DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS. GREGORIO CAPULONG, RESPONDENT.

G.R. No. 181790. January 30, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

This is a petition[1] for review on certiorari under Rule 45 of the Rules of Court seeking the reversal of the Decision[2] dated September 18, 2007 and the Resolution[3] dated February 15, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 90338.

On January 28, 1983, petitioner Development Bank of the Philippines (DBP) granted a loan to Asialand Development Corporation (ADC) in the amount of P16,000,000.00 for the purpose of real estate development. To secure the loan, a mortgage was constituted on the project site and all improvements thereon consisting of 378,226 square meters then covered by ten (10) mother certificates of title.

After the mortgage was constituted, ADC caused the subdivision of the entire property into separate individual residential lots eventually sold to different buyers, one of whom was respondent Gregorio Capulong (Capulong), who purchased five (5) lots by way of a Contract to Sell on September 30, 1984.

For failure of ADC to pay its obligation to DBP, the latter extrajudicially foreclosed the mortgage and, thus, was able to acquire the property. ADC failed to redeem the foreclosed properties within the redemption period.

On December 8, 1986, the Asset Privatization Trust (APT) was created by virtue of Proclamation No. 50 for the benefit of the National Government tasked to take title to possess, conserve, provisionally manage and dispose of assets identified for privatization. Consequently, DBP transferred the account and properties of ADC to APT, including the subject property.

Later, for failure to obtain titles to the properties he purchased from ADC despite full payment, Capulong filed a Complaint against ADC before the Housing and Land Use Regulatory Board (HLURB) in Region III for the release of the Transfer Certificates of Title over the purchased realties or the replacement thereof and damages. Capulong impleaded DBP, being the former mortgagee and having acquired the properties after foreclosure, and APT, now Property Management Office (PMO), to which the properties were transferred after DBP's acquisition thereof.

In the complaint, Capulong alleged that ADC sold the properties to him without having the Contract to Sell registered with the HLURB; that it did not inform him of the mortgage; and that despite his full payment, it refused to deliver to him the titles to the properties in violation of Presidential Decree (PD) 957.

DBP interposed as its defenses, inter alia, that the loan to ADC was granted at the time when the mortgaged property was not yet subdivided into individual lots and when there were as yet no end-buyers thereof; that it foreclosed the property pursuant to the Loan Agreement and the Mortgage Contract signed by them; and that it was not the proper party in interest due to its transfer of the account and the titles to PMO such that even if

Capulong prevails in the case, it would be impossible for it to comply with any order of the HLURB, as DBP was no longer in possession of the said titles and could not dispose of the same.

After due hearing, the HLURB Arbiter rendered a Decision[4] dated May 7, 2002, in favor of Capulong. The Arbiter found that ADC committed several violations of PD 957; declared the foreclosure null and void; ordered respondents ADC, DBP, and PMO to cause the transfer of titles over the subject properties to Capulong's name or, in the alternative, replace the realties with other lots of the same value, standard, and area; indemnify Capulong in the form of damages and attorney's fees; refund to him the excess payments with corresponding interest; and pay the costs of suit.

DBP elevated the said Decision in a petition for review to the HLURB Board of Commissioners which, in its Decision[5] dated June 26, 2003, affirmed the Decision of the Arbiter, but set aside the directive for the DBP and PMO to return the excess payments made by Capulong and for PMO to pay damages.

DBP moved to reconsider the Decision, but the HLURB Board of Commissioners denied the same in the Resolution[6] dated June 18, 2004.

On appeal to the Office of the President (OP), the Decision of the HLURB Board of Commissioners was affirmed in toto in an Order[7] dated March 14, 2005. Subsequently, the OP denied DBP's motion for reconsideration in its Order[8] dated June 8, 2005.

DBP went to the CA via a petition for review which was denied in the assailed Decision dated September 18, 2007. The motion for reconsideration of the said Decision was likewise denied by the CA in its Resolution dated February 15, 2008.

Hence, this petition ascribing to the CA the following errors:

- Affirming that the mortgage, foreclosure, and auction sale of the subject properties are null and void;

- Declaring that DBP is obligated to inform the lot buyer of the mortgage under PD 957 not being an owner or developer of the subdivision lots;

- Holding DBP liable for damages; and

- Dismissing DBP's counterclaims.

