

FIRST DIVISION

[G.R. No. 169228, September 11, 2009]

**THE ALEXANDRA CONDOMINIUM CORPORATION, PETITIONER,
VS. LAGUNA LAKE DEVELOPMENT AUTHORITY, RESPONDENT.**

DECISION

CARPIO, J.:

The Case

Before the Court is a petition for review assailing the 26 April 2005 Decision^[1] and 1 August 2005 Resolution^[2] of the Court of Appeals in CA-G.R. SP No. 82409.

The Antecedent Facts

Philippine Realty and Holdings, Inc. (PhilRealty) developed, established, and constructed The Alexandra Condominium Complex from 1987 to 1993. In a Deed of Conveyance dated 18 April 1988, PhilRealty transferred to The Alexandra Condominium Corporation (TACC) a parcel of land with an area of 9,876 square meters located at 29 Meralco Avenue, Pasig City as well as all the common areas of the project. The land was covered by Transfer Certificate of Title No. 64355.

The condominium project consists of the following phases:

- (a) Cluster A - 3 Five Storey Buildings; A-1, A-2 and A-3;
- (b) Cluster B - 2 Eleven Storey Buildings; B-1 and B-2;
- (c) Cluster C - 2 Seven Storey Buildings; C-1 and C-2;
- (d) Cluster D - 2 Fourteen Storey Buildings; D-a and D-2; and
- (e) Cluster E - 2 Eleven Storey Buildings; E-1 and E-2.

On 2 September 1987, the Human Settlements Regulatory Commission issued a Development Permit to PhilRealty to develop Cluster A of the project. In the Development Permit, PhilRealty was required to submit its condominium plans to the Building Official of Pasig City. Architect Walter R. Perez (Architect Perez), then Building Official of Pasig City, reviewed the Site Development and Location Plan as well as the Sanitary/Plumbing Plans and Specifications of the project. On 24 September 1987, Architect Perez issued a Building Permit. On 30 September 1987, Architect Perez issued a Sanitary/Plumbing Permit acknowledging the fixtures to be installed but without indicating the System of Disposal including a Waste Water Treatment Plan. On 15 December 1988, Architect Perez issued a Certificate of Final Inspection and a Certificate of Occupancy for Buildings A-1 to A-3.

PhilRealty undertook the same process for Clusters B, C, D, and E. Building Permits and Certificates of Final Inspection and Occupancy were issued for these clusters

from 1991 to 1993. On 31 December 1993, upon completion of Buildings E-1 and E-2, PhilRealty formally turned over the project to TACC. However, PhilRealty did not turn over the as-built plans for the perimeter drainage layout, the foundation, and the electrical and plumbing layout of the project. Thereafter, TACC managed the project through Century Properties Management Corporation.

On 24 June 1998, Laguna Lake Development Authority (LLDA) advised TACC that its wastewater did not meet government effluent standards provided in Sections 68 and 69 of the 1978 National Pollution Control Commission Rules and Regulations (NPCC) as amended by Department of Energy and Natural Resources (DENR) Administrative Order No. 34.^[3] LLDA informed TACC that it must put up its own Sewage Treatment Plant (STP) for its effluent discharge to meet government standards.

Since a sewage treatment plant would cost approximately P15 million to put up, TACC experimented with a proposed solution from Larutan Resources Development Corporation, which treated the septic vault water with biological enzymes. Still, TACC's water discharge failed to meet the government standards.

On 26 March 1999, LLDA's Environmental Division collected samples of TACC's wastewater. In a report dated 6 April 1999, LLDA found two determinants in TACC's samples: (1) Chemical Oxygen Demand (COD) and (2) Oil/Grease (OG). LLDA found that TACC's samples failed to meet government standards of 150 for COD and 5 for OG.

In a Notice of Violation^[4] dated 6 May 1999, LLDA directed TACC to submit corrective measures to abate or control its water effluents discharged into the Laguna de Bay. LLDA likewise imposed upon TACC a daily fine of P1,000 from 26 March 1999 until full cessation of pollutive wastewater discharge.

TACC entered into an agreement with World Chem Marketing for the construction of the STP for P7,550,000. The construction was completed by the second week of October 2001.

In an Order dated 19 July 1999, LLDA stated that the daily penalty was imposed upon TACC for the pollutive wastewater discharge, and to condone the penalty would be tantamount to tolerating the pollution of the river bodies and the Laguna de Bay which is contrary to LLDA's mandate.

On 1 April 2002, TACC requested LLDA to dismiss the water pollution case against it because of the favorable analysis undertaken by the LLDA's Pollution Control Division on 28 February 2002. LLDA conducted a hearing on 26 April 2002. In its position paper filed on 15 May 2002, TACC requested LLDA to condone the imposition of the penalty of P1,000 per day since March 1999 in recognition of the remedial and corrective measures it undertook to comply with government standards.

On 4 September 2003, LLDA issued an Order requiring TACC to pay a fine of P1,062,000 representing the penalty from 26 March 1999 to 20 February 2002.

TACC filed a petition for certiorari before the Court of Appeals with a prayer for the

issuance of a temporary restraining order.

The Decision of the Court of Appeals

In its 26 April 2005 Decision, the Court of Appeals resolved the petition as follows:

WHEREFORE, premises considered, instant petition is DISMISSED.
Accordingly, the prayer for temporary restraining order is DENIED.

SO ORDERED.^[5]

The Court of Appeals sustained LLDA's contention that the petition for certiorari was prematurely filed. LLDA pointed out that TACC failed to file a motion for reconsideration of the 4 September 2003 Order before filing the petition before the Court of Appeals. The Court of Appeals also ruled that before a party is allowed to seek the court's intervention, he should have availed of all the means of administrative processes afforded him. The Court of Appeals ruled that the proper remedy should have been to resort to an administrative remedy before the DENR Secretary prior to judicial action. The Court of Appeals noted LLDA's allegation of TACC's offer to compromise, which LLDA countered with an advice to address the offer to the Commission on Audit (COA). Hence, the Court of Appeals found that TACC had not abandoned its administrative remedies despite simultaneous resort to judicial action.

The Court of Appeals ruled that under Republic Act No. 4850^[6] (RA 4850), as amended by Presidential Decree No. 813,^[7] LLDA shall be compensated for the damages to the water and aquatic resources of Laguna de Bay resulting from failure to meet established water and effluent quality standards. The Court of Appeals ruled that under Section 4 of Executive Order No. 927, series of 1983,^[8] LLDA is mandated to "make, alter or modify orders requiring the discontinuation of pollution specifying the conditions and the time within which such discontinuance must be accomplished." Further, the Court of Appeals ruled that Presidential Decree No. 984^[9] provides for penalties for violation or non-compliance with any order, decision or regulation of the Commission for the control or abatement of pollution.

TACC filed a motion for reconsideration. In its 1 August 2005 Resolution, the Court of Appeals denied the motion.

Hence, the petition before this Court.

The Issues

TACC raises the following issues in its memorandum:

1. Whether the Court of Appeals erred in disregarding TACC's exhaustive efforts in complying with the government's standards on effluent discharge; and

2. Whether the Court of Appeals erred in finding that the petition for certiorari was prematurely filed.

The Ruling of this Court

The petition has no merit.

Non-Exhaustion of Administrative Remedies

The Court of Appeals ruled that due to the transfer of LLDA to the DENR under Executive Order No. 149^[10] (EO 149), TACC should have first resorted to an administrative remedy before the DENR Secretary prior to filing a petition for certiorari before the Court of Appeals.

The doctrine of non-exhaustion of administrative remedies requires that resort be first made with the administrative authorities in the resolution of a controversy falling under their jurisdiction before the controversy may be elevated to a court of justice for review.^[11] A premature invocation of a court's intervention renders the complaint without cause of action and dismissible.^[12]

EO 149 transferred LLDA from the Office of the President to the DENR "for policy and program coordination and/or administrative supervision x x x."^[13] Under EO 149, DENR only has administrative power over LLDA. Administrative power is concerned with the work of applying policies and enforcing orders as determined by proper governmental organs.^[14]

However, Executive Order No. 192^[15] (EO 192), which reorganized the DENR, mandates the DENR to "promulgate rules and regulations for the control of water, air and land pollution" and to "promulgate ambient and effluent standards for water and air quality including the allowable levels of other pollutants and radiations."^[16] EO 192 created the Pollution Adjudication Board^[17] under the Office of the DENR Secretary which assumed the powers and functions of the NPCC with respect to the adjudication of pollution cases, including NPCC's function to "[s]erve as arbitrator for the determination of reparation, or restitution of the damages and losses resulting from pollution."^[18] Hence, TACC has an administrative recourse before the DENR Secretary which it should have first pursued before filing a petition for certiorari before the Court of Appeals.

Powers of the LLDA to Impose Penalty

RA 4850 specifically mandates LLDA to carry out and make effective the declared national policy of promoting and accelerating the development and balanced growth of the Laguna Lake area and the surrounding provinces of Rizal and Laguna and the cities of San Pablo, Manila, Pasay, Quezon and Caloocan with due regard and adequate provisions for environmental management and control, preservation of the quality of human life and ecological systems, and the prevention of undue ecological