

PHILIPPINE NATIONAL BANK, PETITIONER, VS. MEGA PRIME REALTY AND CHICO-NAZARIO, RESPONDENT.

G.R. No. 173454. October 06, 2008

Ponente: REYES, R.T., J.

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REYES, R.T., J.:

IN sales of realty, a breach in the warranties of the seller entitles the buyer to a proportionate reduction of the purchase price.

The principle is illustrated in these consolidated petitions for review on certiorari of the Decision[1] and Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 66759, which reversed and set aside that of the Regional Trial Court (RTC) in Malabon City. Earlier, the RTC invalidated the sale of shares of stock in PNB Management and Development Corporation (PNB-Madecor) by and between Mega Prime Realty Corporation (Mega Prime), as vendee, and the Philippine National Bank (PNB), as vendor.

The Facts

The facts, as summarized by the appellate court, are as follows:

Mega Prime filed a complaint for annulment of contract before the RTC of Malabon on November 28, 1997. An amended complaint was subsequently filed on February 17, 1998.

In its amended complaint, Mega Prime alleged, among others, that PNB operates a subsidiary by the name of PNB Management and Development Corporation. In line with PNB's privatization plan, it opted to sell or dispose of all its stockholdings over PNB-Madecor to Mega Prime. Thereafter, a deed of sale dated September 27, 1996 was executed between PNB (as vendor) and Mega Prime (as vendee) whereby PNB sold, transferred and conveyed to Mega Prime, on "As is where is" basis, all of its stockholdings in PNB-Madecor for the sum of Five Hundred Five Million Six Hundred Twenty Thousand Pesos (P505,620,000.00). The pertinent portions of the deed of sale are hereunder quoted as follows:

WHEREAS, PNB Management and Development Corporation (PNB-MADECOR), a corporation organized and existing under the laws of the Republic of the Philippines, with principal office at PNB Financial Center, Roxas Boulevard, Pasay City, Metro Manila, is a wholly-owned subsidiary of the vendor;

WHEREAS, the Vendee has offered to buy all of the stockholdings of the Vendor in PNB-MADECOR with an authorized capital stock of P250,000,000.00 and the Vendor has accepted the said offer;

WHEREAS, the parties have previously agreed for the Vendee to pay the Vendor the purchase price of all the said stockholdings of the Vendor, as follows:

- (i) P50,562,000.00 on or before July 18, 1996 which has been paid;
- (ii) P50,562,000.00 on or before September 27, 1996; and
- (iii) Balance of the purchase price through loan with the Vendor;

subject to the condition that if the Vendee fails to pay the second installment, the agreement to sell the said stockholdings will be cancelled and the initial 10% down payment will be forfeited in favor of the Vendor;

NOW, THEREFORE, for and in consideration of the foregoing premises and the sum of PHILIPPINE PESOS: FIVE HUNDRED FIVE MILLION SIX HUNDRED TWENTY (P505,620,000.00), receipt of which in full is hereby acknowledged, the Vendor hereby sells, transfers and conveys, on "As is where is" basis, unto and in favor of the Vendee, its assigns and successors-in-interest, all of the Vendor's stockholdings in PNB-MADECOR, free from any liens and encumbrances, as evidenced by the following Certificates of Stock (the "Certificates of Stock"):

Number

No. of Shares

0010

313,871

0002

1

0003

1

0004

1

0005

1

0006

1

0007

1

0008

1

0009

1

0010

1

0011

1

0012

1

hereto attached as Annex "A," and any subscription rights thereto, subject to the following terms and conditions:

1. The sale of the above stockholdings of the Vendor is on a clean balance sheet, i.e. all assets and liabilities are squared, and no deposits, furniture, fixtures and equipment, including receivables shall be transferred to the Vendee, except real properties and improvements thereon of PNB-MADECOR in Quezon City containing an area of 19,080 sq. m., situated at the corner of Quezon Boulevard (presently Quezon Avenue) and Roosevelt Avenue covered by five (5) titles, namely: TCT Nos. 87881, 87882, 87883, 87884, and 160470, per Annexes "B," "C," "D," "E," and "F" hereof.

Leasehold rights of the Vendor on the Numancia property are excluded from this sale, however, lease of the Mandy Enterprises and sub-leases thereon shall be honored by the Vendor which shall become the sub-lessor of the said property. x x x

Pursuant, therefore, to the terms of the above-quoted deed of sale, the parties also entered into a loan agreement on the same date (September 27, 1996) for P404,496,000.00 and Mega Prime executed in favor of PNB a promissory note for the P404,496,000.00.

Mega Prime further alleged that one of the principal inducements for it to purchase the stockholdings of defendant PNB in PNB-Madecor was to acquire assets of PNB-Madecor, specifically the 19,080 square-meter property located at the corner of Quezon Avenue and Roosevelt Avenue referred to as the Pantranco property.

Mega Prime then entered into a joint venture to develop the Pantranco property. However, Mega Prime's joint venture partner pulled out of the agreement when it learned that the property covered by Transfer Certificate of Title (TCT) No. 160470 was likewise the subject matter of another title registered in the name of the City Government of Quezon City (TCT No. RT-9987 [266573]). Moreover, the lot plan of the Pantranco property shows that TCT No. 160470 covers real property located right in the middle of the Pantranco property rendering nugatory the plans set up by Mega Prime for the said property.

Mega Prime sought the annulment of the deed of sale on ground that PNB misrepresented that among the assets to be acquired by Mega Prime from the sale of shares of stock was the property covered by TCT No. 160470. However, the subject property was outside the commerce of man, the same being a road owned by the Quezon City Government.

Mega Prime also sought reimbursement of the P150,000,000.00 plus legal interest incurred by Mega Prime as expenses for the development of the Pantranco property as actual damages and further sought moral and exemplary damages and attorney's fees.

In its answer to the amended complaint, PNB maintains that the subject matter of the deed of sale was PNB's shares of stock in PNB-Madecor which is a separate juridical entity, and not the properties owned by the latter as evidenced by the deed itself. The sale of PNB's shares of stock in PNB-Madecor to Mega Prime did not dissolve PNB-Madecor. PNB only transferred its control over PNB-Madecor to Mega Prime. The real properties of PNB-Madecor did not change ownership, but remained owned by PNB-Madecor. Moreover, PNB denied that it is liable for P150,000,000.00 allegedly incurred by Mega Prime for the development of the Pantranco property since Mega Prime itself alleged in its amended complaint that no such development could be undertaken.

According to PNB, Mega Prime's accusation that there was fraudulent misrepresentation on the former's part is without basis. The best evidence of their transaction is the subject deed of sale which clearly shows that what PNB sold to Mega Prime was PNB's stockholdings in PNB-Madecor.

As stockholder of PNB-Madecor, PNB did not know nor was it in a position to know, that the Quezon City Government was able to secure another title over the lot covered by TCT No. 160470. Mega Prime, as buyer, bought the shares of stock at its own risk under the caveat emptor rule, more so considering that the sale was made on an "as is where is" basis. Moreover, the fact that the Quezon City Government was able to secure a title over the same lot does not necessarily mean that PNB-Madecor's title to it is void or outside the commerce of man. Only a proper proceeding may determine which of the two (2) titles should prevail over the other. Mega Prime, now as the controlling stockholder of PNB-Madecor, should have instead filed action to quiet PNB-Madecor's title over the said lot.[3]

RTC and CA Dispositions

On December 21, 1999, the RTC gave judgment in favor of Mega Prime and against PNB. The fallo of the RTC decision states:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff and against the defendant, as follows:

- (1) Declaring the Deed of Sale of 27 September 1996 as void and rescinded;
- (2) Ordering the defendant PNB to reimburse plaintiff the legal interest on the amount of ONE HUNDRED FIFTY MILLION PESOS (P150,000,000.00) loan intended by plaintiff in developing the Pantranco properties, as actual damages;
- (3) Ordering defendant PNB to pay plaintiff the sum of FIVE MILLION PESOS (P5,000,000.00) as exemplary damages;
- (4) Ordering defendant PNB to pay plaintiff the sum of ONE HUNDRED THOUSAND PESOS (P100,000.00) as attorney's fees;
- (5) Ordering defendant to restore to plaintiff the sum of ONE HUNDRED ONE MILLION ONE HUNDRED TWENTY-FOUR THOUSAND PESOS (P101,124,000.00) representing the sum actually paid by plaintiff under the subject contract of sale with legal interest thereon reckoned from the date of extra judicial demand made by plaintiff;
- (6) Ordering plaintiff to return the five properties covered by T.C.T. Nos. 87881, 87882, 87883, 87884 and 160470 in favor of the defendant under the principle of mutual restitution;
- (7) Ordering plaintiff to return the stockholdings subject matter of the 27 September 1996 contract of sale in favor of defendant;
- (8) Ordering defendant to pay the costs of suit.

SO ORDERED.[4]

PNB elevated the matter to the CA via Rule 41 of the 1997 Rules of Civil Procedure. In its appeal, PNB contended, inter alia, that what was sold to Mega Prime were the bank's shares of stock in PNB-Madecor, a corporation separate and distinct from PNB; that the Pantranco property was never a consideration in the contract of sale; that Mega Prime is presumed to have undertaken due diligence in ascertaining the ownership of the disputed property, it being a reputable real estate company.

Further, PNB claimed that Mega Prime bought its shares of stock at its own risk under the caveat emptor rule, as the sale was on an "as is where is" basis. That the Quezon City Government was able to secure title over the same lot does not necessarily mean that PNB-Madecor's title to it was void or outside the commerce of man. According to PNB, Mega Prime's remedy, as the new controlling owner of PNB-Madecor, is to file an action for quieting of

its title to the questioned lot.

On January 27, 2006, the CA reversed and nullified the RTC ruling, disposing as follows:

WHEREFORE, based on the above premises, the assailed Decision dated 21 December 1999 of the Regional Trial Court of Malabon, Metro Manila, Branch 72, is hereby REVERSED and SET ASIDE and a new one entered DISMISSING the complaint in Civil Case No. 2793-MN. The counterclaim of PNB is likewise DISMISSED.

SO ORDERED.[5]

Both parties moved for reconsideration of the CA decision. Both motions were, however, denied with finality on July 5, 2006.[6]

Hence, the present recourse by both PNB and Mega Prime.

PNB first filed its petition for review, docketed as G.R. No. 173454, assailing only the CA's dismissal of its counterclaim. In its separate petition for review, docketed as G.R. No. 173456, Mega Prime challenged the reversal by the CA of the RTC decision.

Issues

PNB assigns solely that the CA committed a grave error, giving rise to a question of law, in concluding that Mega Prime's complaint was not a mere ploy to prevent the foreclosure of the pledge and in dismissing PNB's counterclaim, ignoring the documentary evidence proving that Mega Prime's complaint was intended to preempt the foreclosure of the pledge and evade payment of its P404,496,000.00 overdue debt.

For its part, Mega Prime submits that the CA erred in ruling that Mega Prime did not have sufficient grounds to have the deed of sale dated September 27, 1996 annulled.

Stripped to its bare essentials, the Court is tasked to resolve the following questions:

A. Are there grounds for the annulment of the deed of sale between PNB and Mega Prime? and

B. Are PNB and Mega Prime entitled to the damages they respectively claim against each other?

Our Ruling

A. There is no sufficient ground to annul the deed of sale.

There is no basis for a finding of fraud against PNB to invalidate the sale. A perusal of the deed of sale reveals that the sale principally involves the entire shareholdings of PNB in PNB-Madecor, not the properties covered by TCT Nos. 87881, 87882, 87883, 87884 and 160740. Any defect in any of the said titles should not, therefore, affect the entire sale. Further, there is no evidence that PNB was aware of the existence of another title on one of the properties covered by TCT No. 160740 in the name of the Quezon City government before and during the execution of the deed of sale.

Although it is expressly stated in the deed of sale that the transfer of the entire stockholdings of PNB in PNB-Madecor will effectively result in the transfer of the said properties, the discovery of the title under the name of the Quezon City government does not substantially affect the integrity of the object of the sale. This is so because TCT No. 160740 covers only 733.70 square meters of the entire Pantranco property which has a total area of 19,080 square meters.

We quote with approval the CA observations along this line:

Well-settled is the rule that the party alleging fraud or mistake in a transaction bears the burden of proof. The circumstances evidencing fraud are as varied as the people who perpetrate it in each case. It may assume different shapes and forms; it may be committed in as many different ways. Thus, the law requires that it be established by clear and convincing evidence.

Fraud is never lightly inferred; it is good faith that is. Under the Rules of Court, it is presumed that "a person is innocent of crime or wrong" and that "private transactions have been fair and regular." While disputable, these presumptions can be overcome only by clear and preponderant evidence. Applied to contracts, the presumption is in favor of validity and regularity.

In this case, it cannot be said that Mega Prime was able to adduce a preponderance of evidence before the trial court to show that PNB fraudulently misrepresented that it had title or authority to sell the property covered by TCT No. 160470. Nor was Mega Prime able to satisfactorily show that PNB should be held liable for damages allegedly sustained by it.

First, PNB correctly argued that with Mega Prime as a corporation principally engaged in real estate business it is presumed to be experienced in its business and it is assumed that it made the proper appraisal and examination of the properties it would acquire from the sale of shares of stock. In fact, Mega Prime was given copies of the titles to the properties which were attached to the subject deed of sale. In other words, there was full disclosure on the part of PNB of the status of the properties of PNB-Madecor to be transferred to Mega Prime by reason of its purchase of all of PNB's shareholdings in PNB-Madecor.

The general rule is that a person dealing with registered land has a right to rely on the Torrens certificate of title and to dispense with the need of making further inquiries. This rule, however, admits of exceptions: when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry or when the purchaser has knowledge of a defect or the lack of title in his vendor or of sufficient facts to induce a reasonably prudent man to inquire into the status of the title of the property in litigation.

A perusal of TCT No. 160470 would show that the property is registered under the name Marcris Realty Corporation and not under PNB or PNB-Madecor, the alleged owner of the said property. Moreover, TCT No. 160470 explicitly shows on its face that it covers a road lot.

This fact notwithstanding, Mega Prime still opted to buy PNB's shares of stock, investing millions of pesos on the said purchase. Mega Prime cannot therefore claim that it can rely on the face of the title when the same is neither registered under the name of PNB, the vendor of the shares of stock in PNB-Madecor, nor of PNB-Madecor, the alleged owner of the property. This should have forewarned Mega Prime to inquire further into the ownership of PNB-Madecor with respect to TCT No. 160470. And it should not be heard to complain that the property covered by TCT No. 160470 is outside the commerce of man, it being a road, since this fact is evident on the face of TCT No. 160470 itself which describes the property it covers as a road lot.

If, indeed, the principal inducement for Mega Prime to buy PNB's shares of stock in PNB-Madecor was the acquisition of the said properties, Mega Prime should have insisted on putting in writing, whether in the same deed of sale or in a separate agreement, any condition or understanding of the parties regarding the transfer of titles from PNB-Madecor to Mega Prime. In buying the shares of stock with notice of the flaw in the certificate of title of PNB-Madecor, Mega Prime assumed the risks that may attach to the said purchase or said investment. Clearly, under the deed of sale, Mega Prime purchased the shares of stock of PNB in PNB-Madecor on an "as is where is" basis, which should give Mega Prime more reason to investigate and look deeper into the titles of PNB-Madecor.

Second, Mega Prime's remedy is not with PNB. It must be stressed that PNB only sold its shares of stock in PNB-Madecor which remains to be the owner of the lot in question. Although, admittedly, PNB-Madecor is a subsidiary of PNB, this does not necessarily mean that PNB and PNB-Madecor are one and the same corporation.

The mere fact that a corporation owns all of the stocks of another corporation, taken alone is not sufficient to justify their being treated as one entity. If used to perform legitimate functions, a subsidiary's separate existence shall be respected, and the liability of the parent corporation as well as the subsidiary will be confined to those arising in their respective business.

The general rule is that as a legal entity, a corporation has a personality distinct and separate from its individual stockholders or members, and is not affected by the personal rights, obligations and transactions of the latter. Courts may, however, in the exercise of judicial discretion step in to prevent the abuses of separate entity privilege and pierce the veil of corporate fiction.

The following circumstances are useful in the determination of whether a subsidiary is but a mere instrumentality of the parent-corporation and whether piercing of the corporate veil is proper:

- (a) The parent corporation owns all or most of the capital stock of the subsidiary.
- (b) The parent and subsidiary corporations have common directors or officers.
- (c) The parent corporation finances the subsidiary.
- (d) The parent corporation subscribes to all the capital stock of the subsidiary or otherwise causes its incorporation.
- (e) The subsidiary has grossly inadequate capital.
- (f) The parent corporation pays the salaries and other expenses or losses of the subsidiary.
- (g) The subsidiary has substantially no business except with the parent corporation or no assets except those conveyed to or by the parent corporation.
- (h) In the papers of the parent corporation or in the statements of its officers, the subsidiary is described as a department or division of the parent corporation, or its business or financial responsibility is referred to as the parent corporation's own.
- (i) The parent corporation uses the property of the subsidiary as its own.
- (j) The directors or executives of the subsidiary do not act independently in the interest of the subsidiary, but take their orders from the parent corporation.
- (k) The formal legal requirements of the subsidiary are not observed.

Aside from the fact that PNB-Madecor is a wholly-owned subsidiary of PNB, there are no other factors shown to indicate that PNB-Madecor is a mere instrumentality of PNB. Therefore, PNB's separate personality cannot be merged with PNB-Madecor in the absence of sufficient ground to pierce the veil of corporate fiction. It must be noted that at the outset, PNB presented to Mega Prime the titles to the properties. With the exception of one (1) title, TCT No. 160470, the four (4) titles are registered under PNB-Madecor's name and not PNB. PNB correctly observed that Mega Prime's remedy is not to go after PNB who merely sold its shares of stock in PNB-Madecor but to file the appropriate action to remove any cloud in PNB-Madecor's title over TCT No. 160470.

Third, it is significant to note that the deed of sale is a public document duly notarized and acknowledged before a notary public. As such, it has in its favor the presumption of regularity, and it carries the evidentiary weight conferred upon it with respect to its due execution. It is admissible in evidence without further proof of its authenticity and is entitled to full faith and credit upon its face. Thus,

It has long been settled that a public document executed and attested through the intervention of the notary public is evidence of the facts in clear, unequivocal manner therein expressed. It has in its favor the presumption of regularity. To contradict all these, there must be evidence that is clear, convincing and more than merely preponderant. The evidentiary value of a notarial document guaranteed by public attestation in accordance with law must be sustained in full force and effect unless impugned by strong, complete and conclusive proof.

Based on the above arguments, there is no reason to annul the said deed considering that both parties freely and fairly entered into the said contract presumptively knowing the consequences of their acts.

Lastly, Mega Prime, using its business judgment, entered into a sale transaction with PNB respecting shares of stock in PNB-Madecor, in anticipation of owning properties owned by PNB-Madecor. However, it was found out later that a title in the name of the Quezon City Government casts a cloud over PNB-Madecor's title to the so-called Pantranco Properties. This fact alone cannot justify annulment of a valid and consummated contract of sale. Mega Prime cannot be relieved from its obligation, voluntarily assumed, under the said contract simply because the contract turned out to be a poor business judgment or unwise investment. It should have been more prudent or careful in making such a huge investment worth millions of pesos. It should have conducted its own due diligence, so to speak. By signing the deed of sale, Mega Prime accepted the risk of an "as is where is" arrangement with respect to the sale of shares of stock therein.

The contract has the force of law between the parties and they are expected to abide in good faith by their respective contractual commitments, not weasel out of them. Just as nobody can be forced to enter into a contract, in the same manner, once a contract is entered into, no party can renounce it unilaterally or without the consent of the other. It is a general principle of law that no one may be permitted to change his mind or disavow and go back upon his own acts, or to proceed contrary thereto, to the prejudice of the other party.

Contrary to the trial court's finding, We find that there is no sufficient basis to annul the Deed of Sale dated 27 September 1996. Mega Prime failed to sufficiently prove that PNB was guilty of misrepresentation or fraud with respect to the said transaction.[7]

Nevertheless, the Court holds that there was a breach in the warranties of the seller PNB. Resultantly, a reduction in the sale price should be decreed.

One of the express conditions in the deed of sale is the transfer of the properties under TCT Nos. 87881, 87882, 87883, 87884 and 160740 in the name of Mega Prime:

- The Sale of the above stockholdings of the vendor is on a clean balance sheet, i.e., all assets and liabilities are squared, and no deposits, furniture, fixtures and equipment, including receivables shall be transferred to the vendee, except real properties and improvements thereon of PNB-Madecor in Quezon City containing an area of 19,080 sq. m., situated at the corner of Quezon Boulevard (presently Quezon Avenue) and Roosevelt Avenue covered by five (5) titles namely: TCT Nos. 87881, 87882, 87883, 87884, and 160470 x x x.[8]

Verily, an important sense of the deed of sale is the transfer of ownership over the subject properties to Mega Prime. Clearly, the failure of the seller PNB to effect a change in ownership of the subject properties amounts to a hidden defect within the contemplation of Articles 1547 and 1561 of the New Civil Code.

The said provisions of law read:

Art. 1547. In a contract of sale, unless a contrary intention appears, there is:

(1) An implied warranty on the part of the seller that he has a right to sell the thing at the time when the ownership is to pass, and that the buyer shall from that time have and enjoy the legal and peaceful possession of the thing;

(2) An implied warranty that the thing shall be free from any hidden faults or defects, or any charge or encumbrance not declared or known to the buyer.

This article shall not, however, be held to render liable a sheriff, auctioneer, mortgagee, pledgee, or other person professing to sell by virtue of authority in fact or law, for the sale of a thing in which a third person has a legal or equitable interest.[9]

x x x x

Art. 1561. The vendor shall be responsible for warranty against the hidden defects which the thing sold may have, should they render it unfit for the use for which it is intended, or should they diminish its fitness for such use to such an extent that, had the vendee been aware thereof, he would not have acquired it or would have given a lower price for it; but said vendor shall not be answerable for patent defects or those which may be visible, or for those which are not visible if the vendee is an expert who, by reason of his trade or profession, should have known them.[10]

Up to now, the title of the said property is still under the name of the former registered owner Marcris Realty Corporation. Mega Prime's subsequent discovery that the property covered by TCT No. 160740 is covered by a title pertaining to the City Government of Quezon City coupled with PNB's inability up to the present to submit a title in the name of PNB-Madecor constitutes a breach of warranty. Hence, a proportionate reduction in the consideration of the sale is justified, applying the Civil Code principle that "no person shall be enriched at the expense of another." [11]

The sale of shares of stock was undertaken to effect the transfer of the subject properties with a total area of 19,080 square meters. When PNB failed to deliver the title to the property covered by TCT No. 160740, with an area of 733.70 square meters, PNB violated an express warranty under the deed of sale. Thus, the total consideration in the Deed of Sale should be proportionately reduced equivalent to the value of the property covered by TCT No. 160740.

Records bear out that the total consideration for the sale contract is P505,620,000.00. The object is the 19,080-square-meter Pantranco property. Simple division or mathematical computation yields that the property has a value of P26,500.00 per square meter. Considering that the area covered by TCT No. 160740 is 733.70 square meters, the purchase price should be proportionately reduced by P19,443,050.00, an amount arrived at after multiplying P26,500.00 by 733.70 or vice versa.

Necessarily, Mega Prime cannot be considered in default with respect to its obligation to petitioner bank in view of the modification of the stipulated consideration.

B. As to the parties' claims of damages against each other, the Court fully agrees with the CA that both should be dismissed for lack of factual and legal bases.

The CA refused to award actual and exemplary damages to Mega Prime. Said the appellate court:

Necessarily, therefore, PNB cannot be made liable for actual damages allegedly sustained by Mega Prime. The latter's allegation that it incurred expenses for the development of the Pantranco Property in the amount of P150,000,000.00 deserves scant consideration.

Basic is the jurisprudential principle that in determining actual damages, the courts cannot rely on mere assertions, speculations, conjectures, or guesswork but must depend on competent proof or the best obtainable evidence of the actual amount of loss.

Aside from the site development plan adduced by Mega Prime, no other proof was presented by Mega Prime to show that it had incurred expenses for the development of the Pantranco property. In fact, Mega Prime itself alleged that its partner pulled out from the project and the development of the Pantranco Property could not be undertaken after knowledge of the alleged defective title of PNB-Madecor. Without sufficient proof that Mega Prime incurred said expenses and that it was due to PNB's fault, then the latter cannot be held liable for such unsupported allegation.

Regarding the award of exemplary damages, the Court likewise finds that PNB cannot be made liable for exemplary damages and attorney's fees, there being no adequate proof to show that PNB was in bad faith when it entered into the contract of sale with Mega Prime.

It is a requisite in the grant of exemplary damages that the act of the offender must be accompanied by bad faith or done in wanton, fraudulent or malevolent manner. On the other hand, attorney's fees may be awarded only when a party is compelled to litigate or to incur expenses to protect his interest by reason of an unjustified act of the other party, as when the defendant acted in gross and evident bad faith in refusing the plaintiff's plainly valid, just and demandable claim. Such circumstances were not proved in this case.[12]

Along the same vein, in dismissing PNB's counterclaims, the CA explained:

In the same vein, We find no reason to hold Mega Prime liable on the counterclaim of PNB for moral and exemplary damages and attorney's fees. PNB's counterclaim is anchored on the alleged bad faith and ill motive of Mega Prime in filing the complaint which allegedly was done by Mega Prime to preempt PNB's foreclosure of the pledge of its shares of stock in PNB-Madecor. According to PNB, Mega Prime filed its complaint against PNB after Mega Prime received PNB's letter dated December 11, 1997 reminding it of the maturity date on November 26, 1997 of its P404,496,000.00 loan with PNB, evidently to prevent PNB from foreclosing the pledge.

We are not persuaded.

The records show that Mega Prime filed its complaint on November 28, 1997, and it was preceded by Mega Prime's demand letter dated November 3, 1997 addressed to PNB, informing PNB of Mega Prime's discovery that the property covered by TCT No. 160470 is actually owned by the Quezon City Government. In said letter, Mega Prime made a demand upon PNB to pay to Mega Prime the amounts of P101,124,000.00 as actual damages and P48,876,000.00 as other expenses, otherwise legal action shall be instituted against PNB.

Clearly, Mega Prime's complaint was filed prior to PNB's letter dated December 11, 1997. Thus, PNB's allegation that Mega Prime filed its complaint as a mere ploy to prevent foreclosure of the pledge and thus evade payment of its overdue obligation is not quite true. Accordingly, in the absence of ample proof that Mega Prime acted in gross and evident bad faith in instituting the complaint against PNB, there is no justification to grant the counterclaim of PNB.[13]

WHEREFORE, premises considered, the appealed decision is **AFFIRMED** with **MODIFICATION** in that the consideration in the Deed of Sale dated September 27, 1996 shall be proportionately reduced by P19,443,050.00, the value corresponding to the property covered by TCT No. 160740.

SO ORDERED.

Austria-Martinez[*], (Acting Chairperson), Quisumbing[**], Chico-Nazario, and Nachura, JJ., concur.

[*] Vice Associate Justice Consuelo Ynares-Santiago, Chairperson, who inhibited herself from these cases as she is related to the former counsel of one of the parties.

[**] Designated as additional member.

[1] Rollo (G.R. No. 173454), pp. 30-50. Dated January 27, 2006. Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Edgardo P. Cruz and Sesinando E. Villon, concurring.

[2] Id. at 52-54. Dated July 5, 2006.

[3] Id. at 32-35.

[4] Id. at 30-31.

[5] Id. at 49.

[6] Id. at 52-54.

[7] Id. at 42-47.

[8] Id. at 8.

[9] New Civil Code, Art. 1547.

[10] Id., Art. 1561.

[11] Id., Art. 22.

[12] Rollo (G.R. No. 173454), pp. 47-48.

[13] Id. at 48-49.

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