

FIRST DIVISION

[G.R. No. 119043, April 14, 1997]

**JRB REALTY, INC., PETITIONER, VS. COURT OF APPEALS,
SECURITIES AND EXCHANGE COMMISSION, MAKATI
COMMERCIAL ESTATE ASSOCIATION, INC. AND AYALA LAND,
INC., RESPONDENTS.**

D E C I S I O N

BELLOSILLO, J.:

MAKATI COMMERCIAL ESTATE ASSOCIATION, INC. (MACEA), respondent herein, is an association of owners, lessees and occupants of various lots situated within the so-called Makati Central Business District (MCBD). JRB REALTY, INC., petitioner herein, as owner of two (2) lots in MCBD, is a member of the MACEA. AYALA LAND, INC. (ALI), in its capacity as successor-in-interest of Ayala Corporation in the ownership and development of said lots, is also a member of MACEA.

For every Deed of Sale concerning the lots within MCBD a *Deed Restrictions* was attached as an essential part of the consideration. The restrictions were then annotated on the corresponding Certificates of Title as voluntary liens and encumbrances. One of the restrictions refers to the construction of the buildings and the architectural designs thereon -

x x x x

2. The building proper must have a total gross floor area of not more than five (5) times the lot area x x x x x

3. The building x x x must have a total height of not more than forty-two (42) meters x x x x

As of the end of 1988 the owners of 80.57% of the lots including petitioner had already erected buildings thereon in compliance with the height and floor area ratio (FAR) restrictions.

Sometime in 1989, within the term of the effectivity of the *Deed Restrictions*, respondent ALI submitted to respondent MACEA through its Board of Governors a proposal for the revision of the restrictions relating to the construction and use of structures to be built on the MCBD lots. The proposal sought the abolition of direct height restrictions to be replaced with FAR, in effect allowing lot owners to increase the total floor areas of their present buildings or to construct buildings with floor areas greater than those stated in the existing *Deed Restrictions*.

On 15 May 1989 respondent MACEA distributed to its members Memorandum Circular No. 89-05 requesting written comments, suggestions and other actions on

the proposed revisions.

Petitioner submitted its written opposition dated 26 May 1989 based on the grounds that the proposal would have an unfair effect on the members who have already built structures on their lots in compliance with the *Deed Restrictions* and that no less than the consent of all the parties to the Deeds of Sale was needed in order to carry the revisions into effect.

The Board of Governors of respondent MACEA then decided to endorse the matter to its members for their direct approval. On 22 March 1990 it sent out notices of an annual meeting set for 5 April 1990 with the proposal to abolish the direct height restrictions as one of the items in the agenda. However said meeting was reset to 14 June 1990.

On 7 June 1990 petitioner filed before respondent Securities and Exchange Commission (SEC) a petition to enjoin respondent MACEA from submitting the proposal in question for consideration and/or approval of its members. On 8 June 1990 the Hearing Officer of respondent SEC issued a temporary restraining order against MACEA. For no apparent reason however the scheduled meeting was cancelled. Subsequently respondent ALI intervened in the proceeding before the Hearing Officer. On 23 June 1990 the application for a preliminary injunction was denied. Consequently the meeting was held on 11-12 July 1990. Out of 476 members, 403 voted in favor of the proposal.

On 14 August 1990 petitioner filed a supplemental petition seeking nullification of the approval of the Revised Deed Restrictions on the basis of, among other things, being an ultra vires act of respondent MACEA and rampant irregularities which attended the meeting. On 17 August 1990 respondent MACEA issued Memorandum Circular No. 90-04 regarding Initial Guidelines for the annotation of the Revised Deed Restrictions on the titles of the lots of members who voted for its adoption and of those who subsequently accepted it.

In the Order dated 28 February 1991 issued in connection with the Preliminary Conference, the Hearing Officer defined the genuine issue as whether respondent MACEA was empowered or could legally and validly change/amend and/or revise the Deed Restrictions.

On 28 February 1994 the Hearing Officer dismissed the petition as well as the supplemental petition.^[1] He expressed the opinion that respondent MACEA's action of adopting the Deed Restrictions could not successfully be attacked as an ultra vires act because -

x x x (it) is expressly vested by its Articles with the general power of promoting the "*general welfare, property, service and reputation*" of the Makati Central Business District, as well as the "*best interest and well-being*" of its members x x x x Insofar as a revision of the original *Deed Restrictions* has the effect of promoting the "*general welfare, property, service and reputation*" of the area under MACEA's jurisdiction, as well as of furthering the "welfare . . . best interest and well being" of the lot owners, lessees and occupants in the same area, the same is validly exercised by the Association as an implied power necessary to carry out its aforestated express, general purposes x x x x It is significant to note