

**OPHELIA L. TUATIS, PETITIONER, VS. SPOUSES ELISEO ESCOL AND
VISMINDA ESCOL; HONORABLE COURT OF APPEALS, 22ND DIVISION,
CAGAYAN DE ORO CITY; REGIONAL TRIAL COURT, BRANCH 11,
SIND...**

G.R. No. 175399. October 27, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This Petition for Certiorari and Mandamus[1] under Rule 65 of the Rules of Court seeks the annulment of the following Resolutions of the Court of Appeals in CA-G.R. SP No. 00737-MIN: (a) Resolution[2] dated 10 February 2006 dismissing the Petition for Certiorari, Prohibition and Mandamus with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction of herein petitioner Ophelia L. Tuatis (Tuatis); (b) Resolution[3] dated 25 July 2006 denying Tuatis' Motion for Reconsideration of the Resolution dated 10 February 2006; and (c) Resolution[4] dated 9 October 2006 denying Tuatis' Motion for Leave to File a Second Motion for Reconsideration. The instant Petition further prays for the annulment of the Order[5] dated 26 September 2005 of the Regional Trial Court (RTC) of Sindangan, Zamboanga del Norte, Branch 11, in Civil Case No. S-618, ordering the Sheriff to immediately serve the Writ of Execution issued on 7 March 2002.

The dispute arose from the following factual and procedural antecedents:

On 18 June 1996, Tuatis filed a Complaint for Specific Performance with Damages[6] against herein respondent Visminda Escol (Visminda) before the RTC, docketed as Civil Case No. S-618.

Tuatis alleged in her Complaint that sometime in November 1989, Visminda, as seller, and Tuatis, as buyer, entered into a Deed of Sale of a Part of a Registered Land by Installment[7] (Deed of Sale by Installment). The subject matter of said Deed was a piece of real property situated in Poblacion, Sindangan, Zamboanga del Norte and more particularly described as "[a] part of a registered land being known as Lot No. 251, Pls-66 covered under OCT [Original Certificate of Title] No. P-5421; x x x with an area of THREE HUNDRED (300) square meters, more or less" (subject property).

The significant portions of the Deed of Sale by Installment stated:

That for and in consideration of the sum of TEN THOUSAND PESOS (P10,000.00), Philippine currency, the SELLER [Visminda[8]] hereby SELLS to the BUYER [Tuatis], the above-described parcel of land under the following terms and conditions:

- That the BUYER [Tuatis] shall pay to the SELLER [Visminda] the amount of THREE THOUSAND PESOS (P3,000.00), as downpayment;
- That the BUYER [Tuatis] shall pay to the SELLER [Visminda] the amount of FOUR THOUSAND PESOS (P4,000.00), on or before December 31, 1989;

- That the remaining balance of THREE THOUSAND PESOS (P3,000.00) shall be paid by the BUYER [Tuatis] to the SELLER [Visminda] on or before January 31, 1990;
- That failure of the BUYER [Tuatis] to pay the remaining balance within the period of three months from the period stipulated above, then the BUYER [Tuatis] shall return the land subject of this contract to the SELLER [Visminda] and the SELLER [Visminda] [shall] likewise return all the amount paid by the BUYER [Tuatis]. [9]

Tuatis claimed that of the entire purchase price of P10,000.00, she had paid Visminda P3,000.00 as downpayment. The exact date of said payment was not, however, specified. Subsequently, Tuatis paid P3,000.00 as installment on 19 December 1989, and another P1,000.00 installment on 17 February 1990. Tuatis averred that she paid Visminda the remaining P3,000.00 on 27 February 1990 in the presence of Eric Selda (Eric), a clerk in the law office of one Atty. Alanixon Selda. In support of this averment, Tuatis attached to her Complaint a certification[10] executed by Eric on 27 May 1996.

In the meantime, Tuatis already took possession of the subject property and constructed a residential building thereon.

In 1996, Tuatis requested Visminda to sign a prepared absolute deed of sale covering the subject property, but the latter refused, contending that the purchase price had not yet been fully paid. The parties tried to amicably settle the case before the Lupon Barangay, to no avail.[11]

Tuatis contended that Visminda failed and refused to sign the absolute deed of sale without any valid reason. Thus, Tuatis prayed that the RTC order Visminda to do all acts for the consummation of the contract sale, sign the absolute deed of sale and pay damages, as well as attorney's fees.

In her Answer,[12] Visminda countered that, except for the P3,000.00 downpayment and P1,000.00 installment paid by Tuatis on 19 December 1989 and 17 February 1990,[13] respectively, Tuatis made no other payment to Visminda. Despite repeated verbal demands, Tuatis failed to comply with the conditions that she and Visminda agreed upon in the Deed of Sale by Installment for the payment of the balance of the purchase price for the subject property. Visminda asked that the RTC dismiss Tuatis' Complaint, or in the alternative, order Tuatis to return the subject property to Visminda after Visminda's reimbursement of the P4,000.00 she had received from Tuatis.

After trial, the RTC rendered a Decision[14] on 29 April 1999 in Civil Case No. S-618 in Visminda's favor. The RTC concluded:

Under the facts and circumstances, the evidence for [Tuatis] has not established by satisfactory proof as to (sic) her compliance with the terms and conditions setforth (sic) in [the Deed of Sale by Installment] x x x.

x x x x

In contracts to sell, where ownership is retained by the seller and is not to pass until the full payment, such payment, as we said, is a positive suspensive condition, the failure of which is not a breach, casual or serious, but simply an event that prevented the obligation of the vendor to convey title from acquiring binding force x x x.

x x x x

As the contract x x x is clear and unmistakable and the terms employed therein have not been shown to belie or otherwise fail to express the true intention of the parties, and that the deed has not been assailed on the ground of mutual mistake which would require its reformation, [the] same should be given its full force and effect.

EVIDENCE (sic) at hand points of no full payment of the price, hence No. 4 of the stipulation applies[,] which

provides:

"That failure (sic) of the Buyer [Tuatis] to pay the remaining balance within the period of three months from the period stipulated above, then the Buyer [Tuatis] shall return the land subject of this Contract to the Seller [Visminda] and the Seller [Visminda] [shall] likewise return all the (sic) amount paid by the Buyer [Tuatis]."

This stipulation is the law between the [Buyer] and [Seller], and should be complied with in good faith x x x.

[Tuatis] constructed the building x x x in bad faith for, (sic) she had knowledge of the fact that the Seller [Visminda] is still the absolute owner of the subject land. There was bad faith also on the part of [Visminda] in accordance with the express provisions of Article 454 [of the New Civil Code][15] since [she] allowed [Tuatis] to construct the building x x x without any opposition on [her] part and so occupy it. The rights of the parties must, therefore, be determined as if they both had acted in bad faith. Their rights in such cases are governed by Article 448 of the New Civil Code of the Philippines.[16]

The RTC decreed the dismissal of Tuatis' Complaint for lack of merit, the return by Tuatis of physical possession of the subject property to Visminda, and the return by Visminda of the P4,000.00 she received from Tuatis.

Tuatis filed an appeal with the Court of Appeals, docketed as CA-G.R. CV No. 65037. In a Resolution[17] dated 29 August 2000, however, the appellate court dismissed the appeal for failure of Tuatis to serve and file her appellant's brief within the second extended period for the same. An Entry of Judgment[18] was made in CA-G.R. CV No. 65037 on 29 September 2000, as a result of which, the appealed RTC Decision dated 29 April 1999 in Civil Case No. S-618 became final and executory.

Visminda filed a Motion for Issuance of a Writ of Execution[19] before the RTC on 14 January 2002. The RTC granted Visminda's Motion in a Resolution dated 21 February 2002, and issued the Writ of Execution[20] on 7 March 2002.

Tuatis thereafter filed before the RTC on 22 April 2002 a Motion to Exercise Right under Article 448 of the Civil Code of the Philippines.[21] Tuatis moved that the RTC issue an order allowing her to buy the subject property from Visminda. While Tuatis indeed had the obligation to pay the price of the subject property, she opined that such should not be imposed if the value of the said property was considerably more than the value of the building constructed thereon by Tuatis. Tuatis alleged that the building she constructed was valued at P502,073.00,[22] but the market value of the entire piece of land measuring 4.0144 hectares, of which the subject property measuring 300 square meters formed a part, was only about P27,000.00.[23] Tuatis maintained that she then had the right to choose between being indemnified for the value of her residential building or buying from Visminda the parcel of land subject of the case. Tuatis stated that she was opting to exercise the second option.

On 20 December 2004, Visminda deposited the amount of P4,000.00 to the office of the Clerk of Court of the RTC, pursuant to the Decision of the trial court dated 29 April 1999.[24]

In the intervening time, the Writ of Execution issued on 7 March 2002 was yet to be served or implemented by the Sheriff. This prompted Visminda to write a letter to the Office of the Court Administrator (OCA) to complain about the said delay. The OCA endorsed the letter to the RTC.

On 26 September 2005, the RTC issued an Order[25] directing the Sheriff to immediately serve or enforce the Writ of Execution previously issued in Civil Case No. S-618, and to make a report and/or return on the action taken thereon within a period of fifteen (15) days from receipt of the order.

On 10 October 2005, Tuatis filed before the RTC a Motion for Reconsideration[26] of the Order dated 26 September 2005, praying that the same be set aside in view of the pendency of her previous Motion to Exercise Right under Article 448 of the Civil Code of the Philippines. However, before the RTC could rule upon Tuatis'

Motion for Reconsideration, the Sheriff enforced the Writ of Execution on 27 October 2005 and submitted his Return to the RTC on 2 November 2005, reporting that the subject writ was fully satisfied.

Tuatis immediately filed with the Court of Appeals a Petition for Certiorari, Prohibition and Mandamus with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction,[27] which was docketed as CA-G.R. No. 00737-MIN. Tuatis sought in said Petition the annulment of the RTC Order dated 26 September 2005, as well as the issuance of an order commanding the RTC and the Sheriff to desist from undertaking any further proceedings in Civil Case No. S-618, and an order directing the RTC to determine the rights of the parties under Article 448 of the Civil Code.

In a Resolution[28] dated 10 February 2006, the Court of Appeals dismissed outright Tuatis' Petition for failure to completely pay the required docket fees, to attach a certified true or authenticated copy of the assailed RTC Order dated 26 September 2005, and to indicate the place of issue of her counsel's IBP and PTR Official Receipts.

Tuatis filed a Motion for Reconsideration[29] of the Resolution dated 10 February 2006, but said Motion was denied by the appellate court in another Resolution dated 25 July 2006 on the ground that Tuatis had not taken any action to rectify the infirmities of her Petition.

Tuatis subsequently filed a Motion for Leave to File a Second Motion for Reconsideration,[30] but it was similarly denied by the Court of Appeals in a Resolution dated 9 October 2006, as Section 2, Rule 52[31] of the Rules of Court proscribes the filing of a second motion for reconsideration.

Hence, Tuatis filed the instant Petition, principally arguing that Article 448 of the Civil Code must be applied to the situation between her and Visminda.

According to Tuatis, grave abuse of discretion, amounting to lack or excess of their jurisdiction, was committed by the RTC in issuing the Order dated 26 September 2005, and by the Sheriff in enforcing the Writ of Execution on 27 October 2005. Tuatis insists that the Motion for Reconsideration of the Order dated 26 September 2005 that she filed on 10 October 2005 legally prevented the execution of the RTC Decision dated 29 April 1999, since the rights of the parties to the case had yet to be determined pursuant to Article 448 of the Civil Code.[32] Tuatis reiterates that the building she constructed is valued at P502,073.00, per assessment of the Municipal Assessor of Sindangan, Zamboanga del Norte; while the entire piece of land, which includes the subject property, has a market value of only about P27,000.00, based on Tax Declaration No. 12464 issued in the year 2000.[33] Such being the case, Tuatis posits that she is entitled to buy the land at a price to be determined by the Court or, alternatively, she is willing to sell her house to Visminda in the amount of P502,073.00.

In addition, Tuatis attributes grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Court of Appeals for dismissing outright her Petition for Certiorari, Prohibition and Mandamus with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction, and subsequently denying her Motion for Reconsideration and Motion for Leave to File a Second Motion for Reconsideration.

The Court grants the present Petition but for reasons other than those proffered by Tuatis.

Procedural deficiencies of Tuatis' Petition before the Court of Appeals

It is true that Tuatis committed several procedural faux pas that would have, ordinarily, warranted the dismissal of her Petition in CA-G.R. No. 00737-MIN before the Court of Appeals.

In its Resolution dated 10 February 2006, the Court of Appeals dismissed outright the Petition for Certiorari, Prohibition and Mandamus with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction filed by Tuatis for failure to comply with the following requirements for such a petition:

(a) to completely pay the required docket fees, (b) to attach a certified true or authenticated copy of the assailed RTC Order dated 26 September 2005, and (c) to indicate the place of issue of her counsel's IBP and PTR Official Receipts.

Section 3, Rule 46 of the Rules of Court lays down the requirements for original cases filed before the Court of Appeals and the effect of non-compliance therewith, relevant portions of which are reproduced below:

SEC. 3. Contents and filing of petition; effect of non-compliance with requirements. - x x x.

x x x x

It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. The certification shall be accomplished by the proper clerk of court or by his duly authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the original.

x x x x

The petitioner shall pay the corresponding docket and other lawful fees to the clerk of court and deposit the amount of P500.00 for costs at the time of the filing of the petition.

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition. (Emphases ours.)

The sound reason behind the policy of the Court in requiring the attachment to the petition for certiorari, prohibition, mandamus, or quo warranto of a clearly legible duplicate original or certified true copy of the assailed judgment or order, is to ensure that the said copy submitted for review is a faithful reproduction of the original, so that the reviewing court would have a definitive basis in its determination of whether the court, body, or tribunal which rendered the assailed judgment or order committed grave abuse of discretion.[34] Also, the Court has consistently held that payment of docket fees within the prescribed period is jurisdictional and is necessary for the perfection of an appeal.[35]

Indeed, the last paragraph of Section 3, Rule 46 states that non-compliance with any of the requirements stated therein shall constitute sufficient ground for the dismissal of the petition. However, the Court, in several cases,[36] also declared that said provision must not be taken to mean that the petition shall be automatically dismissed in every instance of non-compliance. The power conferred upon the Court of Appeals to dismiss an appeal, or even an original action, as in this case, is discretionary and not merely ministerial. With that affirmation comes the caution that such discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case.[37]

It must be borne in mind that the rules of procedure are intended to promote, rather than frustrate, the ends of justice, and while the swift unclogging of court dockets is a laudable objective, it, nevertheless, must not be met at the expense of substantial justice. Technical and procedural rules are intended to help secure, not suppress, the cause of justice; and a deviation from the rigid enforcement of the rules may be allowed to attain that prime objective for, after all, the dispensation of justice is the core reason for the existence of courts.[38]

Hence, technicalities must be avoided. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice. A litigation is not a game of technicalities. Lawsuits, unlike duels,

are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. Litigations must be decided on their merits and not on technicality. Every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override, substantial justice. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage, of justice.[39]

In this case, the Court finds that the Court of Appeals committed grave abuse of discretion in focusing on the procedural deficiencies of Tuatis' Petition and completely turning a blind eye to the merits of the same. The peculiar circumstances of the present case and the interest of substantial justice justify the setting aside, pro hac vice, of the procedural defects of Tuatis' Petition in CA-G.R. No. 00737-MIN.

Perusal of the RTC Decision dated
29 April 1999

The RTC, in the body of its Decision dated 29 April 1999 in Civil Case No. S-618, found that Tuatis breached the conditions stipulated in the Deed of Sale by Installment between her and Visminda; but since both Tuatis and Visminda were guilty of bad faith, "[t]heir rights in such cases are governed by Article 448 of the New Civil Code of the Philippines." [40]

Article 448 of the Civil Code, referred to by the RTC, provides:

ART. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof. (Emphases supplied.)

According to the aforequoted provision, the landowner can choose between appropriating the building by paying the proper indemnity for the same, as provided for in Articles 546[41] and 548[42] of the Civil Code; or obliging the builder to pay the price of the land, unless its value is considerably more than that of the structures, in which case the builder in good faith shall pay reasonable rent.[43]

The Court notes, however, that the RTC, in the dispositive portion of its 29 April 1999 Decision, which exactly reads -

WHEREFORE, premises studiedly considered, judgment is hereby rendered as follows:

- (1) DISMISSING the Complaint for lack of merit;
- (2) ORDERING [Tuatis] to return the physical possession of the land in question to [Visminda]; and,
- (3) ORDERING [Visminda] to return the P4,000.00 she received as evidenced by Exhibit "B" and Exhibit "C" [44] to [Tuatis].[45]

utterly failed to make an adjudication on the rights of Tuatis and Visminda under Article 448 of the Civil Code. It would seem that the decretal part of said RTC judgment was limited to implementing the following paragraph in the Deed of Sale by Installment:

- That failure of the BUYER [Tuatis] to pay the remaining balance within the period of three months from the period stipulated above, then the BUYER [Tuatis] shall return the land subject of this contract to the SELLER [Visminda] and the SELLER [Visminda] [shall] likewise return all the amount paid by the BUYER [Tuatis].^[46]

without considering the effects of Article 448 of the Civil Code.

It was this apparent incompleteness of the fallo of the RTC Decision dated 29 April 1999 that resulted in the present controversy, and that this Court is compelled to address for a just and complete settlement of the rights of the parties herein.

Finality of the RTC Decision dated
19 April 1999

The Court has not lost sight of the fact that the RTC Decision dated 29 April 1999 in Civil Case No. S-618 already became final and executory in view of the dismissal by the appellate court of Tuatis' appeal in CA-G.R. CV No. 650307 and the entry of judgment made on 29 September 2000.

Nothing is more settled in law than that when a final judgment is executory, it thereby becomes immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest Court of the land. The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time. The only recognized exceptions are the corrections of clerical errors or the making of the so-called nunc pro tunc entries, in which case there is no prejudice to any party, and, of course, where the judgment is void.^[47]

Equally well-settled is the rule that the operative part in every decision is the dispositive portion or the fallo, and where there is conflict between the fallo and the body of the decision, the fallo controls. This rule rests on the theory that the fallo is the final order, while the opinion in the body is merely a statement, ordering nothing.^[48]

Jurisprudence also provides, however, that where there is an ambiguity caused by an omission or a mistake in the dispositive portion of the decision, the Court may clarify such an ambiguity by an amendment even after the judgment has become final. In doing so, the Court may resort to the pleadings filed by the parties and the findings of fact and the conclusions of law expressed in the text or body of the decision.^[49] Therefore, even after the RTC Decision dated 29 April 1999 had already become final and executory, this Court cannot be precluded from making the necessary amendment thereof, so that the fallo will conform to the body of the said decision.

If the Court does not act upon the instant Petition, Tuatis loses ownership over the building she constructed, and in which she has been residing, allegedly worth P502,073.00, without any recompense therefor whatsoever; while Visminda, by returning Tuatis' previous payments totaling P4,000.00, not just recovers the subject property, but gains the entire building without paying indemnity for the same. Hence, the decision of the Court to give due course to the Petition at bar, despite the finality of the RTC Decision dated 29 April 1999, should not be viewed as a denigration of the doctrine of immutability of final judgments, but a recognition of the equally sacrosanct doctrine that a person should not be allowed to profit or enrich himself inequitably at another's expense.

Furthermore, the Court emphasizes that it is not even changing or reversing any of the findings of fact and law of

the RTC in its Decision dated 29 April 1999. This Court is still bound by said RTC judgment insofar as it found that Tuatis failed to fully pay for the price of the subject property; but since both Tuatis and Visminda were in bad faith, Article 448 of the Civil Code would govern their rights. The Court herein is simply clarifying or completing the obviously deficient decretal portion of the decision, so that said portion could effectively order the implementation of the actual ruling of the RTC, as clearly laid down in the rationale of the same decision.

Applying Article 448 and other related provisions of the Civil Code

Taking into consideration the provisions of the Deed of Sale by Installment and Article 448 of the Civil Code, Visminda has the following options:

Under the first option, Visminda may appropriate for herself the building on the subject property after indemnifying Tuatis for the necessary^[50] and useful expenses^[51] the latter incurred for said building, as provided in Article 546 of the Civil Code.

It is worthy to mention that in *Pecson v. Court of Appeals*,^[52] the Court pronounced that the amount to be refunded to the builder under Article 546 of the Civil Code should be the current market value of the improvement, thus:

The objective of Article 546 of the Civil Code is to administer justice between the parties involved. In this regard, this Court had long ago stated in *Rivera vs. Roman Catholic Archbishop of Manila* [40 Phil. 717 (1920)] that the said provision was formulated in trying to adjust the rights of the owner and possessor in good faith of a piece of land, to administer complete justice to both of them in such a way as neither one nor the other may enrich himself of that which does not belong to him. Guided by this precept, it is therefore the current market value of the improvements which should be made the basis of reimbursement. A contrary ruling would unjustly enrich the private respondents who would otherwise be allowed to acquire a highly valued income-yielding four-unit apartment building for a measly amount. Consequently, the parties should therefore be allowed to adduce evidence on the present market value of the apartment building upon which the trial court should base its finding as to the amount of reimbursement to be paid by the landowner. (Emphasis ours.)

Until Visminda appropriately indemnifies Tuatis for the building constructed by the latter, Tuatis may retain possession of the building and the subject property.

Under the second option, Visminda may choose not to appropriate the building and, instead, oblige Tuatis to pay the present or current fair value of the land.^[53] The P10,000.00 price of the subject property, as stated in the Deed of Sale on Installment executed in November 1989, shall no longer apply, since Visminda will be obliging Tuatis to pay for the price of the land in the exercise of Visminda's rights under Article 448 of the Civil Code, and not under the said Deed. Tuatis' obligation will then be statutory, and not contractual, arising only when Visminda has chosen her option under Article 448 of the Civil Code.

Still under the second option, if the present or current value of the land, the subject property herein, turns out to be considerably more than that of the building built thereon, Tuatis cannot be obliged to pay for the subject property, but she must pay Visminda reasonable rent for the same. Visminda and Tuatis must agree on the terms of the lease; otherwise, the court will fix the terms.

Necessarily, the RTC should conduct additional proceedings before ordering the execution of the judgment in Civil Case No. S-618. Initially, the RTC should determine which of the aforementioned options Visminda will choose. Subsequently, the RTC should ascertain: (a) under the first option, the amount of indemnification Visminda must pay Tuatis; or (b) under the second option, the value of the subject property vis-à-vis that of the building, and depending thereon, the price of, or the reasonable rent for, the subject property, which Tuatis must

pay Visminda.

The Court highlights that the options under Article 448 are available to Visminda, as the owner of the subject property. There is no basis for Tuatis' demand that, since the value of the building she constructed is considerably higher than the subject property, she may choose between buying the subject property from Visminda and selling the building to Visminda for P502,073.00. Again, the choice of options is for Visminda, not Tuatis, to make. And, depending on Visminda's choice, Tuatis' rights as a builder under Article 448 are limited to the following: (a) under the first option, a right to retain the building and subject property until Visminda pays proper indemnity; and (b) under the second option, a right not to be obliged to pay for the price of the subject property, if it is considerably higher than the value of the building, in which case, she can only be obliged to pay reasonable rent for the same.

The rule that the choice under Article 448 of the Civil Code belongs to the owner of the land is in accord with the principle of accession, i.e., that the accessory follows the principal and not the other way around. Even as the option lies with the landowner, the grant to him, nevertheless, is preclusive.[54] The landowner cannot refuse to exercise either option and compel instead the owner of the building to remove it from the land.[55]

The *raison d'être* for this provision has been enunciated thus: Where the builder, planter or sower has acted in good faith, a conflict of rights arises between the owners, and it becomes necessary to protect the owner of the improvements without causing injustice to the owner of the land. In view of the impracticability of creating a state of forced co-ownership, the law has provided a just solution by giving the owner of the land the option to acquire the improvements after payment of the proper indemnity, or to oblige the builder or planter to pay for the land and the sower the proper rent. He cannot refuse to exercise either option. It is the owner of the land who is authorized to exercise the option, because his right is older, and because, by the principle of accession, he is entitled to the ownership of the accessory thing.[56]

Visminda's Motion for Issuance of Writ of Execution cannot be deemed as an expression of her choice to recover possession of the subject property under the first option, since the options under Article 448 of the Civil Code and their respective consequences were also not clearly presented to her by the 19 April 1999 Decision of the RTC. She must then be given the opportunity to make a choice between the options available to her after being duly informed herein of her rights and obligations under both.

As a final note, the directives given by the Court to the trial court in *Depra v. Dumlao*[57] may prove useful as guidelines to the RTC herein in ensuring that the additional proceedings for the final settlement of the rights of the parties under Article 448 of the Civil Code shall be conducted as thoroughly and promptly as possible.

WHEREFORE, premises considered, the Court:

- (1) GRANTS the instant Petition;
- (2) ANNULS AND SETS ASIDE (a) the Resolution dated 21 February 2002 of the Regional Trial Court of Sindangan, Zamboanga del Norte, Branch 11, ordering the issuance of a writ for the execution of the Decision dated 19 April 1999 of the said trial court in Civil Case No. S-618; (b) the Writ of Execution issued on 7 March 2002; and (c) the actions undertaken by the Sheriff to enforce the said Writ of Execution;
- (3) DIRECTS the Regional Trial Court of Sindangan, Zamboanga del Norte, Branch 11, to conduct further proceedings to determine with deliberate dispatch: (a) the facts essential to the proper application of Article 448 of the Civil Code, and (b) respondent Visminda Escol's choice of option under the same provision; and
- (4) Further DIRECTS the Regional Trial Court of Sindangan, Zamboanga del Norte, Branch 11, to undertake the

implementation of respondent Visminda Escol's choice of option under Article 448 of the Civil Code, as soon as possible.

No costs.

SO ORDERED.

Quisumbing,[*] Carpio, (Chairperson), Peralta, and Abad,**] JJ., concur.

[*] Per Special Order No. 755, dated 12 October 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Leonardo A. Quisumbing to replace Associate Justice Antonio Eduardo B. Nachura, who is on official leave.

[**] Per Special Order No. 753, dated 12 October 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Roberto A. Abad to replace Associate Justice Presbitero J. Velasco, Jr., who is on official leave.

[1] Rollo, pp. 4-22.

[2] Penned by Associate Justice Ricardo R. Rosario with Associate Justices Romulo V. Borja and Myrna Dimaranan-Vidal, concurring; rollo, pp. 38-39.

[3] Rollo, pp. 45-46.

[4] Id. at 58.

[5] Id. at 55.

[6] CA rollo, pp. 17-20.

[7] Id. at 21.

[8] In the Deed of Sale of a Part of a Registered Land by Installment, Visminda was referred to as "Visminda Crampatanta, x x x married to Eliseo Escol x x x."

[9] CA rollo, p. 21.

[10] Id. at 22A-23.

[11] Id. at 24.

[12] Id. at 25-29.

[13] The payments were each evidenced by a certification signed by Visminda that she received the aforesaid amounts from Tuatis, which were marked as Exhibits B and C, respectively, in the proceedings before the RTC; CA rollo, p. 22.

[14] Penned by Judge Wilfredo G. Ochotorena; CA rollo, pp. 30-54.

[15] Although the Decision mentioned Article 454 of the New Civil Code, the same was apparently erroneous since the applicable provision was Article 453 of the said code, which provides:

ART. 453. If there was bad faith, not only on the part of the person who built, planted or sowed on the land of another, but also on the part of the owner of such land, the rights of one and the other shall be the same as though both had acted in good faith.

It is understood that there is bad faith on the part of the landowner whenever the act was done with his knowledge and without opposition on his part.

[16] CA rollo, pp. 49-54.

[17] Penned by Associate Justice B.A. Adefuin-De la Cruz with Associate Justices Cancio C. Garcia and Renato C. Dacudao, concurring. Records, p. 123.

[18] Records, p. 124.

[19] Id. at 125-126.

[20] CA rollo, pp. 76-77.

[21] Id. at 55-59.

[22] Id. at 60-61.

[23] This amount was derived from Tax Declaration No. 12464, covering the subject property. (CA rollo, p. 62.)

[24] Records, p. 176.

[25] CA rollo, p. 66.

[26] Id. at 67-75.

[27] Impleaded therein were the spouses Eliseo and Visminda Escol, the RTC of Sindangan, Zamboanga del Norte, Branch 11 and the Sheriff of the said trial court. (CA rollo, pp. 1-16.)

[28] CA rollo, pp. 81-82.

[29] Id. at 85-89.

[30] Id. at 94-106.

[31] Section 2, Rule 52 of the Rules of Court provides:

SEC. 2. Second motion for reconsideration. - No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

[32] ART. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

[33] CA rollo, p. 62.

[34] Durban Apartments Corporation v. Catacutan, G.R. No. 167136, 14 December 2005, 477 SCRA 801, 808; Quintano v. National Labor Relations Commission, G.R. No. 144517, 13 December 2004, 446 SCRA 193, 202-203.

[35] Carlos v. Court of Appeals, G.R. No. 134473, 30 March 2006, 485 SCRA 578, 583.

[36] In Garcia v. Philippine Airlines, Inc. (G.R. No. 160798, 8 June 2005, 459 SCRA 768, 780), the Court held

that "if, upon its initial review of the petition, the Court of Appeals is of the view that additional pleadings, documents or order should have been submitted and appended to the petition, it has the following options: (a) dismiss the petition under the last paragraph of [Section 3,] Rule 46 of the Rules of Court; (b) order the petitioner to submit the required additional pleadings, documents, or order within a specific period of time; or (c) order the petitioner to file an amended petition appending thereto the required pleadings, documents or order within a fixed period." (See also *Lao v. Court of Appeals* [382 Phil. 583, 604 (2000)]; *Paras v. Judge Baldado* [406 Phil. 589, 596 (2001)]; *Hilario v. People* [G.R. No. 161070, 14 April 2008, 551 SCRA 191, 201].)

Similarly, in *La Salette College v. Pilotin* (463 Phil. 785, 794 [2003]), the Court recognized that, notwithstanding the mandatory nature of the requirement of payment of appellate docket fees, its strict application is qualified by the following: first, failure to pay those fees within the reglementary period allows only discretionary, not automatic, dismissal; second, such power should be used by the court in conjunction with its exercise of sound discretion in accordance with the tenets of justice and fair play, as well as with a great deal of circumspection in consideration of all attendant circumstances. (See also *Public Estates Authority v. Yujuico* [404 Phil. 91, 101 (2001)]; *Jose v. Court of Appeals* [447 Phil. 159, 165 (2003)]; *Villamor v. Court of Appeals* [478 Phil. 728, 735-736 (2004)], citing *Buenaflor v. Court of Appeals* [400 Phil. 395, 401-402 (2000)].)

[37] *Philippine Merchant Marine School, Inc. v. Court of Appeals*, 432 Phil. 733, 741-742 (2002).

[38] *General Milling Corporation v. National Labor Relations Commission*, 442 Phil. 425, 428 (2002).

[39] *Aguam v. Court of Appeals*, 388 Phil. 587, 595 (2000).

[40] In accordance with Article 453 of the Civil Code which provides:

ART. 453. If there was bad faith, not only on the part of the person who built, planted or sowed on the land of another, but also on the part of the owner of such land, the rights of one and the other shall be the same as though both had acted in good faith.

It is understood that there is bad faith on the part of the landowner whenever the act was done with his knowledge and without opposition on his part. (Emphasis ours.)

[41] ART. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

[42] ART. 548. Expenses for pure luxury or mere pleasure shall not be refunded to the possessor in good faith; but he may remove the ornaments with which he has embellished the principal thing if it suffers no injury thereby, and if his successor in the possession does not prefer to refund the amount expended.

[43] *Macasaet v. Macasaet*, 482 Phil. 853, 874 (2004).

[44] Exhibits B and C are the certifications signed by Visminda, stating that she indeed received the amounts of P3,000.00 and P1,000.00 from Tuatis on 19 December 1989 and 17 February 1990, respectively.

[45] CA rollo, p. 54.

[46] *Id.* at 21.

[47] *Mayon Estate Corporation v. Altura*, G.R. No. 134462, 18 October 2004, 440 SCRA 377, 386.

[48] *Mendoza, Jr. v. San Miguel Foods, Inc.*, G.R. No. 158684, May 16, 2005, 458 SCRA 664, 676-677, cited in *Florentino v. Rivera*, G.R. No. 167968, 23 January 2006, 479 SCRA 522, 528-529.

[49] *Partosa-Jo v. Court of Appeals*, G.R. No. 82606, 18 December 1992, 216 SCRA 692, 697.

[50] Necessary expenses have been variously described by the Spanish commentators as those made for the preservation of the thing (4 Manresa's *Comentarios al Código Civil*, p. 258); as those without which the thing would deteriorate or be lost (Scaevola's *Comentarios al Código Civil*, p. 408); as those that augment the income of the things upon which they are expanded (4 Manresa's *Comentarios al Código Civil*, p. 261; 8 Scaevola's *Comentarios al Código Civil*, p. 416). Among the necessary expenditures are those incurred for cultivation, production, upkeep, etc. (4 Manresa's *Comentarios al Código Civil*, p. 257). (*Mendoza v. De Guzman*, 52 Phil. 164, 171 [1928].)

[51] Useful expenses are incurred to give greater utility or productivity to the thing. (Tolentino, *Civil Code*, Vol. II (1992 ed.), p. 294.

[52] 314 Phil. 313, 324-325 (1995).

[53] See *Depra v. Dumlao*, G.R. No. L-57348, 16 May 1985, 136 SCRA 475.

[54] *Philippine National Bank v. De Jesus*, 458 Phil. 454, 459 (2003).

[55] *Technogas Philippines Manufacturing Corporation v. Court of Appeals*, 335 Phil. 471, 482 (1997).

[56] *Depra v. Dumlao*, *supra* note 53 at 483.

[57] The fallo in *Depra v. Dumlao* (*ibid.*) reads:

WHEREFORE, the judgment of the trial Court is hereby set aside, and this case is hereby ordered remanded to the Regional Trial Court of Iloilo for further proceedings consistent with Articles 448 and 546 of the Civil Code, as follows:

- The trial Court shall determine

a)

the present fair price of DEPRA's 34 square-meter area of land;

b)

the amount of the expenses spent by DUMLAO for the building of the kitchen;

c)

the increase in value ("plus value") which the said area of 34 square meters may have acquired by reason thereof, and

d)

whether the value of said area of land is considerably more than that of the kitchen built thereon.

- After said amounts shall have been determined by competent evidence, the Regional Trial Court shall render judgment, as follows:

a)

The trial Court shall grant DEPRA a period of fifteen (15) days within which to exercise his option under the law

(Article 448, Civil Code), whether to appropriate the kitchen as his own by paying to DUMLAO either the amount of the expenses spent by DUMLAO for the building of the kitchen, or the increase in value ("plus value") which the said area of 34 square meters may have acquired by reason thereof, or to oblige DUMLAO to pay the price of said area. The amounts to be respectively paid by DUMLAO and DEPRA, in accordance with the option thus exercised by written notice of the other party and to the Court, shall be paid by the obligor within fifteen (15) days from such notice of the option by tendering the amount to the Court in favor of the party entitled to receive it;

b)

The trial Court shall further order that if DEPRA exercises the option to oblige DUMLAO to pay the price of the land but the latter rejects such purchase because, as found by the trial Court, the value of the land is considerably more than that of the kitchen, DUMLAO shall give written notice of such rejection to DEPRA and to the Court within fifteen (15) days from notice of DEPRA's option to sell the land. In that event, the parties shall be given a period of fifteen (15) days from such notice of rejection within which to agree upon the terms of the lease, and give the Court formal written notice of such agreement and its provisos. If no agreement is reached by the parties, the trial Court, within fifteen (15) days from and after the termination of the said period fixed for negotiation, shall then fix the terms of the lease, provided that the monthly rental to be fixed by the Court shall not be less than Ten Pesos (P10.00) per month, payable within the first five (5) days of each calendar month. The period for the forced lease shall not be more than two (2) years, counted from the finality of the judgment, considering the long period of time since 1952 that DUMLAO has occupied the subject area. The rental thus fixed shall be increased by ten percent (10%) for the second year of the forced lease. DUMLAO shall not make any further constructions or improvements on the kitchen. Upon expiration of the two-year period, or upon default by DUMLAO in the payment of rentals for two (2) consecutive months, DEPRA shall be entitled to terminate the forced lease, to recover his land, and to have the kitchen removed by DUMLAO or at the latter's expense. The rentals herein provided shall be tendered by DUMLAO to the Court for payment to DEPRA, and such tender shall constitute evidence of whether or not compliance was made within the period fixed by the Court.

c)

In any event, DUMLAO shall pay DEPRA an amount computed at Ten Pesos (P10.00) per month as reasonable compensation for the occupancy of DEPRA's land for the period counted from 1952, the year DUMLAO occupied the subject area, up to the commencement date of the forced lease referred to in the preceding paragraph;

d)

The periods to be fixed by the trial Court in its Decision shall be inextendible, and upon failure of the party obliged to tender to the trial Court the amount due to the obligee, the party entitled to such payment shall be entitled to an order of execution for the enforcement of payment of the amount due and for compliance with such other acts as may be required by the prestation due the obligee.

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