

FAR EAST BANK & TRUST CO., PETITIONER, VS. ARTURO L. MARQUEZ, RESPONDENT.

G.R. No. 147964. January 20, 2004

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Under PD 957, the mortgage of a subdivision lot or a condominium unit is void, if executed by a property developer without the prior written approval of the Housing and Land Use Regulatory Board (HLURB). That an encumbrance has been constituted over an entire property, of which the subject lot or unit is merely a part, does not affect the invalidity of the lien over the specific portion at issue.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, assailing the April 27, 2001 Decision[2] of the Court of Appeals (CA) in CA-GR SP No. 56813. The decretal portion of the Decision reads as follows:

“WHEREFORE, the petition for review is DENIED, for lack of merit.”[3]

The Facts

The undisputed facts of the case are summarized in the CA Decision as follows:

“1. On 13 March 1989, respondent [Arturo] Marquez entered into a Contract to Sell with Transamerican Sales and Exposition (‘TSE’), through the latter’s Owner/General Manager Engr. Jesus Garcia, involving a 52.5 sq. m. lot in Diliman, Quezon City with a three-storey townhouse unit denominated as Unit No. 10 to be constructed thereon for a total consideration of P800,000.00. The parcel of land in question is a portion of that property covered by TCT No. 156254 (now TCT No. 383697).

“2. On 22 May 1989, TSE obtained a loan from petitioner FEBTC in the amount of P7,650,000.00 and mortgaged the property covered by TCT No. 156254.

“3. For failure of TSE to pay its obligation, petitioner FEBTC extrajudicially foreclosed the real estate mortgage and became the highest bidder (P15.7 million) in the auction sale conducted for the purpose.

“4. Respondent had already paid a total of P600,000.00 when he stopped payment because the construction of his townhouse unit slackened. He discovered later on that this was due to the foreclosure.

“5. Consequently, [respondent] instituted a case with the Office of Appeals, Adjudication and Legal Affairs (‘OAALA’) of the Housing and Land Use Regulatory Board (‘HLURB’) on 29 January 1991 entitled ‘Arturo Marquez vs. Transamerican Sales, et al’ docketed as HLRB Case No. REM-012991-4712 to compel TSE to complete the construction of the townhouse and to prevent the enforceability of the extra-judicial foreclosure made by petitioner FEBTC and to have the mortgage between TSE and petitioner FEBTC declared invalid, said mortgage having been entered into by the parties in violation of section 18 of P.D. 957.

“6. The OAALA ruled in favor of the respondent via a Decision dated 11 November 1991, the decretal portion of which reads as follows:

‘WHEREFORE, premises considered, judgment is hereby rendered as follows:

- Declaring the mortgage executed by and between x x x Engr. Jesus Garcia/Transamerican Sales and Exposition and Far East Bank and Trust Company to be unenforceable against [respondent];
- Ordering the x x x Far East Bank and Trust Company to compute and/or determine the loan value of the [respondent] who was not able to complete or make full payment and accept payment and/or receive the amortization from the [respondent] and upon full payment to deliver the title corresponding to Unit No. 10 of that Townhouse Project located at No. 10 Panay Ave., Quezon City;
- Ordering the Register of Deeds of Quezon City to cancel the annotations of the mortgage indebtedness between x x x Engr. Jesus Garcia and Far East 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 Far East Bank and Trust Company on Transfer Certificate of Title No. 156254 to which the lot subject of this case is a part thereof, without prejudice to its right to require x x x Engr. Jesus Garcia/Transamerican Sales and Exposition to constitute new collateral in lieu of said title sufficient in value to cover the mortgage obligation.’

xxx xxx xxx’

“7. Petitioner FEBTC interposed a Petition for Review from the decision issued by the OAALA with the Board of Commissioners of the HLURB, docketed as HLRB Case No. REM-A-1126, which in a Decision dated 18 July 1994 affirmed in toto the OAALA decision.

“8. Hence, petitioner FEBTC appealed the Decision dated 18 July 1994 to the Office of the President xxx.

xxx xxx xxx’

“9. The Office of the President dismissed the appeal and affirmed the Decision dated 18 July 1994 x x x.”[4] (Citations omitted)

Petitioner then elevated the case to the CA through a Petition for review under Rule 43.

Ruling of the Court of Appeals

The CA found that petitioner had known that a “subdivision was forthcoming inasmuch as the loan was obtained by TSE to partially finance the construction of a 20-unit townhouse project, as stated in the ‘Whereas’ clause in the mortgage contract.”[5] Thus, the CA ruled that “petitioner should not have merely relied on the representation of TSE that it had obtained the approval and authorization of the proper government agencies but should have required the submission of said documents.”[6]

Further, the appellate court found that the Certification against forum shopping attached to the Petition before it had not been made under oath, in violation of the Rules of Court.

Hence, this Petition.[7]

The Issues

Petitioner raises the following issues for our consideration:

“Whether or not the mortgage contract violated Section 18 of P.D. 957, hence, void insofar as third persons are concerned.

“Assuming arguendo that the mortgage contract violated Section 18 of P.D. 957, whether or not the remedy granted and imposed by the HLURB, as sustained by the Office of the President and the Court of Appeals, is proper.

“Whether or not the inadvertent failure of the notary public to affix his signature on the Certification against forum shopping executed by petitioner FEBTC in connection with the Petition for Review it filed with the Court of Appeals provided a sufficient basis for the dismissal of the appeal.”[8]

The Court's Ruling

The Petition is partly meritorious.

First Issue:

Violation of Section 18 of PD 957

Section 18 of PD 957[9] provides as follows:

“SEC. 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.”

