

**CAROLINA HERNANDEZ-NIEVERA, DEMETRIO P. HERNANDEZ, JR.,
AND MARGARITA H. MALVAR, PETITIONERS, VS. WILFREDO
HERNANDEZ, HOME INSURANCE AND GUARANTY CORPORATION,
PROJECT MOVERS REA...**

G.R. No. 171165. February 14, 2011

Ponente: PERALTA, J.

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PERALTA, J.:

This Rule 45 petition for review assails the October 19, 2005 Decision[1] of the Court of Appeals in CA-G.R. CV No. 83852,[2] as well as the January 11, 2006 Resolution[3] in the same case which denied reconsideration. The said decision had reversed and set aside the August 30, 2004 judgment[4] rendered by the Regional Trial Court (RTC) of San Pablo City, Laguna, Branch 32 in Civil Case No. SP-5742(2000) - one for rescission of a memorandum of agreement and declaration of nullity of a deed of assignment and conveyance, with prayer for preliminary injunction and damages.

The facts follow.

Project Movers Realty & Development Corporation (PMRDC), one of the respondents herein, is a duly organized domestic corporation engaged in real estate development. Sometime in 1995, it entered through its president, respondent Mario Villamor (Villamor), into various agreements with co-respondents Home Insurance & Guaranty Corporation (HIGC)[5] and Land Bank of the Philippines (LBP), in connection with the construction of the Isabel Homes housing project in Batangas and of the Monumento Plaza commercial and recreation complex in Caloocan City. In its Asset Pool Formation Agreement, PMRDC conveyed to HIGC the constituent assets of the two projects,[6] whereas LBP agreed to act as trustee of the resulting Asset Pool[7] for a consideration.[8] The execution of the projects would be funded largely through securitization, a method of sourcing development funds by the issuance of participation certificates against the direct backing assets of the projects,[9] whereby LBP would act as the nominal issuer of such certificates with the Asset Pool itself acting as the real issuer.[10] HIGC, in turn, would provide guaranty coverage to these participation certificates in accordance with its Contract of Guaranty with PMRDC and LBP. [11]

On November 13, 1997, PMRDC entered into a Memorandum of Agreement (MOA) whereby it was given the option to buy pieces of land owned by petitioners Carolina Hernandez-Nievera (Carolina), Margarita H. Malvar (Margarita) and Demetrio P. Hernandez, Jr. (Demetrio). Demetrio, under authority of a Special Power of Attorney to Sell or Mortgage,[12] signed the MOA also in behalf of Carolina and Margarita. In the aggregate, the realty measured 4,580,451 square meters and was segregated by agreement into Area I and Area II, respectively pertaining to the parcels covered by Transfer Certificate of Title (TCT) Nos. T-3137, T-3138, T-3139 and T-3140 on the one hand, and on the other by TCT Nos. T-3132, T-3133, T-3134, T-3135 and T-3136, all issued by the Register of Deeds of Laguna. The MOA materially provides:

1. THAT, the consideration for the sale of the parcels of land (Areas I and II) shall be TWENTY-FIVE PESOS

(Php 25.00) per square meter or a total of PESOS: ONE HUNDRED FOURTEEN MILLION FIVE HUNDRED ELEVEN TWO HUNDRED SEVENTY (Php114,511,270.00);

1. THAT, the VENDEE shall have the option to purchase the above-described parcels of land within a period of twelve (12) months from the date of this instrument and that the VENDEE shall pay the vendor option money in the following amounts and on the dates herein specified:

Area I

PESOS: SIX MILLION (Php6,000,000.00) payable in two (2) equal installments of PESOS: THREE MILLION (Php3,000,000.00), the first installment due on or before November 20, 1997; the second installment due on or before December 15, 1997, both installments to be covered by postdated checks upon signing of this Agreement.

Area II

Option money of PESOS: EIGHT MILLION FIVE HUNDRED THOUSAND (Php8,500,000.00) payable within thirty (30) days after conveyance to the Isabel Homes Asset Pool.

2. THAT, should the VENDEE exercise the option to purchase the parcels of land within the stipulated period, the VENDEE shall complete the TWENTY-FIVE (25%) PERCENT downpayment inclusive of the option money within the said stipulated period. Balance of the TWENTY FIVE (25%) PERCENT downpayment exclusive of the option money for Area I is PESOS: TEN MILLION FOUR HUNDRED EIGHTY-TWO THOUSAND TWO HUNDRED SIXTY-TWO (Php10,482,262.00) and for Area II is PESOS: THREE MILLION SIX HUNDRED FORTY-FIVE THOUSAND FIVE HUNDRED FIFTY- SIX (Php3,645,556.00).

The balance of the purchase price in the amount of PESOS: EIGHTY-FIVE MILLION EIGHT HUNDRED EIGHTY-THREE FOUR HUNDRED FIFTY-SIX (Php85,883,456.00) shall be payable within two (2) years in eight (8) quarterly installments covered by postdated checks. Schedule of payments shall be as follows:

January 31, 1999 Php 10,735,432.00
April 30, 1999 10,735,432.00
July 31, 1999 10,735,432.00
October 31, 1999 10,735,432.00
January 31, 2000 10,735,432.00
April 30, 2000 10,735,432.00
July 30, 2000 10,735,432.00
October 31, 2000 10,735,432.00

3. THAT, should the VENDEE fail to exercise its option to purchase the said described parcels of land within the stipulated period, the option money shall be forfeited in favor of the VENDOR and that the VENDEE shall return to the VENDOR all the Transfer Certificates of Title covering the said described parcels of land within a period of THIRTY (30) DAYS from the stipulated period, FREE FROM ALL LIENS AND ENCUMBRANCES;

4. THAT, the VENDOR, at the request of the VENDEE, shall agree to convey the parcels of land to any bank or financial institution by way of mortgage or to a Trustee by way of a Trust Agreement at any time from the date of this instrument, PROVIDED, HOWEVER, that the VENDOR is not liable for any mortgage or loans or obligations that will be incurred by way of mortgage of Trust Agreement that the VENDEE might enter into;

5. It is agreed that the VENDOR shall have the sole responsibility in the settlement of the tenants and eviction of the tenants and eviction of the occupants of the described parcels of land after all consideration have been fully paid by the VENDEE to the VENDOR;

6. THAT, all taxes including capital gains tax, transfer tax and documentary stamps tax shall be for the account of the VENDOR;

7. THAT, the VENDOR hereby warrants valid title to, and peaceful possession of the said described parcels of land after all considerations have been fully paid.[13]

As an implementation of the MOA, the lands within Area I were then mortgaged to Solid Bank for which petitioners received consideration from PMRDC.[14]

Later on, PMRDC saw the need to convey additional properties to and augment the value of its Asset Pool to support the collateralization of additional participation certificates to be issued.[15] Thus, on March 23, 1998, it entered with LBP and Demetrio - the latter purportedly acting under authority of the same special power of attorney as in the MOA - into a Deed of Assignment and Conveyance (DAC)[16] whereby the lands within Area II covered by TCT Nos. T-3132, T-3133, T-3134, T-3135 and T-3136 were transferred and assigned to the Asset Pool in exchange for a number of shares of stock which supposedly had already been issued in the name and in favor of Demetrio. These pieces of land are the subject of the present controversy as far as they are affected by the explicit provision in the DAC which dispensed with the stipulated obligation of PMRDC in the MOA to pay option money should it opt to buy the properties.[17]

PMRDC admittedly did not avail of its option to purchase the lands in Area II in the twelve months that passed after the execution of the MOA. Although PMRDC delivered to petitioners certain checks representing the money, the same however allegedly bounced.[18] Hence, on January 8, 1999, petitioners demanded the return of the corresponding TCTs.[19] In its January 21, 1999 letter to Demetrio, however, PMRDC, through Villamor, stated that the TCTs could no longer be delivered back to petitioners as the covered properties had already been conveyed and assigned to the Asset Pool pursuant to the March 23, 1998 DAC. In the correspondence that ensued, petitioners disowned Demetrio's signature in the DAC and labeled it a mere forgery. They explained that Demetrio could not have entered into the said agreement as his power of attorney was limited only to selling or mortgaging the properties and not conveying the same to the Asset Pool. Boldly, they asserted that the fraudulent execution of the DAC was made possible through the connivance of all the respondents.[20]

With that final word, petitioners instituted an action before the RTC of San Pablo City, Laguna, Branch 32 for the rescission of the MOA, as well as for the declaration of nullity of the DAC. They prayed for the issuance of a writ of preliminary injunction and for the payment of damages.[21]

Ruling for petitioners, the trial court, on August 30, 2004, declared the MOA to be an option contract and ordered its rescission. It, likewise, declared the DAC null and void as it made a definite finding of forgery of Demetrio's signature as well as fraud in its execution, and accordingly, adjudged respondents PMRDC and Villamor liable to petitioner for damages.[22] The dispositive portion of the decision reads:

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered in the favor of the plaintiffs and against the defendants as follows:

1. Rescinding the Memorandum of Agreement (MOA) executed between the plaintiffs and Project Movers Realty [&] Development Corporation (PMRDC);
2. Declaring null and void the Deed of Assignment and Conveyance (DAC) executed between Project Movers Realty [&] Development Corporation, Land Bank of the Philippines and Demetrio Hernandez whose signature is forged;
3. Ordering Transfer Certificate of Title Nos. T-3132, T-3133, T-3134 and T-3135, all in the names of the plaintiffs, which are in the custody of the Court, to be delivered to plaintiffs immediately and the plaintiffs are

ordered to issue a corresponding receipt of said certificates of title signed by all the plaintiffs to be submitted to the OIC-Branch Clerk of Court of this Court within five (5) days from receipt of said titles;

4. Ordering defendants Mario Villamor and Wilfredo Hernandez to pay plaintiffs, jointly and severally, the following:

- a. Actual damages of P500,000.00;
- b. Moral damages of P200,000.00;
- c. Exemplary damages of P200,000.00;
- d. Attorney's fees in the amount of P300,000.00;
- e. And the costs of the suit.

SO ORDERED.[23]

Aggrieved, respondents filed a notice of appeal and elevated the matter to the Court of Appeals. On October 19, 2005, the Court of Appeals issued the assailed Decision reversing and setting aside the trial court's decision as follows:

WHEREFORE, based on the foregoing, the appeal is GRANTED. The decision dated August 30, 2004 of the Regional Trial Court, Branch 32, San Pablo City in Civil Case No. SP-5742 (2000) is REVERSED and SET ASIDE and a new one is entered declaring the Deed of Conveyance valid and thus, the Transfer Certificates of Title subject of this case are ordered returned to HIGC. No costs.

SO ORDERED.[24]

Central to the ruling of the Court of Appeals is its contrary finding that the allegation of forgery of Demetrio's signature in the DAC was not established by the evidence and, hence, following the legal presumption of regularity in the execution of notarized deeds, it upheld the validity of the DAC.[25] The Court of Appeals noted that the incompatibility in the terms of the MOA and the DAC clearly signified the intention of the parties to have the MOA novated by subsequent agreement and have the properties conveyed to the Asset Pool in exchange for PMRDC shares to be issued to Demetrio. This, according to the appellate court, completely changed the original obligations of PMRDC as provided in the MOA. It noted further that it was premature to order the release of the subject TCTs to petitioners at this stage of the proceedings, because that would amount to an execution of the decision.[26]

With the denial of their motion for reconsideration,[27] petitioners filed the instant petition for review attributing error to the Court of Appeals in declining to rescind the MOA and declare the DAC null and void.

