SECOND DIVISION

COMMUNITIES CAGAYAN, INC., *Petitioner,*	**G.R. No. 176791**
	Present:
- versus-	CARPIO, *Chairperson,* BRION, DEL CASTILLO, PEREZ, *and* PERLAS-BERNABE, *JJ.*
SPOUSES ARSENIO (Deceased) and ANGELES NANOL AND ANYBODY CLAIMING RIGHTS UNDER THEM, *Respondents.*	Promulgated: NOV 1 4 2012

x - x

DECISION

DEL CASTILLO, *J.*:

Laws fill the gap in a contract.

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the December 29, 2006 Decision[2] and the February 12, 2007 Order[3] of the Regional Trial Court (RTC), Cagayan de Oro City, Branch 18, in Civil Case No. 2005-158.

Factual Antecedents

Sometime in 1994, respondent-spouses Arsenio and Angeles Nanol entered into a Contract to Sell[4] with petitioner Communities Cagayan, Inc.,[5] whereby the latter agreed to sell to respondent-spouses a house and Lots 17 and 19[6] located at

---

[1] *Rollo*, pp. 17-29.
[2] Id. at 30-35; penned by Presiding Judge Edgardo T. Lloren.
[3] Id. at 38.
[4] Only the first page of the Contract to Sell was attached; id. at 176.
[5] Formerly Masterplan Properties, Inc., id. at 31.
[6] Covered by Transfer Certificate of Title Nos. T-74947 and T-74949; id at 180 and 182.

Block 16, Camella Homes Subdivision, Cagayan de Oro City,[7] for the price of ₱368,000.00.[8] Respondent-spouses, however, did not avail of petitioner's in-house financing due to its high interest rates.[9] Instead, they obtained a loan from Capitol Development Bank, a sister company of petitioner, using the property as collateral.[10] To facilitate the loan, a simulated sale over the property was executed by petitioner in favor of respondent-spouses.[11] Accordingly, titles were transferred in the names of respondent-spouses under Transfer Certificates of Title (TCT) Nos. 105202 and 105203, and submitted to Capitol Development Bank for loan processing.[12] Unfortunately, the bank collapsed and closed before it could release the loan.[13]

Thus, on November 30, 1997, respondent-spouses entered into another Contract to Sell[14] with petitioner over the same property for the same price of ₱368,000.00.[15] This time, respondent-spouses availed of petitioner's in-house financing[16] thus, undertaking to pay the loan over four years, from 1997 to 2001.[17]

Sometime in 2000, respondent Arsenio demolished the original house and constructed a three-story house allegedly valued at ₱3.5 million, more or less.[18]

In July 2001, respondent Arsenio died, leaving his wife, herein respondent Angeles, to pay for the monthly amortizations.[19]

On September 10, 2003, petitioner sent respondent-spouses a notarized

---

7 Id. at 31.
8 Id. at 142-143.
9 Id. at 50.
10 Id. at 31.
11 Id. at 31-32.
12 Id.
13 Id. at 32.
14 Both petitioner and respondent-spouses failed to attach a copy of the Contract to Sell in the pleadings they filed before the RTC and the Supreme Court.
15 *Rollo*, p. 32 and Records, p. 186.
16 *Rollo*, p. 51.
17 Records, p. 186.
18 *Rollo*, p. 145.
19 Id. at 133.

Notice of Delinquency and Cancellation of Contract to Sell[20] due to the latter's failure to pay the monthly amortizations.

In December 2003, petitioner filed before Branch 3 of the Municipal Trial Court in Cities of Cagayan de Oro City, an action for unlawful detainer, docketed as C3-Dec-2160, against respondent-spouses.[21] When the case was referred for mediation, respondent Angeles offered to pay ₱220,000.00 to settle the case but petitioner refused to accept the payment.[22] The case was later withdrawn and consequently dismissed because the judge found out that the titles were already registered under the names of respondent-spouses.[23]

Unfazed by the unfortunate turn of events, petitioner, on July 27, 2005, filed before Branch 18 of the RTC, Cagayan de Oro City, a Complaint for Cancellation of Title, Recovery of Possession, Reconveyance and Damages, [24] docketed as Civil Case No. 2005-158, against respondent-spouses and all persons claiming rights under them. Petitioner alleged that the transfer of the titles in the names of respondent-spouses was made only in compliance with the requirements of Capitol Development Bank and that respondent-spouses failed to pay their monthly amortizations beginning January 2000.[25] Thus, petitioner prayed that TCT Nos. T-105202 and T-105203 be cancelled, and that respondent Angeles be ordered to vacate the subject property and to pay petitioner reasonable monthly rentals from January 2000 plus damages.[26]

In her Answer,[27] respondent Angeles averred that the Deed of Absolute Sale is valid, and that petitioner is not the proper party to file the complaint because petitioner is different from Masterplan Properties, Inc.[28] She also prayed

---

20 Records, p. 201.
21 *Rollo*, p. 133.
22 Id. at 193-194.
23 Id. at 134.
24 Id. at 49-56.
25 Id. at 50-51.
26 Id. at 55.
27 Id. at 190-205.
28 Id. at 196-197.

for damages by way of compulsory counterclaim.[29]

In its Reply,[30] petitioner attached a copy of its Certificate of Filing of Amended Articles of Incorporation[31] showing that Masterplan Properties, Inc. and petitioner are one and the same. As to the compulsory counterclaim for damages, petitioner denied the same on the ground of "lack of knowledge sufficient to form a belief as to the truth or falsity of such allegation."[32]

Respondent Angeles then moved for summary judgment and prayed that petitioner be ordered to return the owner's duplicate copies of the TCTs.[33]

Pursuant to Administrative Order No. 59-2005, the case was referred for mediation.[34] But since the parties failed to arrive at an amicable settlement, the case was set for preliminary conference on February 23, 2006.[35]

On July 7, 2006, the parties agreed to submit the case for decision based on the pleadings and exhibits presented during the preliminary conference.[36]

Ruling of the Regional Trial Court

On December 29, 2006, the RTC rendered judgment declaring the Deed of Absolute Sale invalid for lack of consideration.[37] Thus, it disposed of the case in this wise:

> WHEREFORE, the Court hereby declares the Deed of Absolute Sale **VOID**. Accordingly, Transfer Certificate[s] of Title Nos. 105202 and 105203 in the names of the [respondents], Arsenio (deceased) and Angeles Nanol, are

---

29 Id. at 202-203.
30 Records, pp. 57-59.
31 Id. at 60.
32 Id. at 58.
33 Id. at 76-84.
34 Id. at 89.
35 Id. at 92.
36 Id. at 160.
37 *Rollo*, p. 34.

> ordered **CANCELLED**. The [respondents] and any person claiming rights under them are directed to turn-over the possession of the house and lot to [petitioner], Communities Cagayan, Inc., subject to the latter's payment of their total monthly installments and the value of the new house minus the cost of the original house.
>
> SO ORDERED.[38]

Not satisfied, petitioner moved for reconsideration of the Decision but the Motion[39] was denied in an Order[40] dated February 12, 2007.

Issue

Instead of appealing the Decision to the Court of Appeals (CA), petitioner opted to file the instant petition directly with this Court on a pure question of law, to wit:

> WHETHER X X X THE ACTION [OF] THE [RTC] BRANCH 18 X X X IN ORDERING THE RECOVERY OF POSSESSION BY PETITIONER '*subject to the latter's payment of their total monthly installments and the value of the new house minus the cost of the original house*' IS CONTRARY TO LAW AND JURISPRUDENCE X X X.[41]

Petitioner's Arguments

Petitioner seeks to delete from the dispositive portion the order requiring petitioner to reimburse respondent-spouses the total monthly installments they had paid and the value of the new house minus the cost of the original house.[42] Petitioner claims that there is no legal basis for the RTC to require petitioner to reimburse the cost of the new house because respondent-spouses were in bad faith when they renovated and improved the house, which was not yet their own.[43] Petitioner further contends that instead of ordering mutual restitution by the

---

38 Id. at 35.
39 Id. at 36-37.
40 Id. at 38.
41 Id. at 136.
42 Id. at 130.
43 Id. at 137.

parties, the RTC should have applied Republic Act No. 6552, otherwise known as the Maceda Law,[44] and that instead of awarding respondent-spouses a refund of all their monthly amortization payments, the RTC should have ordered them to pay petitioner monthly rentals.[45]

Respondent Angeles' Arguments

Instead of answering the legal issue raised by petitioner, respondent Angeles asks for a review of the Decision of the RTC by interposing additional issues.[46] She maintains that the Deed of Absolute Sale is valid.[47] Thus, the RTC erred in cancelling TCT Nos. 105202 and 105203.

Our Ruling

The petition is partly meritorious.

At the outset, we must make it clear that the issues raised by respondent Angeles may not be entertained. For failing to file an appeal, she is bound by the Decision of the RTC. Well entrenched is the rule that "a party who does not appeal from a judgment can no longer seek modification or reversal of the same. He may oppose the appeal of the other party only on grounds consistent with the judgment."[48] For this reason, respondent Angeles may no longer question the propriety and correctness of the annulment of the Deed of Absolute Sale, the cancellation of TCT Nos. 105202 and 105203, and the order to vacate the property.

Hence, the only issue that must be resolved in this case is whether the RTC

---

44 Id. at 24-25.
45 Id. at 136.
46 Id. at 152.
47 Id. at 156.
48 *Raquel-Santos v. Court of Appeals*, G.R. Nos. 174986, 175071 & 181415, July 7, 2009, 592 SCRA 169, 190-191.

erred in ordering petitioner to reimburse respondent-spouses the "total monthly installments and the value of the new house minus the cost of the original house."[49] Otherwise stated, the issues for our resolution are:

1) Whether petitioner is obliged to refund to respondent-spouses all the monthly installments paid; and

2) Whether petitioner is obliged to reimburse respondent-spouses the value of the new house minus the cost of the original house.

Respondent-spouses are entitled to the cash surrender value of the payments on the property equivalent to 50% of the total payments made.

Considering that this case stemmed from a Contract to Sell executed by the petitioner and the respondent-spouses, we agree with petitioner that the Maceda Law, which governs sales of real estate on installment, should be applied.

Sections 3, 4, and 5 of the Maceda Law provide for the rights of a defaulting buyer, to wit:

> **Section 3.** In all transactions or contracts involving the sale or financing of real estate on installment payments, including residential condominium apartments but excluding industrial lots, commercial buildings and sales to tenants under Republic Act Numbered Thirty-eight hundred forty-four, as amended by Republic Act Numbered Sixty-three hundred eighty-nine, where the buyer has paid at least two years of installments, the buyer is entitled to the following rights in case he defaults in the payment of succeeding installments:
>
> (a) To pay, without additional interest, the unpaid installments due within the total grace period earned by him which is hereby fixed at the rate of one month grace period for every one year of installment payments made: Provided, That this right shall be exercised by the buyer only once in every five years of the life of the contract and its extensions, if any.
>
> (b) **If the contract is canceled, the seller shall refund to the buyer the cash surrender value of the payments on the property equivalent to fifty**

[49] *Rollo*, p. 35.

> **percent of the total payments made,** and, after five years of installments, an additional five per cent every year but not to exceed ninety per cent of the total payments made: Provided, That the actual cancellation of the contract shall take place after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer.
>
> Down payments, deposits or options on the contract shall be included in the computation of the total number of installment payments made. (Emphasis supplied.)
>
> **Section 4.** In case where less than two years of installments were paid, the seller shall give the buyer a grace period of not less than sixty days from the date the installment became due.
>
> If the buyer fails to pay the installments due at the expiration of the grace period, the seller may cancel the contract after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act.
>
> **Section 5.** Under Sections 3 and 4, the buyer shall have the right to sell his rights or assign the same to another person or to reinstate the contract by updating the account during the grace period and before actual cancellation of the contract. The deed of sale or assignment shall be done by notarial act.

In this connection, we deem it necessary to point out that, under the Maceda Law, the actual cancellation of a contract to sell takes place after 30 days from receipt by the buyer of the notarized notice of cancellation,[50] and upon full payment of the cash surrender value to the buyer.[51] In other words, before a contract to sell can be validly and effectively cancelled, the seller has (1) to send a notarized notice of cancellation to the buyer and (2) to refund the cash surrender value.[52] Until and unless the seller complies with these twin mandatory requirements, the contract to sell between the parties remains valid and subsisting.[53] Thus, the buyer has the right to continue occupying the property subject of the contract to sell,[54] and may "still reinstate the contract by updating the account during the grace period and before the actual cancellation"[55] of the contract.

---

50 An action for annulment of contract is a kindred concept of rescission by notarial act (*Pagtalunan v. Dela Cruz Vda. de Manzano*, G.R. No. 147695, September 13, 2007, 533 SCRA 242, 254).

51 Id. at 253.

52 *Active Realty & Development Corp. v. Daroya*, 431 Phil. 753, 761-762 (2002).

53 Id. at 763.

54 *Pagtalunan v. Dela Cruz Vda. de Manzano*, supra at 254-255.

55 *Leaño v. Court of Appeals*, 420 Phil. 836, 847 (2001).

In this case, petitioner complied only with the first condition by sending a notarized notice of cancellation to the respondent-spouses. It failed, however, to refund the cash surrender value to the respondent-spouses. Thus, the Contract to Sell remains valid and subsisting and supposedly, respondent-spouses have the right to continue occupying the subject property. Unfortunately, we cannot reverse the Decision of the RTC directing respondent-spouses to vacate and turn-over possession of the subject property to petitioner because respondent-spouses never appealed the order. The RTC Decision as to respondent-spouses is therefore considered final.

In addition, in view of respondent-spouses' failure to appeal, they can no longer reinstate the contract by updating the account. Allowing them to do so would be unfair to the other party and is offensive to the rules of fair play, justice, and due process. Thus, based on the factual milieu of the instant case, the most that we can do is to order the return of the cash surrender value. Since respondent-spouses paid at least two years of installment,[56] they are entitled to receive the cash surrender value of the payments they had made which, under Section 3(b) of the Maceda Law, is equivalent to 50% of the total payments made.

Respondent-spouses are entitled to reimbursement of the improvements made on the property.

Petitioner posits that Article 448 of the Civil Code does not apply and that respondent-spouses are not entitled to reimbursement of the value of the improvements made on the property because they were builders in bad faith. At the outset, we emphasize that the issue of whether respondent-spouses are builders in good faith or bad faith is a factual question, which is beyond the scope of a petition filed under Rule 45 of the Rules of Court.[57] In fact, petitioner is deemed

---

56 Records, p. 202.

57 *Fuentes v. Court of Appeals*, 335 Phil. 1163, 1169 (1997).

to have waived all factual issues since it appealed the case directly to this Court,[58] instead of elevating the matter to the CA. It has likewise not escaped our attention that after their failed preliminary conference, the parties agreed to submit the case for resolution based on the pleadings and exhibits presented. No trial was conducted. Thus, it is too late for petitioner to raise at this stage of the proceedings the factual issue of whether respondent-spouses are builders in bad faith. Hence, in view of the special circumstances obtaining in this case, we are constrained to rely on the presumption of good faith on the part of the respondent-spouses which the petitioner failed to rebut. Thus, respondent-spouses being presumed builders in good faith, we now rule on the applicability of Article 448 of the Civil Code.

As a general rule, Article 448 on builders in good faith does not apply where there is a contractual relation between the parties,[59] such as in the instant case. We went over the records of this case and we note that the parties failed to attach a copy of the Contract to Sell. As such, we are constrained to apply Article 448 of the Civil Code, which provides *viz*:

> ART. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

Article 448 of the Civil Code applies when the builder believes that he is the owner of the land or that by some title he has the right to build thereon,[60] or that, at least, he has a claim of title thereto.[61] Concededly, this is not present in the instant case. The subject property is covered by a Contract to Sell hence

---

58 *Aballe v. Santiago*, 117 Phil. 936, 938-939 (1963).
59 Arturo M. Tolentino, CIVIL CODE OF THE PHILIPPINES, Vol II, 116 (1998).
60 *Rosales v. Castelltort*, 509 Phil. 137, 147 (2005).
61 *Briones v. Macabagdal*, G.R. No. 150666, August 3, 2010, 626 SCRA 300, 307.

ownership still remains with petitioner being the seller. Nevertheless, there were already instances where this Court applied Article 448 even if the builders do not have a claim of title over the property. Thus:

> This Court has ruled that this provision covers only cases in which the builders, sowers or planters believe themselves to be owners of the land or, at least, to have a claim of title thereto. It does not apply when the interest is merely that of a holder, such as a mere tenant, agent or usufructuary. From these pronouncements, good faith is identified by the belief that the land is owned; or that – by some title – one has the right to build, plant, or sow thereon.
>
> However, in some special cases, this Court has used Article 448 by recognizing good faith beyond this limited definition. Thus, in *Del Campo v. Abesia*, this provision was applied to one whose house – despite having been built at the time he was still co-owner – overlapped with the land of another. This article was also applied to cases wherein a builder had constructed improvements with the consent of the owner. The Court ruled that the law deemed the builder to be in good faith. In *Sarmiento v. Agana*, the builders were found to be in good faith despite their reliance on the consent of another, whom they had mistakenly believed to be the owner of the land.[62]

The Court likewise applied Article 448 in *Spouses Macasaet v. Spouses Macasaet*[63] notwithstanding the fact that the builders therein knew they were not the owners of the land. In said case, the parents who owned the land allowed their son and his wife to build their residence and business thereon. As found by this Court, their occupation was not by mere tolerance but "upon the invitation of and with the complete approval of (their parents), who desired that their children would occupy the premises. It arose from familial love and a desire for family solidarity x x x."[64] Soon after, conflict between the parties arose. The parents demanded their son and his wife to vacate the premises. The Court thus ruled that as owners of the property, the parents have the right to possession over it. However, they must reimburse their son and his wife for the improvements they had introduced on the property because they were considered builders in good faith even if they knew for a fact that they did not own the property, thus:

---

62 *Spouses Macasaet v. Spouses Macasaet*, 482 Phil. 853, 871-872 (2004).
63 Id.
64 Id. at 865.

> Based on the aforecited special cases, Article 448 applies to the present factual milieu. The established facts of this case show that respondents fully consented to the improvements introduced by petitioners. In fact, because the children occupied the lots upon their invitation, the parents certainly knew and approved of the construction of the improvements introduced thereon. Thus, petitioners may be deemed to have been in good faith when they built the structures on those lots.
>
> The instant case is factually similar to *Javier v. Javier*. In that case, this Court deemed the son to be in good faith for building the improvement (the house) with the knowledge and consent of his father, to whom belonged the land upon which it was built. Thus, Article 448 was applied.[65]

In fine, the Court applied Article 448 by construing good faith beyond its limited definition. We find no reason not to apply the Court's ruling in *Spouses Macasaet v. Spouses Macasaet* in this case. We thus hold that Article 448 is also applicable to the instant case. First, good faith is presumed on the part of the respondent-spouses. Second, petitioner failed to rebut this presumption. Third, no evidence was presented to show that petitioner opposed or objected to the improvements introduced by the respondent-spouses. Consequently, we can validly presume that petitioner consented to the improvements being constructed. This presumption is bolstered by the fact that as the subdivision developer, petitioner must have given the respondent-spouses permits to commence and undertake the construction. Under Article 453 of the Civil Code, "[i]t is understood that there is bad faith on the part of the landowner whenever the act was done with his knowledge and without opposition on his part."

In view of the foregoing, we find no error on the part of the RTC in requiring petitioner to pay respondent-spouses the value of the new house minus the cost of the old house based on Article 448 of the Civil Code, subject to succeeding discussions.

---

[65] Id. at 873.

Petitioner has two options under Article 448 and pursuant to the ruling in Tuatis v. Escol.[66]

In *Tuatis*, we ruled that the seller (the owner of the land) has two options under Article 448: (1) he may appropriate the improvements for himself after reimbursing the buyer (the builder in good faith) the necessary and useful expenses under Articles 546[67] and 548[68] of the Civil Code; or (2) he may sell the land to the buyer, unless its value is considerably more than that of the improvements, in which case, the buyer shall pay reasonable rent.[69] Quoted below are the pertinent portions of our ruling in that case:

> Taking into consideration the provisions of the Deed of Sale by Installment and Article 448 of the Civil Code, Visminda has the following options:
>
> Under the first option, Visminda **may appropriate for herself the building on the subject property after indemnifying Tuatis for the necessary and useful expenses the latter incurred for said building, as provided in Article 546 of the Civil Code.**
>
> It is worthy to mention that in Pecson v. Court of Appeals, the Court pronounced **that the amount to be refunded to the builder under Article 546 of the Civil Code should be the current market value of the improvement,** thus:
>
> x x x x
>
> Until Visminda appropriately indemnifies Tuatis for the building constructed by the latter, Tuatis may retain possession of the building and the subject property.
>
> Under the second option, Visminda **may choose not to appropriate the building and, instead, oblige Tuatis to pay the present or current fair value of the land.** The ₱10,000.00 price of the subject property, as stated in the Deed

---

66 G.R. No. 175399, October 27, 2009, 604 SCRA 471.

67 ART. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

68 ART. 548. Expenses for pure luxury or mere pleasure shall not be refunded to the possessor in good faith; but he may remove the ornaments with which he has embellished the principal thing if it suffers no injury thereby, and if his successor in the possession does not prefer to refund the amount expended.

69 *Tuatis v. Escol*, supra at 488.

of Sale on Installment executed in November 1989, shall no longer apply, since Visminda will be obliging Tuatis to pay for the price of the land in the exercise of Visminda's rights under Article 448 of the Civil Code, and not under the said Deed. Tuatis' obligation will then be statutory, and not contractual, arising only when Visminda has chosen her option under Article 448 of the Civil Code.

Still under the second option, **if the present or current value of the land, the subject property herein, turns out to be considerably more than that of the building built thereon, Tuatis cannot be obliged to pay for the subject property, but she must pay Visminda reasonable rent for the same. Visminda and Tuatis must agree on the terms of the lease; otherwise, the court will fix the terms.**

Necessarily, the RTC should conduct additional proceedings before ordering the execution of the judgment in Civil Case No. S-618. Initially, the RTC should determine which of the aforementioned options Visminda will choose. Subsequently, the RTC should ascertain: (a) under the first option, the amount of indemnification Visminda must pay Tuatis; or (b) under the second option, the value of the subject property vis-à-vis that of the building, and depending thereon, the price of, or the reasonable rent for, the subject property, which Tuatis must pay Visminda.

The Court highlights that the options under Article 448 are available to Visminda, as the owner of the subject property. There is no basis for Tuatis' demand that, since the value of the building she constructed is considerably higher than the subject property, she may choose between buying the subject property from Visminda and selling the building to Visminda for ₱502,073.00. Again, the choice of options is for Visminda, not Tuatis, to make. And, depending on Visminda's choice, Tuatis' rights as a builder under Article 448 are limited to the following: (a) under the first option, a right to retain the building and subject property until Visminda pays proper indemnity; and (b) under the second option, a right not to be obliged to pay for the price of the subject property, if it is considerably higher than the value of the building, in which case, she can only be obliged to pay reasonable rent for the same.

The rule that the choice under Article 448 of the Civil Code belongs to the owner of the land is in accord with the principle of accession, i.e., that the accessory follows the principal and not the other way around. Even as the option lies with the landowner, the grant to him, nevertheless, is preclusive. The landowner cannot refuse to exercise either option and compel instead the owner of the building to remove it from the land.

The raison d'etre for this provision has been enunciated thus: Where the builder, planter or sower has acted in good faith, a conflict of rights arises between the owners, and it becomes necessary to protect the owner of the improvements without causing injustice to the owner of the land. In view of the impracticability of creating a state of forced co-ownership, the law has provided a just solution by giving the owner of the land the option to acquire the improvements after payment of the proper indemnity, or to oblige the builder or planter to pay for the land and the sower the proper rent. He cannot refuse to exercise either option. It is the owner of the land who is authorized to exercise the option, because his right is older, and because, by the *principle* of accession, he is entitled to the ownership of the accessory thing.

> Visminda's Motion for Issuance of Writ of Execution cannot be deemed as an expression of her choice to recover possession of the subject property under the first option, **since the options under Article 448 of the Civil Code and their respective consequences were also not clearly presented to her by the 19 April 1999 Decision of the RTC. She must then be given the opportunity to make a choice between the options available to her after being duly informed herein of her rights and obligations under both**.[70] (Emphasis supplied.)

In conformity with the foregoing pronouncement, we hold that petitioner, as landowner, has two options. It may appropriate the new house by reimbursing respondent Angeles the current market value thereof minus the cost of the old house. Under this option, respondent Angeles would have "a right of retention which negates the obligation to pay rent."[71] In the alternative, petitioner may sell the lots to respondent Angeles at a price equivalent to the current fair value thereof. However, if the value of the lots is considerably more than the value of the improvement, respondent Angeles cannot be compelled to purchase the lots. She can only be obliged to pay petitioner reasonable rent.