Essentially, DBP asseverates that under Section 18[9] of PD 957, it is only the owner or the developer who had the obligation to obtain a prior written approval of the HLURB before a mortgage on any unit or lot is constituted and to inform the lot buyers of the mortgage. It points out that, at the time the mortgage was executed, the subject property was not yet subdivided into individual lots and sold to end-buyers such that when it granted the loan, the title to the property it received as collateral was clean. Thus, for failure of ADC to comply with its obligation to pay its loan, DBP had merely exercised its rights under the law when it foreclosed the mortgage on the property. DBP then should not be adjudged as a mortgagee in bad faith.

It further argues that Far East Bank & Trust Co. v. Marquez[10] is not applicable because the factual milieu of the instant case is different. In Far East Bank, the mortgage was constituted after the property was already subject of a contract to sell, whereas, in this case, the contract to sell in favor of Capulong was executed long after the mortgage was constituted on the entire property, including the lots purchased by Capulong. Thus, it should not be held liable with ADC in delivering to Capulong the purchased lots or their equivalent and in the payment of damages.

The petition is partially meritorious.

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DBP cannot bank on the factual difference in Far East Bank that it granted the loan and constituted the mortgage on the property subject of that case after the same was already subject of a contract to sell. The circumstance that DBP and ADC executed the mortgage contract prior to the selling of the subdivided portions of the property to Capulong is immaterial considering that when DBP granted the loan to ADC, it already knew that the loan was to be used for realty development.

DBP should have considered that it was dealing with a property subject of a real estate development project. A reasonable person, particularly a financial institution such as DBP, should have been aware that, to finance the project, funds other than those obtained from the loan could have been used to serve the purpose, albeit partially. Hence, there was a need to verify whether any part of the property was already intended to be the subject of any other contract involving buyers or potential buyers. In granting the loan, DBP should not have been content merely with a clean title, considering the presence of circumstances indicating the need for a thorough investigation of the existence of buyers like Capulong. Wanting in care and prudence, the DBP cannot be deemed to be an innocent mortgagee. It should not have relied only on the representation of ADC that it had secured all requisite permits and licenses from the government agencies concerned. During the existence of the loan and the mortgage, DBP should have required the submission of certified true copies of those documents and verified their authenticity through its own independent effort.[11]

However, we believe that the award of damages and attorney's fees in favor of Capulong, as against DBP, should be deleted because there is no direct causal connection between the failure of DBP to require ADC to comply with the HLURB requirements pursuant to PD 957 and the injury sustained by Capulong owing to ADC's failure to inform him of the prior mortgage with DBP and of the foreclosure of the mortgage. More importantly, it is noticeable that the decisions of the HLURB Arbiter, the HLURB Board of Commissioners, the Office of the President and the CA did not discuss the basis for the award of moral and liquidated damages and attorney's fees as against DBP. It is a settled rule that the factual bases of the award for damages and attorney's fees should be set forth in an order or a decision, failing which, no grant of damages can be sustained.[12]

WHEREFORE, the Decision dated September 18, 2007 and the Resolution dated February 15, 2008 are AFFIRMED, with the MODIFICATION that the award of P50,000.00 moral damages, P50,000.00 liquidated damages, and P50,000.00 attorney's fees, in favor of respondent Capulong as against petitioner DBP, is deleted.

SO ORDERED.

Austria-Martinez, (Acting Chairperson), Tinga[*], Chico-Nazario, and Peralta, JJ., concur.

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[*] Additional member in lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 556 dated January 15, 2009.

[1] Rollo, pp. 9-39.

[2] Id. at 41-49.

[3] Id. at 50.

[4] Id. at 51-59.

[5] Id. at 60-63.

[6] Id. at 65-67.

[7] Id. at 68-73.

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[8] Id. at 74.

[9] Sec. 18. Mortgages. -- No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority. Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development

[10] 465 Phil. 276 (2004).

[11] Id. at 288.

[12] Santiago v. Court of Appeals, G.R. No. 127440, January 26, 2007, 513 SCRA 69, 86.

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