

**SPS. MA. CARMEN L. JAVELLANA AND VICTOR JAVELLANA,
PETITIONERS, VS. HON. PRESIDING JUDGE, REGIONAL TRIAL
COURT, BRANCH 30, MANILA AND BENITO LEGARDA, RESPONDENTS.**

G.R. No. 139067. November 23, 2004

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a petition for review on certiorari filed by petitioners spouses Ma. Carmen and Victor Javellana, assailing the Resolution dated April 30, 1999[1] of the Court of Appeals dismissing their petition for certiorari, docketed as CA-G.R. SP No. 51833, for being filed out of time; and the Resolution dated June 9, 1999[2] denying petitioners' motion for reconsideration.

The factual background of the case is as follows:

On December 6, 1996, private respondent Benito Legarda filed before the Regional Trial Court of Manila, Branch 30, a complaint for Accion Publiciana and sum of money[3] against petitioners, portions of which read:

.....

- On December 11, 1992, defendants MA. CARMEN L. JAVELLANA and VICTOR C. JAVELLANA entered into a Contract To Sell with plaintiff whereby subject to the terms and conditions therein provided, plaintiff agreed to sell to them its property identified as Lot No. 44, Plan 15 with an area of 139.4 square meters situated in the District of Sampaloc, Manila and covered by Transfer Certificate of Title No. 131305 of the Registry of Deeds of Manila in plaintiff's name for the total sum of P836,400.00 which after a down payment of P83,640.00 the balance of P752,760.00 was to be paid within five (5) years by means of 60 equal monthly installments of P19,943.57 each which included the stipulated interest of 20% per annum. The installments were to be paid every 30th of each month beginning February, 1993.

.....

- Upon the execution of the Contract To Sell, ANNEX "A", defendants MA. CARMEN L. JAVELLANA and VICTOR C. JAVELLANA were placed in possession of the aforementioned lot.

- Nevertheless, since February, 1995 defendants spouses have defaulted in the payment of the monthly installments.

- After the grace period allowed and provided in the Contract To Sell, ANNEX "A", plaintiff exercised its right to cancel the contract by executing a "RESCISSION OF CONTRACT" on October 16, 1996..... Formal notice and copy of the "RESCISSION OF THE CONTRACT," Annex "B", have(sic) duly received by defendants.

- As defendants have made total payments in the sum of P546,453.18 on the "CONTRACT TO SELL", ANNEX "A", up to its rescission on October 16, 1996, ANNEX "B", defendants spouses are entitled to the refund of the cash surrender value equivalent to fifty percent (50%) of the total payments or the sum of

P270,726.59 in accordance with the provisions of Section 3(b) of Republic Act No. 6552 (the MACEDA LAW).

- Plaintiff is ready to pay to defendants spouses the said cash surrender value in the sum of P270,726.59 immediately after the restoration to plaintiff of the possession of Lot No. 44, Plan 15, District of Sampaloc, Manila.
- Restoration of possession of the lot to plaintiff should be effected not later than thirty (30) days from the date of service upon defendants spouses of the Honorable Court's judgment---
- directing plaintiff to pay defendant spouses the sum of P270,726.59 representing the cash surrender value of the total payments made by them;
- ordering defendants to vacate forthwith Lot No. 44, Plan 15, District of Sampaloc, Manila and restore possession to plaintiff.[4]

On March 16, 1998, petitioners filed a motion to dismiss[5]alleging that the trial court has no jurisdiction over the case. Private respondent filed an opposition thereto[6] and a reply was filed by petitioners.[7]

In an Order dated September 30, 1998,[8] the trial court denied petitioners' motion to dismiss, a copy of which was received by petitioners on November 3, 1998. Petitioners' motion for reconsideration was likewise denied in an Order dated December 28, 1998,[9] and received by petitioners on January 18, 1999. Subsequently, petitioners filed their Answer Ad Abundante Cautelam with Compulsory Counterclaim for damages and attorney's fees.[10]

Petitioners then filed the subject petition for certiorari under Rule 65[11] with the Court of Appeals raising this issue:

WHETHER OR NOT PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HOLDING THAT THE REGIONAL TRIAL COURT OF MANILA (BRANCH 30) HAS JURISDICTION OVER THE SUBJECT MATTER OF THE COMPLAINT FILED BY THE PRIVATE RESPONDENT.

