

SECOND DIVISION

[G.R. No. 180394, September 29, 2008]

MARJORIE B. CADIMAS, BY HER ATTORNEY-IN-FACT, VENANCIO Z. ROSALES, PETITIONER, VS. MARITES CARRION AND GEMMA HUGO, RESPONDENTS.

D E C I S I O N

TINGA, J.:

This is a petition for review on certiorari^[1] under Rule 45 of the 1997 Rules of Civil Procedure, assailing the Decision^[2] and Resolution^[3] of the Court of Appeals in CA-G.R. SP No. 98572. The appellate court set aside two orders^[4] of the Regional Trial Court (RTC), Branch 85, Quezon City issued in Civil Case No. Q-04-53581 on the ground that the trial court had no jurisdiction over the case.

The instant petition stemmed from the complaint^[5] for *accion reivindicatoria* and damages filed by petitioner Marjorie B. Cadimas, through her attorney-in-fact, Venancio Z. Rosales, against respondents Marites Carrion and Gemma Hugo. The complaint was docketed as Civil Case No. Q-04-53581 and raffled to Branch 85 of the RTC of Quezon City.

In the complaint, petitioner averred that she and respondent Carrion were parties to a Contract To Sell dated 4 August 2003, wherein petitioner sold to respondent Carrion a town house located at Lot 4-F-1-12 No. 23 Aster Street, West Fairview Park Subdivision, Quezon City for the sum of P330,000.00 to be paid in installments. According to petitioner, Carrion had violated paragraph 8 of said contract when she transferred ownership of the property to respondent Hugo under the guise of a special power of attorney, which authorized the latter to manage and administer the property for and in behalf of respondent Carrion. Allegedly, petitioner asked respondent Carrion in writing to explain the alleged violation but the latter ignored petitioner's letter, prompting petitioner to demand in writing that Carrion and Hugo vacate the property and to cancel the contract.^[6]

On 28 October 2004, petitioner filed a Motion To Declare Defendant Marites Carrion In Default,^[7] alleging that despite the service of summons and a copy of the complaint, respondent Carrion failed to file a responsive pleading within the reglementary period.

Respondent Hugo filed a Motion To Dismiss^[8] on her behalf and on behalf of respondent Carrion on 18 November 2004, citing the grounds of lack of jurisdiction to hear the case on the part of the RTC and estoppel and/or laches on the part of petitioner. Respondent Hugo argued that the Housing and Land Use Regulatory Board (HLURB) has jurisdiction over the complaint because ultimately, the sole issue to be resolved was whether petitioner, as the owner and developer of the subdivision

on which the subject property stood, was guilty of committing unsound real estate business practices.

In the same motion, respondent Hugo averred that the RTC had not acquired jurisdiction over the person of respondent Carrion for not complying with Section 16, Rule 14 of the Rules of Court on the proper service of summons on a non-resident defendant. However, attached to the motion was a special power of attorney, whereby respondent Carrion had authorized respondent Hugo, among others, to manage and administer the subject property and to prosecute and defend all suits to protect her rights and interest in said property.^[9]

After petitioner filed a comment on the motion to dismiss, the RTC issued an Omnibus Order^[10] on 21 March 2005, which denied the motion to dismiss. The RTC held that the court's jurisdiction is not determined by the defenses set up in the answer or the motion to dismiss.

In the same omnibus order, the RTC ruled that summons was served properly, thus, the court had acquired jurisdiction over respondent Carrion. The RTC noted that respondent Hugo's failure to disclose at the outset that she was equipped with a special power of attorney was an act constitutive of misleading the court. Thus, the RTC declared respondent Carrion in default, directed petitioner to present evidence *ex-parte* against respondent Carrion, and respondent Hugo to file an answer.

On 18 April 2005, respondent Hugo filed an answer on her behalf and as the attorney-in-fact of respondent Carrion.^[11] The answer pleaded a compulsory counterclaim for damages. The following day, petitioner presented evidence *ex-parte* against respondent Carrion. Thus, on 22 April 2005, respondent Hugo sought a reconsideration of the omnibus order, praying for the dismissal of the complaint, the cancellation of the presentation of evidence *ex-parte*, the lifting of the order of default against respondent Carrion and the issuance of an order directing the extraterritorial service of summons on respondent Carrion.^[12]

On 17 January 2007, the RTC issued an order, upholding its jurisdiction over petitioner's complaint. Citing the interest of substantial justice, the RTC lifted the order of default against respondent Carrion and set the pre-trial conference of the case.^[13]

However, respondents elevated the matter to the Court of Appeals via a special civil action for certiorari, praying that the Omnibus Order dated 21 March 2005 and Order dated 17 January 2007 issued by Judge Teodoro T. Riel be reversed and set aside and that the complaint in Civil Case No. Q-04-53581 be dismissed for lack of jurisdiction.

On 27 September 2007, the Court of Appeals rendered the assailed Decision granting respondents' petition for certiorari. The appellate court set aside the assailed orders of the RTC and ordered the dismissal of petitioner's complaint for lack of jurisdiction. In its Resolution dated 9 November 2007, the Court of Appeals denied petitioner's motion for reconsideration.

Hence, the instant petition, raising the following arguments: (1) based on the allegations in the complaint, the RTC has jurisdiction over Civil Case No. Q-04-

53581; (2) in any case, respondents have expressly submitted to or recognized the jurisdiction of the RTC by filing an answer with counterclaim; and (3) respondents erroneously availed of a Rule 65 petition instead of filing a timely appeal from the order denying their motion to dismiss.^[14]

Essentially, petitioner argues that based on the allegations in the complaint and the reliefs sought, the RTC has jurisdiction over the matter. In any case, the compulsory counterclaim pleaded in the answer of respondents was an express recognition on their part of the jurisdiction of the RTC over the complaint for *accion reivindicatoria*, petitioner adds.

The petition is meritorious.

The nature of an action and the jurisdiction of a tribunal are determined by the material allegations of the complaint and the law at the time the action was commenced. Jurisdiction of the tribunal over the subject matter or nature of an action is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action.^[15]

An examination of Section 1 of Presidential Decree (P.D.) No. 1344,^[16] which enumerates the regulatory functions of the HLURB,^[17] readily shows that its quasi-judicial function is limited to hearing only the following specific cases:

SECTION 1. In the exercise of its functions to regulate the real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority shall have exclusive jurisdiction to hear and decide cases of the following nature:

- A. Unsound real estate business practices;
- B. Claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker, or salesman; and
- C. Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lot or condominium unit against the owner, developer, dealer or salesman.

The aforequoted provision must be read in the light of the statute's preamble or the introductory or preparatory clause that explains the reasons for its enactment or the contextual basis for its interpretation. The scope of the regulatory authority thus lodged in the National Housing Authority (NHA) [now HLURB] is indicated in the second and third preambular paragraphs of the statute which provide:

"WHEREAS, numerous reports reveal that many real estate subdivision owners, developers, operators, and/or sellers have reneged on their representations and obligations to provide and maintain properly subdivision roads, drainage, sewerage, water systems, lighting systems and other similar basic requirements, thus endangering the health and safety of home and lot buyers;

WHEREAS, reports of alarming magnitude also show cases of swindling and fraudulent manipulations perpetrated by unscrupulous subdivision

and condominium sellers and operators, such as failure to deliver titles to the buyers or titles free from liens and encumbrances, and to pay real estate taxes, and fraudulent sales of the same subdivision lots to different innocent purchasers for value ."[18]

The boom in the real estate business all over the country resulted in more litigation between subdivision owners/developers and lot buyers with the issue of the jurisdiction of the NHA or the HLURB over such controversies as against that of regular courts. In the cases that reached this Court, the ruling has consistently been that the NHA or the HLURB has jurisdiction over complaints arising from contracts between the subdivision developer and the lot buyer or those aimed at compelling the subdivision developer to comply with its contractual and statutory obligations to make the subdivision a better place to live in.[19]

We agree with the ruling of the RTC that it has jurisdiction over the case based on the allegations of the complaint. Nothing in the complaint or in the contract to sell suggests that petitioner is the proper party to invoke the jurisdiction of the HLURB. There is nothing in the allegations in the complaint or in the terms and conditions of the contract to sell that would suggest that the nature of the controversy calls for the application of either P.D. No. 957 or P.D. No. 1344 insofar as the extent of the powers and duties of the HLURB is concerned.

Note particularly paragraphs (b) and (c) of Sec. 1, P.D. No. 1344 as worded, where the HLURB's jurisdiction concerns cases commenced *by* subdivision lot or condominium unit buyers. As to paragraph (a), concerning "unsound real estate practices," the logical complainants would be the buyers and customers against the sellers (subdivision owners and developers or condominium builders and realtors), and not *vice versa*.[20]

The complaint does not allege that petitioner is a subdivision lot buyer. The contract to sell does not contain clauses which would indicate that petitioner has obligations in the capacity of a subdivision lot developer, owner or broker or salesman or a person engaged in real estate business. From the face of the complaint and the contract to sell, petitioner is an ordinary seller of an interest in the subject property who is seeking redress for the alleged violation of the terms of the contract to sell. Petitioner's complaint alleged that a contract to sell over a townhouse was entered into by and between petitioner and respondent Carrion and that the latter breached the contract when Carrion transferred the same to respondent Hugo without petitioner's consent.[21] Thus, petitioner sought the cancellation of the contract and the recovery of possession and ownership of the town house. Clearly, the complaint is well within the jurisdiction of the RTC.

In *Javellana v. Hon. Presiding Judge, RTC, Branch 30, Manila*, [22] the Court affirmed the jurisdiction of the RTC over the complaint for *accion publiciana* and sum of money on the ground that the complaint did not allege that the subject lot was part of a subdivision project but that the sale was an ordinary sale on an installment basis. Even the mere assertion that the defendant is a subdivision developer or that the subject lot is a subdivision lot does not automatically vest jurisdiction on the HLURB. On its face, the complaint must sufficiently describe the lot as a subdivision lot and sold by the defendant in his capacity as a subdivision developer to fall within the purview of P.D. No. 957 and P.D. No. 1344 and thus within the exclusive

jurisdiction of the HLURB.^[23]

In their comment, respondents cite *Antipolo Realty Corp. v. National Housing Authority*,^[24] to bolster the argument that the HLURB has jurisdiction over controversies involving the determination of the rights of the parties under a contract to sell a subdivision lot. *Antipolo Realty* is not squarely applicable to the instant controversy. The issue in said case called for the determination of whether the developer complied with its obligations to complete certain specified improvements in the subdivision within the specified period of time, a case that clearly falls under Section 1, paragraph (c) of P.D. No. 1344.

In the instances where the jurisdiction of the HLURB was upheld, the allegations in the complaint clearly showed that the case involved the determination of the rights and obligations of the parties in a sale of real estate under P.D. No. 957,^[25] or the complaint for specific performance sought to compel the subdivision developer to comply with its undertaking under the contract to sell,^[26] or the claim by the subdivision developer would have been properly pleaded as a counterclaim in the HLURB case filed by the buyer against the developer to avoid splitting causes of action.^[27]

The statement in *Suntay v. Gocolay*^[28] to the effect that P.D. No. 957 encompasses all questions regarding subdivisions and condominiums, which was cited by the Court of Appeals in the assailed decision, is a mere *obiter dictum*. As a matter of fact, the Court in *Suntay* nullified the orders issued by the HLURB over the action for the annulment of an auction sale, cancellation of notice of levy and damages on the ground of lack of jurisdiction. P.D. No. 957 and P.D. No. 1344 were not the applicable laws because the action was brought against a condominium buyer and not against the developer, seller, or broker contemplated under P.D. No. 1344. The action likewise involved the determination of ownership over the disputed condominium unit, which by its nature does not fall under the classes of disputes cognizable by the HLURB under Section 1 of P.D. No. 1344.

The Court of Appeals held that the provision in the contract to sell mandating membership of the buyer of the housing unit in a housing corporation was a strong indication that the property purchased by respondent Carrion from petitioner was part of a tract of land subdivided primarily for residential purposes. Thus, the appellate court concluded that the HLURB has jurisdiction over the controversy because the property subject thereof was part of a subdivision project.

Not every controversy involving a subdivision or condominium unit falls under the competence of the HLURB^[29] in the same way that the mere allegation of relationship between the parties, *i.e.*, that of being subdivision owner/developer and subdivision lot buyer, does not automatically vest jurisdiction in the HLURB. For an action to fall within the exclusive jurisdiction of the HLURB, the decisive element is the nature of the action as enumerated in Section 1 of P.D. No. 1344.^[30] Notably, in *Spouses Dela Cruz v. Court of Appeals*,^[31] the Court upheld the jurisdiction of the RTC over the complaint for cancellation of the contract to sell of a subdivision house and lot because the case did not fall under any of the cases mentioned in Section 1, P.D. No. 1344. In interpreting said provision, the Court explained, thus: