MA. ELIZABETH KING AND MARY ANN KING, PETITIONERS, VS. MEGAWORLD PROPERTIES AND HOLDINGS, INC., RESPONDENT.

G.R. NO. 162895. August 16, 2006

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is a petition for review on certiorari of the Decision[1] dated January 27, 2004 and the Resolution[2] dated March 24, 2004 of the Court of Appeals in CA-G.R. SP No. 80560. The Court of Appeals upheld the Decision[3] dated August 1, 2003 of the Office of the President in O.P. Case No. 99-J-8861 which affirmed the Housing and Land Use Regulatory Board (HLURB) Arbiter's decision denying petitioners' prayer for moral damages and the revocation of respondent's certificate and license to sell.

Petitioners purchased one unit of the Sherwood Heights Townhouse from respondent.[4] A year after, cracks and leaks appeared in the perimeter fence of the unit. On the request of petitioners, respondent's engineers repaired the fence. Four months after, the same cracks and leaks reappeared. The petitioners requested that the affected area of the fence be demolished, and a stronger foundation with better construction materials be built. Because of respondent's failure to repair the fence, rainwater seeped through the wall and the floor. Various insects also proliferated. This prompted petitioners to institute a complaint before the HLURB Expanded National Capital Region Field Office. They alleged violation of warranty and prayed for the revocation of petitioner's certificate and license to sell, moral and exemplary damages, and execution of the necessary repairs.[5]

The HLURB Arbiter found that the cracks and leaks were caused by the soft soil movement of the adjacent property. Further, the Arbiter also found that the additional load from the converted lanai area, which was altered without the consent of respondent as required in the deed of restrictions,[6] aggravated the cracks. He also found that said cracks and leaks were superficial and did not affect the structural integrity of the main structure.[7]

Since respondent had already completed the soil stabilization measure of the adjoining lot even before the termination of the case,[8] the Arbiter merely directed respondent to repair the cracks and leaks, and pay petitioners P20,000.00 as attorney's fees.[9] He did not award moral damages since petitioners failed to prove fraud and bad faith.[10]

Petitioners went to the Board of Commissioners reiterating the same appeal before the Expanded National Capital Region Field Office. After the case was submitted for decision, they amended their prayer and asked for payment of actual damages and the refund of all payments made in the purchase of the unit. They also moved for the presentation of supplemental evidence, in the form of VHS tape, without furnishing respondent a copy of the tape. The Board granted the motion but did not give respondent an opportunity to examine and authenticate the contents of the tape.

On August 24, 1999, the Board of Commissioners of the HLURB annulled the Arbiter's decision and ordered respondent to refund 1.9 million pesos with interest, and to pay P120,000.00 as moral and exemplary damages and attorney's fees.[11] On appeal, the Office of the President ruled that the cracks and leaks appearing in the

perimeter fence did not affect the structural integrity of the townhouse, and that there was no proof of fraud or bad faith on the part of the respondents. It set aside the Board's decision and affirmed the Arbiter.[12] Petitioners sought reconsideration but it was denied.[13]

When petitioners appealed, the appellate court denied the petition and the subsequent motion for reconsideration based on its finding that the townhouse and its foundation were structurally sound.

Petitioners now come before us raising the following issues:

> I
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> WHETHER OR NOT THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN TOTALLY DISREGARDING THE FINDING OF FACTS BY THE BOARD OF COMMISSIONERS OF THE HOUSING AND LAND USE REGULATORY BOARD.
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> II
>
> WHETHER OR NOT THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN NOT APPLYING ARTICLE 1173 OF THE CIVIL CODE.[14]

Simply stated, the issues for our resolution are the following: (1) Did the cracks and leaks in the perimeter fence affect the structural integrity of the unit to justify the refund of petitioners' payments for the unit? (2) Are petitioners entitled to moral and exemplary damages?

Petitioners aver that respondent breached the warranty of the townhouse when it used substandard materials. They maintain that the cracks and leaks, which were caused by the soft soil movement of the adjacent lot, could have been prevented if the respondent executed the soil stabilization of the adjacent lot prior to the construction of the townhouse and the perimeter fence. Petitioners insist that respondent should be held liable for moral and exemplary damages because of its negligence.

For its part, respondent does not contest that the cracks and leaks in the perimeter fence were caused by the soft soil movement of the adjacent lot. Nonetheless, it maintains that the townhouse unit has its own independent foundation separate and distinct from the perimeter fence and is not affected by the loosening of the soil of the adjacent lot. It also maintains that the cracks did not affect the structural integrity of the main house. It declares that it had already completed the soil stabilization measure for the perimeter fence, and is willing to do the necessary repairs. In sum, it should not be made to refund the purchase price.

Respondent further claims it is not liable for moral and exemplary damages. Petitioners have not shown that respondent intended to do wrong, cause damage, employ fraud, or act in bad faith. It points out that petitioners did not present any expert witness nor a structural engineer to support their claim.

Prefatorily, we reiterate the well-settled rule that, when supported by substantial evidence and absent any clear showing of abuse, arbitrariness or capriciousness, findings of fact of administrative agencies, especially when affirmed by the Court of Appeals, are binding and conclusive upon this Court.[15] After study of the evidence on record, we find no reason to depart from this rule.

Under the original plan, the perimeter fence was not part of the townhouse. It was attached to the main unit when the lanai area was converted into an indoor dining room. This renovation was without prior consent of the respondent as required in the deed of restrictions appended to the deed of sale. Hence, in determining the townhouse's structural soundness, only the original structure should be the point of reference.

There is nothing on record to show that the original structure was unstable. One who alleges a fact has the burden

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of proving it.[16] Aside from the pictures and videos of the cracked perimeter fence, petitioners did not present any other evidence. These pictures and videos are insufficient to show that the townhouse's foundation was structurally defective. The cracks could be merely superficial. Other than that, the presumption is that there was no irregularity regarding the approval of the building plan. Moreover, respondent presented an affidavit of a structural engineer attesting that the cracks and leaks on the perimeter fence do not affect the structural integrity of the townhouse. Absent any showing that the townhouse structure was unstable and unsafe for habitation, petitioners are not entitled to a refund.

For moral and exemplary damages to be awarded, the party must prove bad faith. Otherwise, the presumption of good faith must be upheld.[17] In this case, the petitioners failed to prove their allegation of bad faith. Hence, we cannot award moral and exemplary damages.

WHEREFORE, the petition is DENIED for lack of merit. The Decision dated January 27, 2004 and Resolution dated March 24, 2004 of the Court of Appeals in CA-G.R. SP No. 80560 are hereby AFFIRMED.

Costs against petitioners.

SO ORDERED.

Carpio, Carpio Morales, Tinga and Velasco, Jr., JJ., concur.

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[1] Rollo, pp. 29-43. Penned by Associate Justice Martin S. Villarama, Jr., with Associate Justices Mario L. Guariña III, and Jose C. Reyes, Jr. concurring.

[2] Id. at 44.

[3] Id. at 129-133.

[4] Id. at 328-330.

[5] Id. at 326-327.

[6] Id. at 319-323.

[7] Id. at 256.

[8] Ibid.

[9] Id. at 258.

[10] Id. at 257.

[11] Id. at 194.

[12] Id. at 133.

[13] Id. at 108.

[14] Id. at 15.

[15] Utto v. Commission on Elections, G.R. No. 150111, January 31, 2002, 375 SCRA 523, 533-534.

[16] Matugas v. Commission on Elections, G.R. No. 151944, January 20, 2004, 420 SCRA 365, 372.

[17] Andrade v. Court of Appeals, G.R. No. 127932, December 7, 2001, 371 SCRA 555, 565.

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