On April 30, 1999, the Court of Appeals issued its assailed Resolution dismissing CA-G.R. SP No. 51833 for being filed out of time. Petitioners' motion for reconsideration was denied in a Resolution dated June 9, 1999.

Hence, the present petition which raises the following issues:

- WHETHER OR NOT THE FAILURE OF THE PETITIONERS TO TIMELY FILE THE PETITION FOR CERTIORARI AMOUNTS TO ESTOPPEL DESPITE THE FACT THAT THE ISSUE TO BE RESOLVED INVOLVES THE JURISDICTION OF THE RESPONDENT COURT.
- WHETHER OR NOT THE REGIONAL TRIAL COURT OF MANILA (BRANCH 30) HAS JURISDICTION OVER THE SUBJECT MATTER OF THE COMPLAINT FILED BY PRIVATE RESPONDENT.

Petitioners submit that there is a need to reconsider the resolutions of the Court of Appeals since the controversy involves the jurisdiction of the trial court; that rules of procedure should not be applied in a very rigid and technical sense so as not to override substantial justice; that the subject property is a subdivision lot as expressly stipulated in their Contract to Sell; that the dispute between petitioners and respondent involves a subdivision project as defined under Section 2 of P.D. No. 957, hence it is cognizable by the National Housing Authority, now Housing and Land Use Regulatory Board (HLURB),[12] which has exclusive jurisdiction to regulate the real estate trade and business;[13] that HLURB has jurisdiction even over complaints instituted by developers against subdivision buyers.

In his Comment, private respondent alleges: The title of the case given by petitioners is misleading since it should be Benito Legarda, Inc. and not Benito Legarda; that nowhere in their petition did petitioners challenge the findings of the Court of Appeals that they filed their petition six days late; that they are estopped from questioning the jurisdiction of the trial court since after their motion to dismiss was denied by the trial court, they filed their (1) Answer Ad Abundante Cautelam with Compulsory Counterclaim for damages and attorney's fees; and (2) Pre-trial brief where their counterclaim for damages and attorney's fees were also enumerated; that respondent being the lot owner seeking to enforce the terms and conditions of the Contract To Sell with petitioners is not one of those instances that would fall within the jurisdiction of the HLURB. Petitioners filed their Reply.

We gave due course to the petition and as required, the parties submitted their respective memoranda.

There is no question that at the time petitioners filed CA-G.R. SP No. 51833 on March 19, 1999, the applicable law was Section 4, Rule 65 of the 1997 Rules of Civil Procedure, as amended by the Resolution of July 21, 1998, which provides:

Sec. 4. Where petition filed. - The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.

If the petitioner had filed a motion for new trial or reconsideration in due time after notice of said judgment, order or resolution, the period herein fixed shall be interrupted. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of such denial. No extension of time to file the petition shall be granted except for the most compelling reason and in no case exceeding fifteen (15) days. (Emphasis ours.)

On the basis thereof, the Court of Appeals found the petition belatedly filed, thus:

Applying the aforequoted provision of the rule, since petitioners received a copy of the Order dated September 30, 1998 on NOVEMBER 3, 1998 and they filed a Motion for Reconsideration thereof on NOVEMBER 9, 1998, six (6) days had elapsed; hence petitioners have a remaining period of FIFTY-FOUR (54) DAYS from receipt of the denial of their Motion for Reconsideration within which to file petition for certiorari with this Court.

They received a copy of the Order dated December 28, 1998, denying their Motion for Reconsideration on January 18, 1999; hence, they have until MARCH 13, 1999 within which to file a petition for certiorari. However, the present petition for certiorari was filed only on MARCH 19, 1999, or six (6) days late.[14]

However, during the pendency of this case, A.M. No. 00-2-03-SC amended Section 4, Rule 65 which took effect on September 1, 2000, as follows:

Sec. 4. When and where petition filed. – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days. (Emphasis ours.)

