

GOLDCREST REALTY CORPORATION, PETITIONER, VS. CYPRESS GARDENS CONDOMINIUM CORPORATION, RESPONDENT.

G.R. No. 171072. April 07, 2009

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review on certiorari are the Decision[1] dated September 29, 2005 and the Resolution[2] dated January 16, 2006 of the Court of Appeals in CA G.R. SP No. 79924.

The antecedent facts in this case are as follows:

Petitioner Goldcrest Realty Corporation (Goldcrest) is the developer of Cypress Gardens, a ten-storey building located at Herrera Street, Legaspi Village, Makati City. On April 26, 1977, Goldcrest executed a Master Deed and Declaration of Restrictions[3] which constituted Cypress Gardens into a condominium project and incorporated respondent Cypress Gardens Condominium Corporation (Cypress) to manage the condominium project and to hold title to all the common areas. Title to the land on which the condominium stands was transferred to Cypress under Transfer Certificate of Title No. S-67513. But Goldcrest retained ownership of the two-level penthouse unit on the ninth and tenth floors of the condominium registered under Condominium Certificate of Title (CCT) No. S-1079 of the Register of Deeds of Makati City. Goldcrest and its directors, officers, and assigns likewise controlled the management and administration of the Condominium until 1995.

Following the turnover of the administration and management of the Condominium to the board of directors of Cypress in 1995, it was discovered that certain common areas pertaining to Cypress were being occupied and encroached upon by Goldcrest. Thus, in 1998, Cypress filed a complaint with damages against Goldcrest before the Housing and Land Use Regulatory Board (HLURB), seeking to compel the latter to vacate the common areas it allegedly encroached on and to remove the structures it built thereon. Cypress sought to remove the door erected by Goldcrest along the stairway between the 8[th] and 9[th] floors, as well as the door built in front of the 9[th] floor elevator lobby, and the removal of the cyclone wire fence on the roof deck. Cypress likewise prayed that Goldcrest pay damages for its occupation of the said areas and for its refusal to remove the questioned structures.

For its part, Goldcrest averred that it was granted the exclusive use of the roof deck's limited common area by Section 4(c)[4] of the condominium's Master Deed. It likewise argued that it constructed the contested doors for privacy and security purposes, and that, nonetheless, the common areas occupied by it are unusable and inaccessible to other condominium unit owners.

Upon the directive of HLURB Arbiter San Vicente, two ocular inspections[5] were conducted on the condominium project. During the first inspection, it was found that Goldcrest enclosed and used the common area fronting the two elevators on the ninth floor as a storage room. It was likewise discovered that Goldcrest constructed a permanent structure which encroached 68.01 square meters of the roof deck's common area.[6]

During the second inspection, it was noted that Goldcrest failed to secure an alteration approval for the said permanent structure.

In his Decision[7] dated December 2, 1999, Arbiter San Vicente ruled in favor of Cypress. He required Goldcrest, among other things, to: (1) remove the questioned structures, including all other structures which inhibit the free ingress to and egress from the condominium's limited and unlimited common areas; (2) vacate the roof deck's common areas and to pay actual damages for occupying the same; and (3) pay an administrative fine for constructing a second penthouse and for making an unauthorized alteration of the condominium plan.

On review, the HLURB Special Division modified the decision of Arbiter San Vicente. It deleted the award for actual damages after finding that the encroached areas were not actually measured and that there was no evidentiary basis for the rate of compensation fixed by Arbiter San Vicente. It likewise held that Cypress has no cause of action regarding the use of the roof deck's limited common area because only Goldcrest has the right to use the same. The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing, the decision of the office [is] modified as follows:

- Directing respondent to immediately remove any or all structures which obstruct the use of the stairway from the eighth to tenth floor, the passage and use of the lobbies at the ninth and tenth floors of the Cypress Gardens Condominium; and to remove any or all structures that impede the use of the unlimited common areas.
- Ordering the respondent to pay an administrative fine of P10,000.00 for its addition of a second penthouse and/or unauthorized alteration of the condominium plan.

All other claims are hereby dismissed.

SO ORDERED.[8]

Aggrieved, Cypress appealed to the Office of the President. It questioned the deletion of the award for actual damages and argued that the HLURB Special Division in effect ruled that Goldcrest could erect structures on the roof deck's limited common area and lease the same to third persons.

