

THE ALEXANDRA CONDOMINIUM CORPORATION, PETITIONER, VS. LAGUNA LAKE DEVELOPMENT AUTHORITY, RESPONDENT.

G.R. No. 169228. September 11, 2009

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a petition for review assailing the 26 April 2005 Decision[1] and 1 August 2005 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 82409.

The Antecedent Facts

Philippine Realty and Holdings, Inc. (PhilRealty) developed, established, and constructed The Alexandra Condominium Complex from 1987 to 1993. In a Deed of Conveyance dated 18 April 1988, PhilRealty transferred to The Alexandra Condominium Corporation (TACC) a parcel of land with an area of 9,876 square meters located at 29 Meralco Avenue, Pasig City as well as all the common areas of the project. The land was covered by Transfer Certificate of Title No. 64355.

The condominium project consists of the following phases:

- (a) Cluster A - 3 Five Storey Buildings; A-1, A-2 and A-3;
- (b) Cluster B - 2 Eleven Storey Buildings; B-1 and B-2;
- (c) Cluster C - 2 Seven Storey Buildings; C-1 and C-2;
- (d) Cluster D - 2 Fourteen Storey Buildings; D-a and D-2; and
- (e) Cluster E - 2 Eleven Storey Buildings; E-1 and E-2.

On 2 September 1987, the Human Settlements Regulatory Commission issued a Development Permit to PhilRealty to develop Cluster A of the project. In the Development Permit, PhilRealty was required to submit its condominium plans to the Building Official of Pasig City. Architect Walter R. Perez (Architect Perez), then Building Official of Pasig City, reviewed the Site Development and Location Plan as well as the Sanitary/Plumbing Plans and Specifications of the project. On 24 September 1987, Architect Perez issued a Building Permit. On 30 September 1987, Architect Perez issued a Sanitary/Plumbing Permit acknowledging the fixtures to be installed but without indicating the System of Disposal including a Waste Water Treatment Plan. On 15 December 1988, Architect Perez issued a Certificate of Final Inspection and a Certificate of Occupancy for Buildings A-1 to A-3.

PhilRealty undertook the same process for Clusters B, C, D, and E. Building Permits and Certificates of Final Inspection and Occupancy were issued for these clusters from 1991 to 1993. On 31 December 1993, upon completion of Buildings E-1 and E-2, PhilRealty formally turned over the project to TACC. However, PhilRealty did not turn over the as-built plans for the perimeter drainage layout, the foundation, and the electrical and plumbing layout of the project. Thereafter, TACC managed the project through Century Properties Management

Corporation.

On 24 June 1998, Laguna Lake Development Authority (LLDA) advised TACC that its wastewater did not meet government effluent standards provided in Sections 68 and 69 of the 1978 National Pollution Control Commission Rules and Regulations (NPCC) as amended by Department of Energy and Natural Resources (DENR) Administrative Order No. 34.[3] LLDA informed TACC that it must put up its own Sewage Treatment Plant (STP) for its effluent discharge to meet government standards.

Since a sewage treatment plant would cost approximately P15 million to put up, TACC experimented with a proposed solution from Larutan Resources Development Corporation, which treated the septic vault water with biological enzymes. Still, TACC's water discharge failed to meet the government standards.

On 26 March 1999, LLDA's Environmental Division collected samples of TACC's wastewater. In a report dated 6 April 1999, LLDA found two determinants in TACC's samples: (1) Chemical Oxygen Demand (COD) and (2) Oil/Grease (OG). LLDA found that TACC's samples failed to meet government standards of 150 for COD and 5 for OG.

In a Notice of Violation[4] dated 6 May 1999, LLDA directed TACC to submit corrective measures to abate or control its water effluents discharged into the Laguna de Bay. LLDA likewise imposed upon TACC a daily fine of P1,000 from 26 March 1999 until full cessation of pollutive wastewater discharge.

TACC entered into an agreement with World Chem Marketing for the construction of the STP for P7,550,000. The construction was completed by the second week of October 2001.

In an Order dated 19 July 1999, LLDA stated that the daily penalty was imposed upon TACC for the pollutive wastewater discharge, and to condone the penalty would be tantamount to tolerating the pollution of the river bodies and the Laguna de Bay which is contrary to LLDA's mandate.

On 1 April 2002, TACC requested LLDA to dismiss the water pollution case against it because of the favorable analysis undertaken by the LLDA's Pollution Control Division on 28 February 2002. LLDA conducted a hearing on 26 April 2002. In its position paper filed on 15 May 2002, TACC requested LLDA to condone the imposition of the penalty of P1,000 per day since March 1999 in recognition of the remedial and corrective measures it undertook to comply with government standards.

On 4 September 2003, LLDA issued an Order requiring TACC to pay a fine of P1,062,000 representing the penalty from 26 March 1999 to 20 February 2002.

TACC filed a petition for certiorari before the Court of Appeals with a prayer for the issuance of a temporary restraining order.

The Decision of the Court of Appeals

In its 26 April 2005 Decision, the Court of Appeals resolved the petition as follows:

WHEREFORE, premises considered, instant petition is DISMISSED. Accordingly, the prayer for temporary restraining order is DENIED.

SO ORDERED.[5]

The Court of Appeals sustained LLDA's contention that the petition for certiorari was prematurely filed. LLDA pointed out that TACC failed to file a motion for reconsideration of the 4 September 2003 Order before filing the petition before the Court of Appeals. The Court of Appeals also ruled that before a party is allowed to seek the court's intervention, he should have availed of all the means of administrative processes afforded him. The Court

of Appeals ruled that the proper remedy should have been to resort to an administrative remedy before the DENR Secretary prior to judicial action. The Court of Appeals noted LLDA's allegation of TACC's offer to compromise, which LLDA countered with an advice to address the offer to the Commission on Audit (COA). Hence, the Court of Appeals found that TACC had not abandoned its administrative remedies despite simultaneous resort to judicial action.

The Court of Appeals ruled that under Republic Act No. 4850[6] (RA 4850), as amended by Presidential Decree No. 813,[7] LLDA shall be compensated for the damages to the water and aquatic resources of Laguna de Bay resulting from failure to meet established water and effluent quality standards. The Court of Appeals ruled that under Section 4 of Executive Order No. 927, series of 1983,[8] LLDA is mandated to "make, alter or modify orders requiring the discontinuation of pollution specifying the conditions and the time within which such discontinuance must be accomplished." Further, the Court of Appeals ruled that Presidential Decree No. 984[9] provides for penalties for violation or non-compliance with any order, decision or regulation of the Commission for the control or abatement of pollution.

TACC filed a motion for reconsideration. In its 1 August 2005 Resolution, the Court of Appeals denied the motion.

Hence, the petition before this Court.

The Issues

TACC raises the following issues in its memorandum:

- Whether the Court of Appeals erred in disregarding TACC's exhaustive efforts in complying with the government's standards on effluent discharge; and
- Whether the Court of Appeals erred in finding that the petition for certiorari was prematurely filed.

The Ruling of this Court

The petition has no merit.

Non-Exhaustion of Administrative Remedies

The Court of Appeals ruled that due to the transfer of LLDA to the DENR under Executive Order No. 149[10] (EO 149), TACC should have first resorted to an administrative remedy before the DENR Secretary prior to filing a petition for certiorari before the Court of Appeals.

The doctrine of non-exhaustion of administrative remedies requires that resort be first made with the administrative authorities in the resolution of a controversy falling under their jurisdiction before the controversy may be elevated to a court of justice for review.[11] A premature invocation of a court's intervention renders the complaint without cause of action and dismissible.[12]

EO 149 transferred LLDA from the Office of the President to the DENR "for policy and program coordination and/or administrative supervision x x x." [13] Under EO 149, DENR only has administrative power over LLDA. Administrative power is concerned with the work of applying policies and enforcing orders as determined by proper governmental organs.[14]

However, Executive Order No. 192[15] (EO 192), which reorganized the DENR, mandates the DENR to "promulgate rules and regulations for the control of water, air and land pollution" and to "promulgate ambient and effluent standards for water and air quality including the allowable levels of other pollutants and radiations." [16] EO 192 created the Pollution Adjudication Board[17] under the Office of the DENR Secretary which assumed the

powers and functions of the NPCC with respect to the adjudication of pollution cases, including NPCC's function to "[s]erve as arbitrator for the determination of reparation, or restitution of the damages and losses resulting from pollution." [18] Hence, TACC has an administrative recourse before the DENR Secretary which it should have first pursued before filing a petition for certiorari before the Court of Appeals.

