G.R. No. 182133 – *UNITED OVERSEAS BANK OF THE PHILIPPINES, INC., Petitioner v. J.O.S. MANAGING BUILDERS, INC. and EDUPLAN, INC., Respondents.*

Promulgated:

June 23, 2015

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CONCURRING OPINION

BERSAMIN, *J.*:

The legal issue for resolution concerns the validity of the mortgage constituted between petitioner bank and respondent developer of a condominium project under Section 18 of Presidential Decree No. 957 (*The Subdivision and Condominium Buyers' Protective Decree*) to secure the performance of the latter's obligations in favor of the former.

Our relevant existing jurisprudence is settled insofar as declaring that the failure to obtain the prior written approval of the Housing and Land Use Regulatory Board (HLURB) renders the mortgage null and void. However, a conflict exists as to the extent of the nullity of the mortgage.

On the one hand, the Court has pronounced in *Metropolitan Bank and Trust Co., Inc. v. SLGT Holdings, Inc.*[1] that the nullity extends to the entire mortgage, opining:

> x x x This disposition stems from the basic postulate that a mortgage contract is, by nature, indivisible. Consequent to this feature, a debtor cannot ask for the release of any portion of the mortgaged property or of one or some of the several properties mortgaged unless and until the loan thus secured has been fully paid, notwithstanding the fact that there has been partial fulfillment of the obligation. Hence, it is provided that the debtor who has paid a part of the debt cannot ask for the proportionate extinguishments of the mortgage as long as the debt is not completely satisfied.
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> The situation obtaining in the case at bench is within the purview of the aforesaid rule on the indivisibility of mortgage. It may be that Section 18 of PD 957 allows partial redemption of the mortgage in the sense that the buyer is entitled to pay his installment for the lot or unit directly to the mortgagee so as to enable him - the said buyer - to obtain title over the lot or unit after full payment thereof. Such accommodation statutorily given to a unit/lot buyer does not, however, render the mortgage contract also divisible. Generally, the divisibility of the principal obligation is not affected by the indivisibility of the mortgage. The real estate mortgage voluntarily constituted by the debtor (ASB) on the lots or units is one and indivisible. In this case, the mortgage contract executed between ASB and the petitioner banks is considered indivisible, that is, it

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[1] G.R. Nos. 175181-82 and G.R. Nos. 175354 & 175387-88, September 14, 2007, 533 SCRA 516.

> cannot be divided among the different buildings or units of the Project. Necessarily, partial extinguishment of the mortgage cannot be allowed. In the same token, the annulment of the mortgage is an all or nothing proposition. It cannot be divided into valid or invalid parts. The mortgage is either valid in its entirety or not valid at all. In the present case, there is doubtless only one mortgage to speak of. Ergo, a declaration of nullity for violation of Section 18 of PD 957 should result to the mortgage being nullified wholly.[2]

On the other hand, the Court has ruled in *Far East Bank and Trust Co. v. Marquez*[3] that the mortgage is void only with respect to the portion of the property under mortgage that is the subject of the litigation, explaining:

> The lot was mortgaged in violation of Section 18 of PD 957. Respondent, who was the buyer of the property, was not notified of the mortgage before the release of the loan proceeds by petitioner. Acts executed against the provisions of mandatory or prohibitory laws shall be void. Hence, the mortgage over the lot is null and void insofar as private respondent is concerned.
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> The remedy granted by the HLURB and sustained by the Office of the President is proper only insofar as it refers to the lot of respondent. In short, the mortgage contract is void as against him. Since there is no law stating the specifics of what should be done under the circumstances, that which is in accord with equity should be ordered. The remedy granted by the HLURB in the first and the second paragraphs of the dispositive portion of its Decision insofar as it referred to respondent's lot is in accord with equity.
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> The HLURB, however, went overboard in its disposition in paragraphs 3 and 4, which pertained not only to the lot but to the entire parcel of land mortgaged. Such ruling was improper. The subject of this litigation is limited only to the lot that respondent is buying, not to the entire parcel of land. He has no personality or standing to bring suit on the whole property, as he has actionable interest over the subject lot only.[4]

Far East Bank and Trust Co. v. Marquez has been reiterated in *Philippine National Bank v. Lim*.[5]

Before resolving the conflict, let us look at the established facts of this case.

