

## THIRD DIVISION

[ G.R. No. 228354, November 26, 2018 ]

**CONCORDE CONDOMINIUM, INC., PETITIONER, VS. PHILIPPINE NATIONAL BANK, PNB-INTERNATIONAL FINANCE LIMITED, AND NEW PPI CORPORATION (FORMERLY PULP AND PAPER, INC.), RESPONDENTS.**

[G.R. No. 228359]

**NEW PPI CORPORATION (FORMERLY PULP AND PAPER, INC.), PETITIONER, VS. CONCORDE CONDOMINIUM, INC., RESPONDENT.**

### DECISION

**GESMUNDO, J.:**

Before us are the consolidated petitions for review on certiorari under Rule 45 assailing the Decision,<sup>[1]</sup> dated March 21, 2016, and the Resolution,<sup>[2]</sup> dated November 21, 2016, of the Court of Appeals (CA). The CA decision granted the petition in CA-G.R. SP No. 135651 but dismissed the petition in CA-G.R. SP No. 135689. Both petitions before the CA sought the reversal of the June 14, 2013 Decision<sup>[3]</sup> of the Office of the President (O.P. Case No. 11-E-159) affirming the March 17, 2011 Decision<sup>[4]</sup> of the Housing and Land Use Regulatory Board Board of Commissioners (*HLURB Board*). The HLURB Board upheld the December 14, 2005 Decision<sup>[5]</sup> of the HLURB Arbiter in the National Capital Region Field Office (*HLURB-NCRFO*).

### ANTECEDENTS

Pulp and Paper, Inc. (*PPI*) is the owner/developer of a residential project known as the Concorde Condominium (*Concorde*), a seven-storey building situated at Benavidez corner Salcedo Streets, Legaspi Village, Makati City. On November 4, 1974, PPI executed a Master Deed with Declaration of Restrictions<sup>[6]</sup> (*master deed*) for the said project. It covered two parcels of land registered in its name under Transfer Certificate of Title (*TCT*) No. [351672] S-20277 with an area of 1,022 square meters and TCT No. [420504] S-20278 consisting of 1,209 square meters. The master deed was annotated on these titles.<sup>[7]</sup>

The master deed provided for the common areas of the Concorde, as follows:

Section 3. The Common Areas. The common areas of the project include:

a) **The parcels of land described above, the basement, the deck roof, the main lobby, the stairways, the common entrances and exits, and common hallways and other areas of common use;**

b) The bearing walls, columns, floors, beams, borders, roofs, foundations, and other structural elements of the building;

c) The elevator equipment and shafts, the compartments and installations of all other services and utilities such as light, water, pumps, drainage, sewerage, fire alarm systems and all pipes, ducts, flues, chutes, conduits, wires and other utility lines wherever located, except the telephone cable line mentioned in Section 4(b) below, and the outlets of such utilities and services when located within a unit, and all other devices and installations existing for or rationally of common use or necessary to the existence, upkeep and safety of the building; and

d) **All other areas**, structural elements and central services, facilities and utilities **shown or indicated as part of the common areas in the condominium project plan** hereto attached and marked as Annex "A."<sup>[8]</sup> (Emphases supplied)

The basement of the Concorde is used for parking purposes. Directly at the rear portion of the building is an uncovered parking area also used by the unit owners.

On January 6, 1975, pursuant to the provisions of the master deed, the Concorde Condominium, Inc. (CCI) was organized to own, hold title to, and manage the common areas, along with the two parcels of land.<sup>[9]</sup> However, despite the completion of the project and incorporation of CCI, the titles to the two parcels of land, where the condominium building stands and all the common areas are located, have not been transferred to CCI.

It turned out that PPI, without CCI's knowledge and consent, consolidated and later subdivided the two parcels of land, thus, segregating the uncovered parking area from the condominium building lot.

On November 7, 1995, PPI, through its president, Robert G. Young (*Young*), requested the Register of Deeds of Makati to issue two new certificates of title based on a re-survey and a subdivision plan covering the two parcels of land. The Register of Deeds of Makati denied the request on the ground that Republic Act No. 4726 (*Condominium Act*) does not allow separate titling for specific common areas of the condominium project. PPI elevated the matter to the Land Registration Authority (*LRA*) which issued a resolution (*Consulta* No. 2439, dated June 10, 1996) granting its request for the issuance of separate certificates of title based on the re-survey plan. Thus, on July 10, 1996, the following new titles were issued in the name of PPI: TCT No. 206284 covering an area of 1,225 square meters and TCT No. 206285 covering 1,006 square meters. The master deed annotated on the original titles was

carried over to the new TCTs.<sup>[10]</sup>

On January 16, 1997, again without CCI's knowledge and consent, PPI, through Young, applied with the HLURB for the alteration of the Concorde Condominium Project's (*Concorde project*) approved plan. The plan excluded the uncovered parking area (TCT No. 206285) from the list of common areas of the condominium project and its master deed. The HLURB granted the request on March 25, 1997, giving PPI clearance for the amended master deed to be recorded with the Register of Deeds of Makati. Thereafter, upon the request of Young, the Register of Deeds of Makati cancelled TCT No. 206285 and issued TCT No. 208874 in the name of PPI without the annotation of the master deed.<sup>[11]</sup>

With the new TCT No. 208874 over the uncovered parking area, PPI executed on May 23, 1997, a real estate mortgage over the said property in favor of Philippine National Bank-International Finance Limited (*PNB-IFL*) as security for a P26,300,000.00 loan extended to PPI and two other corporations. The debtors-mortgagors defaulted on its loan obligation, resulting in the foreclosure of the mortgage. Consequently, the property was sold at a public auction and a certificate of sale was issued to Philippine National Bank (*PNB*) on September 1, 1999.<sup>[12]</sup>

On May 5, 2000, CCI filed a complaint against PPI, PNB-IFL, and the Register of Deeds of Makati for annulment of title, mortgage, and reconveyance (HLURB Case No. REM-050500-10982).<sup>[13]</sup>

CCI alleged that PPI's acts of retaining title over the two parcels of land of the condominium project, including its common areas as provided in the master deed, were done without CCI's knowledge and consent and in evident bad faith, with fraud and misrepresentation to promote its self-interest. Such caused the re-survey and amendment of the project plan and master deed and the issuance of a separate title for the uncovered parking area which undisputedly forms part of the common areas. By excluding the uncovered parking area of the condominium project from the common areas, PPI has deprived CCI of ownership over it. CCI averred that not all unit owners were given prior or appropriate notices of the proposal to amend the master deed. There was no approval by majority of the registered owners of the amendment, contrary to the Corporate Secretary's Certificate submitted by PPI. Neither did the Makati Commercial Estate Association (*MACEA*) and the City Engineer approve the amendment to the plan and master deed.

As for PNB-IFL, CCI claimed that it is not an innocent mortgagee for value, having failed to exercise the degree of diligence required by law before accepting the mortgage, relying solely on the representation of the borrower and PPI. Had PNB-IFL conducted an ocular inspection of the property offered as collateral, it would have been compelled by the physical features to undertake further inquiry and investigation on the property's recent history. It would have then discovered that the parcel of land covered by TCT No. 208874 formed part of the condominium project. CCI cited the following physical evidence: 1) the lot is situated directly behind the condominium building and is still being used by CCI and its owners for parking; and 2) there is no demarcation line or divider between the building and the uncovered parking area to show that the latter is not part of the condominium project. The mortgage, constituted without the prior approval of the HLURB, is not valid. The foreclosure sale to PNB is likewise void, PNB-IFL being a mere *alter ego* or

conduit of PNB. PNB is, therefore, not an innocent purchaser for value. CCI argued that PPI, PNB-IFL and PNB, being mere trustees of the property, are duty bound to convey or transfer the title in its favor. In the alternative, CCI prayed that if, for whatever reason, the property covered by TCT No. 208874 cannot be transferred in its name, PPI and/or PNB/PNB-IFL should compensate CCI in the amount equivalent to its current value. Further, it should cause the annotation in the title the exclusive and perpetual easement of use of the uncovered parking area in CCI's favor.

In its Answer,<sup>[14]</sup> PPI contended that no specific provision in the Condominium Act vests exclusive jurisdiction on the HLURB over cases on annulment and cancellation of titles, issuance of new titles, transfer of title, and possession. Such actions are under the exclusive original jurisdiction of the RTC of Makati City. In fact, Section 23 of said law provides that the courts have jurisdiction over actions for partition of a condominium project or for the dissolution of the condominium corporation.

PPI argued that the complaint essentially questions the validity of the resolution (*consulta*) of the LRA granting PPI's request for the issuance of a separate certificate of title over the segregated parking lots. It pointed out that the HLURB approved the proposed amendment of the master deed and issued its clearance after a review of all documents submitted, particularly the proof of consent for the condominium plan alteration. Indeed, the Corporate Secretary's Certificate attesting to the stockholders' approval of the amendment to the condominium project and the master deed, confirms this.

PPI stressed that the acts of the LRA, the Register of Deeds of Makati, and the HLURB in acknowledging PPI's absolute ownership over the uncovered parking area by cancelling TCT No. 206285 and issuing the new title TCT No. 208874, evidence the presumption of regularity. It posited that the non-annotation of the master deed in TCT No. 208874 confirms that the subject lot is not part of the common areas.

PNB and PNB-IFL filed their Answer,<sup>[15]</sup> asserting that PNB-IFL is a mortgagee in good faith and for value. Due to the default of the debtors-mortgagors on their loan obligation and their failure to settle their outstanding debt despite demands, PNB-IFL foreclosed the property, pursuant to the provisions of the promissory note and the mortgage contract, after due notice and publication. PNB, the highest bidder at the public auction, was issued a certificate of sale.

PNB-IFL alleged that before accepting the offered collateral, it had conducted a thorough investigation, inspection, and appraisal. On the strength of the conclusive character of all matters in TCT No. 208874 issued solely in the name of PPI, PNB-IFL approved the loan and executed the loan documents, including the real estate mortgage contract. It claimed to have granted the credit accommodation and accepted the mortgage in good faith only on the basis of TCT No. 208874 solely in PPI's name, satisfied that the title had no defect or infirmity. Interposing a cross-claim against PPI, PNB-IFL stated that it had extended the credit accommodation on PPI's representation as the absolute owner of the mortgaged property free from all liens and encumbrances. Thus, should the mortgage and the foreclosure be declared void, PNB-IFL prayed that PPI be ordered to pay its outstanding obligation or the fair market value of the property.

### ***Ruling of the HLURB Arbiter***

On June 5, 2003, Arbiter Dunstan T. San Vicente rendered a decision<sup>[16]</sup> upholding the HLURB's jurisdiction over the case. It reasoned that the HLURB is granted exclusive authority to approve or disapprove the alteration of condominium plans and to issue a title resulting from such. It would thus be illogical that it would have no authority to order the partition of the common areas, which is but an incident of alteration. It cited PPI's previous invocation of the HLURB's authority to give it clearance and to approve its alteration of the Concorde Condominium Project plan, only to deny such jurisdiction because of its suit for the alleged illegal alteration.

***On the validity of the consolidation and subdivision of the two parcels of land of the Concorde Condominium project***

Arbiter San Vicente found that the issuance of a new title over the said portion without annotation of the master deed showed that PPI failed to secure the required consent of the majority of the unit owners for the amendment of the master deed. PPI had submitted to the HLURB a mere certificate of its corporate secretary and not a registrable instrument, *i.e.*, a resolution of the CCI Board attesting that the majority of the registered owners approved the proposed amendment. Nonetheless, the new titles issued over the uncovered parking area, the mortgage in favor of PNB-IFL, and the certificate of sale awarded to PNB were not declared null and void. PNB is considered an innocent assignee of the foreclosed property. PPI's acts deprived CCI of ownership over the parcels of land and disregarded CCI's rights as condominium unit buyers. Thus, it is held solely liable to CCI for damages.

The *fallo* of the HLURB-NCRFO's original decision reads:

**WHEREFORE**, all the foregoing premises considered, a judgment is hereby rendered as follows:

1. Ordering the respondent Pulp and Paper, Inc. to compensate and reimburse complainant Concorde Condominium, Inc. the amount of money equivalent to the present market value of the land segregated from the mass of the common areas of the condominium project, which is covered by TCT No. 206285 and later TCT No. 208874;
2. Ordering the respondent Pulp and Paper, Inc. to restore and provide to the Concorde Condominium project parking lots or slots, whether on-site or off-site, with the same area and use as the lot area, which was removed or taken from it by reason of the alteration of the project's common area;
3. Ordering respondent Pulp and Paper, Inc. to pay CCI damages in the amount of P100,000.00 and attorney's fees in the amount of P20,000.00.