We rule that the amendment is deemed applicable to the instant case. As held in *San Luis vs. CA*:^[15]

Under this amendment, the 60-day period within which to file the petition starts to run from receipt of notice of the denial of the motion for reconsideration, if one is filed. In our decision in *Systems Factors Corporation and Modesto Dean vs. NLRC, et al.* reiterated in *Unity Fishing Development Corp. and/or Antonio Dee vs. Court of Appeals, et al.* the new period was made applicable to pending cases, such as in the case at bar. Settled is the rule that remedial statutes or statutes relating to remedies or modes of procedure, which do not create new rights or take away vested rights but only operate in furtherance of the remedy or confirmation of rights already existing, do not come within the purview of the general rule against the retroactive operation of statutes. Procedural laws are construed to be applicable to actions pending and undetermined at the time of their passage, and are deemed retroactive in that sense and to that extent. As a general rule, the retroactive application of procedural laws cannot be considered violative of any personal rights because no vested right may attach to nor arise therefrom. (Emphasis ours.)

Consequently, counting the 60 days from the time petitioners received the Order of the trial court denying their motion for reconsideration on January 18, 1999, the petition filed with the Court of Appeals on March 19, 1999, was within the reglementary period of filing the same.

Considering the foregoing, the Court of Appeals could take cognizance of the petition for certiorari filed before it. However, instead of remanding the case to it which would unduly prolong the trial of the main case, we shall act on the issue presented, i.e., whether the subject matter of this case falls under the exclusive jurisdiction of the HLURB, which is a question of law.

We rule in the negative.

Under Section 1 of P.D. No. 1344, the National Housing Authority (now HLURB) has exclusive jurisdiction to hear and decide the following, thus:

SECTION 1. In the exercise of its functions 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, dealer, broker or salesman.

It is a settled rule that jurisdiction over the subject matter is determined by the allegations in the complaint. Jurisdiction is not affected by the pleas or the theories set up by the defendant in an answer or a motion to dismiss. Otherwise, jurisdiction would become dependent almost entirely upon the whims of the defendant.^[16] Accordingly, we can resolve the issue presented before us by examining the allegations in the complaint filed by respondent in the trial court, docketed as Civil Case No. 96-81225, for *accion publiciana* and sum of money.

A reading of the complaint does not show that the subject lot was a subdivision lot which would fall under the jurisdiction of the HLURB. The complaint clearly described the subject lot as Lot No. 44, Plan 15 with an area of 139.4 sq. meters situated in the District of Sampaloc covered by Transfer Certificate of Title No. 131305 of the Registry of Deeds of Manila. We note that such description was used when referring to the subject lot. What

appears from the complaint was the fact that the subject lot was sold to petitioners in an ordinary sale of a lot on installment basis; that petitioners allegedly defaulted in the payment of their monthly installments for which reason respondent seeks to recover possession thereof. Thus, the trial court has jurisdiction over the case.

Petitioners' insistence that the subject lot is a subdivision lot, thus cognizable by HLURB is anchored on paragraph 6 of their Contract To Sell which provides:

.....

Notwithstanding the foregoing provisions of the first paragraph of this Sixth Clause no installment payment make (sic) by the SECOND PARTY shall be forfeited in favor of the FIRST PARTY, when the SECOND PARTY, after giving notice to the FIRST PARTY, voluntarily desists from further payment on grounds of lack of development of the FIRST PARTY'S property as a regular subdivision project and within the time limit that had been set for such development, insofar as this requirement may apply to the FIRST PARTY'S property considering that the lots being sold by the FIRST PARTY had been inherited by the FIRST PARTY'S immediate predecessors in interest and constituted scattered fragments of widely separated pre-war subdivisions approved according to the official pre-requisites in force at the time.

We are not convinced.

