



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

**SPOUSES NESTOR CABASAL
and MA. BELEN CABASAL,**

Petitioners,

- versus -

**BPI FAMILY SAVINGS BANK,
INC. and ALMA DE LEON,**

Respondents.

G.R. No. 233846

Present:

PERALTA, *CJ.*, Chairperson
CAGUIOA,
CARANDANG,*
ZALAMEDA, and
GAERLAN, *JJ.*

Promulgated:

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DECISION

ZALAMEDA, J.:

Morality and ethics enjoin everyone to observe the unwritten rule that “one’s right ends where others’ begin.” In a civilized and peaceful society, an abuse of one’s right is eschewed. Statutorily, however, Article 19 of the New Civil Code, known to contain what is commonly referred to as the principle of abuse of rights, is not a panacea for all human hurts and social grievances.¹ To warrant reliefs from the courts, the act complained of must be shown to be done in bad faith or with intent to injure.

* On official leave.

¹ See *Mata v. Agravante*, G.R. No. 147597, 06 August 2008, 583 Phil. 64 (2008).

The Case

This petition for review² under Rule 45 of the Rules of Court, seeks to reverse and set aside the Decision³ dated 15 February 2017 and Resolution⁴ dated 05 September 2017 of the Court of Appeals (CA) in CA G.R. CV No. 98642. The CA reversed the Decision⁵ dated 01 December 2011 of Branch 274, Regional Trial Court (RTC) of Parañaque City, in the consolidated cases for Damages with Annulment of Extra-Judicial Foreclosure of Transfer Certificate of Title (TCT) No. (35660) 141767 and Injunction and *Ex-Parte* Proceedings for the Issuance of a Writ of Possession, docketed as Civil Case No. 01-0014 and Land Registration Case No. 02-0068, respectively.

Antecedents

Petitioners spouses Nestor Cabasal (Nestor) and Ma. Belen Cabasal (Belen) (collectively, petitioners) were granted by BPI Family Savings Bank (BPI) a credit line for their build and sell business. Sometime in 1997, petitioners purchased two (2) real properties with improvements using said credit line as source of payment. Consequently, petitioners executed (2) Mortgage Loan Agreements⁶ in favor of BPI under the following loan accounts: 1) Account No. 021112476 for Php5,000,000.00; and 2) Account No. 0211291311 for Php3,360,000.00.⁷

While looking for prospective buyers for the properties, petitioners religiously paid their amortizations. However, it took them three (3) years to find a willing buyer in the person of Eloisa Guevarra Co (Eloisa) who agreed to buy their properties by way of sale with assumption of mortgage. Accordingly, the parties prepared a Deed of Sale with Assumption of Mortgage.⁸ Eloisa undertook to give a down payment of Php7,850,000.00, and assume the balance of petitioners with BPI in the amount of Php4,462,226.00.⁹ At that time, petitioners' accounts with BPI were already past due. Hence, Nestor asked for an updated statement of account from respondent Alma De Leon (respondent).

² *Rollo*, pp. 12-57.

³ *Id.* at 62; penned by Associate Justice Zenaida T. Galapate-Laguilles and concurred in by Associate Justices Mariflor P. Punzalan-Castillo and Florito S. Macalino of the Court of Appeals, Manila.

⁴ *Id.* at 101-102.

⁵ *Id.* at 354-368, Annex "EEEE."; penned by Presiding Judge Fortunito L. Madrona.

⁶ *Id.* at 212-215.

⁷ *Id.* at 63 and 354-355.

⁸ *Id.* at 126-129.

⁹ *Id.* at 63 and 355.



On 06 July 2000, Nestor and Eloisa went to BPI to obtain a copy of petitioners' statement of account, and to effectuate the transfer of mortgage to Eloisa. However, respondent informed them that their transfer agreement would not be recognized by BPI since Eloisa was not a client of the bank. Nestor pleaded with respondent to accommodate Eloisa, citing a similar transaction he had in the past, which was authorized by BPI. Respondent, however, insisted that the transaction was not allowed by BPI, being in the form of assumption of mortgage.¹⁰

Petitioners claimed that Eloisa was a sure buyer, given that she already had three (3) air conditioning units delivered to the properties.¹¹ However, their deal with her fell through because of respondent's irresponsible handling on the incident. Petitioners assert that they failed to realize an expected profit of Php3,387,773.96. Consequently, Nestor sent a letter¹² of complaint dated 27 July 2000 to BPI. His lawyer likewise sent a letter¹³ dated 08 December 2000, informing BPI that petitioners would not pay their amortization due to the grossly negligent act of respondent. In addition, petitioners requested the waiver of all interests and charges on their loan.¹⁴ He did not receive any response from BPI.

Meanwhile, petitioners continued to default on their loan obligation under Account No. 0211291311, eventually leading to the foreclosure of the mortgage by BPI. The subject property was then sold at public auction, where BPI was declared the highest bidder.¹⁵

Consequently, petitioners instituted Civil Case No. 01-0014, for Damages with Annulment of Extra-Judicial Foreclosure of TCT No. (35660) 141767 and Injunction, against respondent and BPI.¹⁶ Later, BPI filed Land Registration Case No. 02-0068, an *Ex-Parte* Petition for the Issuance of Writ of Possession.¹⁷ It was ordered consolidated with Civil Case No. 01-0014 upon motion of petitioners.¹⁸

During trial on the merits, respondent and BPI denied petitioners' allegations.

¹⁰ *Id.* at 63-64 and 355.

¹¹ *Id.* at 64.

¹² *Id.* at 232-233.

¹³ *Id.* at 234.

¹⁴ *Id.*

¹⁵ *Id.* at 357-358.

¹⁶ *Id.* at 66; see also Complaint, *id.* at 111-119, Annex "F."

¹⁷ *Id.* at 66 and 363-364; see also Judicial Affidavit of Lilie C. Ultu, *id.*, 310-317.

¹⁸ *Id.* at 23.

Respondent averred that on 05 July 2000, she talked to Nestor over the phone, and he requested for a statement of account for his overdue loan accounts. Nestor also informed her about the impending sale of his property to Eloisa, the proceeds of which would be used to pay off his loan. Respondent dissuaded him from doing so, explaining that this type of agreement was against the bank's policy and Section 35 of the Mortgage Loan Agreement. She also told Nestor that she would not entertain any query from his buyer.¹⁹ Nestor was nevertheless adamant, and brought Eloisa to their office the following day. She gave Nestor a copy of the statement of account, but refused to talk to Eloisa.²⁰ When Nestor pleaded, she relented. Respondent similarly informed Eloisa that the agreement between her and Nestor would not get BPI's approval. In the vernacular, she said, "*kung tutuusin po kasi para pong illegal itong ginagawa niyo dahil against po sa bank policy, yong loan po nakapangalan pa kay Mr. Cabasal so hindi po namin talaga kayo irerecognize as client.*"²¹ Respondent claimed that her statement was uttered in good faith and with reference only to Section 35 of the loan agreement signed by petitioners.²² She maintained that BPI prohibits an assumption of mortgage, and recommended that the interested buyer should instead take out a separate loan to extinguish the obligation of the first borrower.²³

In addition, BPI clarified that the previous sale transaction of petitioners was allowed by BPI only because petitioners' buyer did not assume the mortgage. Instead, the buyer took out a personal loan with BPI which he then used to pay off petitioners' loan, and thus cleared the latter's account. In the present transaction, however, Nestor wanted Eloisa to assume their mortgage liabilities, which BPI prohibits to prevent third parties, who are not qualified for a loan, from incurring a financial obligation to BPI.²⁴

Finally, BPI claimed that because petitioners' loan account remained delinquent despite several demands, it instituted a petition for extra-judicial foreclosure of real estate mortgage. Consequently, the sheriff prepared a notice of sheriff's sale, and caused the posting and publication of the same. The public auction transpired on 27 September 2000, with BPI emerging as the highest bidder. Subsequently, the sheriff issued to BPI a certificate of sale, which the latter registered. For failure of petitioners to redeem the property within the redemption period, BPI executed an Affidavit of

¹⁹ *Id.* at 362.