Powers of the LLDA to Impose Penalty

RA 4850 specifically mandates LLDA to carry out and make effective the declared national policy of promoting and accelerating the development and balanced growth of the Laguna Lake area and the surrounding provinces of Rizal and Laguna and the cities of San Pablo, Manila, Pasay, Quezon and Caloocan with due regard and adequate provisions for environmental management and control, preservation of the quality of human life and ecological systems, and the prevention of undue ecological disturbances, deterioration and pollution. [19] LLDA, by virtue of its special charter, has the responsibility to protect the inhabitants of the Laguna Lake region from the deleterious effects of pollutants emanating from the discharge of wastes from the surrounding areas. [20]

Under Section 4-A of RA 4850, as amended, LLDA is entitled to compensation for damages resulting from failure to meet established water and effluent quality standards, thus:

Sec. 4-A. Compensation for damages to the water and aquatic resources of Laguna de Bay and its tributaries resulting from failure to meet established water and effluent quality standards and from such other wrongful act or omission of a person, private or public, juridical or otherwise, punishable under the law shall be awarded to the Authority to be earmarked for water quality control and management.

In the present case, TACC does not challenge LLDA's authority to impose the fine. However, TACC argues that since it had already exhausted efforts and substantially spent to comply with established effluent quality standards, the daily penalty imposed by the LLDA is an unwarranted financial burden to its unit owners and should thus be condoned. TACC further argues that the non-compliance with government standards was due to the omission and fault of PhilRealty.

TACC's arguments have no merit.

PhilRealty formally turned over the project to TACC on 31 December 1993. Thereafter, TACC managed the project. It was almost five years after, or on 24 June 1998, when LLDA advised TACC that its wastewater did not meet government effluent standards. It is clear that the responsibility to comply with government standards lies with TACC. If, as claimed by TACC, the non-compliance was due to the omission and fault of PhilRealty, TACC's recourse is to file an action, if warranted, against PhilRealty in a proper court. TACC cannot escape its liability to LLDA by shifting the blame to PhilRealty. Hence, the LLDA did not abuse its discretion in issuing its 4 September 2003 Order.

Condonation of Penalty and Pending Offer to Compromise

As regards the condonation of the penalty, the power to compromise claims is vested exclusively in the COA or Congress pursuant to Section 20 (1), Chapter IV, Subtitle B, Title I, Book V of Executive Order No. 292 (Administrative Code of 1987) which provides:

Section 20. Power to Compromise Claims. - (1) When the interest of the Government so requires, the Commission may compromise or release in whole or in part, any settled claim or liability to any government agency not exceeding ten thousand pesos arising out of any matter or case before it or within its jurisdiction, and with the written approval of the President, it may likewise compromise or release any similar claim or liability not exceeding one hundred thousand pesos. In case the claim or liability exceeds one hundred thousand pesos, the application for relief therefrom shall be submitted, through the Commission and the

President, with their recommendations, to the Congress[.] x x x

In a letter dated 5 May 2004,[21] TACC manifested its offer to compromise by paying a reduced fine of P500,000. In its response dated 8 July 2004,[22] LLDA stated that the proposal would be forwarded to LLDA's Board of Directors although "it is necessary that the case be withdrawn from the court." In a letter dated 11 September 2004,[23] TACC stated that in a regular meeting held on 6 September 2004, the members of TACC's Board of Directors unanimously agreed to withdraw the petition for certiorari before the Court of Appeals, provided the LLDA would agree to reduce the penalty to P500,000. In a letter dated 22 September 2004,[24] LLDA referred the offer to its resident auditor Antonio M. Malit (Auditor Malit) on the ground that only the COA had the authority to compromise settlement of obligations to the State. In a letter dated 23 September 2004, Auditor Malit informed LLDA that the power to compromise claims is vested exclusively in the COA pursuant to Section 36 of Presidential Decree No. 1445.[25] Auditor Malit stated that the request for compromise should be addressed to COA. However, since the amount of the penalty sought to be condoned is P1,062,000, the authority to compromise such claim is vested exclusively in Congress pursuant to Section 20 (1), Chapter IV, Subtitle B, Title I, Book V of the Administrative Code of 1987. This remedy is not administrative but legislative, and need not be resorted to before filing a judicial action.

Moreover, the Court cannot sustain the Court of Appeals' finding that there was a pending offer to compromise when the petition for certiorari was filed before it. There is nothing in the records that indicates that TACC withdrew its offer of compromise. At the same time, there is also nothing to indicate that TACC submitted a compromise offer to COA, as Auditor Malit had advised. Hence, it is not proven that this petition was simultaneously availed of with the offer to compromise.

Failure to File a Motion for Reconsideration

For a petition for certiorari under Rule 65 of the Rules of Court to prosper, TACC must show that (1) the LLDA acted without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction and (2) there is no appeal or a plain, speedy and adequate remedy in the ordinary course of law.

The plain and adequate remedy referred to in Section 1 of Rule 65 is a motion for reconsideration of the assailed decision.[26] The purpose of this requirement is to enable the court or agency to rectify its mistakes without the intervention of a higher court.[27] To dispense with this requirement, there must be a concrete, compelling, and valid reason for the failure to comply with the requirement.[28] Petitioner may not arrogate to itself the determination of whether a motion for reconsideration is necessary or not.[29]

In the present case, TACC did not file a motion for reconsideration of the 4 September 2003 Order. TACC also failed to show sufficient compelling and valid reason to dispense with the requirement of filing a motion for reconsideration. Hence, we agree with the Court of Appeals that the petition for certiorari was prematurely filed before it.

Finally, TACC wants the Court to review the mandate of LLDA to help transform it from a regulatory agency into a developmental and promotional agency. However, we agree with LLDA that such a review of LLDA's charter is not within the jurisdiction of this Court.

WHEREFORE, we DENY the petition. We AFFIRM the 26 April 2005 Decision and 1 August 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 82409.

SO ORDERED.

Puno, C.J., Corona, Leonardo-De Castro, and Bersamin, JJ., concur.

[1] Rollo, pp. 33-40. Penned by Associate Justice Arcangelita Romilla-Lontok with Associate Justices Rodrigo V. Cosico and Danilo B. Pine, concurring.

[2] Id. at 42.

[3] Revised Water Usage and Classification/Water Quality Criteria.

[4] Rollo, p. 78.

[5] Id. at 40.

[6] An Act Creating The Laguna Lake Development Authority, Prescribing Its Powers, Functions And Duties, Providing Funds Therefor, And For Other Purposes.

[7] Amending Certain Sections of Republic Act Numbered Eight Hundred Fifty, Otherwise Known As The "Laguna Lake Development Authority Act of 1966." Dated 17 October 1975.

[8] Further Defining Certain Functions And Powers Of The Laguna Lake Development Authority. Dated 16 December 1983.

[9] Providing For The Revision Of Republic Act No. 3931, Commonly Known As The Pollution Control Law, And For Other Purposes.

[10] Streamlining Of The Office Of The President. Dated 28 December 1993.

[11] Estrada v. Court of Appeals, 484 Phil. 730 (2004).

[12] Id.

[13] Section 3.2.

[14] See Review Center Association of the Philippines v. Executive Secretary Ermita, G.R. No. 180046, 2 April 2009.

[15] Providing For The Reorganization Of The Department of Environment, Energy And Natural Resources Renaming It As The Department of Environment And Natural Resources, And For Other Purposes.

[16] Section 5 (o) and (p).

[17] Section 19.

[18] Section 6 (j) of Presidential Decree No. 984 (Providing For The Revision of Republic Act No. 3931, Commonly Known As The Pollution Control Law, And For Other Purposes).

[19] LLDA v. Court of Appeals, G.R. No. 110120, 16 March 1994, 231 SCRA 292.

[20] Id.

[21] Rollo, pp. 205-206. Through TACC's counsel Anthony B. Peralta.

[22] Id. at 207.

[23] Id. at 208.

[24] Id. at 209.

[25] Ordaining And Instituting A Government Auditing Code of the Philippines. Section 36 provides:

Section 36. Power to compromise claims.

1. When the interest of the government so requires, the Commission may compromise or release in whole or in part, any claim or settled liability to any government agency not exceeding ten thousand pesos and with the written approval of the Prime Minister, it may likewise compromise or release any similar claim or liability not exceeding one hundred thousand pesos, the application for relief therefrom shall be submitted, through the Commission and the Prime Minister, with their recommendations, to the National Assembly.

2. The respective governing bodies of government-owned or controlled corporations, and self-governing boards, commissions or agencies of the government shall have the exclusive power to compromise or release any similar claim or liability when expressly authorized by their charters and if in their judgment, the interest of their respective corporations or agencies so requires. When the charters do not so provide, the power to compromise shall be exercised by the Commission in accordance with the preceding paragraph.

3. The Commission may, in the interest of the government, authorize the charging or crediting to an appropriate account in the National Treasury, small discrepancies (average or shortage) in the remittances to and disbursements of the National Treasury, subject to the rules and regulations as it may prescribe.

[26] Metro Transit Organization, Inc. v. Court of Appeals, 440 Phil. 743 (2002).

[27] Id.

[28] Id.

[29] Id.

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