Both petitioners and respondent failed to attach in their pleadings filed before the trial court, a copy of the Contract To Sell to show the terms and conditions embodied therein. A mere reference to the above-quoted paragraph, standing alone, does not establish that the subject lot is a subdivision lot. What it merely states is that petitioners may invoke the grounds of lack of development of respondent's property as a regular subdivision project and within the time limit set, if such requirements are applicable to the subject lot, for voluntarily desisting from further payments and their installments paid would not be forfeited. There is not even a certainty that those grounds apply to the subject lot. In fact, the use of the phrase "regular subdivision project" does not automatically make the instant case fall under the jurisdiction of the HLURB. In *Sps. Kakilala vs. Faraon*,^[17] notwithstanding the allegations of petitioners in their complaint that the subject lot is "a subdivision lot" in a "subdivision project," we held that such allegations were not sufficient to vest the HLURB of jurisdiction over the case, thus:

Jurisdiction is determined by the averments of the complaint and not by the defense contained in the answer. Hence, the jurisdictional issue involved here shall be determined on the basis of the allegations of petitioner's complaint before the HLURB. Petitioners simply alleged therein that the subject lot is "a subdivision lot" in "a subdivision project." Under Section 2(d) and (e) of PD 957, "subdivision project" and "subdivision lot" are defined as follows:

d) Subdivision project – "Subdivision project" shall mean a tract or a 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.

e) Subdivision lot. – "Subdivision lot" shall mean any of the lots, whether residential, commercial, industrial, or recreational, in a subdivision project.

There is no allegation in the complaint that the lot purchased by petitioners is part of a tract of land partitioned primarily for residential purposes into individual lots and offered to the public for sale. There is likewise no allegation that the tract of land includes recreational areas and open spaces. Nor does the "Contract to Sell", which forms part of the complaint, describe the subject property as a subdivision lot. What the contract strongly suggests is that the property is simply a lot offered by respondents, as vendors, to the petitioners, as vendees, for sale on installment. As can be clearly gleaned from the same contract, respondents are not acting as subdivision

owners, developers, brokers or salesmen, nor are they engaged in the real estate business. What is plain is that the parties are acting only as ordinary sellers and buyers of a specific lot, a portion of a big tract of land co-owned by the heirs of Mariano Faraon. Neither are there undertakings specified in the contract that respondents shall develop the land, like providing for the subdivision concrete roads and sidewalks, street lights, curbs and gutters, underground drainage system, independent water system, landscaping, developed park, and 24-hour security guard service. Even the rights and obligations of the sellers and buyers of a subdivision lot are not provided in the agreement. All these provisions are usually contained in a standard contract involving a sale of a subdivision lot.

WHEREFORE, the Resolutions of the Court of Appeals dated April 30, 1999 and June 9, 1999 in CA- G.R. SP No. 51833 are SET ASIDE. The Orders dated September 30, 1998 of the trial court denying petitioners' motion to dismiss and December 28, 1998 denying their motion for reconsideration are hereby AFFIRMED.

SO ORDERED.

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

[1] CA-G.R. SP No. 51833; Penned by Justice Quirino D. Abad Santos, Jr. (now retired), concurred in by Justices Bernardo Ll. Salas (now retired) and Candido V. Rivera (now retired); Rollo, pp. 29-30.

[2] Rollo, p. 32.

[3] Docketed as Civil Case No. 96-81225.

[4] Rollo, pp. 33-35.

[5] Id., at pp. 38-41.

[6] Id., at pp. 43-44.

[7] Id., at pp. 46-49.

[8] Id., at p. 50; Per Judge Senecio O. Ortile.

[9] Id., at pp. 51-54.

[10] Id., at pp. 113-120.

[11] 1997 Rules of Civil Procedure.

[12] Per Executive Order No. 90, s. 1986.

[13] P.D. No. 1344, Empowering the National Housing Authority to issue writ of execution in the enforcement of its decision under Presidential Decree No. 957.

[14] Rollo, p. 30.

[15] 365 SCRA 279, 285 (2001).

[16] Sta. Clara Homeowners' Association vs. Gaston, 374 SCRA 396, 409 (2002), citing Commart (Phils.), Inc. vs. Securities & Exchange Commission, 198 SCRA 73 (1991).

[17] G.R. No. 143233, October 18, 2004.

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