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SECOND DIVISION

[G.R. No. 171072, April 07, 2009]

GOLDCREST REALTY CORPORATION, PETITIONER, VS. CYPRESS GARDENS CONDOMINIUM CORPORATION, RESPONDENT.

D E C I S I O N

QUISUMBING, J.:

For review on certiorari are the Decision[1] dated September 29, 2005 and the Resolution[2] dated January 16, 2006 of the Court of Appeals in CA G.R. SP No. 79924.

The antecedent facts in this case are as follows:

Petitioner Goldcrest Realty Corporation (Goldcrest) is the developer of Cypress Gardens, a ten-storey building located at Herrera Street, Legaspi Village, Makati City. On April 26, 1977, Goldcrest executed a Master Deed and Declaration of Restrictions[3] which constituted Cypress Gardens into a condominium project and incorporated respondent Cypress Gardens Condominium Corporation (Cypress) to manage the condominium project and to hold title to all the common areas. Title to the land on which the condominium stands was transferred to Cypress under Transfer Certificate of Title No. S-67513. But Goldcrest retained ownership of the two-level penthouse unit on the ninth and tenth floors of the condominium registered under Condominium Certificate of Title (CCT) No. S-1079 of the Register of Deeds of Makati City. Goldcrest and its directors, officers, and assigns likewise controlled the management and administration of the Condominium until 1995.

Following the turnover of the administration and management of the Condominium to the board of directors of Cypress in 1995, it was discovered that certain common areas pertaining to Cypress were being occupied and encroached upon by Goldcrest. Thus, in 1998, Cypress filed a complaint with damages against Goldcrest before the Housing and Land Use Regulatory Board (HLURB), seeking to compel the latter to vacate the common areas it allegedly encroached on and to remove the structures it built thereon. Cypress sought to remove the door erected by Goldcrest along the stairway between the 8th and 9th floors, as well as the door built in front of the 9th floor elevator lobby, and the removal of the cyclone wire fence on the roof deck. Cypress likewise prayed that Goldcrest pay damages for its occupation of the said areas and for its refusal to remove the questioned structures.

For its part, Goldcrest averred that it was granted the exclusive use of the roof deck's limited common area by Section 4(c)[4] of the condominium's Master Deed. It likewise argued that it constructed the contested doors for privacy and security purposes, and that, nonetheless, the common areas occupied by it are unusable and inaccessible to other condominium unit owners.

Upon the directive of HLURB Arbiter San Vicente, two ocular inspections[5] were conducted on the condominium project. During the first inspection, it was found that Goldcrest enclosed and used the common area fronting the two elevators on the ninth floor as a storage room. It was likewise discovered that Goldcrest constructed a permanent structure which encroached 68.01 square meters of the roof deck's common area.[6]

During the second inspection, it was noted that Goldcrest failed to secure an alteration approval for the said permanent structure.

In his Decision[7] dated December 2, 1999, Arbiter San Vicente ruled in favor of Cypress. He required Goldcrest, among other things, to: (1) remove the questioned structures, including all other structures which inhibit the free ingress to and egress from the condominium's limited and unlimited common areas; (2) vacate the roof deck's common areas and to pay actual damages for occupying the same; and (3) pay an administrative fine for constructing a second penthouse and for making an unauthorized alteration of the condominium plan.

On review, the HLURB Special Division modified the decision of Arbiter San Vicente. It deleted the award for actual damages after finding that the encroached areas were not actually measured and that there was no evidentiary basis for the rate of compensation fixed by Arbiter San Vicente. It likewise held that Cypress has no cause of action regarding the use of the roof deck's limited common area because only Goldcrest has the right to use the same. The dispositive portion of the decision reads:

> **WHEREFORE**, in view of the foregoing, the decision of the office [is] modified as follows:
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> 1. Directing respondent to immediately remove any or all structures which obstruct the use of the stairway from the eighth to tenth floor, the passage and use of the lobbies at the ninth and tenth floors of the Cypress Gardens Condominium; and to remove any or all structures that impede the use of the unlimited common areas.
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> 2. Ordering the respondent to pay an administrative fine of P10,000.00 for its addition of a second penthouse and/or unauthorized alteration of the condominium plan.
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> All other claims are hereby dismissed.
>
> **SO ORDERED.**[8]

Aggrieved, Cypress appealed to the Office of the President. It questioned the deletion of the award for actual damages and argued that the HLURB Special Division in effect ruled that Goldcrest could erect structures on the roof deck's limited common area and lease the same to third persons.

The Office of the President dismissed the appeal. It ruled that the deletion of the award for actual damages was proper because the exact area encroached by

Goldcrest was not determined. It likewise held that, contrary to the submissions of Cypress, the assailed decision did not favor the building of structures on either the condominium's limited or unlimited common areas. The Office of the President stressed that the decision did not only order Goldcrest to remove the structures impeding the use of the unlimited common areas, but also fined it for making unauthorized alteration and construction of structures on the condominium's roof deck.[9] The dispositive portion of the decision reads:

> WHEREFORE, premises considered, the appeal of Cypress Gardens Corporation is hereby **dismissed** and the decision of the Board a quo dated May 11, 2000 is hereby **AFFIRMED**.
>
> SO ORDERED.[10]

Cypress thereafter elevated the matter to the Court of Appeals, which partly granted its appeal. The appellate court noted that the right of Goldcrest under Section 4(c) of the Master Deed for the exclusive use of the easement covering the portion of the roof deck appurtenant to the penthouse did not include the unrestricted right to build structures thereon or to lease such area to third persons. Thus the appellate court ordered the removal of the permanent structures constructed on the limited common area of the roof deck. The dispositive portion of the decision reads:

> **WHEREFORE**, the petition is **PARTIALLY GRANTED**. The Decision of the Office of the President dated June 2, 2003 is hereby AFFIRMED with modification. Respondent Goldcrest Realty Corporation is further directed to remove the permanent structures constructed on the limited common area of the roof deck.
>
> **SO ORDERED.**[11]

The parties separately moved for partial reconsideration but both motions were denied.

Hence this petition, raising the following issues:

> I.
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> [WHETHER OR NOT] THE APPELLATE COURT ERRED IN RULING THAT GOLDCREST BUILT AN OFFICE STRUCTURE ON A SUPPOSED ENCROACHED AREA IN THE OPEN SPACE OF THE ROOF DECK.
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> II.
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> [WHETHER OR NOT] THE APPELLATE COURT ERRED IN RULING THAT PETITIONER IMPAIRED THE EASEMENT ON THE PORTION OF THE ROOF DECK DESIGNATED AS A LIMITED COMMON AREA.[12]

Anent the first issue, Goldcrest contends that since the areas it allegedly encroached upon were not actually measured during the previous ocular inspections, the finding of the Court of Appeals that it built an office structure on the roof deck's limited common area is erroneous and that its directive "to remove the permanent