The Office of the President dismissed the appeal. It ruled that the deletion of the award for actual damages was proper because the exact area encroached by Goldcrest was not determined. It likewise held that, contrary to the submissions of Cypress, the assailed decision did not favor the building of structures on either the condominium's limited or unlimited common areas. The Office of the President stressed that the decision did not only order Goldcrest to remove the structures impeding the use of the unlimited common areas, but also fined it for making unauthorized alteration and construction of structures on the condominium's roof deck.[9] The dispositive portion of the decision reads:

WHEREFORE, premises considered, the appeal of Cypress Gardens Corporation is hereby dismissed and the decision of the Board a quo dated May 11, 2000 is hereby AFFIRMED.

SO ORDERED.[10]

Cypress thereafter elevated the matter to the Court of Appeals, which partly granted its appeal. The appellate court noted that the right of Goldcrest under Section 4(c) of the Master Deed for the exclusive use of the easement covering the portion of the roof deck appurtenant to the penthouse did not include the unrestricted right to build structures thereon or to lease such area to third persons. Thus the appellate court ordered the removal of the permanent structures constructed on the limited common area of the roof deck. The dispositive portion of the decision reads:

WHEREFORE, the petition is PARTIALLY GRANTED. The Decision of the Office of the President dated

June 2, 2003 is hereby AFFIRMED with modification. Respondent Goldcrest Realty Corporation is further directed to remove the permanent structures constructed on the limited common area of the roof deck.
SO ORDERED.[11]

The parties separately moved for partial reconsideration but both motions were denied.

Hence this petition, raising the following issues:

I.

[WHETHER OR NOT] THE APPELLATE COURT ERRED IN RULING THAT GOLDCREST BUILT AN OFFICE STRUCTURE ON A SUPPOSED ENCROACHED AREA IN THE OPEN SPACE OF THE ROOF DECK.

II.

[WHETHER OR NOT] THE APPELLATE COURT ERRED IN RULING THAT PETITIONER IMPAIRED THE EASEMENT ON THE PORTION OF THE ROOF DECK DESIGNATED AS A LIMITED COMMON AREA.[12]

Anent the first issue, Goldcrest contends that since the areas it allegedly encroached upon were not actually measured during the previous ocular inspections, the finding of the Court of Appeals that it built an office structure on the roof deck's limited common area is erroneous and that its directive "to remove the permanent structures[13] constructed on the limited common area of the roof deck" is impossible to implement.

On the other hand, Cypress counters that the Court of Appeals' finding is correct. It also argues that the absence of such measurement does not make the assailed directive impossible to implement because the roof deck's limited common area is specifically identified by Section 4(c) of the Master Deed, which reads:

Section. 4. The Limited Common Areas. Certain parts of the common areas are to be set aside and reserved for the exclusive use of certain units and each unit shall have appurtenant thereto as exclusive easement for the use of such limited areas:

x x x x

(c) Exclusive use of the portion of the roof deck (not shaded red in sheet 10 of Annex "B") by the Penthouse unit on the roof deck.[14]

x x x x

We rule in favor of Cypress. At this stage of the proceedings, the failure to measure the supposed encroached areas is no longer relevant because the award for actual damages is no longer in issue. Moreover, a perusal of the records shows that the finding of the Court of Appeals that Goldcrest built an office structure on the roof deck's limited common area is supported by substantial evidence and established facts, to wit: (1) the ocular inspection reports submitted by HLURB Inspector Edwin D. Aquino; (2) the fact that the second ocular inspection of the roof deck was intended to measure the actual area encroached upon by Goldcrest;[15] (3) the fact that Goldcrest had been fined for building a structure on the limited common area;[16] and (4) the fact that Goldcrest neither denied the structure's existence nor its encroachment on the roof deck's limited common area.

Likewise, there is no merit in Goldcrest's submission that the failure to conduct an actual measurement on the roof deck's encroached areas makes the assailed directive of the Court of Appeals impossible to implement. As aptly pointed out by Cypress, the limited common area of the roof deck is specifically identified by Section 4(c) of the Master Deed.

Anent the second issue, Goldcrest essentially contends that since the roof deck's common limited area is for its exclusive use, building structures thereon and leasing the same to third persons do not impair the subject easement.

For its part, Cypress insists the said acts impair the subject easement because the same are already beyond the contemplation of the easement granted to Goldcrest.

