



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

PHILIPPINE NATIONAL BANK,  
Petitioner,

G.R. No. 182128

Present:

SERENO, C.J.,  
*Chairperson,*  
LEONARDO-DE CASTRO,  
BERSAMIN,  
VILLARAMA, JR., and  
REYES, JJ.

- versus -

TERESITA TAN DEE, ANTIPOLLO  
PROPERTIES, INC., (now PRIME  
EAST PROPERTIES, INC.) and  
AFP-RSBS, INC.,

Respondents.

Promulgated:

**FEB 19 2014**

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DECISION

REYES, J.:

This is a Petition for Review<sup>1</sup> under Rule 45 of the Rules of Court, assailing the Decision<sup>2</sup> dated August 13, 2007 and Resolution<sup>3</sup> dated March 13, 2008 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 86033, which affirmed the Decision<sup>4</sup> dated August 4, 2004 of the Office of the President (OP) in O.P. Case No. 04-D-182 (HLURB Case No. REM-A-030724-0186).

<sup>1</sup> Rollo, pp. 28-50.

<sup>2</sup> Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Rodrigo V. Cosico and Mariano C. Del Castillo (now a member of this Court), concurring; id. at 53-64.

<sup>3</sup> Id. at 66-67.

<sup>4</sup> CA rollo, pp. 6-14.

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### Facts of the Case

Some time in July 1994, respondent Teresita Tan Dee (Dee) bought from respondent Prime East Properties Inc.<sup>5</sup> (PEPI) on an installment basis a residential lot located in Binangonan, Rizal, with an area of 204 square meters<sup>6</sup> and covered by Transfer Certificate of Title (TCT) No. 619608. Subsequently, PEPI assigned its rights over a 213,093-sq m property on August 1996 to respondent Armed Forces of the Philippines-Retirement and Separation Benefits System, Inc. (AFP-RSBS), which included the property purchased by Dee.

Thereafter, or on September 10, 1996, PEPI obtained a ₱205,000,000.00 loan from petitioner Philippine National Bank (petitioner), secured by a mortgage over several properties, including Dee's property. The mortgage was cleared by the Housing and Land Use Regulatory Board (HLURB) on September 18, 1996.<sup>7</sup>

After Dee's full payment of the purchase price, a deed of sale was executed by respondents PEPI and AFP-RSBS on July 1998 in Dee's favor. Consequently, Dee sought from the petitioner the delivery of the owner's duplicate title over the property, to no avail. Thus, she filed with the HLURB a complaint for specific performance to compel delivery of TCT No. 619608 by the petitioner, PEPI and AFP-RSBS, among others. In its Decision<sup>8</sup> dated May 21, 2003, the HLURB ruled in favor of Dee and disposed as follows:

**WHEREFORE, *premises considered*,** judgment is hereby rendered as follows:

1. Directing [the petitioner] to cancel/release the mortgage on Lot 12, Block 21-A, Village East Executive Homes covered by Transfer Certificate of Title No. -619608- (TCT No. -619608-), and accordingly, surrender/release the title thereof to [Dee];
2. Immediately upon receipt by [Dee] of the owner's duplicate of Transfer Certificate of Title No. -619608- (TCT No. -619608-), respondents PEPI and AFP-RSBS are hereby ordered to deliver the title of the subject lot in the name of [Dee] free from all liens and encumbrances;

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<sup>5</sup> Formerly Antipolo Properties, Inc.

<sup>6</sup> Identified as Lot 12, Block 21-A.

<sup>7</sup> CA *rollo*, p. 56.

<sup>8</sup> Id. at 58-62.

3. Directing respondents PEPI and AFP-RSBS to pay [the petitioner] the redemption value of Lot 12, Block 21-A, Village East Executive Homes covered by Transfer Certificate of Title No. -619608- (TCT No. -619608-) as agreed upon by them in their Real Estate Mortgage within six (6) months from the time the owner's duplicate of Transfer Certificate of Title No. -619608- (TCT No. -619608-) is actually surrendered and released by [the petitioner] to [Dee];
4. In the alternative, in case of legal and physical impossibility on the part of [PEPI, AFP-RSBS, and the petitioner] to comply and perform their respective obligation/s, as above-mentioned, respondents PEPI and AFP-RSBS are hereby ordered to jointly and severally pay to [Dee] the amount of **FIVE HUNDRED TWENTY THOUSAND PESOS (₱520,000.00)** plus twelve percent (12%) interest to be computed from the filing of complaint on April 24, 2002 until fully paid; and
5. Ordering [PEPI, AFP-RSBS, and the petitioner] to pay jointly and severally [Dee] the following sums:
  - a) The amount of **TWENTY FIVE THOUSAND PESOS (₱25,000.00)** as attorney's fees;
  - b) The cost of litigation[;] and
  - c) An administrative fine of **TEN THOUSAND PESOS (₱10,000.00)** payable to this Office fifteen (15) days upon receipt of this decision, for violation of Section 18 in relation to Section 38 of PD 957.

**SO ORDERED.**<sup>9</sup>

The HLURB decision was affirmed by its Board of Commissioners per Decision dated March 15, 2004, with modification as to the rate of interest.<sup>10</sup>

On appeal, the Board of Commissioners' decision was affirmed by the OP in its Decision dated August 4, 2004, with modification as to the monetary award.<sup>11</sup>

Hence, the petitioner filed a petition for review with the CA, which, in turn, issued the assailed Decision dated August 13, 2007, affirming the OP decision. The dispositive portion of the decision reads:

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<sup>9</sup> Id. at 61-62.

<sup>10</sup> *Rollo*, p. 57.

<sup>11</sup> Id. at 57-58.

**WHEREFORE**, in view of the foregoing, the petition is **DENIED**. The Decision dated August 4, 2004 rendered by the Office of the President in O. P. Case No. 04-D-182 (HLURB Case No. REM-A-030724-0186) is hereby **AFFIRMED**.

**SO ORDERED.**<sup>12</sup>

Its motion for reconsideration having been denied by the CA in the Resolution dated March 13, 2008, the petitioner filed the present petition for review on the following grounds:

- I. THE HONORABLE COURT OF APPEALS ERRED IN ORDERING OUTRIGHT RELEASE OF TCT NO. 619608 DESPITE PNB'S DULY REGISTERED AND HLURB[-] APPROVED MORTGAGE ON TCT NO. 619608.
- II. THE HONORABLE COURT OF APPEALS ERRED IN ORDERING CANCELLATION OF MORTGAGE/RELEASE OF TITLE IN FAVOR OF RESPONDENT DEE DESPITE THE LACK OF PAYMENT OR SETTLEMENT BY THE MORTGAGOR (API/PEPI and AFP-RSBS) OF ITS EXISTING LOAN OBLIGATION TO PNB, OR THE PRIOR EXERCISE OF RIGHT OF REDEMPTION BY THE MORTGAGOR AS MANDATED BY SECTION 25 OF PD 957 OR DIRECT PAYMENT MADE BY RESPONDENT DEE TO PNB PURSUANT TO THE DEED OF UNDERTAKING WHICH WOULD WARRANT RELEASE OF THE SAME.<sup>13</sup>

The petitioner claims that it has a valid mortgage over Dee's property, which was part of the property mortgaged by PEPI to it to secure its loan obligation, and that Dee and PEPI are bound by such mortgage. The petitioner also argues that it is not privy to the transactions between the subdivision project buyers and PEPI, and has no obligation to perform any of their respective undertakings under their contract.<sup>14</sup>

The petitioner also maintains that Presidential Decree (P.D.) No. 957<sup>15</sup> cannot nullify the subsisting agreement between it and PEPI, and that the petitioner's rights over the mortgaged properties are protected by Act 3135<sup>16</sup>. If at all, the petitioner can be compelled to release or cancel the mortgage only after the provisions of P.D. No. 957 on redemption of the mortgage by the owner/developer (Section 25) are complied with. The petitioner also objects to the denomination by the CA of the provisions in the Affidavit of

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<sup>12</sup> Id. at 64.

<sup>13</sup> Id. at 36-37.

<sup>14</sup> Id. at 37-42.

<sup>15</sup> Entitled, "The Subdivision and Condominium Buyers' Protective Decree".

<sup>16</sup> Entitled "An Act to Regulate the Sale of Property under Special Powers Inserted In or Annexed to Real Estate Mortgages".

Undertaking as stipulations *pour autrui*,<sup>17</sup> arguing that the release of the title was conditioned on Dee's direct payment to it.<sup>18</sup>

Respondent AFP-RSBS, meanwhile, contends that it cannot be compelled to pay or settle the obligation under the mortgage contract between PEPI and the petitioner as it is merely an investor in the subdivision project and is not privy to the mortgage.<sup>19</sup>

Respondent PEPI, on the other hand, claims that the title over the subject property is one of the properties due for release by the petitioner as it has already been the subject of a Memorandum of Agreement and *dacion en pago* entered into between them.<sup>20</sup> The agreement was reached after PEPI filed a petition for rehabilitation, and contained the stipulation that the petitioner agreed to release the mortgage lien on fully paid mortgaged properties upon the issuance of the certificates of title over the *dacioned* properties.<sup>21</sup>

For her part, respondent Dee adopts the arguments of the CA in support of her prayer for the denial of the petition for review.<sup>22</sup>

### **Ruling of the Court**

The petition must be **DENIED**.

The petitioner is correct in arguing that it is not obliged to perform any of the undertaking of respondent PEPI and AFP-RSBS in its transactions with Dee because it is not a privy thereto. The basic principle of relativity of contracts is that contracts can only bind the parties who entered into it,<sup>23</sup> and cannot favor or prejudice a third person, even if he is aware of such contract and has acted with knowledge thereof.<sup>24</sup> "Where there is no privity of contract, there is likewise no obligation or liability to speak about."<sup>25</sup>

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<sup>17</sup> In upholding the OP decision, the CA ruled that paragraph 6 of herein petitioner's undertaking is a stipulation *pour autrui*, which is an exception to the principle of relativity of contracts under Article 1311 of the Civil Code. According to the CA, the provision should be read in conjunction with Section 25 of P.D. No. 957, which compels the owner/developer to redeem the mortgage on the property and deliver the title to the buyer; *rollo*, pp. 59-64.

<sup>18</sup> Id. at 42-46.

<sup>19</sup> Id. at 70-75.

<sup>20</sup> Id. at 77.

<sup>21</sup> See Memorandum of Agreement dated November 22, 2006, id. at 92-95.

<sup>22</sup> Id. at 131-133.

<sup>23</sup> CIVIL CODE, Article 1311, states in part, that contracts take effect only between the parties, their assigns and heirs.

<sup>24</sup> *Spouses Borromeo v. Hon. Court of Appeals*, 573 Phil. 400, 412 (2008).

<sup>25</sup> Id. at 411-412.

The petitioner, however, is not being tasked to undertake the obligations of PEPI and AFP-RSBS. In this case, there are two phases involved in the transactions between respondents PEPI and Dee – the first phase is the contract to sell, which eventually became the second phase, the absolute sale, after Dee’s full payment of the purchase price. In a contract of sale, the parties’ obligations are plain and simple. The law obliges the vendor to transfer the ownership of and to deliver the thing that is the object of sale.<sup>26</sup> On the other hand, the principal obligation of a vendee is to pay the full purchase price at the agreed time.<sup>27</sup> Based on the final contract of sale between them, the obligation of PEPI, as owners and vendors of Lot 12, Block 21-A, Village East Executive Homes, is to transfer the ownership of and to deliver Lot 12, Block 21-A to Dee, who, in turn, shall pay, and has in fact paid, the full purchase price of the property. There is nothing in the decision of the HLURB, as affirmed by the OP and the CA, which shows that the petitioner is being ordered to assume the obligation of any of the respondents. There is also nothing in the HLURB decision, which validates the petitioner’s claim that the mortgage has been nullified. The order of cancellation/release of the mortgage is simply a consequence of Dee’s full payment of the purchase price, as mandated by Section 25 of P.D. No. 957, to wit:

Sec. 25. *Issuance of Title.* The owner or developer shall deliver the title of the lot or unit to the buyer upon full payment of the lot or unit. No fee, except those required for the registration of the deed of sale in the Registry of Deeds, shall be collected for the issuance of such title. In the event a mortgage over the lot or unit is outstanding at the time of the issuance of the title to the buyer, the owner or developer shall redeem the mortgage or the corresponding portion thereof within six months from such issuance in order that the title over any fully paid lot or unit may be secured and delivered to the buyer in accordance herewith.

It must be stressed that the mortgage contract between PEPI and the petitioner is merely an accessory contract to the principal three-year loan takeout from the petitioner by PEPI for its expansion project. It need not be belaboured that “[a] mortgage is an accessory undertaking to secure the fulfillment of a principal obligation,”<sup>28</sup> and it does not affect the ownership of the property as it is nothing more than a lien thereon serving as security for a debt.<sup>29</sup>

Note that at the time PEPI mortgaged the property to the petitioner, the prevailing contract between respondents PEPI and Dee was still the Contract to Sell, as Dee was yet to fully pay the purchase price of the property. On this point, PEPI was acting fully well within its right when it

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<sup>26</sup> CIVIL CODE, Article 1495.

<sup>27</sup> CIVIL CODE, Article 1582.

<sup>28</sup> *Situs Development Corporation v. Asiatruster Bank*, G.R. No. 180036, July 25, 2012, 677 SCRA 495, 509.

<sup>29</sup> *Typingco v. Lim*, G.R. No. 181232, October 23, 2009, 604 SCRA 396, 401.

mortgaged the property to the petitioner, for in a contract to sell, ownership is retained by the seller and is not to pass until full payment of the purchase price.<sup>30</sup> In other words, at the time of the mortgage, PEPI was still the owner of the property. Thus, in *China Banking Corporation v. Spouses Lozada*,<sup>31</sup> the Court affirmed the right of the owner/developer to mortgage the property subject of development, to wit: “[P.D.] No. 957 cannot totally prevent the owner or developer from mortgaging the subdivision lot or condominium unit when the title thereto still resides in the owner or developer awaiting the full payment of the purchase price by the installment buyer.”<sup>32</sup> Moreover, the mortgage bore the clearance of the HLURB, in compliance with Section 18 of P.D. No. 957, which provides that “[n]o mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the [HLURB].”

Nevertheless, despite the apparent validity of the mortgage between the petitioner and PEPI, the former is still bound to respect the transactions between respondents PEPI and Dee. The petitioner was well aware that the properties mortgaged by PEPI were also the subject of existing contracts to sell with other buyers. While it may be that the petitioner is protected by Act No. 3135, as amended, it cannot claim any superior right as against the installment buyers. This is because the contract between the respondents is protected by P.D. No. 957, a social justice measure enacted primarily to protect innocent lot buyers.<sup>33</sup> Thus, in *Luzon Development Bank v. Enriquez*,<sup>34</sup> the Court reiterated the rule that a bank dealing with a property that is already subject of a contract to sell and is protected by the provisions of P.D. No. 957, **is bound by the contract to sell.**<sup>35</sup>

However, the transferee BANK is bound by the Contract to Sell and has to respect Enriquez’s rights thereunder. **This is because the Contract to Sell, involving a subdivision lot, is covered and protected by PD 957.**  
 x x x.

x x x x

x x x Under these circumstances, the BANK knew or should have known of the possibility and risk that the assigned properties were already covered by existing contracts to sell in favor of subdivision lot buyers. As observed by the Court in another case involving a bank regarding a subdivision lot that was already subject of a contract to sell with a third party:

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<sup>30</sup> *Spouses Delfin O. Tumibay and Aurora T. Tumibay v. Spouses Melvin A. Lopez and Rowena Gay T. Visitation Lopez*, G.R. No. 171692, June 3, 2013.  
<sup>31</sup> 579 Phil. 454 (2008).  
<sup>32</sup> Id. at 480.  
<sup>33</sup> *Philippine Bank of Communications v. Pridisons Realty Corporation*, G.R. No. 155113, January 9, 2013, 688 SCRA 200, 214, citing *Philippine National Bank v. Office of the President*, 252 Phil. 5 (1996); *Far East Bank & Trust Co. v. Marquez*, 465 Phil. 276, 287 (2004).  
<sup>34</sup> G.R. No. 168646, January 12, 2011, 639 SCRA 332.  
<sup>35</sup> The contract to sell in Luzon Development Bank was not registered.

“[The Bank] should have considered that it was dealing with a property subject of a real estate development project. A reasonable person, particularly a financial institution x x x, should have been aware that, to finance the project, funds other than those obtained from the loan could have been used to serve the purpose, albeit partially. Hence, there was a need to verify whether any part of the property was already intended to be the subject of any other contract involving buyers or potential buyers. In granting the loan, [the Bank] should not have been content merely with a clean title, considering the presence of circumstances indicating the need for a thorough investigation of the existence of buyers x x x. Wanting in care and prudence, the [Bank] cannot be deemed to be an innocent mortgagee. x x x”<sup>36</sup> (Citation omitted)

**More so in this case where the contract to sell has already ripened into a contract of absolute sale.**

Moreover, PEPI brought to the attention of the Court the subsequent execution of a Memorandum of Agreement dated November 22, 2006 by PEPI and the petitioner. Said agreement was executed pursuant to an Order dated February 23, 2004 by the Regional Trial Court (RTC) of Makati City, Branch 142, in SP No. 02-1219, a petition for Rehabilitation under the Interim Rules of Procedure on Corporate Rehabilitation filed by PEPI. The RTC order approved PEPI’s modified Rehabilitation Plan, which included the settlement of the latter’s unpaid obligations to its creditors by way of *dacion* of real properties. In said order, the RTC also incorporated certain measures that were not included in PEPI’s plan, one of which is that “[t]itles to the lots which have been fully paid shall be released to the purchasers within 90 days after the *dacion* to the secured creditors has been completed.”<sup>37</sup> Consequently, the agreement stipulated that as partial settlement of PEPI’s obligation with the petitioner, the former absolutely and irrevocably conveys by way of “*dacion en pago*” the properties listed therein,<sup>38</sup> which included the lot purchased by Dee. The petitioner also committed to –

[R]elease its mortgage lien on fully paid Mortgaged Properties upon issuance of the certificates of title over the Dacioned Properties in the name of the [petitioner]. The request for release of a Mortgaged Property shall be accompanied with: (i) proof of full payment by the buyer, together with a certificate of full payment issued by the Borrower x x x. The [petitioner] hereby undertakes to cause the transfer of the certificates of title over the Dacioned Properties and the release of the Mortgaged Properties with reasonable dispatch.<sup>39</sup>

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<sup>36</sup> Supra note 34, at 352-353.

<sup>37</sup> *Rollo*, p. 90.

<sup>38</sup> Id. at 92.

<sup>39</sup> Id. at 93.



*Dacion en pago* or dation in payment is the delivery and transmission of ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of the obligation.<sup>40</sup> It is a mode of extinguishing an existing obligation<sup>41</sup> and partakes the nature of sale as the creditor is really buying the thing or property of the debtor, the payment for which is to be charged against the debtor's debt.<sup>42</sup> Dation in payment extinguishes the obligation to the extent of the value of the thing delivered, either as agreed upon by the parties or as may be proved, unless the parties by agreement – express or implied, or by their silence – consider the thing as equivalent to the obligation, in which case the obligation is totally extinguished.<sup>43</sup>

There is nothing on record showing that the Memorandum of Agreement has been nullified or is the subject of pending litigation; hence, it carries with it the presumption of validity.<sup>44</sup> Consequently, the execution of the dation in payment effectively extinguished respondent PEPI's loan obligation to the petitioner insofar as it covers the value of the property purchased by Dee. This negates the petitioner's claim that PEPI must first redeem the property before it can cancel or release the mortgage. As it now stands, the petitioner already stepped into the shoes of PEPI and there is no more reason for the petitioner to refuse the cancellation or release of the mortgage, for, as stated by the Court in *Luzon Development Bank*, in accepting the assigned properties as payment of the obligation, "[the bank] has assumed the risk that some of the assigned properties are covered by contracts to sell which must be honored under PD 957."<sup>45</sup> Whatever claims the petitioner has against PEPI and AFP-RSBS, monetary or otherwise, should not prejudice the rights and interests of Dee over the property, which she has already fully paid for.

As between these small lot buyers and the gigantic financial institutions which the developers deal with, it is obvious that the law—as an instrument of social justice—must favor the weak.<sup>46</sup> (Emphasis omitted)

Finally, the Court will not dwell on the arguments of AFP-RSBS given the finding of the OP that "[b]y its non-payment of the appeal fee, AFP-RSBS is deemed to have abandoned its appeal and accepts the decision of the HLURB."<sup>47</sup> As such, the HLURB decision had long been final and executory as regards AFP-RSBS and can no longer be altered or modified.<sup>48</sup>

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<sup>40</sup> *Aquintey v. Sps. Tibong*, 540 Phil. 422, 446 (2006), citing *Vda. de Jayme v. Court of Appeals*, 439 Phil. 192, 210 (2002).

<sup>41</sup> *Dao Heng Bank, Inc. v. Spouses Laigo*, 592 Phil. 172, 181 (2008).

<sup>42</sup> *Bank of the Philippine Islands v. Securities and Exchange Commission*, 565 Phil. 588, 596 (2007).

<sup>43</sup> *Tan Shuy v. Maulawin*, G.R. No. 190375, February 8, 2012, 665 SCRA 604, 614-615.

<sup>44</sup> *GSIS v. The Province of Tarlac*, 462 Phil. 471, 478 (2003).

<sup>45</sup> *Supra* note 34, at 357.

<sup>46</sup> *Philippine Bank of Communications v. Pridisons Realty Corporation*, *supra* note 33.


<sup>47</sup> CA rollo, p. 10.

<sup>48</sup> *Eastland Construction & Development Corp. v. Mortel*, 520 Phil. 76, 91 (2006).


**WHEREFORE**, the petition for review is **DENIED** for lack of merit. Consequently, the Decision dated August 13, 2007 and Resolution dated March 13, 2008 of the Court of Appeals in CA-G.R. SP No. 86033 are **AFFIRMED**.

Petitioner Philippine National Bank and respondents Prime East Properties Inc. and Armed Forces of the Philippines-Retirement and Separation Benefits System, Inc. are hereby **ENJOINED** to strictly comply with the Housing and Land Use Regulatory Board Decision dated May 21, 2003, as modified by its Board of Commissioners Decision dated March 15, 2004 and Office of the President Decision dated August 4, 2004.

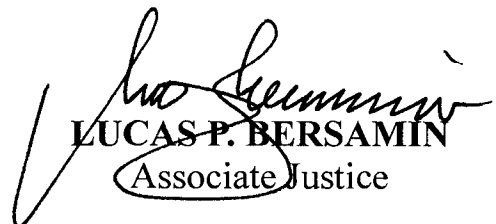
**SO ORDERED.**


  
**BIENVENIDO L. REYES**  
Associate Justice

**WE CONCUR:**

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice  
Chairperson

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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