

## SECOND DIVISION

[ G.R. No. 184482, July 04, 2012 ]

**BETHEL REALTY AND DEVELOPMENT CORPORATION,  
PETITIONER, VS. HOUSING AND LAND USE REGULATORY  
BOARD, AND SPOUSES MARJORIE AND NEMESIO VISAYA,  
RESPONDENTS.**

### DECISION

**PEREZ, J.:**

Before this Court is a *Petition for Review on Certiorari* assailing the issuances of the Court of Appeals, to wit: (a) the Amended Decision<sup>[1]</sup> dated 26 May 2008 denying the *Petition for Certiorari, Annulment, Injunction* with prayer for TRO and/or Preliminary Injunction for failure to indicate in the petition the material date when the petitioner received the notice of the assailed decision of the Housing and Land Use Regulatory Board (HLURB); and (b) the Resolution<sup>[2]</sup> dated 16 September 2008 denying petitioner's Motion for Reconsideration of the Amended Decision.

In denying the petition, the Amended Decision of the Court of Appeals effectively reinstated the Decision<sup>[3]</sup> dated 8 September 2000 of the HLURB, which ordered the petitioner, among others, to immediately deliver the Transfer Certificate of Title of the subdivision lot it sold to private respondents.

#### ***The Factual Antecedents***

On 3 March 1994, petitioner Bethel Realty and Development Corporation sold to private respondents spouses Nemesio and Marjorie Visaya a parcel of lot located in the Municipality of Taytay, Province of Rizal. Upon respondents' full payment of the purchase price on 24 March 1997, the contracting parties executed a Deed of Absolute Sale. However, despite several demands, petitioner failed to deliver the Transfer Certificate of Title covering the subject lot. Marjorie sought the help of the HLURB.

#### ***Proceedings with the HLURB***

The HLURB Legal Services Group indorsed Marjorie's letter dated 16 September 1999 to the appropriate field office after the same was verified and acknowledged before a Notary Public.<sup>[4]</sup> The field office, in turn, treated the same as a verified complaint<sup>[5]</sup> and correspondingly issued a summons dated 16 November 1999 to the president/general manager of the petitioner.<sup>[6]</sup> On 23 December 1999, petitioner was declared in default for failure to file an answer to the complaint.<sup>[7]</sup> Thereafter, on 8 September 2000, the HLURB rendered its decision<sup>[8]</sup> in HLURB Case No. REM-102599-10727 in favor of the respondents, pertinent portions of which

read:

Complainants religiously paid their due installments or zealously complied with their obligations xxx, they further paid the sum of x x x representing their full payment of the purchase price xxx.

x x x

x x x [C]omplainants demanded from respondent immediate delivery of the Transfer Certificate of Title of the subject lot but the latter promised to deliver the same later on. Complainants made several demands for the delivery of the title of the lot but respondent failed and continuous to fail to deliver the same (sic).

To apparently reassure complainants, the respondent issued to them its tax declaration. But no Transfer Certificate of Title was later issued to them.

Compound[ing] their woes and dismay, complainants found out that the project named Leviticus V had no license to sell. Neither is it registered as such with this Board. Complainants likewise found out that the subdivision was not developed contrary to the provisions of law and implementing rules and regulations of P.D. No. 957.

Furthermore, entrance to the project was denied to the complainants by inhabitants of the adjoining subdivision project for failure of respondent to pay the necessary compensation for the easement of the road right of way.

x x x

**WHEREFORE**, this Office hereby renders judgment against the respondent and orders it to immediately deliver to the complainants the Transfer Certificate of Title of the subdivision lot in question. In the event that it fails to do so, or on account of some legal or physical impossibility to deliver, the respondent is thus ordered to refund to complainants the total amount paid to it plus interest and damages reckoned from the date of filing this complaint until fully paid.

Respondent is hereby ordered to pay damages to herein complainant in the sum of P20,000.00, and furthermore, to pay this Board administrative fine of Ten Thousand Pesos (P10,000.00) for violation of Sections 4, 5 and 25 of Presidential Decree No. 957.<sup>[9]</sup>

The sheriff of the Regional Trial Court, Antipolo City, attempted to implement the decision by virtue of the Writ of Execution and Alias Writ of Execution issued by the HLURB.<sup>[10]</sup> In the last Sheriff's Report dated 1 July 2002, it was stated that he could not locate the exact address of the petitioner.<sup>[11]</sup>

### ***Proceedings with the Court of Appeals***

In a *Petition for Certiorari with Injunction*<sup>[12]</sup> filed on 29 October 2003 and docketed as CA G.R. SP No. 80225, petitioner sought to nullify the decision and the entire proceedings in the HLURB. On 7 November 2003, the Court of Appeals dismissed the petition in the following manner:

x x x [A]side from the assailed Decision and Writs of Execution, petitioner **failed to attach to the petition copies of all pleadings and documents and other material portions of the record relevant and pertinent thereto**, a non compliance with Section 1, Rule 65 and Section 3, Rule 46 of the revised Rules on Civil Procedure, hence, the petition is dismissible under the last paragraph of said Section 3. (*Emphasis supplied.*)

ACCORDINGLY, the petition is hereby DISMISSED OUTRIGHT.<sup>[13]</sup>

Petitioner re-filed the petition on 5 March 2004, now docketed as CA-G.R. SP No. 82579.<sup>[14]</sup> This time, while copies of the required documents were attached, the same were neither duplicate originals nor certified true copies. This necessitated the issuance of a Resolution<sup>[15]</sup> dated 11 March 2004, to wit:

x x x [T]he documents attached to the Petition, specifically Annexes "A to F," are neither duplicate originals nor certified true copies.

**WHEREFORE**, petitioners are hereby **ordered** to submit, within five (5) days from notice hereof, clear and legible duplicate originals or certified true copies of the aforesaid documents. (*Emphasis in the original.*)  
**Failure to do so shall merit the dismissal of the instant Petition.**  
<sup>[16]</sup> (*Emphasis supplied.*)

Petitioner partially complied with the Resolution of 11 March 2004 prompting the Court of Appeals to order anew the submission of certified true copies of four (4) of the annexes earlier mentioned, with a warning that its failure to do so will warrant the dismissal of the petition. Its Resolution<sup>[17]</sup> of 1 June 2004 reads in part:

In Compliance with Our Resolution dated March 11, 2004, petitioner submitted certified true copies of the documents specifically Annexes B, B-1, C and D and mere photocopies of Annexes A, E, F and F-1. Accordingly, petitioner is hereby ordered anew to submit within five (5) days from notice certified true copies of Annexes "A, E, F and F-1."  
**Failure to do so shall merit the dismissal of the instant Petition.**  
<sup>[18]</sup> (*Emphasis supplied.*)

On 22 June 2004, petitioner filed its *Compliance with Urgent Motion for Issuance of TRO*.<sup>[19]</sup> Thereafter, on 17 November 2004, the Court of Appeals resolved to issue

a temporary restraining order against the enforcement of the assailed HLURB Decision upon payment of an injunctive bond of P346,800.00.<sup>[20]</sup>

On 21 December 2007, the Court of Appeals granted the petition. The dispositive portion of the Decision reads:

**WHEREFORE**, the instant Petition is **GRANTED**. The assailed Decision, dated September 8, 2000, of the Public Respondent Housing and Land Use Regulatory Board is hereby **ANNULED and SET ASIDE**. The Public Respondent Housing and Land Use Regulatory Board is declared without jurisdiction to take cognizance of HLURB Case No. REM-102599-10727, and all its orders and issuances in connection therewith are hereby **ANNULED and SET ASIDE**.<sup>[21]</sup>

However, acting on the respondents' Motion for Reconsideration of the Decision dated 21 December 2007, the Court of Appeals promulgated an Amended Decision<sup>[22]</sup> on 26 May 2008 denying the petition and reinstating the HLURB Decision. We quote, in part:

It is settled that the function of a motion for reconsideration is to point out to the court the error that it may have committed and to give it a chance to correct itself. xxx We took a second hard look at the records and the facts of this case and, in result discovered that **Petitioner committed a fatal error in failing to indicate when it received or was informed of the decision of the HLURB for purposes of reckoning whether the Petition was filed on time or not.** Consequently, We partially grant the Motion for Reconsideration by denying the Petition for Certiorari. (*Emphasis supplied.*)

**WHEREFORE**, Private Respondent's Motion for Reconsideration, dated January 16, 2008, is **GRANTED IN PART** only insofar as the dismissal of the Petition for Certiorari.

Accordingly, Our Decision, dated December 21, 2007, is hereby **REVERSED and SET ASIDE** and a new one issued **denying** the Petition xxx dated February 24, 2004. The Decision, dated September 8, 2000, of the Public Respondent Housing and Land Use Regulatory Board is reinstated.<sup>[23]</sup>

Aggrieved, petitioner moved for the reconsideration of the Amended Decision denying its petition. Finding no compelling reason to modify the same, the Court of Appeals denied the motion.<sup>[24]</sup>

### **Issue**

In this instant petition, we are not called upon to rule on the merits of the Decision of the HLURB. The sole issue raised by the petitioner is "whether or not the Court of Appeals correctly applied and interpreted the provisions on the material data rule

under Section 4, Rule 65 and Sec. 3[,] Rule 46 of the 1997 Rules of Civil Procedure” [25] warranting the denial of its petition before the Court of Appeals.

### ***Our Ruling***

We deny the petition.

### ***Administrative remedies were available to petitioner to question the decision of the HLURB***

Settled is the rule that the special civil action of *certiorari* under Rule 65 of the Rules of Court is available to an aggrieved party only when “there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law.”[26] Otherwise, the petition will not prosper even if the alleged ground is grave abuse of discretion. [27]

In the instant case, it would appear that the petitioner failed to exhaust all other remedies available to it.

Rule V of the 1996 Rules of Procedure of the HLURB then in force provides:

Section 3. *Review of Judgment of Default.* – If the party declared in default who for good cause was unable to file a motion to lift the order of default, and a judgment by default was consequently rendered, he may still file a petition for review of the judgment by default with the Board in accordance with Rule XII of these Rules and whatever defenses he has against the complainant may still be raised in said petition.

Relative thereto, Rule XII of the same Rules read:

Section 1. *Petition for Review.* – The aggrieved party on any legal ground and upon payment of the review fee, may file with the Regional Office a verified petition for review of the arbiter’s decision within thirty (30) calendar days from receipt thereof.

After a review of the decision of the arbiter, the aggrieved party may also file a motion for reconsideration of the decision of the Board of Commissioners and eventually appeal the same to the Office of the President. Rule XVIII of the same Rules provides:

Section 1. *Motion for Reconsideration.* – Within the period for filing an appeal from a Board decision, order or ruling of the Board of Commissioners, any aggrieved party may file a motion for reconsideration with the board x x x.

x x x

Section 2. *Appeal.* – Any party may upon notice to the Board and the