465 Phil. 276

FIRST DIVISION

[G.R. No. 147964, January 20, 2004]

FAR EAST BANK & TRUST CO., PETITIONER, VS. ARTURO L. MARQUEZ, RESPONDENT.

DECISION

PANGANIBAN, J.:

Under PD 957, the mortgage of a subdivision lot or a condominium unit is void, if executed by a property developer without the prior written approval of the Housing and Land Use Regulatory Board (HLURB). That an encumbrance has been constituted over an entire property, of which the subject lot or unit is merely a part, does not affect the invalidity of the lien over the specific portion at issue.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, assailing the April 27, 2001 Decision[2] of the Court of Appeals (CA) in CA-GR SP No. 56813. The decretal portion of the Decision reads as follows:

> "WHEREFORE, the petition for review is DENIED, for lack of merit."[3]

The Facts

The undisputed facts of the case are summarized in the CA Decision as follows:

> "1. On 13 March 1989, respondent [Arturo] Marquez entered into a Contract to Sell with Transamerican Sales and Exposition ('TSE'), through the latter's Owner/General Manager Engr. Jesus Garcia, involving a 52.5 sq. m. lot in Diliman, Quezon City with a three-storey townhouse unit denominated as Unit No. 10 to be constructed thereon for a total consideration of P800,000.00. The parcel of land in question is a portion of that property covered by TCT No. 156254 (now TCT No. 383697).
>
> "2. On 22 May 1989, TSE obtained a loan from petitioner FEBTC in the amount of P7,650,000.00 and mortgaged the property covered by TCT No. 156254.
>
> "3. For failure of TSE to pay its obligation, petitioner FEBTC extrajudicially foreclosed the real estate mortgage and became the highest bidder (P15.7 million) in the auction sale conducted for the purpose.
>
> "4. Respondent had already paid a total of P600,000.00 when he stopped payment because the construction of his townhouse unit slackened. He discovered later on that this was due to the foreclosure.

"5. Consequently, [respondent] instituted a case with the Office of Appeals, Adjudication and Legal Affairs ('OAALA') of the Housing and Land Use Regulatory Board ('HLURB') on 29 January 1991 entitled 'Arturo Marquez vs. Transamerican Sales, et al' docketed as HLRB Case No. REM-012991-4712 to compel TSE to complete the construction of the townhouse and to prevent the enforceability of the extra-judicial foreclosure made by petitioner FEBTC and to have the mortgage between TSE and petitioner FEBTC declared invalid, said mortgage having been entered into by the parties in violation of section 18 of P.D. 957.

"6. The OAALA ruled in favor of the respondent via a Decision dated 11 November 1991, the decretal portion of which reads as follows:

> 'WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> 1. Declaring the mortgage executed by and between x x x Engr. Jesus Garcia/Transamerican Sales and Exposition and Far East Bank and Trust Company to be unenforceable against [respondent];
>
> 2. Ordering the x x x Far East Bank and Trust Company to compute and/or determine the loan value of the [respondent] who was not able to complete or make full payment and accept payment and/or receive the amortization from the [respondent] and upon full payment to deliver the title corresponding to Unit No. 10 of that Townhouse Project located at No. 10 Panay Ave., Quezon City;
>
> 3. Ordering the Register of Deeds of Quezon City to cancel the annotations of the mortgage indebtedness between x x x Engr. Jesus Garcia and Far East Bank and Trust Company;
>
> 4. Ordering, likewise, the Register of Deeds of Quezon City to cancel the annotation of the Certificate of Sale in favor of the Far East Bank and Trust Company on Transfer Certificate of Title No. 156254 to which the lot subject of this case is a part thereof, without prejudice to its right to require x x x Engr. Jesus Garcia/Transamerican Sales and Exposition to constitute new collateral in lieu of said title sufficient in value to cover the mortgage obligation.'
>
> xxx xxx xxx'

"7. Petitioner FEBTC interposed a Petition for Review from the decision issued by the OAALA with the Board of Commissioners of the HLURB,

docketed as HLRB Case No. REM-A-1126, which in a Decision dated 18 July 1994 affirmed in toto the OAALA decision.

"8. Hence, petitioner FEBTC appealed the Decision dated 18 July 1994 to the Office of the President xxx.

xxx xxx xxx'

"9. The Office of the President dismissed the appeal and affirmed the Decision dated 18 July 1994 x x x."[4] (Citations omitted)

Petitioner then elevated the case to the CA through a Petition for review under Rule 43.

Ruling of the Court of Appeals

The CA found that petitioner had known that a "subdivision was forthcoming inasmuch as the loan was obtained by TSE to partially finance the construction of a 20-unit townhouse project, as stated in the 'Whereas' clause in the mortgage contract."[5] Thus, the CA ruled that "petitioner should not have merely relied on the representation of TSE that it had obtained the approval and authorization of the proper government agencies but should have required the submission of said documents."[6]

Further, the appellate court found that the Certification against forum shopping attached to the Petition before it had not been made under oath, in violation of the Rules of Court.

Hence, this Petition.[7]

The Issues

Petitioner raises the following issues for our consideration:

"Whether or not the mortgage contract violated Section 18 of P.D. 957, hence, void insofar as third persons are concerned.

"Assuming *arguendo* that the mortgage contract violated Section 18 of P.D. 957, whether or not the remedy granted and imposed by the HLURB, as sustained by the Office of the President and the Court of Appeals, is proper.

"Whether or not the inadvertent failure of the notary public to affix his signature on the Certification against forum shopping executed by petitioner FEBTC in connection with the Petition for Review it filed with the Court of Appeals provided a sufficient basis for the dismissal of the appeal."[8]

The Court's Ruling

The Petition is partly meritorious.

First Issue:
Violation of Section 18 of PD 957

Section 18 of PD 957[9] provides as follows:

> "SEC. 18. *Mortgages*.-No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority. Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereof."

Petitioner contends that the above-quoted provision does not apply to this case, because the land mortgaged to it was one whole parcel, not of a "subdivision lot," but of an unsubdivided one. It insists that the written approval of the National Housing Authority (now the Housing and Land Use Regulatory Board) was not a requirement for the constitution of a mortgage on the property.

We are not persuaded. It is undisputed that the subject 52.5-square-meter lot with a three-storey town house unit denominated as Unit No. 10 (the "lot") is part of the property mortgaged to petitioner and is covered by TCT No. 156254. The lot was technically described and segregated in a Contact to Sell that had been entered into before the mortgage loan was contracted. The fact that the lot had no separate TCT did not make it less of a "subdivision lot" entitled to the protection of PD 957.

That the subject of the mortgage loan was the entire land, not the individual subdivided lots, does not take the loan beyond the coverage of Section 18 of PD 957. Undeniably, the lot was also mortgaged when the entire parcel of land, of which it was a part, was encumbered.

Petitioner also contends that Section 18 of PD 957 is merely a directory provision, noncompliance with which does not render the mortgage transaction void.

In determining whether a law is mandatory, it is necessary to ascertain the legislative intent, as stated by Sen. Arturo M. Tolentino, an authority on civil law:

> "There is no well-defined rule by which a mandatory or prohibitory law may, in all circumstances, be distinguished from one which is directory, suppletory, or permissive. In the determination of this question, the prime object is to ascertain the legislative intention. Generally speaking, those provisions which are mere matter of form, or which are not material, do not affect any substantial right, and do not relate to the essence of the thing to be done, so that compliance is a matter of convenience rather that substance, are considered to be directory. On the