²⁰ *Id.* at 65 and 362.

²¹ *Id.* at 362.

²² *Id.* at 362-363.

²³ *Id.* at 363.

²⁴ *Id.* at 66 and 363.

Consolidation of Ownership, leading to the issuance of a new certificate of title in its name, in lieu of petitioners' certificate of title. BPI then demanded the petitioners to vacate the property, but they refused. Hence, BPI filed an *ex-parte* petition for issuance of writ of possession.²⁵

Ruling of the RTC

On 01 December 2011, the RTC rendered its Decision, the dispositive portion of which reads:

WHEREFORE, all the foregoing duly considered, judgment is hereby rendered as follows:

(1) For Civil Case no. 01-0014, partly in favor of the plaintiffs, ordering the defendants to jointly and severally pay the plaintiffs the sum of P3,387,773.96 with legal interest of 12% per annum until fully paid; the sum of P100,000.00 and P2,000.00 per court appearance and for attorney's fees; the sum of P200,000.00 as moral damage; the sum of P100,000.00 as exemplary damage; and cost of suit.;

(2) For Land Registration Case No. 02-0068, in favor of defendant bank, allowing the issuance of writ of possession for the lot covered by Transfer Certificate of Title No. 150985, formerly Transfer Certificate of Title No. 141767.

SO ORDERED.²⁶

The RTC dismissed the case for annulment of extra-judicial foreclosure of mortgage, and granted the application for the issuance of a writ of possession. It found the mortgage to be in order, and the foreclosure proceedings to have duly complied with all the requisites of the law.²⁷

Nonetheless, the RTC found respondent and BPI liable to petitioners for damages on account of their bad faith. According to the RTC, respondent violated Articles 19 and 20 of the New Civil Code because she failed to exercise good faith and honesty in dealing with Nestor and Eloisa. She blatantly and thoughtlessly branded the transaction between Nestor and Eloisa illegal even if the same was not yet consummated, and though she was aware that another office or division – not the collection department to which she belonged – was better equipped to handle matters relating to

²⁵ *Id.* at 357-358 and 363-364.

²⁶ *Id.* at 368.

²⁷ *Id.* at 367-368.

assumption of mortgages. The RTC opined that what respondent should have done was to help a valued client by referring him to the appropriate office.²⁸

For respondent's acts, the RTC found BPI equally liable for damages, in accordance with Article 2180 of the New Civil Code.²⁹ The RTC ascribed fault on BPI for failing to prove that it exercised diligence in the selection and supervision of its employees like respondent.

Finally, the RTC held that neither respondent nor BPI can claim good faith as paragraph 35 of the Mortgage Loan Agreement was a circumvention of Article 2130 of the Civil Code. In support thereof, the RTC cited *Litonjua v. L&R Corporation*,³⁰ where the Court held that a stipulation forbidding the owner from alienating the immovable mortgage shall be void.³¹

Both parties appealed the decision. Whereas petitioners filed a Notice of Partial Appeal³² against the RTC's ruling in Land Registration Case No. 02-0068, respondent and BPI assailed the RTC's judgment in Civil Case No. 01-0014.³³

Ruling of the CA

In the now assailed Decision, the CA affirmed the RTC's ruling in Land Registration Case No. 02-0068, but reversed the RTC's decision in Civil Case No. 01-0014. The decretal portion of said decision reads:

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

(1.) For Civil Case no. 01-0014, the *Appeal* filed by appellants BPI and De Leon is **GRANTED**. The appealed *Decision* dated December 1, 2011 of the RTC, Branch 274 of Parañaque City awarding damages and attorney's fees to spouses Cabasal is **REVERSED** and **SET ASIDE**. Accordingly, spouses Cabasal's Complaint for Damages docketed as Civil Case No. 01-0014 is **DISMISSED** for lack of merit.

²⁸ *Id.* at 365-367.

²⁹ *Id.* at 367.

³⁰ G.R. No. 130722, 09 December 1999, 378 Phil. 145 (1999); 320 SCRA 405 [Per J. Ynares-Santiago].

³¹ *Rollo*, p. 367.

³² *Id.* at 369-373, Annex "FFFF."

³³ *Id.* at 67.

(2) For Land Registration Case No. 02-0068, the Appeal filed by appellants spouses Cabasal is **DISMISSED**. The appealed Decision dated December 1, 2011 of the RTC, Branch 274 of Parañaque City is **AFFIRMED**.

SO ORDERED.

Anent Land Registration Case No. 02-0068, the CA agreed that the writ of possession should issue as a matter of course in view of the established facts.³⁴

With respect to Civil Case No. 01-0014, the CA emphasized that the absence of good faith is essential to abuse of right under Article 19 of the New Civil Code. In this case, however, respondent's utterances cannot be equated to bad faith, as she adequately explained that the transaction between Nestor and Eloisa violated paragraph 35 of the Mortgage Loan Agreement.³⁵ While respondent admitted that she was not competent to ultimately rule on the matter, being merely a collection assistant, her statement was based on BPI's policy proscribing such arrangement.³⁶

Finally, the CA held that although BPI's policy may appear to be unreasonably restrictive to some, the same cannot be characterized as suffused with bad faith.³⁷ On the contrary, BPI acted appropriately in keeping with its duty as a banking institution to exercise extra-ordinary care and prudence. The stipulation was in strict adherence of its own rules, which petitioners, as borrowers, may freely accept or reject.³⁸

Petitioners filed a Motion for Reconsideration,³⁹ but the same was denied. Hence, they filed the present petition, submitting the following grounds for the allowance thereof:

- A. THE INSTANT PETITION FOR REVIEW UNDER RULE 45 OF THE 1997 RULES OF CIVIL PROCEDURE CAN BE TAKEN COGNIZANCE BY THIS HONORABLE COURT DUE TO THE FINDINGS OF THE HONORABLE COURT OF APPEALS BEING CONTRARY TO THAT OF THE HONORABLE TRIAL COURT

³⁴ *Id.* at 76-78.

³⁵ *Id.* at 72.

³⁶ *Id.* at 73.

³⁷ *Id.* at 74.

³⁸ *Id.*

³⁹ *Id.* at 80-99.

- B. THE HONORABLE COURT OF APPEALS ERRED IN REVERSING THE HONORABLE TRIAL COURT'S AWARD OF DAMAGES TO PETITIONERS IN THE INSTANT CASE, BY FAILING TO APPLY ARTICLE 20 OF THE CIVIL CODE TO THE DULY PROVEN NEGLIGENCE COMMITTED BY RESPONDENT ALMA DE LEON WHICH RESPONDENT BANK IS VICARIOUSLY LIABLE [SIC]
- C. THE HONORABLE COURT OF APPEALS ERRED IN UPHOLDING THE HONORABLE TRIAL COURT'S GRANTING OF THE SUBJECT WRIT OF POSSESSION CONSIDERING THAT RESPONDENTS COMMITTED BREACH OF CONTRACT WHICH GIVES PETITIONERS THE RIGHT TO SUSPEND PAYMENT OF THEIR MORTGAGE LOAN UNDER ARTICLES 1169 AND 1191 OF THE CIVIL CODE THEREBY MAKING THE FORECLOSURE OF THE [PARAÑAQUE] PROPERTY VOID⁴⁰

Ruling of the Court

The petition lacks merit.

Prefatorily, it should be pointed out that the present petition conspicuously contains the same factual issues and arguments already fully passed upon by the CA. As a rule, questions of fact, which would require a re-evaluation of the evidence, are inappropriate for a Rule 45 petition. Under Section 1 of Rule 45, the Court's jurisdiction is limited only to errors of law since it is not a trier of facts.⁴¹ Although jurisprudence has provided several exceptions to these rules, exceptions must be alleged, substantiated, and proved by the parties so this court may evaluate and review the facts of the case. In any event, even in such cases, this court retains full discretion on whether to review the factual findings of the Court of Appeals.⁴²

In the instant case, the RTC and the CA were unanimous that based on the established facts, BPI is entitled to a writ of possession. However, they differed on their findings as to the liability of respondent and BPI under the circumstances.

The Court sustains the CA's decision.

⁴⁰ *Id.* at 31-32.

⁴¹ *See Gatan v. Vinarao*, G.R. No. 205912, 18 October 2017, 842 SCRA 602, 609 [Per J. Leonardo-De Castro].

⁴² *See Pascual v. Burgos*, G.R. No. 171722, 11 January 2016, 776 Phil. 167-191 (2016); 778 SCRA 189, 191 [Per J. Leonen].

It has long been settled that once title to the property has been consolidated in the buyer's name upon failure of the mortgagor to redeem the property within the one-year redemption period, the writ of possession becomes a matter of right belonging to the buyer. Consequently, the buyer can demand possession of the property at any time. Its right of possession has then ripened into the right of a confirmed absolute owner and the issuance of the writ becomes a ministerial function that does not admit of the exercise of the court's discretion. The court, acting on an application for its issuance, should issue the writ as a matter of course and without any delay.⁴³

It is thus befuddling that the proceeding for the issuance of writ of possession was even consolidated with Civil Case No. 01-0014. To be sure, no hearing is necessary prior to the issuance of a writ of possession, as it is a proceeding wherein relief is granted without giving the person against whom the relief is sought an opportunity to be heard.⁴⁴ By its very nature, an *ex-parte* petition for issuance of a writ of possession is a non-litigious proceeding. It is a judicial proceeding for the enforcement of one's right of possession as purchaser in a foreclosure sale. It is not an ordinary suit filed in court, by which one party sues another for the enforcement of a wrong or protection of a right, or the prevention or redress of a wrong.⁴⁵

Petitioners contend that because of the negligent act of respondent, BPI must be considered guilty of breaching its obligation to observe the highest degree of diligence in the selection and supervision of their employees.⁴⁶ For such breach, petitioners additionally contend that they were justified to suspend payment; hence, they cannot be said to be in default of their obligation.

The argument deserves scant consideration.

Not even any question regarding the validity of the mortgage or its foreclosure is a legal ground for refusing the issuance of a writ of execution/writ of possession.⁴⁷ Furthermore, it should be pointed out that

⁴³ See *Nagtalon v. United Coconut Planters Bank*, G.R. No. 172504, 31 July 2013, 715 Phil. 595 (2013); 702 SCRA 615, 622 [Per J. Brion].

⁴⁴ See *LZK Holdings and Development Corporation v. Planters Development Bank*, G.R. No. 187973, 20 January 2014, 725 Phil. 83 (2014); 714 SCRA 294, 304 [Per J. Reyes]; *Espinoza v. United Overseas Bank Phils.*, G.R. No. 175380, 22 March 2010, 630 Phil. 342 (2010); 616 SCRA 353, 358 [Per J. Corona].

⁴⁵ *Id.*

⁴⁶ *Rollo*, p. 47.

⁴⁷ See *Nagtalon v. United Coconut Planters Bank*, G.R. No. 172504, 31 July 2013, 715 Phil. 595 (2013); 702 SCRA 615, 626, [Per J. Brion] citing *Espinoza v. United Overseas Bank Phils.*, G.R. No. 175380, 22 March 2010, 630 Phil. 342 (2010); 616 SCRA 353, 357 [Per J. Corona].

even prior to the incident, petitioners were already in default of their obligations to BPI, precisely why Nestor dealt with respondent, instead of other BPI employees.

In any case, the Court agrees with the CA that respondents and BPI are not liable in this case.

The principle of abuse of rights, as enshrined in Article 19 of the Civil Code, provides that every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.⁴⁸ In *Arco Pulp and Paper, Inc. v. Dan T. Lim*,⁴⁹ the Court emphasized that Article 19 is the general rule which governs the conduct of human relations. By itself, it is not the basis of an actionable tort. Article 19 describes the degree of care required so that an actionable tort may arise when it is alleged together with Article 20 or Article 21.

Whether the principle of abuse of rights has been violated resulting in damages under Article 20 or other applicable provision of law depends on the circumstances of each case.⁵⁰ Article 20 covers violations of existing law as basis for an injury. It allows recovery should the act have been willful or negligent. "Willful" may refer to the intention to do the act and the desire to achieve the outcome that the plaintiff in tort action considers as injurious. "Negligence" may refer to a situation where the act was consciously done but without intending the injurious result. Article 21, on the other hand, concerns injuries that may be caused by acts which are not necessarily proscribed by law. This article requires that the act be willful, that is, that there was an intention to do the act and a desire to achieve the outcome. In cases under Article 21, the legal issues revolve around whether such outcome should be considered a legal injury on the part of the plaintiff or whether the commission of the act was done in violation of the standards of care required in Article 19.⁵¹

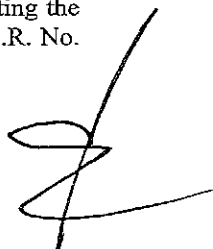
After a perusal of the facts and evidence on hand, the Court holds that contrary to the RTC's findings, petitioners failed to prove that respondent and BPI acted in bad faith or negligence so as to be liable under Article 20 and 21 of the New Civil Code.

⁴⁸ *Ardiente v. Spouses Pastorfide*, 714 Phil. 235 (2013); G.R. No. 161921, 17 July 2013, 701 SCRA 389, 399.

⁴⁹ G.R. No. 206806, 25 June 2014, 737 Phil. 133 (2014); 727 SCRA 275, 294 [Per J. Leonen], citing the Concurring opinion of Associate Justice Marvic Mario Victor F. Leonen in *Alano v. Logmao*, G.R. No. 175540, 07 April 2014, 720 SCRA 655, 693 [Per J. Peralta].

⁵⁰ *Alano v. Magud-Logmao*, G.R. No. 175540, 07 April 2014, 720 SCRA 655 [Per J. Peralta].

⁵¹ *Supra* at note 48.



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.⁵²

The settled rule is bad faith should be established by clear and convincing evidence since the law always presumes good faith.⁵³ Bad faith, like fraud, is never presumed since it is a serious accusation that can be so conveniently and casually invoked.⁵⁴ Hence, for anyone who claims that someone is in bad faith, the former has the duty to convincingly prove the existence of the same.⁵⁵

Like the CA, the Court sees no intention on the part of respondent to cause harm to the petitioners. She forewarned Nestor that the BPI would not acquiesce to the agreement between him and Eloisa because the bank does not allow assumption of mortgage. Despite that, Nestor insisted, and even brought Eloisa to her. Respondent may have been blunt in her response, but it was Nestor who prodded her to explain, even if she already told him that she would not entertain any queries from Eloisa.

Respondent's remark may have ultimately put Eloisa off only because it was not what she expected to hear. But it was not respondent's fault. It was Nestor who put her in that awkward position, and the latter answered only based on what she understood of the situation.

Further, it cannot even be established from petitioners' evidence whether Eloisa backed out of the agreement because of the very words spoken by respondent. Eloisa was not presented in court; hence, petitioners' asseveration is merely self-serving, unsubstantiated, and conjectural. It is a fundamental rule that bare allegations, unsubstantiated by evidence, are not equivalent to proof.⁵⁶ Charges based on mere suspicion and speculation cannot be given credence. When the complainant relies on mere conjectures

⁵² *Adriano v. La Sala*, 719 Phil. 408 (2013); G.R. No. 197842, 09 October 2013, 707 SCRA 345, 358.

⁵³ *Spouses Espinoza v. Spouses Mayandoc*, 812 Phil. 95 (2017); G.R. No. 211170, 03 July 2017, 828 SCRA 601, 610.

⁵⁴ *See Spouses Estrada v. Philippine Rabbit Bus Lines, Inc.*, G.R. No. 203902, 19 July 2017, 813 Phil. 950 (2017); 831 SCRA 349, 371 [Per J. Del Castillo].

⁵⁵ *Supra* at note 52.

