

**PHILIPPINE NATIONAL BANK, PETITIONER, VS. COURT OF APPEALS,
SILVESTRA CERENA AND HEIRS OF HILARION ALONZO
REPRESENTED BY ALFREDO ALONZO, NAMELY: ALFREDO ALONZO,
BASILICA A. NORO...**

G.R. No. 107109. February 06, 1996

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court assailing the decision of the respondent Court of Appeals dated 14 September 1992 in CA-G.R. No. CV-25796 entitled *Silvestra A. Cerena, et al. vs. Sps. Feliciano & Gloria Daa, et al. and Philippine National Bank*.

The facts of the case are as follows:

The spouses Adriano Alonzo and Damiana Basibas owned two (2) parcels of land herein referred to as Lot No. 1773 and Lot No. 1983 with an area of 239 and 3,519 square meters, respectively, both located at Tacloban, Leyte and covered by Original Certificate of Title No. 21293.

The spouses begot four (4) children, namely, Ambrosio, Hilarion, Hilario and Gloria, all surnamed Alonzo. After the demise of Damiana, Adriano married Basilia Daatorin with whom he had a daughter, Aurelia Alonzo. Adriano died in 1933.

Ambrosio passed away sometime in November, 1936. On 13 February 1968, Aurelia Alonzo executed a deed waiving all her interest, claims and participation over the aforementioned lots in favor of Gloria, Hilarion and Margarita, who was allegedly the natural daughter of the deceased Ambrosio, to the extent of one-fourth each, and the remaining one-fourth in favor of Victoria and Silvestra, also surnamed Alonzo.

On 10 March 1968, Margarita sold a portion of seven hundred (700) square meters of the aforementioned lots to be taken from her one-fourth share to the spouses Florencio and Margarita Daa. Said lots were eventually designated as Lot 1983-B-3 in Transfer Certificate of Title No. T-403 in the name of the Daa spouses.

On 4 June 1968, the Philippine National Bank (PNB) extended a "time loan" to the Daa spouses in the amount of P3,500.00, secured by a real estate mortgage on Lot 1983-B-3. This loan was increased later to P20,000.00 in 1969; to P110,000.00 in 1980 plus P50,000.00 on 14 August 1980; and to P68,500.00 on 7 October 1980 plus P75,000.00 on 29 December 1980.

The Daa spouses defaulted in the payment of their obligation resulting in the extrajudicial foreclosure by PNB of the real estate mortgage. Lot 1983-B-3 was purchased for P114,005.00 by PNB, it being the highest bidder. The Daa spouses failed to exercise their right of redemption during the period allowed by law and, consequently, Transfer Certificate of Title (TCT) No. T-27516 was issued in the name of PNB covering the mortgaged lot.

Herein private respondents, who are all direct descendants of Hilario and Hilarion Alonzo, filed an action before

the Regional Trial Court, Branch 7, Palo, Leyte to annul the deed of sale between Margarita Alonzo and the Daa spouses and the mortgage contract executed between PNB and the Daa spouses, contending that said deeds were null and void as Margarita Alonzo, also known as Margarita Nalda, was not the child of the late Ambrosio Alonzo who died single and without issue; that Margarita was the illegitimate child of Magno Paclibaro and Filomena Nalda; and that PNB acted in gross and evident negligence amounting to bad faith in approving the loan of the Daa spouses. Included as party defendants were the PNB, the Daa spouses, Margarita Nalda alias Margarita Alonzo and others. The PNB filed a cross-claim against the Daa spouses and asserted that:

x x x x x x x x

21. In the very remote event that the Honorable Court will find for the plaintiff, and PNB is ordered to reconvey the property in question to the former, the cross-defendants, Sps. Daa, should also be simultaneously ordered to reimburse PNB the full current market value of the said property and the improvements thereon.

22. In the very remote event that the Honorable Court will find for the plaintiffs and orders PNB to pay plaintiffs damages and/or any other assessments, the cross-defendants should also be simultaneously ordered to reimburse PNB any and all such amounts ordered paid to the plaintiffs by PNB.[1]

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On 14 December 1989, the trial court rendered its decision in favor of private respondents, the dispositive portion of which reads:

The defendant Philippine National Bank must be indemnified by defendant spouses Feliciano and Gloria Daa and defendant Margarita Nalda jointly and severally in the sum equivalent to the loan plus interest given to lot 1983-B in relation that it bears to the whole loan obligation of spouses Daa as of June 10, 1985, the date PNB consolidated its title over the said lot.

The defendants Margarita Nalda alias Margarita Alonzo, spouses Feliciano and Gloria Daa and the Philippine National Bank to pay plaintiffs the sum of P30,000.00 for and as attorney's fees plus costs.

The Register of Deeds of Tacloban City is hereby ordered to cancel Transfer Certificate of Title No. 2576 (now in the name of Philippine National Bank) and in lieu thereof, to issue another in the name of the following and their respective shares:

1. Silvestra A. Cerena, Lot No. 1983, 1,173 square meters;
2. Alfredo Alonzo, 1/6 of 1,173 square meters; Basilica Alonzo, 1,173 square meters; Felipe Alonzo, 1 /6 of 1,173 square meters;
3. Deudelyn, Jacqueline and Andy Alonzo (heirs of Alejandro) of 1,173 square meters, in equal shares in the 1/6 share of their father Alejandro Alonzo;
4. Reynaldo Alonzo (heir of Liberato Alonzo) 1/6 of 1,173 square meters;
5. Nene Natolia, Lolita Natolia and Reynaldo Natolia (heirs of Candelaria Alonzo Natolia) in equal shares of the 1/6 share of their mother Candelaria Alonzo of 1,173 square meters.
6. That Lot 1773 which has an area of 239 square meters, be divided into 3 equal parts among the heirs representing the 3 lines of Hilario Alonzo, Hilarion Alonzo and Gloria Alonzo.

SO ORDERED.[2]

Not satisfied with the decision, PNB interposed an appeal before the Court of Appeals assigning the following errors, to wit:

I

THE LOWER COURT ERRED IN NOT FINDING THAT APPELLANT PNB IS ENTITLED TO THE FAIR MARKET VALUE OF THE PROPERTY (NOT "LOAN PLUS INTEREST") CONSIDERING THAT TITLE ON THE PROPERTY HAS ALREADY BEEN CONSOLIDATED IN PNB'S NAME.

II

THE LOWER COURT ERRED IN FINDING APPELLANT PNB LIABLE TO APPELLEE FOR ATTORNEY'S FEES.[3]

On 14 September 1992, the respondent court rendered its decision, the decretal portion of which reads:

WHEREFORE, with the modification that the award of P30,000.00 as attorney's fees in favor of the appellees is deleted from the judgment appealed from, the rest thereof not inconsistent herewith is AFFIRMED. Costs against the appellant.

SO ORDERED.[4]

In arriving at its conclusion, respondent court opined that:

The appellant contends that it is entitled to the fair market value of the land in dispute since it has consolidated and acquired title to the said parcel of land, invoking its own memorandum dated July 13, 1971, laying its policy in the disposition of assets acquired by it; General Circular No. 49-98/84, "New Scheme for Disposition of Assets Acquired"; and SCL Circular No. 8-7/89, all ordaining the sale of assets acquired through foreclosure proceeding at their fair market value (pp. 4-7, appellant's brief).

The appellant's contention is untenable.

To begin with, the appellant does not question that part of the judgment ordering it to return Lot No. 1983-B-3 to the appellees as it is not the subject of its assignment of error. All that it assails as insufficient is the amount for which it should be paid by the Daa spouses and Margarita Nalda, which is "the sum equivalent to the loan plus interest given to Lot 1983-B in relation that it bears to the whole loan obligation of spouses Daa of July 10, 1985, the date of PNB consolidated its title over the said lot" (sic). It insists that it should be "the fair market value of the property (not 'loan plus interest').".

The memorandum and circulars upon which the appellant relies for it to be paid "the fair market value of the property" in question may not be considered at all for purposes of the instant case. First, they have no binding effect upon the courts of the land which are to take cognizance of and follow only the statutes enacted by Congress, the administrative or executive acts, orders and regulations issued by the duly authorized officials, and judicial decisions applying or interpreting the laws or the Constitution which form part of the Philippine legal system (Articles 2, 4, 7, 8, Civil Code). Such memorandum and circulars relied upon by the appellant are not the official acts of the legislative, executive and judicial departments of the Philippines which may be taken judicial notice of without introduction of evidence (Section 1, Rule 129, Revised Rules of Court; Section 1, Rule 129, Revised Rules of Evidence, effective July 1, 1989). Second, they were not at all introduced and formally offered in evidence (Section 35, Rule 132, Revised Rules of Court; Section 34, Revised Rules of Evidence, effective July 1, 1989). Third, they are but self-serving in nature to be followed by the appellant's subordinate officials and employees in the disposition of its acquired assets.[5]

Aggrieved by the decision of respondent court, PNB filed the present appeal by certiorari, raising a single issue, to wit:

WHETHER OR NOT BANK POLICIES IN DISPOSITION OF ASSETS ACQUIRED (CONTAINED IN APPROPRIATE MEMORANDUM AND CIRCULARS OF PNB) HAVE BINDING EFFECT ON THE COURTS.[6]

In its petition, PNB prays for the following affirmative reliefs, to wit:

WHEREFORE, premises considered, petitioner PNB respectfully prays of this Honorable Court that the Decision dated September 14, 1992 of the Court of Appeals be modified in that private respondents Sps. Daa and Nalda be ordered to indemnify petitioner the full and fair market value of the property in question (and not the amount of the loan plus interest).

Other reliefs just and equitable under the premises are also prayed for.[7]

The petition was given due course by this Court in its resolution dated 24 March 1993,[8] and the parties were required to submit their respective memoranda.

The petition has no merit.

It is quite apparent that the issue presented by petitioner is erroneous. The problem that must initially and primarily be resolved is whether or not the aforementioned circulars and memorandum are pertinent to the present controversy. Whether or not this Court is bound to respect and rigorously apply bank policies regarding disposition of acquired assets becomes an issue only if the answer to the first query is in the affirmative. In the case at bench, however, petitioner makes a gargantuan leap by immediately concluding that the subject memorandum and circulars are so applicable. Unfortunately, there is neither factual nor legal basis for such presumption.

Petitioner insists that since title to the property in question has already been consolidated in its name, it is entitled not to the loan plus interest as decreed by the trial court but to the property's fair market value pursuant to its policies on the disposition of acquired assets as follows:

x x x x x x x x.

In Memorandum dated July 13, 1971 (Policy in the Disposition of Assets Acquired by the Bank):

"Assets acquired shall be sold at the highest obtainable offer to purchase but the price shall in no case be less than the estimated fair market value thereof (in accordance with an appraisal made by the Bank not more than one year old) provided, however, that in case the former owner-debtor and/ or mortgagor has indicated interest in reacquiring the property, said former owner-debtor and/or mortgagor shall be given the opportunity to reacquire the property by equaling the best offer to the Bank."

In Gen. Circular 49-98/84 (entitled "New Scheme for Disposition of Assets Acquired"):

The scheme involves the sale by the Special Assets Management Department (SAMD) and PNB branches of selected Bank acquired assets at the current fair market value at the time of sale, with option to resell them to the Bank after two (2) years. Approval of dispositions shall be subject to the provisions of the Manual of Signing Authority. If the buyer exercise his/her option, he/she shall be paid the pre-agreed resale price plus interest equivalent to the rate for a time deposit of the same amount and holding period existing at the time of sale (as distinguished from resale). However, if the customer does not resell after two years, no interest is paid.

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The buyer shall be required to pay the full agreed purchase price of the property in cash based on its fair market value. Upon payment, a "Contract of Sale With Option to Resell" shall be executed by the Bank in favor of the buyer who is given a period of two years to resell or not the property which is the object of the contract. In SCL Cir. No. 8-7/ 89:

The maximum market value shall be used as determined by Bank's appraisers in case of properties valued at no more than P1 .0 Million and for properties valued at more than P1.0 Million, maximum market value as

quoted by Bank's appraisers or independent appraisers, whichever is higher.[9]

x x x x x x x x.

Petitioner's contention proceeds from a flawed premise. It assumes, erroneously, that it acquired a lawful title to the lot in question. As correctly held by the trial court, petitioner was not a mortgagee in good faith, hence, it did not acquire a valid title to the subject property. The trial court expounded thus:

x x x x x x x x.

So, we now determine if PNB is a mortgagee for value and in good faith. On this point, the plaintiffs allege:

2) Had the PNB exercised due diligence in examining how the Daas came by the property, they would have discovered some infirmities that Margarita Nalda alias Margarita Alonzo, sold the questioned lot before she could acquire any title thereto.

PNB had in its possession Exhibit "T" the Extrajudicial Partition executed by and among Margarita Nalda @ Alonzo and allegedly the other co-heirs dated March 28, 1968 wherein she was recognized as natural daughter of her natural father Ambrosio and given 1/4 of the estate. PNB also had in its possession the Deed of Sale she executed in favor of the Daas on March 10, 1968 (Exhibit "S") meaning, before the property was partitioned and her share determined, she already sold her part. Plaintiff says that PNB had Exhibits "S" and "T" in their possession for PNB presented these in evidence. The core of plaintiffs argument is, PNB could have inquired into the irregularity why the sale preceded the partition. No explanation was given by PNB on this point. PNB's memorandum cited that they are not obliged to look beyond the title for flaws, but had the right to rely on the very title itself.

3) That the loans given by PNB to the Daas violated ordinary banking procedures.

There was no application for a loan. The loan was granted by PNB and real estate mortgaged was made June 4, 1968 (Exh. "3", p. 330 of Records). The loan application presented by PNB as Exhibit "2" (p. 329 of Records) was dated April 17, 1989. Surely this Application for Loan dated 1980 could not be the application to support loan granted in 1968. There was therefore no application for loan. Counsel for PNB admitted there was no application for loan:

COURT:

The counsel is asking for the application for loan in 1968 which covers Certificate of Title No. 4031.

ATTY. PUERTOLLANO:

We have only Exhibit "2" the Inspection Report.

COURT:

So, you have no application for loan dated 1968?

ATTY. PUERTOLLANO:

None Your Honor.

Q: And you have told this Honorable Court that before a loan is processed and, approved there is always filed with the bank a loan application?

A: Yes, sir. (TSN, 10-26-87, p. 36-39.)

Clearly, this loan was granted without the benefit of a loan application, contrary to the ordinary banking procedure.

4) PNB did not conduct an ocular inspection of the property for which reason it failed to determine that the plaintiffs were in possession of the property.

PNB submitted an Inspection and Appraisal Report covering the property in dispute by Wilbur Orejola (p. 314 of Records). The inspection report states that the property is a vacant lot, on the space for "improvement." The land was appraised at P55,000.00. On the reverse page of this report were the following comments:

Subject property is situated at the interior portion in San Jose Tacloban City, 15 meters from the national road going to the airport. Said property adjoins our asset acquired of the bank under TCT-27517 containing an area of 71 square meters marked "AA" in the sketch below, formerly owned by Gloria Daa, which serves as its means of access to the subject. It was noted also that houses of light materials are erected in both properties. However, no appraisal is given to the houses. (*Italics supplied.*)

On September 21, 1977 there was again submitted an Inspection and Appraisal Report by Ernesto F. Rodriguez and on October 10, 1979 was also an Inspection and Appraisal Report (p. 335-336 of Records). Apparently, these are periodic appraisal of the properties. But to be noted is the absence of any Inspection and Appraisal Report done in 1968, when the loan was approved. It is clear that there was no inspection and appraisal made of the property in question in 1968, for, if there was no application, how can there be an inspection that would guide the inspector on the location of the property?

Counsel for the plaintiffs pointed out that, had there been an inspection of the property the inspector could have determined that the property is possessed by the plaintiffs even from an inquiry from the neighbors. In the 1988 Inspection as earlier pointed out, the inspector noted that there were houses of light materials, in both properties, meaning also in the property of the plaintiffs. The Bank could have inquired in 1968 whose houses are these, but the bank did not. For having failed to conduct an ocular inspection of the property, which if they have only done, they would have ascertained and confirmed that the properties are in possession of the plaintiffs and who have titles adverse to that of the Daas, the loan applicant. Without the benefit of a Loan Application and without conducting an ocular inspection of the property, PNB discarding standard procedures processed the loan with haste. The Daas got the title (TCT 4031 on May 23, 1968, Exhibit "A", p. 326 of Records) and the loan was approved and mortgage on June 4, 1968 or a period of 11 days including Saturdays and Sundays (Entry 10765, p. 326, reverse page). As to whether PNB qualify as mortgagee in good faith the Court finds that PNB fell short in the light of the Supreme Court ruling in the cases of Tomas vs. Tomas, L-36897, June 25, 1980 and Pichay vs. Celestino, L-18292-4, May 30, 1967 where it said:

x x x it accords more with justice and equity in the light of the common practice of banking institutions, which is a matter of public knowledge, that before approving a loan, they send out representatives to the premises of the land offered as collateral to investigate who are the owners thereof. Banks, indeed should exercise more care and prudence in dealing even in registered lands, than private individuals for their business is one affected with public interest, keeping in trust money belonging to their depositors which they should guard against loss by not committing any act of negligence which amounts to lack of good faith by which they would be denied the protective mantle of the Land Registration Act as extended only to purchases for value and in good faith, as well as to mortgagees of the same character and description.

Hence, in the light of the above standard, this Court finds PNB not a mortgagee in good faith and must perforce return the property without any encumbrances. The question now is, to whom must the property be returned? The Court sustains the argument of the plaintiffs, that Lot 1983-B now covered by Transfer Certificate of Title No. T-27516 (now in the name of the Philippine National Bank) must be returned to its lawful owners the herein plaintiffs who are the successors-in-interest of the late Hilarion Alonzo and Hilario Alonzo only. The Court finds that Margarita Nalda alias Margarita Alonzo is disqualified to inherit for lack of proof that she was a natural child of Ambrosio Alonzo and assuming she was indeed a natural child. She was never acknowledged.[10]

On the basis of the foregoing ratiocination, the trial court cancelled the Transfer Certificate of Title in favor of petitioner and awarded the subject property to the lawful owners, herein private respondents. The cancellation of petitioner's consolidated title had the effect of rendering the same null and void and utterly worthless. In other words, petitioner has never acquired a valid title over the subject lot, so that the same cannot be considered its "acquired asset." There being no "acquired asset" to speak of, the aforementioned circulars and memorandum cannot help petitioner any as these issuances only apply to the disposition of the bank's "acquired assets."

Clearly, petitioner is not entitled to an indemnity equivalent to the property's fair market value considering that the subject lot cannot be considered an "acquired asset" under General Circular 49-98/ 84 entitled "New Scheme for Disposition of Assets Acquired."

Lacking the proverbial leg to stand on, petitioner's contentions must fall.

WHEREFORE, premises considered, the petition is DENIED and the assailed decision is hereby AFFIRMED.

SO ORDERED.

Padilla, Bellosillo, Vitug, and Hermosisima, Jr., JJ., concur.

[1] Original Record, p. 207.

[2] Id., at 428-429.

[3] Rollo, p. 63.

[4] Id., at 19-23.

[5] Id., at 23-24.

[6] Id., at 10.

[7] Id., at 15.

[8] Id., at 57.

[9] Id., at 65-66.

[10] Original Record, pp. 419-424.

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