

G.R. No. 182133 - UNITED OVERSEAS BANK OF THE PHILIPPINES, petitioner, v. JOS MANAGING BUILDERS INC., and EDUPLAN INC., respondents.

Promulgated:

June 23, 2015

x-----*Richard J. Brion*-----x

DISSENTING OPINION

BRION, J.:

While I see no basis to disagree with the *ponencia* on the inapplicability of exhaustion of administrative remedies in the present case, I dissent against its far-reaching conclusion to limit the nullity of the mortgage contract to the interest of the complaining buyer. Thus, on the whole, I express this Opinion as a dissenting one instead of a concurrence and a dissent.

Section 18 of P.D. 957¹ 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.

Section 18 of the decree directly addresses the problem of fraud committed against buyers when the lots they have contracted to purchase, and which they have religiously paid for, are mortgaged without their knowledge.

The avowed purpose of P.D. 957 compels the reading of Section 18 to be prohibitory so that **acts committed contrary to it are void.**² This construction ensures the attainment of the purpose of the law: to protect lot buyers so they do not end up homeless despite full payment of the home lots

¹ REGULATING THE SALE OF SUBDIVISION LOTS AND CONDOMINIUMS, PROVIDING PENALTIES FOR VIOLATIONS THEREOF.

² *Far East Bank & Trust Co. v. Marquez*, G.R. No. 147964, January 20, 2004, 420 SCRA 349.

they bought with their hard-earned cash.³ We fully recognized this intent when we held in *Philippine National Bank v. Office of the President* that:⁴

xxx [T]he unmistakable intent of the law [is] to protect innocent lot buyers from scheming subdivision developers. As between these small lot buyers and the gigantic financial institutions which the developers deal with, it is obvious that the law – as an instrument of social justice – must favor the weak. Indeed, the petitioner bank had at its disposal vast resources with which it could adequately protect its loan activities, and therefore is presumed to have conducted the usual “due diligence” checking and ascertaining xxx the actual status, condition, utilization and occupancy of the property offered as collateral. xxx On the other hand, private respondents obviously were powerless to discover the attempt of the land developer to hypothecate the property being sold to them. It was precisely in order to deal with this kind of situation that P.D. 957 was enacted, its very essence and intendment being to provide a protective mantle over helpless citizens who may fall prey to the razzmatazz of what P.D. 957 termed “unscrupulous subdivision and condominium sellers.

Despite the clear and unambiguous provisions of P.D. 957 that clearly reflect this intent, the *ponencia* now still hesitates to nullify the entire mortgage contract between United Overseas Bank (*UOB*) and JOS Management Builders Inc. (*JOS*), and opts instead for a tempered approach that only declares a partial invalidity of the mortgage contract; it does so by relying on our ruling in the case of *Far East Bank v. Marquez*.⁵

In this cited case, this Court – speaking through then Associate Justice Artemio Panganiban – held that the *subject of this litigation is limited only to the lot that the respondent bought*;⁶ **he has no personality or standing to bring suit on the whole property, as his actionable interest is only over the subject lot.**⁷ This kind of ruling, of course, is **the unscrupulous subdivision developer’s dream** as he thereby divides the opposition to his fraudulent scheme into individual lot owners, many of whom can ill-afford to devote time and resources to the formal assertion of their rights.

While this Court was briefly enlightened in the subsequent case of *Metropolitan Bank and Trust Company, Inc. v. SLGT Holding, Inc.*,⁸ the present case now resurrects the *Marquez* reasoning and thereby allows the watering down of what Section 18, P.D. 957 forcefully commands. It is in the spirit of preventing this retrogressive consequence that I now submit this Dissenting Opinion.

I outline below the reasons supporting my view.

³ Id.

⁴ G.R. No. 104528, January 18, 1996, 252 SCRA 5.

⁵ *Supra* note 2.

⁶ Id.

⁷ Id.

⁸ G.R. Nos. 175181-82, September 14, 2007, 533 SCRA 516.

First, the action in the present case **assails the validity of the entire mortgage contract** between UOB and JOS, not solely the validity of the contract to sell between JOS and EDUPLAN Inc. (*EDUPLAN*). While the contract to sell between JOS and EDUPLAN gave the latter the legal right to assail the validity of the real estate mortgage, that right is by no means limited to its **juridical effect** on EDUPLAN.

In other words, the principal issue pertains to the validity of the mortgage contract, not simply on its effect on EDUPLAN as a buyer. The juridical effect on EDUPLAN only gives rise to the right to assail the validity of the contract as a whole. As aptly stated by the eminent Civil Code Commentator, Senator Arturo Tolentino:⁹

x x x any person may invoke **the inexistence of the contract whenever its juridical effects founded thereon are asserted against him**. Thus, if there has been a void transfer of property, the transferor can recover it by *accion reivindicatoria*, and any possessor may refuse to deliver it to the transferee who cannot enforce the transfer. Creditors may attach a property of the debtor, which has been alienated by the latter under a void contract; a debtor can assert the nullity of an assignment of credit as a defense to an action by the assignee. x x x

The *ponencia* tried to wiggle out of this tight spot by stating that EDUPLAN has **actionable interest solely on the unit it bought**. The *ponencia*'s reasoning, however, is badly flawed **for although the juridical effect of the void mortgage contract condominium buyer is grounded on his purchased unit, it necessarily extends to the completion of the entire project itself.**

Section 2 of Republic Act 4726, otherwise known as the "Condominium Act" provides:

Sec. 2. A condominium is an interest in real property consisting of separate interest in a unit in a residential, industrial or commercial building and an undivided interest in common, **directly or indirectly, in the land on which it is located and in other common areas of the building.** A condominium may include, in addition, a separate interest in other portions of such real property. Title to the common areas, including the land, or the appurtenant interests in such areas, may be held by a corporation specially formed for the purpose (hereinafter known as the "condominium corporation") in which the holders of separate interest shall automatically be members or shareholders, to the exclusion of others, in proportion to the appurtenant interest of their respective units in the common areas. x x x

⁹ Tolentino, Commentaries on Jurisprudence on Civil Code of the Philippines, Vol. V., 1986 Ed at p. 632.

While a buyer purchases a unit in a condominium project for independent use or ownership,¹⁰ his **interests thereon** are not limited to that livable space **but extends to the entire project itself. These include the facilities, improvements, infrastructures, and other forms of development, such as water supply and lighting facilities offered and indicated in the condominium plan, brochure, prospectus, or in any form of advertisement.**¹¹ All these facilities and conveniences materially affect the buyer's investment and the level of use and enjoyment of his unit.

So important is the interest of a condominium buyer to the completion of the project that public policy as enshrined in P.D. 957 jealously protects it in its scattered provisions. In particular, P.D. 957 instructs the Housing and Land Use Regulatory Board (*HLURB*) to ensure the financial viability of the owner of the lot intended to be converted into a subdivision.

X X X

The owner or the real estate dealer interested in the sale of lots or units, respectively, in such subdivision project or condominium project shall register the project with the Authority by filing therewith a sworn registration statement containing the following information

X X X

(e) A statement of the capitalization of the owner, including the authorized and outstanding amounts of its capital stock and the proportion thereof which is paid up.

X X X

The following documents shall be attached to the registration statement:

X X X

(c) In case of a business firm, a balance sheet showing the amount and general character of its assets and liabilities and a copy of its articles of incorporation or articles of partnership or association, as the case may be, with all the amendments thereof and existing bylaws or instruments corresponding thereto.

X X X

Section 5. License to sell. Such owner or dealer to whom has been issued a registration certificate shall not, however, be authorized to sell any subdivision lot or condominium unit in the registered project unless he shall have first obtained a license to sell the project within two weeks from the registration of such project.

¹⁰ P.D. 957, Section 2 (b) "Unit" means a part of the condominium project intended for any type of independent use or ownership, including one or more rooms or spaces located in one or more floors (or part or parts of floors) in a building or buildings and such accessories as may be appended thereto."

¹¹ Section 19, P.D. 957.

The Authority, upon proper application therefor, shall issue to such owner or dealer of a registered project a license to sell the project if, after an examination of the registration statement filed by said owner or dealer and all the pertinent documents attached thereto, he is convinced that the owner or dealer is of good repute, that his business is financially stable, and that the proposed sale of the subdivision lots or condominium units to the public would not be fraudulent.

Section 6. *Performance Bond.* No license to sell subdivision lots or condominium units shall be issued by the Authority under Section 5 of this Decree unless the owner or dealer shall have filed an adequate performance bond approved by said Authority to guarantee the construction and maintenance of the roads, gutters, drainage, sewerage, water system, lighting systems, and full development of the subdivision project or the condominium project and the compliance by the owner or dealer with the applicable laws and rules and regulations.

The performance bond shall be executed in favor of the Republic of the Philippines and shall authorize the Authority to use the proceeds thereof for the purposes of its undertaking in case of forfeiture as provided in this Decree.

Similarly, Section 18 of P.D. 957 provides for the regulatory mechanisms precisely to minimize the risk of noncompletion of the project and to protect the buyer's interest. **In particular, it states that no mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the HLURB. 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 thus, is primarily intended to be a capital infusion to complete the project and not simply as a respirator to a barely breathing developer, who or which does not possess the financial means and adequate level of liquidity, and which only relies on leveraging its capital asset and revenues from pre-selling to sustain the project.

The reason for this is that the last thing the State wants is an unfinished condominium project which has surreptitiously been foreclosed by a financial institution. At that point, the buyer practically is left with no recourse but to sue a defaulting developer for refund to recover his meager life savings while the mortgagee bank could sleep at night in view of its secured credit. This Court precisely observed this scheme in *Metropolitan Bank and Trust Company, Inc. v. SLGT Holding, Inc.*,¹² where we stated:

¹² *Supra* note 8.

It happened before; it will likely happen again. A developer embarks on an aggressive marketing campaign and succeeds in selling units in a yet to-be completed condominium project. Short of funds, the developer borrows money from a bank and, without apprising the latter of the pre-selling transactions, mortgages the condominium complex, but also without informing the buyers of the mortgage constitution. Saddled with debts, the developer fails to meet its part of the bargain. The defaulting developer is soon sued by the fully paid unit buyers for specific performance or refund and is threatened at the same time with a foreclosure of mortgage. Having his hands full parrying legal blows from different directions, the developer seeks a declaration of suspension of payment, followed by a petition for rehabilitation with suspension of action.

Second, it would have been different if EDUPLAN had opted for a **partial release** of the mortgage, instead of seeking a declaration of its nullity. **Such partial release, however, could have only been resorted to if the real estate mortgage is valid, that is, obtained with the prior approval of the Housing and Land Use Regulatory Board under Section 18 of P.D. 957.**¹³ In the absence of an HLURB approval, as in the present case, a partial release of mortgage may not be availed of.

Mr. Justice Bersamin, in his concurring opinion, lamentably, supports the *ponencia's* reasoning and even attempts to strengthen the arguments by generously citing *Belo v. Philippine National Bank*.¹⁴

In citing *Belo*,¹⁵ Mr. Justice Bersamin sought to impress upon this Court that the mortgage between JOS and UOB is divisible considering that the principle of indivisibility of mortgages only applies to debtor-creditor relations. To further support his contention, Justice Bersamin cites the last sentence of Section 18 of P.D. 957 which provides that *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.*

¹³ 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. See also Section 4 par 4(d), (Id.) which states that in case any subdivision lot or condominium unit is mortgaged, it is sufficient if the instrument of mortgage contains a stipulation that the mortgagee shall release the mortgage on any subdivision lot or condominium unit as soon as the full purchase price for the same is paid by the buyer. [Emphasis supplied]

¹⁴ G.R. No. 134330, March 1, 2001, 353 SCRA 359.

¹⁵ Id.

Unfortunately, in his earnestness to support the *ponencia*, Justice Bersamin glossed over the critical fact that ***Belo* was decided on a valid mortgage contract**. In particular, in *Belo*,¹⁶ this Court upheld the partial redemption by the owner of the lot on a **validly constituted mortgage**. Justice Bersamin therefore suffered the critical error of putting the cart before the horse and effectively assumed the divisibility of mortgage and the remedy of partial release, to argue the validity of the mortgage itself. What he fatally overlooked, however, is that these remedies are only available when the mortgage is validly constituted.

Notably, this principle of partial release is likewise echoed in Section 18 of P.D. 957 which allows the buyer to **pay his installment for the 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 the title over the lot for **validly constituted mortgages**. **This, however, mandates that the parties to the mortgage secure the prior clearance from the HLURB before the constitution of mortgage. In the absence of this mandatory provision of law, the remedies provided by divisibility and release are not available.**

Third, as a **void contract**, the mortgage in favor of the UOB **has no legal force and effect from the very beginning; it is equivalent to a contract that has never been entered into and that cannot be validated by time nor by ratification**.¹⁷ The contract **produces no effect whatsoever either against or in favor of anyone**; hence it does not create, modify or extinguish the juridical relation to which it refers.¹⁸ The nullity exists *ipso jure*, and judgment of nullity would be merely declaratory.¹⁹

In declaring a partial invalidity of the mortgage contract, the *ponencia* practically “gave effect” to a patently void agreement with respect to buyers who fail to seek legal intervention to assail the validity of the real estate mortgage. **This kind of declaration goes against the concept of void agreements that, by law and by its nature, should produce no civil effects**.²⁰ This is the same principle that is taught to students in law schools as a **basic characteristic of void contracts**. This cannot be overemphasized in void contracts which violate an overriding public policy, such as in the present case, for to do so would interfere with an established interest of society and injure public interest.

Moreover, the partial invalidity of mortgage goes against established principles of justice and equity, and circumvents the very purpose of P.D. 957. The *whereas* clauses of P.D. 957 expressly state that:

¹⁶ Id.

¹⁷ *Supra* note 9.

¹⁸ Id.

¹⁹ Id.

²⁰ Id. at 629.

WHEREAS, reports of alarming magnitude also show cases of swindling and **fraudulent manipulations perpetrated by unscrupulous subdivision and condominium sellers and operators, such as failure to deliver titles to the buyers** or titles free from liens and encumbrances, and to pay real estate taxes, and fraudulent sales of the same subdivision lots to different innocent purchasers for value;

WHEREAS, these acts not only undermine the land and housing program of the government but also defeat the objectives of the New Society, particularly the promotion of peace and order and the enhancement of the economic, social and moral condition of the Filipino people;²¹

Fourth, the *ponencia's* reliance on the **doctrine of *in pari delicto*** in justifying the partial invalidity of the mortgage is **fatally flawed**. The phrase means, in essence, that since both parties are equally at fault, the court will not involve itself in resolving one side's claim over the other, and whoever possesses whatever is in dispute may continue to do so in the absence of a superior claim.²² Nonetheless, the application of the doctrine of *in pari delicto* is not always rigid. **An accepted exception arises when its application contravenes well-established public policy.**²³ As we held in *Prudential Bank v. Panis*.²⁴

Nonetheless, we apply our earlier rulings because we believe that as in *in pari delicto* may not be **invoked to defeat the policy of the State** neither may the doctrine of estoppel give a validating effect to a void contract. Indeed, it is generally considered that as between parties to a contract, validity cannot be given to it by estoppel if it is prohibited by law or is against public policy. **It is not within the competence of any citizen to barter away what public policy by law was to preserve.**²⁵

The application of the principle of *in pari delicto* to the present case is fraught with danger. To validate the present transaction on the basis of *in pari delicto* would open the flood gates to fraud, and much worse, conspiracy, perpetuated by unscrupulous developers and financial institutions at the expense of condominium buyers. An unscrupulous condominium developer without any substantial financial capacity to complete a project could obtain a developer's loan from any financial institution by mortgaging certain parcels of land, emboldened by the knowledge that the courts would leave them where they are until each of the condominium buyers initiate an action to question the nullity of the mortgage. From a business standpoint, said practice is worth the risk for the labyrinth of legalities often serve as a protective mantle for unsound business practices.

²¹ Emphasis supplied.

²² http://en.wikipedia.org/wiki/In_pari_delicto.

²³ *Gonzalo v. Tarnate*, G.R. No. 160600, January 15, 2014.

²⁴ G.R. No. L-50008 August 31, 1987, 153 SCRA 390.

²⁵ Citations omitted.

Translated to its **practical effects**, the result will prejudice buyers who do not have the resources to engage their own counsel to defend their rights; at the very least, it will prejudice them to the extent of the time, money, efforts, and resources they will use to protect their rights to the lots or units they have already paid for.

Fifth, the intent of P.D. 957 is to **protect buyers** from fraudulent manipulations perpetrated by unscrupulous subdivision and condominium sellers and operators, and **not large scale mortgages**. In construing P.D. 957, **this Court must recognize this legislative policy to the fullest extent**. Already, this Court has adopted and articulated its full recognition and support for this intent in *Philippine National Bank v. Office of the President* when it said:²⁶

Protection must be afforded small homeowners who toil and save if only to purchase on installment a tiny home lot they can call their own. The consuming dream of every Filipino is to be able to buy a lot, no matter how small, so that he may somehow build a house. It has, however, been seen of late that these honest, hard-living individuals are taken advantage of, with the delivery of titles delayed, the subdivision facilities, including the most essential such as water installations not completed, or worse yet, as in the instant case, after almost completing the payments for the property and after constructing a house, the buyer is suddenly confronted by the stark reality, contrived or otherwise, in which another person would now appear to be owner.

Let us not now return to this ruling and definitively reject other rulings that reject the salutary purposes of P.D. 957.

In these lights, I vote to **DENY** the petition.


ARTURO D. BRION
Associate Justice

CERTIFIED XEROX COPY:


FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT

²⁶

Supra note 4.