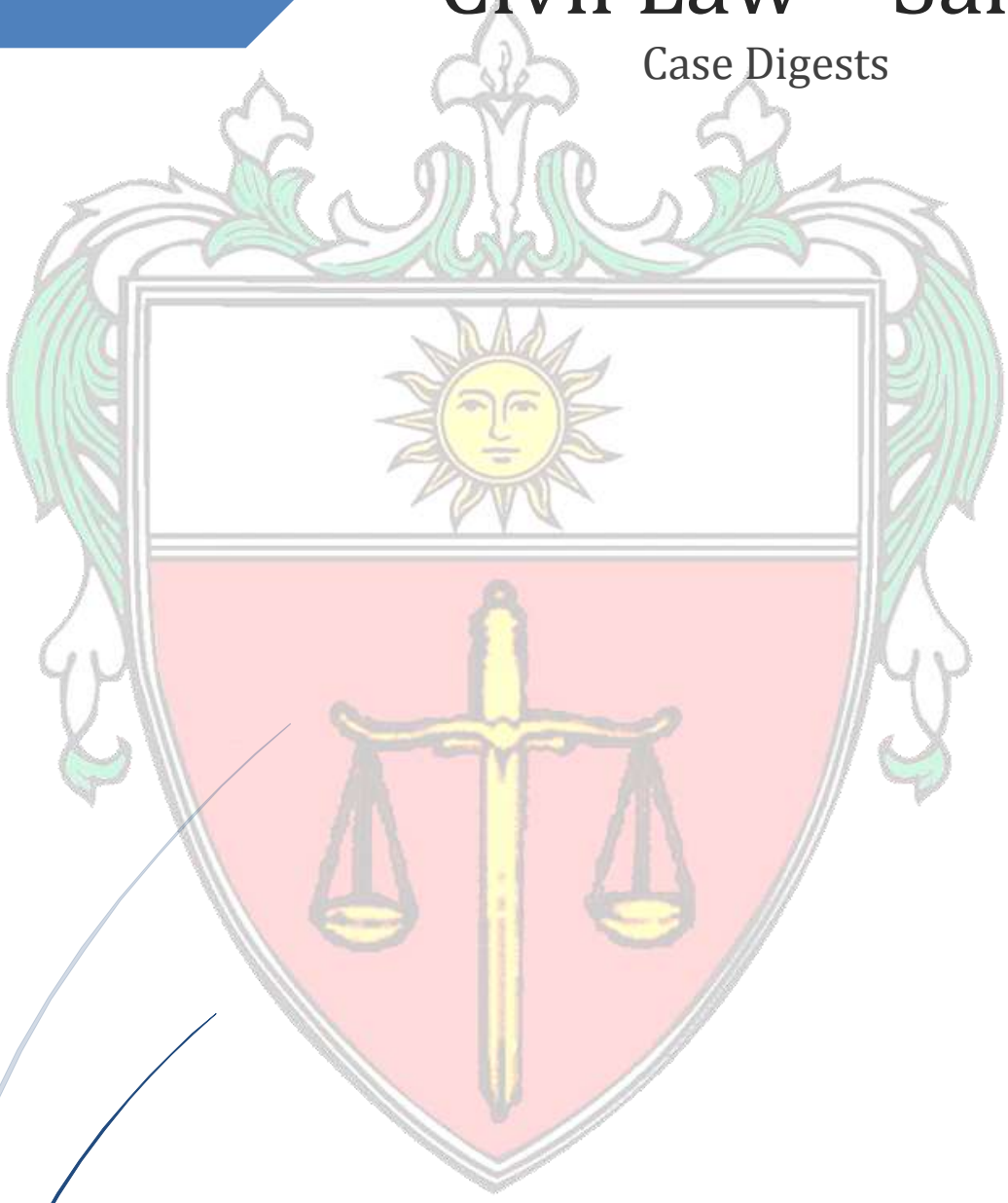
Civil Law – Sales

Case Digests



UNIVERSITY OF SANTO TOMAS
FACULTY OF CIVIL LAW

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SALES

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G.R. No. 145470, 9 December 2005, Second Division, Austria-Martinez, *J.*

Although the Civil Code does not expressly state that the minds of the parties must also meet on the terms or manner of payment of the price, the same is needed, otherwise there is no sale.

FACTS

Spouses Fernando filed a complaint for *accion publiciana* against petitioners, demanding the Spouses Cruz to vacate the property which the Spouses Fernando had purchased from the previous owner when Spouses Cruz did not exercise their option to purchase. Spouses Cruz filed a motion to dismiss claiming that the offer to sell embodied in the *Kasunduan* is a perfected contract of sale. The RTC and the CA ruled that the Agreement between the parties was a mere offer to sell. The *Kasunduan* does not establish any definite agreement between the parties concerning the terms of payment. What it merely provides is the purchase price for the 213-square meter property at P40 per square meter. Also that the previous owner only agreed to sell a portion of the property and that the portion to be sold measures 213 square meters.

ISSUE

Whether the CA erred in holding that the Agreement between the parties was a "mere offer to sell," and not a perfected "Contract of Purchase and Sale"

RULING

NO. Under Article 1458 of the Civil Code, a ***contract of sale*** is a contract by which one of the contracting parties obligates himself to transfer the ownership and to deliver a determinate thing and the other to pay therefor a price certain in money or its equivalent. Article 1475 of the Code further provides that the contract of sale is perfected at the moment there is meeting of the times upon the thing which is the object of the contract and upon the price. The conspicuous absence of a definite manner of payment of the purchase price in the agreement confirms the conclusion that it is a contract to sell. This is because the manner of payment of the purchase price is an essential element before a valid and binding contract of sale can exist. Although the Civil Code does not expressly state that the minds of the parties must also meet on the terms or manner of payment of the price, the same is needed, otherwise there is no sale.

In this case, The *Kasunduan* provides for the following terms and conditions: (a) that the Gloriosos agreed to sell to petitioners a portion of the property with an area of 213 meters at the price of P40.00 per square meter; (b) that in the title that will be caused to be issued, the aggregate area is 223 square meters with 10 meters thereof serving as right of way; (c) that the right of way shall have a width of 1.75 meters from Lopez Jaena road going towards the back of the lot where petitioners will build their house on the portion of the lot that they will buy; (d) that the expenses for the survey and for the issuance of the title will be divided between the parties with each party giving an amount of no less than P400.00; and (e) that petitioners will definitely relocate their house to the portion they bought or will buy by January 31, 1984. The foregoing terms and conditions show that it is a contract to sell and not a contract of sale. For one, the conspicuous absence of a definite manner of payment of the purchase price in the agreement confirms the conclusion that it is a contract to sell. **This is**

because the manner of payment of the purchase price is an essential element before a valid and binding contract of sale can exist. Although the Civil Code does not expressly state that the minds of the parties must also meet on the terms or manner of payment of the price, the same is needed, otherwise there is no sale

SPOUSES VICENTE and LOURDES PINGOL *v.* HON. COURT OF APPEALS and HEIRS OF FRANCISCO N. DONASCO, namely: MELINDA D. PELAYO, MARIETTA D. SINGSON, MYRNA D. CUEVAS, NATIVIDAD D. PELAYO, YOLANDA D. CACERES and MARY DONASCO
G.R. No. 102909, September 6, 1993, J. Davide, Jr.

*A deed of sale is absolute in nature although denominated as a "Deed of Conditional Sale" where there is no stipulation in the deed that title to the property sold is reserved in the seller until the full payment of the price, nor is there a stipulation giving the vendor the right to unilaterally resolve the contract the moment the buyer fails to pay within a fixed period. Additionally, in a **contract of sale**, the title passes to the vendee upon the delivery of the thing sold, whereas in a **contract to sell**, by agreement, ownership is reserved in the vendor and is not to pass until the full payment of the price.*

Facts:

Vicente Pingol was the owner of the subject lot. He executed in favor of Francisco Donasco a deed of absolute sale under which the purchase price will be paid in installments. Donasco immediately took possession of the subject lot and constructed a house thereon. He started paying the monthly installments but was able to pay only for up to two years. When he died, the subject house and lot remained in the possession of his heirs. Now, the heirs filed an action for Specific Performance against spouses Pingol, and prayed that the defendants be ordered to accept the payment of the balance for the agreed price on the lot. In their answer, spouses Pingol argued that the deed of sale embodied a conditional contract of sale as the consideration is to be paid on installment basis, and considering the breach by Francisco of his contractual obligation, the sale was deemed to have been cancelled.

Issue:

Whether the parties entered into a contract to sell.

Ruling:

NO. The plain and clear tenor of the deed of sale and Pingol's failure to reserve his title lead to the conclusion that the deed embodies a contract of sale. A deed of sale is absolute in nature although denominated as a "Deed of Conditional Sale" where there is no stipulation in the deed that title to the property sold is reserved in the seller until the full payment of the price, nor is there a stipulation giving the vendor the right to unilaterally resolve the contract the moment the buyer fails to pay within a fixed period. The deed of sale in this case contains neither stipulation. In addition, the contract here being one of absolute sale, the ownership of the subject lot was transferred to the buyer upon the actual and constructive delivery thereof. The constructive delivery of the subject lot was made upon the execution of the deed of sale while the actual delivery was effected when the heirs took possession of and constructed a house

CORNELIA CLANOR VDA. DE PORTUGAL, FRANCISCO C. PORTUGAL, PETRONA C. PORTUGAL, CLARITA PORTUGAL, LETICIA PORTUGAL, and BENEDICTO PORTUGAL, JR. *v.* INTERMEDIATE APPELLATE COURT and HUGO C. PORTUGAL
G.R. No. 73564, March 25, 1988, J. Sarmiento

*A valid cause or consideration in any contract is indispensable. The **total absence** of a valid cause or consideration renders the contract of sale void, not merely voidable.*

Facts:

Hugo Portugal, a son of the spouses Portugal borrowed from his mother, Cornelia, the certificates of title to several parcels of land registered under the name of the spouses. Later, when Pascual Portugal died, the heirs of the deceased wished to have all the properties of the spouses collated. So, Cornelia asked Hugo for the return of the titles. However, Hugo manifested that the said titles no longer exist. Instead, he showed Cornelia Transfer Certificate of Title registered in his and his brother Emiliano's names. The said title was brought about by a deed of sale by which the spouses Portugal purportedly sold the parcels of land to their two sons. When confronted by his mother of the fraud, Emiliano denied any participation, and reconveyed the portion of the subject lot conveyed to him in the void deed of sale. Hugo, on the other hand, refused to do the same. Consequently, the heirs filed the present action for annulment of title.

Issue:

Whether the contract of sale is merely voidable on the ground of fraud.

Ruling:

NO. The alleged contract of sale is void for total absence of a valid cause or consideration. A closer scrutiny of the records of the case readily supports a finding that fraud and mistake are not the only vices present in the assailed contract of sale. Cornelia never knew of the existence of the questioned deed of sale, and came to know of the supposed sale only after Hugo showed to her the controversial deed of sale and certificate of title. More than that, Hugo's brother Emiliano, who was allegedly his co-vendee in the transaction, disclaimed any knowledge or participation therein. Inevitably, no consideration was ever paid at all by Hugo. Applying the provisions of Articles 1350, 1352, and 1409 of the New Civil Code in relation to the indispensable requisite of a valid cause or consideration in any contract, and what constitutes a void or inexistent contract, it is undisputed that deed of sale is void ab initio or inexistent, not merely voidable

NFF INDUSTRIAL CORPORATION *v.* G & L ASSOCIATED BROKERAGE AND/OR GERARDO TRINIDAD
G.R. No. 178169, January 12, 2015, J. Peralta

In the Law on Sales, delivery may be either actual or constructive, but both forms of delivery contemplate the absolute giving up of the control and custody of the property on the part of the vendor, and the assumption of the same by the vendee. Indeed, the actual use by the vendee of the thing sold is an act of dominion, which is inconsistent with the ownership of the vendor; in which case, the thing sold shall be understood as delivered for it was in the control and possession of the vendee as per the provision of Article 1497 of the Civil Code.

Facts:

G & L Associated Brokerage, Inc. ordered bulk bags from NFF Industrial Corporation. In the Purchase Order, an instruction was made that the bulk bags were for immediate delivery to "G & L Associated Brokerage, Inc., c/o Hi-Cement Corporation, Norzagaray, Bulacan." Accordingly, NFFIC made deliveries of the bulk bags to Hi-Cement. Subsequently, however, GLABI alleged that there was no delivery at all in contemplation of law because the alleged deliveries were not received by the its authorized representative in conformity with the Purchase Order. For this reason, GLABI did not pay. This prompted NFFIC to file a complaint for sum of money. It alleged that it has delivered the bulk bags to Hi-Cement, which effectively placed the latter in control and possession thereof, as in fact, GLABI had made use of the said bulk bags in the ordinary course of its business activities.

Issue:

Whether there was valid delivery on the part of NFFIC.

Ruling:

YES. In the Law on Sales, delivery may be either actual or constructive, but both forms of delivery contemplate the absolute giving up of the control and custody of the property on the part of the vendor, and the assumption of the same by the vendee. ***Article 1497 of the Civil Code considers the thing as delivered when it is placed in the control and possession of the vendee.*** This is what is known as real or actual delivery. In this case, the records disclose that the personnel of GLABI used the bulk bags by loading cement inside the bulk bags and it was lifted by a forklift and lifted the same towards the truck belonging to the same company. Indeed, the use by GLABI of the bulk bags is an act of dominion, which is inconsistent with the ownership of NFFIC. It is clear therefore that NFFIC has actually delivered the bulk bags, albeit the same was not delivered to the person named in the Purchase Order

NICOLAS SANCHEZ *v.* SEVERINA RIGOS
G.R. No. L-25494, June 14, 1972, J. Concepcion

Where the option contract is not supported by a consideration distinct from the price, the promisor is not bound by the same and may, accordingly, withdraw it. Nonetheless, if the party decides to exercise his option before a withdrawal, then a binding contract of sale results, even though the option was not supported by a sufficient consideration.

Facts:

Nicolas Sanchez and Severina Rigos executed an instrument entitled "Option to Purchase," whereby Rigos "agreed, promised and committed to sell" to Sanchez a parcel of land with the understanding that said option shall be deemed "terminated and elapsed," if "Sanchez shall fail to exercise his right to buy the property" within two years. Sanchez made several tenders of payment within said period, but all were rejected by Rigos. So, he commenced the present action for specific performance. He maintains that by virtue of the option under consideration, Rigos agreed and committed to sell the land, and may be compelled therefore. On the other hand, Rigos argued that that the contract between them is a unilateral promise to sell, and the same being unsupported by any valuable consideration is null and void.

Issue:

Whether an accepted unilateral promise to sell without consideration distinct from the price may be enforced pending withdrawal.

Ruling:

YES. An accepted unilateral promise to sell or an option contract, which although not binding as a contract in itself for lack of a separate consideration, nevertheless generates a bilateral contract of purchase and sale upon acceptance of the offer to sell. In other words, since there may be no valid contract without a cause or consideration, the promisor is not bound by his promise and may, accordingly, withdraw it. However, pending withdrawal, the promisor's accepted promise to sell or the option contract partakes, however, of the nature of an offer to sell. This offer to sell, if accepted and the buyer decides to exercise his option pending withdrawal, results in a perfected contract of sale. In this case, Sanchez accepted the offer to sell before Rigos was able to withdraw his offer. Thus, upon acceptance, i.e., the tender of payment, by Sanchez, a bilateral contract of sale was perfected.

NOTE: The court abandoned the ruling in Southwestern Sugar & Molasses Co. case

SPOUSES ALFREDO AND BRIGIDA ROSARIO *v.* PCI LEASING AND FINANCE, INC.
G.R. No. 139233, November 11, 2005, J. Callejo, Sr.

A creditor is not obliged to foreclose a chattel mortgage even if there is one; precisely the law says that any of the remedies "may" be exercised by the seller. He may still sue for fulfillment or for cancellation of the obligation, if he does not want to foreclose. As a matter of fact, he may avail himself of specific performance and may still ask that a real estate mortgage be executed to secure the payment of the obligation, in which case, and in the event of foreclosure, there can still be recovery of the deficiency.

Facts:

The spouses Rosario purchased a truck from Carmerchants, Inc., and made a downpayment therefor. Then, they obtained from PCI a loan secured by a chattel mortgage over the truck. Later, the spouses Rosario failed to pay the amortizations on their loan. Thus, PCI filed a Complaint against the spouses for "Sum of Money with Damages with a Prayer for a Writ of Replevin." The RTC issued an Order for the issuance of a writ of replevin. On the other hand, the spouses alleged that the chattel mortgage covering the truck was in effect a contract of sale of personal property, payable in installments to be governed by Article 1484 of the Civil Code. They further alleged that by securing a writ of replevin from the RTC, PCI Leasing had opted to foreclose the chattel mortgage under Article 1484 of the New Civil Code; thus, it was barred from suing for the unpaid balance of the purchase price of the vehicle.

Issue:

Whether securing a writ of replevin is equivalent to foreclosing the chattel mortgage which thus bars further collection of the balance of the purchase price.

Ruling:

NO. At the outset, it must be noted that Article 1484 of the New Civil Code does not apply in this case since the contract is a loan, and no assignment of credit has been made by the original seller of the truck. Assuming however that Article 1484 of the New Civil Code is applicable, PCI is not proscribed from suing the spouses for their unpaid balance. The fact of the matter is that PCI did not foreclose the chattel mortgage, but opted to sue the spouses for the balance of their account, with a plea for a writ of replevin. *By securing a writ of replevin, the PCI did not thereby foreclose the chattel mortgage. Thus, if there has been no foreclosure of the chattel mortgage, then the prohibition against further collection of the balance of the price does not apply.*

A creditor is not obliged to foreclose a chattel mortgage even if there is one; precisely the law says that any of the remedies "may" be exercised by the seller. He may still sue for fulfillment or for cancellation of the obligation, if he does not want to foreclose. As a matter of fact, he may avail himself of remedy no. 1 (specific performance) and may still ask that a real estate mortgage be executed to secure the payment of the obligation, in which case, and in the event of foreclosure, there can still be recovery of the deficiency

DAVID P. FORNILDA, JUAN P. FORNILDA, EMILIA P. FORNILDA OLILI, LEOCADIA P. FORNILDA LABAYEN and ANGELA P. FORNILDA GUTIERREZ *v.* THE BRANCH 164, REGIONAL TRIAL COURT IVTH JUDICIAL REGION, PASIG, JOAQUIN C. ANTONIA Deputy Sheriff, RTC, 4JR Tanay, Rizal and ATTY. SERGIO AMONOY
G.R.No. L-72306, January 24, 1989, MELENCIO-HERRERA, *J.*

"A lawyer is prohibited from acquiring either by purchase or assignment the property or rights involved which are the object of the litigation in which they intervene by virtue of their profession."

Facts:

The controverted parcels were part of the estate of the late Julio M. Catolos subject of intestate estate proceedings, wherein Atty. Sergio Amonoy acted as counsel for some of Catolos' heirs. Consequently, these properties were adjudicated to Alfonso Fornilda and Asuncion M. Pasamba in the Project of Partition approved by the Court in 1965. Eight days after its approval, these properties were mortgaged by Fornilda and Pasamba to Atty. Amonoy to secure payment of the latter's attorney's fees in the amount of P27,600.00. However, since the mortgage indebtedness was not paid, Atty. Amonoy instituted an action for judicial foreclosure of mortgage. The mortgage was subsequently ordered foreclosed and auction sale followed where Atty. Amonoy was the sole bidder for P23,600.00, and that being short of the mortgage indebtedness, he applied for and further obtained a deficiency judgment.

When Fornilda and Pasamba died, their heirs filed a complaint for the annulment of the judgment in the foreclosure case before the Court of First Instance (CFI) on the ground that the mortgage and the Sheriff's sales were null and void as contrary to the positive statutory injunction in Article 1491 (5) of the Civil Code, which prohibits attorneys from purchasing, even at a public or judicial auction, properties and rights in litigation. However, the CFI dismissed the complaint which was affirmed by the Court of Appeals (CA) on the ground that no legal impediment exist to bar Atty. Amonoy from exercising his right of ownership. Hence, this petition was filed.

Issue:

Whether or not the mortgage constituted on the Controverted Parcels in favor of Respondent Amonoy comes within the scope of the prohibition in Article 1491 of the Civil Code.

Ruling:

Yes. Art. 1491 states that *The following persons cannot acquire by purchase* even at a public or judicial or auction, either in person or through the mediation of another: xxx (5) Justices, judges, prosecuting attorneys, ... *the property and rights in litigation* or levied upon on execution before the court within whose jurisdiction or territory they exercise their respective functions; this prohibition includes the act of acquitting by assignment and shall apply *to lawyers with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession*.

Respondent Amonoy avers that at the time of the execution of the mortgage on 20 January 1965, subject properties were no longer "properties in litigation" since the Project of Partition (as signed by the intestate heirs) covering said properties was approved by the lower Court as early as 12 January 1965. This argument must fail for the reason that while the Project of Partition was approved on 12 January 1965, it was only on 6 August 1969, and after all charges against the estate had been paid, that the estate was declared closed and terminated. In fact, by his own admission, he had acted as counsel from 1959 until 1968 (Comment, p. 145, Rollo). Thus, at the time of the execution of the mortgage contract, the Controverted Parcels were still in litigation and a fiduciary relationship of lawyer and client, which Article 1491[5] precisely seeks to protect, still existed between the parties. To state that mortgages are not included within the prohibition is to open the door to an indirect circumvention of that statutory injunction, acquisition of the property being merely postponed till eventual foreclosure.

Respondent asserts further that Article 1491[5] does not apply to judgment creditors of which, he claims, he was one. Under ordinary circumstances, the argument of respondent could be considered plausible. Unfortunately, however, as heretofore explained, the mortgage was executed in violation of Article 1491[5] so that this Article has a direct bearing on this case and respondent cannot escape its provision. Having violated the same, he cannot be considered in the general run of a judgment creditor

NORKIS DISTRIBUTORS, INC. *v*. THE COURT OF APPEALS & ALBERTO NEPALES
G.R. No. 91029, February 7, 1991, Grino-Aquino, J.

For there was neither an actual nor constructive delivery of the thing sold, hence, the risk of loss should be borne by the seller.

Facts:

Alberto Nepales bought from Norkis Distributors, Inc. a brand new motorcycle. He executed a chattel mortgage over the motorcycle as a security for the loan he obtained from the DBP. The branch manager issued an invoice showing that the contract of sale of the motorcycle had been perfected. In the meantime, the motorcycle remained in Norkis' possession. Thereafter, the motorcycle was registered in the Land Transportation Commission in the name of Nepales. The motorcycle was delivered to Julian Nepales who was allegedly the agent of Alberto Nepales but the latter denies it. However, the motorcycle met an accident and the unit was a total wreck. It was returned, and stored inside Norkis' warehouse. When Norkis could not deliver upon demand, Nepales filed an action for

specific performance with damages against Norkis. The latter, in its answer, contended that the motorcycle had already been delivered to Nepales before the accident, hence, the risk of loss or damage had to be borne by him as owner of the unit. The RTC ruled in favor of Nepales. The CA affirmed the said decision.

Issue:

Whether or not ownership had already been transferred to Nepales at the time it was destroyed.

Ruling:

NO. The issuance of a sales invoice does not prove transfer of ownership of the thing sold to the buyer. An ***invoice*** is nothing more than a detailed statement of the nature, quantity and cost of the thing sold and has been considered not a bill of sale. In all forms of delivery, it is necessary that the act of delivery whether constructive or actual, be coupled with the intention of delivering the thing. The act, without the intention, is insufficient. The CA Correctly ruled that the purpose of the execution of the sales invoice and the registration of the vehicle in the name of Nepales was not to transfer to him the ownership and dominion over the motorcycle, but only to comply with the requirements of the DBP for processing Nepales' loan. Alberto also denied having authorized Julian Nepales to get the motorcycle from Norkis Distributors or to enter into any transaction with Norkis relative to said motorcycle.

Article 1496 of the Civil Code which provides that "in the absence of an express assumption of risk by the buyer, the things sold remain at seller's risk until the ownership thereof is transferred to the buyer," is applicable to this case, for there was neither an actual nor constructive delivery of the thing sold, hence, the risk of loss should be borne by the seller, Norkis, which was still the owner and possessor of the motorcycle when it was wrecked. This is in accordance with the well-known doctrine of res perit domino

GAISANO CAGAYAN, INC. *v.* INSURANCE COMPANY OF NORTH AMERICA
G.R. No. 147839, June 8, 2006, Austria-Martinez, J.

When the seller retains ownership only to insure that the buyer will pay its debt, the risk of loss is borne by the buyer

Facts:

Gaisano Cagayan, Inc. is a customer and dealer of the products of IMC and LSPI. In 1991, the Gaisano Superstore Complex in Cagayan de Oro City, owned by petitioner, was consumed by fire wherein the stocks of ready-made clothing materials sold and delivered by IMC and LSPI were lost or destroyed. ICNA then filed a complaint for damages against Gaisano Cagayan, Inc. alleging that it was subrogated to the rights of IMC and LSPI against petitioner. The RTC rendered a decision dismissing the complaint. It held since the sales invoices state that "it is further agreed that merely for purpose of securing the payment of purchase price, the above-described merchandise remains the property of the vendor until the purchase price is fully paid", IMC and LSPI retained ownership of the delivered goods and must bear the loss. However, the CA reversed the said decision.

Issue:

Whether or not all the risk over the goods had been transferred to Gaisano Cagayan, Inc. upon delivery thereof.

Ruling:

YES. The present case clearly falls under paragraph (1), Article 1504 of the Civil Code: ART. 1504. Unless otherwise agreed, the goods remain at the seller's risk until the ownership therein is transferred to the buyer, but when the ownership therein is transferred to the buyer the goods are at the buyer's risk whether actual delivery has been made or not, except that: (1) Where delivery of the goods has been made to the buyer or to a bailee for the buyer, in pursuance of the contract and the ownership in the goods has been retained by the seller merely to secure performance by the buyer of his obligations under the contract, the goods are at the buyer's risk from the time of such delivery. Thus, when the seller retains ownership only to insure that the buyer will pay its debt, the risk of loss is borne by the buyer. Accordingly, Gaisano Cagayan, Inc. bears the risk of loss of the goods delivered

LAWYERS COOPERATIVE PUBLISHING COMPANY *v*. PERFECTO A. TABORA
G.R. No. L-21263, April 30, 1965, Bautista Angelo, J.

While as a rule the loss of the object of the contract of sale is borne by the owner or in case of force majeure the one under obligation to deliver the object is exempt from liability, the application of that rule does not here obtain because the law on the contract entered into on the matter argues against it.

Facts:

In 1955, Perfecto Tabora bought from the Lawyers Cooperative Publishing Company one complete set of American Jurisprudence which were delivered and received by Tabora. It was provided in the contract that "title to and ownership of the books shall remain with the seller until the purchase price shall have been fully paid. Loss or damage to the books after delivery to the buyer shall be borne by the buyer." However, a big fire broke out in the locality destroying the books bought by Tabora. Since the goods were only partially paid, the company demanded payment of the installments due. When Tabora failed to pay, the company instituted a complaint for recovery of the balance of the obligation. The CFI ruled in favor of the company. Tabora now contends that since it was agreed that the title to and the ownership of the books shall remain with the seller until the purchase price shall have been fully paid, the company should be the one to bear the loss for, as a result, the loss is always borne by the owner.

Issue:

Whether or not the loss should be borne by Lawyers Cooperative Publishing Company.

Ruling:

NO. While as a rule the loss of the object of the contract of sale is borne by the owner or in case of force majeure the one under obligation to deliver the object is exempt from liability, the application of that rule does not here obtain because the law on the contract entered into on the matter argues against it. It is true that in the contract entered into between the parties the seller agreed that the ownership of the books shall remain with it until the purchase price shall have been fully paid, but such stipulation cannot make the seller liable in case of loss not only because such was agreed merely to secure the performance by the buyer of his obligation but in the very contract it was expressly

agreed that the "loss or damage to the books after delivery to the buyer shall be borne by the buyer." Any such stipulation is sanctioned by Article 1504 of our Civil Code, which in part provides: (1) Where delivery of the goods has been made to the buyer or to a bailee for the buyer, in pursuance of the contract and the ownership in the goods has been retained by the seller merely to secure performance by the buyer of his obligations under the contract, the goods are at the buyer's risk from the time of such delivery

CIRCE S. DURAN and ANTERO S. GASPAR *v.* INTERMEDIATE APPELLATE COURT, ERLINDA B. MARCELO TIANGCO and RESTITUTO TIANGCO
G.R. No. L-64159, September 10, 1985, Relova, J.

A fraudulent or forged document of sale may become the root of a valid title if the certificate of title has already been transferred from the name of the true owner to the name of the forger or the name indicated by the forger.

Facts:

Circe Duran claims to be the owner of the two parcels of land subject of this case. It was alleged that a deed of sale was made in favor of her mother, Fe Duran, who subsequently mortgaged the same to Erlinda Marcelo-Tiangco. The said lots were sold to Erlinda in the foreclosure sale conducted. Circe asserts that her signature in the deed was a forgery. The CA rendered judgment modifying the decision of the trial court. It dismissed the petition ruling that the signature of Circe is genuine because there is the presumption of regularity in the case of a public document. But even if the signatures were a forgery, and the sale would be regarded as void, still the Deed of Mortgage is valid, with respect to the mortgagees. Insofar as innocent third persons are concerned the owner was already Fe Duran inasmuch as she had already become the registered owner.

Issue:

Whether or not Erlinda was a buyer in good faith and for value.

Ruling:

YES. *Good faith* consists in the possessor's belief that the person from whom he received the thing was the owner of the same and could convey his title. While it is always presumed in the absence of proof to the contrary, good faith requires a well-founded belief that the person from whom title was received was himself the owner of the land, with the right to convey it. There is good faith where there is an honest intention to abstain from taking any unconscientious advantage from another.
In the case at bar, private respondents, in good faith relied on the certificate of title in the name of Fe Duran. Even on the supposition that the sale was void, the general rule that the direct result of a previous illegal contract cannot be valid (on the theory that the spring cannot rise higher than its source) cannot apply here for the Court is confronted with the functionings of the Torrens System of Registration. The doctrine to follow is simple enough: *a fraudulent or forged document of sale may become the root of a valid title if the certificate of title has already been transferred from the name of the true owner to the name of the forger or the name indicated by the forger.* Every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go behind the certificate to determine the condition of the property.

JOSE B. AZNAR v. RAFAEL YAPDIANGCO and TEODORO SANTOS

G.R. No. L-18536, March 31, 1965, REGALA, *J.*

Contracts *only constitute titles or rights to the transfer or acquisition of ownership, while* ***delivery or tradition*** *is the mode of accomplishing the same.*

Facts:

Teodoro Santos agreed to sell his car to Vicente Marella on the condition that the price would be paid only after the car had been registered in Marella's name. The deed of sale was then executed and the car was registered in Marella's name. However, Marella, instead of paying, asked for an extension and instructed his nephew, L. De Dios, to go to the house of Marella's sister to get the money. L. De Dios and Ireneo, Teodoro went to the said house using the subject car. When they arrived, Ireneo was made to wait inside the house. After some time, Ireneo went out and discovered that the car and L. De Dios were gone.

On that same day, Marella was able to sell the car to petitioner Jose Aznar. While the subject car was in the possession of Aznar, agents of the Philippine Constabulary seized the same based on the report that the same was stolen from Santos. Thus, Aznar filed a complaint for replevin against Captain Rafael Yapdiangco, the head of the Philippine Constabulary unit which seized the subject car. The lower court ruled in favor of Santos and held that although Aznar acquired the car in good faith and for a valuable consideration from Marella, Santos was still entitled to its recovery under Article 559 of the Civil Code.

Issue:

Whether or not Jose Aznar is entitled to the subject car.

Ruling:

NO. Under Article 1506 of the Civil Code, it is essential that the seller should have a voidable title at least. It is very clearly inapplicable where, as in this case, the seller had no title at all. Vicente Marella did not have any title to the property under litigation because the same was never delivered to him. He sought ownership or acquisition of it by virtue of the contract. Vicente Marella could have acquired ownership or title to the subject matter thereof only by the delivery or tradition of the car to him. **Under Article 712 of the Civil Code, ownership is not transferred by contract merely but by tradition or delivery.** ***Contracts*** only constitute titles or rights to the transfer or acquisition of ownership, while ***delivery or tradition*** is the mode of accomplishing the same.

In the case on hand, the car in question was never delivered to the vendee by the vendor as to complete or consummate the transfer of ownership by virtue of the contract. While there was indeed a contract of sale between Vicente Marella and Teodoro Santos, the former, as vendee, took possession of the subject matter thereof by stealing the same while it was in the custody of the latter's son. The lower court was correct in applying Article 559 of the Civil Code to the case at bar, for under it, the rule is to the effect that if the owner has lost a thing, or if he has been unlawfully deprived of it, he has a right to recover it, not only from the finder, thief or robber, but also from third persons who may have acquired it in good faith from such finder, thief or robber

SPOUSES MICHELLE M. NOYNAY and NOEL S. NOYNAY *v.* CITIHOMES BUILDER AND DEVELOPMENT, INC.
G.R. No. 204160, September 22, 2014, MENDOZA, *J.*

"Since the contract to sell was not validly cancelled or rescinded under Section 3(b) of R.A. No. 6552, the respondent therein had the right to continue occupying unmolested the property subject thereof."

Facts:

Citihomes Builder and Development, Inc. and Spouses Michelle and Noel Noynay executed a contract to sell for the sale of a house and lot in payable in 120 equal monthly installments. Corollarily, Citihomes assigned its rights, titles, and interest over the same property in favor of UCPB evidenced by a Deed of Assignment of Claims and Accounts.

Consequently, the spouses failed to pay their subsequent monthly installments prompting Citihomes to send a notarized Notice of Delinquency and Cancellation of the Contract To Sell which the former received. Eventually, Citihomes sent its final demand letter asking Spouses Noynay to vacate the premises due to their continued failure to pay the arrears but to no avail. Thus, Citihomes filed a case for unlawful detainer before the Municipal Trial Court for Cities (MTCC) which was dismissed for lack of cause of action. The Regional Trial Court (RTC) reversed the MTCC decision and was affirmed by the Court of Appeals (CA) on the ground that Citihomes still had the right and interest over the property in its capacity as the registered owner. Moreover, CA noted that pursuant to Republic Act (R.A.)No. 6552, otherwise known as the Realty Installment Buyer Act (Maceda Law), Citihomes validly effected the termination of the contract because the spouses failed to complete the minimum two (2) years of installment. From that moment, the CA treated Spouses Noynay to have lost the right to possess the property. Hence, this petition was filed.

Issue:

Whether or not the unlawful detainer case will prosper in favor of Citihomes against the spouses Noynay.

Ruling:

No. Citihomes failed to comply with the procedures for the proper cancellation of the contract to sell as prescribed by Maceda Law. In *Pagtalunan v. Manzano*, the Court stressed the importance of complying with the provisions of the Maceda Law as to the cancellation of contracts to sell involving realty installment schemes. There it was held that the cancellation of the contract by the seller must be in accordance with Section 3 (b) of the Maceda Law, which requires the notarial act of rescission and the refund to the buyer of the full payment of the cash surrender value of the payments made on the property. The actual cancellation of the contract takes place after thirty (30) days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer, to wit: (b) If the contract is cancelled, the seller shall refund to the buyer the cash surrender value of the payments on the property equivalent to fifty percent of the total payments made and, after five years of installments, an additional five percent every year but not to exceed ninety percent of the total payments made: Provided, That the actual cancellation of the contract shall take place after thirty days from receipt

by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer.

Here, Spouses Noynay proposed for stipulation the factual allegation that they had been paying Citihomes the monthly amortization of the property for more than three (3) years and only stopped payment by January 8, 2008. The MTCC noted the said fact as admitted. xxx By its admission that Spouses Noynay had been paying the amortizations for three (3) years, there is no reason to doubt Spouses Noynay's compliance with the minimum requirement of two years payment of amortization, entitling them to the payment of the cash surrender value provided for by law and by the contract to sell. To reiterate, Section 3(b) of the Maceda Law requires that for an actual cancellation to take place, the notice of cancellation by notarial act and the full payment of the cash surrender value must be first received by the buyer. Clearly, no payment of the cash surrender value was made to Spouses Noynay. Necessarily, no cancellation of the contract to selI could be considered as validly effected. Without the valid cancellation of the contract, there is no basis to treat the possession of the property by Spouses Noynay as illegal

RADIOWEALTH FINANCE COMPANY *v.* MANUELITO S. PALILEO
G.R. No. 83432, May 20, 1991, Gancayco, *J.*

"Under Act No. 3344, registration of instruments affecting unregistered lands is without prejudice to a third party with a better right. This means that the mere registration of a sale in one's favor does not give him any right over the land if the vendor was not anymore the owner of the land having previously sold the same to somebody else even if the earlier sale was unrecorded."

Facts:

Spouses Enrique Castro and Herminia Castro sold a parcel of unregistered coconut land to Manuelito Palileo by virtue of which a deed of absolute sale was executed. However, the said deed of absolute sale was not registered in the Registry of Property for unregistered land. Nonetheless, Palileo exercised acts of ownership over the said land. Sometime after, in a civil case filed against spouses Castro, the court rendered a decision ordering the former to pay Radiowealth Finance Company. Upon the finality of the judgment, a writ of execution was issued ordering the sheriff to levy and sell at public auction the land sold to Palileo. Consequently, a certificate of sale and a deed of final sale was executed and registered with the Registry of Deeds in favor of Radiowealth. Learning of what happened to the land, private respondent Manuelito Palileo filed an action for quieting of title over the same. After a trial on the merits, the court *a quo* rendered a decision in his favor. On appeal, the decision of the trial court was affirmed. Hence, this petition for review on *certiorari*.

Issue:

Whether or not the CA erred in recognizing the ownership of the first buyer in a prior sale that was unrecorded over the second buyer who purchased the land in an execution sale whose transfer was registered in the Register of Deeds.

Ruling:

NO. the Court of Appeals correctly held that the execution sale of the unregistered land in favor of Radiowealth is of no effect because the land no longer belonged to the judgment debtor as of the time of the said execution sale. The case of *Carumba vs. Court of Appeals* is a case in point. It was held

therein that Article 1544 of the Civil Code has no application to land not registered under Act No. 496. Xxx. Applying Section 35, Rule 39 of the Revised Rules of Court, this Court held that Article 1544 of the Civil Code cannot be invoked to benefit the purchaser at the execution sale though the latter was a buyer in good faith and even if this second sale was registered. It was explained that this is because the purchaser of unregistered land at a sheriff's execution sale only steps into the shoes of the judgment debtor, and merely acquires the latter's interest in the property sold as of the time the property was levied upon.

SPOUSES DIOSDADO NUGUID AND MARIQUETA VENEGAS *v.* COURT OF APPEALS, AMORITA GUEVARRA, TERESITA GUEVARRA, NARCISO GUEVARRA, MARCIANA DELA ROSA, BERNABE BUENAVENTURA, AND JULIETA BUENAVENTURA
G.R. No. 77423, March 13, 1989, SARMIENTO, *J.*

"The general rule is that if the property sold is registered land, the purchaser in good faith has a right to rely on the certificate of title and is under no duty to go behind it to look for flaws."

Facts:

The late spouses Victorino and Crisanta Dela Rosa were the registered owners of a parcel of land covered by an original certificate of title (OCT). Sometime in 1931, the spouses sold one-half of the said property to Juliana Salazar. Although the sale was evidenced by a document, the same was not registered. Years after, Nicolas Dela Rosa, uncle of the other heirs of Dela Rosa, sold the same property to spouses Diosdado Nuguid and Mariqueta Venegas under the claim that he had already purchased the shares of the heirs over the subject property as evidenced by a private document. Consequently, spouses Nuguid and Mariqueta caused the registration of a document entitled "Kasulatan ng Partihan at Bilihan"' whereby Marciana dela Rosa et. al., all heirs of Victorino and Crisanta dela Rosa- sold to the former the subject property which was cancelled by the Register of Deeds of Bataan, and Transfer Certificate of Title was issued under the former's names. Now, Amorita Guevarra et. al, heirs of Juliana Salazar claim that that they have succeeded the ownership over the subject property and that the said "kasunduan" was a forged deed. The Regional Trial Court (RTC) dismissed the complaint but on appeal, it was reversed by the Court of Appeals (CA). Hence, this petition was filed.

Issue:

Whether or not spouses Nuguid and Mariqueta are purchasers in good faith.

Ruling:

YES. They are purchasers in good faith. The Original Certificate of Title No. 3778 covering the entire property was clean and free from any annotation of an encumbrance, and there was nothing whatsoever to indicate on its face any vice or infirmity in the title of the registered owners-the spouses Victorino and Crisanta dela Rosa. Thus, the petitioners could not have known of the prior sale to Juliana Salazar as, precisely, it was not registered. The ***general rule*** is that if the property sold is registered land, the purchaser in good faith has a right to rely on the certificate of title and is under no duty to go behind it to look for flaws. This' notwithstanding, the petitioners did not rely solely upon the certificate of title. They personally inspected the subject property. Undeniably, they found the same to be occupied by two houses, one belonging to a certain Doray dela Rosa and the other to spouses Pedro Guevarra and Pascuala Tolentino, parents of the respondents Guevarras. Upon being

informed of the petitioners' desire to purchase the land, Doray dela Rosa apparently offered to sell her house, which offer was accepted by the petitioners. As regards the spouses Guevarra, we find no reason to disturb the trial court's finding that they themselves requested that they be allowed to refrain on the property until such time that the petitioners would need the entire premises; and in lieu of rentals to the petitioners, they offered to continue paying the real estate taxes for one-half of the property as this was their arrangement with the previous owners-to which request the petitioners acceded. Evidently, neither Doray dela Rosa nor the spouses Guevarra professed ownership over the portions of land they were occupying; on the contrary, by their actuations they expressly acknowledged that they were not the real owners of the said property. The spouses Guevarra, in particular, made no mention of the prior unregistered sale to their predecessor-in-interest, Juliana Salazar. Thus, when the petitioners registered the sale in their favor with the Register of Deeds, they did so without any knowledge about the prior sale in favor of Juliana Salazar. The petitioners, therefore, had acted in good faith

NATIVIDAD ARIAGA VDA. DE GURREA, CARLOS GURREA, JULIETA GURREA, TERESA GURREA-RODRIGUEZ, RICARDO GURREA, Jr., MA. VICTORIA GURREA-CANDEL, and RAMONA GURREA-MONTINOLA *v.* ENRIQUE SUPLICO
G.R. No. 144320, April 26, 2006, AUSTRIA-MARTINEZ, *J.*

"Contracts which are expressly prohibited or declared void by law are considered inexistent and void from the beginning."

Facts:

Rosalina Gurrea sold her San Juan lot to Adelina Gurrea whose ownership was evidenced by a transferred certificate of title (TCT). When Adelina passed away, her properties were subjected to probate proceedings whereby the San Juan lot was assigned to Ricardo Gurrea. Ricardo, represented by his counsel Atty. Enrique Suplico, filed an opposition to said special proceedings. Consequently, a project of partition was agreed upon by the heirs of Adelina wherein the whole San Juan lot was adjudicated to Ricardo, among other properties.

Corollarily, Ricardo offered the San Juan lot as payment of Atty. Suplico's attorney's fees which the latter accepted. They executed a deed of Transfer of Rights and Interest signed by Ricardo. Suplico secured its registration and was able to obtain San Juan lot's TCT under his name. When Ricardo died, his heirs filed a complaint questioning the validity of the contract of attorney's fees between Ricardo and Suplico which provided for the payment of attorney's fees in the form of real property because such agreement is prohibited by Article 1491 of the Civil Code.

The Regional Trial Court (RTC) dismissed the complaint on the ground that the said property was no longer a subject of litigation at the time the deed of Transfer of Rights and Interest was executed. Hence, there was no violation of the said Civil Code provision. The Court of Appeals (CA) affirmed *in toto* the RTC decision. Therefore, this present petition was filed.

Issue:

Whether or not the contract of attorney's fees between the late Ricardo and Atty. Suplico and the consequent transfer of rights and interest in favor of the latter is invalid for being violative of Article 1491 of the Civil Code.

Ruling

YES. The agreement is violative of Article 1491 of the Civil Code. Article 1491(5) of the Civil Code provides for the following persons who cannot acquire by purchase, even at a public or judicial auction, either in person or through the mediation of another: (5) Justices, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected with the administration of justice, the property and rights in litigation or levied upon an execution before the court within whose jurisdiction or territory they exercise their respective functions; this prohibition includes the act of acquiring by assignment and shall apply to lawyers, with respect to the property and rights which may be the **object of any litigation** in which they may take part by virtue of their profession.

The rule is that as long as the order for the distribution of the estate has not been complied with, the probate proceedings cannot be deemed closed and terminated. The probate court loses jurisdiction of an estate under administration only after the payment of all the debts and the remaining estate delivered to the heirs entitled to receive the same. In the present case, while the subject lot was assigned as Ricardo's share in the project of partition executed by the heirs of Adelina Gurrea, the title over the subject lot was still in the name of the latter and was not yet conveyed to Ricardo when the Transfer of Rights and Interest was executed. It follows that, since at the time of execution of the deed of Transfer of Rights and Interest, the subject property still formed part of the estate of Adelina, and there being no evidence to show that material possession of the property was given to Ricardo, the probate proceedings concerning Adelina's estate cannot be deemed to have been closed and terminated and the subject property still the object of litigation.

Having been established that the subject property was still the object of litigation at the time the subject deed of Transfer of Rights and Interest was executed, the assignment of rights and interest over the subject property in favor of respondent is null and void for being violative of the provisions of Article 1491 of the Civil Code which expressly prohibits lawyers from acquiring property or rights which may be the object of any litigation in which they may take part by virtue of their profession

PHILIPPINE STEEL COATING CORP. v. EDUARD QUINONES
G. R. No. 194533, APR 19, 2017, *SERENO, CJ:*

An express warranty can be oral when it is a positive affirmation of a fact that the buyer relied on.

FACTS:

In 1994, Lopez, a sales engineer of PhilSteel, offered Quinones their new product: primer-coated, long-span, rolled galvanized iron (G.I.) sheets. The latter showed interest, but asked Lopez if the primer-coated sheets were compatible with the Guilder acrylic paint process used its company in the finishing of its assembled buses.

Angbengco, the Sales Manager, to whom Lopez referred the question, assured Quinones that the quality of their new product was superior to that of the non-primer coated G.I. sheets being used by the latter in his business. However, sometime in 1995, Quinones received several complaints from customers who had bought bus units, claiming that the paint or finish used on the purchased vehicles was breaking and peeling off. Quinones then sent a letter-complaint to PhilSteel invoking the warranties given by the latter. According to Quinones, the damage to the vehicles was attributable to the hidden defects of the primer-coated sheets and/or their incompatibility with the Guilder acrylic

paint process, contrary to the prior evaluations and assurances of PhilSteel. Because of the barrage of complaints, Quinones was forced to repair the damaged buses.

PhilSteel counters that Quinones himself offered to purchase the subject product directly from the former without being induced by any of PhilSteel's representatives. According to its own investigation, PhilSteel discovered that the breaking and peeling off of the paint was caused by the erroneous painting application done by Quinones. Unconvinced, Quinones filed a complaint for damages.

ISSUES:

1. Whether vague oral statements made by seller on the characteristics of a generic good can be considered warranties that may be invoked to warrant payment of damages;

2. Whether general warranties on the suitability of products sold prescribe in six (6) months under Article 1571 of the Civil Code;

3. Assuming that statements were made regarding the characteristics of the product, whether respondent as buyer is equally negligent; and

4. Whether non-payment of price is justified on allegations of breach of warranty

RULING:

1. *Yes. An express warranty can be oral when it is a positive affirmation of a fact that the buyer relied on.*

These "vague oral statements" were express affirmations not only of the costs that could be saved if the buyer used PhilSteel's G.I. sheets, but also of the compatibility of those sheets with the acrylic painting process customarily used in Amianan Motors. Angbengco did not aimlessly utter those "vague oral statements" for nothing, but with a clear goal of persuading Quinones to buy PhilSteel's product.

Taken together, the oral statements of Angbengco created an express warranty. They were positive affirmations of fact that the buyer relied on, and that induced him to buy petitioner's primer-coated G.I. sheets.

Under Article 1546 of the Civil Code, "[n]o affirmation of the value of the thing, nor any statement purporting to be a statement of the seller's opinion only, shall be construed as a warranty, unless the seller made such affirmation or statement as an expert and it was relied upon by the buyer."

Despite its claims to the contrary, Angbengco was an expert in the eyes of the buyer Quinones. Quinones did not talk to an ordinary sales clerk such as can be found in a department store or even a *sari-sari* store. If Lopez, a sales agent, had made the assertions of Angbengco without true knowledge about the compatibility or the authority to warrant it, then his would be considered dealer's talk. But sensing that a person of greater competence and knowledge of the product had to answer Quinones' concerns, Lopez wisely deferred to his boss, Angbengco.

2. *Yes. The prescription period of the express warranty applies to the instant case.*

There being an express warranty, this Court holds that the prescription period applicable to the instant case is that prescribed for breach of an express warranty. The applicable prescription period is therefore that which is specified in the contract; in its absence, that period shall be based on the general rule on the rescission of contracts: four years (*see* Article 1389, Civil Code). In this case, no prescription period specified in the contract between the parties has been put forward. Quinones filed the instant case on 6 September 1996 or several months after the last delivery of the thing sold. His filing of the suit was well within the prescriptive period of four years; hence, his action has not prescribed.

3. *No. The buyer cannot be held negligent in the instant case.*

Negligence is the absence of reasonable care and caution that an ordinarily prudent person would have used in a given situation.[21] Under Article 1173 of the Civil Code,[22] where it is not stipulated in the law or the contract, the diligence required to comply with one's obligations is commonly referred to as *paterfamilias*; or, more specifically, as *bonos paterfamilias* or "a good father of a family." A good father of a family means a person of ordinary or average diligence. To determine the prudence and diligence that must be required of all persons, we must use as basis the abstract average standard corresponding to a normal orderly person. Anyone who uses diligence below this standard is guilty of negligence.

It bears reiteration that Quinones had already raised the compatibility issue at the outset. He relied on the manpower and expertise of PhilSteel, but at the same time reasonably asked for more details regarding the product. It was not an impulsive or rush decision to buy. In fact, it took 4 to 5 meetings to convince him to buy the primed G.I. sheets. And even after making an initial order, he did not make subsequent orders until after a painting test, done upon the instructions of Angbengco proved successful. The test was conducted using their acrylic paint over PhilSteel's primer-coated G.I. sheets. Only then did Quinones make subsequent orders of the primer-coated product, which was then used in the mass production of bus bodies.

4. *Yes. The nonpayment of the unpaid purchase price was justified, since a breach of warranty was proven.*

Since what was proven was express warranty, the remedy for implied warranties under Article 1567 of the Civil Code does not apply to the instant case. Instead, following the ruling of this Court in *Harrison Motors Corporation v. Navarro*, Article 1599 of the Civil Code applies when an express warranty is breached.

According to the provision, recoupment refers to the reduction or extinction of the price of the same item, unit, transaction or contract upon which a plaintiffs claim is founded.
In the case at bar, Quinones refused to pay the unpaid balance of the purchase price of the primer-coated G.I. sheets PhilSteel had delivered to him. He took this action after complaints piled up from his customers regarding the blistering and peeling-off of the paints applied to the bus bodies they had purchased. The unpaid balance of the purchase price covers the same G.I. sheets. Therefore, this Court finds that respondent has legitimately defended his claim for reduction in price and is no longer liable for the unpaid balance of the purchase price

JERRY T. MOLES *v.* INTERMEDIATE APPELLATE COURT and MARIANO M. DIOLOSA

G.R. No. 73913, January 31, 1989, REGALADO, *J.*

Where the buyer makes known to the seller the particular purpose for which the goods are acquired, and it appears that the buyer relies on the seller's skill or judgment, there is an implied warranty that the goods shall be reasonably fit for such purpose.

Facts:

To purchase a linotype printing machine for his printing business, Jerry T. Moles obtained a loan with the Development Bank of the Philippines (DBP). As a condition *sine qua non* for the issuance of the amount loaned, a certification that the printing machine when acquired is in good working condition. Consequently, Mariano M. Diliosa sold his linotype printing machine to Moles informing the latter that the same is secondhand but functional. Diliosa issued a certification wherein he warranted that the machine sold was in A-1 condition.

Sometime after the machine was delivered and installed to Moles's publishing house, Moles wrote to Diliosa that the machine was not functioning properly as it needed a new distributor bar but the latter made no reply. After several phone calls regarding the defects in the machine, Diliosa sent two technicians to make the necessary repairs but they failed to put the machine in running condition. Since then, Moles was never able to use the machine. Later, Diliosa decided to purchase a new distributor bar and delivered it to Moles. The latter asked Diliosa to pay its cost but the former offered to share its cost with Moles. Hence, Moles filed a complaint for rescission of contract with damages.

The Regional Trial Court (RTC) ruled in favor of Moles, however, its decision was reversed by the Intermediate Appellate Court (IAC) on the ground that there is no implied warranty as to the condition, adaptation, fitness, or suitability for a secondhand article. Hence, this petition was filed.

Issue:

Whether or not there is an implied warranty as to the quality or fitness of secondhand articles subject of sale.

Ruling:

YES. Article 1562 of our Civil Code, which was taken from the Uniform Sales Act, provides that in a sale of goods, there is an implied warranty or condition as to the quality or fitness of the goods, as follows: (1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are acquired, and it appears that the buyer relies on the seller's skill or judgment (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for such purpose; xxx

We disagree with respondent court that private respondent's express warranty as to the A-1 condition of the machine was merely dealer's talk. Private respondent was not a dealer of printing or linotype machines to whom could be ascribed the supposed resort to the usual exaggerations of trade in said items. His certification as to the condition of the machine was not made to induce petitioner to purchase it but to confirm in writing for purposes of the financing aspect of the transaction his representations thereon. Ordinarily, what does not appear on the face of the written instrument should be regarded as dealer's or trader's talk; conversely, what is specifically represented as true in said document, as in the instant case, cannot be considered as mere dealer's talk

NATIVIDAD VILLOSTAS *v.* THE HON. COURT OF APPEALS, SECOND DIVISION, THE HON. SALVADOR S. TENSUAN as Presiding Judge of RTC, Makati, Branch 146 and ELECTROLUX MARKETING, INCORPORATED
G.R. No. 96271, June 26, 1992, PARAS, *J.*

"While it is true that Article 1571 of the Civil Code provides for a prescriptive period of six months for a redhibitory action, a cursory reading of the ten preceding articles to which it refers will reveal that said rule may be applied only in case of implied warranties."

Facts:

Through door-to-door marketing, Electrolux Marketing, Inc.'s sales agents sold to Natividad Villostas 1 unit of water purifier evidenced by a contract of sale and a warranty certificate attached therein stating that the company warrants the efficient performance of the product for one (1) full year from the date of the original purchase. Two months from the delivery and installment of the unit, Villostas made a number of complaints that the water which came out of the water purifier remains dirty although its filters were replaced as instructed by Electorolux's technicians. Hence, it decided to return the unit and demand a refund for the amount paid. Electrolux offered to change the water purifier with another brand of any of its appliance but Villostas did not accept. Consequently, the latter ceased to pay any subsequent monthly installments for the unit. Ultimately, Electrolux filed a complaint against Villostas before the Metropolitan Trial Court (MTC) for the recovery of the unpaid balance of the purchase price of the water purifier. In her answer with counterclaim, Villostas averred that by reason of Electrolux's breach of warranty, she prays for the rescission of the contract of sale and offered to return the unit aside from claiming for the refund of her payments.

The MTC ordered Villostas to pay Electrolux the unpaid balance of the purchase price which decision was affirmed by the Regional Trial Court (RTC) on the ground that Villostas' claim for rescission had prescribed pursuant to Article 1571 of the Civil Code. Villostas petition for review before the Court of Appeals (CA) was denied. Hence, this petition was filed.

Issue:

Whether or not Villostas' claim for rescission based on breach of warranty had already prescribed.

Ruling:

NO. It must be pointed out that at the time the Electrolux Aqua Guard water purifier was delivered and installed at petitioner Villostas' residence a Warranty Certificate was issued by private respondent Electrolux which reads: "*ELECTROLUX MARKETING, INCORPORATED WARRANTS THIS QUALITY ELECTROLUX PRODUCT TO PERFORM EFFICIENTLY FOR ONE FULL YEAR FROM DATE OF ORIGINAL PURCHASE*"

The foregoing is clearly an express warranty regarding the efficiency of the water purifier. On this regard the court said that while it is true that Article 1571 of the Civil Code provides for a prescriptive period of six months for a redhibitory action, a cursory reading of the ten preceding articles to which

it refers will reveal that said rule may be applied only in case of implied warranties. The present case involves one with an express warranty. Consequently, the general rule on rescission of contract, which is four years (Article 1389, Civil Coded) shall apply (Moles v. IAC, G.R. No. 73913, 169 SCRA 777 [1989]). Inasmuch as the instant case involves an express warranty, the filing of petitioner's amended answer on September 30, 1988 is well within the four-year prescriptive period for rescission of contract from September 13, 1986, which was the delivery date of the unit

SPOUSES MICHAEL UY & BONITA UY *v.* EDUARDO ARIZA, et. al
G.R. No. 158370, August 17, 2006, PUNO, *J.*

"In order that a vendor's liability for eviction may be enforced, the following requisites must concur a) there must be a final judgment; b) the purchaser has been deprived of the whole or part of the thing sold; c) said deprivation was by virtue of a right prior to the sale made by the vendor; and d) the vendor has been summoned and made co-defendant in the suit for eviction at the instance of the vendee."

Facts:

Spouses Uy initially bought a 200 square meter lot from Eduardo Ariza, et. al. with an option to choose which portions of the said land will be the subject of sale. After exercising his option to choose a portion of the property, the spouses took possession of the same. Consequently, the spouses also bought the adjacent land with the same option to choose a portion which the spouses exercised. However, upon taking possession of the said portion of land, it appears that it was occupied already by Carlos Delgado, et. al. The Delgados contended that the entire portion of land bought by the spouses were already sold to them by Ariza evidenced by a deed of sale and transfer certificate of title. Hence, the Delgados filed an unlawful detainer case against the spouses.

During the trial, the Delgados and spouses Uy entered into a compromise agreement to the effect that the latter shall surrender portions of the property. However, the spouses did not notify Ariza regarding this agreement. Thus, when the spouses demanded from Ariza that they be allowed to choose again from the latter's parcel of land, the latter refused prompting the former to file a case for specific performance against the latter. The Regional Trial Court ruled in favor of the spouses but this decision was reversed by the Court of Appeals on the ground that the proper remedy should be an action of enforcement of warranty against eviction. Thus, this petition was filed.

Issue:

Whether or not the Court of Appeals erred in ruling that instead of filing an action for specific performance, the proper remedy applying to the case should be an action of enforcement of warranty against eviction.

Ruling:

NO. This case is a clear case of eviction. Thus, the action for specific performance filed by [petitioners] against [respondents] must necessarily fail. If at all, [petitioners] may file an action for the enforcement of warranty in case of eviction which every vendor of a parcel of land is enjoined by law to guarantee as provided under Article 1548 of the New Civil Code which states that eviction shall take place whenever by a final judgment based on a right prior to the sale or an act imputable to the vendor, the vendee is deprived of the whole or part of the thing purchased. xxx The vendor shall answer for the eviction even though nothing has been said in the contract on the subject. xxx The contracting parties, however, may increase, diminish or suppress this legal obligation of the vendor.

But even if [petitioners] would file an action for the enforcement of warranty in case of eviction against [respondents], the same will not prosper. The records of the case reveal that the unlawful detainer case filed by third persons against [petitioners], which led to the ouster of the latter from the subject lots, was decided by compromise agreement without impleading [respondents] as third-party defendants. It should be stressed that in order for the case to prosper, it is a precondition that the seller must have been summoned in the suit for the eviction of the buyer. This rule is provided under the provisions of Articles 1558 and 1559 of the New Civil Code, to wit: Art. 1558. The vendor shall not be obliged to make good the proper warranty, unless he is summoned in the suit for eviction at the instance of the vendee. xxx Art. 1559. The defendant vendee shall ask, within the time fixed in the Rules of Court for answering the complaint, that the vendor be made a co-defendant.

If petitioners filed the third-party complaint against the respondents, they could have sought from the respondents x x x contribution, indemnity, subrogation or any other relief in respect of the claim of the Delgados. The phrase any other relief includes a claim of a vendee for warranty against the vendor

CARLOS B. DE GUZMAN *v.* TOYOTA CUBAO, INC.
G.R. No. 141480, November 29, 2006, AZCUNA, *J.*

"In the Civil Code, a redhibitory action for violation of an implied warranty against hidden defects prescribes in six (6) months, while if it based on an express warranty, the action prescribes in four (4) years. Under RA No. 7394, the implied warranty cannot be more than one (1) year; however, the implied warranty can only be of equal duration to that an express warranty when the implied warranty of merchantability accompanies an express warranty (Art. 68, par. [e]). Therefore, the prescriptive period of two years under Art. 169 does not cover an implied warranty, which is not accompanied by an express warranty."

Facts:

Carlos B. De Guzman purchased a brand new Toyota Hi-Lux motor vehicle from Toyota Cubao, Inc. Two years from the delivery of the vehicle, its engine developed a crack after traversing Marcos Highway during a heavy rain. Thus, De Guzman asserted that Toyota should replace the engine with a new one based on implied warranty but to no avail. Hence, he filed a complaint for damages against Toyota before the Regional Trial Court. The RTC dismissed the complaint on the ground that the cause of action had already prescribed based on Article 1571 of the Civil Code. De Guzman contended that the applicable prescriptive period should be based on Article 169 of R.A. No. 7394, otherwise known as "The Consumer Act of the Philippines" and not Article 1571. The (CA) affirmed the RTC decision. Hence, this petition was filed.

Issue:

Whether or not the applicable prescriptive period for implied warranty in the given case is Article 169 of R.A. No. 7394 and not Article 1577 of the Civil Code.

Ruling:

The applicable prescriptive period is Article 1571 of the Civil Code which provides that Actions arising from the provisions of preceding ten articles shall be barred after six months from the delivery of the thing sold.

Under Article 1599 of the Civil Code, once an express warranty is breached, the buyer can accept or keep the goods and maintain an action against the seller for damages. In the absence of an existing express warranty on the part of the respondent, as in this case, the allegations in petitioner's complaint for damages were clearly anchored on the enforcement of an implied warranty against hidden defects, i.e., that the engine of the vehicle which respondent had sold to him was not defective. By filing this case, petitioner wants to hold respondent responsible for breach of implied warranty for having sold a vehicle with defective engine. Such being the case, petitioner should have exercised this right within six months from the delivery of the thing sold. Since petitioner filed the complaint on April 20, 1999, or more than nineteen months counted from November 29, 1997 (the date of the delivery of the motor vehicle), his cause of action had become time-barred.

Petitioner contends that the subject motor vehicle comes within the context of Republic Act No. 7394. Thus, petitioner relies on Article 68 (f) (2) in relation to Article 169 of Republic Act No. 7394. Xxx The following provisions of Republic Act No. 7394 state: Art. 67. *Applicable Law on Warranties.* — The provisions of the Civil Code on conditions and warranties shall govern all contracts of sale with conditions and warranties. Art. 68. Additional Provisions on Warranties. — In addition to the Civil Code provisions on sale with warranties, the following provisions shall govern the sale of consumer products with warranty: e) Duration of warranty. Xxx Any other implied warranty shall endure not less than sixty (60) days nor more than one (1) year following the sale of new consumer products. x x x Consequently, even if the complaint is made to fall under the Republic Act No. 7394, the same should still be dismissed since the prescriptive period for implied warranty thereunder, which is one year, had likewise lapsed

GOODYEAR PHILIPPINES, INC. *v.* ANTHONY SY AND JOSE L. LEE
G.R. No. 154554, November 09, 2005, J. Panganiban

*In a **contract of sale**, the vendor is bound to transfer the ownership of and to deliver the thing that is the object of the sale. Moreover, the implied warranties are as follows: **first**, the vendor has a right to sell the thing at the time that its ownership is to pass to the vendee, as a result of which the latter shall from then on have and enjoy the legal and peaceful possession of the thing; and, **second**, the thing shall be free from any charge or encumbrance not declared or known to the vendee.*

Facts:

The subject of this case involves a motor vehicle originally owned by Goodyear Philippines, Inc. It had since been in the service of Goodyear until April 1986 when it was hijacked. It was later on recovered. The vehicle was used by Goodyear until 1996, when it sold it to Anthony Sy, who in turn sold it to Jose L. Lee. But Lee filed an action for rescission of contract with damages against Sy because he could not register the vehicle in his name due to the certification from the PNP Regional Traffic Management Office that it was a stolen vehicle and the alarm covering the same was not lifted. Instead, the PNP impounded the vehicle and charged Lee criminally.

Issue:

Whether or not Goodyear breached any warranty in the absence of proof that at the time it sold the subject vehicle to Sy, it was not the owner thereof

Ruling:

NO. In a contract of sale, the vendor is bound to transfer the ownership of and to deliver the thing that is the object of the sale. Moreover, the implied warranties are as follows: *first*, the vendor has a right to sell the thing at the time that its ownership is to pass to the vendee, as a result of which the latter shall from then on have and enjoy the legal and peaceful possession of the thing; and, *second*, the thing shall be free from any charge or encumbrance not declared or known to the vendee. Upon the execution of the Deed of Sale, Goodyear did transfer ownership of and deliver the vehicle to Sy. No other owner or possessor of the vehicle had been alleged, and the ownership and possession rights of Goodyear over it had never been contested. The Deed of Sale showed that Goodyear was the absolute owner. Therefore, at the time that ownership passed to Sy, Goodyear alone had the right to sell the vehicle.

Gratia argumenti that there was a breach of the implied warranty against hidden encumbrances, notice of the breach was not given to Goodyear within a reasonable time. Article 1586 of the Civil Code requires that notice be given after the breach, of which Sy ought to have known. In his Third-Party Complaint against Goodyear, there was no allegation at all that Sy had given Goodyear the requisite notice. More important, an action for damages for a breach of implied warranties must be brought within *six months* from the delivery of the thing sold

ANGEL VILLARICA and NIEVES PALMA GIL DE VILLARICA *v*. THE COURT OF APPEALS, JULIANA MONTEVERDE, GAUDENCIO CONSUNJI and JOVITO S. FRANCISCO
G.R. No. L-19196, November 29, 1968, J. Capistrano

The right of repurchase is not a right granted the vendor by the vendee in a subsequent instrument, but is a right reserved by the vendor in the same instrument of sale as one of the stipulations of the contract. Once the instrument of absolute sale is executed, the vendor can no longer reserve the right to repurchase, and any right thereafter granted the vendor by the vendee in a separate instrument cannot be a right of repurchase but some other right like the option to buy in the instant case.

Facts:

Spouses Angel and Nieves Villarica sold to the spouses Gaudencio Consunji and Juliana Monteverde a lot for the price of P35,000. Spouses Consunji executed another public instrument, whereby they granted the spouses Villarica an option to buy the same property within the period of one year for the price of P37,750. In July, same year, the spouses Consunji registered the absolute deed of sale in the names of the spouses Consunji. The spouses Consunji sold the lot to Jovito Francisco for the price of P47,000. Spouses Villarica brought an action against the spouses Consunji and Jovito Francisco for the reformation of the instrument of absolute sale into an equitable mortgage as a security for a usurious loan alleging that such was the real intention of the parties.

Issue:

Whether or not the public instrument of sale should be presumed as an equitable mortgage.

Ruling:

NO. The Consunjis, as new owners of the lot, granted the Villaricas an option to buy the property within the period of one year. Said option to buy is different and distinct from the right of repurchase which must be reserved by the vendor, by stipulation to that effect, in the contract of sale. This is clear from Article 1601 of the Civil Code, which provides that conventional redemption shall take place when the vendor reserves the right to repurchase the thing sold, with the obligation to comply with the provisions of Article 1616 and other stipulation which may have been agreed upon. The right of repurchase is not a right granted the vendor by the vendee in a subsequent instrument, but is a right reserved by the vendor in the same instrument of sale as one of the stipulations of the contract. Once the instrument of absolute sale is executed, the vendor can no longer reserve the right to repurchase, and any right thereafter granted the vendor by the vendee in a separate instrument cannot be a right of repurchase but some other right like the option to buy in the instant case. Hence, the public instrument of absolute sale cannot be considered as evidencing a contract of sale with *pacto de retro*. Since the public instrument of absolute sale did not evidence a right to repurchase but an option to buy, the extension of the period of one year for the exercise of the option by one month does not fall under No. 3, of Article 1602 of the Civil Code, which provides that when upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed

IRENEO LEAL, JOSE LEAL, CATALINA LEAL, BERNABELA LEAL, VICENTE LEAL EUIOGIA LEAL PATERNO RAMOS, MACARIO DEL ROSARIO, MARGARITA ALBERTO, VICTORIA TORRES, JUSTINA MANUEL, JULIAN MANUEL, MELANIA SANTOS, CLEMENTE SAMARIO, MARIKINA VALLEY, INC., MIGUELA MENDOZA, and REGISTER OF DEEDS OF RIZAL *v.* THE HONORABLE INTERMEDIATE APPELLATE COURT (4th Civil Cases Division), and VICENTE SANTIAGO (Substituted by SALUD M. SANTIAGO)
G.R. No. L-65425, November 5, 1987, J. Sarmiento

Under Art. 1508 of the Civil Code of Spain (Art. 1606 of the Civil Code of the Philippines), the right to redeem or repurchase, in the absence of an express agreement as to time, shall last four years from the date of the contract.

Facts:

A document entitled "Compraventa," written entirely in the Spanish language, involving three parcels of land, was executed by the private respondent's predecessors-in-interest, Vicente Santiago and his brother, Luis Santiago, in favor of Cirilio Leal, the deceased father of some of the petitioners. Pursuant to this "Compraventa," the title over the three parcels of land in the name of the vendors was cancelled and a new one was issued in the name of Cirilo Leal who immediately took possession and exercised ownership over the said lands. When Cirilo died, the subject lands were inherited by his six children, who are among the petitioners, and who caused the consolidation and subdivision of the properties among themselves. Between the years 1960 and 1965, the properties were either mortgaged or leased by the petitioners-children of Cirilo Leal — to their co-petitioners. Vicente Santiago then approached the petitioners and offered to repurchase the subject properties. Petitioners, however, refused the offer. Consequently, Vicente Santiago instituted a complaint for specific performance.

Issue:

Whether or not under paragraph (b) of the "Compraventa" a right of repurchase in favor of the private respondent exist.

Ruling:

NO. ***The law provides that for conventional redemption to take place, the vendor should reserve, in no uncertain terms, the right to repurchase the thing sold. Thus, the right to redeem must be expressly stipulated in the contract of sale in order that it may have legal existence.*** In the case at bar, there is no express or implied grant of a right to repurchase, nor can it be inferred, from any word or words in the questioned paragraph the existence of any such right. But even assuming that such a right of repurchase is granted under the "Compraventa," the petitioner correctly asserts that the same has already prescribed. Under Art. 1508 of the Civil Code of Spain (Art. 1606 of the Civil Code of the Philippines), the right to redeem or repurchase, in the absence of an express agreement as to time, shall last four years from the date of the contract. In this case then, the right to repurchase, if it was at four guaranteed under in the "Compraventa," should have been exercised within four years from March 21, 1941 (indubitably the date of execution of the contract), or at the latest in 1945. Since the alleged right to repurchase was attempted to be exercised by Vicente Santiago only in 1966, or 25 years from the date of the contract, the said right has undoubtedly expired

ANITA C. BUCE *v.* THE HONORABLE COURT OF APPEALS, SPS. BERNARDO C. TIONGCO AND ARACELI TIONGCO, SPS. DIONISIO TIONGCO AND LUCILA TIONGCO, AND JOSE M. TIONGCO
G.R. No. 136913, May 12, 2000, C.J. Davide Jr.

Pursuant to Article 1196 of the Civil Code, the period of the lease contract is deemed to have been set for the benefit of both parties. Renewal of the contract may be had only upon their mutual agreement or at the will of both of them.

Facts:

Buce leased a parcel of land. The lease contract was for a period of 15 years subject to renewal for another 10 years, under the same terms and conditions. Buce then constructed a building and paid the required monthly rental. Private respondents' counsel wrote Buce informing her of the increase in the rent pursuant to the provisions of the Rent Control Law. Buce, however, tendered checks for less than what was asked. As might be expected, private respondents refused to accept the same. Buce then filed a complaint for specific performance and prayed that private respondents be ordered to accept the rentals in accordance with the lease contract and to respect the lease of fifteen years, which was renewable for another ten years. Private respondents argued that the phrase in the lease contract authorizing renewal for another ten years does not mean automatic renewal; rather, it contemplates a mutual agreement between the parties.

Issue:

Whether or not the parties intended an automatic renewal of the lease contract when they agreed that the lease shall be for a period of fifteen years subject to renewal for another ten (10) years

Ruling:

NO. Generally, the renewal of a contract connotes the death of the old contract and the birth or emergence of a new one. A clause in a lease providing for an extension operates of its own force to create an additional term, but a clause providing for a renewal merely creates an obligation to execute a new lease contract for the additional term. As renewal of the contract contemplates the cessation of the old contract, then it is necessary that a new one be executed between the parties. The fact that the lessee was allowed to introduce improvements on the property is not indicative of the intention of the lessors to automatically extend the contract. In a reciprocal contract like a lease, the period must be deemed to have been agreed upon for the benefit of *both parties*, absent language showing that the term was deliberately set for the benefit of the lessee or lessor alone.

In the case at bar, it was not specifically indicated who may exercise the option to renew, neither was it stated that the option was given for the benefit of Buce. Thus, pursuant to Article 1196 of the Civil Code, the period of the lease contract is deemed to have been set for the benefit of both parties. Renewal of the contract may be had only upon their mutual agreement or at the will of both of them. Since the private respondents were not amenable to a renewal, they cannot be compelled to execute a new contract when the old contract terminated on 1 June 1994. It is the owner-lessor's prerogative to terminate the lease at its expiration. The continuance, effectivity and fulfillment of a contract of lease cannot be made to depend exclusively upon the free and uncontrolled choice of the lessee between continuing the payment of the rentals or not, completely depriving the owner of any say in the matter. Mutuality does not obtain in such a contract of lease and no equality exists between the lessor and the lessee since the life of the contract would be dictated solely by the lessee

RENATO S. SANTOS *v.* THE HONORABLE COURT OF APPEALS AND THE SPOUSES CESAR A. FERRERA AND REYNALDA PEDRONIA AND RUFINO NAZARETH AND DOMINGO NAZARETH
G.R. No. 83664 November 13, 1989, J. Paras

Art. 1602 of the Civil Code provides that the contract shall be presumed to be an equitable mortgage, in any of the following cases: 1) When the price of a sale with right to purchase is unusually inadequate; 2) When the vendor remains in possession as lessee or otherwise; 3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed; 4) When the purchaser retains for himself a part of the purchase price; 5) When the vendor binds himself to pay the taxes on the thing sold; 6) In any other cases where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.

Facts:

Spouses Ferrera and Pedronia were the registered owners of the property which had been planted with rice for some time by defendants Nazareths under a tenancy agreement with the predecessor-in-interest of defendant Ferrera. Spouses Ferrera and Pedronia executed a deed of sale over the said property in favor of spouses Apolonia and Rufino Santos. Simultaneous with the execution of the deed of sale, an instrument entitled Promise to Sell was executed by the spouses Santos in favor of defendants Ferrera, where the former promised to sell back the land in question to the latter within a period of six months. Defendants Ferrera failed to exercise the right to repurchase the property. Spouses Santos executed a deed of absolute sale in favor of their daughter Felicitacion. On the same date, Felicitacion and Gregorio Santos executed a promise to sell the property in favor of the Ferreras within six months. Notwithstanding, the sale of the property to the Santoses, spouses Ferrera continued in possession of the property thru their tenants, the Nazareths. The Santoses informed the Nazareths that they are the new owners of the property in question and required the latter to pay the

rent for the property in question to them but the Nazareths refused to recognize them as the owner of the property and continued to deliver the harvest shares to the Ferreras. The defendants argue that the real contract between the parties is of equitable mortgage only.

Issue:

Whether or not the contract entered into by the parties constitutes an absolute sale or merely an equitable mortgage

Ruling:

It is merely an equitable mortgage. It is an undisputed fact that respondent spouses were "in dire need of money" to settle certain obligations when they entered into the subject transaction with the petitioners. They entered into a loan agreement but were however made to execute a Deed of Absolute Sale for the amount of P22,000.00. Simultaneous with the execution of the said document, petitioners executed a separate document, which is the Promise to Sell for the same amount of money. From the time the Deed of Absolute Sale was executed up to the time the action was instituted in court, respondent spouses continued to remain in actual physical possession of the land in dispute, through their tenants Nazareths) who were also made respondents. The acts of the parties indicate the presence of an equitable mortgage. ***Equitable mortgage*** has been defined as one in which although lacking in some formality, form or words or other requisites demanded by a statute nevertheless reveals the intention of the parties to charge a real property as security for a debt, and contains nothing impossible or contrary to law.
Art. 1602 of the Civil Code provides that the contract shall be presumed to be an equitable mortgage, in any of the following cases: 1) When the price of a sale with right to purchase is unusually inadequate; 2) When the vendor remains in possession as lessee or otherwise; 3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed; 4) When the purchaser retains for himself a part of the purchase price; 5) When the vendor binds himself to pay the taxes on the thing sold; 6) In any other cases where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation. According to the pertinent law, presence of any of the circumstances enumerated would be sufficient enough to declare the transaction of absolute sale as one impressed with an equitable mortgage. In the instant case, there is even more than one (1) circumstance indicating an equitable mortgage

RAQUEL ADORABLE, ET AL., *v.* IRINEA INACALA, ET AL.
G.R. No. L-10183, April 28, 1958, C.J. Paras

The sale is expressly with right to repurchase whereby it granted Inacala the right to redeem within one year. As this stipulated period has expired without Inacala having redeemed the land in question, the original purchaser, Arcadio Mendoza, had irrevocably acquired ownership over the property in accordance with Article 1509 of the old Civil Code which was in force at the time of the transaction in dispute.

Facts:

Inacala was the registered owner of a parcel of land. She executed a deed of sale in favor of Arcadio Mendoza for P420.00. The latter then executed a private instrument granting Inacala the option to repurchase the lot for the same consideration within the period of one year from the date of the sale.

Mendoza afterwards sold the property to the spouses Eugenio and Margarita Ramos to whom a transfer certificate of title was issued. Raquel Adorable, et al., in turn bought the land from the Ramos spouses. Since the first sale, Inacala, who had not redeemed the land from Mendoza, never relinquished the possession thereof. It was only 10 years after, during the opening of the Pampanga River Irrigation Project, when Raquel Adorable, et al., attempted to take physical possession, that Adorable et al were apprised for the first time of Inacala's claim over the lot.

Issue:

Whether or not Inacala should be permitted to exercise the right of repurchase

Ruling:

NO. There can be no question about the correctness of the Court of Appeals that the transaction at bar is a *pacto de retro* sale. In the present case, the sale is expressly with right to repurchase whereby it granted Inacala the right to redeem within one year. As this stipulated period has expired without Inacala having redeemed the land in question, the original purchaser, Arcadio Mendoza, had irrevocably acquired ownership over the property in accordance with Article 1509 of the old Civil Code which was in force at the time of the transaction in dispute

ISABELA BANDONG and JUAN FERRER *v.* ALEJANDRA AUSTRIA
G.R. No. 9785, September 24, 1915, J. Carson

The parties having expressly agreed that the vendors should have the right to repurchase in the month of March of any year after the date of the contract, the only statutory limitation placed upon them in the exercise of that right is the limitation found in the second paragraph of Article 1508 of the Civil Code, which limits the power of the vendor, even by express agreement, to reserve a right to repurchase for a longer period than ten years.

Facts:

Bandong and Ferrer sold to Antonio Ventenilla, since deceased, a parcel of land for P350, expressly reserving a right to repurchase under and in accordance with the terms of the deed of sale. The vendors offered to repurchase in the month of March, 1913, but this offer was declined on the ground that the right to repurchase expired at the end of four years from the date of the contract, relying on the provisions of Article 1508 of the Civil Code, which provides that the right to repurchase, in the absence of an express agreement, shall last four years counted from the date of the contract. In case of stipulation, the period of redemption shall not exceed ten years.

Issue:

Whether or not the vendors may still exercise their right to repurchase.

Ruling:

YES. The provision in the written contract was an express agreement between the parties by the terms of which the vendors were given the right to repurchase in the month of March of any year, after the date of the contract (1905), which they might elect for that purpose. In the event that they should assert that right in the month of March of any year after the date of the contract, it could not be said that there was no express agreement between the parties authorizing them so to do. Manifestly, therefore, the statutory limitation upon the right of repurchase to a period of four years is not applicable to the contract under consideration, that limitation being applicable only to cases wherein there is no express agreement touching the date of redemption. The parties having expressly agreed that the vendors should have the right to repurchase in the month of March of any year after the date of the contract, the only statutory limitation placed upon them in the exercise of that right is the limitation found in the second paragraph of Article 1508 of the Civil Code, which limits the power of the vendor, even by express agreement, to reserve a right to repurchase for a longer period than ten years. Hence, the provisions of the contract of sale, whereby the parties undertook by express agreement to secure to the vendors a right to repurchase in the month of March of any year after the date of the contract, were valid and binding upon the parties for a period of ten years from the date of the contract but wholly without force and effect thereafter

EUFEMIA ELPA DE BAYQUEN and ESTEFANIA BAYON VDA. DE ELPA *v.* EULALIO BALAORO
G.R. No. L-28161, August 13, 1986, J. Paras

Where the contract between the parties is admitted and which has been stipulated by the parties to be a deed of sale with right to repurchase, there should be no issue or dispute about the effects thereof that once there is failure to redeem within the stipulated period, ownership thereof becomes vested or consolidated by operation of law on the vendee. Any other interpretation would be violative of the sanctity of the contract between the parties.

Facts:

Bayquen and Bayon sold the land under question to the Balaoros, reserving their right to repurchase the said land within four (4) years. Bayquen and Bayon failed to repurchase the land within the four-year period. They now assert their right to repurchase the subject property after more than thirteen (13) years. The trial court ruled that Bayquen and Bayon have lost their right to repurchase the land under controversy and that by operation of law, ownership of such land had become consolidated in the name of Balaoro. Bayquen and Bayon contend that the transaction is actually mortgage.

Issue:

Whether or not the contract is not an equitable mortgage but a deed of sale with right to repurchase

Ruling:

YES. The deed of conveyance states the purchase price as P2,000.00 for a parcel of land, partly riceland and partly pasture land, with an assessed value of P440.00. Based on the size, productivity and accessibility, the price of P2,000.00 for said parcel is adequate. The vendee admittedly took immediate possession after the execution of the contract; no extension of the period of redemption, at or after its expiration, was made. The vendee did not retain any part of the purchase price. The vendee has declared the property under his name and paid the corresponding real estate taxes, and there is no circumstance by which the Court could fairly infer that the transaction was intended by

the parties to secure the payment of a debt or loan. Hence, there is no doubt as to the true nature of the transaction and it was a contract of sale with right to purchase.

Besides, not one of the instances enumerated in Article 1602 of the Civil Code (re presumption that the contract is one of equitable mortgage) exists in this case. Lastly, where the contract between the parties is admitted and which has been stipulated by the parties to be a deed of sale with right to repurchase, there should be no issue or dispute about the effects thereof that once there is failure to redeem within the stipulated period, ownership thereof becomes vested or consolidated by operation of law on the vendee. Any other interpretation would be violative of the sanctity of the contract between the parties

SPOUSES UY *vs.* THE HONORABLE COURT OF APPEALS and SPS. DE GUZMAN
G.R. No. 109197. June 21, 2001, MELO, *J.*

Art. 1602 of the New Civil Code provides that the contract shall be presumed to be an equitable mortgage, in any of the following cases: (1) When the price of a sale with right to repurchase is unusually inadequate; (2) When the vendor remains in possession as lessee or otherwise; (3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;(4) When the purchaser retains for himself a part of the purchase price; (5) When the vendor binds himself to pay the taxes on the thing sold; (6) In any other case where it may fairly be inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.

FACTS:

Spouses de Guzman borrowed P2.5 Million from Mario Siochi to finance Mr. de Guzman's election campaign. In line with this, a deed of sale was executed whereby the spouses purportedly sold the 3 lots registered in their names along with the improvements thereon to Siochi. Thereafter, de Guzman was able to obtain an additional loan of 1M pesos but no additional collateral was required. The de Guzmans remained in possession of the property. Aside from these loans, de Guzman also owed Siochi several debts which were all paid by the latter. To repay these other loans, 1 of the 3 lots were sold the proceeds of which were all retained by Siochi. In the meantime, Siochi had the TCTs of the 2 remaining lots cancelled and had new Torrens titles issued in his name. He thereafter sold the same plus the improvements thereon to Spouses Uy causing the issuance of TCTs of the 2 lots in the latter's names. The spouses Uy entered into a contract of lease with option to buy with Roberto Salapantan but the latter was unable to obtain possession of the lots since the premises were occupied by the de Guzman spouses. Consequently, Salapantan filed a complaint for ejectment. It was only at this time that the de Guzmans discovered the sale of their house and lot by Mario Siochi to Spouses Uy and the lease executed by petitioners to Salapantan. The de Guzmans filed a complaint for reformation, action to remove the cloud cast over the TCTs of the 3 lots involved, and reconveyance. The trial court rendered its decision in favor of the de Guzmans. The CA affirmed the RTC decision. Hence, this petition.

ISSUE:

Whether or not the sale by the de Guzmans to Siochi is an equitable mortgage.

RULING:

YES. In line with Art. 1603 of the New Civil Code on equitable mortgage, the questioned deed of sale is in reality a mere equitable mortgage and not an absolute sale in view of the following circumstances: First, the consideration of the sale of P2.5 Million is grossly and unusually inadequate. The price alone of Spouses de Guzman's residential house is P10 Million while the two (2) lots commanded a price of from P4,000.00 to P5,000.00 per square meter. The vacant lot which was sold by Siochi was priced at P4.8 Million. Second, despite the alleged deed of sale, plaintiffs have remained in actual and physical possession of the litigated property up to the present time. Third, Spouses de Guzman were driven to obtain the emergency loan due to urgent necessity of obtaining funds and they signed the deed of sale knowing that it did not express their real intention. In fact, additional loans in the total sum of P1 million were extended to plaintiffs by Siochi even after the execution of said sale without Siochi demanding for any additional security. Fourth, the Spouses de Guzman had obtained series of loans from defendants Siochi which is likewise a badge of equitable mortgage Fifth, defendants Siochi had retained for themselves the entire proceeds of P4.8 million derived from the sale of 1 of the 3 lots owned by Spouses de Guzman. Siochi had sought the permission of plaintiffs to sell said lot notwithstanding the questioned deed of sale. Sixth, the admission of Siochi in having granted series of loans to Spouses de Guzman before and after the execution of the questioned deed of sale apart from circumstances that the emergency loan of P2.5 million was specially treated as loan by Siochi which indubitably show that the deed of sale was in reality an equitable mortgage

ZOSIMA VERDAD *vs*. THE HON. COURT OF APPEALS, ET AL.
G.R. No. 109972, April 29, 1996, VITUG, *J.*

Article 1623 of the Civil Code *provides that the right of legal pre-emption or redemption shall not be exercised except within thirty days from the notice in writing by the prospective vendor, or by the vendor, as the case may be. The deed of sale shall not be recorded in the Registry of Property, unless accompanied by an affidavit of the vendor that he has given written notice thereof to all possible redemptioners.* ***The written notice of sale is mandatory.*** *This Court has long established the rule that notwithstanding actual knowledge of a co-owner, the latter is still entitled to a written notice from the selling co-owner in order to remove all uncertainties about the sale, its terms and conditions, as well as its efficacy and status.*

FACTS:

Upon discovery of the sale in 1987**,** Socorro Cordero Vda. de Rosales, sought to exercise the right of legal redemption over the subject property sold to Zosima Verdad in 1982 by the heirs of her mother in law with her first husband Angel Burdeos. (Burdeos' heirs). She anchored her right of redemption on the successional right of her late husband to the property being a son of Macaria with her second husband Canuto Rosales. She sought the intervention of the Lupong Tagapayapa for the redemption of the property and tendered the sum of P23,000.00 to Zosima. The latter refused to accept the amount. As there was no settlement reached before the Lupong Tagapayapa, Socorro, filed an action for Legal Redemption with Preliminary Injunction against Zosima. The trial court dismissed the complaint holding that Socorro's right to redeem the property had already lapsed. Upon appeal, the CA reversed the RTC decision. Hence, this petition.

ISSUE:

Whether or not Socorro C. Rosales may redeem the property, she being merely the spouse of David Rosales, a son of Macaria, and not being a co-heir herself in the intestate estate of Macaria.

RULING:

YES. It is true that Socorro, a daughter-in-law, is not an intestate heir of her parents-in-law; however, Socorro's right to the property is not because she rightfully can claim heirship in Macaria's estate but that she is a legal heir of her husband, David Rosales, part of whose estate is a share in his mother's inheritance. David Rosales, incontrovertibly, survived his mother's death. When Macaria died, her estate passed on to her surviving children, among them David Rosales, who thereupon became co-owners of the property. When David Rosales himself later died, his own estate, which included his *undivided* interest over the property inherited from Macaria, passed on to his widow Socorro and her co-heirs pursuant to the law on succession thereby making them co-owners of the same. When their interest in the property was sold by the Burdeos heirs to petitioner, a right of redemption arose in favor of Socorro, et al.

The right of redemption was timely exercised. Concededly, no written notice of the sale was given by the Burdeos heirs (vendors) to the co-owners required under Art. 1623 of the Civil Code. Hence, the thirty-day period of redemption had yet to commence when private respondent Rosales sought to exercise the right of redemption on 31 March 1987, a day after she discovered the sale or when the case was initiated, on 16 October 1987, before the trial court. The written notice of sale is mandatory. This Court has long established the rule that notwithstanding actual knowledge of a co-owner, the latter is still entitled to a written notice from the selling co-owner in order to remove all uncertainties about the sale, its terms and conditions, as well as its efficacy and status.

DASMARIÑAS T. ARCAINA and MAGNANI T. BANTA,*Petitioners* -versus-
NOEMI L. INGRAM, represented by MA. NENETTE L. ARCHINUE, *Respondent*
G.R. No. 196444, THIRD DIVISION, February 15, 2017, JARDELEZA, *J.:*

*In sales involving real estate, the parties may choose between two types of pricing agreement: a **unit price contract** wherein the purchase price is determined by way of reference to a stated rate per unit area (e.g, ₱1,000.00 per sq. m.) or a **lump sum contract** which states a full purchase price for an immovable the area of which may be declared based on an estimate or where both the area and boundaries are stated (e.g., ₱1 million for 1,000 sq. m., etc.).*

FACTS:

Arcaina is the owner of Lot No. 3230 located at Salvacion, Sto. Domingo, Albay. Sometime in 2004, her attorney-in-fact, Banta, entered into a contract with Ingram for the sale of the property. Banta showed Ingram and the latter's attorney-in-fact, respondent Archinue, the metes and bounds of the property and represented that Lot No. 3230 has an area of more or less 6,200 sq.m. per the tax declaration covering it. The contract price was ₱1,860,000.00, with Ingram making installment payments for the property from May 5, 2004 to February 10, 2005 totaling ₱1,715,000.00. Banta and Ingram thereafter executed a Memorandum of Agreement acknowledging the previous payments and that Ingram still had an obligation to pay the remaining balance in the amount of ₱145,000.00. They also separately executed deeds of absolute sale over the property in Ingram's favor.

Subsequently, Ingram caused the property to be surveyed and discovered that Lot No. 3230 has an area of 12,000 sq. m. Upon learning of the actual area of the property, Banta allegedly insisted that the difference of 5,800 sq. m. remains unsold. This was opposed by Ingram who claims that she owns the whole lot by virtue of the sale. Thus, Archinue, on behalf of Ingram, instituted the recovery case, against petitioners before the MCTC.

In her Complaint, Ingram alleged that upon discovery of the actual area of the property, Banta insisted on fencing the portion which she claimed to be unsold. Ingram further maintained that she is ready to pay the balance of ₱145,000.00 as soon as petitioners recognize her ownership of the whole property. After all, the sale contemplated the entire property as in fact the boundaries of the lot were clearly stated in the deeds of sale.

MCTC granted petitioners' demurrer and counterclaim against Ingram. RTC reversed and set aside the Order of the MCTC. CA affirmed the RTC's ruling with modification. The CA agreed with the RTC that other than the uniform statements of the parties, no evidence was presented to show that the property was found to have an actual area of more or less 12,000 sq. m. It held that the parties' statements cannot be simply admitted as true and correct because the area of the land is a matter of public record and presumed to have been recorded in the Registry of Deeds. The CA also agreed with the RTC that the sale was made for a **lump sum** and not on a per-square-meter basis. The parties merely agreed on the purchase price of ₱l,860,000.00 for the 6,200 sq. m. lot, with the deed of sale providing for the specific boundaries of the property.

ISSUE:

Whether the sale was made on a lump sum basis. (NO)

RULING:

In sales involving real estate, the parties may choose between two types of pricing agreement: a **unit price contract** wherein the purchase price is determined by way of reference to a stated rate per unit area *(e.g,* ₱1,000.00 per sq. m.) or a **lump sum contract** which states a full purchase price for an immovable the area of which may be declared based on an estimate or where both the area and boundaries are stated *(e.g.,* ₱1 million for 1,000 sq. m., *etc.).* Here, the Deed of Sale executed by Banta on March 21, 2005 and the Deed of Sale executed by Arcaina on April 13, 2005 both show that the property was conveyed to Ingram at the predetermined price of ₱1,860,000.00. There was no indication that it was bought on a per-square-meter basis. Thus, Article 1542 of the Civil Code governs the sale.

The provision teaches that where both the area and the boundaries of the immovable are declared in a sale of real estate for a lump sum, the area covered within the boundaries of the immovable prevails over the stated area. The vendor is obliged to deliver all that is included within the boundaries regardless of whether the actual area is more than what was specified in the contract of sale; and he/she shall do so without a corresponding increase in the contract price. This is particularly true when the stated area is qualified to be approximate only, such as when the words "more or less" were used.

The deeds of sale in this case provide both the boundaries and the estimated area of the property. The land is bounded on the North East by Lot No. 3184, on the South East by seashore, on the South West by Lot No. 3914 and on the North West by a road. It has an area of *more or less* 6,200 sq. m. The uniform allegations of petitioners and Ingram, however, reveal that the actual area within the boundaries of the property amounts to more or less 12,000 sq. m., with a difference of 5,800 sq. m. from what was stated in the deeds of sale. With Article 1542 in mind, the RTC and the CA ordered petitioners to deliver the excess area to Ingram.

In *Del Prado v. Spouses Caballero,* we explained:
The Court, however, clarified that the rule laid down in Article 1542 is not hard and fast and admits of an exception. It held:

"A caveat is in order, however. **The use of "more or less" or similar words in designating quantity covers only a reasonable excess or deficiency.** A vendee of land sold in gross or with the description "more or less" with reference to its area does not thereby *ipso facto* take all risk of quantity in the land.

xxx

In the instant case, the deed of sale is not one of a unit price contract. The parties agreed on the purchase price of ₱40,000.00 for a predetermined area of 4,000 sq m, *more or less,* bounded on the North by Lot No. 11903, on the East by Lot No. 11908, on the South by Lot Nos. 11858 & 11912, and on the West by Lot No. 11910. In a contract of sale of land in a mass, the specific boundaries stated in the contract must control over any other statement, with respect to the area contained within its boundaries.

Black's Law Dictionary defines the phrase "more or less" to mean:

"About; substantially; or approximately; implying that both parties assume the risk of any ordinary discrepancy. **The words are intended *to cover slight or unimportant inaccuracies* in quantity, *Carter v. Finch,* 186 Ark. 954, 57 S.W.2d 408; and are ordinarily to be interpreted as taking care of unsubstantial differences or differences of small importance compared to the whole number of items transferred."**

Clearly, the discrepancy of 10,475 sq m cannot be considered a slight difference in quantity. The difference in the area is obviously sizeable and too substantial to be overlooked. It is not a reasonable excess or deficiency that should be deemed included in the deed of sale.

In a lump sum contract, a vendor is generally obligated to deliver all the land covered within the boundaries, regardless of whether the real area should be greater or smaller than that recited in the deed. However, in case there is conflict between the area actually covered by the boundaries and the estimated area stated in the contract of sale, he/she shall do so only when the excess or deficiency between the former and the latter is **reasonable.**

Applying *Del Prado* to the case before us, we find that the difference of 5,800 sq. m. is too substantial to be considered reasonable. We note that only 6,200 sq. m. was agreed upon between petitioners and Ingram. Declaring Ingram as the owner of the whole 12,000 sq. m. on the premise that this is the actual area included in the boundaries would be ordering the delivery of almost twice the area stated in the deeds of sale. Surely, Article 1542 does not contemplate such an unfair situation to befall a vendor-that he/she would be compelled to deliver double the amount that he/she originally sold without a corresponding increase in price. In *Asiain v. Jalandoni,* we explained that "[a] vendee of a land when it is sold in gross or with the description 'more or less' does not thereby *ipso facto* take all risk of quantity in the land. The use of 'more or less' or similar words in designating quantity covers only a reasonable excess or deficiency." Therefore, we rule that Ingram is entitled only to 6,200 sq. m. of the property. An *area* of 5,800 sq. m. more than the area intended to be sold is not a reasonable excess that can be deemed included in the sale.

Further, at the time of the sale, Ingram and petitioners did not have knowledge of the actual area of the land within the boundaries of the property. It is undisputed that before the survey, the parties relied on the tax declaration covering the lot, which merely stated that it measures more or less 6,200 sq. m. Thus, when petitioners offered the property for sale and when Ingram accepted the offer, the object of their consent or meeting of the minds is only a 6,200 sq. m. property. The deeds of sale merely put into writing what was agreed upon by the parties.

The contract of sale is the law between Ingram and petitioners; it must be complied with in good faith. Petitioners have already performed their obligation by delivering the 6,200 sq. m. property. Since Ingram has yet to fulfill her end of the bargain, she must pay petitioners the remaining balance of the contract price amounting to ₱145,000.00.

PILIPINAS MAKRO, INC., *Petitioner* -versus- COCO CHARCOAL PHILIPPINES, INC. and LIM KIM SAN, *Respondents*
G.R. No. 196419, THIRD DIVISION, October 4, 2017, MARTIRES, *J.:*

A warranty is a collateral undertaking in a sale of either real or personal property, express or implied; that if the property sold does not possess certain incidents or qualities, the purchaser may either consider the sale void or claim damages for breach of warranty. Thus, a warranty may either be express or implied.

FACTS:

Petitioner Pilipinas Makro, Inc. is a duly registered domestic corporation. In 1999, it was in need of acquiring real properties in Davao City to build on and operate a store to establish its business presence in the city. After conferring with authorized real estate agents, Makro found two parcels of land suitable for its purpose.

Makro and respondent Coco Charcoal Phils., Inc. executed a notarized Deed of Absolute Sale wherein the latter would sell its parcel of land, with a total area of 1,000 square meters and covered by *TCT* No. 208776, to the former for the amount of ₱8,500,000.00. On the same date, Makro entered into another notarized Deed of Absolute Sale with respondent Lim Kim San for the sale of the latter's land, with a total area of 1,000 square meters and covered by TCT No. 282650, for the same consideration of ₱8,500,000.00.

Makro engaged the services of *Engr. Vedua,* a geodetic engineer, to conduct a resurvey and relocation of the two adjacent lots. As a result of the resurvey, it was discovered that 131 square meters of the lot purchased from Coco Charcoal had been encroached upon by the *DPWH* for its road widening project and construction of a drainage canal to develop and expand the Davao-Cotabato National Highway. On the other hand, 130 square meters of the land bought from Lim had been encroached upon by the same DPWH project. Meanwhile, TCT Nos. T-321199 and T-321049 were issued in January 2000 in favor of Makro after the deeds of sale were registered and the titles of the previous owners were cancelled.

Makro informed the representatives of Coco Charcoal and Lim about the supposed encroachment on the parcels of land due to the DPWH project. Initially, Makro offered a compromise agreement in consideration of a refund of 75% of the value of the encroached portions. Thereafter, Makro sent a final demand letter to collect the refund of the purchase price corresponding to the area encroached upon by the road widening project, seeking to recover ₱1,113,500.00 from Coco Charcoal and

₱1,105,000.00 from Lim. Failing to recover such, Makro filed separate complaints against Coco Charcoal and Lim to collect the refund sought.

RTC granted Makro's complaint and ordered respondents to refund the amount corresponding to the value of the encroached area. CA reversed the RTC decision. While the appellate court agreed that the DPWH project encroached upon the frontal portions of the properties, it ruled that Makro was not entitled to a refund. It explained that the warranty expressed in Section 4(i) of the deeds of sale is similar to the warranty against eviction set forth under Article 1548 of the Civil Code. As such, the CA posited that only a buyer in good faith may sue to a breach of warranty against eviction.

ISSUES:

Whether or not Section 4(i) of the deeds of sale is akin to an implied warranty against eviction. (NO)

RULING:

Pursuant to Section 2 of the deeds of sale, Makro engaged the services of a surveyor which found that the DPWH project had encroached upon the properties purchased. After demands for a refund had failed, it opted to file the necessary judicial action for redress.

The courts *a quo* agree that the DPWH project encroached upon the properties Makro had purchased from respondents. Nevertheless, the CA opined that Makro was not entitled to a refund because it had actual knowledge of the ongoing road widening project. The appellate court likened Section 4(i) of the deeds of sale as a warranty against eviction, which necessitates that the buyer be in good faith for it to be enforced.

A warranty is a collateral undertaking in a sale of either real or personal property, express or implied; that if the property sold does not possess certain incidents or qualities, the purchaser may either consider the sale void or claim damages for breach of warranty. Thus, a warranty may either be express or implied.

An express warranty pertains to any affirmation of fact or any promise by the seller relating to the thing, the natural tendency of which is to induce the buyer to purchase the same. It includes all warranties derived from the language of the contract, so long as the language is express-it may take the form of an affirmation, a promise or a representation. On the other hand, an implied warranty is one which the law derives by application or inference from the nature of transaction or the relative situation or circumstances of the parties, irrespective of any intention of the seller to create it. In other words, an express warranty is different from an implied warranty in that the former is found within the very language of the contract while the latter is by operation of law.

Thus, the CA erred in treating Section 4(i) of the deeds of sale as akin to an implied warranty against eviction. *First,* the deeds of sale categorically state that the sellers assure that the properties sold were free from any encumbrances which may prevent Makro from fully and absolutely possessing the properties in question. *Second,* in order for the implied warranty against eviction to be enforceable, the following requisites must concur: (a) there must be a final judgment; (b) the purchaser has been deprived of the whole or part of the thing sold; (c) said deprivation was by virtue of a prior right to the sale made by the vendor; and (d) the vendor has been summoned and made co-defendant in the suit for eviction at the instance of the vendee.[22] Evidently, there was no final

judgment and no opportunity for the vendors to have been summoned precisely because no judicial action was instituted.

Further, even if Section 4(i) of the deeds of sale was to be deemed similar to an implied warranty against eviction, the CA erred in concluding that Makro acted in bad faith. It is true that the warranty against eviction cannot be enforced if the buyer knew of the risks or danger of eviction and still assumed its consequences.

It is undisputed that Makro's legal counsel conducted an ocular inspection on the properties in question before the execution of the deeds of sale and that there were noticeable works and constructions going on near them. Nonetheless, these are insufficient to charge Makro with actual knowledge that the DPWH project had encroached upon respondents' properties. The dimensions of the properties in relation to the DPWH project could have not been accurately ascertained through the naked eye. A mere ocular inspection could not have possibly determined the exact extent of the encroachment. It is for this reason that only upon a relocation survey performed by a geodetic engineer, was it discovered that 131 square meters and 130 square meters of the lots purchased from Coco Charcoal and Lim, respectively, had been adversely affected by the DPWH project.

To reiterate, the fact of encroachment is settled as even the CA found that the DPWH project had disturbed a portion of the properties Makro had purchased. The only reason the appellate court denied Makro recompense was because of its purported actual knowledge of the intrusion which is not reason enough to deny Makro a refund of the proportionate amount pursuant to Section 2 of the deeds of sale.

Nevertheless, the RTC errs in ordering respondents to pay ₱l,500,00.00 each to Makro. Under Section 2 of the deeds of sale, the purchase price shall be adjusted in case of increase or decrease in the land area at the rate of ₱8,500.00 per square meter. In the case at bar, 131 square meters and 130 square meters of the properties of Coco Charcoal and Lim, respectively, were encroached upon by the DPWH project. Applying the formula set under the deeds of sale, Makro should be entitled to receive ₱l,113,500.00 from Coco Charcoal and ₱l,105,000.00 from Lim. It is noteworthy that Makro's complaint against respondents also prayed for the same amounts. The RTC awarded ₱l,500,00.00 without sufficient factual basis or justifiable reasons.

RECENT JURISPRUDENCE

LOURDES VALDERAMA, *Petitioner,* -versus- SONIA ARGUELLES AND LORNA ARGUELLES, *Respondents*.
G.R. No. 223660, FIRST DIVISION, April 2, 2018, TIJAM, J.

A notice of lis pendens is a mere incident of an action which does not create any right nor lien. It may be cancelled without a court hearing. In contrast, an adverse claim constitutes a lien on a property. As such, the cancellation of an adverse claim is still necessary to render it ineffective, otherwise, the inscription will remain annotated and shall continue as a lien upon the property. Given the different attributes and characteristics of an adverse claim vis-a-vis a notice of lis pendens, this Court is led to no other conclusion but that the said two remedies may be availed of at the same time.

FACTS:

Respondents alleged that on November 18, 2004, Conchita Amongo Francia, who was the registered owner of a parcel of land consisting of one thousand (1000) square meters located in Sampaloc, Manila (subject property), freely and voluntarily executed an absolute deed of sale of the subject property in favor of respondents. The subject property was subsequently registered in the names of respondents.

On November 14, 2007, Conchita filed an affidavit of adverse claim. On January 24, 2008, Conchita died. As registered owners of the subject property, respondents prayed for the **cancellation of the adverse claim** in the petition subject of this controversy.
On February 10, 2010, petitioner and Tarcila Lopez, as full-blooded sisters of Conchita, filed an opposition to the petition. They claimed that upon Conchita's death, the latter's claims and rights against the subject property were transmitted to her heirs by operation of law. They also argued that the sale of the subject property to the respondents was simulated.

Meanwhile, while the petition to cancel adverse claim was pending before the RTC, respondents filed a complaint for recovery of ownership and physical possession of a piece of realty and its improvements with damages and with prayer for the issuance of temporary restraining order and/or writ of preliminary injunction against petitioner and Tarcila, among others.

In light of the respondent's filing of the complaint, petitioner and Tarcila **filed a notice of *lis pendens*** with respect to the TCT No. 266311

Respondents filed a manifestation and motion praying for the outright cancellation of the adverse claim annotated on the TCT No. 266311 on the ground that petitioner's subsequent filing of notice of *lis pendens* rendered the issue moot and academic.

The RTC issued a Resolution ordering the cancellation of the adverse claim. In arriving at the said ruling, the RTC reasoned, that it cannot disregard the pronouncement of the court in ***Villaflor vs. Juerzan*****,** G.R. No. 35205 which states that a Notice of *Lis Pendens* between the parties concerning Notice of Adverse Claim calls for the cancellation thereof.

The CA rendered a decision dismissing petitioner's appeal for lack of merit. The CA held that the issue on cancellation of adverse claim is a question of law since its resolution would not involve an examination of the evidence but only an application of the law on a particular set of facts. Having raised a sole question of law, the petition was dismissed by the CA pursuant to Section 2, Rule 50 of the Rules of Court.

ISSUE:

Whether the subsequent annotation of a notice of *lis pendens* on a certificate of title renders the case for cancellation of adverse claim on the same title moot and academic. (NO)

RULING:

At the crux of the present controversy is this Court's ruling in the case of *Villaflor*. Admittedly, the present case involves the same issue resolved by this Court in *Villaflor*. However, the *Villaflor* ruling **stemmed from a different factual milieu**. As pointed out by the petitioner, in the case at bar, the respondents are the ones who filed the case subject of the notice of *lis pendens*. Further, the ruling

in *Villaflor* specifically highlighted the fact that the related civil case was already terminated and attained finality. Here, the civil case filed by the respondents is still pending before the RTC.

An adverse claim and a notice of lis pendens under P.D. 1529 are not of the same nature and do not serve the same purpose.

As distinguished from an adverse claim, the notice of *lis pendens* is ordinarily recorded without the intervention of the court where the action is pending. Moreover, a notice of *lis pendens* neither affects the merits of a case nor creates a right or a lien. The notice is but an extrajudicial incident in an action. It is intended merely to constructively advise, or warn, all people who deal with the property that they so deal with it at their own risk, and whatever rights they may acquire in the property in any voluntary transaction are subject to the results of the action. Corollarily, unlike the rule in adverse claims, the cancellation of a notice *lis pendens* is also a mere incident in the action, and may be ordered by the Court having jurisdiction of it at any given time. Its continuance or removal is not contingent on the existence of a final judgment in the action, and ordinarily has no effect on the merits thereof.

The law and jurisprudence provide clear distinctions between an annotation of an adverse claim, on one hand, and an annotation of a notice of *lis pendens* on the other. In sum, the main differences between the two are as follows: (1) an adverse claim protects the right of a claimant during the pendency of a **controversy** while a notice of *lis pendens* protects the right of the claimant during the pendency of the **action or litigation**; and (2) an adverse claim may only be cancelled upon filing of a petition before the court which **shall conduct a hearing on its validity** while a notice of *lis pendens* may be cancelled **without a court hearing**.

The ruling of this Court in the case of Ty Sin Tei v. Dy Piao is applicable in this case. The aforecited rationale of this Court in *Ty Sin Tei* is more in accordance with the basic tenets of fair play and justice. As previously discussed, a notice of *lis pendens* is a mere incident of an action which does not create any right nor lien. It may be cancelled without a court hearing. In contrast, an adverse claim constitutes a lien on a property. As such, the cancellation of an adverse claim is still necessary to render it ineffective, otherwise, the inscription will remain annotated and shall continue as a lien upon the property. Given the different attributes and characteristics of an adverse claim *vis-a-vis* a notice of *lis pendens*, this Court is led to no other conclusion but that the said two remedies may be availed of at the same time.

CATALINA F. ISLA, ELIZABETH ISLA, AND GILBERT F. ISLA, *Petitioners*, -versus- GENEVIRA P. ESTORGA, *Respondent*.
G.R. No. 233974, SECOND DIVISION, July 02, 2018, PERLAS-BERNABE, *J.*

Anent monetary interest, the parties are free to stipulate their preferred rate. However, courts are allowed to equitably temper interest rates that are found to be excessive, iniquitous, unconscionable, and/or exorbitant. In such, the legal rate of interest prevailing at the time the agreement was entered into is applied by the Court.

In this case, the stipulated interest of 10% per month was found to be unconscionable, and thus, the courts a quo struck down the same and pegged a new monetary interest of 12% per annum, which was

the prevailing legal rate of interest for loans and forbearances of money at the time the loan was contracted on December 6, 2004.

FACTS:

On December 6, 2004, petitioners obtained a loan in the amount of P100,000.00 from respondent, payable anytime from six months to one year and subject to interest at the rate of 10% per month, payable on or before the end of each month. As security, a real estate mortgage was constituted over a land located in Pasay City registered under the name of Edilberto Isla, who is married to Catalina.

When petitioners failed to pay the said loan, respondent sought assistance from the barangay, and consequently, a Kasulatan ng Pautang dated December 8, 2005 was executed. Petitioners, however, failed to comply with its terms, prompting respondent to send a demand letter dated November 16, 2006. Once more, petitioners failed to comply with the demand, causing respondent to file a Petition for Judicial Foreclosure against them before the RTC.

Petitioners maintained that the subject mortgage was not a real estate mortgage but a mere loan, and that the stipulated interest of 10 per month was exorbitant and grossly unconscionable. They also insisted that since petitioners were not the absolute owners of the subject property - as the same was allegedly owned by Edilberto – they could not have validly constituted the subject mortgage thereon.

The RTC granted the Petition for Judicial Foreclosure and directed petitioners to pay respondent the amounts of P100,000.00 with twelve percent 12% interest per annum from December 2007 until fully paid and P20,000.00 as attorney's fees. In the event that petitioners fail to pay the said amounts within a period of 6 months from receipt of a copy of the RTC Decision, it held that the subject property will be foreclosed and sold at public auction to satisfy the mortgage debt, and the surplus, if any, will be delivered to petitioners with reasonable interest under the law.

Aggrieved, respondent appealed to the CA.

The CA affirmed with modification the RTC Decision, and accordingly, ordered petitioners to pay respondent P100,000.00 representing the principal of the loan obligation; an amount equivalent to 12% of P100,000.00 computed per year from November 16, 2006 (as distinguished from the RTC decision which fixed the start date at December 2007) until full payment, representing interest on the loan; an amount equivalent to 6% of the sums due computed from the finality of the CA Decision until full payment, representing legal interest; and P20,000.00 as attorney's fees. It likewise held that the stipulated interest of ten percent 10% per month on the real estate mortgage is exorbitant.
In their petition, petitioners contest the interest imposed on the principal amount of the loan at the rate of twelve percent 12% per annum from the date of extrajudicial demand until full payment. In this regard, they argue that pursuant to ECE Realty and Development, Inc. v. Hernandez the applicable interest rate should only be six percent 6%.

ISSUE:

Whether or not the CA erred in awarding 12% interest on the principal obligation until full payment

RULING:

No.

There are two types of interest, namely, monetary interest and compensatory interest. Monetary interest is the compensation fixed by the parties for the use or forbearance of money. On the other hand, compensatory interest is that imposed by law or by the courts as penalty or indemnity for damages. Accordingly, the right to recover interest arises only either by virtue of a contract (monetary interest) or as damages for delay or failure to pay the principal loan on which the interest is demanded (compensatory interest).

Anent monetary interest, the parties are free to stipulate their preferred rate. However, **courts are allowed to equitably temper interest rates that are found to be excessive, iniquitous, unconscionable, and/or exorbitant**, such as stipulated interest rates of three percent (3%) per month or higher. In such instances, it is well to clarify that only the unconscionable interest rate is nullified and deemed not written in the contract; whereas the parties' agreement on the payment of interest on the principal loan obligation subsists. **It is as if the parties failed to specify the interest rate to be imposed on the principal amount, in which case the legal rate of interest prevailing at the time the agreement was entered into is applied by the Court**. This is because, according to jurisprudence, the legal rate of interest is the presumptive reasonable compensation for borrowed money.

In this case, petitioners and respondent entered into a loan obligation and clearly stipulated for the payment of monetary interest. However, the **stipulated interest of 10% per month was found to be unconscionable, and thus, the courts a quo struck down the same and pegged a new monetary interest of 12% per annum, which was the prevailing legal rate of interest for loans and forbearances of money at the time the loan was contracted** on December 6, 2004.

Applying this, the loan obtained by respondents from petitioners is deemed subjected to conventional interest at the rate of 12% per annum, the legal rate of interest at the time the parties executed their agreement. Moreover, should conventional interest still be due as of July 1, 2013, the rate of 12% per annum shall persist as the rate of conventional interest. Stated otherwise, the legal rate of interest, when applied as conventional interest, shall always be the legal rate at the time the agreement was executed and shall not be susceptible to shifts in rate.

The Court rules that the CA correctly imposed a monetary interest rate of 12% per annum on the principal loan obligation of petitioners to respondent, reckoned from the date of extrajudicial demand until finality of this ruling. **Petitioner's reliance on ECE Realty is misplaced because unlike in this case, the amount due therein does not partake of a loan obligation or forbearance of money.**

SECURITY BANK CORPORATION, *Petitioner*, -versus- SPOUSES RODRIGO and ERLINDA MERCADO, *Respondents*.
G.R. No. 192934, FIRST DIVISION, June 27, 2018, JARDELEZA, J.

Failure to advertise a mortgage foreclosure sale in compliance with statutory requirements constitutes a jurisdictional defect which invalidates the sale. This jurisdictional requirement may not be waived by the parties; to allow them to do so would convert the required public sale into a private sale. Thus, the statutory provisions governing publication of notice of mortgage foreclosure sale must be strictly complied with and that even slight deviations therefrom will invalidate the notice and render the sale at least voidable.

In this case, the errors in the notice consist of: (1) TCT No. T-33150- "Lot 952-C-1" which should be "Lot 952-C-1-B;" (2) TCT No. T-89822 "Lot 1931, Cadm- 164-D" which should be "Lot 1931 Cadm 464-D;''64 and (3) the omission of the location. While the errors seem inconsequential, they in fact constitute data important to prospective bidders when they decide whether to acquire any of the lots announced to be auctioned. First, the published notice misidentified the identity of the properties. Since the lot numbers are misstated, the notice effectively identified lots other than the ones sought to be sold. Second, the published notice omitted the exact locations of the properties. As a result, prospective buyers are left completely unaware of the type of neighborhood and conforming areas they may consider buying into. With the properties misidentified and their locations omitted, the properties' sizes and ultimately, the determination of their probable market prices, are consequently compromised. The errors are of such nature that they will significantly affect the public's decision on whether to participate in the public auction. We find that the errors can deter or mislead bidders, depreciate the value of the properties or prevent the process from fetching a fair price.

FACTS:

On September 13, 1996, Security Bank granted spouses Mercado a revolving credit line in the amount of P1,000,000.00. To secure the credit line, the spouses Mercado executed a Real Estate Mortgage in favor of Security Bank over their properties covered by Transfer Certificate of Title (TCT) No. T-103519 (located in Lipa City, Batangas), and TCT No. T-89822 (located in San Jose, Batangas). The spouses Mercado executed another Real Estate Mortgage in favor of Security Bank this time over their properties located in Batangas City, Batangas covered by TCT Nos. T-33150, T-34288, and T-34289 to secure an additional amount of P7,000,000.00 under the same revolving credit agreement.

Subsequently, the spouses Mercado defaulted in their payment under the revolving credit line agreement. Security Bank requested the spouses Mercado to update their account, and sent a final demand letter on March 31, 1999.12 Thereafter, it filed a petition for extrajudicial foreclosure pursuant to Act No. 3135,13 as amended, with respect to the parcel of land situated in Lipa City. Security Bank likewise filed a similar petition with the Office of the Clerk of Court and Ex-Officio Sheriff of the RTC of Batangas City with respect to the parcels of land located in San Jose, Batangas and Batangas City.

The respective notices of the foreclosure sales of the properties were published in newspapers of general circulation once a week for three consecutive weeks as required by Act No. 3135, as amended. However, the publication of the notices of the foreclosure of the properties in Batangas City and San Jose, Batangas contained errors with respect to their technical description. Security Bank caused the publication of an erratum in a newspaper to correct these errors. The corrections consist of the following: (1) TCT No. 33150 – "Lot 952-C-1" to "Lot 952-C-1-B;" and (2) TCT No. 89822 – "Lot 1931 Cadm- 164-D" to "Lot 1931 Cadm 464-D." The erratum was published only once, and did not correct the lack of indication of location in both cases.

The foreclosure sale of the parcel of land in Lipa City, Batangas was held wherein Security Bank was adjudged as the winning bidder. A similar foreclosure sale was conducted over the parcels of land in Batangas City and San Jose, Batangas where Security Bank was likewise adjudged as the winning bidder. The spouses Mercado offered to redeem the foreclosed properties for P10,000,000.00. However, Security Bank allegedly refused the offer and made a counter-offer in the amount of P15,000,000.00.

The spouses Mercado filed a complaint for annulment of foreclosure sale, damages, injunction, specific performance, and accounting with application for temporary restraining order and/or preliminary injunction with the RTC of Batangas City. In the complaint, the spouses Mercado averred that: (1) the parcel of land in San Jose, Batangas should not have been foreclosed together with the properties in Batangas City because they are covered by separate real estate mortgages; (2) the requirements of posting and publication of the notice under Act No. 3135, as amended, were not complied with; (3) Security Bank acted arbitrarily in disallowing the redemption of the foreclosed properties for P10,000,000.00; (4) the total price for all of the parcels of land only amounted to P4723,620.00; and (5) the interests and the penalties imposed by Security Bank on their obligations were iniquitous and unconscionable.

Meanwhile, Security Bank, after having consolidated its titles to the foreclosed parcels of land, filed an ex-parte petition for issuance of a writ of possession over the parcels of land located in Batangas City and San Jose, Batangas.

RTC declared that: (1) the foreclosure sales of the five parcels of land void; (2) the interest rates contained in the revolving credit line agreement void for being potestative or solely based on the will of Security Bank; and (3) thesum of P8,000,000.00 as the true and correct obligation of the spouses Mercado to Security Bank. RTC modified its Decision in an Amendatory Order where it declared that: (1) only the foreclosure sales of the parcels of land in Batangas City and San Jose, Batangas are void as it has no jurisdiction over the properties in Lipa City, Batangas; (2) the obligation of the spouses Mercado is P7,500,000.00, after deducting P500,000.00 from the principal loan of P1,000,000.00; and (3) as "cost of money," the obligation shall bear the interest at the rate of 6% from the time of date of the Amendatory Order until fully paid. The CA, on appeal, affirmed with modifications the RTC Amended Decision.

ISSUES:

(1) Whether the foreclosure sales of the parcels of land in Batangas City and San Jose, Batangas are valid. (NO)

(2) Whether the provisions on interest rate in the revolving credit line agreement and its addendum are void for being violative of the principle of mutuality of contracts. (YES)

(3) Whether interest and penalty are due and demandable from date of auction sale until finality of the judgment declaring the foreclosure void under the doctrine of operative facts. (NO)

RULING:

(1) The foreclosure sales of the properties in Batangas City and San Jose, Batangas are void for non-compliance with the publication requirement of the notice of sale.

Act No. 3135, as amended, provides for the statutory requirements for a valid extrajudicial foreclosure sale. Among the requisites is a valid notice of sale. Section 3, as amended, requires that when the value of the property reaches a threshold, the notice of sale must be published once a week for at least three consecutive weeks in a newspaper of general circulation:

Sec. 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city.

Failure to advertise a mortgage foreclosure sale in compliance with statutory requirements constitutes a jurisdictional defect which invalidates the sale. This jurisdictional requirement may not be waived by the parties; to allow them to do so would convert the required public sale into a private sale. Thus, the statutory provisions governing publication of notice of mortgage foreclosure sale must be strictly complied with and that even slight deviations therefrom will invalidate the notice and render the sale at least voidable.

Nevertheless, the validity of a notice of sale is not affected by immaterial errors. Only a substantial error or omission in a notice of sale will render the notice insufficient and vitiate the sale. An error is substantial if it will deter or mislead bidders, depreciate the value of the property or prevent it from bringing a fair price.

In this case, the errors in the notice consist of: (1) TCT No. T-33150- "Lot 952-C-1" which should be "Lot 952-C-1-B;" (2) TCT No. T-89822 "Lot 1931, Cadm- 164-D" which should be "Lot 1931 Cadm 464-D;''64 and (3) the omission of the location. While the errors seem inconsequential, they in fact constitute data important to prospective bidders when they decide whether to acquire any of the lots announced to be auctioned. First, the published notice misidentified the identity of the properties. Since the lot numbers are misstated, the notice effectively identified lots other than the ones sought to be sold. Second, the published notice omitted the exact locations of the properties. As a result, prospective buyers are left completely unaware of the type of neighborhood and conforming areas they may consider buying into. With the properties misidentified and their locations omitted, the properties' sizes and ultimately, the determination of their probable market prices, are consequently compromised. The errors are of such nature that they will significantly affect the public's decision on whether to participate in the public auction. We find that the errors can deter or mislead bidders, depreciate the value of the properties or prevent the process from fetching a fair price.

The publication of a single erratum, however, does not cure the defect. As correctly pointed out by the RTC, "[t]he act of making only one corrective publication in the publication requirement, instead of three (3) corrections is a fatal omission committed by the mortgagee bank." To reiterate, the published notices that contain fatal errors are nullities. Thus, the erratum is considered as a new notice that is subject to the publication requirement for once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city where the property is located. Here, however, it was published only once.

(2) The interest rate provisions in the parties' agreement violate the principle of mutuality of contracts.

The principle of mutuality of contracts is found in Article 1308 of the New Civil Code, which states that contracts must bind both contracting parties, and its validity or compliance cannot be left to the will of one of them. The binding effect of any agreement between parties to a contract is premised on two settled principles: (I) that any obligation arising from contract has the force of law between the parties; and (2) that there must be mutuality between the parties based on their essential equality. As such, any contract which appears to be heavily weighed in favor of one of the parties so as to lead to an unconscionable result is void. Likewise, any stipulation regarding the validity or compliance of

the contract that is potestative or is left solely to the will of one of the parties is invalid. This holds true not only as to the original terms of the contract but also to its modifications. Consequently, any change in a contract must be made with the consent of the contracting parties, and must be mutually agreed upon. Otherwise, it has no binding effect.

Stipulations as to the payment of interest are subject to the principle of mutuality of contracts. As a principal condition and an important component in contracts of loan, interest rates are only allowed if agreed upon by express stipulation of the parties, and only when reduced into writing.

Here, the spouses Mercado supposedly: (1) agreed to pay an annual interest based on a "floating rate of interest;" (2) to be determined solely by Security Bank; (3) on the basis of Security Bank's own prevailing lending rate; (4) which shall not exceed the total monthly prevailing rate as computed by Security Bank; and (5) without need of additional confirmation to the interests stipulated as computed by Security Bank.

Notably, stipulations on floating rate of interest differ from escalation clauses. Escalation clauses are stipulations which allow for the increase (as well as the mandatory decrease) of the original fixed interest rate. Meanwhile, floating rates of interest refer to the variable interest rate stated on a market-based reference rate agreed upon by the parties. The former refers to the method by which fixed rates may be increased, while the latter pertains to the interest rate itself that is not fixed. Nevertheless, both are contractual provisions that entail adjustment of interest rates subject to the principle of mutuality of contracts. Thus, while the cited cases involve escalation clauses, the principles they lay down on mutuality equally apply to floating interest rate clauses.

The Banko Sentral ng Pilipinas (BSP) Manual of Regulations for Banks (MORB) allows banks and borrowers to agree on a floating rate of interest, provided that it must be based on market-based reference rates:

§ X305.3 Floating rates of interest. The rate of interest on a floating rate loan during each interest period shall be stated on the basis of Manila Reference Rates (MRRs), T-Bill Rates or other market based reference rates plus a margin as may be agreed upon by the parties.

The MRRs for various interest periods shall be determined and announced by the Bangko Sentral every week and shall be based on the weighted average of the interest rates paid during the immediately preceding week by the ten (10) KBs with the highest combined levels of outstanding deposit substitutes and time deposits, on promissory notes issued and time deposits received by such banks, of P100,000 and over per transaction account, with maturities corresponding to the interest periods tor which such MRRs are being determined. Such rates and the composition of the sample KBs shall be reviewed and determined at the beginning of every calendar semester on the basis of the banks' combined levels of outstanding deposit substitutes and time deposits as of 31 May or 30 November, as the case may be.

The rate of interest on floating rate loans existing and outstanding as of 23 December 1995 shall continue to be determined on the basis of the MRRs obtained in accordance with the provisions of the rules existing as of 01 January 1989: Provided, however, That the parties to such existing floating rate loan agreements are not precluded from amending or modifying their loan agreements by adopting a floating rate of interest determined on the basis of the TBR or other market based reference rates.

Where the loan agreement provides for a floating interest rate, the interest period, which shall be such period of time for which the rate of interest is fixed, shall be such period as may be agreed upon by the parties.

For the purpose of computing the MRRs, banks shall accomplish the report forms, RS Form 2D and Form 2E (BSP 5-17-34A).

This BSP requirement is consistent with the principle that the determination of interest rates cannot be left solely to the will of one party. It further emphasizes that the reference rate must be stated in writing, and must be agreed upon by the parties.

The authority to change the interest rate was given to Security Bank alone as the lender, without need of the written assent of the spouses Mercado. This unbridled discretion given to Security Bank is evidenced by the clause "I hereby give my continuing consent without need of additional confirmation to the interests stipulated as computed by [Security Bank]." The lopsidedness of the imposition of interest rates is further highlighted by the lack of a breakdown of the interest rates imposed by Security Bank in its statement of account accompanying its demand letter.

The interest rate to be imposed is determined solely by Security Bank for lack of a stated, valid reference rate. The reference rate of "Security Bank's prevailing lending rate" is not pegged on a market-based reference rate as required by the BSP. The stipulated interest rate based on "Security Bank's prevailing lending rate" is not synonymous with "prevailing market rate." For one, Security Bank is still the one who determines its own prevailing lending rate. More, the argument that Security Bank is guided by other facts (or external factors such as Singapore Rate, London Rate, Inter-Bank Rate) in determining its prevailing monthly rate fails because these reference rates are not contained in writing as required by law and the BSP.

Nevertheless, while we find that no stipulated interest rate may be imposed on the obligation, legal interest may still be imposed on the outstanding loan. Eastern Shipping Lines, Inc. v. Court of Appeals and Nacar v. Gallery Frames provide that in the absence of a stipulated interest. a loan obligation shall earn legal interest from the time of default, i.e., from judicial or extrajudicial demand.

(3) For purposes of computing when legal interest shall run, it is enough that the debtor be in default on the principal obligation. To be considered in default under the revolving credit line agreement, the borrower need not be in default for the whole amount, but for any amount due. The spouses Mercado never challenged Security Bank's claim that they defaulted as to the payment of the principal obligation of P8,000,000.00. Thus, we find they have defaulted to this amount at the time Security Bank made an extrajudicial demand on March 31, 1999.

We also find no merit in their argument that penalty charges should not be imposed. While we see no legal basis to strike down the penalty stipulation, however, we reduce the penalty of 2% per month or 24% per annum for being iniquitous and unconscionable as allowed under Article 1229 of the Civil Code.

In MCMP Construction Corp. v. Monark Equipment Corp.,103 we declared the rate of 36% per annum unconscionable and reduced it to 6% per annum. We thus similarly reduce the penalty here from 24% per annum to 6% per annum from the time of default, i.e., extrajudicial demand.

We also modify the amount of the outstanding obligation of the spouses Mercado to Security Bank. To recall, the foreclosure sale over the parcel of land in Lipa City is not affected by the annulment proceedings. We thus find that the proceeds of the foreclosure sale over the parcel of land in Lipa City in the amount of P483,120.00 should be applied to the principal obligation of P8,000,000.00 plus interest and penalty from extrajudicial demand (March 31, 1999) until date of foreclosure sale (October 19, 1999). The resulting deficiency shall earn legal interest at the rate of 12% from the filing of Security Bank's answer with counterclaim105 on January 5, 2001 until June 30, 2013, and shall earn legal interest at the present rate of 6% from July 1, 2013 until finality of judgment.

SPOUSES GODFREY and MA. TERESA TEVES, *Petitioners,* -versus- INTEGRATED CREDIT & CORPORATE SERVICES, CO. (now CAROL AQUI), *Respondent*.
G.R. No. 216714, FIRST DIVISION, April 4, 2018, DEL CASTILLO, J.

On the contention that the RTC — sitting as a land registration court — does not have jurisdiction to award back rentals or grant relief which should otherwise be sought in an ordinary civil action, this is no longer tenable. The distinction between the trial court acting as a land registration court with limited jurisdiction, on the one hand, and a trial court acting as an ordinary court exercising general jurisdiction, on the other, has already been removed with the effectivity of Presidential Decree No. 1529, or the Property Registration Decree.

FACTS:

Sometime in 1996, Standard Chartered Bank extended various loans to petitioners Godfrey and Ma. Teresa Teves. As security, petitioners mortgaged their property covered by Transfer Certificate of Title No. 107520 (the subject property).

Petitioners defaulted in their loan payments. Standard extrajudicially foreclosed on the mortgage, and the property was sold to Integrated Credit and Corporate Services Co. (ICCS). A new certificate of title was issued in favor of ICCS after petitioners failed to redeem the subject property upon the expiration of the redemption period on May 23, 2007.

ICCS filed a petition for the issuance of a wit of possession. During the proceedings, or in May, 2010, ICCS was substituted by respondent Carol Aqui who appears to have acquired the property from ICCS, and a new certificate of title was issued in Aqui's favor.

On July 14, 2010, the RTC issued two Orders.

The first, issued the writ of possession. The second, ordered the defendants to deliver to petitioner and/or deposit with the Court the monthly rentals of the subject property covering the period from May 24, 2007 up to the time they surrender the possession thereof to the petitioner.

Petitioners filed a Partial Motion for Reconsideration of the Second Order, but RTC denied the same. Petitioners filed a Petition for *Certiorari* before the CA. The latter dismissed the Petition filed under Rule 65 being an improper remedy. It ratiocinated that the orders subject of the petition partakes the nature of a judgment or final order which is appealable under Rule 41 of the Rules of Court.

Petitioners, praying that this Court set aside the second order of the RTC, argue that Aqui should file an independent action — and not simply seek the same in her petition for issuance of a writ of possession, since (a) the RTC, sitting as a land registration court, does not have jurisdiction to

award back rentals or grant relief which should otherwise be sought in an ordinary civil action; and (b) Act No. 3135, as amended by Act No. 4118, contains no provision authorizing the award of back rentals to the purchaser at auction.

ISSUE:

Whether back rentals can be awarded in an ex parte application for writ of possession under Act 3135. (YES)

RULING:

When the redemption period expired on May 23, 2007, ICCS became the owner of the subject property and was, from then on, entitled to the fruits thereof. Petitioners ceased to be the owners of the subject property, and had no right to the same as well as to its fruits. Under Section 32, Rule 39 of the Rules, on Execution, Satisfaction and Effect of Judgments, all rents, earnings and income derived from the property pending redemption shall belong to the judgment obligor, but only until the expiration of his period of redemption. Thus, if petitioners leased out the property to third parties after their period for redemption expired, as was in fact the case here, the rentals collected properly belonged to ICCS or Aqui, as the case may be. Petitioners had no right to collect them.

On the contention that the RTC — sitting as a land registration court — does not have jurisdiction to award back rentals or grant relief which should otherwise be sought in an ordinary civil action, this is no longer tenable. The distinction between the trial court acting as a land registration court with limited jurisdiction, on the one hand, and a trial court acting as an ordinary court exercising general jurisdiction, on the other, has already been removed with the effectivity of Presidential Decree No. 1529, or the Property Registration Decree. "The change has simplified registration proceedings by conferring upon the designated trial courts the authority to act not only on applications for 'original registration' but also 'over all petitions filed after original registration of title, with power to hear and determine all questions arising from such applications or petition.'"

Moreover, under Section 6, Rule 135 of the Rules, on Powers and Duties of Courts and Judicial Officers, it is provided that —

Sec. 6. *Means to carry jurisdiction into effect.* — When by law, jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of said law or rules.

Given the above-cited rule and the pronouncement in *China Banking Corporation v. Spouses Lozada*, it can be understood why the RTC issued the two separate Orders of July 14, 2010 The First Order was issued relative to the main remedy sought by ICCS — that is, for the court to issue a writ of possession. The Second Order was issued pursuant to the court's authority under Section 6 of Rule 135 of the Rules, to the end that a patent inequity may be immediately remedied and justice served in accordance with the objective of the Rules to secure a just, speedy and inexpensive disposition of every action and proceeding. In the eyes of the law, petitioners clearly had no right to collect rent from the lessee of the subject property; they were no longer the owners thereof, yet they continued to collect and appropriate for themselves the rentals on the property to which ICCS was entitled. This is a clear case of unjust enrichment that the courts may not simply ignore.

VICTORIA N. RACELIS, IN HER CAPACITY AS ADMINISTRATOR, *Petitioner,* -versus- SPOUSES GERMIL JAVIER and REBECCA JAVIER, *Respondents.*
G.R. No. 189609, THIRD DIVISION, January 29, 2018, LEONEN, *J.*

In Goldstein v. Roces:

Nobody has in any manner disputed, objected to, or placed any difficulties in the way of plaintiff's peaceful enjoyment, or his quiet and peaceable possession of the floor he occupies. The lessors, therefore, have not failed to maintain him in the peaceful enjoyment of the floor leased to him and he continues to enjoy this status without the slightest change, without the least opposition on the part of any one. That there was a disturbance of the peace or order in which he maintained his things in the leased story does not mean that he lost the peaceful enjoyment of the thing rented. The peace would likewise have been disturbed or lost had some tenant of the Hotel de Francia, living above the floor leased by plaintiff, continually poured water on the latter's bar and sprinkled his bar-tender and his customers and tarnished his furniture; or had some gay patrons of the hotel gone down into his saloon and broken his crockery or glassware, or stunned him with deafening noises. Numerous examples could be given to show how the lessee might fail peacefully to enjoy the floor leased by him, in all of which cases he would, of course, have a right of action for the recovery of damages from those who disturbed his peace, but he would have no action against the lessor to compel the latter to maintain him in his peaceful enjoyment of the thing rented. The lessor can do nothing, nor is it incumbent upon him to do anything, in the examples or cases mentioned, to restore his lessees peace.

True it is that, pursuant to paragraph 3, of article 1554, the lessor must maintain the lessee in the peaceful enjoyment of the lease during all of the time covered by the contract, and that, in consequence thereof, he is obliged to remove such obstacles as impede said enjoyment; but, as in warranty in a case of eviction (to which doctrine the one we are now examining is very similar, since it is necessary, as we have explained, that the cause of eviction be in a certain manner imputable to the vendor, which must be understood as saying that it must be prior to the sale), the obstacles to enjoyment which the lessor must remove are those that in some manner or other cast doubt upon the right by virtue of which the lessor himself executed the lease and, strictly speaking, it is this right that the lessor should guarantee to the lessee.

Lessees are entitled to suspend the payment of rent under Article 1658 of the Civil Code if their legal possession is disturbed. Acts of physical disturbance that do not affect legal possession is beyond the scope of this rule. Lessees who exercise their right under Article 1658 of the Civil Code are not freed from the obligations imposed by law or contract. Assuming that parties were entitled to invoke their right under Article 1658 of the Civil Code, this does exonerate them from their obligation under Article 1657 of the civil Code "to pay the price of the lease according to the terms stipulated."

FACTS:

Before his death, the late Pedro Nacu, Sr. (Nacu) appointed his daughter, Racelis, to administer his properties, among which was a residential house and lot located in Marikina City. Nacu requested his heirs to sell this property first. Acting on this request, Racelis immediately advertised it for sale.

In August 2001, the Spouses Javier offered to purchase the Marikina property. However, they could not afford to pay the price of P3,500,000.00. The parties agreed on a month-to-month lease and rent of P11,000.00 per month. The Spouses Javier used the property as their residence and as the site of their tutorial school, the Niño Good Shepherd Tutorial Center.

Sometime in July 2002, Racelis inquired whether the Spouses Javier were still interested to purchase the property. The Spouses Javier reassured her of their commitment and even promised to pay P100,000.00 to buy them more time within which to pay the purchase price. On July 26, 2002, the Spouses Javier tendered the sum of P65,000.00 representing "initial payment or goodwill money." On several occasions, they tendered small sums of money to complete the promised P100,000.00, but by the end of 2003, they only delivered a total of P78,000.00.

Meanwhile, they continued to lease the property. They consistently paid rent but started to fall behind by February 2004. Realizing that the Spouses Javier had no genuine intention of purchasing the property, Racelis wrote to inform them that her family had decided to terminate the lease agreement and to offer the property to other interested buyers. **In the same letter, Racelis demanded that they vacate the property by May 30, 2004.**

The Spouses Javier refused to vacate due to the ongoing operation of their tutorial business. They insisted that the sum of P78,000.00 was advanced rent and proposed that this amount be applied to their outstanding liability until they vacate the premises. Disagreeing on the application of the P78,000.00, Racelis and the Spouses Javier brought the matter to the barangay for conciliation. Unfortunately, the parties failed to reach a settlement. During the proceedings, Racelis demanded the Spouses Javier to vacate the premises by the end of April 30, 2004. However, the Spouses Javier refused to give up possession of the property and even refused to pay rent for the succeeding months.

On May 12, 2004, Racelis caused the disconnection of the electrical service over the property forcing the Spouses Javier to purchase a generator. This matter became the subject of a complaint for damages filed by the Spouses Javier against Racelis. Racelis was absolved from liability.

Meanwhile, Racelis filed a complaint for ejectment against the Spouses Javier before the Metropolitan Trial Court in Marikina City. The case was docketed as Civil Case No. 04-7710. Racelis alleged that she agreed to lease the property to the Spouses Javier based on the understanding that they would eventually purchase it. Spouses Javier averred that they never agreed to purchase the property from Racelis because they found a more affordable property at Greenheights Subdivision in Marikina City. They claimed that the amount of P78,000.00 was actually advanced rent. During trial, the Spouses Javier vacated the property and moved to their new residence at Greenheights Subdivision

On August 19, 2005, the Metropolitan Trial Court rendered a Decision dismissing the complaint. It ruled that the Spouses Javier were entitled to suspend the payment of rent under Article 1658 of the Civil Code due to Racelis' act of disconnecting electric service over the property.

The Metropolitan Trial Court declared that the Spouses Javier's obligation had been extinguished. Their advanced rent and deposit were sufficient to cover their unpaid rent. The Metropolitan Trial Court, however, did not characterize the P78,000.00 as advanced rent but as earnest money.

On appeal, the Regional Trial Court rendered a Decision reversing the Metropolitan Trial Court August 19, 2005 Decision. The Regional Trial Court held that the Spouses Javier were not justified in suspending rental payments. However, their liability could not be offset by the P78,000.00. The Regional Trial Court explained that the parties entered into two (2) separate and distinct contracts—a lease contract and a contract of sale. Based on the evidence presented, the P78,000.00 was not intended as advanced rent, but as part of the purchase price of the property. The Spouses Javier moved for reconsideration. The Regional Trial Court reduced the Spouses Javier's unpaid rentals by their advanced rental deposit. They were ordered to pay P54,000.00 instead. The Spouses Javier appeal.

On January 13, 2009, the Court of Appeals rendered a Decision declaring the Spouses Javier justified in withholding rental payments due to the disconnection of electrical service over the property. Nevertheless, the Court of Appeals stated that they were not exonerated from their obligation to pay accrued rent. On the other hand, Racelis was bound to return the sum of P78,000.00 in view of her waiver. Racelis moved for reconsideration but her motion was denied in the Court of Appeals. On November 25, 2009, Racelis filed a Petition for Review

ISSUE:

Whether respondents Spouses Germil and Rebecca Javier can invoke their right to suspend the payment of rent under Article 1658 of the Civil Code. (NO)

RULING:

A **contract of leas**e is a "consensual, bilateral, onerous and commutative contract by which the owner temporarily grants the use of his property to another who undertakes to pay rent therefor."

Article 1658 of the Civil Code allows a lessee to postpone the payment of rent if the lessor fails to either (1) "make the necessary repairs" on the property or (2) "maintain the lessee in peaceful and adequate enjoyment of the property leased." This provision implements the obligation imposed on lessors under Article 1654(3) of the Civil Code.

The failure to maintain the lessee in the peaceful and adequate enjoyment of the property leased does not contemplate all acts of disturbance. **Lessees may suspend the payment of rent under Article 1658 of the Civil Code only if their legal possession is disrupted.**

In this case, the disconnection of electrical service over the leased premises on May 14, 2004 was not just an act of physical disturbance but one that is meant to remove respondents from the leased premises and disturb their legal possession as lessees. Ordinarily, this would have entitled respondents to invoke the right accorded by Article 1658 of the Civil Code.

However, this rule will not apply in the present case because the lease had already expired when petitioner requested for the temporary disconnection of electrical service. Petitioner demanded respondents to vacate the premises by May 30, 2004. Instead of surrendering the premises to petitioner, respondents unlawfully withheld possession of the property. Respondents continued to stay in the premises until they moved to their new residence on September 26, 2004. At that point, petitioner was no longer obligated to maintain respondents in the "peaceful and adequate enjoyment

of the lease for the entire duration of the contract." Therefore, respondents cannot use the disconnection of electrical service as justification to suspend the payment of rent.

Assuming that respondents were entitled **to invoke their right under Article 1658 of the Civil Code, this does exonerate them from their obligation under Article 1657 of the civil Code "to pay the price of the lease according to the terms stipulated."**

Lessees who exercise their right under Article 1658 of the Civil Code are not freed from the obligations imposed by law or contract. Moreover, respondents' obligation to pay rent was not extinguished when they transferred to their new residence. Respondents are liable for a reasonable amount of rent for the use and continued occupation of the property upon the expiration of the lease. To hold otherwise would unjustly enrich respondents at petitioner's expense.

BENJAMIN EVANGELISTA *v.* SCREENEX, INC., represented by ALEXANDER G. YU
G.R. No. 211564, November 20, 2017, First Division, SERENO, C.J.:

The acceptance of a check implies an undertaking of due diligence in presenting it for payment, and if he from whom it is received sustains loss by want of such diligence, it will be held to operate as actual payment of the debt or obligation for which it was given.

FACTS:

Screenex, Inc. represented by Alexander Yu issued two checks to Evangelista in September 1991 pursuant to a loan obtained by the latter. The first was a UCPB check for ₱1,000,000 and the second, a Chinabank check for ₱500, 000. There were also vouchers of Screenex that were signed by the accused evidencing that he received the 2 checks in acceptance of the loan granted to him. In turn, Petitioner issued two open-dated UCPB checks both pay to the order of Screenex, Inc. The checks issued by Evangelista were held in safekeeping by Philip Gotuaco, Sr, the father-in-law of the Respondent. These were kept by him until his death in 2004.

In 2005, Petitioner was charged with a violation of BP 22 for the issuance of the two UCPB checks for issuing to Respondent checks for value despite knowing that there were insufficient funds at the time of its issuance, and when subsequently presented within 90 days from the date thereof, was dishonored by the drawee bank for the reason "ACCOUNT CLOSED." Despite receipt of notice of such dishonor, the said accused failed to pay said payee the face amount of said checks or to make arrangement for full payment thereof within 5 banking days after receiving notice.

The METC acquitted Petitioner for failure to prove the third element of BP 22 at the time of the issuance of the check to the payee, the latter did not have sufficient funds in, or credit with, the drawee bank for payment of the check in full upon its presentment. Here, there was a failure to prove Evangelista's receipt of the demand letter. Thus, there was a failure to establish *prima faci*e evidence of knowledge of the insufficiency of funds on the part of Evangelista. However, petitioner was made liable to pay the corresponding civil obligation since the checks were in the creditor's possession, which is sufficient evidence of an unpaid debt.
The RTC affirmed the MeTC decision *in toto* as regards civil liability. In ruling against the Respondent, the Court said that the alleged payment of Evangelista is an affirmative defense thathe failed to discharge and that prescription has not settled yet as the 10-year period must be counted from the time the right of action accrues as per Art. 1144 of the New Civil Code. Here, the reckoning point of prescription has not yet been established since there was no evidence as to the date of maturity of

the loan obligation. The RTC also stressed that the right of action in this case is not upon a written contract. Hence, Art. 1144 does not apply.

Evangelista filed a petition for review before the CA insisting that the lower court erred in finding him liable to pay the sum with interest at 12% per annum from the date of filing until full payment. He further alleged that witness Yu was not competent to testify on the loan transaction; that the insertion of the date on the checks without the knowledge of the accused was an alteration that avoided the checks; and that the obligation had been extinguished by prescription.

The CA denied the petition. It held that (a) the reckoning time for the prescriptive period began when the instrument was issued and the corresponding check returned by the bank to its depositor; (b) the issue of prescription was raised for the first time on appeal with the RTC; (c) the writing of the date on the check cannot be considered as an alteration, as the checks were undated, so there was nothing to change to begin with; (d) the loan obligation was never denied by petitioner, who claimed that it was settled in 1992, but failed to show any proof of payment.

ISSUE:

Whether or not Evangelista should be made liable to pay the civil liability.

RULING:

NO. The Court ruled in favor of Petitioner on 3 grounds: *First*, a check is discharged by any other act which will discharge a simple contract for the payment of money. *Second*, prescription allows the court to dismiss the case motu propio. And *third*, the delivery of the check produces the effect of payment when through the fault of the creditor they have been impaired. On the first and second grounds, the civil action deemed instituted with the criminal action in B.P. 22 cases is treated as an "independent civil liability based on contract.

By definition, a check is a bill of exchange drawn on a bank payable on demand. It is a negotiable instrument — written and signed by a drawer containing an unconditional order to pay on demand a sum certain in money. It is an undertaking that the drawer will pay the amount indicated thereon. **Section 119 of the NIL, however, states that a negotiable instrument like a check may be discharged by any other act which will discharge a simple contract for the payment of money**.

A check therefore is subject to prescription of actions upon a written contract, that is, the action must be brought from the time the right of action accrues. Barring any extrajudicial or judicial demand that may toll the 10-year prescription period and any evidence which may indicate any other time when the obligation to pay is due, **the cause of action based on a check is reckoned from the date indicated on the check.**

If the check is undated, however, as in the present petition, the cause of action is reckoned from the date of the issuance of the check.This is pursuant to Section 17 of the NIL which provides that an undated check is presumed dated as of the time of its issuance. The Court also stressed that although the date on a check may be filled, this must be done strictly in accordance with the authority given and within a reasonable time. Here, Yu, even assuming that was authorized**, failed to insert the dates within a reasonable time**. The insertion was made after more than 10 years from the issuance of the checks. Thus, the cause of action on the checks has become stale, hence, time-barred. No written extrajudicial or judicial demand was shown to have been made within 10 years

which could have tolled the period. Prescription has set in which allows the Court to dismiss the case motu propio. The dismissal may be made albeit this ground has been raised belatedly for the first time on appeal.

As regards the third ground, Art. 1249 of the Civil Code and Sec. 186 of the NIL requires the presentment of checks within a reasonable time after their issuance. In *Papa v. Valencia*, it was held that **the acceptance of a check implies an undertaking of due diligence in presenting it for payment, and if he from whom it is received sustains loss by want of such diligence, it will be held to operate as actual payment of the debt or obligation for which it was given**. It has, likewise, been held that if no presentment is made at all, the drawer cannot be held liable irrespective of loss or injury unless presentment is otherwise excused. This is in harmony with Article 1249 of the Civil Code under which payment by way of check or other negotiable instrument is conditioned on its being cashed, except when through the fault of the creditor, the instrument is impaired. The payee of a check would be a creditor under this provision and if its no-payment is caused by his negligence, payment will be deemed effected and the obligation for which the check was given as conditional payment will be discharged.

In the present case, Respondent's subsequent failure to encash the checks within a period of 10 years or more, not only resulted in the checks becoming stale but also had the effect of payment. Petitioner is considered discharged from his obligation to pay and can no longer be pronounced civilly liable for the amounts indicated thereon.