

**ARRA REALTY CORPORATION AND SPOUSES CARLOS ARGUELLES  
AND REMEDIOS DELA RAMA ARGUELLES, PETITIONERS, VS.  
GUARANTEE DEVELOPMENT CORPORATION AND INSURANCE  
AGENCY AND ENGR. ERLINDA ...**

*G.R. No. 142310. September 20, 2004*

Ponente: CALLEJO, SR., J.

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**CALLEJO, SR., J.:**

Arra Realty Corporation (ARC) was the owner of a parcel of land, located in Alvarado Street, Legaspi Village, Makati City, covered by Transfer Certificate of Title (TCT) No. 112269 issued by the Register of Deeds.[1] Through its president, Architect Carlos D. Arguelles, the ARC decided to construct a five-story building on its property and engaged the services of Engineer Erlinda Peñaloza as project and structural engineer. In the process, Peñaloza and the ARC, through Carlos Arguelles, agreed on November 18, 1982 that Peñaloza would share the purchase price of one floor of the building, consisting of 552 square meters for the price of P3,105,838: P901,738, payable within sixty (60) days from November 20, 1982, and the balance payable in twenty (20) equal quarterly installments of P110,205. The parties further agreed that the payments of Peñaloza would be credited to her account in partial payment of her stock subscription in the ARC's capital stock.[2] Sometime in May 1983, Peñaloza took possession of the one-half portion of the second floor, with an area of 552 square meters[3] where she put up her office and operated the St. Michael International Institute of Technology. Unknown to her, ARC had executed a real estate mortgage over the lot and the entire building in favor of the China Banking Corporation as security for a loan on May 12, 1983.[4] The deed was annotated at the dorsal portion of TCT No. 112269 on June 3, 1983.[5] From February 23, 1983 to May 31, 1984, Peñaloza paid P1,175,124.59 for the portion of the second floor of the building she had purchased from the ARC.[6] She learned that the property had been mortgaged to the China Banking Corporation sometime in July 1984. Thereafter, she stopped paying the installments due on the purchase price of the property.

Peñaloza wrote the China Banking Corporation on August 1, 1984 informing the bank that the ARC had conveyed a portion of the second floor of the building to her, and that she had paid P1,175,124.59 out of the total price of P3,105,838. She offered to open an account with the bank in her name in the amount of P300,000, and to make monthly deposits of P50,000 each, to serve as payments of the equivalent loan of the ARC upon the execution of the appropriate documents. She also proposed for the bank to assist her in requesting the ARC to execute a deed of absolute sale over the portion of the second floor she had purchased and the issuance of the title in her name upon the payment of the purchase price.[7] However, the bank rejected her proposal.[8] She then wrote the ARC on August 31, 1984 informing it of China Banking Corporation's rejection of her offer to assume its equivalent loan from the bank and reminded it that it had conformed to her proposal to assume the payment of its loan from the bank up to the equivalent amount of the balance of the purchase price of the second floor of the building as agreed upon, and the consequent execution by the ARC of a deed of absolute sale over the property in her favor.[9] Peñaloza then sent a copy of a deed of absolute sale with assumption of mortgage for the ARC's

consideration, and informed the latter that, in the meantime, she was withholding installment payments.[10] On October 3, 1984, Peñaloza transferred the school to another building she had purchased, but retained her office therein. She later discovered that her office had been padlocked.[11] She had the office reopened and continued holding office thereat. To protect her rights as purchaser, she executed on November 26, 1984 an affidavit of adverse claim over the property which was annotated at the dorsal portion of TCT No. 112269 on November 27, 1984.[12] However, the adverse claim was cancelled on February 11, 1985.[13]

When the ARC failed to pay its loan to China Banking Corporation, the subject property was foreclosed extrajudicially, and, thereafter, sold at public auction to China Banking Corporation on August 13, 1986 for P13,953,171.07.[14] On April 29, 1987, the ARC and the Guarantee Development Corporation and Insurance Agency (GDCIA) executed a deed of conditional sale covering the building and the lot for P22,000,000, part of which was to be used to redeem the property from China Banking Corporation.[15] With the money advanced by the GDCIA, the property was redeemed on May 4, 1987.[16] On May 14, 1987, the petitioner executed a deed of absolute sale over the lot and building in favor of the GDCIA for P22,000,000.[17] The ARC obliged itself under the deed to deliver possession of the property without any occupants therein. The Register of Deeds, thereafter, issued TCT No. 147846 in favor of the GDCIA over the property without any liens or encumbrances on May 15, 1987.[18] Of the purchase price of P22,000,000, the GDCIA retained P1,000,000 to answer for any damages arising from any suits of the occupants of the building.

On May 28, 1987, Peñaloza filed a complaint against the ARC, the GDCIA, and the Spouses Arguelles, with the Regional Trial Court of Makati, Branch 61, for “specific performance or damages” with a prayer for a writ of preliminary injunction.

Peñaloza prayed for the following reliefs:

WHEREFORE, it is most respectfully prayed of this Honorable Court that –

1.- Before hearing, a temporary restraining order immediately issue;

2.- After notice and hearing, and the filing of an injunction bond, a preliminary injunction be issued forthwith enjoining and restraining the defendant Register of Deeds for Makati, Metro Manila, from receiving and registering any document transferring, conveying, encumbering or, otherwise, alienating the land and edifice covered by Transfer Certificate of Title No. 112269 of said Registry of Deeds and from issuing a new title therefor;

3.- After hearing and trial –

(a) Ordering defendants ARRA and Arguelles to execute a deed of sale in favor of plaintiff over the second floor of that 5-storey edifice built on 119 Alvarado Street, Legaspi Village, Makati, Metro Manila, simultaneously with the tender of the remaining balance on the purchase price thereon;

(b) Ordering defendants ARRA and Arguelles, jointly and severally, to pay the plaintiff such moral damages as may be proved during the trial;

(c) Ordering defendants ARRA and Arguelles, jointly and severally, to pay the plaintiff exemplary damages in such amount as may be deemed (sic) just, sufficient and equitable as exemplary (sic) damages;

(d) Ordering defendants ARRA and Arguelles, jointly and severally, to pay the plaintiff an amount equivalent

to 20% of whatever she may recover herein as and for attorney's fees; P500.00 per appearance of counsel in Court; and miscellaneous litigation expenses and cost of suit;

4.- On the Alternative Cause of Action, in the event that specific performance cannot be effected for any reason, to render judgment in favor of the plaintiff and against the defendants –

(a) Ordering the defendants, jointly and severally (sic), to reconstitute to the plaintiff the sum of P1,444,124.59 with interest thereon at bank borrowing rate from August 1984 until the same is finally wholly returned;

(b) Ordering the defendants, jointly and severally, to pay the plaintiff the difference between the selling price on the second floor of the 5-storey edifice after deducting P1,444,124.59 therefrom;

(c) Directing defendant Guarantee Development Corporation & Insurance Agency to deposit with the Honorable Court any amount still in its possession on the purchase price of the land and the 5-storey edifice in question;

(d) Ordering the defendants, jointly and severally, to pay the plaintiff moral and exemplary damages as may be proved during the trial and/or as this Honorable Court may deem just, adequate and equitable in the premises;

(e) Ordering the defendants, jointly and severally, to pay the plaintiff an amount equivalent to 20% of whatever she may recover from the defendants in this suit as and for attorney's fees, litigation expenses and costs.

PLAINTIFF further prays for such other reliefs and remedies as may be just and equitable in the premises.[19]

On her first cause of action, Peñaloza alleged, inter alia:

2.- That on or about November 18, 1982, the plaintiff and defendant ARRA represented by its President and General Manager, defendant Arguelles, entered into an agreement whereby for and in consideration of the amount of P3,105,828.00 on a deferred payment plan payable in five (5) years, defendants ARRA and Arguelles agreed to sell to the plaintiff one (1) whole floor of a prospective 5-storey building which said defendants planned to build on a 992 square meter lot located at 119 Alvarado Street, Legaspi Village, Makati, Metro Manila, covered by Transfer Certificate of Title No. 112269 of the Registry of Deeds for Makati, Metro Manila, copy of which agreement is hereto attached as Annex "A" and made integral part hereof ;

3.- That consonant with the aforementioned agreement between the plaintiff and defendants ARRA and Arguelles, the former paid to said defendants the total amount of P1,377,124.59 as evidenced by receipts and cash vouchers copies of which are hereto attached as Annexes "B," "B-1" to "B-10" and made integral parts hereof;

4.- That upon completion of the 5-storey edifice on May 31, 1984, the plaintiff made her choice of the second floor thereof as the subject matter or object of the sale in her favor, and with the express knowledge and consent of defendants ARRA and Arguelles, she immediately took possession and occupied the same as contained in a certification to said effect of the defendants, and where they further certified that the certificate of condominium corresponding to the second floor "is presently under process," copy of said certification is hereto attached as Annex "C" hereof;

5.- That sometime in August 1984, the plaintiff learned that the defendants ARRA and Arguelles, conspiring with one another in a clear and unmistakably (sic) scheme to defraud the plaintiff of her investment on the

second floor of the 5-storey edifice, mortgaged the land and the building covered by Transfer Certificate of Title No. 112269 of the Registry of Deeds for Makati, Metro Manila, with the China Banking Corporation in order to secure the payment of their loan in the total sum of P6,500,000.00 without the knowledge and/or consent of the plaintiff;

6.- That after verifying the fact of mortgage with the China Banking Corporation and realizing the risk of loss of her investment of P1,377,124.59 she had so far paid on the purchase price of the second floor of the 5-storey edifice, the plaintiff wrote the defendants ARRA and Arguelles on August 31, 1984 proposing to defendants ARRA and Arguelles the execution of a deed of sale with assumption of mortgage in her favor of the portion of the loan corresponding to the second floor of the said edifice and informing them of her resolve to hold further payments on the purchase price of the second floor until her rights and interest over the same shall have been adequately and properly secured, copy of said letter is hereto attached as Annex "D" hereof;

7.- That in order to facilitate the transaction and expeditious execution of the sale over the second floor in her favor, the plaintiff had a Deed of Sale with Assumption of Mortgage prepared and forwarded the same to defendants ARRA and Arguelles for their consideration and signature with an accompanying letter therefor dated September 25, 1984, copy of said draft of a deed of sale with assumption of mortgage and the accompanying letter therefor are hereto attached as Annexes "E" and "E-1," respectively;

8.- That by reason of the unjustified, unwarranted and malicious inaction and/or refusal and failure of the defendants ARRA and Arguelles to comply with plaintiff's perfectly valid and legal demand for the execution of a document of sale over the second floor of the 5-storey edifice, and in order to protect her rights and interest in said transaction, the plaintiff caused to be prepared and executed an affidavit of Adverse Claim and effected the annotation thereof on Transfer Certificate of Title No. 112269 of the Registry of Deeds for Makati, M.M., copy of said Adverse Claim is hereto attached as Annex "F" hereof.[20]

On her second cause of action, Peñaloza alleged, as follows:

9.- That after her occupation and taking possession of the second floor of the said 5-storey edifice, the plaintiff caused the installation of a water tank and water pumps thereto;

10.- That the water tank installed on the second floor of the 5-storey edifice involved an outlay of P15,000.00 as evidenced by Cash Vouchers, copies of which are hereto attached as Annexes "G" and "G-1," while the water pumps involved the disbursement of P52,000.00 from the funds of the plaintiff as evidenced by Cash Vouchers, copies of which are hereto attached as Annexes "H," "H-1" hereof;

11.- That when the defendants ARRA and Arguelles mortgaged with (sic) land and the 5-storey edifice to the China Banking Corporation, the mortgage included the water tank and water pumps servicing the second floor thereof installed by the plaintiff;[21]

Peñaloza caused the annotation of the notice of lis pendens at the dorsal portion of TCT No. 112269.

The GDCIA interposed the following affirmative and special defenses in its answer to the complaint:

- Guarantee acquired clean title to the Property, as evidenced by the transfer certificate of title attached as Annex 4 hereof.

- Guarantee was an innocent purchaser for value and in good faith of the Property who: (i) verified that the title to the Property in the Registry of Deeds of Makati was absolutely free and clear of any encumbrances, liens or claims other than the mortgage to China Banking Corporation; and, (ii) even obtained explicit confirmation of that fact from Arra and Arguelles.

...

- Consequently, Guarantee could rely, as it did, on the absence of any annotation of encumbrance on the title to

the Property. By clear provision of law, the present action, which is a collateral attack on the title to the Property in question, cannot be allowed by the Court.

- The complaint (para. 6) admits that plaintiff was unable to pay the purchase price for the portion of the building which she allegedly bought under the letter agreement with Arra dated November 18, 1982 (Annex "A," Complaint). Assuming plaintiff's agreement with Arra to be valid and enforceable, her failure to discharge her part of the agreement bars her from now attempting to compel performance from Arra and Arguelles.

- Plaintiff's remedy, should her claim, indeed, be meritorious, is a personal action for damages against Arra and Arguelles.[22]

The GDCIA prayed that, after due proceedings, judgment be rendered in its favor, thus:

WHEREFORE, it is respectfully prayed that, after due hearing, judgment be rendered:

(i) Dismissing the complaint for lack of merit;

(ii) Ordering plaintiff to pay attorney's fees in such amount as may be proven in the course of trial;

(iii) Ordering plaintiff to pay to Guarantee the amount of P500,000.00 as moral damages;

or, in the alternative, should plaintiff's claim be adjudged meritorious,

(iv) Ordering defendants Arra and Arguelles, solidarily, to return the purchase price of the Property with interest as stated in the Deed of Conditional Sale;

(v) Ordering defendants Arra and Arguelles, solidarily, to pay to Guarantee the amount of P1,000,000.00 as punitive and exemplary damages;

(vi) Ordering defendants Arra and Arguelles to pay attorney's fees in such amount as may be proven in the course of trial;

(vii) Ordering defendants Arra and Arguelles to pay to Guarantee the amount of P500,000.00 as moral damages. Other just and equitable reliefs are prayed for.[23]

The ARC and the Spouses Arguelles interposed the following special and affirmative defenses:

- Plaintiff has no cause of action against answering defendants; her complaint is definitely a nuisance suit;

- When answering defendants decided to erect a 5-storey building on their lot in 1982, plaintiff and answering defendants agree that plaintiff will share in the construction of any one (1) floor thereof; hence, the agreement between them (Annex "A");

- Plaintiff not only refused and failed to comply with her Agreement despite repeated demands but also grossly violated said agreement as she paid only an initial amount of P200,000.00 on February 7, 1982 in contrary to the specific, express decisive stipulation in Annex "A" which was synchronized with the agreement of Answering Defendants with the contractor of the building, Pyramid Construction & Engineering Corp., who was committed to finish the building in a period of five (5) months;

- Having committed to construct the 5-storey edifice on their lot, answering defendants has (sic) to raise the required initial amount to start the construction and for this reason, they were constrained to borrow the rest of the amount necessary for the completion of the building and they used their own land and the building itself as collateral to enable defendant Arguelles to finish the building plus his own funding in the amount of P7,000,000.00;

- Despite her non-compliance with her agreement, plaintiff, on her own and without the consent of answering

defendants, occupied the second floor of the building and converted the same into a school the St. Michael International School and other business establishments whereby she earned no less than P3,000,000.00 in a period of four (4) years of her occupancy as a squatter thereof without paying the rentals to answering defendants;

- Due to plaintiff's persistent requests for the issuance in her favor of a certification of her occupancy of the second floor to enable her to secure a loan in the amount of P3,105,838.00 to complete payment of her obligation, defendant Carlos Arguelles, always a kind and understanding person, issued Annex "C" with the expectation that plaintiff could, indeed, comply with her agreement within a period of three (3) months as she promised;

- Having failed to fulfill her promise and to comply with her obligation as mentioned in the immediately preceding paragraph hereof, plaintiff voluntarily vacated the second floor of the said building on (sic) May 1986;

- As a consequence of plaintiff's violation of her written agreement, answering defendants naturally defaulted in their mortgage obligation with China Banking Corporation and answering defendants' lot and building were, therefore, foreclosed by said bank and having no means of redeeming the mortgaged properties within the redemption period, answering defendants were compelled to negotiate for the sale of the foreclosed properties which sale was monitored to the plaintiff together with her statement of account;

- That the negotiation for the sale of the building took almost a year and during such period, plaintiff was cooperative in showing the second floor which she was then occupying to prospective buyers;

- Whatever right plaintiff may have acquired over the second floor of the subject 5-storey building has been extinguished upon her failure to comply with her obligation, which was the payment of the total amount of P3,105,838.00 within the specific period expressly provided as the essence of the agreement.[24]

The ARC and the Spouses Arguelles also interposed counterclaims against the GDCIA, while the latter secured a writ of preliminary attachment against its co-defendants and garnished their funds. On April 17, 1995, the trial court rendered judgment in favor of Peñaloza and the GDCIA, and against the ARC and the Spouses Arguelles, thus:

WHEREFORE, premises above considered, judgment is hereby rendered as prayed for by plaintiff PEÑALOZA in the case for SUM OF MONEY as against defendants ARRA and SPOUSES CARLOS D. ARGUELLES and REMEDIOS DELA RAMA-ARGUELLES, who are hereby ORDERED as follows:

- TO PAY plaintiff the amount of P1,444,124.59 with interest of 12 per centum per annum from August 1984 until fully paid;

- TO PAY the amount of P150,000.00 for and as attorney's fees; and

- TO PAY the Costs of the proceedings.

The case for SPECIFIC PERFORMANCE and prayer for PRELIMINARY INJUNCTION are considered as DISMISSED on grounds that this case for this alternative relief was filed after the Transfer Certificate of Title of the property was already issued by defendant Register of Deeds in the name of GUARANTEE.

The case as against DEFENDANT Guarantee Development Corporation & Insurance Agency (GUARANTEE) is hereby DISMISSED for insufficiency of evidence.

The counterclaims of DEFENDANTS are hereby DISMISSED for insufficiency of evidence.

**SO ORDERED.[25]**

Peñaloza, as well as the ARC and the Spouses Arguelles, appealed the decision to the Court of Appeals (CA). The ARC and the Spouses Arguelles alleged that the Regional Trial Court (RTC) erred as follows:

- IN NOT ANNULING OR RESCINDING THE CONDITIONAL DEED OF SALE OF REALTY DATED APRIL 29, 1987 AND DEED OF ABSOLUTE SALE DATED MAY 14, 1999;
- IN NOT ORDERING THE DEFENDANT GUARANTEE DEVELOPMENT AND INSURANCE AGENCY TO PAY DEFENDANTS-APPELLANTS FOR THE MALICIOUS AND UNFOUNDED FILING OF WRIT OF ATTACHMENT AND GARNISHMENT; AND
- IN NOT DIRECTING PACES TO PAY ARRA REALTY AND SPOUSES ARGUELLES ARREARS IN RENTALS PLUS INTERESTS AND DISMISSING THE ORIGINAL AND AMENDED COMPLAINTS.[26]

The CA rendered judgment, on September 30, 1998, affirming with modification the appealed decision. The fallo reads:

WHEREFORE, the appeals of both ARRA Realty Corporation and plaintiff Engineer Erlinda Peñaloza are hereby DISMISSED, and the Decision of the lower court is hereby AFFIRMED but the award of P150,000.00 as attorney's fees in favor of said plaintiff is deleted. The Register of Deeds of Makati City is hereby ordered to cancel the Notice of Lis Pendens annotated on Transfer Certificate of Title No. 147845 registered in the name of Guarantee Development Corporation and Insurance Agency.[27]

The ARC and the Spouses Arguelles filed a motion for reconsideration of the decision of the CA on the following grounds:

1.) THIS HONORABLE COURT OF APPEALS ERRED IN NOT RULING THAT PEÑALOZA'S ACTION WAS TANTAMOUNT TO FORFEITURE OR WAIVER OF HER RIGHTS.

2.) THIS HONORABLE COURT OF APPEALS ERRED IN NOT APPRECIATING THE EVIDENCE OF CO-DEFENDANTS ARRA/ARGUELLES ESPECIALLY THE ARREARS IN RENTALS/OUT OF POCKET ADVANCES WITH THE RESULTANT UNJUST ENRICHMENT ON THE PART OF PEÑALOZA.[28]

However, the appellate court denied the said motion. Peñaloza filed a petition for review on certiorari with this Court docketed as G.R. No. 136876, wherein she made the following assignment of errors:

**I**

The Court of Appeals gravely erred in finding respondent Guarantee an innocent purchaser for value and in good faith contrary to settled jurisprudence that a buyer of a parcel of land who did not pay the purchase price in full and who could not have failed to know or discover that the land sold to him was in the adverse possession of another is a buyer in bad faith.

**II**

The Court of Appeals gravely erred in finding that petitioner, who had established her legal right for sum of money against respondents Arra and the Arguelles spouses, may be effectively barred from pursuing her alternative remedy for recovery of title against respondent Guarantee contrary to Section 2, Rule 8 of the Rules of Court.

**III**

The Court of Appeals gravely erred in not awarding damages and attorney's fees despite violation of the rights

of the petitioner on the wrongful or fraudulent action on the part of the respondents.[29]

...

WHEREFORE, premises considered, it is respectfully prayed that the Decision of the Court of Appeals in CA-G.R. CV No. 52911 dated September 30, 1998 as well as its Resolution dated December 23, 1998 be reversed and set aside and that a Decision be rendered:

- Declaring as null and void the title of Guarantee (TCT No. 147845) over the subject property located at No. 119 Alvarado St., Legaspi Village, Makati, Metro Manila.
- Ordering respondents to execute a Deed of Sale in favor of the petitioner covering the subject second floor of the subject property simultaneously with the tender of the remaining balance on the purchase price.
- Ordering respondents, jointly and severally, to pay petitioner moral and exemplary damages of One Million Pesos (P1,000,000.00).
- Ordering respondents, jointly and severally, to pay petitioner attorney's fees of ten (10%) percent of the amount involved.

On the alternative cause of action, in the event that specific performance cannot be affected, to render judgment:

- Ordering respondents, jointly and severally, to pay petitioner the sum of P1,944,124.59 with interest of twelve (12%) percent from August 1984 until fully paid.
- Ordering respondents, jointly and severally, to pay moral and exemplary damages of One Million Pesos (P1,000,000.00).
- Ordering respondents, jointly and severally, to pay attorney's fees of ten (10%) percent of the amount involved.

Such other reliefs just and proper are, likewise, prayed for.[30]

On March 15, 1999, the Court resolved to deny due course to the petition for failure of the petitioner therein to show any reversible error committed by the CA in its decision. Entry of judgment was made of record on April 14, 1999.[31]

For their part, the ARC and the Spouses Arguelles, now the petitioner, filed their petition for review with this Court, contending that:

I

THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW IN NOT HOLDING THAT NO PERFECTED CONTRACT EXISTS BETWEEN ARRA REALTY CORPORATION AND ENGINEER ERLINDA PEÑALOZA.

II

THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW IN NOT HOLDING THAT GUARANTEE DEVELOPMENT CORPORATION IS NOT AN INNOCENT PURCHASER FOR VALUE AND THAT AUTOMATIC RESCISSION IS PRESENT.

III

THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW IN NOT HOLDING THAT ENGINEER ERLINDA PEÑALOZA IS GUILTY OF FRAUD AND IS IN BAD FAITH. HENCE, LIABLE FOR DAMAGES. [32]

At the outset, it must be pointed out that the issues raised by the parties in their respective pleadings in this Court have already been resolved in G.R. No. 136876, where we denied due course to Peñaloza's petition for review. Nonetheless, considering that the sole petitioner in the said case was Peñaloza, whereas the petitioners in the petition at bar are the ARC and the Spouses Arguelles, we shall resolve the petition on its merits. Furthermore, since the issues raised by the petitioners in their assignment of errors are interrelated, the Court shall delve into and resolve the same simultaneously.

The petitioners posit that no contract of sale over the subject property was perfected between the petitioner ARC, on the one hand, and respondent Peñaloza, on the other, because the latter failed to pay the balance of the total purchase price of a portion of the second floor of the building as provided in their November 18, 1982 agreement. They aver that respondent Peñaloza bound and obliged herself to pay the downpayment of P901,738 on or before January 1983, and the balance in twenty (20) equal quarterly payments of P110,205. However, the petitioners aver, respondent Peñaloza was able to complete the downpayment only on March 4, 1983 and managed to pay only three quarterly installments, and part of the fourth quarterly installment. They assert that, in violation of the November 18, 1982 agreement, respondent Peñaloza used the property as a school instead of an office, and later abandoned the same without prior notice to the petitioner ARC. The petitioners assert that respondent Peñaloza failed to pay for the advances extended to her, amounting to P302,753.06 inclusive of interests, as well as rentals for her occupancy of the property in the total amount of P2,177,935. The petitioners contend that, even if the payments of respondent Peñaloza amounting to P1,735,500 would be deducted from the agreed purchase price, she would still end up owing the petitioner ARC the net amount of P930,815.56, excluding interests. They aver that respondent Peñaloza should be ordered to pay damages under Article 19 of the New Civil Code because she acted in bad faith, and pray that the payments she made to the petitioner ARC for the purchase of the said portion of the building be forfeited in its favor.

The petitioners further contend that respondent GDCIA was a purchaser of the property in bad faith because it purchased the lot and building despite its presumed knowledge of the claims of respondent Peñaloza and the fact that the building was occupied by private individuals and/or corporations. The petitioners aver that they even offered to return the P21,000,000 paid by the respondent GDCIA for the property, less the retained P1,000,000, but that the latter rejected the offer. Hence, the deed of absolute sale executed by the petitioner ARC and the respondent GDCIA over the property was automatically rescinded.

In her comment on the petition, respondent Peñaloza averred that her November 18, 1982 agreement with the petitioner ARC is a perfected contract of sale. She asserts that the CA erred in holding that she was barred from recovering the property from the respondent GDCIA and in not finding that the latter is not an innocent purchaser in good faith because, by its own admission, it purchased the building although it was still occupied. In fact, she notes, the respondent GDCIA retained P1,000,000 of the purchase price of the property to answer for any claims for damages of the said occupants. She prayed, thus:

WHEREFORE, premises considered, it is respectfully prayed that the petition be denied and that the Decision of the Court of Appeals in CA-G.R. CV No. 52911 dated September 30, 1998 as well as its Resolution dated February 21, 2000 be modified in that:

- Declaring as null and void the title of Guarantee (TCT No. 147845) over the subject property located at No. 119 Alvarado St., Legaspi Village, Makati, Metro Manila.
- Ordering petitioners and respondent Guarantee to execute a Deed of Sale in favor of the petitioner covering the subject second floor of the subject property simultaneously with the tender of the remaining balance on the purchase price.
- Ordering petitioners and respondent Guarantee, jointly and severally, to pay Peñaloza moral and exemplary

damages of One Million Pesos (P1,000,000.00).

- Ordering petitioners and respondent Guarantee, jointly and severally, to pay Peñaloza attorney's fees of ten (10%) percent of the amount involved.

In the alternative, in the event that specific performance cannot be affected, to render judgment:

- Ordering petitioners and respondent Guarantee, jointly and severally, to pay petitioner the sum of P1,944,124.59 with interest of twelve (12%) percent from August 1984 until fully paid.

- Ordering petitioners and respondent Guarantee, jointly and severally, to pay moral and exemplary damages of One Million Pesos (P1,000,000.00).

- Ordering petitioners and respondent Guarantee, jointly and severally, to pay attorney's fees of ten (10%) percent of the amount involved.

Such other reliefs just and proper are, likewise, prayed for.[33]

In its comment on the petition, the respondent GDCIA avers that the issues raised by the petitioners and respondent Peñaloza in her Comment had already been resolved by this Court in G.R. No. 136876, when the petition therein was denied due course.

We rule against the petitioners.

Central to the issue is the November 18, 1982 letter-agreement of the parties, which reads:

Ms. Erlinda Peñaloza  
5th Flr. ODC Int'l. Plaza Bldg.  
Salcedo St., Legaspi Village  
Makati, Metro Manila

Dear Linda:

I would like to review the arrangement arrived at our meeting yesterday afternoon. You shall share one (1) floor of the proposed 5-storey office building to be constructed on a 992 sq. mt. lot owned by ARRA Realty Corporation located at Alvarado St., Legaspi Village, Makati, Metro Mla. The consideration for which you shall own one (1) floor is THREE MILLION ONE HUNDRED FIVE THOUSAND EIGHT HUNDRED THIRTY-EIGHT PESOS (P3,105,838.00) on a deferred payment plan. The initial payment of NINE HUNDRED ONE THOUSAND SEVEN HUNDRED THIRTY-EIGHT PESOS (P901,738.00) shall be paid within sixty (60) days from November 20, 1982 and the balance payable in 20 equal quarterly payments of ONE HUNDRED TEN THOUSAND TWO HUNDRED FIVE PESOS (P110,205.00). Every payment that you make, ARRA shall credit your account by way of partial payment to your stock subscriptions of ARRA's capital stock. As soon as our contractor, Pyramid Construction and Engineering Corporation, complete its commitment with us, which is not more than five (5) months, you shall immediately take possession of the floor of your choice. Further, as soon as practicable, the Title corresponding to the floor that you own shall be transferred to your name.

However, should you pay in full at the end of the fourth quarter or at any time prior to the 5-year arrangement, the price shall be adjusted accordingly.

I believe that this accurately summarizes our understanding. If you have any questions or if I have not properly stated our agreement, please let me know, otherwise, you may signify your conformity by signing the duplicate copy of this letter.

Very truly yours,

(Sgd.)

CARLOS D. ARGUELLES CONFORME:

President & General Manager

(Sgd.)

ERLINDA PEÑALOZA

PL:FP:ccr Date: \_\_\_\_\_[34]

As gleaned from the agreement, the petitioner ARC, as vendor, and respondent Peñaloza, as vendee, entered into a contract of sale over a portion of the second floor of the building yet to be constructed for the price of P3,105,838 payable in installments, the first installment of P901,738 to be paid within sixty (60) days from November 20, 1982 or on or before January 20, 1983, and the balance payable in twenty (20) equal quarterly payments of P110,205. As soon as the second floor was constructed within five (5) months, respondent Peñaloza would take possession of the property, and title thereto would be transferred to her name. The parties had agreed on the three elements of subject matter, price, and terms of payment. Hence, the contract of sale was perfected, it being consensual in nature, perfected by mere consent, which, in turn, was manifested the moment there was a meeting of the minds as to the offer and the acceptance thereof.[35] The perfection of the sale is not negated by the fact that the property subject of the sale was not yet in existence. This is so because the ownership by the seller of the thing sold at the time of the perfection of the contract of sale is not an element of its perfection. A perfected contract of sale cannot be challenged on the ground of non-ownership on the part of the seller at the time of its perfection. What the law requires is that the seller has the right to transfer ownership at the time the thing is delivered. Perfection per se does not transfer ownership which occurs upon the actual or constructive delivery of the thing sold.[36]

In May 1983, respondent Peñaloza took possession of a portion of the second floor of the building sold to her with an area of 552 square meters. She put up her office and operated the St. Michael International Institute of Technology. Thenceforth, respondent Peñaloza became the owner of the property, conformably to Article 1477 of the New Civil Code which reads:

Art. 1477. The ownership of the thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof.

In a contract of sale, until and unless the contract is resolved or rescinded in accordance with law, the vendor cannot recover the thing sold even if the vendee failed to pay in full the initial payment for the property. The failure of the buyer to pay the purchase price within the stipulated period does not by itself bar the transfer of ownership or possession of the property sold, nor ipso facto rescind the contract.[37] Such failure will merely give the vendor the option to rescind the contract of sale judicially or by notarial demand as provided for by Article 1592 of the New Civil Code:

Art. 1592. In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by a notarial act. After the demand, the court may not grant him a new term.

Admittedly, respondent Peñaloza failed to pay the downpayment on time. But then, the petitioner ARC accepted, without any objections, the delayed payments of the respondent; hence, as provided in Article 1235 of the New Civil Code, the obligation of the respondent is deemed complied with:

Art. 1235. When the obligee accepts the performance, knowing its incompleteness or irregularity, and without expressing any protest or objection, the obligation is deemed fully complied with.

The respondent cannot be blamed for suspending further remittances of payment to the petitioner ARC because when she pushed for the issuance of her title to the property after taking possession thereof, the ARC failed to comply. She was aghast when she discovered that in July 1984, even before she took possession of the property, the petitioner ARC had already mortgaged the lot and the building to the China Banking Corporation; when she offered to pay the balance of the purchase price of the property to enable her to secure her title thereon, the petitioner ARC ignored her offer. Under Article 1590 of the New Civil Code, a vendee may suspend the payment of the price of the property sold:

Art. 1590. Should the vendee be disturbed in the possession or ownership of the thing acquired, or should he have reasonable grounds to fear such disturbance, by a vindicatory action or a foreclosure of mortgage, he may suspend the payment of the price until the vendor has caused the disturbance or danger to cease, unless the latter gives security for the return of the price in a proper case, or it has been stipulated that, notwithstanding any such contingency, the vendee shall be bound to make the payment. A mere act of trespass shall not authorize the suspension of the payment of the price.

Respondent Peñaloza was impelled to cause the annotation of an adverse claim at the dorsal portion of TCT No. 112269. Her testimony is quoted, thus:

Q: And did you finally acquire the certificate of title to the 2nd floor of the said building?

A: No, Sir.

Q: Why not?

A: Because the said building was mortgaged by ARRA Realty and Architect Arguelles with China Banking Corporation and subsequently sold to Guaranty (sic) Development Corporation.

Q: When, for the first time, did you learn about the mortgage of the building to China Banking Corp.?

A: It was sometime in July of 1984.

Q: How did you learn about it?

A: Since I took possession of the 2nd floor and made payments thereon, I asked Architect Arguelles every now and then about the execution of a Deed of Sale to the 2nd floor.

Q: What was the reply of Arguelles?

A: He told me that he had to work out yet the titling of the 2nd floor as a condominium unit.

Q: Was Arguelles able to have the 2nd floor titled as a condominium unit?

A: No, Sir.

Q: Why not?

A: Because he did not take any steps about it.

Q: When Arguelles did not take steps about it, what did you do?

A: I inquired why Arguelles was not doing anything about the titling of the 2nd floor and the sale thereof to me. That was how I discovered that Arguelles mortgaged the same to the China Banking Corp.[38]

...

Q: With those letters, what did you do?

A: On August 31, 1984, I wrote a letter to ARRA requesting them to execute a deed of sale with the assumption of mortgage in my favor. I attached a copy of the deed of sale and assumption of mortgage to the said letter, may I request this letter be marked as Exh. "U" and the deed of sale attached to it with the assumption of mortgage as Exh. "U-1."

Q: Did ARRA reply to your letter?

A: ARRA and Arguelles ignored the said letter.

Q: What did you do then?

A: On September 25, 1984, I wrote a letter to ARRA which I request to be marked as Exh. "V" reiterating the signing of the deed of sale and at the same time telling him that I was suspending my payments on the 2nd floor unless and until he signs that Deed of Sale. I offered to pay the full amount so I can get the certificate of title, because I had more than sufficient money to pay him at the time. Here are copies of my bank deposits from 1982 to 1986 which show my liquidity. I request that they be marked as Exh. "W" and "W-1" to "W-59" inclusive.

Q: What did ARRA do with that letter?

A: ARRA and Arguelles ignored the said letter.

Q: What steps did you take?

A: Upon [the] advise of my lawyer, I filed a Notice of Adverse Claim dated November 26, 1984, which I request to be marked as Exh. "X" which was inscribed the next day, November 7, 1984, at the back of the Certificate of Title No. 112269, which I request to be marked as Exh. "Y" and the inscription of the Notice of Adverse Claim to be bracketed and marked as Exh. "Y-1." [39]

Contrary to the claim of the petitioners, respondent Peñaloza did not waive her right to enforce the letter-agreement or abandon the property she had purchased from the petitioner ARC. While she transferred the school to another location, the respondent maintained her office in the subject property, only to discover that the petitioner had had her office padlocked. Nevertheless, she had her office reopened and continued holding office thereat for a year or so, thereafter:

Q:

In the meantime, did you continue holding office and holding classes for St. Michael on the 2nd floor?

A:

Sometime in April of 1986 when classes ended I transferred the St. Michael School to a building which I purchased at Yakal St. also in Makati.

Q:

Why did you transfer the St. Michael School at that building in Yakal St.?

A:

Because after three years of operation the St. Michael School has grown too big for the 2nd floor of that building at 119 Alvarado.

Q:

How about your Engineering Office?

A:

My Engineering Office has also grown bigger, just right for that space at the 2nd floor, so it remained there.

Q:

So the office of Peñaloza Engineering retained the Alvarado office?

A:

Yes, Sir

Q:

After St. Michael left it, were you able to hold office there peacefully?

A:

No, Sir.

Q:

Why not?

A:

One Monday, I went to our office at the 2nd floor at 119 Alvarado for work.

Q:

Were you able to enter the office?

A:

No, Sir.

Q:

Why not?

A:

Because the padlock that I placed there had been changed.

Q:

How did you discover that?

A:

Because when I was using my key to my padlock, it would not fit.

Q:

What did you do?

A:

I went to the office of Engr. Arguelles at ARRA Realty Corp. at the upper floor and asked them why they changed the padlock. Nobody wanted to explain to me why the padlock was changed but they gave me the key and I had it duplicated for my use, so I continued holding office there. I held office in the said premises continuously for about a year. Later on, it was padlocked.[40]

Respondent Peñaloza turned over the possession of the property to the petitioner ARC on October 7, 1986 and, shortly thereafter, filed her complaint against the petitioner ARC. The bare fact that the respondent filed her complaint shortly after vacating the property is evidence of her determination to pursue her claims against the petitioners.

In view of the failure of the petitioner ARC to transfer the title of the property to her name because of the mortgage thereof to China Banking Corporation and the subsequent sale thereof to the GDCIA, respondent Peñaloza is entitled to the refund of the amount she paid to the petitioner ARC, conformably to Article 1398 of the New Civil Code, which reads:

Art. 1398. An obligation having been annulled, the contracting parties shall restore to each other the things which have been the subject matter of the contract, with their fruits, and the price with its interest, except in cases provided by law.

In obligations to render service, the value thereof shall be the basis for damages.

We reject the petitioners' claim that respondent Peñaloza is liable for P2,177,935 by way of advances and unpaid rentals. We note that in their answer to the amended complaint of respondent Peñaloza, the petitioners did not interpose any counterclaims for actual damages in the form of unpaid rentals. Neither did the petitioners assign as error in their brief in the CA the failure of the trial court to award P302,753.06 to them for advances. It was only when they moved for the reconsideration of the decision of the CA did they claim, for the first time on appeal, their entitlement to P302,753.06 as refund for advances. The petitioner ARC is, thus, barred from raising the said issue in this Court.[41]

Likewise barren of factual and legal basis is the petitioners' claim for damages against the respondent based on Article 19 of the New Civil Code, which reads:

Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

In this case, respondent Peñaloza suspended the payment of the balance of the purchase price of the property because she had the right to do so. While she failed to pay the purchase price on time, the petitioner ARC nevertheless accepted such delayed payments. The respondent even proposed to assume the loan account of the petitioner ARC with the China Banking Corporation in an amount equivalent to the balance of the purchase price of the subject property, which the petitioner ARC rejected. In fine, respondent Peñaloza acted in accord with law

and in utmost good faith. Hence, she is not liable for damages to the petitioners under Article 19 of the New Civil Code.

The law is that men, singly or in combination, may use any lawful means to accomplish a lawful purpose, although the means adopted may cause injury to another.[42] When a person is doing a lawful thing in a lawful way, his conduct is not actionable though it may result in damages to another; for, though the damage caused is undoubted, no legal right of another is invaded; hence, it is said to be *damnum absque injuria*. [43]

The elements of abuse of rights are the following: (a) the existence of a legal right or duty, (b) which is exercised in bad faith; and (c) for the sole intent of prejudicing or injuring another. Malice or bad faith is at the core of said provision.[44] Good faith is presumed and he who alleges bad faith has the duty to prove the same.[45] Good faith refers to the state of the mind which is manifested by the acts of the individual concerned. It consists of the intention to abstain from taking an unconscionable and unscrupulous advantage of another.[46] Bad faith, on the other hand, does not simply connote bad judgment to simple negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of known duty due to some motive or interest or ill-will that partakes of the nature of fraud.[47] Malice connotes ill-will or spite and speaks not in response to duty. It implies an intention to do ulterior and unjustifiable harm. The petitioners failed to adduce evidence of bad faith or malice on the part of respondent Peñaloza. This cannot be said of the petitioner ARC. It mortgaged the property to China Banking Corporation even after having sold the same to respondent Peñaloza, and, thereafter, sold the same anew to GDCIA; respondent Peñaloza was, thus, left holding the proverbial bag.

On the last issue, the petitioners contend that the deed of conditional sale and deed of absolute sale executed by them and the respondent GDCIA were automatically nullified because the latter had actual or personal knowledge that the property sold had tenants. Furthermore, the respondent GDCIA retained P1,000,000 on account of the claims of respondent Peñaloza, Paces Industrial Development Corporation, and Emeterio Samson over the portions of the property.

The contention of the petitioners has no merit.

First. The petitioners did not file a counterclaim against the respondent GDCIA for the rescission of the aforesaid decision.[48] Moreover, the petitioners did not adduce evidence to prove bad faith on the part of the respondent GDCIA. Additionally, the petitioners warranted in the aforesaid deeds in favor of the said respondent, that:

d) It is hereby agreed, covenanted and stipulated by and between the parties hereto that the VENDOR will execute and deliver to the VENDEE a definite or absolute Deed of Sale upon the full payment by the VENDEE of the unpaid balance of the purchase price hereinabove stipulated.

- The VENDOR undertakes and commits to deliver the Property, including all floors of the building, as entirely vacant to the VENDEE not later than May 15, 1987. Physical possession, however, of the first and second floors of the Building can be turned over to the VENDEE at any time convenient to them.[49]

...

The VENDOR undertakes to perform, fulfill and comply with the representations, warranties and undertaking stated in the Deed of Conditional Sale. Should the VENDOR fail to do so, this agreement shall become null and void and the VENDEE shall be entitled to enforce its right under Section 8 of the Deed of Conditional Sale.[50]

Second. The respondent GDCIA relied on the representations of the petitioners. However, the respondent received claims for ownership of portions of the property from tenants of the building, including respondent Peñaloza, which impelled it to retain P1,000,000 of the purchase price to answer for said claims. There is, thus, no factual

and legal basis for the plea of the petitioners that the trial court and the CA erred in not rendering judgment in their favor declaring the said deeds rescinded.

On the claim of respondent Peñaloza against the petitioners and her co-respondent GDCIA, we agree with the latter that the same is barred by the resolution of this Court in G.R. No. 136876, denying due course to her petition for review of the decision of the CA on the ground that no reversible error was committed by the said court, which resolution has become final and executory.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED. The assailed decision and resolution of the Court of Appeals are AFFIRMED. Costs against the petitioners.

**SO ORDERED.**

Puno, (Chairman), and Tinga, JJ., concur.

Austria-Martinez, J., on official leave.

Chico-Nazario, J., on leave.

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[1] Exhibit “Y,” Records, p. 443.

[2] Exhibit “B,” Id. at 385.

[3] Id. at 613.

[4] Exhibit “B,” supra.

[5] Exhibit “Y,” supra.

[6] Ibid.

[7] Exhibit “S,” Id. at 414.

[8] Exhibit “T,” Id. at 415.

[9] Id. at 20.

[10] Exhibit “V,” Id. at 419.

[11] Id. at 619.

[12] Exhibit “Y,” supra.

[13] Records, p. 444.

[14] Id. at 535.

[15] Id. at 522-529.

[16] Id. at 535.

[17] Id. at 527-531.

[18] Id. at 532-533.

[19] Id. at 9-11.

[20] Id. at 2-4.

- [21] Id. at 4.
- [22] Id. at 80-81.
- [23] Id. at 82-83.
- [24] Id. at 221-224.
- [25] Id. at 1420.
- [26] Rollo, p. 39.
- [27] Id. at 28.
- [28] Id. at 31.
- [29] Id. at 275-276.
- [30] Id. at 286-287.
- [31] Id. at 105.
- [32] Id. at 10.
- [33] Id. at 88-90.
- [34] Id. at 52. (Underscoring supplied).
- [35] *Quejada v. Court of Appeals*, 299 SCRA 695 (1998).
- [36] Ibid.
- [37] *Ocampo v. Court of Appeals*, 233 SCRA 551 (1994).
- [38] Records, pp. 372-373.
- [39] Id. at 374-375.
- [40] Id. at 375-376.
- [41] *Ysmael v. Court of Appeals*, 318 SCRA 215 (1999); *Cojuangco, Jr. v. Court of Appeals*, 309 SCRA 602 (1999); *Reburiano v. Court of Appeals*, 301 SCRA 342 (1999); *Cheng v. Genato*, 300 SCRA 722 (1998); *Salao v. Court of Appeals*, 284 SCRA 493 (1998).
- [42] *Roverback v. Newton Machine Operations Union*, 168 N.E. 766 (1918).
- [43] *White v. Kimcaid*, 63 S.E. 109 (1908).
- [44] *ABS-CBN Broadcasting Corporation v. Court of Appeals*, 301 SCRA 572 (1999).
- [45] *Chua v. Court of Appeals*, 242 SCRA 341 (1995).
- [46] *Farolan v. Solmac Marketing Corporation*, 195 SCRA 168 (1991).
- [47] *Cojuangco, Jr. v. Court of Appeals*, *supra*.
- [48] Rollo, pp. 118-125.
- [49] Records, p. 90.

[50] Id. at 94.

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