

SECOND DIVISION

[G.R. No. 134284, December 01, 2000]

AYALA CORPORATION, PETITIONER, VS. ROSA-DIANA REALTY AND DEVELOPMENT CORPORATION, RESPONDENT.

D E C I S I O N

DE LEON, JR., J.:

Before us is a petition for review on *certiorari* seeking the reversal of a decision rendered by the Court of Appeals in C.A. G.R. C.V. No. 4598 entitled, "Ayala Corporation vs. Rosa-Diana Realty and Development Corporation," dismissing Ayala Corporation's petition for lack of merit.

The facts of the case are not in dispute:

Petitioner Ayala Corporation (hereinafter referred to as Ayala) was the registered owner of a parcel of land located in Alfaro Street, Salcedo Village, Makati City with an area of 840 square meters, more or less and covered by Transfer Certificate of Title (TCT) No. 233435 of the Register of Deeds of Rizal.

On April 20, 1976, Ayala sold the lot to Manuel Sy married to Vilma Po and Sy Ka Kieng married to Rosa Chan. The Deed of Sale executed between Ayala and the buyers contained Special Conditions of Sale and Deed Restrictions. Among the Special Conditions of Sale were:

a) the vendees shall build on the lot and submit the building plans to the vendor before September 30, 1976 for the latter's approval

b) the construction of the building shall start on or before March 30, 1977 and completed before 1979. Before such completion, neither the deed of sale shall be registered nor the title released even if the purchase price shall have been fully paid

c) there shall be no resale of the property

The Deed Restrictions, on the other hand, contained the stipulation that the gross floor area of the building to be constructed shall not be more than five (5) times the lot area and the total height shall not exceed forty two (42) meters. The restrictions were to expire in the year 2025.

Manuel Sy and Sy Ka Kieng failed to construct the building in violation of the Special Conditions of Sale. Notwithstanding the violation, Manuel Sy and Sy Ka Kieng, in April 1989, were able to sell the lot to respondent Rosa-Diana Realty and Development Corporation (hereinafter referred to as Rosa-Diana) with Ayala's

approval. As a consideration for Ayala to release the Certificate of Title of the subject property, Rosa-Diana, on July 27, 1989 executed an Undertaking promising to abide by said special conditions of sale executed between Ayala and the original vendees. Upon the submission of the Undertaking, together with the building plans for a condominium project, known as "The Peak", Ayala released title to the lot, thereby enabling Rosa-Diana to register the deed of sale in its favor and obtain Certificate of Title No. 165720 in its name. The title carried as encumbrances the special conditions of sale and the deed restrictions. Rosa-Diana's building plans as approved by Ayala were "subject to strict compliance of cautionary notices appearing on the building plans and to the restrictions encumbering the Lot regarding the use and occupancy of the same."

Thereafter, Rosa-Diana submitted to the building official of Makati another set of building plans for "The Peak" which were substantially different from those that it earlier submitted to Ayala for approval. While the building plans which Rosa-Diana submitted to Ayala for approval envisioned a 24-meter high, seven (7) storey condominium project with a gross floor area of 3,968.56 square meters, the building plans which Rosa-Diana submitted to the building official of Makati, contemplated a 91.65 meter high, 38 storey condominium building with a gross floor area of 23,305.09 square meters.^[1] Needless to say, while the first set of building plans complied with the deed restrictions, the latter set exceeded the same.

During the construction of Rosa-Diana's condominium project, Ayala filed an action with the Regional Trial Court (RTC) of Makati, Branch 139 for specific performance, with application for a writ of preliminary injunction/temporary restraining order against Rosa-Diana Realty seeking to compel the latter to comply with the contractual obligations under the deed of restrictions annotated on its title as well as with the building plans it submitted to the latter. In the alternative, Ayala prayed for rescission of the sale of the subject lot to Rosa- Diana Realty.

The lower court denied Ayala's prayer for injunctive relief, thus enabling Rosa-Diana to complete the construction of the building. Undeterred, Ayala tried to cause the annotation of a notice of *lis pendens* on Rosa-Diana's title. The Register of Deeds of Makati, however, refused registration of the notice of *lis pendens* on the ground that the case pending before the trial court, being an action for specific performance and/or rescission, is an action *in personam* which does not involve the title, use or possession of the property.^[2] The Land Registration Authority (LRA) reversed the ruling of the Register of Deeds saying that an action for specific performance or rescission may be classified as a proceeding of any kind in court directly affecting title to the land or the use or occupation thereof for which a notice of *lis pendens* may be held proper.^[3] The decision of the LRA, however, was overturned by the Court of Appeals in C.A. G.R. S.P. No. 29157. In G.R. No. 112774, We affirmed the ruling of the CA on February 16, 1994 saying

We agree with respondent court that the notice of lis pendens is not proper in this instance. The case before the trial court is a personal action since the cause of action thereof arises primarily from the alleged violation of the Deed of Restrictions.

In the meantime, Ayala completed its presentation of evidence before the trial

court. Rosa-Diana filed a Demurrer to Evidence averring that Ayala failed to establish its right to the relief sought inasmuch as (a) Ayala admittedly does not enforce the deed restrictions uniformly and strictly (b) Ayala has lost its right/power to enforce the restrictions due to its own acts and omissions; and (c) the deed restrictions are no longer valid and effective against lot buyers in Ayala's controlled subdivision.

The trial court sustained Rosa-Diana's Demurrer to Evidence saying that Ayala was guilty of abandonment and/or estoppel due to its failure to enforce the terms of deed of restrictions and special conditions of sale against Manuel Sy and Sy Ka Kieng. The trial court noted that notwithstanding the violation of the special conditions of sale, Manuel Sy and Sy Ka Kieng were able to transfer the title to Rosa-Diana with the approval of Ayala. The trial court added that Ayala's failure to enforce the restrictions with respect to Trafalgar, Shellhouse, Eurovilla, LPL Plaza, Parc Regent, LPL Mansion and Leronville which are located within Salcedo Village, shows that Ayala discriminated against those which it wants to have the obligation enforced. The trial court then concluded that for Ayala to discriminately choose which obligor would be made to follow certain conditions and which should not, did not seem fair and legal.

The Court of Appeals affirmed the ruling of the trial court saying that the "appeal is sealed by the doctrine of the law of the case in C.A. G.R. S.P. No. 29157" where it was stated that

x x x Ayala is barred from enforcing the Deed of Restrictions in question pursuant to the doctrine of waiver and estoppel. Under the terms of the deed of sale, the vendee Sy Ka Kieng assumed faithful compliance with the special conditions of sale and with the Salcedo Village Deed of Restrictions. One of the conditions was that a building would be constructed within one year. However, Sy Ka Kieng failed to construct the building as required under the Deed of Sale. Ayala did nothing to enforce the terms of the contract. In fact, it even agreed to the sale of the lot by Sy Ka Kieng in favor of petitioner Realty in 1989 or thirteen (13) years later. We, therefore, see no justifiable reason for Ayala to attempt to enforce the terms of the conditions of sale against the petitioner.

x x x

The Court of Appeals also cited C.A. G.R. C.V. No. 46488 entitled, "Ayala Corporation vs. Ray Burton Development Corporation" which relied on C.A. G.R. S.P. No. 29157 in ruling that Ayala is barred from enforcing the deed restrictions in dispute. Upon a motion for reconsideration filed by herein petitioner, the Court of Appeals clarified that "the citation of the decision in Ayala Corporation vs. Ray Burton Development Corporation, C.A. G.R. C.V. No. 46488, February 27, 1996, was made not because said decision is *res judicata* to the case at bar but rather because it is precedential under the doctrine of *stare decisis*."

Upon denial of said motion for reconsideration, Ayala filed the present appeal.

Ayala contends that the pronouncement of the Court of Appeals in C.A. G.R. S.P. No. 29157 that it is estopped from enforcing the deed restrictions is merely *obiter dicta* inasmuch as the only issue raised in the aforesaid case was the propriety of a *lis pendens* annotation on Rosa-Diana's certificate of title.

Ayala avers that Rosa-Diana presented no evidence whatsoever on Ayala's supposed waiver or estoppel in C.A. G.R. S.P. No. 29157. Ayala likewise pointed out that at the time C.A. G.R. S.P. No. 29157 was on appeal, the issues of the validity and continued viability of the deed of restrictions and their enforceability by Ayala were joined and then being tried before the trial court.

Petitioner's assignment of errors in the present appeal may essentially be summarized as follows:

- I. The Court of Appeals acted in a manner not in accord with law and the applicable decisions of the Supreme Court in holding that the doctrine of the law of the case, or *stare decisis*, operated to dismiss Ayala's appeal.
- II. The Court of Appeals erred as a matter of law and departed from the accepted and usual course of judicial proceedings when it failed to expressly pass upon the specific errors assigned in Ayala's appeal.

A discussion on the distinctions between *law of the case*, *stare decisis* and *obiter dicta* is in order.

The doctrine of the *law of the case* has certain affinities with, but is clearly distinguishable from, the doctrines of *res judicata* and *stare decisis*, principally on the ground that the rule of the *law of the case* operates only in the particular case and only as a rule of policy and not as one of law.^[4] At variance with the doctrine of *stare decisis*, the ruling adhered to in the particular case under the doctrine of the *law of the case* need not be followed as a precedent in subsequent litigation between other parties, neither by the appellate court which made the decision followed on a subsequent appeal in the same case, nor by any other court. The ruling covered by the doctrine of the *law of the case* is adhered to in the single case where it arises, but is not carried into other cases as a precedent.^[5] On the other hand, under the doctrine of *stare decisis*, once a point of law has been established by the court, that point of law will, generally, be followed by the same court and by all courts of lower rank in subsequent cases where the same legal issue is raised.^[6] *Stare decisis* proceeds from the first principle of justice that, absent powerful countervailing considerations, like cases ought to be decided alike.^[7]

The Court of Appeals, in ruling against petitioner Ayala Corporation stated that the appeal is "sealed" by the doctrine of the *law of the case*, referring to G.R. No. 112774 entitled "Ayala Corporation, *petitioner* vs. Court of Appeals, et al., *respondents*". The Court of Appeals likewise made reference to C.A. G.R. C.V. No. 46488 entitled, "Ayala Corporation vs. Ray Burton Development Corporation, Inc." in ruling against petitioner saying that it is jurisprudential under the doctrine of *stare decisis*.

It must be pointed out that the only issue that was raised before the Court of Appeals in C.A. G.R. S.P. No. 29157 was whether or not the annotation of *lis pendens* is proper. The Court of Appeals, in its decision, in fact stated "the principal issue to be resolved is: whether or not an action for specific performance, or in the alternative, rescission of deed of sale to enforce the deed of restrictions governing the use of property, is a real or personal action, or one that affects title thereto and its use or occupation thereof."^[8]

In the aforesaid decision, the Court of Appeals even justified the cancellation of the notice of *lis pendens* on the ground that Ayala had ample protection *should it succeed in proving its allegations regarding the violation of the deed of restrictions*, without unduly curtailing the right of the petitioner to fully enjoy its property in the meantime that there is as yet no decision by the trial court.^[9]

From the foregoing, it is clear that the Court of Appeals was aware that the issue as to whether petitioner is estopped from enforcing the deed of restrictions has yet to be resolved by the trial court. Though it did make a pronouncement that the petitioner is estopped from enforcing the deed of restrictions, it also mentioned at the same time that this particular issue has yet to be resolved by the trial court. Notably, upon appeal to this Court, We have affirmed the ruling of the Court of Appeals only as regards the particular issue of the propriety of the cancellation of the notice of *lis pendens*.

We see no reason then, how the law of the case or *stare decisis* can be held to be applicable in the case at bench. If at all, the pronouncement made by the Court of Appeals that petitioner Ayala is barred from enforcing the deed of restrictions can only be considered as *obiter dicta*. As earlier mentioned, the only issue before the Court of Appeals at the time was the propriety of the annotation of the *lis pendens*. The additional pronouncement of the Court of Appeals that Ayala is estopped from enforcing the deed of restrictions even as it recognized that this said issue is being tried before the trial court was not necessary to dispose of the issue as to the propriety of the annotation of the *lis pendens*. A *dictum* is an opinion of a judge which does not embody the resolution or determination of the court, and made without argument, or full consideration of the point, not the proffered deliberate opinion of the judge himself.^[10] It is not necessarily limited to issues essential to the decision but may also include expressions of opinion which are not necessary to support the decision reached by the court. Mere *dicta* are not binding under the doctrine of *stare decisis*.^[11]

While the Court of Appeals did not err in ruling that the present petition is not barred by C.A. G.R. C.V. No. 46488 entitled "Ayala Corporation vs. Ray Burton Development Inc." under the doctrine of *res judicata*, neither, however, can the latter case be cited as precedential under the doctrine of *stare decisis*. It must be pointed out that at the time the assailed decision was rendered, C.A. G.R. C.V. No. 46488 was on appeal with this Court. Significantly, in the decision We have rendered in Ayala Corporation vs. Ray Burton Development Corporation^[12] which became final and executory on July 5, 1999 we have clearly stated that "An examination of the decision in the said Rosa-Diana case reveals that the sole issue raised before the appellate court was the propriety of the *lis pendens* annotation. However, the appellate court went beyond the sole issue and made factual findings