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FIRST DIVISION

[G.R. NO. 165973, June 29, 2005]

LACSON HERMANAS, INC. HEREIN REPRESENTED BY ITS PRESIDENT MR. ODILON L. LACSON, PETITIONER, VS. HEIRS OF CENON IGNACIO, HEREIN REPRESENTED BY THEIR ATTY-IN-FACT, AMALIA IGNACIO, REGIONAL TRIAL COURT, BRANCH 48, CITY OF SAN FERNANDO, PRESIDED BY THE HON. JUDGE SERAFIN B. DAVID, RESPONDENTS.

D E C I S I O N

YNARES-SANTIAGO, J.:

Assailed in this petition for certiorari under Rule 65 of the Revised Rules of Civil Procedure are the September 9, 2004[1] and October 15 2004[2] Orders of the Regional Trial Court of San Fernando City, Branch 48,[3] which denied petitioner's motion to dismiss and motion for reconsideration, respectively.

The undisputed facts show that on April 29, 2004, private respondents filed a complaint[4] for recovery of real property against petitioner Lacson Hermanas, Inc. They alleged that their predecessor-in-interest, Cenon Ignacio (Cenon), purchased from petitioner a 1,000 square meter portion of a parcel of land covered by Transfer Certificate of Title (TCT) No. 261974-R for P50,000.00 which was fully paid on September 24, 1989. Cenon thereafter took possession of the subject area and fenced the boundaries thereof for the construction of Seventh Day Adventist Chapel. On January 11, 1996, however, Cenon died.

Sometime in 2002, private respondents demanded the delivery of the lot's title and the segregation of the portion sold to Cenon but was informed by petitioner that the same lot has been sold to Rowena T. Coleman. Hence, the instant case to compel petitioner to execute the necessary deed of sale and to deliver the owner's duplicate copy of title.

Petitioner filed a motion to dismiss[5] contending, among others, that the case is cognizable by the Housing and Land Use Regulatory Board (HLURB) and not the trial court because it is sued as a subdivision developer and the property involved is a subdivision lot.

The trial court denied the motion to dismiss holding that it has jurisdiction over the subject matter. It added that petitioner's allegation that the lot involved is a subdivision lot is not a ground to deprive the court of its jurisdiction.[6] Petitioner's motion for reconsideration was denied.[7]

Hence, the instant petition.

The petition lacks merit.

At the outset, the instant petition for *certiorari* should have been filed with the Court of Appeals and not with this Court pursuant to the doctrine of hierarchy of courts. Disregard of this rule warrants the outright dismissal of the petition. While the Court's original jurisdiction to issue a writ of *certiorari* is concurrent with the Regional Trial Courts and the Court of Appeals in certain cases, we emphasized in *Liga ng mga Barangay National v. Atienza, Jr.,*[8] that such concurrence does not allow an unrestricted freedom of choice of court forum, thus –

> This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefore will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and also serves as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard of that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. It is a policy necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket.[9]

In the present case, petitioner adduced no special and important reason why direct recourse to this Court should be allowed. Thus, we reaffirm the judicial policy that this Court will not entertain a direct invocation of its jurisdiction unless the redress desired cannot be obtained in the appropriate courts, and exceptional and compelling circumstances justify the resort to the extraordinary remedy of writ of *certiorari*.

Although the invocation of this Court's jurisdiction is available to petitioner on the ground that this case raises a pure question of law, specifically, the issue of jurisdiction,[10] the proper recourse is not a petition for certiorari under Rule 65 but an appeal via a petition for review on certiorari in accordance with Rule 45 of the Revised Rules of Civil Procedure,[11] which should have been filed within 15 days from notice of the denial of its motion for reconsideration[12] on October 22, 2004. Even if we treat the instant petition as an appeal under Rule 45, the same will not prosper having been filed only on November 30, 2004, way beyond the 15 day reglementary period.

Then too, even if we gloss over these procedural infirmities, the instant petition must fail for lack of merit.

Section 1 of PD 1344[13] vests the National Housing Authority (now HLURB) with exclusive jurisdiction to hear and decide the following cases: (a) unsound real estate business practice; (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, broker or salesman.**

It is a settled rule that jurisdiction over the subject matter is determined by the allegations in the complaint and is not affected by the pleas or the theories set up by the defendant in an answer or a motion to dismiss. Otherwise, jurisdiction would become dependent upon the whims of the defendant.

Here, the allegations in private respondents' complaint clearly vest jurisdiction in the trial court. Nothing therein shows that the questioned property is a subdivision lot and sold by petitioner as a subdivision developer. It simply referred to petitioner as a corporation and the seller of a lot described as "portion of a parcel of land, particularly a 1,000 sq. m. area thereof … covered by Transfer Certificate of Title No. 261974-R …"[14]

Mere assertion by petitioner that it is a subdivision developer and the land involved is a subdivision lot, will not automatically strip the trial court of its jurisdiction and authorize the HLURB to take cognizance of the complaint. Indeed, it does not always follow that each sale made by petitioner is undertaken in its capacity as a subdivision developer, in the same manner that sales made in such capacity are not at all times intended for subdivision development.

In *Javellana v. Presiding Judge, RTC, Branch 30, Manila,*[15] the Court sustained the denial of a motion to dismiss, holding that jurisdiction lies with the regular courts and not with the HLURB because the averments in the complaint reveal that the transaction involved an installment sale of a lot and not a sale of a subdivision lot. It further held that even the allegation – *a subdivision lot in a subdivision project*, is not sufficient to vest jurisdiction with the HLURB, thus –

> A reading of the complaint does not show that the subject lot was a subdivision lot which would fall under the jurisdiction of the HLURB. The complaint clearly described the subject lot as Lot No. 44, Plan 15 with an area of 139.4 sq. meters situated in the District of Sampaloc covered by Transfer Certificate of Title No. 131305 of the Registry of Deeds of Manila. We note that such description was used when referring to the subject lot. What appears from the complaint was the fact that the subject lot was sold to petitioners in an ordinary sale of a lot on installment basis; that petitioners allegedly defaulted in the payment of their monthly installments for which reason respondent seeks to recover possession thereof. Thus, the trial court has jurisdiction over the case.
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> [T]he use of the phrase "regular subdivision project" does not automatically make the instant case fall under the jurisdiction of the HLURB. In Sps. Kakilala vs. Faraon, notwithstanding the allegations of petitioners in their complaint that the subject lot is "a subdivision lot" in a "subdivision project," we held that such allegations were not sufficient to vest the HLURB of jurisdiction over the case, thus: