

**TRI-CORP LAND & DEVELOPMENT, INC., REPRESENTED BY
SOLITA S. JIMENEZ-PAULINO, PETITIONER, VS. COURT OF APPEALS
AND GREYSTONE CORPORATION, RESPONDENTS.***G.R. No. 165742. June 30, 2009*

Ponente: QUISUMBING, J.

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This petition for certiorari under Rule 65 of the Rules of Court assails the Decision[1] dated June 9, 2004 and Resolution[2] dated September 21, 2004 of the Court of Appeals in CA-G.R. CV No. 71285. The Court of Appeals affirmed the Orders dated November 15, 2000[3] and June 11, 2001[4] of the Regional Trial Court (RTC) of Makati City, Branch 139 in LRC Case No. M-4086 dismissing the complaint filed by petitioner Tri-Corp Land and Development, Inc. (Tri-Corp) against respondent Greystone Corporation (Greystone) for lack of jurisdiction.

The facts, culled from the records, are as follows:

On February 12, 1998, Greystone executed in favor of Tri-Corp a Contract to Sell[5] whereby Tri-Corp agreed to pay the purchase price, exclusive of interest, in the amount of P13,500,000 and payable in installments, of a unit of Casa Madeira, a residential condominium project located at Fatima Street, San Miguel Village, Makati City. Said unit, covered by Condominium Certificate of Title (CCT) No. 51232[6] was to be used as a family residence of Tri-Corp's officers and stockholders. However, when Tri-Corp applied for membership with the San Miguel Village Homeowner's Association (SMVHA), it was denied and not given gate passes for its vehicles. The reason cited by SMVHA for Tri-Corp's denial of application was that the construction of the Casa Madeira condominium project was in violation of village restrictions annotated as Entry No. 31976[7] and inscribed on October 9, 1961 at the back of Transfer Certificates of Title Nos. 205827[8] and 205828[9] covering the lots on which the condominium project was constructed. SMVHA filed a case against Greystone for this violation and prayed for the cancellation of the CCTs of the Casa Madeira condominium project before the Housing and Land Use Regulatory Board (HLURB). The case was docketed as HLURB Case No. REM-10045. Upon learning of the pending case, Tri-Corp filed a Complaint-in-Intervention[10] in said case for suspension of payments until the issue of violation of the village restriction and validity of the CCT to the condominium unit sold shall have been resolved. Tri-Corp, likewise, filed a petition[11] dated September 28, 2000, against Greystone before the HLURB for Suspension and Cancellation of Certificate of Registration and License to Sell of Greystone.

Greystone, in turn, filed an ejectment suit against Tri-Corp before the Metropolitan Trial Court of Makati City, for failure to pay under the Contract to Sell. The complaint was docketed as Civil Case No. 63308. Tri-Corp was ejected by the Sheriff in the said case for its refusal to pay the supersedeas bond. Civil Case No. 63308 is still pending on appeal.[12]

Tri-Corp also filed before the RTC of Makati City, sitting as a Land Registration Court, a Petition for Correction of Error /Misrepresentation in the Master Deed entered as Memorandum on TCTs Nos. 205827 and 205828 with

prayer for Temporary Restraining Order and Injunction.[13] The case was docketed as LRC Case No. M-4086. Tri-Corp alleged in its petition that Greystone used different descriptions of the condominium project in order to circumvent existing laws, rules and regulations on registration of real estate projects, to wit:

[1] Thus, to obtain approval of the San Miguel Village Association Construction and Permits Committee, it styled its project as a "2-Unit Duplex Residence, to conform with association rules.

[2] To obtain approval of Barangay Poblacion, Makati City, and the issuance of Certificate of Registration and Clearance No. 2758 on the same project, it dubbed the same project as a "3-storey townhouse", to suit barangay guidelines.

[3] To obtain from the City of Makati Building Permit No. C1096-01259, it called the same project a "4-unit Residential Bldg." "Two-storey duplex", to comply with zoning ordinances.

[4] To obtain from the HLURB the Preliminary Approval of Condominium Plan, it described Casa Madeira as a "Condominium Project", for the purpose of complying with PD 957 and its implementing rules.

[5] To obtain from the HLURB the Final Approval, it called the project a Condominium Plan/Subdivision Townhouse, for the same purpose.

[6] To obtain from the HLURB a development permit, it called the project a condominium for the same purpose.

[7] To obtain from the HLURB a Certificate of Locational Viability for the same project, it was designated as a "2 Storey with Attic Residential Condominium", for the same purpose.

[8] To obtain from the Department of Environment and Natural Resources, National Capital Region an Environmental Compliance Certificate (ECC) it designated the project as "four units, two storey with attic townhouse project", to comply with the requirement of law.

[9] To obtain from the HLURB Certificate of Registration No. 97-09-3003, it called Casa Madeira a condominium project, for the purpose of complying with PD 957 and its implementing rules.

[10] These misrepresentations misled the petitioner as buyer and also mis[led] the buying public as to the real nature of [the] project.[14] [Emphasis supplied.]

During the hearing on Tri-Corp's application for a Writ of Preliminary Injunction on September 28, 2000, Greystone raised the issue of jurisdiction. Greystone contended in its Memorandum[15] that the RTC had no jurisdiction to try and decide the case because it involves an unsound real estate practice within the jurisdiction of the HLURB, Tri-Corp is not a party in interest, and same issues had been raised by Tri-Corp in the HLURB.

In an Order dated November 15, 2000, the RTC dismissed the case for lack of jurisdiction. The dispositive portion of the order states:

IN VIEW OF THE FOREGOING PREMISES, based on law and jurisprudence, the COURT hereby ORDERS that:

(a) The prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction is hereby DENIED for lack of merit.

(b) The Complaint dated 19 September 1990 (sic) is hereby DISMISSED, the same being within the exclusive jurisdiction of [the] HLURB pursuant to PD[s] 987 and 1344.

SO ORDERED.[16]

Tri-Corp filed a motion for reconsideration but it was denied by the RTC in an Order dated June 11, 2001.

Tri-Corp appealed to the Court of Appeals. In a Decision promulgated on June 9, 2004, the Court of Appeals affirmed the orders of the RTC. The dispositive portion of the decision states:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the appealed orders dated November 15, 2000 and June 11, 2001 must be, as they hereby, are AFFIRMED. Without costs in this instance.

SO ORDERED.[17]

Tri-Corp filed a motion for reconsideration but it was denied by the Court of Appeals in a Resolution promulgated on September 21, 2004 for being filed out of time and for being without merit.

Alleging that the Court of Appeals committed grave abuse of discretion in affirming the orders of the RTC, Tri-Corp filed this original action for certiorari under Rule 65.

Tri-Corp alleges that:

I.

THE APPELLATE COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DECLARED THE MOTION FOR RECONSIDERATION AS HAVING BEEN FILED OUT OF TIME DESPITE PROOFS OF TRAVEL.

II.

THE APPELLATE COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION IN DECLARING THAT HEREIN PETITIONER IS NOT A PARTY IN INTEREST.

III.

THE APPELLATE COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION WHEN IT RESOLVED THE INSTANT CASE IN FAVOR OF RESPONDENT GREYSTONE WITHOUT DUE REGARD TO THE PROTECTIVE MANTLE ENSHRINED UNDER PD 957 TOWARDS BUYERS OF CONDOMINIUM UNITS.[18]

In sum, the issue is, did the Court of Appeals act with grave abuse of discretion in denying Tri-Corp's motion for reconsideration for being filed out of time, in declaring Tri-Corp as not a party in interest, and in affirming the RTC's Order dismissing the case for lack of jurisdiction?

In its Memorandum,[19] Tri-Corp asserts that it disagrees with the findings of the appellate court that its motion for reconsideration was filed out of time since it would be absurd to consider receipt by its mailbox as receipt by Tri-Corp when its representative, Solita S. Jimenez-Paulino, was not physically present in the Philippines.[20] Tri-Corp further argues that the conclusion that Tri-Corp is not a party in interest is also absurd since Tri-Corp stands to lose an enormous amount at the instance of Greystone who stands to gain without giving anything of value.[21] Tri-Corp also argues that the Court of Appeals overlooked the fact that the case is one for cancellation of inscriptions and cancellation of the CCT, which is within the ambit of the Register of Deeds to perform, and the case is not a simple buyer-seller of condominium relationship but one which seeks the alteration of annotations and cancellation of titles with the jurisdiction of the RTC sitting as a Land Registration Court.[22]

On the other hand, Greystone, in its Memorandum,[23] argues that it is clear that since Tri-Corp's mailbox, MBE Center, received a copy of the decision of the Court of Appeals on June 16, 2004, it had until July 1, 2004 within which to file a motion for reconsideration. Its motion for reconsideration, which was filed only on July 13, 2004[24] was clearly filed out of time.

