

FIRST DIVISION

[G.R. No. 199353, April 04, 2018]

LEVISTE MANAGEMENT SYSTEM, INC., PETITIONER, VS. LEGASPI TOWERS 200, INC., AND VIVIAN Y. LOCSIN AND PITONG MARCORDE, RESPONDENTS.

ENGR. NELSON Q. IRASGA, IN HIS CAPACITY AS MUNICIPAL BUILDING OFFICIAL OF MAKATI, METRO MANILA AND HON. JOSE P. DE JESUS, IN HIS CAPACITY AS SECRETARY OF THE DEPT. OF PUBLIC WORKS AND HIGHWAYS, THIRD PARTY RESPONDENTS.

[G.R. NO. 199389]

LEGASPI TOWERS 200, INC., PETITIONER, VS. LEVISTE MANAGEMENT SYSTEM, INC., ENGR. NELSON Q. IRASGA, IN HIS CAPACITY AS MUNICIPAL BLDG. OFFICIAL OF MAKATI, METRO MANILA, AND HON. JOSE P. DE JESUS, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, RESPONDENTS.

D E C I S I O N

LEONARDO-DE CASTRO, J.:**

The Civil Code provisions on builders in good faith presuppose that the **owner of the land** and the **builder** are two distinct persons who are not bound either by specific legislation on the subject property or by contract. Properties recorded in accordance with Section 4^[1] of Republic Act No. 4726^[2] (otherwise known as the Condominium Act) are governed by said Act; while the Master Deed and the By Laws of the condominium corporation establish the contractual relations between said condominium corporation and the unit owners.

These are consolidated petitions under Rule 45 filed by Leviste Management System, Inc. (LEMANS) and Legaspi Towers 200, Inc. (Legaspi Towers), both assailing the Decision^[3] dated May 26, 2011 of the Court of Appeals in CA-G.R. CV No. 88082. The assailed Decision^[4] affirmed the October 25, 2005 Decision of the Regional Trial Court (RTC), Branch 135 of Makati City in Civil Case No. 91-634.

The facts, as culled by the Court of Appeals from the records, follow:

Legaspi Towers is a condominium building located at Paseo de Roxas, Makati City. It consists of seven (7) floors, with a **unit on the roof deck** and **two levels above said unit called Concession 2 and Concession 3**. The use and occupancy of the condominium building is governed by the Master Deed with Declaration of Restrictions of Legaspi Towers

(hereafter "Master Deed") annotated on the transfer certificate of title of the developer, Legaspi Towers Development Corporation.

Concession 3 was originally owned by Leon Antonio Mercado. On 9 March 1989, Lemans, through Mr. Conrad Leviste, bought Concession 3 from Mercado.

Sometime in 1989, Lemans decided to build another unit (hereafter "Concession 4") on the roof deck of Concession 3. Lemans was able to secure the building permit for the construction of Concession 4 and commenced the construction thereof on October 1990.

Despite Legaspi Corporation's notice that the construction of Concession 4 was illegal, Lemans refused to stop its construction. Due to this, Legaspi Corporation forbade the entry of Lemans' construction materials to be used in Concession 4 in the condominium. Legaspi Corporation similarly wrote letters to the Building Official Nelson Irasga ("hereafter Irasga"), asking that the [building] permit of Lemans for Concession 4 be cancelled. Irasga, however, denied the requested cancellation, stating that the applicant complied with the requirements for a building permit and that the application was signed by the then president of Legaspi Corporation.

Lemans filed the Complaint dated February 20, 1991 with the RTC, praying among others that a writ of mandatory injunction be issued to allow the completion of the construction of Concession 4. On 3 April 1991, the RTC issued the writ prayed for by Lemans.

Later, Legaspi Corporation filed the Third Party Complaint dated October 7, 1991. This was against Irasga, as the Municipal Building Official of Makati, and Jose de Jesus (hereafter "De Jesus"), as the Secretary of Public Works and Highways (collectively referred to as the "third-party defendants-appellees") so as to nullify the building permit issued in favor of Lemans for the construction of Concession 4.

After the parties had presented and formally offered their respective pieces of evidence, but before the rendition of a judgment on the main case, the RTC, in its Order dated May 24, 2002, found the application of Article 448 of the Civil Code and the ruling in the *Depra vs. Dumlao* [case] (hereafter "*Depra Case*") to be proper.

Lemans moved for the reconsideration o[f] the aforementioned order. The RTC denied this and further ruled:

The main issue in this case is whether or not [LEMANS] owns the air space above its condominium unit. As owner of the said air space, [LEMANS] contends that its construction of another floor was in the exercise of its rights.

It is the [finding] of the Court that [LEMANS] is not the owner of the air space above its unit. [LEMANS'] claim of ownership

is without basis in fact and in law. The air space which [LEMANS] claims is not on top of its unit but also on top of the condominium itself, owned and operated by defendant Legaspi Towers.

Since it appears that both plaintiff and defendant Legaspi Towers were in good faith, the Court finds the applicability of the ruling in *Depra vs. Dumlao*, 136 SCRA 475.

From the foregoing, Lemans filed the Petition for Certiorari dated November 13, 2002 with the [Court of Appeals], docketed as CA G.R. SP. No. 73621, which was denied in the Decision promulgated on March 4, 2004. The Court did not find grave abuse of discretion, amounting to lack or excess of jurisdiction, on the RTC's part in issuing the above orders. Lemans sought reconsideration of this decision but failed.

Meanwhile, Lemans adduced evidence before the RTC to establish that the actual cost for the construction of Concession 4 was Eight Hundred Thousand Eight Hundred Ninety-seven and 96/100 Pesos (PhP800,897.96) and that the fair market value of Concession 4 was Six Million Pesos (PhP6,000,000.00). Afterwards, the RTC rendered the Assailed Decision.^[5]

Reiterating its previous ruling regarding the applicability of Article 448 of the Civil Code to the case, the RTC in its October 25, 2005 Decision disposed of the dispute in this wise:

WHEREFORE, judgment is hereby rendered ordering defendant Legaspi Towers 200, Inc. to exercise its option to appropriate the additional structure constructed on top of the penthouse owned by plaintiff Leviste Management Systems, Inc. within sixty [60] days from the time the Decision becomes final and executory. Should defendant Legaspi Towers 200, Inc. choose not to appropriate the additional structure after proper indemnity, the parties shall agree upon the terms of the lease and in case of disagreement, the Court shall fix the terms thereof.

For lack of merit, the third party complaint and the counterclaims are hereby dismissed.

Costs against the plaintiff.^[6]

When the parties' respective motions for reconsideration were denied by the trial court, both elevated the matter to the Court of Appeals.

On May 26, 2011, the Court of Appeals, acting on the consolidated appeals of LEMANS and Legaspi Towers, rendered its Decision affirming the decision of the RTC

of Makati City.

The Court of Appeals held that the appeal of LEMANS should be dismissed for failure to comply with Section 13, Rule 44 in relation to Section 1(f), Rule 50 of the Rules of Court, as the subject index of LEMANS' brief did not contain a digest of its arguments and a list of textbooks and statutes it cited.^[7] For this reason, the appellate court no longer passed upon the sole issue raised by LEMANS, *i.e.*, whether its construction of Concession 4 should be valued at its actual cost or its market value.

As regards the appeal of Legaspi Towers, the Court of Appeals held that while Concession 4 is indeed a nuisance, LEMANS has been declared a builder in good faith, and noted that Legaspi Towers failed to contest this declaration. Since Concession 4 was built in good faith, it cannot be demolished. The Court of Appeals likewise affirmed the validity of the building permit for Concession 4, holding that if the application and the plans appear to be in conformity with the requirements of governmental regulation, the issuance of the permit may be considered a ministerial duty of the building official.^[8]

The Motion for Partial Reconsideration of Legaspi Towers and the Motion for Reconsideration of LEMANS were denied for lack of merit in the appellate court's Resolution^[9] dated November 17, 2011.

Consequently, LEMANS and Legaspi Towers filed separate Petitions for Review on *Certiorari* with this Court based on the following grounds:

[LEMANS PETITION:]

I

THE COURT OF APPEALS ERRED WHEN IT FAILED TO APPLY THE *DEPRA VS. DUMLAO* DOCTRINE WHEN IT REFUSED TO RULE ON THE PROPER VALUATION OF THE SUBJECT PROPERTY FOR THE PURPOSE OF DETERMINING THE PURCHASE PRICE IN THE EVENT THAT RESPONDENT LEGASPI TOWERS EXERCISES ITS OPTION TO PURCHASE THE PROPERTY

II

THE COURT OF APPEALS ERRED WHEN, REFUSING TO RULE ON THE VALUATION OF THE SUBJECT PROPERTY, IT DISREGARDED THE EVIDENCE ALREADY SUBMITTED AND PART OF THE RECORDS.^[10]

[LEGASPI TOWERS PETITION:]

- I. THE COURT OF APPEALS ERRED IN NOT HOLDING THAT [LEGASPI TOWERS] HAS THE RIGHT TO DEMOLISH CONCESSION 4 FOR BEING AN ILLEGAL CONSTRUCTION.

II. THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE BUILDING PERMIT OF CONCESSION 4 IS NOT VALIDLY ISSUED.^[11]

At the crux of the present controversy is the legal issue whether Article 448 of the Civil Code and our ruling in *Depra v. Dumlao*^[12] are applicable to the parties' situation.

Prior to answering this key question, we dispose of a procedural matter. LEMANS has taken the position that in light of the finality of the trial court's Order dated May 24, 2002 holding that Article 448 of the Civil Code and the *Depra* case should be applied in this case, Legaspi Towers is now bound by same and may no longer question the former's status as a builder in good faith. The Court of Appeals in its assailed Decision appears to subscribe to the same view when it ruled that, despite the fact that Concession 4 was a nuisance, the previous declaration that LEMANS is a builder in good faith limits Legaspi Towers' options to those provided in Article 448.

The Court does not agree with LEMANS and the Court of Appeals.

At the outset, it must be pointed out that the May 24, 2002 RTC Order is an interlocutory order that did not finally dispose of the case and, on the contrary, set the case for hearing for reception of evidence on the amount of expenses spent by LEMANS in the construction of Concession 4. For this reason, it is apropos to discuss here the remedies available to a party aggrieved by interlocutory orders of the trial court.

Section 1, Rule 41 of the Rules of Court pertinently states:

RULE 41
Appeal from the Regional Trial Courts

SECTION 1. *Subject of appeal.* — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

- (a) An order denying a motion for new trial or reconsideration;
- (b) An order denying a petition for relief or any similar motion seeking relief from judgment;
- (c) **An interlocutory order;**
- (d) An order disallowing or dismissing an appeal;
- (e) An order denying a motion to set aside a judgment by