

FIRST DIVISION

[G.R. No. 171677, January 30, 2013]

**PHILIPPINE NATIONAL BANK, SUBSTITUTED BY TRANCHE^[1]
(SPV-AMC), INC., PETITIONER, VS. RINA PARAYNO LIM AND
PUERTO AZUL LAND, INC., RESPONDENTS.**

D E C I S I O N

REYES, J.:

This is a petition for review on *certiorari*^[1] under Rule 45 of the Rules of Court to assail the Decision^[2] dated September 29, 2005 and Resolution^[3] 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.*"

In its Decision^[4] dated September 29, 2005, the CA dismissed the petition for review filed by petitioner Philippine National Bank (PNB) from the Decision^[5] 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 Resolution^[7] 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 P150,000,000.00 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:

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 P120,000,000.00 and P50,000,000.00. 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 Complaint^[11] 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 HLURB as required by Section 18^[12] of P.D. No. 957. PALI's complaint was docketed as Civil Case No. NC-99-1005 and raffled to Branch 15.

In an Order^[13] 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]ubject matter of this case as valid and enforceable; (II) lifting the temporary restraining order issued; and (III) allowing the foreclosure of the mortgaged properties.

SO ORDERED.^[14]

PALI moved for reconsideration, which was denied by the RTC in an Order^[15] 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 prerequisite 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 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 Resolution^[17] 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 complaint^[20] 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 P5,752,215.24.

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:

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.