

**PLEASANTVILLE DEVELOPMENT CORPORATION, PETITIONER, VS.
COURT OF APPEALS, WILSON KEE, C.T. TORRES ENTERPRISES, INC.
AND ELDRED JARDINICO, RESPONDENTS.**

G.R. No. 79688. February 01, 1996

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Is a lot buyer who constructs improvements on the wrong property erroneously delivered by the owner's agent, a builder in good faith? This is the main issue resolved in this petition for review on certiorari to reverse the Decision[1] of the Court of Appeals[2] in CA-G.R. SP No. 11040, promulgated on August 20, 1987.

By resolution dated November 13, 1995, the First Division of this Court resolved to transfer this case (along with several others) to the Third Division. After due deliberation and consultation, the Court assigned the writing of this Decision to the undersigned ponente.

The Facts

The facts, as found by respondent Court, are as follows:

Edith Robillo purchased from petitioner a parcel of land designated as Lot 9, Phase II and located at Taculing Road, Pleasantville Subdivision, Bacolod City. In 1975, respondent Eldred Jardinico bought the rights to the lot from Robillo. At that time, Lot 9 was vacant.

Upon completing all payments, Jardinico secured from the Register of Deeds of Bacolod City on December 19, 1978 Transfer Certificate of Title No. 106367 in his name. It was then that he discovered that improvements had been introduced on Lot 9 by respondent Wilson Kee, who had taken possession thereof.

It appears that on March 26, 1974, Kee bought on installment Lot 8 of the same subdivision from C.T. Torres Enterprises, Inc. (CTTEI), the exclusive real estate agent of petitioner. Under the Contract to Sell on Installment, Kee could possess the lot even before the completion of all installment payments. On January 20, 1975, Kee paid CTTEI the relocation fee of P50.00 and another P50.00 on January 27, 1975, for the preparation of the lot plan. These amounts were paid prior to Kee's taking actual possession of Lot 8. After the preparation of the lot plan and a copy thereof given to Kee, CTTEI through its employee, Zenaida Octaviano, accompanied Kee's wife, Donabelle Kee, to inspect Lot 8. Unfortunately, the parcel of land pointed by Octaviano was Lot 9. Thereafter, Kee proceeded to construct his residence, a store, an auto repair shop and other improvements on the lot.

After discovering that Lot 9 was occupied by Kee, Jardinico confronted him. The parties tried to reach an amicable settlement, but failed.

On January 30, 1981, Jardinico's lawyer wrote Kee, demanding that the latter remove all improvements and vacate Lot 9. When Kee refused to vacate Lot 9, Jardinico filed with the Municipal Trial Court in Cities, Branch 3, Bacolod City (MTCC), a complaint for ejectment with damages against Kee.

Kee, in turn, filed a third-party complaint against petitioner and CTTEI.

The MTCC held that the erroneous delivery of Lot 9 to Kee was attributable to CTTEI. It further ruled that petitioner and CTTEI could not successfully invoke as a defense the failure of Kee to give notice of his intention to begin construction required under paragraph 22 of the Contract to Sell on Installment and his having built a sari-sari store without the prior approval of petitioner required under paragraph 26 of said contract, saying that the purpose of these requirements was merely to regulate the type of improvements to be constructed on the lot[3].

However, the MTCC found that petitioner had already rescinded its contract with Kee over Lot 8 for the latter's failure to pay the installments due, and that Kee had not contested the rescission. The rescission was effected in 1979, before the complaint was instituted. The MTCC concluded that Kee no longer had any right over the lot subject of the contract between him and petitioner. Consequently, Kee must pay reasonable rentals for the use of Lot 9, and, furthermore, he cannot claim reimbursement for the improvements he introduced on said lot.

The MTCC thus disposed:

"IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered as follows:

1. Defendant Wilson Kee is ordered to vacate the premises of Lot 9, covered by TCT No. 106367 and to remove all structures and improvements he introduced thereon;
2. Defendant Wilson Kee is ordered to pay to the plaintiff rentals at the rate of P 15.00 a day computed from the time this suit was filed on March 12, 1981 until he actually vacates the premises. This amount shall bear interests (sic) at the rate of 12 per cent (sic) per annum.
3. Third-Party Defendant CT. Torres Enterprises, Inc. and Pleasantville Subdivision are ordered to pay the plaintiff jointly and severally the sum of P3,000.00 as attorney's fees and P700.00 as cost and litigation expenses."[4]

On appeal, the Regional Trial Court, Branch 48, Bacolod City (RTC) ruled that petitioner and CTTEI were not at fault or were not negligent, there being no preponderant evidence to show that they directly participated in the delivery of Lot 9 to Kee.[5] It found Kee a builder in bad faith. It further ruled that even assuming *arguendo* that Kee was acting in good faith, he was, nonetheless, guilty of unlawfully usurping the possessory right of Jardinico over Lot 9 from the time he was served with notice to vacate said lot, and thus was liable for rental.

The RTC thus disposed:

"WHEREFORE, the decision appealed from is affirmed with respect to the order against the defendant to vacate the premises of Lot No. 9 covered by Transfer Certificate of Title No. T-106367 of the land records of Bacolod City; the removal of all structures and improvements introduced thereon at his expense and the payment to plaintiff (sic) the sum of Fifteen (P 15.00) Pesos a day as reasonable rental to be computed from January 30, 1981, the date of the demand, and not from the date of the filing of the complaint, until he had vacated (sic) the premises, with interest thereon at 12% per annum. This Court further renders judgment against the defendant to pay the plaintiff the sum of Three Thousand (P3,000.00) Pesos as attorney's fees, plus costs of litigation.

"The third-party complaint against Third-Party Defendants Pleasantville Development Corporation and C.T. Torres Enterprises, Inc. is dismissed. The order against Third-Party Defendants to pay attorney's fees to plaintiff and costs of litigation is reversed."[6]

Following the denial of his motion for reconsideration on October 20, 1986, Kee appealed directly to the Supreme Court, which referred the matter to the Court of Appeals.

The appellate court ruled that Kee was a builder in good faith, as he was unaware of the "mix-up" when he began construction of the improvements on Lot 8. It further ruled that the erroneous delivery was due to the negligence of CTTEI, and that such wrong delivery was likewise imputable to its principal, petitioner herein. The appellate court also ruled that the award of rentals was without basis.

Thus, the Court of Appeals disposed:

"WHEREFORE, the petition is GRANTED, the appealed decision is REVERSED, and judgment is rendered as follows:

1. Wilson Kee is declared a builder in good faith with respect to the improvements he introduced on Lot 9, and is entitled to the rights granted him under Articles 448, 546 and 548 of the New Civil Code.
2. Third-party defendants C.T. Torres Enterprises, Inc. and Pleasantville Development Corporation are solidarily liable under the following circumstances:
 - a. If Eldred Jardinico decides to appropriate the improvements and, thereafter, remove these structures, the third-party defendants shall answer for all demolition expenses and the value of the improvements thus destroyed or rendered useless;
 - b. If Jardinico prefers that Kee buy the land, the third-party defendants shall answer for the amount representing the value of Lot 9 that Kee should pay to Jardinico.
3. Third-party defendants C.T. Torres Enterprises, Inc. and Pleasantville Development Corporation are ordered to pay in solidum the amount of P3,000.00 to Jardinico as attorney's fees, as well as litigation expenses.
4. The award of rentals to Jardinico is dispensed with.

"Furthermore, the case is REMANDED to the court of origin for the determination of the actual value of the improvements and the property (Lot 9), as well as for further proceedings in conformity with Article 448 of the New Civil Code." [7]

Petitioner then filed the instant petition against Kee, Jardinico and CTTEI.

The Issues

The petition submitted the following grounds to justify a review of the respondent Court's Decision, as follows:

- "1. The Court of Appeals has decided the case in a way probably not in accord with law or the the (sic) applicable decisions of the Supreme Court on third-party complaints, by ordering third-party defendants to pay the demolition expenses and/or price of the land;
- "2. The Court of Appeals has so far departed from the accepted course of judicial proceedings, by granting to private respondent-Kee the rights of a builder in good faith in excess of what the law provides, thus enriching private respondent Kee at the expense of the petitioner;
- "3. In the light of the subsequent events or circumstances which changed the rights of the parties, it becomes imperative to set aside or at least modify the judgment of the Court of Appeals to harmonize with justice and the facts;
- "4. Private respondent-Kee in accordance with the findings of facts of the lower court is clearly a builder in bad faith, having violated several provisions of the contract to sell on installments;
- "5. The decision of the Court of Appeals, holding the principal, Pleasantville Development Corporation (liable) for the acts made by the agent in excess of its authority is clearly in violation of the provision of the law;
- "6. The award of attorney's fees is clearly without basis and is equivalent to putting a premium in (sic) court

litigation."

From these grounds, the issues could be re-stated as follows:

- (1) Was Kee a builder in good faith?
- (2) What is the liability, if any, of petitioner and its agent, C.T. Torres Enterprises, Inc.? and
- (3) Is the award of attorney's fees proper?

The First Issue: Good Faith

Petitioner contends that the Court of Appeals erred in reversing the RTC's ruling that Kee was a builder in bad faith.

Petitioner fails to persuade this Court to abandon the findings and conclusions of the Court of Appeals that Kee was a builder in good faith. We agree with the following observation of the Court of Appeals:

"The roots of the controversy can be traced directly to the errors committed by CTTEI, when it pointed the wrong property to Wilson Kee and his wife. It is highly improbable that a purchaser of a lot would knowingly and willingly build his residence on a lot owned by another, deliberately exposing himself and his family to the risk of being ejected from the land and losing all improvements thereon, not to mention the social humiliation that would follow.

"Under the circumstances, Kee had acted in the manner of a prudent man in ascertaining the identity of his property. Lot 8 is covered by Transfer Certificate of Title No. T-69561, while Lot 9 is identified in Transfer Certificate of Title No. T-106367. Hence, under the Torrens system of land registration, Kee is presumed to have knowledge of the metes and bounds of the property with which he is dealing. x x x

xxx xxx xxx

"But as Kee is a layman not versed in the technical description of his property, he had to find a way to ascertain that what was described in TCT No. 69561 matched Lot 8. Thus, he went to the subdivision developer's agent and applied and paid for the relocation of the lot, as well as for the production of a lot plan by CTTEI's geodetic engineer. Upon Kee's receipt of the map, his wife went to the subdivision site accompanied by CTTEI's employee, Octaviano, who authoritatively declared that the land she was pointing to was indeed Lot 8. Having full faith and confidence in the reputation of CTTEI, and because of the company's positive identification of the property, Kee saw no reason to suspect that there had been a misdelivery. The steps Kee had taken to protect his interests were reasonable. There was no need for him to have acted ex-abundantia cautela, such as being present during the geodetic engineer's relocation survey or hiring an independent geodetic engineer to countercheck for errors, for the final delivery of subdivision lots to their owners is part of the regular course of everyday business of CTTEI. Because of CTTEI's blunder, what Kee had hoped to forestall did in fact transpire. Kee's efforts all went to naught."[8]

Good faith consists in the belief of the builder that the land he is building on is his and his ignorance of any defect or flaw in his title.[9] And as good faith is presumed, petitioner has the burden of proving bad faith on the part of Kee.[10]

At the time he built improvements on Lot 8, Kee believed that said lot was what he bought from petitioner. He was not aware that the lot delivered to him was not Lot 8. Thus, Kee's good faith. Petitioner failed to prove otherwise.

To demonstrate Kee's bad faith, petitioner points to Kee's violation of paragraphs 22 and 26 of the Contract of Sale on Installment.

We disagree. Such violations have no bearing whatsoever on whether Kee was a builder in good faith, that is, on his state of mind at the time he built the improvements on Lot 9. These alleged violations may give rise to petitioner's cause of action against Kee under the said contract (contractual breach), but may not be bases to negate the presumption that Kee was a builder in good faith.

Petitioner also points out that, as found by the trial court, the Contract of Sale on Installment covering Lot 8 between it and Kee was rescinded long before the present action was instituted. This has no relevance on the liability of petitioner, as such fact does not negate the negligence of its agent in pointing out the wrong lot to Kee. Such circumstance is relevant only as it gives Jardinico a cause of action for unlawful detainer against Kee.

Petitioner next contends that Kee cannot "claim that another lot was erroneously pointed out to him" because the latter agreed to the following provision in the Contract of Sale on Installment, to wit:

"13. The Vendee hereby declares that prior to the execution of his contract he/she has personally examined or inspected the property made subject-matter hereof, as to its location, contours, as well as the natural condition of the lots and from the date hereof whatever consequential change therein made due to erosion, the said Vendee shall bear the expenses of the necessary fillings, when the same is so desired by him/her." [11]

The subject matter of this provision of the contract is the change of the location, contour and condition of the lot due to erosion. It merely provides that the vendee, having examined the property prior to the execution of the contract, agrees to shoulder the expenses resulting from such change.

We do not agree with the interpretation of petitioner that Kee contracted away his right to recover damages resulting from petitioner's negligence. Such waiver would be contrary to public policy and cannot be allowed. "Rights may be waived, unless the waiver is contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person with a right recognized by law." [12]

The Second Issue: Petitioner's Liability

Kee filed a third-party complaint against petitioner and CTTEI, which was dismissed by the RTC after ruling that there was no evidence from which fault or negligence on the part of petitioner and CTTEI can be inferred. The Court of Appeals disagreed and found CTTEI negligent for the erroneous delivery of the lot by Octaviano, its employee.

Petitioner does not dispute the fact that CTTEI was its agent. But it contends that the erroneous delivery of Lot 9 to Kee was an act which was clearly outside the scope of its authority, and consequently, CTTEI alone should be liable. It asserts that "while [CTTEI] was authorized to sell the lot belonging to the herein petitioner, it was never authorized to deliver the wrong lot to Kee." [13]

Petitioner's contention is without merit.

The rule is that the principal is responsible for the acts of the agent, done within the scope of his authority, and should bear the damage caused to third persons. [14] On the other hand, the agent who exceeds his authority is personally liable for the damage. [15]

CTTEI was acting within its authority as the sole real estate representative of petitioner when it made the delivery to Kee. In acting within its scope of authority, it was, however, negligent. It is this negligence that is the basis of petitioner's liability, as principal of CTTEI, per Articles 1909 and 1910 of the Civil Code.

Pending resolution of the case before the Court of Appeals, Jardinico and Kee on July 24, 1987 entered into a deed of sale, wherein the former sold Lot 9 to Kee. Jardinico and Kee did not inform the Court of Appeals of such deal.

The deed of sale contained the following provision:

"1. That Civil Case No. 3815 entitled "Jardinico vs. Kee" which is now pending appeal with the Court of Appeals, regardless of the outcome of the decision shall be mutually disregarded and shall not be pursued by the parties herein and shall be considered dismissed and without effect whatsoever;[16]

Kee asserts though that the "terms and conditions in said deed of sale are strictly for the parties thereto" and that "(t)here is no waiver made by either of the parties in said deed of whatever favorable judgment or award the honorable respondent Court of Appeals may make in their favor against herein petitioner Pleasantville Development Corporation and/or private respondent C.T. Torres Enterprises, Inc."[17]

Obviously, the deed of sale can have no effect on the liability of petitioner. As we have earlier stated, petitioner's liability is grounded on the negligence of its agent. On the other hand, what the deed of sale regulates are the reciprocal rights of Kee and Jardinico; it stressed that they had reached an agreement independent of the outcome of the case.

Petitioner further assails the following holding of the Court of Appeals:

"2. Third-party defendants C.T. Torres Enterprises, Inc. and Pleasantville Development Corporation are solidarily liable under the following circumstances:

"a. If Eldred Jardinico decides to appropriate the improvements and, thereafter, remove these structures, the third-party defendants shall answer for all demolition expenses and the value of the improvements thus destroyed or rendered useless;

"b. If Jardinico prefers that Kee buy the land, the third-party defendants shall answer for the amount representing the value of Lot 9 that Kee should pay to Jardinico."[18]

Petitioner contends that if the above holding would be carried out, Kee would be unjustly enriched at its expense. In other words, Kee would be -able to own the lot, as buyer, without having to pay anything on it, because the aforequoted portion of respondent Court's Decision would require petitioner and CTTEI jointly and solidarily to "answer" or reimburse Kee there for.

We agree with petitioner.

Petitioner's liability lies in the negligence of its agent CTTEI. For such negligence, the petitioner should be held liable for damages. Now, the extent and/or amount of damages to be awarded is a factual issue which should be determined after evidence is adduced. However, there is no showing that such evidence was actually presented in the trial court; hence no damages could now be awarded.

The rights of Kee and Jardinico vis-a-vis each other, as builder in good faith and owner in good faith, respectively, are regulated by law (i.e., Arts. 448, 546 and 548 of the Civil Code). It was error for the Court of Appeals to make a "slight modification" in the application of such law, on the ground of "equity". At any rate, as it stands now, Kee and Jardinico have amicably settled through their deed of sale their rights and obligations with regards to Lot 9. Thus, we delete items 2 (a) and (b) of the dispositive portion of the Court of Appeals' Decision [as reproduced above] holding petitioner and CTTEI solidarily liable.

The Third Issue: Attorney's Fees

The MTCC awarded Jardinico attorney's fees and costs in the amount of P3,000.00 and P700.00, respectively, as prayed for in his complaint. The RTC deleted the award, consistent with its ruling that petitioner was without fault or negligence. The Court of Appeals, however, reinstated the award of attorney's fees after ruling that petitioner was liable for its agent's negligence.

The award of attorney's fees lies within the discretion of the court and depends upon the circumstances of each case.[19] We shall not interfere with the discretion of the Court of Appeals. Jardinico was compelled to litigate for the protection of his interests and for the recovery of damages sustained as a result of the negligence of petitioner's agent.[20]

In sum, we rule that Kee is a builder in good faith. The disposition of the Court of Appeals that Kee "is entitled to the rights granted him under Articles 448, 546 and 548 of the New Civil Code" is deleted, in view of the deed of sale entered into by Kee and Jardinico, which deed now governs the rights of Jardinico and Kee as to each other. There is also no further need, as ruled by the appellate Court, to remand the case to the court of origin "for determination of the actual value of the improvements and the property (Lot 9), as well as for further proceedings in conformity with Article 448 of the New Civil Code."

WHEREFORE, the petition is partially GRANTED. The Decision of the Court of Appeals is hereby MODIFIED as follows:

- (1) Wilson Kee is declared a builder in good faith;
- (2) Petitioner Pleasantville Development Corporation and respondent C.T. Tones Enterprises, Inc. are declared solidarily liable for damages due to negligence; however, since the amount and/or extent of such damages was not proven during the trial, the same cannot now be quantified and awarded;
- (3) Petitioner Pleasantville Development Corporation and respondent C.T. Torres Enterprises, Inc. are ordered to pay in solidum the amount of P3,000.00 to Jardinico as attorney's fees, as well as litigation expenses; and
- (4) The award of rentals to Jardinico is dispensed with.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., and Melo, JJ., concur.

Francisco, J., took no part. Member of the division in the CA which rendered the assailed decision.

[1] Rollo, pp. 37-46.

[2] Eleventh Division, composed of J. Alfredo L. Benipayo, ponente, and JJ. Lorna S. Lombos-dela Fuente, chair, and Ricardo J. Francisco, member.

[3] Rollo, pp. 28-29.

[4] Rollo, pp. 30-31.

[5] Rollo, p. 34.

[6] Rollo, p. 35.

[7] Rollo, pp. 45-46.

[8] Rollo, pp. 43-44.

[9] Floreza vs. Evangelista, 96 SCRA 130 (February 21, 1980); cf Art. 526, Civil Code of the Philippines.

[10] Art. 527, Civil Code of the Philippines.

[11] Rollo, p. 17.

[12] Art. 6, Civil Code of the Philippines; see Canete vs. San Antonio Agro-Industrial Development Corp., 113 SCRA 723 (April 27, 1982).

[13] Rollo, p. 19.

[14] Lopez vs. Alvendia, 120 Phil. 1424 (December 24, 1964); cf Art. 1910. Civil Code.

[15] BA Finance Corporation vs. Court of Appeals, 211 SCRA 112 (July 3, 1992); Art. 1897, Civil Code.

[16] Rollo, p. 47.

[17] Rollo, p.61.

[18] Rollo, pp. 9-10

[19] Universal Shipping Lines, inc. vs. intermediate Appellate Court, 188 SCRA 170 (July 31, 1990).

[20] Art. 2208, Civil Code of the Philippines.

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