

IGMIDIO ABANDO AND CONSOLACION ABANDO, PETITIONERS, VS. FRANCISCO LOZADA, MILAGROS LOZADA AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.

G.R. No. 82564. October 13, 1989

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

In this petition for review on certiorari what is sought is to reverse the ruling of the Court of Appeals finding and declaring that private respondents herein, the spouses Francisco and Milagros Lozada, are purchasers in good faith of certain parcels of land.[1]

The facts leading to the controversy are as follows:

Petitioners herein, the spouses Igmidio and Consolacion Abando, are the registered owners of three (3) parcels of land all located at Malamig Street, Mandaluyong, Metro Manila. The said lots are covered by Transfer Certificates of Title Nos. 21196, 21197 and 100771, all in the name of the spouses Abando.

Trouble began sometime in November 1976 when the spouses Abando, through the efforts of Romeo Cuevas, treasurer of Prime Exchange Co., Inc. (hereinafter referred to as Prime Exchange), met Ernesto Pucan, president of the said corporation. Immediately thereafter, an offer for the spouses Abando to invest in Prime Exchange was made by Pucan. The idea was for the spouses to incorporate their three lots as their contribution to Prime Exchange. This proposal was turned down by the spouses.

Cuevas and Pucan persevered, and instead, offered to lease the three lots from the spouses Abando. To lure the spouses into agreeing to the proposition, Cuevas and Pucan represented that Prime Exchange would construct a five (5) storey building on the land. As additional incentives, Cuevas and Pucan promised that the spouses Abando would administer the building; that they would be given a place to dwell thereon; that they would be guaranteed an annual income of twenty thousand one hundred and sixty pesos (P20,160.00); and that their son would be given a job. By reason of this apparent magnanimity on the part of Cuevas and Pucan, the spouses finally agreed to lease their properties to Prime Exchange.

Later, Cuevas and Pucan presented to the spouses copies of the purported lease contract for signature. Unknown to the latter, only one of these copies contains the stipulations of the lease contract they agreed upon. Through deceit and trickery, Cuevas and Pucan were able to convince the spouses to sign all the copies of the contract without reading but one of them. On the pretext that the contracts have yet to be notarized, none was left for the spouses.

To continue with the grand swindle, Pucan later borrowed the three transfer certificates of title from the spouses on the pretext that the company engineer needed the same for the immediate construction of the building. A week later, Pucan went back to see the petitioners bringing with him a document purportedly needed by the engineer who will draft the plan and specifications of the building. On the excuse that he was in a hurry, Pucan again

succeeded in making the spouses sign without reading the contents of the document.

Later and much to their dismay, the spouses Abando discovered that they were duped all along. The first batch of documents they signed turned out to be a "Joint Venture Agreement" while the second document was in reality a "Deed of Assignment" of their three (3) parcels of land in favor of Prime Exchange in consideration of one hundred forty-four thousand pesos (P144,000.00) worth of preferred shares of stock of the corporation. No building was ever erected on their land. Neither did petitioners receive the yearly income as promised, nor did they become owners of stocks in Prime Exchange.

When it dawned upon petitioners that they had been defrauded, they looked for the perpetrators at the latter's office along Buendia Avenue in Makati but found out that the office had already been transferred. After so much effort, they finally located Pucan at the fourth floor of Amparo Building along España, Manila.

Convinced that Pucan's promises were empty gestures of sincerity in returning to them their certificates of title, the spouses went to the Office of the Register of Deeds of Pasig and to their chagrin learned that their titles - Transfer Certificates of Title Nos. 21196, 21197 and 100771 have already been replaced by Transfer Certificates of Title Nos. 2844, 2845 and 2846 respectively, all in favor of Prime Exchange.

As if the tragic discoveries were not enough, they also found out that Prime Exchange had already sold two of the three parcels of land to Ernesto Pucan. Thus, Transfer Certificates of Title Nos. 2845 and 2846 had already been replaced by Transfer Certificates of Title Nos. 6300 and 6301 in the name of Pucan.

It was found out that on June 30, 1977, Pucan mortgaged the two parcels of land to private respondents herein the spouses Francisco and Milagros Lozada for and in consideration of the amount of sixty thousand pesos (P60,000.00). When Pucan failed to pay the loan at maturity, proceedings for the extrajudicial foreclosure of the real estate mortgage were initiated by the spouses Lozada. The bidding was held on June 30, 1978 and the said parcels of land were awarded to the spouses Lozada as highest bidder. No one redeemed the property within the prescribed period, hence, titles over the properties were consolidated in the name of Francisco and Milagros Lozada. Subsequently, Transfer Certificates of Title Nos. 6300 and 6301 were cancelled and Transfer Certificates of Title Nos. 20694 and 20695 were issued in their stead.

Thereupon, petitioners instituted an action before the then Court of First Instance of Rizal, Branch X for the revival, restitution and restoration of Transfer Certificates of Title Nos. 21196, 21197 and 100771 that sought among others the following: the cancellation of Transfer Certificates of Title Nos. 20695, 20696 and 2844; the nullification of the Joint Venture Agreement and the Deed of Assignment; the nullification of the Deed of Sale executed between Prime Exchange and Pucan; and the nullification of the subsequent mortgage contract between Pucan and private respondents herein.

After trial, the lower court ruled:

"WHEREFORE, premises considered, judgment is hereby rendered declaring null and void the joint venture agreement (Exh. D), the deed of assignment (Exh. E), the deed of sale between Prime Exchange Co., Inc. and Ernesto Pucan (Exhibit 1), the deed of first mortgage executed by Ernesto Pucan and Romeo Cuevas in favor of Eutiquio Vasquez and the certificates of sales executed by the sheriff in favor of Vasquez and Lozada; Transfer Certificate of Title No. 2844 in the name of defendant Prime Exchange Co., Inc. is hereby declared null and void and Transfer Certificate of Title No. 21196 in the name of plaintiffs is hereby revived; Transfer Certificates of Title Nos. 20695 and 20696 in the name of defendant Francisco Lozada are hereby declared null and void and Transfer Certificates of Title Nos. 21197 and 100771 in the names of plaintiffs are hereby revived. xxx."

SO ORDERED."[2]

On appeal, the respondent court modified the decision of the lower court and ruled:

"WHEREFORE, premises considered, the decision of the lower court is modified and a new judgment is hereby rendered to read as follows:

1. Declaring Francisco and Milagros Lozada the lawful owners of the two parcels of land covered by Transfer Certificates of Title Nos. 20694 and 20695;

2. xxx.

SO ORDERED." [3]

The third parcel of land covered by Transfer Certificate of Title No. 2844 is not a subject matter of this petition. It is only that portion of the Court of Appeals' decision relating to the two other parcels (Originally under TCT Nos. 21197 and 100771) that are raised in this appeal. Thus, this Court prefers not to narrate any longer the peccant transactions perpetuated by Cuevas and Pucan relative thereto.

After going over the records of this case, this Court finds no cogent reason to disturb the ruling of respondent Court of Appeals.

As correctly pointed out by the appellate court, [4] the strategem, the deceit, the misrepresentations employed by Cuevas and Pucan are facts constitutive of fraud which is defined in Article 1338 of the Civil Code as that insidious words or machinations of one of the contracting parties, by which the other is induced to enter into a contract which, without them, he would not have agreed to. When fraud is employed to obtain the consent of the other party to enter into a contract, the resulting contract is merely a voidable contract, that is, a valid and subsisting contract until annulled or set aside by a competent court. [5] Thus, contrary to the assertion of petitioners [6] the joint venture agreement and the deed of assignment which they unknowingly signed are not void contracts. In fact, this Court has ruled upon a similar question in the case of Rivero vs. Court of Appeals. [7] In that particular case, this Court held that when one party was made to think by the other that the contract he had signed was one of mortgage when in fact it was one of sale, the resulting contract is a voidable contract of sale.

Bearing in mind this legal truism, We now come to the core issue raised in this petition. Can the spouses Lozada be considered purchasers in good faith?

Petitioners assert the negative. They claim that the respondent court erred in not considering the totality of the circumstances which culminated in the sale at public auction of the subject lots. Petitioners allege that the inquiry should not have been limited to the time of the auction sale, but rather, should have gone back to that time when these same properties were mortgaged to the spouses Lozada. Petitioners then point to the evidence on record showing that at the particular day the mortgage was executed between Ernesto Pucan and the Lozadas, Transfer Certificates of Title Nos. 6300 and 6301 were not yet in existence. In fact, they added, these titles were issued only in the name of Pucan, the mortgagor, a day after the mortgage contract was perfected. [8] They also argue that had private respondents made an inquiry as to who was in possession of the property they would have found the petitioners in possession thereof.

While concededly there is a point in petitioners' argument that "[a] mortgagee in bad faith cannot shed his bad faith color by the mere expedient of an auction sale of the same property where he himself is the highest bidder," [9] however, even if We consider the environmental circumstance of the present controversy, this Court finds and so holds that no substantial reason exists to disturb the finding that private respondents are indeed in good faith.

Good faith refers to a state of the mind which is manifested by the acts of the individual concerned. It consists of

the honest intention to abstain from taking an unconscionable and unscrupulous advantage of another. It is the opposite of fraud, and its absence should be established by convincing evidence.[10]

On the other hand, bad faith does not simply connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of wrong. It partakes of the nature of fraud.[11]

While it is true that at the time the real estate mortgage was executed, title was not yet registered in the name of the mortgagor, however, the evidence on record does not disclose that the mortgagees were privy to or even aware of the fraud and deceit used by Pucan upon the original owners of the land. Standing alone, the fact that the private respondents did not investigate the title to the properties offered as collaterals does not constitute convincing evidence to rebut the presumption that they are in good faith. Under the rules on evidence, a presumption exists that private transactions have been fair and regular.[12] More so when, as in this instant case, investigation of the titles had become moot, when on the following day, titles to the mortgage lots were issued in the name of the mortgagor Pucan.[13]

As correctly pointed out by the private respondents herein, the cases of *Leung Yee vs. F. L. Strong Machinery Co. and Williamson*[14] and *Conspecto vs. Fruto*[15] find no application to the case at bar. In *Leung Yee*, there is evidence to support the finding of bad faith because it was established that plaintiff therein had full knowledge of a claim by another entity when he bought the property at the sheriff's sale. Thus, this Court emphasized the following:

"But it appearing that he had full knowledge of the machinery company's claim of ownership when he executed the indemnity bond and bought the property at the sheriff's sale, and it appearing further that the machinery company's claim of ownership was well founded, he cannot be said to have been an innocent purchaser for value. He took the risk and must stand by the consequences; and it is in this sense that we find that he was not a purchaser in good faith."[16] (emphasis supplied).

Likewise, in the case of *Conspecto*, this Court made the following observation,

"xxx it clearly appears that on the 14th day of October, 1911, when Zacarias Conspecto purchased the land from the heirs of Venancio Liquigan, each of the defendants was in possession, and had been for a long time, of his respective parcel. There is no proof that, knowing that the land or a portion of it was in the actual possession of others than the vendor, the buyer made any inquiry concerning the rights of such possessors."[17] (emphasis supplied.)

In the present case, unlike *Conspecto*, private respondents had no prior knowledge petitioners were in actual possession of the property. They had no duty to inspect the property before granting the loan. They did not have to inquire beyond the titles of the property. And no doubt in this case the clean transfer certificates of title were issued in the name of the mortgagors.

As stated earlier, no such knowledge or even a tinge of awareness of the fraudulent transactions can be attributed to private respondents; no precipitate haste or irregularity characterized the proceedings at the foreclosure sale. On the contrary, there is evidence to bolster private respondents' claim of innocence and good faith. Prior to the foreclosure proceeding, Francisco Lozada not only relied on the two certificates of title that were exhibited to him, he even went out of his way and verified from the records of the Register of Deeds if the properties were really in the name of Pucan.[18]

Paraphrasing a principle enunciated by this Court in *Blondeau and De la Cantera vs. Nano and Vallejo*,[19] "as between two innocent persons, the mortgagee and the real owner of the mortgage property one of whom must suffer the consequence of fraud, the one who made it possible by his act of confidence must bear the loss."

WHEREFORE, the judgment "declaring Francisco and Milagros Lozada the lawful owners of the two parcels of land covered by Transfer Certificates of Title Nos. 20694 and 20695" is hereby AFFIRMED; and the petition is hereby DISMISSED. No pronouncement as to costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Decision of the Court of Appeals Sixteenth Division in CA-G.R. CV No. 02120 dated January 12, 1988 and the Resolution of the same division dated March 5, 1988. Mr. Justice Hector C. Fule was the ponente, concurred into by Justices Nathanael P. de Pano, Jr. and Justo P. Torres, Jr.

[2] Pages 42-43, Rollo.

[3] Pages 57-58, Rollo.

[4] Page 51, Rollo.

[5] Articles 1330, 1338 and 1390 par. (2), Civil Code.

[6] Pages 35-39, Rollo.

[7] 80 SCRA 411 (1977).

[8] Pages 28-33, Rollo.

[9] Page 33, Rollo.

[10] Hilario vs. Galvez, 45494-R, August 19, 1971; underscoring supplied.

[11] Board of Liquidators vs. Kalaw, 20 SCRA 1007 (1967).

[12] Sec. 5(p), Rule 131, Revised Rules of Court; Now Sec. 3(p), Revised Rules of Court, as amended.

[13] Page 26, Rollo.

[14] 37 Phil 644 (1918).

[15] 31 Phil 144 (1915).

[16] 37 Phil 644, 651 (1918).

[17] 31 Phil 144, 148-149 (1915).

[18] Page 54, Rollo.

[19] 61 Phil. 625, 630 (1935).

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