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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

**HOMEOWNERS ASSOCIATION
OF TALAYAN VILLAGE INC.,**
Petitioner,

G.R. NO. 203883

-versus-

**J.M. TUASON & CO., INC.,
TALAYAN HOLDINGS, INC.,
QUEZON CITY MAYOR and
EQUITABLE BANKING
CORPORATION (NOW BANCO
DE ORO BANKING
CORPORATION),**
Respondents.

X-----X
**J.M. TUASON & CO., and
TALAYAN HOLDINGS, INC.,**
Petitioner,

G.R. No. 203930

Present:

SERENO, C.J.,
Chairperson,
LEONARDO-DE CASTRO,
PERALTA,*
BERSAMIN, and
PEREZ, JJ.

-versus-

**HOMEOWNERS ASSOCIATION
OF TALAYAN VILLAGE, INC.
and QUEZON CITY MAYOR,**
Respondents.

Promulgated:

NOV 10 2015

X-----X

DECISION

PEREZ, J.:

Assailed in these Rule 45 petitions for review on certiorari is the Decision¹ dated 5 March 2012 rendered by the Eighth Division of the Court of Appeals (CA) in CA-G.R. CV No. 80351, the dispositive portion of which states:

WHEREFORE, in view of the foregoing premises, the assailed Decision of the Regional Trial Court, Branch 77, Quezon City in Civil Case No. Q-98-35548 is AFFIRMED with MODIFICATION that x x x J.M. Tuazon & Company, Inc. and Talayan Holdings Corporation, having been adjudged herein as owners in bad faith, are hereby held accountable to x x x Homeowners Association of Talayan [Village], Inc. and the Local Government of Quezon City for the payment of the value of the facilities which were built on Block 494 including the payment of damages in accordance with the provisions of Article 447 of the New Civil Code. However, these shall be determined in a separate proceeding specially commenced for the purpose of determining the actual value of the properties therein built as well as the extent and amount of damages and expenses these entities are entitled to receive from [J.M. Tuazon & Company, Inc. and Talayan Holdings Corporation].²

The Facts

The subject matter of the instant suit is a 22,012 square meter parcel of land denominated as Block 494 of the Talayan Village which forms part of the Sta. Mesa Heights Subdivision in Quezon City. Block 494 was previously registered under Transfer Certificate of Title (TCT) No. RT-110168 (29132)³ in the name of J.M. Tuason Co., Inc. (J.M. Tuason) which, thru its representative, Gregorio Araneta, Inc. (Araneta), sold subdivision lots in the 1950's to the general public, in accordance with Subdivision Plan PSD-52256. Approved in an Order dated 22 April 1958 issued by Branch 4 of the then Court of First Instance (CFI) of Rizal in LRC (GLRO) Rec. No. 7681, Subdivision Plan PSD-52256 designated Block 503 as the park/open space for the subdivision.⁴ In the subdivision plan approved by the National Planning Commission and the Quezon City Council, however, Block 494 remained undivided even as the lots surrounding the same were divided into home lots⁵ which were sold to interested buyers. In an undated certification

* Additional member per raffle dated 4 November 2015.

¹ *Rollo* (G.R. No. 203883), pp. 33-47; Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Noel G. Tijam and Romeo F. Barza concurring.

² *Id.* at 46-47.

³ Records, Vol. I, pp. 33; Exhibit "N."

⁴ *Id.* at 111; Exhibit "8."

⁵ *Id.* at 12; Exhibits "A" and "1-A."

issued by Araneta, moreover, Block 494 was listed as one of the open spaces for the Sta. Mesa Heights Subdivision.⁶

On 7 June 1962, the Quezon City Council passed Ordinance No. 5095, series of 1962, directing all subdivision owners to turn over to the city government the open spaces in city subdivisions⁷ which were required to be equivalent to 6% of the total land area being developed.⁸ Ostensibly in compliance with said ordinance, J.M. Tuason, through Araneta, executed in favor of the city government a Deed of Donation and Acceptance (Deed of Donation) over its subdivisions' open spaces which included, among others, Block 494.⁹ Accompanied by a Certification issued by Araneta authorizing one Luis Ma. Araneta to donate the open spaces listed, the Deed of Donation which had yet to be notarized was submitted to the city government thru Araneta's letter dated 16 April 1969.¹⁰ Although the Deed of Donation was, however, referred for comment and recommendation to the City Engineer in an Indorsement dated 21 April 1969 issued by the Office of the Quezon City Mayor,¹¹ no record or document exists to show that the donation was, indeed, accepted.

There is no dispute regarding the fact that Block 494 became the site of the Talayan Village *Barangay* Hall, a multi-purpose hall, basketball, tennis and football courts and a children's playground which were developed at the expense of Homeowners Association of Talayan Village, Inc. (HATVI) and the Quezon City government. For failure of J.M. Tuason to pay its realty taxes, however, Block 494 was scheduled for a tax delinquency sale by the city government sometime in 1996. In letters dated 20 and 29 May 1996 addressed to the Quezon City *Sangguniang Panglungsod* and then Mayor Ishmael Mathay (Mayor Mathay), the *Barangay* Captain and the homeowners of Talayan Village made known their opposition/objection to the impending sale.¹² Aside from the fact that no replies to said letters were received, the tax delinquency sale pushed through on 26 June 1996 and Block 494 was sold to J.M. Tuason, the highest bidder, for the aggregate sum of Php641,651.93, representing the total amount of the unpaid taxes and penalties due thereon.¹³

⁶ Id. at 13; Exhibit "B."

⁷ Id. at 15; Exhibit "C."

⁸ Pursuant to Quezon City Ordinance Nos. 1525 (S-1952), 2754 (S-1956), 2969 (S-1956) and 3446 (S-1957).

⁹ Records, Vol. I, pp 16-17; Exhibit "D."

¹⁰ Id. at 18-19; Exhibits "E" and "F."

¹¹ Id. at 20; Exhibit "G."

¹² Id. at 21-26; Exhibits "H" and "I."

¹³ Id. at 28; Exhibit "K."

On 9 July 1996, J.M. Tuason executed a Unilateral Deed of Absolute Sale transferring Block 494 in favor of respondent Talayan Holdings, Inc. (THI) for a stated consideration of Php33,018,000.00.¹⁴ Having caused TCT No 110168 (29132) to be cancelled with the issuance of TCT No. N-160418 in its favor,¹⁵ THI subdivided Block 494 into four lots which were registered in its name under TCT Nos. N-192112, N-192113, N-192114 and N-192115.¹⁶ On 22 October 1996, the Manila Bulletin published in its Classified Ads Section an advertisement offering the sale of a 22,000 square meters property in Talayan Village for the price of Php25,000.00 per square meter. Inquiring from the designated broker, Eastcoast Properties & Holdings Corp. (EPHC), one Dr. Rosario Agustin received a letter dated 22 October 1996¹⁷ confirming, among other matters, that the land being sold was Block 494 and that the same was previously purchased in a delinquency sale by J.M. Tuason.¹⁸ On 17 January 1997, THI eventually obtained a loan in the sum of Php150,000,000.00 from Equitable Banking Corporation (Equitable Bank), secured by real estate mortgages over the four lots into which Block 494 had been subdivided.¹⁹

On 15 September 1998, HATVI filed against J.M. Tuason, THI, Equitable Bank and Mayor Mathay the complaint which was docketed as Civil Case No. Q-98-35548 before the Regional Trial Court (RTC), Branch 77, Quezon City and styled one for annulment of sale, cancellation of titles and mortgage, acceptance of donation and damages. Contending that it had no knowledge of the delinquency sale and that its members purchased their respective home lots on the belief that Block 494 was an open space for use – as in fact it was used – as a public park, HATVI argued that the subject

¹⁴ Id. at 29-31; Exhibit "L."

¹⁵ Id. at 32; Exhibit "M."

¹⁶ Id. at 35-38; Exhibits "P," "Q," "R" and "S."

¹⁷ Id. at 27; Exhibit "J."

¹⁸ Id.

The letter contained the following information:

Location: within Talayan Village, bounded by four (4) streets, thus marking it a whole block, of prime piece of property within an elevated area of vacant lot. Talayan Village is where most Chinese [stay] because they believe it is a 'Valley of Luck';

Property: 22,012 square meters of one whole block property; Selling Price: P20,000.00 per square [meter] or a total of P440,240,000.00
Offer: First Come First Serve Basis.