Petitioner contends that the above-quoted provision does not apply to this case, because the land mortgaged to it was one whole parcel, not of a “subdivision lot,” but of an unsubdivided one. It insists that the written approval of the National Housing Authority (now the Housing and Land Use Regulatory Board) was not a requirement for the constitution of a mortgage on the property.

We are not persuaded. It is undisputed that the subject 52.5-square-meter lot with a three-storey town house unit denominated as Unit No. 10 (the “lot”) is part of the property mortgaged to petitioner and is covered by TCT No. 156254. The lot was technically described and segregated in a Contact to Sell that had been entered into before the mortgage loan was contracted. The fact that the lot had no separate TCT did not make it less of a “subdivision lot” entitled to the protection of PD 957.

That the subject of the mortgage loan was the entire land, not the individual subdivided lots, does not take the loan beyond the coverage of Section 18 of PD 957. Undeniably, the lot was also mortgaged when the entire parcel of land, of which it was a part, was encumbered.

Petitioner also contends that Section 18 of PD 957 is merely a directory provision, noncompliance with which does not render the mortgage transaction void.

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.”[10]

In *Philippine National Bank v. Office of the President*, [11] we had occasion to mull over the intent of PD 957 thus:

“x x x [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, x x x On the other hand, private respondents obviously were powerless to discover the 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. 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. 957 termed ‘unscrupulous subdivision and condominium sellers.’”[12]

Concededly, PD 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 PD 957 compels the reading of Section 18 as prohibitory -- acts committed contrary to it are void.[13] 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.

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 encumbrance or lien. We do not agree.

“x x x. 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.”[14]

Petitioner bank should have considered that it was dealing with a town house 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.[15]

Second Issue:**Remedy Granted**

To retain possession of the lot, petitioner claims that its rights as the buyer in the foreclosure sale are superior to those of respondent.

We are not persuaded. Aside from being a buyer of the lot, petitioner was also the mortgagee, which, as previously discussed, was presumed to know the rights of respondent over that lot. The conversion of the status of the former from mortgagee to buyer-owner will not lessen the importance of such knowledge. Neither will the conversion set aside the consequences of its negligence as a mortgagee.

The lot was mortgaged in violation of Section 18 of PD 957. Respondent, who was the buyer of the property, was not notified of the mortgage before the release of the loan proceeds by petitioner. Acts executed against the provisions of mandatory or prohibitory laws shall be void.^[16] Hence, the mortgage over the lot is null and void insofar as private respondent is concerned.^[17]

The remedy granted by the HLURB and sustained by the Office of the President is proper only insofar as it refers to the lot of respondent. In short, the mortgage contract is void as against him. Since there is no law stating the specifics of what should be done under the circumstances, that which is in accord with equity should be ordered. The remedy granted by the HLURB in the first and the second paragraphs of the dispositive portion of its Decision insofar as it referred to respondent's lot is in accord with equity.

The HLURB, however, went overboard in its disposition in paragraphs 3 and 4, which pertained not only to the lot but to the entire parcel of land mortgaged. Such ruling was improper. The subject of this litigation is limited only to the lot that respondent is buying, not to the entire parcel of land. He has no personality or standing to bring suit on the whole property, as he has actionable interest over the subject lot only.

Third Issue:**Certification Against Forum Shopping**

We find no cogent reason to alter the ruling of the CA regarding the Certification against forum shopping that did not bear the notary public's signature. It is worth emphasizing that despite petitioner's noncompliance with the technical requirements regarding the Certification, the CA still ruled on the merits of the case.^[18] In fact, there is no more need to pass upon this issue inasmuch as, on the merits, we have already turned down petitioner's plea against respondent.

WHEREFORE, the Petition is PARTLY GRANTED. The Decision of the HLURB is AFFIRMED, but it shall be applicable only to the 52.5-square-meter lot with a three-storey town house unit denominated as Unit No. 10. No costs.

SO ORDERED

Davide Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 8-32.

[2] Id., pp. 35-46. Sixth Division. Penned by Justice Marina L. Buzon, with the concurrence of Justices Eubulo G. Verzola (Division chairman) and Bienvenido I. Reyes (member).

[3] CA Decision, p. 12; rollo, p. 45.

[4] Id., pp. 1-5 & 35-39.

[5] Id., pp. 12 & 45.

[6] Ibid.

[7] This case was deemed submitted for resolution on October 17, 2002, upon receipt by the Court of petitioner's Memorandum signed by Attys. Armando M. Marcelo, Francisco J. Rivera and Joseph B. Sagandoy Jr. Respondent's Memorandum, signed by Atty. Wendell E. Coronel, was filed with the Court on September 2, 2002.

[8] Petitioner's Memorandum, p. 5; rollo, p. 207. Original in upper case.

[9] Entitled "Regulating the Sale of Subdivision Lots and Condominiums, Providing Penalties for Violations Thereof."

[10] Tolentino, Commentaries and jurisprudence on the Civil Code of the Philippines, Vol. I (1990 ed.), p. 26.

[11] 322 Phil. 6, January 18, 1996.

[12] Id., p. 13, per Panganiban, J.

[13] Article 5 of the Civil Code states:

"Art. 5. Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity."

[14] Col. De la Merced v. Government Service Insurance System, 417 Phil. 324, 338, September 11, 2001, per Ynares-Santiago, J.; citing State Investment House, Inc. v. Court of Appeals, 254 SCRA 368, March 5, 1996.

[15] Ibid.

[16] Art. 5 of the Civil Code.

[17] PNB v. Office of the President, *supra*.

[18] See CA Decision, pp. 7-12; rollo, pp. 41-45.

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