The question of whether a certain act impairs an easement is undeniably one of fact, considering that its resolution requires us to determine the act's propriety in relation to the character and purpose of the subject easement.[17] In this case, we find no cogent reason to overturn the similar finding of the HLURB, the Office of the President and the Court of Appeals that Goldcrest has no right to erect an office structure on the limited common area despite its exclusive right to use the same. We note that not only did Goldcrest's act impair the easement, it also illegally altered the condominium plan, in violation of Section 22[18] of Presidential Decree No. 957.[19]

The owner of the dominant estate cannot violate any of the following prescribed restrictions on its rights on the servient estate, to wit: (1) it can only exercise rights necessary for the use of the easement;[20] (2) it cannot use the easement except for the benefit of the immovable originally contemplated;[21] (3) it cannot exercise the easement in any other manner than that previously established;[22] (4) it cannot construct anything on it which is not necessary for the use and preservation of the easement;[23] (5) it cannot alter or make the easement more burdensome;[24] (6) it must notify the servient estate owner of its intention to make necessary works on the servient estate;[25] and (7) it should choose the most convenient time and manner to build said works so as to cause the least convenience to the owner of the servient estate.[26] Any violation of the above constitutes impairment of the easement.

Here, a careful scrutiny of Goldcrest's acts shows that it breached a number of the aforementioned restrictions. First, it is obvious that the construction and the lease of the office structure were neither necessary for the use or preservation of the roof deck's limited area. Second, the weight of the office structure increased the strain on the condominium's foundation and on the roof deck's common limited area, making the easement more burdensome and adding unnecessary safety risk to all the condominium unit owners. Lastly, the construction of the said office structure clearly went beyond the intendment of the easement since it illegally altered the approved condominium project plan and violated Section 4[27] of the condominium's Declaration of Restrictions.[28]

WHEREFORE, the petition is DENIED for lack of merit. The assailed Decision dated September 29, 2005 of the Court of Appeals in CA G.R. SP. No. 79924 is hereby AFFIRMED. Costs against the petitioner.

SO ORDERED.

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

[1] Rollo, pp. 32-43. Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Andres B. Reyes, Jr. and Monina Arevalo-Zenarosa concurring.

[2] Id. at 45-46.

[3] Id. at 47-61.

[4] Id. at 49-50.

Section 4. The Limited Common Areas. Certain parts of the common areas are to be set aside and reserved for the exclusive use of certain units and each unit shall have appurtenant thereto as exclusive easement for the use of

such limited areas:

x x x x

(c) Exclusive use of the portion of the roof deck (not shaded red in sheet 10 of Annex "B") by the Penthouse unit on the roof deck.

[5] Records, Vol. I, pp. 152 and 173-174.

[6] No distinction, however, was made between the roof deck's limited and unlimited common areas.

[7] CA rollo, pp. 86-99.

[8] Id. at 107.

[9] Id. at 108-119.

[10] Id. at 119.

[11] Id. at 341.

[12] Rollo, p. 21.

[13] Referring to the office structure.

[14] CA rollo, pp. 37-38.

[15] Id. at 173-174.

[16] Rollo, p. 316.

[17] See *Breliant v. Preferred Equities Corp.*, No. 23737, 109 Nev. 842, 858 P.2d 1258 (1993) and *Bijou Irr. Dist. v. Empire Club*, 804 P.2d 175 21 Env'tl. L. Rep. 21,461 (Colo. 1991), both cited in 25 Am. Jur. 2d Easements and Licenses § 71.

[18] SEC. 22. Alteration of Plans. - No owner or developer shall change or alter the roads, open spaces, infrastructures, facilities for public use and/or other form of subdivision development as contained in the approved subdivision plan and/or represented in its advertisements, without the permission of the Authority and the written conformity or consent of the duly organized homeowners association, or in the absence of the latter, by the majority of the lot buyers in the subdivision.

[19] THE SUBDIVISION AND CONDOMINIUM BUYERS' PROTECTIVE DECREE, done on July 12, 1976.

[20] CIVIL CODE,

Art. 625. Upon the establishment of an easement, all the rights necessary for its use are considered granted.

[21] Id.,

Art. 626. The owner of the dominant estate cannot use the easement except for the benefit of the immovable originally contemplated. Neither can he exercise the easement in any other manner than that previously established.

[22] Id.

[23] Id.,

Art. 627. The owner of the dominant estate may make, at his own expense, on the servient estate any works necessary for the use and preservation of the servitude, but without altering it or rendering it more burdensome.

For this purpose he shall notify the owner of the servient estate, and shall choose the most convenient time and manner so as to cause the least inconvenience to the owner of the servient estate.

[24] Id.

[25] Id.

[26] Id.

[27] Section. 4. Maintenance, Repairs and Alterations.– ...

x x x x

Notwithstanding the foregoing provisions, the owner, tenant or occupant of a unit may not undertake any structural repairs or alterations, or any other work which would jeopardize the safety of the Building, or another unit, or impair any easement, without the prior written approval of the Condominium Corporation and of the owners of the units directly affected by such work.

x x x x

[28] Rollo, pp. 51-58.

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