Property History: The property used to be a park and playground of Talayan Village Homeowners Association. However, this was foreclosed by the Quezon City Government due to unpaid taxes. **J. TUAZON CO., INC.** and **G. ARANETA, INC.**, bidded and the sale was awarded to both companies last June 26, 1996. And now it is open for Sale or for a JOINT VENTURE on selective basis.

¹⁹ Records, Vol. I, p. 34; Exhibit "O."

parcel is beyond the commerce of man.²⁰ J.M. Tuason and THI moved for the dismissal of the complaint on the ground, among others, that the donation was not accepted and that, as a consequence, Block 494 remained a private property.²¹ With Equitable Bank likewise filing a motion to dismiss on the ground that it was a mortgagee in good faith,²² Mayor Mathay also filed a motion to drop him as defendant in the case.²³ The same motions were, however, denied for lack of merit in the RTC's Order dated 30 March 1999,²⁴ prompting said defendants to file their separate answers.

Reiterating the arguments raised in their motion to dismiss, J.M. Tuason and THI maintained that no donation was perfected and that, if at all, the right under said contract pertained to the Quezon City government. Invoking the CFI's ruling in LRC (GLRO) Rec. No. 7681, they insisted that it was Block 503 and not Block 494 which was the designated open space for the Talayan Village. With Act No. 496 or the Land Registration Act then not requiring a minimum area for open spaces, it was argued that J.M. Tuason had more than amply complied with the Quezon City ordinances requiring the same when it segregated a total of 275,770.79 square meters out of the aggregate 4,596,197.90 square meters it developed.²⁵ Asserting that J.M. Tuason retained and never lost ownership over Block 494, on the other hand, Equitable Bank called attention to the fact that, having purchased the land at a tax delinquency sale, the former acquired the same free from all liens and encumbrances, whether annotated or not on the property's title.²⁶ Admitting that the donation was not accepted, Mayor Mathay, in turn, alleged that he could not confirm the expenditure of city funds on the amenities built on Block 494.²⁷

The issues joined, the RTC proceeded to conduct the pre-trial conference where the parties stipulated on: (a) Subdivision Plan PSD-52256 being the subdivision plan for Talayan Village; (b) the identity of Block 494; (c) the non-acceptance of the donation by the Quezon City Government; and (d) the excess of 48,679.040 square meters in the designated open spaces for the Sta. Mesa Heights Subdivision.²⁸ Subsequent to the trial of the case on the merits at which the parties adduced evidence in support of their respective positions, the RTC went on to render its 24 June 2002 Decision finding, among other matters, that Block 494 is not an open space and that

²⁰ Id. at 2-11.
²¹ Id. at 102-110.
²² Id. at 65-74.
²³ Id. at 242-243.
²⁴ Id. at 246-247.
²⁵ Id. at 107.
²⁶ Id. at 85.
²⁷ Id. at 397-399.
²⁸ Id. at 500-504.

the Deed of Donation J.M. Tuason executed over the same was null and void due to non-acceptance and non-notarization. Further concluding that Equitable Bank was a mortgagee in good faith,²⁹ the RTC disposed of the case in the following wise:

WHEREFORE, premises considered, the complaint is hereby dismissed. The counterclaims of the defendants are likewise dismissed. The cross-claim of Equitable Banking Corporation is also dismissed.

No pronouncements as to costs.³⁰

Aggrieved, HATVI elevated the foregoing decision on appeal before the Court of Appeals under docket of CA-G.R. 80351. On 5 March 2012, the CA's then Eight Division rendered the herein assailed Decision, upon the following findings and conclusions: (a) as PD No. 1216 was not yet in existence at the time Talayan Village was developed, the applicable law is the Land Registration Act, the dearth of minimum requirement for open spaces of which was filled in by ordinances passed by the Quezon City government which had been complied with by J.M. Tuason; (b) the Deed of Donation executed by J.M. Tuason had no legal effect since it was not accepted and effected in accordance with law; (c) aside from not being designated as an open space, the tax delinquency sale conducted over Block 494 indicated that it remained a private property; (d) rather than estoppel being applicable, the proven facts of the case show only accrual of a cause of action for damages in favor of HATVI's members; and (e) Equitable Bank is a mortgagee in good faith because J.M. Tuason purchased Block 494 at a tax delinquency sale.³¹

In modification of the RTC's decision, however, the CA ruled that J.M. Tuason and THI were in bad faith for allowing the amenities to be built on Block 494 and are, therefore, accountable to HATVI and the Quezon City local government for damages to be determined in separate proceedings commenced to ascertain the extent thereof.³² The motions for reconsideration of the assailed Decision filed by J.M. Tuason and THI as well as HATVI were respectively denied for lack of merit in the CA's Resolution³³ dated 9 October 2012. Dissatisfied, said parties filed these petitions which were ordered consolidated in the Court's Resolution dated 1 July 2013.³⁴

²⁹ Records, Vol. II, p. 821.

³⁰ Id. at 823.

³¹ CA *rollo*, pp. 208-222.

³² Id. at 221-222.

³³ Id. at 315-316.

³⁴ *Rollo* (G.R. No. 203883), pp. 303-304.

The Issues

HATVI's petition for review in G.R. No. 203883 seeks the reversal of the assailed CA decision on the following grounds:

I.

THE COURT OF APPEALS ERRED IN RULING THAT THE CORE ISSUE IS THE APPLICABLE LAW AT THE TIME OF THE DEVELOPMENT OF TALAYAN VILLAGE AND NOT WHETHER BLOCK 494 WAS RESERVED BY J.M. TUAZON AS AN OPEN SPACE.

II.

THE COURT OF APPEALS ERRED IN CONCLUDING THAT ESTOPPEL DOES NOT APPLY AGAINST J.M.TUAZON AND THI.

III.

THE COURT OF APPEALS ERRED IN CONCLUDING THAT BLOCK 494 REMAINED A PRIVATE PROPERTY BECAUSE OF QUEZON CITY'S FAILURE TO ACCEPT THE DEVELOPER'S DONATION.

IV.

THE COURT OF APPEALS ERRED IN CONCLUDING THAT BLOCK 494 REMAINED A PRIVATE PROPERTY BECAUSE OF THE TAX DELINQUENCY SALE CONDUCTED THEREON BY QUEZON CITY.

V.

THE COURT OF APPEALS ERRED IN CONCLUDING THAT EQUITABLE BANK (NOW BDO) IS A MORTGAGEE IN GOOD FAITH.³⁵

On the other hand, J.M. Tuason and THI urge the grant of their petition in G.R. No. 203930 on the following grounds:

A.

THE COURT OF APPEALS ERRED IN RULING THAT J.M. TUAZON AND THI ARE OWNERS IN BAD FAITH AND ARE

³⁵ Id. at 16.

THUS LIABLE FOR DAMAGES TO HATVI AND THE QUEZON CITY LOCAL GOVERNMENT.

B.

THE COURT OF APPEALS ERRED IN DECIDING A MATTER WHICH WAS NEVER RAISED BY THE PARTIES ON APPEAL.³⁶

The Court's Ruling

In G.R. No. 203883, HATVI insists that the case was never about the applicable law at the time Talayan Village was developed but, rather, whether Block 494 is an open space on account of its reservation as such and the execution of a Deed of Donation over the same by J.M. Tuason which allowed its exclusive use as a park/open space over the years. Invoking this Court's ruling in *White Plains Association, Inc. v. CA*³⁷ and *Anonuevo v. CA*,³⁸ HATVI argues that J.M. Tuason had represented to its buyers that Block 494 is an open space and should therefore be considered estopped from taking a stand contrary to said representation. Aside from the fact that the non-acceptance of the donation supposedly did not alter the nature of the subject land, HATVI posits that the rights of its members should not be prejudiced by the Quezon City government's mistake in conducting a tax delinquency sale over the same. For failing to exercise extraordinary diligence before approving the mortgage THI executed over the four lots into which Block 494 had been subdivided, it is argued that Equitable Bank should have been declared a mortgagee in bad faith.

The fact, however, that the applicable laws at the time of the development of Talayan Village was raised *a quo* impels us to rule that the CA did not err in considering the same in rendering the assailed decision. Granted that the same is not the pivotal issue in the case, the application of said laws is nevertheless germane to the determination of whether or not Block 404 remained a private property in the face of HATVI's claim to the contrary on the strength of P.D. 1216. Passed on 14 October 1977, however, said law was correctly found by the CA to be inapplicable to the case at bench since Talayan Village was developed in the 1950s. Considering that P.D. 1216 does not provide for the retroactive application of its provisions,³⁹ moreover, the CA cannot be faulted for ruling that the applicable law is the Land Registration Act whose lack of requirement for the reservation of open spaces in subdivisions was filled in by the requirement for the same in the

³⁶ *Rollo* (G.R. No. 203910), p. 20.

³⁷ G.R. No. 55868, 14 November 1985.

³⁸ 313 Phil. 709 (1995).

³⁹ *Duenas v. Santos Subd. Homeowners Association*, 474 Phil. 834, 848 (2004).

ordinances passed by the Quezon City government. Having already designated sufficient open spaces for the Sta. Mesa Heights subdivision to an excess of 48,679.040 square meters, J.M. Tuason was admitted by the parties to have complied with said ordinances by executing the Deed of Donation over Block 494 in favor of the Quezon City government.

Considered in the light of the foregoing factual antecedents, the next question that pleads for the Court's resolution is whether or not Block 494 was effectively removed from the commerce of men as claimed by HATVI. In resolving this issue in the negative, uppermost in the mind of the Court is the parties' admission during the pre-trial stage that the development of Talayan Village was pursuant to Subdivision Plan PSD-52256 which was approved by the CFI of Rizal in LRC (GLRO) Rec. No. 7681. Rather than Block 494, said subdivision plan significantly designated Block 503 as the park/open space for said subdivision. That J.M. Tuason donated Block 494 to the Quezon City government in compliance with the latter's ordinances also did not operate to divest the property of its private character. In addition to the fact that the donation was not embodied in a public document as provided under Article 749⁴⁰ of the Civil Code of the Philippines, the record is entirely bereft of showing that said donation was duly accepted in accordance with Article 745⁴¹ of the same Code. The purpose of the formal requirement for acceptance of a donation is to ensure that such acceptance is duly communicated to the donor.⁴² Since the donation is considered perfected only upon the moment the donor is apprised of such acceptance, it has been ruled that lack of such acceptance, as expressly provided under the law, renders the donation null and void.⁴³

Given that Block 494 has been used as an open space over the years, however, HATVI argues that J.M. Tuason and THI should be considered estopped from claiming the contrary on the strength of this Court's rulings in the *White Plains Association, Inc.* and the *Anonuevo* cases. Aside from the fact, however, that estoppel is an equitable principle rooted on natural

⁴⁰ Art. 749. In order that the donation of an immovable may be valid, it must be made in a public document, specifying therein the property donated and the value of the charges which the donee must satisfy.

The acceptance may be made in the same deed of donation or in a separate public document, but it shall not take effect unless it is done during the lifetime of the donor.

If the acceptance is made in a separate instrument, the donor shall be notified thereof in an authentic form, and this step shall be noted in both instruments.

⁴¹ Art. 745. The donee must accept the donation personally, or through an authorized person with a special power for the purpose, or with a general and sufficient power; otherwise, the donation shall be void.

⁴² *Republic of the Philippines v. Silim*, 408 Phil. 69, 79 (2001).

⁴³ *Lagazo v. CA*, 350 Phil. 449, 456 (1998).

justice⁴⁴ which can be invoked only in highly exceptional and justifiable cases,⁴⁵ HATVI loses sight of the fact that, on the third time that the case was presented for its review, this Court ruled in *White Plains Association v. CA*⁴⁶ that, absent a deed of donation or legitimate acquisition thereof by the government, the area claimed to have been reserved for public use and/or as an open space still pertained to the subdivision developer. Unlike in the *Anonuevo* case where there was no record of an approved subdivision plan, it is moreover clear that the parties in this case are in agreement that Talayan Village was covered by Subdivision Plan PSD-52256 which identified Block 503 as the required open space. In contrast to the subdivision developer in said latter case who appears not to have segregated any other lot for the open space required under the law, furthermore, J.M. Tuason had already done so to an excess 48,679.040 square meters.

That Block 494 was the subject of the tax delinquency sale conducted by the Quezon City government further serves to confirm the private character of said property. While it is true that said tax delinquency sale was conducted in June 1996 or when P.D. 1216 was already in effect, HATVI still cannot validly invoke Section 2 of said law which, in amending Section 31 of P.D. No. 957, in part, provides that “[t]hese areas reserved for parks, playgrounds and recreational use shall be non-alienable public lands, and non-buildable.” Unlike Block 503 which was specifically identified as such under Subdivision Plan PSD-52256, there was, for starters, no operative reservation of Block 494 as the designated open space for Talayan Village. Although there is no dispute regarding the fact that J.M. Tuason later endeavored to donate Block 494 to the Quezon City government, the transfer was not efficacious not only for lack of notarization of the document embodying the same but, more importantly, for failure of the donee to accept the donation. Not having been thus segregated and/or transferred, it necessarily follows that Block 494 was not removed from the commerce of man.

Since the Block 494 remained in private ownership, HATVI has neither factual nor legal basis to question the sale thereof by the Quezon City government for tax delinquency. As highest bidder at the tax delinquency sale, J.M. Tuason was acting well within its rights when it sold the property to THI which had the right to rely on what appears on the title covering the same. After the expiration of the redemption period, after all, a property acquired pursuant to a tax delinquency sale, like that purchased from a public auction sale,⁴⁷ passes to the purchaser, free from any encumbrance or

⁴⁴ *Philippine National Bank v. Palma*, 503 Phil. 917, 933 (2005).

⁴⁵ *Manila Memorial Park Cemetery, Inc. v. CA*, 398 Phil. 720, 732 (2000).

⁴⁶ 358 Phil. 185, 189 (1998).

⁴⁷ *Angeles v. Intermediate Appellate Court*, 258 Phil. 746, 752 (1989).

third party claim⁴⁸ not inscribed on the certificate of title. Also, having purchased the property from J.M. Tuason, THI was likewise acting well-within its rights to cause the subdivision thereof, offer the same to the general public and to utilize the same as security for the loan it obtained from Equitable Bank. Given that the property was purchased at a tax delinquency sale, on the other hand, Equitable Bank cannot be considered in bad faith when it primarily relied on what appeared on the title over the property.

The rule is long and well-settled that every person dealing with registered land has a right to rely on the face of the title when determining its ownership.⁴⁹ A mortgagee has a right to rely in good faith on the certificate of title of the mortgagor of the property given as security and has no obligation to undertake further investigation in the absence of any sign that might arouse suspicion.⁵⁰ Since their business is imbued with public interest, banks are, concededly, are expected to be more cautious than ordinary individuals in dealing with lands, even registered ones.⁵¹ Before approving a loan, it has become the practice of banks and other financial institutions to conduct an ocular inspection of the property offered to be mortgaged and verify the genuineness of the title to determine the real owners thereof.⁵² The record shows that, despite being confronted with THI's clean titles, Equitable Bank nevertheless caused an ocular inspection of Block 494. Considering the validity of the mortgage THI executed in its favor, however, there is no need to resolve the issue of whether or not Equitable Bank was in good faith in proceeding with the mortgage despite the visible improvements on the property.⁵³

In G.R. No. 203930, J.M. Tuason and THI, in turn, take exception to the CA's finding that, as owners of the land, they were in bad faith for not opposing the construction of the structures and amenities thereon pursuant to Articles 454⁵⁴ and 447⁵⁵ of the Civil Code. Aside from the fact, however,

⁴⁸ *Francisco v. Mejia*, 415 Phil. 153, 168 (2001).

⁴⁹ *Spouses Dominador & Ofelia Peralta v. Heirs of Bernardina Abalon*, G.R. Nos. 183448 & 183464, 30 June 2015.

⁵⁰ *Onofre Andres v. Philippine National Bank*, G.R. No. 173548, 15 October 2014.

⁵¹ *Philippine National Bank v. Corpuz*, 626 Phil. 410, 413 (2010).

⁵² *Alano v. Planter's Development Bank*, 667 Phil. 81, 89-90 (2011).

⁵³ *Philippine National Bank v. Lim*, G.R. No. 171677, 30 January 2013, 689 SCRA 523, 545.

⁵⁴ Art. 454. When the landowner acted in bad faith and the builder, planter or sower proceeded in good faith, the provisions of Article 447 shall apply.

