



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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SECOND DIVISION

KAREN NUÑEZ* VITO,
LYNETTE NUÑEZ MASINDA,**
WARREN NUÑEZ, and ALDEN***
NUÑEZ,

Petitioners,

- versus -

G.R. No. 224466
(Formerly UDK-15574)

Present:

CARPIO, J., Chairperson,
PERLAS-BERNABE,
CAGUIOA,
J. REYES, JR., and
LAZARO-JAVIER, JJ.

NORMA MOISES-PALMA,
Respondent.

Promulgated:

27 MAR 2019

[Handwritten Signature]

X-----X

DECISION

CAGUIOA, J.:

This is a Petition for Review on *Certiorari*¹ (Petition) under Rule 45 of the Rules of Court assailing the Decision² dated July 31, 2015 and Resolution³ dated March 15, 2016 of the Court of Appeals⁴ (CA) in CA-G.R. SP. No. 07390. The CA Decision affirmed with modifications the Decision⁵ dated December 11, 2012 of the Regional Trial Court, 6th Judicial Region, Branch 21, Mambusao, Capiz (RTC) in Civil Case No. M-12-0360-07 AP. The RTC Decision, in turn, modified the Decision⁶ dated June 8, 2012 of the Municipal Trial Court, 6th Judicial Region, Mambusao, Capiz (MTC) in Civil Case No. 515. The CA Resolution denied the motion for reconsideration filed by the petitioners.

* Also spelled as "Nunez" in other parts of the records.

** Also spelled as "Lyneth" in some parts of the records.

*** Also spelled as "Aldin" in some parts of the records.

¹ *Rollo*, pp. 2-26, excluding Annexes.

² *Id.* at 27-35. Penned by Associate Justice Germano Francisco D. Legaspi, with Associate Justices Pamela Ann Abella Maxino and Jhosep Y. Lopez concurring.

³ *Id.* at 39-40. Penned by Associate Justice Germano Francisco D. Legaspi, with Associate Justices Pamela Ann Abella Maxino and Pablito A. Perez concurring.

⁴ Twentieth (20th) Division and Special Former Twentieth (20th) Division, Visayas Station, Cebu City.

⁵ *Rollo*, pp. 84-90. Penned by Judge Daniel Antonio Gerardo S. Amular.

⁶ *Id.* at 59-81. Penned by Judge Rommel L. Leonor.

[Handwritten Signature]

Facts and Antecedent Proceedings

Petitioners' father, Vicentico Nuñez (Vicentico), was the original owner of Lot No. 2159-A, with an area of 429 square meters, located in Mambusao, Capiz (subject lot) as evidenced by Transfer Certificate of Title No. (TCT) T-16612.⁷

Sometime in May 1992, Vicentico, who was then suffering from diabetes, borrowed ₱30,000.00 from Rosita Moises (Rosita) and as security, executed a real estate mortgage over his property (Lot No. 2159-A). Since Rosita had no money, the funds came from Norma Moises-Palma (Norma), Rosita's daughter. According to petitioners, the ₱30,000.00 loan of Vicentico was subsequently paid as evidenced by an Affidavit Authorizing Release of Mortgage⁸ (AARM).⁹

Upon Vicentico's death on September 27, 1994, the subject lot was transmitted to his heirs, namely: petitioners Karen Nuñez Vito (Karen), Warren Nuñez (Warren), Lynette Nuñez Macinda (Lynette), Alden Nuñez (Alden) (collectively, petitioners) and Placida Hisole¹⁰ Nuñez (Placida), Vicentico's surviving spouse.¹¹ Each heir had an undivided 1/5 share in the subject lot equivalent to 85.8¹² square meters.¹³

Placida died on August 1, 1997 and her 1/5 share was inherited equally by her heirs. Thus, petitioners each had a *pro indiviso* 1/4 share in the subject lot equivalent to 107.25 square meters.¹⁴

On June 28, 1995, Norma was able to have all petitioners, except Alden, sign a Deed of Adjudication and Sale¹⁵ (DAS) wherein petitioners purportedly sold to Norma their respective *pro indiviso* shares in the subject lot for ₱50,000.00, but the DAS reflected ₱30,000.00 as the consideration in order to reduce the amount to be paid for capital gains tax and documentary stamp tax. After the execution of the DAS, Norma immediately took possession of the subject lot.¹⁶

Instead of paying cash, Norma executed a Promissory Note¹⁷ (PN) on July 1, 1995 in favor of petitioners whereby she obligated herself to pay ₱50,000.00, which "amount represents the cost of a parcel of land [Norma] bought from them described as follows: TITLE NO. T-16612 Lot No 2159-

⁷ CA Decision dated July 31, 2015, *rollo*, p. 28.

⁸ Records (Vol. II), p. 353.

⁹ *Rollo*, pp. 29, 66.

¹⁰ Also stated as "Nizole" and "Placida Hesole" in some parts of the records.

¹¹ *Rollo*, p. 28.

¹² Stated as "85.5" in the CA Decision, *id.*

¹³ CA Decision dated July 31, 2015, *id.*

¹⁴ *Rollo*, p. 28.

¹⁵ Records (Vol. I), pp. 15-16.

¹⁶ CA Decision dated July 31, 2015, *rollo*, pp. 28-29.

¹⁷ Records (Vol. I), p. 17.

A situated at Poblacion Tabuc Mambusao, Capiz[,] [c]ontaining an area of FOUR HUNDRED TWENTY NINE (429) SQUARE METERS, more or less¹⁸ on or before July 1, 1998, without interest.¹⁹ Upon prodding of petitioners, Norma executed an Acknowledgment of Debt²⁰ (AOD) dated February 22, 2007, whereby she admitted that she owed petitioners ₱50,000.00, representing the purchase price of the DAS.²¹

Despite non-payment of the purchase price and the absence of Alden's signature on the DAS, Norma was able to cause the registration of the document with the Register of Deeds of Capiz and TCT T-35460²² was issued to her on August 2, 2005.²³

On July 10, 2006, Alden instituted a case against respondent for *Annulment of Transfer Certificate of Title No. T-35460, Declaring Deed of Adjudication and Sale Null and Void, Partition, Reconveyance and Recovery of Possession of a Portion of Land with Damages*²⁴ docketed as Civil Case No. 499 before the MTC. During the pendency of this case, Alden and Norma entered into a Compromise Agreement (Compromise Agreement) on September 7, 2006, whereby Alden agreed to respect Norma's ownership and possession of 85.8 square meters of the subject lot, the share being claimed by him.²⁵

About a year later, or on August 15, 2007, petitioners Karen, Warren and Lynette, represented by their brother and attorney-in-fact Alden, filed against Norma a case for *Declaration of Nullity of Deed of Adjudication and Sale, Cancellation of Transfer Certificate of Title No. T-35460, Recovery of Ownership and/or Possession of Lot No. 2159-A and Damages*²⁶ before the MTC. After trial on the merits, the MTC, on February 27, 2009 rendered a Decision in favor of petitioners. Norma filed a Notice of Appeal on April 22, 2009 which was given due course by the MTC. On October 19, 2009, the RTC rendered a Decision setting aside the MTC's Decision on the ground that Alden, who was merely acting as attorney-in-fact of Karen, Warren and Lynette, was not included as indispensable party. The RTC ordered the MTC to include Alden as an indispensable party and to conduct further proceedings on the case.²⁷

On February 19, 2010, Karen, Warren and Lynette, through Alden, and Alden, in his own capacity, filed an amended complaint before the MTC for *Declaration of Nullity of Deed of Adjudication and Sale, Cancellation of*

¹⁸ Id.

¹⁹ Id.

²⁰ Id. at 18.

²¹ *Rollo*, p. 29.

²² Records (Vol. I), p. 19.

²³ *Rollo*, p. 29.

²⁴ Records (Vol. II), pp. 305-311.

²⁵ *Rollo*, p. 30.

²⁶ Records (Vol. I), pp. 2-9.

²⁷ MTC Decision dated June 8, 2012, *rollo*, pp. 59-60.



*Transfer Certificate of Title No. T-35460, Recovery of Ownership and/or Possession of Lot No. 2159-A and Damages.*²⁸ The allegations of the amended complaint are basically the same as those of the original, except the addition of Alden as an indispensable party.²⁹ Even up to the filing of the amended complaint, Norma was not able to pay the consideration of ₱50,000.00.³⁰

The MTC Ruling

After trial, the MTC rendered on June 8, 2012 a Decision³¹ in favor of petitioners, the dispositive portion of which states:

WHEREFORE, preponderance of evidence point in favor of plaintiffs and against defendant, judgment is hereby rendered:

- 1.) **DECLARING** the Deed of Adjudication and Sale dated June 28, 1995 **NULL AND VOID**;
- 2.) **ORDERING** the **CANCELLATION** of Transfer Certificate of Title No. T-35460 in the name of defendant Norma Moises Palma and the **REINSTATEMENT** of Transfer Certificate of Title No. T-16612 in the name of Vicentico Nuñez married to Placida Hisole;
- 3.) **DECLARING** plaintiffs as the rightful owners of Lot No. 2159-A subject to the right of defendant Norma Moises Palma with respect to the share of Alden Nuñez in the total area of 85.8 square meters;
- 4.) **ORDERING** defendant to turn over ownership and possession of Lot No. 2159-A to plaintiffs except the share of Alden Nuñez with an area of 85.8 square meters;
- 5.) **ORDERING** defendant Norma Moises Palma to pay plaintiffs the following:
 - a.) Fifty Thousand (Php50,000.00) pesos as attorney's fees;
 - b.) Five Thousand (Php5,000.00) pesos as litigation expenses;
 - c.) Seventy-Five Thousand (Php75,000.00) pesos as moral damages; and
 - d.) Fifteen Thousand (Php15,000.00) pesos as exemplary damages; and
- 6.) **ORDERING** defendant to pay the cost of the suit.

SO ORDERED.³²

²⁸ Records (Vol. II), pp. 1-9.

²⁹ *Rollo*, p. 60.

³⁰ See *id.* at 29.

³¹ *Id.* at 59-81.

³² *Id.* at 80-81.



Norma appealed³³ the MTC Decision to the RTC.

The RTC Ruling

The RTC in its Decision³⁴ dated December 11, 2012 granted respondent's appeal. The dispositive portion of the RTC Decision states:

WHEREFORE, premises considered, the decision of the Court a quo is hereby modified as follows:

1. Ordering the defendant-appellant to pay the plaintiffs except Alden Nuñez, the amount of ₱50,000.00 with legal interest rate of 12% starting on April 28, 1995 until the full amount price is paid;
2. Ordering defendant Norma Moises Palma to pay plaintiffs the following:
 - a.) Fifty Thousand (₱50,000.00) pesos as attorney's fees;
 - b.) Five Thousand (₱5,000.00) pesos as litigation expenses;
 - c.) Seventy Five Thousand (₱75,000.00) pesos as moral damages; and
 - d.) Fifteen Thousand (₱15,000.00) pesos as exemplary damages; and
3. Declaring as valid the Deed of Adjudication and Sale, dated June 28, 1995, with judicial notice on the decision based on the Compromise Agreement rendered by the Municipal Trial Court of Mambusao in Civil Case No. 499, dated September 20, 2006, involving the share of Alden Nuñez with an area of 85.8 square meters.

No pronouncement as to costs.

SO ORDERED.³⁵

Dissatisfied, petitioners filed a petition for review under Rule 42 before the CA.

The CA Ruling

The CA in its Decision³⁶ dated July 31, 2015 affirmed the RTC Decision with modification. The dispositive portion of the CA Decision states:

³³ Id. at 82-83.

³⁴ Id. at 84-90.

³⁵ Id. at 90.

³⁶ Id. at 27-35.

WHEREFORE, the Decision dated December 11, 2012 of the RTC, Branch 21, Mambusao, Capiz in Civil Case No. M-12-0360-07 AP is **AFFIRMED** with the following **MODIFICATION**. The order directing respondent to pay petitioners the amount of P50,000.00 as consideration for the sale is **DELETED**. The award of attorney's fees, litigation expenses, moral damages and exemplary damages is likewise **DELETED**. No pronouncement as to costs.

SO ORDERED.³⁷

Petitioners filed a motion for reconsideration³⁸ and pointed to the CA the AARM as proof of payment of Vicentico's loan. The CA denied the motion for reconsideration.³⁹

Hence, the Petition. To date, Norma has not filed her Comment despite the Resolution⁴⁰ dated July 11, 2016 of the Court requiring her to comment on the Petition within 10 days from receipt thereof; accordingly, she is deemed to have waived her right to do so.

Issues

The petitioners raise the following issues in the Petition:

1. whether the CA, in ruling that the transaction between petitioners and Norma is *dacion en pago*, erred in applying Article 1245 of the Civil Code; and
2. whether the CA erred in deleting the award of attorney's fees, litigation expenses, moral damages and exemplary damages.⁴¹

The Court's Ruling

The general rule is that only questions of law may be raised in a Rule 45 petition for *certiorari*.⁴² There are, however, admitted exceptions. One of them is when the findings of the CA are contrary to the trial court.⁴³

Indeed, the findings of the CA and the RTC with respect to the DAS dated June 28, 1995 are divergent, requiring a review of their factual findings.

The CA ruled that the transaction between the parties is in reality a *dacion en pago*⁴⁴ based on the following:

³⁷ Id. at 34.

³⁸ Petitioners' Motion for Reconsideration of Decision Promulgated on July 31, 2015, id. at 36-38.

³⁹ CA Resolution dated March 15, 2016, id. at 39-40.

⁴⁰ *Rollo*, pp. 111-112.

⁴¹ Id. at 16.

⁴² RULES OF COURT, Rule 45, Sec. 1 partly provides: "x x x The petition x x x shall raise only questions of law, which must be distinctly set forth."

⁴³ See *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, 472 Phil. 11, 22-23 (2004).

⁴⁴ *Rollo*, p. 33.

x x x *First*. Both parties agreed that Vicentico's pre-existing debt of P30,000.00 should be considered as the consideration for the Deed of Adjudication and Sale. Notably too, the dation in payment was not only with the creditor's consent, it was upon her proposal. *Second*. There is no showing that other creditors would be prejudiced by the agreement. *Lastly*, petitioners had not been judicially declared insolvent. Accordingly, We uphold the validity of the Deed of Adjudication and Sale.⁴⁵

On the other hand, the RTC ruled that the DAS "showed that the consequent sale of the lot in question was by way of constructive delivery x x x [and] the defendant-appellant took possession of the property right after the execution of the Deed of Adjudication. Clearly, there has been transfer of ownership x x x."⁴⁶ The RTC, thus, considered the transaction of the parties as a valid contract of sale, notwithstanding the non-payment of the consideration.⁴⁷

The RTC in effect agreed with the MTC's finding that the DAS is a contract of sale. But, it disagreed with the MTC's ruling that it is null and void. The MTC reasoned out as follows:

By the testimonies of plaintiffs that no money or consideration was ever paid to them by defendant despite repeated demands and coupled with the presentation [by] plaintiffs of the Promissory Note (Exhibit "E") and the Acknowledgment of Debt (Exhibit "F") all of which was executed by the defendant Norma Moises Palma, the burden of proof x x x now has shifted on the shoulder of the defendant to prove that she paid the consideration of the sale of Lot No. 2159-A, because the plaintiffs categorically testified and told this Court that they did not receive even a single centavo from the defendant x x x much so that the defendant never rebutted such testimony of plaintiffs. Likewise, the execution of defendant of the Promissory Note (Exhibit "E") which expressly points to Lot No. 2159-A as the subject of sale between plaintiffs and defendant, will add to the belief of this Court that indeed no consideration was given to plaintiffs, because it is very unnatural for defendant to still execute a Promissory Note (Exhibit "E"), whose amount of Fifty Thousand (Php50,000.00) pesos is even greater than the amount of Thirty Thousand (Php30,000.00) pesos as reflected in the Deed of Adjudication and Sale (Exhibit "D"), had she already paid the latter amount to plaintiffs.

x x x x

In short, [the defendant failed to render proof that she paid the purchase price of lot No. 2159-A, because, as] the burden of proof had already shifted [upon her] to prove she [had] paid the [consideration], she failed to introduce [any evidence that would tend] to prove [the payment of the purchase price.] x x x⁴⁸

Having ruled that no consideration was ever given to plaintiffs (herein petitioners) by defendant (Norma), the DAS was considered by the MTC as

⁴⁵ Id. at 34.

⁴⁶ RTC Decision dated December 11, 2012, id. at 88.

⁴⁷ Id.

⁴⁸ MTC Decision dated June 8, 2012, id. at 72-74.

null and void on the ground that a contract of sale is void and produces no effect whatsoever where the price, which appears thereon paid, has in fact never been paid by the vendee to the vendor.⁴⁹

The following documentary exhibits adduced and admitted are crucial in the resolution of the first issue:

1. DAS – Deed of Adjudication and Sale⁵⁰ dated June 28, 1995 (Exhibit “D” and “1”), notarized on July 14, 1995, but inscribed as Entry No. 155331⁵¹ on August 2, 2005 in TCT T-16612. It provides:

We, PLACIDA HISOLE NUNEZ, widow, KAREN NUNEZ, single, WARREN NUNEZ, single, ALDIN NUNEZ, single AND LYNETH NUNEZ, single, all of legal ages, Filipinos and residents of Mambusao, Capiz, do by these presents hereby declare:

1.) That a certain VICENTICO NUNEZ died in Mambusao, Capiz on Sept. 27, 1994 leaving as forced heirs the herein parties;

x x x x

3.) That upon his death he left Real Property hereunder described:

TITLE NO. T-16612

“A parcel of land (Lot 2159-A of the Subd. plan (LRC) Psd-213453, being a portion of Lot 2159, Mambusao cadastre, LRC Cad. Record No. N-449), situated in the Barrio of Municipality of Mambusao, province of Capiz, Island of Panay. x x x Containing an area of FOUR HUNDRED TWENTY NINE (429) Square meters, more or less. x x x”

4.) That pursuant to the provision of Rule 74, Sec. 1 of the Rules of Court, We the parties of these instrument do hereby adjudicate unto ourselves the above described property in pro indiviso share;

5.) That for and in consideration of the sum of THIRTY THOUSAND PESOS (P30,000.00), Philippine Currency which we have received from NORMA MOISES PALMA, of legal age, widow and resident of Mambusao, Capiz, do by these presents hereby CEDE, SELL, CONVEY and TRANSFER by way of Absolute Sale unto the above named NORMA MOISES PALMA, her heirs and successors the above described property free from all liens and encumbrances and whatever kind.

This instrument concerns a residential lot, hence, it is not within the provision of Land Reform Code nor any tenancy contract.

By virtue of this instrument that certain Real Estate Mortgage executed before Jesus V. Rivas dated May 19, 1992 and docketed in the

⁴⁹ Id. at 74, citing *Mapalo v. Mapalo*, 123 Phil. 979, 987 (1966).

⁵⁰ Records (Vol. I), pp. 15-16.

⁵¹ Id. at 12 (dorsal side).



Notarial Register as Doc. No. 112; Page No. 57; Book No. 6; Series of 1992 is cancell (*sic*) and considered null and void and no effect.

WITNESS our signature hereunder this 28th day of June 1995, at Roxas City.

(SGD.)
PLACIDA HISOLE NUNEZ

(SGD.)
KAREN NUNEZ

(SGD.)
WARREN NUNEZ

(SGD.)
LYNETH NUNEZ⁵²

2. PN – Promissory Note⁵³ executed by Norma and notarized on July 1, 1995 (Exhibit “E”), which provides:

That I, NORMA MOISES PALMA, of legal age, [F]ilipino, widow and a resident of Mambusao, Capiz by these presents promise to pay the heirs of VICENTICO NUNEZ: namely PLACIDA NIZOLE NUNEZ, widow, KAREN NUNE[Z], single, WARREN NUNEZ, single, ALDIN NUNEZ, single, and LYNETTE NUNEZ, single x x x the sum of FIFTY THOUSAND (P50,000.00) PESOS, Philippine Currency; on or before July 1, 1998. This amount do (*sic*) not bear interest.

This amount represents the cost of a parcel of land I bought from them described as follows: TITLE NO. T-16612 Lot No 2159-A situated at Poblacion Tabuc Mambusao, Capiz. Containing an area of FOUR HUNDRED TWENTY NINE (429) SQUARE METERS, more or less.⁵⁴

3. AOD – Acknowledgment of Debt⁵⁵ notarized on February 22, 2007 (Exhibit “F”) executed by Norma which provides:

That I am indebted to **KAREN NUÑEZ VITO, WARREN NUÑEZ AND LYNETTE NUÑEZ x x x** in the sum of **FIFTY THOUSAND PESOS (PHP 50,000.00)**.

That I promise to pay **KAREN NUÑEZ VITO, WARREN NUÑEZ AND LYNETTE NUÑEZ** the amount of **FIFTY THOUSAND PESOS (PHP 50,000.00)** within a period of five (5) days after I have sold my parcel of land, [Lot No. 2159-A of the Subdivision plan (LRC) Psd-213453 being a portion of Lot 2159, Mambusao Cadastre, LRC Cad. Record No. N-449] situated at Poblacion Tabuc, Mambusao, Capiz and covered by Transfer Certificate of Title No. T-35460.⁵⁶

4. AARM – Affidavit Authorizing Release of Mortgage⁵⁷ dated July 8, 2005 (Exhibit “I” and “6”) which states:

⁵² Id. at 15.

⁵³ Id. at 17.

⁵⁴ Id.

⁵⁵ Id. at 18.

⁵⁶ Id.

⁵⁷ Records (Vol. II), p. 353.

WE, NORMA MOISES-PALMA, widow; CESAR N. MOISES, married; LACERIANO N. MOISES, widower; JOSE N. MOISES, single; and GILDA MOISES FELONIA, widow, Filipinos, all of legal ages, and all residents of Mambusao, Capiz, after having been duly sworn to according to law, depose and say:

That we are the children of the late Rosita Nunez Moises who died on May 09, 2003;

That during her lifetime, his brother, the late Vicentico Nunez who died on September 27, 1994 was indebted to her in the amount of THIRTY THOUSAND PESOS (P30,000.00) under and by virtue of Real Estate Mortgage notarized by Notary Public Jesus V. Rivas under Doc. No. 112, Page No. 57, Book No. 6, Series of 1992, dated May 19, 1992 and inscribed by the Acting Register of Deeds, Paterno Kapunan on December 1, 1993 at 10:25 A.M.;

That by these presents, we are releasing this Real Estate Mortgage, the fact being that the late Vicentico Nunez had already paid our late mother indebtedness of THIRTY THOUSAND PESOS (P30,000.00);

That we are executing this affidavit to attest further to the fact that the late Vicentico Nunez has paid his total obligation of THIRTY THOUSAND PESOS (P30,000.00) to our late mother;

That furthermore, we are executing this affidavit absolving the late Vicentico Nunez of any liabilities whatsoever, thus releasing this Deed of Real Estate Mortgage.

IN WITNESS WHEREOF, We have hereunto set our hands 8th day of July 2005, at Roxas City[,] Philippines.

(SGD.)
NORMA M. PALMA
Affiant

(SGD.)
CESAR N. MOISES
Affiant

(SGD.)
LACERIANO N. MOISES
Affiant

(SGD.)
JOSE N. MOISES
Affiant

(SGD.)
GILDA M. FELONIA
Affiant⁵⁸

5. TCT T-16612⁵⁹ (Exhibit "B") registered in the name of "VICENTICO NUÑEZ, married to Placeda Hesole" with the following annotations:⁶⁰

Entry No. 118493 – Mortgage – executed by Vicentico Nuñez in favor of Rosita Nuñez covering the whole parcel of land described in this title for the sum of THIRTY THOUSAND PESOS (30,000.00) subject to all conditions stipulated therein and acknowledged before Notary Public

⁵⁸ Id.

⁵⁹ Records (Vol. I), pp. 12-13.

⁶⁰ Id. at 12 (dorsal side).

Jesus V. Rivas under Doc. No. 112, Page No. 57, Book No. 6, Series of 1992. Date of document May 19, 1992. Inscription December 1, 1993 at 10:25 A.M.

X X X X

Entry No. 155188 – Affidavit Authorizing Release of Mortgage – executed by the children of Rosita Nuñez Moises namely: Norma Moises-Palma; Cesar N. Moises, Lacer[ia]no N. Moises; Jose N. Moises and Gilda Moises Felonia in favor of Vicentico Nuñez, affecting Entry No. 118493. Subscribed by Notary Public Erico V. Abalajon under Doc. No. 405; Page No. 82; Book No. XXXVIII; Series of 2005. Date of Doc. July 8, 2005. Inscription: July 13, 2005 at 1:30 P.M.

X X X X

Entry No. 155331 – Deed of Adjudication and Sale – executed by the heirs of the late Vicentico Nunez, stating that they are the only heirs who survived the deceased, namely: Placida Hisole Nunez, Karen, Warren, and Lynette, all surnamed Nunez, have adjudicated and partitioned the parcel of land described in this title in pro indiviso equal share and thereby sold to Norma Moises Palma for the sum of THIRTY THOUSAND PESOS (₱30,000.00). Acknowledged before Notary Public Eleuterio F. Martinez, under Doc. No. 901; Page No. 84; Book No. II; Series of 1995. Date of Document: June 28, 1995. Inscription: August 2, 2005 at 10:55 A.M. This title is cancelled by TCT No. T-35460⁶¹.

6. Compromise Agreement⁶² dated September 7, 2006 executed by Alden and Norma in connection with Civil Case No. 499, wherein they agreed as follows:

1. As settlement, the private defendant [Norma] undertakes to pay the amount of Eighty Eight Thousand Pesos (Php88,000.00) Philippine Currency as payment for the purchase of the 85.8 square meters undivided portion of Lot 2159-A, which amount shall be delivered on or before January 31, 2007;

2. The plaintiff [Alden], in return, shall respect defendant's ownership and possession over the same. He further waives and renounce (*sic*) his interest over Lot 2159-A in favor of defendant.⁶³

It can be gathered from the last paragraph of the DAS wherein the Real Estate Mortgage (REM) which Vicentico executed was "cancell[ed] and considered null and void and no effect" that a dation in payment might have been intended by the parties therein. Under Article 1245 of the Civil Code, there is dation in payment when property is alienated to the creditor in satisfaction of a debt in money and is governed by the law of sales.

⁶¹ Exhibit "G," *id.* at 19. Registered in the name of Norma Moises Palma and entered at Roxas City on August 2, 2005 at 10:55 a.m.

⁶² Records (Vol. II), p. 55. Pursuant to the Compromise Agreement, Norma became a co-owner of the subject lot to the extent of 85.8 square meters undivided portion of Lot 2159-A or 1/5 *pro indiviso* share therein.

⁶³ *Id.*

This scheme was affirmed by Laceriano N. Moises (Laceriano), the brother of Norma, who testified on direct examination that his uncle Vicentico together with his wife mortgaged Lot 2159-A, the subject lot, to his mother Rosita for the amount of ₱30,000.00 and the source of the amount came from his younger sister Norma,⁶⁴ and that since no payment was made regarding the ₱30,000.00, Vicentico and Placida offset the subject lot for their indebtedness.⁶⁵

While the DAS seems to suggest a dation in payment, the subsequent actuations of the parties, especially Norma, negate the same or the contemplated offset. If the DAS was intended to be a dation in payment, the execution of the PN and AOD by Norma as well as the Compromise Agreement by Alden and Norma on September 7, 2006, whereby Alden agreed, for an agreed consideration, to respect Norma's ownership and possession of 85.8 square meters of the subject lot, the share being claimed by him, shows an opposite declaration, *i.e.*, there was no dation in payment or offset.

If the intention by the parties was that the heirs of Vicentico were ceding the subject lot to Norma as payment of the ₱30,000.00 loan of their father to Rosita, it would be out of the ordinary for Norma to execute a PN two days after the DAS, acknowledging her indebtedness of the ₱50,000.00 to them, promising to pay the same within a specified period, and declaring against her interest that the said amount represented the "cost" of the land that she bought from them. Subsequently, in 2007, it would be unlikely for her to execute the AOD wherein she acknowledged that she owed Karen, Warren and Lynette ₱50,000.00 if the consideration of the DAS was Vicentico's indebtedness of ₱30,000.00. Alden was no longer included because by then Norma had already paid the ₱88,000.00 which she agreed to pay him pursuant to their Compromise Agreement. And, Norma should have insisted in the case filed by Alden against her that there was an offset of his father's loan to her, through Rosita, her mother.

Moreover, in the AARM, a duly notarized document which the heirs of Rosita executed in July 2005, they acknowledged that: "[they] are releasing this Real Estate Mortgage, the fact being that the late Vicentico Nunez had already paid [their] late mother indebtedness of THIRTY THOUSAND PESOS (P30,000.00) [and] absolving the late Vicentico Nunez of any liabilities whatsoever."⁶⁶ Indeed, as claimed by petitioners in the Petition, the ₱30,000.00 loan of their father Vicentico had been paid as duly acknowledged in a registered public instrument by the heirs of Rosita, including Norma.

⁶⁴ TSN, June 15, 2011, pp. 3-4; records (Vol. II), pp. 266-267.

⁶⁵ Id. at 12; id. at 275.

⁶⁶ Records (Vol. II), p. 353.

Thus, there is preponderant evidence that supports the finding that the DAS was **not** intended by the parties to be a dation in payment. And, even assuming that the DAS was a dation in payment, the documents that were subsequently executed had the effect of novating the same.

Under Article 1291 of the Civil Code, obligations may be modified by: (1) changing their object or principal conditions; (2) substituting the person of the debtor; and (3) subrogating a third person in the rights of the creditor.

When Norma executed the PN, AOD and Compromise Agreement, she was acknowledging that the principal condition or stipulation on the payment of the purchase price in the DAS had been modified from the offset or cancellation of Vicentico's indebtedness secured by the REM, without which would have amounted to a dation in payment, to a loan payable within a certain period, which converted the transaction to a sale on credit.

Given the foregoing, the CA erred in its finding that the transaction between the parties is a dation in payment or *dacion en pago*. The MTC and RTC were, therefore, correct in considering the transaction as a contract of sale.

A contract of sale is defined in Article 1458 of the Civil Code, to wit:

ART. 1458. By the contract of sale, one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

A contract of sale may be absolute or conditional.

The Court in *Sps. Ramos v. Sps. Heruela*⁶⁷ (*Ramos*) differentiated an absolute sale from a conditional sale as follows:

Article 1458 of the Civil Code provides that a contract of sale may be absolute or conditional. A contract of sale is absolute when title to the property passes to the vendee upon delivery of the thing sold.⁶⁸ A deed of sale is absolute when there is no stipulation in the contract that title to the property remains with the seller until full payment of the purchase price.⁶⁹ The sale is also absolute if there is no stipulation giving the vendor the right to cancel unilaterally the contract the moment the vendee fails to pay within a fixed period.⁷⁰ In a conditional sale, as in a contract to sell, ownership remains with the vendor and does not pass to the vendee until full payment of the purchase price.⁷¹ The full payment of the purchase

⁶⁷ 509 Phil. 658 (2005).

⁶⁸ Id. at 665, citing *Universal Robina Sugar Milling Corp. v. Heirs of Teves*, 438 Phil. 26, 34-35 (2002).

⁶⁹ Id., citing *Adelfa Properties, Inc. v. CA*, 310 Phil. 623, 637 (1995).

⁷⁰ Id., citing *Adelfa Properties, Inc. v. CA*, id. at 637.

⁷¹ Id., citing *Adelfa Properties, Inc. v. CA*, id.



price partakes of a suspensive condition, and non-fulfillment of the condition prevents the obligation to sell from arising.⁷²

Pursuant to *Ramos*, the DAS is an absolute sale because there is no stipulation in the contract that title to the property remains with the sellers until full payment of the purchase price and there is no stipulation giving the vendors the right to cancel unilaterally the contract the moment the vendee fails to pay within a fixed period. It will be recalled that after the execution of the DAS, Norma immediately took possession of the subject lot⁷³ and there was no retention of ownership by the heirs of Vicentico until full payment of the purchase price by Norma that was stipulated in the DAS.

What then is the legal effect of the non-payment of the purchase price of ₱50,000.00⁷⁴ by Norma to petitioners?

Pursuant to Article 1458 of the Civil Code, a contract of sale is a reciprocal obligation to give; and the prestation or obligation of the seller or vendor is “to transfer the ownership of and to deliver a determinate thing” while the prestation or obligation of the buyer or vendee is “to pay therefor a price certain in money or its equivalent.” The full payment of the purchase price is the buyer’s prestation.

The non-payment of the purchase price by the buyer after the seller has delivered the object of the sale to the buyer constitutes a breach of the buyer’s prestation in a contract of sale. The buyer has contravened the very tenor of the contract.

Generally, under Article 1594 of the Civil Code, “[a]ctions for breach of the contract of sale of goods shall be governed particularly by the provisions of this Chapter [Chapter 6 on ‘Actions for Breach of Contract of Sale of Goods’], and as to matters not specifically provided for herein, by other applicable provisions of this Title [Title VI on ‘Sales’].”

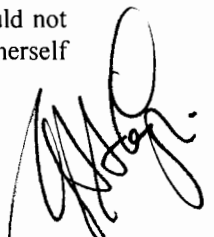
One remedy is provided in Article 1595, to wit:

ART. 1595. Where, under a contract of sale, the ownership of the goods has passed to the buyer, and he wrongfully neglects or refuses to pay for the goods according to the terms of the contract of sale, the seller may maintain an action against him for the price of the goods.

⁷² Id., citing *Chua v. Court of Appeals*, 449 Phil. 25, 42 (2003).

⁷³ *Rollo*, p. 29.

⁷⁴ While the DAS states the purchase price as ₱30,000.00, the PN wherein Norma declared that ₱50,000.00 was the “cost” of the land which she bought from the heirs of Vicentico should control, being a subsequent declaration against interest. Under Section 38, Rule 130 of the Rules of Court, the declaration made by a person who was unable to testify, like Norma, who was not presented as witness, against the interest of the declarant, if the fact asserted in the declaration was at the time it was made so far contrary to the declarant’s own interest, that a reasonable man in his position would not have made the declaration unless she believed it to be true, may be received in evidence against herself or her successors in interest and against third persons. Besides, the PN was notarized.



In addition, the buyer may be held liable for damages under Article 1596, to wit:

ART. 1596. Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for nonacceptance.

The measure of damages is the estimated loss directly and naturally resulting in the ordinary course of events from the buyer's breach of contract.

Also, an unpaid seller, who is deemed as such "[w]hen the whole of the price has not been paid or tendered" as provided in Article 1525(1), has the right to rescind the sale under Article 1526.

With respect to the sale of immovable properties, the remedies of the vendor are provided in the following Civil Code provisions:

ART. 1591. Should the vendor have reasonable grounds to fear the loss of immovable property sold and its price, he may immediately sue for the rescission of the sale.

Should such ground not exist, the provisions of Article 1191 shall be observed.

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

x x x x

ART. 2242. With reference to specific immovable property and real rights of the debtor, the following claims, mortgages and liens shall be preferred, and shall constitute an encumbrance on the immovable or real right:

x x x x

(2) For the unpaid price of real property sold, upon the immovable sold[.]⁷⁵

The above remedies in case of breach of a contract of sale mirror the rights of a creditor in an obligation to give a determinate thing, as in the sale of a specific real property, which are:

(1) To compel specific performance. This right is expressly recognized by the first paragraph of Art. 1165 of the Code which states that the creditor may compel the debtor to make the delivery. x x x

⁷⁵ See Araceli T. Baviera, HANDBOOK ON THE LAW ON SALES, p. 120 (1976).



(2) To recover damages for breach of the obligation. Besides the right to compel specific performance, the creditor has also the right to recover damages from the debtor in case of breach of the obligation through delay, fraud, negligence or contravention of the tenor thereof.⁷⁶

With respect to reciprocal obligations, rescission or more appropriately resolution is another remedy pursuant to Article 1191 of the Civil Code, to wit:

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

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

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

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

To recall, reciprocal obligations are those which are created or established at the same time, out of the same cause, and which result in mutual relationships of creditor and debtor between the parties; and their outstanding characteristic is reciprocity arising from identity of cause by virtue of which one obligation is a correlative of the other.⁷⁷

Justice Eduardo P. Caguioa⁷⁸ explained:

x x x A reciprocal obligation has been defined as that where each of the parties is a promisee of a prestation and promises another in return as a counterpart or equivalent of the other.⁷⁹ Article 1191 refers to this kind of obligation. The most salient feature of this obligation is reciprocity. In order that there be reciprocity, it is not sufficient that two persons be mutually debtor and creditor of each other; the reciprocity must be so perfect as to cause both relations to arise from the same source; each obligation being correlative with the other, it not being possible to conceive one without the other. x x x⁸⁰

In a contract of sale, as in the DAS in this case, the obligation of the vendee to pay the price is a correlative of the obligation of the vendor to deliver the thing sold.⁸¹

⁷⁶ Desiderio P. Jurado, COMMENTS AND JURISPRUDENCE ON OBLIGATIONS AND CONTRACTS (1987 Ninth Revised Edition), pp. 42-43. Citations omitted.

⁷⁷ Desiderio P. Jurado, id. at 125.

⁷⁸ Eduardo P. Caguioa, COMMENTS AND CASES ON CIVIL LAW, CIVIL CODE OF THE PHILIPPINES, Vol. IV (1983 Rev. Second Ed.).

⁷⁹ Id. at 174, citing 3 Castan, 8th ed., p. 79, citing Enneccerus.

⁸⁰ Id., citing Decision of Supreme Court of Spain of Oct. 30, 1917.

⁸¹ See Desiderio P. Jurado, supra note 76, at 125-126.



Proceeding from the fact that the obligation of one party is the correlative of the obligation of the other in reciprocal obligations, the Civil Code in the first paragraph of Article 1191 has established the principle that if one of the parties fails to comply with what is incumbent upon him, there is a right on the part of the other to rescind (or “resolve” in accordance with accepted translations of the Spanish Civil Code) the obligation.⁸² Since this condition, which is implied as a general rule in all reciprocal obligations, has the effect of extinguishing rights which are already acquired or vested, it is resolatory in character, thus a tacit resolatory condition.⁸³

In the words of Justice Eduardo P. Caguioa, “Article 1191 provides for the implied or tacit resolatory condition even if there is no corresponding agreement between the parties,” unlike in unilateral obligations where the right to resolve the obligation must always be express.⁸⁴ He further opined that although the said Article uses the term “rescind” the same should be understood in the sense of “resolve”; and distinguished the two terms as follows:

x x x Between the two terms, there are several differences: (1) resolution can only be availed of by a party to the obligation while rescission may be availed of by a third person (creditor); (2) resolution can be obtained only on the ground of non-performance by the other party while rescission may be based on fraud, lesion, etc.; (3) resolution may be refused by the court on valid grounds while rescission may not be refused by the court if all requisites are present; (4) resolution is a primary remedy while rescission is subsidiary, available only when there is no other remedy; and (5) resolution is based on mutuality of the parties while rescission is based on prejudice or damage suffered.⁸⁵

To summarize, the remedies of the unpaid seller, after ownership of the real property not covered by Republic Act No. 6552⁸⁶ or the Maceda Law, has been vested to the buyer, are:

1. To compel specific performance by filing an action against the buyer for the agreed purchase price; or
2. To rescind or resolve the contract of sale either judicially or by a notarial act; and
3. In either (1) or (2), to recover damages for the breach of the contract.

⁸² Id. at 126.

⁸³ Id.

⁸⁴ Eduardo P. Caguioa, *supra* note 78, at 176, citing 4 Reyes & Puno, p. 52.

⁸⁵ Id. at 176-177.

⁸⁶ AN ACT TO PROVIDE PROTECTION TO BUYERS OF REAL ESTATE ON INSTALLMENT PAYMENTS, September 14, 1972.



Based on the amended complaint, petitioners seek to declare the DAS null and void *ab initio* and non-existent since Norma, the vendee, did not pay the purchase price to them pursuant to the doctrine that where the price which appears in the contract of sale to have been paid but has in fact not or never been paid, the contract is void; and the absence of Alden's signature in the DAS showed that he did not sign the same and it lacked his consent.⁸⁷ The DAS being null and void, TCT T-35460 that was issued in the name of Norma should be cancelled; the ownership of the subject lot should be reconveyed to the heirs of Vicentico; and possession thereof should be delivered to them.⁸⁸

Since the cause of action of Alden had been finally and fully settled in the Compromise Agreement in Civil Case No. 499, he no longer has a cause of action against Norma with respect to his *pro indiviso* right in the subject lot.

What is clear from the amended complaint is that the remedy of specific performance was not availed of by petitioners. They do not seek to collect from Norma the purchase price of ₱50,000.00. While they have not expressly sought the resolution of the DAS on account of Norma's non-payment of the purchase price, such remedy could be implied when they sought the nullification of Norma's TCT, the reconveyance to them of the subject lot and the return of the possession to them. When the remedy of resolution of reciprocal obligations, as in rescission, is sought, "the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interests" is created pursuant to Article 1385 of the Civil Code.

Aside from attorney's fees, litigation expenses, moral damages and exemplary damages, they also seek from Norma in their amended complaint the "reasonable value of the use of the premises in the estimated amount of at least ₱10,000.00 a year, the property in question being a prime commercial lot," having been deprived thereof.⁸⁹

As to the ruling of the MTC, it erred when it concluded that the DAS could be considered as not consummated because no consideration was effected or given by Norma; and, thus, it is void and non-existent.⁹⁰ The sale was partly consummated on account of the transfer of ownership by the vendors to Norma. The DAS is not void for lack of consideration, but it has been extinguished by the happening of the tacit resolutive condition, which is judicial resolution or rescission of the sale.

Likewise, the RTC erred in ruling that the DAS is valid, notwithstanding the non-payment of the consideration, because there was

⁸⁷ Records (Vol. II), pp. 5-6.

⁸⁸ Id. at 7.

⁸⁹ Id. at 6.

⁹⁰ MTC Decision dated June 8, 2012, *rollo*, p. 76.



delivery pursuant to Article 1477⁹¹ in relation to Article 1498⁹² of the Civil Code.⁹³ It further erred when it ordered Norma to pay the ₱50,000.00 with interest at the legal rate of 12% per annum starting on June 28, 1995 (DAS' date of execution) until the full amount is paid.⁹⁴ The error is because, firstly, the remedy availed of by the vendors is not specific performance, and secondly, under Article 1592 of the Civil Code, the court may not grant the buyer a new term when a demand for rescission of the contract has been made upon him judicially.

The applicability of Article 1592 was discussed by the Court in *Cabrera v. Ysaac*:⁹⁵

For the sale of immovable property, the following provision governs its rescission:

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

This provision contemplates (1) a *contract of sale* of an immovable property and (2) a stipulation in the contract that failure to pay the price at the time agreed upon will cause the rescission of the contract. The vendee or the buyer can still pay even after the time agreed upon, if the agreement between the parties has these requisites. This right of the vendee to pay ceases when the vendor or the seller demands the rescission of the contract judicially or extrajudicially. In case of an extrajudicial demand to rescind the contract, it should be notarized.

Hence, this provision does not apply if it is not a contract of sale of an immovable property and merely a *contract to sell* an immovable property. A contract to sell is "where the ownership or title is retained by the seller and is not to pass until the full payment of the price, such payment being a positive suspensive condition and failure of which is not a breach, casual or serious, but simply an event that prevented the obligation of the vendor to convey title from acquiring binding force."⁹⁶

The Court is mindful of the opinion of Justice J.B.L. Reyes in the consolidated cases of *Sing, Yee & Cuan, Inc. v. Santos, et al.*⁹⁷ and *Santos, et al. v. Sing Yee & Cuan, Inc.*⁹⁸ (*Sing, Yee & Cuan, Inc.*), viz.:

⁹¹ Art. 1477 of the Civil Code provides: "The ownership of the thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof."

⁹² First paragraph, Art. 1498 of the Civil Code provides: "When the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred."

⁹³ RTC Decision dated December 11, 2012, *rollo*, p. 88.

⁹⁴ *Id.* at 89-90.

⁹⁵ 747 Phil. 187 (2014).

⁹⁶ *Id.* at 211-212, citing *Roque v. Lapuz*, 185 Phil. 525, 540 (1980).

⁹⁷ No. 2081-R, January 20, 1950 (CA), 47 O.G. 6372.

⁹⁸ No. 2082-R, January 20, 1950, *id.*

x x x [I]t is nevertheless clear that a distinction must be made between a contract of sale in which title passes to the buyer upon delivery of the thing sold and a contract to sell (or of “exclusive right and privilege to purchase,” as in this case) where by agreement the ownership is reserved in the seller and is not to pass until the full payment of the purchase price is made. In the first case, nonpayment of the price is a negative resolutive condition; in the second place, full payment is a positive suspensive condition. Being contraries, their effect in law can not be identical. In the first case, the vendor has lost and can not recover the ownership of the land sold until and unless the contract of sale is itself resolved and set aside. In the second case, however, the title remains in the vendor if the vendee does not comply with the condition precedent of making payment at the time specified in the contract. Hence, when the seller, because of noncompliance with the suspensive condition stipulated, seeks to eject the buyer from the land object of the agreement, said vendor is enforcing the contract and is not resolving the same. That article 1504 [(of the Civil Code of Spain or old Civil Code, now Article 1592 of the new Civil Code)] refers to nonpayment as a resolutive condition and does not contemplate an agreement to sell in which title is reserved by the vendor until the vendee has complied first with conditions specified, is clear from its terms:

“ART. 1504. In the sale of real property, even though it may have been stipulated that in default of the payment of the price within the time agreed upon, the resolution of the contract shall take place *ipso jure*, the purchaser may pay even after the expiration of the period, at any time before demand has been made upon him either by suit or by notarial act. After such demand has been made the judge cannot grant him further time.”⁹⁹

Based on Justice J.B.L. Reyes’ opinion in *Sing, Yee & Cuan, Inc.* that the non-payment of the purchase price in a contract of sale is a negative resolutive condition, the happening or fulfillment thereof will extinguish the obligation or the sale pursuant to Article 1231 of the Civil Code, which provides that fulfillment of a resolutive condition is another cause of extinguishment of obligations. Despite its extinguishment, since the vendor has lost ownership of the land, the contract must itself be resolved and set aside. It is noted, however, that the resolution of the sale is the tacit resolutive condition under Article 1191, as discussed above, which is implied in reciprocal obligations.

Consequently, the Court rules that the sale transaction in the DAS is deemed resolved.

Proceeding to the second issue, the MTC justified the award of damages in this wise:

It is an elementary rule that when a person causes injury to another by reason of a breach of contract or by a wrongful act or negligent act or omission, the person injured can recover damages for the injury he

⁹⁹ Id. at 6374-6375.



sustained from the one who causes it and that the damages he may receive will be commensurate to the injuries he sustained.

It was testified to by the plaintiffs, particularly Karen Nuñez Vito and Lynette Nuñez Macinda, that due to the non-payment of defendant Norma Moises Palma of the purchase price of their property (Lot No. 2159-A) despite their demands and the transfer of the defendant in her name the certificate of title over the subject property, it causes them sleepless nights, serious anxiety and other sufferings because, they said, they might lose their property to defendant for nothing. The plaintiff further testified that they had no other choice but to protect their rights and hired the services of a lawyer for thirty thousand (Php30,000.00) pesos.

It is already ruled by this Court that defendant Norma Moises Palma never paid plaintiffs the purchase price of Lot No. 2159-A and as such, her action caused breached (sic) of faith, which lead to the nullification of the Deed of Adjudication and Sale. Defendant's action indeed caused apprehension to plaintiffs that their property will go to waste considering that defendant had already registered and acquired in her name a Transfer Certificate of Title. The worry of plaintiffs are real and justice and equity dictates that moral damages be given to them just to alleviate and or (sic) compensate their moral sufferings caused by the action of defendant Norma Moises Palma. Likewise, the attitude of defendant, despite the lapse of twelve (12) years from the time the Deed of Adjudication and Sale was executed (June 28, 1995) by the plaintiffs up to the time of the filing of this case which was on August 15, 2007, in not paying plaintiffs, shows that defendant acted in a wanton, fraudulent and even oppressive manner which this Court will not countenance and therefore so as to give an example to similarly minded persons, the award for exemplary damages is proper.

Plaintiffs action in filing a case against defendant was borne out of fear that they may lose their property. They were forced to litigate and incurred expenses to protect their rights, hence, an award of attorney's fees and litigation expenses is just and equitable.¹⁰⁰

The non-payment of the entire purchase price, despite repeated assurances by Norma to pay the same clearly constitutes a substantial and fundamental breach as would defeat the very object of the parties in making the agreement.¹⁰¹

In contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner pursuant to Article 2232 of the Civil Code. Under Article 2219, moral damages may be recovered with respect to acts and actions referred to in Article 21: "Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage." As provided in Article 2208, as to attorney's fees and expenses of litigation, other than judicial costs, they cannot be recovered in the absence of stipulation, except: when the defendant's act or omission has compelled the plaintiff to incur expenses to

¹⁰⁰ MTC Decision dated June 8, 2012, *rollo*, pp. 79-80.

¹⁰¹ See *Universal Food Corporation v. Court of Appeals*, 144 Phil. 1, 18 (1970).

protect his interest; where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim; and in any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered. In all cases, they must be reasonable.

The MTC Decision has adequately explained the award of damages and the Court is in full agreement based on the statutory bases afore-cited.

The Court is aware that while petitioners alleged the amount of at least ₱10,000.00 a year as reasonable value of the use of the premises in the amended complaint,¹⁰² no evidence was adduced by them to support such claim. Nonetheless, the Court deems it just and equitable to award reasonable compensation in the amount as alleged by petitioners for the use and occupation of the premises by Norma because petitioners have been unjustly deprived of the use of the subject lot.¹⁰³ They are entitled to recover possession of the subject lot because of the failure of Norma to pay the agreed purchase price and she has not been paying any rental for her use and occupancy of the premises. Under Article 1596, the measure of damages is the estimated loss directly and naturally resulting in the ordinary course of events from the buyer's breach of contract for refusing to pay the purchase price.

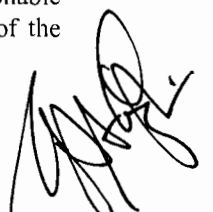
WHEREFORE, the Petition is hereby **GRANTED**. The Court of Appeals (Visayas Station) Decision dated July 31, 2015 and Resolution dated March 15, 2016 in CA-G.R. SP No. 07390 are hereby **REVERSED** and **SET ASIDE**. Likewise, the Decision dated December 11, 2012 of the Regional Trial Court, 6th Judicial Region, Branch 21, Mambusao, Capiz in Civil Case No. M-12-0360-07 AP is hereby **REVERSED** and **SET ASIDE**. The Decision dated June 8, 2012 of the Municipal Trial Court, 6th Judicial Region, Mambusao, Capiz in Civil Case No. 515 is **REINSTATED** and **AFFIRMED** with **MODIFICATION** as follows:

WHEREFORE, preponderance of evidence points in favor of plaintiffs and against defendant, judgment is hereby rendered:

- 1.) **DECLARING** the Deed of Adjudication and Sale dated June 28, 1995 **RESOLVED in so far as the sale in favor of Norma Moises Palma is concerned;**
- 2.) **ORDERING** the proper Register of Deeds to **CANCEL** Transfer Certificate of Title No. T-35460 in the name of defendant Norma Moises Palma and, in lieu thereof, to **ISSUE** a new Transfer Certificate of Title in the names of Placida Hisole Nuñez, Karen

¹⁰² Records (Vol. II), p. 6.

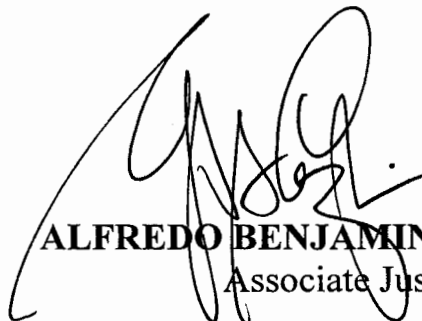
¹⁰³ See *De los Reyes v. Pastorfide*, 112 Phil. 610 (1961). In forcible entry and unlawful detainer cases, the court shall render a judgment in favor of the plaintiff for the restitution of the premises and reasonable compensation of the premises, attorney's fees and costs, if after trial it finds the allegations of the complaint are true. (Section 17, Rule 70, Rules of Court).



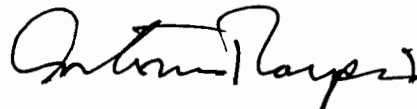
Nuñez, Warren Nuñez, Lynette Nuñez and Norma Moises Palma, as co-owners to the extent of $1/5$ *pro indiviso* each or 85.8 square meters undivided portion;

- 3.) **DECLARING** plaintiffs as the rightful co-owners of Lot No. 2159-A subject to the co-owner's right of defendant Norma Moises Palma with respect to the share of Alden Nuñez in the total area of 85.8 square meters;
- 4.) **ORDERING** defendant Norma Moises Palma to recognize and respect the rights of ownership and possession of Placida Hisole Nuñez, Karen Nuñez, Warren Nuñez and Lynette Nuñez as co-owners of Lot No. 2159-A;
- 5.) **ORDERING** defendant Norma Moises Palma to pay plaintiffs the following:
 - a.) Ten Thousand (Php10,000.00) pesos per year from 1995 up to the actual turnover of possession of Lot No. 2159-A to plaintiffs except the share of Alden Nuñez with an area of 85.8 square meters;
 - b.) Fifty Thousand (Php50,000.00) pesos as attorney's fees;
 - c.) Five Thousand (Php5,000.00) pesos as litigation expenses;
 - d.) Seventy-Five Thousand (Php75,000.00) pesos as moral damages; and
 - d.) Fifteen Thousand (P15,000.00) pesos as exemplary damages;with the foregoing amounts bearing legal interest at 6% per annum from finality of this Decision until full payment; and
- 6.) **ORDERING** defendant to pay the cost of the suit.

SO ORDERED.


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

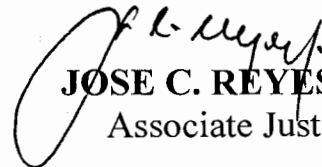
WE CONCUR:



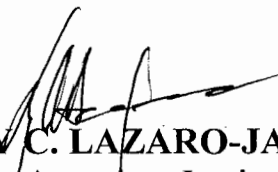
ANTONIO T. CARPIO
Associate Justice
Chairperson



ESTELA M. PERLAS-BERNABE
Associate Justice



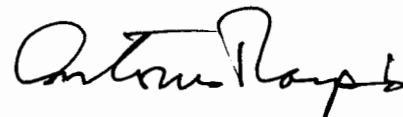
JOSE C. REYES, JR.
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice

ATTESTATION

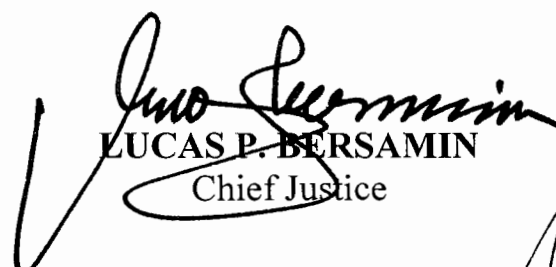
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



LUCAS P. BERSAMIN
Chief Justice

