

## THIRD DIVISION

[ G.R. No. 164795, April 19, 2017 ]

**TGN REALTY CORPORATION, PETITIONER, VS. VILLA TERESA  
HOMEOWNERS ASSOCIATION, INC., RESPONDENT.**

### DECISION

**BERSAMIN, J.:**

This case concerns the dispute between the land developer and the residents of its subdivision development regarding the state of improvements on the subdivision. Having been declared by the forum of origin to have not completed the development of the subdivision, and the declaration having been upheld on appeal, the land developer persists in urging the undoing of the decision promulgated on August 6, 2004,<sup>[1]</sup> whereby the Court of Appeals (CA) denied its petition for review against the adverse ruling of the Office of the President (OP).

#### Antecedents

Petitioner TGN Realty Corporation owned and developed starting on August 22, 1966 the Villa Teresa Subdivision on a parcel of land situated in Barangays Sto. Rosario and Cutcut, Angeles City, Pampanga. The project soon had many lot buyers who built or bought residential units thereon. Respondent Villa Teresa Homeowners Association, Inc. (VTHAI) was the association of the residents and homeowners of the subdivision.

In a letter dated September 2, 1997,<sup>[2]</sup> VTHAI, through counsel, made known to the petitioner the following complaints and demands, to wit:

- 1.1. Immediate opening of Aureo St. and the closed section of Flora Avenue;
- 1.2. Completion of all fencing at the perimeter of Villa Teresa, including the perimeter fencing along property line from Gate #2 to Sto. Rosario (section of the Flora Avenue) which is being used, against the objection of the residents, as parking for vehicles which constricts the entry and exit to and from the subdivision;
- 1.3. Closure of all openings at the perimeter fence (Pritil gate);
- 1.4. Construction of adequate drainage at Ma. Cristina and along Flora Avenue;
- 1.5. Construction of a Guard House and gate at the 2<sup>nd</sup> Gate and reimburse the VTHA, Inc. for the costs (sic) construction of a Guard House at 3<sup>rd</sup> gate;
- 1.6. Completion of all sidewalks;
- 1.7. Development of the open space;
- 1.8. Use of residential lots not for residential purposes (HAU) in clear violation of restrictions in the title;

- 1.9. Plan of HAU to construct an overpass across Flora Ave.;
- 1.10. Severe pruning of all Talisay trees along the perimeter of HAU resulting in the death of several trees. (These trees have been here for about 20 years now)

Allegedly, VTHAI tried to discuss the complaints and demands but the petitioner failed and refused to meet in evident disregard of the latter's obligations as the owner and developer of the project.

In its letter dated September 22, 1997,<sup>[3]</sup> the petitioner specifically answered the complaints and demands of VTHAI by explaining thusly:

#### 1.1. Opening of Aureo St. and Flora Avenue

Aureo St. and a portion of Flora Avenue have always been part and parcel of the Holy Angel University even before their construction and development of Villa Teresa Subdivision. Said streets have long been turned-over to the University, and were never opened to the public, much less, the residents of Villa Teresa. Hence, for all legal intents and purposes, said streets are not part of the subdivision and are now under the control and supervision of the University.

#### 1.2. Completion of Fencing

The whole length of the perimeter fence, especially at the back portion, was already constructed prior to the Mt. Pinatubo eruption. It was only in 1992 that flash floods destroyed a small portion thereof, particularly the lots near the David's residence and Marissa Drive opposite Villa Dolores Subdivision.

Fencing the entrance of Flora Avenue fronting the Jimenez property is a foolish and vindictive way of solving the alleged constricted entry and exit. It will do more harm than good, and result in a legal, if not social and political problem. At most, this is a temporary inconvenience which poses no serious problem.

#### 3. Closure of Openings (Pritil Gate).

Pritil Gate serves as an emergency entry/exit to the subdivision, and is not supposed to be fenced by a concrete wall. Moreover, the adjacent landowner, Rafael Nunag, has threatened to close all our drainage lines passing through his property before it drains to the nearby Matua Creek, if this gate will be fenced. If this happens, water from the upper portion of the subdivision will overflow from the manholes and catch basins, and will flood low lying streets like Aurora Drive and Flora Avenue.

#### 4. Construction of Adequate Drainage

The drainage system designed by Engr. Victor Valencia along Cristina Drive and Flora Avenue has been functioning effectively for thirty (30) years. It was only recently that manholes on low portions of Cristina Drive are slow in absorbing the unusual amount of rain water, but takes

only about an hour to fully drain.

#### 5. Construction of Guard House

A guard house was constructed at the Flora Avenue exit, but was transferred by VTHA. As far as reimbursement of costs of guard house at Don Juan Nepomuceno Avenue is concerned, T.G.N. Realty has never agreed to reimburse the same, nor does it intend to.

#### 6. Completion of Sidewalks

All sidewalks of the subdivision were constructed except that portion of Flora Avenue along the open space, because it was leveled by heavy equipments contracted by the VTHA. The gutter along the full frontage of the open space is halved or low, and used by residents as parking for their vehicles. If you will observe, very few people use the sidewalks, especially in this part of the subdivision.

#### 7. Development of the Open Space

Records will show that T.G.N Realty did not advertise nor commit to develop the open space when it opened the subdivision and sold the lots therein. It was never its intention to put up amenities/facilities that some residents are expecting. It may be recalled that T.G.N. Realty provided several playground equipments in the provisional playground near the Teresa water tank. However, children from nearby barangay Cutcut would climb the fence and play at the park, to the dismay of some residents. Hence, the former officers at VTHA requested T.G.N. Realty to remove these playground equipments and it was agreed that the same be donated to Barangay Cutcut.

#### 8. Use of Residential Lots for Other Purposes

There was no violation of the restrictions when T.G.N. Realty donated the whole Block No. 5 to the Holy Angel University, which is now the site of the school gym. This is a prerogative of the T.G.N. as the owner. Besides, a careful perusal of the titles would readily show that these lots are for educational, and not residential purposes.

#### 9. Plan of HAU to Construct Overpass

We suggest that you direct your request to the school administration as the proper party.

#### 10. Pruning of Trees

T.G.N. Realty has nothing to do with the pruning of Talisay trees around the perimeter of Holy Angel University. However, T.G.N. was informed that the matter has been properly explained to VTHA by the school authorities and that 75 new Mahogany trees were planted to eventually replace 47 live and 14 dead trees.

The truth of the matter is that about two years ago, our client had already dealt with the present officers of VTHA on the control, supervision and maintenance of these facilities, and in fact. a Memorandum of Agreement was prepared for signing by the parties. Among the many conditions that VTHA voluntarily agreed to undertake was payment of realty tax on the road lots and open space, and maintenance and repair of all facilities in the subdivision. A verification with the Office of the City Treasurer, however, revealed that VTHA has been delinquent in the payment of taxes for the past two years.

x x x x

In view of the failure and refusal of the petitioner to heed its demands, VTHAI filed with the Housing and Land Use Regulatory Board (HLURB) its complaint for specific performance and for violation of Presidential Decree (P.D.) No. 957 and P.D. No. 1216 on October 17, 1997, docketed as HLURB Case No. REM-C0-03-7-1133.<sup>[4]</sup>

On December 10, 1997, the petitioner filed its answer with counterclaim,<sup>[5]</sup> whereby it reiterated the explanations contained in its letter dated September 22, 1997, and urged that the complaint be dismissed. It insisted that it should be granted moral damages of 100,000.00 for discrediting its goodwill, and attorney's fees of P30,000.00 plus P2,000.00/appearance per hearing because the complaint was malicious.

On September 25, 1998, HLURB Arbiter Jose A. Atencio, Jr. rendered his decision,<sup>[6]</sup> relevantly holding and ruling thusly:

To verify the status of development in the subdivision an ocular inspection was conducted on March 13, 1998, and the findings revealed among others that:

Background:

Villa Teresa Subdivision is a first class subdivision ...

Development Description:

Road Network: Per approved plan all roads will be paved with concrete ... the Aureo and Flora Ave., which is (sic) near the Holy Angel University is (sic) closed to the subdivision residents and allegedly appropriated by the school.

Curbs, Gutters and sidewalk: The curb, gutters and sidewalks were not yet fully completed specially at the side of the open space.

Drainage System: ... Per inspection the subdivision drainage were completed but the canal at the Cristina Ave. were (sic) clogging and the road and some houses were submerged with 1-2 feet of water during rainy season as alleged by the residents at the site. Because the flow of water coming from the Holy Angel University cannot be accommodated in the canal, that's why it goes to the road (sic).

Electrical installation: ... were already completed.

Water System: ... will be provided by a centralized water system. Installation of water pipe (sic) were already completed.

Open Space: The designated open space is already operational and a clubhouse is already constructed with a basketball (sic) (which) is on-going construction including the guardhouses and the name of the subdivision (sic). As stated by the members and officer of the association, construction of the basketball court, clubhouse and the name of the subdivision is funded by the Homeowners Assn.

Recommendation: Proper development and maintenance of all subdivision facilities should be undertaken by the owner/developer. And fencing of unfinished perimeter fence especially those leading to the squatter area. Cleaning of clogging canal and help the association in maintaining the subdivision a safe, clean and healthy place to live in (are) the request of the residents.

Based on the allegations in the pleadings and the position papers of the parties the issues to be resolved are whether or not:

1.1. Respondent has violated PD 957, otherwise known as subdivision lot and condominium unit buyer protective decree and PD 1216, the law defining open space in a subdivision.

1.2. The parties are liable for damages and the payments of administrative fines, insofar as the respondent is concerned.

As to the first issue.

A perusal of the evidence presented, records of the subdivision, as well as the facts and circumstances obtaining in the case, it cannot be denied that respondent violated Section 22 of PD 957 when it allowed Flora Avenue and Aureo Street which are part of the subdivision to be closed and exclusively appropriated for the use of Holy Angel University.

It likewise violated the same Section when it caused the construction of a gate (Pritil) as the same is part of the perimeter fence of the subdivision.

The transfer of the whole Block 5 under the name of Holy University (sic) and its subsequent conversion into a compound of the said school is an alteration in violation of the above-mentioned Section of PD 957.

Said. Section 22 of PD 957 states that:

Section 22. Alteration of Plans - No owner or developer shall change or alter roads, open space, infrastructures, facilities for public use and/or other form of subdivision developments as contained in the approved subdivision plan and/or represented in its advertisements, without the permission of the Authority (now this Board) and the written conformity or consent of the