

JACOBUS BERNHARD HULST, PETITIONER, VS. PR BUILDERS, INC., RESPONDENT.

G.R. No. 156364. September 25, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

This resolves petitioner's Motion for Partial Reconsideration.

On September 3, 2007, the Court rendered a Decision[1] in the present case, the dispositive portion of which reads:

WHEREFORE, the instant petition is GRANTED. The Decision dated October 30, 2002 of the Court of Appeals in CA-G.R. SP No. 60981 is REVERSED and SET ASIDE. The Order dated August 28, 2000 of HLURB Arbiter Ma. Perpetua Y. Aquino and Director Belen G. Ceniza in HLRB Case No. IV6-071196-0618 is declared NULL and VOID. HLURB Arbiter Aquino and Director Ceniza are directed to issue the corresponding certificates of sale in favor of the winning bidder, Holly Properties Realty Corporation. Petitioner is ordered to return to respondent the amount of P2,125,540.00, without interest, in excess of the proceeds of the auction sale delivered to petitioner. After the finality of herein judgment, the amount of P2,125,540.00 shall earn 6% interest until fully paid.

SO ORDERED.[2] (Emphasis supplied)

Petitioner filed the present Motion for Partial Reconsideration[3] insofar as he was ordered to return to respondent the amount of P2,125,540.00 in excess of the proceeds of the auction sale delivered to petitioner. Petitioner contends that the Contract to Sell between petitioner and respondent involved a condominium unit and did not violate the Constitutional proscription against ownership of land by aliens. He argues that the contract to sell will not transfer to the buyer ownership of the land on which the unit is situated; thus, the buyer will not get a transfer certificate of title but merely a Condominium Certificate of Title as evidence of ownership; a perusal of the contract will show that what the buyer acquires is the seller's title and rights to and interests in the unit and the common areas.

Despite receipt of this Court's Resolution dated February 6, 2008, respondent failed to file a comment on the subject motion.

The Motion for Partial Reconsideration is impressed with merit.

The Contract to Sell between petitioner and respondent provides as follows:

Section 3. TITLE AND OWNERSHIP OF UNIT

- Upon full payment by the BUYER of the purchase price stipulated in Section 2 hereof, x x x, the SELLER shall deliver to the BUYER the Deed of Absolute Sale conveying its rights, interests and title to the UNIT and to the common areas appurtenant to such UNIT, and the corresponding Condominium Certificate of Title in the SELLER's name; x x x

- The Seller shall register with the proper Registry of Deeds, the Master Deed with the Declaration of Restrictions and other documents and shall immediately comply with all requirements of Republic Act No. 4726 (The Condominium Act) and Presidential Decree No. 957 (Regulating the Sale of Subdivision Lots and Condominiums, Providing Penalties for Violations Thereof). It is hereby understood that all title, rights and interest so conveyed shall be subject to the provisions of the Condominium Act, the Master Deed with Declaration of Restrictions, the Articles of Incorporation and By-Laws and the Rules and Regulations of the Condominium Corporation, zoning regulations and such other restrictions on the use of the property as annotated on the title or may be imposed by any government agency or instrumentality having jurisdiction thereon.[4] (Emphasis supplied)

Under Republic Act (R.A.) No. 4726, otherwise known as the Condominium Act, foreign nationals can own Philippine real estate through the purchase of condominium units or townhouses constituted under the Condominium principle with Condominium Certificates of Title. Section 5 of R.A. No. 4726 states:

SECTION 5. Any transfer or conveyance of a unit or an apartment, office or store or other space therein, shall include the transfer or conveyance of the undivided interest in the common areas or, in a proper case, the membership or shareholdings in the condominium corporation; Provided, however, That where the common areas in the condominium project are held by the owners of separate units as co-owners thereof, no condominium unit therein shall be conveyed or transferred to persons other than Filipino citizens or corporations at least 60% of the capital stock of which belong to Filipino citizens, except in cases of hereditary succession. Where the common areas in a condominium project are held by a corporation, no transfer or conveyance of a unit shall be valid if the concomitant transfer of the appurtenant membership or stockholding in the corporation will cause the alien interest in such corporation to exceed the limits imposed by existing laws. (Emphasis supplied)

The law provides that no condominium unit can be sold without at the same time selling the corresponding amount of rights, shares or other interests in the condominium management body, the Condominium Corporation; and no one can buy shares in a Condominium Corporation without at the same time buying a condominium unit. It expressly allows foreigners to acquire condominium units and shares in condominium corporations up to not more than 40% of the total and outstanding capital stock of a Filipino-owned or controlled corporation. Under this set up, the ownership of the land is legally separated from the unit itself. The land is owned by a Condominium Corporation and the unit owner is simply a member in this Condominium Corporation.[5] As long as 60% of the members of this Condominium Corporation are Filipino, the remaining members can be foreigners.

Considering that the rights and liabilities of the parties under the Contract to Sell is covered by the Condominium Act wherein petitioner as unit owner was simply a member of the Condominium Corporation and the land remained owned by respondent, then the constitutional proscription against aliens owning real property does not apply to the present case. There being no circumvention of the constitutional prohibition, the Court's pronouncements on the invalidity of the Contract of Sale should be set aside.

WHEREFORE, the Motion for Partial Reconsideration is GRANTED. Accordingly, the Decision dated September 3, 2007 of the Court is MODIFIED by deleting the order to petitioner to return to respondent the amount of P2,125,540.00 in excess of the proceeds of the auction sale delivered to petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Reyes, JJ., concur.

[1] Rollo, p. 593.

[2] Rollo, p. 614.

[3] Id. at 666.

[4] Rollo, p. 294.

[5] See *City Treasurer of Makati v. BA Lepanto Condominium Corporation*, G.R. No. 154993, October 25, 2005, 474 SCRA 258.

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