UNITED OVERSEAS BANK OF THE PHILIPPINES, INC., PETITIONER, VS. THE BOARD OF COMMISSIONERS-HLURB, J.O.S. MANAGING BUILDERS, INC., AND EDUPLAN PHILS., INC., RESPONDENTS.

G.R. No. 182133. June 23, 2015

Ponente: PERALTA, J.

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PERALTA, J.:

Before this Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, assailing the Decision[1] and Resolution[2] of the Court of Appeals (CA), dated February 27, 2006 and March 5, 2008, respectively, in CAG.R.SP No. 86401.

The antecedents are as follows:

Respondent J.O.S. Managing Builders, Inc. (JOS Managing Builders) is the registered owner and developer of the condominium project Aurora Milestone Tower. On December 16, 1997, JOS Managing Builders and respondent EDUPLAN Philippines, Inc. (EDUPLAN) entered into a Contract to Sell covering Condominium Unit E, 10[th] Floor of the Aurora Milestone Tower with an area of 149.72 square meters, more or less. In August 1998, EDUPLAN effected full payment, and in December 1998, JOS Managing Builders and EDUPLAN executed a Deed of Absolute Sale over the condominium unit. Notwithstanding the execution of the deed of sale in favor of EDUPLAN, JOS Managing Builders failed to cause the issuance of a Condominium Certificate of Title over the condominium unit in the name of EDUPLAN. EDUPLAN learned that the lots on which the condominium building project Aurora Milestone Tower was erected had been mortgaged by JOS Managing Builders to petitioner United Overseas Bank of the Philippines (United Overseas Bank) without the prior written approval of the Housing and Land Use Regulatory Board (HLURB). Due to the inability of JOS Managing Builders to deliver the condominium certificate of title covering the unit purchased by EDUPLAN, the latter filed a complaint for specific performance and damages against JOS Managing Builders and United Overseas Bank before the HLURB praying that: (a) the mortgage between JOS Managing Builders and United Overseas Bank be declared null and void; (b) JOS Managing Builders and United Overseas Bank be compelled to cause the issuance and release of the Condominium Certificate of Title; and (c) JOS Managing Builders be ordered to provide emergency power facilities, to refund the monthly telephone carrier charges, and to permanently cease and desist from further collecting such charges.

In its defense, JOS Managing Builders alleged that it could not issue an individual Condominium Certificate of Title in favor of EDUPLAN, because petitioner United Overseas Bank has custody of the Transfer Certificates of Title covering the condominium building.

United Overseas Bank, on the other hand, alleged that JOS Managing Builders is the owner of several parcels of land covered by Transfer Certificate of Title (TCT) Nos. N-146444, N-146445 and N-143601. On April 3, 1997, JOS Managing Builders executed in favor of United Overseas Bank a Real Estate Mortgage[3] over the said parcels of land and the improvements existing or to be erected thereon to secure the Two Hundred Million Peso

(PhP200,000,000.00)[4] loan it acquired from the bank. The subject condominium building project Aurora Milestone Tower, which is situated in the said parcels of land, are part of the properties mortgaged to United Overseas Bank. JOS Managing Builders defaulted in the payment of its loan obligations to United Overseas Bank. Hence, United Overseas Bank foreclosed the mortgage constituted over properties of JOS Managing Builders and the subject properties were sold by public auction on March 22, 1999 wherein United Overseas Bank was declared as the highest bidder. Subsequently, a certificate of sale was issued in favor of United Overseas Bank corresponding to the foreclosed properties, which was registered with the Register of Deeds of Quezon City on April 27, 1999.

On August 15, 2001, the HLURB Arbiter ruled,[5] in favor of EDUPLAN and declared the mortgage executed between JOS Managing Builders and United Overseas Bank as well as the foreclosure proceedings null and void, pointing out that the mortgage was executed without the approval of the HLURB as required under Section 18 of Presidential Decree (P.D.) No. 957.[6] The Arbiter held that that since EDUPLAN has paid the full purchase price of the condominium unit, JOS Managing Builders and United Overseas Bank should cause the release from encumbrance of the mother titles to the condominium building project, and issue the corresponding condominium certificate of title in favor of EDUPLAN. Further, JOS Managing Builders should provide EDUPLAN with emergency power facilities and refund it with the monthly telephone carrier charges it has been collecting since September 1999, and permanently cease and desist from further imposing and collecting such fees. Moreover, JOS Managing Builders was directed to pay EDUPLAN damages, attorney's fees and costs of suit. The dispositive portion of the decision reads:

> Wherefore, the foregoing premises considered and as prayed for, judgment is hereby rendered in favor of the Complainant and against the Respondents as follows:
> 1. Declaring the mortgage executed by Respondent J.O.S. Managing Builders in favor of Respondent United Overseas Bank (Westmont) as null and void, including the foreclosure of the mortgage, for being in violation of Section 18 of P.D. 957;
>
> 2. Ordering Respondents to cause the release from the encumbrances of the "mother titles" to the Condominium Building Project and, issuance of the individual Condominium Certificate of Title of Complainant to its Condominium Unit, free from any and all liens and encumbrances;
>
> 3. Ordering Respondent J.O.S. Managing Builders to provide the Complainant with emergency power facilities, strictly as represented in its sales brochures;
>
> 4. Ordering Respondent J.O.S. Managing Builders to refund to Complainant the monthly telephone carrier charges it has been collecting since September 1, 1999 and permanently cease and desist from further imposing and collecting said charges;
>
> 5. Ordering Respondent J.O.S. to pay the complainant P100,000.00 by way of temperate damages, P50,000.00 by way of exemplary damages, P40,000.00 as and by way of Attorney's Fees; and the costs of suit.
>
> 6. Ordering Respondent J.O.S. Managing Builders to pay Respondent United Overseas Bank (Westmont) the loan release value of the subject condominium unit.

United Overseas Bank then filed a petition for review with the HLURB. On August 20, 2004, the HLURB Board of Commissioners affirmed the Arbiter's decision, but deleted the award of emergency power facilities and refund of the monthly telephone carrier charges. Hence, United Overseas Bank filed a petition for review under Rule 43 before the CA.[7]

On February 27, 2006, the CA dismissed the petition.[8] A motion for reconsideration was filed, but it was denied for lack of merit.[9] The CA held that United Overseas Bank did not exhaust the administrative remedies

available to it due to its failure to appeal the decision of the HLURB Board of Commissioners to the Office of the President before going to the CA.

Hence, the petition assigning the lone error:

> THE COURT OF APPEALS ERRED IN REFUSING TO APPLY THE EXCEPTION TO THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES.[10]

Petitioner United Overseas Bank argues that the CA erred when it dismissed the petition due to its failure to exhaust administrative remedies. It alleges that the question on whether the HLURB is correct in declaring null and void the entire mortgage constituted by JOS Managing Builders in favor of United Overseas Bank, as well as the foreclosure of the entire mortgage, is a legal question which is an exception to the rule on exhaustion of administrative remedies.

The petition is meritorious.

The doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence.[11] It has been held, however, that the doctrine of exhaustion of administrative remedies and the doctrine of primary jurisdiction are not iron-clad rules. In the case of Republic v. Lacap,[12] the Court enumerated the numerous exceptions to these rules, namely: (a) where there is estoppel on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively so small as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent; (g) where the application of the doctrine may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) where the issue of non-exhaustion of administrative remedies has been rendered moot; (j) where there is no other plain, speedy and adequate remedy; (k) where strong public interest is involved; and (1) in quo warranto proceedings.[13]

The situation in paragraph (e) of the foregoing enumeration obtains in this case.

The issue on whether non-compliance with the clearance requirement with the HLURB would result to the nullification of the entire mortgage contract or only a part of it is purely legal which will have to be decided ultimately by a regular court of law. It does not involve an examination of the probative value of the evidence presented by the parties. There is a question of law when the doubt or difference arises as to what the law is on a certain state of facts, and not as to the truth or the falsehood of alleged facts. Said question at best could be resolved only tentatively by the administrative authorities. The final decision on the matter rests not with them but with the courts of justice. Exhaustion of administrative remedies does not apply, because nothing of an administrative nature is to be or can be done. The issue does not require technical knowledge and experience, but one that would involve the interpretation and application of law.[14] There is, thus, no need to exhaust administrative remedies, under the premises.

The Court will now proceed to the legal issue on hand.

Petitioner United Overseas Bank alleges that the HLURB erred in declaring null and void the entire mortgage constituted by JOS Managing Builders in its favor, as EDUPLAN does not claim ownership over all the properties mortgaged by JOS Managing Builders in favor of United Overseas Bank, but only over a single condominium unit, i.e., Unit E, 10[th] Floor of the Aurora Milestone Tower.

We agree with petitioner.

The HLURB erred in declaring

null and void the entire mortgage

executed between JOS Managing

Builders and United Overseas Bank.

At the onset, it is worthy to note that jurisprudence have varying conclusions of the issue at hand. In Far East Bank & Trust Co. v Marquez,[15] the Court sustained the HLURB when it declared the mortgage entered into between the subdivision developer and the bank as unenforceable against the lot buyer for failure of the developer to obtain the prior written approval of the HLURB. However, we were categorical that the HLURB acted beyond bounds when it nullified the mortgage covering the entire parcel of land, of which the lot subject of the buyer's complaint is merely a part of.

