Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

LEVISTE MANAGEMENT SYSTEM, INC.,
Petitioner,

- *versus* -

LEGASPI TOWERS 200, INC., and VIVIAN Y. LOCSIN and PITONG MARCORDE,
Respondents.

- -

ENGR. NELSON Q. IRASGA, in his capacity as Municipal Building Official of Makati, Metro Manila and HON. JOSE P. DE JESUS, in his capacity as Secretary of the Dept. of Public Works and Highways,
Third Party Respondents.

G.R. No. 199353

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LEGASPI TOWERS 200, INC.,
Petitioner,

- *versus* -

LEVISTE MANAGEMENT SYSTEM, INC., ENGR. NELSON Q. IRASGA, in his capacity as Municipal Bldg. Official of Makati, Metro Manila, and HON. JOSE P. DE JESUS, in his capacity as Secretary of the Department of Public Works and Highways,
Respondents.

G.R. No. 199389

Present:

SERENO,* *CJ.,*
LEONARDO-DE CASTRO,**
Acting Chairperson,
DEL CASTILLO,
JARDELEZA, and
TIJAM, *JJ.*

Promulgated:

APR 04 2018

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DECISION

LEONARDO-DE CASTRO, *J.*:

The Civil Code provisions on builders in good faith presuppose that the ***owner of the land*** and the ***builder*** are two distinct persons who are not bound either by specific legislation on the subject property or by contract. Properties recorded in accordance with Section 4[1] of Republic Act No. 4726[2] (otherwise known as the Condominium Act) are governed by said Act; while the Master Deed and the By Laws of the condominium corporation establish the contractual relations between said condominium corporation and the unit owners.

These are consolidated petitions under Rule 45 filed by Leviste Management System, Inc. (LEMANS) and Legaspi Towers 200, Inc. (Legaspi Towers), both assailing the Decision[3] dated May 26, 2011 of the Court of Appeals in CA-G.R. CV No. 88082. The assailed Decision[4] affirmed the October 25, 2005 Decision of the Regional Trial Court (RTC), Branch 135 of Makati City in Civil Case No. 91-634.

The facts, as culled by the Court of Appeals from the records, follow:

> Legaspi Towers is a condominium building located at Paseo de Roxas, Makati City. It consists of seven (7) floors, with a **unit on the roof deck** and **two levels above said unit called Concession 2 and Concession 3**. The use and occupancy of the condominium building is governed by the Master Deed with Declaration of Restrictions of Legaspi Towers (hereafter "Master Deed") annotated on the transfer certificate of title of the developer, Legaspi Towers Development Corporation.
>
> Concession 3 was originally owned by Leon Antonio Mercado. On 9 March 1989, Lemans, through Mr. Conrad Leviste, bought Concession 3 from Mercado.
>
> Sometime in 1989, Lemans decided to build another unit (hereafter "Concession 4") on the roof deck of Concession 3. Lemans was able to secure the building permit for the construction of Concession 4 and commenced the construction thereof on October 1990.

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* On leave.

** Per Special Order No. 2540 dated February 28, 2018.

1 Section 4. The provisions of this Act shall apply to property divided or to be divided into condominiums only if there shall be recorded in the Register of Deeds of the province or city in which the property lies and duly annotated in the corresponding certificate of title of the land, if the latter had been patented or registered under either the Land Registration or Cadastral Acts, an enabling or master deed which shall contain, among others, the following x x x[.]

2 AN ACT TO DEFINE CONDOMINIUM, ESTABLISH REQUIREMENTS FOR ITS CREATION, AND GOVERN ITS INCIDENTS.

3 *Rollo* (G.R. No. 199353), pp. 41-50; penned by Associate Justice Florito S. Macalino with Associate Justices Juan Q. Enriquez, Jr. and Ramon M. Bato, Jr. concurring.

4 Id. at 118-122.

Despite Legaspi Corporation's notice that the construction of Concession 4 was illegal, Lemans refused to stop its construction. Due to this, Legaspi Corporation forbade the entry of Lemans' construction materials to be used in Concession 4 in the condominium. Legaspi Corporation similarly wrote letters to the Building Official Nelson Irasga ("hereafter Irasga"), asking that the [building] permit of Lemans for Concession 4 be cancelled. Irasga, however, denied the requested cancellation, stating that the applicant complied with the requirements for a building permit and that the application was signed by the then president of Legaspi Corporation.

Lemans filed the Complaint dated February 20, 1991 with the RTC, praying among others that a writ of mandatory injunction be issued to allow the completion of the construction of Concession 4. On 3 April 1991, the RTC issued the writ prayed for by Lemans.

Later, Legaspi Corporation filed the Third Party Complaint dated October 7, 1991. This was against Irasga, as the Municipal Building Official of Makati, and Jose de Jesus (herafter "De Jesus"), as the Secretary of Public Works and Highways (collectively referred to as the "third-party defendants-appellees") so as to nullify the building permit issued in favor of Lemans for the construction of Concession 4.

After the parties had presented and formally offered their respective pieces of evidence, but before the rendition of a judgment on the main case, the RTC, in its Order dated May 24, 2002, found the application of Article 448 of the Civil Code and the ruling in the *Depra vs. Dumlao* [case] (hereafter "*Depra Case*") to be proper.

Lemans moved for the reconsideration o[f] the aforementioned order. The RTC denied this and further ruled:

> The main issue in this case is whether or not [LEMANS] owns the air space above its condominium unit. As owner of the said air space, [LEMANS] contends that its construction of another floor was in the exercise of its rights.
>
> It is the [finding] of the Court that [LEMANS] is not the owner of the air space above its unit. [LEMANS'] claim of ownership is without basis in fact and in law. The air space which [LEMANS] claims is not on top of its unit but also on top of the condominium itself, owned and operated by defendant Legaspi Towers.
>
> Since it appears that both plaintiff and defendant Legaspi Towers were in good faith, the Court finds the applicability of the ruling in Depra vs. Dumlao, 136 SCRA 475.

From the foregoing, Lemans filed the Petition for Certiorari dated November 13, 2002 with the [Court of Appeals], docketed as CA G.R. SP. No. 73621, which was denied in the Decision promulgated on March 4, 2004. The Court did not find grave abuse of discretion, amounting to lack

> or excess of jurisdiction, on the RTC's part in issuing the above orders. Lemans sought reconsideration of this decision but failed.
>
> Meanwhile, Lemans adduced evidence before the RTC to establish that the actual cost for the construction of Concession 4 was Eight Hundred Thousand Eight Hundred Ninety-seven and 96/100 Pesos (PhP800,897.96) and that the fair market value of Concession 4 was Six Million Pesos (PhP6,000,000.00). Afterwards, the RTC rendered the Assailed Decision.[5]

Reiterating its previous ruling regarding the applicability of Article 448 of the Civil Code to the case, the RTC in its October 25, 2005 Decision disposed of the dispute in this wise:

> WHEREFORE, judgment is hereby rendered ordering defendant Legaspi Towers 200, Inc. to exercise its option to appropriate the additional structure constructed on top of the penthouse owned by plaintiff Leviste Management Systems, Inc. within sixty [60] days from the time the Decision becomes final and executory. Should defendant Legaspi Towers 200, Inc. choose not to appropriate the additional structure after proper indemnity, the parties shall agree upon the terms of the lease and in case of disagreement, the Court shall fix the terms thereof.
>
> For lack of merit, the third party complaint and the counterclaims are hereby dismissed.
>
> Costs against the plaintiff.[6]

When the parties' respective motions for reconsideration were denied by the trial court, both elevated the matter to the Court of Appeals.

On May 26, 2011, the Court of Appeals, acting on the consolidated appeals of LEMANS and Legaspi Towers, rendered its Decision affirming the decision of the RTC of Makati City.

The Court of Appeals held that the appeal of LEMANS should be dismissed for failure to comply with Section 13, Rule 44 in relation to Section 1(f), Rule 50 of the Rules of Court, as the subject index of LEMANS' brief did not contain a digest of its arguments and a list of textbooks and statutes it cited.[7] For this reason, the appellate court no longer passed upon the sole issue raised by LEMANS, *i.e.*, whether its construction of Concession 4 should be valued at its actual cost or its market value.

As regards the appeal of Legaspi Towers, the Court of Appeals held that while Concession 4 is indeed a nuisance, LEMANS has been declared a builder in good faith, and noted that Legaspi Towers failed to contest this declaration. Since Concession 4 was built in good faith, it cannot be

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5 Id. at 42-44.
6 Id. at 122.
7 Id. at 47-48.

demolished. The Court of Appeals likewise affirmed the validity of the building permit for Concession 4, holding that if the application and the plans appear to be in conformity with the requirements of governmental regulation, the issuance of the permit may be considered a ministerial duty of the building official.[8]

The Motion for Partial Reconsideration of Legaspi Towers and the Motion for Reconsideration of LEMANS were denied for lack of merit in the appellate court's Resolution[9] dated November 17, 2011.

Consequently, LEMANS and Legaspi Towers filed separate Petitions for Review on *Certiorari* with this Court based on the following grounds:

> [LEMANS PETITION:]
>
> I
>
> THE COURT OF APPEALS ERRED WHEN IT FAILED TO APPLY THE *DEPRA VS. DUMLAO* DOCTRINE WHEN IT REFUSED TO RULE ON THE PROPER VALUATION OF THE SUBJECT PROPERTY FOR THE PURPOSE OF DETERMINING THE PURCHASE PRICE IN THE EVENT THAT RESPONDENT LEGASPI TOWERS EXERCISES ITS OPTION TO PURCHASE THE PROPERTY
>
> II
>
> THE COURT OF APPEALS ERRED WHEN, REFUSING TO RULE ON THE VALUATION OF THE SUBJECT PROPERTY, IT DISREGARDED THE EVIDENCE ALREADY SUBMITTED AND PART OF THE RECORDS.[10]
>
> [LEGASPI TOWERS PETITION:]
>
> I. THE COURT OF APPEALS ERRED IN NOT HOLDING THAT [LEGASPI TOWERS] HAS THE RIGHT TO DEMOLISH CONCESSION 4 FOR BEING AN ILLEGAL CONSTRUCTION.
>
> II. THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE BUILDING PERMIT OF CONCESSION 4 IS NOT VALIDLY ISSUED.[11]

At the crux of the present controversy is the legal issue whether Article 448 of the Civil Code and our ruling in *Depra v. Dumlao*[12] are applicable to the parties' situation.

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8 Id. at 48-49.
9 Id. at 52-53.
10 Id. at 24.
11 *Rollo* (G.R. No. 199389), p. 41.
12 221 Phil. 168 (1985).

Prior to answering this key question, we dispose of a procedural matter. LEMANS has taken the position that in light of the finality of the trial court's Order dated May 24, 2002 holding that Article 448 of the Civil Code and the *Depra* case should be applied in this case, Legaspi Towers is now bound by same and may no longer question the former's status as a builder in good faith. The Court of Appeals in its assailed Decision appears to subscribe to the same view when it ruled that, despite the fact that Concession 4 was a nuisance, the previous declaration that LEMANS is a builder in good faith limits Legaspi Towers' options to those provided in Article 448.

The Court does not agree with LEMANS and the Court of Appeals.

At the outset, it must be pointed out that the May 24, 2002 RTC Order is an interlocutory order that did not finally dispose of the case and, on the contrary, set the case for hearing for reception of evidence on the amount of expenses spent by LEMANS in the construction of Concession 4. For this reason, it is apropos to discuss here the remedies available to a party aggrieved by interlocutory orders of the trial court.

Section 1, Rule 41 of the Rules of Court pertinently states:

> RULE 41
> Appeal from the Regional Trial Courts
>
> SECTION 1. *Subject of appeal.* — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.
>
> **No appeal may be taken from**:
>
> (a) An order denying a motion for new trial or reconsideration;
>
> (b) An order denying a petition for relief or any similar motion seeking relief from judgment;
>
> (c) **An interlocutory order;**
>
> (d) An order disallowing or dismissing an appeal;
>
> (e) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;
>
> (f) An order of execution;
>
> (g) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and

(h) An order dismissing an action without prejudice.

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65. (Emphases supplied.)

Hence, we explained in *Crispino v. Tansay*[13] that:

The remedy against an interlocutory order is not appeal but a special civil action for *certiorari* under Rule 65 of the Rules of Court. The reason for the prohibition is to prevent multiple appeals in a single action that would unnecessarily cause delay during trial. In *Rudecon v. Singson*:

> The rule is founded on considerations of orderly procedure, to forestall useless appeals and avoid undue inconvenience to the appealing party by having to assail orders as they are promulgated by the court, when all such orders may be contested in a single appeal.

Faced with an interlocutory order, **parties may instantly avail of the special civil action of certiorari. This would entail compliance with the strict requirements under Rule 65 of the Rules of Court.** Aggrieved parties would have to prove that the order was issued without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction and that there is neither appeal nor any plain, speedy, and adequate remedy in the ordinary course of law.

This notwithstanding, a special civil action for certiorari is not the only remedy that aggrieved parties may take against an interlocutory order, since an interlocutory order may be appealed in an appeal of the judgment itself. In *Investments, Inc. v. Court of Appeals* it was held:

> Unlike a "final" judgment or order, which is appealable, as above pointed out, **an "interlocutory" order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case.** (Emphases supplied; citations omitted.)

From the foregoing disquisition in *Crispino*, a party who wishes to assail an interlocutory order may (a) immediately file a petition for *certiorari* if appropriate and compliant with the stringent requirements of Rule 65 or (b) await judgment and question the interlocutory order in the appeal of the main decision. Notably, in the case at bar, LEMANS filed a petition for *certiorari* against the RTC's May 24, 2002[14] and August 19, 2002[15] Orders while Legaspi Towers chose to simply appeal the main

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13 G.R. No. 184466, December 5, 2016.

14 *Rollo* (G.R. No. 199389), pp. 148-149.

15 Id. at 150-151. To recall, in the August 19, 2002 Order, the trial court denied LEMANS motion for reconsideration of the May 24, 2002 Order and held:

decision.

This Court is not bound by the interlocutory orders of the trial court nor by the Court of Appeals' Decision dated March 4, 2004 in CA-G.R. SP No. 73621, *i.e.*, LEMANS' petition for *certiorari* of said interlocutory orders.

To begin with, the Court of Appeals' decision in CA-G.R. SP No. 73621 was never evelated to this Court. Secondly, in resolving LEMANS' petition for *certiorari*, the Court of Appeals itself ruled, among others, that:

> It is noteworthy to state that the petitioner imputes grave abuse of discretion on the part of the respondent judge in ruling that Article 448 and the case of *Depra v. Dumlao (136 SCRA 475)* are applicable in the case at bar. At most, these are considered **mere errors of judgment**, which **are not proper for resolution in a petition for *certiorari*** under Rule 65.
>
> The error is not jurisdictional, and ***certiorari* is not available to correct errors in judgment or conclusions of law and fact not amounting to excess or lack of jurisdiction**. In the extraordinary writ of *certiorari*, neither questions of fact nor even of law are entertained, but only questions of lack or excess of jurisdiction or grave abuse of discretion.[16] (Emphases supplied.)

We are not so constrained in these consolidated petitions under Rule 45 for as we observed in *E.I. Dupont De Nemours and Co. v. Francisco*[17]:

> The special civil action of *certiorari* under Rule 65 is intended to correct errors of jurisdiction. Courts lose competence in relation to an order if it acts in grave abuse of discretion amounting to lack or excess of jurisdiction. **A petition for review under Rule 45, on the other hand, is a mode of appeal intended to correct errors of judgment**. Errors of judgment are errors committed by a court within its jurisdiction. **This includes a review of the conclusions of law of the lower court and, in appropriate cases, evaluation of the admissibility, weight, and inference from the evidence presented**. (Emphases supplied; citations omitted.)

> The main issue in this case is whether or not plaintiff owns the air space above its condominium unit. As owner of the said air space, plaintiff contends that its construction of another floor was in the exercise of its rights.
>
> It is the findings [sic] of the Court that **plaintiff [LEMANS] is not the owner of the air space above its unit**. Plaintiff[']s claim of ownership is without basis in fact and in law. The air space which plaintiff claims is not only on top of its unit but also on top of the condominium itself, owned and operated by defendant Legaspi Towers.
>
> **Since it appears that both plaintiff and defendant Legaspi Towers were in good faith,** the Court finds the applicability of the ruling in *Depra v. Dumlao*, 136 SCRA 475.
>
> WHEREFORE, for lack of merit the motion is hereby DENIED. (Emphases supplied.)

16 Id. at 162.

17 G.R. No. 174379, August 31, 2016, 801 SCRA 629, 642-643.

In all, there is no procedural bar for this Court to pass upon the previous interlocutory orders of the court *a quo* and examine the legal conclusions therein in the present consolidated appeals of the trial court's decision. We are compelled to undertake such a review in light of the novelty of the main issue presented in these petitions. The Court, after all, is the final arbiter of all legal questions properly brought before it.[18]

We proceed to the merits of these consolidated cases.

First, we find no cogent reason to disturb the finding of the lower courts that it is Legaspi Towers which owns the air space above Concession 3 as the same is in keeping with the facts and the applicable law. We quote with approval the following discussion from the Court of Appeals Decision dated March 4, 2004 in CA-G.R. SP No. 73621:

> As correctly pointed out by the private respondent Legaspi, the air space wherein *Concession 4* was built is not only above *Concession 3*, but above the entire condominium building. The petitioner's [LEMANS'] ownership of Concession 3 does not necessarily extend to the area above the same, which is actually the "air space" of the entire condominium building. The *ownership of the air space above Concession 3* is not a necessary incident of the *ownership of Concession 3*.
>
> It may be well to state here the following provisions of Republic Act No. 4726, otherwise known as The Condominium Act:
>
> > Section 2. A condominium is an interest in real property consisting of a separate interest in a unit in a residential, industrial or commercial building and an undivided interest in common directly or indirectly, in the land on which it is located and in other common areas of the building. A condominium may include, in addition, a separated interest on other portions of such real property. Title to the common areas, including the land, or the appurtenant interests in such areas, may be held by a corporation specially formed for the purpose (hereinafter known as the "condominium corporation") in which the holders of separate interests shall automatically be members or shareholders, to the exclusion of others, in proportion to the appurtenant interest of their respective units in the common areas. (RA 4726, The Condominium Act)
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> > Section 3 (d). "Common areas" means the entire project excepting all units separately granted or held or reserved.

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18 *See Presidential Decree No. 1271 Committee v. De Guzman*, G.R. Nos. 187291 & 187334, December 5, 2016.

> Section 6. Unless otherwise expressly provided in the enabling or master deed or the declaration of restrictions, the incidents of the condominium grant are as follows:
>
> (a) The boundary of the unit granted are the interior surfaces of the perimeter walls, ceilings, windows and doors thereof. The following are not part of the unit – bearing walls, columns, walls, roofs, foundations and other common structural elements of the building x x x.

Evidently, what a unit includes is only the *four walls, ceilings, windows and doors thereof.* It certainly does not include the roof or the areas above it.

In a condominium, common areas and facilities are "portions of the condominium property not included in the units," whereas, a unit is "a part of the condominium property which is to be subject to private ownership." Inversely, that which is not considered a unit should fall under common areas and facilities.

Inasmuch as the air space or the area above Concession 3 is not considered as part of the unit, it logically forms part of the common areas.

The petitioner's efforts to establish that Concession 3 and the open area in the roof deck are reserved and separately granted from the condominium project are futile, inasmuch as even if the same is established, it would not prove that the area above it is not part of the common area. Admittedly, there is nothing in the Master Deed which prohibits the construction of an additional unit on top of Concession 3, however, there is also nothing which allows the same. The more logical inference is that the unit is limited to that stated in the Condominium Act, considering that the *Master Deed with Declaration of Restrictions* does not expressly declare otherwise.

To allow the petitioner's claim over the air space would not prevent the petitioner from further constructing another unit on top of *Concession 4* and so on. This would clearly open the door to further "impairment of the structural integrity of the condominium building" which is explicitly proscribed in the Master Deed.[19]

Significantly, the parties are no longer questioning before us the past rulings regarding Legaspi Towers' ownership of the air space above Concession 3 which is the air space above the condominium building itself. The principal bones of contention here are the legal consequences of such ownership and the applicability of Article 448 of the Civil Code and our ruling in *Depra v. Dumlao*[20] on the factual antecedents of these cases.

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19 *Rollo* (G.R. No. 199389), pp. 160-161.

20 Supra note 12.

The ruling of this Court in *Depra v. Dumlao* extensively cited by both parties pertains to the application of Articles 448 and 546 of the Civil Code, which respectively provide:

> Art. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to **appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548**, or to **oblige the one who built or planted to pay the price of the land**, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.
>
> Art. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.
>
> Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

To recap, the defendant in *Depra* constructed his house on his lot but, in good faith, encroached on an area of 34 square meters of the property of plaintiff on which defendant's kitchen was built. The Court ruled that pursuant to Article 448 of the Civil Code, plaintiff, as the owner of the land, has the option either to pay for the encroaching part of the kitchen, or to sell the encroached 34 square meters of his lot to the defendant, the builder in good faith. The owner of the land cannot refuse to pay for the encroaching part of the building and to sell the encroached part of the land. Pursuant to Articles 448 and 546 of the Civil Code, the Court remanded the case to the RTC to determine the following:

(1) the present fair price of the 34-square meter encroached area of the land;

(2) the amount of expenses spent in building the kitchen;

(3) the increase in value the area may have acquired by reason of the building; and

(4) whether the value of the 34-square meter area is considerably more than that of the kitchen built thereon.

After the RTC has determined the four items above, the RTC shall grant the owner a period of 15 days to exercise his **option** whether **(a)** to appropriate the kitchen by paying the amount of expenses spent for building the same or the increase of such area's value by reason of the building **or (b)** to oblige the builder in good faith to pay the price of said area. The Court thereafter provided for further contingencies based on the RTC finding in the fourth item.

In the case at bar, LEMANS prays that, pursuant to *Depra*, the Court should determine the value of Concession 4, and find such value to be Six Million Eight Hundred Thousand Eight Hundred Ninety-Seven and 96/100 Pesos (₱6,800,897.96) plus legal interest. Legaspi Towers, on the other hand, prays for the extrajudicial abatement of Concession 4, on the ground that the applicable provision of the Civil Code is Article 699, which provides:

> Article 699. The remedies against a public nuisance are:
>
> (1) A prosecution under the Penal code or any local ordinance; or
>
> (2) A civil action; or
>
> (3) Abatement, without judicial proceedings.

Legaspi Towers also argues that Concession 4 is an illegal construction, for being in violation of the Condominium Act and the By Laws of Legaspi Towers. Legaspi Towers stresses that LEMANS failed to comply with the Condominium Act, which requires the consent of the registered owners of the condominium project for the amendment of the Master Deed.

Indeed, the last paragraph of Section 4 of the Condominium Act provides:

> The enabling or master deed may be amended or revoked upon registration of an instrument executed by the registered owner or owners of the property and consented to by all registered holders of any lien or encumbrance on the land or building or portion thereof. The term "registered owner" shall include the registered owners of condominiums in the project. Until registration of a revocation, the provisions of this Act shall continue to apply to such property.

The Master Deed of Legaspi Towers[21] states the number of stories and basements, and the number of units and accessories, and contains as an attachment a diagrammatic floor plan of the building as required by Section

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21 *Rollo* (G.R. No. 199389), pp. 78-88.

4(b)[22] of the Condominium Act. Section 2 of the Master Deed states:

> Section 2. The Building and the Units. The building included in the condominium project is a commercial building constructed of reinforced concrete and consisting of seven (7) storeys with a basement, a ground floor, a deck roof, and two levels above the deck roof. x x x.[23]

The construction by LEMANS of Concession 4 contravenes the Master Deed by adding a third level above the roof deck. As pointed out by Legaspi Towers and shown in the records, the Master Deed was never amended to reflect the building of Concession 4. Furthermore, LEMANS failed to procure the consent of the registered owners of the condominium project as required in the last paragraph of Section 4 of the Condominium Act.

The By-Laws of Legaspi Towers [24] specifically provides that extraordinary improvements or additions must be approved by the members in a regular or special meeting called for the purpose *prior* to the construction:

> ARTICLE V
> IMPROVEMENTS AND ADDITIONS
>
> x x x x
>
> Section 2. Extraordinary Improvements. Improvements or additions to the common areas which shall cost more than ₱100,000.00 or which involve structural construction or modification must be approved by the members in a regular or special meeting called for the purpose before such improvements or additions are made. x x x.[25]

Said By-Laws also provides for the process by which violations of the Master Deed are redressed, and the same coincides with the prayer of Legaspi Towers:

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22 SECTION 4. The provisions of this Act shall apply to property divided or to be divided into condominiums only if there shall be recorded in the Register of Deeds of the province or city in which the property lies and duly annotated in the corresponding certificate of title of the land, if the latter had been patented or registered under either the Land Registration or Cadastral Acts, an enabling or master deed which shall contain, among others, the following:

x x x x

(b) Description of the building or buildings, stating the number of stories and basements, the number of units and their accessories, if any;

x x x x

(g) The following plans shall be appended to the deed as integral parts thereof:

(1) A survey plan of the land included in the project, unless a survey plan of the same property had previously bee[n] filed in said office;

(2) A diagrammatic floor plan of the building or buildings in the project, in sufficient detail to identify each unit, its relative location and approximate dimensions;

23 *Rollo* (G.R. No. 199389), p. 80.

24 Id. at 301-311.

25 Id. at 308.

ARTICLE VII
ABATEMENT OF VIOLATIONS

> Section 1. Power to Abate Violations. In the event that any member or his tenant or lessee fails or refuses to comply with any limitation, restriction, covenant or condition of the Master Deed with Declaration of Restrictions, or with the rules and regulations on the use, enjoyment and occupancy of office/units or other property in the project, within the time fixed in the notice given him by the Board of Directors, the latter or its duly authorized representative shall have the right to enjoin, abate or remedy the continuance of such breach or violation by appropriate legal proceedings.
>
> The Board shall assess all expenses incurred in abatement of the violation, including interest, costs and attorney's fees, against the defaulting member.[26]

Instead of procuring the required consent by the registered owners of the condominium project pursuant to the Condominium Act, or having Concession 4 approved by the members in a regular or special meeting called for the purpose pursuant to the By-Laws, LEMANS merely had an internal arrangement with the then president of Legaspi Towers. The same, however, cannot bind corporations, which includes condominium corporations such as Legaspi Towers, as they can act only through their Board of Directors.[27]

Unperturbed, LEMANS argues that the internal arrangement shows its good faith in the construction of Concession 4, and claims the application of the aforementioned Articles 448 and 546 of the Civil Code. For reference, Article 448 provides:

> Art. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

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26 Id. at 308-309.

27 Section 23 of the Corporation Code:

> SECTION 23. *The Board of Directors or Trustees.* — Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year and until their successors are elected and qualified.

Firstly, it is recognized in jurisprudence that, as a general rule, Article 448 on builders in good faith does not apply where there is a contractual relation between the parties.[28]

Morever, in several cases, this Court has explained that the *raison d'etre* for Article 448 of the Civil Code is to prevent the impracticability of creating a state of forced co-ownership:

> The rule that the choice under Article 448 of the Civil Code belongs to the owner of the land is in accord with the principle of accession, *i.e.*, that the accessory follows the principal and not the other way around. Even as the option lies with the landowner, the grant to him, nevertheless, is preclusive. The landowner cannot refuse to exercise either option and compel instead the owner of the building to remove it from the land.
>
> The *raison d'etre* for this provision has been enunciated thus: Where the builder, planter or sower has acted in good faith, a conflict of rights arises between the owners, and it becomes necessary to protect the owner of the improvements without causing injustice to the owner of the land. In view of the impracticability of creating a state of forced co-ownership, the law has provided a just solution by giving the owner of the land the option to acquire the improvements after payment of the proper indemnity, or to oblige the builder or planter to pay for the land and the sower the proper rent. He cannot refuse to exercise either option. It is the owner of the land who is authorized to exercise the option, because his right is older, and because, by the principle of accession, he is entitled to the ownership of the accessory thing.[29]

In the case at bar, however, the land belongs to a condominium corporation, wherein the builder, as a unit owner, is considered a stockholder or member in accordance with Section 10 of the Condominium Act, which provides:

> SECTION 10. Whenever the common areas in a condominium project are held by a condominium corporation, such corporation shall constitute the management body of the project. The corporate purposes of such a corporation shall be limited to the holding of the common areas, either in ownership or any other interest in real property recognized by law, to the management of the project, and to such other purposes as may

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28 *Communities Cagayan, Inc. v. Nanol,* 698 Phil. 648, 660 (2012), citing Arturo M. Tolentino, CIVIL CODE OF THE PHILIPPINES, Vol. II, 116 (1998). In his Commentaries, Tolentino had the occasion to expound that:
[Article 448] and the following articles are not applicable to cases where there is a contractual relation between the parties, such as lease of land, construction contract, usufruct, etc., in which cases **the stipulations of the parties and the pertinent legal provisions shall apply**. The owner of the land and that of the improvements may validly settle the conflict of their rights by contract, and **it is only in the absence of contrary stipulation that the alternative solutions provided by Article 448 are applicable**. (Emphases supplied.)

29 *Tuatis v. Escol*, 619 Phil. 465, 488-489 (2009); *Espinoza v. Mayandoc,* G.R. No. 211170, July 3, 2017.

> be necessary, incidental or convenient to the accomplishment of said purposes. The articles of incorporation or by-laws of the corporation shall not contain any provision contrary to or inconsistent with the provisions of this Act, the enabling or master deed, or the declaration of restrictions of the project. Membership in a condominium corporation, regardless of whether it is a stock or non-stock corporation, shall not be transferable separately from the condominium unit of which it is an appurtenance. When a member or stockholder ceases to own a unit in the project in which the condominium corporation owns or holds the common areas, he shall automatically cease to be a member or stockholder of the condominium corporation.

The builder is therefore already in a co-ownership with other unit owners as members or stockholders of the condominium corporation, whose legal relationship is governed by a special law, the Condominium Act. It is a basic tenet in statutory construction that between a general law and a special law, the special law prevails. *Generalia specialibus non derogant.*[30] The provisions of the Civil Code, a general law, should therefore give way to the Condominium Act, a special law, with regard to properties recorded in accordance with Section 4[31] of said Act. Special laws cover distinct situations, such as the necessary co-ownership between unit owners in condominiums and the need to preserve the structural integrity of condominium buildings; and these special situations deserve, for practicality, a separate set of rules.

Articles 448 and 546 of the Civil Code on builders in good faith are therefore inapplicable in cases covered by the Condominium Act where the ***owner of the land*** and the ***builder*** are already bound by specific legislation on the subject property (the Condominium Act), and by contract (the Master Deed and the By-Laws of the condominium corporation). This Court has ruled that upon acquisition of a condominium unit, the purchaser not only affixes his conformity to the sale; he also binds himself to a contract with other unit owners.[32]

In accordance therefore with the Master Deed, the By-Laws of Legaspi Towers, and the Condominium Act, the relevant provisions of which were already set forth above, Legaspi Towers is correct that it has the right to demolish Concession 4 at the expense of LEMANS. Indeed, the application of Article 448 to the present situation is highly iniquitous, in that an owner, also found to be in good faith, will be forced to either appropriate the illegal structure (and impliedly be burdened with the cost of its demolition) or to allow the continuance of such an illegal structure that

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30 *National Power Corp. v. Presiding Judge, RTC, 10th Judicial Region, Br. XXV, Cagayan De Oro City,* 268 Phil. 507, 513 (1990).

31 Section 4. The provisions of this Act shall apply to property divided or to be divided into condominiums only if there shall be recorded in the Register of Deeds of the province or city in which the property lies and duly annotated in the corresponding certificate of title of the land, if the latter had been patented or registered under either the Land Registration or Cadastral Acts, an enabling or master deed which shall contain, among others, the following[.]

32 *Limson v. Wack Wack Condominium Corp.,* 658 Phil. 124, 133 (2011).

violates the law and the Master Deed, and threatens the structural integrity of the condominium building upon the payment of rent. The Court cannot countenance such an unjust result from an erroneous application of the law and jurisprudence.

We will no longer pass upon the issue of the validity of building permit for Concession 4 as the same has no bearing on the right of Legaspi Towers to an abatement of Concession 4.

Finally, we are constrained to deny the Petition of LEMANS in view of our ruling that the doctrine in *Depra* and Articles 448 and 546 of the Civil Code were improperly applied in these cases.

WHEREFORE, the Petition in G.R. No. 199353 is hereby **DENIED** for lack of merit. The Petition in G.R. No. 199389 is **GRANTED**. The Decision dated May 26, 2011 and Resolution dated November 17, 2011 of the Court of Appeals in CA-G.R. CV No. 88082 are **REVERSED** and **SET ASIDE**. Leviste Management System, Inc. is **ORDERED** to remove Concession 4 at its own expense.

No pronouncement as to costs.

SO ORDERED.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:

On leave
MARIA LOURDES P. A. SERENO
Chief Justice

MARIANO C. DEL CASTILLO
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

NOEL GIMENEZ TIJAM
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Acting Chief Justice