



MEMORANDUM CIRCULAR 99-08

March 11, 1999

FOR : ALL MEMBERS
FROM: THE BOARD OF GOVERNORS
RE : CONSOLIDATED AND REVISED DEED RESTRICTIONS

Please be advised that, in its decision promulgated on August 7, 1998 in G. R. No. 126699, "Ayala Corporation vs. Ray Burton Development Corporation," the Supreme Court has ruled that Ray Burton Development Corporation (RBDC) "acted in bad faith in constructing the Trafalgar Plaza in excess of the applicable restrictions upon a double submission of plans and exercising deceit upon both AYALA and the Makati Engineer's Office."

This dispositive portion of the position reads as follows:

"WHEREFORE, the premises considered, the assailed Decision of the Court of Appeals dated February 27, 1996, in CA-G.R. CV No. 46488, and its Resolution dated October 7, 1996 are hereby REVISED and SET ASIDE, and in lieu thereof, judgment is hereby rendered finding that:

- (1) The Deed Restrictions are valid and petitioner AYALA is not estopped from enforcing them against lot owners who have not yet adopted the Consolidated and Revised Deed Restrictions;
- (2) Having admitted that the Consolidated and Revised Deed Restrictions are the applicable Deed Restrictions to Ray Burton Development Corporation's Trafalgar Plaza, RBDC should be, and is, bound by the same;
- (3) Considering that Ray Burton Development Corporation's Trafalgar Plaza exceeds the floor area limits of the Deed Restrictions, RBDC is hereby ordered to pay development charges as computed under the provisions of the Consolidated and Revised Deed Restrictions currently in force.

XXXX XXXX XXXX
SO ORDERED."

On January 13, 1999, the Supreme Court denied with "FINALITY" the motion for reconsideration of RBDC. Hence, this decision is now final and Ayala's lawyers have filed a motion for entry to judgment to start the execution process against RBDC.

From the foregoing, the Board notes the Supreme Court's basic finding that the Consolidated and Revised Deed Restrictions or applicable predecessor restrictions, in proper cases, are valid and are to be adhered to as contractual stipulations, under pain of applicable liabilities for their transgression.

For your perusal and information, quoted hereunder is an excerpt from the said decision:

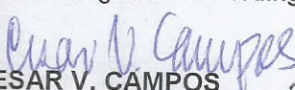
What is clear from the record, however, is that RBDC was the party guilty of misrepresentation and/or concealment when it resorted to the fraudulent scheme of submitting two (2) sets of building plans, one (1) set conformed to the Deed Restrictions, which was submitted to and approved by AYALA, while another set violated the said restrictions, and which it presented to the Makati City Building Official in order to secure from the latter the necessary building permit. It is noteworthy that after the submission of the second set of building plans to the Building Official, RBDC continued to make representations to AYALA that it would build the five-storey building in accordance with the first set of plans approved by AYALA, obviously for the purpose of securing the release of the title of the subject lot to obtain bank funding. AYALA relied on RBDC's false representations and released the said title. Hence, RBDC was in bad faith.

XXXX XXXX XXXX

In sum, there is more than ample evidence on record pinpointing RBDC's violation of the applicable FAR restrictions in the Consolidated and Revised Deed Restrictions (CRDRs) when it constructed the 27-storey Trafalgar Plaza."

In the light of the foregoing, your Board will not hesitate to enjoin or prohibit the construction of any building in violation of the restrictions, impose the appropriate sanctions for such or similar transgressions and pursue other available reliefs.

Please be guided accordingly.


CESAR V. CAMPOS
Chairman and President