

THIRD DIVISION

[G.R. No. 181790, January 30, 2009]

**DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS.
GREGORIO CAPULONG, RESPONDENT.**

D E C I S I O N

NACHURA, J.:

This is a petition^[1] for review on *certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Decision^[2] dated September 18, 2007 and the Resolution^[3] dated February 15, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 90338.

On January 28, 1983, petitioner Development Bank of the Philippines (DBP) granted a loan to Asialand Development Corporation (ADC) in the amount of P16,000,000.00 for the purpose of real estate development. To secure the loan, a mortgage was constituted on the project site and all improvements thereon consisting of 378,226 square meters then covered by ten (10) mother certificates of title.

After the mortgage was constituted, ADC caused the subdivision of the entire property into separate individual residential lots eventually sold to different buyers, one of whom was respondent Gregorio Capulong (Capulong), who purchased five (5) lots by way of a Contract to Sell on September 30, 1984.

For failure of ADC to pay its obligation to DBP, the latter extrajudicially foreclosed the mortgage and, thus, was able to acquire the property. ADC failed to redeem the foreclosed properties within the redemption period.

On December 8, 1986, the Asset Privatization Trust (APT) was created by virtue of Proclamation No. 50 for the benefit of the National Government tasked to take title to possess, conserve, provisionally manage and dispose of assets identified for privatization. Consequently, DBP transferred the account and properties of ADC to APT, including the subject property.

Later, for failure to obtain titles to the properties he purchased from ADC despite full payment, Capulong filed a Complaint against ADC before the Housing and Land Use Regulatory Board (HLURB) in Region III for the release of the Transfer Certificates of Title over the purchased realties or the replacement thereof and damages. Capulong impleaded DBP, being the former mortgagee and having acquired the properties after foreclosure, and APT, now Property Management Office (PMO), to which the properties were transferred after DBP's acquisition thereof.

In the complaint, Capulong alleged that ADC sold the properties to him without having the Contract to Sell registered with the HLURB; that it did not inform him of the mortgage; and that despite his full payment, it refused to deliver to him the

titles to the properties in violation of Presidential Decree (PD) 957.

DBP interposed as its defenses, *inter alia*, that the loan to ADC was granted at the time when the mortgaged property was not yet subdivided into individual lots and when there were as yet no end-buyers thereof; that it foreclosed the property pursuant to the Loan Agreement and the Mortgage Contract signed by them; and that it was not the proper party in interest due to its transfer of the account and the titles to PMO such that even if Capulong prevails in the case, it would be impossible for it to comply with any order of the HLURB, as DBP was no longer in possession of the said titles and could not dispose of the same.

After due hearing, the HLURB Arbiter rendered a Decision^[4] dated May 7, 2002, in favor of Capulong. The Arbiter found that ADC committed several violations of PD 957; declared the foreclosure null and void; ordered respondents ADC, DBP, and PMO to cause the transfer of titles over the subject properties to Capulong's name or, in the alternative, replace the realties with other lots of the same value, standard, and area; indemnify Capulong in the form of damages and attorney's fees; refund to him the excess payments with corresponding interest; and pay the costs of suit.

DBP elevated the said Decision in a petition for review to the HLURB Board of Commissioners which, in its Decision^[5] dated June 26, 2003, affirmed the Decision of the Arbiter, but set aside the directive for the DBP and PMO to return the excess payments made by Capulong and for PMO to pay damages.

DBP moved to reconsider the Decision, but the HLURB Board of Commissioners denied the same in the Resolution^[6] dated June 18, 2004.

On appeal to the Office of the President (OP), the Decision of the HLURB Board of Commissioners was affirmed *in toto* in an Order^[7] dated March 14, 2005. Subsequently, the OP denied DBP's motion for reconsideration in its Order^[8] dated June 8, 2005.

DBP went to the CA via a petition for review which was denied in the assailed Decision dated September 18, 2007. The motion for reconsideration of the said Decision was likewise denied by the CA in its Resolution dated February 15, 2008.

Hence, this petition ascribing to the CA the following errors:

1. Affirming that the mortgage, foreclosure, and auction sale of the subject properties are null and void;
2. Declaring that DBP is obligated to inform the lot buyer of the mortgage under PD 957 not being an owner or developer of the subdivision lots;
3. Holding DBP liable for damages; and
4. Dismissing DBP's counterclaims.

Essentially, DBP asseverates that under Section 18^[9] of PD 957, it is only the owner or the developer who had the obligation to obtain a prior written approval of the