

**GAMES AND GARMENTS DEVELOPERS, INC., PETITIONER, VS.
ALLIED BANKING CORPORATION, RESPONDENT.***G.R. No. 181426. July 13, 2015*

Ponente: LEONARDO-DE CASTRO, J.

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Before Us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court seeking a review of the Decision[1] dated October 23, 2007 and Resolution[2] dated January 23, 2008 of the Court of Appeals in CA-G.R. CV No. 82765, which affirmed with modification the Decision[3] of the Regional Trial Court (RTC) of Quezon City[4] in Civil Case No. Q-98-34077, a Complaint for Breach of Contract and Damages instituted by petitioner Games and Garments Developers, Inc. (GGDI) against spouses Bienvenida (Bienvenida) and Benedicto Pantaleon (together referred to as the spouses Pantaleon), Ernesto Mercado (Mercado), and respondent Allied Banking Corporation (Allied Bank). While the RTC rendered judgment against the spouses Pantaleon and Allied Bank, the appellate court dismissed the Complaint in so far as it pertained to Allied Bank.

The antecedent facts are as follows:

Bienvenida, married to Benedicto Pantaleon, agreed to purchase a parcel of land located at Bayanan, Muntinlupa, covered by Transfer Certificate of Title (TCT) No. 205965 of the Register of Deeds, Makati City (subject property), in the name of petitioner Games and Garments Developers, Inc. (GGDI), for the sums of P14,000,000.00 payable to GGDI, P4,000,000.00 payable to the Cosay Family,[5] and P1,000,000.00 as attorney's fees payable to GGDI VP-Legal and counsel Atty. Cesar M. Lao (Lao). The parties executed a Memorandum of Agreement[6] (MOA) dated August 22, 1996, with the following terms and conditions:

2. [GGDI], [Cosay family] and Atty. Cesar M. Lao shall be paid in the following manner:

- a) Upon signing of this Agreement, the sum of SIX MILLION PESOS (P6,000,000.00) shall be paid directly to [GGDI] by way of Managers/Cashiers check drawn against the Allied Bank, Pasong Tamo Branch, Makati City, and the balance of EIGHT MILLION PESOS (P8,000,000.00) together with interest at the rate of eighteen (18%) percent per annum until the same is fully paid by way of postdated check in ninety (90) days from date of this Agreement with bank [guaranty] of paying the same by Allied Banking Corporation;
- b) Upon signing this agreement, the sum of THREE MILLION PESOS (P3,000,000.00) shall be paid directly to the [Cosay family] by way of managers/cashiers check drawn against the Allied Bank, Pasong Tamo Branch, Makati City, and the balance of ONE MILLION PESOS (P1,000,000.00) without interest by way of postdated check ninety (90) days from date of this agreement with the bank [guaranty] of paying the same by Allied Banking Corporation;
- c) The sum of ONE MILLION PESOS (P1,000,000.00) together with interest of eighteen (18%) percent per annum until the same is fully paid shall be paid directly to Atty. Cesar M. Lao by way of postdated check ninety (90) days from date of this Agreement, with bank [guaranty] of paying the same issued by Allied Banking Corporation;

3. Simultaneous upon receipt of payments as above stated in paragraph 2 hereof, [GGDI] shall submit to Allied Bank Pasong Tamo Branch, Makati City, a Deed of Sale in favor of [Bienvenida] while the [Cosay family] their Motion for the withdrawal of the pending Civil Case aforesated. and petition for the cancellation of lis pendens annotated in the title under Entry No. (479691) S-107492 TCT No. 205965 addressjed] to the Register of Deeds of Makati City.

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7. In case [Bienvenida] fails for any reason whatsoever to pay the balance of the amount indicated above in paragraph 2 hereof, then the sale executed by [GGDI] in favor of Bienvenida shall be considered CANCELLED and NULL and VOID and the amount received by the respective parties shall be deemed forfeited in their favor as liquidated damages[.]

On August 22, 1996, Mercado, Branch Manager of Allied Bank-Pasong Tamo, issued a letter addressed to Atty. Lao of GGDI and with Bienvenida's conforme, printed on the letterhead of Allied Bank, which reads:

This is with reference to the real property located at National Road, Bayanan, Muntinlupa City[,] a lot covered by Transfer Certificate of Title (TCT) No. 205965.

Please be advised that Bienvenida Pantaleon/Sucat Import/Export who is purchasing the above-mentioned property has an approved real estate loan with us in the amount of PESOS: ELEVEN MILLION ONLY (P11,000,000.00), the portion of the proceeds of which shall be used to partially liquidate the account with you. Succeeding releases which is secured by the subject property will be made payable to Games and Garments Developers, Inc.

After said Transfer Certificate of Title (TCT) covering said property is already transferred in our client's name, our mortgage duly annotated thereon, we guarantee to pay directly to you the amount of PESOS: EIGHT MILLION THREE HUNDRED SIXTY THOUSAND ONLY (P8,360,000.00) ninety days from August 23, 1996 or on or before November 21, 1996.

It is understood that this guaranty is irrevocable.[7]

Upon the spouses Pantaleon's request, and assured by Mercado's letter dated August 22, 1996, GGDI, through its President Sunder Hemandas (Hemandas), executed a Deed of Sale[8] on August 23, 1996 in favor of the spouses Pantaleon. However, in the Deed of Sale, the amount of purchase price for the subject property was reduced to P11,000,000.00, payable to GGDI thus:

1. Upon signing of this Deed, [Bienvenida] shall pay [GGDI] the sum of THREE MILLION PESOS (P3,000,000.00), Philippine Currency, receipt of which is hereby acknowledged by [GGDI] from [Bienvenida] and the balance of the purchase price in the sum of EIGHT MILLION PESOS (P8,000,000.00) plus interest of 18% per annum until the same is fully paid by way of post-dated check ninety (90) days from date hereof and bank [guaranty] from [Allied Bank] to assume payment thereof.

The Deed of Sale also stipulated that:

4. In case for any reason whatsoever, [Bienvenida] fails to pay the balance of the purchase price of P8,000,000.00 then this Deed shall be deemed cancelled and null and void and all payments previously made shall be deemed forfeited in favor of [GGDI] as liquidated damages.

Also on August 23, 1996, the same day the Deed of Sale was executed, the Register of Deeds of Makati cancelled TCT No. 205965 in the name of GGDI and issued TCT No. 206877 in the name of Bienvenida, married to Benedicto Pantaleon;[9] and to secure her loan for P14,000,000.00 approved by Allied Bank, Bienvenida executed a Real Estate Mortgage of even date constituting a mortgage on the subject property and one other

property covered by TCT No. 205488 in favor of said bank.[10] The notice of lis pendens (concerning the civil case of the Cosay family against GGDI) was cancelled and the Real Estate Mortgage in favor of Allied Bank was annotated on Bienvenida's TCT No. 206877. All of the aforementioned transactions were expedited and accomplished in a single day because of the assistance of Allied Bank.

Despite Mercado's letter dated August 22, 1996, and unbeknownst to GGDI, Allied Bank[11] already released the proceeds of the approved loan to the spouses Pantaleon on August 23, 1996.

In a letter[12] dated November 21, 1996 to Allied Bank, thru Mercado, Atty. Lao requested for the immediate payment of the balance of the purchase price amounting to P8,360,000.00 considering that the guaranty executed by the bank in favor of GGDI was irrevocable and the TCT for the subject property was already transferred in Bienvenida's name. There being no action on his previous letter, Atty. Lao wrote another letter[13] dated December 11, 1996 to Allied Bank, thru Mercado, to follow-up on the request for payment.

Bienvenida, in a letter[14] dated January 6, 1997, offered to pay GGDI P1,000,000.00 on or before January 24, 1997 and the balance of P7,360,000.00 plus interest on March 28, 1997. GGDI received the P1,000,000.00 partial payment from Bienvenida via two checks dated January 17, 1997 and January 24, 1997 for the amount of P500,000.00 each.[15] Bienvenida then issued two Allied Bank postdated checks for March 28, 1997 for the amounts of P7,360,000.00 and P442,340.00, to cover the balance of the purchase price for the subject property and interest, respectively.[16]

Mercado executed another letter dated January 27, 1997 addressed to Atty. Lao, similarly worded as his letter dated August 22, 1996, except for the penultimate paragraph which states that "we guarantee to pay directly to you the amount of PESOS: SEVEN MILLION EIGHT HUNDRED TWO THOUSAND THREE HUNDRED FORTY (P7,802,340.00) sixty days from January 27, 1997 or on or before March 28, 1997." [17]

When GGDI deposited the two Allied Bank checks dated March 28, 1997 issued by Bienvenida, said checks were dishonored for being "Drawn Against Insufficient Funds." [18]

Atty. Lao sent a letter dated August 15, 1997 to the Head Office of Allied Bank in Makati City, copy furnished Mercado, referring to Mercado's letter of guaranty dated January 27, 1997 and making a final request for payment of the sum of P7,802,340.00 within seven days from receipt of the current letter.[19]

Hemandas, President of GGDI, sent a fax letter dated October 7, 1997 to Aida T. Yu, Vice President of Allied Bank, also requesting payment based on Mercado's letter of guaranty dated January 27, 1997. In a letter dated October 13, 1997, Reynaldo A. Maclang, Senior Vice-President of Allied Bank, replied to Hemandas's letter in this wise:

We asked Mr. Mercado about this and he said that this letter [dated January 27, 1997] was not really intended as a [guaranty] for anything but was an accommodation to a request of Atty. Cesar Lao, the Vice President of Games and Garments Developers, Inc. He even emphasized to Atty. Lao that he was not authorized to issue such [guaranty] inasmuch as banks are not allowed to do so under the General Banking Act.

We noted that the letter dated 27 January, 1997 makes reference to a lot covered by TCT# 205965 which was supposed to be purchased, but our records show that this title was already superseded by TCT# 206877 issued to Bienvenida S. Pantaleon since 23 August, 1996 yet.[20]

In a letter dated December 19, 1997 to Maclang, Hemandas inquired as to the status of the demand for payment of GGDI and sought an opportunity to discuss the matter.[21]

Without any favorable action from Allied Bank, Atty. Lao, this time for Lacas, Lao & Associates, counsel for

GGDI, wrote Maclang a letter dated January 9, 1998, demanding that Allied Bank immediately pay GGDI the sum of P7,802,340.00 plus prevailing bank interest rate from March 28, 1997 until the same is fully paid, otherwise, they would be filing the necessary case/suit before the appropriate body/court.[22]

On April 15, 1998, GGDI filed before the RTC a Complaint for Breach of Contract (Rescission) and Damages with prayer for Preliminary Attachment against the spouses Pantaleon, Mercado, and Allied Bank. GGDI prayed for: (1) the payment of the balance of the purchase price for the subject property, damages, attorney's fees, and costs of the suit; (2) the annulment of the Deed of Sale, TCT No. 206877 in Bienvenida's name, and the Real Estate Mortgage constituted on the subject property by Bienvenida in favor of Allied Bank; and (3) the reconveyance of the subject property to GGDI or the cancellation by the Register of Deeds of TCT No. 206877, as well as the annotations thereon of the mortgage in favor of Allied Bank and the Special Power of Attorney in favor of Bienvenida.[23]

After ex parte proceedings, the RTC issued an Order[24] dated May 8, 1998 granting the prayer of GGDI for the issuance of a writ of preliminary attachment. The RTC issued the writ of preliminary attachment[25] on May 22, 1998 for the real and personal properties of the spouses Pantaleon sufficient to satisfy the demand of GGDI, but in no case to exceed P7,802,340.00. Per the Sheriffs Report[26] dated June 15, 1998, the real properties of the spouses Pantaleon covered by TCT Nos. 206877 and 205488 were already levied upon.

In its Answer with Compulsory Counterclaim and Crossclaim filed before the RTC, Allied Bank denied knowledge of and any liability under the MOA and the Deed of Sale as it is not a party to both contracts. While Allied Bank admitted that the MOA and the Deed of Sale did contain stipulations regarding the issuance of a guaranty by Allied Bank for payment of the balance of the purchase price for the subject property, Allied Bank was not aware of said contracts until the later part of 1997 when it was provided with copies by Hemandas, long after the proceeds of the approved loan were already released to the spouses Pantaleon. Allied Bank denied that it issued a letter of guaranty in favor of GGDI and maintained that Mercado had no authority to issue the letters dated August 22, 1996 and January 27, 1997 because all banks were prohibited from entering into any contract of guaranty or surety under Section 74 of the General Banking Act. Allied Bank also relayed that Mercado was already separated from service of the bank. Allied Bank further refuted the allegation in the Complaint that it was by reason of the letter of guaranty and the Deed of Sale that a new TCT was issued for the subject property in Bienvenida's name. Allied Bank pointed out that a bank guaranty was not necessary for the issuance of a new TCT and the only document needed was the Deed of Sale.

In its Cross-claim against Mercado and the spouses Pantaleon, Allied Bank alleged that it was an innocent mortgagee for value and in good faith. Allied Bank recounted that on August 23, 1996, Bienvenida was granted through Mercado, former Manager of Allied Bank-Pasong Tamo, a loan in the amount of P14,000,000.00 to finance the construction of a two-storey building, which was secured by a real estate mortgage over the property covered by TCT No. 206877 in the name of Bienvenida, married to Benedicto Pantaleon. Bienvenida executed a Promissory Note and Real Estate Mortgage in favor of Allied Bank. Because the spouses Pantaleon failed to pay the installments and interest on their due dates despite demands by Allied Bank, the entire amount outstanding under Bienvenida's Promissory Note became due and payable pursuant to the acceleration clause in the said note. Allied Bank then caused the extrajudicial foreclosure of the real estate mortgage and was the sole bidder at the public auction sale of the subject property held on March 19, 1998. The subject property was awarded to Allied Bank for the bid price of P21,006,000.00, as evidenced by the Certificate of Sale[27] issued by the Office of the Clerk of Court, RTC, Muntinlupa City.

In its prayer, Allied Bank sought the following:

On the Complaint-

1. [GGDI's] complaint be dismissed;

On the Counterclaim -

1. A judgment be issued ordering [GGDI] to pay [Allied Bank] the following:

a) Moral damages in the amount of P2,000,000.00;

b) Exemplary damages in the amount of P2,000,000.00;

c) Attorney's fees in the amount of P300,000.00 plus the costs of suits;

On the Crossclaim -

1.)

In the remote event that [Allied Bank] be held liable to [GGDI] by reason of the letter of guaranty executed by Mercado without [Allied Bank's] authority, Mercado and Sps. Pantaleon should be held jointly and severally liable to indemnify or reimburse [Allied Bank] for whatever amount it may be held liable to [GGDI].

2.)

In the remote event that the Transfer Certificate of Title No. 206877 and the Real Estate Mortgage executed by Pantaleon in favor of [Allied Bank] be cancelled and rescinded and/or declared null and void, Mercado and Sps. Pantaleon should be held liable to pay the value of the said property in the amount of P21,006,000.00 which was the auction sale price of the property when it was sold at public auction pursuant to the application for extrajudicial foreclosure filed by [Allied Bank] against Pantaleon for failure of the latter to pay its loan obligation with [Allied Bank].[28]

In its Reply and Answer to Counterclaim,[29] GGDI contested the assertion of Allied Bank that it came to know of the existence of the Deed of Sale only in the later part of 1997 as the bank, through Mercado, received a copy of the Deed of Sale on August 23, 1996. It was pursuant to said Deed of Sale that Allied Bank was able to undertake, also on August 23, 1996, the cancellation of the lis pendens annotated on TCT No. 205965; the cancellation of TCT No. 205965 in the name of GGDI and the issuance of TCT No. 206877 in the name of Bienvenida, married to Benedicto Pantaleon; and the annotation on TCT No. 206877 of the mortgage on the subject property in favor of Allied Bank and the Special Power of Attorney in favor of Bienvenida. GGDI explained that it had no reason not to rely on the guaranty given in the two letters dated August 22, 1996 and January 27, 1997 since these were written on official paper of Allied Bank and signed by Mercado, whose precise job as Branch Manager was to represent Allied Bank. GGDI avowed that without the guaranty of Allied Bank, it would not have executed the Deed of Sale and transferred ownership of the subject property to the spouses Pantaleon. GGDI likewise contradicted the claim of Allied Bank that the letters of guaranty were merely the personal accommodation of Mercado as the contents of said letters were confirmed when Allied Bank, by virtue of the Deed of Sale executed by GGDI, was able to transfer the TCT for the subject property in Bienvenida's name and annotate thereon Bienvenida's Real Estate Mortgage in favor of the bank. GGDI lastly averred that the purchase price for the subject property was really P19,000,000.00 as embodied in the MOA, and it was only stated as P11,000,000.00 in the Deed of Sale to lessen the amount of taxes and fees which the parties had to pay on the sale.

