

**SPS. RODRIGO AND FILOMENA ORPIANO, PLAINTIFFS-APPELLEES,
VS. DIT FERNANDEZ, ROSITA SEE, PROSERFINA MONTEROLA,
SPOUSES PEDRO AND LOURDES BEA, JENELYN BEA AND RIZAL
COMMERCIAL BAN...**

Ponente: COSICO, J.

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COSICO, J.:

Banks, their business being impressed with public interest, are expected to exercise more care and prudence than private individuals in their dealings, even those involving registered lands.[1] When the purchaser or mortgagee is a financing institution, the general rule that a purchaser or mortgagee of land is not required to look further than what appears on the face of the title does not apply.[2]

The Facts

This decision resolves defendant-appellant Rizal Commercial Banking Corporation's appeal from the decision dated July 25, 2003 of the Regional Trial Court, Branch 80 of Quezon City in Civil Case No. Q-96-27565. The facts, as narrated by the trial court and reproduced by herein defendant-appellant in its appeal brief, are as follows:

"This is a verified amended complaint for Specific Performance, Nullification of Contracts to Sell (Purchase and Conditional Sale) and Delivery of Property with Damages filed by plaintiffs Spouses Rodrigo and Filomena Orpiano against defendants Dit Fernandez, Rosita See, Proserfina Monterola, Spouses Pedro and Lourdes Bea and Jenelyn Bea and Rizal Commercial Banking Corporation.

"For failure of defendant Proserfina Monterola and both defendants Bea and Rizal Commercial Banking Corporation to file answer within the reglementary period notwithstanding receipt of summons and to appear during the pre-trial respectively, the Court upon plaintiff's motion, declared the aforementioned defendants in default and allowed plaintiff to present evidence ex-parte. Defendants Dit Fernandez and Rosita See and plaintiffs, on the other hand, filed a Joint Motion to Dismiss which the Court granted in the Court Order dated June 20, 2002 thus leaving Proserfina Monterola, Spouses Pedro and Lourdes Bea, Jenelyn Bea and Rizal Commercial Banking Corporation as the remaining defendants in the instant case.

"To support their claim, plaintiffs presented documentary and testimonial evidence which show that defendant Proserfina Monterola approached plaintiff Filomena Orpiano to assume the former's monetary obligation from co-defendant Dit Fernandez assigning her absolute rights, title and interest over a parcel of land owned by defendant Fernandez, containing an area of 258 square meters more or less situated in Barrio Tandang Sora (Bahay Toro) Quezon City, covered by the Transfer Certificate of Title No. 274790 issued by the Register of Deeds of Quezon City; that on January 20, 1986, a written public document otherwise known as the "Deed of Assignment" was executed by defendant Proserfina Monterola in favor of the plaintiff who was induced and through [insidious machinations] employed by the said defendant was convinced to rely and agree to the terms and conditions of the subject deed of assignment and thereafter, made cash payments, one of which is in the amount of Php 30,000.00 as evidenced by a Security Bank and Trust Company managers Check no. 006151; that on one of the receipts of payments issued by defendant Dit Fernandez dated January 20, 1986, particularly in the second clause, it states that 'the remaining balance of P60,000.00 shall be paid within four (4) months

from this date with interest of 2 percent per month; that, however, when plaintiffs, in actual possession of the property then, and still are in possession to the present, were making and tendering payment in the amount of Php60,000.00 to defendant Dit Fernandez, the latter refused and deliberately denied acceptance without any justifiable reason; that recently, plaintiff discovered and learned that the real estate properties of defendants Dit Fernandez and Rosita See including the parcel of land covered by Transfer Certificate of Title [No.] 274790 subject of the Deed of Assignment in favor of the plaintiffs has been disposed of and sold to [defendants-spouses] Pedro and Lourdes Bea by virtue of a “Contract to Sell” dated March 3, 1981; that subsequently, plaintiffs also discovered that defendants Dit Fernandez, Monterola and Rosita See entered into a fictitious and spurious document otherwise known as “Contract of Purchase and Sale”, a ploy transaction dated September 18, 1985 involving the same property assigned to plaintiffs covered by Transfer Certificate of Title [No.] 274790; that on July 21, 1986, counsel for plaintiffs wrote demand letters for defendants Dit Fernandez and Rosita See to accept and receive the said amount of balance being tendered by plaintiffs as per Deed of Assignment but the former refused and failed and still refuses and fails to heed such demand; that however, in Civil Case no. Q-92-13084, entitled Dit Fernandez and Rosita See, (plaintiffs) versus Pedro Bea and Lourdes Bea, (defendants) assigned before the Regional Trial Court Branch 99, Quezon City, involving several real estates properties with its improvements including the property assigned to herein plaintiffs, the said Regional Trial Court, on July 16, 1993, rendered a Decision based on a Compromise Agreement submitted by the parties in the aforesaid Civil Case No. Q-92-13084; that to prevent plaintiffs from exercising their right of recovery or redemption, defendants Monterola, Fernandez, See and spouses Bea compounded their bad faith by misleading the Honorable Court, Branch 99, Regional Trial Court [of] Quezon City into believing that the loan approved by defendant Rizal Commercial Banking Corporation was Php 5,000,000.00 when in truth the loan was only Php 400,000.00 for the six parcels of land including “Lot I-E” under Transfer Certificate of Title No. RT-23356 (then Transfer Certificate of Title No. 274790); that defendant Rizal Commercial Banking Corporation similarly acted in bad faith when it constituted the mortgage in its favor over a residential property without regard to plaintiffs who were then, and still are actual occupants [thereof]; that although ownership over the property in litigation has been consolidated in favor of defendant bank, the period of redemption had not expired when notice of [lis pendens] was inscribed on Transfer Certificate of Title no. 109755 then in the name of defendant Jenelyn Bea, which thereafter, was transferred to defendant bank under Transfer Certificate of Title No-161038; that due to the non-performance of defendants Bea of their obligations pursuant to the Decision dated July 16, 1993 rendered by Branch 99, Quezon City Regional Trial Court, a Motion for Execution was filed; that due to the financial loss suffered by the plaintiffs in the performance of the terms and conditions of the subject Deed of Assignment where defendants acted in bad faith, the former is claiming actual damages in the amount of Php 150,000.00; that due to the malevolent and malicious acts committed by the defendants to employ a deceitful manner of transaction, the plaintiffs suffered mental anguish, sleepless nights, moral shock and wounded feelings in which they are entitled to recover the amount of Php 50,000.00 as moral damages, plus the amount of Php 30,000.00 for exemplary damages for public good; and that plaintiffs in protecting their interest were constrained to engage the services of counsel and agreed to pay the amount of Php 30,000.00 for and as attorney’s fees and Php 1,500.00 per court appearance.”[3]

The Ruling of the RTC

The trial court ruled in favor of the plaintiffs-appellees. Thus, the dispositive portion of its decision dated July 25, 2003 reads as follows:

“Wherefore, [in light of the foregoing], by preponderance of evidence, judgment is hereby rendered in favor of the plaintiffs and against defendant spouses Pedro and Lourdes Bea, Jenelyn Bea, Proserfina Monterola and Rizal Commercial Bank Corporation as follows:

- Defendant Rizal Commercial Banking Corporation is ordered to accept plaintiffs’ balance of Php 60,000.00 as redemption price for the land consisting of 258 sq. meters covered by Transfer Certificate of Title No. N-161038;

- Defendants Proserfina Monterola, Jenelyn Bea, Spouses Pedro and Lourdes Bea and Rizal Commercial Banking Corporation are ordered jointly and severally to pay plaintiffs the amount of Php 150,000.00 as actual damages, the amount of Php 30,000.00 for and as attorney's fees, the amount of Php 1,500.00 per court appearance and the costs of suit.”[4]

Herein defendant-appellant Rizal Commercial Banking Corporation (RCBC) was declared equally liable to the plaintiffs-appellees on the following basis:

“Also, defendant bank when it constituted the mortgage in its favor over the subject property did not even inquire on the nature of plaintiff's possession of the same. Thus, it [cannot] be said that it has no notice of plaintiffs' claim on the subject property. A purchaser in good faith and for value is one who buys the property of another without notice that some other person has a right to or interest in such property and pays a full and fair price for the same at the time of such purchase, or before he has notice of the claims or interest of some other person in the property. x x x ”[5]

Defendant-appellant bank's motion for reconsideration of the decision dated July 25, 2003 was denied by the trial court. Hence, the instant appeal.

Plaintiffs-appellees failed to file their appellees' brief despite due notice from this Court. Hence, the instant appeal was deemed submitted for decision sans plaintiffs-appellees' brief.

The Issues

Prescinding from the defendant-appellant's assignment of errors in its appeal brief, the following are the issues for this Court's resolution: (1) whether or not defendant-appellant bank was a mortgagee/purchaser in good faith; and (2) the extent of defendant-appellant bank's liability to the plaintiffs-appellees.

This Court's Ruling

The appeal is bereft of merit.

First Issue:

Good faith/Bad faith of Defendant-Appellant Bank

Defendant-appellant RCBC refutes plaintiffs-appellees' right to go against it by invoking decisions of the Supreme Court to the effect that every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor, and the law will in no way oblige him to go beyond the certificate to determine the condition of the property. As mortgagee of a titled property, defendant-appellant was allegedly charged only with the notice of such burdens on the property as were duly annotated in the registry books and on the certificate of title. Thus, the bank stressed that at the time the real estate mortgage was constituted on the subject property to secure the loan obligation of defendant Jenelyn Bea, there was no inscription or memorandum of encumbrance on the certificate of title relating to plaintiffs-appellees' claim over the property.

Defendant-appellant's contention is bereft of merit. This general rule cited by defendant-appellant bank is subject to a well-established exception, i.e., when the purchaser or mortgagee is a bank or financial institution.

The rule that a purchaser or mortgagee of land is not required to look further than what appears on the face of the title does not apply to banks and other financial institutions. These entities are required to exercise more care and prudence in dealing even with registered lands for their business is one affected with public interest. The ascertainment of the status and condition of properties offered to it must be a standard and indispensable part of its operations.[6]

As explained by the Supreme Court in the case of *Sunshine Finance and Investment Corporation v. Intermediate*

Appellate Court[7]:

“The court does not intend to disregard the long line of its decisions holding that ‘where innocent third persons, relying on the correctness of the certificate of title thus issued, acquire rights over the property, the court cannot disregard such rights and order the total cancellation of the certificate.’ It is true that ‘the effect of such cancellation would be to impair public confidence in the certificate of title, for everyone dealing with property registered under the Torrens System would have to inquire in every instance as to whether the title has been regularly or irregularly issued. This is contrary to the evident purpose of Act 496, Sec. 39, as ‘innocent purchasers for value’ or any equivalent phrase shall be deemed under Section 38 of that law to include an innocent lessee, mortgagee or other encumbrances for value. A mortgagee has the right to rely on what appears in the certificate of title, and in the absence of anything to excite suspicion, is under no obligation to look beyond the certificate and investigate the title of the mortgagor appearing on the face of the certificate.

“Nevertheless, we have to deviate from the general rule because of the failure of the petitioner in this case to take the necessary precautions to ascertain if there was any flaw in the title of the Nolascos and to examine the condition of the property they sought to mortgage. The petitioner is an investment and financing corporation. We presume it is experienced in the business. Ascertainment of the status and condition of properties offered to it as security for the loans it extends must be a standard and indispensable part of its operations. Surely, it cannot simply rely on an examination of a Torrens certificate to determine what the subject property looks like as its condition is not apparent in the document. The land might be in a depressed area. There might be squatters on it. It might be easily inundated. It might be an interior lot, without convenient access. These and other similar factors determine the value of the property and so should be of practical concern to the petitioner.”

Thus, defendant-appellant bank cannot feign good faith on its part given its failure to perform what the law expects from it. Had the bank conducted further investigations on the mortgaged parcel of land, it should have at least known that herein plaintiffs-appellees were the occupants of the property and that they had a claim over the property. The failure of the bank to take precautionary steps is considered negligence on its part and would thereby preclude the defense of good faith.[8]

Second Issue:

Liability of RCBC to Spouses Orpiano

The order of the trial court upon defendant-appellant to accept the amount of Sixty Thousand Pesos (P60,000.00) from the plaintiffs-appellees is just and legal. The trial court denominated such amount as a redemption price. This Court, however, sustains such order for a reason different from that employed by the trial court.

The bank, being a mortgagee and purchaser in bad faith and a successor-in-interest of its co-defendant Dit Fernandez with respect to the disputed property, is equally liable as its predecessor-in-interest. It had to respect and allow the fulfillment of the terms and conditions of the previous agreements between its co-defendants and the plaintiffs-appellees spouses.

In the assailed decision of the RTC, it was held that the defendants acted in bad faith when they conveyed the disputed property in favor of defendants Bea despite prior sale thereof to Monterola. Thus, the trial court declared:

“A careful scrutiny of the plaintiffs’ evidence reveals that defendants failed to observe the aforementioned standard. The Court also noted that if indeed the subject property had already been disposed of and sold by defendants Dit Fernandez and Rosita See to defendants Bea by virtue of a Contract to Sell dated March 3, 1981, defendant Dit Fernandez should have not issued a receipt of payment dated January 20, 1986 wherein the second clause states that the remaining balance of Php 60,000.00 shall be paid within four months from this date with interest of 2 percent per month. In view thereof, the Court is left without recourse but to conclude that the Contract to Sell dated March 3, 1981 entered by defendants Fernandez and See with defendants Bea

was just a ploy to prevent plaintiffs from perfecting their legal rights on the subject property.”[9]

It having been established that defendant-appellant bank’s co-defendants acted in bad faith to the prejudice of the plaintiffs-appellees, and that defendant-appellant bank cannot be considered a mortgagee/purchaser in good faith in view of prevailing law and jurisprudence on the matter, they are all bound to effect a transfer of the disputed property in favor of the plaintiffs-appellees after payment by the latter of the balance of the consideration in the deed of assignment. Since plaintiffs-appellees’ obligation to the defendants under the deed of assignment stood only at P60,000.00, they can only be compelled to pay such amount, afterwhich, the spouses shall be entitled to the peaceful possession and ownership of the property.

Defendant-appellant bank cannot claim a right superior to the plaintiffs-appellees. Not even the alleged lapse of the one-year redemption period under the law would preclude the plaintiffs-appellees from claiming the subject property. We reiterate that defendant-appellant bank supposedly obtained the property from its co-defendants who were declared by the trial court to have acted in good faith. While defendant-appellant bank had acquired title over the property, it obtained only the rights which its predecessors-in-interest had. As held by the Supreme Court in the case of Consolidated Rural Bank (Cagayan Valley), Inc. v. Court of Appeals[10], it is an established principle that no one can give what one does not have. *Nemo dat quod non habet*. Accordingly, one can sell only what one owns or is authorized to sell, and the buyer can acquire no more than what the seller can transfer legally.

Moreover, we note that a notice of *lis pendens* was annotated on the certificate of title then still in the name defendant Jenelyn Bea. By virtue of such notice, defendant-appellant RCBC, the subsequent registered owner of the property, became bound by the outcome of the litigation subject of the *lis pendens*. As a transferee pendente lite, it stood exactly in the shoes of the transferor and must respect any judgment or decree which may be rendered for or against the transferor. Its interest is subject to the incidents or results of the pending suit, and its Certificates of Title will, in that respect, afford her no special protection.[11]

The award of P150,000.00 as actual damages made by the trial court must however be deleted because plaintiffs-appellees failed to sufficiently prove such claim by convincing evidence. Settled is the rule that actual or compensatory damages cannot be presumed but must be proved with reasonable degree of certainty.[12] To be entitled therefor, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable to the injured party.[13] The order upon the defendant-appellant to pay the plaintiffs-appellees attorney’s fees and costs of suit, however, must be sustained. RCBC’s liability for such amounts is settled, considering that it had acted in bad faith as a mortgagee/purchaser of the disputed property. As ruled by the trial court in the case of Philippine National Bank v. Court of Appeals[14]:

“x x x the court a quo merely acted as a matter of course in consequence of its determination that appellant PNB was in bad faith when it executed the contract of mortgage with its co-defendant de los Santos covering the property in question which turned out to be owned by the appellee. With these facts spread on the face of the decision, we find it superfluous for the court a quo to state in categorical terms the rationale for the award of attorney’s not only against de los Santos but also against the PNB in solidum.”

Considering the factual circumstances attending the instant case, this Court nevertheless deems an award of P30,000.00 as attorney’s fees already just and sufficient.

WHEREFORE, in view of the foregoing, the decision appealed from is hereby **AFFIRMED** with **MODIFICATION** in that judgment is hereby rendered in favor of the plaintiffs-appellees and against defendants spouses Pedro and Lourdes Bea, Jenelyn Bea, Proserfina Monterola and Rizal Commercial Bank Corporation:

- Declaring the contracts effecting conveyance of the disputed property among the defendants, to the prejudice of

the rights of the plaintiffs-appellees, as null and void;

- Ordering defendant-appellant RCBC to accept from the plaintiffs-appellees the sum of P60,000.00, and upon receipt of such payment, to deliver peaceful possession and ownership of the property to the plaintiffs-appellees.
- Ordering the defendants to pay jointly and severally the amount of P30,000.00 as attorney's fees and costs of suit.

The award of P150,000.00 as actual damages made by the trial court is hereby deleted.

SO ORDERED.

Sundiam and Dimaampao, JJ., concur.

[1] Consolidated Rural Bank (Cagayan Valley), Inc. v. Court of Appeals, 448 SCRA 347 (2005).

[2] Agag v. Alpha Financing Corporation, 407 SCRA 602 (2003).

[3] Decision, pp. 1-3; Records, pp. 338-340.

[4] Id. at 5; Records, p. 342.

[5] Id. at 4; Records, p. 341.

[6] Agag v. Alpha Financing Corporation, supra.

[7] 203 SCRA 210 (1991).

[8] Agag v. Alpha Financing Corporation, supra.

[9] Decision, p. 4; Records, p. 341

[10] supra.

[11] Toledo-Banaga v. Court of Appeals, 302 SCRA 331 (1999).

[12] Chan v. Macenda, Jr., 402 SCRA 352 (2003).

[13] People v. Vicente, 405 SCRA 40 (2003).

[14] 324 SCRA 714 (2000).

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