In Far East Bank, the Court held that:

> Acts executed against the provisions of mandatory or prohibitory laws shall be void. Hence, the mortgage over the lot is null and void insofar as private respondent is concerned.
>
> The remedy granted by the HLURB and sustained by the Office of the President is proper only insofar as it refers to the lot of respondent. In short, the mortgage contract is void as against him. Since there is no law stating the specifics of what should be done under the circumstances, that which is in accord with equity, should be ordered. The remedy granted by the HLURB in the first and the second paragraphs of the dispositive portion of its Decision insofar as it referred to respondent's lot is in accord with equity.
>
> The HLURB, however, went overboard in its disposition in paragraphs 3 and 4, which pertained not only to the lot but to the entire parcel of land mortgaged. Such ruling was improper. The subject of this litigation is limited only to the lot that respondent is buying, not to the entire parcel of land. He has no personality or standing to bring suit on the whole property, as he has actionable interest over the subject lot only. (Citations omitted and underscoring ours)[16]

In Metropolitan Bank and Trust Co., Inc. v. SLGT Holdings, Inc.,[17] however, the Court nullified the entire mortgage contract executed between the subdivision developer and the bank albeit the fact that only two units or lot buyer/s filed a case for declaration of nullity of mortgage. In the said case, the entire mortgage contract was nullified on the basis of the principle of indivisibility of mortgage as provided in Article 2089[18] of the New Civil Code.

This notwithstanding, in the fairly recent case of Philippine National Bank v. Lim,[19] the Court reverted to our previous ruling in Far East Bank that a unit buyer has no standing to seek for the complete nullification of the entire mortgage, because he has an actionable interest only over the unit he has bought. Hence, in the said case, the mortgage was nullified only insofar as it affected the unit buyer.

We find the recent view espoused in Philippine National Bank to be in accord with law and equity. While a mortgage may be nullified if it was in violation of Section 18 of P.D. No. 957, such nullification applies only to the interest of the complaining buyer. It cannot extend to the entire mortgage. A buyer of a particular unit or lot has no standing to ask for the nullification of the entire mortgage.

Since EDUPLAN has an actionable interest only over Unit E, 10[th] Floor, Aurora Milestone Tower, it is but logical to conclude that it has no standing to seek for the complete nullification of the subject mortgage and the HLURB was incorrect when it voided the whole mortgage between JOS Managing Builders and United Overseas Bank.

Considering that EDUPLAN had already paid the full purchase price of the subject unit, the latter is entitled to the transfer of ownership of the subject property in its favor. This right is provided for in Section 25 of P.D. No. 957, 50 wit:

> Issuance of Title. The owner or development shall deliver the title of the lot or unit to the buyer upon full payment of the lot or unit, x x x.

Verily, JOS Managing Builders has the obligation to cause the delivery of the Title to the subject condominium unit in favor of EDUPALN.

Nevertheless, despite the fact that the mortgage constituted between JOS Managing Builders and United Overseas Bank cannot bind EDUPLAN, because of the non-observance of the provision of P.D. No. 957 by JOS managing Builders, the mortgage between the former and United Overseas Bank is still valid.

In the present case, it is undisputed that JOS Managing Builders mortgaged several parcels of land, including all the buildings and improvements therein covered by TCT Nos. N-146444, N-146445 and N-143601 to United Overseas Bank without prior clearance from the HLURB. The said omission clearly violates Section 18 of P.D. No. 957 (The Subdivision and condominium Buyers' Protective Decree), which provides as follows:

> Section 18. Mortgages. - No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the [HLURB]. xxx (Word in bracket added)

It should be noted, however, that the failure of JOS Managing Builders to secure prior approval of the mortgage from the HLURB and United Overseas Bank's failure to inquire on the status of the property offered for mortgage placed the condominium developer and the creditor Bank in pari delicto.[20] Hence, they cannot ask the courts for relief for such parties should be left where they are found for being equally at fault.

More importantly, it should be understood that the prior approval requirement is intended to protect buyers of condominium units from fraudulent manipulations perpetrated by unscrupulous condominium sellers and operators, such as their failure to deliver titles to the buyer or titles free from lien and encumbrances.[21] This is pursuant to the intent of P.D. No. 957 to protect hapless buyers from the unjust practices of unscrupulous developers which may constitute mortgages over condominium projects sans the knowledge of the former and the consent of the HLURB.[22]

Thus, failure to secure the HLURB'S prior written approval as required by P.D. No. 957 will not annul the entire mortgage between the condominium developer and the creditor bank, otherwise the protection intended for condominium buyers will inadvertently be extended to the condominium developer even though, by failing to secure the government's prior approval, it is the party at fault.

To rule otherwise would certainly affect the stability of large-scale mortgages, which is prevalent in the real estate industry. To be sure, mortgagee banks would be indubitably placed at risk if condominium developers are empowered to unilaterally invalidate mortgage contracts based on their mere failure to secure prior written approval of the mortgage by the HLURB, which could be easily caused by inadvertence or by deliberate intent.

From all the foregoing, the HLURB erred when it declared the entire mortgage constituted by JOS Managing Builders, Inc. in favor of United Overseas Bank null and void based solely on the complaint of EDUPLAN which was only claiming ownership over a single condominium unit of Aurora Milestone Tower. Accordingly, the mortgage executed between JOS Managing Builders and United Overseas Bank is valid.

WHEREFORE, the petition is GRANTED. The Decision and Resolution of the Court of Appeals, dated February 27, 2006 and March 5, 2008, respectively, in CA-G.R. SP No. 86401, are REVERSED and SET ASIDE. The

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Decision of the HLURB, dated August 20, 2004, is AFFIRMED with MODIFICATION. The mortgage executed and the succeeding foreclosure proceedings between respondent J.O.S. Managing Builders, Inc. and petitioner United Overseas Bank of the Philippines, Inc., with respect to respondent EDUPLAN Philippines, Inc.'s unit E., 10[TH] Floor, Aurora Milestone Tower, is declared null and void.

SO ORDERED.

Sereno, C.J., Carpio, Leonardo-De Castro, Villarama, Jr., Perez, Mendoza, Reyes, and Jardeleza, JJ., concur.

Bersamin, J., please see concurring opinion.

Leonen, J., see separate concurring and dissenting opinion.

Perlas-Bernabe, J., I am joining the opinion of J. Leonen.

Brion, J., on leave. C.J. Sereno certifies that J. Brion left his dissenting opinion.

Del Castillo, J., joins J. Brion in his dissenting opinion.

Velasco, Jr., J., on leave.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on June 23, 2015 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on August 25, 2015 at 1:35 p.m.

Very truly yours,
(SGD.)
FELIPA G. BORLONGAN-ANAMA
Clerk of Court

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[1] Penned by Associate Justice Portia Alino-Hormachuelos, with Associate Justices Amelita G. Tolentino and Vicente S. E. Veloso, concurring; rollo, pp. 15-22.

[2] Rollo, pp. 24-29.

[3] CA rollo, pp. 102-103.

[4] This amount was later on increased to PhP250,000,000.00 by virtue of an Amendment of Real Estate Mortgage, id. at 105.

[5] CA rollo, pp. 52-63.

[6] The Subdivision and Condominium Buyers Protective Decree.

[7] Rollo, pp. 23-25.

[8] Id. at 15-22.

[9] Id. at 24-29.

[10] Id. at 37.

[11] Universal Robina Corp. (Corn Division) v. Laguna Lake Development Authority, G.R No. 191427, May 30, 2011, 649 SCRA 506, 511.

[12] 546 Phil. 87 (2007).

[13] Republic v. Lacap, supra, at 97-98. (Underscoring supplied)

[14] Vigilar v. Aquino, G.R. No. 180388, January 18, 2011, 639 SCRA 772, 778, citing Republic v. Lacap, supra note 12, at 98.

[15] 465 Phil. 276 (2004).

[16] Far East Bank & Trust Co. v. Marquez, supra, at 298, cited in Philippine National Bank v. Lim, supra note 15, at 543-544.

[17] G.R. Nos. 175181-82 and G.R. Nos. 175354 & 175387-88, September 14, 2007, 533 SCRA 516.

[18] Article 2089. A pledge or mortgage is indivisible, even though the debt may be divided among the successors-in-interest of the debtor or of the creditor, x x x.

[19] G.R. No. 171677, January 30, 2013, 689 SCRA 523, 543, citing Manila Banking Corporation v. Rabina, G.R. No. 145941, December 16, 2008, 574 SCRA 16, 23.

[20] The pari delicto rule provides that when two parties are equally at fault, the law leaves them as they are and denies recovery by either one of them. (Land Bank of the Philippines v. Poblete, G.R. No. 196577, February 25, 2013, 691 SCRA 613).

[21] See third Whereas Clause of P.D. No. 957.

[22] Id.

CONCURRING OPINION

BERSAMIN, J.:

The legal issue for resolution concerns the validity of the mortgage constituted between petitioner bank and respondent developer of a condominium project under Section 18 of Presidential Decree No. 957 (The Subdivision and Condominium Buyers' Protective Decree) to secure the performance of the latter's obligations in favor of the former.

Our relevant existing jurisprudence is settled insofar as declaring that the failure to obtain the prior written approval of the Housing and Land Use Regulatory Board (HLURB) renders the mortgage null and void. However, a conflict exists as to the extent of the nullity of the mortgage.

On the one hand, the Court has pronounced in Metropolitan Bank and Trust Co., Inc. v. SLGT Holdings, Inc.[1] that the nullity extends to the entire mortgage, opining:

> x x x This disposition stems from the basic postulate that a mortgage contract is, by nature, indivisible. Consequent to this feature, a debtor cannot ask for the release of any portion of the mortgaged property or of one or some of the several properties mortgaged unless and until the loan thus secured has been fully paid, notwithstanding the fact that there has been partial fulfillment of the obligation. Hence, it is provided that the

> debtor who has paid a part of the debt cannot ask for the proportionate extinguishments of the mortgage as long as the debt is not completely satisfied.
>
> The situation obtaining in the case at bench is within the purview of the aforesaid rule on the indivisibility of mortgage. It may be that Section 18 of PD 957 allows partial redemption of the mortgage in the sense that the buyer is entitled to pay his installment for the lot or unit directly to the mortgagee so as to enable him - the said buyer - to obtain title over the lot or unit after full payment thereof. Such accommodation statutorily given to a unit/lot buyer does not, however, render the mortgage contract also divisible. Generally, the divisibility of the principal obligation is not affected by the indivisibility of the mortgage. The real estate mortgage voluntarily constituted by the debtor (ASB) on the lots or units is one and indivisible. In this case, the mortgage contract executed between ASB and the petitioner banks is considered indivisible, that is, it cannot be divided among the different buildings or units of the Project. Necessarily, partial extinguishment of the mortgage cannot be allowed. In the same token, the annulment of the mortgage is an all or nothing proposition. It cannot be divided into valid or invalid parts. The mortgage is either valid in its entirety or not valid at all. In the present case, there is doubtless only one mortgage to speak of. Ergo, a declaration of nullity for violation of Section 18 of PD 957 should result to the mortgage being nullified wholly.[2]

On the other hand, the Court has ruled in Far East Bank and Trust Co. v. Marquez[3] that the mortgage is void only with respect to the portion of the property under mortgage that is the subject of the litigation, explaining:

> The lot was mortgaged in violation of Section 18 of PD 957. Respondent, who was the buyer of the property, was not notified of the mortgage before the release of the loan proceeds by petitioner. Acts executed against the provisions of mandatory or prohibitory laws shall be void. Hence, the mortgage over the lot is null and void insofar as private respondent is concerned.
>
> The remedy granted by the HLURB and sustained by the Office of the President is proper only insofar as it refers to the lot of respondent. In short, the mortgage contract is void as against him. Since there is no law stating the specifics of what should be done under the circumstances, that which is in accord with equity should be ordered. The remedy granted by the HLURB in the first and the second paragraphs of the dispositive portion of its Decision insofar as it referred to respondent's lot is in accord with equity.
>
> The HLURB, however, went overboard in its disposition in paragraphs 3 and 4, which pertained not only to the lot but to the entire parcel of land mortgaged. Such ruling was improper. The subject of this litigation is limited only to the lot that respondent is buying, not to the entire parcel of land. He has no personality or standing to bring suit on the whole property, as he has actionable interest over the subject lot only.[4]

Far East Bank and Trust Co. v. Marquez has been reiterated in Philippine National Bank v. Lim.[5]

Before resolving the conflict, let us look at the established facts of this case.

Respondent EDUPLAN Philippines Inc. (EDUPLAN) bought a condominium unit with an area of 149.72 square meters, more or less, known as Unit E located in the 10[th] Floor of the Aurora Milestone Tower, from respondent J.O.S. Managing Builders, Inc. (J.O.S. Managing Builders) under a contract to sell. In August 1998, EDUPLAN effected full payment; hence, J.O.S. Managing Builders and EDUPLAN executed their deed of absolute sale in December 1998. Despite the execution of the deed of absolute sale, J.O.S. Managing Builders did not deliver the condominium certificate of title to EDUPLAN, which, in due time, discovered that the lots on which the condominium project was being constructed had been made the subject of the mortgage by J.O.S. Managing Builders in favor of United Overseas Bank without the prior written approval of the HLURB.

Consequently, EDUPLAN filed its complaint for specific performance and damages against J.O.S. Managing Builders and United Overseas Bank in the HLURB, praying, among others, that the mortgage between J.O.S. Managing Builders and United Overseas Bank be declared null and void.

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On August 15, 2001, the HLURB Arbiter rendered a decision declaring, inter alia, that the mortgage between J.O.S. Managing Builders and United Overseas Bank and the foreclosure of the mortgage were null and void for being in violation of Section 18 of P.D. No. 957.

United Overseas Bank brought its petition for review to the HLURB Board of Commissioners, which, on August 20, 2004, affirmed the HLURB Arbiter's decision with modification.

United Overseas Bank elevated the case to the Court of Appeals (CA), which affirmed the HLURB Board of Commissioners through the now assailed judgment promulgated on February 27, 2006.

The CA also denied United Overseas Bank's motion for reconsideration, observing that United Overseas Bank did not exhaust administrative remedies due to its failure to appeal the decision of the HLURB Board of Commissioners to the Office of the President before filing its petition for review in the CA.

In its present appeal, United Overseas Bank raises as the lone error of the CA the refusal to apply the exception to the doctrine of exhaustion of administrative remedies.

The very erudite main opinion written by Justice Peralta considers the petition meritorious. Firstly, it says that this case presents a purely legal question - whether failure to obtain prior written approval of the HLURB would result to the nullification of the entire mortgage contract - that will eventually be decided by the courts. With the presence of such recognized exception, the rule on exhaustion of administrative remedies need not strictly apply. It insists anent the legal issue that the HLURB erred in declaring the entire mortgage executed between J.O.S. Managing Builders and United Overseas Bank null and void in view of the pronouncement in Philippine National Bank v. Lim because although the mortgage could be nullified if it was in violation of Section 18 of P.D. No. 957, the nullification should apply only to the interest of the complaining buyer, and should not extend to the entire mortgage considering that the buyer of a particular unit or lot has no standing to ask for the nullification of the entire mortgage. It explains that the principle of indivisibility of mortgage under Article 2089 of the Civil Code cannot be applied herein because Section 18 of P.D. No. 957 expressly allows the proportionate extinguishment of a mortgage upon payment of the debt corresponding to the lot or unit of a particular buyer; that it follows that the mortgage can be partially nullified insofar as it affects the complaining party; and that the mortgage executed and the succeeding foreclosure proceedings between J.O.S. Managing Builders and United Overseas Bank were consequently null and void only with respect to EDUPLAN's Unit E at the 10[th] Floor of the Aurora Milestone Tower.

I CONCUR with the main opinion in its declaration that the mortgage contract between J.O.S. Managing Builders and United Overseas Bank should be declared null and void only insofar as it concerns EDUPLAN's condominium unit.

The general rule that a mortgage is an indivisible contract[6] applies only between the contracting parties where a debtor-creditor relationship exists. This the Court has made clear in Belo v. Philippine National Bank,[7] declaring:

> There is no dispute that the mortgage on the four (4) parcels of land by the Eslabon spouses and the other mortgage on the property of Eduarda Belo both secure the loan obligation of respondents spouses Eslabon to respondent PNB. However, we are not persuaded by the contention of the respondent PNB that the indivisibility concept applies to the right of redemption of an accommodation mortgagor and her assignees. The jurisprudence in Philippine National Bank v. Agudelo is enlightening to the case at bar, to wit:
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> x x x x x x x x x
>
> However, Paz Agudelo y Gonzaga (the principal) ... gave her consent to the lien on lot No. 878 .... This

> acknowledgment however, does not extend to lots Nos. 207 and 61 ... inasmuch as, although it is true that a mortgage is indivisible as to the contracting parties and as to their successors in interest (Article 1860, Civil code), it is not so with respect to a third person who did not take part in the constitution thereof either personally or through an agent x x x. Therefore, the only liability of the defendant-appellant Paz Agudelo y Gonzaga is that which arises from the aforesaid acknowledgment but only with respect to the lien and not to the principal obligation secured by the mortgage acknowledged by her to have been constituted on said lot No. 878 .... Such liability is not direct but a subsidiary one.
>
> x x x x x x x x x
>
> Wherefore, it is hereby held that the liability contracted by the aforesaid defendant-appellant Paz Agudelo y Gonzaga is merely subsidiary to that of Mauro A. Garrucho (the agent), limited to lot No. 87.
>
> x x x x x x x x x

From the wordings of the law, indivisibility arises only when there is a debt, that is, there is a debtor-creditor relationship. But, this relationship is wanting in the case at bar in the sense that petitioners are assignees of an accommodation mortgagor and not of a debtor-mortgagor. Hence, it is fair and logical to allow the petitioners to redeem only the property belonging to their assignor, Eduarda Belo.