Petitioners insist that the obligation of PMRDC to deliver back the TCTs arises on its failure to exercise the option to purchase the lands according to the terms of the MOA, and that the deliberate refusal of PMRDC to perform such obligation gives ground for the rescission of the MOA. This thesis is perched on petitioners' argument that the MOA could not have possibly been novated by the DAC because first, Demetrio's signature therein has been forged, and second, Demetrio could not have validly assented to the DAC in behalf of Carolina and Margarita because his special power was limited only to selling or mortgaging the properties and excludes conveying and assigning the said properties to the Asset Pool for consideration.[28] They also point out that the DAC itself is infirm insofar as it stipulated to convey the lands to the Asset Pool as the latter supposedly is neither a registered corporation nor a partnership and does not possess a legal personality.[29]

Commenting on the petition, PMRDC and Villamor advance that petitioners' allegation of fraud and forgery are all factual matters that are inappropriate in a Rule 45 petition.[30] More importantly, they aver that the novation of the MOA by the DAC is unmistakable as the DAC itself has made an express reference to the MOA provisions

on the payment of option money and, hence, has expressly modified the pertinent terms thereof.[31]

HIGC and its president, Wilfredo Hernandez, both represented by the Office of the Government Corporate Counsel (OGCC),[32] and LBP[33] are of the same view.[34] In addition, HIGC explains that contrary to petitioners' belief, the transfer of the properties under the DAC is valid as the conveyance has been made to the Asset Pool with LBP, an entity with juridical entity, acting as trustee thereof.[35] Addressing the issue of forgery and fraud in the execution of the DAC, HIGC maintains that these factual matters remain to be mere allegations which nothing in the records of the case could conclusively prove, except the self-serving testimony of petitioners themselves.[36]

The Court denies the petition.

Petitioners' cause stems from the failure of PMRDC to restore to petitioners the possession of the TCTs of the lands within Area II upon its failure to exercise the option to purchase within the 12-month period stipulated in the MOA. Respondents maintain, however, that said obligation, dependent as it is on the exercise of the option to purchase, has altogether been expressly obliterated by the terms of the DAC whereby petitioners, through Demetrio as attorney-in-fact, have agreed to novate the terms of the MOA by extinguishing the core obligations of PMRDC on the payment of option money. This seems to suggest that with the execution of the DAC, PMRDC has already entered into the exercise of its option except that its obligation to deliver the option money has, by subsequent agreement embodied in the DAC, been substituted instead by the obligation to issue participation certificates in Demetrio's name but which, likewise, has not yet been performed by PMRDC. But petitioners stand against the validity of the DAC on the ground that the signature of Demetrio therein was spurious.

Firmly settled is the jurisprudential rule that forgery cannot be presumed from a mere allegation but rather must be proved by clear, positive and convincing evidence by the party alleging the same.[37] The burden to prove the allegation of forgery in this case has not been conclusively discharged by petitioners because first, nothing in the records supports the allegation except only perhaps Demetrio's explicit self-serving disavowal of his signature in open court.[38] Second, while in fact Demetrio at the trial of the case had committed to have the subject signature examined by an expert,[39] nevertheless, the trial had terminated without the results of the examination being submitted in evidence. Third, the claim of forgery, unsubstantiated as it is, becomes even more unremarkable in light of the fact that the DAC involved in this case is a notarized deed guaranteed by public attestation in accordance with law, such that the execution thereof enjoys the legal presumption of regularity in the absence of compelling proof to the contrary.[40]

Yet the inquiry on the validity of the DAC does not terminate with the finding alone of the genuineness of Demetrio's signature therein, because petitioners also stand against its validity on the ground of Demetrio's non-authority to execute the same. They claim that the execution of the DAC would be beyond the power of Demetrio to perform as his authority is limited only to selling or mortgaging the properties and does not include assigning and conveying said properties to the Asset Pool in consideration of shares of stocks for his lone benefit. For their part, respondents, who believe Demetrio's power of attorney was broad enough to effectuate a novation of PMRDC's core obligations in the MOA or, at the least, implement the provisions thereof through the DAC, invoke the 4[th] and 5[th] whereas-clauses in the DAC which, in relation to each other, supposedly pertain to that certain provision in the MOA which authorizes the conveyance of the properties to the Asset Pool in exchange for corporate shares.[41]

The 4[th] and 5[th] whereas-clauses in the DAC read as follows:

WHEREAS, on November 3, 1997, PMRDC and LANDOWNER have entered into a Memorandum of Agreement whereby the former agreed to convey to the Isabel Homes Asset Pool certain real properties located

at Sta. Maria, Laguna;

[WHEREAS], the LANDOWNER and PMRDC have agreed to revise and modify the said Memorandum of Agreement, whereby the LANDOWNER shall dispense with the option money as a requisite to the sale and purchase of the properties by PMRDC, and agreed to convey absolutely and unqualifiedly the same properties directly to the Isabel Homes Asset Pool for and in exchange of shares of stock or equity in PMRDC.[42]

While indeed we find no provision in the MOA such as that alluded to in the aforequoted 4[th] whereas-clause in the DAC which purportedly embodies an agreement by the parties to assign and convey the subject properties to the Asset Pool, we surmise that the clause could be referring to paragraph 5 of the MOA which stipulates a commitment on the part of petitioners to give their consent to an assignment and conveyance of the properties to the Asset Pool but only once a request therefor is made by PMRDC. Paragraph 5 reads:

5. THAT, the VENDOR at the request of the VENDEE shall agree to convey the parcels of land to any bank or financial institution by way of mortgage or to a Trustee by way of a Trust Agreement at any time from the date of this instrument, PROVIDED, HOWEVER, that the VENDOR is not liable for any mortgage or loans or obligations that will be incurred by way of mortgage of Trust Agreement that the VENDEE might enter into;[43]

Petitioners profess, however, that no such request was ever intimated to them at any time during the subsistence of the PMRDC's right to exercise the option to buy. But respondents are quick to reason that a request is unnecessary because Demetrio has been legally enabled by his special power to give such consent and accordingly execute the DAC, effect a novation of the MOA, and extinguish the stipulated obligations of PMRDC therein, or at least that he could assent to the implementation of the MOA provisions in the way that transpired. We agree.

Demetrio's special power of attorney granting the powers to sell and/or mortgage reads in part:

1. To sell and/or mortgage in favor of any person, corporation, partnership, private banking or financial institution, government or semi-government banking or financial institution for such price or amount and under such terms and conditions as our aforesaid attorney-in-fact may deem just and proper, parcels of land more particularly described as follows:

x x x

2. To carry out the authority aforestated, to sign, execute and deliver such deeds, instruments and other papers that may be required or necessary;

3. To further attain the authority herein given, to do and perform such acts and things that may be necessary or incidental to fully carry out the authority herein granted.[44]

It is in the context of this vesture of power that Demetrio, representing his shared interest with Carolina and Margarita, entered into the MOA with PMRDC. It is likewise within this same context that Demetrio later on entered into the DAC and accordingly extinguished the previously subsisting obligation of PMRDC to deliver the stipulated option money and replaced said obligation with the delivery instead of participation certificates in favor of Demetrio.

The powers conferred on Demetrio were exclusive only to selling and mortgaging the properties. Between these two specific powers, the power to sell is quite controversial because it is the sale transaction which bears close resemblance to the deal contemplated in the DAC. In fact, part of the testimony of Atty. Danilo Javier, counsel for respondent HIGC and head of its legal department at the time, is that in the execution of the DAC, respondents had relied on Demetrio's special power of attorney and also on his supposed agreement to be paid in kind, i.e., in shares of stock, as consideration for the assignment and conveyance of the subject properties to the Asset

Pool.[45] What petitioners miss, however, is that the power conferred on Demetrio to sell "for such price or amount"[46] is broad enough to cover the exchange contemplated in the DAC between the properties and the corresponding corporate shares in PMRDC, with the latter replacing the cash equivalent of the option money initially agreed to be paid by PMRDC under the MOA. Suffice it to say that "price" is understood to mean "the cost at which something is obtained, or something which one ordinarily accepts voluntarily in exchange for something else, or the consideration given for the purchase of a thing." [47]

Thus, it becomes clear that Demetrio's special power of attorney to sell is sufficient to enable him to make a binding commitment under the DAC in behalf of Carolina and Margarita. In particular, it does include the authority to extinguish PMRDC's obligation under the MOA to deliver option money and agree to a more flexible term by agreeing instead to receive shares of stock in lieu thereof and in consideration of the assignment and conveyance of the properties to the Asset Pool. Indeed, the terms of his special power of attorney allow much leeway to accommodate not only the terms of the MOA but also those of the subsequent agreement in the DAC which, in this case, necessarily and consequently has resulted in a novation of PMRDC's integral obligations. On this score, we quote with approval the decision of the Court of Appeals, aptly citing the case of *California Bus Lines, Inc. v. State Investment House, Inc.*[48] thus -

There are two ways which could indicate, in fine, the presence of novation and thereby produce the effect of extinguishing an obligation by another which substitutes the same. The first is when novation has been explicitly stated and declared in unequivocal terms. The second is when the old and the new obligations are incompatible on every point. The test of incompatibility is whether the two obligations can stand together, each one having its independent existence. If they cannot, they are incompatible, and the latter obligation novates the first. Corollarily, changes that breed incompatibility must be essential in nature and not merely accidental. The incompatibility must take place in any of the essential elements of the obligation such as its object, cause or principal conditions thereof; otherwise, the change would be merely modificatory in nature and insufficient to extinguish the original obligation.[49]

In view of the foregoing, the Court finds no useful purpose in addressing all the other issues raised in this petition.

A final note. Section 10, Book IV, Title III, Chapter 3[50] of the Revised Administrative Code of 1987 has designated the OGCC to act as the principal law office of government-owned or controlled corporations (GOCCs) in connection with any judicial or quasi-judicial proceeding. Yet between the two respondents GOCCs in this case - LBP and HIGC - it is only the latter for which the OGCC has entered its appearance. Nowhere in the records is it shown that the OGCC has ever entered its appearance in this case as principal legal counsel of respondent LBP, or that at the very least it has given express conformity to the LBP legal department's representation.[51]

In *Land Bank of the Philippines v. Martinez*,[52] citing *Land Bank of the Philippines v. Panlilio-Luciano*,[53] we explained that the legal department of LBP is not expressly authorized by its charter to appear in behalf of the corporation in any proceeding as the mandate of the law is explicit enough to place the said department under the OGCC's power of control and supervision. We held in that case:

[Section 10] mandates the OGCC, and not the LBP Legal Department, as the principal law office of the LBP. Moreover, it establishes the proper hierarchical order in that the LBP Legal Department remains under the control and supervision of the OGCC. x x x

At the same time, the existence of the OGCC does not render the LBP Legal Department a superfluity. We do not doubt that the LBP Legal Department carries out vital legal services to LBP. However, the performance of such functions cannot deprive the OGCC's role as overseer of the LBP Legal Department and its mandate of exercising control and supervision over all GOCC legal departments. For the purpose of filing petitions and making submissions before this Court, such control and supervision imply express participation by the OGCC

as principal legal counsel of LBP. x x x

It should also be noted that the aforementioned Section 10, Book IV, Title III, Chapter 3 of the Administrative Code of 1987 authorizes the OGCC to receive the attorney's fees adjudged in favor of their client GOCCs, such fees accruing to a special fund of the OGCC. Evidently, the non-participation of the OGCC in litigations pursued by GOCCs would deprive the former of its due funding as authorized by law. Hence, this is another reason why we cannot sustain Attys. Beramo and Berbaño's position that the OGCC need not participate in litigations pursued by LBP.

