

## CAVITE DEVELOPMENT BANK AND FAR EAST BANK AND TRUST COMPANY, PETITIONERS, VS. SPOUSES CYRUS LIM AND LOLITA CHAN LIM AND COURT OF APPEALS, RESPONDENTS.

*G.R. No. 131679. February 01, 2000*

Ponente: MENDOZA, J.

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### **MENDOZA, J.:**

This is a petition for review on certiorari of the decision[1] of the Court of Appeals in C.A. GR CV No. 42315 and the order dated December 9, 1997 denying petitioners' motion for reconsideration.

The following facts are not in dispute.

Petitioners Cavite Development Bank (CDB) and Far East Bank and Trust Company (FEBTC) are banking institutions duly organized and existing under Philippine laws. On or about June 15, 1983, a certain Rodolfo Guansing obtained a loan in the amount of P90,000.00 from CDB, to secure which he mortgaged a parcel of land situated at No. 63 Calavite Street, La Loma, Quezon City and covered by TCT No. 300809 registered in his name. As Guansing defaulted in the payment of his loan, CDB foreclosed the mortgage. At the foreclosure sale held on March 15, 1984, the mortgaged property was sold to CDB as the highest bidder. Guansing failed to redeem, and on March 2, 1987, CDB consolidated title to the property in its name. TCT No. 300809 in the name of Guansing was cancelled and, in lieu thereof, TCT No. 355588 was issued in the name of CDB.

On June 16, 1988, private respondent Lolita Chan Lim, assisted by a broker named Remedios Gatpandan, offered to purchase the property from CDB. The written Offer to Purchase, signed by Lim and Gatpandan, states in part:

We hereby offer to purchase your property at #63 Calavite and Retiro Sts., La Loma, Quezon City for P300,000.00 under the following terms and conditions:

(1)

10% Option Money;

(2)

Balance payable in cash;

(3)

Provided that the property shall be cleared of illegal occupants or tenants.

Pursuant to the foregoing terms and conditions of the offer, Lim paid CDB P30,000.00 as Option Money, for which she was issued Official Receipt No. 3160, dated June 17, 1988, by CDB. However, after some time following up the sale, Lim discovered that the subject property was originally registered in the name of Perfecto Guansing, father of mortgagor Rodolfo Guansing, under TCT No. 91148. Rodolfo succeeded in having the property registered in his name under TCT No. 300809, the same title he mortgaged to CDB and from which the

latter's title (TCT No. 355588) was derived. It appears, however, that the father, Perfecto, instituted Civil Case No. Q-39732 in the Regional Trial Court, Branch 83, Quezon City, for the cancellation of his son's title. On March 23, 1984, the trial court rendered a decision<sup>[2]</sup> restoring Perfecto's previous title (TCT No. 91148) and cancelling TCT No. 300809 on the ground that the latter was fraudulently secured by Rodolfo. This decision has since become final and executory.

Aggrieved by what she considered a serious misrepresentation by CDB and its mother-company, FEBTC, on their ability to sell the subject property, Lim, joined by her husband, filed on August 29, 1989 an action for specific performance and damages against petitioners in the Regional Trial Court, Branch 96, Quezon City, where it was docketed as Civil Case No. Q-89-2863. On April 20, 1990, the complaint was amended by impleading the Register of Deeds of Quezon City as an additional defendant.

On March 10, 1993, the trial court rendered a decision in favor of the Lim spouses. It ruled that: (1) there was a perfected contract of sale between Lim and CDB, contrary to the latter's contention that the written offer to purchase and the payment of P30,000.00 were merely pre-conditions to the sale and still subject to the approval of FEBTC; (2) performance by CDB of its obligation under the perfected contract of sale had become impossible on account of the 1984 decision in Civil Case No. Q-39732 cancelling the title in the name of mortgagor Rodolfo Guansing; (3) CDB and FEBTC were not exempt from liability despite the impossibility of performance, because they could not credibly disclaim knowledge of the cancellation of Rodolfo Guansing's title without admitting their failure to discharge their duties to the public as reputable banking institutions; and (4) CDB and FEBTC are liable for damages for the prejudice caused against the Lims.<sup>[3]</sup> Based on the foregoing findings, the trial court ordered CDB and FEBTC to pay private respondents, jointly and severally, the amount of P30,000.00 plus interest at the legal rate computed from June 17, 1988 until full payment. It also ordered petitioners to pay private respondents, jointly and severally, the amounts of P250,000.00 as moral damages, P50,000.00 as exemplary damages, P30,000.00 as attorney's fees, and the costs of the suit.<sup>[4]</sup>