Although the concept of indivisibility does not apply to the unit buyers of the condominium project because they are not parties to the principal contract of loan and the mortgage, the agreements that they enter into with the developer nevertheless affect the nature of the mortgage. In consideration of the agreements and conformably with the governing law, I humbly opine that the mortgage contract between J.O.S. Managing Builders and United Overseas Bank is not indivisible in this context.

To begin with, there are certain factors that may be considered to properly determine whether an obligation is divisible or indivisible, namely: (1) the will or intention of the parties, which may be express or presumed; (2) the objective or purpose of the stipulated prestation; (3) the nature of the thing; and (4) provisions of law affecting the prestation.[8]

In a real estate mortgage, the object or prestation does not refer to the lots or units mortgaged, but to the security given by the debtor to the creditor to guarantee the fulfillment of the principal obligation. However, unlike in the case of ordinary mortgage contracts, the provisions of P.D. No. 957 are embedded in the mortgage contract between J.O.S. Managing Builders and United Overseas Bank, particularly Section 18 which states:

> Section 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 of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereto.

It is easily discernible from Section 18 that the partial extinguishment of the mortgage corresponding to a particular lot or unit that is meanwhile fully paid for is expressly permitted. As such, Section 18 affects the prestation of the mortgage because it releases a portion that no longer belongs to the mortgagor-developer and thus ceases to be the object of its mortgage.[9] In short, Section 18 of P.D. No. 957 renders mortgages of this nature divisible.

By virtue of Section 18 of P.D. No. 957, the parties of the mortgage become bound to respect the agreements from

which the rights of lot or unit buyers arise. The Court has fittingly observed in Philippine National Bank v. Dee:[10]

> Nevertheless, despite the apparent validity of the mortgage between the petitioner and PEPI, the former is still bound to respect the transactions between respondents PEPI and Dee. The petitioner was well aware that the properties mortgaged by PEPI were also the subject of existing contracts to sell with other buyers. While it may be that the petitioner is protected by Act No. 3135, as amended, it cannot claim any superior right as against the installment buyers. This is because the contract between the respondents is protected by P.D. No. 957, a social justice measure enacted primarily to protect innocent lot buyers. Thus, in Luzon Development Bank v. Enriquez, the Court reiterated the rule that a bank dealing with a property that is already subject of a contract to sell and is protected by the provisions of P.D. No. 957, is bound by the contract to sell.
> However, the transferee BANK is bound by the Contract to Sell and has to respect Enriquez's rights thereunder. This is because the Contract to Sell, involving a subdivision lot, is covered and protected by PD 957. x x x.
>
> x x x x x x x x x
>
> xxx Under these circumstances, the BANK knew or should have known of the possibility and risk that the assigned properties were already covered by existing contracts to sell in favor of subdivision lot. buyers. As observed by the Court in another case involving a bank regarding a subdivision lot that was already subject of a contract to sell with a third party:
> [The Bank] should have considered that it was dealing with a property subject of a real estate development project. A reasonable person, particularly a financial institution x x x, 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, [the Bank] 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 x x x. Wanting in care and prudence, the [Bank] cannot be deemed to be an innocent mortgagee, x x x

The possibility exists that the developer's principal obligation with the financial institution will eventually become unsecured should all unit buyers of the condominium project effect full payment. In consideration of this possibility, the mortgage between J.O.S. Managing Builders and United Overseas Bank should be construed as divisible instead of indivisible. Hence, the nullity of the mortgage contract should be confined only to the interest of the complaining buyer, EDUPLAN.

I should stress that the right to set up the nullity of a void or non-existent contract is not limited to the parties, as in the case of annullable or voidable contracts. Under Article 1421 of the Civil Code, the defense of the illegality of a contract is available to third persons whose interests are directly affected.[11]

The interests of EDUPLAN, while not a party to the mortgage contract between J.O.S. Managing Builders and United Overseas Bank, are directly affected if the mortgage and its foreclosure were to be upheld. Even so, EDUPLAN, not being directly injured by the foreclosure of the other units, has no right to bring an action in behalf of the other unit buyers because its actionable interest is limited to its purchased unit. Indeed, Section 2, Rule 3 of the Rules of Court generally limits the right of action only to the real party-in-interest, viz:

> Sec. 2. Parties in interest. - A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

Interest within the meaning of this rule means material interest, or an interest in issue to be affected by the decree or judgment of the case, as distinguished from mere curiosity about the question involved. Accordingly, a real

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party in interest is the party who, by the substantive law, has the right sought to be enforced.[12] Following Philippine National Bank v. Lim, supra, the HLURB really went overboard in voiding the entire mortgage without an action being filed by all the real parties in interest.

The fear exists that this interpretation may result in the filing of multiple actions for the annulment of mortgage and foreclosure proceedings by unit buyers of condominium projects. The situation is not necessarily adverse to procedural orderliness, however, because the Rules of Court may partly address it under the rule on the permissive joinder of parties. Thus, Rule 3, Section 6 of the Rules of Court, which embodies the rule on permissive joinder of parties, states:

> Sec. 6. Permissive joinder of parties. - All persons in whom or against whom any right to relief in respect to or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, may, except as otherwise provided in these Rules, join as plaintiffs or be joined as defendants in one complaint, where any question of law or fact common to all such plaintiffs or to all such defendants may arise in the action; but the court may make such orders as may be just to prevent any plaintiff or defendant from being embarrassed or put to expense in connection with any proceedings in which he may have no interest.

IN VIEW OF THE FOREGOING, I vote to GRANT the petition for review on certiorari.

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[1] G.R. Nos. 175181-82 and G.R. Nos. 175354 & 175387-88, September 14, 2007, 533 SCRA 516.

[2] Id. at 527-528.

[3] G.R. No. 147964, January 20, 2004, 420 SCRA 349.

[4] Id. at 357-358.

[5] G.R. No. 171677, January 30, 2013, 689 SCRA 523.

[6] Article 2089, Civil Code.

[7] G.R. No. 134330, March 1, 2001, 353 SCRA 359, 378-379.

[8] IV Tolentino, Civil Code of the Philippines, (1999), p. 255.

[9] Article 2085, Civil Code.

[10] G.R. No. 182128, February 19, 2014, 717 SCRA 14, 25-26.

[11] See also Heirs of Policronio M. Ureta, Sr. v. Heirs of Liberate M. Ureta, G.R. No. 165748, September 14, 2011, 657 SCRA 555, 589.

[12] Ang v. Ang, G.R. No. 186993, August 22, 2012, 678 SCRA 699, 707-708.

CONCURRING AND DISSENTING OPINION

LEONEN, J.:

The case involves the doctrines on exhaustion of administrative remedies and void mortgage contracts under Section 18 of Presidential Decree No. 957.[1]

This is a Petition for Review on Certiorari assailing the Decision dated February 27, 2006 and Resolution dated

March 5, 2008 of the Court of Appeals in CA-G.R. SP No. 86401.[2] The Court of Appeals dismissed petitioner's Petition for Review under Rule 43 of the Rules of Court for failure to exhaust administrative remedies available to petitioner.

Respondent J.O.S. Managing Builders, Inc. (JOS) is the registered owner and developer of Aurora Milestone Tower (the condominium project).[3]The condominium project is located on Aurora Boulevard, Quezon City.

JOS mortgaged the condominium project, among other properties, to Far East Bank and Trust Co. (Far East). The properties were security for JOS loan of P112,002,000.00.

However, as requested by JOS, petitioner United Overseas Bank (UOB) assumed the indebtedness of JOS with Far East.[4] The mortgage was released on April 15, 1997 for P200 million, which represented JOS principal loan plus interest. The mortgaged properties transfer certificates of title were delivered to UOB as the new mortgagee. UOB did not secure a mortgage clearance from the Housing and Land Use Regulatory Board (HLURB).

JOS failed to pay its loan with UOB.[5] The real estate mortgage was then foreclosed, and UOB was declared as the highest bidder in the public auction held on March 22, 1999.[6]

In the meantime, on December 16, 1997, JOS and EDUPLAN Phils., Inc. (EDUPLAN) entered into a contract to sell.[7] The contract covered Unit E, 10[th] Floor of the condominium project. The cost of the unit was P9,028,116.00 payable in installments within six (6) years.

EDUPLAN fully paid JOS on August 24, 1998.[8] The parties then executed a Deed of Absolute Sale[9] where it was disclosed that there was a mortgage lien in favor of UOB.[10]

JOS was not able to issue the individual condominium certificate of title in favor of EDUPLAN as UOB had custody of the transfer certificate of title covering the condominium building.[11]

On February 11, 2000, EDUPLAN filed a Complaint for specific performance and damages against JOS and UOB before the HLURB Arbiter.[12] The Complaint prayed for the following reliefs:

> (a) that the mortgage between JOS and UOB be declared void; (b) that [JOS and EDUPLAN] be compelled to issue and release the condominium certificate of title; and (c) that JOS be ordered to provide emergency power facilities, to refund the monthly telephone carrier charges, and to permanently cease and desist from further collecting such charges.[13]

The HLURB Arbiter issued a Decision in favor of EDUPLAN on August 15, 2001.[14] The Decision declared that the mortgage between JOS and UOB, including the foreclosure proceedings, was void for violating Section 18 of Presidential Decree No. 957. Moreover, the HLURB Arbiter ruled that since EDUPLAN had already fully paid for the condominium unit, JOS and UOB should cause the release of the title to the condominium building or the "mother title" free from all liens and encumbrances in connection with Section 25 of Presidential Decree No. 957. The HLURB Arbiter also held that JOS should provide emergency power facilities to EDUPLAN in consonance with its sales brochure. JOS should also refund monthly telephone carrier charges from September 1, 1999 to EDUPLAN, and stop the collection of such fees.

In addition, JOS should pay UOB the loan release value of EDUPLAN's unit. JOS was also held liable for damages, attorney's fees, and the costs of suit.[15]

Upon UOB's filing of its Petition for Review, the HLURB Board of Commissioners affirmed with modification the HLURB Arbiter's Decision.[16] According to the Board of Commissioners, EDUPLAN was entitled to the delivery of the title of the fully paid unit under Section 25 of Presidential Decree No. 957.[17] JOS had the legal obligation to cause the release of titles despite non-payment of its loan with UOB.[18]

The Board of Commissioners also ruled that JOS and UOB violated Section 18 of Presidential Decree No. 957 for not securing the Board's prior approval before the mortgage was executed.[19] However, the Board of Commissioners found that there was no basis to support the refund of the payment for telephone carrier services and the order of desistance to collect such and other similar fees.[20]

The dispositive portion of the August 20, 2004 Decision of the Board of Commissioners provides:

> In the light of the foregoing premises, the decision of the Office Below is hereby modified as follows:
>
> - The mortgage executed by Respondent J.O.S. Managing Builders in favor of Respondent United Overseas Bank (Westmont), including the foreclosure of the mortgage, is declared as null and void for being in violation of Section 18 of Presidential Decree No. 957.
>
> - Respondent JOS is ordered to cause the release of the mother titles to the Aurora Milestone Tower condominium building from the mortgage held by Respondent Westmont and to issue an individual Condominium Certificate of Title to Complainant over its condominium unit, free from any and all liens and encumbrances.
>
> - Respondent JOS is ordered to pay the Complainant P100,000.00 by way of temperate damages; P50,000.00 by way of exemplary damages; P40,000.00 as and by way of Attorney's Fees; and the costs of suit.
>
> - Respondent J.O.S. is ordered to pay respondent Westmont the loan release value of complainant's condominium unit.
>
> - All other claims are hereby dismissed.
>
> So ordered.[21]

As stated earlier, UOB filed a Petition for Review under Rule 43 of the Rules of Court before the Court of Appeals. The Court of Appeals dismissed the Petition for its belated filing and for failing to exhaust administrative remedies.[22] According to the Court of Appeals, the proper recourse of UOB was to file the appeal of the Board of Commissioners' Decision before the Office of the President within 15 days from receipt of the Decision.[23]

On Motion for Reconsideration, the Court of Appeals affirmed its earlier Decision.[24] However, it reconsidered its finding that the Petition was filed out of time.[25] The Court of Appeals also ruled that UOB's argument involving a purely legal question was raised for the first time in its Motion and Supplemental Motion for Reconsideration.[26]

The present Petition was filed before this court on May 5, 2008.[27] This court resolved to require JOS and EDUPLAN to submit their Comment on July 16, 2008.[28]

After receipt of JOS' and EDUPLAN's Comments dated September 11, 2008 and February 11, 2009, respectively, this court granted UOB's Motion for leave and extension of 15 days to file a consolidated Reply.[29]

UOB's consolidated Reply was noted on June 3, 2009.[30]

UOB raised the lone issue of whether the Court of Appeals erred in not applying the exception to the doctrine of exhaustion of administrative remedies. However, as noted by the ponencia, the more important issue at hand is whether the HLURB's nullification of the entire mortgage over the condominium project is proper.

UOB argued that the issues it raised before the Court of Appeals were purely legal, with this being a proper exception to the doctrine of exhaustion of administrative remedies.[31] The Court of Appeals erred in dismissing the Petition for Review and calling UOB's argument on the exception to the doctrine of exhaustion of

administrative remedies a "mere afterthought" since UOB raised issues on HLURB's jurisdiction and on the patent illegality of HLURB's actions.[32]

According to UOB, the HLURB went overboard or went beyond its jurisdiction when it declared the entire mortgage void.[33] Citing Far East Bank & Trust Co. v. Marquez,[34] UOB claimed that the mortgage should be declared void only as to Unit E, 10[th] Floor, Aurora Milestone Tower, or EDUPLAN's unit, since EDUPLAN did not have any claim over other units covered by the mortgage.[35]

Furthermore, the burden to comply with Section 18 of Presidential Decree No. 957 rests on JOS and not on UOB, thus, JOS cannot rely on the law to renege on its loan obligations.[36] To allow JOS to do so would "allow JOS to profit from its own misdeed."[37]

On the other hand, EDUPLAN claimed in its Comment that UOB's argument of exception to the rule of exhaustion of administrative remedies "was a mere afterthought."[38] UOB had all the opportunity to invoke questions of law. However, it remained silent to its detriment.[39] EDUPLAN prayed that this court dismiss the Petition for lack of merit.[40]

Likewise, JOS argued that UOB fatally erred when it appealed the Decision of the HLURB Board of Commissioners to the Court of Appeals instead of the Office of the President, which the rules specifically provide.[41] This Petition should also be denied as UOB belatedly claimed an exception to the doctrine of exhaustion of administrative remedies.[42] Nevertheless, there is no purely legal question involved, thus, the exception is inexistent.[43]

At the outset, what is only questioned in this Petition is the validity of the Court of Appeals' ruling with regard to the existence of an exception to the doctrine of exhaustion of administrative remedies. However, in view of the importance of the issues involved, this court must go beyond the issues brought by the parties to this forum.

The doctrine of exhaustion of administrative remedies is already settled in this jurisdiction.[44] UOB admitted that it raised the exception to the doctrine in its Motion for Reconsideration filed before the Court of Appeals after the court had already ruled on the propriety of UOB's appeal.[45]

I concur with the ponencia when it held that an exception to the doctrine of administrative remedies exists in this case, specifically that the main issue involves a legal question that only the courts may address.[46] This opinion shall focus on the legality of the nullification of the entire mortgage over the condominium project.

Presidential Decree No. 957 stands as legislation that promotes the enforcement of social justice.[47] It occupies a unique place in this jurisdiction wherein economic considerations are trumped by the need to protect unit or lot buyers with the view of ensuring improvement in the quality of life of Filipinos.[48]

Section 18 of this law provides:

> SECTION 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 of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereto;

With Section 18 of Presidential Decree No. 957 being a prohibitory law,[49] acts done contrary to its provisions are invalid.[50]

I concur with the ponencia when it held that the lack of mortgage clearance from the HLURB in this case resulted in the nullity of the mortgage under Section 18 of Presidential Decree No. 957.[51]

However, I disagree with the conclusion that the HLURB erred in declaring the entire mortgage void. In refusing to declare the entire mortgage void, the ponencia cites Far East Bank & Trust Co. v. Marquez,[52] which was reiterated in Philippine National Bank v. Lim.[53]

It is true that Far East Bank ruled that the HLURB went overboard in declaring the mortgage over the entire land void. The court reasoned that respondent-buyer had "no personality standing to bring suit on the whole property, as he has actionable interest over the subject lot only."[54] Similarly, Philippine National Bank had language which states that:

> [W]hile it is within Lim's right to file a complaint before the HLURB to protect her right as a condominium unit buyer, she has no standing to seek for the complete nullification of the subject mortgage. She has an actionable interest only over Unit 48C of Cluster Dominiko of Vista de Loro, no more and no less.[55]

Philippine National Bank, however, involved a peculiar set of facts. It involved the application of res judicata wherein this court previously upheld the trial court's decision that the mortgage contract over the subject properties was merely voidable and not void. Thus, the mortgage was held valid between the developer and the bank.[56]

The principal obligation, i.e., the loan contract of JOS, is different from the mortgage constituted over the lots and its improvements. The loan obligation, in turn, is separate from the developer's obligation to deliver the property to the buyers.

The divisibility of the principal obligation is, thus, distinct from the indivisibility of the mortgage.[57] The mortgage contract cannot be divided among the different lots or units.[58] To rule that the nullity of the mortgage contract under Section 18 of Presidential Decree No. 957 only applies to the property of the lot or unit owner bringing the case implies that the mortgage is divisible among the properties it covers.

Article 2089 of the Civil Code provides:

> Art. 2089. A pledge or mortgage is indivisible, even though the debt may be divided among the successors in interest of the debtor or of the creditor.

In Metropolitan Bank and Trust Company, Inc. v. SLGT Holdings, Inc.,[59] this court definitively ruled on the issue of the nullity of the entire mortgage contract under Section 18 of Presidential Decree No. 957. Thus:

> This disposition stems from the basic postulate that a mortgage contract is, by nature, indivisible. Consequent to this feature, a debtor cannot ask for the release of any portion of the mortgaged property or of one or some of the several properties mortgaged unless and until the loan thus secured has been fully paid, notwithstanding the fact that there has been partial fulfillment of the obligation. Hence, it is provided that the debtor who has paid a part of the debt cannot ask for the proportionate extinguishments of the mortgage as long as the debt is not completely satisfied.
>
> The situation obtaining in the case at bench is within the purview of the aforesaid rule on the indivisibility of mortgage. It may be that Section 18 of PD 957 allows partial redemption of the mortgage in the sense that the buyer is entitled to pay his installment for the lot or unit directly to the mortgagee so as to enable him - the said buyer - to obtain title over the lot or unit after full payment thereof. Such accommodation statutorily given to a unit/lot buyer does not, however, render the mortgage contract also divisible. Generally, the divisibility of the principal obligation is not affected by the indivisibility of the mortgage. The real estate mortgage voluntarily constituted by the debtor (ASB) on the lots or units is one and indivisible. In this case, the mortgage contract

> executed between ASB and the petitioner banks is considered indivisible, that is, it cannot be divided among the different buildings or units of the Project. Necessarily, partial extinguishment of the mortgage cannot be allowed. In the same token, the annulment of the mortgage is an all or nothing proposition. It cannot be divided into valid, or invalid parts. The mortgage is either valid in its entirety or not valid at all. In the present case, there is doubtless only one mortgage to speak of. Ergo, a declaration of nullity for violation of Section 18 of PD 957 should result to the mortgage being nullified wholly.[60] (Emphasis supplied)

In Luzon Development Bank v. Enriquez,[61] this court again nullified the entire mortgage, constituted over several parcels of land, notwithstanding the dacion en pago executed between the developer and petitioner bank. Among the properties included as security for the developer's loan was respondent's Lot 4. The court upheld the law's intent to protect subdivision lot or condominium unit buyers above everything else.[62] The nullity was in accordance with Section 18 of Presidential Decree No. 957 and was unqualified as to extent of the nullity.[63] Citing Metropolitan Bank and Trust Company, Inc.:

> As the HLURB Arbiter and Board of Commissioners both found, DELTA violated Section 18 of PD 957 in mortgaging the properties in Delta Homes I (including Lot 4) to the BANK without prior clearance from the HLURB.
>
> This violation of Section 18 renders the mortgage executed by DELTA void. We have held before that "a mortgage contract executed in breach of Section 18 of [PD 957] is null and void." Considering that "PD 957 aims to protect innocent subdivision lot and condominium unit buyers against fraudulent real estate practices," we have construed Section 18 thereof as "prohibitory and acts committed contrary to it are void."
>
> Because of the nullity of the mortgage, neither DELTA nor the BANK could assert any right arising therefrom. The BANK'S loan of P8 million to DELTA has effectively become unsecured due to the nullity of the mortgage. . . . [64] (Emphasis supplied, citations omitted)

To construe Section 18 of Presidential Decree No. 957 to mean that only those buyers or owners who brought a claim against the developer and mortgagee bank should be entitled to the nullity of the mortgage would be to undermine the purpose of the law: protection of real estate buyers.[65] The declaration of nullity of only a part of the mortgage contract furthermore encourages litigation and circumvention of the clear provisions of the law.[66]

The interpretation in the ponencia will mean sanctioning partial mortgage releases. It will require all buyers of condominium projects to file their own cases to nullify a void mortgage over their property and claim release of their titles. Innocent lot or unit buyers will be left vulnerable to the whims and manipulations of the developer and/or the mortgagee.

Another unintended consequence of the majority's decision is the weakening of HLURB's regulatory functions. Developers will take advantage of the ambiguity that the allowance of partial mortgage releases will create.

It is the court's duty to interpret the law as intended by the legislature. As stated before, "[t]he lofty aspirations of P.D. No. 957 should be read in every provision of the statute, in every contract that undermines its objects, in every transaction which threatens its fruition."[67] The law is a tool for social justice. Circumvention should not be tolerated.[68]

The HLURB, therefore, acted within its powers when it nullified the entire mortgage, as well as the foreclosure proceedings.[69] Consequently, the title to EDUPLAN's Unit E, 10[th] Floor, Aurora Milestone Tower should be issued pursuant to Section 25 of Presidential Decree No. 957.[70]

ACCORDINGLY, I vote that the Petition be DENIED. The Decision dated February 27, 2006 and Resolution dated March 5, 2008 of the Court of Appeals in CA-G.R. SP No. 86401, insofar as it dismissed the Petition for Review of the Housing and Land Use Regulatory Board Decision dated August 20, 2004, should be AFFIRMED,

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The mortgage constituted over the Aurora Milestone Tower by respondent J.O.S. Managing Builders, Inc. with petitioner United Overseas Bank of the Philippines, Inc. is void in its entirety.

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[1] Regulating the Sale of Subdivision Lots and Condominiums, Providing Penalties for Violations Thereof (1976).

[2] Rollo, pp. 59-66. The Decision, promulgated on February 27, 2006, was penned by Justice Portia Alino-Hormachuelos and concurred in by Justices Amelita G. Tolentino and Vicente S.E. Veloso of the Fourth Division, Court of Appeals Manila.

[3] Id. at 60.

[4] Id. at 61.

[5] Id.

[6] Id.

[7] Id.

[8] Id.

[9] Id.

[10] Id.

[11] Id.

[12] Id. at 62.

[13] Id.

[14] Id.

[15] Id. at 63.

[16] Id. at 93.

[17] Id. at 92.

[18] Id.

[19] Id. at 92-93.

[20] Id. at 93.

[21] Id. at 93.

[22] Id. at 65.

[23] citing Rule XXI, sec. 2 of the 2004 Rules of Procedure of the Housing and Land Use Regulatory Board. See rollo, pp. 70-73.

[24] Id. at 73.

[25] Id. at 69.

[26] Id. at 72.

[27] Id. at 31-57.

[28] Id. at 94.

[29] Id. at 133-A.

[30] Id. at 160.

[31] Id. at 37-38.

[32] Id. at 39-40.

[33] Id. at 43-45.

[34] Id. at 43-44.

[35] Id. at 44.

[36] Id. at 45-46.

[37] Id. at 46.

[38] Id. at 112.

[39] Id. at 113.

[40] Id. at 114.

[41] Id. at 100.

[42] Id. at 102.

[43] Id.

[44] See Addition Hills Mandaluyong Civic & Social Organization, Inc. v. Megaworld Properties & Holdings, Inc., G.R. No. 175039, April 18, 2012, 670 SCRA 83 [Per J. Leonardo-De Castro, First Division].

[45] Rollo, p. 39.

[46] See Go v. Distinction Properties Development and Construction, Inc., G.R. No. 194024, April 25, 2012, 671 SCRA 461, 481 [Per J. Mendoza, Third Division].

[47] See Philippine National Bank v. Office of the President, 322 Phil. 6 (1996) [Per J. Panganiban, Third Division Resolution]. See also Philippine Bank of Communications v. Pridisons Realty Corporation, G.R. No. 155113, January 9, 2013, 688 SCRA 200, 214 [Per J. Brion, Second Division].

[48] See 1[st] whereas clause, Pres. Decree No. 957.

[49] Metropolitan Bank and Trust Company, Inc. v. SLGT Holdings, Inc., 559 Phil. 914 (2007) [Per J. Garcia, First Division]. See The Manila Banking Corporation v. Rabina, 594 Phil. 422 (2008) [Per J. Carpio Morales, Second Division].

[50] See CIVIL CODE - art. 5 - Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity. (4a)

[51] Ponencia, p. 6.

[52] 465 Phil. 276 (2004) [Per J. Panganiban, First Division].

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[53] G.R. No. 171677, January 30, 2013, 689 SCRA 523 [Per J. Reyes, First Division].

[54] Far East Bank & Trust Co. v. Marquez, 465 Phil. 276 (2004) [Per J. Panganiban, First Division].

[55] Philippine National Bank v. Lim, G.R. No. 171677, January 30, 2013, 689 SCRA 523, 544 [Per J. Reyes, First Division].

[56] Id. at 540542.

[57] Gonzales v. Government Service Insurance System, 194 Phil. 465, 476 (1981) [Per J. Melencio-Herrera, First Division].

[58] Id. See also Aquino v. Macondray & Co., Inc., et al., 97 Phil. 731, 741 (1955) [Per J. Jugo, First Division].

[59] 559 Phil. 914 (2007) [Per J. Garcia, First Division].

[60] Id. at 927-928.

[61] 654 Phil. 315 (2011) [Per J. Del Castillo, First Division].

[62] Id.

[63] Id. at 331. The specific subject matter of the case pertained to Lot 4 of the Delta Homes I project. However, the declaration of nullity of the real estate mortgage was unqualified.

[64] Id.

[65] See Philippine National Bank v. Office of the President, G.R. No. 104528, January 18, 1996, 252 SCRA 5, 10 [Per J. Panganiban, Third Division Resolution].

[66] See Go v. Distinction Properties Development and Construction, Inc., G.R. No. 194024, April 25, 2012, 671 SCRA 461, 473 [Per J. Mendoza, Third Division], citing Luzon Development Bank v. Enriquez, G.R. Nos. 168646 and 168666, January 12, 2011, 639 SCRA 332, 337-338 [Per J. Del Castillo, First Division].

