

BURGUNDY REALTY CORP., PETITIONER, VS. DANIELA P. BELLA, GERONIMO BELLA, JR., AND RODRIGO P. BELLA, RESPONDENTS.*G.R. No. 268562, August 04, 2025*

Ponente: INTING, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-268562/>**INTING, J.:**

Before the Court is a Petition for Review on Certiorari (Petition)[1] filed by Burgundy Realty Corporation (petitioner) assailing the Decision[2] dated February 28, 2023, and the Resolution[3] dated July 11, 2023, of the Court of Appeals (CA) in CA-G.R. CV No. 112944. The CA affirmed with modification the Decision[4] dated December 27, 2018, of the Regional Trial Court (RTC), Branch 65, Makati City in Civil Case No. 04-851 which granted the Amended Complaint[5] for Specific Performance, Damages and Mandatory Injunction with Prayer for Temporary Restraining Order and Writ of Preliminary Injunction filed by Daniela P. Bella (Daniela), Geronimo Bella, Jr. (Geronimo, Jr.), and Rodrigo P. Bella (Rodrigo) (collectively, respondents) against the petitioner.

The Antecedents

Daniela and Geronimo Bella, Sr. (Geronimo, Sr.) (collectively, Spouses Bella) are the registered owners of two adjoining parcels of land located in Manila City, covered by Transfer Certificate of Title (TCT) Nos. 116917 and 191313, with a combined total area of 1,129.50 square meters (condominium lot). On the other hand, petitioner is a corporation engaged in the business of real estate development.[6]

I.

The First Joint Venture Agreement dated and notarized on December 6, 1996 (JVA-A)

On December 6, 1996, Spouses Bella and petitioner, through its president, Rogelio T. Serafica (Serafica), entered into and signed a Joint Venture Agreement[7] (JVA-A) for the development of the condominium lot into a condominium project.[8]

Under the JVA-A, Spouses Bella agreed to contribute the condominium lot while petitioner agreed to contribute its expertise in the development, construction, marketing, and sale of the condominium project. The parties further agreed, among others, to share the condominium project as follows:

Article II**SHARE IN THE PROJECT**

OWNER SHARE - shall be Seven (7) residential units or a total AREA of 229.24 SQUARE METERS of the Condominium Project and marked as Owner's Reserved Area.

DEVELOPER SHARE - shall be the remaining units of the Condominium Project, any and all of those that are not marked as Owner's Reserve[d] Area.[9]

On April 24, 1997, petitioner, through Serafica, wrote to Spouses Bella and informed the latter that an ocular inspection at the condominium lot shall be conducted by the building authorities to ensure that the lot has been vacated before a demolition permit can be issued in its favor. In response, Spouses Bella sent letters dated May 30, 1997, and July 3, 1997, and requested for additional time to vacate the premises.[10]

On November 20, 1998, Geronimo, Jr., representing his parents, Spouses Bella, issued an authorization letter allowing petitioner to construct the project at the condominium lot.[11]

On June 21, 2000, Spouses Bella, represented by their children, Geronimo, Jr. and Rodrigo, sent a Confirmation Letter[12] to petitioner with the following stipulations:[13]

This is in connection with the Joint Venture Agreement ("JVA") dated 06 December 1996 executed by and between Geronimo B. Bella and Daniella P. Bella, as represented by Geronimo P. Bella, Jr. and Rodrigo P. Bella, ("Owner") and Burgundy Realty Corporation represented by Rogelio T. Serafica ("Developer").

This is to confirm that the Owner and Developer have agreed as follows:

- The Owner's share in the Condominium Project shall be Two and One-Half (2.5) times of the lot area or a total usable area of Two Thousand Eight Hundred Twenty Three and 75/100 (2,823.75) square meters, plus twelve (12) "ground level" parking spaces ...
- Except for seven (7) units which shall be registered in the name of Daniella P. Bella, the balance of the Owner's units referred to in #1 shall be provisionally registered under the name of the Developer. Developer shall thereafter transfer the aforesaid Owner's Units to the Owner's assignee/s upon request at no extra cost.

....

In the event of any inconsistency between the confirmation letter and the JVA, the stipulations of this confirmation letter shall prevail.

Very truly yours,

(Sgd.)

Geronimo P. Bella, Jr.

(Sgd.)

Rodrigo P. Bella

Conforme:

(Sgd.)

BURGUNDY REALTY CORPORATION

By: ROGELIO T. SERAFICA[14]

On April 30, 2003, petitioner turned over to Spouses Bella seven original Owner's Duplicate Condominium Certificate of Title (CCT) issued in the name of Daniela. As proof of receipt of the titles, Spouses Bella signed an Acknowledgement Receipt dated April 28, 2003. The details of the seven units covered by the seven CCTs are as follows:[15]

CCT No.

Unit No.

Area

46297

906

32.73

46298

907

32.56

46299

908

34.76

46305

914

37.54

46309

918

44.77

46310

919

40.08

46418

1517

36.39

On March 26, 2004, respondents sent a letter to petitioner and demanded for additional units as compensation for the unrealized profits in view of the delay in the construction of the project. In response, petitioner sent a letter dated March 31, 2004, signed by a certain Cymbeline Galero,[***] stating that respondents' request could no longer be granted.[16]

On April 28, 2004, respondents, through counsel, requested for a meeting and reiterated their concern regarding the delay in the turnover of their share in the condominium project and changes in the building plan without their consent. In the same letter, they also reiterated their demand for additional compensation. Likewise, a similar demand was made through another letter dated May 26, 2004.[17]

As respondents' demands remained unheeded, on July 21, 2004, respondents filed a Complaint[18] for Specific Performance, Damages and Mandatory Injunction with Prayer for Temporary Restraining Order and Writ of Preliminary Injunction.[19]

Initially, the complaint was raffled to Branch 139, RTC of Makati City which, through Orders dated July 30, 2004, and August 19, 2004, issued a Temporary Restraining Order and a Writ of Preliminary Injunction,

respectively, against petitioner.[20]

Thereafter, petitioner filed its Answer[21] on August 31, 2004, and mainly alleged that the complaint stated no cause of action. According to petitioner, it already delivered and transferred the ownership of seven units with a total area of 258.83 square meters to Daniela, instead of the stipulated seven units with a total area of 229.24 square meters. It also averred that it even gave an additional unit and parking slot to respondents, as a gesture of its goodwill. Thus, petitioner asserted that it had more than sufficiently complied with its obligation under the JVA-A. Further, petitioner pointed out that Serafica was not authorized by any board resolution to negotiate with respondents, much less, sign the Confirmation Letter dated June 21, 2000. Thus, it maintained that the questioned Confirmation Letter is unenforceable against it for being an ultra vires act of Serafica.[22]

Subsequently after filing their Reply[23] on March 2, 2005, respondents filed a Supplemental Motion[24] and moved for the issuance of a summary judgment to allow Daniela to take possession of the seven residential units as their partial share in the project.[25]

In an Order[26] dated April 29, 2005, the RTC issued a separate judgment confirming the ownership of Daniela over the seven residential units, thus:

Prescinding from the foregoing findings, it is not controverted that [respondent] Daniela is the true owner of the subject residential units. And being the owner, she has the right to exercise all the attributes of ownership, including the right to possess the same. On the part of the [petitioner], it has no more right to retain possession of the units as it is clear from its own pronouncement that said units were given to [respondents] as their share in the [JVA]. [27]

Meanwhile, after the RTC issued its Pre-Trial Order,[28] on July 11, 2005, respondents filed a Motion for Leave to File Amended Complaint.[29]

II.

The Second Joint Venture Agreement dated and notarized on December 6, 1996 (JVA-B)

In the Amended Complaint,[30] respondents attached another Joint Venture Agreement, also dated and notarized on December 6, 1996 (JVA-B).[31] The main distinctions, among others, between the JVA-A and JVA-B are shown in the table below:

JVA-A

JVA-B

Article II

SHARE IN THE PROJECT

OWNER SHARE – shall be Seven (7) residential units or a total AREA of 229.24 SQUARE METERS of the Condominium Project and marked as Owner's Reserved Area.

DEVELOPER SHARE - shall be the remaining units of the Condominium Project, any and all of those that are not marked as Owner's Reserve[d] Area.

Article II

SHARE IN THE PROJECT

OWNER SHARE – shall have USABLE (LIVING) AREA of TWO AND ONE HALF (2.5) TIMES of the LOT AREA of the Project Property or a total USABLE AREA of TWO THOUSAND EIGHT HUNDRED TWENTY THREE AND 75/100 (2,823.75) SQUARE METERS plus 12 parking slots of the Condominium Project, of which is specified and marked as (Owner's Reserved Area) in the aforementioned Perspective and Feasibility Study Scheme, which shall form an integral part of the Agreement.

DEVELOPER SHARE - shall be the remaining units of the Condominium Project, any and all of those that are not marked as Owner's Reserve[d] Area in the Perspective and Feasibility Scheme.

Article XII

ADDITIONAL PROVISION

That a cash advance in the amount of Philippine Pesos: ONE MILLION ([PHP] 1,000,000.00) shall be given to the owner upon signing of the contract of the Joint Venture Agreement. It is understood that the said cash advances shall be deducted from the sale proceeds of the Owner's Reserved Areas. ...

Article XII

ADDITIONAL PROVISION

That a cash advance in the amount of 2.5 million Philippine Pesos shall be given to the owner upon signing of the contract of the Joint Venture Agreement, balance of 2.5 million [] Philippine Peso after procurement of Building Permit. It is understood that said cash advances shall be deducted from the sale proceeds of the Owner's Reserved Areas. ...

Respondents then prayed, among others, for the RTC to direct petitioner: (1) to deliver the remaining residential and commercial units to them; and (2) to finish the construction of the project within six months. Respondents also sought for the payment of damages, and attorney's fees in the amount of PHP 500,000.00.[32]

Despite the objections of petitioner, the RTC to avoid multiplicity of suits, issued its Order dated September 21, 2005, admitting the Amended Complaint. The RTC likewise denied petitioner's motion for reconsideration which prompted the latter to elevate the matter to the CA via a petition for certiorari. Eventually, the CA, in CA-G.R. SP No. 93503, rendered its Decision dated March 9, 2012, and affirmed the Order dated September 21, 2005, of the RTC admitting the Amended Complaint.[33]

Meanwhile, the RTC issued an Order[34] dated February 20, 2006, requiring the petitioner to file its answer to the Amended Complaint. Instead of filing an answer, however, petitioner filed a Motion to Dismiss on the ground of lack of jurisdiction and non-payment of proper docket fees. The RTC denied it through an Order[35] dated 31 January 2011.

Petitioner then challenged the Order of the RTC denying its motion to dismiss through a petition for certiorari with the CA which the latter denied.[36]

Eventually in 2016, after various motions, including a motion for inhibition filed by petitioner, the case was re-raffled to Branch 65, RTC, Makati City.[37]

Despite the lapse of almost two years from the original schedule given to petitioner to present its evidence, the latter still failed to do so which prompted the RTC to issue an Order on November 9, 2017, declaring petitioner to have waived its right to present its evidence. It then directed the parties to submit their respective memoranda.

Incidentally, in their Memorandum[38] dated December 8, 2017, respondents prayed for an alternative relief of

payment of sum of money, to wit:

WHEREFORE, it is respectfully prayed that:

- The prayer in the Amended Complaint be awarded by the Honorable Court, in favor of [respondents] except those covered by a Separate Judgment and the one transmitted to Rafael Ledesma, Jr.
- In the alternative, defendant be directed to pay the amount of [PHP] 229,293,328.55 corresponding to the amount of plaintiffs' share in the condominium project.

....

Notwithstanding the belated filing of petitioner's Memorandum[39] dated March 23, 2018, the RTC, in the interest of justice, admitted it.[40]

The Ruling of the RTC

In the Decision[41] dated December 27, 2018, the RTC ruled in favor of respondents and directed petitioner to pay the sum of PHP 229,293,328.55 plus attorney's fees. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgement is hereby in favor of the [respondents] DANIELA P. BELLA, GERONIMO P. BELLA, JR., and RODRIGO P. BELLA ordering [petitioner] BURGUNDY REALTY CORP., to pay the [respondents] the amount of TWO HUNDRED TWENTY-NINE MILLION TWO HUNDRED NINETY-THREE THOUSAND THREE HUNDRED TWENTY-NINE PESOS FIFTY-FIVE CENTAVOS ([PHP] 229,293,328.55)[42] corresponding to the amount of the [respondents'] share, and the amount of TWENTY MILLION PESOS ([PHP] 20,000,000.00) by way of attorney's fees and litigation expenses.

SO ORDERED.[43]

The RTC upheld the validity of the Confirmation Letter and ruled that Serafica was clothed with apparent authority to sign it. Further, it interpreted the provisions of the Confirmation Letter and JVA-A to be consistent with one another and concluded that the parties intended both documents to complement one another. However, instead of directing petitioner to deliver the condominium units corresponding to respondents' share in the project, the RTC deemed it more appropriate to grant respondents' alternative prayer for payment of the value of the condominium units, as stated in their Memorandum.[44]

The RTC also ruled that respondents failed to prove their claim for damages. Nonetheless, it awarded attorney's fees in the amount of PHP 20,000,000.00 to respondents.[45]

The petitioner filed an appeal.

The Ruling of the CA

In the assailed Decision[46] dated February 28, 2023, the CA denied the appeal of petitioner, and accordingly, affirmed with modification the decision of the RTC. The dispositive portion of the Decision reads:

WHEREFORE, the appeal is DENIED. The assailed Decision dated 27 December 2018 of the Regional Trial Court, National Capital Judicial Region, Branch 65, Makati City in Civil Case No. 04-851 is AFFIRMED WITH MODIFICATIONS as to the sum of money representing their share in the condominium project amounting to Two Hundred Ninety-Nine Million Two Hundred Ninety-Three Thousand Three Hundred Twenty-Eight Pesos and Fifty-Five Centavos (PHP 229,293,328.55).

Such monetary award shall earn interest at the rate of six percent (6%) per annum from the finality of this decision until full payment thereof.

SO ORDERED.[47]

The CA cited the series of acts performed and documents executed by Serafica and concluded that they were sufficient to vest the latter with apparent authority to transact with respondents. Thus, it agreed with the RTC that petitioner is estopped from denying Serafica's authority and is bound to comply with the obligations undertaken by the latter in its name. The CA also ruled that there was no novation of the joint venture agreements; that the JVA-A was merely a relatively simulated contract; and that the parties actually intended to be bound by the stipulations stated in the JVA-B.[48]

Lastly, the CA ruled that the records show that respondents were able to prove during trial that the value of their undelivered share in the condominium project is PHP 299,293,328.55, and not only PHP 229,293,328.55 as what they have prayed for in their Memorandum and granted by the RTC. Thus, it increased the sum awarded to respondents from PHP 229,293,328.55 to PHP 299,293,328.55.[49]

In the Resolution[50] dated July 11, 2023, the CA denied the motion for reconsideration filed by petitioner.

Hence, the present petition.

The Petition

Petitioner insists that the doctrine of apparent authority is not applicable in the case and that its board of directors did not authorize Serafica to negotiate and sign the questioned Confirmation Letter, the purported JVA-B, and other documents, and to perform other series of acts, as proven by the lack of board resolution or secretary's certificate attesting to such authority. It also argues that the CA erred in ruling that there was no novation notwithstanding that the objects of the JVA-A and JVA-B are incompatible with each other. Further, petitioner submits that the CA erred when it agreed with the RTC in granting respondents' alternative prayer for payment of sum of money without first giving it an opportunity to deliver the condominium units pertaining to the alleged shares of respondents in the project. Likewise, it contends that the CA unjustly modified the RTC decision and increased the award from PHP 229,293,328.55 to PHP 299,293,328.55. Lastly, petitioner avers that the lower courts awarded attorney's fees in the amount of PHP 20,000,000.00 without any factual or legal basis.[51]

In their Comment,[52] respondents argue that petitioner raises a question of fact which is not proper in a Rule 45 petition. They also maintain that petitioner vested Serafica with apparent authority to enter and execute the questioned Confirmation Letter and JVA-B. Further, respondents insist that there was no novation of either the JVA-A or JVA-B. As regards the increased award, respondents aver that they have proven their entitlement to it.

Thereafter, petitioner filed its Reply,[53] reiterating its argument that Serafica had no authority to bind it and that its obligation to respondents was extinguished by reason of the novation of the two JVAs.

The Issues

The issues for the Court to resolve are: (a) whether the CA correctly ruled that Serafica was expressly authorized or clothed with apparent authority to transact with respondents; (b) whether novation took place in any of the joint venture agreements; (c) whether the CA was correct when it affirmed the award of sum of money in lieu of the delivery of the condominium units to respondents and further increased the RTC award from PHP 229,293,328.55 to PHP 299,293,328.55; and (d) whether respondents are entitled to the award of attorney's fees.

The Ruling of the Court

The jurisdiction of the Court in a petition for review on certiorari under Rule 45 of the Rules of Court is generally limited only to errors of law, as the Court is not a trier of facts.[54] However, the Court may delve into and resolve factual issues when, among others, the conclusion is grounded entirely on speculation, surmises or conjectures; the judgment is based on misapprehension of facts; or when the findings of fact of the lower courts

are conflicting, as in the present case.[55] Hence, the Court shall examine the evidence on record and determine the issues raised by the petitioner as warranted under the circumstances.

Defective Notarization

Incidentally, the Court notes that both JVA-A and JVA-B were notarized by the same lawyer and contained the same notarial details, i.e., document number, page number, and book number. Likewise, the competent evidence of identity of the parties was not indicated on the acknowledgment part of the JVA-B.

Nonetheless, it has been held that a defective notarization only strips the document of its public character and reduces it to a private instrument.[56] Consequently, the document with a defective notarization shall be treated as a private document and should be examined under the parameters of Section 20, Rule 132 of the Rules of Court which provides that, "before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either: (a) by anyone who saw the document executed or written; or (b) by evidence of the genuineness of the signature or handwriting of the maker . . ."[57]

Here, the parties do not dispute the existence and authenticity of both JVAs.

As a matter of fact, petitioner mainly argues that JVA-B is unenforceable against it because of Serafica's supposed lack of authority to execute the same and that JVA-B was novated by the execution of JVA-A. In other words, by advancing the aforementioned arguments, petitioner is deemed to have admitted the existence and validity of both JVAs.

Thus, considering that there is no dispute regarding the existence and due execution of both the JVAs, their classification either as a public or private document will not affect their validity and the parties are bound by their agreements.[58]

Serafica is clothed with apparent authority and petitioner is estopped from denying it

It is settled that a corporation, like petitioner, being a juridical person created by law, can only act and exercise its express and implied powers through its board of directors as a collective body, "which is vested with the power and responsibility to decide whether the corporation should enter into a contract that will bind the corporation, subject to the Articles of Incorporation, By-Laws, or relevant provisions of law." [59] This is pursuant to the provisions of Section 23 of the then Corporation Code which provides:

Section 23. The board of directors or trustees. – Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year until their successors are elected and qualified.

It is equally settled that without the appropriate authority of the corporation's board of directors, "no person, not even its officers, can validly bind a corporation," [60] exercise any of its powers, or make it liable for any obligation.

Nonetheless, under the doctrine of apparent authority, "a corporate officer or agent may represent and bind the corporation in transactions with third persons to the extent that authority to do so has been conferred upon him, and this includes powers which have been intentionally conferred, and . . . such apparent powers as the corporation has caused persons dealing with the officer or agent to believe that it has conferred." [61]

Further, apparent authority may be determined through (1) the general manner by which the corporation holds out an officer or agent as having the power to act or, in other words, the apparent authority with which it clothes him [or her] to act in general or (2) the acquiescence in his [or her] acts of a particular nature, with actual or constructive knowledge thereof, whether within or without the scope of his [or her] ordinary powers.[62]

In such a case, "the corporation will be estopped to deny that such apparent authority in real, as to innocent third persons dealing in good faith with such officers or agents." [63]

In the case, it is undeniable that petitioner clothed Serafica with apparent authority to deal with respondents and execute the following documents, among others:

- Letter[64] dated April 24, 1997:

April 24, 1997

MR. JUN BELLA
General Manager

TRANSPACIFIC TOWAGE, INC
Taft Avenue, Manila

Jun:

Please be advised that we are already applying for demolition permit. We would like to inform you that building officials require that the place be vacant before they can issue a demolition permit.

Please inform us on when could the building inspector visit the area for inspection for the issuance of the demolition permit.

Thank you for your cooperation.

Sgd.
ROGELIO T. SERAFICA
President

- Letter[65] dated August 5, 1997:

August 5, 1997

MR. GERONIMO P. BELLA, JR.
President & General Manager
Transpacific Towage, Inc.
Transpacific Building
2444-A Taft Avenue, Manila

Dear Jun,

I received your letter dated August 4, 1997 and in it your request for a loan of Two Million Pesos ([PHP] 2,000,000.00) to renovate your new office building. I can extend to you the cost of renovation through our construction activity by building this as per your specification, labor and materials included. You may pay us for a six (6) month period for this renovation. . . .

I hope that we will be able to proceed with our agreed schedule on August 15, 1997.

Thank you.

Very truly yours.

Sgd.
ROGELIO T. SERAFICA
President

- Undated Letter[66]:

MR. GERONIMO BELLA, JR.
President
Transpacific Towage, Inc.
2444-A Taft Avenue, Manila

Dear Mr. Bella,

This is to confirm your allotted shares in our condominium project, Transpacific Place, under our joint venture agreement and as per your request on the following units based on our architectural plans submitted to you.

The following units are as follows:

- Ground Floor (Unit 9) Leon Guinto side ----- 175.28 sqm
- Mezzanine Floor (Unit # A & B) ----- 152.96 sqm
- Lower Second Floor (All units) ----- 579.73 sqm
- 15th Floor (Unit # 1,2,3,4,5,6,7,8,9,14& 15) ----- 463.93 sqm
- 25th Floor (All units) ----- 738.88 sqm
- Upper Penthouse (All units) ----- 713.84 sqm
- 12 Parking Slots

TOTAL 2,824.62 sqm

Thank you and best wishes.

Very truly yours,

Sgd.
ROGELIO T. SERAFICA
President

- Assumption of Indebtedness[67] between petitioner and respondents:

KNOW ALL MEN BY THESE PRESENTS:

The Assumption of Indebtedness made and entered into this 25[th] day of October 2000 in the City of Makati by:

BURGUNDY REALTY CORPORATION, a domestic corporation duly organized and existing by virtue of the laws of the Philippines, with principal address at 174 B. Gonzalez, Loyola Heights, Quezon City, represented by its duly authorized President and CEO, MR. ROGELIO L SERAFICA. (hereinafter referred to as "BRC")

....

NOW THEREFORE, for and in consideration of the foregoing premises, BRC agrees as follows:

BRC hereby assumes the loan of the BELLAS with DBS Bank in the Principal amount of THIRTEEN

MILLION TWO HUNDRED NINETY FIVE THOUSAND THREE HUNDRED THIRTEEN & 25/100 Pesos ([PHP] 13,295,313.25) which shall take effect on _____ under such conditions and terms as BRC and the Bank may agree upon.

IN WITNESS WHEREOF, BRC signs this Assumption of Indebtedness on the date and place above mentioned.

BURGUNDY REALTY CORPORATION

By:

Sgd.

ROGELIO T. SERAFICA

President

These are in addition to the JVA-A,[68] and JVA-B,[69] both dated December 6, 1996, and Declaration of Trust[70] dated November 12, 2003, which Serafica likewise executed on behalf of petitioner.

Interestingly, except for the JVA-B which petitioner now alleges to have been executed by Serafica sans authority, petitioner allowed Serafica to execute all the above-mentioned documents notwithstanding the lack of board resolution expressly authorizing him to do so without objection from its board or the shareholders. Undoubtedly, it had clothed Serafica with apparent authority to execute the questioned documents, i.e., Confirmation Letter and JVA-B.

Verily, the CA correctly ruled that petitioner cannot fault respondents for believing that Serafica had the authority to deal with them concerning their joint venture and is now estopped from denying Serafica's authority. Thus, it is bound to comply with the obligations validly executed in its name.

Lastly, it is important to point out that by building on the condominium lot of Spouses Bella to advance its business interest, petitioner is deemed to have ratified the alleged unenforceable acts of Serafica under Article 1405[71] of the Civil Code.

There was no novation of either of the JVAs: JVA-A relatively simulated contract

Novation is defined as a mode of extinguishing an obligation by changing its objects or principal obligations, by substituting a new debtor in place of the old one, or by subrogating a third person to the rights of the creditor.[72] Novation is never presumed, and the animus novandi, whether totally or partially, must appear by express agreement of the parties, or by their acts that are too clear and unmistakable.[73]

In arguing that there was novation of the JVAs, petitioner theorizes that after the parties executed JVA-B, they subsequently executed JVA-A. Thus, it argues that because the objects of both JVAs are totally incompatible with one another, its obligation to respondents had been extinguished by novation.[74]

However, it must be recalled that petitioner earlier argued that the JVA-A could not have been amended or superseded by JVA-B that increased the shares of respondents in the project because Serafica had no authority to execute the latter, thereby implying that JVA-A was the first agreement executed by the parties.

On this point, it is apparent to the Court that petitioner's own arguments contradict each other. A classic case of wanting to have its cake and eat it, too.

At any rate, extinctive novation requires: (1) the existence of a previous valid obligation; (2) the agreement of all the parties to the new contract; (3) the extinguishment of the old obligation or contract; and (4) the validity of the new one.

Here, none of the mentioned requisites are present. As a matter of fact, the requirement that the first contract be extinguished by a subsequent one does not even exist because there is only one contract involved in the present case, as will be discussed below.

CROSS-EXAMINATION OF ATTY. LINDBERGH S. VILLAMIL ON RODRIGO P. BELLA:

Q:

Can you tell this court what was the reason why you agreed or rather decided so obscure that this first JVA which was very, very advantageous to you?

A:

The reason behind that is because of my father's death, he passed away immediately during the time that the agreement was being signed. So[,] to shield the project from any other claims, that's what we made for any other claims that might come up because of my father's death. So that was agreed by both parties.

Q:

You said that you wanted to shield the property from whom you wanted to shield?

A:

Because my father's died [sic], so you know my father might have some other families, so we shielded the property from any other possible claimants which also Burgundy agreed and its also for their protection.

Q:

So[,] are you implying that your father during his [life time] was a gigolo?

A.

You may say so.

....

Q:

Ah. And that you were afraid that these brothers and sisters would be holding a claim against the property?

A:

Yes, sir. it would be possible, but I'm not saying that there's a claim too.

Q:

So[,] in other words, you asked Burgundy consent to this idea of yours to conceal that the real agreement from the possibility of people claiming against the property?

A:

I did not say that I asked Burgundy when I entered into the contract[.] I presented the whole picture to Burgundy, take it or leave it, that was the agreement. They already knew the whole background of the property before entering to this. And before entering into the project Burgundy also made the feasibility study and they know the whole background before entering into.

Q:

Are you saying that before the project was conduct, you were made known to the Burgundy that the property could be the subject of claimants from other parties other than your family[?]

A:

Burgundy knows a lot of things. 1) they knew that the properties under a mortgage; 2) [t]hey knew that my father was very sick at that time; and we also stated that there could be possible claimants in case my father's death [sic].

Q:

So, actually the reason why the second JVA was the one annotated, because you intended the real agreement to be concealed from other parties so that there will be no other claims?

A:

Just in case to protect the both parties.

....

Q:

Was it a favor you asked from Burgundy to agree to this idea that you only annotate the second JVA instead [of] the first JVA?

A:

It was not really a favor, it was already presented as a fact to them, whether they agree or not, its should have they signed the agreement in the first place. So, I wouldn't say that I asked for their favor[.] I presented the whole picture to them whether they agree to continuing the project or not it was their decision, but I wouldn't say that I sought or I asked the favor from them to make that clear.

....

Q:

Ah I see. And Burgundy agreed to this to actually protect you?

A:

Protect me and protect them otherwise, he gets other possible claimants its not only our units that will be affected but, also the units that they were selling to the public. I think the second JVA would be advantageous to both parties[,] not only me.[75]

It is apparent that while the parties executed two agreements, they only executed JVA-A to conceal JVA-B in order to protect the interest of both parties in the event that other unknown children of Geronimo, Sr. suddenly appear and make claims against the property. Moreover, as the CA correctly found and ruled, the following subsequent acts of petitioner, after the execution of the JVAs, further confirm that JVA-A is only a relatively simulated contract and the parties only intended to be bound by JVA-B, to wit:

- Letter[76] dated March 24, 2004:

....

Dear Sirs/Madame:

Please be it on record that the development of our project. Transpacific Place is in accordance with our schedule of timetable of construction considering the following facts:

....

We regret to inform [you] that we can only give you the additional unit of (UPH-J) and two parking slots on top of your share of 2.5 times the area of your lot.

We hope that you also give considerations as our joint venture partner in the said project.

Very truly yours,

Sgd.

Cymbeline Galero

- The Undated Letter[77] mentioned above; and

- Document signed on October 21, 1997[78]:

TRANS-PACIFIC CREST

AREA/FLOOR

14 October 1997

LEVEL

AREA

1 . GROUND FLOOR

175.28 sqm

2. MEZZANINE (A & B)

152.96 sqm

3. LOWER 2ND FLOOR

579.73 sqm

4. 25TH FLOOR

738.88 sqm

5. UPPER PENTHOUSE

713.84 sqm

6. PARTIAL 15TH FLOOR

463.93 sqm

TOTAL -----

2,824.62 sqm

Sgd.

Sgd.

10/21/97

Sgd.

Sgd.

10/21/1997

Evidently, considering that JVA-A is only a relatively simulated contract, there could be no novation of the two JVAs and petitioner's argument clearly has no leg to stand on.

The principle of *pari-delicto*

During the deliberations of the case, Associate Justice Alfredo Benjamin S. Caguioa opined that the parties are in *pari-delicto* for having intentionally entered into a void contract. According to him, the JVA-A was executed with an illegal purpose, i.e., to deprive possible compulsory heirs from receiving their rightful shares to the estate of Geronimo Sr., and defraud third party creditors into thinking that Geronimo Sr. and consequently, his estate, was only entitled to a certain number of units in the condominium project in Manila City. Thus, Justice Caguioa further opined that the Court should leave them where it finds them and not grant any affirmative relief to them.

However, it must be stressed that the rule on *pari delicto* is not absolute. An accepted exception is when its application will violate the public policy against unjust enrichment,[79] as in the case.

"There is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience." [80]

Here, although the parties simultaneously executed JVA-A and JVA-B to conceal their true agreement, it is undisputed that the main consideration for Spouses Bella to relinquish their lots was their expectation of receiving a total useable area of 2,823.75 square meters and 12 parking slots in the project, which petitioner promised to deliver. Otherwise stated, if not for petitioner's promise to give that much useable area, Spouses Bella would not have agreed to part with their lots. Verily, to allow petitioner to retain the additional share of respondents, contrary to what they had voluntarily and mutually agreed upon, would amount to unjust enrichment to the detriment of Spouses Bella.

Besides, if basic rules of fair play, justice, and due process dictate that arguments or issues not raised before the lower courts may not be raised for the first time on appeal, then it follows even more strongly that a reviewing court cannot resolve *motu proprio* an issue that was not even raised by a party.[81]

Still, the Court notes that regardless of whether both JVAs are declared void and inexistent for being entered into with an illegal purpose, respondents are still entitled to their additional share in the project. As earlier discussed, Mr. Serafica issued various letters addressed to respondents and expressly confirmed the latter's share in the project. Notably, the sharing agreement indicated in the letters of Mr. Serafica mirrors that of the JVA-B. In other words, even without the JVAs, respondents duly proved, by preponderance of evidence, their entitlement to the additional share in the project, through other pieces of documentary evidence.

Moreover, even assuming that the parties are in *pari delicto*, the supposed evil sought to be avoided by the rule on *pari-delicto* will be better achieved with the Court's recognition of respondents' additional share in the project because the possible compulsory heirs, or creditors who may have had been prejudiced by the JVA-A would now be able to enforce their rights based on the decision of the case.

Units to be delivered

As a necessary consequence of the Court's ruling that petitioner is bound by the contents of JVA-B and other subsequent documents increasing the share of respondents in the joint venture, and based on the testimony of Geronimo, Jr.[82] and documentary evidence on record, the Court rules that respondents' share in the project comprises of the following units, to wit:

- 12 parking slots:[83]

- Commercial and Residential Units identified as:

Unit No.	Residential Units
----------	-------------------

Area as Built

(SQUARE METERS)

906[84]

32.73

907[85]

32.56

908[86]

34.76

914[87]

37.54

918[88]

44.77

919[89]

40.06

1515[90]

39.24

1517[91]

36.39

2501[92]

60.57

2502[93]

63.47

2507[94]

32.56

2508[95]

34.76

2509[96]

32.13

2510[97]

37.29

2511[98]

36.34

2512[99]

38.68

2513[100]

34.62

2514[101]

37.54

2515[102]

39.24

UPF-A[103]

122.28

UPF-B[104]

150.84

UPF-C[105]

100.40

UPF-D[106]

76.85

UPF-E[107]

84.61

UPF-F[108]

104.34

UPF-G[109]

108.37

UPF-H[110]

38.82

UPF-I[111]

35.38

UPH-J[112]

21.01

- Ground Floor Units identified as:

Unit

Area

G-6-A[113]

52.69 sq.m.

G-6-B[114]

48.31 sq.m.

G-6-C[115]

50.95 sq.m.

- Two additional parking slots, pursuant to the letter of Ms. Cymbeline Gelero;[116]

- Mezzanine Units identified as:

Unit

Area

MZ-C[117]

32.43 sq.m

MZ-D[118]

33.14 sq.m.

MZ-E[119]

40.20 sq.m.

LGS-B[120]

61.09 sq.m.

LGS-C[121]

57.23 sq.m.

LGS-D[122]

20.92 sq.m.

UGS-5[123]

27.76 sq.m.

UGS-6[124]

45.58 sq.m.

UGS-7[125]

25.34 sq.m.

- Other remaining units identified as "Lower Guests Suites"; Upper "Guests Suites"; and "Roof Deck".[126]

It is only when petitioner fails to deliver the units pertaining to the share of respondents that it can be directed to pay its monetary equivalent

It is undisputed that the complaint filed by the respondents was one for specific performance which is the "[t]he remedy of requiring exact performance of a contract in the specific form in which it was made, or according to the precise terms agreed upon. [It is t]he actual accomplishment of a contract by a party bound to fulfill it." [127] As applied in the case, it is the delivery of the residential and commercial units to respondents, pursuant to the JVA.

While respondents also included an alternative prayer for payment of sum of money in their Memorandum, it is evident from the testimony of Geronimo, Jr. that their alternative prayer for payment is only conditioned upon the failure of petitioner to deliver the units due them pursuant to the JVA, to wit:

CONTINUATION OF DIRECT-EXAMINATION OF ATTY. JERRY R. MARASIGAN ON GERONIMO P. BELLA, JR.:

Q:

Going back to those condominium units that shall be delivered by [petitioner BRC] to the Bella Family, how much is the total cost of these condominium units based on the selling price being undertaken by the [respondents].

A:

These condominium units that were specifically allocated to us have a total value of around [PHP] 299,293,328.55, excluding cost of money, sir.

....

Q:

What document do you have to show about the value of the condominium units and the so-called "cost of

money"?

A:

We prepared a summary, sir.

....

Q:

Why did you prepare this document marked as Exhibit "EEEEEE"?

A:

We want to prove the actual value of the condominium units as our share in the project and that if in case the [petitioner BRC] fails to deliver those units to us pursuant to our agreement, then the amounts provided in this document will serve as our claims against [petitioner], sir.[128] (Emphasis supplied)

Evidently, respondents only seek for the payment of sum of money in case petitioner fails to deliver the condominium units to them.

However, in its decision ordering petitioner to pay respondents, the RTC simply declared that "it deems it more appropriate and practical to have the [petitioner] pay the amount as prayed for by [respondents] in their Memorandum dated December 8, 2017 as an alternative to the delivery of the condominium units." [129] Similarly, the CA merely concluded that "the payment of the monetary value of the condominium units and parking lots which cannot be delivered is justified. What is to be awarded is that which is proven during trial as other reliefs prayed for in the Amended Complaint." [130]

Hence, the Court agrees with petitioner that the lower courts erred when they prematurely directed it to pay the respondents the alleged value of the condominium units, without first giving it an opportunity to perform its obligation, e.g. delivery of the condominium units.

The award of PHP 299,293,328.55 to respondents by the CA is not supported by evidence on record

While the Court agrees that respondents are entitled to their alternative prayer for payment of sum of money, in the event that petitioner fails to deliver said units, the Court cannot simply affirm the amount adjudged by the CA in favor of respondents in the sum of PHP 299,293,328.55 for being baseless and erroneous.

An examination of the summary prepared by the respondents, offered as Exhibit EEEEE, shows that the values indicated in the document were mere estimates of respondents, grounded entirely on speculation, and not based on any reliable basis, i.e., market value, zonal value, or assessed value. In addition, the total amount indicated on Exhibit EEEEE also included the values of the condominium units pertaining to Units 906, 907, 908, 914, 918, 919 which had previously been confirmed by the RTC in its Order [131] dated April 29, 2005.

Consequently, should petitioner fail to deliver any or all the condominium units to respondents, and there being no proper valuation of the condominium units, the Court is constrained to remand the case to the RTC for the determination of the prevailing market value of the condominium units. Thereafter, petitioner is directed to pay the respondents the prevailing market value of the condominium units, as determined by the RTC, while legal interest at the rate of 6% per annum from the date of the finality of this Decision until fully paid. [132]

Award of attorney's fees

However, with regard to the award of attorney's fees, the Court finds it necessary to delete it.

As a rule, "attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit." [133] Moreover, in the event that the award of attorney's fees is warranted under Article 2208 [134] of the Civil Code, the award should have factual, legal, and equitable basis; not founded on pure speculation and conjecture, and the court should state the reason for the award of attorney's fees in the body of the decision; and not merely in the dispositive portion. [135]

Further, "[e]ven when a claimant is compelled to litigate with third persons, or to incur expenses to protect his rights, still attorney's fees may not be awarded where [there is] no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause." [136]

In the case, the CA erred when it affirmed the award of attorney's fees in the amount of PHP 20,000,000.00 despite that the RTC did not provide any factual or legal basis in the body of its decision. Not only did respondents fail to prove their entitlement to damages; they also failed to prove that petitioner, in refusing their claim, acted in bad faith. Hence, the award of attorney's fees should be deleted.

ACCORDINGLY, the Petition for Review on Certiorari is PARTLY GRANTED. The Decision dated February 28, 2023, and the Resolution dated July 11, 2023, of the Court of Appeals in CA-G.R. CV No. 112944 are AFFIRMED WITH MODIFICATIONS in that:

- Petitioner is DIRECTED to deliver and turn over the following units and parking slots to respondents:
- 14 parking slots;
- Units 1515, 2501, 2502, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, UPF-A, UPF-B, UPF-C, UPF-D, UPF-E, UPF-F, UPF-G, UPF-H, UPF-I, UPH-J, G-6-A, G-6-B, G-6-C, MZ-C, MZ-D, MZ-E, LGS-B, LGS-C, LGS-D, UGS-5, UGS-6, UGS-7; and
- All other remaining units of the "Lower Guests Suites"; Upper "Guests Suites"; and "Roof Deck".
- If petitioner could no longer deliver the above-described units, it shall pay respondents the prevailing market value of the same; which the RTC is hereby ORDERED to determine. The amount shall be subject to legal interest at the rate of 6% per annum from the date of the finality of this Decision until fully paid; and
- The award of attorney's fees is DELETED.

SO ORDERED.

Gaerlan, and Dimaampao, JJ., concur.
Caguioa (Chairperson), J., see dissent.
Singh, [*] J., on leave.

[*] On leave.

[**] Also spelled as "Daniella" in the CA Decision, rollo, p. 83.

[1] Rollo, pp. 3-30.

[2] Id. at 79-105. Penned by Associate Justice Jose Lorenzo R. Dela Rosa and concurred in by Associate Justices

Nina G. Antonio-Valenzuela and Emily R. Aliño-Geluz of the Twelfth Division, Court of Appeals, Manila.

[3] Id. at 107-108. Penned by Associate Justice Jose Lorenzo R. Dela Rosa and concurred in by Associate Justices Nina G. Antonio-Valenzuela and Emily R. Aliño-Geluz of the Twelfth Division, Court of Appeals, Manila.

[4] Id. at 68-76. Penned by Acting Presiding Judge Rommel O. Baybay

[5] RTC records, vol. I, pp. 307-336.

[6] Rollo, p. 80.

[7] RTC records, vol. I, pp. 337-340-A.

[8] Rollo, p. 80.

[9] Id.

[10] Id. at 83.

[11] Id.

[12] RTC records, vol. I, pp. 31-32.

[13] Rollo, p. 83.

[14] Id. at 83-84.

[15] Id. at 84-85.

[***] Also referred to as "Cylbeline" and "Cymblime Gelero" in some parts of the rollo (see rollo, p. 85, RTC records, vols. IV-V, pp. 1151, 2416 and 2422-2424, respectively.)

[16] Rollo, p. 85.

[17] Id.

[18] RTC records, vol. I, pp. 1-23.

[19] Rollo, p. 85.

[20] Id. at 85-86.

[21] RTC records, vol. I, pp. 172-182.

[22] Id. at 177-178.

[23] Id. at 183-186.

[24] RTC records, vol. I, pp. 256-260.

[23] Rollo, p. 86.

[24] RTC records, vol. I, pp. 256-260.

[25] Rollo, p. 86.

[26] RTC records, vol. I, pp. 275-276.

[27] Id. at 276.

[28] Id. at 296-301.

[29] Id. at 302-306.

[30] RTC records, vol. II, pp. 551-580.

[31] Id. at 590-595.

[32] Id. at 576-579.

[33] RTC records, vol. V, pp. 1581-1588.

[34] RTC records, vol. II, p. 404.

[35] RTC records, vol. V, pp. 1450-1453.

[36] Rollo, p. 90.

[37] Id. at 90-91.

[38] RTC records, vol. VIII, pp. 2949-3066.

[39] Id. at 3243-3254.

[40] Rollo, p. 92.

[41] Id. at 68-76.

[42] Discrepancy between the amount in words and amount in figures.

[43] Rollo, p. 76.

[44] Id. at 74-76 and 94, respectively.

[45] Id. at 76.

[46] Id. at 79-105.

[47] Id. at 104-105.

[48] Id. at 95-98.

[49] Id. at 104.

[50] Id. at 107-108.

[51] Id. at 8-25.

[52] Id. at 113-175.

[53] Id. at 519-531.

[54] SECTION 1. Filing of Petition with Supreme Court. — A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

[55] See *Miro v. Vda. de Erederos*, 721 Phil. 772, 786 (2013).

[56] *Adelaida Meneses (deceased) v. Venturozo*, 675 Phil. 641, 652 (2011).

- [57] *The Heirs of Victoriano Sarili v. Lagrosa*, 724 Phil. 608, 619 (2014). (Emphasis supplied)
- [58] Article 1346, Civil Code.
- [59] See *Ayala Land, Inc. v. ASB Realty Corporation*, 840 Phil. 590, 605 (2018).
- [60] See *People's Aircargo and Warehousing Company, Inc. v. Court of Appeals*, 357 Phil. 850, 862 (1998).
- [61] See *Yao Ka Sin Trading v. Court of Appeals*, 285 Phil. 345, 365 (1992).
- [62] *Id.* at 367.
- [63] *Id.*
- [64] RTC records, vol. VI, p. 2426.
- [65] *Id.* at 2429.
- [66] *Id.* at 2404.
- [67] *Id.* at 2414-2415.
- [68] RTC records, vol. I, pp. 337-340-A.
- [69] *Id.* at 344-350.
- [70] RTC records, vol. VI, pp. 2469-2470.
- [71] Art. 1405. Contracts infringing the Statute of Frauds, referred to in No. 2 of [A]rticle 1403, are ratified by the failure to object to the presentation of oral evidence to prove the same, or by the acceptance of benefit under them.
- [72] See *S.C. Megaworld Construction and Development Corporation v. Engr. Parada*, 717 Phil. 752, 764 (2013), citing *Garcia v. Llamas* 462 Phil. 779, 788 (2003).
- [73] See *Philippine Savings Bank v. Spouses Mañalac*, 496 Phil. 671, 687 (2005).
- [74] CA rollo, pp. 47-64, see Appellant's Brief.
- [75] TSN, Rodrigo Bella, August 13, 2007, pp. 559-567.
- [76] RTC records, vol. VI, p. 2424.
- [77] *Id.* at 2404.
- [78] *Id.* at 2405.
- [79] *Gonzalo v Tarnate, Jr.*, 724 Phil. 198, 200 (2014).
- [80] *Gaisano v. Development Insurance and Surety Corp.*, 806 Phil. 450, 464 (2017).
- [81] *Chinatrust (Phils.) Commercial Bank v. Philip Turner*, 812 Phil. 1, 16-17 (2017).
- [82] RTC records, vol. IV, pp. 1146-1269.
- [83] *Id.* at 1151.
- [84] *Id.* at 1146 and 1262, respectively.
- [85] *Id.* at 1263.

- [86] Id. at 1264.
- [87] Id. at 1265.
- [88] Id. at 1266.
- [89] Id. at 1147 and 1267, respectively.
- [90] Id. at 1149 and 1158, respectively.
- [91] Id. at 1147 and 1268, respectively.
- [92] Id. at 1149 and 1182, respectively.
- [93] Id. at 1242.
- [94] Id. at 1150 and 1243, respectively.
- [95] Id. at 1244.
- [96] Id. at 1183.
- [97] Id. at 1150.
- [98] Id. at 1184.
- [99] Id. at 1185.
- [100] Id. at 1186.
- [101] Id. at 1187.
- [102] Id. at 1188.
- [103] Id. at 1189.
- [104] Id. at 1190.
- [105] Id. at 1191.
- [106] Id. at 1192.
- [107] Id. at 1193.
- [108] Id. at 1194.
- [109] Id. at 1195.
- [110] Id. at 1196.
- [111] Id. at 1197.
- [112] Id. at 1152 and 1198, respectively.
- [113] Id. at 1148 and 1155, respectively.
- [114] Id. at 1156.
- [115] Id. at 1157.
- [116] Id. at 1151.

[117] Id. at 1152 and 1164, respectively.

[118] Id. at 1165.

[119] Id. at 1166.

[120] Id. at 1200.

[121] Id. at 1201.

[122] Id. at 1202.

[123] Id. at 1152.

[124] Id.

[125] Id.

[126] Id.

[127] See *Ayala Life Assurance, Inc. v. Ray Burton Development Corporation*, 515 Phil. 431, 438 and 450 (2006), citing *Black's Law Dictionary Sixth Centennial Edition*, at 1138.

[128] RTC records, vol. IV, p. 1153.

[129] Rollo, p. 76.

[130] Id. at 104.

[131] RTC records, vol. I, pp. 275-276.

[132] See *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*, G.R. No. 225433, September 20, 2022 [Resolution on Motion for Reconsideration], citing *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

[133] See *Spouses Timado v. Rural Bank of San Jose, Inc.*, 789 Phil. 453, 460 (2016).

[134] ARTICLE 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1)

When exemplary damages are awarded;

(2)

When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3)

In criminal cases of malicious prosecution against the plaintiff;

(4)

In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5)

Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6)

In actions for legal support;

(7)

In actions for the recovery of wages of household helpers laborers and skilled workers;

(8)

In actions for indemnity under workmen's compensation and employer's liability laws;

(9)

In a separate civil action to recover civil liability arising from a crime;

(10)

When at least double judicial costs are awarded;

(11)

In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

[135] See *Alcatel Philippines, Inc. v. I.M. Bongar & Co., Inc.*, 674 Phil. 529, 533 (2011).

[136] See *DBP v. Traverse Development Corp.*, 674 Phil. 405, 415 (2011).

BURGUNDY REALTY CORP., PETITIONER, VS. DANIELA[*] P. BELLA, GERONIMO BELLA, JR., AND RODRIGO P. BELLA, RESPONDENTS.

DISSENTING OPINION

CAGUIOA, J.:

The case involves two documents embodying a joint venture agreement between Burgundy Realty Corp. (petitioner) and Spouses Daniela P. Bella (Daniela) and Geronimo Bella, Sr. (Geronimo, Sr.) (Spouses Bella). The documents essentially contain the same provisions, except with respect to the share of Spouses Bella in the project in Article II (Owner Share) and the amount of cash advance that Spouses Bella would receive upon the signing of the contract in Article XII.[1] The main thrust of the case is the amount of Owner Share that Spouses Bella are entitled to receive pursuant to the joint venture agreement.

The first Joint Venture Agreement[2] (JVA-A), which was executed on December 6, 1996, states:

OWNER SHARE – shall be Seven (7) residential units or a total AREA of 229.24 SQUARE METERS of the Condominium Project and marked as Owner's Reserved Area.[3]

Notably, despite claiming that the parties' true agreement is embodied in the second Joint Venture Agreement (JVA-B), Daniela, Geronimo Bella, Jr (Geronimo, Jr.), and Rodrigo P. Bella (Rodrigo) (respondents) attached JVA-A to their Complaint for Specific Performance, Damages and Mandatory Injunction (with Prayer for Issuance of Temporary Restraining Order and Issuance of Writ of Preliminary Injunction)[4] dated June 30, 2004, and based their causes of action on the said document. In the Complaint, they alleged that the parties only agreed on increasing Spouses Bella's Owner Share after petitioner had presented the specifications and floor plans of the

condominium project and after Spouses Bella had exercised their option to choose the units constituting their shares therein.[5] This increase in Owner Share was embodied only in a Confirmation Letter[6] dated June 21, 2000, or almost four years after the execution of JVA-A.

It was only after the issuance of the Pre-Trial Order that respondents moved to amend the complaint and attached JVA-B as additional evidence therein.[7] Interestingly, in their Amended Complaint[8] dated August 1, 2005, respondents still claimed that the additional Owner Share was only agreed upon after the parties had already executed JVA-A.[9] However, a perusal of JVA-B shows that the document was executed on December 6, 1996, the same date that JVA-A was executed.[10] JVA-B also bore the same notarial details as JVA-A.[11] With respect to the Owner Share in JVA-B, the document provides:

OWNER SHARE – shall have USABLE (LIVING) AREA of TWO AND ONE HALF (2.5) TIMES of the LOT AREA of the Project Property or a total of USABLE AREA of TWO THOUSAND EIGHT HUNDRED TWENTY[-]THREE AND 75/100 (2,823.75) SQUARE METERS plus 12 parking slots of the Condominium Project, of which is specified and marked as (Owner's Reserved Area) in the aforementioned Perspective and Feasibility Study Scheme, which shall form an integral part of the Agreement.[12]

Ruling on the validity and the binding effect of the documents, the majority finds that TVA-A is only a relatively simulated contract, as the parties "only executed JVA-A to conceal JVA-B in order to protect the interest of both parties in the event that other unknown children of Geronimo, Sr. suddenly appear and make claims against the property." [13] Understanding the circumstances of their transaction would show that the parties only intended to be bound by JVA-B. Consequently, the majority rules that respondents are entitled to the Owner Share stated in JVA-B, as it embodies the true agreement of the parties.

While I agree that the parties simulated JVA-A, it is my view that respondents should not be granted relief considering that the simulated contract is void for having an illegal purpose and the parties went to court with unclean hands.

As the majority finds, the parties simulated JVA-A to prevent possible compulsory heirs of Geronimo, Sr. from discovering the properties and filing claims against the same. The purpose of the simulation was to deprive possible compulsory heirs from receiving their rightful shares to the estate of Geronimo, Sr. As well, the simulated contracts defrauded third-party creditors into thinking that Geronimo, Sr. and, consequently, his estate, was only entitled to a certain number of units in the condominium project in Manila City. To be exact, respondents simulated the contracts to make it appear that Geronimo, Sr. had only 229.24 square meters of the condominium project, when, in truth, he was entitled to 2,823.75 square meters plus 12 parking slots of the said project. The difference in value between the two Owner Shares is too significant in every aspect, especially in terms of computing the estate of Geronimo, Sr., the would-be legitime of his compulsory heirs and even the taxes due on the estate.

Respondents' illicit objective to hide Geronimo, Sr.'s share in the condominium project is even more pronounced in their act of attaching only JVA-A to their initial complaint before the Regional Trial Court and using other documents to seemingly show that the parties only agreed on the additional shares four years after the execution of JVA-A. Respondents perpetuated the lie by attaching JVA-B to their Amended Complaint, while still claiming that the additional shares were only agreed upon after the parties had executed JVA-A. Worse, respondents seek to compel petitioner to turn over the 'correct' Owner Share to them[14] and not to Spouses Bella, the true parties to the joint venture agreement. Clearly, respondents' judicial recourse is still in pursuit of their illegal purpose of depriving the estate of Geronimo, Sr. of his supposedly correct share in the joint venture agreement with petitioner.

On this note, Rodrigo, a respondent and an heir of Geronimo, Sr., testified on cross-examination that Geronimo, Sr. "passed away immediately during the time that the agreement was being signed." [15] Notably, Geronimo, Jr. and Rodrigo signed the contracts on behalf of Spouses Bella. [16] A reading of the partial transcript of his cross-examination also reveals that there is a possibility that Geronimo, Sr. had already died when the JVA-A was executed since Rodrigo testified that they shielded the property from any other possible claimants "[b]ecause [Geronimo, Sr.] died." [17] Rodrigo likewise testified that the idea to simulate the contract came from them:

Q:

So[,] in other words, you asked [petitioner] consent to this idea of yours to conceal that the real agreement from the possibility of people claiming against the property?

A:

I did not say that I asked [petitioner] when I entered into the contract[.] I presented the whole picture to [petitioner], take it or leave it, that was the agreement. They already knew the whole background of the property before entering to this. And before entering into the project[, petitioner] also made the feasibility study and they know the whole background before entering into.

....

Q:

Was it a favor you asked from [petitioner] to agree to this idea that you only annotate the [JVA-B] instead [of] the [JVA-A]?

A:

It was not really a favor, it was already presented as a fact to them, whether they agree or not, its [(sic)] should have they signed the agreement in the first place. So, I wouldn't say that I asked for their favor[.] I presented the whole picture to them whether they agree to continuing the project or not it was their decision, but I wouldn't say that I sought or I asked the favor from them to make that clear. [18]

To be sure, petitioner is not without fault as it voluntarily agreed to the simulation and executed the contracts, knowing the purpose of respondents in doing so.

In fact, the parties even violated the notarial rules by causing the notarization of both contracts to have the same notarial details, i.e. document number, page number and book number. Such blatant illegal act of the parties not only strips the documents of their public nature but shows the lengths that the parties went to in the furtherance of their immoral and illegal purpose.

From the foregoing, I find that the simulated contract is void for having an illegal purpose—to circumvent the law on legitimate, and for violating the notarial rules. Such fraudulent machinations should not be sanctioned by the Court, especially considering respondents' glaring deception in the Complaint and Amended Complaint. Verily, Article 1409 of the Civil Code provides:

ARTICLE 1409. The following contracts are inexistent and void from the beginning:

(1)

Those whose cause, object or purpose is contrary to law, morals, good customs, public order[,] or public policy[.] (Emphasis supplied)

Corollary thereto, Article 1412 of the Civil Code states:

ARTICLE 1412. If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed:

(1) When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking[.] (Emphasis supplied)

Although often applied in cases of equity, the doctrine of unclean hands has likewise been applied to contracts, wherein the Court prevents the party with unclean hands to profit from their own wrongdoings.[19] In *Clavecilla v. Clavecilla*,[20] the Court explained the doctrine as follows:

The doctrine of unclean hands originated from the maxim "he who comes into equity must come there with clean hands." It is a frequently stated maxim which is also expressed in the principle that he or she who has done inequity shall not have equity. It signifies that a litigant may be denied relief by a court of equity on the ground that his or her conduct has been inequitable, unfair and dishonest, or fraudulent, or deceitful as to the controversy in issue. Equity refuses to offer its aid in any manner to one seeking its active interposition who has been guilty of unlawful or inequitable conduct in the matter with relation to which he seeks relief.[21] (Citations omitted; emphasis in the original)

In relation thereto, the doctrine of *in pari delicto* provides that parties cannot recover what they each had given by virtue of the contract and likewise cannot demand performance of the contract as they knowingly entered into the transaction that was tainted with illegality.[22] The Court shall leave the parties where it finds them,[23] and no affirmative relief of any kind will be given to one against the other.[24]

Thus, applying the doctrines of unclean hands and *in pari delicto*, it is my opinion that respondents are not entitled to the relief that they seek from the Court. As explained in *Frenzel v. Catito*: [25]

A contract that violates the Constitution and the law, is null and void and vests no rights and creates no obligations. It produces no legal effect at all. The petitioner, being a party to an illegal contract, cannot come into a court of law and ask to have his illegal objective carried out. One who loses his money or property by knowingly engaging in a contract or transaction which involves his own moral turpitude may not maintain an action for his losses. To him who moves in deliberation and premeditation, the law is unyielding. The law will not aid either party to an illegal contract or agreement; it leaves the parties where it finds them. Under Article 1412 of the New Civil Code, the petitioner cannot have the subject properties deeded to him or allow him to recover the money he had spent for the purchase thereof. Equity as a rule will follow the law and will not permit that to be done indirectly which, because of public policy, cannot be done directly. . . . [26] (Citations omitted; emphasis supplied)

As a final note, the Civil Code provides that, "[e]very person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith." [27] Transacting in good faith is to be determined not only with respect to the effects of the contract between the parties themselves, but also to third persons and the public as well. Corollary thereto, the Court should be cautious in granting reliefs that sanction or at the very least, tolerate, the illegal, immoral or fraudulent intents of the parties. Otherwise, it would be washing the unclean hands of the parties that come before it.

All told, I vote to PARTLY GRANT the Petition for Review on Certiorari, REVERSE and SET ASIDE the assailed Decision dated February 28, 2023 and Resolution dated July 11, 2023 of the Court of Appeals in CA-G.R. CV No. 112944, and DISMISS the complaint filed before the Regional Trial Court in Civil Case No. 04-851 for lack of merit.

[*] Also spelled as "Daniella" in other parts of the records.

[1] Ponencia, pp. 6-7.

[2] Rollo, pp. 208-214.

[3] Id. at 208, Joint Venture Agreement-A. art. II.

[4] Id. at 185-207.

[5] Id. at 187, Complaint.

[6] Id. at 215.

[7] Ponencia, p. 6.

[8] Rollo, pp. 267-296.

[9] Id. at 269, Amended Complaint.

[10] Id. at 176, Joint Venture Agreement-B.

[11] Id. at 181 and 212. See signature and Acknowledgment pages of JVA-B and JVA-A, respectively.

[12] Id. at 176, Joint Venture Agreement-B.

[13] Ponencia, p. 21. (Emphasis supplied)

[14] Rollo, pp. 292-293, Amended Complaint.

[15] Ponencia, p. 19. (Emphasis supplied)

[16] Rollo, p. 302. Special Power of Attorney executed by Spouses Bella, authorizing Geronimo P. Bella, Jr. and Ricardo Rodrigo P. Bella to represent them as signatories to the JVA between Burgundy Realty Corp. and Spouses Bella and to sign and receive payments relative to the JVA on their behalf. A perusal of the signatures on both JVA-A and JVA-B also shows that the signatures above the names of Spouses Bella are identical to the signatures of Geronimo Jr. and Rodrigo in other documents.

[17] Ponencia, p. 19.

[18] Id. at 20. See Cross-Examination of Atty. Lindbergh S. Villamil on respondent Rodrigo P. Bella, TSN (Folder 2), Rodrigo Bella, August 13, 2007, pp. 562-563, 565-567.

[19] Atty. De Guzman v. Spouses Santos, 939 Phil. 77, 87 (2023) [Per J. Gaerlan, Third Division].

[20] 937 Phil. 488 (2023) [Per C.J. Gesmundo, First Division].

[21] Id. at 503.

[22] Villegas v. Rural Bank of Tanjay, Inc., 606 Phil. 427, 439-440 (2009) [Per J. Nachura, Third Division].

[23] Constantino v. Heirs of Pedro Constantino, Jr., 718 Phil. 575, 585 (2013) [Per J. Perez, Second Division].

[24] Gonzalo v. Tarnate, Jr., 724 Phil. 198, 206 (2014) [Per J. Bersamin, First Division].

[25] 453 Phil. 885 (2003) [Per J. Callejo, Sr., Second Division].

[26] Id. at 904-905.

[27] CIVIL CODE OF THE PHILIPPINES, art. 19.

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