Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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EN BANC

PRINCESS RACHEL DEVELOPMENT CORPORATION AND BORACAY ENCLAVE CORPORATION,
Petitioners,

- versus -

HILLVIEW MARKETING CORPORATION, STEFANIE DORNAU AND ROBERT DORNAU,
Respondents.

G.R. No. 222482

Present:

PERALTA, *C.J.,*
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
GESMUNDO,
REYES, J. JR.,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ,
DELOS SANTOS,[*] and
GAERLAN, *JJ.*

Promulgated:

June 2, 2020

x - x

DECISION

REYES, J. JR., *J.*:

Assailed in this Petition for Review on *Certiorari* are the November 28, 2014 Decision[1] and the January 15, 2016 Resolution[2] of the Court of Appeals-Cebu City (CA) in CA-G.R. C.V. No. 04415 which affirmed with

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[*] On leave and no part due to prior participation in the Court of Appeals' Decision.
[1] Penned by Associate Justice Marilyn B. Lagura-Yap, with Associate Justices Edgardo L. Delos Santos (now a Member of the Court), and Jhosep Y. Lopez, concurring; *rollo*, pp. 61-102.
[2] Id. at 104-107.

modification the April 30, 2012 Decision[3] of the Regional Trial Court, Kalibo, Aklan, Branch 6 (RTC) in Civil Case No. 8237, a case for *accion publiciana* and damages.

While the RTC and the CA agreed on the fact of encroachment by respondent Hillview Marketing Corporation (Hillview) on petitioners' properties, they differed on their findings as to whether Hillview was a builder in good faith or bad faith.

The Antecedents

On January 25, 2008, petitioner Princess Rachel Development Corporation (PRDC) filed a Complaint for *Accion Publiciana* and Damages with Prayer for Issuance of Writ of Preliminary Injunction against respondents Hillview, Stefanie Dornau (Stefanie) and Robert Dornau (Robert; collectively, respondents). The original complaint was amended to expunge claims for damages representing reasonable rentals in the amount of ₱3,402,669.00.[4] Later on, PRDC's prayer to hold respondents "liable to pay damages in such amount" as may be determined by the RTC was likewise expunged.[5]

In its Complaint, PRDC alleged that it is the registered and absolute owner of the following parcels of land: Lot 1-B-7-A-1 of the subdivision plan Psd-06-015339, with an area of 10,000 square meters, more or less, covered by Transfer Certificate of Title (TCT) No. T-24348; and Lot 1-B-7-B-1 of subdivision plan Psd-06-015339, with an area of 20,000 sq m, more or less, covered by TCT No. T-24349, both of the Register of Deeds of Kalibo, Aklan.

PRDC has been in physical possession of the said properties as early as May 1996 and has religiously paid the realty taxes thereon. In August 2007, Engineer Lester Madlangbayan (Engr. Madlangbayan) conducted a relocation survey on the properties and it was discovered that Hillview, which owns the adjoining property known as Lot 1-B-7-A-2, has encroached an area of 2,614 sq m, more or less.[6] Further, respondents have built condominium units known as the Alargo Residences on the encroached area without PRDC's knowledge and consent. A survey conducted by Engr. Madlangbayan in September 2007 showed an encroachment of 4,685 sq m

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3 Penned by Presiding Judge Jemena L. Abellar Arbis; id. at 136-171.
4 Id. at 15 and 66.
5 Id. at 69.
6 Id. at 12.

when he inadvertently included a portion of a property belonging to the Vargas family in the survey.[7]

PRDC alleged that the construction of the buildings on the encroached area was done in bad faith as the respondents have full knowledge of the territorial boundaries of their respective properties. Consequently, on September 20, 2007, PRDC sent respondents a demand letter requesting them to vacate the subject premises, but the latter ignored it. A subsequent letter to vacate was sent on September 27, 2007, but it was likewise left unheeded.

In their Answer, respondents counter that petitioner did not have prior physical possession over the disputed area. There was no manifestation of PRDC's claim of possession over the area in controversy and there was no noticeable mark or boundary which delineated the adjoining properties. The Alargo Residences project was allegedly constructed within respondents' own land which they bought from Leo Niel Tirol and Dem Tirol (the Tirols). Further, respondents diligently examined the titles and boundaries of the properties, and even obtained an approved survey plan thereof before they started the construction of the Alargo Residences project sometime in 2004.

Respondents also argue that PRDC has no cause of action against Stefanie and Robert because Hillview is imbued with a separate juridical personality, and there was no allegation of any specific wrongful act or omission on the part of Stefanie and Robert. Respondents contend that Hillview is both a buyer and builder in good faith, having bought the land free from any liens or encumbrances, and having constructed structures within the premises of the land which they bought from the Tirols.

The RTC directed the parties to submit their respective survey reports which shall be reviewed and evaluated by the court-appointed Commissioner. In compliance, PRDC submitted the relocation survey report with the attached survey plans, revealing an encroachment of about 2,614 sq m. Respondents, on the other hand, submitted the consolidated sketch plan, but not the relocation survey report. The consolidated sketch plan was a table survey which was made without the surveyor conducting an actual survey on the ground.[8]

A survey was then scheduled by the court-appointed Commissioner. This survey was sought to be postponed by respondents on various grounds.[9]

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7 Id. at 13.
8 Id. at 16.
9 Id. at 17 and 67-68.

The survey was nevertheless conducted and, thereafter, the Commissioner submitted his Report,[10] with the following observations:

> When plotted all structures using all references intact in actual ground, it was found out that portion of perimeter of concrete fence constructed by [Hillview] encroached the area claimed by [PRDC]. Area encroached in Lot 1-B-7-B-1 is 383 square meters and 2,400 square meters in Lot 1-B-7-A-1 with a total area of 2,783 square meters.
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> The land in question is fully developed with 3 conc. houses inside and a swimming pool.[11]

Respondents opposed the Commissioner's Report and were, thus, instructed by the RTC to submit its own survey on the land. Trial on the merits thereafter ensued.

Among the witnesses presented by PRDC was Engr. Reynaldo Lopez (Engr. Lopez) who testified that he was hired by Hillview to survey Lot 1-B-7-A-2. At the survey, Engr. Lopez discovered an error in the concrete monuments mounted on the boundary limits of Hillview that encroached upon the boundary of PRDC. He informed Stefanie's husband and one of Hillview's owners, Martin Dornau (Martin), of the encroachment, but the latter instructed him to nevertheless proceed with the survey and that he will be responsible for the error.[12] Since the adjoining property was vacant, Hillview kept developing the property.

Engr. Lopez further testified that he made an actual survey of the boundaries of Hillview and discovered that the boundary pointed by Hillview is not in accordance with the title. The boundary line agreed upon by the Tirols and the Vargases does not conform to the titles of the lots, and using this boundary line will result in encroachment. Again, Engr. Lopez informed Martin of his findings, but the latter nevertheless instructed him to proceed since the adjoining lot was vacant.[13] The lots were then surveyed and all corner monuments were fully monumented, but the geographical position on the ground was altered and not in accordance with the title.[14] They then proceeded with the partition and Hillview made improvements thereon.

Engr. Lopez explained that the reason why no encroachment was stated in the subdivision plans of Hillview was because the plans were based

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10 Id. at 121-122.
11 Id. at 122.
12 Id. at 140.
13 Id.
14 Id. at 141.

on the wrong boundary lines.[15] He further explained that he was not allowed by the Vargases to place monuments as the existing concrete monuments were along the boundary of the Tirols and the Vargases. When he surveyed the lot of the Tirols being sold to Hillview, there were monuments that were already planted, but it was not in accordance with the technical description of the land.[16] Engr. Lopez stressed that he informed Martin of the foregoing.[17]

For its part, respondents presented, among others, the testimony of Althea C. Acevedo (Acevedo), the Chief of Technical Services Section of the Department of Environment and Natural Resources (DENR). Acevedo testified that the survey plans were submitted by Engr. Lopez and were approved by the DENR since said survey plans did not overlap with any previous plans. She further testified that the survey plans did not indicate any encroachment. On cross-examination, she confirmed that there can be a situation where no encroachment is indicated in the survey plans, but at actual ground survey there is an encroachment because of the reference point that was used. She testified that in this case, the reference monument was transferred two to three meters and that, accordingly, there is a great possibility of an encroachment.[18]

The testimony of Atty. Rodolfo B. Pollentes (Atty. Pollentes), a geodetic engineer hired by respondents, was also presented. He sought to excuse respondents' non-submission of their own relocation survey for lack of reliable reference point within the two properties.[19] He also impugns the survey conducted by the court-appointed Commissioner as it was supposedly conducted while the parties' representatives were discussing about the postponement of the survey.[20] Atty. Pollentes also represented that since Engr. Lopez refutes his own survey, he should be liable for damages and revocation of license.[21]

Notably, respondents did not present any geodetic engineer who may have conducted a relocation survey of its own property.

On rebuttal, Engr. Lopez testified that since there was a mistake in the survey plans which he submitted to the DENR, he wrote a letter seeking for the cancellation of said plans.[22] Acevedo confirmed receipt of Engr. Lopez's

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15 Id. at 142.
16 Id.
17 Id.
18 Id. at 145.
19 Id. at 146.
20 Id.
21 Id. at 147.
22 Id.

request for cancellation, but stressed that if titles were already issued for the sub-lots, these titles should first be cancelled before the cancellation of the survey plans.[23]

Meanwhile, PRDC sold its properties to Boracay Enclave Corporation (Boracay Enclave). For this reason, Boracay Enclave was joined as a party to the case.[24]

The RTC Ruling

In a Decision dated April 30, 2012, the RTC ruled that there was encroachment on the basis of the survey conducted by the court-appointed Commissioner. It found that respondents encroached on about 383 sq m on Lot 1-B-7-B-1 and into about 2,400 sq m in Lot 1-B-7-A-1 of PRDC's properties, or a total of 2,783 sq m.

The RTC noted that the adjoining properties of PRDC and respondents were registered and, as such, encroachment can be determined by checking the metes and bounds of the properties as set forth in the titles. The parties' titles in this case contained no errors in the technical descriptions. To settle the issue of encroachment, the RTC emphasized that it ordered the parties to submit their respective relocation surveys, but respondents failed to comply.[25] At any rate, the RTC observed that the fact of encroachment was settled through the actual survey conducted by the court-appointed Commissioner.[26]

As to the issue of whether or not respondents are builders in bad faith, the RTC took note that PRDC anchored its imputation of bad faith on the testimony of Engr. Lopez. While noting that Engr. Lopez was the one who conducted the survey, discovered the encroachment, caused the survey to be approved, and who later on assailed these surveys as erroneous, the RTC was nevertheless convinced that Engr. Lopez has informed Martin of the encroachment which the latter ignored. The RTC found that respondents deliberately ignored Engr. Lopez's discovery as they were bent on developing the properties. In fact, the RTC noted that at the time of the survey, respondents have a subdivision plan already prepared.[27]

The RTC also held that respondents' bad faith was further proven by the fact that Martin, despite having knowledge of the encroachment,

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23 Id.
24 Id. at 19.
25 Id. at 150.
26 Id. at 151.
27 Id. at 155.

acquiesced to the use of the wrong boundary line dividing the properties of the Tirols and the Vargases.[28] The RTC declared that it was beneficial for the respondents to just maintain the use of the wrong boundary line as there were already established improvements on the premises. The use of the wrong boundary line resulted to the encroachment upon PRDC's adjoining properties.[29]

Anent respondents' defense that their survey plans were approved and adopted by the DENR, the RTC ruled that such approval does not prove that there was no error in the conduct of the surveys or that respondents did not consent to the encroachment. The RTC noted that an approved survey may actually later on be corrected or cancelled.[30] It likewise noted that Engr. Lopez himself assails the correctness of the surveys he conducted and prepared, thus, there was no reason for respondents to insist on adopting and relying upon such surveys.[31]

In conclusion, the RTC held that respondents acted in bad faith in introducing improvements on the encroached areas of PRDC's properties, and that, in spite of this, respondents refused to vacate the area despite demand.

Consequently, the RTC ordered respondents, jointly and severally, to vacate and demolish the buildings and improvements in the encroached premises at its own cost, and to return physical possession thereof to PRDC. The RTC also ordered respondents to pay attorney's fees in the amount of ₱200,000.00 and litigation expenses in the total amount of ₱3,546,163.20, composed of ₱143,494.20 as legal fees and ₱3,402,669.00 as additional filing fees.

The *fallo* reads:

> WHEREFORE, in view of the foregoing premises, this Court hereby rules and so holds that the defendants have encroached into the properties of the plaintiff consisting of 383 sq m in Lot 1-B-7-B-1 covered by TCT No. T-24349 and 2,400 sq m in Lot 1-B-7-A-1 covered by TCT No. T-24348 or a total of 2,783 sq m in the name of plaintiff Princess Rachel Development Corporation and now in the name of Boracay Enclave Corporation. This Court also finds the defendants acting in bad faith in introducing the improvements on the said encroached areas of plaintiff's properties. By reason of the encroachment by defendant of plaintiff's properties and having refused to vacate said area despite

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28 Id. at 160.
29 Id. at 164.
30 Id. at 167.
31 Id. at 170.

> demand, the plaintiff was forced to file this case and is entitled to recover litigation expenses in the amount of P143,494.20 (Legal Fees form dated January 25, 2008) plus P3,402,669.00 as additional filing fees or a total of P3,546,163.20 and attorney's fee of P200,000.00.
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> For this reason, the defendants, jointly and severally, are hereby ordered to vacate the said premises and demolish the buildings and improvements made in the encroached premises at its own cost and to return to plaintiff the physical possession of the encroached premises and to pay plaintiff the amount of P3,546,163.20 for litigation/filing fees and P200,000.00 as attorney's fees.
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> SO ORDERED.[32]

Aggrieved, respondents appealed to the CA on the arguments that the encroachment was not established since the survey conducted by the court-appointed Commissioner was void since the latter did not take an oath before assuming his duties and that, instead, the approved survey plans prepared by Engr. Lopez which do not show any encroachment should be given weight. Respondents also dispute the finding of bad faith as they allegedly built on their own land which they bought from the Tirols. Should there be any finding of encroachment, they argued that it should be Engr. Lopez who must be held accountable because of his professional misconduct.[33] Respondents also questioned the RTC's award of attorney's fees and litigation expenses for lack of basis.[34]

The CA Ruling

In a Decision dated November 28, 2014, the CA affirmed with modification the RTC's ruling.

The CA disregarded respondents' contention as regards the validity of the survey conducted by the court-appointed Commissioner and upheld the RTC's finding that respondents encroached on 2,783 sq m of PRDC's properties.

Nevertheless, the CA declared that Hillview is a builder in good faith.

The CA held that there was no sufficient proof of bad faith because the testimony of Engr. Lopez was inherently weak. As an expert in the field, it was Engr. Lopez's duty to see to it that the subdivision and survey plans he prepared for Hillview were true and accurate. As such, his clients had the

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32 Id. at 170-171.
33 Id. at 81.
34 Id. at 82.

right to rely on the survey reports and respondents could not be faulted for doing so. According to the CA, there was no showing that Martin's alleged knowledge of the encroachment was relayed to the respondents.[35]

The CA further held that the subdivision and survey plans prepared by Engr. Lopez remain valid and subsisting to this date. These were the same plans which respondents relied upon when they caused the construction of Alargo Residences.[36]

The CA likewise noted that PRDC waited for a considerable time before protecting its rights since the construction of the Alargo Residences began in 2004 while the complaint was filed only in 2007.[37]

Citing Article 527 of the Civil Code, the CA held that since good faith is presumed and there is no sufficient proof to show that respondents are guilty of bad faith, they should be presumed to have built the properties in good faith.

As builders in good faith, the CA held that the provisions of the Civil Code, specifically, Article 448 (giving the landowner the choice to appropriate the building by payment of indemnity or to pay the price of the land), Article 546 (giving the builder in good faith the right to be indemnified for the necessary and useful expenses) and Article 548 (giving the possessor in good faith the right to remove ornaments without causing injury to the principal thing) should be applied.[38]

The CA affirmed the RTC's award for attorney's fees and litigation expenses, but deleted the award of ₱3,402,669.00 as additional filing fees on the ground that PRDC did not pay such amount when they filed the complaint as they in fact deleted the claim for rentals over the encroached property.

Anent the liability of Stefanie and Robert, the CA held that they cannot be held solidarily liable with Hillview which enjoys a separate juridical personality in the absence of proof that said stockholders acted in bad faith.[39]

Hence, the CA disposed the case in this wise:

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35 Id. at 92.
36 Id. at 93.
37 Id. at 93-94.
38 Id. at 96.
39 Id. at 97.

WHEREFORE, premises considered, the instant appeal is PARTIALLY GRANTED and the assailed Decision dated April 30, 2012 is AFFIRMED with MODIFICATION. The award of P3,402,669.00 as additional filing fees in favor of plaintiffs-appellees is DELETED. Only defendant-appellant Hillview Marketing Corporation is liable. The case is REMANDED to the Regional Trial Court, Branch 6, Kalibo, Aklan 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. [T]he present fair price of the plaintiff-appellees' lot encroached upon;

   b. [T]he amount of the expenses spent by defendants-appellants for the construction of the buildings situated on plaintiffs-appellees' lot;

   c. [T]he increase in value ("plus value") which the said lot may have acquired by reason of the construction; and

   d. [W]hether the value of said land is considerably more than that of the improvements built thereon.

2. After said amounts shall have been determined by competent evidence, the Regional Trial Court shall render judgment, as follows:

   a. The trial court shall grant the plaintiffs-appellees a period of fifteen (15) days within which to exercise their option under Article 448 of the Civil Code, whether to appropriate the improvements as their own by paying to defendants-appellants either the amount of the expenses spent by them for the building of the improvements, or the increase in value ("plus value") which the said lot may have acquired by reason thereof, or to oblige [the] defendants-appellants to pay the price of the said land. The amounts to be respectively paid by the plaintiffs-appellees and defendants-appellants, in accordance with the option thus exercised by written notice of the other party and to the Court, shall be paid by the obligor within fifteen (15) days from such notice of the option by tendering the amount to the Court in favor of the party entitled to receive it;

   b. The trial court shall further order that if the plaintiffs-appellees exercises the option to oblige defendants-appellants to pay the price of the land but if the latter rejects such purchase because, as found by the trial court, the value of the land is considerably more than those of the buildings, defendants-appellants shall give written notice of such rejection to the plaintiffs-appellees and to the Court within fifteen (15) days from notice of the plaintiffs-appellees' option to sell the land.

In that event, the parties shall be given a period of fifteen (15) days from such notice of rejection within which to agree upon the terms of the lease, and give the Court formal written notice of such agreement and its *provisos*. If no agreement is reached by the parties, the trial court, within fifteen (15) days from and after the termination of the said period fixed for negotiation, shall then fix the terms of the lease, payable within the first five (5) days of each calendar month. The period for the forced lease shall not be more than two (2) years, counted from the finality of the judgment, considering the long period of time since petitioners have occupied the subject area. The rental thus fixed shall be increased by ten percent (10%) for the second year of the forced lease.

Defendants-appellants shall not make any further constructions or improvements on the lot. Upon expiration of the two(2)-year period, or upon default by defendants-appellants in the payment of rentals for two (2) consecutive months, the plaintiffs-appellees shall be entitled to terminate the forced lease, to recover their land, and to have the improvements removed by defendants-appellants at the latter's expense. The rentals herein provided shall be tendered by defendants-appellants to the Court for payment to the plaintiffs-appellees, and such tender shall constitute evidence of whether or not compliance was made within the period fixed by the Court.

c. In any event, defendants-appellants shall pay the plaintiffs-appellees reasonable compensation for the occupancy of plaintiffs-appellees' land for the period counted from the year defendants-appellants occupied the subject area, 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 inextendible, 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.[40]

PRDC and Boracay Enclave (collectively, petitioners) moved for reconsideration, but the same was denied by the CA in a Resolution dated January 15, 2016. Hence, this petition for review on *certiorari* raising the following errors:

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[40] Id. at 99-102.

I

THE [CA] ERRED IN HOLDING THAT THE TESTIMONY OF ENGR. LOPEZ WAS INHERENTLY WEAK AND WAS INSUFFICIENT TO PROVE BAD FAITH ON THE PART OF THE RESPONDENTS.

II

THE [CA] ERRED IN HOLDING THAT SINCE THE SUBDIVISION AND SURVEY PLANS PREPARED BY ENGR. LOPEZ REMAINED VALID AND SUBSISTING TO THIS DAY, THE RESPONDENTS WHO JUST RELIED THEREON ARE NOT BUILDERS IN BAD FAITH.

III

THE [CA] ERRED IN RULING THE RESPONDENTS BUILDERS IN GOOD FAITH BASED ON THE PERCEIVED INACTION OF THE PETITIONERS TO PROTECT THEIR RIGHTS.[41]

Petitioners argue that Engr. Lopez had personally known about respondents' encroachment on petitioners' properties and he had personally informed Martin, thus, respondents were already aware that the area where they built the Alargo Residences were not theirs; that respondents never refuted the allegations of Engr. Lopez about Martin's prior knowledge of petitioners' ownership of the encroached premises; that respondents did not even bother to present any testimonial evidence to prove their good faith; and that it is the duty of respondents to deny any knowledge on their part about the encroachment and prove that Martin never relayed to them such information.[42]

In their Comment,[43] respondents counter that they have the right to rely on the subdivision and survey plans prepared by Engr. Lopez because these were approved by the DENR-LMS, a government agency tasked to verify the same; that the approved subdivision and survey plans are public documents which carry with it the presumption of regularity and constitute *prima facie* evidence of the facts stated therein; that Hillview should be considered a builder in good faith because it merely relied on the regular, official and professional execution of Engr. Lopez's duty as a duly licensed geodetic engineer when he surveyed the properties it acquired from the Tirols; and that after being shown the sketch plans, Hillview relied in good faith on Engr. Lopez's technical and professional opinion, and was convinced that the properties sought to be purchased were within the

41 Id. at 22.
42 Id. at 23-50.
43 Id. at 190-206.

technical boundaries as stated in their titles and did not encroach on the adjoining properties.

In their Reply,[44] petitioners contend that the validity of the subdivision plans does not determine whether respondents had knowingly constructed their structures in the properties of petitioners; and that even at the time of the initial surveys of the lots in issue, Engr. Lopez already informed Martin about the encroachment on petitioners' lots, but the same was just dismissed by Martin who then told Engr. Lopez to proceed with the survey of the lot.

The Court's Ruling

There is merit in the petition. There is no dispute as regards the fact of encroachment as this much was settled by the RTC and the CA, which factual finding being amply supported by evidence binds the Court. The controversy lies as to whether Hillview was a builder in good faith or bad faith, as the character of its possession over the encroached portion largely determines the parties' relative rights and obligations.

I.
Hillview is a Builder in Bad Faith

Bad faith contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes.[45] To be deemed a builder in good faith, it is essential that a person asserts title to the land on which he builds, *i.e.*, that he be a possessor in the concept of owner, and that he be unaware that there exists in his title or mode of acquisition any flaw which invalidates it.[46]

The factual circumstances surrounding the instant case lead the Court to inevitably conclude that Hillview was a builder in bad faith.

As competently pointed out by Justice Zalameda and Justice Carandang, the encroachment in this case covers 2,783 sq m. Given that such encroachment is substantial, visible to the naked eye, and not merely negligible, Hillview could not feign ignorance thereof.

Hillview was also actually informed by Engr. Lopez of the intrusion, but nevertheless proceeded with the development. The Court, thus, takes

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44 Id. at 211-221.

45 *See Villanueva v. Sandiganbayan*, 295 Phil. 615, 623 (1993).

46 *Spouses Espinoza v. Spouses Mayandoc*, 812 Phil. 95, 102 (2017).

with a grain of salt Hillview's contention that it merely relied on the surveys prepared by Engr. Lopez given the latter's testimony that he discovered the use of the wrong boundary line as early as the time when the property was being sold by the Tirols to Hillview. The use of this wrong boundary line despite the resultant encroachment was nevertheless maintained by Hillview.

Hillview also took advantage of the fact that PRDC's adjoining property was vacant, thus, it proceeded with the construction which remained unhampered as PRDC knew nothing thereof.

Further, at the trial before the RTC, Hillview was given the opportunity to present evidence to dispute the alleged encroachment. However, instead of doing so, Hillview submitted a mere consolidated sketch plan which was accomplished without the surveyor conducting an actual physical survey. Hillview also sought to postpone the survey to be conducted by the court-appointed Commissioner, and when the survey was not postponed, Hillview impugned the same as supposedly having been made clandestinely.

Significantly as well, Hillview is not an ordinary landowner, but a property developer. Hillview is undeniably engaged in large-scale property development projects where it is expected to exercise a higher degree of diligence. More so in this case where there was no noticeable mark or boundary which delineated the adjoining properties. As a large property developer, Hillview ought to have, and which it could have easily dispensed, verified the definite boundaries of the property it sought to improve.

Clearly, these facts when taken together, show that Hillview was not unaware that it possesses the encroached portion improperly or wrongfully.[47] Bad faith on the part of Hillview is, thus, evident.

II.
PRDC is a Landowner in Good Faith

As a registered owner, PRDC enjoys the indefeasibility of its titles and, thus, "may rest secure without necessity of waiting in the portals of the court sitting in the '*mirador de su casa*' to avoid the possibility of losing his land."[48] Thus, PRDC had the right to eject any person illegally occupying its property, and although it may be aware of Hillview's encroachment, PRDC

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47 CIVIL CODE, Art. 528.

48 *Salao, v. Salao,* 162 Phil. 89, 116 (1976).

maintains the right to demand the return of its property as registered owner thereof.[49]

However, in relation to possession, a landowner may be in good faith or may be deemed in bad faith depending on the landowner's knowledge of the fact of encroachment. A landowner is deemed in bad faith when there are circumstances indicating that he had become aware of the encroachment and had chosen not to act on it. In such cases, the owner's failure to act gives rise to laches or estoppel, and bars the registered owner from asserting good faith. Article 453 of the Civil Code provides:

> ART. 453. If there was bad faith, not only on the part of the person who built, planted or sowed on the land of another, but also on the part of the owner of such land, the rights of one and the other shall be the same as though both had acted in good faith.
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> **It 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.** (Emphasis supplied)

The circumstances of the instant case show that PRDC had become aware of Hillview's encroachment only in 2007 when it decided to conduct a relocation survey on its properties because of the contemplated sale to Boracay Enclave. While the construction of the Alargo Residences commenced in 2004, the fact of encroachment was not known to PRDC at that time considering that it holds office in Quezon City while the properties were in Boracay. From PRDC's discovery of Hillview's encroachment in 2007 as a consequence of the relocation survey, PRDC lost no time in asserting its right and protecting its interest by sending Hillview notices to vacate which unfortunately went unheeded and which eventually lead to the immediate filing of the complaint *a quo*. Thus, PRDC is a landowner in good faith.

III.
Rights and obligations of the parties

Because of the CA's erroneous conclusion that Hillview was a builder in good faith, the CA likewise erred in applying Articles 448 in relation to Articles 546 and 548 of the Civil Code (possessor's right of reimbursement and retention) as these provisions apply where the builder acted in good faith.

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[49] *See Arroyo v. Bocago Inland Development Corp.*, 698 Phil. 626, 636 (2012), citing *Labrador v. Spouses Perlas*, 641 Phil. 388, 396 (2010).

Instead, the following provisions of the Civil Code governing the rights of a landowner in good faith and a builder in bad faith find application in this case:

> ART. 449. He who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without right of indemnity.
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> ART. 450. The owner of the land on which anything has been built, planted or sown in bad faith may demand the demolition of the work, or that the planting or sowing be removed, in order to replace things in their former condition at the expense of the person who built, planted or sowed; or he may compel the builder or planter to pay the price of the land, and the sower the proper rent.
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> ART. 451. In the cases of the two preceding articles, the landowner is entitled to damages from the builder, planter or sower.
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> ART. 452. The builder, planter or sower in bad faith is entitled to reimbursement for the necessary expenses of preservation of the land.
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> x x x x
>
> 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.

Thus, petitioners have the right to appropriate what has been built on its property, without any obligation to pay indemnity therefor. Due to its bad faith, Hillview forfeits what it has built without any right to be paid indemnity. While necessary expenses shall be refunded to the builder, whether he built the same in good faith or in bad faith, PRDC's properties were in fact not preserved but used, and were consequently damaged, for the construction of Hillview's project. Notably, as well, Hillview did not file a counterclaim for the refund of necessary expenses to which it may have been entitled, if at all.[50] Neither does Hillview have the right of retention over the encroached portions as the right of retention is afforded only to a possessor in good faith.

Should petitioners choose not to exercise its right to appropriate the improvements as granted to it under Article 449 of the Civil Code, it may exercise either of its alternative rights under Articles 450 and 451, *i.e.,* (a) to demand the removal or demolition of what has been built at Hillview's expense; or (b) to compel Hillview to pay the price or value of the portions it had encroached upon, whether or not the value of the land is considerably more than the value of the improvements.

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[50] *See Beltran v. Valbuena*, 53 Phil. 697, 700-701 (1929).

These considered, the RTC's order to "demolish the buildings and improvements made in the encroached premises at its own cost" should be modified so as to correctly reflect the foregoing alternative rights given to the landowner.

IV.
Award of damages

In addition, Article 451 of the Civil Code grants the landowner the right to recover damages from a builder in bad faith. While Article 451 does not provide the basis for damages, the amount thereof should reasonably correspond with the value of the properties lost or destroyed as a result of the occupation in bad faith, as well as the fruits from those properties that the landowner reasonably expected to obtain.[51]

While the Court had allowed the award of actual damages representing reasonable compensation or monthly rental for the use and occupation of the landowner's property,[52] we find no basis to award actual or compensatory damages in this case considering that PRDC itself deleted its prayer for reasonable rentals and other damages as may be determined by the Court. Article 2199 of the Civil Code also provides that actual damages must be duly proved.[53] For these reasons, as well, we find the CA's deletion of the award of ₱3,402,669.00 to be proper.

Temperate damages could not likewise be awarded since there is no basis for the Court to conclude that PRDC indeed suffered some pecuniary loss and that only the amount thereof cannot be ascertained.[54] Nevertheless, since Article 451 of the Civil Code guarantees the award of damages in favor of the landowner and as further punishment for the builder's bad faith, we find it proper to award nominal damages. Nominal damages are awarded in every case where any property right has been invaded. Articles 2221 and 2222 of the Civil Code provide:

> ART. 2221. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

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51 *Heirs of Durano, Sr. v. Spouses Uy*, 398 Phil. 125, 155, (2000).

52 *Spouses Aquino v. Spouses Aguilar*, 762 Phil. 52, 71 (2015).

53 CIVIL CODE, Art. 2199 provides:
Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

54 *See Seven Brothers Shipping Corp. v. DMC-Construction Resources, Inc.*, 748 Phil. 692, 701 (2014).

> ART. 2222. The court may award nominal damages in every obligation arising from any source enumerated in Article 1157, **or in every case where any property right has been invaded.** (Emphasis supplied)

Since Hillview indubitably violated the property rights of PRDC, the Court finds that nominal damages in the amount of ₱100,000.00 is warranted under the circumstances.[55]

V.

Solidary liability of respondents

Finally, petitioners question the CA's reversal of the RTC's finding of respondents' solidary liability on the argument that individual respondents Stefanie and Robert, as stockholders and corporate officers, benefited from the construction of the Alargo Park Residences.[56] Petitioners, thus, urge the Court to pierce the veil of corporate fiction.

To hold a corporate officer personally liable for corporate obligations, two requisites must concur: (a) it must be alleged that the officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and (b) such unlawful acts, negligence or bad faith must be clearly and convincingly proven.[57]

Here, apart from its allegation, petitioners have not presented proof that Hillview was a mere alter ego of individual respondents to justify the piercing of the veil of corporate fiction. The question of whether a corporation is a mere alter ego is purely one of fact.[58] Thus, before this doctrine can be applied, the parties must have presented evidence for and/or against piercing the veil of corporate fiction. Fundamental is the rule that bare allegations, unsubstantiated by evidence, are not equivalent to proof.[59]

Failing in its burden to prove by clear and convincing evidence that individual respondents Stefanie and Robert assented to Hillview's unlawful acts or are guilty of gross negligence or bad faith, petitioners cannot hold said individual respondents personally and solidarily liable with Hillview's corporate liabilities. As such, we find no reason to reverse the CA's finding on this score.

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55 *See Pen Development Corporation v. Martinez Leyba, Inc.*, 816 Phil. 554, 573 (2017).
56 *Rollo*, p. 45.
57 *Zaragoza v. Tan*, 847 Phil. 437, 454 2017.
58 *Concept Builders, Inc. v. National Labor Relations Commission*, 326 Phil. 955, 966 (1996).
59 *Domingo v. Robles*, 493 Phil. 916, 921 (2005).

WHEREFORE, the petition is **PARTLY GRANTED**.

The November 28, 2014 Decision and the January 15, 2016 Resolution of the Court of Appeals in CA-G.R. C.V. No. 04415 are **REVERSED** insofar as it found Hillview Marketing Corporation to be a builder in good faith and insofar as it applied the provisions of Articles 448, 546, and 548 of the Civil Code in determining the rights and obligations of the parties.

Accordingly, the April 30, 2012 Decision of the Regional Trial Court, Kalibo, Aklan, Branch 6 in Civil Case No. 8237 is **REINSTATED** insofar as it:

1. Found respondent Hillview Marketing Corporation to have encroached on 383 sq m of Lot 1-B-7-B-1 covered by TCT No. T-24349 and 2,400 sq m of Lot 1-B-7-A-1 covered by TCT No. T-24348 registered in the name of petitioner Princess Rachel Development Corporation, and to have acted in bad faith in introducing improvements thereon;

2. Ordered Hillview Marketing Corporation to vacate the encroached portions and surrender possession thereof to petitioners; and

3. Awarded litigation expenses in the amount of ₱143,494.20 and attorney's fees in the amount of ₱200,000.00.

The case is **REMANDED** to the Regional Trial Court for further proceedings for the proper application of Articles 449, 450, and 451 of the Civil Code. The trial court shall grant petitioners a reasonable period within which to exercise its option either to:

1. Appropriate what has been built without any obligation to pay indemnity therefor, or

2. Demand that Hillview Marketing Corporation remove what it had built, or

3. Compel Hillview Marketing Corporation to pay the value of the land.

In any case, Hillview Marketing Corporation is further **ORDERED** to pay nominal damages in the amount of ₱100,000.00.

The Decision and the Resolution of the Court of Appeals are **AFFIRMED** insofar as it absolved individual respondents Stefanie Dornau and Robert Dornau of solidary liability with Hillview Marketing Corporation, and deleted the award of additional filing fees in the amount of ₱3,546,163.20.

SO ORDERED.

JOSE C. REYES, JR.
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

See Separate Concurring Opinion

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

Please see separate opinion

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

Pls. see Separate Concurring Opinion

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

(On Leave) and
(No part)
EDGARDO L. DELOS SANTOS
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified 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.

DIOSDADO M. PERALTA
Chief Justice

CERTIFIED TRUE COPY

EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court

EN BANC

G.R. No. 222482 – PRINCESS RACHEL DEVELOPMENT CORPORATION AND BORACAY ENCLAVE CORPORATION, *Petitioner,* v. **HILLVIEW MARKETING CORPORATION, STEFANIE DORNAU AND ROBERTO DORNAU,** *Respondents.*

Promulgated:
June 2, 2020

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

CONCURRING OPINION

LEONEN, *J.*:

Both the Regional Trial Court[1] and the Court of Appeals[2] found that Hillview Marketing Corporation (Hillview) encroached on 2,783 sq. m.[3] of Princess Rachel Development Corporation's (Princess Rachel) property. However, in determining the rights and duties of the parties, the trial and appellate courts contrarily decided on whether Hillview, in doing so, acted in good or bad faith.

On the basis of Engineer Reynaldo Lopez's[4] (Engineer Lopez) testimony, the Regional Trial Court declared Hillview a builder in bad faith.[5] Engineer Lopez testified that when he "discovered an error in the concrete monuments mounted on the boundary limits"[6] of Hillview's property, he relayed the matter of intrusion to one of Hillview's owners, Martin Dornau (Martin).[7] Despite the notice, Martin nevertheless directed Engineer Lopez to continue with the survey assuring that he will stand accountable for the error mentioned.[8]

Accordingly, the Regional Trial Court ordered Hillview to vacate the encroached portion and to remove the improvements made on it at its own cost.[9] The dispositive portion of the trial court's Decision reads:

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1 *Ponencia,* p. 6.
2 Id. at 8.
3 Id. at 3–4. Based on the survey conducted by the court-appointed Commissioner, Hillview encroached on 383 square meters in Lot 1-B-7-B-1 and 2,400 square meters in Lot 1-B-7-A-1 of Princess Rachel's properties.
4 Hillview is the owner of the adjoining property identified as Lot 1-B-7-A-2. It hired Engineer Lopez to survey the property.
5 Id. at 6–7.
6 Id. at 4
7 Id. Martin Dornau is also the husband of the other respondent, Stefanie Dornau.
8 Id.
9 Id. at 7.

> **WHEREFORE,** in view of the foregoing premises, this Court hereby rules and so holds that the defendants have encroached into the properties of the plaintiff consisting of 383 square meters in Lot 1-B-7-B-1 covered by TCT No. T-24349 and 2,400 square meters in Lot 1-B-7-A-1 covered by TCT No. T-24348 or a total of 2,783 square meters in the name of plaintiff Princess Rachel Development Corporation and now in the name of Boracay Enclave Corporation. This Court also finds the defendants acting in bad faith in introducing the improvements on the said encroached areas of plaintiff's properties. By reason of the encroachment by defendant of plaintiff's properties and having refused to vacate said area despite demand, the plaintiff was forced to file this case and is entitled to recover litigation expenses in the amount of P143,494.20 (Legal Fees form [sic] dated January 25, 2008) plus P3,402,669.00 as additional filing fees or a total of P3,546,163.20 and attorney's fee of P200,000.00.
>
> For this reason, the defendants, jointly and severally, are hereby ordered to vacate the said premises and demolish the buildings and improvements made in the encroached premises at its own cost and to return to plaintiff the physical possession of the encroached premises and to pay plaintiff in the amount of P3,546,163.20 for litigation/filing fees and P200,000.00 as attorney's fees.
>
> **SO ORDERED.**[10] (Emphasis in the original)

On appeal, however, the testimony of Engineer Lopez was found innately weak.[11] Hinging on his proficiency, the Court of Appeals pointed out that Engineer Lopez should have ensured that the survey and subdivision plans he made were "true and accurate."[12] Hillview, as a client, cannot be faulted in relying on these survey reports.[13]

The Court of Appeals added that there was no indication that Martin conveyed the information he got from Engineer Lopez to Hillview.[14] It also emphasized Princess Rachel's belated filing of the complaint in 2007 despite the construction of the Alargo Residences as early as 2004.[15]

Accordingly, the Court of Appeals declared that Hillview is a builder in good faith[16] and ruled that Articles 448,[17] 546,[18] and 548[19] of the Civil

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10 Id. at 7–8.
11 Id. at 8.
12 Id.
13 Id.
14 Id.
15 Id. at 9.
16 Id.
17 CIVIL CODE, art. 448 provides:

> ARTICLE 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.

18 CIVIL CODE, art. 546 provides:

Code apply in its favor.[20] The dispositive portion of the appellate court's Decision provides:

> **WHEREFORE**, premises considered, the instant appeal is PARTIALLY GRANTED and the assailed Decision dated April 30, 2012 is AFFIRMED with MODIFICATION. The award of P3,402,669.00 as additional filing fees in favor of plaintiffs-appellees is DELETED. Only defendant-appellant Hillview Marketing Corporation is liable. The case is REMANDED to the Regional Trial Court, Branch 6, Kalibo, Aklan 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 fair price of the plaintiff-appellees' lot encroached upon;
>   b. the amount of the expenses spent by defendant-appellants for the construction of the buildings situated on the plaintiffs-appellees' lot;
>   c. the increase in value ("plus value") which the said lot may have acquired by reason of the construction; and
>   d. whether the value of said land is considerably more than that of the improvements built thereon.
>
> 2. After said amounts shall have been determined by competent evidence, the Regional Trial Court shall render the judgment, as follows:
>
>   a. The trial court shall grant the plaintiffs-appellees a period of fifteen (15) days within which to exercise their option under Article 448 of the Civil Code, whether to appropriate the improvements as their own by paying the defendants-appellants either the amount of the expenses spent by them for the building of the improvements, or the increase in value ("plus value") which the said lot may have acquired by reason thereof, or to oblige the defendants-appellants to pay the price of the said land. The amounts to be respectively paid by the plaintiff-appellees and defendants-appellants, in accordance with the option thus exercised by written notice of the other party and to the Court, shall be paid by the obligor within fifteen (15) days from such notice of the option by tendering the amount to the Court in favor of the party entitled to receive it;

Article 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.

[19] CIVIL CODE, art. 548 provides:
Article 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.

[20] *Ponencia*, p. 9.

b. The trial court shall further order that if the plaintiffs-appellees exercises the option to oblige defendants-appellants to pay the price of the land but if the latter rejects such purchase because, as found by the trial court, the value of the land is considerably more than those of the buildings, defendants-appellant[s] shall give written notice of such rejection to the plaintiffs-appellees and to the Court within fifteen (15) days from notice of the plaintiffs-appellees' option to sell the land.

In that event, the parties shall be given a period of fifteen (15) days from such notice of rejection within which to agree upon the terms of the lease, and give the Court formal written notice of such agreement and its provisos. If no agreement is reached by the parties, the trial court, within fifteen (15) days from and after the termination of the said period fixed for negotiation, shall then fix the terms of the lease, payable within the first five (5) days of each calendar month. The period for the forced lease shall not be more than two (2) years, counted from the finality of the judgment, considering the long period of time since petitioners have occupied the subject area. The rental thus fixed shall be increased by ten percent (10%) for the second year of the forced lease.

Defendants-appellants shall not make any further constructions or improvements on the lot. Upon expiration of the two (2)-year period, or upon default by defendants-appellants in the payment of rentals for two (2) consecutive months, the plaintiffs-appellees shall be entitled to terminate the forced lease, to recover their land, and to have the improvements removed by defendants-appellants at the latter's expense. The rentals herein provided shall be tendered by defendants-appellants to the Court for payment to the plaintiffs-appellees, and such tender shall constitute evidence of whether or not compliance was made within the period fixed by the Court.

c. In any event, defendant-appellants shall pay the plaintiffs-appellees reasonable compensation for the occupancy of plaintiffs-appellees' land for the period counted from the year defendants-appellants occupied the subject area, 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 inextendible, 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.[21] (Emphasis in the original)

Contrary to the Court of Appeals' pronouncement, the *ponencia* declared that Hillview is a builder in bad faith.[22]

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[21] Id. at 9–11.
[22] Id. at 16.

Hinging on Hillview's presumptive knowledge of Princess Rachel's Torren's title over the encroached portion, the *ponencia* underscored that Hillview is similarly charged with presumptive knowledge of the property's actual boundaries as reflected in the owner's title:

> *[I]n cases involving the encroachment of registered property, the builder cannot be considered in law to be in good faith since he is deemed to have presumptive knowledge of the registered owner's Torrens title, which, in turn, reflects the metes and bounds of [Princess Rachel's] property.*
>
> In the instant case, when Hillview built upon [Princess Rachel's] registered property, [it] should be deemed to have acted in bad faith for [it] is presumed to have knowledge of the metes and bounds of [Princess Rachel's] property as described in its title.
>
> For Hillview to be regarded as a builder or possessor in good faith, it must prove that it built within the property as described in its own Torrens title or that the encroached portion fell within its own boundaries, or that the encroached portion overlapped with that of [Princess Rachel's], for then it would have rightfully relied on the indefeasibility of its own title.
>
> However, as established, the improvements were built on a portion belonging to [Princess Rachel] and that there was no error in the technical descriptions of either [Princess Rachel] or Hillview's properties. On the contrary, Hillview used a wrong boundary line that does not conform with Hillview's title. Thus, there is no basis for the Court to deem Hillview a builder in good faith. [23] (Emphasis supplied)

Moreover, as a registered owner, the *ponencia* emphasized that Hillview must have actual knowledge of its property's extent.[24] For this reason, it "is deemed to have known that it constructed improvements beyond the boundaries of its own lots, and consequently encroached upon [the] lots belonging to the adjacent owner, [Princess Rachel]."[25] The *ponencia* disposed the case in this wise:

> **WHEREFORE**, the petition is **PARTLY GRANTED**.
>
> The November 28, 2014 Decision and January 15, 2016 Resolution of the Court of Appeals in CA-G.R. C.V. No. 04415 are **REVERSED** insofar as it found Hillview Marketing Corporation to be a builder in good faith and insofar as it applied the provisions of Article 448, 546, and 548 of the Civil Code in determining the rights and obligations of the parties.
>
> Accordingly, the April 30, 2012 Decision of the Regional Trial Court, Kalibo, Aklan, Branch 6 in Civil Case No. 8237 is **REINSTATED** insofar as it:

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23 Id. at 16–17.
24 Id. at 17.
25 Id.

1. found respondent Hillview Marketing Corporation to have encroached on 383 square meters of Lot 1-B-7-B-1 covered by TCT No. T-24349 and 2,400 square meters of Lot 1-B-7-A-1 covered by TCT No. T-24348 registered in the name of petitioner Princess Rachel Development Corporation, and to have acted in bad faith in introducing improvements thereon;

2. ordered Hillview Marketing Corporation to vacate the encroached portions and surrender possession thereof to petitioners; and

3. awarded litigation expenses in the amount of ₱143,494.20 and attorney's fees in the amount of ₱200,000.00.

The case is **REMANDED** to the Regional Trial Court for further proceedings for the proper application of Article 449, 450, and 451 of the Civil Code. The trial court shall grant petitioners a reasonable period within which to exercise its option either to:

1. appropriate what has been built without any obligation to pay indemnity thereof, or

2. demand that Hillview Marketing Corporation remove what it had built, or

3. compel Hillview Marketing Corporation to pay the value of the land.

In any case, Hillview Marketing Corporation is further **ORDERED** to pay nominal damages in the amount of ₱100,000.00.

The decision and resolution of the Court of Appeals are **AFFIRMED** insofar as it absolved individual respondents Stefanie Dornau and Roberto Dornau of solidary liability with Hillview Marketing Corporation, and deleted the award of additional filing fees in the amount of ₱3,546,163.20.

SO ORDERED.[26] (Emphasis in the original)

I concur with the *ponencia* that Hillview is a builder in bad faith. In addition to the points raised, I wish to emphasize that the concomitant duty of a registered owner to be charged with notice of everything about his or her property (including its actual metes and bounds on site) is *inherent* in the nature of the right. Therefore, as an owner of a registered land under the Torrens System, Hillview ought to know the exact parameters of its property.

Besides, it is highly improbable that Hillview could not have known such encroachment. For one, a higher degree of diligence is expected of it since it is engaged in large property development projects. Also, there are relevant circumstances indicating that despite prior knowledge of the

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[26] Id. at 22–23.

intrusion, Hillview heedlessly persisted with the construction of the project being complained of.

I

The main purpose of registration under the Torrens System is "to make registered titles indefeasible."[27] Under the Torrens System, when an application for the registration of the land title is presented before the Court of Land Registration, "the theory of the law is that *all* occupants, adjoining owners, adverse claimants, and other interested persons are notified of the proceedings, and have a right to appear in opposition to such application."[28] Otherwise stated, "the proceeding is against the whole world."[29]

Presidential Decree No. 1529, otherwise known as the Property Registration Decree, aims to reinforce the Torrens System.[30] The objective of integrating the Torrens System into our jurisdiction "is to guarantee the integrity of land titles and to protect their *indefeasibility* once the claim of ownership is established and recognized."[31] This is intended to prevent "any possible conflicts of title that may arise by giving the public the right to rely upon the face of the Torrens title and dispense with the need of inquiring further as to the ownership of the property."[32] Corollary, Section 2 of Presidential Decree No. 1529 explicitly provides that land registration is an *in rem* proceeding:

> SECTION 2. *Nature of Registration Proceedings; Jurisdiction of Courts. — Judicial proceedings for the registration of lands throughout the Philippines shall be in rem* and shall be based on the generally accepted principles underlying the Torrens system. (Emphasis supplied)

As an *in rem* proceeding, "[j]urisdiction is acquired by virtue of the power of the court over the *res*."[33] Furthermore, "[s]uch a proceeding *in rem*, dealing with a tangible res, may be instituted and carried to judgment *without* personal service upon the claimants within the state or notice by mail to those outside of it."[34]

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27 *Alba v. De la Cruz,* 17 Phil. 49, 58–59 (1910) [Per J. Trent, First Division]. The case also said that the *"Torrens Land Registration System"* was initiated by Sir Robert Torrens in South Australia on 1857 and this system of registration was taken into consideration by the legislature when it passed Act No. 496 otherwise known as the "Land Registration Act." This is the predecessor of Presidential Decree No. 1529.

28 Id.

29 Id.

30 *See Whereas* Clauses of Presidential Decree No. 1529 (1978).

31 *Spouses Stilianopoulos v. Register of Deeds of Legazpi City*, G.R. No. 224678, July 3, 2018, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64392> [Per J.Perlas-Bernabe, En Banc].

32 Id.

33 *Acosta v. Salazar,* 609 Phil. 48, 57 (2009) [Per J. Nachura, Third Division].

34 Id.

In other words, it would be needless "to give personal notice to the owners or claimants of the land sought to be registered, to vest the court with authority over the *res*."[35] As provided for under Section 23[36] of Presidential Decree No. 1529, upon the filing of an application for land registration, the date of initial hearing will then be set through an order where the public will be given notice through publication, mailing, and posting.

It is the publication of the notice of application—*which informs everyone that a petition has been filed and whomsoever may oppose or contest*—"that brings in the *whole world* as a party and vests the court with jurisdiction to hear the case."[37] Thus, if no person files any opposition within the time prescribed to do so, Section 26 of Presidential Decree No. 1529 provides that an order of default in favor of the applicant will follow:

> SECTION 26. *Order of Default*; *Effect*. — If no person appears and answers within the time allowed, the court shall, upon motion of the applicant, no reason to the contrary appearing, order a default to be recorded and require the applicant to present evidence. By the description in the notice "To all Whom It May Concern", all the world are made parties defendant and shall be concluded by the default order.

After considering the evidence presented and the court finds that the applicant has sufficient title appropriate for registration, it will render a

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35 *Ignacio v. Basilio,* 418 Phil. 256, 264 (2001) [Per J. Quisumbing, Second Division]. Land Registration was then governed by Act 496 (The Land Registration Act), enacted on November 6, 1902. However, Act 496 was superseded by Presidential Decree No. 1529 (Property Registration Decree) on June 11, 1987 which, in turn, codified the laws relative to Property Registration.

36 Pres. Decree No. 1529, sec. 23 provides:

SECTION 23. *Notice of Initial Hearing, Publication, etc.* — The court shall, within five days from filing of the application, issue an order setting the date and hour of the initial hearing which shall not be earlier than forty-five days nor later than ninety days from the date of the order.

The public shall be given notice of the initial hearing of the application for land registration by means of (1) publication; (2) mailing; and (3) posting.

1. By publication. —

Upon receipt of the order of the court setting the time for initial hearing, the Commissioner of Land Registration shall cause a notice of initial hearing to be published once in the Official Gazette and once in a newspaper of general circulation in the Philippines: *Provided, however*, that the publication in the Official Gazette shall be sufficient to confer jurisdiction upon the court. Said notice shall be addressed to all persons appearing to have an interest in the land involved including the adjoining owners so far as known, and "to all whom it may concern". Said notice shall also require all persons concerned to appear in court at a certain date and time to show cause why the prayer of said application shall not be granted.

2. By mailing. —

(a) Mailing of notice to persons named in the application. — The Commissioner of Land Registration shall also, within seven days after publication of said notice in the Official Gazette, as hereinbefore provided, cause a copy of the notice of initial hearing to be mailed to every person named in the notice whose address is known.

....

3. By posting.

The Commissioner of Land Registration shall also cause a duly attested copy of the notice of initial hearing to be posted by the sheriff of the province or city, as the case may be, or by his deputy, in a conspicuous place on each parcel of land included in the application and also in a conspicuous place on the bulletin board of the municipal building of the municipality or city in which the land or portion thereof is situated, fourteen days at least before the date of initial hearing.

37 *Ignacio v. Basilio,* 418 Phil. 256, 264 (2001) [Per J. Quisumbing, Second Division].

judgment confirming title[38] which, in turn, will attain finality after 30 days from receipt of the notice of judgment.[39] Thereafter, the court releases an order to cause the issuance of the decree of registration and certificate of title in favor of the applicant.[40]

The court's judgment confirming the applicant's title and the subsequent order of registration under the latter's name, "when final, [constitutes] *res judicata* against the whole world."[41] Accordingly, the resultant decree of registration[42] shall be *conclusive* against all persons:

> SECTION 31. *Decree of Registration.* Every decree of registration issued by the Commissioner shall bear the date, hour and minute of its entry, and shall be signed by him. It shall state whether the owner is married or unmarried, and if married, the name of the husband or wife: Provided, however, that if the land adjudicated by the court is conjugal property, the decree shall be issued in the name of both spouses. If the owner is under disability, it shall state the nature of disability, and if a minor, his [or her] age. It shall ***contain a description of the land as finally determined by the court***, and shall set forth the estate of the owner, and also, in such manner as to show their relative priorities, all particular estates, mortgages, easements, liens, attachments, and other encumbrances, including rights of tenant-farmers, if any, to which the land or owner's estate is subject, as well as any other matters properly to be determined in pursuance of this Decree.
>
> The **decree of registration** shall **bind the land and quiet title thereto, subject only to such exceptions or liens as may be provided by law.** It shall be ***conclusive*** **upon and against all persons, including the National Government and all branches thereof, whether mentioned by name in the application or notice, the same being included in the general description *"To all whom it may concern."*** (Emphasis supplied)

Consistent with the nature of land registration as an *in rem* proceeding, once a title is registered, "[a]ll persons must take notice [and] [n]o one can plead ignorance of the registration."[43] On the part of the owner, he or she "may rest secure, without the necessity of waiting in the portals of the court, or sitting in the *'mirador de su casa'*, to avoid the possibility of losing his [or her] land."[44]

Considering that "[a]ll persons dealing with the land so recorded, or any portion of it, must be charged with notice of *whatever* it contains[,]"[45] it is only incumbent on the part of the property owner to be charged with

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38 Presidential Decree No. 1529, sec. 29.

39 Pres. Decree No. 1529, sec. 30.

40 Pres. Decree No. 1529, sec. 30.

41 *Ting v. Heirs of Lirio et al.*, 547 Phil. 237, 241 (2007) [Per J. Carpio-Morales, Second Division].

42 Pres. Decree No. 1529, sec. 31.

43 *Heirs of Fama v. Garas*, 637 Phil. 46, 63 (2010) [Per J. Villarama Jr., Third Division] With reference to the antecedent facts of the case, land registration was then governed by Act 496 (The Land Registration Act).

44 Id.

45 *Legarda et al. v. Saleeby*, 31 Phil. 590, 600 (1915) [Per J. Johnson, En Banc].

notice of *every* fact appearing on his or her title. This encompasses not only the land's technical description (as reflected in the owner's decree of registration and certificate of title), but also the property's actual boundaries *on site*. Simply put, the duty to know everything about one's property is inherent in the nature of the right as an owner of a registered land.

In *Spouses Padilla, Jr. v. Malicsi, et al.*,[46] this Court defined a builder in good faith:

> *A builder in good faith is a builder who was not aware of a defect or flaw in his or her title when he or she introduced improvements on a lot that turns out to be owned by another.*
>
> *Philippine National Bank v. De Jesus* explains that the essence of good faith is an honest belief of the strength and validity of one's right while being ignorant of another's superior claim at the same time:
>
> > Good faith, here understood, is an intangible and abstract quality with no technical meaning or statutory definition, and it *encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage.* An individual's personal good faith is a concept of his own mind and, therefore, may not conclusively be determined by his protestations alone. *It implies honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry.* The essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim, and absence of intention to overreach another[.][47] (Citations omitted) (Emphasis supplied)

Applying the foregoing to the case at hand, Hillview's claim that it acted in good faith[48] fails to persuade. It is undisputed that both parties are registered property owners.[49] However, as between Princess Rachel and Hillview, the latter was the active participant in the matter of encroachment. As it is inherent in Hillview's right as a registered owner to know the precise boundaries of its property on site, it cannot be in good faith when it built the constructions on Princess Rachel's lot.

Furthermore, Hillview's own insistence that "[t]here was no manifestation of [Princess Rachel's] claim of possession over the area in controversy [as] there was *no noticeable mark* or boundary which delineated the adjoining properties"[50] should have put it in inquiry all the more. Also, considering that Hillview is capable of engaging in huge property

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46 795 Phil. 794 (2016) [Per J. Leonen, Second Division].
47 Id. at 803–804.
48 *Ponencia*, p. 12.
49 Id. at 13.
50 Id. at 3.

development projects such as this, it should have exercised a higher degree of diligence in verifying the definite boundaries of the land that it sought to improve. Surprisingly, however, it proceeded heedlessly with construction without regard to the properties of adjoining owners that it encroached on a *significant* extent of 2,783 square meters. Indubitably, this falls short of a status of a builder in good faith.

Finally, this Court cannot simply disregard the statements of Engineer Lopez that he informed Martin about the encroachment[51] which, according to Princess Rachel, was unrefuted by Hillview.[52] While Hillview may possibly be in good faith when it relied on the misplaced concrete monuments erected on its land, such alleged good faith ceased when it was already forewarned about the intrusion. The fact that Hillview ensued with the construction, despite prior notice, buttress bad faith.

II

Impelled by a forthcoming sale of its property to Boracay Enclave Corporation,[53] Princess Rachel directed Engineer Lester Madlangbayan to conduct a relocation survey in August 2007.[54] It was only from that moment when Princess Rachel came to know about the encroachment.[55]

On September 20, 2007, Princess Rachel sent Hillview a demand letter directing it "to vacate the subject premises, but the latter ignored it."[56] On September 27, 2007, it sent another letter but the same was also unheeded.[57] Ultimately, on January 25, 2008, Princess Rachel was constrained to file a complaint for *accion publiciana* and damages[58] before the Regional Trial Court of Kalibo, Aklan.[59]

A landowner is in bad faith "when the act of *building*, planting, or sowing was done with his [or her] knowledge and without opposition on his [or her] part."[60] As provided for under Article 453 of the Civil Code:

> ARTICLE 453. If there was bad faith, not only on the part of the person who built, planted or sowed on the land of another, but also on the part of the owner of such land, the rights of one and the other shall be the same as though both had acted in good faith.

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51 Id. at 4.
52 Id. at 12.
53 Id. at 18.
54 Id. at 2.
55 Id. at 18.
56 Id. at 3.
57 Id.
58 With Prayer for Issuance of Writ of Preliminary Injunction.
59 *Ponencia*, p. 2
60 *Delos Santos v. Abejon*, 807 Phil. 720, 732 (2017) [Per J. Perlas-Bernabe, First Division].

> *It 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.* (Emphasis supplied)

Undeniably, Princess Rachel is a landowner in good faith. As aptly underscored in the *ponencia*, it "lost no time in asserting its right and protecting its interest[.]"[61] To emphasize, when Princess Rachel discovered that Hillview unlawfully held a portion of its property, it promptly sent demand letters directing Hillview to vacate the encroached lot. However, despite the advice given, Hillview seemingly "turned a blind eye and deaf ear" [62] and still commenced with making improvements in the area owned by Princess Rachel.

Contrary to the Court of Appeals' ruling,[63] Princess Rachel never slept on its right. In fact, it was committed in asserting its claim over its property that all the actions against Hillview ensued within just five (5) to six (6) months from the time it discovered the encroachment. As a holder of a Torrens title, Princess Rachel has the right "to eject any person illegally occupying [its] property."[64] Besides, "[t]he right to possess and occupy the land is an attribute and a logical consequence of [its] ownership."[65]

Finally, on the premise that Princess Rachel is a landowner in good faith and Hillview is a builder in bad faith, we apply the following Civil Code provisions in determining the rights and duties of the parties:

> ARTICLE 449. He who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without right to indemnity.
>
> ARTICLE 450. The owner of the land on which anything has been built, planted or sown in bad faith may demand the demolition of the work, or that the planting or sowing be removed, in order to replace things in their former condition at the expense of the person who built, planted or sowed; or he may compel the builder or planter to pay the price of the land, and the sower the proper rent.
>
> ARTICLE 451. In the cases of the two preceding articles, the landowner is entitled to damages from the builder, planter or sower.
>
> ARTICLE 452. The builder, planter or sower in bad faith is entitled to reimbursement for the necessary expenses of preservation of the land.

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61 *Ponencia*, p. 18.

62 *See Pen Development Corp. v. Martinez Leyba, Inc.*, 816 Phil. 554, 578 (2017) [Per J. Del Castillo, First Division].

63 *Ponencia*, p. 11. Princess Rachel asserted that the Court of Appeals erred in ruling that Hillview is a builder in good faith "based on the perceived inaction of [Princess Rachel] to protect their rights."

64 *Supapo v. Spouses De Jesus*, 758 Phil. 444, 462 (2015) [Per J. Brion, Second Division].

65 Id.

Thus, Princess Rachel has the following alternative rights against Hillview:

> (1) to appropriate what has been built without any obligation to pay indemnity therefor, *or* (2) to demand that [Hillview] remove what [it] had built, *or* (3) to compel [Hillview] to pay the value of the land. *In any case, [Princess Rachel] is entitled to damages* under Article 451, [as] above cited.[66] (Emphasis supplied)

ACCORDINGLY, I concur that Hillview is a builder in bad faith and hence, the pertinent provisions of Articles 449, 450, 451 and 452 of the Civil Code shall be applied in determining the rights and obligations of the parties.

MARVIC M.V.F. LEONEN
Associate Justice

CERTIFIED TRUE COPY

EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court

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[66] *Padilla, et al. v. Malicsi, et al.*, 795 Phil. 794, 811 (2016) [Per J. Leonen, Second Division]. Citing *Heirs of Durano, Sr. v. Spouses Uy* 398 Phil. 125 (2000) [Per J. Gonzaga-Reyes, Third Division].

G.R. No. 222482 – PRINCESS RACHEL DEVELOPMENT CORPORATION and **BORACAY ENCLAVE CORPORATION**, *petitioners, versus* **HILLVIEW MARKETING CORPORATION, STEFANIE DORNAU** and **ROBERTO DORNAU**, *respondents.*

Promulgated:

June 2, 2020

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

SEPARATE CONCURRING OPINION

CAGUIOA, *J.*:

I concur.

The crux of the controversy stems from the perceived conflict between the general presumption of good faith regarding possession embodied in Article 527[1] of the Civil Code and the principle of constructive notice of registration provided in Section 52[2] of Presidential Decree No. (PD) 1529[3] or the Property Registration Decree.

I submit this Separate Concurring Opinion to clarify that there is, in fact, no conflict between these two seemingly opposing principles, as they differ in scope.

In encroachment scenarios, the general presumption of good faith shall apply when the properties involved are both unregistered.

Conversely, when either or both of the properties involved are registered under the Torrens system, it is the constructive notice rule that applies. This is evident under Articles 18 and 711 of the Civil Code, which state that the general law defers to the special law with respect to matters governed by the latter, thus:

> ART. 18. In matters which are governed by the Code of Commerce and special laws, their deficiency shall be supplied by the provisions of this Code.

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1 The provision states:

> ART. 527. Good faith is always presumed, and upon him who alleges bad faith on the part of a possessor rests the burden of proof.

2 The provision states:

> SEC. 52. *Constructive notice upon registration.* – Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be **constructive notice to all persons from the time of such registering, filing or entering**. (Emphasis supplied)

3 AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES.

> ART. 711. For determining what titles are subject to inscription or annotation, as well as the form, effects, and cancellation of inscriptions and annotations, the manner of keeping the books in the Registry, and the value of the entries contained in said books, the provisions of the Mortgage Law, the Land Registration Act,[4] and other special laws shall govern.

In my view, the interplay between the general provisions of the Civil Code and the specific provisions of PD 1529 can be reconciled, as follows:

1. When the adjoining properties are both unregistered, the general presumption of good faith under the Civil Code applies.

2. When the property encroached upon is registered under the Torrens system, the applicable rule shall depend on the nature of the adjoining property.

    a. When the encroachment is done by an adjacent owner of *unregistered* land, the constructive notice rule under Section 52 of PD 1529 shall apply against such adjacent owner. The adjacent owner shall be deemed a builder in bad faith as he is charged with *constructive* notice of the metes and bounds of the registered property encroached upon.

    b. When the encroachment is done by an adjacent owner of *registered* land and there is *no overlap* in the Torrens titles involved, Sections 15 and 31[5] of PD 1529 shall apply against such adjacent owner. The adjacent owner shall be deemed a

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4 Now PD 1529.

5 The provision states, in part:

> SEC. 15. *Form and contents.* – The application for land registration shall be in writing, signed by the applicant or the person duly authorized in his behalf, and sworn to before any officer authorized to administer oaths for the province or city where the application was actually signed. If there is more than one applicant, the application shall be signed and sworn to by and in behalf of each. **The application shall contain a description of the land** and shall state the citizenship and civil status of the applicant, whether single or married, and, if married, the name of the wife or husband, and, if the marriage has been legally dissolved, when and how the marriage relation terminated. **It shall also state the full names and addresses of all occupants of the land and those of the adjoining owners, if known, and, if not known, it shall state the extent of the search made to find them.** (Emphasis supplied)
>
> x x x x
>
> SEC. 31. *Decree of registration.* – Every decree of registration issued by the Commissioner shall bear the date, hour and minute of its entry, and shall be signed by him. It shall state whether the owner is married or unmarried, and if married, the name of the husband or wife: Provided, however, that if the land adjudicated by the court is conjugal property, the decree shall be issued in the name of both spouses. If the owner is under disability, it shall state the nature of disability, and if a minor, his age. It shall contain a description of the land as finally determined by the court, and shall set forth the estate of the owner, and also, in such manner as to show their relative priorities, all particular estates, mortgages, easements, liens, attachments, and other encumbrances, including rights of tenant-farmers, if any, to which the land or owner's estate is subject, as well as any other matters properly to be determined in pursuance of this Decree.
>
> The decree of registration shall bind the land and quiet title thereto, subject only to such exceptions or liens as may be provided by law. It shall be conclusive upon and against all persons, including the National Government and all branches thereof, whether mentioned by name in the application or notice, the same being included in the general description "To all whom it may concern".

builder in bad faith as he is charged with *actual* knowledge of the metes and bounds of his own property, and *constructive* notice of the metes and bounds of the registered property encroached upon.

c. When the encroachment is done by an adjacent owner of *registered* land and it is established that a portion of the Torrens titles involve an overlap, Sections 15 and 31 of PD 1529 shall also apply. Nevertheless, the adjacent owner shall be deemed in good faith with respect to improvements he built within the bounds of his own Torrens title inasmuch as he has the right to rely on said title until it is declared null and void, even if he is deemed to have constructive notice of the metes and bounds of the registered property encroached upon.

d. When the encroachment is done by an adjacent owner of *registered* land and it is established that the property covered by his Torrens title is completely subsumed within that of the owner of the property encroached upon, the constructive notice rule under PD 1529 shall apply against such adjacent owner if it is established that he derives his title from a later registrant. Priority of registration shall govern, following the established rule that once property is registered under the Torrens system, then it is taken out of the mass of properties that can still be registered.[6] Stated differently, the registered owner of the property encroached upon is preferred if the title of said owner is derived from the earlier registrant of said property, and the subsequent Torrens title that had been issued from which the adjacent owner derives his title is necessarily invalid.

3. When the property encroached upon is unregistered, but the encroachment is done by an adjacent owner of registered land, the adjacent owner shall be deemed a builder in bad faith as he is charged with actual knowledge of the metes and bounds of his own property.

I expound.

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[6] See *Legarda v. Saleeby*, 31 Phil. 590 (1915) penned by Associate Justice Elias Finley Johnson, with the concurrence of Chief Justice Cayetano Arellano and Associate Justices Florentino Torres and Manuel Araullo. Therein, the Court held that "[t]he holder of the first original certificate and his successors should be permitted to rest secure in their title, against one who had acquired rights in conflict therewith and who had full and complete knowledge of their rights. The purchaser of land included in the second original certificate, by reason of the facts contained in the public record and the knowledge with which he is charged and by reason of his negligence, should suffer the loss, if any, resulting from such purchase, rather than he who has obtained the first certificate and who was innocent of any act of negligence."
See also *Aguilar v. Caoagdan*, 105 Phil. 661 (1959) citing Section 45 of Act No. 496 which states "the obtaining of a decree of registration and the entry of a certificate of title shall be regarded as an agreement running with the land, and binding upon the applicant and all successors in title that the land shall be and always remain registered land x x x." In *Viajar v. Court of Appeals*, 250 Phil. 404 (1988), the Court held that "[s]ince there is no provision in PD 1529 which is inconsistent with or in conflict with this Section of Act 496, [Section 45 is] still the law on the matter."

The rights and obligations of the builder and landowner in an encroachment situation are spelled out under Articles 448 to 454 of the Civil Code. These provisions state:

> 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.
>
> ART. 449. He who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without right to indemnity.
>
> ART. 450. The owner of the land on which anything has been built, planted or sown in bad faith may demand the demolition of the work, or that the planting or sowing be removed, in order to replace things in their former condition at the expense of the person who built, planted or sowed; or he may compel the builder or planter to pay the price of the land, and the sower the proper rent.
>
> ART. 451. In the cases of the two preceding articles, the landowner is entitled to damages from the builder, planter or sower.
>
> ART. 452. The builder, planter or sower in bad faith is entitled to reimbursement for the necessary expenses of preservation of the land.
>
> ART. 453. If there was bad faith, not only on the part of the person who built, planted or sowed on the land of another, but also on the part of the owner of such land, the rights of one and the other shall be the same as though both had acted in good faith.
>
> It 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.
>
> ART. 454. When the landowner acted in bad faith and the builder, planter or sower proceeded in good faith, the provisions of Article 447 shall apply.

Pursuant to these provisions, good faith determines the rights and obligations of the builder and landowner in the event of an encroachment. Hence, as correctly observed by the *ponencia*, the character of Hillview's possession over the encroached portion determines the parties' relative rights and obligations.[7]

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7 *Ponencia*, p. 12.

Under the Civil Code, good faith is always presumed, and upon him who alleges bad faith on the part of a possessor rests the burden of proof. This presumption regarding good faith possession is, however, rebuttable.

Articles 448 to 454 of the Civil Code do not appear to distinguish between registered and unregistered properties. However, pursuant to Articles 18 and 711 of the same statute, the general provisions of the Civil Code shall apply ***only if*** the properties involved in the encroachment are both unregistered. Conversely, if either or both properties involved are registered under the Torrens system, Articles 448 to 454 should be applied in conjunction with the provisions of PD 1529.

Here, the lots encroached upon are registered under the Torrens system in the name of Princess Rachel Development Corporation (PRDC). Thus, the determination of the existence of good faith on the part of landowner PRDC and builder Hillview Marketing Corporation (Hillview) should be done in consonance with the provisions of PD 1529, the latter being the special law governing registered land.

Accordingly, reference to Section 52 of PD 1529 is proper. It states:

> SEC. 52. *Constructive notice upon registration.* – Every conveyance, mortgage, lease, lien, attachment, order, **judgment, instrument or entry affecting registered land** shall, if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be **constructive notice to all persons** from the time of such registering, filing or entering. (Emphasis supplied)

In turn, Sections 31 and 39 of the same statute detail **the scope of constructive notice with respect to the decree of registration**, thus:

> SEC. 31. *Decree of Registration.* — **Every decree of registration** issued by the Commissioner shall bear the date, hour and minute of its entry, and shall be signed by him. It shall state whether the owner is married or unmarried, and if married, the name of the husband or wife: Provided, however, that if the land adjudicated by the court is conjugal property, the decree shall be issued in the name of both spouses. If the owner is under disability, it shall state the nature of disability, and if a minor, his age. **It shall contain a description of the land as finally determined by the court, and shall set forth the estate of the owner, and also, in such manner as to show their relative priorities, all particular estates, mortgages, easements, liens, attachments, and other encumbrances, including rights of tenant-farmers, if any, to which the land or owner's estate is subject, as well as any other matters properly to be determined in pursuance of this Decree.**
>
> **The decree of registration shall bind the land and quiet title thereto, subject only to such exceptions or liens as may be provided by law. It shall be conclusive upon and against all persons, including the National Government and all branches thereof, whether mentioned by name in the application or notice, the same being included in the general description "To all whom it may concern".**

x x x x

SEC. 39. *Preparation of decree and Certificate of Title.* – After the judgment directing the registration of title to land has become final, the court shall, within fifteen days from entry of judgment, issue an order directing the Commissioner to issue the corresponding decree of registration and certificate of title. The clerk of court shall send, within fifteen days from entry of judgment, certified copies of the judgment and of the order of the court directing the Commissioner to issue the corresponding decree of registration and certificate of title, and a certificate stating that the decision has not been amended, reconsidered, nor appealed, and has become final. Thereupon, the Commissioner shall cause to be prepared the decree of registration as well as the original and duplicate of the corresponding original certificate of title. **The original certificate of title shall be a true copy of the decree of registration**. The decree of registration shall be signed by the Commissioner, entered and filed in the Land Registration Commission. **The original of the original certificate of title shall also be signed by the Commissioner and shall be sent, together with the owner's duplicate certificate, to the Register of Deeds of the city or province where the property is situated for entry in his registration book.** (Emphasis and underscoring supplied)

These provisions confirm that the decree *and* the corresponding certificate of title, ***both of which contain the description of the land to which they pertain***, fall within the scope of the constructive notice rule, inasmuch as they are, by law, conclusive against *all* persons. Since the original certificate of title is "entered in [the Registrar of Deeds'] record book,"[8] and serves as a true copy of the decree of registration, the constructive notice rule should necessarily be understood as covering all that appears on the face of such title, *including* the technical description of the property to which it corresponds.

Speaking of the parameters of the constructive notice rule, the Court, in *Legarda v. Saleeby*[9] (*Legarda*) held:

> **When a conveyance has been properly recorded such record is constructive notice of its contents and all interests, legal and equitable, included therein**. x x x
>
> **Under the rule of notice, it is presumed that the purchaser has examined every instrument of record affecting the title. Such presumption is irrebuttable. He is charged with notice of every fact shown by the record and is presumed to know every fact which an examination of the record would have disclosed. This presumption cannot be overcome by proof of innocence or good faith.** ***Otherwise the very purpose and object of the law requiring a record would be destroyed.*** Such presumption cannot be defeated by proof of want of knowledge of what the record contains any more than one may be permitted to show that he was ignorant of the provisions of the law. The rule that all persons must take notice of the facts which the public record contains is a rule of law. The rule must be absolute. Any variation would lead to endless confusion and

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8 See PD 1529, Sec. 40.

9 *Legarda v. Saleeby*, supra note 6.

> useless litigation.[10] (Emphasis, italics and underscoring supplied; citations omitted)

In *Legarda*, the Court resolved conflicting claims of **ownership** over a parcel of land registered in the name of both adjacent owners. Applying the constructive notice rule, the Court held that "in case of double registration under the Land Registration Act,[11] x x x the owner of the earliest certificate is the owner of the land."[12]

I maintain that *Legarda* remains controlling with respect to the determination of **ownership** in cases of overlapping Torrens titles issued to different parties.

However, as I stated in my Concurring and Dissenting Opinion in *Pen Development Corp. v. Martinez Leyba, Inc.*[13] (*Pen Development*), I oppose the "wholesale, indiscriminate, blind application of the constructive notice [rule] espoused in *Legarda* without regard to the peculiar factual circumstances of each case[.]"[14] In turn, the peculiar circumstances which I alluded to in *Pen Development* were: (i) the case did *not* merely involve the issue of ownership, but *also* possession; and (ii) the case involved valid *albeit* overlapping Torrens titles issued to different parties. Taking these peculiar circumstances into account, I stated:

> This case is NOT a simple boundary dispute where a neighbor builds a structure on an adjacent registered land belonging to another. Here, the area where the former had built happens to be within the land registered in his name which overlaps with the titles of the latter. Thus, this is a proper case of overlapping of certificates of title belonging to different persons.
>
> Given the fact that this case involves overlapping of titles, I fully concur with the Decision that as between Martinez Leyba, Inc. (MLI) and Las Brisas Resorts Corp. (Las Brisas), MLI has a superior right to the overlapped or encroached portions in issue being the holder of a transfer certificate of title that can be traced to the earlier original certificate of title.
>
> **In case of double registration where land has been registered in the name of two persons, priority of registration is the settled rule.** x x x
>
> x x x x
>
> TCT Nos. 250242, 250243 and 250244 registered in the name of MLI conflict with TCT No. 153101 registered in the name of Las Brisas. x x x The overlapped portions add up to 3,454 square meters. Given that the total area of TCT No. 153101 is 3,606 square meters and 3,454 square meters will

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10 Id. at 600-601.
11 Now PD 1529.
12 *Legarda v. Saleeby*, supra note 6 at 598-599.
13 816 Phil. 554 (2017).
14 Id. at 585.

be deducted therefrom because that portion rightfully pertains to MLI pursuant to prevailing and settled rule on double registration, only 152 square meters will remain under TCT No. 153101 in the name of Las Brisas.

However, I cannot agree with the finding that Las Brisas is a builder in bad faith. Thus, my dissent tackles directly and mainly the issue of good faith on the part of a registered owner (Las Brisas) who built within a portion of the parcel of land delimited by the boundaries or technical descriptions of its own certificate of title that turns out to be within the boundaries or technical descriptions of the adjoining titled parcels of land despite prior written notices by the registered owner (MLI) of the adjoining parcels of land that the former owner was building within the latter owner's registered property.

The Decision rules in favor of MLI and affirms the finding of the Court of Appeals (CA) that Las Brisas is a builder in bad faith. x x x

x x x x

With due respect, the determination of the good faith of Las Brisas should not be made to depend solely on the written notices sent by MLI to Las Brisas warning the latter that it was building and making improvements on MLI's parcels of land. **I firmly subscribe to the view that the fact that Las Brisas built within its titled property and the doctrine of indefeasibility or incontrovertibility of its certificate of title should also be factored in.**

The provision of the Civil Code on the definition of a possessor in good faith, Article 526, provides:

> ART. 526. He is deemed a possessor in good faith who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it.
>
> He is deemed a possessor in bad faith who possesses in any case contrary to the foregoing.
>
> Mistake upon a doubtful or difficult question of law may be the basis of good faith.

In turn, Article 528 of the Civil Code provides: "Possession acquired in good faith does not lose this character except in the case and from the moment facts exist which show that the possessor is not unaware that he possesses the thing improperly or wrongfully."

When did Las Brisas become aware of facts which show that it was possessing the disputed areas or portions improperly or wrongfully? There are several ***en banc*** Decisions of the Court which may find application in this case. These are [*Legarda*] (1915), *Dizon v. Rodriguez* (1965), *De Villa v. Trinidad* (1968) and *Gatioan v. Gaffud* (1969).

In *Legarda*, the Court had to grapple with Sections 38, 55 and 112 of Act No. 496 which indicate that the vendee may acquire rights and be protected against the defenses which the vendor would not and speak of available rights in favor of third parties which are cut off by virtue of the sale of the land to an "innocent purchaser." Thus, the Court said:

> May the purchaser of land which has been included in a "second original certificate" ever be regarded as an "innocent purchaser" as against the rights or interest of the owner of the first original certificate, his heirs, assigns, or vendee? The first original certificate is recorded in the public registry. It is never issued until it is recorded. The record is notice to all the world. All persons are charged with the knowledge of what it contains. All persons dealing with the land so recorded, or any portion of it, must be charged with notice of whatever it contains. The purchaser is charged with notice of every fact shown by the record and is presumed to know every fact which the record discloses. x x x
>
> When a conveyance has been properly recorded such record is constructive notice of its contents and all interests, legal and equitable, included therein. x x x
>
> Under the rule of notice, it is presumed that the purchaser has examined every instrument of record affecting the title. Such presumption is irrebutable. He is charged with notice of every fact shown by the record and is presumed to know every fact which an examination of the record would have disclosed. This presumption cannot be overcome by proof of innocence or good faith. Otherwise the very purpose and object of the law requiring a record would be destroyed. Such presumption cannot be defeated by proof of want of knowledge of what the record contains any more than one may be permitted to show that he was ignorant of the provisions of the law. The rule that all persons must take notice of the facts which the public record contains is a rule of law. The rule must be absolute. Any variation would lead to endless confusion and useless litigation.
>
> x x x x

Legarda was concerned more with the issue of ownership than with the issue of possession: To bar transferees of the "second or later original certificate of title" from ever having a right of ownership superior to those who derive their title from the "earlier or first original certificate of title," *Legarda* ruled that the "innocent purchaser [for value]" doctrine should not apply because "[w]hen land is once brought under the [T]orrens system, the record of the original certificate and all subsequent transfers thereof is notice to all the world." However, that notice is constructive and not actual.

If *Legarda* is strictly and uniformly applied, then holders of transfer certificates of title emanating from the "second or later original certificate of title" or any person deriving any interest from them can never be buyers in good faith.

I am not advocating in this dissent that the *Legarda* doctrine on double registration or titling be abandoned or overturned. I submit that it is and remains controlling in that respect. Rather, I take the position that a wholesale, indiscriminate, blind application of the constructive notice doctrine espoused in *Legarda* without regard to the peculiar factual circumstances of each case may not be the best approach to dispense justice.

Dizon v. Rodriguez did not involve double registration. It involved titled lots which are "actually part of the territorial waters and belong to the State." While the Court ruled that "the incontestable and indefeasible character of a Torrens certificate of title does not operate when the land thus covered is not capable of registration," **the Court nonetheless upheld the CA's finding of possession in good faith in favor of the registered owners until the latter's titles were declared null and void**, *viz.*:

> On the matter of possession of plaintiffs-appellants, the ruling of the Court of Appeals must be upheld. There is no showing that plaintiffs are not purchasers in good faith and for value. **As such title-holders, they have reason to rely on the indefeasible character of their certificates.**
>
> x x x x

In *Gatioan v. Gaffud*, the Court did not only cite *Legarda* but held it controlling. In that case, while the appellant therein (Philippine National Bank) did not impugn the lower court's ruling in declaring null and void and cancelling OCT No. P-6038 in favor of defendant spouses Gaffud and Logan, it insisted that the lower court should have declared it an innocent mortgagee in good faith and for value as regards the mortgages executed in its favor by said defendant spouses and duly annotated on their OCT and that consequently, the said mortgage annotations should be carried over to and considered encumbrances on the land covered by TCT No. T-1212 of appellee which is the identical land covered by the OCT of the Gaffuds. The Court found the contention of the appellant therein without merit and quoted extensively *Legarda* wherein the Court held that the purchaser of the land or a part thereof which has been included in a "second original certificate" cannot be regarded as an "innocent purchaser" under Sections 38, 55, and 112 of Act No. 496 because of the facts contained in the record of the first original certificate.

However, in the same breath, the Court also took judicial notice that before a bank grants a loan on the security of a land, it first undertakes a careful examination of title of the applicant as well as a physical and on-the-spot investigation of the land itself offered as security. In that case, had the appellant bank taken such a step which was demanded by the most ordinary prudence, it would have easily discovered the flaw in the title of the defendant spouses. As such, it was held guilty of gross negligence in granting the loans in question. x x x

x x x x

Thus, the Court in *Gatioan* took "a more factual approach" in determining the good faith of the mortgagee who derived its right from the owner of the "second original certificate" and it did not simply apply the constructive notice doctrine espoused in *Legarda*.

In the Decision, the factual approach is being adopted. This is evident when it reproduced the Regional Trial Court of Antipolo City, Branch 71 (RTC) Decision's citation and discussion of *Ortiz v. Fuentebella*, wherein it was held that the defendant's possession in bad faith began from the receipt by the defendant of a letter from the daughter of the plaintiff therein, advising the defendant to desist from planting on a land in possession of the defendant. x x x

x x x x

Unfortunately, Ortiz — decided "103 years ago" according to the *ponente* — is not squarely in point. There, the subject land is not registered land. It was merely covered by a possessory information title, which was allowed under the Spanish Mortgage Law. The *informacion posesoria* was a method of acquiring title to public lands, subject to two conditions, to wit: (1) the inscription or registration thereof in the Registry of Property, and (2) actual, public, adverse and uninterrupted possession of the land for 20 years.

If the constructive notice doctrine embodied in Section 52 of PD 1529 and espoused in *Legarda* has been strictly applied in this case and the *ponente* has not taken a "more factual approach," then it would be erroneous to hold that "they [referring to petitioners, Las Brisas and Pen Development Corporation, which are one and the same entity] acquired TCT 153101 in good faith and for value" or "petitioners may have been innocent purchasers for value with respect to their land," and that Las Brisas' good faith turned into bad faith upon "being apprised of the encroachment" by MLI — because Las Brisas should automatically be deemed to have had constructive notice of MLI's certificates of title that overlapped the certificate of title of Republic Bank which Las Brisas acquired as a foreclosed property. By the same token, a finding that Las Brisas is an "innocent purchaser for value with respect to its land" is precisely what *Legarda* wanted to avoid because that would result in a transferee of the "second or later original certificate of title" having a right of ownership superior to that of a transferee of the "first or earliest original certificate of title." Clearly, the Decision here betrays a fundamental confusion on the import of these earlier rulings.

I agree that the factual approach is preferable over the indiscriminate application of the constructive notice doctrine <u>in cases of double registration with respect to the determination of the good faith or bad faith of the possessor or builder who derives his right from the "second original certificate of title</u>." [15] (Emphasis and underscoring supplied; emphasis in the original omitted; citations omitted)

However, my Concurring and Dissenting Opinion in *Pen Development* should not be used as basis to conclude that the constructive notice rule applies only in cases involving conflicting claims of ownership over registered land.

For clarity, I stress that the constructive notice rule is a statutory feature of the Torrens system which attaches to all lands registered under PD 1529 and its predecessor law. Necessarily, the constructive notice rule still applies in cases involving possession of registered land, *albeit* applied in consonance with the doctrine of indefeasibility or incontrovertibility of title in cases **<u>where the land in question is covered by overlapping titles</u>**, as in *Pen Development*.

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[15] J. Caguioa, Concurring and Dissenting Opinion, *Pen Development Corp. v. Martinez Leyba, Inc.*, supra note 13 at 580-591.

The constructive notice rule applies to cases of usurpation and encroachment of registered lands.

As Associate Justice Amy C. Lazaro-Javier observes, this case involves Hillview's encroachment upon land covered by Torrens titles issued in the name of PRDC (now, Boracay Enclave Corporation).[16]

Here, the Court is called upon to resolve the issue of good faith in the context of encroachment of registered land. Verily, the Court's rulings in *J.M. Tuason & Co., Inc. v. Macalindong*[17] (*1962 J.M. Tuason case*) squarely apply in this case.

J.M. Tuason & Co., Inc. (J.M. Tuason) filed a complaint to oust Teodosio Macalindong (Macalindong) from a portion of its registered property in Sta. Mesa Heights Subdivision, Quezon City. Macalindong vigorously opposed the complaint, claiming that he had purchased the disputed portion, and that he, together with his vendor and the latter's predecessors-in-interest "prior to 1955 and since time immemorial x x x have been in open, adverse, public, continuous and actual possession of the [disputed portion] in the concept of owner and, by reason of such possession, he had made improvement[s] thereon valued at ₱9,000.00."[18]

The Court of First Instance (CFI) granted the complaint. According to the CFI, Macalindong's claim of possession cannot defeat J.M. Tuason's title, considering that the disputed portion had been registered in the latter's name since 1914. Accordingly, the CFI ordered Macalindong to vacate the disputed portion, remove his improvements thereon, and pay J.M. Tuason monthly rental from the date of usurpation until possession in the latter's favor is restored.

Macalindong sought recourse before the Court where he argued, among others, that the CFI erred when it failed to consider him a possessor in good faith who was entitled to retention until he was reimbursed for the full value of his improvements. Addressing Macalindong's assertions, the Court held:

> Appellant claims that he should have been declared a builder in good faith, that he should not have been ordered to pay rentals, and that the complaint should have been dismissed. Again this question is being raised for the first time on appeal. It was not alleged as a defense or counter-claim and the trial court did not make any finding on this factual issue. **From the documents submitted, however, it appears that appellant was not a builder in good faith. From the initial certificate**

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16 J. Lazaro Javier, Separate Concurring Opinion, p. 2.

17 116 Phil. 1227 (1962). Penned by Justice Associate Jose Ma. Paredes, with the concurrence of Chief Justice Jose Bengzon and Associate Justices Sabino Padilla, Felix Angelo Bautista, Roberto Concepcion, J.B.L. Reyes, Jesus Barrera and Querube Makalintal.

18 Id. at 1229.

> **of title of appellee's predecessors-in-interest issued on July 8, 1914, there is a presumptive knowledge by appellant of appellee's Torrens [t]itle (which is a notice to the whole world) over the subject premises** and consequently appellant [cannot], in good conscience, say now that he believed his vendor (Flores), his vendor's vendor (Teotico) and the latter's seller (De Torres) had rights of ownership over said lot. x x x[19] (Emphasis and underscoring supplied)

J.M. Tuason filed a subsequent case involving the usurpation of another portion of the same registered lot, this time against Estrella Vda. de Lumanlan (Lumanlan), who possessed and built improvements on an 800-square meter portion of J.M. Tuason's registered property. The case eventually reached the Court and was docketed as *J.M. Tuason & Co., Inc. v. Estrella Vda. de Lumanlan*[20] (*1968 J.M. Tuason case*). There, the Court similarly rejected Lumanlan's assertion that she should be deemed a builder in good faith, thus:

> As to Lumanlan's allegation in her counterclaim that she should be deemed a builder in good faith, a similar contention has been rejected in [the *1962 J.M. Tuason case*] where We ruled that there being a presumptive knowledge of the Torrens titles issued to [J.M. Tuason] and its predecessors in interest since 1914, the buyer from Deudors (or from their transferees) cannot, in good conscience, say now that she believed her vendor had rights of ownership over the lot purchased. x x x[21]

In sum, the *1962 and 1968 J.M. Tuason cases* instruct that one who builds upon property covered by a Torrens title and/or possesses the same is charged with the presumptive knowledge of said title's its existence. Thus, in cases involving the encroachment of registered property, the builder cannot be considered ***in law*** to be one in good faith since he is deemed to have presumptive knowledge of the registered owner's Torrens title, which reflects the metes and bounds of the latter's property.

It is crystal clear that under PD 1529, the presumption of good faith that is accorded to possessors and/or builders under the Civil Code does not apply in cases of encroachment of registered property, because what is applicable is the constructive notice rule.

In this connection, I find that the *1962 and 1968 J.M. Tuason cases* correctly applied the constructive notice rule, considering that the parties who claimed to be possessors in good faith in these cases did not hold Torrens titles over the lots subject of their claims. To stress, the *1962 and 1968 J.M. Tuason cases* did *not* involve overlapping Torrens titles, but claims of ownership concerning lots which fell entirely within the Torrens titles of J.M. Tuason.

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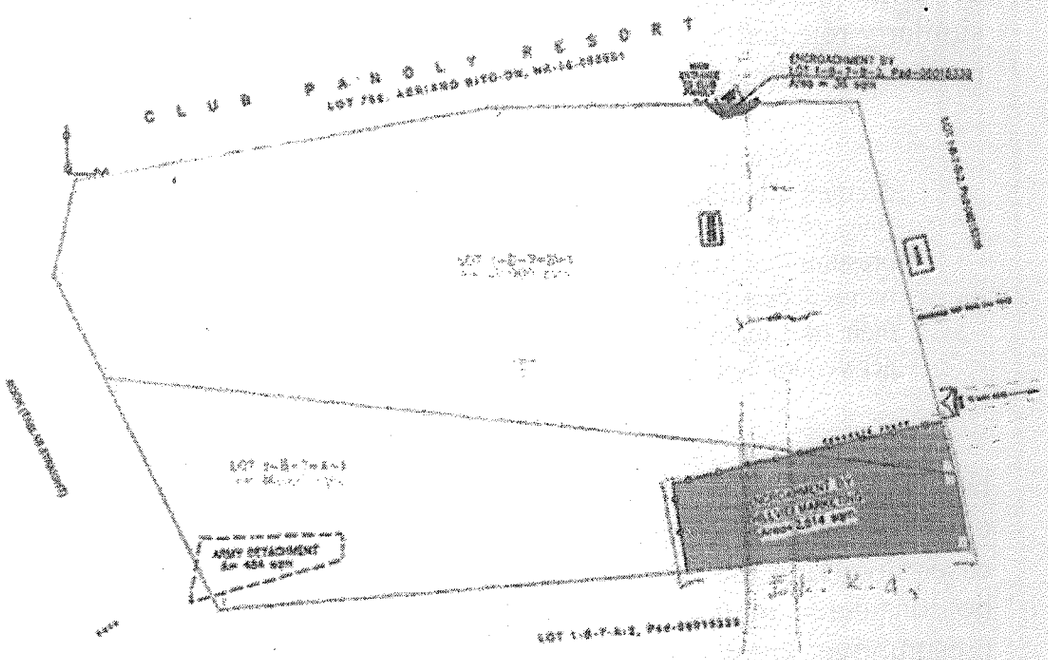
[19] Id. at 1234.

[20] 131 Phil. 756 (1968). Penned by Acting Chief Justice J.B.L. Reyes, with the concurrence of Associate Justices Arsenio Dizon, Querube Makalintal, Jose Bengzon, Calixto Zaldivar, Conrado Sanchez, Fred Ruiz Castro and Enrique Fernando.

[21] Id. at 761.

Consistent with my position in *Pen Development,* I stress that the only way by which Hillview could be considered ***in law*** as a builder in good faith is if it had shown that the encroachment falls within the boundaries of its own subsisting Torrens titles, and that such portion overlaps with a portion of land covered by the Torrens titles belonging to PRDC. In such case, Hillview could be deemed to have built on the overlapping portion in good faith, as it would have the right to rely on the indefeasibility or incontrovertibility of its Torrens titles until they are declared null and void.[22]

Here, PRDC presented Engineer Madlangbayan's Relocation Plan[23] to show that the portion encroached upon fell within the boundaries of its own registered lots as described in its Torrens titles:



Hence, it became incumbent upon Hillview to present similar evidence to show that the encroached portion falls within the bounds of its

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22 Section 32 of PD 1529 states:

> SEC. 32. *Review of decree of registration; Innocent purchaser for value.* – The decree of registration shall not be reopened or revised by reason of absence, minority, or other disability of any person adversely affected thereby, nor by any proceeding in any court for reversing judgments, subject, however, to the right of any person, including the government and the branches thereof, deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by actual fraud, to file in the proper Court of First Instance a petition for reopening and review of the decree of registration not later than one year from and after the date of the entry of such decree of registration, but in no case shall such petition be entertained by the court where an innocent purchaser for value has acquired the land or an interest therein, whose rights may be prejudiced. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value.
>
> Upon the expiration of said period of one year, the decree of registration and the certificate of title issued shall become incontrovertible. Any person aggrieved by such decree of registration in any case may pursue his remedy by action for damages against the applicant or any other persons responsible for the fraud.

23 See *rollo*, p. 116.

registered lots, spanning 5,100 square meters.[24] **Since Hillview failed to do so, the Court is left without any basis to conclude that Hillview built within the bounds of its own registered lots in good faith.**

Contrary to Hillview's assertions, its reliance on the erroneous survey plans prepared by Engineer Lopez does not support its claim of good faith. As observed by Senior Associate Justice Estela M. Perlas-Bernabe, the attendant circumstances show that Hillview had knowledge of the erroneous boundary line previously used by its predecessors, the Tirols. Nonetheless, Hillview proceeded with the construction of Alargo Residences despite the apparent encroachment upon PRDC's registered lots. Also notable is the *ponencia*'s observation that Hillview's own witness, Althea Acevedo of the Department of Environment and Natural Resources admitted in her testimony that "the reference monument [in this case] was **transferred** [by] 2 to 3 meters."[25]

These facts, taken together, completely belie Hillview's claim of good faith.

Conversely, PRDC is charged with *actual* knowledge of the boundaries of its registered lots. Nevertheless, it must be stressed that PRDC stands as the owner of the lots encroached upon. Accordingly, the protection afforded by the Torrens system in this case extends to PRDC.

In this context, a distinction must be made between PRDC's knowledge of its own land boundaries on the one hand, and the *fact* of encroachment on the other.

As astutely observed by Associate Justice Rodil V. Zalameda, the registered owner cannot be deemed in bad faith when there are no circumstances indicating that such owner had knowledge of the *fact* of encroachment and, in effect, permitted it. Once land is duly registered under the Torrens system, "the owner may rest secure, without the necessity of waiting in the portals of the court, or, sitting in the *mirador de su casa* to avoid the possibility of losing his land."[26] Here, the registered owner's lack of knowledge of the *fact* of encroachment is not taken against him, as he is indeed protected by the Torrens system. However, the registered owner is deemed in bad faith when there are circumstances indicating that he had become aware of the encroachment and had chosen *not* to act on it. In such cases, the owner's failure to act gives rise to laches or estoppel, and bars the registered owner from asserting good faith. This is pursuant to the express provision of Article 453 of the Civil Code, which provides that there is bad

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[24] Lot No. 1-B-7-A-2-B-1 covered by TCT No. T-34199; Lot No. 1-B-7-A-2-B-2 covered by TCT No. T-34200; Lot No. 1-B-7-A-2-B-3-A covered by TCT No. T-35280; Lot No. 1-B-7-A-2-B-3-B-1 covered by TCT No. T-35976; and Lot No. 1-B-7-A-2-B-3-B-2 covered by TCT No. T-35977. See Comment, *rollo*, pp. 193-196.

[25] *Ponencia*, p. 5.

[26] See *Salao, et al. v. Salao*, 162 Phil. 89, 116 (1976).

faith on the part of the landowner whenever the act was done with his knowledge and without opposition on his part.

As likewise observed by Associate Justice Rodil V. Zalameda, there appears to be no indication that PRDC had knowledge of Hillview's encroachment before 2007, considering that its main office was located in Quezon City. By the time PRDC discovered the encroachment in 2007, Alargo Residences had already been constructed. Hence, PRDC was left with no other recourse but to file the Complaint since Hillview refused to heed its demand to vacate.

The Court's ruling in Co Tao v. Chico should be abandoned.

Hillview attempts to escape liability by insisting that it relied in good faith on the erroneous survey plans submitted by Engineer Lopez, none of which showed any encroachment upon PRDC's property. Hillview's argument appears to find support in *Co Tao v. Chico*[27] (*Co Tao*), a 1949 case.

In *Co Tao,* the Court held:

> It is now claimed by petitioner that the respondent's house took a portion of petitioner's land. The Court of Appeals, after examining the evidence, found that respondent's house occupies 6.97 square meters of petitioner's lot, but that respondent acted in good faith. Accordingly, the Court of Appeals declared "that the plaintiff (petitioner) has the right to elect to purchase that portion of the defendant's (respondent's) house which protrudes into the plaintiff's property, or to sell to the defendant the land upon which the said portion of the defendant's house is built." And the case was remanded to the Court of First Instance "with direction to require the plaintiff to make the election as herein provided, within the time that the Court shall fix, and thereafter to reset the case for the admission of the evidence on the value of the improvement, in case the plaintiff elects to buy the same, or the value of the land, in case he elects to sell it, and to render decision as the result of the new trial shall warrant." From this decision petitioner appealed by certiorari to this Court.
>
> All the questions raised by the petitioner are unmeritorious. **He alleges, for instance, that respondent could not have acted in good faith in building a portion of his house beyond the limits of his land, because he ought to know the metes and bounds of his property as stated in his certificate of title. But, as rightly stated by the Court of Appeals[,] "[i]t is but stating the obvious to say that outside of the individuals versed in the science of surveying, and this is already going far, no one can determine the precise extent or location of his property by merely examining his paper title. <u>The fact is even surveyors cannot with exactitude do so. The disagreement among the three surveyors in the case at hand who have made a resurvey of the ground with the aid of scientific devices and of their experience and</u>**

[27] 83 Phil. 543 (1949).

> **knowledge of surveying, is a graphic and concrete illustration of this truth**."[28] (Emphasis and underscoring supplied)

I believe that it is high time for the Court *en banc* to explicitly abandon its ruling in *Co Tao* lest confusion ensue.

Co Tao was decided in 1949, over a decade prior to the promulgation of the *1962 J.M. Tuason case*. As earlier stated, the Court's pronouncement in the latter case was reiterated in the *1968 J.M. Tuason case*. Accordingly, the *1962 and 1968 J.M. Tuason cases,* which adhere to the presumptive/constructive knowledge principle/rule, must take precedence.

The subsequent case of *Tecnogas Philippines Manufacturing Corp. v. CA*[29] (*Tecnogas*) which relied on the Court's ruling in *Co Tao* should be deemed an aberration. Nonetheless, the ruling in *Tecnogas* was promulgated in division, **while the 1962 and 1968 *J.M. Tuason cases* were both *en banc***. Thus, the principles set forth in the latter cases, which have been discussed above, may not be authoritatively overturned or abandoned except through another case similarly decided *en banc*.[30]

Moreover, there is no dispute that the precise extent or location of one's registered property cannot be determined by merely examining the technical description appearing on the face of one's Torrens title. As Justice Lazaro-Javier points out, "the actual boundaries as plotted on the ground will only be apparent after examining the registry and accomplishing several additional processes x x x."[31] ***However*, it must be emphasized that the examination of the registry and the ascertainment of the actual boundaries of one's land area are part and parcel of the due diligence that PD 1529 exacts upon those dealing with land registered under the Torrens system**.

To note, confirmation of title under PD 1529 is a tedious process. It requires hearing, publication, posting, and personal notice to adjoining owners, among others.[32] These stringent requirements are necessitated not only by the nature of land registration cases as proceedings *in rem*, but also by the strength of the Torrens title resulting therefrom.

The protection afforded by PD 1529 to registered land will be diluted if the exercise of due diligence on the part of those dealing with such land is deemed "unreasonable", considering that the difficulty in ascertaining the precise metes and bounds of registered property that might have existed in 1949 and 1970, when the improvements in question in *Co Tao* and *Tecnogas* were built, no longer obtains at present due to significant advancements in

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28 Id. at 544-545.
29 335 Phil. 471 (1997).
30 See INTERNAL RULES OF THE SUPREME COURT, Rule 2, Sec. 3(h).
31 J. Lazaro-Javier, Separate Concurring Opinion, p. 7.
32 See PD 1529, Secs. 15 and 23.

the field of surveying and the relative inexpensiveness of hiring a geodetic engineer.

To my mind, the fact that licensed geodetic engineers sometimes make mistakes when determining the exact physical location of titled property does not warrant a wholesale abdication of the rule on constructive notice. Geodesy, by nature, is a precise science. The occasional errors or mistakes made by licensed geodetic engineers are the exception rather than the general rule. The strength of the Torrens system lies in the full faith and credit accorded to the Torrens titles and their contents. The integrity of the Torrens system cannot be made subject to the claims of laymen and experts alike, if such claims are not consistent with what is reflected on the Torrens titles.

Finally, it may not be amiss to state that both *Co Tao* and *Tecnogas* involved registered land. In *Co Tao,* respondent Joaquin Chan Chico built improvements beyond the boundaries of his own Torrens title.[33] In *Tecnogas*, petitioner Tecnogas Philippines Manufacturing Corporation purchased registered land with improvements that encroached on the adjoining land registered in the name of respondent Eduardo Uy. Nevertheless, both cases applied the general presumption of good faith under the Civil Code in determining the rights and obligations of the encroaching party. This reliance on the Civil Code is what I submit to be incorrect given that the properties involved in these cases were registered properties.

As stated at the outset, the general presumption of good faith under the Civil Code applies in an encroachment scenario when both properties involved are unregistered. **When either or both of the properties involved are registered under the Torrens system, it is the constructive notice rule espoused in PD 1529 that applies.** I respectfully submit that *Co Tao* and *Tecnogas* cannot serve as basis to carve out, as an exception to the constructive notice rule, situations where one's structure encroaches upon property registered in the name of another, ***for no such exception exists in law***.

Final Note

In every case involving the encroachment on registered land, it is the stability of the Torrens system that must first and foremost be upheld, and secondly, if not equally important, the primacy of PD 1529, being the special law applicable to registered land, must be accorded.

To accord good faith in favor of Hillview based on an erroneous relocation survey prepared by its geodetic engineer who is the supposed expert in the precise science of geodesy creates a dangerous precedent. It will make it almost impossible to rebut such "proof" of good faith.

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[33] See *Co Tao v. Chico*, supra note 27 at 544.

The correctness of a relocation survey prepared by a geodetic engineer will be rendered immaterial, as good faith will be automatically assured to the party who relies on it.

Such a precedent will dangerously confer on the builder a preferred status under Article 448 to the detriment of the registered owner, and open the floodgates to wealthy land grabbers who will be permitted to unscrupulously oust innocent landowners from their registered property through encroachment, by building improvements of significant value which the latter would not be able to acquire. I fail to see how adherence to the principles of the Torrens system would lead to the impairment of the real estate industry. On the contrary, I believe that such stance will enhance the real estate industry as it operates, as it always has, as a cloak of protection to valid titleholders.

Article 448 of the Civil Code provides:

> 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.

The landowner has two mutually exclusive options under this Article: (1) to appropriate as his own the works or the improvements, or (2) to oblige the one who built to pay the price of the land. If the improvements are of significant value beyond the capacity of the registered landowner, the latter is left with no practical alternative but to choose the second option. This means that the registered owner is forced to lose the encroached portion of his registered land. Worse, if the wealthy land grabber unscrupulously builds on the entire registered land, the registered owner risks losing his entire registered land. In this situation, the Torrens system would have failed to protect the registered owner because one of its safeguards, the constructive notice rule, would have been disregarded. This should not be allowed. Such ruling puts owners of unregistered land, who are not bound by the irrefutable presumption of constructive knowledge on the metes and bounds of their property, in a position better than those who have placed their real property under the coverage of the Torrens system and are bound by such rule — this undermines the very purpose of the Torrens system and throws away the protection it was designed to afford.

Proceeding from the foregoing, I vote to reverse the Decision and Resolution respectively dated November 28, 2014 and January 15, 2016 rendered by the Court of Appeals in CA-G.R. CV No. 04415, insofar as they hold that respondent Hillview Marketing Corporation is a builder in good faith.

In view of the Court's finding that respondent is a builder in bad faith, the present case should be remanded to the Regional Trial Court for proper determination of the parties' respective rights and fulfillment of their respective obligations in accordance with Articles 449, 450 and 451 of the Civil Code.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

G.R. No. 222482 ***(Princess Rachel Development Corporation and Boracay Enclave Corporation v. Hillview Marketing Corporation, Stefanie Dornau and Roberto Dornau)***

Promulgated:
June 2, 2020

SEPARATE CONCURRING OPINION

LAZARO-JAVIER, *J.*:

I concur in the result.

In ***Legarda v. Saleeby***[1] and the twin cases of ***JM Tuason & Co., Inc. v. Macalindong***[2] and ***JM Tuason & Co., Inc. v. Lumanlan,***[3] the Court essentially held that a person who occupies a titled property is **presumed** to have knowledge of this title, including the metes and bounds of the property. These cases do not apply here.

In the 1915 *En Banc* case of ***Legarda v. Saleeby,*** plaintiffs and defendant owned adjoining lots in Ermita, Manila. For years, a stone wall had stood between these lots. The parties' respective predecessors-in-interest filed separate petitions for registration of their individual properties. The trial court granted plaintiffs' petition on October 25, 1906, and defendant's petition, on March 25, 1912. On even dates, the court also issued their individual original certificates of title. Both their titles, however, included the portion where the dividing wall stood. The issue --- who owned this portion? The Court held:

> The question, who is the owner of land registered in the name of two different persons, has been presented to the courts in other jurisdictions. In some jurisdictions, where the "torrens" system has been adopted, the difficulty has been settled by express statutory provision. In others it has been settled by the courts. Hogg, in his excellent discussion of the "Australian Torrens System," at page 823, says: **"The general rule is that in the case of <u>two certificates of title, purporting to include the same land</u>, the earlier in date prevails, whether the land comprised in the latter certificate be wholly, or only in part, comprised in the earlier certificate.** Hogg adds however that, "if it can be clearly ascertained by the ordinary rules of construction relating to written documents, that the inclusion of the land in the certificate of title of prior date is a mistake, the mistake may be rectified by holding the latter of the two certificates of title to be conclusive." Niblack, in discussing the general question, said: "**Where**

[1] G.R. No. 8936, October 2, 1915.
[2] G.R. No. L-15398, December 29, 1962.
[3] G.R. No. L-23497, April 26, 1968.

> **two certificates purport to include the same land the earlier in date prevails** . . . In successive registrations, where more than one certificate is issued in respect of a particular estate or interest in land, the person claiming under the prior certificate is entitled to the estate or interest; and that person is deemed to hold under the prior certificate who is the holder of, or whose claim is derived directly or indirectly from the person who was the holder of the earliest certificate issued in respect thereof. While the acts in this country do not expressly cover the case of the issue of two certificates for the same land, they provide that a registered owner shall hold the title, and the effect of this undoubtedly is that **where two certificates purport to include the same registered land, the holder of the earlier one continues to hold the title"**. (emphases added, citations omitted)

These facts significantly differ from the present petition. ***Legarda*** involved the same portion covered by both titles. Consequently, the Court held that real property sold to two different persons belonged to the person who first inscribed it in the registry.

Here, it does not appear that the title certificates of Princess Rachel and Boracay Enclave, on the one hand, and Hillview, on the other, overlap substantially or otherwise. What exists here is Hillview's encroachment on a portion of the lot belonging to Princess Rachel/Boracay Enclave.

I submit that ***Legarda*** would only apply when **there are at least two title certificates purporting to include the same land or portion.** To resolve the parties' conflicting claims of ownership, the Court ruled that the second registrant is charged with constructive notice of the metes and bounds of the first registrant's property pursuant to Section 52 of Presidential Decree (PD) 1529, *viz*:

> **Section 52.** *Constructive notice upon registration.* Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering.

As ***Legarda*** elucidated:

> **Under the rule of notice, it is presumed that the purchaser has examined every instrument of record affecting the title**. Such presumption is irrebutable. **He is charged with notice of every fact <u>shown by the record</u>** and is presumed to know every fact which an examination of the record would have disclosed. This presumption cannot be overcome by proof of innocence or good faith. Otherwise the very purpose and object of the law requiring a record would be destroyed. Such presumption cannot be defeated by proof of want of knowledge of what the record contains any more than one may be permitted to show that he was ignorant of the provisions of the law. The rule that all persons must take notice of the facts

> which the public record contains is a rule of law. The rule must be absolute. Any variation would lead to endless confusion and useless litigation. (emphases added)

To emphasize, the rule on constructive notice is expressed in decisional law only as to the existence of instruments properly executed and placed on the records of the title and all that is shown or found thereon. **If the overlap, therefore, is apparent on the face of at least two certificates of title, the second registrant is presumed to have acted in bad faith should he or she subsequently build on the same area already covered by the title of the first registrant.** As shown, this doctrine finds no application to the present case.

The twin ***JM Tuason*** cases, decided by the Court *En Banc* in 1962 and 1968, do not apply here either. There, respondents Macalindong and Lumanlan were claiming ownership over two (2) smaller lots forming part of the bigger parcel registered in the name of JM Tuason. They traced their claim of ownership to one Pedro Deudor who allegedly acquired the lots from JM Tuason through a compromise agreement. Ultimately, the Court ruled in favor of JM Tuason when it discovered that the compromise agreement did not grant to Deudor ownership of the two lots in question, but a mere preferential right to purchase the same, thus:

> Careful analysis of this paragraph of the compromise agreement will show that while the same created "a sort of contractual relation" between the J.M. Tuason & Co., Inc., and the Deudor vendees (as ruled by this Court in Evangelista *vs.* Dendor, *ante*), the same in no way obligated Tuason & Co. to sell to those buyers the lots occupied by them at the price stipulated with the Deudors, but at "the current prices and terms specified by the OWNERS (Tuason) in their sales of lots in their subdivision known as 'Sta. Mesa Heights Subdivision'." This is what is expressly provided. Further, paragraph plainly imports that these buyers of the Deudors must "recognize the title of the OWNERS (Tuason) over the property *purportedly* bought by them" from the Deudors, and "sign, whenever possible, new contracts of purchase for said property"; and, if and when they do so, "the sums paid by them to the Deudors . . . shall be credited to the buyers." **All that Tuason & Co. agreed to, therefore, was to grant the Deudor buyers preferential right to purchase "at current prices and terms" the lots occupied by them, upon their recognizing the title of Tuason & Co., Inc., and signing *new* contracts therefor; and to credit them for the amounts they had paid to the Deudors.** (emphases added)

On whether respondents Macalindong and Lumanlang acted in bad faith in taking possession of subject lots, the Court held:

> xxx There being a presumptive knowledge of the Torrens title issued to Tuason & Co., and its predecessors-in-interest since 1914, the buyer from the Deudors cannot in good conscience claim that she believed her vendor had rights of ownership over the lot purchased. She is bound conclusively

> by Tuason's Torrens title. Respondent is, therefore, not a builder in good faith.

Indubitably, **the parties in the *JM Tuason* cases were both claiming ownership over the same subject lots.** There was no issue on the identity of these lots. Macalindong and Lumanlan never denied that JM Tuason had registered title over them but insisted that their right thereto was superior to that of JM Tuason.

The situations in ***Legarda*** and ***JM Tuason*** are not too different from each other. In both cases, the parties laid conflicting claims of ownership over the same lot or area. In stark contrast, the present petition does not present conflicting claims of ownership. It hinges solely on the merits of Hillview's defense of good faith vis-à-vis its encroachment on a portion of petitioners' property.

Considering such fundamental difference between ***Legarda*** and the ***JM Tuason*** cases, on the one hand, and the present case, on the other, the standard of constructive notice in the former cases for the purpose of upholding or rejecting one's claim of good faith cannot be applied here.

We should instead apply ***Co Tao v. Joaquin Chan Chico***[4] and ***Tecnogas Philippines Manufacturing Corporation v. Court of Appeals.***[5]

In the 1949 *En Banc* case of ***Co Tao***, Chico was the owner of a property described as Lot No. 7 and covered by Certificate of Title No. 24239. Co Tao owned the adjoining lot No. 6. The conflict arose when Chico asserted that the house constructed by Co Tao encroached on a portion of Chico's land. After due proceedings, the Court ultimately found it was actually Chico who encroached on Co Tao's property by 6.97 sqm.; not the other way around. The Court emphasized though that the fact alone that Co Tao's property was registered did not automatically mean that Chico was a builder in bad faith insofar as the encroachment was concerned. The Court aptly decreed:

> xxx It is but stating the obvious to say that outside of the individuals versed in the science of surveying, and this is already going far, **no one can determine the precise extent or location of his property by merely examining his paper title. The fact is even surveyors cannot with exactitude do so.** The disagreement among the three surveyors in the case at hand who have made a resurvey of the ground with the aid of scientific devices and of their experience and knowledge of surveying, is a graphic and concrete illustration of this truth. (emphasis and underscoring added)

Notably, ***Co Tao*** was cited in the 1997 case of ***Tecnogas,*** decided by the Third Division. To recall, Tecnogas was the registered owner of a lot in

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[4] G.R. No. L-49167, April 30, 1949.
[5] 335 Phil. 471 (1997).

Barrio San Dionisio, Parañaque City, known as Lot 4531-A and covered by Transfer Certificate of Title No. 409316. It bought the property from Pariz Industries in 1970, together with all the buildings and improvements thereon. Meanwhile, Eduardo Uy was the registered owner of the adjoining parcels covered by Transfer Certificate of Title Nos. 279838 (Lot 4531-B) and 31390, respectively. Tecnogas later learned that portions of the structures it bought actually stood on a small portion of Uy's property. For this reason, Tecnogas offered to buy this portion, but Uy refused and sued Tecnogas instead.

The Court ruled that Tecnogas did not act in bad faith when it built on a portion of Uy's titled property. The Court even rejected the application of the ***JM Tuason*** cases in resolving ***Tecnogas***, thus:

> Respondent Court, citing the cases of ***J. M. Tuason & Co., Inc. vs. Vda. De Lumanlan*** **and** ***J. M. Tuason & Co., Inc. v. Macalindong,*** ruled that petitioner "cannot be considered in good faith" because as a land owner, it is "presumed to know the metes and bounds of his own property, specially if the same are reflected in a properly issued certificate of title. One who erroneously builds on the adjoining lot should be considered a builder in *(b)ad (f)aith*, there being presumptive knowledge of the Torrens title, the area, and the extent of the boundaries."
>
> We disagree with respondent Court. The two cases it relied upon do not support its main pronouncement that a registered owner of land has presumptive knowledge of the metes and bounds of its own land, and is therefore in bad faith if he mistakenly builds on an adjoining land. Aside from the fact that **those cases had factual moorings radically different from those obtaining here,** there is nothing in those cases which would suggest, however remotely, that bad faith is imputable to a registered owner of land when a part of his building encroaches upon a neighbor's land, simply because he is supposedly presumed to know the boundaries of his land as described in his certificate of title. No such doctrinal statement could have been made in those cases because such issue was not before the Supreme Court. Quite the contrary, we have rejected such a theory in ***Co Tao vs. Chico***, where we held that **unless one is versed in the science of surveying, "no one can determine the precise extent or location of his property by merely examining his paper title."**

The Court declined to apply the supposed irrebuttable presumption of bad faith in ***JM Tuason.*** Instead, the Court applied the disputable presumption of good faith considering the attendant circumstances, *viz*:

> There is no question that **when petitioner purchased the land from Pariz Industries, the buildings and other structures were already in existence**. The record is not clear as to who actually built those structures, but it may well be assumed that petitioner's predecessor-in-interest, Pariz Industries, did so. **Article 527 of the Civil Code presumes good faith, and since no proof exists to show that the encroachment over a narrow, needle-shaped portion of private respondent's land was done in bad faith by the builder of the encroaching structures, the latter should be presumed to have built them in good faith.** It is presumed that possession

> continues to be enjoyed in the same character in which it was acquired, until the contrary is proved. Good faith consists in the belief of the builder that the land he is building on is his, and his ignorance of any defect or flaw in his title. Hence, such good faith, by law, passed on to Pariz's successor, petitioner in this case. Further, "(w)here one derives title to property from another, the act, declaration, or omission of the latter, while holding the title, in relation to the property, is evidence against the former." And possession acquired in good faith does not lose this character except in case and from the moment facts exist which show that the possessor is not unaware that he possesses the thing improperly or wrongfully. The good faith ceases from the moment defects in the title are made known to the possessor, by extraneous evidence or by suit for recovery of the property by the true owner.
>
> Recall that the encroachment in the present case was caused by a very slight deviation of the erected wall (as fence) which was supposed to run in a straight line from point 9 to point 1 of petitioner's lot. It was an error which, in the context of the attendant facts, was consistent with good faith. xxx

Indeed, the law always presumes good faith. The one who alleges bad faith must prove it by clear and convincing evidence, *viz*:

> **Article 527.** Good faith is always presumed, and upon him who alleges bad faith on the part of a possessor rests the burden of proof. (434)

In resolving the issue of good faith, the Court in ***Co Tao*** and ***Tecnogas*** considered several factors. For instance, the 6.97 sqm. encroachment over the titled property in ***Co Tao*** and the "very slight deviation" of a constructed wall in ***Tecnogas*** did not automatically render Chico and Tecnogas builders in bad faith. The Court may also consider the circumstances that led to the fact of encroachment, including the history of the encroaching party's claim of title. Thus, the Court deemed it proper to evaluate the peculiar circumstances by which Chico and Tecnogas acquired their respective properties.

Here, the courts below found that Hillview encroached on petitioners' property by 2,783 sqm. By itself, however, the size of the encroachment is not sufficient to support the conclusion that Hillview acted in bad faith. Compared to the entire expanse of petitioners' property, extending up to 30,000 sqm. altogether, the size of the encroached area may appear miniscule. Besides, in cases of encroachment, there should always be margins for error and possibilities of good faith. For who among us mortals, by our naked eye alone, can instantly and accurately ascertain that 2,783 sqm. when plotted on the ground is already the same size as the courtyard of the Supreme Court facing Padre Faura?

To emphasize, no one can determine the **precise** extent or location of his or her property by merely examining the four (4) corners of his or her paper title. Although a paper title may inform a person of the specific points bounding a property, how these points are plotted on actual land is beyond the

expertise of a layperson. Even licensed geodetic engineers sometimes make mistakes on the exact physical location of a titled property. When honest mistakes are committed, the good faith of the builder serves as his or her own protection.

Suffice it to state that the metes and bounds of a piece of land do not jump out of the page to tell the reader where the piece of land is, how big it is, what shape it is and what its edges are. The actual boundaries as plotted on the ground will only be apparent after examining the registry and accomplishing several additional processes that all require expertise and expense. It is therefore unreasonable to conclude that just because a property is registered, all persons dealing with them may already be charged with constructive notice of not only the technical metes and bounds but also how the same will appear when actually laid on the ground.

Co Tao did not overrule ***Legarda*** and does not conflict with ***JM Tuason***. Similarly, ***Tecnogas***, which was decided by a Division of the Court, did not as it could not have overturned ***JM Tuason***. These cases govern different facts, hence, at no point can there be conflict between them. All told, I respectfully suggest that the following guidelines be considered in the application of these cases:

1. When it appears on the face of two (2) Torrens titles that they include the same property or portion, the second of the two (2) registrants is presumed to have acted in bad faith when he or she encroaches on the land of the first registrant (***Legarda***);

2. When the identity, location and the extent of a property as appearing on the registry record are not in dispute, a person, not being the registered owner, who appropriates the property as his or her own is presumed to have acted in bad faith (***JM Tuason*** cases); and

3. When one's structure happens to encroach on a registered property or portion belonging to another, this fact alone does not support a finding of bad faith. The same must be established by independent, nay, competent evidence. (***Co Tao*** and ***Tecnogas***)

Verily, the cases of ***Co Tao*** and ***Tecnogas*** are applicable here. Any finding of bad faith on the part of Hillview, therefore, should not be based on any mere presumption but should be warranted by the factual circumstances obtaining in the present case. On this score, I agree that the factual circumstances here support a finding of bad faith against Hillview.

I therefore join the majority in granting the petition and remanding the same to the trial court for further proceedings on the proper application of Articles 449, 450 and 451 of the Civil Code.

AMY C. LAZARO-JAVIER
Associate Justice

EN BANC

G.R. No. 222482 – Princess Rachel Development Corporation and Boracay Enclave Corporation, *Petitioners,* *v.* **Hillview Marketing Corporation, Stefanie Dornau and Roberto Dornau,** *Respondents.*

Date Promulgated: June 2, 2020

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SEPARATE CONCURRING OPINION

ZALAMEDA, *J.*:

I concur. The issue of good faith or bad faith of the builder and the landowner should be considered based on the peculiar circumstances surrounding the case.

Petitioner Princess Rachel Development Corporation is a landowner in good faith, and it must be categorically declared to be so

It need not be underscored that the laws applicable here enjoin the courts not only to make a finding on the builder's good faith or bad faith, but also make a specific determination of the landowner's good faith or the absence of it. Simply put, the determination of the respective rights and liabilities of the parties essentially depends on the finding of good faith or bad faith on their part.

While respondent Hillview Marketing Corporation (respondent Hillview), along with its co-respondents Stefanie Dornau and Robert Dornau (Stefanie and Robert), is adamant that petitioner Princess Rachel Development Corporation (petitioner) should be held in bad faith for sleeping on its rights in this case, the respective decisions of the Regional Trial Court (RTC) and the Court of Appeals (CA) are conspicuously silent on the matter. Although the CA had the occasion to point out petitioner's alleged inactions or negligence in protecting its rights as landowner, it nevertheless shunned away from the responsibility of making a categorical finding whether petitioner is a landowner in good faith or bad faith.

The *ponente* aptly fills the *lacuna* with the pertinent discussion and duly declares petitioner to be a landowner in good faith.

Verily, petitioner, being a registered landowner, can rightfully claim protection under the Torrens system, in that it may rest secure, without the necessity of waiting in the portals of the court, or sitting in the *mirador de su casa,* to avoid the possibility of losing its land.[1] In addition, Article 453[2] of the New Civil Code is categorical that bad faith may only be attributed to a landowner when the act of building, planting, or sowing was done with his knowledge and without opposition on his or her part.[3]

As I have consistently pointed out from the start, the scrutiny of the established facts readily reveals petitioner's good faith in this case.

Contrary to what the CA opined in the assailed decision, petitioner had shown sufficient justification for not being able to object to the construction of respondent Hillview from 2004-2007. Its office is located in Metro Manila while the disputed properties are situated in Aklan. Respondent Hillview's intrusion into petitioner's properties was discovered only in 2007, after the latter caused a relocation survey of the same due to the impending sale thereof to Boracay Enclave Corporation. From then on, however, petitioner diligently notified respondent Hillview of the encroachment, and sent the appropriate demands for the latter to vacate and return possession of the encroached lots to petitioner. When such demands unfortunately fell on deaf ears, petitioner immediately filed the complaint. All these actions were undertaken by petitioner in a matter of months after its discovery of respondent Hillview's encroachment.

In fine, as discussed in the *ponencia*, petitioner cannot be said to have slept on its right and must therefore be regarded as a landowner in good faith, entitled to the protections provided under the New Civil Code.

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1 *See Wee v. Mardo*, G.R. No. 202414, 4 June 2014; 735 Phil. 420-434 (2014); 725 SCRA 242.

2 ARTICLE 453. If there was bad faith, not only on the part of the person who built, planted or sowed on the land of another, but also on the part of the owner of such land, the rights of one and the other shall be the same as though both had acted in good faith. It 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.

3 *See Dinglasan-Delos Santos v. Abejon*, G.R. No. 215820, 20 March 2017; 807 Phil. 720-737 (2017); 821 SCRA 132.

Bad faith of respondent Hillview in building on the disputed properties is clear and unmistakable from the established facts

The RTC and the CA were unanimous in finding that respondent Hillview encroached upon a huge portion of petitioner's properties. This factual finding binds this Court, as it is clearly supported by evidence. Be that as it may, the trial and appellate courts were diametrically opposed on the responsibilities of respondent Hillview: the RTC found respondent Hillview liable under the circumstances based mainly on the "revelations" of Engineer Reynaldo Lopez (Engr. Lopez) imputing actual knowledge of the encroachment on respondent Hillview, while the CA found no liability on the part of the latter applying the presumption of good faith in its favor.

In resolving the impasse, the *ponencia* upheld the RTC's view that respondent Hillview is indeed a builder in bad faith, albeit for an entirely different reason.

Based on the facts and evidence on hand, it is correct that respondent Hillview be held liable for being a builder in bad faith. This must be so notwithstanding the rather unreliable testimony of Engr. Lopez. Indeed, regardless of my strong misgivings on the motivation of Engr. Lopez' surprising shift of allegiance in this case, the CA committed reversible error in applying the presumption of good faith in favor of respondent Hillview.

It is axiomatic in jurisprudence that the essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim and absence of intention to overreach another. Applied to possession, one is considered in good faith if he is not aware that there exists in his title or mode of acquisition any flaw which invalidates it.[4]

In the instant case, based on the figures alone, it can already be fairly deduced that respondent Hillview was well-aware of its intrusion into the lots of petitioner. Tommy Sarceno, respondent Hillview's own witness, testified that respondent Hillview only bought a total of 5,100 square meters of spouses Tirol's property,[5] which means that the encroachment extended to more than 50% of respondent Hillview's own lot. An increase in the land

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4 *See Ochoa v. Apeta*, G.R. No. 146259, 13 September 2007; 559 Phil. 650-657 (2007); 533 SCRA 235.
5 RTC Decision; *rollo*, pp. 143-144.

area of such proportion is too great to be left undiscovered by respondent Hillview at any time before, or during the construction of the *Alargo Residence*, with Engineer Lester Madlangbayan describing **the encroachment as very visible.**[6]

Respondent Hillview ought to have known the actual land area or the metes and bounds of its own property as part of its due diligence, being the developer of the *Alargo Residence* subdivision project. To be sure, the encroachment in this case spanned 2,783 square meters, and every square inch thereof was a potential source of huge profit for respondent Hillview. As found in the records, a unit at the *Alargo Residence* - an upscale and sophisticated residential project - was pegged at USD200,000.00.[7] Needless to say, no prudent and savvy developer could miss that vital information.

If that is not enough, it bears pointing out that respondent Hillview, in a desperate attempt to hide the fact of encroachment, even resorted to several schemes to repeatedly avoid the RTC's order for the parties to submit their respective survey reports within the period provided. When it was left with no other ruse to employ, it instead submitted a consolidated sketch plan, or a table survey prepared by its chosen geodetic engineer, without even conducting an actual survey on the ground.[8]

With the foregoing factual findings, it is certain that respondent Hillview knew very well of its encroachment into petitioner's properties, and should be declared a builder in bad faith.

The ponente is right in declaring the good faith or bad faith of a builder, as in the case of the landowner, based on the peculiar circumstances of the case, not on a strict application of the constructive notice rule

Despite the long, tedious deliberation of the members of this Court, I still have not wavered in my view that a declaration of the good faith or bad faith strictly on *a priori* application of the constructive notice rule and the presumptive knowledge of Torrens title may lead to iniquitous results. To reiterate, an indiscriminate, blind application of these rules, without regard

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6 *Id.* at 139.
7 *Id.* at 143-144.
8 *Rollo*, p. 16.

to the peculiar factual circumstances of each case, may not be the best approach to dispense justice.

To illustrate, A bought a registered lot from a subdivision developer and after receiving a go signal from the latter, built a house thereon. After completion of the construction, B, the adjoining lot owner and A's neighbor, found through a recently concluded technical survey that A's house and lot encroached on his property because of an error committed by the subdivision developer. A, who built on the lot, relying in good faith on the subdivision developer's title and representations, and without negligence on his part should not be deemed a builder in bad faith under the circumstances.

Indeed, subservience to the provisions of the pertinent provisions of PD 1529, or a literal application thereof, is not always the rational and judicious way of resolving encroachment cases like this, as have been amply proven in jurisprudence. Badges of good faith of the builders or their transferees would be negated if the Court expands the scope and application of the constructive notice rule under PD 1529 to include a presumptive knowledge of the metes and bounds of every registered land, as reflected in the technical description thereof. Verily, certificates of titles are not always free from errors; hence, there has been a need for their correction in many instances. Most of the time, however, the errors are only realized much later, often after the owners have already constructed their improvements. There are also instances of honest mistakes by the builders, as when the lots delivered to them by the sellers are different, a case which is prevalent in subdivision developments.

Jurisprudence abound where the Court, in declaring the rights and liabilities of a builder, made use of the factual circumstances approach, instead of a blind application of the constructive notice rule

It has been said that Article 448[9] of the Civil Code applies only when the builder believes that he is the owner of the land or that by some title he

[9] ARTICLE 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.

has the right to build thereon, or that, at least, he has a claim of title thereto.[10] It is not amiss to underscore, however, that Article 527[11] of the New Civil Code provides that good faith is always presumed, and upon him who alleges bad faith on the part of a possessor rests the burden of proof. Corollarily, **the settled rule is bad faith should be established by clear and convincing evidence since the law always presumes good faith.**[12] However, bad faith does not simply connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of known duty through some motive or interest or ill-will that partakes of the nature of fraud. It is, therefore, a question of intention, which can be inferred from one's conduct and/or contemporaneous statements.[13]

Following these settled principles, the Court has had many occasions where it recognized good faith beyond its limited definition,[14] by declaring the builder to be in good faith despite a finding that the latter encroached or built on a registered lot belonging to another.

In the vintage case of *Co Tao v. Chico,*[15] the three (3) surveyors who made a resurvey of the ground with the aid of their scientific devices, along with their experience and knowledge of surveying, still had a disagreement on the results of their respective measurements. **Hence, the Court, in declaring the builder to be in good faith, underscored that unless one is versed in the science of surveying, no one can determine the precise extent or location of his property by merely examining his paper title when even the surveyors cannot, with exactitude, do so.**

Also, in *Tecnogas Philippines Manufacturing Corporation v. Court of Appeals, et al.,*[16] the Court, after taking into consideration all the circumstances established in the said case, adjudged petitioner *Tecnogas* in good faith despite its property encroaching a "narrow, needle-shaped portion of private respondent's land."

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[10] *See Communities Cagayan, Inc. v. Spouses Nanol*, G.R. No. 176791, 14 November 2012; 698 Phil. 648-669 (2012); 685 SCRA 453.

[11] ARTICLE 527. Good faith is always presumed, and upon him who alleges bad faith on the part of a possessor rests the burden of proof.

[12] *Spouses Espinoza v. Spouses Mayandoc*, G.R. No. 211170 , 03 July 2017; 812 Phil. 95-107 (2017); 828 SCRA 601.

[13] *Adriano v. La Sala,* G.R. No. 197842, 09 October 2013; 719 Phil. 408-421 (2013); 707 SCRA 345.

[14] *Supra* at note 10.

[15] G.R. No. 49167, 30 April 1949; 83 Phil. 543-547 (1949).

[16] G.R. No. 108894, 10 February 1997; 335 Phil. 471-489 (1997); 268 SCRA 5.

Meanwhile, the Court, in *Sarmiento v. Hon. Agana*,[17] found the builder to be in good faith despite building his residential house on a lot owned by another. The Court held therein that the builder was in good faith in view of the peculiar circumstances under which he had constructed his house. **As the facts disclosed, he proceeded to build on the erroneous assumption that land was owned by his mother-in-law who gave her consent, and thus, could reasonably be expected to later on give him the lot.**

Similarly, *Rosales v. Castelltort*,[18] *Briones v. Macabagdal, et al.*,[19] and *Pleasantville Development Corporation v. Court of Appeals, et al.*,[20] all declared the builders therein in good faith despite building their improvements on the properties of another. **In these cases, the builders constructed their houses on the lots of another on the honest, albeit mistaken, belief that the lots they built on were the ones sold to them by their predecessors or developers.**

In *Spouses Aquino v. Spouses Aguilar*,[21] the Court was categorical in acknowledging that it is, in fact, aware of some instances where it allowed the application of Article 448 to a builder who has constructed improvements on the land of another with the consent of the owner. **The Court explained therein that builders may be adjudged in good faith even though they are aware of the construction of their improvement on a land owned by another for as long as the landowners knew and approved or acquiesced to the construction of improvements on their property.** This was also the declaration of the Court in *Communities Cagayan, Inc. v. Spouses Nanol*.[22]

In *Pen Dev't. Corp. v. Leyba, Inc.*,[23] the Court likewise determined the bad faith of the builder therein on a "more factual approach" rather than by a mechanical application of the constructive notice rule.

Lest it be forgotten, the foregoing cases and several more, involved real estate properties registered under the Torrens system. Yet, these cases prove that even if the provisions of PD 1529 supposedly require an indiscriminate and overreaching application of the constructive notice rule

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17 G.R. No. 57288, 30 April 1984; 214 Phil. 101-106 (1984).
18 G.R. No. 157044, 05 October 2005; 509 Phil. 137-156 (2005); 427 SCRA 144.
19 G.R. No. 150666, 03 August 2010; 640 Phil. 343-358 (2010); 626 SCRA 300.
20 G.R. No. 79688, 01 February 1996; 323 Phil. 12-29 (1996); 253 SCRA 10.
21 G.R. No. 182754, 29 June 2015; 762 Phil. 52-72 (2015); 760 SCRA 444.
22 *Supra* at note 10.
23 G.R. No. 211845, 09 August 2017; 816 Phil. 554-595 (2017); 836 SCRA 548.

and presumptive knowledge of Torrens title, the Court nevertheless has had so many occasions where it did not apply the same, but instead judiciously considered the peculiar facts of the case in determining the good faith or bad faith of the builder instead.

The determination of the good faith or bad faith must indeed be on a case to case basis

The use of the factual approach in the case at bar in determining the good faith or bad faith of the builder is clearly neither novel nor an aberration, but finds clear support from jurisprudence. Prudence and the interest of justice dictate that We should apply the same going forward. Withal, in *PNB v. Heirs of Militar,*[24] the Court elucidated that in ascertaining good faith, or the lack of it, which is a question of intention, **courts are necessarily controlled by the evidence as to the conduct and outward acts by which alone the inward motive may, with safety, be determined.** Expounding further, the Court stressed:

> Good faith, or want of it, is capable of being ascertained only from the acts of one claiming its presence, for it is a condition of the mind which can be judged by actual or fancied token or signs. Good faith, or want of it, is not a visible, tangible fact that can be seen or touched, but rather a state or condition of mind which can only be judged by actual or fancied token or signs. Good faith connotes an honest intention to abstain from taking unconscientious advantage of another. Accordingly, in University of the East v. Jader we said that "[g]ood faith connotes an honest intention to abstain from taking undue advantage of another, even though the forms and technicalities of law, together with the absence of all information or belief of facts, would render the transaction unconscientious."
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> x x x
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> Contrastingly, in Magat, Jr. v. Court of Appeals the Court explained that "[b]ad faith does not simply connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of wrong. It means a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud." In Arenas v. Court of Appeals the Court held that the determination of whether one acted in bad faith is evidentiary in nature. Thus "[s]uch acts (of bad faith) must be substantiated by evidence." Indeed, the unbroken jurisprudence is that "[b]ad faith under the law cannot be presumed; it must be established by clear and convincing evidence.

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[24] G.R. No. 164801, 30 June 2006; 526 Phil. 788-808 (2006); 494 SCRA 308.

By this yardstick, it is more judicious for the Court to take on a calibrated examination of the facts and evidence in resolving similarly situated encroachment disputes, as acknowledged by the *ponente* in this case.

Accordingly, I vote to GRANT the petition.

RODIL V. ZALAMEDA
Associate Justice