[67] Luzon Development Bank v. Enrique, G.R. No. 168646, January 12, 2011, 639 SCRA 332, 337 [Per J. Del Castillo, First Division].

[68] See Philippine Bank of Communications v. Pridisons Realty Corporation, G.R. No. 155113, January 9, 2013, 688 SCRA 200, 214 [Per J. Brion, Second Division], citing Philippine National Bank v. Office of the President, 322 Phil. 6 (1996) [Per J. Panganiban, Third Division].

[69] See The Manila Banking Corporation v. Rabina, 594 Phil. 422 (2008) [Per J. Carpio Morales, Second Division], citing Section 3 of Pres. Decree No. 957 in relation to Section 1 of Pres. Decree No. 1344:

SECTION 3. National Housing Authority - The National Housing Authority shall have exclusive jurisdiction to regulate the real estate trade and business in accordance with the provisions of this Decree.

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:

A. Unsound real estate business practices;

B. 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

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C. 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.

[70] SECTION 25. Issuance of Title. - The owner or developer shall deliver the title of the lot or unit to the buyer upon full payment of the lot or unit.

DISSENTING OPINION

BRION, J.:

While I see no basis to disagree with the ponencia on the inapplicability of exhaustion of administrative remedies in the present case, I dissent against its far-reaching conclusion to limit the nullity of the mortgage contract to the interest of the complaining buyer. Thus, on the whole, I express this Opinion as a dissenting one instead of a concurrence and a dissent.

Section 18 of P.D. 957[1] provides as follows:

> 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 of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereof.

Section 18 of the decree directly addresses the problem of fraud committed against buyers when the lots they have contracted to purchase, and which they have religiously paid for, are mortgaged without their knowledge.

The avowed purpose of P.D. 957 compels the reading of Section 18 to be prohibitory so that acts committed contrary to it are void.[2] This construction ensures the attainment of the purpose of the law: to protect lot buyers so they do not end up homeless despite full payment of the home lots they bought with their hard-earned cash.[3] We fully recognized this intent when we held in Philippine National Bank v. Office of the President that:[4]

> xxx [T]he unmistakable intent of the law [is] to protect innocent lot buyers from scheming subdivision developers. As between these small lot buyers and the gigantic financial institutions which the developers deal with, it is obvious that the law - as an instrument of social justice - must favor the weak. Indeed, the petitioner bank had at its disposal vast resources with which it could adequately protect its loan activities, and therefore is presumed to have conducted the usual "due diligence" checking and ascertaining xxx the actual status, condition, utilization and occupancy of the property offered as collateral, xxx On the other hand, private respondents obviously were powerless to discover the attempt of the land developer to hypothecate the property being sold to them. It was precisely in order to deal with this kind of situation that P.D. 957 was enacted, its very essence and intendment being to provide a protective mantle over helpless citizens who may fall prey to the razzmatazz of what P.D. 957 termed "unscrupulous subdivision and condominium sellers.

Despite the clear and unambiguous provisions of P.D. 957 that clearly reflect this intent, the ponencia now still hesitates to nullify the entire mortgage contract between United Overseas Bank (UOB) and JOS Management Builders Inc. (JOS), and opts instead for a tempered approach that only declares a partial invalidity of the mortgage contract; it does so by relying on our ruling in the case of Far East Bank v. Marquez.[5]

In this cited case, this Court - speaking through then Associate Justice Artemio Panganiban - held that the subject

of this litigation is limited only to the lot that the respondent bought;[6] he has no personality or standing to bring suit on the whole property, as his actionable interest is only over the subject lot[7] This kind of ruling, of course, is the unscrupulous subdivision developer's dream as he thereby divides the opposition to his fraudulent scheme into individual lot owners, many of whom can ill-afford to devote time and resources to the formal assertion of their rights.

While this Court was briefly enlightened in the subsequent case of Metropolitan Bank and Trust Company, Inc. v. SLGT Holding, Inc.,[8] the present case now resurrects the Marquez reasoning and thereby allows the watering down of what Section 18, P.D. 957 forcefully commands. It is in the spirit of preventing this retrogressive consequence that I now submit this Dissenting Opinion.

I outline below the reasons supporting my view.

First, the action in the present case assails the validity of the entire mortgage contract between UOB and JOS, not solely the validity of the contract to sell between JOS and EDUPLAN Inc. (EDUPLAN). While the contract to sell between JOS and EDUPLAN gave the latter the legal right to assail the validity of the real estate mortgage, that right is by no means limited to its juridical effect on EDUPLAN.

In other words, the principal issue pertains to the validity of the mortgage contract, not simply on its effect on EDUPLAN as a buyer. The juridical effect on EDUPLAN only gives rise to the right to assail the validity of the contract as a whole. As aptly stated by the eminent Civil Code Commentator, Senator Arturo Tolentino:[9]

> xxx any person may invoke the inexistence of the contract whenever its juridical effects founded thereon are asserted against him. Thus, if there has been a void transfer of property, the transferor can recover it by accion reinvidicatoria, and any possessor may refuse to deliver it to the transferee who cannot enforce the transfer. Creditors may attach a property of the debtor, which has been alienated by the latter under a void contract; a debtor can assert the nullity of an assignment of credit as a defense to an action by the assignee, xxx

The ponencia tried to wiggle out of this tight spot by stating that EDUPLAN has actionable interest solely on the unit it bought. The ponencia's reasoning, however, is badly flawed for although the juridical effect of the void mortgage contract condominium buyer is grounded on his purchased unit, it necessarily extends to the completion of the entire project itself.

Section 2 of Republic Act 4726, otherwise known as the "Condominium Act" provides:

> Sec. 2. A condominium is an interest in real property consisting of separate interest in a unit in a residential, industrial or commercial building and an undivided interest in common, directly or indirectly, in the land on which it is located and in other common areas of the building. A condominium may include, in addition, a separate interest in other portions of such real property. Title to the common areas, including the land, or the appurtenant interests in such areas, may be held by a corporation specially formed for the purpose (hereinafter known as the "condominium corporation") in which the holders of separate interest shall automatically be members or shareholders, to the exclusion of others, in proportion to the appurtenant interest of their respective units in the common areas, x x x

While a buyer purchases a unit in a condominium project for independent use or ownership,[10] his interests thereon are not limited to that livable space but extends to the entire project itself. These include the facilities, improvements, infrastructures, and other forms of development, such as water supply and lighting facilities offered and indicated in the condominium plan, brochure, prospectus, or in any form of advertisement.[11] All these facilities and conveniences materially affect the buyer's investment and the level of use and enjoyment of his unit.

So important is the interest of a condominium buyer to the completion of the project that public policy as

enshrined in P.D. 957 jealously protects it in its scattered provisions. In particular, P.D. 957 instructs the Housing and Land Use Regulatory Board (HLURB) to ensure the financial viability of the owner of the lot intended to be converted into a subdivision.

> x x x x x x x x x
>
> The owner or the real estate dealer interested in the sale of lots or units, respectively, in such subdivision project or condominium project shall register the project with the Authority by filing therewith a sworn registration statement containing the following information
>
> x x x x x x x x x
>
> (e) A statement of the capitalization of the owner, including the authorized and outstanding amounts of its capital stock and the proportion thereof which is paid up.
>
> xxx

The following documents shall be attached to the registration statement:

> x x x x x x x x x

(c) In case of a business firm, a balance sheet showing the amount and general character of its assets and liabilities and a copy of its articles of incorporation or articles of partnership or association, as the case may be, with all the amendments thereof and existing bylaws or instruments corresponding thereto.

> x x x x x x x x x

Section 5. License to sell. Such owner or dealer to whom has been issued a registration certificate shall not, however, be authorized to sell any subdivision lot or condominium unit in the registered project unless he shall have first obtained a license to sell the project within two weeks from the registration of such project.

The Authority, upon proper application therefor, shall issue to such owner or dealer of a registered project a license to sell the project if, after an examination of the registration statement filed by said owner or dealer and all the pertinent documents attached thereto, he is convinced that the owner or dealer is of good repute, that his business is financially stable, and that the proposed sale of the subdivision lots or condominium units to the public would not be fraudulent.

Section 6. Performance Bond. No license to sell subdivision lots or condominium units shall be issued by the Authority under Section 5 of this Decree unless the owner or dealer shall have filed an adequate performance bond approved by said Authority to guarantee the construction and maintenance of the roads, gutters, drainage, sewerage, water system, lighting systems, and full development of the subdivision project or the condominium project and the compliance by the owner or dealer with the applicable laws and rules and regulations.

The performance bond shall be executed in favor of the Republic of the Philippines and shall authorize the Authority to use the proceeds thereof for the purposes of its undertaking in case of forfeiture as provided in this Decree.

Similarly, Section 18 of P.D. 957 provides for the regulatory mechanisms precisely to minimize the risk of noncompletion of the project and to protect the buyer's interest. In particular, it states that no mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the HLURB. Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization.

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The loan thus, is primarily intended to be a capital infusion to complete the project and not simply as a respirator to a barely breathing developer, who or which does not possess the financial means and adequate level of liquidity, and which only relies on leveraging its capital asset and revenues from pre-selling to sustain the project.

The reason for this is that the last thing the State wants is an unfinished condominium project which has surreptitiously been foreclosed by a financial institution. At that point, the buyer practically is left with no recourse but to sue a defaulting developer for refund to recover his meager life savings while the mortgagee bank could sleep at night in view of its secured credit. This Court precisely observed this scheme in Metropolitan Bank and Trust Company, Inc. v. SLGT Holding, Inc.,[12] where we stated:

> It happened before; it will likely happen again. A developer embarks on an aggressive marketing campaign and succeeds in selling units in a yet to-be completed condominium project. Short of funds, the developer borrows money from a bank and, without apprising the latter of the pre-selling transactions, mortgages the condominium complex, but also without informing the buyers of the mortgage constitution. Saddled with debts, the developer fails to meet its part of the bargain. The defaulting developer is soon sued by the fully paid unit buyers for specific performance or refund and is threatened at the same time with a foreclosure of mortgage. Having his hands full parrying legal blows from different directions, the developer seeks a declaration of suspension of payment, followed by a petition for rehabilitation with suspension of action.

Second, it would have been different if EDUPLAN had opted for a partial release of the mortgage, instead of seeking a declaration of its nullity. Such partial release, however, could have only been resorted to if the real estate mortgage is valid, that is, obtained with the prior approval of the Housing and Land Use Regulatory Board under Section 18 of P.D. 957.[13] In the absence of an HLURB approval, as in the present case, a partial release of mortgage may not be availed of.

Mr. Justice Bersamin, in his concurring opinion, lamentably, supports the ponencia's reasoning and even attempts to strengthen the arguments by generously citing Belo v. Philippine National Bank.[14]

In citing Belo,[15] Mr. Justice Bersamin sought to impress upon this Court that the mortgage between JOS and UOB is divisible considering that the principle of indivisibility of mortgages only applies to debtor-creditor relations. To further support his contention, Justice Bersamin cites the last sentence of Section 18 of P.D. 957 which provides that the buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereof.

Unfortunately, in his earnestness to support the ponencia, Justice Bersamin glossed over the critical fact that Belo was decided on a valid mortgage contract. In particular, in Belo,[16] this Court upheld the partial redemption by the owner of the lot on a validly constituted mortgage. Justice Bersamin therefore suffered the critical error of putting the cart before the horse and effectively assumed the divisibility of mortgage and the remedy of partial release, to argue the validity of the mortgage itself. What he fatally overlooked, however, is that these remedies are only available when the mortgage is validly constituted.

Notably, this principle of partial release is likewise echoed in Section 18 of P.D. 957 which allows the buyer to pay his installment for the unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain the title over the lot for validly constituted mortgages. This, however, mandates that the parties to the mortgage secure the prior clearance from the HLURB before the constitution of mortgage. In the absence of this mandatory provision of law, the remedies provided by divisibility and release are not available.

Third, as a void contract, the mortgage in favor of the UOB has no legal force and effect from the very beginning; it is equivalent to a contract that has never been entered into and that cannot be validated by time nor by ratification.[17] The contract produces no effect whatsoever either against or in favor of anyone; hence it does not create, modify or extinguish the juridical relation to which it refers.[18] The nullity exists ipso jure, and judgment of nullity would be merely declaratory.[19]

In declaring a partial invalidity of the mortgage contract, the ponencia practically "gave effect" to a patently void agreement with respect to buyers who fail to seek legal intervention to assail the validity of the real estate mortgage. This kind of declaration goes against the concept of void agreements that, by law and by its nature, should produce no civil effects.[20] This is the same principle that is taught to students in law schools as a basic characteristic of void contracts. This cannot be overemphasized in void contracts which violate an overriding public policy, such as in the present case, for to do so would interfere with an established interest of society and injure public interest.

Moreover, the partial invalidity of mortgage goes against established principles of justice and equity, and circumvents the very purpose of P.D. 957. The whereas clauses of P.D. 957 expressly state that:

> WHEREAS, reports of alarming magnitude also show cases of swindling and fraudulent manipulations perpetrated by unscrupulous subdivision and condominium sellers and operators, such as failure to deliver titles to the buyers or titles free from liens and encumbrances, and to pay real estate taxes, and fraudulent sales of the same subdivision lots to different innocent purchasers for value;
>
> WHEREAS, these acts not only undermine the land and housing program of the government but also defeat the objectives of the New Society, particularly the promotion of peace and order and the enhancement of the economic, social and moral condition of the Filipino people;[21]

Fourth, the ponencia 's reliance on the doctrine of in pari delicto in justifying the partial invalidity of the mortgage is fatally flawed. The phrase means, in essence, that since both parties are equally at fault, the court will not involve itself in resolving one side's claim over the other, and whoever possesses whatever is in dispute may continue to do so in the absence of a superior claim.[22] Nonetheless, the application of the doctrine of in pari delicto is not always rigid. An accepted exception arises when its application contravenes well-established public policy.[23] As we held in Prudential Bank v. Panis.[24]

> Nonetheless, we apply our earlier rulings because we believe that as in pari delicto may not be invoked to defeat the policy of the State neither may the doctrine of estoppel give a validating effect to a void contract. Indeed, it is generally considered that as between parties to a contract, validity cannot be given to it by estoppel if it is prohibited by law or is against public policy. It is not within the competence of any citizen to barter away what public policy by law was to preserve.[25]

The application of the principle of in pari delicto to the present case is fraught with danger. To validate the present transaction on the basis of in pari delicto would open the flood gates to fraud, and much worse, conspiracy, perpetuated by unscrupulous developers and financial institutions at the expense of condominium buyers. An unscrupulous condominium developer without any substantial financial capacity to complete a project could obtain a developer's loan from any financial institution by mortgaging certain parcels of land, emboldened by the knowledge that the courts would leave them where they are until each of the condominium buyers initiate an action to question the nullity of the mortgage. From a business standpoint, said practice is worth the risk for the labyrinth of legalities often serve as a protective mantle for unsound business practices.

Translated to its practical effects, the result will prejudice buyers who do not have the resources to engage their own counsel to defend their rights; at the very least, it will prejudice them to the extent of the time, money,

efforts, and resources they will use to protect their rights to the lots or units they have already paid for.

Fifth, the intent of P.D. 957 is to protect buyers from fraudulent manipulations perpetrated by unscrupulous subdivision and condominium sellers and operators, and not large scale mortgages. In construing P.D. 957, this Court must recognize this legislative policy to the fullest extent. Already, this Court has adopted and articulated its full recognition and support for this intent in Philippine National Bank v. Office of the President when it said:[26]

> Protection must be afforded small homeowners who toil and save if only to purchase on installment a tiny home lot they can call their own. The consuming dream of every Filipino is to be able to buy a lot, no matter how small, so that he may somehow build a house. It has, however, been seen of late that these honest, hard-living individuals are taken advantage of, with the delivery of titles delayed, the subdivision facilities, including the most essential such as water installations not completed, or worse yet, as in the instant case, after almost completing the payments for the property and after constructing a house, the buyer is suddenly confronted by the stark reality, contrived or otherwise, in which another person would now appear to be owner.

Let us not now return to this ruling and definitively reject other rulings that reject the salutary purposes of P.D. 957.

In these lights, I vote to DENY the petition.

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[1] REGULATING THE SALE OF SUBDIVISION LOTS AND CONDOMINIUMS, PROVIDING PENALTIES FOR VIOLATIONS THEREOF.

[2] Far East Bank & Trust Co. v. Marquez, G.R. No. 147964, January 20, 2004, 420 SCRA 349.

[3] Id.

[4] G.R. No. 104528, January 18, 1996, 252 SCRA 5.

[5] Supra note 2.

[6] Id.

[7] Id.

[8] G.R. Nos. 175181-82, September 14, 2007, 533 SCRA 516.

[9] Tolentino, Commentaries on Jurisprudence on Civil Code of the Philippines, Vol. V., 1986 Ed at p. 632.

[10] P.D. 957, Section 2 (b) "Unit" means a part of the condominium project intended for any type of independent use or ownership, including one or more rooms or spaces located in one or more floors (or part or parts of floors) in a building or buildings and such accessories as may be appended thereto.

[11] Section 19, P.D. 957.

[12] Supra note 8.

[13] 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 of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the

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payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereof. See also Section 4 par 4(d), (Id.) which states that in case any subdivision lot or condominium unit is mortgaged, it is sufficient if the instrument of mortgage contains a stipulation that the mortgagee shall release the mortgage on any subdivision lot or condominium unit as soon as the full purchase price for the same is paid by the buyer. [Emphasis supplied]

[14] G.R. No. 134330, March 1, 2001, 353 SCRA 359.

[15] Id.

[16] Id.

[17] Supra note 9.

[18] Id.

[19] Id.

[20] Id. at 629.

[21] Emphasis supplied.

[22] http://en.wikipedia.org/wiki/In_pari_delicto.

[23] Gonzalo v. Tarnate, G.R. No. 160600, January 15, 2014.

[24] G.R. No. L-50008, August 31, 1987, 153 SCRA 390.

[25] Citations omitted.

[26] Supra note 4.

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