The spouses Pantaleon contended in their Answer with Compulsory Counterclaim and Cross-claim[30] that of the purchase price of P11,000,000.00 for the subject property, they had already paid to GGDI P6,000,000.00 with Allied Bank Check No. 85-001746 dated August 23, 1996; P665,000.00 with Allied Bank Check No. 85-0017251 dated August 23, 1996; P1,045,000.00 with Allied Bank Check No. 85-0017250 dated November 30, 1996;

P500,000.00 with Allied Bank Manager's Check No. MC000821 dated January 17, 1997; and P500,000.00 with Allied Bank Check No. 85-0024530 dated January 24, 1997. The spouses Pantaleon likewise asserts that contrary to the warranty given by GGDI, there were claimants to the subject property other than the Cosay Family. The spouses Pantaleon then reasoned that their obligation to pay the balance of the purchase price was extinguished upon the issuance by Allied Bank of the irrevocable letter of guaranty dated August 22, 1996. For their cross-claim against Allied Bank, the spouses. Pantaleon claimed that Allied Bank failed to release the balance of P44,000,000.00 from their approved loan of P55,000,000.00, causing the spouses Pantaleon to abandon the construction of the commercial building on the subject property and to default on the payment of their other loan of P14,000,000.00 from the same bank; and that Allied Bank hurriedly and maliciously foreclosed on the real estate mortgage since it intended to use the subject property as site for its Muntinlupa Branch. The spouses Pantaleon prayed of the RTC, viz.:

WHEREFORE, under the above premises, it is most respectfully prayed that the Honorable Court, after trial, order the dismissal of the instant case with respect to the Defendant Pantaleon Spouses; order the Plaintiff [GGDI] to pay to them moral damages in the amount of TEN MILLION PESOS (P10,000,000.00), exemplary damages of TWO MILLION PESOS (P2,000,000.00), attorney's fees of ONE MILLION PESOS (P1,000,000.00) and costs of suit; and order Defendants Allied Banking Corporation and Ernesto Mercado to annul or render null and void the foreclosure of the mortgage on the property in question and in the event the title has already been consolidate in the bank's name, to reconvey the same to Defendant Pantaleon Spouses and to pay jointly and severally to the Defendant Pantaleon Spouses moral damages of TWENTY MILLION PESOS (P20,000,000.00), exemplary damages of FIVE MILLION PESOS (P5,000,000.00), attorney's fees of ONE MILLION PESOS (P1,000,000.00) and costs of suit.[31]

During the Pre-trial Conference, attended by the counsels for GGDI, Allied Bank, and spouses Pantaleon, the parties stipulated and admitted that GGDI received the amount of P6,000,000.00 via Allied Bank Check No. 85-0017246 dated August 23, 1996 as the spouses Pantaleon's partial payment for the subject property.[32] During trial, Hemandas, as witness for GGDI, testified that GGDI only received from the spouses Pantaleon as partial payments for the subject property the amounts of P6,000,000.00 upon execution of the Deed of Sale on August 23, 1996 and P1,000,000.00 through two checks of P500,000.00 each sometime in January 1997;[33] and the amounts of P1,045,000.00 and P665,000.00 were paid by the spouses Pantaleon, not to GGDI, but to Atty, Lao as his attorney's fees and broker's fees, respectively.

The spouses Pantaleon failed to present any evidence, while Allied Bank only submitted documentary evidence.

On September 25, 2003, the RTC rendered its Decision in favor of GGDI and against the spouses Pantaleon and Allied Bank, but was completely silent regarding Mercado's liability. The RTC found that GGDI had already complied with its obligation to deliver and transfer the title of the subject property to the spouses Pantaleon but the spouses Pantaleon and Allied Bank failed and refused to comply with their obligation to pay GGDI the unpaid balance of the purchase price for the said property; that GGDI likewise complied with the requirements in the letter of guaranty to transfer title to the subject property to the spouses Pantaleon and annotate on the new title the mortgage of the same property to Allied Bank, by virtue of which, Allied Bank was subsequently able to foreclose the mortgage and acquire the subject property as the sole bidder at the public auction sale; that Allied Bank cannot now deny Branch Manager Mercado's authority to issue the letters of guaranty on the ground that banks are prohibited from entering into any contract of guaranty; that there was bad faith on the part of the spouses Pantaleon and Allied Bank; that the criminal cases filed by GGDI against the spouses Pantaleon for the bouncing checks the latter issued to pay the balance of the purchase price for the subject property would not bar or suspend the present civil case as these cases had different and separate causes of action and within the jurisdiction of different trial courts; that the terms and conditions of the MOA between GGDI and the spouses Pantaleon were

not onerous, appearing to be fair and equitable to both sides; and that GGDI was entitled to the rescission of the Deed of Sale they executed in favor of the spouses Pantaleon and to the reconveyance of the subject property free from any lien. The dispositive portion of the RTC judgment reads:

WHEREFORE, in light of the foregoing, JUDGMENT is hereby RENDERED IN FAVOR of the Plaintiff [GGDI] and against the Defendant-Spouses Pantaleon and Defendant [Allied Bank]:

1) ORDERING the Defendant-Spouses Pantaleon and Defendant [Allied Bank] to pay jointly and severally the Plaintiff [GGDI] the sum of SEVEN MILLION TWO HUNDRED SIXTY THOUSAND PESOS (P7,360,000.00) representing the unpaid balance on the subject property, plus 18% interest per annum computed from March 29, 1997 (as per parties' agreement Exh. A) until the whole amount is fully paid; OR, in case of failure to do so within thirty (30) days from the finality of this Decision, all of the following are hereby DECLARED cancelled, annulled, reconsidered, and voided:

a)

Deed of Sale (Exh. C) null and void pursuant to paragraph 4, page 2 of the said Deed of Sale dated August 23, 1996;

b)

Transfer Certificate of Title No. 206877 (Exh. E) in the name of Defendant Bienvenida Pantaleon married to Benedicto Pantaleon;

c)

Real Estate Mortgage (Exh. 2-Defendant ABC) executed by Defendants Spouses Pantaleon in favor of Defendant [Allied Bank]; and

d)

Transfer Certificate of Title issued in the name of Defendant [Allied Bank];

AND

The Defendant [Allied Bank] and/or Defendant-Spouses Pantaleons are hereby ORDERED to reconvey the property subject matter hereof to the plaintiff Company, [GGDI].

