

FIRST DIVISION

[G.R. NO. 165648, March 26, 2006]

**EASTLAND CONSTRUCTION & DEVELOPMENT CORPORATION,
PETITIONER, VS. BENEDICTA MORTEL, RESPONDENT.**

CHICO-NAZARIO, J.:

Before Us is a petition for review on *certiorari* which seeks to set aside the resolution^[1] of the Court of Appeals in CA-G.R. SP No. 84835 dated 22 July 2004 dismissing petitioner Eastland Construction & Development Corporation's petition for review for failure to append material portions of the record and other supporting papers as well as the Certificate of Non-Forum Shopping, and the resolution^[2] dated 11 October 2004 denying its motion for reconsideration.

The antecedents are stated in the decision of the Housing and Land Use Arbiter, as follows:

Sometime in 1996, respondent Eastland Construction and Development Corporation (Eastland for brevity), publicly announced and claimed that they would sell and develop a subdivision in Mabini, Batangas, to be known as the "Evergreen Anilao Estate," covered by TCT No. T-82217. For this purpose, Eastland went on a marketing campaign where they represented to the people of Mabini, Batangas the availability of the Project in general and of specific lots in particular. Allegedly at that time, Eastland was not yet equipped with a Certificate of Registration and License to Sell (CR/LS) issued by this Office.

Believing on the representations made by Eastland, complainant entered into a contract with the Eastland through its president Imelda de los Santos to purchase a lot specifically described as Lot No. 9, Block 2 with a total area of 125 square meters for a contract price of P168,750.00. Complainant alleged that there was a technical error in the contract to sell because the area stated therein is 120 square meters corresponding the amount of P162,000.00. Thus, complainant paid an additional amount of P6,750.00 corresponding the additional 5 square meter lot to complete the 125 square meter lot, which is allegedly the true and genuine agreement of the parties.

The parties likewise agreed that upon full payment of the purchase price, Eastland is obliged to execute a Deed of Absolute Sale in favor of the complainant, free from any liens and encumbrances, to wit:

"4. DEED OF SALE. Upon complete payment by the PURCHASER of all obligation herein stipulated, the OWNER agrees to execute a final deed of sale in favor of the

PURCHASER free from liens and encumbrances whatsoever except those imposed herein and by law." (Italics Supplied)

Listed below are the payments made by the complainant for the subject lot to wit:

(Receipt lost)	P5,000.00	Reservation
May 17, 1996	48,600.00	O.R. No. 0855 D/P
August 01, 1996	6,109.38	O.R. No. 0906
September 16, 1996	5,995.57	O.R. No. 0915
October 5, 1996	5,995.57	O.R. No. 0925
December 16, 1996	105,228.48	O.R. No. 0949
July 10, 1998	<u>6,750.00</u>	O.R. No. 05
Total	P183,679.00	

Having more than fully paid the agreed contract price, complainant demanded from Eastland copy of the title covering the subject property. However, Eastland failed to heed the demand.

Worse, complainant discovered that Eastland concealed from the buyers the fact that the lots they are offering for sale covered by TCT No. T-82217 constituting the Evergreen Anilao Estate has been previously mortgaged in favor of Bangko Silangan Development Bank, which later on became the Orient Commercial Banking Corporation (hereinafter Orient Bank), through a Real Estate Mortgage on September 8, 1994, to secure a loan amounting to P2,000,000.00. Said mortgage was duly registered and annotated at the back of TCT No. T-82217.

On October 17, 1994, Eastland caused the subdivision of TCT No. T-82217 into 173 subdivision lots, one of which is the lot subject matter of the instant case.

Records reveal that it was only on September 15, 1998 that Evergreen Anilao Project was issued a CR/LS by this Board. Said Project was registered pursuant to Section 21 of Batas Pambansa Blg. 220 and under the said License, each lot should be sold only at a maximum selling price of P150,000.00.

On October 14, 1998, Orient Bank closed shop and was placed under receivership by respondent Philippine Deposit Insurance Corporation (PDIC for brevity) by virtue of Resolution No. 1427 issued by the Monetary Board of the Bangko Sentral ng Pilipinas. Respondent PDIC took over the assets and affairs of the closed bank, including the subject title.

On several occasions, complainant demanded from Eastland the

execution and delivery of the Deed of Sale and Transfer Certificate of Title covering the subject lot, unfortunately it fell on deaf ears. Hence, the instant case.

In its answer, Eastland claims that the title was not mortgaged with PDIC but it was only pledged to the latter. Eastland wanted to impress this Office that inasmuch as the title was merely pledged with the Bank, thus it is exempted from the coverage of P.D. 957 specifically Section 18. Eastland went on to state that, what was proscribed by law was mortgage on the land not on the title of the land.

Moreover, Eastland claims that it cannot effect a valid and legal transfer because the Owner's Duplicate Copy is in the possession of Orient Commercial Banking Corporation, which by reason of closure the title was (sic) subsequently went into the possession of PDIC. Hence, Eastland reiterates that it cannot be faulted for non-delivery of the title.

For its part, PDIC interposed the following defenses; that complainant is constructively notified of the duly registered Real Estate Mortgage over the parcel of land covered by TCT No. T-82217 between respondent Eastland and Orient Bank as security for the former's P2,000,000.00 loan; that complainant must acknowledge and respect the duly registered encumbrance in favor of respondent Orient Bank over TCT No. T-82217 which was carried over to the subdivided titles; that at the time Eastland executed the mortgage over the subject lot, it is not yet covered by P.D. 957, as would require the prior written approval of the HLURB.^[3]

The complaint for Specific Performance, Delivery of Title and Damages was filed before the Regional Office No. IV of the Housing and Land Use Regulatory Board (HLURB) on 5 March 2001 by respondent Benedicta Mortel, docketed as HLURB Case No. RIV6-030501-1534. It impleaded petitioner Eastland Construction & Development Corporation (Eastland), represented by its President, Imelda P. De los Santos, and Arturo M. Garcia, and the Philippine Deposit Insurance Corporation (PDIC) as respondents.

In a decision dated 21 November 2002, Atty. Raymundo A. Foronda, Housing and Land Use Arbiter, disposed of the case as follows:

1. Declaring as null and void the Real Estate Mortgage constituted over Lot 9, Block 2 of the Evergreen Anilao Estate located in Mabini, Batangas, entered into between Eastland Construction and Development Corporation and Orient Commercial Banking Corporation;
2. Ordering respondents to jointly and severally, execute and deliver to complainant the Deed of Absolute Sale over the aforecited property;
3. Ordering respondents to jointly and severally, deliver the Transfer Certificate of Title covering the subject lot, free from liens and encumbrances, within fifteen (15) days from finality of the Decision;

4. Ordering respondents to jointly and severally turn over to the complainant peacefully the possession of the subject lot;
5. Ordering respondents to jointly and severally pay complainant the following:
 - a. the sum of P20,000.00 as moral damages;
 - b. the sum of P20,000.00 as exemplary damages;
 - c. the sum of P20,000.00 as attorney's fees and cost of suit;
6. Ordering respondents to jointly and severally pay this Board the sum of P40,000.00 for violation of Sections 4, 5, 18 & 25 of P.D. 957 and the provision of B.P. 220 for selling beyond the maximum selling price.^[4]

The Housing and Land Use Arbiter ruled that respondent's full payment of the contract price appearing in the Contract to Sell justifies the execution of the Deed of Absolute Sale, the transfer in the latter's name of the title covering the subject property, free from liens and encumbrances, and its eventual turnover of the physical possession to her. He brushed aside Eastland's defense that it could not execute a Deed of Absolute Sale and/ or deliver the title in respondent's name because the subject lot, together with other lots in the same subdivision, was mortgaged to Orient Commercial Banking Corporation (Orient Bank). He explained that Eastland, as developer/owner of the project, was obligated to guarantee that the lots it is offering for sale were free from liens and encumbrances. He said that under Presidential Decree No. 957, the seller, if the buyer had already made full payment of the lot or unit, had six months from the time of the issuance of the title to the buyer within which to redeem the title. He disclosed that Eastland's attempt to deny the existence of a mortgage over the titles of the lots being sold claiming that same were merely pledged was debunked by PDIC's admission that the titles were indeed mortgaged. Thus, he held that Eastland concealed from its buyers the fact of mortgage by not showing a copy of Transfer Certificate of Title (TCT) No. T-82217 and in refusing to hand over copies of titles over the subdivided lots. He added that Eastland's failure to inform respondent of the mortgage likewise bespeaks of concealment because under Section 18 of Presidential Decree No. 957, the latter has the option to pay the 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 to enable said buyer to obtain title over the lot or unit promptly after full payment. This concealment, he ruled, constitutes fraud and unsound real estate business practice. Moreover, he declared that Eastland should also be liable for its pre-selling activities inasmuch as the subject lot was sold to respondent approximately two years before the License to Sell for the subdivision project was issued by the HLURB on 15 September 1998.

As regards the defenses raised by PDIC, the Housing and Land Use Arbiter ignored them stating that since the mortgagee bank had at its disposal vast resources with which it could adequately protect its loan activities, it is presumed to have conducted the usual "due diligence" in checking and ascertaining the actual status, condition, utilization and occupation of the property offered as collateral.

The decision was appealed by PDIC and Orient Bank to the HLURB Board of Commissioners via petition for review praying that the same be set aside and/or

declared null and void as against them.^[5] It was docketed as REM-A-030304-0074. Respondent filed her opposition.^[6]

In a decision dated 16 October 2003, the HLURB Board of Commissioners dismissed the petition and affirmed the decision being assailed.^[7] On 5 December 2003, PDIC and Orient Bank filed a Notice of Appeal manifesting their intention to appeal the decision before the Office of the President.^[8] The case was docketed as OP Case No. 03-K-657.

On 22 March 2004, the Office of the President, through Presidential Assistant Manuel C. Domingo, rendered its decision dismissing the appeal and affirming the decision being appealed.^[9] Eastland filed a motion for reconsideration which was denied in an order dated 4 June 2004.^[10]

Pursuant to Rule 43 of the 1997 Rules of Civil Procedure, Eastland appealed the decision of the Office of the President to the Court of Appeals *via* petition for review.^[11] The Court of Appeals dismissed the same for Eastland's failure to append material portions of the record and other supporting papers as well as the Certificate of Non-Forum Shopping.^[12] The motion for reconsideration filed by Eastland was denied in a resolution dated 11 October 2004.^[13]

Hence, this appeal.

Petitioner advances the following reasons for the allowance of the petition:

I.

THE HONORABLE COURT OF APPEALS GRIEVOUSLY COMMITTED A REVERSIBLE ERROR WHEN IT DISMISSED THE PETITION FOR REVIEW ON MERE TECHNICAL GROUND WHICH IS FROWN[ED] UPON IN THIS JURISDICTION.

II.

THE COURT OF APPEALS GRIEVOUSLY ERRED WHEN IT DELIBERATELY IGNORED THE MERITS OF THE PETITION FOR REVIEW.^[14]

On the first assigned error, petitioner argues that while it is desirable that the Rules of Court be faithfully and even meticulously observed, courts should not be so strict about procedural lapses that do not really impair the proper administration of justice. If the rules are intended to insure the orderly conduct of litigation, it is because of higher objective they seek, which is the protection of the substantive rights of the parties. It added that while it inadvertently failed to attach the Verification and Certification against Non-Forum Shopping, including the Secretary's Certificate, the fact remains that it has satisfactorily explained in its motion for reconsideration the reason for its failure to append said documents from which the Court of Appeals could validly rule on the merits of the petition.

Petitioner maintains that the Court of Appeals should not have deliberately ignored the merits of the case. It contends that it is not guilty of fraud because respondent