In view of the foregoing disquisition and in accordance with *Depra v. Dumlao*[72] and *Technogas Philippines Manufacturing Corporation v. Court of Appeals*,[73] we find it necessary to remand this case to the court of origin for the purpose of determining matters necessary for the proper application of Article 448, in relation to Articles 546 and 548 of the Civil Code.

WHEREFORE, the petition is hereby **PARTIALLY GRANTED.** The assailed Decision dated December 29, 2006 and the Order dated February 12, 2007 of the Regional Trial Court, Cagayan de Oro City, Branch 18, in Civil Case No. 2005-158 are hereby **AFFIRMED with MODIFICATION** that petitioner Communities Cagayan, Inc. is hereby ordered to **RETURN** the cash surrender value of the payments made by respondent-spouses on the properties, which is

---

70 Id. at 492-495.
71 *Technogas Philippines Manufacturing Corp. v. Court of Appeals*, 335 Phil. 471, 487 (1997).
72 221 Phil. 168 (1985).
73 Supra.

equivalent to 50% of the total payments made, in accordance with Section 3(b) of Republic Act No. 6552, otherwise known as the Maceda Law.

The case is hereby **REMANDED** to the Regional Trial Court, Cagayan de Oro City, Branch 18, for further proceedings consistent with the proper application of Articles 448, 546 and 548 of the Civil Code, as follows:

1. The trial court shall determine:

a) the present or current fair value of the lots;
b) the current market value of the new house;
c) the cost of the old house; and
d) whether the value of the lots is considerably more than the current market value of the new house minus the cost of the old house.

2. After said amounts shall have been determined by competent evidence, the trial court shall render judgment as follows:

a) Petitioner shall be granted a period of 15 days within which to exercise its option under the law (Article 448, Civil Code), whether to appropriate the new house by paying to respondent Angeles the current market value of the new house minus the cost of the old house, or to oblige respondent Angeles to pay the price of the lots. The amounts to be respectively paid by the parties, in accordance with the option thus exercised by written notice to the other party and to the court, shall be paid by the obligor within 15 days from such notice of the option by tendering the amount to the trial court in favor of the party entitled to receive it.

b) If petitioner exercises the option to oblige respondent Angeles to pay the price of the lots but the latter rejects such purchase because, as found by the trial court, the value of the lots is considerably more than the value of the new house minus the cost of the old house, respondent Angeles shall

give written notice of such rejection to petitioner and to the trial court within 15 days from notice of petitioner's option to sell the land. In that event, the parties shall be given a period of 15 days from such notice of rejection within which to agree upon the terms of the lease, and give the trial court formal written notice of the agreement and its *provisos*. If no agreement is reached by the parties, the trial court, within 15 days from and after the termination of the said period fixed for negotiation, shall then fix the period and terms of the lease, including the monthly rental, which shall be payable within the first five days of each calendar month. Respondent Angeles shall not make any further constructions or improvements on the building. Upon expiration of the period, or upon default by respondent Angeles in the payment of rentals for two consecutive months, petitioner shall be entitled to terminate the forced lease, to recover its land, and to have the new house removed by respondent Angeles or at the latter's expense.

c) In any event, respondent Angeles shall pay petitioner reasonable compensation for the occupancy of the property for the period counted from the time the Decision dated December 29, 2006 became final as to respondent Angeles or 15 days after she received a copy of the said Decision up to the date petitioner serves notice of its option to appropriate the encroaching structures, otherwise up to the actual transfer of ownership to respondent Angeles or, in case a forced lease has to be imposed, up to the commencement date of the forced lease referred to in the preceding paragraph.

d) The periods to be fixed by the trial court in its decision shall be non-extendible, and upon failure of the party obliged to tender to the trial court the amount due to the obligee, the party entitled to such payment shall be entitled to an order of execution for the enforcement of payment of the amount due and for compliance with such other acts as may be required by the prestation due the obligee.

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
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

CERTIFICATION

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.

MARIA LOURDES P. A. SERENO
Chief Justice