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Wilfredo V. Lapan
 WILFREDO V. LAPAN
 Division Clerk of Court
 Third Division
 OCT 23 2017

Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION

PILIPINAS MAKRO, INC.,
 Petitioner,

G.R. No. 196419

Present:

VELASCO, JR., J.,
 Chairperson,

- versus -

BERSAMIN,
 LEONEN,
 MARTIRES, and
 GESMUNDO, JJ.

COCO CHARCOAL
 PHILIPPINES, INC. and
 LIM KIM SAN,
 Respondents.

Promulgated:

October 4, 2017

Wilfredo V. Lapan

X ----- X

DECISION

MARTIRES, J.:

This Petition for Review on Certiorari seeks to reverse and set aside the 30 December 2010 Decision¹ and 7 April 2011 Resolution² of the Court of Appeals (CA) in CA-G.R. CV No. 83836 which reversed the 16 August 2004 Decision³ of the Regional Trial Court, Branch 276, Muntinlupa City (RTC).

Petitioner Pilipinas Makro, Inc. (*Makro*) 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

¹ *Rollo*, pp. 36-49. Penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Ramon R. Garcia and Manuel M. Barrios.

² *Id.* at 33-34.

³ *Id.* at 301-308. Penned by Presiding Judge N.C. Perello.

Perello

city. After conferring with authorized real estate agents, Makro found two parcels of land suitable for its purpose.⁴

On 26 November 1999, Makro and respondent Coco Charcoal Phils., Inc. (*Coco Charcoal*)⁵ executed a notarized Deed of Absolute Sale⁶ wherein the latter would sell its parcel of land, with a total area of 1,000 square meters and covered by Transfer Certificate of Title (*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 Sale⁷ with respondent Lim Kim San (*Lim*) 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.

Coco Charcoal and Lim's parcels of land are contiguous and parallel to each other. Aside from the technical descriptions of the properties in question, both deeds of sale contained identical provisions, similar terms, conditions, and warranties.⁸

In December 1999, Makro engaged the services of Engineer Josefino M. Vedula (*Engr. Vedula*), 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 Department of Public Works and Highways (*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.⁹

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

⁴ Id. at 37.

⁵ Spelled out as "Coco-Charcoal" in some parts of the records.

⁶ Id. at 88-92.

⁷ Id. at 193-197.

⁸ Id. at 38.

⁹ Id. at 40-41.



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

The RTC Decision

In its 16 August 2004 Decision, the RTC granted Makro's complaint and ordered respondents to refund the amount corresponding to the value of the encroached area. The trial court ruled that the DPWH project encroached upon the purchased properties, such that Makro had to adjust its perimeter fences. It noted that Makro was constrained to bring legal action after its demand for refund remained unheeded. The trial court expounded that the road right of way includes not only the paved road, but also the shoulders and gutters. It highlighted that the unpaved portion of the right of way was well within the area Makro had purchased.

The RTC also found respondents in bad faith because they had concealed from Makro the fact that the DPWH had already taken possession of a portion of the lands they had sold, respectively, considering that drainage pipes had already been installed prior to the sale. It noted that DPWH could not have undertaken the diggings and subsequent installation of drainage pipes without Coco Charcoal and Lim's consent, being the previous owners of the lots in question. The dispositive portion reads:

PREMISES CONSIDERED, judgment is rendered for the plaintiff and defendants LIM KIM SAN directed to return and reimburse to plaintiff the sum of ONE MILLION FIVE HUNDRED THOUSAND (Php1,500,000.00) PESOS, Philippine Currency, with interest at 12% per annum, attorney's fees of Php200,000.00, exemplary damages of Php200,000.00 to deter anybody similarly prone;

Coco Charcoal Philippines, Inc. is likewise directed to pay a refund and return to plaintiff corporation the value of ONE MILLION FIVE HUNDRED THOUSAND (Php1,500,000.00) PESOS, Philippine Currency, with interest at 12% per annum, representing the 131 square meters parcel of land it cannot occupy and to pay attorney's fees in the sum of Php200,000.00 and exemplary damages of Php200,000.00 to deter anybody similarly inclined;

Both Defendants are directed to pay the cost of this litigation.

It is SO ORDERED.¹⁰



¹⁰ Id. at 308.

Aggrieved, Coco Charcoal and Lim appealed before the CA.

The CA Ruling

In its 30 December 2010 Decision, the 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)¹¹ 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. It averred that Makro could not feign ignorance of the ongoing road widening project. The appellate court noted Makro's actual knowledge of the encroachment before the execution of the sale constitutes its recognition that Coco Charcoal and Lim's warranty against liens, easements, and encumbrances does not include the respective 131 and 130 square meters affected by the DPWH project, but covers only the remainder of the property. It ruled:

WHEREFORE, premises considered, the instant appeal is GRANTED. Accordingly, the herein assailed August 16, 2004 Decision of the trial court is REVERSED and SET ASIDE, and the action instituted by appellee MAKRO against appellants Coco Charcoal and Lim Kim San for collection of sum of money by way of refund is hereby DISMISSED for lack of cause of action.

SO ORDERED.¹²

Makro moved for reconsideration, but the same was denied by the CA in its assailed 7 April 2011 Resolution.

Hence, this present petition raising the following:

ISSUES

I

WHETHER THE COURT OF APPEALS ERRED IN DENYING MAKRO'S MOTION FOR EXTENSION TO FILE A MOTION FOR RECONSIDERATION; AND



¹¹ The property is and shall continue to be free and clear of all easements, liens and encumbrances of any nature whatsoever, and is, and shall continue to be, not subject to any claim set-off or defense which will prevent the BUYER from obtaining full and absolute ownership and possession over the Property or from developing or using it as a site for its store building.

¹² Id. at 48-49.

II

**WHETHER THE COURT OF APPEALS ERRED IN DENYING
MAKRO A REFUND ON THE GROUND OF BAD FAITH.****THE COURT'S RULING**

The petition is meritorious.

***Non-extendible period to
file motion for
reconsideration;
exceptions***

Makro filed two motions for extension to file a motion for reconsideration. On the first motion, it sought an extension after its former lawyer, Atty. Edwin Lacierda, withdrew as a counsel in view of his appointment as press secretary for former President Benigno Aquino III. Makro again asked for an extension after its present counsel was confined for dengue and typhoid fever. Eventually, it filed its motion for reconsideration on 7 March 2011.

In its 7 April 2011 Resolution, the CA denied Makro's motions for extension to file a motion for reconsideration, explaining that the 15-day period for the filing of such is non-extendible and that a motion for extension is prohibited.

It must be remembered that procedural rules are set not to frustrate the ends of substantial justice, but are tools to expedite the resolution of cases on their merits. The Court reminds us in *Gonzales v. Serrano*¹³ that the prohibition on motion for extension to file a motion for reconsideration is not absolute, to wit:

The Court shall first delve on the procedural issue of the case. In *Imperial v. Court of Appeals*,¹⁴ the Court ruled:

In a long line of cases starting with *Habaluyas Enterprises v. Japson*,¹⁵ we have laid down the following guideline:



¹³ 755 Phil. 513, 526 (2015).

¹⁴ 606 Phil. 391 (2009).

¹⁵ 226 Phil. 144 (1986).

Beginning one month after the promulgation of this Resolution, the rule shall be strictly enforced that no motion for extension of time to file a motion for new trial or reconsideration may be filed with the Metropolitan or Municipal Trial Courts, the Regional Trial Courts, and the Intermediate Appellate Court. Such a motion may be filed only in cases pending with the Supreme Court as the court of last resort, which may in its sound discretion either grant or deny the extension requested.

Thus, the general rule is that no motion for extension of time to file a motion for reconsideration is allowed. This rule is consistent with the rule in the 2002 Internal Rules of the Court of Appeals that unless an appeal or a motion for reconsideration or new trial is filed within the 15-day reglementary period, the CA's decision becomes final. Thus, a motion for extension of time to file a motion for reconsideration does not stop the running of the 15-day period for the computation of a decision's finality. At the end of the period, a CA judgment becomes final, immutable and beyond our power to review.

This rule, however, admits of exceptions based on a liberal reading of the rule, so long as the petitioner is able to prove the existence of cogent reasons to excuse its non-observance. xxx

While the CA was correct in denying his Urgent Motion for Extension to File Motion for Reconsideration for being a prohibited motion, the Court, in the interest of justice, looked into the merits of the case, and opted to suspend the prohibition against such motion for extension after it found that a modification of the CA Decision is warranted by the law and the jurisprudence on administrative cases involving sexual harassment. **The emerging trend of jurisprudence, after all, is more inclined to the liberal and flexible application of procedural rules. Rules of procedure exist to ensure the orderly, just and speedy dispensation of cases; to this end, inflexibility or liberality must be weighed. Thus, the relaxation or suspension of procedural rules, or exemption of a case from their operation is warranted only by compelling reasons or when the purpose of justice requires it.** (emphases and underscoring supplied)

The Court finds that cogent reason exists to justify the relaxation of the rules regarding the filing of motions for extension to file a motion for reconsideration. The explanation put forth by Makro in filing its motions for extension clearly were not intended to delay the proceedings but were caused by reasons beyond its control, which cannot be avoided even with the exercise of appropriate care or prudence. Its former counsel had to withdraw in the light of his appointment as a cabinet secretary and its new lawyer was unfortunately afflicted with a serious illness. Thus, it would have been more



prudent for the CA to relax the procedural rules so that the substantive issues would be thoroughly ventilated.

More importantly, the liberal application of the rules becomes more imperative considering that Makro's position is meritorious.

*Express Warranty vis-à vis
Implied Warranty*

In addressing the issues of the present case, the following provisions of the deeds of sale between Makro and respondents are pertinent:

Section 2. General Investigation and Relocation

Upon the execution of this Deed, the BUYER shall undertake at its own expense a general investigation and relocation of their lots which shall be conducted by a surveyor mutually acceptable to both parties. Should there be any discrepancy between the actual areas of the lots as re-surveyed and the areas as indicated in their Transfer Certificates of Title, the Purchase Price shall be adjusted correspondingly at the rate of PESOS: EIGHT THOUSAND FIVE HUNDRED (Php8,500.000) per square meter. In the event that the actual area of a lot is found to be in excess of the area specified in the Titles, the Purchase Price shall be increased on the basis of the rate specified herein. Conversely, in the event that the actual area of a lot is found to be less than the area specified in the Titles, the BUYER shall deduct a portion of the Purchase Price corresponding to the deficiency in the area on the basis of the rate specified herein. In any case of discrepancy, be it more or less than the actual area of the Property as specified in the Titles, the SELLER agrees to make the necessary correction of the title covering the lots before the same is transferred to the BUYER.¹⁶

Section 4. Representations and Warranties

The SELLER hereby represents and warrants to the BUYER that:

- i. The Property is and shall continue to be free and clear of all easements, liens and encumbrances of any nature whatsoever, and is, and shall continue to be, not subject to any claim set-off or defense which will prevent the BUYER from obtaining full and absolute ownership and possession over the Property or from developing or using it as a site for its store building.¹⁷



¹⁶ *Rollo*, pp. 89-90 and 194.

¹⁷ *Id.* at 90 and 195.

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.¹⁸ 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.¹⁹ 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.²⁰ 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.²¹ 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

¹⁸ Pineda, *Sales and other Special Contracts* (2010), p. 250.

¹⁹ Article 1546 of the Civil Code.

²⁰ Paras, *Civil Code of the Philippines Annotated* (2016), p. 211.

²¹ *Ang v. Court of Appeals*, 588 Phil. 366, 373 (2008).

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.²³ The CA highlights that Makro was aware of the encroachments even before the sale because the ongoing road widening project was visible enough to inform the buyer of the diminution of the land area of the property purchased.

The Court disagrees.

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 ₱1,500,00.00 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

²² *Escaler et. al. v. Court of Appeals*, 222 Phil. 320, 326 (1985).

²³ *Luzon Development Bank v. Enriquez*, 654 Phil. 315, 337 (2011).

formula set under the deeds of sale, Makro should be entitled to receive ₱1,113,500.00 from Coco Charcoal and ₱1,105,000.00 from Lim. It is noteworthy that Makro's complaint against respondents also prayed for the same amounts. The RTC awarded ₱1,500,00.00 without sufficient factual basis or justifiable reasons.

Exemplary damages and attorney's fees may be awarded only for cause provided for by law.

In finding for Makro, the RTC also awarded attorney's fees and exemplary damages in its favor. The trial court ruled that Makro was entitled to attorney's fees because it was forced to bring the matter before the court assisted by counsel. It found the grant of exemplary damages in order because respondents were in bad faith for concealing from Makro the fact that the DPWH had already dispossessed a portion of the lots purchased.

In *ABS-CBN Broadcasting Corporation v. Court of Appeals*,²⁴ the Court cautioned that the fact that a party was compelled to litigate his cause does not necessarily warrant the award of attorney's fees, to wit:

As regards attorney's fees, the law is clear that in the absence of stipulation, attorney's fees may be recovered as actual or compensatory damages under any of the circumstances provided for in Article 2208 of the Civil Code.

The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification. **Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.** (emphasis supplied)

Other than the bare fact that Makro was compelled to hire the services of counsel to prosecute its case, the RTC did not provide compelling reasons to justify the award of attorney's fees. Thus, it is but right to delete the award especially since there is no showing that respondents had acted in bad

²⁴ 361 Phil. 499 (1999).



faith in refusing Makro's demand for refund. It is in consonance with the policy that there is no premium on the right to litigate.²⁵

On the other hand, exemplary damages may be awarded if the defendant had acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.²⁶ The RTC found the award of exemplary damages warranted because respondents allegedly concealed the fact the DPWH had already taken possession of a portion of the land they had sold to Makro. Bad faith, however, involves a state of mind dominated by ill will or motive implying a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity.²⁷ Here, there is insufficient evidence to definitively ascertain that respondents' omission to mention the ongoing DPWH projects was impelled by a conscious desire to defraud Makro. This is especially true since the road widening project was already in progress even before the time of the sale, and which would have been noticeable when Makro conducted its ocular inspection.

WHEREFORE, the petition is **GRANTED**. The 30 December 2010 Decision and 7 April 2011 Resolution of the Court of Appeals in CA-G.R. CV No. 83836 are **REVERSED** and **SET ASIDE**. Petitioner Pilipinas Makro, Inc. is entitled to recover ₱1,113,500.00 from respondent Coco Charcoal Phils., Inc. and ₱1,105,000.00 from respondent Lim Kim San.

SO ORDERED.


SAMUEL R. MARTIRES
Associate Justice

²⁵ *Philippine National Construction Corporation v. APAC Marketing Corporation*, 710 Phil. 389, 395 (2013).

²⁶ Article 2232 of the Civil Code.

²⁷ *Gatmaitan v. Gonzales*, 525 Phil. 658, 671 (2006).

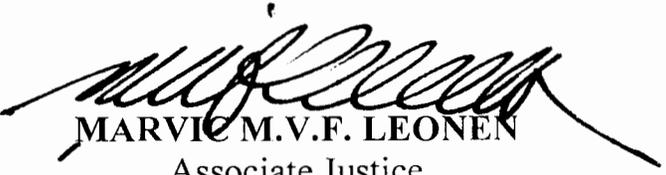
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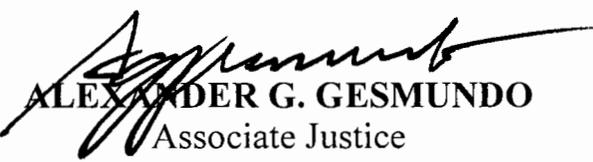
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice



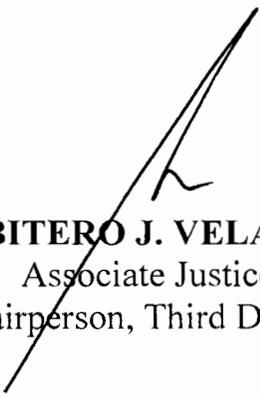
MARVIC M.V.F. LEONEN
Associate Justice



ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

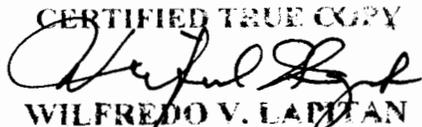
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third 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.

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WILFREDO V. LAPIDAN
Division Clerk of Court
Third Division
OCT 23 2017


MARIA LOURDES P. A. SERENO
Chief Justice