

SECOND DIVISION

[G.R. No. 126699, August 07, 1998]

**AYALA CORPORATION, PETITIONER, VS. RAY BURTON
DEVELOPMENT CORPORATION, RESPONDENT.**

DECISION

MARTINEZ, J.:

Petitioner Ayala Corporation (AYALA) is the owner of the Ayala estate located in Makati City. The said estate was originally a raw land which was subdivided for sale into different lots devoted for residential, commercial and industrial purposes. The development of the estate consisted of road and building construction and installation of a central sewerage treatment plant and drainage system which services the whole Ayala Commercial Area.

On March 20, 1984, Karamfil Import-Export Company Ltd. (KARAMFIL) bought from AYALA a piece of land identified as Lot 26, Block 2 consisting of 1,188 square meters, located at what is now known as H.V. de la Costa Street, Salcedo Village, Makati City. The said land, which is now the subject of this case, is more particularly described as follows:

"A parcel of land (Lot 26, Block 2, of the subdivision plan [LRC] Psd-6086, being a portion of Block D, described as plan [LRC] Psd-5812 LRC [GLRO] Rec. No. 2029) situated in the Municipality of Makati, Province of Rizal, Is. of Luzon. Bounded on the NE., points 2 to 3 by Lot 31, Block 2 (Creek 6.00 m. wide) of the subdivision plan, on the SE., points 3 to 4 by Lot 27, Block 2 of the Subdivision plan; on the SW, points 4 to 5, by proposed Road, 17.00 m. wide (Block C[LRC] Psd-5812); points 5 to 1 by Street Lot 2 (17.00 m. wide) of the subdivision plan. On the NW, points 1 to 2 by Lot 25, Block 2 of the subdivision plan. x x x beginning, containing an area of ONE THOUSAND ONE HUNDRED EIGHTY EIGHT (1,188) SQUARE METERS."

The transaction was documented in a Deed of Sale^[1] of even date, which provides, among others, that the vendee would comply with certain special conditions and restrictions on the use or occupancy of the land, among which are -

Deed Restrictions:^[2]

a) The total height of the building to be constructed on the lot shall not be more than forty-two (42) meters, nor shall it have a total gross floor area of more than five (5) times the lot area; and

b) The sewage disposal must be by means of connection into the sewerage system servicing the area.

Special Conditions:^[3]

- a) The vendee must obtain final approval from AYALA of the building plans and specifications of the proposed structures that shall be constructed on the land;
- b) The lot shall not be sold without the building having been completed; and
- c) Any breach of the stipulations and restrictions entitles AYALA to rescission of the contract.

As a result of the sale, a Transfer Certificate of Title No. 132086^[4] was issued in the name of KARAMFIL. The said special conditions and restrictions were attached as an annex to the deed of sale and incorporated in the "Memorandum of Encumbrances" at the reverse side of the title of the lot as Entry No. 2432/T-131086.

On February 18, 1988, KARAMFIL sold the lot to Palmcrest Development and Realty Corporation (PALMCREST) under a Deed of Absolute Sale^[5] of even date. This deed was submitted to AYALA for approval in order to obtain the latter's waiver of the special condition prohibiting the resale of the lot until after KARAMFIL shall have constructed a building thereon. AYALA gave its written conformity to the sale but reflecting in its approval the same special conditions/restrictions as in the previous sale. AYALA's conformity was annotated on the deed of sale.^[6] PALMCREST did not object to the stipulated conditions and restrictions.^[7]

PALMCREST in turn sold the lot to Ray Burton Development Corporation (RBDC), now respondent, on April 11, 1988, with the agreement that AYALA retains possession of the Owner's Duplicate copy of the title until a building is erected on said parcel of land in accordance with the requirements and/or restrictions of AYALA.^[8] The Deed of Absolute Sale^[9] executed on the said date was also presented to AYALA for approval since no building had yet been constructed on the lot at the time of the sale. As in the KARAMFIL-PALMCREST transaction, AYALA gave its conformity to the sale, subject to RBDC's compliance with the special conditions/restrictions which were annotated in the deed of sale, thus:

"With our conformity, subject to the compliance by the Vendees of the Special Conditions of Sale on the reverse side of the Deed of Sale dated March 20, 1984 per Doc. No. 140, Page No. 29, Book No. 1, Series of 1984 of the Notary Public Silverio Aquino."^[10]

The conditions and restrictions of the sale were likewise entered as encumbrances at the reverse side of the Transfer Certificate of Title No. 155384 which was later issued in the name of RBDC.^[11] Like PALMCREST, RBDC was not also averse to the aforesaid conditions and restrictions.^[12]

Sometime in June of 1989, RBDC submitted to AYALA for approval a set of architectural plans for the construction of a 5-storey office building on the subject lot, with a height of 25.85 meters and a total gross floor area of 4,989.402 square meters.^[13] The building was to be known as "Trafalgar Tower" but later renamed "Trafalgar Plaza." Since the building was well within the 42-meter height restriction, AYALA approved the architectural plans.

