# RURAL BANK OF SIATON, (NEGROS ORIENTAL), INC., PETITIONER, VS. FELIX MACAJILOS AND QUIRICO MACAJILOS, JR., RESPONDENTS.

*G.R. NO. 152483. July 14, 2006*

Ponente: YNARES-SANTIAGO, J.

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**YNARES-SANTIAGO, J.:**

This petition for review on certiorari assails the April 18, 2001 Decision[1] of the Court of Appeals in CA-G.R. CV No. 51290, which affirmed the July 12, 1995 Decision[2] of the Regional Trial Court of Negros Oriental, Dumaguete City, Branch 39 in Civil Case No. 9049, and the November 12, 2001 Resolution[3] denying petitioner Rural Bank of Siaton, Inc.'s (RBSI) motion for reconsideration.

The controversy arose from the complaint for removal of cloud over title to and/or recovery of real property and damages filed by Felix Macajilos and Quirico Macajilos, Jr. (Macajilos) against RBSI and Fidela Macalipay (Fidela) on July 27, 1987.

In their complaint,[4] Macajilos alleged that they are the children of the late Gregoria Macalipay Macajilos who during her lifetime owned and possessed a parcel of residential land situated at Poblacion, Siaton, Negros Oriental with an area of 441 square meters; that upon Gregoria's death on July 25, 1959, Macajilos inherited the subject property as compulsory heirs of Gregoria, their father Quirico Macajilos, Sr. having predeceased Gregoria; that in 1975, Macajilos allowed Juanito Macalipay, a nephew of Gregoria to build a house on the subject property where he lived together with his wife Fidela, and their son, Lamberto; that Fidela and Lamberto continued to live in the house even after the death of Juanito; that on February 12, 1975, Fidela executed an "Affidavit of Heirship" before a Notary Public at Dumaguete City falsely claiming to be the sole heir of Gregoria Macalipay and adjudicating to herself the subject property; that the tax declaration in the name of Gregoria Macalipay was cancelled and transferred to the name of Fidela under Tax Declaration No. 022478; that Lamberto was the manager of RBSI when Fidela obtained a loan using as collateral the subject property; that Fidela defaulted thus the subject property was foreclosed and sold at public auction with RBSI as the only and highest bidder; that Fidela failed to redeem the property thus RBSI was able to transfer the tax declaration to its name; that Macajilos have always been in actual possession under claim of ownership of the subject property from the time of their mother's death up to the present; that RBSI knew that Fidela did not own the subject property; that Macajilos filed a criminal case for estafa through falsification of public document (Criminal Case No. 9096 before the Municipal Trial Court in Cities, Dumaguete City, Branch I) against Fidela and Lamberto immediately upon discovery of the foreclosure sale; that in her counter affidavit in the preliminary investigation of that criminal case, Fidela denied that she signed the "Affidavit of Heirship".

In its answer,[5] RBSI claimed it considered Fidela to be the owner of the subject property as she was in actual physical possession thereof when she applied for a loan; that Macajilos maliciously built a house on the subject property pretending to be the owners thereof; that, if they owned the subject property, they are already in estoppel

since the mortgage document was duly registered with the Register of Deeds and they have constructive notice thereof; that the extrajudicial foreclosure and the public auction proceedings were duly published and that the Sheriff's Certificate of Sale in favor of RBSI and the final deed of sale were registered with the Register of Deeds of the Province of Negros Oriental.

On the other hand, Fidela averred in her answer[6] that the property belonged to her late husband, Juanito Macalipay; that she lacks formal education and anything she did was the work of her son, Lamberto, who was at the time the manager of RBSI.

After trial, the trial court found in favor of Macajilos, thus:

> WHEREFORE, on the basis of the foregoing discussion, judgment is hereby rendered:
>
> 1. Declaring the foreclosure of the mortgaged property null and void ab initio;
>
> 2. Declaring [Macajilos] the rightful owners of the land subject matter of this case;
>
> 3. Ordering the Provincial Assessor's Office to cancel Tax Dec. No. 022478 in the name of Fidela Macalipay and issue another Tax Declaration in the name of Felix Macajilos and Quirico Macajilos covering the same property;
>
> 4. Ordering the Rural Bank of Siaton, Inc. to immediately release from mortgage the land covered by Tax Dec. 022478 in the name of Fidela Macalipay; and
>
> 5. Ordering the Rural Bank of Siaton, Inc. to pay [Macajilos] the following:
>
> a. P10,000.00 as moral damages;
> b. P10,000.00 as exemplary damages;
> c. P5,000.00 as attorney's fees; and
> d. costs of the suit.
>
> SO ORDERED.[7]

The trial court noted that RBSI failed to ascertain whether Fidela was the lawful owner of the property being mortgaged. Rather, it relied on the tax declaration in Fidela's name and the "Affidavit of Ownership and Possession" that she executed. No investigator inspected the premises. Thus, the trial court ruled that RBSI must suffer for its failure to investigate and determine the lawful owner of the subject property who turned out to be Macajilos.

