

## FIRST DIVISION

[ G.R. No. 131683, June 19, 2000 ]

**JESUS LIM ARRANZA; LORENZO CINCO; QUINTIN TAN; JOSE ESCOBAR; ELBERT FRIEND; CLASSIC HOMES VILLAGE ASSOCIATION, INC.; BF NORTHWEST HOMEOWNERS' ASSOCIATION, INC.; AND UNITED BF HOMEOWNERS' ASSOCIATIONS, INC., PETITIONERS, VS. B.F. HOMES, INC. AND THE HONORABLE COURT OF APPEALS, RESPONDENT.**

### DECISION

**DAVIDE JR., C.J.:**

For resolution in this petition is the issue of whether it is the Securities and Exchange Commission (SEC) or the Housing and Land Use Regulatory Board (HLURB) that has jurisdiction over a complaint filed by subdivision homeowners against a subdivision developer that is under receivership for specific performance regarding basic homeowners' needs such as water, security and open spaces.

Respondent BF Homes, Inc. (BFHI), is a domestic corporation engaged in developing subdivisions and selling residential lots. One of the subdivisions that respondent developed was the BF Homes Parañaque Subdivision, which now sprawls across not only a portion of the City of Parañaque but also those of the adjoining cities of Las Piñas and Muntinlupa.

When the Central Bank ordered the closure of Banco Filipino, which had substantial investments in respondent BFHI, respondent filed with the SEC a petition for rehabilitation and a declaration that it was in a state of suspension of payments. On 18 March 1985, the SEC placed respondent under a management committee. Upon that committee's dissolution on 2 February 1988, the SEC appointed Atty. Florencio B. Orendain as a Receiver, and approved a Revised Rehabilitation Plan.

As a Receiver, Orendain instituted a central security system and unified the sixty~five homeowners' associations into an umbrella homeowners' association called United BF Homeowners' Associations, Inc. (UBFHAI), which was thereafter incorporated with the Home Insurance and Guaranty Corporation (HIGC).<sup>[1]</sup>

In 1989, respondent, through Orendain, turned over to UBFHAI control and administration of security in the subdivision, the Clubhouse and the open spaces along Concha Cruz Drive. Through the Philippine Waterworks and Construction Corporation (PWCC), respondent's managing company for waterworks in the various BF Homes subdivisions, respondent entered into an agreement with UBFHAI for the annual collection of community assessment fund and for the purchase of eight new pumps to replace the over~capacitated pumps in the old wells.

On 7 November 1994, Orendain was relieved by the SEC of his duties as a Receiver,

and a new Board of Receivers consisting of eleven members of respondent's Board of Directors was appointed for the implementation of Phases II and III of respondent's rehabilitation.<sup>[2]</sup> The new Board, through its Chairman, Albert C. Aguirre, revoked the authority given by Orendain to use the open spaces at Concha Cruz Drive and to collect community assessment funds; deferred the purchase of new pumps; recognized BF Parañaque Homeowners' Association, Inc., (BFPHAI) as the representative of all homeowners in the subdivision; took over the management of the Clubhouse; and deployed its own security guards in the subdivision.

Consequently, on 5 July 1995, herein petitioners filed with the HLURB a class suit "for and in behalf of the more than 7,000 homeowners in the subdivision" against respondent BFHI, BF Citiland Corporation, PWCC and A.C. Aguirre Management Corporation "to enforce the rights of purchasers of lots" in BF Homes Parañaque.<sup>[3]</sup> They alleged that:

1. The forty (40) wells, mostly located at different elevations in Phases 3 and 4 of the subdivision and with only twenty~seven (27) productive, are the sources of the inter~connected water system in the 765~hectare subdivision;
2. There is only one drainage and sewer system;
3. There is one network of roads;
4. There are eight (8) entry and exit points to the subdivision and from three (3) municipalities (now cities), a situation obtaining in this subdivision only and nowhere else;
5. There was no security force for the entire subdivision until 1988;
6. There are not enough open spaces in the subdivision in relation to the total land area developed; and whatever open spaces are available have been left unkempt, undeveloped and neglected;
7. There are no zoning guidelines which resulted in unregulated constructions of structures and the proliferation of business establishments in residential areas; and
8. The BFPHAI became "moribund" sometime in 1980 on account of its failure to cope with the delivery of basic services except for garbage collection.

Petitioners raised "issues" on the following basic needs of the homeowners: rights~of~way; water; open spaces; road and perimeter wall repairs; security; and the interlocking corporations that allegedly made it convenient for respondent "to compartmentalize its obligations as general developer, even if all of these are hooked into the water, roads, drainage and sewer systems of the subdivision."<sup>[4]</sup> Thus, petitioners prayed that:

- A. A cease~and~desist order from selling any of the properties within the subdivision be issued against respondent BFHI, BF Citi, ACAMC, and/or any and all corporations acting as surrogates/alter~egos, sister companies of BFHI and/or its stockholders until the warranties, facilities and infrastructures shall have been complied with or put up (and) the advances of UBFHAI

- reimbursed, otherwise, to cease and desist from rescinding valid agreements or contracts for the benefit of complainants, or committing acts diminishing, diluting or otherwise depriving complainants of their rights under the law as homeowners;
- B. After proper proceedings the bond or deposit put up by respondent BF Homes, Inc. be forfeited in favor of petitioners;
  - C. Respondent BFHI be ordered to immediately turnover the roads, open spaces, and other facilities built or put up for the benefit of lot buyers/homeowners in the subdivision to complainant UBFHAI as representative of all homeowners in BF Homes Parañaque, free from all liens, encumbrances, and taxes in arrears;
  - D. If the open spaces in the subdivision are not sufficient as required by law, to impose said penalties/sanctions against BFHI or the persons responsible therefor;
  - E. Order the reimbursement of advances made by UBFHAI;
  - F. Turn over all amounts which may have been collected from users' fees of the strip of open space at Concha Cruz Drive;
  - G. Order PWCC to effect and restore 24~hour water supply to all residents by adding new wells replacing over~capacitated pumps and otherwise improving water distribution facilities;
  - H. Order PWCC to continue collecting the Community Development Fund and remit all amounts collected to UBFHAI;
  - I. Order BFHI to immediately withdraw the guards at the clubhouse and the 8 entry and exit points to the subdivision, this being an act of usurpation and blatant display of brute force;
  - J. The appropriate penalties/sanctions be imposed against BF Citi, ACAMC or any other interlocking corporation of BFHI or any of its principal stockholders in respect of the diminution/encroaching/violation on the rights of the residents of the subdivision to enjoy/avail of the facilities/services due them; and
  - K. Respondents be made to pay attorney's fees and the costs of this suit.<sup>[5]</sup>

In its answer, respondent claimed that (a) it had complied with its contractual obligations relative to the subdivision's development; (b) respondent could not be compelled to abide by agreements resulting from Orendain's *ultra vires* acts; and (c) petitioners were precluded from instituting the instant action on account of Section 6(c) of P.D. No. 902~A providing for the suspension of all actions for claims against a corporation under receivership. Respondent interposed counterclaims and prayed for the dismissal of the complaint.<sup>[6]</sup>

Petitioners thereafter filed an urgent motion for a cease~and~desist/*status quo* order. Acting on this motion, HLURB Arbiter Charito M. Bunagan issued a 20~day temporary restraining order to avoid rendering nugatory and ineffectual any

judgment that could be issued in the case,<sup>[7]</sup> and subsequently, an Order granting petitioners' prayer for preliminary injunction was issued

enjoining and restraining respondent BF Homes, Incorporated, its agents and all persons acting for and in its behalf from taking over/administering the Concha Garden Row, from issuing stickers to residents and non-residents alike for free or with fees, from preventing necessary improvements and repairs of infrastructures within the authority and administration of complainant UBFHAI, and from directly and indirectly taking over security in the eight (8) exit points of the subdivision or in any manner interfering with the processing and vehicle control in subject gates and otherwise to remove its guards from the gates upon posting of a bond of One Hundred Thousand Pesos (P100,000.00) which bond shall answer for whatever damages respondents may sustain by reason of the issuance of the writ of preliminary injunction if it turns out that complainant is not entitled thereto.<sup>[8]</sup>

Respondent thus filed with the Court of Appeals a petition for *certiorari* and prohibition docketed as CA~G.R. SP No. 39685. It contended in the main that the HLURB acted "completely without jurisdiction" in issuing the Order granting the writ of preliminary injunction considering that inasmuch as respondent is under receivership, the "subject matter of the case is one exclusively within the jurisdiction of the SEC."<sup>[9]</sup>

On 28 November 1997, the Court of Appeals rendered a decision<sup>[10]</sup> annulling and setting aside the writ of preliminary injunction issued by the HLURB. It ruled that private respondents' action may properly be regarded as a "claim" within the contemplation of PD No. 902~A which should be placed on equal footing with those of petitioners' other creditor or creditors and which should be filed with the Committee of Receivers. In any event, pursuant to Section 6(c) of P.D. No. 902~A and SEC's Order of 18 March 1985, petitioners' action against respondent, which is under receivership, should be suspended.

Hence, petitioners filed the instant petition for review on *certiorari*. On 26 January 1998, the Court issued a temporary restraining order (TRO) enjoining respondent, its officers, representatives and persons acting upon its orders from

(a) taking over/administering the Concha Garden Row; (b) issuing stickers to residents and non~residents alike for free or with fees; (c) preventing necessary improvements and repairs of infrastructures within the authority and administration of complainant United BF Homeowners' Association, Inc. (UBFHAI); (d) directly and indirectly taking over security in the eight (8) exit points of all of BF Homes Parañaque Subdivision or in any manner interfering with the processing and vehicle control in the subject gates; and (e) otherwise to remove its guards from the gates....

<sup>[11]</sup>

Respondent's motion to lift the TRO was denied.

At the hearing on 1 July 1998, the primary issue in this case was defined as "which body has jurisdiction over petitioners' claims, the Housing and Land Use Regulatory Board (HLURB) or the Securities and Exchange Commission (SEC)?" The collateral

issue to be addressed is "assuming that the HLURB has jurisdiction, may the proceedings therein be suspended pending the outcome of the receivership before the SEC?"

For their part, petitioners argue that the complaint referring to rights of way, water, open spaces, road and perimeter wall repairs, security and respondent's interlocking corporations that facilitated circumvention of its obligation involves unsound real estate practices. The action is for specific performance of a real estate developers' obligations under P.D. No. 957, and the relief sought is revocation of the subdivision project's registration certificate and license to sell. These issues are within the jurisdiction of the HLURB. Even if respondent is under receivership, its obligations as a real estate developer under P.D. No. 957 are not suspended. Section 6(c) of P.D. No. 902~A, as amended by P.D. No. 957, on "suspension of all actions for claims against corporations" refers solely to monetary claims which are but incidental to petitioner's complaints against BFHI, and if filed elsewhere than the HLURB, it would result to splitting causes of action. Once determined in the HLURB, however, the monetary awards should be submitted to the SEC as established claims. Lastly, the acts enjoined by the HLURB are not related to the disposition of BFHI's assets as a corporation undergoing its final phase of rehabilitation.

On the other hand, respondent asserts that the SEC, not the HLURB, has jurisdiction over petitioners' complaint based on the contracts entered into by the former receiver. The SEC, being the appointing authority, should be the one to take cognizance of controversies arising from the performance of the receiver's duties. Since respondent's properties are under the SEC's *custodia legis*, they are exempt from any court process.

Jurisdiction is the authority to hear and determine a cause - the right to act in a case.<sup>[12]</sup> It is conferred by law and not by mere administrative policy of any court or tribunal.<sup>[13]</sup> It is determined by the averments of the complaint and not by the defense contained in the answer.<sup>[14]</sup> Hence, the jurisdictional issue involved here shall be determined upon an examination of the applicable laws and the allegations of petitioners' complaint before the HLURB.

Presidential Decree No. 957 (The Subdivision and Condominium Buyers' Protective Decree) was issued on 12 July 1976 in answer to the popular call for correction of pernicious practices of subdivision owners and/or developers that adversely affected the interests of subdivision lot buyers. Thus, one of the "whereas clauses" of P.D. No. 957 states:

WHEREAS, numerous reports reveal that many real estate subdivision owners, developers, operators, and/or sellers have reneged on their representations and obligations to provide and maintain properly subdivision roads, drainage, sewerage, water systems, lighting systems, and other similar basic requirements, thus endangering the health and safety of home and lot buyers....

Section 3 of P.D. No. 957 empowered the National Housing Authority (NHA) with the "exclusive jurisdiction to regulate the real estate trade and business." On 2 April 1978, P.D. No. 1344 was issued to expand the jurisdiction of the NHA to include the following: