



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PHILIPPINE NATIONAL BANK,
substituted by TRANCHE 1
(SPV-AMC), INC.,

Petitioner,

- versus -

RINA PARAYNO LIM and
PUERTO AZUL LAND, INC.,
Respondents.

G.R. No. 171677

Present:

SERENO, C.J.,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, JJ.

Promulgated:

JAN 30 2013

X-----X

DECISION

REYES, J.:

This is a petition for review on *certiorari*¹ under Rule 45 of the Rules of Court to assail the Decision² dated September 29, 2005 and Resolution³ dated February 23, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 82435 entitled “*Philippine National Bank substituted by Tranche 1 (SPV-AMC), Inc. v. Rina Parayno Lim and Puerto Azul Land, Inc., the Office of the President and the Housing and Land Use Regulatory Board.*”

¹ Rollo, pp. 48-86.

² Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Conrado M. Vasquez, Jr. and Japar B. Dimaampao, concurring; id. at 15-23.

³ Id. at 26-27.

In its Decision⁴ dated September 29, 2005, the CA dismissed the petition for review filed by petitioner Philippine National Bank (PNB) from the Decision⁵ dated June 18, 2003 of the Office of the President (OP). The dispositive portion of the CA Decision dated September 29, 2005 reads:

WHEREFORE, premises considered, the petition for review is hereby **DISMISSED**. The Decision of the Office of the President dated June 18, 2003 is **AFFIRMED WITH MODIFICATION** that the award of moral damages and attorney's fees is **DELETED**.

SO ORDERED.⁶

In its Resolution⁷ dated February 23, 2006, the CA denied PNB's Motion for Reconsideration.

Antecedent Facts

One of herein respondents, Puerto Azul Land, Inc. (PALI), is the owner and developer of Vista de Loro Condominium (Vista de Loro), a condominium project that straddles on eight (8) parcels of land located at the Puerto Azul Beach and Hotel Complex, Ternate, Cavite. The lots are registered in PALI's name under Transfer Certificates of Title (TCT) Nos. 404201, 404202, 404203, 404204, 404432, 404433, 404434 and 404425 of the Cavite Province Registry of Deeds.

On May 17, 1993, the Housing and Land Use Regulatory Board (HLURB) issued in favor of PALI, relative to Vista de Loro, a License to Sell pursuant to Presidential Decree (P.D.) No. 957, otherwise known as "The Subdivision and Condominium Buyers' Protective Decree".

On May 13, 1994, PALI and PNB entered into a "Credit Agreement" by virtue of which PNB loaned to PALI ₱150,000,000.00 to finance the construction and development of Vista de Loro. As security, PALI mortgaged to PNB the eight (8) lots mentioned above. In the "Credit Agreement", PALI made several representations, one of which is as follows:

Section 6. Representation and Warranties.

The Borrower [PALI] represents and warrants to the Bank [PNB] as follows:

⁴ Id. at 15-23.

⁵ Id. at 298-299.

⁶ Id. at 23.

⁷ Id. at 26-27.

X X X X

6.02. Authority; Corporate Action; No Violation. At the time of the execution and delivery of this Agreement, the Note/s and the other documentation contemplated thereby, their execution and delivery as well as the performance and observance by the borrower of the respective terms and provisional (sic) thereof, (I) will have been duly authorized by all necessary corporate actions, (II) will have received such approvals, if any, of any court, office or administrative or regulatory agency or authority having jurisdiction over the transactions contemplated thereby, and (III) will not contravene or violate any applicable provision of law or the Borrower[']s Articles of Incorporation or By[-]Laws, or of any contract [or] agreement or indenture or other instrument to which the borrower is a party or by which any of its properties may be bound.⁸

On June 8, 1995 and September 25, 1996, PNB loaned to PALI additional amounts of ₱120,000,000.00 and ₱50,000,000.00. It was agreed that these two (2) subsequent loans shall likewise be secured by the same mortgage which was earlier constituted on the eight (8) lots owned by PALI.

On September 8, 1997, PALI and its co-respondent in the instant petition, Rina Parayno Lim (Lim), entered into a Contract to Sell, covering Unit 48C in Cluster Dominiko of Vista de Loro. Unit 48C is covered by Condominium Certificate of Title (CCT) No. 408 and Cluster Dominiko is situated on the land covered by TCT No. 404201. PNB's mortgage is annotated on both titles.⁹

PALI defaulted in the payment of its loans. Thus, PNB moved for the foreclosure of the subject mortgage and a Notice of Sale dated April 19, 1999 was thereafter issued, scheduling the sale of the eight (8) lots at public auction on May 25, 1999.¹⁰

1st Annulment of Mortgage Case

On May 24, 1999, PALI filed with the Regional Trial Court of Naic, Cavite (RTC) a Complaint¹¹ against PNB for the annulment of the subject mortgage with application for the issuance of a temporary restraining order and/or writ of preliminary injunction. PALI alleged that the subject mortgage is void as it was not approved by the

⁸ Id. at 141-142.

⁹ Id. at 51, 132.

¹⁰ Id. at 183.

¹¹ Id. at 170-177.

HLURB as required by Section 18¹² of P.D. No. 957. PALI's complaint was docketed as Civil Case No. NC-99-1005 and raffled to Branch 15.

In an Order¹³ dated August 29, 2003, the RTC dismissed PALI's complaint stating that:

The failure on the part of the plaintiff [PALI] to comply with its undertaking to secure the approval of the mortgage by the HLURB does not invalidate the mortgage or render it unenforceable. It would be rank injustice to hold otherwise for then the validity of the contract would be left to the entire discretion and whim of the plaintiff.

x x x x

In the instant case, it is the claim of plaintiff that it did not have free disposal of the mortgaged properties at the time the mortgage was constituted. Contrary to plaintiff's submission, as the registered owner of the real properties covered by the mortgage, plaintiff had absolute title to such properties and may make use of it in such manner it may deem fit for its advantage so long as such use is not injurious or harmful to others.

Plaintiff can validly constitute the mortgage under consideration since the validity thereof does not depend on the written approval of the HLURB. Even in the absence of such approval, the mortgage remains valid and enforceable since PD No. 957 merely prohibits the owner or developer from mortgaging any unit or lot without such approval. Nowhere in the said Decree is it provided that a mortgage entered into by the owner or developer in violation thereof is not valid. x x x.

x x x x

It is quite evident from the foregoing that plaintiff intended to be bound by its contract of mortgage with defendant PNB. Plaintiff may not now be heard to complain that its contract with PNB is invalid for its failure to seek the written approval from the HLURB of the mortgage it has entered into and hide behind the mantle of PD No. 957 which is meant for the protection of subdivision lot or condominium unit buyers and not the owner or developer which in the instant case is the plaintiff.

WHEREFORE, premises considered, let judgment be rendered in favor of the defendants and against the plaintiff: (I) declare the Real Estate Mortgage [s]subject matter of this case as valid and enforceable; (II) lifting the temporary restraining order issued; and (III) allowing the foreclosure

¹² Sec. 18. *Mortgages*. No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority. Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his instalment 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.

¹³ *Rollo*, pp. 134-144.

of the mortgaged properties.

SO ORDERED.¹⁴

PALI moved for reconsideration, which was denied by the RTC in an Order¹⁵ dated March 30, 2004. The RTC declared the subject mortgage as voidable since there is nothing in Section 18 of P.D. No. 957 suggesting that the failure to secure the approval of the HLURB relative to the execution of the said mortgage would render the same as void. Nonetheless, the RTC ruled that while the subject mortgage is voidable, PALI is estopped from questioning its validity. The RTC explained that:

The point of contention is Section 18 of P.D. No. 957 which provides in part, to wit: “No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the authority (now the Housing and Land Use Regulatory Board or HLURB).” Certainly, the prohibition is mandatory since it commands and leaves no discretion in the matter. It is true that as provided by Article 5, Civil Code, “Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity.” But the word “void” refers to both acts which are ipso facto void and to acts which are merely voidable (*Municipality of Camiling vs. Lopez*, 99 Phil. 187, cited in *Aquino and Griño-Aquino, The Civil Code of the Philippines and Family Code*, 1990 ed., p. 12). In the cited case, it was held that the lease of fishponds executed by a municipality, without the consent of the provincial governor as required by law, was merely voidable and not void ab initio. The instant controversy is akin to the *Municipality of Camiling* case in that a prior approval or consent by a specific authority is a pre-requisite to the validity of a given transaction. Yet, the absence of such previous consent merely makes the transaction voidable, or valid unless and until made void. Consequently, the real estate mortgage between the parties without the antecedent HLURB written approval is only voidable, and remains valid until set aside.

But may not Plaintiff have the mortgage be (sic) annulled now, which is in fact the remedy it prays for? PALI has the principle of estoppel against it, having misrepresented itself to have free disposal of the property subject of the mortgage. It is PALI’s responsibility to seek HLURB approval of the mortgage. Note that Section 18 of P.D. No. 957 prohibits a mortgage by an owner or developer without HLURB approval. PALI is the owner and developer of the Vista de Loro Condominium Project, subject of the mortgage. Since the prohibition covers Plaintiff, it is incumbent upon it to secure the consent of HLURB before the property can be mortgaged to PNB. PALI cannot pass the buck to PNB by arguing that it is new in the business and PNB being vastly experienced, the responsibility lies with the latter. Ignorance of the law excuses no one from compliance therewith (Article 3, Civil Code). Truly, to nullify the real estate mortgage due to Plaintiffs’ failure to secure the required written

¹⁴ Id. at 138-144.

¹⁵ Id. at 145-147.

HLURB approval would be to allow Plaintiff to unjustly benefit from its own inaction or negligence at the expense of PNB.¹⁶

PALI filed with this Court a petition for review on *certiorari*, which was docketed as G.R. No. 163377. In a Resolution¹⁷ dated June 7, 2004, this Court denied PALI's petition. Thus:

Considering the allegations, issues, and arguments adduced in the petition for review on certiorari of the orders of the Regional Trial Court, Naic, Cavite, Branch 15, dated August 29, 2003 and March 30, 2004, the Court Resolves to **DENY** the petition for failure of the petitioner to sufficiently show that the Regional Trial Court committed any reversible error in the challenged orders as to warrant the exercise by this Court of its discretionary appellate jurisdiction in this case.¹⁸

This Court's Resolution dated June 7, 2004 became final and executory on September 10, 2004.¹⁹

2nd Annulment of Mortgage Case

On July 19, 1999, Lim filed with the HLURB a complaint²⁰ against PALI, PNB, the Registrar of Deeds of the Province of Cavite and Atty. Jude Jose F. Latorre, Sr., a Notary Public for Cavite City, seeking for the nullification of the subject mortgage, suspension of PALI's license to sell, and award of damages. Lim claimed that apart from the fact that the subject mortgage is prejudicial to her interest, it is void for lack of the requisite approval of the HLURB. Lim likewise emphasized that by the time she learned of the subject mortgage, she had already paid PALI the total amount of ₱5,752,215.24.

The Ruling of the HLURB

On October 25, 2000, the HLURB gave due course to Lim's complaint and rendered a Decision,²¹ the dispositive portion of which states:

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

¹⁶ Id. at 146-147.

¹⁷ Id. at 148.

¹⁸ Id.

¹⁹ Id. at 149.

²⁰ Id. at 150-157.

²¹ Id. at 237-242.

1. Declaring the Real Estate Mortgage between PALI and PNB dated March 22, 1994 involving the Vista de Loro Heights condominium null and void;
2. Ordering respondent PNB to return the CCT covering the property subject of the instant case, particularly CCT No. 408 to PALI in order for the latter to cause delivery of the aforementioned title in the name of complainant, upon payment by the latter of the balance of the purchase price in the amount of [P]413,847.78;
3. Ordering respondents PALI and PNB to jointly and solidarily pay complainant the following:
 - a) the sum of [P]10,000.00 as moral damages;
 - b) the sum of [P]15,000.00 as exemplary damages;
 - c) the sum of [P]15,000.00 as attorney's fees; and
 - d) cost of suit.
4. For violating [S]ection 18 of PD 957, the License to Sell of PALI over the subject project is hereby ordered suspended and they are further directed to pay this Board the sum of [P]10,000.00 as administrative fine.

SO ORDERED.²²

The HLURB ruled that PALI's failure to secure its approval rendered the subject mortgage void. Thus:

From the arguments of respondents as well as the documentary exhibits presented by complainant, more particularly the Complaint and Affidavit of Merit of Cynthia Hermoso, it was strongly established that indeed the required Mortgage Clearance was not procured before the Mortgage Contract between PALI and PNB was executed. This act is not only prohibited but also penalized under P.D. No. 957.²³

Likewise ruling that *litis pendentia* will not bar Lim from having the subject mortgage annulled, the HLURB ratiocinated as follows:

The defense of *litis pendentia* and forum-shopping presupposes dual actions involving the same parties with identical reliefs sought. Respondent PALI failed to submit any evidence to prove that complainant was a party to the case pending before the Regional Trial Court of Naic, Cavite. Jurisdiction falls within this Board over this case since the same involves the relief for violation of P.D. 957. This falls under the purview of unsound real estate business practice, as enunciated in P.D. 1344.²⁴

²² Id. at 241-242.

²³ Id. at 239-240.

²⁴ Id. at 240.

Consequently, PNB filed a Petition for Review²⁵ with the Board of Commissioners of the HLURB.

In a Decision²⁶ dated October 26, 2001, the Third Division of the HLURB's Board of Commissioners partially affirmed the HLURB's Decision dated October 25, 2000, *viz*:

Wherefore, the decision of the office below is hereby modified with the deletion of the award of exemplary damages and of the directive for the suspension of the license to sell of respondent Puerto Azul Land, Inc.

In all other respects, the decision of the office below is affirmed.

So ordered.²⁷

PNB appealed to the OP.²⁸ However, in a Decision²⁹ dated June 18, 2003, the OP affirmed the assailed decision of the HLURB's Board of Commissioners. Thus:

After a careful and thorough evaluation and study of the records of this case, this Office hereby adopts by reference the findings of fact and conclusions of law contained in the decisions.

X X X X

WHEREFORE, premises considered, judgment appealed from is hereby **AFFIRMED** *in toto*.

SO ORDERED.³⁰

PNB moved for reconsideration³¹ but this was denied by the OP in its Order³² dated February 10, 2004. On March 18, 2004, PNB filed with the CA a Petition for Review³³ under Rule 43 of the Rules of Court, assailing the OP's June 18, 2003 and February 10, 2004 Orders. PNB argued that: (a) it is not bound by the contract between Lim and PALI as it is not a party thereto; (b) the power to annul the subject mortgage is judicial in nature and exclusively vested with the RTCs; (c) in *Dy v. Court of Appeals*,³⁴ this Court stated that there is nothing in Section 18 of P.D. No. 957 which provides that

²⁵ Id. at 243-253.

²⁶ Id. at 280-283.

²⁷ Id. at 283.

²⁸ Id. at 284-291.

²⁹ Id. at 298-299.

³⁰ Id. at 298.

³¹ Id. at 312-322.

³² Id. at 323-324.

³³ Id. at 325-347.

³⁴ G.R. No. 97929, December 17, 1991, 204 SCRA 878.

a mortgage without the HLURB's approval is null and void; (d) the remedy provided by Section 25 of P.D. No. 957 is redemption and not the nullification of the mortgage; and (e) it is a mortgagee in good faith as PALI's titles do not bear an annotation of any lien or encumbrance at the time of the constitution of the subject mortgage.

PNB thereafter moved for substitution of parties stating that it had assigned its interest in PALI's loan and the subject mortgage to Tranche 1 (SPV-AMC), Inc. (Tranche 1) pursuant to Republic Act No. 9182.³⁵ This was granted by the CA in a Resolution³⁶ dated September 2, 2005.

The Ruling of the CA

On September 29, 2005, the CA rendered the herein assailed Decision³⁷ partially granting PNB's petition. The CA upheld the HLURB's jurisdiction to annul the subject mortgage and dismissed PNB's claim that it is a mortgagee in good faith, the rights of which should prevail over Lim's rights as the buyer of Unit 48C. The CA, however, reversed the award of moral damages and attorney's fees in Lim's favor for lack of factual basis. The CA ratiocinated that:

Clearly, PALI's act of mortgaging parcels of land on which the condominium project is located without the approval of the HLURB was not only an unsound real estate business practice but also highly prejudicial to the buyer. The jurisdiction of the HLURB to regulate the real estate trade is broad enough to include jurisdiction over complaints for annulment of the mortgage with damages (*Home Bankers Savings and Trust Co. vs. Court of Appeals, et. al.*, April 26, 2005 citing *Union Bank of the Philippines vs. Housing and Land Use Regulatory Board*, 210 SCRA 558).

PNB likewise contends that it is a mortgagee in good faith and for value, hence, should not be prejudiced by declaring the mortgage null and void.

Such claim is without merit.

Judicial notice can be taken of the uniform practice of banks to investigate, examine and assess the real estate offered as security for the application of a loan. We cannot overemphasize the fact that the Bank cannot barefacedly argue that simply because the title or titles offered as security were clean of any encumbrances or lien, that it was thereby

³⁵ *Rollo*, pp. 400-405; Republic Act No. 9182 is otherwise known as "An Act Granting Tax Exemptions and Fee Privileges to Special Purpose Vehicles Which Acquire or Invest in Non-Performing Assets, Setting the Regulatory Framework Therefor, and for Other Purposes", effective December 23, 2002.

³⁶ *Id.* at 407-408.

³⁷ *Id.* at 15-23.

relieved of taking any other step to verify the over-reaching implications should the subdivision be auctioned on foreclosure (*Home Bankers Savings and Trust Co. vs. Court of Appeals, et. al.*, April 26, 2005). Thus, the claim of PNB that it is a mortgagee in good faith cannot be sustained.

As to the award of damages, We find the same improper. The decision of the HLU[RB] Arbiter (which was modified by the Board which decision was in turn affirmed *in toto* by the Office of the President) states that the award of moral damages was based on the speculated moral suffering of Lim. No proof of pecuniary loss is necessary in order that moral damages may be adjudicated. However, there must be proof that petitioner caused physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury to the plaintiff (Lim). Speculated moral suffering as found by the HLU[RB] Arbiter is not sufficient to sustain the award.

The decision likewise failed to state in the body of the decision the basis of the award of attorney's fees. Whatever attorney's fees are awarded, the court must explicitly state in the body of its decision, and not only in the dispositive portion thereof, the legal reason for the award. The power of the courts to grant damages and attorney's fees demands factual, legal and equitable justification; its basis cannot be left to speculation or conjecture (*Ranola vs. Court of Appeals*, 322 SCRA 1). Consequently, the issue of whether or not PNB can be held solidarily liable with PALI for damages, is moot and academic.³⁸

On November 2, 2005, Tranche 1 filed a Motion for Partial Reconsideration³⁹ but this was denied by the CA in its Resolution⁴⁰ dated February 23, 2006.

Issues

The instant petition seeks the reversal of the herein assailed Decision dated September 29, 2005 and Resolution dated February 23, 2006 of the CA, which declared the subject mortgage as null and void. The petition is anchored on the following grounds:

I.

THE HONORABLE COURT HAS ALREADY RULED, IN A FINAL AND EXECUTORY DECISION, THAT THE 1994 MORTGAGE CONTRACT IS VALID.

³⁸ Id. at 35-36.

³⁹ Id. at 104-120.

⁴⁰ Id. at 26-27.

II.

THE COURT OF APPEALS COMMITTED GRAVE ERROR IN RULING THAT THE HLURB HAD JURISDICTION AND AUTHORITY TO ANNUL AND SET ASIDE THE 1994 MORTGAGE CONTRACT BETWEEN PNB AND PALI.

III.

THE COURT OF APPEALS COMMITTED GRAVE ERROR IN RULING THAT PNB WAS NOT A MORTGAGEE IN GOOD FAITH.⁴¹

The Petitioner's Allegations

Tranche 1 posits that pursuant to the principle of *res judicata*, the RTC Order dated August 29, 2003, which this Court affirmed in its Resolution dated June 7, 2004, is a bar to a re-litigation of the issues relative to the (a) HLURB's jurisdiction to annul the subject mortgage, and (b) validity of the said mortgage.

It is true that Section 1 of P.D. No 957 confers upon the HLURB the authority to decide cases involving "unsound real estate business practices" and "specific performance of contractual and statutory obligations filed by buyers of subdivision or condominium unit against the owner, developer, broker or salesman". However, there is nothing in P.D. No. 957 or P.D. No. 1344⁴² which vests in the HLURB the jurisdiction to annul mortgage contracts over subdivision lots and condominium units entered into between the owners and developers, on one hand, and third party lenders, on the other.

Quoting *Dy*,⁴³ Tranche 1 likewise argues that "there is nothing in the said provision [of P.D. No. 957] which states that a mortgage executed without the approval of the National Housing Authority [now HLURB] is null and void". Besides, in *Lopez and Javelona v. El Hogar Filipino*,⁴⁴ this Court was unequivocal that "prohibitory statute may itself point out the consequences of its violation; and if on a consideration of the whole statute, it appears that the legislature intended to define such consequences and to exclude any other penalty or forfeiture than such as is declared in the statute itself, no other will be enforced, and if an action can be maintained on the transaction of which the prohibited transaction was a part, without sanctioning the illegality, such action will be entertained."⁴⁵ In P.D. No.

⁴¹ Id. at 56.

⁴² Otherwise known as "Empowering the National Housing Authority to Issue Writ of Execution in the Enforcement of its Decisions Under Presidential Decree No. 957", effective April 2, 1978.

⁴³ Supra note 34.

⁴⁴ 47 Phil. 249 (1925).

⁴⁵ Id. at 286.

957, penalties are provided for, to wit, revocation of both the registration of the subdivision or condominium project and the developer's license to sell, imposition of fines, and/or imprisonment against the persons responsible for the violations.

Tranche 1 also maintains that PNB is a mortgagee in good faith, the rights of which should prevail over the rights of Lim, who is a buyer in bad faith. At the time the subject mortgage was constituted, PALI's titles bore no annotation of any lien or encumbrance. In contrast thereto, at the time Lim purchased Unit 48C, the subject mortgage was already annotated on TCT No. 404201 and CCT No. 408. Hence, it can be presumed that Lim had constructive knowledge of the existence of the subject mortgage.

Section 25⁴⁶ of P.D. No. 957 explicitly provides for redemption as a remedy available to a buyer of a condominium unit in case an outstanding mortgage covering the purchased property exists.

Lim's Arguments

In her Comment,⁴⁷ Lim stresses that she was not a party to the first annulment of mortgage case filed with the RTC. Further, the HLURB's jurisdiction over her complaint cannot be assailed since the relief she sought was posed against PALI and PNB's acts which were violative of P.D. No. 957.

While Lim admits that she was not privy to the subject mortgage executed between PALI and PNB, she was directly affected by the same.

Besides, it is beyond dispute that no mortgage clearance was obtained from the HLURB. Thus, the subject mortgage cannot be enforced against her and the other buyers of units in the condominium project.

As to PNB, it failed to exercise due diligence relative to the execution of the subject mortgage. PNB cannot be considered as a mortgagee in good faith in the light of this Court's pronouncement in pertinent cases, that the rule stating that persons dealing with registered lands can rely solely on the certificates of title, does not apply to banks.

⁴⁶ Sec. 25. *Issuance of Title*. – The owner or developer shall deliver the title of the lot or unit to the buyer upon full payment of the lot or unit. No fee, except those required for the registration of the deed of sale in the Registry of Deeds, shall be collected for the issuance of such title. In the event a mortgage over the lot or unit is outstanding at the time of the issuance of the title to the buyer, the owner or developer shall redeem the mortgage or the corresponding portion thereof within six months from such issuance in order that the title over any fully paid lot or unit may be secured and delivered to the buyer in accordance herewith. (Underlining ours)

⁴⁷ *Rollo*, pp. 446-453.

PALI's Contentions

In its Comment,⁴⁸ PALI reiterates the arguments it had raised in the first annulment of mortgage case filed with the RTC and proceedings before the HLURB.

PALI contends that the subject mortgage is void for having been constituted *sans* HLURB's approval, hence, in contravention of Section 18 of P.D. No. 957. Consonant to the foregoing, this Court ruled in *Far East Bank & Trust Co. v. Marquez*⁴⁹ that "the avowed purpose of [P.D. No.] 957 compels the reading of Section 18 as prohibitory—acts committed contrary to it are void."⁵⁰

Further, Article 5 of the New Civil Code is explicit that "acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity." Therefore, even if P.D. No. 957 only provides for fines and imprisonment as penalties, they are not the sole consequences of violations of its provisions. The subject mortgage is void for having been constituted without complying with the requirements laid down in P.D. No. 957.

Citing *Alonso v. Cebu Country Club, Inc.*,⁵¹ PALI also posits that a minute resolution is not a precedent. PALI thus concludes that this Court's affirmation, by way of a minute resolution, of the RTC's ruling anent the validity of the subject mortgage, does not constitute *res judicata*.

PALI likewise refutes Tranche 1's stance that Lim should have instead availed of the remedy of redemption provided for in P.D. No. 957. PALI emphasizes that redemption presupposes that the subject mortgage is valid. In the case at bar, the mortgage is void, hence, there is nothing to be redeemed.

Our Ruling

We partially grant the instant petition.

⁴⁸ Id. at 459-475.

⁴⁹ 465 Phil. 276 (2004).

⁵⁰ Id. at 287, citing Article 5 of the CIVIL CODE OF THE PHILIPPINES.

⁵¹ 426 Phil. 61 (2002).

As the issues raised herein are interrelated, they shall be discussed jointly.

By reason of *res judicata*, the binding effect of the subject mortgage on PNB and PALI cannot anymore be assailed.

As pointed out by Tranche 1, this Court had already sustained the validity of the subject mortgage by way of a minute resolution issued on June 7, 2004, which became final and executory on September 10, 2004. The said resolution affirmed the RTC's finding that even if the subject mortgage is voidable, PALI is already estopped from challenging its validity for to rule otherwise would be tantamount to rewarding the latter to benefit from its own inaction or negligence.

PALI refutes the above and cites *Alonso*⁵² to argue that a minute resolution is not a precedent.

In *Alonso*, we declared that a "minute resolution may amount to a final action on the case but it is not a precedent."⁵³ However, we continued to state that "it can not bind non-parties to the action."⁵⁴ Corollary thereto, we can conclude that a minute resolution, while not a precedent relative to strangers to an action, nonetheless binds the parties therein, and calls for *res judicata*'s application.

*Nationwide Security and Allied Services, Inc. v. Valderama*⁵⁵ is instructive anent the effects of the issuance of a minute resolution, viz:

It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. When we dismissed the petition, we effectively affirmed the CA ruling being questioned. As a result, our ruling in that case has already become final.
x x x.

With respect to the same subject matter and the same issues concerning the same parties, it constitutes *res judicata*. However, if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent. x x x.⁵⁶
(Underlining ours)

⁵² Id.

⁵³ Id. at 86, citing *Komatsu Industries (Phils.) Inc. v. Court of Appeals*, 352 Phil. 440, 446 (1998).

⁵⁴ Id.

⁵⁵ G.R. No. 186614, February 23, 2011, 644 SCRA 299.

⁵⁶ Id. at 309, citing *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*, G.R. No. 167330, September 18, 2009, 600 SCRA 413, 446.

It is therefore clear from the above that for purposes of the application of *res judicata*, minute resolutions issued by this Court are as much precedents as promulgated decisions, hence, binding upon the parties to the action.

In *Heirs of Maximino Derla v. Heirs of Catalina Derla Vda. de Hipolito*,⁵⁷ we enumerated the following as the elements of *res judicata*:

- a) The former judgment or order must be final;
- b) It must be a judgment or order on the merits, that is, it was rendered after a consideration of the evidence or stipulations submitted by the parties at the trial of the case;
- c) It must have been rendered by a court having jurisdiction over the subject matter and the parties; and
- d) There must be, between the first and second actions, identity of parties, of subject matter and of cause of action. This requisite is satisfied if the two (2) actions are substantially between the same parties.⁵⁸

In the case at bar, the validity of the subject mortgage between PALI and PNB was the primary issue raised by the parties and resolved by the RTC after the conclusion of a full-blown trial. On September 10, 2004, the issue was finally laid to rest. A final and executory judgment, no matter how erroneous, cannot be changed even by this Court.⁵⁹ Inevitably, *res judicata* operates to bar PALI and PNB from raising the same issue lest there will be no end to litigation.

The HLURB has the authority to take cognizance of a complaint for nullification of a mortgage, but in the case at bar, its ruling shall only affect Unit 48C of Vista de Loro, which was the subject of the Contract to Sell executed between PALI and Lim.

⁵⁷ G.R. No. 157717, April 13, 2011, 648 SCRA 638.

⁵⁸ Id. at 652-653, citing *Villanueva v. CA*, 349 Phil. 99, 109 (1998).

⁵⁹ Id. at 653.

The jurisdiction of the HLURB to regulate the real estate trade is broad enough to include jurisdiction over complaints for annulment of mortgage.⁶⁰ This is pursuant to the intent of P.D. No. 957 to protect hapless buyers from the unjust practices of unscrupulous developers which may constitute mortgages over condominium projects *sans* the knowledge of the former and the consent of the HLURB.

In *Far East Bank*,⁶¹ we held that:

Acts executed against the provisions of mandatory or prohibitory laws shall be void. Hence, the mortgage over the lot is null and void insofar as private respondent is concerned.

The remedy granted by the HLURB and sustained by the Office of the President is proper only insofar as it refers to the lot of respondent. In short, the mortgage contract is void as against him. Since there is no law stating the specifics of what should be done under the circumstances, that which is in accord with equity should be ordered. The remedy granted by the HLURB in the first and the second paragraphs of the dispositive portion⁶² of its Decision insofar as it referred to respondent's lot is in accord with equity.

The HLURB, however, went overboard in its disposition in paragraphs 3 and 4, which pertained not only to the lot but to the entire parcel of land mortgaged. Such ruling was improper. The subject of this litigation is limited only to the lot that respondent is buying, not to the entire parcel of land. He has no personality or standing to bring suit on the whole property, as he has actionable interest over the subject lot only.⁶³ (Citations omitted and underlining ours)

In *Far East Bank*, we sustained the HLURB when it declared the mortgage entered into between the subdivision developer and the bank as unenforceable against the lot buyer. However, we were categorical that the HLURB acted beyond bounds when it nullified the mortgage covering the entire parcel of land, of which the lot subject of the buyer's complaint is

⁶⁰ *Manila Banking Corporation v. Rabina*, G.R. No. 145941, December 16, 2008, 574 SCRA 16, 23, citing *Union Bank v. HLURB*, G.R. No. 95364, June 29, 1992, 210 SCRA 558, 564.

⁶¹ *Supra* note 49.

⁶² 1. Declaring the mortgage executed by and between x x x Engr. Jesus Garcia/Transamerican Sales and Exposition and Far East Bank and Trust Company to be unenforceable against [respondent];

2. Ordering the x x x Far East Bank and Trust Company to compute and/or determine the loan value of the [respondent] who was not able to complete or make full payment and accept payment and/or receive the amortization from the [respondent] and upon full payment to deliver the title corresponding to Unit No. 10 of that Townhouse Project located at No. 10 Panay Ave., Quezon City;

3. Ordering the Register of Deeds of Quezon City to cancel the annotations of the mortgage indebtedness between x x x Engr. Jesus Garcia and Far East Bank and Trust Company;

4. Ordering, likewise, the Register of Deeds of Quezon City to cancel the annotation of the Certificate of Sale in favor of the Far East Bank and Trust Company on Transfer Certificate of Title No. 156254 to which the lot subject of this case is a part thereof, without prejudice to its right to require x x x Engr. Jesus Garcia/Transamerican Sales and Exposition to constitute new collateral in lieu of said title sufficient in value to cover the mortgage obligation.

x x x. (Underlining ours); *id.* at 282-283.

⁶³ *Id.* at 289.

merely a part.

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

Further, notwithstanding the existence of the subject mortgage, Section 25⁶⁴ of P.D. No. 957 affords Lim the remedy of redemption. Under the said section, PALI shall be compelled to redeem from PNB at least the portion of the mortgage corresponding to Unit 48C within six months from the issuance of CCT No. 408 to Lim. Thereafter, PALI should deliver to Lim her title over the condominium unit free from all liens and encumbrances.

**The issue of whether or not PNB
was a mortgagee in good faith need
not be resolved.**

The issue of whether or not PNB was in good faith need not be resolved since the validity of the mortgage between PALI and PNB is a settled matter. While diligence on the part of PNB was wanting when it failed to independently conduct inquiries and verify circumstances surrounding the execution of the subject mortgage, the fact remains that it extended loans to PALI in 1994 long before Lim purchased Unit 48C of Cluster Dominiko of Vista de Loro. It is thus offensive to the concept of fair play to declare PNB liable with PALI for the latter's violation of Lim's rights.

WHEREFORE, IN VIEW OF THE FOREGOING, the petition is **PARTLY GRANTED**. The Decision dated September 29, 2005 and Resolution dated February 23, 2006 of the Court of Appeals in CA-G.R. SP No. 82435 are hereby **MODIFIED** as follows:

(a) The real estate mortgage entered into between Puerto Azul Land, Inc. and Philippine National Bank remains valid pursuant to the Resolution dated June 7, 2004, which we issued relative to G.R. No. 163377, albeit without prejudice to the rights provided for in Section 25 of Presidential Decree No. 957 accruing to Rina Parayno Lim and to those who are similarly situated; and

⁶⁴

Supra note 46.


(b) The Decision dated October 25, 2000 of the Housing and Land Use Regulatory Board Arbiter is **AFFIRMED** *except* items (1) and (3) of the dispositive portion⁶⁵ thereof respectively declaring the real estate mortgage executed by and between Puerto Azul Land, Inc. and Philippine National Bank as void, and holding Philippine National Bank solidarily liable with Puerto Azul Land, Inc. to Rina Parayno Lim for moral and exemplary damages, attorney's fees and costs of suit.

SO ORDERED.



BIENVENIDO L. REYES
Associate Justice


WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson



TERESITA J. LEONARDO-DE CASTRO
Associate Justice



LUCAS P. BERSAMIN
Associate Justice



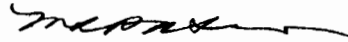
MARTIN S. VILLARAMA, JR.
Associate Justice

⁶⁵

Supra note 22.

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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

CERTIFIED TRUE COPY:



EDGAR O. ARICHETA

Division Clerk of Court

First Division