conversion of the status of petitioner from mortgagee to buyer-owner will not lessen the importance of such knowledge.[24] Neither will the conversion set aside the consequence of its negligence as a mortgagee.[25]

Judicial notice can be taken of the uniform practice of banks to investigate, examine and assess the real estate offered as security for the application of a loan. We cannot overemphasize the fact that the Bank cannot barefacedly argue that simply because the title or titles offered as security were clean of any encumbrances or lien, that it was thereby relieved of taking any other step to verify the over-reaching implications should the subdivision be auctioned on foreclosure.[26] We find apropos to cite our ruling in *Far East Bank and Trust Co. vs. Marquez*, thus:[27]

Petitioner argues that it is an innocent mortgagee whose lien must be respected and protected, since the title offered as security was clean of any encumbrances or lien. We do not agree.

. . . As a general rule, where there is nothing on the certificate of title to indicate any cloud or vice in the ownership of the property, or any encumbrance thereon, the purchaser is not required to explore further than what the Torrens Title upon its face indicates in quest for any hidden defect or inchoate right that may subsequently defeat his right thereto. This rule, however, admits of an exception as where the purchaser or mortgagee has knowledge of a defect or lack of title in the vendor, or that he was aware of sufficient facts to induce a reasonably prudent man to inquire into the status of the property in litigation.

Petitioner bank should have considered that it was dealing with a [townhouse] project that was already in progress. A reasonable person should have been aware that, to finance the project, sources of funds could have been used other than the loan, which was intended to serve the purpose only partially. Hence, there was need to verify whether any part of the property was already the subject of any other contract involving buyers or potential buyers. In granting the loan, petitioner bank should not have been content merely with a clean title, considering the presence of circumstances indicating the need for a thorough investigation of the existence of buyers like respondent. Having been wanting in care and prudence, the latter cannot be deemed to be an innocent mortgagee.

Petitioner cannot claim to be a mortgagee in good faith. Indeed it was negligent, as found by the Office of the President and by the CA. Petitioner should not have relied only on the representation of the mortgagor that the latter had secured all requisite permits and licenses from the government agencies concerned. The former should have required the submission of certified true copies of those documents and verified their authenticity through its own independent effort.

Having been negligent in finding out what respondent's rights were over the lot, petitioner must be deemed to possess constructive knowledge of those rights.

As to the third issue, petitioner contends that private respondents were negligent in failing to register their contracts to sell in accordance with Section 17 of P.D. No. 957; that private respondents' unregistered contracts to sell are binding only on them and Garcia/TransAmerican but not on petitioner which had no actual or constructive notice of the sale at the time the mortgage was constituted.

We disagree.

Section 17 of P.D. No. 957[28] provides that the seller shall register the contracts to sell with the Register of Deeds of Quezon City. Thus, it is Garcia's responsibility as seller to register the contracts and petitioner should not blame private respondents for not doing so. As we have said earlier, considering petitioner's negligence in ascertaining the existence or absence of authority from HLURB for Garcia/TransAmerican to mortgage the subject lots, petitioner cannot claim to be an innocent purchaser for value and in good faith. Petitioner is bound by private respondents' contracts to sell executed with Garcia/TransAmerican.

The last paragraph of Section 18 of P.D. No. 957 provides that respondents who have not yet paid in full have the option to pay their installment for the lot directly to the mortgagee (petitioner) who is required to apply such payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereof. Thus, petitioner is obliged to accept the payment of remaining unpaid amortizations, without prejudice to petitioner bank's seeking relief against the subdivision developer.[29]

Notably, although no issue was taken on the fact that the case against Garcia/TransAmerican, the developer/seller and mortgagor of the subject lots, was archived for failure to serve summons on him/it as his whereabouts or the office could not be located, it must be stated that Garcia/TransAmerican is not an indispensable party since a final

determination on the validity of the mortgage over the subject lots can be rendered against petitioner. Thus, the absence of Garcia/TransAmerican did not hamper the OAALA from resolving the dispute between private respondents and petitioner. In *China Bank vs. Oliver*,^[30] we held that the mortgagor, who allegedly misrepresented herself to be Mercedes M. Oliver, the registered owner of TCT No. S-50195, is not an indispensable party in a case filed by a person claiming to be the true registered owner, for annulment of mortgage and cancellation of title against the mortgagee, China Bank. We found therein that even without the mortgagor, the true Mercedes Oliver can prove in her complaint that she is the real person referred in the title and she is not the same person using the name who entered into a deed of mortgage with the mortgagee, China Bank.

In the present case, private respondents, in their complaint, alleged that the mortgage was constituted without the prior written approval of the HLURB which is in violation of Section 18 of P.D. No. 957. Petitioner's admission that it granted and released the loan without notifying the HLURB because of its belief that it was not necessary to do so, is fatal to petitioner's defense. As a consequence thereof, the mortgage constituted in favor of petitioner can be declared invalid as against private respondents even without the presence of Garcia/TransAmerican. It is worthy to mention that the assailed decision was rendered merely against petitioner and had not made any pronouncement as to Garcia/TransAmerican's liability to private respondents for the non-completion of the projects; or to herein petitioner, as mortgagee.

The present case merely involves the liability of petitioner bank to private respondents as buyers of the lots and townhouse units.

WHEREFORE, the petition is DISMISSED for lack of merit.

SO ORDERED.

Puno, (Chairman), Callejo, Sr., Tinga, and Chico-Nazario, JJ., concur.

[1] Rollo, pp. 36-44; Penned by Justice Romeo A. Brawner (now Presiding Justice), concurred in by Justices Emeterio C. Cui (retired) and Lourdes K. Tayao-Jaguros (retired).

[2] TCT No. 3352.

[3] TCT No. 3356.

[4] TCT No. 3351.

[5] TCT No. 3354.

[6] TCT No. 3350.

[7] Rollo, pp. 51-54.

[8] Rollo, p. 55.

[9] *Id.*, p. 62.

[10] HLURB Case No. REM-011890-4627.

[11] Per Arbiter Abraham N. Vermudez.

[12] Rollo, pp. 77-79.

[13] *Id.*, pp. 81-83; Docketed as HLURB Case No. REM-A-1072; Per Commissioner Amado B. Deloria,

concurred in by Ex-Officio Commissioners Harry H. Pasimio and Victoria Isabel A. Paredes.

[14] Id., pp. 84-97; Docketed as O.P. Case No. 5018; Penned by then Assistant Executive Secretary for Legal Affairs, Renato C. Corona (now an Associate Justice of this Court).

[15] Id., p. 98.

[16] 210 SCRA 558.

[17] Id., p. 46.

[18] See footnote 16.

[19] Union Bank vs. HLURB, 210 SCRA 558, 561-564.

[20] Section 2(d) of P.D. No. 957

(d) Subdivision project – “Subdivision project” shall mean a tract or parcel of land registered under Act No. 496 which is partitioned primarily for residential purposes into individual lots with or without improvements thereon, and offered, to the public for sale, in cash or in installment terms. It shall include all residential, commercial, industrial and recreational areas, as well as open spaces and other community and public areas in the project.

[21] 420 SCRA 349.

[22] Id, pp. 354-355.

[23] PNB vs. CA, 187 SCRA 735; Planters Development Bank vs. CA, 197 SCRA 698.

[24] Far East Bank and Trust Co. vs. Marquez, supra.

[25] Ibid.

[26] PNB vs. Office of the President, 252 SCRA 5, 15, citing Breta and Hamor vs. Lao, et al., CA-G.R. No. 8728-R promulgated on November 11, 1981.

[27] Supra, pp. 356-357.

[28] Sec. 17. Registration. – All contracts to sell, deeds of sale and other similar instruments relative to the sale or conveyance of the subdivision lots and condominium units, whether or not the purchase price is paid in full, shall be registered by the seller in the Office of the Register of Deeds of the province or city where the property is situated.

...

[29] PNB vs. Office of the President, 252 SCRA 5, 16.

[30] 390 SCRA 263.

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