

## **SPECIAL FOURTEENTH DIVISION**

**[ CA-G.R. SP NO. 91653, June 08, 2010 ]**

**ROBERTO P. DIRAY, PETITIONER, VS. SPS. LEONILO AND CONSOLACION MARCOS, SPS. ANTONIO AND ELVIRA TABJAN, AND SOCIAL SECURITY SYSTEM, RESPONDENTS.**

### **Court of Appeals**

Before the Court is a Petition for Review from the Order dated May 24, 2005 and Resolution dated September 16, 2005 of the Office of the President in O.P Case No. 05-A-004 which dismissed petitioner's appeal and denied his motion for reconsideration, respectively.

These are the antecedents:

Roberto P. Diray ("petitioner") and his wife Bella were the registered owners of a 156 square meter lot in Console Village, San Vicente, San Pedro Laguna covered by TCT No. T-111006. After acquiring the lot, the Dirays contracted Sps. Leonilo and Consolacion Marcos, owners/developers of the village, to construct a residential house for P219,000.00, payable in installments. Petitioner was able to pay the Marcoses P66,500.00 before leaving for Angola, where he worked from 1983 to 1984. On March 18, 1984, while petitioner was abroad, his wife, allegedly with the help of the Sps. Marcos, applied for and was granted a housing loan worth P100,000.00 by the Social Security System ("SSS"). A mortgage was thereafter constituted on the lot. The Marcoses then forced petitioner's children and sister to vacate the house, and later sold the property to Sps. Antonio and Elvira Tabjan. Upon return to the country, petitioner sought to nullify the loan with SSS and tried to locate his wife, to no avail. He claimed that he never executed the Special Power of Attorney ("SPA") and Deed of Appointment as Special Administrator ("DASA") which were used in processing the loan and mortgage. The check, in the name of petitioner, also came into hands and was encashed by the Marcoses without any endorsement from petitioner. (Rollo, pp. 18-21).

Petitioner then filed a complaint before the Housing and Land Use Regulatory Board ("HLURB") against the Marcoses, the Tabjans and the SSS for the declaration of nullity of the SPA, DASA and Loan Mortgage Contract, as well as to have the sale between the Marcoses and the Tabjans nullified. (Rollo, p. 18).

On May 5, 2003, Housing and Land Use Arbiter Atty. Ma. Perpetua Y. Aquino, rendered her Decision in favor of petitioner as follows:

"1. Declaring the Loan Mortgage Contract entered into by the [petitioner's] wife with SSS as unenforceable and of no force and effect. Consequently, respondent SSS is hereby ordered to release TCT No. T-111006 to complainant, free from liens and encumbrances. Respondent spouses Marcos, on the other hand are ordered to return to respondent SSS the amount they received as the proceeds for the loan applied for by

the wife of the complainant without the latter's authority, minus the amount already paid by spouses Tabjan to respondent SSS.

2. Ordering respondent spouses Tabjan to vacate the subject property and peacefully turn over possession thereto to the complainant.

3. Ordering respondent spouses Marcos to refund to respondent spouses Tabjan the total payments they have made plus the amount paid by spouses Tabjan to respondent SSS as partial payment of the assumed loan. Further, respondent spouses Marcos are hereby ordered to pay complainant the amount of P10,000.00 as moral damages; the amount of P10,000.00 as exemplary damages; and the amount of P5,000.00 as attorney's fees.

4. Ordering complainant to pay respondent spouses Marcos the balance of the contract price for the construction of his residential house in the amount of P152,500.00 (P219,000.00 – P65,500.00), with interest at the rate of 12% per annum reckoned from the time of last payment until fully paid.

All other claims and counterclaims are hereby dismissed.

SO ORDERED." (Rollo, pp. 28-29).

Petitioner, through counsel Atty. Arturo M. de Castro of De Castro and Cagampang Law Offices filed a Motion for (Partial) Reconsideration dated June 10, 2003, arguing that the Tabjans should be required to pay petitioner rent from 1985 and that petitioner should not be held liable to pay 12% on the balance of P152,500.00 due on the house constructed by the Marcoses. (Rollo, pp. 30-39).

On June 8, 2004, the HLURB Board of Commissioners rendered its Decision modifying that of the Arbiter's as follows:

"Wherefore the decision of the office below is hereby modified with respect to the interest rate on the unpaid obligation of the complainant [Diray] to respondent Spouses Marcos which is modified from 12% per annum to legal rate of interest per annum reckoned from the date of last payment.

In all other respect the decision of the office below is affirmed.

So ordered." (Rollo, p. 86)

On July 1, 2004, petitioner terminated the services of Atty. de Castro on the ground that the Motion for (Partial) Reconsideration was not granted. (Rollo, p. 60). Then he filed another Motion for (Partial) Reconsideration on July 2, 2004 asserting the same arguments, but under another counsel. (Rollo, pp. 41-50).

On November 25, 2004, the HLURB Board of Commissioners rendered a Resolution denying the motion for reconsideration. It held that the arguments raised have already been passed upon. The Tabjan spouses have already made payments to petitioner's account with the SSS which offsets any claim for rentals, and it is not disputed that petitioner has an unpaid obligation with respect to the construction of

the house which has remained unpaid since 1984, which must be paid with legal interest. (Rollo, pp. 90-91).

Petitioner then filed a Petition for Review with the Office of the President dated December 28, 2004 assailing the June 8, 2004 Decision and November 25, 2004 Resolution of the HLURB. The appeal was dismissed, through an Order dated May 24, 2005, for non-payment of appeal fee and for having been filed beyond the reglementary period to appeal. (Rollo, p. 99). The OP explained:

"Without having paid the appeal fee, this Office has not acquired appellant jurisdiction over the subject matter, and the appealed judgment became final and executory as if no appeal was filed at all....

Moreover, further evaluation of the records shows that the appeal was filed out of time, as follows:

1. On 18 June 2004, petitioner-appellant received a copy of the Decision dated 8 June 2004 of the HLURB Board of Commissioners. This is admitted in his *Motion for (Partial) Reconsideration* dated 2 July 2004 on file with the official records transmitted by the HLURB to this Office.

2. After fourteen (14) days, on 2 July 2004, petitioner-appellant filed his *Motion for (Partial) Reconsideration* with the HLURB Board of Commissioners.

3. On 23 December 2004 petitioner-appellant received a copy of the Resolution dated 25 November 2004 of the HLURB Board of Commissioners denying his Motion for (Partial) Reconsideration. This is admitted in his Petition for Review dated 28 December 2004.

4. After six (6) days, on 29 December 2004 as evidenced by the postage date stamped on the envelope, and contrary to his allegation of 28 December 2004 as date of filing, complainant-appellant filed his Petition for Review dated 28 December 2004 with this Office.

In sum, it took petitioner-appellant a total of twenty (20) days to file the instant appeal. The reglementary period to appeal from a decision of HLURB Board of Commissioners to the Office of the President is fifteen (15) days only as provided in Section 2, Rule XVIII of the 1996 Revised Rules of Procedure of the HLURB....

Section 1 of Administrative Order No. 18, Series of 1987, Prescribing Rules and Regulations Governing Appeals to the Office of the President of the Philippines, provides that 'the time during which a motion for reconsideration has been pending with the Ministry/agency concerned shall be deducted from the period for appeal.' " (Rollo, pp. 97-99).

Petitioner moved for reconsideration but it was denied with finality by the OP in its Resolution dated September 16, 2005. (Rollo, p. 17). It reads:

"...For the first time, petitioner-appellant attached to the instant Motion for Reconsideration a photocopy of Official Receipt (O.R.) No. 4197590 A dated January 24, 2005 evidencing payment of appeal fee. However, he