⁵⁵ Art. 447. The owner of the land who makes thereon, personally or through another, plantings, constructions or works with the materials of another, shall pay their value; and, if he acted in bad faith, he shall also be obliged to the reparation of damages. The owner of the material shall have the right to remove them only in case he can do so without injury to the work constructed, or without the planting, constructions or works being destroyed. However if the land acted in bad faith, the owner of the materials may remove them in any event with a right to be indemnified for damages.

that THI appears to have purchased the property long after said improvements were built on Block 494, the supposed bad faith of J.M. Tuason and THI is a matter that was neither litigated before the RTC nor raised as error before the CA. Necessitated by basic considerations of due process,⁵⁶ the rule is settled that, unless it affects the jurisdiction over the subject matter or the validity of the appealed judgment, no error will be considered unless assigned as such or is closely related to or dependent on an assigned error and properly argued in the brief.⁵⁷ Courts are, moreover, called upon to resolve actual cases and controversies, not to render advisory opinions⁵⁸ which are beyond the permissible scope of judicial power.⁵⁹ The CA contravened these rule when, simultaneous to its determination of bad faith on the part of J.M. Tuason and THI, it ruled that the resultant damages will have to be determined in a sparate proceeding specially commenced for the purpose.

WHEREFORE, the Decision dated 5 March 2012 and Resolution dated 9 October 2012 of the Court of Appeals are **AFFIRMED** insofar as they affirm the Regional Trial Court of Quezon City, Branch 77, Decision dated 24 June 2002, finding that:

- a. Block 494 is not an open space or a park;
- b. The Deed of Donation executed by J.M. Tuason Co., Inc. in favor of the Quezon City government is void for lack of acceptance by the done and for not having been made in a public instrument;
- c. J.M. Tuason Co., Inc. was able to redeem the subject property;
- d. The mortgage executed by Talayan Holdings, Inc. in favor of Equitable Banking Corporation is valid; and
- e. Equitable Banking Corporation is a mortgagee in good faith.

but the same are **REVERSED** and **SET ASIDE** in part insofar as the Court of Appeals declared that (1) J.M. Tuason Co., Inc. and Talayan Holdings, Inc. are owners in bad faith, and (2) the mortgage rights of Banco de Oro

⁵⁶ *Genesis Transport Service, Inc. v. Unyon ng Malayang Manggagawa ng Genesis Transport*, 631 Phil. 350, 352 (2010).

⁵⁷ Sec. 8, Rule 51 Rules of Court.

⁵⁸ *Tatad v. Commission on Appointments*, 584 Phil. 332, 335-336 (2008).

⁵⁹ *Gonzales v. Narvasa*, 392 Phil. 518, 523 (2000).

over Block 494 are subject to the rights of Homeowners Association of Talayan Village, Inc. and the Quezon City government to damages and to be reimbursed by J.M. Tuason Co., Inc. and Talayan Holdings, Inc.

Accordingly, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by J.M. Tuason Co., Inc. and Talayan Holdings, Inc. in G.R. No. 203930 seeking to reverse, annul and set aside the Decision dated 5 March 2012 issued by the Court of Appeals in CA-GR CV No. 80351 as well as the Petition-in-Intervention filed by Banco de Oro in G.R. No. 203930, are **PARTLY GRANTED**, and the Motion for Reconsideration dated 25 March 2013 of Homeowners Association of Talayan Village, Inc. of the Court's Resolution dated 28 January 2013 is **DENIED** for lack of merit.

No pronouncement as to costs.

SO ORDERED.



JOSE PORTUGAL PEREZ
Associate Justice

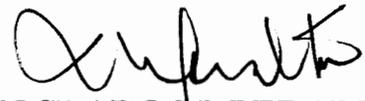
WE CONCUR:



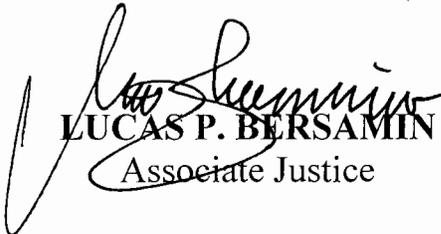
MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson



TERESITA J. LEONARDO-DE CASTRO
Associate Justice



DIOSDADO M. PERALTA
Associate Justice



LUCAS P. BERSAMIN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice