RURAL BANK OF STA. MARIA, PANGASINAN, PETITIONER VS. THE HONORABLE COURT OF APPEALS, ROSARIO R. RAYANDAYAN, CARMEN R. ARCEÑO, RESPONDENTS.

G.R. No. 110672. September 14, 1999

Ponente: GONZAGA_REYES, J.

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GONZAGA_REYES, J.:

Before us are two consolidated[1] petitions for review on certiorari under Rule 45 of the Revised Rules of Court. In G.R. No. 110672, petitioner Rural Bank of Sta. Maria, Pangasinan, assails portions of the Decision dated March 17, 1993, and the Resolution dated January 25, 1993, of the Court of Appeals[2] in CA-G.R. CV No. 21918, which affirmed with modification the Decision of the Regional Trial Court (Branch 6, Baguio City)[3] in Civil Case No. 890-R entitled "Rosario R. Rayandayan and Carmen R. Arceño versus Rural Bank of Sta. Maria, Pangasinan and Halsema, Inc." In G.R. No. 111201, petitioners Rosario R. Rayandayan and Carmen R. Arceño likewise assail portions of said Decision adverse to it.

The facts as found by the trial court and adopted by the Court of Appeals insofar as pertinent to the instant petitions are as follows:

> "xxx, the Court Finds that a parcel of land of about 49,969 square meters, located in Residence Section J, Camp 7, Baguio City, covered by TCT T-29817 (land for short) is registered in the name of Manuel Behis, married to Cristina Behis (Exhibit "B"). Said land originally was part of a bigger tract of land owned by Behis (one name), father of Manuel Behis, covered by OCT-0-33 (Exhibit "26", Halsema, for history of the land). And upon the latter's death on September 24, 1971, his children, namely: Saro Behis, Marcelo Behis, Manuel Behis, Lucia Behis, Clara Behis and Arana Behis, in an extrajudicial settlement with Simultaneous Sale of Inheritance dated September 28, 1978, agreed to sell the land to Manuel Behis, married to Cristina Behis (Exhibit `2', Halsema) but which subsequently was explained as only an arrangement adopted by them to facilitate transactions over the land in a Confirmation of Rights of Co-Ownership over real Property dated September 26, 1983, showing that the Behis brothers and sisters, including Manuel Behis, are still co-owners thereof (Exhibit `30', Halsema, Exhibit `AA').
>
> Manuel Behis mortgaged said land in favor of the Bank in a Real Estate Mortgage dated October 23, 1978 (Exhibit `Q-1') as security for loans obtained, covered by six promissory notes and trust receipts under the Supervised Credit Program in the total sum of P156,750.00 (Exhibit `Q-2' to `Q-7', Exhibits `4-A' to `4-F', Halsema) and annotated at the back of the title on February 13, 1979 as Entry No. 85538-10-231 (Exhibit "1-A-1", Halsema). The mortgage, the promissory notes and trust receipts bear the signatures of both Manuel Behis and Cristina Behis.
>
> Unfortunately thereafter, Manuel Behis was delinquent in paying his debts.
>
> On January 9, 1985, Manuel Behis sold the land to the plaintiffs[4] in a Deed of Absolute Sale with Assumption of Mortgage for the sum of P250,000.00 (Exhibit `A') which bears the signature of his wife Cristina Behis. Manuel Behis took it upon himself to secure the signature of his wife and came back with it. On

the same date of January 9, 1985, plaintiffs and Manuel Behis simultaneously executed another Agreement (Exhibit `15') whereby plaintiffs are indebted to Manuel Behis for the sum of P2,400,000.00 payable in installments with P10,000.00 paid upon signing and in case of default in the installments, Manuel Behis shall have legal recourse to the portions of the land equivalent to the unpaid balance of the amounts in installments. Obviously, the real consideration of the sale of the land of Manuel Behis to the plaintiffs is contained in this Agreement (Exhibit `15').

Plaintiffs did not present to the Register of Deeds of Baguio said two contracts and ask that the title, TCT T-29817 in the name of Manuel Behis be cancelled and a new one issued in their name which normally a buyer does. Neither did plaintiffs annotate at the back of the title the aforesaid two contracts. Nor did they immediately go to the Bank and present said two contracts. Thus, the title to the land, TCT No. T-29817, remained in the name of Manuel Behis.

Pursuant to their two contracts with Manuel Behis, plaintiffs paid him during his lifetime the sum of P10,000.00 plus P50,000.00 plus P145,800.00 (Exhibit `U' as stipulated in the hearing), and the sum of P21,353.75 for the hospitalization, medical and burial expenses of Manuel Behis when he died on June 21, 1985 (Exhibit `II', `JJ', `KK', `LL', `PP', `OO', and `RR'). Obviously, from the above payments, the plaintiffs were unable to complete their full payment to Manuel Behis of the sale of the land as it is nowhere near P2,400,000.00.

Meantime, the loan in the name of Manuel Behis with the Bank secured by the Real Estate Mortgage on the land continued to accumulate being delinquent. By May 30, 1985, in a Statement of Account (Exhibit `D') sent to Manuel Behis by the Bank thru the Paredes Law Office for collection, the debt of P150,750.00 has ballooned into P316,368.13, with interest and other charges. In fact, the Bank, thru its President, Vicente Natividad, initiated foreclosure proceedings. But after the usual publication, the same was discontinued since many parties were interested to buy the land outside the said procedure but none materialized.

On June 19, 1985, Atty. William Arceño, in behalf of Manuel Behis, wrote a letter asking for a more detailed Statement of Account from the Bank broken down as to principal, interest and other charges (Exhibit `E').

Thereafter, plaintiffs finally presented the Deed of Absolute Sale with Assumption of Mortgage (Exhibit `A') to the Bank when negotiating with its principal stockholder, Engr. Edilberto Natividad, in Manila, but did not show to the latter the Agreement (Exhibit `15') with Manuel Behis providing for the real consideration of P2,400,000.00. And thus, on August 1, 1985, a Memorandum of Agreement (Exhibit `F') was entered into between plaintiffs, as assignees of Manuel Behis, and the Bank, the salient features of which are:

`x x x x x x x x x`3. That during the lifetime of Manuel Behis he had executed a Deed of Absolute Sale with Assumption of Mortgage in favor of Carmen Arceño and Rosario Rayandayan;

`4. That the total obligation of the late Manuel Behis to the Bank amounts to P343,782.22;

`5. That the assignees hereby offer to redeem the aforesaid real property and the Bank hereby agrees to release the mortgage thereon under the following terms and conditions:
(a). That the amount of P35,000.00 shall be paid by the assignees to the Bank upon execution of this Agreement;

(b). That the amount of P108,000.00 shall be paid by the assignees to the Bank at the rate of P36,000.00 a month payable on September 15, 1985, October 15, 1985 and November 15, 1985;

(c). That the balance of P200,000.00 shall be renewed for one year and shall be secured by another mortgage over the same property which is renewable every year upon payment of interests and at least 10 percent of the principal;

(d). That the bank shall release the mortgage of Manuel Behis and a new mortgage shall be executed by the

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assignees and the bank shall give its consent for the transfer of the title under the name of the assignees.

"x x x."

Plaintiffs did not annotate the Memorandum of Agreement in the title, TCT T-29817.

Pursuant to the Memorandum of Agreement, plaintiffs paid the Bank the following:

(1)

P35,000.00 on August 1, 1985 as initial deposit when the Agreement was signed (Exhibits `G' and `H');

(2)

P15,000.00 on September 16, 1985 (Exhibit `I') and P21,000.00 on September 20, 1985 (Exhibit `J') to cover the obligation of P36,000.00 on September 15, 1985;

(3)

P20,000.00 on October 17, 1985 (Exhibit `K') and P16,000.00 on October 25, 1985 (Exhibit `L') to cover the obligation to pay P36,000.00 on October 15, 1985;

(4)

P36,000.00 in the form of dollars remitted to Engr. Edilberto Natividad on December 18, 1985 (Exhibit `N') to cover the obligation to pay P36,000.00 on November 15, 1985.

After the last payment of P36,000.00 on December 18, 1985, received in dollars (Exhibit `N') which completed the P143,000.00 under paragraphs 5 (a) and 5 (b) of the Memorandum of Agreement Engr. Edilberto Natividad, wrote a letter (Exhibit 'M') to Vicente Natividad, with instructions that payment be duly credited and Atty. Arceño will communicate about the transfer of title to them and to consult the Bank's counsel on the matter, and with instructions also to Ana Acosta of the Rural Bank of Tuba to debit said amount from the savings of Edilberto Natividad. xxx.

From the above payments made, the total amount of P143,000.00 as required by paragraphs 5 (a) and 5 (b) of the Memorandum of Agreement was fully paid by plaintiffs although they were not paid on time.

Meanwhile, on September 5, 1985, Cristina Behis, widow of Manuel Behis, wrote a letter to the Bank (Exhibit `3', Halsema) claiming the Real Estate mortgage was without her signature. And in another letter dated October 28, 1985 to the Bank (Exhibit 4, Halsema), Cristina Behis stressed she did not authorize anybody to redeem the property in her behalf as one of the mortgagors of the land.

On January 7, 1986, plaintiffs demanded in a letter (Exhibit `O') that the Bank comply with its obligation under the Memorandum of Agreement to (1) release the mortgage of Manuel Behis, (2) give its consent for the transfer of title in the name of the plaintiffs, and (3) execute a new mortgage with plaintiffs for the balance of P200,000.00 over the same land.

Meanwhile on January 18, 1986, Cristina Behis went to the Bank inquiring about her protest about her signature. The Bank told her it did not receive her two letters and instead advised her to write the Bank again as well as the plaintiffs about her objections.

In a reply letter dated February 11, 1986, (Exhibit `B') to the demand of the plaintiffs, the Bank said it cannot comply because of supervening circumstances, enclosing the two letters of Cristina Behis dated September 5, 1985 and October 28, 1985 which they said were both self explanatory, and suggested that plaintiffs take up the matter with Mrs. Cristina Behis.

On February 15, 1986, as suggested by the Bank, Cristina Behis wrote another letter to the Bank claiming this time that she was not a party to the Deed of Absolute Sale with Assumption of Mortgage and her signature was forged (Exhibit 5', Halsema) and requesting the Bank not to release the title with copy furnished to the plaintiffs (Exhibit `5-B', Halsema).

Then, months passed, and nothing was heard from the plaintiffs by the Bank. On the first week of July, 1986, Teodoro Verzosa, President of Halsema, Inc., heard about the land and got interested and had preliminary talks with Vicente Natividad, President of the Bank, and with Edilberto Natividad, the principal stockholder of the bank.

x x x.
xxx, upon suggestion of the lawyer of Halsema, an Assignment of Mortgage was entered into on July 28, 1986 between Halsema and the Bank for the consideration of P520,765.45 (Exhibit `1', Bank) which amount was the total indebtedness of Manuel Behis with the Bank at the time (Exhibit `7-A', Halsema). Note however, that what was assigned was the Mortgage made originally by Manuel Behis and not the Mortgage as assumed by plaintiffs under a restructured and liberalized terms.

As explained by Halsema lawyer, she suggested the Assignment of Mortgage as the cheapest and fastest way for Halsema to acquire the property of Manuel Behis as (1) they assume the role of the Bank as Mortgagee with the assignment of mortgage credit, (2) they acquire the property for the amount only of the mortgage debt at the time, (3) after execution thereof, the Bank is out of the picture, and (4) in case of foreclosure, Halsema controls the foreclosure proceedings and is assured of its legality.

In turn, the Bank explained it entered into the Assignment of Mortgage because at the time it considered the Memorandum of Agreement cancelled as first, plaintiffs failed to settle the objections of Cristina Behis aforesaid on her signature being forged in the Deed of Sale with Assumption of Mortgage despite the lapse of time from February, 1986 to July, 1986. Second, the terms of the Memorandum of Agreement have not been fully complied with as the payments were not made on time on the dates fixed therein; and third, their consent to the Memorandum of Agreement was secured by the plaintiffs thru fraud as the Bank was not shown the Agreement containing the real consideration of P2,400,000.00 of the sale of the land of Manuel Behis to plaintiffs.

On the same date of July 28, 1986, Vicente Natividad of the Bank sent notice of the Assignment of Mortgage to the debtor mortgagor, Manuel Behis (already dead at the time) and Cristina Behis. Notice of the Assignment of Mortgage was not sent to plaintiffs for as aforesaid what was assigned was the Mortgage originally made by Manuel Behis and not the Mortgage as assumed by plaintiffs under the restructured and liberalized terms in the Memorandum of Agreement which was considered by the Bank as cancelled.