It may strike as disruptive to the flow of a GOCC's daily grind to require the participation of the OGCC as its principal law office, or the exercise of control and supervision by the OGCC over the acts of the GOCC's legal departments. For reasons such as proximity and comfort, the GOCC may find it convenient to rely instead on its in-house legal departments, or more irregularly, on private practitioners. Yet the statutory role of the OGCC as principal law office of GOCCs is one of long-standing, and we have to recognize such function as part of public policy. Since the jurisdiction of the OGCC includes all GOCCs, its perspective is less myopic than that maintained by a particular legal department of a GOCC. It is not inconceivable that left to its own devices, the legal department of a given GOCC may adopt a legal position inconsistent with or detrimental to other GOCCs. Since GOCCs fall within the same governmental framework, it would be detrimental to have GOCCs foisted into adversarial positions by their respective legal departments. Hence, there is indubitable wisdom in having one overseer over all these legal departments which would ensure that the legal positions adopted by the GOCCs would not conflict with each other or the government.

x x x Certainly, Section 10, Book IV, Title III, Chapter 3 of the Administrative Code of 1987 can be invoked by adverse parties or by the courts in citing as deficient the exclusive representation of LBP by its Legal Department. Then again, if neither the adverse parties nor the courts of jurisdiction choose to contest this point, there would be no impediment to the litigation to maintain. x x x[54]

WHEREFORE, the Petition is DENIED. The October 19, 2005 Decision and January 11, 2006 Resolution of the Court of Appeals, in CA- G.R. CV No. 83852, are hereby AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Nachura, Abad, and Mendoza, JJ., concur.

[1] Penned by Associate Justice Juan Q. Enriquez, with Associate Justices Conrado M. Vasquez, Jr. and Vicente Q. Roxas, concurring; rollo, pp. 26-36.

[2] The case was entitled, Carolina Hernandez-Nievera, Demetrio P. Hernandez, Jr. and Margarita H. Malvar v. Wilfredo F. Hernandez, Home Insurance & Guaranty Corporation, Project Movers Realty & Development Corp., Mario P. Villamor and Land Bank of the Philippines.

[3] Rollo, pp. 38-39.

[4] The judgment was signed by Judge Zorayda Herradura-Salcedo, records, Vol. I, pp. 170-202.

[5] Now known as Home Guaranty Corporation.

[6] See Asset Pool Formation Agreement dated May 29, 1995, folder of exhibits, pp. 48-69.

[7] See Trust Agreement dated May 29, 1995, id. at 32-47.

[8] See Trustee Fee Agreement dated November 15, 1995 between PMRDC and LBP, id. at 81-84.

[9] See Trust Agreement dated May 29, 1995, *id.* at 32.

[10] Asset Pool Formation Agreement, *rollo*, p. 115.

[11] See Contract of Guaranty dated May 29, 1995, folder of exhibits, pp. 70-75.

[12] See Special Power of Attorney dated January 23, 1997; *id.* at 21-23.

[13] See Memorandum of Agreement, *id.* at 18-19. (Emphasis supplied.)

[14] TSN, September 6, 2000, pp. 19-21, 40-43; TSN, September 27, 2000, p. 5.

[15] PMRDC Board Resolution No. 7, 1998, folder of exhibits, p. 85.

[16] See Deed of Assignment and Conveyance, *id.* at 25-27.

[17] *Id.* at 25. It provides:

[WHEREAS], the LANDOWNER and PMRDC have agreed to revise and modify the said Memorandum of Agreement, whereby the LANDOWNER shall dispense with the option money as a requisite to the sale and purchase of the properties by PMRDC, and agreed to convey absolutely and unqualifiedly the same properties directly to the Isabel Homes Asset Pool for and in exchange of shares of stock or equity in PMRDC. (Emphasis supplied.)

[18] TSN, September 6, 2000, pp. 8-17. TSN, March 8, 2001, p. 13; TSN, December 7, 2000, pp. 28, 32.

[19] Records, Vol. I, pp. 29-30.

[20] CA *rollo*, pp. 202-221.

[21] Records, Vol. I, pp. 3-13. The trial court declined to issue a preliminary injunctive relief in view of the fact that the TCTs in question have already been put in custodia legis, (Records, Vol. II, pp. 38, 84-87).

[22] Records, Vol. II, pp. 199-200.

[23] *Id.* at 201-202.

[24] CA *rollo*, p. 212.

[25] *Id.*

[26] *Id.* at 210-212.

[27] CA *rollo*, pp. 245-246.

[28] *Rollo*, pp. 15-16.

[29] *Id.* at 16-17.

[30] *Id.* at 43-44.

[31] *Id.* at 45.

[32] *Id.* at 68-69.

[33] Represented by its own Administrative Legal and Litigation Department; *id.* at 51-52.

[34] *Rollo*, pp. 55-56, 86, 89-92.

[35] *Id.* at 87-88.

[36] *Id.* at 92-101.

[37] *St. Mary's Farm, Inc. v. Prima Real Properties, Inc.*, G.R. No. 158144, July 31, 2008, 560 SCRA 704, 713; *Libres v. Delos Santos*, G.R. No. 176358, June 17, 2008, 554 SCRA 642, 655; *Fernandez v. Fernandez*, 416 Phil. 322, 342 (2001); *R.F. Navarro & Co., Inc. v. Hon. Vailoces*, 413 Phil. 432, 442 (2001); *Tenio-Obsequio v. Court of Appeals*, G.R. No. 107967, March 1, 1994, 230 SCRA 550, 558.

[38] TSN, August 29, 2000, p. 16; TSN, September 27, 2000, pp. 10-11, 19-20.

[39] TSN, August 29, 2000, p. 17.

[40] *Libres v. Delos Santos*, *supra* note 37; *Pan Pacific Industrial Sales Co., Inc. v. Court of Appeals* G.R. No. 125283, February 10, 2006, 482 SCRA 164.

[41] See Comment of HIGC, rollo, p. 98.

[42] Rollo, p. 162. (Emphasis supplied.)

[43] Folder of Exhibits, p. 19. (Emphasis supplied.)

[44] *Id.* at 1-3. (Emphasis supplied.)

[45] TSN, December 7, 2000, pp. 23-34.

[46] *Id.*

[47] *Black's Law Dictionary*, 6[th] ed., pp. 1188-1189.

[48] 463 Phil. 689 (2003).

[49] Rollo, p. 34.

[50] Section 10. Office of the Government Corporate Counsel. - The Office of the Government Corporate Counsel (OGCC) shall act as the principal law office of all government-owned or controlled corporations, their subsidiaries, other corporate offsprings and government acquired asset corporations and shall exercise control and supervision over all legal departments or divisions maintained separately and such powers and functions as are now or may hereafter be provided by law. In the exercise of such control and supervision, the Government Corporate Counsel shall promulgate rules and regulations to effectively implement the objectives of the Office.

The OGCC is authorized to receive the attorney's fees adjudged in favor of their client government-owned or controlled corporations, their subsidiaries/other corporate offsprings and government acquired asset corporations. These attorney's fees shall accrue to a Special fund of the OGCC, and shall be deposited in an authorized government depository as trust liability and shall be made available for expenditure without the need for a Cash Disbursement Ceiling, for purposes of upgrading facilities and equipment, granting of employee's incentive pay and other benefits, and defraying such other incentive expenses not provided for in the General Appropriations Act as may be determined by the Government Corporate Counsel.

[51] See Entry of Appearance with Motion for Extension of Time to File Comment, rollo, pp. 51-52.

[52] G.R. No. 169008, August 14, 2007, 530 SCRA 158.

[53] G.R. No. 165428, July 13, 2005 (Resolution).

[54] *Land Bank of the Philippines v. Martinez*, *supra* note 52, at 164-166, citing *Land Bank of the Philippines v.*

Panlilio-Luciano, supra note 53. (Emphasis supplied.)

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