



Republic of the Philippines  
**Supreme Court**  
Manila

**SECOND DIVISION**

**JULIETA E. BERNARDO,**  
Petitioner,

**G.R. No. 185491**

— versus —

Present:

**ANDREW (CHONG BUAN) L. TAN,  
KATHERINE L. TAN, GERARDO  
C. GARCIA, CIRILO L.  
MANLANGIT, GEORGE T. YANG,  
THOMAS J. BARRACK, JR.,  
ENRIQUE SANTOS L. SY,  
ROBERT J. ZULKOSKI,  
ROBERTO S. GUEVARRA,  
ANTONIO T. TAN, ROSE A.  
CAMBALIZA, LOURDES G.  
CLEMENTE, NOLI HERNANDEZ,  
FRANCIS CANUTO, CIELO  
CUSTODIO, GUNTER  
RAMETSTEINER, CHARLES Y.  
UY, RAQUEL BONCAN, and  
RICHMOND TAN,**

**BRION, J., Acting Chairperson,  
PEREZ,  
SERENO,  
REYES, and  
PERLAS-BERNABE, \* JJ.**

Respondents.

Promulgated:

**JUL 11 2012**

X ----- X

**DECISION**

**SERENO, J.:**

Before the Court is a Petition for Review on Certiorari filed under Rule 45 of the Rules of Court, assailing the 24 November 2008 Decision of

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\* Designated as additional member in lieu of Senior Associate Justice Antonio T. Carpio per Raffle dated 11 July 2012.

the Court of Appeals (CA).<sup>1</sup> The present controversy stems from the 29 June 2006 and 8 September 2006 Orders of the Regional Trial Court (RTC)<sup>2</sup> granting the withdrawal of the Informations filed against respondents for violation of Sections 5 (first Information), 17 (second Information), and 20 (third Information) in relation to Section 39 of Presidential Decree No. 957, otherwise known as “The Subdivision and Condominium Buyers’ Protective Decree of 1976” (P.D. 957).

## FACTS

We reproduce the narration of facts by the CA<sup>3</sup> as follows:

On October 26, 2000, the petitioner Julieta Bernardo (Ms. Bernardo), offered to purchase a condominium unit described as Unit E with an area of 37 square meters of the Paseo Parkview Suites Tower II project of the developer Megaworld Corporation (Megaworld) located at Sedeño corner Valero Streets, Salcedo Village, Makati City. The said project was to be constructed on the lots covered by Transfer Certificates of Title Nos. 160210, 160211 and 160212, which are located at Makati City. The purchase price of the unit is ₱2,935,785.00 and Ms. Bernardo paid ₱19,571.90 as her reservation deposit, thus, a Request for Reservation [and Offer to Purchase] was completed by Ms. Bernardo and the same was assented to by Megaworld. Subsequently, a Contract to Buy and Sell dated November 22, 2000 was furnished to Ms. Bernardo. The said contract stipulated therein that the condominium unit would be delivered not later than July 31, 2003 with an additional grace period of six (6) months. As of October 22, 2003, Ms. Bernardo was able to pay the amount of ₱901,728.40. On April 15, 2004, Megaworld sent a letter to Ms. Bernardo regarding the transmittal of the Deed of Absolute Sale for her to affix her signatures thereto and for her to pay taxes and other fees so that Megaworld could start with the processing of her bank loan. Attached with the letter is a schedule of expenses needed in the transfer of the certificate of title in favor of Ms. Bernardo. The taxes and other fees to be paid by Ms. Bernardo amounted to ₱93,318.13. The conflict arose when Megaworld sent a letter dated August 9, 2004 to Ms. Bernardo as a final notice of cancellation or rescission of the Request for Reservation because of the latter’s alleged failure to make the necessary payments.

Consequently, Ms. Bernardo inquired with the Housing and Land Use Regulatory Board (HLURB) on the records of the project and she learned that the Certificate of Registration and the License to Sell for the project Paseo Parkview Tower 2 were only issued by HLURB on June 7,

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<sup>1</sup> The Decision in CA-G.R. SP No. 97247 was penned by CA Associate Justice Isaias Dicdican and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison.

<sup>2</sup> The 29 June 2006 and 8 September 2006 Orders in Criminal Case No. 05-1733-35 was penned by Judge Elmo M. Alameda.

<sup>3</sup> *Rollo*, pp. 53-57; CA Decision, pp. 2-6.

2001. Hence, Ms. Bernardo, represented by Romeo Ruiz, filed a complaint on August 12, 2004 before the City Prosecutor of Makati City against the respondents for violations of Sections 5, 17 and 20 of Presidential Decree No. 957, otherwise known as “Regulating the Sale of Subdivision Lots and Condominiums, Providing Penalties for Violations Thereof” and the Revised Implementing Rules and Regulations of P.D. 957 and Estafa through False Pretenses and Fraudulent Acts before the Office of the City Prosecutor. Ms. Bernardo alleged that, since the Reservation Agreement (or Request for Reservation) was executed between her and Megaworld on October 26, 2000, the respondents should have caused the annotation of the same within 180 [days] therefrom or until April 24, 2001, that no annotation on the certificates of title was done when she verified the same, that Megaworld was never able to deliver the condominium unit on the stipulated deadline, which was [] on December 2003 and that, by such acts and omissions, Megaworld and the project owner, Sedeño Manor, violated the provisions of P.D. 957 to her prejudice.

In a Joint Counter-Affidavit filed by some of the respondents herein, they averred that Megaworld applied for a Certificate of Registration and License to Sell for the project as early as July 1, 1998, that subsequently, a License to Sell was issued by the HLURB but only for the Paseo Parkview Suites Phase 1 due to the modifications in the Paseo Parkview Suites Tower 2, that there was no intent on the part of Megaworld to defraud Ms. Bernardo because, when the latter requested for reservation, it has applied for the registration of the project and to have license to sell the units on the said project, that when HLURB issued the corresponding certificate and license for the Phase 1, it is understood that Megaworld is a dealer of good refute [sic] and is financially stable, that the subsequent issuance of the certificate of registration and license to sell on June 7, 2001 for the Tower 2 proved that Megaworld had good standing in pursuing the project, that subsequent certifications for the Tower 2 were issued before its completion, that Ms. Bernardo was not in good faith in filing the complaint against the respondents as she had defaulted in the payment of her obligations and also failed to settle the balance of ₱2,016,145.71 with interest and penalty charges amounting to ₱181,453.11 and that no damage was incurred by Ms. Bernardo since the Contract to Buy and Sell was never executed.

In a Resolution dated December 29, 2004, the City Prosecutor dismissed the complaint of Ms. Bernardo. Consequently, she filed a petition for review with the Secretary of Justice. Her petition was granted by the Secretary of Justice, hence, it ordered the filing of the corresponding Informations for violations of Sections 5, 17 and 20 of P.D. No. 957. The said Informations were filed in RTC, Branch 62 in Makati City. Due to the voluntary inhibition of the presiding judge of the said court, the case was re-assigned to RTC, Branch 150.

Aggrieved, the respondents moved for the reconsideration of the filing of the Informations against them. This time, the Secretary of Justice ruled in their favor and granted their motion in a Resolution dated November 17, 2005. Hence, pursuant to the Resolution, the Secretary of Justice ordered the City Prosecutor to move for the withdrawal of the Informations filed before the [trial] court. Acting on the motion of the City Prosecutor, the public respondent court issued the assailed Order dated June 29, 2006. The pertinent portion of the said order is quoted as follows:

“As correctly ruled by the Secretary of Justice, it is overly simplistic to consider respondents as having violated Section 5 of P.D. 957 requiring licenses to be secured for each phase of the project. Under Title I of P.D. 957 a condominium project shall mean the entire parcel of real property divided or to be divided primarily for residential purposes into condominium units including all structures thereon. Clearly, the requirement of securing a license for each phase refers to a subdivision project not a condominium project. There is therefore doubt as to whether or not Section 5 of P.D. 957 can be a basis for prosecuting the respondents. x x x.”

“Respondents cannot also be indicted for violation of Section 17 of P.D. 957 for failure to register the Contract to Buy and Sell with the Registry of Deeds of Makati City because they did not have in their possession said document. Their inability to register the same was justified. x x x.”

“Section 20 of P.D. 957 should not also [be] applied mechanically against the respondents. Under the Contract to Buy and Sell, Megaworld is mandated to complete the project by July 23, 2003 with a grace period of six (6) months barring delays due to manmade or natural causes. Upon its completion, Megaworld shall notify the complainant of such fact, which shall constitute constructive delivery of subject condominium unit. Under the facts obtaining, respondents had no obligation to notify the complainant of the completion and availability of the unit for occupancy due to complainant’s failure to pay in full the purchase price of the unit. In fact, Megaworld prepared a notice to cancel/rescind and forfeit the Contract to Buy and Sell due to complainant’s default. Following this theory, the non-completion of Phase II of the condominium project cannot be made the basis of criminal prosecution under the aforecited section of P.D. 957.”

Consequently, Ms. Bernardo filed a motion for reconsideration but the same was denied by the [trial] court in [an Order] dated September 8, 2006. (Citations omitted)

On 24 November 2008, the CA issued its questioned Decision upholding the 29 June 2006 and 8 September 2006 Orders of the RTC. The appellate court ruled<sup>4</sup> that the RTC did not commit grave abuse of discretion when it allowed the withdrawal of the Informations filed against respondents for their alleged violation of P.D. 957. According to the CA, the trial court made an assessment and evaluation of the merits of the Motion to Withdraw

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<sup>4</sup> *Rollo*, pp. 60-62; CA Decision, pp. 9-11.

the Informations independent from those of the respective findings of the Secretary of Justice and the City Prosecutor.

The CA, however, set aside the finding of the trial court with regard to the applicability of Section 5 of P. D. 957. According to the appellate court, the provision governs both subdivision and condominium projects. It then made a distinction between a contract to sell and a contract of sale. The CA explained that what P.D. 957 prohibits is the act of selling condominium units, not the act of approving the request of a client to reserve a unit for future sale, without license. It thereafter pointed out that the Request for Reservation and Offer to Purchase (Reservation Agreement) only acknowledged petitioner's interest to buy the unit and her payment of the reservation deposit, which did not constitute a contract of sale. Consequently, the appellate court concluded that, since a violation of the provisions under P.D. 957 requires the execution of a contract of sale, the RTC's grant of the withdrawal of Informations was done in accordance with law and did not constitute grave abuse of discretion.

## **ISSUE**

We summarize the legal arguments raised before this Court in one main issue – whether or not there is probable cause to indict respondents for allegedly violating Sections 5, 17, and 20 of P.D. 957.

## **DISCUSSION**

Prosecutors have discretion and control over the criminal prosecution of offenders, as they are the officers tasked to resolve the existence of a *prima facie* case and probable cause that would warrant the filing of an information against the perpetrator.<sup>5</sup> The process of determining whether there is probable cause is ordinarily done through the conduct of a

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<sup>5</sup> *Crespo v. Mogul*, 235 Phil. 465 (1987).

preliminary investigation.<sup>6</sup> If the prosecutor finds that the evidence he or she relies upon is insufficient for conviction, courts may not compel the former to initiate criminal prosecution or to continue prosecuting a proceeding originally initiated through a criminal complaint.<sup>7</sup> Consequently, a prosecutor who moves for the dismissal of a criminal case or the withdrawal of an information for insufficiency of evidence has authority to do so, and courts that grant the motion commit no error.<sup>8</sup> Furthermore, a prosecutor “may re-investigate a case and subsequently move for the dismissal should the re-investigation show either that the defendant is innocent or that his guilt may not be established beyond reasonable doubt.”<sup>9</sup>

However, once a complaint or an information is filed in court giving it jurisdiction over the criminal case, a reinvestigation thereof by the prosecutor requires prior permission from the court.<sup>10</sup> If reinvestigation is allowed, the findings and recommendations of the prosecutor should be submitted to the court for appropriate action.<sup>11</sup> If the prosecutor moves for the withdrawal of the information or the dismissal of the case, the court may grant or deny the motion. It may even order the trial to proceed with the proper determination of the case on the merits, according to its sound discretion.<sup>12</sup> The court “is the best and sole judge on what to do with the case before it.”<sup>13</sup> Thus, in *Yambot v. Armovit*,<sup>14</sup> we ruled:

[The court] **may therefore grant or deny at its option** a motion to dismiss or **to withdraw the information based on its own assessment of the records of the preliminary investigation submitted to it**, in the faithful exercise of **judicial discretion and prerogative**, and not out of subservience to the prosecutor. While it is imperative on the part of a trial judge to state his/her assessment and reasons in resolving the motion before him/her, he/she need not state with specificity or make a lengthy exposition of the factual and legal foundation relied upon to arrive at the decision. (Emphasis supplied and citations omitted)

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<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id. at 473.

<sup>10</sup> *Crespo v. Mogul*, supra note 5.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id. at 476.

<sup>14</sup> G.R. No. 172677, 12 September 2008, 565 SCRA 177, 180.

This exercise of discretion is not unbridled, however, especially when attended with grave abuse. Grave abuse of discretion denotes “abuse of discretion too patent and gross as to amount to an evasion of a positive duty, or a virtual refusal to perform the duty enjoined or act in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of passion and personal hostility.”<sup>15</sup> It is present when there is capricious, whimsical, and arbitrary exercise of judgment, which in the eyes of the law amounts to lack of jurisdiction.<sup>16</sup>

We find reversible error in the CA Decision upholding the 29 June 2006 and 8 September 2006 Orders of the RTC insofar as the first (violation of Section 5) and the third (violation of Section 20) Informations are concerned. The trial court committed grave abuse of discretion when it granted the motion to withdraw the first and the third Informations against respondents on the basis of a grossly erroneous interpretation and application of law.

Probable cause for purposes of filing a criminal information is described as “such facts as are sufficient to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.”<sup>17</sup> In *Alejandro v. Bernas*,<sup>18</sup> we further elaborated thus:

[Probable cause] is such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe or entertain an honest or strong suspicion that a thing is so. The term does not mean “actual or positive cause”; nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a **finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged.** Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge. (Emphasis supplied)

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<sup>15</sup> *Romy’s Freight Service v. Castro*, 523 Phil. 540, 546 (2006), (citing *Lim v. Executive Secretary*, 430 Phil. 55 [2002]).

<sup>16</sup> *Gaston v. Court of Appeals*, 390 Phil. 36 (2000); *Palma v. Q. & S. Inc.*, 123 Phil. 958 (1966).

<sup>17</sup> *Alejandro v. Bernas*, G.R. No. 179243, 7 September 2011, 657 SCRA 255, 264-265.

<sup>18</sup> *Id.* at 265.

We find that there is probable cause to indict respondents for violating Section 5 on the basis of the allegations in the first Information. Below is a reproduction of the criminal complaint:

The undersigned Prosecutor accuses ANDREW L. TAN @ CHONG BUAN, KATHERINE TAN, GERARDO GARCIA, CIRILO L. MANLANGIT, GEORGE T. YANG, THOMAS J. BARRACK, JR., ENRIQUE SANTOS L. SY, ROBERT J. ZULKOSHI [sic], ROBERTO S. GUEVARRA, ANTONIO T. TAN, ROSE A. CAMBALIZA, LOURDES G. CLEMENTE, NOLI HERNANDEZ, FRANCIS CANUTO, CIELO CUSTODIO, GUNTER RAMETSTEINER, CHARLES Y. UY, RAQUEL BONCAN and RICHMOND TAN of the crime of **Violation of Section 5 of P.D. 957**, committed as follows:

That on or about the 22<sup>nd</sup> day of November, 2000, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the responsible officers of Megaworld Corporation and Sedeño Manor, Inc. and in charge of the business of said corporation **sold to complainant JULIETA E. BERNARDO** a condominium unit described as 23E Tower II for the amount of Three Million Ninety Thousand and Three Hundred Pesos (₱3,090,300.00), that **while complainant was paying the monthly amortization due on the said condominium**, accused conspiring and confederating together and mutually helping and aiding one another, did then and there willfully, unlawfully and feloniously **failed to secure a Certification of Registration and License to Sell** from the Housing and Land Use Regulatory Board (HLURB), in violation of the aforecited law. (Emphasis supplied)

In support of the first Information, it was claimed that the condominium project comprised two phases/towers, and that each phase/tower was given a separate Certification of Registration and License to Sell by the HLURB. Allegedly, respondents sold petitioner a unit located in Tower II of the condominium project at the time when Megaworld had yet to receive the registration certificate and its license to sell. The CA upheld the grant of the Motion to Withdraw the Information, allegedly because the law only proscribed transactions involving a contract of sale.

A review of the pertinent provisions of P.D. 957 plainly shows that the execution of a contract of sale between the parties is not an essential ingredient before there could be a violation of Section 5, viz:



SECTION 5. License to sell. - Such **owner or dealer** to whom has been issued a registration certificate **shall not, however, be authorized to sell any** subdivision lot or **condominium unit in the registered project unless he shall have first obtained a license to sell** the project within two weeks from the registration of such project.

The Authority, upon proper application therefore, shall issue to such owner or dealer of a registered project a license to sell the project if, after an examination of the registration statement filed by said owner or dealer and all the pertinent documents attached thereto, he is convinced that the owner or dealer is of good repute, that his business is financially stable, and that the proposed sale of the subdivision lots or condominium units to the public would not be fraudulent.

SECTION 2. Definition of Terms - When used in this Decree, the following terms shall, unless the context otherwise indicates, have the following respective meanings:

X X X X X X X X X X

- b) **Sale or sell.** – “Sale” or “sell” shall **include every disposition, or attempt to dispose, for a valuable consideration**, of a subdivision lot, including the building and other improvements thereof, if any, in a subdivision project or a condominium unit in a condominium project. “Sale” and “sell” **shall also include a contract to sell, a contract of purchase and sale, an exchange, an attempt to sell, an option of sale or purchase, a solicitation of a sale, or an offer to sell, directly or by an agent, or by a circular, letter, advertisement or otherwise.**
- c) **Buy and purchase.** - The “buy” and “purchase” shall include **any contract to buy, purchase, or otherwise acquire** for a valuable consideration a subdivision lot, including the building and other improvements, if any, in a subdivision project or a condominium unit in a condominium project.

X X X X X X X X X X

SECTION 39. Penalties. - **Any person who shall violate any of the provisions of this Decree and/or any rule or regulation** that may be issued pursuant to this Decree shall, **upon conviction, be punished by a fine** of not more than twenty thousand (₱20,000.00) pesos **and/or imprisonment** of not more than ten years: Provided, That **in the case of corporations, partnership, cooperatives, or associations, the President, Manager or Administrator or the person who has charge of the administration of the business shall be criminally responsible for any violation of this Decree and/or the rules and regulations promulgated pursuant thereto.** (Emphasis supplied)

Read in conjunction with Section 2 of P.D. 957, Section 5 has an extended definition of “sale,” which forbids all activities that dispose or

attempt to dispose of subdivision lots or condominium units absent a *prior* issuance of an HLURB license to sell.<sup>19</sup> The prohibition includes all agreements that are in the nature of a “contract to sell, a contract of purchase and sale, an exchange, an attempt to sell, an option of sale or purchase, a solicitation of a sale, or an offer to sell.”<sup>20</sup> Thus, the statement in the first Information that reads “sold to complainant” must be interpreted in the light of this extended definition.

One of the reasons behind the expanded meaning of the term “sale” was to deter the rising cases of swindling and fraudulent manipulations perpetrated by unscrupulous subdivision and condominium sellers and operators against unknowing buyers.<sup>21</sup> Thus, for the state to be able to closely supervise and regulate real estate subdivision and condominium businesses,<sup>22</sup> owners or dealers thereof must have a license to sell before they engage in any type of “sale” within the meaning of the law.

A perusal of the Reservation Agreement would show that the transaction between petitioner Bernardo and Megaworld is covered by the extended definition of “sale” under P.D. 957. The agreement provides as follows:<sup>23</sup>

Gentlemen :

I hereby tender my offer to purchase

UNIT NUMBERS	: <u>23 E (STUDIO), TOWER II</u>
AREA	: <u>37 sq.m.</u>
CONTRACT PRICE	: <u>₱ 3,090,300.00</u>
LESS 5%	: <u>2,935,785.00</u>

under the following terms of payment:

DOWNPAYMENT	: <u>₱ NR-NDP</u>
(30 days from date of Reservation)	

<sup>19</sup> See *Cabral v. Uy*, G.R. No. 174584, 22 January 2010, 610 SCRA 405; and *Co Chien v. Sta. Lucia Realty and Development, Inc.*, G.R. No. 162090, 31 January 2007, 513 SCRA 570.  
<sup>20</sup> *Id.*  
<sup>21</sup> See P.D. 957, Preamble.  
<sup>22</sup> *Id.*  
<sup>23</sup> *Rollo*, p. 214; Request for Reservation and Offer to Purchase, Comment to the Petition for Review on Certiorari of Respondents, Annex “10.”

MONTHLY  
AMORTIZATION : ₱ 19,571.90  
in 60 months : \_\_\_\_\_  
at 0% interest p.a. : \_\_\_\_\_

BALANCE UPON  
TURN-OVER 50% : ₱ 1,467,892.50

of your proposed PASEO PARKVIEW TOWER II  
Project to be constructed at the property located at THE CORNER  
STREETS OF VALERO, SAN AGUSTIN & SEDENO IN SALCEDO  
VILLAGE, MAKATI

In faith of my interest to purchase said unit/s; please find my reservation deposit, to wit:

Cross Check No. 6291516  
dated Nov. 22, 2000  
in the amount of ₱ 19,571.90, drawn against the  
FAR EAST BANK AND TRUST COMPANY ORTIGAS AVE.,  
GREENHILLS Branch,  
payable to MEGAWORLD CORPORATION.

**This amount shall form part of the downpayment.**

I understand that you reserve the right to accept or deny this request for reservation. **In the event of your acceptance hereof, and upon my full downpayment hereinabove-stated together with my delivery of the postdated checks to cover the balance of the purchase price, I agree to execute your standard Contract to Buy and Sell a copy thereof I have read, understood and agree to.**

Should I fail to pay the downpayment and/or perform and execute any of the above conditions within the period stated, for any reason whatsoever, the reservation made will automatically be cancelled and the reservation fee and all my other payments shall be forfeited in your favor.

X X X

X X X

X X X

# RECEIPT

Received the amount NINETEEN THOUSAND FIVE HUNDRED SEVENTY ONE & 90/100 (₱19,571.90) covered by FAR EAST BANK Check No. 6291516 dated Nov. 22, 2000 representing reservation deposit Unit/s 23 E of PASEO PARKVIEW TOWER 2. (Emphasis supplied)

It also appears from the letters of Megaworld to petitioner Bernardo that she made subsequent monthly amortization payments after her initial

reservation deposit.<sup>24</sup> She alleged that her total payment as of October 2003, inclusive of the reservation deposit, amounted to ₱921,300.30.<sup>25</sup>

We emphasize that the owner or dealer of subdivision lots or condominium units must have already obtained a license to sell at the time it disposes or attempts to dispose of the property.<sup>26</sup> The subsequent issuance of a license to sell and the invocation of good faith “cannot reach back to erase the offense and extinguish [an accused’s] criminal liability.”<sup>27</sup> This is because engaging in such activities is regarded as a crime that is *malum prohibitum*, one to which criminal intent is immaterial.<sup>28</sup> The perpetrators are punished, because the law forbids the mere commission of an act regardless of whether the conduct is inherently immoral or not.<sup>29</sup>

Anent the violation of Section 20, we rule that probable cause is also present, warranting the filing of criminal complaint against respondents. The third Information reads as follows:

The undersigned Prosecutor accuses ANDREW L. TAN @ CHONG BUAN, KATHERINE TAN, GERARDO GARCIA, CIRILO L. MANLANGIT, GEORGE T. YANG, THOMAS J. BARRACK, JR., ENRIQUE SANTOS L. SY, ROBERT J. ZULKOSHI [sic], ROBERTO S. GUEVARRA, ANTONIO T. TAN, ROSE A. CAMBALIZA, LOURDES G. CLEMENTE, NOLI HERNANDEZ, FRANCIS CANUTO, CIELO CUSTODIO, GUNTER RAMETSTEINER, CHARLES Y. UY, RAQUEL BONCAN and RICHMOND TAN of the crime of **Violation of Section 20 of P.D. 957**, committed as follows:

That on or about the 22<sup>nd</sup> day of November, 2000, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the responsible officers of Megaworld Corporation and Sedeño Manor, Inc. and in charge of the business of said corporation **sold to complainant JULIETA E. BERNARDO** a condominium unit described as 23E Tower II for the amount of Three Million Ninety Thousand and Three Hundred Pesos

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<sup>24</sup> *Rollo*, pp. 217-225; Letters of Megaworld, Comment to the Petition for Review on Certiorari of Respondents, Annexes “12” – “20.”

<sup>25</sup> *Rollo*, p. 13; Petition for Review on Certiorari, p. 5; *Rollo*, p. 99; Summary of PDCs Issued, Petition for Review on Certiorari, Annex “I.”

<sup>26</sup> *Cabral v. Uy*, supra note 19. See also *Mortel v. KASSCO, Inc.*, 401 Phil. 580 (2000).

<sup>27</sup> *Cabral v. Uy*, supra, at 411.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

(₱3,090,300.00), that **while complainant was paying the monthly amortization due on the said condominium**, accused conspiring and confederating together and mutually helping and aiding one another, did then and there willfully, unlawfully and feloniously **failed to complete the project by December 2003, the deadline given by the Housing and Land Use Regulatory Board (HLURB)**, in violation of the aforecited law. (Emphasis supplied)

In deciding the matter at hand, we again cite the pertinent provisions under P.D. 957 and the Revised Rules and Regulations Implementing the Subdivision and Condominium Buyer's Protective Decree (HLURB Resolution No. 699, Series of 2001):

SECTION 20. *Time of Completion.* - Every owner or developer shall construct and provide the facilities, improvements, infrastructures and other forms of development, including water supply and lighting facilities, which are offered and indicated in the approved subdivision or condominium plans, brochures, prospectus, printed matters, letters or in any form of advertisement, **within one year from the date of the issuance of the license for the subdivision or condominium project or such other period of time as may be fixed by the Authority.**

#### **Section 21. Time for Completion**

**Every owner or developer shall construct and provide** the facilities, infrastructures, other forms of development, including water supply and lighting facilities and as far as practicable improvements, which are offered and indicated in the approved subdivision or condominium plans, brochures, prospectus, printed matters, letters or in any form of advertisement, **within one ( 1) year or within such other period of time as may be fixed by the Board from the date of the issuance of license to sell** for the subdivision or condominium project.

**Request for extension of time to complete development of a subdivision or condominium project may be granted only in cases where non-completion of project is caused by fortuitous events, legal orders or such other reasons that the board may deem fit/proper with the written notice to lot or unit buyers** without prejudice to the exercise of their rights pursuant to Section 23 of the Decree.

The request for extension of time for completion shall be accompanied by a revised work program duly signed and sealed by a licensed engineer or architect with project costing and financing scheme therefor. In appropriate cases, the Board may require the posting of additional performance bond amounting to 20% of development cost of the unfinished portion of the approved development plan, or issue such orders it may deem proper. (Emphasis supplied)

The law is unambiguous when it states that it shall be the National Housing Authority (now the HLURB) that would fix or extend the date of completion of the subdivision or condominium projects if justified. The RTC thus committed grave abuse of discretion when it decreed that the time of completion as mandated by Section 20 should not be applied “mechanically against respondents”;<sup>30</sup> and when it relied on the completion time as indicated in the Contract to Buy and Sell. Moreover, nowhere can it be found that the law requires a contract of sale before an offense can be committed under Section 20.

We however found no reversible error when the CA affirmed the RTC’s grant of the withdrawal of the second Information filed against respondents with respect to the violation of Section 17. Below is a reproduction of the pertinent portion of the second Information:

The undersigned Prosecutor accuses ANDREW L. TAN @ CHONG BUAN, KATHERINE TAN, GERARDO GARCIA, CIRILO L. MANLANGIT, GEORGE T. YANG, THOMAS J. BARRACK, JR., ENRIQUE SANTOS L. SY, ROBERT J. ZULKOSHI [sic], ROBERTO S. GUEVARRA, ANTONIO T. TAN, ROSE A. CAMBALIZA, LOURDES G. CLEMENTE, NOLI HERNANDEZ, FRANCIS CANUTO, CIELO CUSTODIO, GUNTER RAMETSTEINER, CHARLES Y. UY, RAQUEL BONCAN and RICHMOND TAN of the crime of **Violation of Section 17 of P.D. 957**, committed as follows:

That on or about the 22<sup>nd</sup> day of November, 2000, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the responsible officers of Megaworld Corporation and Sedeño Manor, Inc. and in charge of the business of said corporation **sold to complainant JULIETA E. BERNARDO** a condominium unit described as 23E Tower II for the amount of Three Million Ninety Thousand and Three Hundred Pesos (₱3,090,300.00), that **while complainant was paying the monthly amortization due on the said condominium**, accused conspiring and confederating together and mutually helping and aiding one another, did then and there willfully, unlawfully and feloniously **failed to register the reservation agreement in the Office of the Register of Deeds of Makati City**, in violation of the aforecited law. (Emphasis supplied)

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<sup>30</sup> *Rollo*, pp. 70-71; RTC Order on the 6<sup>th</sup> and 7<sup>th</sup> pages (unpaginated).

According to the trial court, respondents were justified in failing to register the documents pursuant to Section 17, because the Reservation Agreement was still in the hands of petitioner.<sup>31</sup> The CA added that a violation under Section 17 also requires the existence of a contract of sale between the parties. For reference, we quote the applicable provision of the law as follows:

SECTION 17. Registration. - **All contracts to sell, deeds of sale and other similar instruments relative to the sale or conveyance of the subdivision lots and condominium units**, whether or not the purchase price is paid in full, **shall be registered by the seller in the Office of the Register of Deeds** of the province or city where the property is situated.  
x x x. (Emphasis supplied)

Indeed, failure to register the agreement or the instrument dealing with the disposition or the attempt to dispose of subdivision lots or condominium units constitutes a violation of P.D. 957.<sup>32</sup> Thus, as soon as the agreement is struck, the seller is duty-bound to register the instrument with the Register of Deeds.<sup>33</sup>

Nevertheless, the phrase “other similar instruments relative to the sale or conveyance of the subdivision lots and condominium units” is not broad enough to include an option contract. An option contract<sup>34</sup> refers to an agreement by which a person acquires the privilege of buying from or selling to another a particular property within a given time and at a named price, in consideration of the payment of a certain sum. It is neither a sale nor an agreement to sell, for the person does not sell or agree to sell the property. Rather, one sells the right or privilege to call for and receive the property at the election or option of another. Here, the owner parts with his or her right to sell the property, except to the other party, for a limited period.

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<sup>31</sup> *Rollo*, p. 70; RTC Order on the 6<sup>th</sup> page (unpaginated).

<sup>32</sup> *Id.*

<sup>33</sup> *Manila Banking Corporation v. Rabina*, G.R. No. 145941, 16 December 2008, 574 SCRA 16; *Sia v. People*, G.R. No. 159659, 12 October 2006, 504 SCRA 507; and *Home Bankers Savings & Trust Co. v. Court of Appeals*, 469 Phil. 637 (2005).

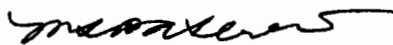
<sup>34</sup> *Tuazon v. Del Rosario-Suarez*, G.R. No. 168325, 13 December 2010, 637 SCRA 728 (citing *Beaumont v. Prieto*, 41 Phil. 670, 686-687 [1916]).

As can be surmised from the allegations in the petition of Bernardo, her purpose for signing the Reservation Agreement and paying the reservation deposit was merely to reserve the right to purchase Unit 23 E of Paseo Parkview Tower II.<sup>35</sup> According to her, Megaworld proposed to enter into a Contract to Buy and Sell – “a distinct contract from the Reservation Agreement” – but the contract was never signed by the parties.<sup>36</sup> Thus, the Reservation Agreement entered into by petitioner and Megaworld must be deemed merely as an option contract, which is not required to be registered under P.D. 957.

We reiterate that our findings here are limited to the existence of probable cause to indict respondents based on the Informations filed with the RTC. As to the merits of the criminal complaints, the prosecution and the accused must be given the opportunity to present their arguments in the appropriate adversarial proceedings.

**WHEREFORE**, the Petition for Review on Certiorari is **GRANTED**. The 24 November 2008 Decision of the CA, which upheld the 29 June 2006 and 8 September 2006 Orders of the RTC in Criminal Case No. 05-1733-35 is **REVERSED** and **SET ASIDE**. This case is hereby **REMANDED** to the Regional Trial Court of Makati, Branch 150, for the appropriate proceedings in accordance with the ruling herein.

**SO ORDERED.**



**MARIA LOURDES P. A. SERENO**  
Associate Justice

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<sup>35</sup> *Rollo*, pp. 12-13; Petition for Review on Certiorari, pp. 4-5.

<sup>36</sup> *Rollo*, p. 13; Petition for Review on Certiorari, p. 5.



**WE CONCUR:**



**ARTURO D. BRION**

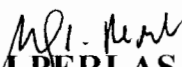
Associate Justice  
Acting Chairperson



**JOSE PORTUGAL PEREZ**  
Associate Justice




**BIENVENIDO L. REYES**  
Associate Justice



**ESTELA M. PERLAS-BERNABE**  
Associate Justice

**A T T E S T A T I O N**

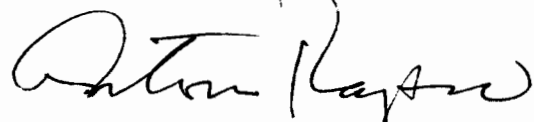
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ARTURO D. BRION**  
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.

A handwritten signature in black ink, appearing to read 'Antonio T. Carpio', written in a cursive style.**ANTONIO T. CARPIO**

Senior Associate Justice

(Per Section 12, R.A. 296,  
The Judiciary Act of 1948, as amended)