AND

In case of failure or refusal of said Defendant [Allied Bank] to do so, for whatsoever reason, the Registry of [Deeds] of Makati City (now Muntinlupa City) is hereby DIRECTED to immediately cancel Transfer Certificate of Title in the name of the said Defendant [Allied Bank], and thereafter, to issue to Plaintiff [GGDI] another title free from any liens or encumbrances whatsoever;

2) ORDERING the Defendant-Spouses Pantaleons and Defendant [Allied Bank] to pay, jointly and severally, the Plaintiff [GGDI] the sum of FIVE HUNDRED THOUSAND PESOS (P500,000.00) as Exemplary Damages;

3) ORDERING the Defendant-Spouses Pantaleons and Defendant [Allied Bank] to pay, jointly and severally, the Plaintiff [GGDI] Attorney's fees often percent (10%) of the total amount, referred to in no. 1 above; and

4) ORDERING the Defendant-Spouses Pantaleons and Defendant [Allied Bank] to pay, jointly and severally, the Costs of suit.[34]

The RTC, in an Order dated February 19, 2004, denied the Motion for Reconsideration of Allied Bank because

the arguments raised therein were mere repetitions and reiterations of its contentions in the pleadings which had already been amply passed upon by the trial court.[35]

Allied Bank appealed before the Court of Appeals. In its Decision dated October 23, 2007, the appellate court held that the appeal was partly meritorious. Disagreeing with the RTC, the Court of Appeals adjudged that Allied Bank should not be held liable under the MOA and Deed of Sale executed between the spouses Pantaleon and GGDI for the bank was not a party or a witness to the said documents. Neither should Allied Bank be held liable under the letters of guaranty Mercado executed, the appellate court reasoning that:

Section 74 of the General Banking Act expressly prohibits banks or banking institutions from entering "directly or indirectly, into any contract of guaranty or surety" or to "guarantee the interest or principal of any obligation of any person..." Considering that the Bank is prohibited from acting as a guarantor, Ernesto Mercado, is likewise prohibited from entering into a contract where the Bank would become a guarantor as a consequence thereof. Also, while there is no question that as the Bank's Branch Manager, Defendant Mercado was an officer and agent of the Bank, the Bank's By-laws, or the law does not in any way confer upon Ernesto Mercado the authority to sign a guaranty agreement. Consequently, when Mercado disregarded this statutory prohibition, he did not only exceed, and acted beyond, the powers and authority granted to him by the Bank and the law, but he also violated the clear provision of the General Banking Act. As such, said letters of guaranty are unenforceable against the corporation unless ratified by the corporation.

However, after a careful review of the records of this case, We find that the Bank neither ratified the letters of guaranty executed by Ernesto Mercado nor was it estopped from denying the same.[36] (Citations omitted.)

The Court of Appeals likewise declared erroneous the alternative order of the RTC to cancel and nullify the certificate of title of Allied Bank in the event that said bank and the spouses Pantaleon failed to pay GGDI the balance of the purchase price for the subject property. The appellate court pointed out that GGDI filed a Complaint for breach of contract and/or rescission with damages, but there was no privity of contract between GGDI and Allied Bank. The Court of Appeals further ruled that Allied Bank acquired the subject property at the public auction sale after the mortgage on the said property was foreclosed; and absent substantial evidence to the contrary, the foreclosure and sale of the subject property are deemed valid and existing. More importantly, according to the appellate court, the Complaint for Breach of Contract (Rescission) with Damages of GGDI constituted a collateral attack on the title of Allied Bank over the subject property, which is prohibited by law and jurisprudence.

Finally, the Court of Appeals denied the cross-claims of Allied Bank against the spouses Pantaleon and Mercado on the following grounds: (1) moral damages cannot be granted to a corporation which cannot experience physical suffering and mental anguish; (2) Allied Bank did not offer any proof that the spouses Pantaleon and Mercado had debased its good reputation and caused it incalculable embarrassment; (3) without moral damages, exemplary damages cannot be awarded; and (4) not every winning party is entitled to an automatic grant of attorney's fees and Allied Bank failed to show that any of the circumstances under Article 2208 of the Civil Code existed in its case.

In the end, the Court of Appeals decreed:

WHEREFORE, the instant Appeal is GRANTED IN PART. The assailed Decision, dated [September 25, 2003], and Order, dated February 19, 2004, of the Regional Trial Court of Quezon City, Branch 101, in Civil Case No. Q-98-34077, are hereby AFFIRMED with MODIFICATIONS in that the Complaint for Breach of Contract and Damages against Defendant-Appellant Allied Banking Corporation is DISMISSED and that the alternative order directing the nullification of Deed of Sale dated August 23, 1996, Transfer Certificate of Title No. 206877 in the name of Defendant Bienvenida Pantaleon, Real Estate Mortgage, and the Transfer

Certificate of Title issued under the name of Defendant-Appellant Allied Banking Corporation, referred to in paragraph 1(a), 1(b), 1(c) and 1(d) of the assailed Decision are hereby DELETED.

Accordingly, the order directing the Register of Deeds of Makati to cancel the transfer certificate of title under the name of Defendant-Appellant [Allied Bank] covering the subject property is DELETED and rendered VOID.[37]

The Motion for Partial Reconsideration of GGDI was denied by the Court of Appeals in a Resolution dated January 23, 2008 as all issues raised therein were already resolved and for lack of an imperative reason to disturb or modify its Decision as regards said issues.[38]

Hence, this Petition.

In its Memorandum, GGDI submits the following issues for our consideration:

3.1 Whether or not the Court of Appeals committed reversible error and /or grave abuse of discretion insofar as it concerns the dismissal of the amended complaint in Civil Case No. Q-98-34077 against Respondent Allied Bank, but upholding the decision of the RTC of Quezon City against Defendants Spouses Bienvenida and Benedicto Pantaleon.

3.2 Whether or not Respondent Allied Bank should be held liable for Defendant Spouses Pantaleon's unpaid obligation because it is not a party or a witness to the Memorandum of Agreement and Deed of Sale.

3.3 The Court of Appeals grossly erred in merely relying upon Respondent Allied Bank's assertion that Section 74 of the General Banking Act prohibits banks from entering directly or indirectly into any contract of guaranty or surety.

3.4 Whether or not Respondent Allied Bank is an innocent mortgagee for value of subject property.

3.5 The Court of Appeals erred in its own finding that the Branch Manager of respondent Allied Bank, Ernesto Mercado, had no authority to sign and issue the two (2) letters of [guaranty].

3.6 The Court of Appeals grossly and erroneously failed to apply the doctrine of apparent authority in the present case.

3.7 The Court of Appeals erred in not holding Respondent Allied Bank estopped from questioning the authority of its Branch Manager Ernesto Mercado to sign and issue the letters of [guaranty] dated 22 August 1996 and 27 January 1997.

3.8 The Court of Appeals grossly erred in not holding Respondent Allied Bank to have acted fraudulently and in bad faith in its dealings with Petitioner [GGDI].[39]

Essentially, GGDI attributes error on the part of the Court of Appeals in absolving Allied Bank of any liability to GGDI.

There is merit in the instant Petition.

Mercado's letters are not contracts of

guaranty covered by the prohibition

in the General Banking Act, as amended.

GGDI maintains that although Allied Bank is not a party to the Deed of Sale, it is still liable for the balance of the purchase price for the subject property based on the letters of guaranty dated August 22, 1996 and January 27, 1997 executed by Mercado, Branch Manager of Allied Bank-Pasong Tamo.

In its defense, Allied Bank argues that banks were prohibited from entering into contracts of guaranty under the then prevailing law, Republic Act No. 337, otherwise known as the General Banking Act, as amended,[40] Section 74 of which explicitly provided:

Sec. 74. No bank or banking institution shall enter, directly, or indirectly, into any contract of guaranty or suretyship, or shall guarantee the interest or principal of any obligation of any person, co-partnership, association, corporation or other entity. The provisions of this section shall, however, not apply to the following: (a) borrowing of money by banking institution through the rediscounting of receivables; (b) acceptance of drafts or bills of exchange; (c) certification of checks; (d) transactions involving the release of documents attached to items received for collection; (e) letters of credit transaction, including stand-by arrangements; (f) repurchase agreements; (g) shipside bonds; (h) ordinary guarantees or indorsements in favor of foreign creditors where the principal obligation involves loans and credits extended directly by foreign firms or persons to domestic borrowers for capital investment purposes; and (i) other transactions which the Monetary Board may, by regulation, define or specify as not covered by the prohibition.

It is undisputed that Mercado wrote two "letters of guaranty" dated August 22, 1996 and January 27, 1997. Although Mercado's letters used the words "guarantee" and "guaranty," the same do not constitute contracts of guaranty covered by the prohibition under Section 74 of the General Banking Act, as amended. Section 74 of the General Banking Act, as amended, proscribes banks from entering into "any contract of guaranty or suretyship" without providing definitions of such contracts. Consequently, we rely on the general definitions of contracts of guaranty and suretyship under Article 2047 of the Civil Code:

ART. 2047. By guaranty a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.

If a person binds himself solidarity with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book shall be observed. In such case the contract is called a suretyship.

While a surety undertakes to pay if the principal does not pay, the guarantor only binds himself to pay if the principal cannot pay. The former is the insurer of the debt, the latter an insurer of the solvency of the debtor.[41] We further expounded on the nature of a contract of guaranty (vis-a-vis a contract of surety) in *E. Zobel, Inc. v. Court of Appeals*,[42] thus:

A contract of surety is an accessory promise by which a person binds himself for another already bound, and agrees with the creditor to satisfy the obligation if the debtor does not. A contract of guaranty, on the other hand, is a collateral undertaking to pay the debt of another in case the latter does not pay the debt.

Strictly speaking, guaranty and surety are nearly related, and many of the principles are common to both. However, under our civil law, they may be distinguished thus: A surety is usually bound with his principal by the same instrument, executed at the same time, and on the same consideration. He is an original promisor and debtor from the beginning, and is held, ordinarily, to know every default of his principal. Usually, he will not be discharged, either by the mere indulgence of the creditor to the principal, or by want of notice of the default of the principal, no matter how much he may be injured thereby. On the other hand, the contract of guaranty is the guarantor's own separate undertaking, in which the principal does not join. It is usually entered into before or after that of the principal, and is often supported on a separate consideration from that supporting the contract of the principal. The original contract of his principal is not his contract, and he is not bound to take notice of its non-performance. He is often discharged by the mere indulgence of the creditor to the principal, and is usually not liable unless notified of the default of the principal. (Citations omitted.)

There was no express undertaking in Mercado's letters dated August 22, 1996 and January 27, 1997 to pay Bienvenida's debt to GGDI in case Bienvenida failed to do so. In said letters, Mercado merely acknowledged that Bienvenida and/or her company had an approved real estate loan with Allied Bank and guaranteed that subsequent

releases from the loan would be made directly to GGDI provided that the certificate of title over the subject property would be transferred to Bienvenida's name and the real estate mortgage constituted on the subject property in favor of Allied Bank would be annotated on the said certificate. Mercado, by the plain language of his letters, merely committed to the manner by which the proceeds of Bienvenida's approved loan from Allied Bank would be released, but did not obligate Allied Bank to be answerable with its own money to GGDI should Bienvenida default on the payment of the purchase price for the subject property. For this reason, Mercado's letters may not be deemed as contracts of guaranty, although they may be binding as innominate contracts. The rule is settled that a contract constitutes the law between the parties who are bound by its stipulations which, when couched in clear and plain language, should be applied according to their literal tenor. We cannot supply material stipulations, read into the contract words it does not contain or, for that matter, read into it any other intention that would contradict its plain import. Neither can we rewrite contracts because they operate harshly or inequitably as to one of the parties, or alter them for the benefit of one party and to the detriment of the other, or by construction, relieve one of the parties from the terms which he voluntarily consented to, or impose on him those which he did not.[43]

Since the undertaking in the said letters were not covered by the prohibition under Section 74 of the General Banking Act, as amended, the next question for us to determine is whether such undertaking bound Allied Bank, thus, making the bank liable to GGDI.

Based on the doctrine of apparent authority, Allied Bank is bound by the undertaking in the letters dated August 22, 1996 and January 27, 1997 executed by Mercado as Branch Manager of Allied Bank-Pasong Tamo.

There is no question that Allied Bank had all such powers necessary to carry on the business of commercial banking, including, among other things, "by lending money against personal security or against securities consisting of personal property or first mortgages on improved real estate and the insured improvements thereon." [44] Allied Bank, with the prior approval of the Monetary Board, could also establish branches in and outside the Philippines, and it would be responsible for all business conducted in such branches to the same extent and in the same manner as though such business had all been conducted in the head office. For purposes of the General Banking Act, a bank and its branches shall be treated as a unit.[45]

Mercado, as Branch Manager, is in charge of the daily administration and supervision of Allied Bank-Pasong Tamo to carry on the business of commercial banking. To the public, Mercado is clothed with the authority to transact and contract on behalf of, not just his branch, but Allied Bank itself. Mercado issued the letters dated August 22, 1996 and January 27, 1997 in the course of facilitating and processing Bienvenida's loan application, which was to be secured by the real estate mortgage on the subject property. Mercado used the letterhead of Allied Bank for the said letters, and signed the same as Bank Manager of Allied Bank-Pasong Tamo. There was nothing to indicate to GGDI that Mercado, in issuing the letters in question, was already acting beyond his authority as Branch Manager.

GGDI relied in good faith on the assurance stated in Mercado's letter dated August 22, 1996 that the proceeds of

Bienvenida's approved loan with Allied Bank would be released directly to it. Without such letter, GGDI would not have parted with its property prior to full payment of the purchase price for the same. Confident of being paid the balance of the purchase price by virtue of Mercado's letter dated August 22, 1996, GGDI already executed the Deed of Sale for the subject property in Bienvenida's favor on August 23, 1996. Based on the Deed of Sale, TCT No. 205965 in the name of GGDI was cancelled and TCT No. 206877 in the name of Bienvenida, married to Benedicto Pantaleon, was issued. Bienvenida then constituted a real estate mortgage on the subject property in favor of Allied Bank and the bank was able to have said mortgage annotated on TCT No. 206877. In the end, Allied Bank benefitted for it acquired security for the substantial amount of loan it approved and released to the spouses Pantaleon.

Allied Bank cannot now disclaim any liability under the letters dated August 22, 1996 and January 27, 1997 by simply averring that Mercado had no authority to issue the same. With our ruling that the letters dated August 22, 1996 and January 27, 1997 did not constitute contracts of guaranty prohibited under Section 74 of the General Banking Act, there is no more basis for the argument of Allied Bank that Mercado had no authority or acted beyond his authority as Branch Manager in issuing said letters in the course of facilitating and processing Bienvenida's loan with real estate mortgage.

Of particular relevance herein are our pronouncements in *BPI Family Savings Bank, Inc. v. First Metro Investment Corporation*,^[46] citing *Prudential Bank v. Court of Appeals*^[47] and *Francisco v. Government Service Insurance System*^[48]:

We have held that if a corporation knowingly permits its officer, or any other agent, to perform acts within the scope of an apparent authority, holding him out to the public as possessing power to do those acts, the corporation will, as against any person who has dealt in good faith with the corporation through such agent, be estopped from denying such authority. We reiterated this doctrine in *Prudential Bank vs. Court of Appeals*, thus:

A bank holding out its officers and agent as worthy of confidence will not be permitted to profit by the frauds they may thus be enabled to perpetrate in the apparent scope of their employment; nor will it be permitted to shirk its responsibility for such frauds, even though no benefit may accrue to the bank therefrom. Accordingly, a banking corporation is liable to innocent third persons where the representation is made in the course of its business by an agent acting within the general scope of his authority even though the agent is secretly abusing his authority and attempting to perpetrate a fraud upon his principal or some other person for his own ultimate benefit.

In *Francisco vs. Government Service Insurance System*, we ruled:

Corporate transactions would speedily come to a standstill were every person dealing with a corporation held duty-bound to disbelieve every act of its responsible officers, no matter how regular they should appear on their face. This Court has observed in *Ramirez vs. Orientalist Co.*, 38 Phil. 634, 654-655, that-

In passing upon the liability of a corporation in cases of this kind it is always well to keep in mind the situation as it presents itself to the third party with whom the contract is made. Naturally he can have little or no information as to what occurs in corporate meetings; and he must necessarily rely upon the external manifestations of corporate consent. The integrity of commercial transactions can only be maintained by holding the corporation strictly to the liability fixed upon it by its agents in accordance with law; and we would be sorry to announce a doctrine which would permit the property of a man in the city of Paris to be whisked out of his hands and carried into a remote quarter of the earth without recourse against the corporation whose name and authority had been used in the manner disclosed in this case. As already observed, it is familiar doctrine that if a corporation knowingly permits one of its officers, or any other agent, to do acts within the scope of an apparent authority, and thus holds him out to the public as possessing power to do those acts, the corporation will, as against any one who has in good faith dealt with the corporation through such agent, be

estopped from denying his authority; and where it is said "if the corporation permits," this means the same as if the thing is permitted by the directing power of the corporation.

Petitioner maintains that respondent should have first inquired whether the deposit of P100 Million and the fixing of the interest rate were pursuant to its (petitioner's) internal procedures. Petitioner's stance is a futile attempt to evade an obligation clearly established by the intent of the parties. What transpires in the corporate board room is entirely an internal matter. Hence, petitioner may not impute negligence on the part of respondent's representative in failing to find out the scope of authority of petitioner's Branch Manager. Indeed, the public has the right to rely on the trustworthiness of bank managers and their acts. Obviously, confidence in the banking system, which necessarily includes reliance on bank managers, is vital in the economic life of our society.

In Prudential Bank, wherein we particularly applied the doctrine of apparent authority to banks, we stressed that the "[a]pplication of these principles is especially necessary because banks have a fiduciary relationship with the public and their stability depends on the confidence of the people in their honesty and efficiency. Such faith will be eroded where banks do not exercise strict care in the selection and supervision of its employees, resulting in prejudice to their depositors."

A bank is liable to innocent third persons where representation is made in the course of its normal business by an agent like Mercado as Branch Manager, even though such agent is abusing his authority. Clearly, persons dealing with Mercado could not be blamed for believing that he was authorized to transact business for and on behalf of the bank.[49]

For its failure to comply with its
undertaking under the letters dated
August 22, 1996 and January 27,
1997, Allied Bank is liable to
GGD1 for temperate/moderate,
exemplary/corrective damages, and
attorney's fees.

As a result of our findings herein that Mercado's letters dated August 22, 1996 and January 27, 1997 were not contracts of guaranty prohibited by Section 74 of the General Banking Act, as amended, and that they bind Allied Bank by virtue of Mercado's apparent authority to issue the same, then Allied Bank is liable for not complying with its obligation under said letters to release the proceeds of Bienvenida's approved loan, equivalent to the balance of the purchase price for the subject property, directly to GGDI.

We cannot hold Allied Bank liable to GGDI for the balance of the purchase price for the subject property as stated in the Deed of Sale given that Allied Bank is neither a party to the said Deed nor an assignee thereof. Granting that Mercado and the other employees of Allied Bank-Pasong Tamo assisted in the execution of the Deed of Sale of the subject property between GGDI and Bienvenida and the transfer of the certificate of title over the subject property to Bienvenida's name, such acts did not make Allied Bank a party to the Deed and liable thereunder. Article 1311 of the Civil Code explicitly provides that "[c]ontracts take effect only between the parties, their assigns and heirs." Contracts take effect only between the parties who execute them. Where there is no privity of contract, there is likewise no obligation or liability to speak about. The civil law principle of relativity of contracts provides that contracts can only bind the parties who entered into it, and it cannot favor or prejudice a third person, even if he is aware of such contract and has acted with knowledge thereof.[50]

Neither can we hold Allied Bank solidarity liable with the spouses Pantaleon for the balance of the purchase price for the subject property under Mercado's letters dated August 22, 1996 and January 27, 1997 for these did not constitute contracts of guaranty as defined by Article 2047 of the Civil Code.

Allied Bank is liable for not fulfilling its obligation under the letters dated August 22, 1996 and January 27, 1997 to directly release the proceeds of Bienvenida's approved loan to GGDI, and instead releasing the proceeds to the spouses Pantaleon on August 23, 1996. GGDI already executed a Deed of Sale for the subject property in Bienvenida's favor and transferred title and possession of the subject property to Bienvenida on August 23, 1996, although the purchase price had not yet been fully paid and was just completely relying on the assurance stated in Mercado's letter dated August 22, 1996. This undeniably caused GGDI pecuniary losses because for almost two decades it had been deprived of the balance of the purchase price for the subject property or, in the alternative, the use of and/or profits from the subject property. Such losses, however, are not easily quantifiable.

The Civil Code allows the award of temperate or moderate damages under the following circumstances:

ART. 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be proved with certainty.

ART. 2225. Temperate damages must be reasonable under the circumstances.

Temperate or moderate damages may be allowed in cases where from the nature of the case, definite proof of pecuniary loss cannot be adduced, although the court is convinced that the aggrieved party suffered some pecuniary loss.[51] The computation of the amount of temperate or moderate damages is usually left to the discretion of the courts, but the amount must be reasonable, bearing in mind that temperate damages should be more than nominal but less than compensatory.[52] In this case, we find it proper to hold Allied Bank liable to GGDI for temperate or moderate damages in the amount of P500,000.00.[53]

Under Article 2229, exemplary or corrective damages may be imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated, or compensatory damages. We reiterate that the business of banking is impressed with public interest and great reliance is made on the bank's sworn profession of diligence and meticulousness in giving irreproachable service. Banks must always act in good faith and must win the confidence of clients and people in general.[54] Because Allied Bank failed to comply with its undertaking in the letters dated August 22, 1996 and January 27, 1997, it is ordered to pay GGDI exemplary damages in the sum of P150,000.00.[55]

And since we awarded exemplary/corrective damages, we also order Allied Bank to pay GGDI P100,000.00 as attorney's fees based on Article 2208(1) of the Civil Code.[56]

Allied Bank shall further be liable to pay, jointly and severally with the spouses Pantaleon, the costs of suit.

Allied Bank is a mortgagee in bad
faith and the foreclosure on the real
estate mortgage and public auction
sale of the subject property are null
and void.

Mercado, as Branch Manager of Allied Bank-Pasong Tamo, had facilitated and processed Bienvenida's loan which was secured by the subject property; executed the letters dated August 22, 1996 and January 27, 1997

undertaking the direct release to GGDI of the proceeds of Bienvenida's approved loan with the bank; and assisted in the execution of the Deed of Sale involving the subject property between GGDI and Bienvenida, the transfer of the certificate of title for the subject property to Bienvenida's name, and the annotation thereon of the real estate mortgage in favor of Allied Bank, all on August 23, 1996. Allied Bank was well aware that the subject property was not yet fully paid for and that the balance of the purchase price was to be paid for from the proceeds of Bienvenida's approved loan from the bank. Allied Bank was just as cognizant of the fact that the proceeds of the loan were already released to the spouses Pantaleon, and not to GGDI, on August 23, 1996, merely a day after Mercado issued his letter dated August 22, 1996 and same day as the execution by GGDI in Bienvenida's favor of the Deed of Sale for the subject property. While it is true that on its face, Bienvenida's TCT No. 206877 appeared clean, Allied Bank knew of the possibility that the sale of the subject property by GGDI to Bienvenida could be rescinded for nonpayment of the balance of the purchase price and, worse, that the bank itself was partly responsible for the nonpayment because it did not honor its letter dated August 22, 1996. Moreover, despite the repeated notices and demands for payment made by GGDI upon Allied Bank as early as November 21, 1996, the bank proceeded with the foreclosure on the mortgage and public auction sale of the subject property on March 19, 1998.

Based on the foregoing, Allied Bank is a mortgagee in bad faith, as we had described in *Consolidated Rural Bank (Cagayan Valley), Inc. v. Court of Appeals*[57]:

As this Court explained in the case of *Spouses Mathay v. Court of Appeals*:

Although it is a recognized principle that a person dealing on a registered land need not go beyond its certificate of title, it is also a firmly settled rule that where there are circumstances which would put a party on guard and prompt him to investigate or inspect the property being sold to him, such as the presence of occupants/tenants thereon, it is, of course, expected from the purchaser of a valued piece of land to inquire first into the status or nature of possession of the occupants, i.e., whether or not the occupants possess the land en concepto de dueño, in concept of owner. As is the common practice in the real estate industry, an ocular inspection of the premises involved is a safeguard a cautious and prudent purchaser usually takes. Should he find out that the land he intends to buy is occupied by anybody else other than the seller who, as in this case, is not in actual possession, it would then be incumbent upon the purchaser to verify the extent of the occupant's possessory rights. The failure of a prospective buyer to take such precautionary steps would mean negligence on his part and would thereby preclude him from claiming or invoking the rights of a "purchaser in good faith."

This rule equally applies to mortgagees of real property. In the case of *Crisostomo v. Court of Appeals*, the Court held:

It is a well-settled rule that a purchaser or mortgagee cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor or mortgagor. His mere refusal to believe that such defect exists, or his willful closing of his eyes to the possibility of the existence of a defect in the vendor's or mortgagor's title, will not make him an innocent purchaser or mortgagee for value, if it afterwards develops that the title was in fact defective, and it appears that he had such notice of the defects as would have led to its discovery had he acted with the measure of a prudent man in a like situation.

Banks, their business being impressed with public interest, are expected to exercise more care and prudence than private individuals in their dealings, even those involving registered lands. Hence, for merely relying on the certificates of title and for its failure to ascertain the status of the mortgaged properties as is the standard procedure in its operations, we agree with the Court of Appeals that CRB is a mortgagee in bad faith. (Citations omitted.)

Because Allied Bank was a mortgagee in bad faith, its foreclosure on the mortgage and the subsequent public

auction sale of the subject property, in which the bank was the highest bidder, are null and void.

Allied Bank asseverates that its title to the subject property cannot be collaterally attacked in this case, which is for breach of contract, rescission, and damages.

We are not persuaded.

Allied Bank did not present a certificate of title for the subject property in its name, but even if it had, it would not accord the bank any protection. As we pointed out in *Erasusta, Jr. v. Court of Appeals*[58]:

The concept of non-collateral attack of title is based on Section 48, P.D. 1529, which provides:
Certificate Not Subject to Collateral attack. - A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law.

Clear it is from the above that what cannot be collaterally attacked is the certificate of title and not the title itself. As it is, a certificate of title is the document issued by the Register of Deeds in case of conveyance of real estates and is known as TCT. But by title, the law refers to the ownership which a certificate of title merely represents. Apparently, respondent Bank confuses a certificate of title with the title itself. Placing a parcel of land under the mantle of the Torrens system does not mean that ownership thereof can no longer be disputed. Ownership is different from a certificate of title. (Citations omitted.)

We also expounded in *Consolidated Rural Bank (Cagayan Valley), Inc.*[59] that "[w]hile certificates of title are indefeasible, unassailable and binding against the whole world, they merely confirm or record title already existing and vested. They cannot be used to protect a usurper from the true owner, nor can they be used for the perpetration of fraud; neither do they permit one to enrich himself at the expense of others."

If the spouses Pantaleon fail to pay

the balance of the purchase price within

the term set by the RTC judgment, GGDI

is entitled to rescission of the Deed of Sale.

GGDI and the spouses Pantaleon are bound

by the purchase price as stated in the

Deed of Sale.

Both the RTC and the Court of Appeals found that the spouses Pantaleon failed to pay GGDI the balance of the purchase price for the subject property. This is a finding of fact, and it is well-settled that factual findings of the trial court, particularly when affirmed by the Court of Appeals, are generally binding upon us.[60]

Paragraph 4 of the Deed of Sale explicitly states that "[i]n case for any reason whatsoever, [Bienvenida] fails to pay the balance of the purchase price xxx, then this Deed shall be deemed cancelled and null and void and all payments previously made shall be deemed forfeited in favor of [GGDI] as liquidated damages." [61] Even without such provision in the Deed of Sale, a contract of sale, being a reciprocal obligation, can be rescinded under Article 1191 of the Civil Code:

ART. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should

become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with articles 1385 and 1388 and the Mortgage Law.

As to rescission of the sale of an immovable property such as a parcel of land, Article 1592 of the Civil Code further provides:

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

The right of rescission of a party to an obligation under Article 1191 of the Civil Code is predicated on a breach of faith by the other party who violates the reciprocity between them.[62] The failure of the spouses Pantaleon to pay the balance of the purchase price for the subject property entitled GGDI to rescind the Deed of Sale. And in view of our finding that Allied Bank was a mortgagee in bad faith, the subsequent transfer in its favor by way of foreclosure on the mortgage and purchase of the subject property at the public auction sale did not and cannot bar rescission.[63]

However, the RTC, in the exercise of its discretion and in accordance with Article 1592 of the Civil Code, decided to grant the spouses Pantaleon a new term of 30 days within which to pay the balance of the purchase price so as to avoid rescission of the sale of the subject property. There is no reason for us to set aside the term granted by the RTC but we are recomputing the balance of the purchase price which the spouses Pantaleon are required to pay. We hold GGDI and the spouses Pantaleon bound by the purchase price for the subject property stated in the Deed of Sale - P11,000,000.00. GGDI alleges that it should be paid a total of P14,000,000.00 for the subject property as stated in the MOA, and it only agreed to the spouses Pantaleon's request to reduce the purchase price stated in the Deed of Sale so that the latter could save on taxes. We cannot uphold the P14,000,000.00 purchase price for the subject property considering that under the parol evidence rule, "[w]hen the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement." [64] Even granting that the Deed of Sale between GGDI and Bienvenida did not express the true intent and agreement of the parties, we take into account the admission of GGDI that the reduced purchase price in the Deed of Sale was for the purpose of tax evasion, which we cannot condone. Although GGDI claims that the reduced purchase price was the initiative and for the benefit of the spouses Pantaleon, still, GGDI agreed to it and is therefore also bound by it.

Of the purchase price of P11,000,000.00 for the subject property, GGDI already received from the spouses Pantaleon P6,000,000.00 upon execution of the Deed of Sale on August 23, 1996 and P1,000,000.00 in January 1997, hence, leaving a balance of P4,000,000.00 which the spouses Pantaleon must pay within 30 days from finality of this judgment, otherwise, the Deed of Sale is rescinded. The amount shall be subject to the interest rate of 18% as stipulated in paragraph 1 of the Deed of Sale beginning March 29, 1997, when the spouses Pantaleon again failed to comply with their promise to pay the balance of the purchase price.

In the event of rescission of the Deed of Sale, GGDI is entitled to forfeit the P7,000,000.00 it had already received as liquidated damages pursuant to paragraph 4 of the Deed of Sale. Liquidated damages are those agreed upon by the parties to a contract, to be paid in case of breach thereof.[65] Absent any showing that the liquidated damages freely agreed upon by the parties herein is iniquitous or unconscionable, we shall not reduce the same. In fact, the

amount is reasonable considering that GGDI has been deprived of possession and use of the subject property for 19 years.

Because the spouses Pantaleon no longer appealed, we will not disturb the order of the RTC for the spouses Pantaleon to pay GGDI exemplary damages in the amount of P500,000.00 and attorney's fees equivalent to 10% of the balance of the purchase price, plus interest. The spouses Pantaleon shall likewise be liable, jointly and severally with Allied Bank, for the costs of suit.

The cross-claims of Allied Bank and

spouses Pantaleon against each

other are dismissed.

In *Londres v. Court of Appeals*,^[66] we pronounced that "[t]he purpose of a cross-claim is to avoid multiplicity of suits. Multiplicity of suits should be avoided if the filing of a separate and independent action to recover a claim would entail proving exactly the same claim in an existing action. However, when the causes of action are distinct and separate from each other, as in this case, the independent interest should be pursued in another proceeding."

Allied Bank and the spouses Pantaleon filed cross-claims against each other in Civil Case No. Q-98-34077 before the RTC but neither of them presented satisfactory evidence in support of their respective claims; resultantly, the RTC ordered the dismissal of their cross-claims. Nonetheless, we observe that the claims of Allied Bank and the spouses Pantaleon against each other are essentially rooted in Bienvenida's loan secured by the real estate mortgage on the subject property, which, although closely related to the instant case, also involve factual and legal issues, as well as causes of action, that may be the subject of a separate and independent action between Allied Bank and the spouses Pantaleon (i.e., the terms and conditions of Bienvenida's loan/s with Allied Bank, Bienvenida's default on the payments, the respective knowledge and participation of Allied Bank and the spouses Pantaleon in the constitution of the real estate mortgage on the subject property to the prejudice of GGDI, etc.). Furthermore, bearing in mind the substantial amounts involved in the claims of Allied Bank and the spouses Pantaleon against each other, the parties should be allowed to fully litigate the same in appropriate proceedings. Hence, the dismissal of the cross-claims of Allied Bank and the spouses Pantaleon against one another is without prejudice.

WHEREFORE, the Petition is PARTLY GRANTED and the Decision dated October 23, 2007 of the Court of Appeals in CA-G.R. CV No. 82765, affirming with modifications the Decision dated September 25, 2003 of the Regional Trial Court of Quezon City in Civil Case No. Q-98-34077, is AFFIRMED with further MODIFICATIONS, to read as follows:

1. The spouses Bienvenida and Benedicto Pantaleon are ORDERED to pay Games and Garments Developers, Inc. within thirty (30) days from finality of this judgment the balance of the purchase price for the subject property in the amount of FOUR MILLION PESOS (P4,000,000.00), plus eighteen percent (18%) interest per annum from March 29, 1997 until finality of this judgment;

2. In the event that the spouses Bienvenida and Benedicto Pantaleon fail to comply with paragraph (1) hereof, then:

(a) The Deed of Sale dated August 23, 1996 is RESCINDED, the amount of SEVEN MILLION PESOS (P7,000,000.00) previously paid by the spouses Pantaleon to Games and Garments Developers, Inc. is FORFEITED as liquidated damages; and TCT No. 206877 in the name of Bienvenida Pantaleon, married to Benedicto Pantaleon, is CANCELLED;

(b) The real estate mortgage constituted on the subject property by Bienvenida Pantaleon in favor of Allied Banking Corporation, the foreclosure on the mortgage by Allied Banking Corporation, and the public auction sale of the subject property are DECLARED null and void; and the Certificate of Sale dated March 19, 1998 issued by the Office of the Clerk of Court of the Regional Trial Court of Muntinlupa City in favor of Allied Banking Corporation and any certificate of title for the subject property issued in the name of Allied Banking Corporation are CANCELLED;

(c) Allied Banking Corporation is ORDERED to reconvey the subject property to Games and Garments Developers, Inc. and the Register of Deeds of Makati City (now Muntinlupa City) is DIRECTED to issue a new certificate of title, free from any liens or encumbrances, in the name of Games and Garments Developers, Inc.;

(3) The spouses Bienvenida and Benedicto Pantaleon are ORDERED to pay Games and Garments Developers, Inc. exemplary damages in the amount of FIVE HUNDRED THOUSAND PESOS (P500,000.00) and attorney's fees equivalent to TEN PERCENT (10%) of the total monetary award in paragraph (1) hereof;

(4) Allied Banking Corporation is ORDERED to pay Games and Garments Developers, Inc. the amounts of FIVE HUNDRED THOUSAND PESOS (P500,000.00) as temperate/moderate damages, ONE HUNDRED FIFTY THOUSAND PESOS (P150,000.00) as exemplary/corrective damages, and ONE HUNDRED THOUSAND PESOS (P100,000.00) as attorney's fees;

(5) The spouses Bienvenida and Benedicto Pantaleon and Allied Banking Corporation are ORDERED to pay, jointly and severally, the costs of suit;

(6) Legal interest of six percent (6%) per annum shall be IMPOSED on all the aforementioned monetary awards from date of finality of this judgment until full satisfaction of the same; and

(7) The cross-claims of the spouses Bienvenida and Benedicto Pantaleon and Allied Banking Corporation against one another are DISMISSED without prejudice.

SO ORDERED.

Sereno, C.J., (Chairperson), Bersamin, Perez, and Perlas-Bernabe, JJ., concur.

[1] Rollo, pp. 31-48; penned by Associate Justice Noel G. Tijam with Associate Justices Martin S. Villarama, Jr. and Sesinando E. Villon, concurring.

[2] Id. at 50-51.

[3] Id. at 72-92.

[4] Although the real property involved in this case is located in Muntinlupa City, Civil Case No. Q-98-34077 was instituted before the RTC in Quezon City pursuant to paragraph 8 of the Memorandum of Agreement between the parties Games and Garments Developers, Inc. and Bienvenida Pantaleon, which provides that "[a]ny legal action that may arise from this agreement shall be brought only before the courts in Quezon City, Philippines." Spouses Bienvenida and Benedicto Pantaleon filed a motion to dismiss Civil Case No. Q-98-34077 for improper venue, among other grounds, which was denied by the RTC in an Order dated August 12, 1998.

[5] The Cosay family is the previous owner of the subject property who mortgaged the same to GGDI. GGDI later foreclosed on the mortgage and acquired and registered the subject property in its name. The Cosay family filed a civil case against GGDI before the RTC of Muntinlupa City, Branch 276 to recover the subject property.

[6] Records, Vol. I, pp. 11-14.

[7] Id. at 44.

[8] Id. at 15-17.

[9] Id. at 50.

[10] Id. at 202.

[11] The records do not show whether the loan proceeds were released by Allied Bank-Pasong Tamo or Allied Bank Head Office.

[12] Records, Vol. I, p. 51.

[13] Id. at 52.

[14] Id. at 53.

[15] TSN, December 28, 1998, p. 38.

[16] Records, Vol. I, p. 154.

[17] Id. at 54.

[18] Id. at 154; Return slip dated April 1, 1997 from China Bank.

[19] Id. at 56.

[20] Id. at 57.

[21] Id. at 58.

[22] Id. at 59.

[23] Id. at 29-39; Amended Complaint.

[24] Id. at 101.

[25] Id. at 119.

[26] Id. at 132.

[27] Id. at 205-206.

[28] Id. at 197-198.

[29] Id. at 209-218.

[30] Id. at 307-315.

[31] Id. at 312-313.

[32] Id. at 383-385.

[33] TSN, December 15, 2000, pp. 35.

[34] Rollo, pp. 91-92.

[35] Records, Vol. II, pp. 721-722.

[36] Rollo, p. 40.

[37] Rollo, p. 46.

[38] CA rollo, pp. 316-317.

[39] Rollo, pp. 139-140.

[40] Republic Act No. 8791, otherwise known as The General Banking Law of 2000, took effect on June 13, 2000, Section 35 of which already allows a bank to extend loans, credit accommodations, and guarantees to any person, partnership, association, corporation or other entity, subject to the limitation that these would not exceed 20% of the net worth of such bank.

[41] *Machetti v. Hospicio de San Jose*, 43 Phil. 297, 300 (1922).

[42] 352 Phil. 608, 614-615 (1998).

[43] *Cabahug v. National Power Corporation*, G.R. No. 186069, January 30, 2013, 689 SCRA 666, 673-674.

[44] Republic Act No. 337, otherwise known as the General Banking Act, as amended, Section 21.

[45] *Id.* at Section 27.

[46] G.R. No. 132390, May 21, 2004, 429 SCRA 30, 37-39.

[47] G.R. No. 108957, June 14, 1993, 223 SCRA 350.

[48] 117 Phil. 586 (1963).

[49] *Rural Bank of Milaor (Camarines Sur) v. Ocfemia*, 381 Phil. 911, 924 (2000).

[50] *Borromeo v. Court of Appeals*, 573 Phil. 400, 411-412 (2008).

[51] *Premiere Development Bank v. Court of Appeals*, 471 Phil. 704, 719 (2004).

[52] *Seven Brothers Shipping Corp. v. DMC-Construction Resources, Inc.*, G.R. No. 193914, November 26, 2014.

[53] See *Maceda, Jr. v. Development Bank of the Philippines*, G.R. No. 174979, August 11, 2010, 628 SCRA 196, 208.

[54] *Citibank, N.A. v. Dinopol*, G.R. No. 188412, November 22, 2010, 635 SCRA 649, 659.

[55] See *Maceda, Jr. v. Development Bank of the Philippines*, *supra* note 53 at 208.

[56] *Id.*

[57] 489 Phil. 320, 336-338 (2005).

[58] 527 Phil. 639, 654-655 (2006).

[59] *Supra* note 57 at 338.

[60] *Raquel-Santos v. Court of Appeals*, 609 Phil. 630, 655 (2009).

[61] *Records*, Vol. I, p. 16.

[62] *Velarde v. Court of Appeals*, 413 Phil. 360, 373 (2001).

[63] See *Bank of the Philippine Islands v. Sanchez*, G.R. Nos. 179518, 179835 & 179954, November 19, 2014.

[64] REVISED RULES OF COURT, Rule 130, Section 9.

[65] CIVIL CODE, Article 2226.

[66] 442 Phil. 340, 361 (2002).

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