Respondent EDUPLAN Philippines Inc. (EDUPLAN) bought a condominium unit with an area of 149.72 square meters, more or less, known as Unit E located in the 10th Floor of the Aurora Milestone Tower, from respondent J.O.S. Managing Builders, Inc. (J.O.S. Managing Builders)

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2 Id. at 527-528.
3 G.R. No. 147964, January 20, 2004, 420 SCRA 349.
4 Id. at 357-358.
5 G.R. No. 171677, January 30, 2013, 689 SCRA 523.

under a contract to sell. In August 1998, EDUPLAN effected full payment; hence, J.O.S. Managing Builders and EDUPLAN executed their deed of absolute sale in December 1998. Despite the execution of the deed of absolute sale, J.O.S. Managing Builders did not deliver the condominium certificate of title to EDUPLAN, which, in due time, discovered that the lots on which the condominium project was being constructed had been made the subject of the mortgage by J.O.S. Managing Builders in favor of United Overseas Bank without the prior written approval of the HLURB.

Consequently, EDUPLAN filed its complaint for specific performance and damages against J.O.S. Managing Builders and United Overseas Bank in the HLURB, praying, among others, that the mortgage between J.O.S. Managing Builders and United Overseas Bank be declared null and void.

On August 15, 2001, the HLURB Arbiter rendered a decision declaring, *inter alia*, that the mortgage between J.O.S. Managing Builders and United Overseas Bank and the foreclosure of the mortgage were null and void for being in violation of Section 18 of P.D. No. 957.

United Overseas Bank brought its petition for review to the HLURB Board of Commissioners, which, on August 20, 2004, affirmed the HLURB Arbiter's decision with modification.

United Overseas Bank elevated the case to the Court of Appeals (CA), which affirmed the HLURB Board of Commissioners through the now assailed judgment promulgated on February 27, 2006.

The CA also denied United Overseas Bank's motion for reconsideration, observing that United Overseas Bank did not exhaust administrative remedies due to its failure to appeal the decision of the HLURB Board of Commissioners to the Office of the President before filing its petition for review in the CA.

In its present appeal, United Overseas Bank raises as the lone error of the CA the refusal to apply the exception to the doctrine of exhaustion of administrative remedies.

The very erudite main opinion written by Justice Peralta considers the petition meritorious. Firstly, it says that this case presents a purely legal question – whether failure to obtain prior written approval of the HLURB would result to the nullification of the entire mortgage contract – that will eventually be decided by the courts. With the presence of such recognized exception, the rule on exhaustion of administrative remedies need not strictly apply. It insists anent the legal issue that the HLURB erred in declaring the

entire mortgage executed between J.O.S. Managing Builders and United Overseas Bank null and void in view of the pronouncement in *Philippine National Bank v. Lim* because although the mortgage could be nullified if it was in violation of Section 18 of P.D. No. 957, the nullification should apply only to the interest of the complaining buyer, and should not extend to the entire mortgage considering that the buyer of a particular unit or lot has no standing to ask for the nullification of the entire mortgage. It explains that the principle of indivisibility of mortgage under Article 2089 of the *Civil Code* cannot be applied herein because Section 18 of P.D. No. 957 expressly allows the proportionate extinguishment of a mortgage upon payment of the debt corresponding to the lot or unit of a particular buyer; that it follows that the mortgage can be partially nullified insofar as it affects the complaining party; and that the mortgage executed and the succeeding foreclosure proceedings between J.O.S. Managing Builders and United Overseas Bank were consequently null and void only with respect to EDUPLAN's Unit E at the 10th Floor of the Aurora Milestone Tower.

I **CONCUR** with the main opinion in its declaration that the mortgage contract between J.O.S. Managing Builders and United Overseas Bank should be declared null and void only insofar as it concerns EDUPLAN's condominium unit.

The general rule that a mortgage is an indivisible contract[6] applies only between the contracting parties where a debtor-creditor relationship exists. This the Court has made clear in *Belo v. Philippine National Bank*,[7] declaring:

> There is no dispute that the mortgage on the four (4) parcels of land by the Eslabon spouses and the other mortgage on the property of Eduarda Belo both secure the loan obligation of respondents spouses Eslabon to respondent PNB. However, we are not persuaded by the contention of the respondent PNB that the indivisibility concept applies to the right of redemption of an accommodation mortgagor and her assignees. The jurisprudence in *Philippine National Bank v. Agudelo* is enlightening to the case at bar, to wit:
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> > However, Paz Agudelo y Gonzaga (the principal) ... gave her consent to the lien on lot No. 878 .... This acknowledgment, however, does not extend to lots Nos. 207 and 61 ... inasmuch as, *although it is true that a mortgage is indivisible as to the contracting parties and as to their successors in interest (Article 1860, Civil code), it is not so with respect to a third person who did not take part in the constitution thereof either personally or through an agent* x x x. Therefore, the only liability of the defendant-appellant Paz Agudelo y Gonzaga is

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6 Article 2089, *Civil Code*.

7 G.R. No. 134330, March 1, 2001, 353 SCRA 359, 378-379.

> that which arises from the aforesaid acknowledgment but only with respect to the lien and not to the principal obligation secured by the mortgage acknowledged by her to have been constituted on said lot No. 878 .... Such liability is not direct but a subsidiary one.
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> x x x x
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> Wherefore, it is hereby held that the liability contracted by the aforesaid defendant-appellant Paz Agudelo y Gonzaga is merely subsidiary to that of Mauro A. Garrucho (the agent), limited to lot No. 87.
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> x x x x
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> From the wordings of the law, indivisibility arises only when there is a debt, that is, there is a debtor-creditor relationship. But, this relationship is wanting in the case at bar in the sense that petitioners are assignees of an accommodation mortgagor and not of a debtor-mortgagor. Hence, it is fair and logical to allow the petitioners to redeem only the property belonging to their assignor, Eduarda Belo.

Although the concept of indivisibility does not apply to the unit buyers of the condominium project because they are not parties to the principal contract of loan and the mortgage, the agreements that they enter into with the developer nevertheless affect the nature of the mortgage. In consideration of the agreements and conformably with the governing law, I humbly opine that the mortgage contract between J.O.S. Managing Builders and United Overseas Bank is not indivisible in this context.

To begin with, there are certain factors that may be considered to properly determine whether an obligation is divisible or indivisible, namely: (1) the will or intention of the parties, which may be express or presumed; (2) the objective or purpose of the stipulated prestation; (3) the nature of the thing; and (4) provisions of law affecting the prestation.[8]

In a real estate mortgage, the object or prestation does not refer to the lots or units mortgaged, but to the security given by the debtor to the creditor to guarantee the fulfillment of the principal obligation. However, unlike in the case of ordinary mortgage contracts, the provisions of P.D. No. 957 are embedded in the mortgage contract between J.O.S. Managing Builders and United Overseas Bank, particularly Section 18 which states:

> Section 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

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[8] IV Tolentino, *Civil Code of the Philippines*, (1999), p.255.

> 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 thereto.**

It is easily discernible from Section 18 that the partial extinguishment of the mortgage corresponding to a particular lot or unit that is meanwhile fully paid for is expressly permitted. As such, Section 18 affects the prestation of the mortgage because it releases a portion that no longer belongs to the mortgagor-developer and thus ceases to be the object of its mortgage.[9] In short, Section 18 of P.D. No. 957 renders mortgages of this nature divisible.

By virtue of Section 18 of P.D. No. 957, the parties of the mortgage become bound to respect the agreements from which the rights of lot or unit buyers arise. The Court has fittingly observed in *Philippine National Bank v. Dee*:[10]

> Nevertheless, despite the apparent validity of the mortgage between the petitioner and PEPI, the former is still bound to respect the transactions between respondents PEPI and Dee. The petitioner was well aware that the properties mortgaged by PEPI were also the subject of existing contracts to sell with other buyers. While it may be that the petitioner is protected by Act No. 3135, as amended, it cannot claim any superior right as against the installment buyers. This is because the contract between the respondents is protected by P.D. No. 957, a social justice measure enacted primarily to protect innocent lot buyers. Thus, in *Luzon Development Bank v. Enriquez*, the Court reiterated the rule that a bank dealing with a property that is already subject of a contract to sell and is protected by the provisions of P.D. No. 957, is bound by the contract to sell.
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> > However, the transferee BANK is bound by the Contract to Sell and has to respect Enriquez's rights thereunder. **This is because the Contract to Sell, involving a subdivision lot, is covered and protected by PD 957.** x x x.
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> > x x x x
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> > x x x Under these circumstances, the BANK knew or should have known of the possibility and risk that the assigned properties were already covered by existing contracts to sell in favor of subdivision lot buyers. As observed by the Court in another case involving a bank regarding a subdivision lot that was already subject of a contract to sell with a third party:

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9 Article 2085, *Civil Code*.

10 G.R. No. 182128, February 19, 2014, 717 SCRA 14, 25-26.

> [The Bank] should have considered that it was dealing with a property subject of a real estate development project. A reasonable person, particularly a financial institution x x x, should have been aware that, to finance the project, funds other than those obtained from the loan could have been used to serve the purpose, albeit partially. Hence, there was a need to verify whether any part of the property was already intended to be the subject of any other contract involving buyers or potential buyers. In granting the loan, [the Bank] should not have been content merely with a clean title, considering the presence of circumstances indicating the need for a thorough investigation of the existence of buyers x x x. Wanting in care and prudence, the [Bank] cannot be deemed to be an innocent mortgagee. x x x

The possibility exists that the developer's principal obligation with the financial institution will eventually become unsecured should all unit buyers of the condominium project effect full payment. In consideration of this possibility, the mortgage between J.O.S. Managing Builders and United Overseas Bank should be construed as divisible instead of indivisible. Hence, the nullity of the mortgage contract should be confined only to the interest of the complaining buyer, EDUPLAN.

I should stress that the right to set up the nullity of a void or non-existent contract is not limited to the parties, as in the case of annullable or voidable contracts. Under Article 1421 of the *Civil Code*, the defense of the illegality of a contract is available to third persons whose interests are directly affected.[11]

The interests of EDUPLAN, while not a party to the mortgage contract between J.O.S. Managing Builders and United Overseas Bank, are directly affected if the mortgage and its foreclosure were to be upheld. Even so, EDUPLAN, not being directly injured by the foreclosure of the other units, has no right to bring an action in behalf of the other unit buyers because its actionable interest is limited to its purchased unit. Indeed, Section 2, Rule 3 of the *Rules of Court* generally limits the right of action only to the real party-in-interest, *viz*:

> Sec. 2. *Parties in interest.* – A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

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[11] See also *Heirs of Policronio M. Ureta, Sr. v. Heirs of Liberato M. Ureta*, G.R. No. 165748, September 14, 2011, 657 SCRA 555, 589.

Interest within the meaning of this rule means material interest, or an interest in issue to be affected by the decree or judgment of the case, as distinguished from mere curiosity about the question involved. Accordingly, a real party in interest is the party who, by the substantive law, has the right sought to be enforced.[12] Following *Philippine National Bank v. Lim*, *supra*, the HLURB really went overboard in voiding the entire mortgage without an action being filed by *all* the real parties in interest.

The fear exists that this interpretation may result in the filing of multiple actions for the annulment of mortgage and foreclosure proceedings by unit buyers of condominium projects. The situation is not necessarily adverse to procedural orderliness, however, because the *Rules of Court* may partly address it under the rule on the permissive joinder of parties. Thus, Rule 3, Section 6 of the *Rules of Court*, which embodies the rule on permissive joinder of parties, states:

> Sec. 6. *Permissive joinder of parties.* – All persons in whom or against whom any right to relief in respect to or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, may, except as otherwise provided in these Rules, join as plaintiffs or be joined as defendants in one complaint, where any question of law or fact common to all such plaintiffs or to all such defendants may arise in the action; but the court may make such orders as may be just to prevent any plaintiff or defendant from being embarrassed or put to expense in connection with any proceedings in which he may have no interest.

IN VIEW OF THE FOREGOING, I vote to **GRANT** the petition for review on *certiorari*.

LUCAS P. BERSAMIN
Associate Justice

CERTIFIED XEROX COPY:
FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT

[12] *Ang v. Ang*, G.R. No. 186993, August 22, 2012, 678 SCRA 699, 707-708.