

EMETERIA LIWAG, PETITIONER, VS. HAPPY GLEN LOOP HOMEOWNERS ASSOCIATION, INC., RESPONDENT.

G.R. No. 189755. July 04, 2012

Ponente: SERENO, J.

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SERENO, J.:

This Rule 45 Petition assails the Decision[1] and Resolution[2] of the Court of Appeals (CA) in CA-GR SP No. 100454. The CA affirmed with modification the Decision[3] and Order[4] of the Office of the President (O.P.) in OP Case No. 05-G-224, which had set aside the Decision[5] of the Board of Commissioners of the Housing and Land Use Regulatory Board (HLURB) in HLURB Case No. REM-A-041210-0261 and affirmed the Decision[6] of the Housing and Land Use Arbiter in HLURB Case No. REM-030904-12609.

The controversy stems from a water facility in Happy Glen Loop Subdivision (the Subdivision), which is situated in Deparo, Caloocan City.

Sometime in 1978, F.G.R. Sales, the original developer of Happy Glen Loop, obtained a loan from Ernesto Marcelo (Marcelo), the owner of T.P. Marcelo Realty Corporation. To settle its debt after failing to pay its obligation, F.G.R. Sales assigned to Marcelo all its rights over several parcels of land in the Subdivision, as well as receivables from the lots already sold.[7]

As the successor-in-interest of the original developer, Marcelo represented to subdivision lot buyers, the National Housing Authority (NHA) and the Human Settlement Regulatory Commission (HSRC) that a water facility was available in the Subdivision.[8]

For almost 30 years, the residents of the Subdivision relied on this facility as their only source of water.[9] This fact was acknowledged by Marcelo and Hermogenes Liwag (Hermogenes), petitioner's late husband who was then the president of respondent Happy Glen Loop Homeowners Association (Association).[10]

Sometime in September 1995, Marcelo sold Lot 11, Block No. 5 to Hermogenes. As a result, Transfer Certificate of Title (TCT) No. C-350099

was issued to him. When Hermogenes died in 2003, petitioner Emeteria P. Liwag subsequently wrote a letter to respondent Association, demanding the removal of the overhead water tank from the subject parcel of land.[11]

Refusing to comply with petitioner's demand, respondent Association filed before the HLURB an action for specific performance; confirmation, maintenance and donation of water facilities; annulment of sale; and cancellation of TCT No. 350099 against T.P. Marcelo Realty Corporation (the owner and developer of the Subdivision), petitioner Emeteria, and the other surviving heirs of Hermogenes.

After the parties submitted their respective position papers, Housing and Land Use Arbiter Joselito Melchor (Arbiter Melchor) ruled in favor of the Association. He invalidated the transfer of the parcel of land in favor of Hermogenes in a Decision dated 5 October 2004, the dispositive portion of which reads:[12]

WHEREFORE, premises considered, judgment is hereby rendered as follows:

- Confirming the existence of an easement for water system/facility or open space on Lot 11, Block 5 of TCT No. C-350099 wherein the deep well and overhead tank are situated,
- Making the Temporary Restraining Order dated 01 April 2004 permanent so as to allow the continuous use and maintenance of the said water facility, i.e., deep well and over head water tank, on the subject lot, by the complainant's members and residents of the subject project, and restraining all the respondents from committing the acts complained of and as described in the complaint,
- Declaring as void ab initio the deed of sale dated 26 February 2001, involving Lot 11, Block 5 in favor of spouses Liwag, and TCT No. C-350099 in the name of same respondents without prejudice to complainant's right to institute a criminal action in coordination with the prosecuting arms of the government against respondents Marcelo and Liwag, and furthermore, with recourse by Liwag against T.P. and/or Marcelo to ask for replacement for controverted lot with a new one within the subject project; and
- Ordering respondents, jointly and severally, to pay complainant the amount of P10,000.00 as attorney's fees and the amount of P20,000.00 as damages in favor of the complainant's members.

SO ORDERED.

On appeal before the HLURB Board of Commissioners, the Board found that Lot 11, Block 5 was not an open space. Moreover, it ruled that Marcelo had complied with the requirements of Presidential Decree No. (P.D.) 1216 with the donation of 9,047 square meters of open space and road lots. It further stated that there was no proof that Marcelo or the original subdivision owner or developer had at any time represented that Lot 11, Block 5 was an open space. It therefore concluded that the use of the lot as site of the water tank was merely tolerated.[13]

Respondent Association interposed an appeal to the OP, which set aside the Decision of the HLURB Board of Commissioners and affirmed that of the Housing and Land Use Arbiter.[14]

The OP ruled that Lot 11, Block 5 was an open space, because it was the site of the water installation of the Subdivision, per Marcelo's official representation on file with the HLURB National Capital Region Field Office. The OP further ruled that the open space required under P.D. 957 excluded road lots; and, thus, the Subdivision's open space was still short of that required by law. Finally, it ruled that petitioner Liwag was aware of the representations made by Marcelo and his predecessors-in-interest, because he had acknowledged the existence of a water installation system as per his Affidavit of 10 August 1982.[15]

Petitioner Liwag unsuccessfully moved for reconsideration,[16] then filed a Rule 43 Petition for Review before the CA.[17]

The CA affirmed that the HLURB possessed jurisdiction to invalidate the sale of the subject parcel of land to Hermogenes and to invalidate the issuance of TCT No. C-350099 pursuant thereto.[18] The appellate court agreed with the OP that an easement for water facility existed on the subject parcel of land and formed part of the open space required to be reserved by the subdivision developer under P.D. 957.[19] However, it ruled that Arbiter Melchor should not have recommended the filing of a criminal action against petitioner, as she was not involved in the development of the Subdivision or the sale of its lots to buyers.[20] The CA likewise deleted the award of attorney's fees and damages in favor of respondent.[21]

Aggrieved, petitioner filed the instant Petition before this Court.

The Court's Ruling

We affirm the ruling of the appellate court.

I

The HLURB has exclusive jurisdiction over the case at bar

The jurisdiction of the HLURB is outlined in P.D. 1344, “Empowering the National Housing Authority to Issue Writ of Execution in the Enforcement of its Decision under Presidential Decree No. 957,” viz:

Sec. 1. In the exercise of its functions to regulate real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority shall have the exclusive jurisdiction to hear and decide cases of the following nature.

- Unsound real estate business practices;
- 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
- Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lots or condominium units against the owner, developer, broker or salesman.

When respondent Association filed its Complaint before the HLURB, it alleged that Marcelo’s sale of Lot 11, Block 5 to Hermogenes was done in violation of P.D. 957 in the following manner:

12. Through fraudulent acts and connivance of [T.P. and Ernesto Marcelo] and the late Liwag and without the knowledge and consent of the complainants all in violation of P.D. 957 and its implementing regulations, respondents T.P. and Ernesto Marcelo transferred the same lot where the deep well is located which is covered by TCT No. C-41785 in favor of spouses Hermogenes Liwag and Emeteria Liwag to the great damage and prejudice of complainants x x x.[22] (Empasis in the original)

We find that this statement sufficiently alleges that the subdivision owner and developer fraudulently sold to Hermogenes the lot where the water facility was located. Subdivisions are mandated to maintain and provide adequate water facilities for their communities.[23] Without a provision for an alternative water source, the subdivision developer’s alleged sale of the lot where the community’s sole water source was located constituted a violation of this obligation. Thus, this allegation makes out a case for an unsound real estate business practice of the subdivision owner and developer. Clearly, the case at bar falls within the exclusive jurisdiction of the HLURB.

It is worthy to note that the HLURB has exclusive jurisdiction over complaints arising from contracts between the subdivision developer and the lot buyer, or those aimed at compelling the subdivision developer to comply with its contractual and statutory obligations to make the Subdivision a better place to live in.[24] This interpretation is in line with one of P.D. 957’s “Whereas clauses,” which provides:

WHEREAS, numerous reports reveal that many real estate subdivision owners, developers, operators, and/or sellers have reneged on their representations and obligations to provide and maintain properly subdivision roads, drainage, sewerage, water systems, lighting systems, and other similar basic requirements, thus endangering the health and safety of home and lot buyers. x x x.

P.D. 957 was promulgated to closely regulate real estate subdivision and condominium businesses.[25] Its provisions were intended to encompass all questions regarding subdivisions and condominiums.[26] The decree aimed to provide for an appropriate government agency, the HLURB, to which aggrieved parties in transactions involving subdivisions and condominiums may take recourse.[27]

II

An easement for water facility exists on Lot 11, Block 5 of Happy Glen Loop Subdivision

Easements or servitudes are encumbrances imposed upon an immovable for the benefit of another immovable belonging to a different owner,[28] for the benefit of a community, [29] or for the benefit of one or more persons to whom the encumbered estate does not belong.[30]

The law provides that easements may be continuous or discontinuous and apparent or non-apparent. The pertinent provisions of the Civil Code are quoted below:

Art. 615. Easements may be continuous or discontinuous, apparent or non-apparent.

Continuous easements are those the use of which is or may be incessant, without the intervention of any act of man.

Discontinuous easements are those which are used at intervals and depend upon the acts of man.

Apparent easements are those which are made known and are continually kept in view by external signs that reveal the use and enjoyment of the same.

Non-apparent easements are those which show no external indication of their existence.

In this case, the water facility is an encumbrance on Lot 11, Block 5 of the Subdivision for the benefit of the community. It is continuous and apparent, because it is used incessantly without human intervention, and because it is continually kept in view by the overhead water tank, which reveals its use to the public.

Contrary to petitioner's contention that the existence of the water tank on Lot 11, Block 5 is merely tolerated, we find that the easement of water facility has been voluntarily established either by Marcelo, the Subdivision owner and developer; or by F.G.R. Sales, his predecessor-in-interest and the original developer of the Subdivision. For more than 30 years, the facility was continuously used as the residents' sole source of water.[31] The Civil Code provides that continuous and apparent easements are acquired either by virtue of a title or by prescription of 10 years.[32] It is therefore clear that an easement of water facility has already been acquired through prescription.

III

Lot 11, Block 5 of Happy Glen Loop Subdivision forms part of its open space

The term "open space" is defined in P.D. 1216 as "an area reserved exclusively for parks, playgrounds, recreational uses, schools, roads, places of worship, hospitals, health centers, barangay centers and other similar facilities and amenities.[33]

The decree makes no specific mention of areas reserved for water facilities. Therefore, we resort to statutory construction to determine whether these areas fall under "other similar facilities and amenities."

The basic statutory construction principle of ejusdem generis states that where a general word or phrase follows an enumeration of particular and specific words of the same class, the general word or phrase is to be construed to include – or to be restricted to – things akin to or resembling, or of the same kind or class as, those specifically mentioned.[34]

Applying this principle to the afore-quoted Section 1 of P.D. 1216, we find that the enumeration refers to areas reserved for the common welfare of the community. Thus, the phrase "other similar facilities and amenities" should be interpreted in like manner.

Here, the water facility was undoubtedly established for the benefit of the community. Water is a basic need in human settlements,[35] without which the community would not survive. We therefore rule that, based on the principle of ejusdem generis and taking into consideration the intention of the law to create and maintain a healthy environment in human settlements,[36] the location of the water facility in the Subdivision must form part of the

area reserved for open space.

IV

The subject parcel of land is beyond the commerce of man and its sale is prohibited under the law

The law expressly provides that open spaces in subdivisions are reserved for public use and are beyond the commerce of man.[37] As such, these open spaces are not susceptible of private ownership and appropriation. We therefore rule that the sale of the subject parcel of land by the subdivision owner or developer to petitioner's late husband was contrary to law. Hence, we find no reversible error in the appellate court's Decision upholding the HLURB Arbiter's annulment of the Deed of Sale.

Petitioner attempts to argue in favor of the validity of the sale of the subject parcel of land by invoking the principle of indefeasibility of title and by arguing that this action constitutes a collateral attack against her title, an act proscribed by the Property Registration Decree.

Petitioner is mistaken on both counts.

First, the rule that a collateral attack against a Torrens title is prohibited by law[38] finds no application to this case.

There is an attack on the title when the object of an action is to nullify a Torrens title, thus challenging the judgment or proceeding pursuant to which the title was decreed.[39] In the present case, this action is not an attack against the validity of the Torrens title, because it does not question the judgment or proceeding that led to the issuance of the title. Rather, this action questions the validity of the transfer of land from Marcelo to petitioner's husband. As there is no attack – direct or collateral – against the title, petitioner's argument holds no water.

Second, the principle of indefeasibility of title is not absolute, and there are well-defined exceptions to this rule.[40] In *Aqualab Philippines, Inc. v. Heirs of Pagobo*,[41] we ruled that this defense does not extend to a transferee who takes the title with knowledge of a defect in that of the transferee's predecessor-in-interest.

In this case, Spouses Liwag were aware of the existence of the easement of water facility when Marcelo sold Lot 11, Block 5 to them. Hermogenes even executed an Affidavit dated 10 August 1982 attesting to the sufficiency of the water supply coming from an electrically operated water pump in the Subdivision.[42] It is undisputed that the water facility in question was their only water source during that time. As residents of the Subdivision, they had even benefited for almost 30 years from its existence. Therefore, petitioner cannot be shielded by the principle of indefeasibility and conclusiveness of title, as she was not an innocent purchaser in good faith and for value.

From the discussion above, we therefore conclude that the appellate court committed no reversible error in the assailed Decision and accordingly affirm it in toto.

WHEREFORE, premises considered, the instant Petition for Review is DENIED, and the assailed Decision and Resolution of the Court of Appeals in CA-GR SP No. 100454 are hereby AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Brion, Perez, and Reyes, JJ., concur.

[1] CA Decision dated 13 March 2009, penned by Associate Justice Rebecca de Guia-Salvador and concurred in by Associate Justices Japar B. Dimaampao and Sixto C. Marella, Jr.; rollo, pp. 38-54.

- [2] CA Resolution on petitioner's Motion for Reconsideration dated 18 September 2009, rollo, pp. 55-56.
- [3] Decision of the OP dated 5 March 2007; rollo, pp. 127-134.
- [4] Order of the OP dated 26 July 2007; rollo, pp. 135-137.
- [5] HLURB Board of Commissioners Decision dated 7 June 2005, rendered by Commissioners Romulo Q. Fabul, Teresita A. Desierto, Francisco L. Dagnalan (no signature) and Jesus Y. Pang; rollo, pp. 120-123.
- [6] HLURB Arbiter's Decision dated 5 October 2004, penned by Atty. Joselito F. Melchor; rollo, pp. 86-93.
- [7] CA Decision dated 13 March 2009, rollo, pp. 39-40.
- [8] Id. at 40.
- [9] HLURB Arbiter's Decision dated 5 October 2004, rollo, p. 87.
- [10] Id.
- [11] CA Decision dated 13 March 2009, rollo, p. 40.
- [12] HLURB Arbiter's Decision dated 5 October 2004, rollo, p. 93.
- [13] Decision of the HLURB Board of Commissioners dated 7 June 2005, rollo, p. 122.
- [14] Decision of the OP dated 5 March 2007, rollo, p. 134.
- [15] Id. at 133-134.
- [16] Order of the OP dated 26 July 2007, rollo, p. 137.
- [17] CA Decision dated 13 March 2009, rollo, p. 38.
- [18] Id. at 47.
- [19] Id. at 49.
- [20] Id. at 52.
- [21] Id. at 53.
- [22] Complaint with a Prayer for a Preliminary Injunction and/or Temporary Restraining Order dated 8 March 2004, rollo, p. 70.
- [23] Rules Implementing the Subdivision and Condominium Buyer's Protective Decree and Other Related Laws, Sec. 11(B) (4).
- [24] *Arranza v. B.F. Homes*, 389 Phil. 318, 329 (2000).
- [25] *Christian General Assembly, Inc. v. Sps. Ignacio*, G.R. No. 164789, 27 August 2009, 597 SCRA 266.
- [26] *Sps. Osea v. Ambrosio*, 521 Phil. 92 (2006).
- [27] Id.
- [28] CIVIL CODE, Art. 613.
- [29] CIVIL CODE, Art. 614.
- [30] Id.

[31] HLURB Arbiter's Decision dated 5 October 2004, rollo, p. 87.

[32] CIVIL CODE, Art. 620.

[33] P.D. No. 1216, Sec. 1.

[34] *Miranda v. Abaya*, 370 Phil. 642 (1999).

[35] Rules and Standards for Economic and Socialized Housing Projects to Implement Batas Pambansa Blg. 220, Rule III, Sec. 5(B).

[36] P.D. 1216, first Whereas clause.

[37] P.D. 1216, second Whereas clause.

[38] P.D. No. 1529, Sec. 48.

[39] *Heirs of Santiago v. Heirs of Santiago*, 452 Phil. 238 (2003).

[40] *Borromeo v. Descallar*, G.R. No. 159310, 24 February 2009, 580 SCRA 175.

[41] G.R. No. 182673, 12 October 2009, 603 SCRA 435.

[42] Joint Affidavit of Gerry Bautista and Hermogenes R. Liwag dated 10 August 1982, HLURB Records, p. 10.

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