

CARIDAY INVESTMENT CORPORATION, PETITIONER, VS. COURT OF APPEALS & FORBES PARK ASSOCIATION, INC., RESPONDENTS.

G.R. No. 83358. August 02, 1989

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

The central issue in this case is the proper interpretation of a provision in the Deed of Restrictions on the title of a lot in the Forbes Park Subdivision which binds the owner to use his lot “for residential purposes and not more than one single family residential building will be constructed thereon” (p. 35, Rollo) - a restriction that generally encumbers lots in the so-called “plush” residential subdivisions.

Forbes Park Association (hereinafter referred to as “FPA”) is a non-profit and non-stock corporation organized for the purpose of promoting and safeguarding the interests of the residents and lot owners in that subdivision who automatically become members of the association and are bound by its rules and regulations stipulated in the Deed of Restrictions annotated on the back of their certificates of title.

Cariday Investment Corporation (CARIDAY for brevity) is the owner of a residential building in the Forbes Park Subdivision, hence, a member of the FPA. On the back of its certificate of title, TCT No. S--91329 (Annex A, p. 56, Rollo), is annotated a “Deed of Restrictions” whose pertinent provisions are as follows:

“RESTRICTIONS

“1. The Property is subject to an easement of two meters within the lot and adjacent to the rear and two sides thereof for the purpose of drainage, sewerage water and other public facilities as may be necessary and desirable.

“... .

“2. Subject to such amendments and additional restrictions, reservations, servitudes as the Forbes Park Association may from time to time adopt and prescribe the land described in this certificate of title is for a period of fifty (50) years from January 1, 1949 subject to the restrictions enumerated in Annex A of the Deed of Sale executed by Ayala Securities Corporation in favor of the registered owner among which are the following:

“... .

“Lots may be only used for residential purposes and not more than one single family residential building will be constructed thereon except that separate servant’s quarters may be built.

“... .” (Emphasis supplied; p. 35, Rollo.)

The same restrictions are found in Section 1(b), Article IV of the association’s rules and regulations (pp. 170-185, Rollo) and are hereunder quoted:

"ART. VI. BUILDING RULES AND REGULATIONS

"Sec. 1. LOTS

"xxx xxx xxx

"b. One residential building per lot. Lots may be used only for residential purposes, and not more than one single-family residential building will be constructed on one lot, except that separate garage and servants' quarters and bathhouses for swimming pools may be built. Should any member owning two (2) or more lots submit a plan of a residence astride two (2) or more lots owned by him, his property will be considered as one parcel for the purpose of application of the set-back line restriction so that this limitation shall be considered applicable only to the exterior boundaries of the property as though the lots were consolidated into one parcel. However, if later on his house is destroyed or removed then the 2-meter set-back line restriction shall be considered as restored to the boundaries of each lot of the subdivision plan.

"c. Use and occupancy of a house. The use and occupancy of houses and other improvements inside Forbes Park shall be exclusively for residence only of the owners and bona fide residents, their families, house guests, staff and domestics but never for commercial, business or office purposes, such as, but not limited to, hotels, restaurants, resorts, motels, condominiums, stores, clubs, schools, studios or any kind of office whatsoever.

In case of violation hereof, the Board of Governors shall, after at least 10 days previous notice in writing to the member/resident concerned, order the disconnection of the water service supplied to the latter by the Association's deepwell pumps; Provided, however, that reconnection thereof shall only be made upon satisfactory showing that violation of this rule no longer exists and that the requisite actual cost of reconnection as estimated by the Association is duly deposited before such reconnection is made." (Underscoring ours; pp. 36-37, Rollo.)

In June 1986, Cariday, with notice to the FPA, "repaired" its building (p. 42, Rollo). After inspection of the "repairs," the FPA's retained civil engineer reported that "additions or deletions were made in the existing residence." A second inspection in May 1987 disclosed more violations of the restrictions. He observed that the building "can be used by more than one family." (p. 78, Rollo.)

Cariday admitted that its building has the exterior appearance of a single family residence but it is designed inside to allow occupancy by two families.

The FPA demanded that corrections be made in the structure to conform with the restrictions.

Without making the corrections, Cariday, on July 1, 1987, leased one portion of the house to an Englishman, James Duvivier, who occupied the same on July 5, 1987. On August 1, 1987, Cariday leased the other half of the building to Procter and Gamble for the use of one of its American executives, Robert Haden, who notified the FPA that he would move in on September 2, 1987 (p. 74, Rollo).

In a letter dated September 7, 1987, Cariday also notified the FPA that Haden would be moving in with his furniture and household appliances and requested that the necessary clearance be issued for presentation to the subdivision's security guards (p. 67, Rollo).

When Haden tried to move in on September 18, 1987, he was stopped by the security guards. In a letter dated September 19, 1987 and received by Cariday on September 21, 1987, the FPA advised Cariday that it would not allow Cariday to lease its house to more than one tenant as this would violate the rule regarding "one single-family residential restriction" (p. 68, Rollo). Because of the alleged "building violations," the FPA threatened to disconnect the water service (which it supplies to the residents from its deep-well pumps) to Cariday's property (p. 68, Rollo).

On September 28, 1987, Cariday filed in the Regional Trial Court of Makati, a complaint (p. 42, Rollo) for

injunction and damages (Civil Case No. 17933). It prayed that, pending the trial of the case, a writ of preliminary injunction be issued ordering the FPA to desist from cutting-off the water supply to its building, or to reconnect the service if it has been cut-off, and, further, to desist from preventing its tenants' ingress into and egress from its aforementioned building. Cariday alleged that if the FPA was not restrained, Cariday would not only lose its tenants but their health would be seriously endangered. As a matter of fact, on October 6, 1987, Procter and Gamble rescinded its lease contract with Cariday (p. 69, Rollo).

The FPA answered Cariday's complaint and opposed the application for preliminary injunction. It alleged that under its rules and regulations, it is empowered to disconnect water services whenever there is a deviation from previously approved plans and specifications of buildings and for violation of the "single-family residential building restriction" (p. 94, Rollo).

On October 21, 1987, the trial court issued a writ of preliminary injunction upon Cariday's filing of a P50,000-bond (pp. 105-106, Rollo). The FPA filed a motion for reconsideration which was denied by the court (p. 119, Rollo). In due time, it sought relief in the Court of Appeals (CA-G.R. SP No. 13965) alleging grave abuse of discretion on the part of the trial court in issuing the writ of preliminary injunction.

The Court of Appeals, after hearing the parties, annulled the writ of injunction. It held:

"x x x. The construction of a residential house as a single-family dwelling unit defines its use by a single family, in the same way that its construction as a duplex house defines its use by two families. Indeed, by prohibiting the use of houses within the subdivision as hotels, motels, condominiums, and the like, sec. 1 (c) makes clear that the requirement in sec. 1(b), that only one single-family residential building may be constructed on a lot, is intended to limit its use and occupancy by one family. The use of a house as hotel, motel or condominium violates the concept of 'one single-family' residential house per lot, as much as the construction of more than one building on one lot.

"x x x. The 'one single family' residential house per lot rule is violated not only when one house is used by more than one family but also when several buildings, each one of which is used by one or more families, are built on one lot." (pp. 37-38, Rollo.)

The Court of Appeals upheld the right of the FPA to prohibit the entry of additional tenants into Cariday's building and to disconnect the water service for violation of the restrictions:

"x x x. With respect to the refusal of the FPA to allow the entry of additional tenant into the building in question, suffice it to say that its authority is clearly provided for in art. VI, sec. 14 which provides as follows:

'Sec. 14. MOVING IN OR MOVING OUT OF FORBES PARK. Anyone who wishes to move into any residential home of the village must, before doing so, first obtain the necessary written clearance from the office of the Association for presentation to the security guards, and any occupant of a house within the village and who wishes to move out of the premises he or she occupies should give a written notification to the Association.'

"We therefore hold that Cariday Investment is without any right to let its premises to more than one tenant and that in threatening to disconnect the water service and in preventing more than one tenant to move into the premises to enforce its rules, FPA acted within powers under the rules that are binding on its members. Consequently, Cariday Investment is not entitled to an injunction." (p. 38, Rollo.)

In its petition for review of the Appellate Court's decision, Cariday avers that while it is indeed bound by the restriction to construct only "one residential building" on its lot, "nowhere in the rules and regulations is there a categorical prohibition and/or restriction preventing it from exercising its rights to let its residential building to two or more tenants" (p. 19, Rollo).

We find the petitioner's interpretation of the restriction unacceptable. The restriction clearly defines not only the type and number of structures (one residential building) that may be built on each lot, but also the number of families (a single family) that may use it as a residence. Indeed, the restriction of "one x x residential building" per lot would have been sufficient, without incorporating the additional restriction of "a single family," (p. 35, Rollo) if the purpose, as petitioner contends, were only to limit the type of building but not its use or occupancy.

We are persuaded that the purpose of the restriction is to avoid overcrowding both in the houses and in the subdivision which would result in pressure upon the common facilities such as water, power and telephone connections, accelerate the deterioration of the roads, and create problems of sanitation and security in the subdivision. As correctly perceived by the petitioner itself, the restrictions are "for aesthetic consideration and for the preservation of the peace, beauty, tranquility and serenity of living at Forbes Park" (p. 306, Rollo).

Logic dictates that as the building rules and regulations of the FPA expressly prohibit the construction of buildings for multiple occupancy, such as hotels, motels, and condominiums, that prohibition may not be circumvented by building a house with the external appearance of a single family dwelling but whose interior is designed for multiple occupancy. It is an elementary rule of reason that what may not be done directly, may not also be done indirectly.

However, recognizing Filipino custom and the cohesive nature of our family ties, the concept of a single-family dwelling may embrace the extended family which includes married children who continue to be sheltered in the family home until they are financially able to establish homes of their own. But leasing one's house in Forbes Park, as the petitioner has done, to two or more tenant families who are not related to the owner, nor to each other, would be impermissible under the one-single family restriction recorded on the title of the property.

WHEREFORE, finding no merit in the petition for review, We resolved to deny it, with costs against the petitioner.

SO ORDERED.

Fernan, C.J., Melencio-Herrera, Feliciano, Bidin, Sarmiento, Cortes, and Regalado, JJ., concur.

Narvasa, J., I join in the dissents of Justice Gutierrez and Justice Medialdea.

Gutierrez, Jr., J., Please see dissent.

Cruz, J., No part. My son represented private respondent.

Paras, J., No part. My wife concurred in CA decision.

Gancayco, J., I join the in dissent of Justice Medialdea.

Padilla, J., No part; member of FPA.

Medialdea, J., Please see dissent.

Cariday Investment vs Court of Appeals : 83358 : August 2, 1989 : J. Gutierrez Jr : En Banc : Dissenting Opinion
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DISSENTING OPINION

GUTIERREZ, JR., J.:

I agree with the dissenting opinion penned by Justice Medialdea. The disputed contractual commitment having been given too restrictive a meaning by the dominant party, the Court should step in with a more liberal and reasonable interpretation.

I have no objection to the proposition that ownership restrictions which are intended to avoid overcrowding, deterioration of roads, unsanitary conditions, ugly surroundings, and lawless behaviour in residential areas may be enforced through the Court's coercive powers. There is absolutely no showing, however, that two families living in one big residence in Forbes Park would lead to any of the above unpleasant consequences.

I believe that the zeal with which the private respondent enforces the disputed single family restriction is intended to insure that Forbes Park real estate values remain higher -- much, much higher-- than the values in any other residential area in the whole country. In other words, what the Court is protecting are not sanitation, peace and order, comfort, or aesthetic surroundings which would not in the least bit be affected by two families sharing one big house in Forbes Park, but inflated land values and an elitist life style. Under the disputed provision, one family could hire a battalion of servants, drivers, yayas, gardeners, butlers, footmen, grooms, cooks, laundresses and other lackeys without violating the single family rule. It is not overcrowding which is sought to be avoided but something else.

Metro Manila has run out of available residential land for its huge and still exploding population. Land use has to be rationalized. Without sacrificing their comfort and security, the rich have to yield a little. I consider it a waste of scarce resources if property worth several millions of pesos is limited in its use to one solitary family, no matter how small, when it could comfortably house two or more families in the kind of comfort and luxury which is undreamed of even to upper middle income people. The very rich have the right to enforce their exclusive lifestyles through voluntary compliance but when the Courts step in to validate and enforce an unreasonable restriction, I am constrained to dissent.

I am not suggesting that affluent suburban enclaves should be allowed to deteriorate into monotonous box-like government housing projects or, worse, into slums or squatter colonies. My only concern is with this Court's validating restrictions whose obvious purpose is to jack up property values to heights which are incongruous against the grinding poverty and hand-to-mouth subsistence of the overwhelming masses of our people.

The provisions of the Constitution on Social Justice and Human Rights (Article XIII, Constitution) emphasize the social function of land. Congress must give the "highest" priority to measures which enhance the right of all the people to human dignity and reduce social, economic, and political inequalities through the equitable diffusion of wealth and political power (id, Section 1). The State is mandated to undertake, in cooperation with the private sector, a continuing housing program and an urban land reform program which seek to make available at affordable cost decent housing and basic services to underprivileged and homeless citizens, (id. Section 9). I am afraid that the Court's decision in this Forbes Park case does not in any way help achieve these constitutional objectives.

The present Constitution expresses the impatience of the framers with what they perceived as an unfortunate lack of attention to the most pressing problem faced by the country. But even under the 1935 Constitution, the Court was less than enthusiastic when asked to enforce contractual commitments based on a laissez faire theory of government. In *Alalayan v. National Power Corporation* (24 SCRA 172, 181-182 [1968]) the Court ruled:

"It is to be admitted of course that property rights find shelter in specific constitutional provisions, one of

which is the due process clause. It is equally certain that our fundamental law framed at a time of 'surging unrest and dissatisfaction' (The phrase is Justice Laurel's, appearing in his concurring opinion in *Ang Tibay v. Court*, cited with approval in *Antamok Goldfields Mining Co. v. Court*, 70 Phil. 340 [1940]), when there was the fear expressed in many quarters that a constitutional democracy, in view of its commitment to the claims of property, would not be able to cope effectively with the problems of poverty and misery that unfortunately afflict so many of our people, is not susceptible to the indictment that the government therein established is impotent to take the necessary remedial measures. The framers saw to that. The welfare state concept is not alien to the philosophy of our Constitution. (Cf. 'Private property does not constitute for anyone an absolute and unconditioned right. x x x All men are equal in their right to a decent life. x x x It is not a system of justice where one man is very wealthy and another very poor. Where such a situation exists on a national scale, it becomes a matter of social justice. x x x [In the Philippines, while] a few have far more than they need, the vast majority lack even the barest essentials of life.' Pastoral Letter of the Catholic Hierarchy, May 1, 1968) It is implicit in quite a few of its provisions. It suffices to mention two.

"There is the clause on the promotion of social justice to ensure the well-being and economic security of all the people, (Art. II, Sec. 5, Constitution of the Philippines) as well as the pledge of protection to labor with the specific authority to regulate the relations between landowners and tenants and between labor and capital. (Art. XIV, Sec. 6, id.) This particularized reference to the rights of working men whether in industry and agriculture certainly cannot preclude attention to and concern for the rights of consumers, who are the objects of solicitude in the legislation now complained of. The police power as an attribute to promote the common weal would be diluted considerably of its reach and effectiveness if on the mere plea that the liberty to contract would be restricted, the statute complained of may be characterized as a denial of due process. The right to property cannot be pressed to such an unreasonable extreme."

I realize the difficulty in pinpointing the line where restrictions on property ownership go beyond the constitutional bounds of reasonableness. Each case must be resolved on its particular merits. Insofar as this petition is concerned, however, I concur with the dissenting minority. I vote to grant the petition.

Cariday Investment vs Court of Appeals : 83358 : August 2, 1989 : J. Medialdea : En Banc : Dissenting Opinion
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DISSENTING OPINION

MEDIALDEA, J.:

The main issue in this petition is whether the restriction against the construction of "more than one single-family residential building" should be interpreted to be also a restriction against the use of the building, after its completion, by more than one family, or whether it is merely a limitation as to the style or type of building and does not define its use after construction.

The majority has adopted the view invoked by respondent FORBES PARK ASSOCIATION, INC. that houses at the subdivision may be occupied by but a single family. I, however, read no such limitation and hesitate to imply one especially that which restricts proprietary rights. An owner should be at liberty to do what he wishes with his property. Any limitation to his right must be explicit and convincing. And any doubt that might arise between free use of property and restrictions thereto must be resolved in favor of the former. Committed to this principle, I am

of the opinion that CARIDAY may, in the exercise of its proprietary rights, lease its building, unrestricted, to more than one tenant.

Aside from the case of Financial Building Corporation, et al. v. Forbes Park Association, G.R. No. 79319, April 6, 1988, there appears no Philippine case which touches on the interpretation of "one single-family residential building" restriction. In the United States the rulings vary. Though there are cases to the contrary, I subscribe to the opinion that:

"x x x a covenant directed only against the type of structure is not violated where the building, having the outward form of a single residence for private dwelling, is used for a multiple dwelling.

"x x x a restriction providing that only one dwelling house should be erected on the property [is] not violated where the evidence showed that the structure complained of was a one-family house, notwithstanding that it was occupied by two families at the same time, [the reason given being] that many occupants of unquestioned one-family houses rented the upper floor or other portions of the house to a separate family for separate use, and that this could be done in the case of practically all single-family houses, but that obviously did not change the essential character of the house.

"x x x a two-family residence was not a violation of a restriction that not more than one building should be erected upon the lot, [it was held that] the word 'building' connoted normally matter of construction, whereas the word 'residence' referred to a use or mode of occupancy to which the building was to be put, saying that it was one thing to restrict the uses to which a lot might be put to the construction of one building upon it, but another to restrict the use to which the building should be put, adding that restrictions pertaining to matters of construction were so essentially distinct from restrictions prescribing the use or mode of occupancy that the employment of the former, instead of carrying with it the implication that the latter was meant, tended strongly to forbid such implication." (14 ALR 2d §21, p. 1432; see also 20 Am Jur 2d §190, p. 760) (Underscoring mine)

That the restriction under consideration is directed solely on the type or style and number of buildings which may be constructed on the lot is clear from this annotation at the back of CARIDAY's certificate of title, to wit:

"Lots may be only used for residential purposes and not more than one single-family residential building will be constructed thereon except that separate servant's quarters may be built. All building must be of strong material and of a type of Architecture that is in harmony with the surrounding landscape and homos of the vicinity. x x x." (Underscoring mine)

The first sentence of the said annotation at the back of the title is also found in the Association's rules and regulations (Art. IV, Sec. 1(b)) where the proviso was elaborated by providing that a separate garage and bathhouses for swimming pools may also be built, and covers a situation where a member owns two or more lots.

That this restriction is only a building restriction becomes more evident when We consider that there is a separate rule (Art. IV, Sec. 1(c)) regarding the use and occupancy of the building after its completion, namely:

"c. Use and occupancy of a house. The use and occupancy of houses and other improvements inside Forbes Park shall be exclusively for residence only of the owners and bonafide residents, their families, house guests, staff and domestics but never for commercial, business or office purposes, such as but not limited to hotels, restaurants, resorts, motels, condominiums, stores, clubs, schools, studios, or any kind of office whatsoever."

Since the subject of use and occupancy is expressly defined in paragraph (c), such provision is deemed to have covered and embraced all and every restrictions regarding the subject, and We should not, therefore, imply from another provision in the Association's rules a restriction foreign to paragraph (c). "Implied restriction can arise and will prevail only when there is no expression on the subject matter of the implied covenant, and an express

agreement or covenant excludes the possibility of an implied one of a different nature." (20 Am Jr. 2d, §12, p. 585)

As can be read from the Association's rules, the only restriction regarding occupancy is that it must be used solely for residential purpose. It does not limit the number of families which may occupy the building. The majority cites the restriction against hotels and motels as indicative of the intention to limit the number of families which may occupy a building. The reason advanced for the proscription is to avoid overcrowding of families in the houses and also at the subdivision.

It must be pointed out, however, that the injunction against the use of buildings at the subdivision as hotels and motels is not their use by more than one family but rather the commercial nature of such establishments. This is clear because hotels and motels were made examples of the broad category of commercial, business and office use of buildings together with restaurants, resorts, stores, etc. It does not in any way broach the idea on how many families may occupy a building house. In this connection, it must be stated that leasing of houses at Forbes Park is not prohibited, as in fact, the Association's rules provide that long-term lessees are required to be and are automatically members of the Association.

To my mind, the restriction under dispute is based on aesthetic consideration and this could be gleaned when We again read the annotation at the back of CARIDAY's certificate of title where, after providing that only one residential building may be constructed on a lot, mandates that the type of architecture of the building must be in "harmony with the surrounding landscape and homos of the vicinity." If We were to sustain Forbes Park's argument, strict compliance of the alleged implied restriction would effectively prohibit the homeowners from allowing families of their own children to reside with them, much less, their relatives. The inequity of this situation would leave Us no alternative but to make an exception to Our interpretation, that homeowner's married children may continue to live with their parents. And if another inequitable situation should arise, is it proper for Us to make an exception to Our exception? If We follow this through We would be inventing rules not otherwise existing according to Our prejudices, thus: blood brothers are allowed but not brothers-in-law; first cousins are allowed but not second cousins; best friends are allowed but not exceeding three months, and so on. Again a question should be asked on the argument that the proscription is to prevent overcrowding: How overcrowded are five families of the homeowner's children against five families of strangers?

Respondent Association cites the case of *Forbes Park Association Inc. v. Hon. Federico Alikpala, Jr.*, CA-G.R. S.P. No. 121170, promulgated on July 27, 1987, which ruled that:

"Indeed, the structure in question is grossly violative of the Association's rules and regulations that lots at Forbes Park Village should be used for residential purpose only; that not more than one single residential building should be constructed on one lot; and that only one family should reside in the said building."

and which decision We, only last April 6, 1988, had affirmed in *Financial Building Corporation, et al. v. Forbes Park Association*, supra. A perusal of the case, however, supports CARIDAY's argument of its inapplicability.

In said case, the government of the Union of Soviet Socialist Republic contracted with Financial Building Corporation (Financial for short) for the construction of a residential house at its lot at Forbes Park for the use of its Trade Representatives to the Philippines. The FPA approved the building plan submitted by Financial and construction commenced. Before its completion, however, FPA, alleging that there was a deviation from the approved building plan, ordered suspension of work and prevented Financial from bringing into the construction site personnel and materials. The main objection there by FPA was although what appears to be in the building plan is a one large residential building, what was being constructed was more than one building - which was a violation of the rule that there shall be constructed only one residential building. The question, therefore, was

factual. Thus, our affirmance was basically premised on the principle that findings of facts of the Court of Appeals will not be disturbed by Us unless they were based on surmises and conjectures. There, the Court of Appeals found that, indeed, what was being constructed were three separate buildings which manifestly appear to be, even on the outside, not intended for the residence of only one family. Therefore, the pronouncement by the Court of Appeals that only one family should reside in the building is a mere obiter dictum since the issue there was the construction of more than one building.

ACCORDINGLY, I vote to GRANT this petition.

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