Petitioners brought the matter to the Court of Appeals, which, on October 14, 1997, affirmed in toto the decision of the Regional Trial Court. Petitioners moved for reconsideration, but their motion was denied by the appellate court on December 9, 1997. Hence, this petition. Petitioners contend that -

- The Honorable Court of Appeals erred when it held that petitioners CDB and FEBTC were aware of the decision dated March 23, 1984 of the Regional Trial Court of Quezon City in Civil Case No. Q-39732.
- The Honorable Court of Appeals erred in ordering petitioners to pay interest on the deposit of THIRTY THOUSAND PESOS (P30,000.00) by applying Article 2209 of the New Civil Code.
- The Honorable Court of Appeals erred in ordering petitioners to pay moral damages, exemplary damages, attorney's fees and costs of suit.

## I.

At the outset, it is necessary to determine the legal relation, if any, of the parties.

Petitioners deny that a contract of sale was ever perfected between them and private respondent Lolita Chan Lim. They contend that Lim's letter-offer clearly states that the sum of P30,000.00 was given as option money, not as earnest money.<sup>[5]</sup> They thus conclude that the contract between CDB and Lim was merely an option contract, not a contract of sale.

The contention has no merit. Contracts are not defined by the parties thereto but by principles of law.<sup>[6]</sup> In determining the nature of a contract, the courts are not bound by the name or title given to it by the contracting

parties.[7] In the case at bar, the sum of P30,000.00, although denominated in the offer to purchase as "option money," is actually in the nature of earnest money or down payment when considered with the other terms of the offer. In *Carcelar v. Court of Appeals*,[8] we explained the nature of an option contract, viz. -

An option contract is a preparatory contract in which one party grants to the other, for a fixed period and under specified conditions, the power to decide, whether or not to enter into a principal contract, it binds the party who has given the option not to enter into the principal contract with any other person during the period designated, and within that period, to enter into such contract with the one to whom the option was granted, if the latter should decide to use the option. It is a separate agreement distinct from the contract to which the parties may enter upon the consummation of the option.

An option contract is therefore a contract separate from and preparatory to a contract of sale which, if perfected, does not result in the perfection or consummation of the sale. Only when the option is exercised may a sale be perfected.

In this case, however, after the payment of the 10% option money, the Offer to Purchase provides for the payment only of the balance of the purchase price, implying that the "option money" forms part of the purchase price. This is precisely the result of paying earnest money under Art. 1482 of the Civil Code. It is clear then that the parties in this case actually entered into a contract of sale, partially consummated as to the payment of the price. Moreover, the following findings of the trial court based on the testimony of the witnesses establish that CDB accepted Lim's offer to purchase:

It is further to be noted that CDB and FEBTC already considered plaintiffs' offer as good and no longer subject to a final approval. In his testimony for the defendants on February 13, 1992, FEBTC's Leomar Guzman stated that he was then in the Acquired Assets Department of FEBTC wherein plaintiffs' offer to purchase was endorsed thereto by Myoresco Abadilla, CDB's senior vice-president, with a recommendation that the necessary petition for writ of possession be filed in the proper court; that the recommendation was in accord with one of the conditions of the offer, i.e., the clearing of the property of illegal occupants or tenants (tsn, p. 12); that, in compliance with the request, a petition for writ of possession was thereafter filed on July 22, 1988 (Exhs. 1 and 1-A); that the offer met the requirements of the banks; and that no rejection of the offer was thereafter relayed to the plaintiffs (p. 17); which was not a normal procedure, and neither did the banks return the amount of P30,000.00 to the plaintiffs.[9]

Given CDB's acceptance of Lim's offer to purchase, it appears that a contract of sale was perfected and, indeed, partially executed because of the partial payment of the purchase price. There is, however, a serious legal obstacle to such sale, rendering it impossible for CDB to perform its obligation as seller to deliver and transfer ownership of the property.

*Nemo dat quod non habet*, as an ancient Latin maxim says. One cannot give what one does not have. In applying this precept to a contract of sale, a distinction must be kept in mind between the "perfection" and "consummation" stages of the contract.

A contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.[10] It is, therefore, not required that, at the perfection stage, the seller be the owner of the thing sold or even that such subject matter of the sale exists at that point in time.[11] Thus, under Art. 1434 of the Civil Code, when a person sells or alienates a thing which, at that time, was not his, but later acquires title thereto, such title passes by operation of law to the buyer or grantee. This is the same principle behind the sale of "future goods" under Art. 1462 of the Civil Code. However, under Art. 1459, at the time of delivery or consummation stage of the sale, it is required that the seller be the owner of the thing sold. Otherwise, he will not be able to comply with his obligation to transfer ownership to the buyer. It is at the consummation stage where the

principle of *nemo dat quod non habet* applies.

In *Dignos v. Court of Appeals*,<sup>[12]</sup> the subject contract of sale was held void as the sellers of the subject land were no longer the owners of the same because of a prior sale.<sup>[13]</sup> Again, in *Nool v. Court of Appeals*,<sup>[14]</sup> we ruled that a contract of repurchase, in which the seller does not have any title to the property sold, is invalid:

We cannot sustain petitioners' view. Article 1370 of the Civil Code is applicable only to valid and enforceable contracts. The Regional Trial Court and the Court of Appeals ruled that the principal contract of sale contained in Exhibit C and the auxiliary contract of repurchase in Exhibit D are both void. This conclusion of the two lower courts appears to find support in *Dignos v. Court of Appeals*, where the Court held:

"Be that as it may, it is evident that when petitioners sold said land to the Cabigas spouses, they were no longer owners of the same and the sale is null and void."

In the present case, it is clear that the sellers no longer had any title to the parcels of land at the time of sale. Since Exhibit D, the alleged contract of repurchase, was dependent on the validity of Exhibit C, it is itself void. A void contract cannot give rise to a valid one. Verily, Article 1422 of the Civil Code provides that (a) contract which is the direct result of a previous illegal contract, is also void and inexistent."

We should however add that *Dignos* did not cite its basis for ruling that a "sale is null and void" where the sellers "were no longer the owners" of the property. Such a situation (where the sellers were no longer owners) does not appear to be one of the void contracts enumerated in Article 1409 of the Civil Code. Moreover, the Civil Code itself recognizes a sale where the goods are to be acquired *x x x* by the seller after the perfection of the contract of sale, clearly implying that a sale is possible even if the seller was not the owner at the time of sale, provided he acquires title to the property later on.

In the present case, however, it is likewise clear that the sellers can no longer deliver the object of the sale to the buyers, as the buyers themselves have already acquired title and delivery thereof from the rightful owner, the DBP. Thus, such contract may be deemed to be inoperative and may thus fall, by analogy, under item No. 5 of Article 1409 of the Civil Code: Those which contemplate an impossible service. Article 1459 of the Civil Code provides that "the vendor must have a right to transfer the ownership thereof [subject of the sale] at the time it is delivered." Here, delivery of ownership is no longer possible. It has become impossible.<sup>[15]</sup>

In this case, the sale by CDB to Lim of the property mortgaged in 1983 by Rodolfo Guansing must, therefore, be deemed a nullity for CDB did not have a valid title to the said property. To be sure, CDB never acquired a valid title to the property because the foreclosure sale, by virtue of which the property had been awarded to CDB as highest bidder, is likewise void since the mortgagor was not the owner of the property foreclosed.

A foreclosure sale, though essentially a "forced sale," is still a sale in accordance with Art. 1458 of the Civil Code, under which the mortgagor in default, the forced seller, becomes obliged to transfer the ownership of the thing sold to the highest bidder who, in turn, is obliged to pay therefor the bid price in money or its equivalent. Being a sale, the rule that the seller must be the owner of the thing sold also applies in a foreclosure sale. This is the reason Art. 2085<sup>[16]</sup> of the Civil Code, in providing for the essential requisites of the contract of mortgage and pledge, requires, among other things, that the mortgagor or pledgor be the absolute owner of the thing pledged or mortgaged, in anticipation of a possible foreclosure sale should the mortgagor default in the payment of the loan.

There is, however, a situation where, despite the fact that the mortgagor is not the owner of the mortgaged property, his title being fraudulent, the mortgage contract and any foreclosure sale arising therefrom are given effect by reason of public policy. This is the doctrine of "the mortgagee in good faith" based on the rule that all persons dealing with property covered by a Torrens Certificate of Title, as buyers or mortgagees, are not required to go beyond what appears on the face of the title.<sup>[17]</sup> The public interest in upholding the indefeasibility of a

certificate of title, as evidence of the lawful ownership of the land or of any encumbrance thereon, protects a buyer or mortgagee who, in good faith, relied upon what appears on the face of the certificate of title.

This principle is cited by petitioners in claiming that, as a mortgagee bank, it is not required to make a detailed investigation of the history of the title of the property given as security before accepting a mortgage.

We are not convinced, however, that under the circumstances of this case, CDB can be considered a mortgagee in good faith. While petitioners are not expected to conduct an exhaustive investigation on the history of the mortgagor's title, they cannot be excused from the duty of exercising the due diligence required of banking institutions. In *Tomas v. Tomas*,<sup>[18]</sup> we noted that it is standard practice for banks, before approving a loan, to send representatives to the premises of the land offered as collateral and to investigate who are the real owners thereof, noting that banks are expected to exercise more care and prudence than private individuals in their dealings, even those involving registered lands, for their business is affected with public interest. We held thus:

We, indeed, find more weight and vigor in a doctrine which recognizes a better right for the innocent original registered owner who obtained his certificate of title through perfectly legal and regular proceedings, than one who obtains his certificate from a totally void one, as to prevail over judicial pronouncements to the effect that one dealing with a registered land, such as a purchaser, is under no obligation to look beyond the certificate of title of the vendor, for in the latter case, good faith has yet to be established by the vendee or transferee, being the most essential condition, coupled with valuable consideration, to entitle him to respect for his newly acquired title even as against the holder of an earlier and perfectly valid title. There might be circumstances apparent on the face of the certificate of title which could excite suspicion as to prompt inquiry, such as when the transfer is not by virtue of a voluntary act of the original registered owner, as in the instant case, where it was by means of a self-executed deed of extra-judicial settlement, a fact which should be noted on the face of Eusebia Tomas certificate of title. Failing to make such inquiry would hardly be consistent with any pretense of good faith, which the appellant bank invokes to claim the right to be protected as a mortgagee, and for the reversal of the judgment rendered against it by the lower court.<sup>[19]</sup>

In this case, there is no evidence that CDB observed its duty of diligence in ascertaining the validity of Rodolfo Guansing's title. It appears that Rodolfo Guansing obtained his fraudulent title by executing an Extra-Judicial Settlement of the Estate With Waiver where he made it appear that he and Perfecto Guansing were the only surviving heirs entitled to the property, and that Perfecto had waived all his rights thereto. This self-executed deed should have placed CDB on guard against any possible defect in or question as to the mortgagor's title. Moreover, the alleged ocular inspection report<sup>[20]</sup> by CDB's representative was never formally offered in evidence. Indeed, petitioners admit that they are aware that the subject land was being occupied by persons other than Rodolfo Guansing and that said persons, who are the heirs of Perfecto Guansing, contest the title of Rodolfo.<sup>[21]</sup>

## II.

The sale by CDB to Lim being void, the question now arises as to who, if any, among the parties was at fault for the nullity of the contract. Both the trial court and the appellate court found petitioners guilty of fraud, because on June 16, 1988, when Lim was asked by CDB to pay the 10% option money, CDB already knew that it was no longer the owner of the said property, its title having been cancelled.<sup>[22]</sup> Petitioners contend that: (1) such finding of the appellate court is founded entirely on speculation and conjecture; (2) neither CDB nor FEBTC was a party in the case where the mortgagor's title was cancelled; (3) CDB is not privy to any problem among the Guansings; and (4) the final decision cancelling the mortgagor's title was not annotated in the latter's title.