⁵⁶ *See Morales, Jr. v. Ombudsman Morales*, G.R. No. 208086, 27 July 2016; 798 SCRA 609, 626 [Per J. Carpio].

and suppositions, and fails to substantiate his allegations, the complaint must be dismissed for lack of merit.⁵⁷

It may be true that Eloisa was a willing buyer, and she actually bought another property afterwards. However, there can be a myriad of reasons which may have prompted her to cancel the deal with Nestor. Perhaps, it could have been because Eloisa could not be able to pay for petitioners' properties without a bank loan. Perhaps, too, Eloisa would not qualify for a bank loan; hence, she only agreed for an assumption of mortgage. It is also possible that she was poached by another seller or broker who gave her a better or more affordable deal. As petitioners' own evidence shows, Eloisa bought a different house and lot, also within Parañaque, for only Php3,800,000.00, which was evidently much lower than the purchase price for petitioners' properties, but within the amount she was willing to shell out as down payment therefor. What is more, Eloisa was able to conveniently purchase the property on installment basis, which did not require Eloisa to obtain a bank loan or assume any mortgage.⁵⁸

Petitioners and the RTC are actually unreasonably passing the blame for the dissolution of the sale with Eloisa to respondent. As the CA aptly pointed out, respondent was only being honest and, in fact, right when she told Nestor and Eloisa that BPI would not permit their arrangement. If petitioners were bent on being able to sell their properties to Eloisa, they could have instead assisted her in taking out a loan in her own name, whether with BPI or a different bank. They did not. If, at all, it was petitioners who were negligent under the circumstances by insisting on a payment term which may have been favorable for them and their buyer, but was clearly not viable.

Similarly, petitioners cannot also fault respondent for not being able to direct them to the proper loan division of BPI. Respondent was under no obligation to do that. She could have done so as a courtesy to Nestor, the latter being a client of BPI, but her failure to extend such assistance at that time is not tantamount to negligence or bad faith on her part, much less be the proximate cause why the transaction between Nestor and Eloisa failed to materialize. Nestor, being an engineer and a businessman of experience, should have known what to do under the circumstances and where to go after, considering that he already had a previous real estate transaction presented to BPI for loan approval. And even assuming for the nonce that he did not know specific BPI division or office to inquire from, he should have

⁵⁷ *Agdeppa v. Hon. Office of the Ombudsman*, G.R. No. 146376, 23 April 2014, 734 Phil. 1 (2014); 723 SCRA 293, 333 [Per J. Leonardo-De Castro].

⁵⁸ *Rollo*, pp. 226-227; see Acknowledgment Receipts dated 21 July 2000 and 26 September 2000.

exerted earnest effort to obtain such information from other BPI employees, not necessarily from respondent.

Verily, a responsible and diligent businessman would go to great lengths to ensure the consummation of any transaction. Under the circumstances, however, Nestor clearly failed in this respect. He should thus not be allowed to pass the blame to other people for his shortcomings. And since respondent cannot be considered to have acted negligently or in bad faith, BPI is not vicariously liable.

WHEREFORE, all the foregoing considered, the instant Petition is hereby **DENIED**. Accordingly, the Decision dated 15 February 2017 and Resolution dated 05 September 2017 promulgated by the Court of Appeals in CA G.R. CV No. 98642 are **AFFIRMED**.

SO ORDERED.

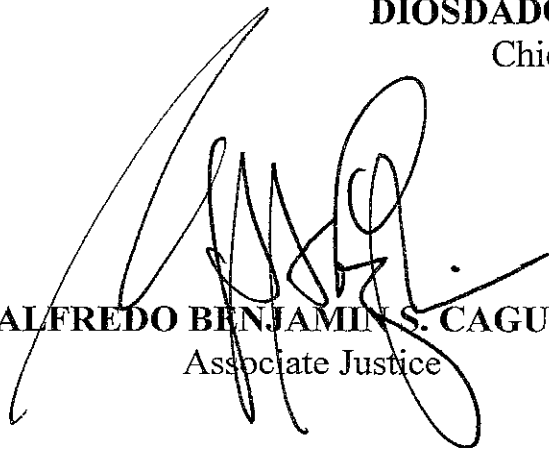


RODIL V. ZALAMEDA
Associate Justice

WE CONCUR:




DIOSDADO M. PERALTA
Chief Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


(On official leave)
ROSMARI D. CARANDANG
Associate Justice



SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice