Republic of the Philippines
Supreme Court
Manila

EN BANC

UNITED OVERSEAS BANK OF THE PHILIPPINES, INC., Petitioner,	**G.R. No. 182133**
	Present:
- *versus* -	SERENO, *C.J.*, CARPIO, VELASCO, JR.*, LEONARDO-DE CASTRO, BRION,* PERALTA, BERSAMIN, DEL CASTILLO, VILLARAMA, JR., PEREZ, MENDOZA, REYES, PERLAS-BERNABE, LEONEN, and JARDELEZA, *JJ.*
THE BOARD OF COMMISSIONERS-HLURB, J.O.S. MANAGING BUILDERS, INC., and EDUPLAN PHILS., INC., Respondents.	**Promulgated:** June 23, 2015

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D E C I S I O N

PERALTA, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] and Resolution[2] of the Court of

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* On leave.

1 Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Amelita G. Tolentino and Vicente S. E. Veloso, concurring; *rollo,* pp. 15-22.

2 *Rollo*, pp. 24-29.

Appeals (*CA*), dated February 27, 2006 and March 5, 2008, respectively, in CA G.R. SP No. 86401.

The antecedents are as follows:

Respondent J.O.S. Managing Builders, Inc. (*JOS Managing Builders*) is the registered owner and developer of the condominium project Aurora Milestone Tower. On December 16, 1997, JOS Managing Builders and respondent EDUPLAN Philippines, Inc. (*EDUPLAN*) entered into a Contract to Sell covering Condominium Unit E, 10th Floor of the Aurora Milestone Tower with an area of 149.72 square meters, more or less. In August 1998, EDUPLAN effected full payment, and in December 1998, JOS Managing Builders and EDUPLAN executed a Deed of Absolute Sale over the condominium unit. Notwithstanding the execution of the deed of sale in favor of EDUPLAN, JOS Managing Builders failed to cause the issuance of a Condominium Certificate of Title over the condominium unit in the name of EDUPLAN. EDUPLAN learned that the lots on which the condominium building project Aurora Milestone Tower was erected had been mortgaged by JOS Managing Builders to petitioner United Overseas Bank of the Philippines (*United Overseas Bank*) without the prior written approval of the Housing and Land Use Regulatory Board (*HLURB*). Due to the inability of JOS Managing Builders to deliver the condominium certificate of title covering the unit purchased by EDUPLAN, the latter filed a complaint for specific performance and damages against JOS Managing Builders and United Overseas Bank before the HLURB praying that: (a) the mortgage between JOS Managing Builders and United Overseas Bank be declared null and void; (b) JOS Managing Builders and United Overseas Bank be compelled to cause the issuance and release of the Condominium Certificate of Title; and (c) JOS Managing Builders be ordered to provide emergency power facilities, to refund the monthly telephone carrier charges, and to permanently cease and desist from further collecting such charges.

In its defense, JOS Managing Builders alleged that it could not issue an individual Condominium Certificate of Title in favor of EDUPLAN, because petitioner United Overseas Bank has custody of the Transfer Certificates of Title covering the condominium building.

United Overseas Bank, on the other hand, alleged that JOS Managing Builders is the owner of several parcels of land covered by Transfer Certificate of Title (TCT) Nos. N-146444, N-146445 and N-143601. On April 3, 1997, JOS Managing Builders executed in favor of United Overseas Bank a Real Estate Mortgage[3] over the said parcels of land and the

[3] CA *rollo*, pp. 102-103.

improvements existing or to be erected thereon to secure the Two Hundred Million Peso (PhP200,000,000.00)[4] loan it acquired from the bank. The subject condominium building project Aurora Milestone Tower, which is situated in the said parcels of land, are part of the properties mortgaged to United Overseas Bank. JOS Managing Builders defaulted in the payment of its loan obligations to United Overseas Bank. Hence, United Overseas Bank foreclosed the mortgage constituted over properties of JOS Managing Builders and the subject properties were sold by public auction on March 22, 1999 wherein United Overseas Bank was declared as the highest bidder. Subsequently, a certificate of sale was issued in favor of United Overseas Bank corresponding to the foreclosed properties, which was registered with the Register of Deeds of Quezon City on April 27, 1999.

On August 15, 2001, the HLURB Arbiter ruled,[5] in favor of EDUPLAN and declared the mortgage executed between JOS Managing Builders and United Overseas Bank as well as the foreclosure proceedings null and void, pointing out that the mortgage was executed without the approval of the HLURB as required under Section 18 of Presidential Decree (*P.D.*) No. 957.[6] The Arbiter held that that since EDUPLAN has paid the full purchase price of the condominium unit, JOS Managing Builders and United Overseas Bank should cause the release from encumbrance of the mother titles to the condominium building project, and issue the corresponding condominium certificate of title in favor of EDUPLAN. Further, JOS Managing Builders should provide EDUPLAN with emergency power facilities and refund it with the monthly telephone carrier charges it has been collecting since September 1999, and permanently cease and desist from further imposing and collecting such fees. Moreover, JOS Managing Builders was directed to pay EDUPLAN damages, attorney's fees and costs of suit. The dispositive portion of the decision reads:

> Wherefore, the foregoing premises considered and as prayed for, judgment is hereby rendered in favor of the Complainant and against the Respondents as follows:
>
> > 1. Declaring the mortgage executed by Respondent J.O.S. Managing Builders in favor of Respondent United Overseas Bank (Westmont) as null and void, including the foreclosure of the mortgage, for being in violation of Section 18 of P.D. 957;
> > 2. Ordering Respondents to cause the release from the encumbrances of the "mother titles" to the Condominium Building Project and, issuance of the individual Condominium Certificate of Title of Complainant to its

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[4] This amount was later on increased to PhP250,000,000.00 by virtue of an Amendment of Real Estate Mortgage, *id*. at 105.

[5] CA *rollo*, pp. 52-63.

[6] The Subdivision and Condominium Buyers' Protective Decree.

> Condominium Unit, free from any and all liens and encumbrances;
>
> 3. Ordering Respondent J.O.S. Managing Builders to provide the Complainant with emergency power facilities, strictly as represented in its sales brochures;
>
> 4. Ordering Respondent J.O.S. Managing Builders to refund to Complainant the monthly telephone carrier charges it has been collecting since September 1, 1999 and permanently cease and desist from further imposing and collecting said charges;
>
> 5. Ordering Respondent J.O.S. to pay the complainant ₱100,000.00 by way of temperate damages, ₱50,000.00 by way of exemplary damages, ₱40,000.00 as and by way of Attorney's Fees; and the costs of suit.
>
> 6. Ordering Respondent J.O.S. Managing Builders to pay Respondent United Overseas Bank (Westmont) the loan release value of the subject condominium unit."

United Overseas Bank then filed a petition for review with the HLURB. On August 20, 2004, the HLURB Board of Commissioners affirmed the Arbiter's decision, but deleted the award of emergency power facilities and refund of the monthly telephone carrier charges. Hence, United Overseas Bank filed a petition for review under Rule 43 before the CA.[7]

On February 27, 2006, the CA dismissed the petition.[8] A motion for reconsideration was filed, but it was denied for lack of merit.[9] The CA held that United Overseas Bank did not exhaust the administrative remedies available to it due to its failure to appeal the decision of the HLURB Board of Commissioners to the Office of the President before going to the CA.

Hence, the petition assigning the lone error:

> THE COURT OF APPEALS ERRED IN REFUSING TO APPLY THE EXCEPTION TO THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES.[10]

Petitioner United Overseas Bank argues that the CA erred when it dismissed the petition due to its failure to exhaust administrative remedies. It alleges that the question on whether the HLURB is correct in declaring null and void the entire mortgage constituted by JOS Managing Builders in favor of United Overseas Bank, as well as the foreclosure of the entire mortgage,

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7 *Rollo*, pp. 23-25.
8 *Id.* at 15-22.
9 *Id.* at 24-29.
10 *Id.* at 37.

is a legal question which is an exception to the rule on exhaustion of administrative remedies.

The petition is meritorious.

The doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence.[11] It has been held, however, that the doctrine of exhaustion of administrative remedies and the doctrine of primary jurisdiction are not iron-clad rules. In the case of *Republic v. Lacap*,[12] the Court enumerated the numerous exceptions to these rules, namely: (a) where there is estoppel on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively so small as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent; (g) where the application of the doctrine may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) where the issue of non-exhaustion of administrative remedies has been rendered moot; (j) where there is no other plain, speedy and adequate remedy; (k) where strong public interest is involved; and (l) in *quo warranto* proceedings.[13]

The situation in paragraph (e) of the foregoing enumeration obtains in this case.

The issue on whether non-compliance with the clearance requirement with the HLURB would result to the nullification of the entire mortgage contract or only a part of it is purely legal which will have to be decided ultimately by a regular court of law. It does not involve an examination of the probative value of the evidence presented by the parties. There is a question of law when the doubt or difference arises as to what the law is on a certain state of facts, and not as to the truth or the falsehood of alleged facts. Said question at best could be resolved only *tentatively* by the administrative authorities. The final decision on the matter rests not with them but with the courts of justice. Exhaustion of administrative remedies does not apply, because nothing of an administrative nature is to be or can be done. The

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11 *Universal Robina Corp. (Corn Division) v. Laguna Lake Development Authority*, G.R. No. 191427, May 30, 2011, 649 SCRA 506, 511.

12 546 Phil. 87 (2007).

13 *Republic v. Lacap, supra*, at 97-98. (Underscoring supplied)

issue does not require technical knowledge and experience, but one that would involve the interpretation and application of law.[14] There is, thus, no need to exhaust administrative remedies, under the premises.

The Court will now proceed to the legal issue on hand.

Petitioner United Overseas Bank alleges that the HLURB erred in declaring null and void the entire mortgage constituted by JOS Managing Builders in its favor, as EDUPLAN does not claim ownership over all the properties mortgaged by JOS Managing Builders in favor of United Overseas Bank, but only over a single condominium unit, *i.e.*, Unit E, 10th Floor of the Aurora Milestone Tower.

We agree with petitioner.

The HLURB erred in declaring null and void the entire mortgage executed between JOS Managing Builders and United Overseas Bank.

At the onset, it is worthy to note that jurisprudence have varying conclusions of the issue at hand. In *Far East Bank & Trust Co. v Marquez*,[15] the Court sustained the HLURB when it declared the mortgage entered into between the subdivision developer and the bank as unenforceable against the lot buyer for failure of the developer to obtain the prior written approval of the HLURB. 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 merely a part of.

In *Far East Bank*, the Court 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

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[14] *Vigilar v. Aquino,* G.R. No. 180388, January 18, 2011, 639 SCRA 772, 778, citing *Republic v. Lacap, supra* note 12, at 98.

[15] 465 Phil. 276 (2004).

> the HLURB in the first and the second paragraphs of the dispositive portion 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. (Citations omitted and underscoring ours)[16]

In *Metropolitan Bank and Trust Co., Inc. v. SLGT Holdings, Inc.,*[17] however, the Court nullified the entire mortgage contract executed between the subdivision developer and the bank albeit the fact that only two units or lot buyer/s filed a case for declaration of nullity of mortgage. In the said case, the entire mortgage contract was nullified on the basis of the principle of indivisibility of mortgage as provided in Article 2089[18] of the New Civil Code.

This notwithstanding, in the fairly recent case of *Philippine National Bank v. Lim*,[19] the Court reverted to our previous ruling in *Far East Bank* that a unit buyer has no standing to seek for the complete nullification of the entire mortgage, because he has an actionable interest only over the unit he has bought. Hence, in the said case, the mortgage was nullified only insofar as it affected the unit buyer.

We find the recent view espoused in *Philippine National Bank* to be in accord with law and equity. While a mortgage may be nullified if it was in violation of Section 18 of P.D. No. 957, such nullification applies only to the interest of the complaining buyer. It cannot extend to the entire mortgage. A buyer of a particular unit or lot has no standing to ask for the nullification of the entire mortgage.

Since EDUPLAN has an actionable interest only over Unit E, 10th Floor, Aurora Milestone Tower, it is but logical to conclude that it has no standing to seek for the complete nullification of the subject mortgage and the HLURB was incorrect when it voided the whole mortgage between JOS Managing Builders and United Overseas Bank.

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16 *Far East Bank & Trust Co. v Marquez supra*, at 298, cited in *Philippine National Bank v. Lim*, *supra* note 15, at 543-544.

17 G.R. Nos. 175181-82 and G.R. Nos. 175354 & 175387-88, September 14, 2007, 533 SCRA 516.

18 Article 2089. A pledge or mortgage is indivisible, even though the debt may be divided among the successors-in-interest of the debtor or of the creditor. x x x.

19 G.R. No. 171677, January 30, 2013, 689 SCRA 523, 543, citing *Manila Banking Corporation v. Rabina*, G.R. No. 145941, December 16, 2008, 574 SCRA 16, 23.

Considering that EDUPLAN had already paid the full purchase price of the subject unit, the latter is entitled to the transfer of ownership of the subject property in its favor. This right is provided for in Section 25 of P.D. No. 957, 50 wit:

> *Issuance of Title.* The owner or development shall deliver the title of the lot or unit to the buyer upon full payment of the lot or unit. x x x.

Verily, JOS Managing Builders has the obligation to cause the delivery of the Title to the subject condominium unit in favor of EDUPALN.

Nevertheless, despite the fact that the mortgage constituted between JOS Managing Builders and United Overseas Bank cannot bind EDUPLAN, because of the non-observance of the provision of P.D. No. 957 by JOS managing Builders, the mortgage between the former and United Overseas Bank is still valid.

In the present case, it is undisputed that JOS Managing Builders mortgaged several parcels of land, including all the buildings and improvements therein covered by TCT Nos. N-146444, N-146445 and N-143601 to United Overseas Bank without prior clearance from the HLURB. The said omission clearly violates Section 18 of P.D. No. 957 *(The Subdivision and condominium Buyers' Protective Decree)*, which provides as follows:

> Section 18. Mortgages. – No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the [HLURB]. x x x *(Word in bracket added)*

It should be noted, however, that the failure of JOS Managing Builders to secure prior approval of the mortgage from the HLURB and United Overseas Bank's failure to inquire on the status of the property offered for mortgage placed the condominium developer and the creditor Bank in *pari delicto.*[20] Hence, they cannot ask the courts for relief for such parties should be left where they are found for being equally at fault.

More importantly, it should be understood that the prior approval requirement is intended to protect buyers of condominium units from fraudulent manipulations perpetrated by unscrupulous condominium sellers and operators, such as their failure to deliver titles to the buyer or titles free from lien and encumbrances.[21] This is pursuant to the intent of P.D. No. 957

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[20] The *pari delicto* rule porivdes that when two parties are equally at fault, the law leaves them as they are and denies recovery by either one of them. (*Land Bank of the Philippines v. Poblete,* G.R. No. 196577, February 25, 2013, 691 SCRA 613).

[21] *See* third *Whereas* Clause 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.[22]

Thus, failure to secure the HLURB'S prior written approval as required by P.D. No. 957 will not annul the entire mortgage between the condominium developer and the creditor bank, otherwise the protection intended for condominium buyers will inadvertently be extended to the condominium developer even though, by failing to secure the government's prior approval, it is the party at fault.

To rule otherwise would certainly affect the stability of large-scale mortgages, which is prevalent in the real estate industry. To be sure, mortgagee banks would be indubitably placed at risk if condominium developers are empowered to unilaterally invalidate mortgage contracts based on their mere failure to secure prior written approval of the mortgage by the HLURB, which could be easily caused by inadvertence or by deliberate intent.

From all the foregoing, the HLURB erred when it declared the entire mortgage constituted by JOS Managing Builders, Inc. in favor of United Overseas Bank null and void based solely on the complaint of EDUPLAN which was only claiming ownership over a single condominium unit of Aurora Milestone Tower. Accordingly, the mortgage executed between JOS Managing Builders and United Overseas Bank is valid.

WHEREFORE, the petition is **GRANTED**. The Decision and Resolution of the Court of Appeals, dated February 27, 2006 and March 5, 2008, respectively, in CA-G.R. SP No. 86401, are **REVERSED** and **SET ASIDE.** The Decision of the HLURB, dated August 20, 2004, is **AFFIRMED with MODIFICATION**. The mortgage executed and the succeeding foreclosure proceedings between respondent J.O.S. Managing Builders, Inc. and petitioner United Overseas Bank of the Philippines, Inc., with respect to respondent EDUPLAN Philippines, Inc.'s unit E., 10TH Floor, Aurora Milestone Tower, is declared null and void.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

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22 *Id.*

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice

On leave
PRESBITERO J. VELASCO, JR.
Associate Justice

I certify that J. Brion left his dissenting opinion

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

On leave
ARTURO D. BRION
Associate Justice

Please see concurring opinion:

LUCAS P. BERSAMIN
Associate Justice

I join J. Brion in his dissenting opinion

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

I am joining the opinion of J. Leonen

See separate concurring and dissenting opinion

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED XEROX COPY:

FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT