



Republic of the Philippines  
**Supreme Court**  
Manila

SECOND DIVISION

**PHILIPPINE BANK OF  
COMMUNICATIONS,**

Petitioner,

- versus -

**PRIDISONS REALTY  
CORPORATION, ANTONIO  
GONZALES, BORMACHECO, INC.,  
NAZARIO F. SANTOS, TERESITA  
CHUA TEK, CHARITO ONG LEE, and  
ERNESTO SIBAL,**

Respondents.

**G.R. No. 155113**

Present:

CARPIO, J.,  
Chairperson,  
BRION,  
DEL CASTILLO,  
PEREZ, and  
PERLAS-BERNABE, JJ.

Promulgated:

JAN 09 2013 *HW Cabalag for JCT*

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**DECISION**

**BRION, J.:**

The petitioner Philippine Bank of Communications (*PBComm*) seeks the reversal of the decision<sup>1</sup> dated April 26, 2002 and the resolution<sup>2</sup> dated September 5, 2002 of the Court of Appeals (*CA*) in CA-G.R. SP No. 62576 through a petition for review on *certiorari*<sup>3</sup> filed under Rule 45 of the Rules of Court.

<sup>1</sup> Penned by Associate Justice Eliezer R. de los Santos, and concurred in by Acting Presiding Justice Cancio C. Garcia (now a retired member of this Court) and Associate Justice Marina L. Buzon; *rollo*, pp. 42-57.

<sup>2</sup> *Id.* at 59.

<sup>3</sup> *Id.* at 11-36.

### **THE ANTECEDENT FACTS**

Respondent Pridisons Realty Corporation (*Pridisons*) is the owner of a 1,988-square meter land located in New Manila, Quezon City, covered by Transfer Certificate of Title No. (276613) RT-1160. On November 23, 1989, Pridisons executed in favor of PBComm a deed of real estate mortgage over the land and the improvements existing or to be erected thereon to secure the ₱7,000,000.00 loan it acquired from the bank. The deed of real estate mortgage was registered and annotated on Pridison's title on the same day it was executed.<sup>4</sup> Pridisons thereafter transferred all its rights over the land to its sister company, Ivory Crest Realty and Development Corporation (*Ivory Crest*).<sup>5</sup> Respondent Antonio Gonzales is the President of both corporations.

Sometime in June 1990, Ivory Crest applied for permits and licenses to construct and sell condominium units on the land with the Housing and Land Use Regulatory Board (*HLURB*). The HLURB issued the certificate of registration and the license to sell on June 23, 1991. Among the buyers of the condominium units were respondents Bormacheco, Inc., Nazario F. Santos, Teresita Chua Tek, Charito Ong Lee, and Ernesto Sibal (collectively referred to as *respondent buyers*).

When Pridisons defaulted in paying its loan obligations, PBComm extrajudicially foreclosed the mortgage. The public auction of the land, however, was forestalled by a preliminary injunction issued by the HLURB in conjunction with the action for specific performance with damages instituted by Bormacheco, Inc. against Pridisons and/or Ivory Crest and

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<sup>4</sup> The mortgage was annotated on the title as Entry No. PE-5620; *id.* at 43.

<sup>5</sup> The transfer of rights occurred on March 18, 1990; *id.* at 137.

PBComm.<sup>6</sup> Bormacheco, Inc. demanded that Pridisons and/or Ivory Crest transfer in its favor the titles of the condominium units already paid for in full, free from all liens and encumbrances, including the mortgage in favor of PBComm. The other respondent buyers followed suit, each filing an action against Pridisons and/or Ivory Crest and PBComm.<sup>7</sup> Answering the complaints, PBComm claimed that the mortgage in its favor was superior to the claims of the respondent buyers, since it was executed long before their purchase of the condominium units. PBComm also assailed the HLURB's jurisdiction over it, contending that it was not engaged in the real estate business as to bring it under the HLURB's jurisdiction.

No tribunal, however, found PBComm's contentions meritorious, as all decisions – from that of the HLURB up to that of the CA – were adverse to it. The HLURB *en banc*<sup>8</sup> upheld its jurisdiction over mortgagee banks when the subject matter involves a condominium or subdivision project.<sup>9</sup> It also ruled against the validity of the mortgage, pointing out that the mortgage was executed without the approval of the HLURB as required under Section 18 of Presidential Decree (PD) No. 957 or *The Subdivision and Condominium Buyers' Protective Decree*. On appeal, the Office of the President (OP) agreed with the HLURB's ruling.<sup>10</sup>

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<sup>6</sup> Docketed as OAALA No. REM-013092-5035 (HLRB Case No. REM-A-1284); *id.* at 135.

<sup>7</sup> Respondent Tek instituted OAALA No. REM-101091-4943 (HLRB Case No. REM-A-1303); respondent Ong Lee instituted OAALA No. REM-10191-4944 (HLRB Case No. REM-A-1304); respondent Sibal instituted OAALA No. REM-021492-5053; and respondent Santos intervened in the Bormacheco, Inc. case; *id.* at 135-136.

<sup>8</sup> Decision dated August 10, 1994 which affirmed, among others, the HLURB Arbiter's decision (HLRB Case No. REM-013092-5035) dated October 8, 1992; *id.* at 135-175.

<sup>9</sup> *Id.* at 151.

<sup>10</sup> Decision dated December 14, 2000; *id.* at 110-134.

### **THE ASSAILED CA RULING**

PBComm elevated the case to the CA by filing a petition for review (under Rule 43 of the Rules of Court) against the OP decision. In the assailed decision dated April 26, 2002, the CA dismissed the petition and affirmed the ruling of the tribunals below.

The CA declared that the HLURB's power to regulate real estate trade is "broad enough to include jurisdiction over complaints for specific performance of the sale, or annulment of the mortgage, of a condominium unit, with damages[.]"<sup>11</sup> The CA also agreed with the finding that the mortgage in favor of PBComm was executed without the approval of the HLURB. Although the mortgage was executed before the condominium project was started, the surrounding circumstances indicate that the "mortgagee [PBComm] was aware of the proposed conversion of the property or the development plans of the owner [Pridisons and/or Ivory Crest]. x x x [W]e believe that the clearance requirement of Section 18 [of PD No. 957] may be imposed, even if what is being mortgaged is raw land."<sup>12</sup> Section 18 of PD No. 957 provides that –

Section 18. *Mortgages*. **No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority.**<sup>13</sup> Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereto[.] [emphasis ours; italics supplied]

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<sup>11</sup> *Id.* at 49-50.

<sup>12</sup> *Id.* at 52.

<sup>13</sup> Referring to the National Housing Authority, the predecessor of the HLURB.

In light of the mandatory nature of the provision, the CA ruled that the failure to secure the HLURB's approval resulted in the nullity of the mortgage. Despite the mortgage's nullity, the CA declared that it may be considered as a contract of indebtedness.<sup>14</sup>

### **THE PARTIES' ARGUMENTS**

PBComm alleges that the CA erred in upholding the HLURB's jurisdiction and nullifying the mortgage executed in its favor.

Section 1 of PD No. 1344<sup>15</sup> limits the scope of the HLURB's jurisdiction over the following cases:

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

- (a) Unsound real estate business practices;
- (b) Claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman; and
- (c) Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lot or condominium unit against the owner, developer, dealer, broker or salesman.

PBComm argues that it is not engaged in the real estate business and may thus not be considered as a "project owner, developer, dealer, broker, or salesman" of a condominium or subdivision against whom cases may be

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<sup>14</sup> *Rollo*, p. 57.

<sup>15</sup> Empowering the National Housing Authority to Issue Writ of Execution in the Enforcement of its Decision under Presidential Decree No. 957, April 2, 1978.

filed with the HLURB. It had nothing to do with the condominium project of Pridisons and/or Ivory Crest that would bring it under the HLURB's authority.<sup>16</sup>

PBComm also claims that it was error for the CA to apply Section 18 of PD No. 957 to the case. It argues that the requirement of Section 18 of the HLURB's approval of the mortgage applies only if the mortgage covers an *existing* condominium or subdivision project, and does not apply to raw lands. In this case, the mortgage was executed and registered on November 23, 1989 when the subject property was still a raw land unclothed of any improvements. Pridisons and/or Ivory Crest applied for registration and license before the HLURB only in June 1990, and these were issued in June 1991 – more than a year after the mortgage was executed.<sup>17</sup>

PBComm alleges that the HLURB was fully aware of the existence of the mortgage, since it was annotated on the title of the land. As there was already an existing mortgage on the land, the HLURB should have applied Section 4 of PD No. 957, instead of Section 18 of the same decree. Section 4 of PD No. 957 requires the mortgagee to release the mortgage on the condominium unit as soon as the full purchase price is paid by the buyer:

Section 4. *Registration of Projects.* The registered owner of a parcel of land who wishes to convert the same into a subdivision project shall submit his subdivision plan to the Authority which shall act upon and approve the same, upon a finding that the plan complies with the Subdivision Standards' and Regulations enforceable at the time the plan is submitted. The same procedure shall be followed in the case of a plan for a condominium project x x x.

x x x x

The following documents shall be attached to the registration statement:

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<sup>16</sup> *Rollo*, pp. 34-35.

<sup>17</sup> *Id.* at 24-28.

X X X X

(d) A title to the property which is free from all liens and encumbrances: Provided, however, that **in case any subdivision lot or condominium unit is mortgaged, it is sufficient if the instrument of mortgage contains a stipulation that the mortgagee shall release the mortgage on any subdivision lot or condominium unit as soon as the full purchase price for the same is paid by the buyer.** [emphasis ours; italics supplied]

In fact, in a letter dated November 27, 1990, the HLURB notified Pridisons and/or Ivory Crest of its deficiency in the requirements submitted, particularly, the affidavit of undertaking by PBComm as compliance with the requirement of Section 4 of PD No. 957. Pridisons and/or Ivory Crest, however, failed to submit or request one from PBComm. Notwithstanding Pridison's and/or Ivory Crest's failure, the HLURB granted the registration and issued a license in June 1991. PBComm asserts that its rights as a mortgagee cannot be prejudiced by the HLURB's error. It also claims that its rights are superior to those of the respondent buyers, as its mortgage was even annotated on the master deed and the 12 condominium certificates of title.

PBComm additionally alleges that it was erroneous to apply Section 18 of PD No. 957 on the basis of the finding that "the mortgagee is aware of the proposed conversion of the property";<sup>18</sup> it claims that the finding is unsupported by the evidence on record.

The respondent buyers, on the other hand, consider PBComm's petition unmeritorious. They claim that all factual and legal issues raised in the petition have been authoritatively considered and passed upon. The CA and the lower tribunals were consistent in upholding the rights of the buyers, as the policy behind PD No. 957 is to protect innocent buyers from

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<sup>18</sup>

*Id.* at 26.

scheming subdivision developers. They thus pray for the affirmance of the rulings below and the denial of the petition.

### **THE COURT'S RULING**

**The Court does not find the petition meritorious.**

#### ***On the HLURB's jurisdiction over mortgagee banks***

Section 1 of PD No. 957 limits the HLURB's jurisdiction to three kinds of cases:

- (a) Unsound real estate business practices;
- (b) Claims involving refund and any other claims filed by subdivision lot or condominium unit buyers against the project owner, developer, dealer, broker or salesman; and
- (c) Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lots or condominium units against the owner, developer, dealer, broker or salesman.

While paragraphs (b) and (c) limit the HLURB cases to those between the buyer and the subdivision or condominium owner, developer, dealer, broker or salesman, paragraph (a) is broad enough to include third parties to the sales contract. It appears that the complaints filed before the HLURB were precisely for the unsound real estate business practices of Pridisons and/or Ivory Crest, which not only failed to secure and submit an affidavit of



undertaking by PBComm, but also sold the same condominium units to more than one buyer. PBComm was impleaded on the basis of the allegation that the mortgage failed to meet the requirements of PD No. 957.

Jurisprudence consistently recognizes the rationale behind the enactment of PD No. 957 – to protect innocent lot buyers from scheming developers. For this reason, the Court has broadly construed the jurisdiction of the HLURB to include complaints for annulment of mortgages of condominium or subdivision units.<sup>19</sup> Indeed, in *Manila Banking Corporation v. Spouses Rabina*,<sup>20</sup> even if the mortgagee bank was under receivership/liquidation, the Court declared that the HLURB retains jurisdiction over an action for the annulment of the mortgage:

The jurisdiction of the HLURB to regulate the real estate trade is broad enough to include jurisdiction over complaints for annulment of mortgage. To disassociate the issue of nullity of mortgage and lodge it separately with the liquidation court would only cause inconvenience to the parties and would not serve the ends of speedy and inexpensive administration of justice as mandated by the laws vesting quasi-judicial powers in the agency. [citations omitted]

The Court thus upholds the HLURB's jurisdiction over the action to annul the mortgage constituted in favor of PBComm.

### ***On the validity of the mortgage in favor of PBComm***

The Court, in general, agrees with PBComm's allegation that Section 18 of PD No. 957 applies to mortgages constituted over *existing* condominium or subdivision projects, while Section 4 of the same law applies to mortgages of *raw lands* that are to be developed as condominium

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<sup>19</sup> See *Union Bank of the Philippines v. Housing and Land Use Regulatory Board*, G.R. No. 95364, June 29, 1992, 210 SCRA 558, 564; *Manila Banking Corporation v. Rabina*, G.R. No. 145941, December 16, 2008, 574 SCRA 16, 23; and *Government Service Insurance System v. Board of Commissioners (Second Division)*, HLURB, G.R. No. 180062, May 5, 2010, 620 SCRA 249, 257.

or subdivision projects. This conclusion can be inferred from a reading of both provisions, which state that –

Section 4. *Registration of Projects.* **The registered owner of a parcel of land who wishes to convert the same into a subdivision project** shall submit his subdivision plan to the Authority which shall act upon and approve the same, upon a finding that the plan complies with the Subdivision Standards' and Regulations enforceable at the time the plan is submitted. The same procedure shall be followed in the case of a plan for a condominium project x x x.

x x x x

The following documents shall be attached to the registration statement:

x x x x

(d) A title to the property which is free from all liens and encumbrances: Provided, however, that *in case any subdivision lot or condominium unit is mortgaged, it is sufficient if the instrument of mortgage contains a stipulation that the mortgagee shall release the mortgage on any subdivision lot or condominium unit as soon as the full purchase price for the same is paid by the buyer.*

x x x x

Section 18. *Mortgages.* **No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority. Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project** and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereto[.] [emphases and italics ours]

Like the HLURB, the OP and the CA, however, the Court believes that the surrounding circumstances show that PBComm was aware of the proposed

conversion of the land into a condominium project, thus, meriting the application of Section 18 of PD No. 957 to the case.

PBComm has not categorically denied prior knowledge of the condominium project and relies mainly on the fact that the mortgage was executed seven months before Pridisons and/or Ivory Crest applied for the registration and license to sell condominium units with the HLURB.<sup>21</sup> The prior execution of the mortgage alone, however, does not discount the possibility that PBComm may have had “foreknowledge and possible complicity”<sup>22</sup> in the development plans of the condominium project; the factual findings of HLURB, as affirmed by both the OP and the CA, indicate that this was indeed the case. As the HLURB declared,

**the standard industry practice for banks [is] to require loan applicants to disclose the nature and purpose of the loan**, and present supporting documents such as project feasibility studies in support thereof. With more reasons, we feel that **the disclosure of loan purpose and presentation of loan documents is expected in this case, considering that the applicant for loan was a realty company[.]** x x x banks are familiar with the nature of realty companies, and are expected to anticipate them to apply for and use bank loans for developmental purposes. x x x.

x x x in the light of the principles or regularity in the performance of functions and of observance of normal course of business transactions, we presume that the standard banking and industry practice and procedures were observed prior to the execution of the mortgage contract, and that **there was due disclosure of loan purpose and submission of plans to the bank.**<sup>23</sup> (emphases supplied)

Additionally, there was a finding of “several annotations and renewal notes concerning the loans [PBComm] extended to [Pridisons], during the period when the project was under development, suggesting the existence of progressive releases for project development.”<sup>24</sup> It is also unlikely to have

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<sup>21</sup> *Rollo*, p. 53.

<sup>22</sup> *Id.* at 55.

<sup>23</sup> *Id.* at 54-55.

<sup>24</sup> *Id.* at 55.

the master deed and 12 condominium certificates of title issued without PBComm releasing the certificate of title over the land, which it held on account of the mortgage. From these, the Court can reasonably conclude that PBComm had actual, not only constructive, knowledge of the condominium project. The earlier execution of the mortgage was more likely made in order to skirt the requirements of Section 18 of PD No. 957. On account of the failure to comply with the mandatory requirement of the law,<sup>25</sup> the Court affirms the nullification of the mortgage constituted in favor of PBComm and upholds the rights and interests of the respondent buyers over the condominium units, as settled by the courts below.

In so ruling, PBComm is not thereby made to bear the consequences of the combined errors and mistakes of the other parties. As mentioned, PD No. 957 is a social justice measure designed to protect innocent lot buyers:<sup>26</sup>

**As between these small lot buyers and the gigantic financial institutions which the developers deal with, it is obvious that the law – as an instrument of social justice – must favor the weak.** Indeed, the petitioner Bank had at its disposal vast resources with which it could adequately protect its loan activities, and therefore is presumed to have conducted the usual "due diligence" checking and ascertained x x x the actual status, condition, utilization and occupancy of the property offered as collateral. x x x On the other hand, private respondents obviously were powerless to discover the attempt of the land developer to hypothecate the property being sold to them. It was precisely in order to deal with this kind of situation that P.D. 957 was enacted, its very essence and intendment being to provide a protective mantle over helpless citizens who may fall prey to the razzmatazz of what P.D. 957 termed "unscrupulous subdivision and condominium sellers."<sup>27</sup> (emphasis ours)

Also, as the CA declared, the mortgage – although voided – still stands as evidence of a contract of indebtedness which PBComm may demand

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<sup>25</sup> See *Home Bankers Savings & Trust Co. v. Court of Appeals*, 496 Phil. 637, 651-652 (2005); and *Far East Bank & Trust Co. v. Marquez*, 465 Phil. 276, 287 (2004).

<sup>26</sup> *Philippine National Bank v. Office of the President*, 252 Phil. 5 (1996).

<sup>27</sup> *Id.* at 10-11.

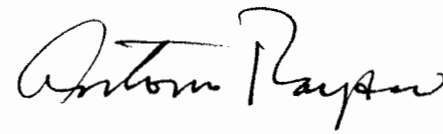
Also, as the CA declared, the mortgage – although voided – still stands as evidence of a contract of indebtedness which PBComm may demand payment for from Pridisons, subject to claims and defenses they have against each other that have not been settled in this Decision.

**WHEREFORE**, we hereby **DENY** the petition and **AFFIRM** the decision dated April 26, 2002<sup>28</sup> and the resolution dated September 5, 2002<sup>29</sup> of the Court of Appeals in CA-G.R. SP No. 62576. Costs against the petitioner.

**SO ORDERED.**


  
**ARTURO D. BRION**  
Associate Justice

**WE CONCUR:**

  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson

  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

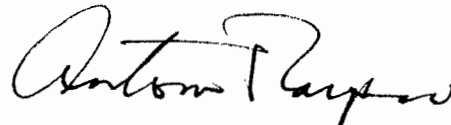
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<sup>28</sup> *Supra* note 1.

<sup>29</sup> *Supra* note 2.

**A T T E S T A T I O N**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**ANTONIO T. CARPIO**

Associate Justice  
Chairperson, Second Division

**C E R T I F I C A T I O N**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**MARIA LOURDES P. A. SERENO**

Chief Justice