Upon written request^[14] made by RBDC, AYALA likewise agreed to release the owner's copy of the title covering the subject lot to the China Banking Corporation as guarantee of the loan granted to RBDC for the construction of the 5-storey building.

Meanwhile, on November 28, 1989, RBDC, together with the Makati Developers Association, Inc. (MADAI), of which RBDC is a member, and other lot owners, filed a complaint against AYALA before the Housing and Land Use Regulatory Board (HLRB), docketed as HLRB Case No. REM-A-0818 (OALA-REM-111489-4240). The complaint sought the nullification of the very same Deed Restrictions incorporated in the deeds of sale of the lots purchased by the complainants from AYALA and annotated on their certificates of title, on the grounds, inter alia, that said restrictions purportedly: (a) place unreasonable control over the lots sold by AYALA, thereby depriving the vendees of the full enjoyment of the lots they bought, in violation of Article 428 of the Civil Code; (b) have been superseded by Presidential Decree No. 1096 (the National Building Code) and Metro Manila Commission Zoning Ordinance No. 81-01; (c) violate the constitutional provision on equal protection of the laws, since the restrictions are imposed without regard to reasonable standards or classifications; and (d) are contracts of adhesion^[15] since AYALA would not sell the lots unless the buyers agree to the deed restrictions. The complaint also alleged that AYALA is in estoppel from enforcing the restrictions in question when it allowed the construction of other high-rise buildings in Makati City beyond the height and floor area limits. AYALA was further charged with unsound business practice.

Early in June of 1990, RBDC made another set of building plans for "Trafalgar Plaza" and submitted the same for approval, this time to the Building Official of the Makati City Engineer's Office,^[16] not to AYALA. In these plans, the building was to be 26-storey high, or a height of 98.60 meters, with a total gross floor area of 28,600 square meters. After having obtained the necessary building permits from the City Engineer's Office, RBDC began to construct "Trafalgar Plaza" in accordance with these new plans.

On July 11, 1990, the majority of the lot owners in the Makati City area, including the Salcedo and Legaspi Village areas, in a general assembly of the Makati Commercial Estate Association, Inc. (MACEA), approved the revision of the Deed Restrictions, which revision was embodied in the "Consolidated and Revised Deed Restrictions"^[17] (Revised Deed Restrictions) wherein direct height restrictions were abolished in favor of floor area limits computed on the basis of "floor area ratios" (FARs). In the case of buildings devoted solely to office use in Salcedo Village " such as the "Trafalgar Plaza" " the same could have a maximum gross floor area of only eight (8) times the lot area. Thus, under the Revised Deed Restrictions, "Trafalgar Plaza" could be built with a maximum gross floor area of only 9,504 square meters (1,188 sq. m. " the size of the subject lot " multiplied by 8). Even under the Revised Deed Restrictions, Trafalgar would still exceed 19,065 square meters of floor area on the basis of a FARs of 8:1. RBDC did not vote for the approval of the Revised Deed Restrictions and, therefore, it continued to be bound by the original Deed Restrictions.

In the meantime, on August 22, 1990, the HLRB En Banc rendered a decision^[18] (a) upholding the Deed Restrictions; (b) absolving AYALA from the charge of unsound business practice; and (c) dismissing HLRB Case No. REM-A-0818. MADAI and RBDC

separately appealed the decision to the Office of the President, which appeal was docketed as O.P. Case No. 4476.

While the appeal was pending before the Office of the President, the September 21, 1990 issue of the Business World magazine^[19] featured the "Trafalgar Plaza" as a modern 27-storey structure which will soon rise in Salcedo Village, Makati City. Stunned by this information, AYALA, through counsel, then sent a letter^[20] to RBDC demanding the latter to cease the construction of the building which dimensions do not conform to the previous plans it earlier approved. RBDC, through counsel, replied with a series of letters^[21] requesting for time to assess the merits of AYALA's demand.

For failing to heed AYALA's bidding, RBDC was sued on January 25, 1991 before the Regional Trial Court of Makati City (Branch 148). AYALA's complaint for Specific Performance or Rescission, docketed as Civil Case No. 91-220, prayed inter alia that judgment be rendered -

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b. Ordering the defendant to comply with its contractual obligations and to remove or demolish the portions or areas of the Trafalgar Tower/Plaza Building constructed beyond or in excess of the approved height as shown by building plans approved by the plaintiff, including any other portion of the building constructed not in accordance with the building plans and specifications submitted to and approved by plaintiff.

c. Alternatively, in the event specific performance becomes impossible:

i) Ordering the cancellation and rescission of the Deed of Sale dated March 20, 1984 (Annex 'A' hereof) and ordering defendant to return to plaintiff Lot 26, Block 2 of Salcedo Village;

ii) Ordering the cancellation of Transfer Certificate of Title No. 155384 (in the name of defendant) and directing the Makati Register of Deeds to issue a new title over the Lot in the name of plaintiff; and

d. Ordering defendant to pay plaintiff attorney's fees in the amount of P500,000.00, exemplary damages in the amount of P5,000.00 and the costs of the instant suit..^[22]

In its answer (with counterclaim) to the complaint, RBDC denied having "actual or constructive notice of the Deed Restrictions" imposed by AYALA on the subject lot. RBDC alleged in essence that even if said deed restrictions exist, the same are not economically viable and should not be enforced because they constitute unreasonable restrictions on its property rights and are, therefore, contrary to law, morals, good customs, public order or public policy. Moreover, RBDC claimed that the enforcement of the deed restrictions has also been arbitrary or discriminatory since AYALA has not made any action against a number of violators of the deed restrictions.

Meantime, the appeal of MADAI in O.P. Case No. 44761 was considered resolved

when it entered into a compromise agreement with AYALA wherein the latter adopted and acknowledged as binding the Revised Deed Restrictions of July 11, 1990.^[23] On the other hand, RBDC's appeal was dismissed in an Order dated February 13, 1992, for the reason that, "insofar as the disposition of the appealed (HLRB) decision is concerned, there is virtually no more actual controversy on the subject of the 'Deed Restrictions' because the same has been overridden by the 'Revised (Deed) Restrictions' which the appellee Ayala Corporation has in fact acknowledged as binding and in full force and effect x x x."^[24] Accordingly, aside from dismissing RBDC's appeal, the Order of February 13, 1992 also "set aside" the appealed HLRB decision. From this order, AYALA sought a reconsideration or clarification, noting, inter alia, that while the said order has ruled that AYALA can no longer enforce the Deed Restrictions against RBDC, it does not expressly state that RBDC is bound by the Revised Deed Restrictions. Clarifying this matter, the Office of the President issued a Resolution dated April 21, 1992,^[25] modifying the February 13, 1992 order, ruling: (1) that RBDC is bound by the original Deed Restrictions, but it has the option to accept and be bound by the Revised Deed Restrictions in lieu of the former; and (2) that the "HLRB decision dated 22 August 1990, to the extent that it absolved Ayala from the charge of unsound business practice, subject of the basic complaint, is affirmed." This time RBDC moved for a reconsideration of the April 21, 1992 Order, but the motion was denied in a Resolution dated October 15, 1993.^[26] Another Resolution of March 21, 1994^[27] was issued denying with finality RBDC's second motion for reconsideration.

AYALA then filed a Manifestation^[28] in Civil Case No. 91-220, informing the trial court of the pertinent rulings/resolutions in the proceedings before the HLRB and the Office of the President, which rulings, AYALA suggested, amount to res judicata on the issue of the validity and enforceability of the Deed Restrictions involved in the said civil case.

After trial on the merits, the trial court rendered a Decision on April 28, 1994 in favor of RBDC, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered in favor of the defendant and against the plaintiff, and as a consequence:

1. The instant case is hereby dismissed;
2. The motion/application for the annotation of the lis pendens is hereby DENIED;
3. The motion/application to hold defendant in continuing contempt is hereby also DENIED;
4. No damages is awarded to any of the parties;
5. Plaintiff is hereby ordered to pay the defendant P30,000.00 for and as attorney's fees and litigation expenses;

"With costs against plaintiff.

"SO ORDERED."^[29]