As defined, grave abuse of discretion means such capricious and whimsical exercise of judgment as is equivalent to lack or excess of jurisdiction or, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[25]

After review, we find that the Court of Appeals did not act with grave abuse of discretion because of the following reasons:

First, the petitioner in this case is Tri-Corp and not Solita Jimenez-Paulino. The reckoning time therefore to count the period to file Tri-Corp's motion for reconsideration was the date the decision was received by Tri-Corp's mailbox and not the date when it was received by its representative, Solita S. Jimenez-Paulino.

Second, the Court of Appeals, in ruling that Tri-Corp is not a party in interest, pointed out in its decision that the contract to sell entered into by both parties contains a stipulation that in case of default or non-payment of the stipulated amortizations and the rentals, Greystone has the option to rescind the contract and forfeit all amounts paid as liquidated damages. Greystone rescinded the contract.[26] As the contract to sell has been rescinded, there is legal basis to hold that Tri-Corp is no longer a party in interest.

Third, the Court of Appeals decision affirming the trial court's Orders dismissing Tri-Corp's petition on the ground that it does not have jurisdiction over the case, has legal basis.

Section 1 of Presidential Decree No. 1344[27] entitled "Empowering the National Housing Authority to Issue Writ of Execution in the Enforcement of its Decisions under Presidential Decree No. 957" provides:

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, or salesman. [Emphasis supplied.]

In this case, Tri-Corp's chief quest is the cancellation of Entry No. 31976 from TCTs Nos. 205827 and 205828, and the cancellation of the CCT of the unit sold to it, and it alludes to Greystone's use of different descriptions of the condominium project in order to circumvent existing laws, rules and regulations on registration of real estate projects in its petition. Under these circumstances, Tri-Corp is alluding to steps allegedly taken by Greystone in consummating an alleged unsound real estate business practice. The HLURB has the technical expertise to resolve this technical issue. Jurisdiction therefore properly pertains to the HLURB.

In view of the foregoing, it cannot be said that the Court of Appeals, in affirming the RTC Orders dismissing the case for lack of jurisdiction, acted with grave abuse of discretion that would warrant the filing of a petition for certiorari under Rule 65 against it.

WHEREFORE, the instant petition is DISMISSED for lack of merit. Costs against petitioner.

SO ORDERED.

Ynares-Santiago,[*] Chico-Nazario,**] Leonardo-De Castro,[***] and Brion, JJ. , concur.

[*] Designated member of the Second Division per Special Order No. 645.

[**] Designated member of the Second Division per Special Order No. 658.

[***] Designated member of the Second Division per Special Order No. 635.

[1] Rollo, pp. 47-60. Penned by Associate Justice Renato C. Dacudao, with Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao concurring.

[2] Id. at 62-64.

[3] Records, pp. 255-264. Penned by Judge Florentino A. Tuason, Jr.

[4] Id. at 347-350. Penned by Pairing Judge Manuel D. Victorio.

[5] Id. at 53-56.

[6] Id. at 39-40.

[7] Rollo, pp. 71 & 77.

[8] Records, pp. 20-23.

[9] Id. at 24-27.

[10] Id. at 212-215.

[11] Id. at 303-323.

[12] Rollo, p. 48.

[13] Records, pp. 1-19.

[14] Id. at 5-6.

[15] Id. at 189-202.

[16] Id. at 264.

[17] Rollo, p. 60.

[18] Id. at 645.

[19] Id. at 637-654.

[20] Id. at 646.

[21] Id. at 649-650.

[22] Id. at 651.

[23] Id. at 485-521.

[24] Id. at 501.

[25] Cathay Pacific Steel Corporation v. Court of Appeals, G.R. No. 164561, August 30, 2006, 500 SCRA 226, 235-236.

[26] Records, pp. 207-209.

[27] Done on April 2, 1978.

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