

TWENTY-SECOND DIVISION

[CA-G.R. CV NO. 02388-MIN, March 06, 2014]

KALAMBOAN HOUSING PROJECT HOMEOWNERS ASSOCIATION, INC., REPRESENTED BY ITS PRESIDENT BALTAZAR BUSTILLO , PLAINTIFF-APPELLEE, VS. ISABELO AYADE, SANCHA A. DONGUILA AND RACHEL ISABEL F. FUENTES, DEFENDANTS-APPELLANTS.

D E C I S I O N

CAMELLO, J.:

This appeal impugns the Decision dated 14 September 2009^[1] of Branch 31 of the Regional Trial Court of Tagum City^[2] in Civil Case No. 3825 for annulment of the deed of absolute sale and declaration of nullity of TCT. No. T-182882 and damages.

The records yield these facts:

When Christ the King Hospital was still in operation in the late 1970s, its employees union, Christ the King Employees Union – FFW (CKHEU-FFW), acquired a 70,000 square meter parcel of land for its housing project called the Kalamboan Housing Project at La Filipina, Tagum, Davao.^[3] The seven-hectare lot was subdivided into residential lots with uniform areas of 425 square meters each, a road network and some open spaces centrally located in the housing project.^[4] A portion of the subdivided lot with an area of 5,445 square meters was segregated and separately titled in the name of the CKHEU-FFW under Transfer Certificate of Title No. T-35685.^[5] This portion of the lot is denominated as Lot 1-B-3-C.

From 1992 to 2005, structures were built within Lot 1-B-3-C by the Kalamboan Housing Project Homeowners Association, Inc. including a chapel, a purok stage, a purok center, a basketball court, a volleyball court, and a day-care center.^[6]

On 08 December 2008, defendant Isabelo Ayade, Jr., as president of the CKHEU-FFW, sold the entire Lot 1-B-3-C to defendants Sancha Donguila and Rachel Isabel Fuentes.^[7] Consequently, TCT No. T-182882^[8] was issued on 07 March 2003 in the name of these vendees.

On 08 November 2008, plaintiff Homeowners Association filed a Complaint against defendants Ayade, Donguila and Fuentes for annulment of the deed of absolute sale and declaration of nullity of *TCT No. T-182882* plus damages. Plaintiff claimed that Lot 1-B-3-C is an “open space” which is defined under Section 1 of *Presidential Decree No. 1216* as “an area reserved exclusively for parks, playgrounds, recreational uses, schools, roads, places of worship, hospitals, health centers, barangay centers, and other similar facilities and amenities.” Plaintiff argued that being an open space, Lot 1-B-3-C is beyond the commerce of man.

Plaintiff further claimed that on 24 February 1994, the CKHEU-FFW, represented by defendant Isabelo Ayade, Jr., donated a portion of Lot 1-B-3-C of TCT No. T-35685 to the plaintiff, represented by Purok Chairman Baltazar Bustillo. The Deed of Donation^[9] executed on 24 February 1992 which was confirmed by the Sangguniang Barangay of Magugpo, Tagum, Davao through Resolution 394-S-93 dated 12 April 1993.^[10]

Plaintiff alleged that defendant Ayade attempted to dispose of Lot 1-B-3-C, but he was ordered by the Regional Officer of the Housing and Land Use Regulatory Board (HLURB) to cease and desist from selling the lot within the open space until and unless expressly permitted by the HLURB or with the conformity of the duly organized homeowners association, or in the absence of such organization, by majority of the lot buyers.^[11]

In their Answer,^[12] defendants claimed that CKHEU-FFW is not an owner or developer of a subdivision project so as to put it under the coverage of *P.D. No. 957* and *P.D. No. 1216*. They alleged that the members of plaintiff were former members of CKHEU-FFW who acquired their respective residential lots from the registered owners. They alleged that CKHEU-FFW did not develop the area occupied by the plaintiff, and that the apparent creation of a subdivision was not at the instance of CKHEU-FFW, but through the collective effort of the members of plaintiff. They insisted that Lot 1-B-3-C was never intended to be an open space of any subdivision project and the requirement of an open space does not apply in this case.^[13]

Defendants admitted, though, that on 24 February 1992, defendant Ayade, in his capacity as President of CKHEU-FFW executed a Deed of Donation in favor of the purok residents of Purok Kalamboan represented by Baltazar Bustillo donating 1,794 sq. m. portion of Lot 1-B-3-C.^[14] They were quick to add that the deed of donation was with the condition that the donees will take charge of the processing of the certificate of title both to the area donated and the remaining area for the donors. Defendants claimed that the donees failed to comply with the condition, but still after another negotiation, the remaining members of the CKHEU-FFW agreed to give the 3,196 sq. m. portion of Lot 1-B-3-C to the members of the plaintiff, but the latter did not accept the offer as they wanted to take the entire area of Lot 1-B-3-C.^[15]

Defendants further claimed that CKHEU-FFW, being the registered owner of Lot 1-B-3-C, has the absolute right to convey and dispose of the lot for its own convenience.^[16] Thus, they asked the court *a quo* to dismiss the case.

After trial, the court *a quo* rendered a Decision^[17] and decreed:

WHEREFORE, in view of the foregoing, judgment is hereby rendered:

1. Declaring the Deed of sale of the land, covered by TCT No. T-182882 in the name of CKHEU-FFW, dated December 8, 2002, executed by defendant Isabelo S. Ayade in favor of Sancha A. Donguila and Rachel Isabel Fuentes, over Lot 1-B-3-C Psd-11-010003 as NULL and VOID for being a simulated sale and an unauthorized one;
2. Declaring Transfer certificate of Title No. T-182882 registered in the name of Sancha A. Donguila and Rachel Isabel Fuentes as NULL and VOID. The Register

of Deeds is directed to cancel Transfer Certificate of Title No. T-182882 and to reinstate Transfer Certificate of Title No. T-35685 under the name of Christ the King Hospital Employees Union-FFW.

3. Directing the Register of Deeds to annotate in the reinstated Transfer Certificate of Title No. T-35685 the fact that Lot 1-B-3-C, covered by the title, is an open space and as such, it cannot be disposed of pursuant to Section 22 of PD 957 and Section 31 of PD 957 as amended by Section 2 of PD 1216.

No pronouncement as to costs.

SO ORDERED.^[18]

On 01 December 2009, defendants Ayade and Donguila filed a Motion for Partial Reconsideration,^[19] alleging that the reserve area for open space is only 3,196 square meters, more or less, according to the survey made by Engr. Leonardo Busque, and thus, the balance of 2,000 square meters, more or less, must remain with the defendants.^[20]

On 02 December 2009, defendant Fuentes filed a Motion for Reconsideration, claiming that the 14 October 2009 Decision is not in accordance with the facts, law, and jurisprudence on the matter. She insisted that she bought the lot in good faith relying on the legal authority of the persons who executed the sale and on the authenticity of the title which was presented to her.

On 17 February 2010, plaintiff filed its Comment/Opposition to the motion for reconsideration.^[21]

In an Order dated 14 October 2010,^[22] the court *a quo* denied the motions of all the defendants for lack of merit.

On 11 November 2010, defendants filed a Notice of Appeal,^[23] which the court *a quo* gave due course in an Order dated 15 November 2011.^[24]

Defendants-appellants now ascribed to the court *a quo* three (3) errors, to wit:

1. THE COURT A *QUO* ERRED IN DECLARING THE SUBJECT DEED OF SALE AS NULL AND VOID.
2. THE COURT A *QUO* ERRED IN DECLARING TRANSFER CERTIFICATE OF TITLE NO. T-182882 AS NULL AND VOID.
3. THE COURT A *QUO* ERRED IN DIRECTING THE REGISTER OF DEEDS TO ANNOTATE IN THE REINSTATED TRANSFER CERTIFICATE OF TITLE NO. T-35685 THE FACT THAT LOT 1-B-3-C, COVERED BY THE TITLE, IS AN OPEN SPACE AND AS SUCH, IT CANNOT BE DISPOSED OF PURSUANT TO SECTIONS 22 AND 31 OF PD 957 AS AMENDED BY SECTION 2 OF PD 1216.^[25]

The appeal must fail.

Article 1458 of the *Civil Code* provides:

By the contract of sale one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the

other to pay therefor a price certain in money or its equivalent.

A contract of sale may be absolute or conditional.

As defined, the essential elements of sale are: (a) Consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price; (b) Determinate subject matter; and, (c) Price certain in money or its equivalent.^[26]

In this case, the questioned Deed of Absolute Sale dated 08 December 2002 involving Lot 1-B-3-C covered by TCT No. T-35685 was executed by defendant-appellant Isabelo Ayade, as President and representative of CKHEU-FFW, in favor of defendant-appellant Sancha Donguila for the 4,645 sq. m. portion of the lot and defendant-appellant Rachel Isabel Fuentes for the 800 sq. m. portion of the lot.

Defendants-appellants claimed that defendant-appellant Isabelo Ayade was duly authorized to sell the subject lot to defendants-appellants Donguila and Fuentes by CKHEU-FFW through Board Resolution No. 7, Series of 1995.

A close reading of the purported Board Resolution, however, reveal that it does not explicitly or impliedly authorize defendant-appellant Ayade "to sell" the property covered by TCT No. T-35685. It only mentions an authority given to defendant-appellant Ayade "to facilitate the transfer of Transfer Certificate of Title No. T-35685 containing an area of Five Thousand Four Hundred Forty Five (5,445) square meters."^[27]

Articles 1874 and 1878 of the *Civil Code* provide:

Art. 1874. When a sale of a piece of land or any interest therein is through an agent, the authority of the latter shall be in writing; otherwise, the sale shall be void.

Art. 1878. Special powers of attorney are necessary in the following cases:

x x x

(5) To enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration;

x x x

The Supreme Court in *Dizon v. Court of Appeals*^[28] is instructive, to wit:

When the sale of a piece of land or any interest thereon is through an agent, *the authority of the latter shall be in writing; otherwise, the sale shall be void. Thus the authority of an agent to execute a contract for the sale of real estate **must be conferred in writing and must give him specific authority***, either to conduct the general business of the principal or to execute a binding contract containing terms and conditions which are in the contract he did execute. A special power of attorney is necessary to enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration. *The express mandate required by law to enable an appointee of an agency (couched) in general terms to sell must be one that expressly mentions a sale or that includes a sale as a necessary ingredient of the act mentioned.* For the principal to confer the right upon