

**WINIFREDA URSAL, PETITIONER, VS. COURT OF APPEALS, THE
RURAL BANK OF LARENA (SIQUIJOR), INC. AND SPOUSES JESUS
MONESET AND CRISTITA MONESET, RESPONDENTS.**

G.R. NO. 142411. October 14, 2005

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a petition for review on certiorari under Rule 45 of the Rules of Court seeking the reversal of the Decision[1] of the Court of Appeals (CA) dated June 28, 1999 and the Resolution dated January 31, 2000 denying petitioner's motion for reconsideration.[2]

These are the facts:

The spouses Jesus and Cristita Moneset (Monesets) are the registered owners of a 333-square meter land together with a house thereon situated at Sitio Laguna, Basak, Cebu City covered by Transfer Certificate of Title No. 78374.[3] On January 9, 1985, they executed a "Contract to Sell Lot & House" in favor of petitioner Winifreda Ursal (Ursal), with the following terms and conditions:

...

That the VENDOR (Cristita R. Moneset) offers to SELL and the VENDEE accepts to BUY at the agreed lump sum price of P130,000.00 payable on the installment basis as follows:

1. That on the date of the signing of this agreement, the VENDEE will tender an earnest money or downpayment of P50,000.00 to the VENDOR, and by these presents, the latter hereby acknowledges receipt of said amount from the former;
2. That the balance of the selling price of P80,000.00 shall be paid by the VENDEE to the VENDOR in equal monthly installments of P3,000.00 starting the month of February, 1985, until said balance of the selling price shall be fully paid;
3. That if the VENDEE shall fail or in default to pay six (6) monthly installments to the VENDOR the herein agreement is deemed cancelled, terminated and/or rescinded and in such event, the VENDEE (sic) binds to refund to the VENDOR (sic) the deposit of P50,000.00 and with the latter's (sic) obligation to pay the former (sic) as a corresponding refund for cost of improvements made in the premises by VENDEE;
4. That on the date of receipt of the downpayment of P50,000.00 by the VENDOR, it is mutually agreed for VENDEE to occupy and take physical possession of the premises as well as for the latter (VENDEE) to keep and hold in possession the corresponding transfer certificate of title No. _____ of the land in question which is the subject of this agreement;
5. That on the date of final payment by the VENDEE to the VENDOR, the latter shall execute at her expense the corresponding document of DEED OF ABSOLUTE SALE for the former as well as the payment of realty

clearances, BIR Capital Gain Tax, sales tax or transfer fees and attorney's fees; that, for the issuance of title in VENDEE's name shall be the exclusive account of said VENDEE.[4]

Petitioner paid the down payment and took possession of the property. She immediately built a concrete perimeter fence and an artesian well, and planted fruit bearing trees and flowering plants thereon which all amounted to P50,000.00. After paying six monthly installments, petitioner stopped paying due to the Monesets' failure to deliver to her the transfer certificate of title of the property as per their agreement; and because of the failure of the Monesets to turn over said title, petitioner failed to have the contract of sale annotated thereon.[5]

Unknown to petitioner, the Monesets executed on November 5, 1985 an absolute deed of sale in favor of Dr. Rafael Canora, Jr. over the said property for P14,000.00.[6] On September 15, 1986, the Monesets executed another sale, this time with pacto de retro with Restituto Bundalo.[7] On the same day, Bundalo, as attorney-in-fact of the Monesets, executed a real estate mortgage over said property with Rural Bank of Larena (hereafter Bank) located in Siquijor for the amount of P100,000.00.[8] The special power of attorney made by the Monesets in favor of Bundalo as well as the real estate mortgage was then annotated on the title on September 16, 1986.[9] For the failure of the Monesets to pay the loan, the Bank served a notice of extrajudicial foreclosure dated January 27, 1988 on Bundalo.[10]

On September 30, 1989, Ursal filed an action for declaration of non-effectivity of mortgage and damages against the Monesets, Bundalo and the Bank. She claimed that the defendants committed fraud and/or bad faith in mortgaging the property she earlier bought from the Monesets with a bank located in another island, Siquijor; and the Bank acted in bad faith since it granted the real estate mortgage in spite of its knowledge that the property was in the possession of petitioner.[11]

