Republic of the Philippines
Supreme Court
Manila

THIRD DIVISON

PHILIPPINE NATIONAL BANK BINALBAGAN BRANCH, Binalbagan, Negros Occidental,	**G.R. No. 214588**
Petitioner,	Present:
- versus -	CAGUIOA, *J.*, Chairperson, INTING, GAERLAN, DIMAAMPAO, and
ANTONIO TAD-Y, for himself and as Attorney-in-Fact of PATRICIA TAD-Y, ET AL.,	SINGH, *JJ.*
Respondent.	Promulgated: September 7, 2022

x----------x

DECISION

GAERLAN, *J.*:

Before us is a petition for review on *certiorari*[1] assailing the April 16, 2013 Decision[2] and the September 4, 2014[3] Resolution of the Court of Appeals (CA) in CA-G.R. CV No. 01412, which dismissed the appeal filed by Philippine National Bank (PNB) against the December 22, 2005 Decision[4] of Branch 55 of the Regional Trial Court (RTC) of Himamaylan City, Negros Occidental in Civil Case No. 912, which, in turn, was a proceeding for breach of contract and reconveyance of property.

The record bears out the following facts:

On January 30, 1975, the spouses Jose Tad-y and Patricia Toledanes Tad-y (spouses Tad-y) obtained an agricultural sugar crop loan from the Binalbagan, Negros Oriental Branch of PNB, in the amount of ₱109,000.00.[5] To secure the loan, PNB and the spouses Tad-y executed a Real Estate

---

1 *Rollo*, pp. 36-78.

2 Id. at 13-25. Penned by Associate Justice Gabriel T. Ingles, with Associate Justices Pampio A. Abarintos, and Marilyn B. Lagura-Yap, concurring.

3 Id. at 27-28. Penned by Associate Justice Gabriel T. Ingles, with Associate Justices Marilyn B. Lagura-Yap, and Marie Christine Azcarraga-Jacob, concurring.

4 Id. at 211-219. Penned by Assisting Judge Edgardo L. Catilo.

5 Id. at 107 and 138.

Mortgage (REM)[6] over six (6) parcels of land located at Himamaylan City and Hinigaran, both in Negros Occidental.[7] The REM was annotated on each certificate of title as Entry No. 201793.[8]

On August 14, 1975, the spouses Tad-y obtained another agricultural sugar crop loan from PNB in the amount of ₱63,000.00.[9] The REM was extended to cover this second loan.[10] The transaction was annotated on the certificates of title as Entry No. 210254.[11]

On August 9, 1988, two of the parcels covered by the REM, Lots 778 and 788,[12] were sold on auction by the provincial treasurer of Negros Occidental, for failure to pay real property taxes thereon.[13] PNB participated in the auction and won as the sole bidder, for a total price of ₱10,609.63.[14] On August 23, 1989, the provincial treasurer conveyed the parcels to PNB through the issuance of two Final Bills of Sale.[15] On September 16, 1988, the Certificate of Sale in favor of PNB was annotated on the certificates of title of Lots 778 and 788 as Entry No. 329629 and Entry No. 329628.[16]

Sometime in November 1995, the spouses Tad-y availed of the loan restructuring provisions of Republic Act No. 7202.[17]A year later, the spouses completed the payments on the two loans.[18] Accordingly, on March 6, 1996, PNB executed a deed of release of the REM.[19] However, PNB excluded Lots 778 and 788 from the release,[20] claiming that it had already acquired title to said lots by virtue of the auction sale.

---

6 Id. at 101-103.
7 Id. at 211-212.
8 Id. at 107 and 138.
9 Id.
10 Id. at 108 and 138.
11 Id.
12 Lot 778, under Transfer Certificate of Title (TCT) No. T-161293 (T-2524), with an area of 24,249 square meters, and Lot 788 under TCT No. T-22350, with an area of 147,564 square meters, both located in Himamaylan, Negros Occidental. Id. at 108.
13 Id. at 109 and 139.
14 Id.
15 Id. at 203-206.
16 Id. at 15.
17 Id. at 137. The statute states in part:
Sec. 3. The Philippine National Bank, the Republic Planters Bank, the Development Bank of the Philippines and other government-owned and controlled financial institutions which have granted loans to the sugar producers shall extend to accounts of said sugar producers incurred from Crop Year 1974- 1975 up to and including Crop Year 1984-1985 the following:
(a) Condonation of interest charged by the banks in excess of twelve percent (12%) per annum and all penalties and surcharges;
(b) The recomputed loans shall be amortized for a period of thirteen (13) years inclusive of a three-year grace period on principal effective upon the approval of this Act. The Principal portion of the loan will carry an interest rate of twelve percent (12%) per annum and on the outstanding balance effective when the original promissory notes were signed and funds released to the producer.
18 Id. at 15, 112 and 139.
19 Id. at 134.
20 Id at 134 and 213.

Through letters dated July 19, 2001[21] and October 23, 2003,[22] Patricia Toledanes Tad-y (Patricia) asked PNB to release Lots 778 and 788 and manifested her willingness to reimburse PNB for the price it paid in the auction sale.[23] In response, PNB reiterated that it had already acquired ownership of Lots 778 and 788; but it was willing to negotiate the repurchase of the lots.[24] On March 23, 2004, Patricia and her children (the Tad-ys), represented by herein respondent Antonio Tad-y, filed the present complaint for breach of contract and reconveyance of property before the RTC of Himamaylan City.[25]

After due proceedings, the RTC rendered the aforementioned decision in favor of the Tad-ys, thus:

> WHEREFORE, based on the foregoing premises and considerations, the court hereby renders judgment, in favor of the plaintiffs and against the defendant, ordering the defendant, Philippine National Bank, to reconvey title of Lot No. 788, covered by Transfer Certificate of Title No. T-235S0 and Lot No. 778 covered by Transfer Certificate of Title No. 2S24 now T- 261298 to the plaintiffs.
>
> The plaintiffs are hereby ordered to pay the defendant, the acquisition price in the auction sale and other expenses relative thereto plus interest, at the rate of twelve (12%) per cent per annum.
>
> The Register of Deeds for the Province of Negros Occidental is hereby ordered to issue new transfer certificates of title covering Lot No. 778 and Lot No. 788, all of Himamaylan Cadastre, in the names of the plaintiffs upon showing receipt of full payment of the purchase price, other expenses relative thereto plus interest at the rate of twelve (12%) per cent per 'annum from the date of the public auction sale up to the time of repurchase of said lots by the plaintiffs therefor.
>
> SO ORDERED.[26]

Citing the last sentence of paragraph (c) of the REM, which provides that "*the Mortgagee shall advance the taxes and insurance premiums due in case the Mortgagor shall fail to pay them*,"[27] the RTC ruled that PNB should have paid real property taxes on the disputed lots in default of the Tad-ys. Instead, PNB refused to perform its obligation under the REM and allowed the lots to become delinquent so that it may acquire them for a below-market price at the delinquency auction sale. While PNB's participation in the

---

21 Id. at 137.
22 Id. at 136.
23 Id. at 136-137.
24 Id. at 41-43.
25 Id. at 43, 106-113.
26 Id. at 218-219.
27 Id. at 214.

auction sale was not illegal, it was an actionable abuse of right under Article 19 of the Civil Code that prejudiced the Tad-ys.[28]

Furthermore, pursuant to paragraph (d) of the REM, which provides for the automatic appointment of PNB as attorney-in-fact of the spouses Tad-y in case of violation or breach of any condition contained therein, PNB's purchase of the disputed lots should inure to the benefit of the Tad-ys.[29] Finally, the RTC rejected PNB's contention that the Province of Negros Occidental should have been impleaded as an indispensable party, since the Tad-ys were merely questioning PNB's participation in the auction sale.[30]

On appeal by PNB,[31] the CA affirmed the RTC decision.

The CA rejected PNB's contention that it had no obligation to pay the real property taxes on the mortgaged properties under the REM. The appellate court held that while paragraph (b) of the REM provides that "*[t]he mortgagor shall likewise pay on time all taxes and assessments on the mortgaged propert[ies],*"[32] the RTC correctly held that this must be read in conjunction with the last sentence in paragraph (c). Thus, when the spouses Tad-y failed to pay the real property taxes on Lots 778 and 788, PNB should have paid the same on the spouses' behalf, instead of "*allow[ing] the real estate taxes due on Lot No. 788 and Lot No. 778 to accumulate;*" and then "*participat[ing] in the [auction sale] thereby acquiring them at a very low price compared to the market price of said lots.*"[33]

The CA refused to pass upon PNB's contention that the action for breach of contract and reconveyance had already prescribed, finding that the issue was not raised in PNB's answer and should therefore be deemed waived. Hence, PNB is barred from raising the matter for the first time on appeal.[34]

Finally, the CA sustained the RTC's conclusion, based on paragraph (d) of the REM, that by virtue of its failure to pay the real estate taxes on Lots 778 and 788, PNB was constituted as attorney-in-fact of the spouses Tad-y; and, therefore, PNB's acquisition of the disputed lots inures to the benefit of the Tad-ys.[35] The appellate court went on to rule that a constructive trust was created over the disputed lots, thus:

---

28 Id. at 214-216.
29 Id. at 216-218.
30 Id. at 218.
31 Notice of Appeal, id. at 220-221.
32 Id. at 18 and 101.
33 Id. at 21 and 215.
34 Id. at 21-22.
35 Id. at 23.

> A constructive trust is one created not by any word or phrase, either expressly or impliedly, evincing a direct intention to create a trust, but one which arises in order to satisfy the demands of justice. It does not come about by agreement or intention but in the main by operation of law, construed against one who, by fraud, duress or abuse of confidence, obtains or holds the legal right to property which he ought not, in equity and good conscience, to hold. The relation of trustee and cestui que trust does not in fact exist, and the holding of a constructive trust is for the trustee himself, and therefore, at all times adverse. Therefore, the subject properties acquired by defendant-appellant bank shall be considered held in trust for plaintiffs-appellees.[36]

PNB filed a motion for reconsideration,[37] which the CA denied through the herein assailed resolution; hence, the present petition, which raises the following errors:

> [A]
> THE COURT OF APPEALS HAS MADE AN INFERENCE THAT IS MANIFESTLY MISTAKEN WHEN IT HELD THAT PETITIONER PNB COMMITTED A BREACH OF THE REAL ESTATE MORTGAGE CONTRACT WHEN IT FAILED TO PAY THE REAL ESTATE TAXES DUE ON THE SUBJECT PROPERTIES.
>
> [B]
> THE COURT OF APPEALS HAS RENDERED THE ASSAILED DECISION BASED ON A MISAPPREHENSION OF FACTS WHEN IT HELD THAT PETITIONER PNB WAS ACTING AS ATTORNEY-IN-FACT OF SPS. JOSE & PATRICIA TAD-Y DURING THE PUBLIC AUCTION SALE OF THE SUBJECT PROPERTIES TO SATISFY THE REALTY TAX DELINQUENCIES.
>
> [C]
> THE COURT OF APPEALS HAS ACTED IN A MANNER CONTRARY TO LAW AND SETTLED JURISPRUDENCE WHEN IT FAILED TO CONSIDER THAT THE PRESENT COMPLAINT IS BARRED BY PRESCRIPTION WHICH IS APPARENT ON THE FACE OF THE COMPLAINT AND THE RECORDS OF THE CASE.[38]

Prescription

PNB argues that the CA erred in refusing to consider the defense of prescription. PNB argues that pursuant to Rule 9, Section 1 of the Rules of Court, the trial court should have dismissed the case *motu proprio* because the prescription of the Tad-ys' cause of action is apparent on the face of the complaint.[39] PNB further argues that it can still raise the issue on appeal since

---

36 Id. at 24.
37 Id. at 271-281.
38 Id. at 49.
39 Id. at 70-74.

the bar by prescription is apparent on the face of the complaint and no new factual issue connected therewith arose during the trial.[40]

Rule 9, Section 1 of the Rules of Court states *inter alia*:

> SECTION 1. Defenses and objections not pleaded. — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that x x x the action is barred x x x by statute of limitations, the court **shall** dismiss the claim.

Jurisprudence clarifies that this provision authorizes the trial court to dismiss a claim *motu proprio if* the fact of prescription is *apparent* from the parties' pleadings or other evidence on record.[41] Under Section 1(f) of the former Rule 16[42] of the Rules of Court, prescription is also a ground for a motion to dismiss which may be filed in response to an initiatory pleading. Thus, it has been held that:

> Prescription is a ground for the dismissal of a complaint without going to trial on the merits. Under Rule 16 of the Rules of Court, it is raised in a motion to dismiss which is filed before the answer. It may also be raised as an affirmative defense in the answer. At the discretion of the court, a preliminary hearing on the affirmative defense may be conducted as if a motion to dismiss was filed. Nevertheless, this is only a general rule. **When the issue of prescription requires the determination of evidentiary matters, it cannot be the basis of an outright dismissal without hearing.**[43]
>
> The Court has consistently held that the affirmative defense of prescription does not automatically warrant the dismissal of a complaint under Rule 16 of the Rules of Civil Procedure. An allegation of prescription can effectively be used in a motion to dismiss only when the complaint on its face shows that indeed the action has already prescribed. If the issue of prescription is one involving evidentiary matters requiring a full-blown trial on the merits, it cannot be determined in a motion to dismiss. Those issues must be resolved at the trial of the case on the merits wherein both parties will be given ample opportunity to prove their respective claims and defenses.[44]

Under the 2019 Amendments to the 1997 Rules of Civil Procedure, the filing of a motion to dismiss on the ground of prescription is still permitted

---

40 Id.

41 *Alpha Plus International Enterprises Corp. v. Philippine Charter Insurance Corp., et al.*, G.R. No. 203756, February 10, 2021.

42 Rule 16 was repealed by A.M. No. 19-10-20-SC (October 15, 2019), entitled the 2019 Amendments to the 1997 Rules of Civil Procedure.

43 *G.V. Florida Transport, Inc, v. Tiara Commercial Corp.*, 820 Phil. 235, 254 (2017).

44 *Sanchez v. Sanchez*, 722 Phil. 763, 769 (2013).

pursuant to Rule 15, Section 12(a)(1).[45] Under Rule 6, Section 5(b), prescription is an affirmative defense which may also be invoked in an answer, in which case the trial court may conduct a summary hearing thereon within the time frames provided in Rule 8, Section 12(d). Crucially, Rule 8, Section 1 facilitates the determination of the fact of prescription by requiring the parties to plead their evidence in support or in refutation thereof.

Prescription that is clearly apparent from the pleadings or evidence on record may be invoked even after rendition of judgment on the merits, or on motion for reconsideration, or for the first time on appeal, or even on *motion for reconsideration of the denial* of an appeal.[46] In *Dino v. Court of Appeals*[47] the defendant raised the issue of prescription *for the first time* in his motion for reconsideration of the denial of his appeal to the CA. When plaintiffs questioned such belated invocation before the Court, we held:

> Even if the defense of prescription was raised for the first time on appeal in respondent's Supplemental Motion for Reconsideration of the appellate court's decision, this does not militate against the due process right of the [plaintiffs]. On appeal, **there was no new issue of fact that arose in connection with the question of prescription,** thus it cannot be said that [plaintiffs] were not given the opportunity to present evidence in the trial court to meet a factual issue. Equally important, [plaintiffs] had the opportunity to oppose the defense of prescription in their Opposition to the Supplemental Motion for Reconsideration filed in the appellate court and in their Petition for Review in this Court.[48]

However, it must be reiterated that the party who invokes prescription for the first time on appeal or thereafter must prove that it is clearly, sufficiently and satisfactorily apparent on the record either in the allegations of the plaintiff's complaint, or otherwise established by the evidence.[49] In *Sanchez v. Sanchez*,[50] the plaintiff filed a complaint for "*Annulment of Deed of Sale, Cancellation of New Title and Reconveyance of Title*" involving a parcel of land. The trial court dismissed the complaint solely on the basis of the pleadings, ruling that the claim had already prescribed. The CA granted the plaintiff's appeal and ordered the trial court to try the case. In sustaining the CA, we ruled that:

---

45 SECTION 12. Prohibited Motions. — The following motions shall not be allowed:
(a) Motion to dismiss except on the following grounds:
x x x x
3) That the cause of action is barred by a prior judgment or by the statute of limitations.

46 *Gicano v. Gegato*, 241 Phil. 139, 145 (1988).

47 411 Phil. 594 (2001).

48 Id. at 605. Citations omitted.

49 *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, 738 Phil. 577, 585-586 (2014), citing *D. B. T. Mar-Bay Construction, Inc. v. Panes*, 612 Phil. 93 (2009); *Dino v. Court of Appeals*, supra note 46; *Gicano v. Gegato*, supra note 45; *Chua Lamko v. Dioso*, 97 Phil. 821 (1955).

50 Supra note 44.

> Contrary to [the defendant]'s contention, it is not apparent from the complaint that the action had already prescribed. Furthermore, it should be noted that it is the relief based on the facts alleged, and not the relief demanded, which is taken into consideration in determining the cause of action. Therefore, in terms of classifying the deed, whether it is valid, void or voidable, it is of no significance that the relief prayed for was Annulment of Deed of Absolute Sale. The issue of prescription hinges on the determination of whether the sale was valid, void or voidable. We agree with the Court of Appeals that the issue of prescription in this case is best ventilated in a full-blown proceeding before the trial court where both parties can substantiate their claims. The trial court is in the best position to ascertain the credibility of both parties.
>
> Upon closer inspection of the complaint, it would seem that there are several possible scenarios that may have occurred given the limited set of facts. The statement "transaction did not push through since defendant did not have the financial wherewithal to purchase the subject property" creates confusion and allows for several different interpretations. On one side, it can be argued that said contract is void and consequently, the right to challenge such contract is imprescriptible. x x x Where the deed of sale states that the purchase price has been paid but in fact has never been paid, the deed of sale is null and void ab initio for lack of consideration.
>
> Such ruling of the Court would mean that when the deed of sale declares that the price has been paid, when in fact it has never been paid, that would be considered as a "badge of simulation" and would render the contract void and consequently, the right to challenge the same is imprescriptible. In the case at bar, by merely basing analysis on the pleadings submitted, in particular, the complaint, it would be an impossibility to deduce the truth as to whether the price stated in the deed was in fact paid. The only way to prove this is by going to trial.
>
> On the other hand, a different analysis of the statement "transaction did not push through since defendant did not have the financial wherewithal to purchase the subject property" may yield another interpretation. One can also deduce that what actually transpired was a simple non-payment of purchase price, which will not invalidate a contract and could only give rise to other legal remedies such as rescission or specific performance. In this scenario, the contract remains valid and therefore subject to prescription.
>
> It is also apparent from the pleadings that both parties denied each other's allegations. It is then but logical to review more evidence on disputed matters. On this score alone, it is apparent that the complaint on its face does not readily show that the action has already prescribed. We emphasize once more that a summary or outright dismissal of an action is not proper where there are factual matters in dispute, which require presentation and appreciation of evidence.
>
> Furthermore, well settled is the rule that the elements of laches must be proven positively. Laches is evidentiary in nature, a fact that cannot be established by mere allegations in the pleadings and cannot be resolved in a motion to dismiss. At this stage therefore, the dismissal of the complaint on the ground of laches is premature. Those issues must be resolved at the trial

> of the case on the merits, wherein both parties will be given ample opportunity to prove their respective claims and defenses.[51]

In the case at bar, we find that the issue of prescription can no longer be raised on appeal, for the following reasons:

1) The statutory basis for prescription is unclear. When PNB raised the issue for the first time in its appeal brief, it cited the ten-year period for bringing actions upon a written contract under Article 1144(1) of the Civil Code.[52] PNB did not replead prescription in its motion for reconsideration; instead it raised the issue for *only* the second time in its petition before the Court, where it now claims that assuming the ten-year period under Article 1144(1) of the Civil Code is not applicable; the complaint is still barred under Article 1144(2), since the action would now be based on the CA's finding that a constructive trust arose between PNB and the Tad-ys.[53] While it may be true that the provisions cited by PNB provide for the same time period, it must be remembered that ground for dismissal under the Rules of Court is not the lapse of time *per se*, but rather the *bar of the action by the statute of limitations*. Thus, the applicable statute of limitations which bars the complaint must appear clearly and sufficiently on the record.

2) Relative to the lack of clarity on the basis of prescription, the allegations of the complaint and the relief sought thereby open the possibility of the application of other statutes of limitation. The complaint, which is captioned as one for "BREACH OF CONTRACT AND RECONVEYANCE OF PROPERTIES COVERED BY TRANSFER CERTIFICATE [of Title]"[54] states in part:

> 11. Sometime on August 9,1988, defendant-mortgagee-bank, the PNB, instead of advancing the amounts of P 9,461.54 and P 1,148.09 and pay the Provincial Treasurer of Negros Occidental for the unpaid taxes of Transfer Certificate of Title No 23350, Lot No. 788, and Transfer Certificate of Tide No. T- 2524, now T -161298, Lot 778, and in violation of the law, R.A. 2612, as amended, and contrary to Paragraph I, of the covering Real Estate Mortgage, opted to participate in as lone and only bidder in the public auction sale of the said property;
>
> x x x x
>
> 14. The act of participating in as lone and only bidder by defendant-mortgagee-bank, the PNB, affecting the above-mentioned-properties, is in legal contemplation, the act of buy and sell of property, which is not

---

51 Id. at 769-771.
52 PNB's Appeal Brief, *rollo*, p. 242.
53 Petition for Review on *Certiorari*, id. at 74-76.
54 Complaint, id. at 106.

authorized by the PNB Charter under Republic Act No. 2612, as amended and operating under the provisions of Presidential Decree No. 694, as amended;

(PNB's Corporate Powers and Purposes, Section 3, p. 264)

15. The act of participation as lone and only bidder by the defendant-mortgagee-bank, the PNB, is also not authorized by the PNB Board of Directors;

x x x x

18. Being contrary to law, the public auction sale of these properties of plaintiff-mortgagor sometime in August 9, 1988 is NULL and VOID AB INITIO;

> (Article 1409-chapter 9 - void or Inexistent Contracts - the following are inexistent and void from the very beginning:
>
> 1) those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy; these contracts cannot be ratified, neither can the right to set up the defense of illegality be waived.

19. Being a contract VOID AB INITIO, the action or defense of inexistence of a contract does not prescribe; x x x

> (it is elementary that a VOID contract produces no effect either against or in favor of anyone. It cannot create, modify, or extinguish the juridical relation to which it refers.

20. Being a contract VOID AB INITIO, laches has not also set in; x x x

21. Being a contract VOID AB INTIO, plaintiff cannot be said to be in ESTOPPEL; x x x

22. Since there is no valid public auction sole of these properties covered by Transfer Certificate of Title No. T- 23350, Lot 788, and Transfer Certificate of Title No, T- 2524, now T-161298, Lot 778, same titles still form part and parcel of the collaterals or securities for the restructured loan accounts of plaintiffs;

23. Being part and parcel of the collaterals or securities, these two (2) properties should have been released on March 6,1996, together with the other four (4) properties upon full payment of the restructured loan accounts of plaintiffs on November, 1995 x x x.

PRAYER

NOW, WHEREFORE, Premises considered, it is most respectfully prayed of this Honorable Court to issue an Order directing the Defendant-mortgagee-Bank, Philippine National Bank, or the PNB to:

> I. Reconvey to Plaintiffs these two (2) titles, covered by Transfer Certificate of Title No 23350, Lot No. 788; and Transfer Certificate of Title No T-161293, formerly T-2524, Lot No 778, now in the name of the Philippine National Bank, Binalbagan Branch, Philippines, as clean titles, free from liens and encumbrances.
>
> Plaintiffs also [pray] for other remedies and reliefs that are just and equitable in the premises.[55]

A plain reading of these allegations and reliefs clearly shows that the determination of the applicable statute of limitations is not so straightforward. At the outset, the prescriptive periods for an action for breach of contract and reconveyance of real property are different.[56] Likewise, as we found in *Sanchez*, the issue of the validity of the tax delinquency auction sale also has a bearing on the applicable prescriptive period. Verily, even PNB could not decide which statute of limitation to apply, which is the most likely reason for its complete silence on the matter at the trial court level[57] and the consequent non-consideration of the matter by the trial court.[58] Ultimately, PNB decided to raise the defense of prescription for the first time on appeal, only after the trial court had ruled upon the validity of the delinquency auction sale and thereby reduced the number of possible candidates for applicable statutes of limitation. By raising the issue for the first time on appeal, PNB impaired the trial court's function to hear arguments and receive evidence on *all* possible claims and defenses that may be advanced by the parties.

3) Similar to the defendant in *Sanchez*, PNB also raised the factual issue of laches, which can only be resolved through presentation of evidence, *viz.*:

> The trial court seriously erred when it did not take into consideration the fact, that the cause of action of the plaintiffs-appellees had already been barred by prescription and laches. x x x
>
> x x x x
>
> Independently of the principle of prescription of actions working against plaintiffs-appellees, the doctrine of laches may further be counted against them, which latter tenet finds application even to imprescriptible actions.
>
> x x x x

---

55 Complaint, id. at 109-113.

56 CIVIL CODE, Articles 1141 and 1144(1).

57 PNB did not raise the issue of prescription in its Answer or in its Pre-Trial Brief. *Rollo*, pp. 138-141, 164-166.

58 The issue of prescription was not mentioned in the Pre-Trial Order. Id. at 179. It was not even mentioned in the trial court's decision.

> The essential elements of laches are the following: (1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made and for which the complaint seeks a remedy; (2) delay in asserting the complainant's rights, the complainant having had knowledge or notice of the defendant's conduct and having been afforded an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held barred.
>
> The act of defendant-appellant Bank in purchasing the subject properties in the auction sale gave rise to the complaint of herein plaintiffs- appellees. However, the latter delayed the assertion of their supposed right to annul the sale for a period of over sixteen (16) years despite knowledge or notice of such sale. They had all the opportunity within that period of time to take action to set aside or annul the sale or bring an action for the alleged breach of contract. Defendant-appellant Bank was never appraised of any intention on the part of plaintiffs-appellees to annul the sale or to bring an action for breach of contract from August 9, 1988, the time of the alleged breach, until July 19, 2001 when they made their written demand. As a matter of fact, plaintiffs-appellees never showed any effort during this period to recover their property. Lastly, it cannot be denied that defendant-appellants' right will be prejudiced in the event that relief shall be granted to the plaintiffs-appellees or if the suit shall not be deemed barred.[59]
>
> 95) Despite having paid their restructured loan in 1995 and obtained a Release of Real Estate Mortgage (on the 4 other mortgaged properties) in 1996, respondent and his principals did not seek judicial redress until 2004, when they probably realized the incremental increase in land values affecting the subject properties. This is clear in the Complaint. Moreover, there was no new issue of fact that arose in connection with the question of prescription when petitioner PNB raised the same on appeal.[60]

It bears repeating that PNB made these arguments for the first time on *appeal*. The trial court, which is the judicially-designated primary factfinder in our legal system, was unable to pass upon these arguments which involve matters of *fact*. Given these circumstances, the CA's refusal to pass upon the defense of prescription was justified.

Obligation to pay real property taxes under the REM

PNB next argues that the obligation to pay real property taxes on the disputed lots fell solely on the spouses Tad-y. It asserts that the last sentence of paragraph (c) of the REM, when read in the context of the whole agreement, applies only in an event of default, if the mortgagee declares the whole obligation due and exercises its power to judicially foreclose the

---

59 PNB's Appeal Brief, id. at 241 and 245-246.

60 Petition for Review on *Certiorari*, id. at 73.

mortgage. There being no foreclosure, PNB's obligation to shoulder the real property taxes on the disputed lots never arose.[61]

Article 1374 of the Civil Code provides that a contract must be interpreted as a whole, with the sense of doubtful stipulations derived from the sense of all other stipulations taken together.

Paragraphs (b) and (c) of the REM read as follows:

> (b) The Mortgagor shall pay all expenses in connection with this mortgage, the cancellation or foreclosure thereof should the Mortgagee deem it necessary, and all other fees and documentary stamps required by law for its registration, as well as other instruments related herewith. **The Mortgagor shall likewise pay on time all taxes and assessments on the mortgaged property, reporting to the Mortgagee, the fact of such payment on the dates on which they were effected and surrendering to the Mortgagee, for the duration of this mortgage, such official receipts as may be issued to him after payment of such taxes and other assessment;** he shall insure, during the life of this mortgage, all the buildings improvements and other properties covered thereby against fire and earthquake for an amount and with such company satisfactory to the Mortgagee, indorsing and delivering to the latter the corresponding policies. X X X [T]he Mortgagor shall keep the mortgaged property in good condition, making repairs[,] filling the land, constructing protective walls that may reasonably be necessary, he shall give additional securities which may be required from time to time by the Mortgagee when, in judgment of the latter, the securities already given are or have become insufficient, and shall authorize the Mortgagee to inspect the mortgaged property to ascertain, the condition thereof and the actual value in the market;
>
> (c) **If at any time the Mortgagor shall fail or refuse to** pay the obligations herein secured, or any of the amortizations of such indebtedness when due, or to **comply with any of the conditions and stipulations herein agreed**, or shall, during the time this mortgage is in force, institute insolvency proceedings, or be in voluntarily declared insolvent, or shall use the proceeds of this loan for purposes other than those specified herein, or if this mortgage cannot be recorded in the corresponding Registry of Deeds, **then all obligations of the Mortgagor secured by this mortgage and all the amortization thereof shall immediately become due, payable and defaulted and the Mortgagee may immediately foreclose this mortgage** judicially in accordance with the Rules of Court, or extra-judicially in accordance with Act No. 3135, as amended, and under Act 2612, as amended. **For the purpose of extra-judicial foreclosure, the Mortgagor hereby appoints the Mortgagee his attorney-in-fact to sell the property** mortgaged under Act No. 3135, as amended, **to sign all documents and perform any act requisite and necessary to accomplish said purpose and to appoint its substitutes as such attorney-in-fact with the same power as above specified.** *In case of judicial foreclosure*, the Mortgagor hereby consents to the appointment of the mortgagee or of any of its

---

61 Id. at 50-61.

> employees as receiver, without any bond, to take charge of the mortgaged property at once, and to hold possession of the same and the rents, benefits and profits derived from the mortgaged property before the sale, less the than [*sic*] P 100.00 exclusive of all costs and fees allowed by law, and the expenses of collection shall be the obligation of the Mortgagor and shall with priority, be paid to the Mortgagee out of any sums realized as rents and profits derived from the mortgaged property or from the proceeds realized from the sale of said property and this mortgage shall likewise stand as security therefor. **It is also agreed that the Mortgagee shall advance the taxes and insurance premiums due in case the Mortgagor shall fail to pay them;**[62]

These stipulations are clear and categorical. A plain reading thereof easily establishes that the duty to pay all taxes and assessments on the mortgaged properties lies with the mortgagor; and failure to comply with such stipulation constitutes an event of default which allows the mortgagee to exercise the right to foreclose. Thus, the spouses Tad-y's failure to pay the real property taxes on the disputed lots amounted to an event of default; and PNB was therefore entitled to exercise its right to foreclose on the mortgage, either judicially or extrajudicially.

Relative thereto, paragraph (c) of the REM regulates the rights and duties of the parties in case of a *foreclosure*. The first two sentences thereof regulate the extrajudicial foreclosure of the mortgage, while the rest of the paragraph, which begins with the phrase "In case of judicial foreclosure", and ends with the last sentence thereof, regulates the *judicial foreclosure* of the mortgage. The use of the word "*also*" in the last sentence indicates that the proviso therein is an additional stipulation which supplements those made in the previous sentences, such that in case of a judicial foreclosure, the mortgagor agrees to: 1) the appointment of the mortgagee or of any of its employees as receiver of the mortgaged properties; 2) shoulder the expenses of collection; 3) the payment of such expenses of collection to the mortgagee out of the proceeds from the sale or rental of the properties; 4) the extension of the mortgage to securing such obligation to shoulder the expenses of collection; and 5) **the advancing of taxes and insurance premiums by the mortgagee *in case* the mortgagor fails to pay them**. We therefore sustain PNB's contention. Its obligation to pay the real property taxes on the mortgaged properties *arises only* in case of a judicial foreclosure.

Creation of agency relation under paragraph (d) of the REM

PNB then argues that the attorney-in-fact provisions under paragraph

---

62 Id. at 101-102. Emphases, underlining, and italics supplied.

(d) of the REM do not contemplate the purchase or acquisition of the mortgaged properties at an auction sale. PNB argues that the powers specified thereunder serve only to facilitate the exercise of the mortgagee's right under the REM to alienate the mortgaged properties to satisfy the debt,[63] in consonance with Article 2087 of the Civil Code.

Paragraph (d) of the REM reads as follows:

> (d) **Effective upon the breach of any condition of this mortgage and in addition to the remedies herein stipulated, the Mortgagee is hereby likewise appointed attorney-in-fact of the Mortgagor with full powers and authority**, with the use of force, if necessary, **to** take actual possession of the mortgaged property, without the necessity of any judicial order or any permission or power, to collect rents, to eject tenants, to lease or sell the mortgaged property or any part thereof, at a private sale without previous notice or advertisement of any kind and execute the corresponding bills of sale, lease or other agreement that may be deemed convenient, to make repairs or improvement on the mortgaged property and pav for the same, and **perform any other act which the Mortgagee may deemed [*sic*] convenient for the proper administration of the mortgaged property.** The payment of any expense advanced by the Mortgagee in connection with the purpose indicated herein is also guaranteed by this mortgaged [*sic*] and such amount advanced shall bear interest at the rate of 12% per annum. Any amount received from sale, disposal or administration above-mentioned may be applied to the payment of the repairs, improvements, taxes and assessments and any other incidental expenses and obligations, and also to the payment of the original indebtedness and interest thereof. The power herein granted shall not be revoked during the life of this mortgage, and all acts that may be executed by the Mortgagee by the virtue of said power are hereby ratified. In addition to the foregoing, the Mortgagor also hereby agrees, that the Auditor General shall withhold any money due or which may become due the Mortgagor from the Government or from any of its instrumentalities, except those exempted by law from attachment or execution, and apply the same in settlement of any and all amount due to the Mortgagee.[64]

By now, there is no doubt that the spouses Tad-y breached the REM by failing to pay real property taxes on the disputed lots. There is likewise no dispute that such breach triggered the application of paragraph (d) as quoted above, which clearly and plainly provides for the *automatic* appointment of PNB as agent of the spouses Tad-y for the purposes stated therein, "upon the breach of any condition of this mortgage." The issue is whether paragraph (d) empowers PNB to acquire Lots 778 and 788 at a tax delinquency auction sale *on the spouses Tad-y's behalf.*

---

63 Id. at 61-67.

64 Id. at 102. Emphases and underlining supplied.

While the power to buy the mortgaged properties at a public sale is not expressly mentioned therein, we nevertheless find that paragraph (d) gives PNB such power, pursuant to its express provision empowering PNB to "**perform any other act which the Mortgagee may deem convenient for the proper administration of the mortgaged property.**"

It must be remembered that paragraph (d) is but one of several stipulations embodied in the *real estate mortgage contract* between PNB and the spouses Tad-y.

A real estate mortgage is a contract of real security. Its essence lies in the right of the mortgagee to sell or otherwise alienate the properties subject of the mortgage when the principal obligation becomes due, for the purpose of applying the proceeds of the sale or other alienation to the *payment of the principal obligation.*[65] Verily, the REM between PNB and the spouses Tad-y provides that:

> if the Mortgagor shall pay to the Mortgagee, its successors or assigns, the obligations secured by this mortgage, together with interest, costs and other expenses, on or before the date they are due, and shall keep and perform all the covenants and agreements herein contained for the Mortgagor to keep and perform, then this mortgage shall be null and void x x x.[66]

Thus, when the Tad-ys fully settled their obligation in 1996, the REM had been rendered *functus officio* and PNB should have released the properties covered thereunder to the Tad-ys.

We have already mentioned that a contract must be construed as a whole, with the sense of doubtful stipulations derived from the sense of all other stipulations taken together. Viewed in the context of the REM's other provisions, paragraph (d) thereof must therefore be interpreted not as a self-contained power of attorney, but as an additional security feature which is meant to facilitate the exercise of the mortgagee's right to foreclose on the mortgage. In *Garcia v. Villar,* we held that such power-of-attorney provisions in mortgage contracts are customary stipulations that implement Article 2087 of the Civil Code,[67] which provides:

> Art. 2087. It is also of the essence of these contracts that when the principal obligation becomes due, the things in which the pledge or mortgage consists may be alienated for the payment to the creditor.

---

65 CIVIL CODE, Articles 2052, 2087.

66 *Rollo*, p. 101.

67 *Garcia v. Villar*, 689 Phil. 363, 378 (2012).

Viewed in this light, we hold that the phrase "*any other acts which the Mortgagee may deem convenient for the proper administration of the mortgaged property*" should be deemed to include any and all acts which PNB may deem appropriate for the preservation of its right to foreclose on the mortgage.

In its answer before the trial court, PNB admitted that it participated in the auction sale *only* to protect its interest in the mortgaged properties,[68] *i.e.*, to protect its right to alienate these properties for payment of the loans, which is precisely the purpose for the grant of agency to it under paragraph (d). Since it had the effect of preserving them from acquisition by third parties, and thereby ensuring that they remain optimally accessible to the mortgagee in case of a foreclosure, PNB's acquisition of Lots 778 and 788 should be deemed an act "*convenient for the proper administration of the mortgaged properties*." Furthermore, pursuant to the terms of the REM and the legal essence of the mortgage contract, the full payment of the loans in 1996 rendered the REM, and consequently, PNB's interest in the disputed lots, *functus officio*, with the option to foreclose left unexercised by PNB.

While it is true that Article 1878 of the Civil Code requires that powers of attorney relating to the creation, conveyance, or transfer of ownership and other real rights over immovables must be specifically provided,[69] it must be remembered that such requirement contemplates acts of strict dominion or ownership,[70] as contrasted with acts of administration. The grant of power to PNB to "**perform any other act which [it] may deem convenient for the proper administration of the mortgaged property**" is a general agency stipulation under Article 1877 of the Civil Code, which expressly pertains to acts of administration. The determination of whether an act is one of administration or of strict dominion is ultimately a question of fact,[71] as a renowned civilist explains:

> Ahora bien: ¿cuáles son los actos de administración aludidos en el primer inciso del texto legal? Parece fácil responder que lo son aquellos que no implican la facultad de disponer, para cuyo ejercicio, según el Código, necesitase de una cláusula expresa de autorización; y sin embargo, **los mandatos de administración serán siempre cuestiones de hecho más que de derecho, planteadas ante los Tribunales, porque, ¿cómo dudar de que los actos de buena administración implicarán alguna vez el ejercicio de un acto de dominio? Por ventura el administrador de un predio rústico al vender los frutos, ¿no realiza, á la par que un acto de buena gestión, un acto de dominio?** Por esto, sin duda, los glosadores y los intérpretes, á quienes siguieron jurisconsultos de la valía de Pothier,

---

68 *Rollo*, p. 140.

69 CIVIL CODE, Article 1878(5) and (12).

70 Hector S. De Leon and Hector M. De Leon, Jr., COMMENTS AND CASES ON PARTNERSHIP, AGENCY, AND TRUSTS 418 (2014).

71 Id. at 413.

> aplicaron esta doctrina, invocando la teoría de las presunciones y convalidaron con ellas los actos del mandatario que, siendo actos de buena gestión, implicaban realmente el ejercicio de facultades dominicales.[72]

Here, PNB admits that it purchased Lots 778 and 788 for the sole reason of protecting its interest as mortgagee under the REM. Clearly, such act of preserving its mortgage interest over the disputed properties constitutes an act of administration not only under the Civil Code but by the express provision of the general agency provision integrated into the mortgage contract entered into by the parties. We therefore sustain the concurrent conclusions of the RTC and the CA that the purchase of Lots 778 and 788 by PNB at the 1988 delinquency auction sale inures to the benefit of the spouses Tad-y.

Creation of constructive trust by virtue of PNB's acquisition of the disputed lots by delinquency auction sale

Finally, PNB argues that the CA erred in ruling that a constructive trust was created over the disputed properties by operation of law. PNB argues that its conduct with respect to the disputed lots did not amount to actual or constructive fraud which creates a constructive trust by operation of law.

Article 1456 of the Civil Code provides that a person who acquires property through mistake or fraud is considered a trustee of a trust created by force of law for the benefit of the person from whom the property comes. The trust relation created by this provision is called a constructive trust, which jurisprudence defines as:

> a trust not created by any words, either expressly or impliedly, evincing a direct intention to create a trust but by the construction of equity in order to satisfy the demands of justice and prevent unjust enrichment. It does not arise by agreement or intention but by operation of law against one who, by fraud, duress, or abuse of confidence obtains or holds the legal right to property which he ought not, in equity and good conscience, to hold.[73]

In *Berico v. Court of Appeals*,[74] we explained that the fraud contemplated in Article 1456 of the Civil Code

---

72 11 José Maria Manresa y Navarro, COMENTARIOS AL CODIGO CIVIL ESPAÑOL 458 (1893). Emphasis and underlining supplied; citations omitted.

73 *Lorenzo Shipping Corp. v. Villarin*, G.R. Nos. 175727 & 178713, March 6, 2019, citing Hector S. De Leon and Hector M. De Leon, Jr., COMMENTS AND CASES ON PARTNERSHIP, AGENCY, AND TRUSTS 639 (2010).

74 296-A Phil. 482 (1993).

> is understood to be either actual or constructive fraud. Actual fraud is intentional fraud; it consists in deception, intentionally practiced to induce another to part with property or to surrender some legal right, and which accomplishes the end designed. **Constructive fraud, on the other hand, is a breach of legal or equitable duty which, irrespective of the moral guilt of the fraud feasor, the law declares fraudulent because of its tendency to deceive others, to violate public or private confidence,** or to injure public interests. **The latter usually proceeds from a breach of duty arising out of a fiduciary or confidential relationship.**[75]

In the case at bar, we find PNB guilty of constructive fraud for breaching its fiduciary duty to the spouses Tad-y under the REM, when it refused to release the disputed lots. It has been established that PNB acquired the disputed lots through the 1988 auction sale on behalf of the spouses Tad-y, pursuant to the power-of-attorney provisions under paragraph (d) of the REM. As earlier mentioned, when the loans were fully paid in 1996, without PNB having exercised its right to foreclose on the mortgaged properties, PNB lost any interest it had in the disputed properties; and should have perforce turned them over to the Tad-ys. In *Severino v. Severino*, an agent who administered a parcel of land on his niece's behalf obtained a certificate of title to the said parcel. In ordering the agent to reconvey the property, we held:

> The relations of an agent to his principal are fiduciary and it is an elementary and very old rule that in regard to property forming the subject-matter of the agency, he is estopped from acquiring or asserting a title adverse to that of the principal. His position is analogous to that of a trustee and he cannot consistently, with the principles of good faith, be allowed to create in himself an interest in opposition to that of his principal or *cestui que trust*. x x x An agent is not only estopped from denying his principal's title to the property, but he is also disabled from acquiring interests therein adverse to those of his principal during the term of the agency.[76]

Likewise, PNB, as the agent of the spouses Tad-y, cannot acquire title to the disputed properties, since it bought them on the latter's behalf and held them strictly for the purpose of foreclosure: an option which it never exercised.

WHEREFORE, the present petition is hereby **DENIED**. The April 16, 2013 Decision and the September 4, 2014 Resolution of the Court of Appeals in CA-G.R. CV No. 01412 are **AFFIRMED**.

---

75 Id. at 496-497. Emphasis and underlining supplied.

76 *Severino v. Severino*, 44 Phil. 343, 359 (1923).

SO ORDERED.

SAMUEL H. GAERLAN
Associate Justice

WE CONCUR:

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

MARIA FILOMENA D. SINGH
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.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson

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.

ALEXANDER G. GESMUNDO
Chief Justice