`x x x x x x x x x
After the assignment of mortgage, the Bank returned the P143,000.00 to plaintiffs (Exhibit `13', Bank). But the latter rejected the same maintaining the Memorandum of Agreement is valid until annulled by Court Action. Subsequently, however, the Bank paid plaintiffs P143,000.00 and P90,000.00 interest in settlement of the criminal case of Estafa against Edilberto Natividad and Vicente Natividad (Exhibit `14', Bank).

In the meantime, since the account of the late Manuel Behis has been delinquent and his widow, Cristina Behis, and his brothers and sisters could not pay as in fact they have already assigned their rights to redeem, Halsema as Mortgage Creditor in place of the Bank instituted foreclosure proceedings by filing an Application for Foreclosure of Real Estate Mortgage in the Office of the Sheriff on July 31, 1986 (Exhibit `37', Halsema) setting the public auction sale on September 2, 1986 and was published and posted as required by law. A Notice of Foreclosure was sent directly to the mortgagor (Exhibit `38', Halsema) and the public auction sale was held on September 2, 1986

at 10:00 a.m. at the City Hall, Baguio City, with Halsema as the only bidder to whom accordingly the Sheriff's Certificate of Sale was issued (Exhibit `8', Halsema).

At the auction sale, the lawyer of Halsema was approached by the plaintiff Rosario Rayandayan who told the former that the land foreclosed was also sold to the plaintiffs. Since plaintiffs could not do anything anymore, they registered and annotated on the title, TCT T-29817, their adverse claim on September 3, 1986."[5]

Since the Bank could not comply with the Memorandum of Agreement, petitioners Rayandayan and Arceño instituted Civil Case No. 890-R before the Regional Trial Court of Baguio City (Branch 6) against the Rural Bank of Sta. Maria, Pangasinan and Halsema, Inc. for "Specific Performance, Declaration of Nullity and/or Annulment of Assignment of Mortgage and Damages" on September 5, 1986, and caused a notice of lis pendens annotated at the back of the title, TCT T-29817, on the same date. On March 6, 1989, judgment was rendered, the dispositive portion of the decision pertinent to this case reads:

> "WHEREFORE, in view of All the Foregoing, Judgment is hereby rendered, as follows:
>
> 1.
>
> xxx xxx xxx;
>
> 2
>
> Declaring the Deed of Sale with assumption of Mortgage (Exhibit "A") and the Agreement (Exhibit "15") taken together valid until annulled or cancelled;
>
> 3.
>
> Ordering the Bank to pay the plaintiffs the sum of P30,000.00 as Moral Damages, P10,000.00 as Exemplary Damages, P20,000.00 as Attorney's fees and P5,000.00
>
> as litigation expenses for their bad faith in violating the Memorandum of Agreement which took place while the Memorandum of Agreement was still valid there being no court action first filed to nullify it before entering into the Assignment of Mortgage;
>
> 4.
>
> Ordering the plaintiffs to pay the Bank the sum of P30,000.00 as Moral Damages, P10,000.00 as Exemplary Damages, P20,000.00 as Attorney's fees and P5,000.00 as litigation expenses for plaintiffs' bad faith in deceiving the Bank to enter into the Memorandum of Agreement;
>
> 5.
>
> Ordering the setting off in compensation the Damages awarded to plaintiffs and the Bank.
>
> 6.
>
> xxx xxx xxx;
>
> 7.
>
> Declaring the Memorandum of Agreement as annulled due to the fraud of plaintiffs;
>
> 8.
>
> xxx xxx xxx;
>
> 9.

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xxx xxx xxx;

10.

xxx xxx xxx,

Without pronouncement as to costs.

SO ORDERED.”[6]

From the decision, plaintiffs Rayandayan and Arceño and defendant Halsema, Inc. appealed. Defendant Rural Bank of Sta. Maria, Pangasinan did not appeal.[7] The Court of Appeals rendered herein assailed decision, the dispositive portion insofar as pertinent to this case reads:

“WHEREFORE, premises considered, decision is hereby rendered:

1

xxx xxx xxx;

2.

xxx xxx xxx;

3

xxx xxx xxx;

4.

Declaring the Deed of Absolute Sale with Assumption of Mortgage, Exhibit A and the Memorandum of Agreement, Exhibit F, valid as between the parties thereto;

5.

Ordering and sentencing defendant Rural Bank of Sta. Maria, Pangasinan to pay plaintiffs-appellant the sum of P229,135.00 as actual damages, the sum of P30,000.00 as moral damages, P10,000.00 as exemplary damages, P20,000.00 as attorney’s fees and P5,000.00 as litigation expenses;

6.

Affirming the dismissal of all other counterclaims for damages;

7.

Reversing and setting aside all other dispositions made by the trial court inconsistent with this decision;

8.

There is no pronouncement as to costs.

SO ORDERED.”[8]

In sum, the Court of Appeals in its assailed decision: (1) affirmed the validity of the Memorandum of Agreement between the parties thereto; (2) reversed and set aside the finding of the trial court on the bad faith of Rayandayan and Arceño in concealing the real purchase price of the land sold to them by Manuel Behis during negotiations with the bank on the assumption of the mortgage debt; (3) modified the trial court’s finding as to the damages due Rayandayan and Arceño from the bank by adding P229,135.00 as actual damages; (4) dismissed the counterclaim

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for damages by the bank and deleted the portion on the set-off of damages due between the bank on the one hand, and Rayandayan and Arceño on the other.

Motions for reconsideration were filed by plaintiffs-appellants Rayandanan and Arceño and defendant Rural Bank of Sta. Maria, Pangasinan which were denied for lack of merit.[9]

Hence, the instant consolidated petitions.

In a Resolution dated August 25, 1993, this Court denied the petition for review on certiorari (G.R. No. 111201) filed by Rayandayan and Arceño for having been filed out of time and for late payment of docket fees.[10] Petitioners Rayandayan and Arceño moved to reconsider; this Court in a Resolution dated November 22, 1993, resolved to deny the same with finality considering petitioners failed to show any compelling reason and to raise any substantial argument which would warrant a modification of the said resolution.[11]

What remains for resolution then is G.R. No. 110672, wherein petitioner Rural Bank of Sta. Maria, Pangasinan, contends that:

> I
> THE MEMORANDUM OF AGREEMENT (EXH. "F") ENTERED INTO BETWEEN PRIVATE RESPONDENTS, AS ALLEGED ASSIGNEES OF MANUEL BEHIS, AND PETITIONER BANK IS VOIDABLE AND MUST BE ANNULLED.
>
> II
> PRIVATE RESPONDENTS ARE IN BAD FAITH, HENCE, THEY ARE NOT ENTITLED TO THE SUMS OF P30,000.00 AS MORAL DAMAGES; P10,000.00 AS EXEMPLARY DAMAGES; P20,000.00 AS ATTORNEY'S FEES; AND P5,000.00 AS LITIGATION EXPENSES.[12]
>
> The petition is devoid of merit.

Briefly, the antecedents material to this appeal are as follows: A Deed of Absolute Sale with Assumption of Mortgage was executed between Manuel Behis as vendor/assignor and Rayandayan and Arceño as vendees/assignees for the sum of P250,000.00. On the same day, Rayandayan and Arceño together with Manuel Behis executed another Agreement embodying the real consideration of the sale of the land in the sum of P2,400,000.00. Thereafter, Rayandayan and Arceño negotiated with the principal stockholder of the bank, Engr. Edilberto Natividad in Manila, for the assumption of the indebtedness of Manuel Behis and the subsequent release of the mortgage on the property by the bank. Rayandayan and Arceño did not show to the bank the Agreement with Manuel Behis providing for the real consideration of P2,400,000.00 for the sale of the property to the former. Subsequently, the bank consented to the substitution of plaintiffs as mortgage debtors in place of Manuel Behis in a Memorandum of Agreement between private respondents and the bank with restructured and liberalized terms for the payment of the mortgage debt. Instead of the bank foreclosing immediately for non-payment of the delinquent account, petitioner bank agreed to receive only a partial payment of P143,000.00 by installment on specified dates. After payment thereof, the bank agreed to release the mortgage of Manuel Behis; to give its consent to the transfer of title to the private respondents; and to the payment of the balance of P200,000.00 under new terms with a new mortgage to be executed by the private respondents over the same land.

This brings us to the first issue raised by petitioner bank that the Memorandum of Agreement is voidable on the ground that its consent to enter said agreement was vitiated by fraud because private respondents withheld from petitioner bank the material information that the real consideration for the sale with assumption of mortgage of the property by Manuel Behis to Rayandayan and Arceño is P2,400,000.00, and not P250,000.00 as represented to petitioner bank. According to petitioner bank, had it known of the real consideration for the sale, i.e. P2.4 million, it would not have consented into entering the Memorandum of Agreement with Rayandayan and Arceño as it was

put in the dark as to the real capacity and financial standing of private respondents to assume the mortgage from Manuel Behis. Petitioner bank pointed out that it would not have assented to the agreement, as it could not expect the private respondents to pay the bank the approximately P343,000.00 mortgage debt when private respondents have to pay at the same time P2,400,000.00 to Manuel Behis on the sale of the land.

The kind of fraud that will vitiate a contract refers to those insidious words or machinations resorted to by one of the contracting parties to induce the other to enter into a contract which without them he would not have agreed to.[13] Simply stated, the fraud must be the determining cause of the contract, or must have caused the consent to be given. It is believed that the non-disclosure to the bank of the purchase price of the sale of the land between private respondents and Manuel Behis cannot be the "fraud" contemplated by Article 1338 of the Civil Code.[14] From the sole reason submitted by the petitioner bank that it was kept in the dark as to the financial capacity of private respondent, we cannot see how the omission or concealment of the real purchase price could have induced the bank into giving its consent to the agreement; or that the bank would not have otherwise given its consent had it known of the real purchase price.

First of all, the consideration for the purchase of the land between Manuel Behis and herein private respondents Rayandayan and Arceño could not have been the determining cause for the petitioner bank to enter into the memorandum of agreement. To all intents and purposes, the bank entered into said agreement in order to effect payment on the indebtedness of Manuel Behis. As correctly ruled by the Court of Appeals:

> "xxx. The real consideration for the sale with assumption of mortgage, or the non-disclosure thereof, was not the determining influence on the consent of the bank.
>
> The bank received payments due under the Memorandum of Agreement, even if delayed. It initially claimed that the sale with assumption of mortgage was invalid not because of the concealment of the real consideration of P2,400,000.00 but because of the information given by Cristina Behis, the widow of the mortgagor Manuel Behis that her signature on the deed of absolute sale with assumption of mortgage was forged. Thus, the alleged nullity of the Memorandum of Agreement, Exhibit F, is a clear aftertought. It was raised by defendant bank, by way of counterclaim only after it was sued.
>
> The deceit which avoids the contract exists where the party who obtains the consent does so by means of concealing or omitting to state material facts, with intent to deceive, by reason of which omission or concealment the other party was induced to give a consent which he would not otherwise have given (Tolentino, Commentaries and Jurisprudence on the Civil Code, Vol. IV, p. 480). In this case, the consideration for the sale with assumption of mortgage was not the inducement to defendant bank to give a consent which it would not otherwise have given.
>
> Indeed, whether the consideration of the sale with assumption of mortgage was P250,000.00 as stated in Exhibit A, or P2,400,000.00 as stated in the Agreement, Exhibit 15, should not be of importance to the bank. Whether it was P250,000.00 or P2,400.000.00 the bank's security remained unimpaired.
>
> The stipulation in Exhibit 15, reading "in case of default in all of the above, Manuel Behis shall have legal recourse to the portion of the parcel of land under TCT No. T-29817 equivalent to the unpaid balance of the amount subject of this Agreement", obviously even if revealed would not have induced defendant bank to withhold its consent. The legal recourse to TCT No. T-29817 given to Manuel Behis, under the Agreement, is subordinate and inferior to the mortgage to the bank.
>
> We are, therefore, constrained to uphold the validity of the Memorandum of Agreement, Exhibit F, and reverse and set aside the ruling declaring the same annulled allegedly due to fraud of plaintiffs-appellants (paragraph 7, dispositive portion).
>
> With the above conclusion reached, the award of moral and exemplary damages, attorney's fees and expenses

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> of litigation in favor of defendant bank and against plaintiffs-appellants in paragraph 4 of the dispositive portion of the decision of the trial court must likewise be reversed and set aside; and similarly, paragraph 5. The basis for the award, which we quote "for plaintiffs' bad faith in deceiving the Bank to enter into the Memorandum of Agreement" is not correct as we have discussed."[15]

Secondly, pursuant to Article 1339 0f the Civil Code,[16] silence or concealment, by itself, does not constitute fraud, unless there is a special duty to disclose certain facts, or unless according to good faith and the usages of commerce the communication should be made. Verily, private respondents Rayandayan and Arceño had no duty, and therefore did not act in bad faith, in failing to disclose the real consideration of the sale between them and Manuel Behis.

Thirdly, the bank had other means and opportunity of verifying the financial capacity of private respondents and cannot avoid the contract on the ground that they were kept in the dark as to the financial capacity by the non-disclosure of the purchase price. As correctly pointed out by respondent court, the bank security remained unimpaired regardless of the consideration of the sale. Under the terms of the Memorandum of Agreement, the property remains as security for the payment of the indebtedness, in case of default of payment. Thus, petitioner bank does not and can not even allege that the agreement was operating to its disadvantage. If fact, the bank admits that no damages has been suffered by it. [17]

Consequently, not all elements of fraud vitiating consent for purposes of annulling a contract concur, to wit: (a) It was employed by a contracting party upon the other; (b) It induced the other party to enter into the contract; (c) It was serious; and; (d) It resulted in damages and injury to the party seeking annulment.[18] Petitioner bank has not sufficiently shown that it was induced to enter into the agreement by the non-disclosure of the purchase price, and that the same resulted in damages to the bank. Indeed, the general rule is that whosoever alleges fraud or mistake in any transaction must substantiate his allegation, since it is presumed that a person takes ordinary care for his concerns and that private transactions have been fair and regular. Petitioner bank's allegation of fraud and deceit have not been established sufficiently and competently to rebut the presumption of regularity and due execution of the agreement.

Based on the foregoing, the second issue raised by petitioner bank must likewise fail. Petitioner bank's imputation of bad faith to private respondents premised on the same non-disclosure of the real purchase price of the sale so as to preclude their entitlement to damages must necessarily be resolved in the negative. Petitioner bank does not question the actual damages awarded to private respondents in the amount of P229,135.00, but only the moral damages of P30,000.00, exemplary damages of P10,000.00, attorney's fees of P20,000.00 and litigation expenses of P5,000.00. We may no longer examine the amounts awarded by the trial court and affirmed by the appellate court as petitioner bank did not appeal from the decision of the trial court. It is well-settled that a party who does not appeal from the decision may not obtain any affirmative relief from the appellate court other than what he has obtained from the lower court, if any, whose decision is brought up on appeal.[19]

WHEREFORE, the petition is hereby DENIED and the decision of the Court of Appeals, dated March 17, 1993 is AFFIRMED. No cost.

SO ORDERED.

Melo, (Chairman), Vitug, and Purisima, JJ., concur. Panganiban, J., took no part being a former counsel of a party.

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[1] Per resolution dated October 18, 1993.

[2] Penned by Associate Justice Eduardo G. Montenegro and concurred by Associate Justices Arturo B. Buena and Regina G. Ordoñez-Benitez.

[3] Presided by Judge Ruben C. Ayson.

[4] Petitioners Rosario R. Rayandayan and Carmen R. Arceño in G.R. No. 111210.

[5] Rollo of G.R. No. 110672, pp. 74-82.

[6] Ibid., pp. 100-101.

[7] Ibid., p. 37.

[8] Ibid., pp. 64-65.

[9] Ibid., p. 68.

[10] Rollo of G.R. No. 111201, pp. 92-93.

[11] Ibid., p. 98.

[12] Rollo of G.R. No. 110672, p. 17.

[13] Reyes vs. Court of Appeals, 216 SCRA 152.

[14] Art. 1338. There is fraud when through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to.

[15] Ibid., pp. 53-54.

[16] Art. 1339. Failure to disclose facts, when there is a duty to reveal them, as when the parties are bound by confidential relations, constitutes fraud.

[17] Ibid., p. 27.

[18] Constantino vs. Court of Appeals, 264 SCRA 59.

[19] Policarpio vs. Court of Appeals, 269 SCRA 344.

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