The Monesets answered that it was Ursal who stopped paying the agreed monthly installments in breach of their agreement.[12] The Bank, on the other hand, averred that the title of the property was in the name of "Cristita Radaza Moneset married to Jesus Moneset" and did not show any legal infirmity.[13]

Bundalo, meanwhile, was not served summons because he could no longer be found at his given address.[14]

Trial on the merits proceeded. Thereafter, the Regional Trial Court of Cebu City, Branch 24, rendered its decision finding that Ursal is more credible than the Monesets and that the Monesets are liable for damages for fraud and breach of the contract to sell:

The evidence of [Ursal] show that she was the first to acquire a substantial interest over the lot and house by virtue of the execution of the Contract to Sell (Exh. "A"). After the execution of Exh. "A" plaintiff took possession of the questioned lot and house-after she made a downpayment of P50,000.00. " [S]he paid the installments for six (6) months without fail. [However] plaintiff (stopped) paying the installment because defendant spouses failed to give her the Transfer Certificate of Title over the lot and house despite repeated demands. It is evident then that the first to violate the conditions of Exh. "A" were the defendants Spouses Moneset. This is the reason why plaintiff was not able to annotate Exh. "A" on the TCT. The evidence of plaintiff show that there was no intention on her part to discontinue paying the installments. In a reciprocal obligation, one cannot be compelled to do if the other party fails to do his part (Art. 1169, New Civil Code).

...

The acts of defendant Spouses Moneset in selling again the lot and house in question to Dr. Canora by executing a Deed of Absolute Sale; in selling the same on pacto de retro to defendant Bundalo; and in mortgaging the same to defendant Rural Bank of Larena are plainly and clearly fraudulent because they were done while Exh. "A" was still existing and the transaction was done without notice to the plaintiff. As provided in Art. 1170 of the New

Civil Code, those who are guilty of fraud in the performance of their obligation --- and those who in any manner contravene the tenor thereof, are liable for damages.

...

Another ground for liability under this article is when there is fraud/deceit. In the instant case, there was fraud/deceit on the part of the defendant spouses Moneset when they executed the Deed of Sale to Dr. Canora; the Deed of Sale with Pacto de Retro to Bundalo and the Special Power of Attorney for Bundalo to execute for and in their behalf the Real Estate Mortgage with the Rural Bank of Larena knowing fully well that the Contract to Sell house and lot, Exh. "A" was still existing notwithstanding their violation to the provisions thereto. It is therefore crystal clear that defendant spouses Moneset are liable for damages.[15]

As to the real estate mortgage, the trial court held that the same was valid and the Bank was not under any obligation to look beyond the title, although the present controversy could have been avoided had the Bank been more astute in ascertaining the nature of petitioner's possession of the property, thus:

The Real Estate Mortgage and the Foreclosure Proceedings cannot be considered null and void in the sense that per se the formalities required by law were complied with except for the fact that behind their execution there was fraud, deceit and bad faith on the part of defendant spouses Moneset and Bundalo.

The defendant Rural Bank of Larena for its part could have avoided this situation if the bank appraiser who made the ocular inspection of the subject house and lot went deeper and investigated further when he learned that the owner is not the actual occupant. He was however told by Moneset that the actual occupant was only a lessee. Banking on this information that the actual occupant was only a lessee with no other right over and above such, the bank approved a loan of P100,000.00 in favor of Moneset through Bundalo their attorney-in-fact.

...

Likewise the Rural Bank of Larena had the right to rely on what appeared on the certificate of title of the Monesets and it was under no obligation to look beyond the certificate and investigate the title of the mortgagor appearing on the face of the certificate.

The approval of the P100,000.00 loan from the Rural Bank of Larena was made possible through the deception and bad faith of defendant spouses Moneset and Bundalo but the pertinent documents were per se in order. The court is of the honest belief that the case against the defendant bank be dismissed for lack of merit. The court however believes that for reasons of equity the bank should give the plaintiff Ursal the preferential right to redeem the subject house and lot.[16]

The trial court then disposed of the case as follows:

Wherefore premises considered, judgment is hereby rendered in favor of the defendant Rural Bank of Larena dismissing the complaint against it for lack of merit and against the defendant spouses Moneset ordering them to:

1. reimburse to plaintiff Ursal the following:
 - a.) downpayment of P50,000.00
 - b.) monthly installments for six months at P3,000.00 per month --- P18,000.00
 - c.) expenses improvements P61, 676.52
2. pay to plaintiff the following:
 - a.) moral damages ----- P30,000.00

b.) exemplary damages ----- P20,000.00

c.) litigation expenses----- P 5,000.00

d.) attorney's fees ----- P10,000.00

e.) costs

3. order the defendant Rural Bank of Larena to give the plaintiff the preferential right to redeem the subject house and lot.

SO ORDERED.[17]

Both Ursal and the Monesets appealed the decision to the CA. Ursal alleged that the Bank was guilty of bad faith for not investigating the presence of Ursal on the property in question, while the Monesets claimed that the trial court erred in giving preferential right to Ursal to redeem the property and in ordering them to pay damages.[18]

The CA affirmed in toto the decision of the trial court. It held that the Bank did not have prior knowledge of the contract to sell the house and lot and the Monesets acted fraudulently thus they cannot be given preferential right to redeem the property and were therefore correctly ordered to pay damages.[19]

The Monesets filed a motion for reconsideration which was denied outright for having been filed out of time.[20] Ursal's motion for reconsideration was denied by the CA on January 31, 2000 for lack of merit.[21]

Hence, the present petition raising the sole error:

"That with grave abuse of discretion amounting to excess of jurisdiction, the Honorable Court of Appeals erred in rendering a decision and Resolution NOT in accordance with law and the applicable rulings of the Supreme Court." [22]

Petitioner claims that: the Bank was duly informed through its appraiser that the house and lot to be mortgaged by Monesets were in the possession of a lessee; the Bank should have taken this as a cue to investigate further the Monesets' right over the same; the case of *Embrado vs. Court of Appeals* (233 SCRA 335) held that where a purchaser neglects to make the necessary inquiry and closes his eyes to facts which should put a reasonable man on his guard to the possibility of the existence of a defect in his vendor's title, he cannot claim that he is a purchaser in good faith; Sec. 50 of Act 496 provides that where a party has knowledge of a prior existing interest which is unregistered at the time he acquired the land, his knowledge of that prior unregistered interest has the effect of registration as to him and the Torrens system cannot be used as a shield against fraud; following Art. 2176 of the Civil Code, respondent Bank is obliged to pay for the damage done.[23]

Petitioner then prayed that the Deed of Real Estate Mortgage be declared as non-effective and non-enforceable as far as petitioner is concerned; that she be declared as the absolute owner of the house and lot in question; that the Monesets be ordered to execute a deed of absolute sale covering the subject property; and that the Bank be ordered to direct the collection or payment of the loan of P100,000.00 plus interest from the Monesets for they were the ones who received and enjoyed the said loan.[24]

On the other hand, respondent Bank in its Comment argues that: its interest in the property was only that of mortgagee and not a purchaser thus its interest is limited only to ascertaining that the mortgagor is the registered owner; the case cited is inapplicable at bar since it involves the purchase of real property; Ursal was purportedly only a lessee of the property, thus as mortgagor who is not entitled to possess the mortgaged property, they no longer considered the lease in the processing and approval of the loan; Sec. 50 of Act No. 496 is also inapplicable since the alleged prior existing interest was only that of a lessee; in any case, it was the Monesets who lied to the

Bank anent the real nature of the encumbrance, thus, it is the Monesets who are guilty of fraud and not the Bank.[25]

In her "Rejoinder,"[26] petitioner argued that: under the law on mortgage, the mortgagor must be the owner of the property he offers as security of his loan; the mortgagee like herein Bank which neglects to verify the ownership of the property offered as security of the loan runs the risk of his folly; the Bank's negligence is not excusable because an adverse claim and notice of lis pendens were already annotated on the certificate of title when the mortgage was constituted or when the deed of real estate mortgage was annotated; it would be unfair to put the blame on petitioner who was innocent of the transaction; the trial court found that the Bank even provided its appraiser the amount of P15,000.00 to redeem the pacto de retro sale allegedly executed in favor of Dr. Canora; this should have aroused the Bank's suspicion and prompted it to investigate further the property; the trial court recognized the bad faith committed by the Monesets and ordered them to pay the sum of P126,676.52 in damages but exonerated the Bank who is equally guilty of bad faith; the Monesets cannot pay the damages as they have no money and property thus if the decision of the trial court as affirmed by the CA is to be enforced, they will only be holding an empty bag while the Bank which is equally guilty will go free; what would be fair is to let the two respondents bear jointly and severally the consequences of their transaction and let the innocent petitioner ultimately own the house and lot in question.[27]

The petitioner, in her Memorandum dated July 31, 2005, raised the issues of: "(1) Whether or not the document captioned: "Contract to Sell Lot and House" (Exh. "A") is valid and binding so much so that the herein Petitioner who is the Vendee is the lawful and true owner of the lot and house in question; (2) Whether or not the herein respondents spouses Jesus Moneset and Cristita Moneset who were the vendors and/or mortgagors together with respondent Restituto Bundalo were conniving and acting in bad faith; and (3) Whether or not respondent Rural Bank of Larena measured up to the strict requirement of making a thorough investigation of the property offered as collateral before granting a loan and be considered as innocent mortgagee and entitled to the protection of the law." [28] Petitioner reiterated her arguments in support of the first and third issues raised in the Memorandum while she merely adopted the CA findings in support of the second issue, i.e., when the Monesets encumbered the Transfer Certificate of Title (TCT) to Dr. Canora and thereafter to Bundalo, they committed bad faith or fraud since the contract to sell with Ursal was still valid and subsisting.[29]

Respondent Bank, in its Memorandum dated July 20, 2005, reiterated the arguments it made in its Comment that: the case cited by petitioner requiring extra ordinary diligence is inapplicable in this case since what is involved here is mortgage and not sale; as mortgagee, its interest is limited only to determining whether the mortgagor is the registered owner of the property whose certificate of title showed that there were no existing encumbrances thereon; and even with unregistered encumbrances, the Bank has priority by the registration of the loan documents.[30]

No memorandum is filed by respondent Monesets.

The crux of petitioner's contention is that the Bank failed to look beyond the transfer certificate of title of the property for which it must be held liable.

We agree. Banks cannot merely rely on certificates of title in ascertaining the status of mortgaged properties; as their business is impressed with public interest, they are expected to exercise more care and prudence in their dealings than private individuals.[31] Indeed, the rule that persons dealing with registered lands can rely solely on the certificate of title does not apply to banks.[32]

As enunciated in *Cruz vs. Bancom*: [33]

Respondent' is not an ordinary mortgagee; it is a mortgagee-bank. As such, unlike private individuals, it is expected to exercise greater care and prudence in its dealings, including those involving registered lands. A banking institution is expected to exercise due diligence before entering into a mortgage contract. The ascertainment of the status or condition of a property offered to it as security for a loan must be a standard and indispensable part of its operations.[34]

Our agreement with petitioner on this point of law, notwithstanding, we are constrained to refrain from granting the prayers of her petition, to wit: that the Deed of Real Estate Mortgage be declared as non-effective and non-enforceable as far as petitioner is concerned; that she be declared as the absolute owner of the house and lot in question; that the Monesets be ordered to execute a deed of absolute sale covering the subject property; and that the Bank be ordered to direct the collection or payment of the loan of P100,000.00 plus interest from the Monesets for they were the ones who received and enjoyed the said loan.[35]

The reason is that, the contract between petitioner and the Monesets being one of "Contract to Sell Lot and House," petitioner, under the circumstances, never acquired ownership over the property and her rights were limited to demand for specific performance from the Monesets, which at this juncture however is no longer feasible as the property had already been sold to other persons.

A contract to sell is a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds himself to sell the said property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, that is, full payment of the purchase price.[36]

In such contract, the prospective seller expressly reserves the transfer of title to the prospective buyer, until the happening of an event, which in this case is the full payment of the purchase price. What the seller agrees or obligates himself to do is to fulfill his promise to sell the subject property when the entire amount of the purchase price is delivered to him. Stated differently, the full payment of the purchase price partakes of a suspensive condition, the non-fulfillment of which prevents the obligation to sell from arising and thus, ownership is retained by the prospective seller without further remedies by the prospective buyer.[37]

It is different from contracts of sale, since ownership in contracts to sell is reserved by the vendor and is not to pass to the vendee until full payment of the purchase price, while in contracts of sale, title to the property passes to the vendee upon the delivery of the thing sold. In contracts of sale the vendor loses ownership over the property and cannot recover it unless and until the contract is resolved or rescinded, while in contracts to sell, title is retained by the vendor until full payment of the price.[38] In contracts to sell, full payment is a positive suspensive condition while in contracts of sale, non-payment is a negative resolutive condition.[39]

A contract to sell may further be distinguished from a conditional contract of sale, in that, the fulfillment of the suspensive condition, which is the full payment of the purchase price, will not automatically transfer ownership to the buyer although the property may have been previously delivered to him. The prospective vendor still has to convey title to the prospective buyer by entering into a contract of absolute sale. While in a conditional contract of sale, the fulfillment of the suspensive condition renders the sale absolute and affects the seller's title thereto such that if there was previous delivery of the property, the seller's ownership or title to the property is automatically transferred to the buyer.[40]

Indeed, in contracts to sell the obligation of the seller to sell becomes demandable only upon the happening of the suspensive condition, that is, the full payment of the purchase price by the buyer. It is only upon the existence of the contract of sale that the seller becomes obligated to transfer the ownership of the thing sold to the buyer. Prior to the existence of the contract of sale, the seller is not obligated to transfer the ownership to the buyer, even if

there is a contract to sell between them. [41]

In this case, the parties not only titled their contract as "Contract to Sell Lot and House" but specified in their agreement that the vendor shall only execute a deed of absolute sale on the date of the final payment by vendee.[42] Such provision signifies that the parties truly intended their contract to be that of contract to sell.[43]

Since the contract in this case is a contract to sell, the ownership of the property remained with the Monesets even after petitioner has paid the down payment and took possession of the property. In *Flancia vs. Court of Appeals*,[44] where the vendee in the contract to sell also took possession of the property, this Court held that the subsequent mortgage constituted by the owner over said property in favor of another person was valid since the vendee retained absolute ownership over the property.[45] At most, the vendee in the contract to sell was entitled only to damages.[46]

Petitioner attributes her decision to stop paying installments to the failure of the Monesets to comply with their agreement to deliver the transfer certificate of title after the down payment of P50,000.00. On this point, the trial court was correct in holding that for such failure, the Monesets are liable to pay damages pursuant to Art. 1169 of the Civil Code on reciprocal obligations.[47]

The vendors' breach of the contract, notwithstanding, ownership still remained with the Monesets and petitioner cannot justify her failure to complete the payment.

In *Pangilinan vs. Court of Appeals*,[48] the vendees contended that their failure to pay the balance of the total contract price was because the vendor reneged on its obligation to improve the subdivision and its facilities. In said case, the Court held that the vendees were barred by laches from asking for specific performance eight years from the date of last installment. The Court held that:

"(the vendees) instead of being vigilant and diligent in asserting their rights over the subject property had failed to assert their rights when the law requires them to act. Laches or "stale demands" is based upon grounds of public policy which requires, for the peace of society, the discouragement of stale claims and unlike the statute of limitations, is not a mere question of time but is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted.

The legal adage finds application in the case at bar. *Tempus enim modus tollendi obligations et actiones, quia tempus currit contra desides et sui juris contemptores*-For time is a means of dissipating obligations and actions, because time runs against the slothful and careless of their own rights."[49]

In this case, petitioner instituted an action for "Declaration of Non-Effectivity of Mortgage with Damages" four years from the date of her last installment and only as a reaction to the foreclosure proceedings instituted by respondent Bank. After the Monesets failed to deliver the TCT, petitioner merely stopped paying installments and did not institute an action for specific performance, neither did she consign payment of the remaining balance as proof of her willingness and readiness to comply with her part of the obligation. As we held in *San Lorenzo Development Corp. vs. Court of Appeals*,[50] the perfected contract to sell imposed on the vendee the obligation to pay the balance of the purchase price. There being an obligation to pay the price, the vendee should have made the proper tender of payment and consignment of the price in court as required by law. Consignation of the amounts due in court is essential in order to extinguish the vendee's obligation to pay the balance of the purchase price.[51] Since there is no indication in the records that petitioner even attempted to make the proper consignation of the amounts due, the obligation on the part of the Monesets to transfer ownership never acquired obligatory force.

In other words, petitioner did not acquire ownership over the subject property as she did not pay in full the equal

price of the contract to sell. Further, the Monesets' breach did not entitle petitioner to any preferential treatment over the property especially when such property has been sold to other persons.

As explained in *Coronel vs. Court of Appeals*:^[52]

In a contract to sell, there being no previous sale of the property, a third person buying such property despite the fulfillment of the suspensive condition such as the full payment of the purchase price, for instance, cannot be deemed a buyer in bad faith and the prospective buyer cannot seek the relief of reconveyance of the property. There is no double sale in such case. Title to the property will transfer to the buyer after registration because there is no defect in the owner-seller's title per se, but the latter, of course, may be sued for damages by the intending buyer.^[53] (Emphasis supplied)

In this case, the lower courts found that the property was sold to Dr. Canora and then to Bundalo who in turn acted as attorney-in-fact for the Monesets in mortgaging the property to respondent Bank. The trial court and the CA erred in giving petitioner the preferential right to redeem the property as such would prejudice the rights of the subsequent buyers who were not parties in the proceedings below. While the matter of giving petitioner preferential right to redeem the property was not put in issue before us, in the exercise of our discretionary power to correct manifest and palpable error, we deem it proper to delete said portion of the decision for being erroneous.^[54]

Petitioner's rights were limited to asking for specific performance and damages from the Monesets. Specific performance, however, is no longer feasible at this point as explained above. This being the case, it follows that petitioner never had any cause of action against respondent Bank. Having no cause of action against the bank and not being an owner of the subject property, petitioner is not entitled to redeem the subject property.

Petitioner had lost her right to demand specific performance when the Monesets executed a Deed of Absolute Sale in favor of Dr. Canora. Contrary to what she claims, petitioner had no vested right over the property.

Indeed, it is the Monesets who first breached their obligation towards petitioner and are guilty of fraud against her. It cannot be denied however that petitioner is also not without fault. She sat on her rights and never consigned the full amount of the property. She therefore cannot ask to be declared the owner of the property, this late, especially since the same has already passed hands several times, neither can she question the mortgage constituted on the property years after title has already passed to another person by virtue of a deed of absolute sale.

At this point, let it be stated that the courts below and even this Court have no jurisdiction to resolve the issue whether there was bad faith among the Monesets, Canora and Bundalo. Canora was never impleaded. Bundalo has not been served with summons.

WHEREFORE, the petition is DENIED. The decision of the Regional Trial Court of Cebu City, Branch 24, promulgated on February 5, 1993 and the decision of the Court of Appeals dated June 28, 1999 are hereby AFFIRMED. However, in the higher interest of substantial justice, the Court MODIFIES the same to the effect that the portion ordering the Rural Bank of Larena (Siquijor), Inc. to give petitioner the preferential right to redeem the house and lot covered by Transfer Certificate of Title No. 78374 is DELETED for lack of legal basis.

No costs.

SO ORDERED.

Puno, (Chairman), Tinga, and Chico-Nazario, JJ., concur.
Callejo, Sr., J., no part.

[1] Penned by Associate Justice Mariano M. Umali (now retired) and concurred in by Associate Justices Quirino D. Abad Santos, Jr. (now retired) and Romeo J. Callejo, Sr. (now Associate Justice of the Supreme Court); Rollo pp. 23-32.

[2] Rollo, p. 37.

[3] Records, p. 27, Exh. "C."

[4] Records, p. 9.

[5] Rollo, pp. 24-27, CA Decision.

[6] Records, p. 70, Exh. "2-Moneset."

[7] Id., p. 71, Exh. "1-Moneset."

[8] Id., p. 184, Exh. "5."

[9] Id., p. 27, Exh. "C."

[10] Id., p. 73.

[11] Id., pp. 1-4.

[12] Id., pp. 28-30, Moneset's Answer.

[13] Id., pp. 21-22, Rural Bank of Larena's Answer.

[14] Rollo, p. 24, CA Decision.

[15] Records, pp. 232-234.

[16] Id., p. 234.

[17] Records, p. 235.

[18] Rollo, pp. 28-29, CA Decision.

[19] Id., pp. 29-32, CA Decision.

[20] CA Rollo, p. 112.

[21] Rollo, p. 37.

[22] Id., p. 16.

[23] Id., pp. 16-18.

Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done, such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

[24] Id., pp. 18-19.

[25] Id., pp. 42-43.

[26] Should be a "Reply."

[27] Rollo, pp. 46-47.

[28] Id., p. 66.

[29] Id., pp. 66-72.

[30] Id., p. 56.

[31] Consolidated Rural Bank (Cagayan Valley) vs. Court of Appeals, G.R. No. 132161, January 17, 2005, 448 SCRA 347, 367.

[32] Rural Bank of Campostela vs. Court of Appeals, G.R. No. 122801, April 8, 1997, 271 SCRA 76, 88.

[33] G.R. No. 147788, March 19, 2002, 379 SCRA 490.

[34] Id., p. 505.

[35] Rollo, pp. 18-19.

[36] Coronel vs. Court of Appeals, G.R. No. 103577, October 7, 1996, 263 SCRA 15, 27.

[37] Id., p. 26.

[38] Flancia vs. Court of Appeals, G.R. No. 146997, April 26, 2005.

[39] Philippine National Bank vs. Court of Appeals, G.R. No. 119580, September 26, 1996, 262 SCRA 464, 479, citing Sing Yee vs. Santos, 47 O.G. 6372 (1951).

[40] Coronel vs. Court of Appeals, *supra*, p. 28.

[41] Chua vs. Court of Appeals, G.R. No. 119255, April 9, 2003, 401 SCRA 54, 66, citing Salazar vs. Court of Appeals, G.R. No. 118203, July 5, 1996, 258 SCRA 317.

[42] Records, p. 9.

[43] Lacanilao vs. Court of Appeals, G.R. No. 121200, September 26, 1996, 262 SCRA 486, 490; Adelfa Properties Inc. vs. Court of Appeals, G.R. No. 111238, January 25, 1995, 240 SCRA 565, 577-578.

[44] G.R. No. 146997, April 26, 2005.

[45] Ibid.

[46] Ibid.; Coronel vs. Court of Appeals, *supra*, p. 28.

[47] Art. 1169. -- ...

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins; see also *Leaño vs. Court of Appeals*, G.R. No. 129018, November 15, 2001, 369 SCRA 36, 45-46.

[48] G.R. No. 83588, September 29, 1997, 279 SCRA 590.

[49] *Pangilinan vs. Court of Appeals*, G.R. No. 83588, September 29, 1997, 279 SCRA 590, 601.

[50] G.R. No. 124242, January 21, 2005, 449 SCRA 99.

[51] Ibid.

[52] G.R. No. 103577, October 7, 1996, 263 SCRA 15.

[53] Ibid., p. 28.

[54] Mendoza vs. Bautista, G.R. No. 143666, March 18, 2005.

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