As a rule, only questions of law may be raised in a petition for review, except in circumstances where questions of fact may be properly raised.<sup>[23]</sup> Here, while petitioners raise these factual issues, they have not sufficiently

shown that the instant case falls under any of the exceptions to the above rule. We are thus bound by the findings of fact of the appellate court. In any case, we are convinced of petitioners' negligence in approving the mortgage application of Rodolfo Guansing.

### III.

We now come to the civil effects of the void contract of sale between the parties. Article 1412(2) of the Civil Code provides:

If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed:

....

(2)

When only one of the contracting parties is at fault, he cannot recover what he has given by reason of the contract, or ask for the fulfillment of what has been promised him. The other, who is not at fault, may demand the return of what he has given without any obligation to comply with his promise.

Private respondents are thus entitled to recover the P30,000.00 option money paid by them. Moreover, since the filing of the action for damages against petitioners amounted to a demand by respondents for the return of their money, interest thereon at the legal rate should be computed from August 29, 1989, the date of filing of Civil Case No. Q-89-2863, not June 17, 1988, when petitioners accepted the payment. This is in accord with our ruling in *Castillo v. Abalayan*[24] that in case of a void sale, the seller has no right whatsoever to keep the money paid by virtue thereof and should refund it, with interest at the legal rate, computed from the date of filing of the complaint until fully paid. Indeed, Art. 1412(2) which provides that the non-guilty party "may demand the return of what he has given" clearly implies that without such prior demand, the obligation to return what was given does not become legally demandable.

Considering CDB's negligence, we sustain the award of moral damages on the basis of Arts. 21 and 2219 of the Civil Code and our ruling in *Tan v. Court of Appeals*[25] that moral damages may be recovered even if a bank's negligence is not attended with malice and bad faith. We find, however, that the sum of P250,000.00 awarded by the trial court is excessive. Moral damages are only intended to alleviate the moral suffering undergone by private respondents, not to enrich them at the expense of the petitioners.[26] Accordingly, the award of moral damages must be reduced to P50,000.00.

Likewise, the award of P50,000.00 as exemplary damages, although justified under Art. 2232 of the Civil Code, is excessive and should be reduced to P30,000.00. The award of P30,000.00 attorney's fees based on Art. 2208, pars. 1, 2, 5 and 11 of the Civil Code should similarly be reduced to P20,000.00.

WHEREFORE, the decision of the Court of Appeals is AFFIRMED with the MODIFICATION as to the award of damages as above stated.

### SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Per Justice B.A. Adefuin-de la Cruz and concurred in by Justice Fidel F. Purisima (now Associate Justice of the Supreme Court) and Justice Ricardo P. Galvez.

[2] Exhibit 2; Records, pp. 149-151.

[3] RTC Decision, CA Rollo, pp. 32-34.

[4] Id., at p. 35.

[5] Petition, p. 13; Rollo, p. 21.

[6] Borromeo v. Court of Appeals, 47 SCRA 65 (1972)

[7] Baluran v. Navarro, 79 SCRA 309 (1977)

[8] G.R. No. 127471, February 10, 1999.

[9] RTC Decision, CA Rollo, p. 49.

[10] Civil Code, Art. 1475.

[11] Martin v. Reyes, 91 Phil. 666 (1952)

**[12] 158 SCRA 375 (1988)**

[13] Id., p. 383.

**[14] 276 SCRA 144 (1997)**

[15] Id., at pp. 157-158.

[16] "The following requisites are essential to the contracts of pledge and mortgage:

....

(2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged."

[17] Philippine National Bank v. Intermediate Appellate Court, 176 SCRA 736 (1989), citing Quimson v. Suarez, 45 Phil 901 (1924)

[18] 98 SCRA 280 (1980) (Empasis added)

[19] Id., at 287.

[20] TSN of the testimony of Atty. Rafael Hilao, Jr., p. 10, April 10, 1992.

[21] Petition, p. 8; Appellants' Brief, p. 6; Rollo, pp. 6 and 16.

[22] CA Decision, Rollo, p. 40.

[23] See Philippine Home Assurance Corp. v. Court of Appeals, 257 SCRA 468 (1996)

**[24] 30 SCRA 359 (1969)**

**[25] 239 SCRA 310 (1994)**

[26] Zenith Insurance Corporation v. Court of Appeals, 185 SCRA 402 (1990)

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