The Court of Appeals denied RBSI's appeal and affirmed the decision of the trial court in toto. Hence, this petition.

The assigned errors revolve around four principal issues: (1) who between Macajilos and RBSI has a superior right over the property, (2) assuming the Macajilos brothers have a better right, whether RBSI was a mortgagee-buyer in good faith of the subject property, (3) assuming the Macajilos brothers have a better right, whether they are barred from recovering the subject property due to estoppel and laches, and (4) whether the award of damages in favor of Macajilos was proper.

RBSI principally raises questions of fact that have been settled by the court a quo. As a general rule, questions of fact are not covered by a petition for review under Rule 45 of the Rules of Court because it is limited to a review of errors of law committed by the appellate court especially so in the case at bar where the findings of fact of the trial court and Court of Appeals coincide and are, thus, binding on this Court.[8] However, RBSI claims that the instant case falls under recognized exceptions to this general rule because the lower courts' conclusions are


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grounded entirely on speculations, surmises or conjectures,[9] and are based on a misapprehension of facts.[10]

After a review of the records, we rule that RBSI failed to impugn the ruling of the lowers courts on the main issue of ownership over the subject property. However, the award of damages should be modified by deleting the award of exemplary damages for lack of factual and legal bases.

Anent the first issue, RBSI contends that Fidela owned the mortgaged property based on her answer to the complaint where she asserted that she inherited the subject property from her late husband, Juanito Macalipay. It argues that the lower courts should not have given credence to the subsequent repudiation by Fidela of her ownership over the subject property during the pre-trial conference as the same was done allegedly in exchange for her being dropped from the instant case.

The contention lacks merit.

To begin with, Fidela was not dropped from the case. During the hearing on April 18, 1988, the trial court sought to have Fidela dropped from the case considering her admission during the pre-trial conference that Macajilos owned the subject property. However, counsel for Macajilos objected.[11] Consequently, Atty. Rosalinda Ybañez continued to represent Fidela throughout the trial of this case.

Moreover, RBSI has failed to produce evidence to show that Fidela's admission was not freely and knowingly given. While it is true that Fidela was no longer presented as a witness after the pre-trial conference for reasons not borne out by the records, this does not necessarily mean that her repudiation of ownership over the subject property was prompted by ill-will against RBSI. The pre-trial order dated December 2, 1987 reflected Fidela's admissions during the pre-trial conference:

> 2. Co-defendant Fidela Macalipay's claims: that the property in question did really belong to plaintiffs [herein respondents Macajilos brothers] by virtue of their rightful succession to the same; that it was her own son, Lamberto Macalipay, who subsequently became an officer-in-charge as manager of co-defendant Rural Bank of Siaton, who so maneuvered her into signing certain documents, in effect making her a debtor of Rural Bank of Siaton, which circumstances were never explained to her by her son Lamberto Macalipay; and that as a consequence of it, said Rural Bank of Siaton did grant a loan to her although the proceeds of said loan only went into the hands of Lamberto Macalipay, her son; that Fidela Macalipay recognizes the fact that she absolutely had nothing, and in fact still has nothing, to do with the property in question, the same property's ownership being always that of plaintiffs, which ownership she recognizes;[12] (Italics supplied)

Although the records do not contain the transcript during the pre-trial conference, it should be noted that on April 18, 1988, the trial court recalled the events that transpired during the pre-trial conference where Fidela freely and knowingly acknowledged that Macajilos were the rightful owners of the subject property, thus:

> COURT:
>
> Then, what happened now[?] Did you convince Fidela that she was just a daughter-in law? In this case, Fidela was a daughter-in-law of...
>
> Logronio:[13]
>
> The first cousin of the plaintiffs.
>
> COURT:
>
> Fidela Macalipay whom you are representing is merely the daughter...
>
> Ybañez:[14]

Is the mother of Lamberto...

COURT:

Wait a minute, ... is the wife of the plaintiff's cousin?

Ybañez:

Yes, your honor.

COURT:

And even her husband, the plaintiff's cousin, had nothing to do with this property, right?

Ybañez:

Yes, that is what the defendant...

COURT:

And even your client, the co-defendant Fidela Macalipay, admits that it was only her son, Lamberto, who soon became OIC...

Logronio:

Who was the OIC at the time.

COURT:

Yes, who soon became the OIC of the Rural Bank who did something using Fidela's name. Is that correct?

Logronio:

Yes, your honor.

x x x x

COURT:

But Fidela said, "Yes, the plaintiff really owned this property," admitting it.

Ybañez:

Yes, your honor.

COURT:

What is the problem of this case now?

Logronio:

So, we have no more problem with Fidela, as far as ownership is concerned. Our target now is the Rural Bank of Siaton who appears to have purchased this property and the foreclosure, and have it transferred to their name and even threatening to eject the plaintiffs who are the real owners x x x.[15] (Emphasis supplied)

As regards Fidela's initial assertion of ownership over the subject property, we agree with the findings of the Court of Appeals that the same should not be given weight. It bears stressing that only a thumb mark appears on top of her printed name at the last page of her answer and the name of the lawyer who prepared the same was not even indicated. The records also show that Fidela's answer was belatedly filed with the trial court. In her opposition[16] to the motion to have her declared in default, there was a plea for understanding and a statement

that the attached answer was prepared by an unnamed lawyer, without being formally engaged, out of pity and compassion for Fidela who was an indigent. Thus, as between the allegations in the answer which was merely thumbmarked by Fidela and prepared by an unknown lawyer, and her admissions in open court with the assistance of her counsel of record, Atty. Rosalinda Ybañez, during the pre-trial conference of this case, the lower courts correctly gave weight to the latter.

At any rate, the lower courts' finding that the subject property rightly belonged to Macajilos was not principally grounded on Fidela's admission. Rather, this admission merely confirmed the undisputed documentary evidence which showed Gregoria Macalipay as the owner of the subject property and the same passed on to her two sons upon her death. The records show that Tax Declaration No. 858[17] covering the period prior to the year 1949,[18] Tax Declaration No. 13895[19] for the year 1949, Tax Declaration No. 25864[20] for the year 1969 and Tax Declaration No. 10651[21] for the year 1974 over the subject property were all in the name of Gregoria Macalipay. It is true that tax declarations or realty tax payments are not conclusive evidence of ownership, however, they constitute good indicia of possession in the concept of owner and a claim of title over the subject property.[22] Coupled with her uncontested actual possession of the subject property, these tax declarations constitute strong evidence of ownership over the subject property by Gregoria Macalipay,[23] the mother of herein respondents Macajilos.

The tax declarations in the name of Gregoria Macalipay takes on great significance because Fidela tacked her claim of ownership to that of Gregoria Macalipay. In 1975, Fidela had Tax Declaration No. 10651 in the name of Gregoria Macalipay cancelled through the execution of an "Affidavit of Heirship" where she claimed to be the sole heir of Gregoria Macalipay. Yet, she was merely the wife of Juanito who was a nephew of Gregoria. Neither she nor Juanito could inherit from Gregoria whose compulsory heirs are respondents Macajilos. Clearly, the "Affidavit of Heirship" was fraudulent and could never be Fidela's source of ownership over the subject property. Neither could Tax Declaration No. 022478 in the name of Fidela and the "Affidavit of Ownership and Possession" be the source of any derivative right of ownership of RBSI over the subject property considering that these documents were the products of the aforementioned fraudulent scheme. Thus, the trial court correctly ruled that the mortgage over the subject property and the foreclosure proceedings were a nullity, and that respondents Macajilos brothers should be declared the lawful owners of the subject property.

We note that in its Memorandum,[24] RBSI contended, among others, that should this Court rule in favor of Macajilos, the mortgage should be declared valid insofar as the one-half portion of the subject property is concerned, based on the alleged admission by respondent Quirico Macajilos, Jr. on cross-examination that there was an oral settlement of the estate of Gregoria Macalipay where respondents Macajilos brothers agreed that the subject property should be apportioned between respondent Quirico Macajilos, Jr. and Fidela Macalipay.

This issue is being raised by RBSI for the first time on appeal and only belatedly in its memorandum before this Court. Well-settled is the rule that points of law, theories, issues and arguments not adequately brought to the attention of the trial court need not be, and ordinarily will not be, considered by a reviewing court as they cannot be raised for the first time on appeal.[25] An issue which was neither averred in the complaint nor raised during the trial in the court below cannot be raised for the first time on appeal as it would be offensive to the basic rules of fair play, justice and due process.[26] Thus, we cannot bend backwards to examine this issue raised by RBSI at this late stage in the proceedings.

Be that as it may, even if we were to consider RBSI's new theory and, thus, assume that the aforementioned oral settlement did take place, the relinquishment of respondent Felix Macajilos' one-half share in the subject property in favor of Fidela would amount to an oral donation of real property which, under Article 749[27] of the Civil Code, is null and void.[28] This void donation to Fidela did not ripen into ownership through acquisitive


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prescription because, as will be discussed in detail shortly, RBSI was a mortgagee-buyer in bad faith. Only six years had elapsed from the auction sale to the filing of the instant case, which is less than the required 30-year-period for extraordinary acquisitive prescription[29] to set in.

Anent the second issue, we agree with the trial court and the Court of Appeals that RBSI was a mortgagee-buyer in bad faith. The subject property was mortgaged three times by Fidela to RBSI, to wit: in 1975 for P2,000.00, in 1976 for 10,000.00, and in 1978 for P12,300.00. After fully paying the first two mortgage debts, Fidela failed to pay the third thus the property was extrajudicially foreclosed and sold at public auction with RBSI as the only and highest bidder. However, in contracting the aforesaid mortgages, RBSI failed to exercise the proper diligence in verifying the true owners of the subject property. Certainly, a mortgagee is not expected to conduct an exhaustive investigation on the history of the mortgagor's title but RBSI, especially because it is a banking institution, must have at least exercised due diligence before entering into said contract. Banks are expected to exercise more care and prudence than private individuals in their dealings because their business is impressed with public interest.[30]

It is a 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.[31] However, in the case at bar, no investigator was sent to the location of the subject property to verify the real owners thereof. Instead, RBSI relied solely on Tax Declaration No. 022478 in the name of Fidela as well as the "Affidavit of Possession and Ownership" that RBSI required her to execute.[32] Atty. Teodoro Singson, a witness for RBSI, explained that when RBSI was established in 1974, there was so much money coming from the Central Bank that the bank was in a hurry to grant loans and was not strict with the documents presented by prospective borrowers as collateral.[33]

What is more, Atty. Singson admitted that RBSI was aware that Tax Declaration No. 022478 in the name of Fidela was previously in the name of Gregoria Macalipay and that the tax declaration was transferred to the name of Fidela through the "Affidavit of Heirship" she executed naming her as the sole heir of Gregoria Macalipay.[34] However, it did not take steps to ascertain whether Fidela was, indeed, the sole heir of Gregoria Macalipay. Rather, it placed full faith on the false representation of Fidela that her husband, Juanito Macalipay, was the son of Gregoria Macalipay.[35] To make matters worse, neither did it inquire from Lamberto, son of Fidela, who was then the manager of the bank when the first loan was granted to her in 1975, as to whether his father, Juanito Macalipay, was the son of Gregoria Macalipay.[36]

As its defense, RBSI dwells on the alleged error of the trial court in finding Lamberto as the manager of RBSI when the mortgage debts were contracted when in fact Lamberto was a mere clerk-typist. However, the records show that RBSI categorically admitted during the pre-trial conference that Lamberto was the manager of the bank when the loan transactions took place.[37] Even in its Reply[38] dated June 21, 2002 filed before this Court, RBSI admitted that Lamberto was the officer-in-charge (OIC) of the bank prior to 1978 or when the first two mortgage debts were contracted by his mother, Fidela, and that Lamberto was demoted to the rank of a clerk-typist only in 1978.[39]

At any rate, we need not belabor this point because whether Lamberto was an OIC or a mere clerk-typist of the bank when the mortgage debts were contracted will not excuse RBSI from exercising prudence in verifying the true owners of the subject property. The fact that Lamberto was the son of its prospective debtor, Fidela, should have prompted RBSI to be more cautious in granting the loan.

Based on the foregoing, it is clear that RBSI chose to close its eyes to facts which should have put a reasonable man on his guard.[40] Far from being prudent, RBSI hastily granted the loan without investigation, and placed

full faith on the false documents submitted by Fidela. Consequently, it cannot now claim that it acted in good faith on the belief that there was no defect in the title of Fidela.

While the findings of the lower courts that RBSI was a mortgagee-buyer in bad faith is in accord with the evidence on record, we must point out, however, that they overlooked the fact that the subject property is an unregistered piece of land. As we ruled in David v. Bandin,[41] which was reiterated in Sales v. Court of Appeals,[42] "the issue of good faith or bad faith of a buyer is relevant only where the subject of the sale is a registered land but not where the property is an unregistered land. One who purchases an unregistered land does so at his peril. His claim of having bought the land in good faith, i.e., without notice that some other person has a right to, or interest in, the property, would not protect him if it turns out that the seller does not actually own the property." Nevertheless, the application of this doctrine will not affect the outcome of this case. RBSI bought the property during the auction sale at its own peril and must suffer the consequences of its failure to investigate the true owners of the subject property who turned out to be respondents Macajilos brothers. Although the discussion on RBSI's bad faith would now seem superfluous given the application of this doctrine, the finding of bad faith is still relevant in the resolution of the last issue with respect to the award of damages.

Anent the third issue, we likewise agree with the findings of the Court of Appeals that respondent Macajilos brothers are not barred by laches or estoppel from recovering the ownership of the subject property. They are not estopped from denying the representations of Fidela that she owns the subject property because they were never privy to the loan agreements between the bank and Fidela. The fact that the mortgages and subsequent foreclosure proceedings were duly registered with the register of deeds will not cure their nullity because Fidela never owned the subject property.

Neither can respondent Macajilos brothers be said to have slept on their rights. Essentially, laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by the exercise of due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it has either abandoned or declined to assert it.[43]

In the case at bar, respondents Macajilos brothers performed acts which showed their intent to assert their rightful ownership over the subject property. Specifically, in 1980, respondent Quirico Macajilos, Jr. came across the notice of public auction of the subject property in the public market.[44] Upon investigation with the provincial assessor's office, he discovered that Fidela had mortgaged the subject property to RBSI by transferring the tax declaration to her name after falsely claiming in the "Affidavit of Heirship" that she was the sole heir of Gregoria Macalipay.

Consequently, in 1981 or within a year from the discovery of the fraudulent scheme perpetuated by Fidela, respondents Macajilos brothers filed a criminal case against Fidela and Lamberto for estafa through falsification of public document.[45] After knowing about the foreclosure of the subject property, respondent Quirico Macajilos, Jr. took possession of the subject property[46] and demanded Fidela to vacate. In 1987, the instant case to remove cloud over the title and/or recovery of real property and damages was filed by respondents Macajilos brothers against RBSI as an off-shoot of the latter's demand on respondent Quirico Macajilos to vacate the subject property. All in all, these acts show that respondents Macajilos brothers did not sleep on their rights but reasonably took steps to assert their ownership over the subject property.

Anent the fourth issue, we note that the task of fixing the amount of damages primarily rests with the trial court as the circumstances of each case may warrant provided that the bases therefor are fully established.[47] In the case at bar, the trial court awarded moral and exemplary damages as well as attorney's fees in view of its finding that RBSI acted in bad faith.[48] As previously discussed, this finding of bad faith by the trial court is sufficiently

supported by the evidence on record. However, the award of exemplary damages should be deleted since there is no clear and convincing proof that RBSI acted in a wanton, fraudulent, reckless, oppressive or malevolent manner to warrant the imposition of the same.[49]

WHEREFORE, the petition is PARTLY GRANTED. The April 18, 2001 Decision and November 12, 2001 Resolution of the Court of Appeals in CA-G.R. CV No. 51290 which affirmed the July 12, 1995 Decision of the Regional Trial Court of Negros Oriental, Dumaguete City, Branch 39 in Civil Case No. 9049 declaring respondents Felix Macajilos and Quirico Macajilos, Jr. the rightful owners of the subject property, are AFFIRMED with the MODIFICATION that the award of exemplary damages is DELETED for lack of basis.

**SO ORDERED.**

Panganiban, C.J., (Chairman), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

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[1] Rollo, pp. 30-39. Penned by Associate Justice Presbitero J. Velasco, Jr. (now a member of this Court) and concurred in by Associate Justices Ruben T. Reyes and Juan Q. Enriquez, Jr.

[2] Records, pp. 146-153. Penned by Judge Teopisto L. Calumpang.

[3] Rollo, p. 29. Penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justices Ruben T. Reyes and Alicia L. Santos.

[4] Records, pp. 1-5.

[5] Id. at 9-11.

[6] Id. at 20-21.

[7] Id. at 153.

[8] First Philippine International Bank v. Court of Appeals, 322 Phil. 280, 340 (1996).

[9] Joaquin v. Navarro, 93 Phil. 257, 270 (1953).

[10] De la Cruz v. Sosing, 94 Phil. 26, 28 (1953).

[11] TSN, April 13, 1988, pp. 6-7.

[12] Records, p. 33.

[13] Counsel for Macajilos.

[14] Counsel for Macalipay.

[15] TSN, April 13, 1988, pp. 2-3.

[16] Records, pp. 16-17.

[17] Exhibit "H," records, p. 63.

[18] The records are not clear as to what period Tax Declaration No. 858 covers but it can be reasonably presumed that it covers the period prior to 1949 since this tax declaration contained an annotation that it was canceled by Tax Declaration No. 13895 which covered the period starting 1949. Both tax declarations are in the name of Gregoria Macalipay.


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[19] Exhibit "H-4," records, p. 66.

[20] Exhibit "H-2," id. at 64.

[21] Exhibit "H-3," id. at 65.

[22] Tan v. Mueco, 420 Phil. 497, 503 (2001).

[23] Development Bank of the Philippines v. Court of Appeals, 387 Phil. 283, 297 (2000).

[24] Rollo, pp. 111-130.

[25] Tay Chun Suy v. Court of Appeals, G.R. No. 93640, January 7, 1994, 229 SCRA 151, 165.

[26] Gevero v. Intermediate Appellate Court, G.R. No. 77029, August 30, 1990, 189 SCRA 201, 208.

[27] In order that the donation of an immovable may be valid, it must be made in a public document, specifying therein the property donated and the value of the charges which the donee must satisfy.

The acceptance may be made in the same deed of donation or in a separate public document, but it shall not take effect unless it is done during the lifetime of the donor.

If the acceptance is made in a separate instrument, the donor shall be notified thereof in an authentic form, and this step shall be noted in both instruments.

[28] Uson v. Del Rosario, 92 Phil. 530, 534 (1953).

[29] CIVIL CODE, Art. 1137. Ownership and other real rights over immovables also prescribe through uninterrupted adverse possession thereof for thirty years, without need of title or of good faith.

[30] Tomas v. Tomas, G.R. No. L-36897, June 25, 1980, 98 SCRA 280, 286.

[31] Id. at 285-286.

[32] TSN, April 19, 1991, p. 15.

[33] Id.

[34] Id. at 11-12.

[35] Id.

[36] Id. at 14.

[37] Records, p. 34. The pre-trial order dated December 2, 1987 relevantly states:
3. Co-defendant Rural Bank of Siaton Incorporated's claims. That the property in question was legitimately collateraled by loan applicant Fidela Macalipay; that a loan agreement indeed materialized with the same property as collateral therefor; that indeed Lamberto Macalipay, son of co-defendant Fidela Macalipay, when these transactions were undertaken, had served as OIC manager of said Rural bank; that per documents introduced to the bank, the bank had no way of determining the veracity of the claim of plaintiffs because it was only relying on the documents presented to it by then loan applicant Fidela Macalipay. (Italics supplied)

[38] Rollo, pp. 81-90.

[39] Id. at 82.

[40] Embrado v. Court of Appeals, G.R. No. 51457, June 27, 1994, 233 SCRA 335, 344-345.

[41] G.R. Nos. L-48322, L-49712, L-49716 & L-49687, April 8, 1987, 149 SCRA 140, 150.

[42] G.R. No. 40145, July 29, 1992, 211 SCRA 858, 865-866.

[43] Reyes v. Court of Appeals, 374 Phil. 236, 244 (1999).

[44] TSN, May 11, 1988, p. 15.

[45] Id. at 15-16; TSN, August 10, 1988, p. 11.

[46] TSN, May 11, 1988, p. 19.

[47] Air France v. Carrascoso, 124 Phil. 722, 742 (1966).

[48] Records, p. 152.

[49] CIVIL CODE, Art. 2232.


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