



Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**

**MARISSA B. BACANI,**  
*Petitioner,*

**G.R. No. 218637**

Present:

- versus -

**GESMUNDO, C.J.,**  
*Chairperson,*  
**HERNANDO,**  
**ZALAMEDA,**  
**ROSARIO, and**  
**MARQUEZ, JJ.**

**ROSITA D. MADIO,**  
*Respondent.*

Promulgated:

**FEB 01 2023**

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**DECISION**

**HERNANDO, J.:**

Challenged in this Petition for Review on *Certiorari*<sup>1</sup> are the September 29, 2014 Decision<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 98817, and its May 4, 2015 Resolution,<sup>3</sup> which reversed and set aside the March 21, 2012 Decision<sup>4</sup> and the May 2, 2012 Order<sup>5</sup> of the Regional Trial Court (RTC) of Baguio City, Branch 6 in Civil Case No. 7141-R.

<sup>1</sup> *Rollo*, pp. 10-32.

<sup>2</sup> *Id.* at 55-74. Penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Hakim S. Abdulwahid and Romeo F. Barza. The Court notes that petitioner incorrectly denominated the date of the assailed Decision as March 12, 2012 in her Petition.

<sup>3</sup> *Id.* at 76-77. The petitioner incorrectly denominated the date of the assailed Resolution as May 2, 2012.

<sup>4</sup> *Id.* at 37-48. Penned by Presiding Judge Cleto R. Villacorta III.

<sup>5</sup> *Id.* at 49-54.

### The Antecedents

As narrated by the CA in the assailed Decision<sup>6</sup> and based on the records of the case, the essential facts and antecedent proceedings of the case are as follows:

On April 8, 2010, respondent Rosita D. Madio (Rosita), as plaintiff, instituted an action<sup>7</sup> for recovery of ownership, possession, and damages with prayer for a temporary restraining order and/or preliminary prohibitory and mandatory injunction against petitioner Marissa D. Bacani (Marissa), as defendant, before the RTC of Baguio City, Branch 6, docketed as Civil Case No. 7141-R. The subject matter of the case was a portion of the building occupied by petitioner. Rosita sought to be declared owner of that portion and the entire building, and for Marissa to be evicted therefrom.

Rosita anchored her right over the subject property, including the portion occupied by petitioner, on the tax declarations<sup>8</sup> that her late husband had possessed, as well as her status as an heir and now co-owner of the building with other heirs.

On the other hand, Marissa claimed that her predecessors-in-interest bought portions of the lot where the subject building was erected in a series of transactions, thus: (1) Deed of Sale of a Portion of Unregistered Parcel of Land executed by Miguel Madio (Miguel) to Andrew Bacani (Andrew), involving a 125 sq. m. portion of the lot;<sup>9</sup> (2) Deed of Sale of a Portion of Unregistered Land executed by Miguel to Emilio Depollo (Emilio), involving 18.58 sq. m of the lot;<sup>10</sup> (collectively referred herein as Deeds of Sale); (3) Deed of Waiver of Rights executed by Andrew to Marissa;<sup>11</sup> and (4) Deed of Waiver of Rights over the lot where the building stands executed by Emilio to Marissa<sup>12</sup> (collectively referred herein as Deeds of Waiver). Marissa claimed that her predecessors-in-interest, through the Deeds of Waiver, conveyed in her favor the respective portions of land that the former bought from Miguel.

Rosita in her complaint alleged that she, together with her late husband, Miguel, are the owners and possessors of a certain two-storey building bearing the No. 321, situated in Magsaysay Avenue, Baguio City, and presently covered under Assessment of Real Property (ARP) No. 01-017015-007267 in the name of Miguel.<sup>13</sup>

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<sup>6</sup> Id. at 55-74.

<sup>7</sup> Records, pp. 2-11.

<sup>8</sup> Id. at 189-193.

<sup>9</sup> Id. at 199-200.

<sup>10</sup> Id. at 47-48.

<sup>11</sup> Id. at 45-46.

<sup>12</sup> Id. at 49-50.

<sup>13</sup> Id. at 189.

Rosita claimed that she and her husband Miguel started owning and possessing the said house sometime in the year 1965, with their young family. Originally, the said house was then a small one-storey structure owned by Miguel's cousin, Cerilo Guing-awan, who later conveyed the ownership and possession of the property to Spouses Madio.<sup>14</sup>

After becoming the owner and possessor of the property, Rosita and Miguel undertook substantial and extensive renovation works thereto and turned the property into a two-storey building.<sup>15</sup>

On April 13, 2009, the heirs of the late Miguel formally adjudicated the ownership of the building in favor of Rosita by executing and causing the publication of an Extra Judicial Settlement of Estate with Simultaneous Waiver of Shares<sup>16</sup> over the subject building.

During Miguel's lifetime, Andrew leased the first storey of the subject building, which he utilized for his auto air-conditioning repair shop business. Meanwhile, the second storey was occupied by the family of respondent.<sup>17</sup>

While Andrew was leasing the portion of the building, he and Miguel came into an agreement on December 2, 1993 for the supposed sale of a 125 square meter portion of the land claimed and possessed by respondent's family with a total area of 750 square meters. Their agreement was contained in a conditional deed of sale of a portion of land,<sup>18</sup> the conditions of which are as follows: (1) the price per square meter shall be PHP 4,000.00 and Andrew shall pay a down payment of PHP 200,000.00; (2) the balance shall be paid upon the issuance of a certificate of title over the land in the name of Miguel and the immediate conveyance of the 125 square meter portion to Andrew; (3) pending the release of the certificate of title in the name of Miguel, Andrew shall continue occupying a portion of the building of Miguel; and (4) in the event the lot would not be conveyed to Andrew for any reason, Miguel shall return the amount he obtained from Andrew since the same shall be considered as a loan.<sup>19</sup>

According to Rosita, a title in the name of Miguel has yet to be issued. Thus, the agreement never materialized. It was due to the said agreement that Andrew allegedly stayed put in the operation of his business within the premises of the first storey building on the firm belief that he shall only vacate it when the "loan" shall have been paid to him.

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<sup>14</sup> *Rollo*, p. 57.

<sup>15</sup> *Id.*

<sup>16</sup> *Records*, pp. 194-197.

<sup>17</sup> *Rollo*, p. 58.

<sup>18</sup> *Records*, pp. 199-200.

<sup>19</sup> *Id.*

When Andrew finally left the first storey approximately sometime in the year 2002, Rosita claimed that Marissa occupied the same and continued the operation of the auto air-conditioning repair shop without the prior permission or consent of Miguel. Therefore, Rosita allegedly made several demands for Marissa to vacate the premises and pay rentals for her occupancy to no avail.

In her defense, Marissa denied Rosita's allegations. She asserted that the portions of the lot and building had been sold by the late Miguel to Andrew and Emilio. Thereafter, Andrew and Emilio executed the respective Deeds of Waiver of Rights, which served as basis for Marissa's claim of ownership and possession of the portions of the lot and the subject building.<sup>20</sup>

Marissa maintained that the late Miguel sold the entire lot where the building was erected upon to Andrew – her predecessor-in-interest. She further claimed that the transaction was not a loan, but one of sale. Moreover, as early as 1996, Andrew sold and/or waived all his rights and interest over the land, including the building, in her favor. Marissa pointed out that Rosita and her family are fully aware that she bought the rights and interests of Andrew over the land and the building. Thus, Rosita's possession of the subject building was due to Marissa's mere tolerance. Thus, Rosita has no legal right over the land as well as the building.<sup>21</sup>

The case was referred to mediation to explore the possibility of an amicable settlement between the parties. However, the case was returned to the RTC for failure of Marissa to appear on the scheduled conferences. Pre-trial was thus conducted. Thereafter, trial ensued.<sup>22</sup>

### **Ruling of the Regional Trial Court**

After trial on the merits, the RTC rendered a Decision on March 21, 2012. The trial court held that Marissa is a *pro indiviso* co-owner of the lot, including improvements, declared in Miguel's name, but only to the extent of 18.58 square meters on the western portion of the lot. Accordingly, Marissa is entitled to exercise the remedy of partition of the lot to get her 18.58 square meter physical portion, including improvements if any.<sup>23</sup>

The RTC further declared that Rosita must respect the Deed of Sale executed between Miguel and Andrew and gave Rosita 30 days to exercise either option: (a) to convey to Marissa the 125 sq. m. lot when they are ready with the title; or (b) to treat the amounts paid by Andrew to the late Miguel as a loan. Moreover, the trial court held that Marissa is entitled to possess the portion

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<sup>20</sup> *Rollo*, pp. 36-37.

<sup>21</sup> *Id.* at 69.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 46.

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of the subject building known as "United Electronics and Store Side," but must vacate parts of the building which are beyond or outside the said portion.<sup>24</sup>

The RTC held thus:

ACCORDINGLY, the complaint and the counterclaim are granted in part and denied in part, to wit:

1. Defendant [petitioner] Marissa Bacani is declared pro-indiviso co-owner of the lot, including improvements, in Miguel Madio's name, but only to the extent of 18.58 square-meters on the western portion of the lot, under Exhibit "6." Defendant may exercise the remedy of partition of the lot to get her 18.58 square-meter physical portion, including improvements if any.
2. Plaintiff [respondent] Rosita Madio is given a period of thirty (30) days from the time this Decision becomes final and executory to communicate to defendant and exercise her option under Exhibit "18" or Exhibit "G" whether –
  - i. to convey to defendant the 125 square meter lot when plaintiff or her privies are ready with the issued title or award, with defendant's corresponding obligation to pay the balance of the purchase price, or
  - ii. to treat the amounts paid by Andrew Bacani to Miguel Madio or his privies as a loan from him and payable to his assignee, herein defendant, with interest at the rate of 14% per annum plus compensatory damages.

Plaintiff shall comply with, consummate or fulfill the option that was chosen within sixty (60) days from the date when the option is exercised.

Defendant is entitled to possess the portion of the subject building known as the "United Electronics and Store Side" portions of the building bounded by a lot of Atty. Rial covered by Tax Declaration No. 0116 situated at Res. Section H, Baguio City x x x until such time that plaintiff exercises her option and complies with, consummates or fulfills the option she chooses, within the periods decreed above.

Corollarily, defendant is obliged to vacate portions of the building she is occupying outside of the portion identified as the "United Electronics and Store" side portion of the building bounded by a lot of Atty. Rial covered by Tax Declaration No. 0116 situated at Res. Section H, Baguio City xxx" if any.

The amount of the loan and compensatory damages that plaintiff and her privies must pay defendant, if this option is chosen, are fixed as follows:

loan = P275,000.00 (Exhibit "13") plus 14% interest per annum starting on December 2, 1993 (Exhibit 18" or Exhibit "G"). Exhibits "19" to "24" cannot be given credence because not one of them was identified and authenticated by the defendant or her witness during trial.

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<sup>24</sup> Id. at 46-47.

compensatory damages = P100,000.00 (fixed according to this Court's equity jurisdiction since the agreement per Exhibit "18" or Exhibit "G" was signed some 19 years ago.)

3. Plaintiff's prayer for damages is dismissed.
4. Defendant's counterclaim for damages is likewise dismissed.

No costs.

March 21, 2012. Baguio City.<sup>25</sup>

Aggrieved, Rosita moved for reconsideration,<sup>26</sup> which the RTC denied in its Order dated May 2, 2012.<sup>27</sup>

Undeterred, Rosita appealed<sup>28</sup> before the CA.

### **Ruling of the Court of Appeals**

In the assailed Decision,<sup>29</sup> the CA granted Rosita's appeal. In reversing and setting aside the RTC Decision and Order, the appellate court found that Rosita was able to prove her title over the subject building through the following: (1) testimonial evidence showing that she and her family were in actual, open, continuous and notorious possession of the subject building; (2) Marissa's admission that the 2<sup>nd</sup> floor of the subject building has always been occupied by Rosita and that Marissa does not have a tax declaration under her name; (3) official receipts under Miguel's name showing Rosita's payment of real property tax covering the subject building. The CA further held that while tax declarations and realty tax payments are not conclusive evidence of ownership, they are however strong and good *indicia* of possession in the concept of an owner for no one in his right mind will be paying taxes for a property that is not in his or her actual or constructive possession.<sup>30</sup>

The CA further observed that the Deed of Sale of Unregistered Parcel of Land executed between Miguel and Andrew reveals that Miguel only sold a portion of the land with an area of 125 sq. m. to Andrew. Nowhere did it state that the sale of the land expressly and specifically included the subject building. The same holds true with the Deed of Absolute Sale of a Portion of Unregistered Land executed between Miguel and Emilio because it pertained to the sale of a lot with improvements with an area of 18.58 sq. m. According to the CA, there

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<sup>25</sup> Id. at 47-48. Emphases omitted.

<sup>26</sup> Records, pp. 367-384.

<sup>27</sup> CA *rollo* p. 56-72.

<sup>28</sup> Id. 34-55.

<sup>29</sup> *Rollo*, pp. 55-74.

<sup>30</sup> Id. at 66-68.

was paucity of evidence showing that the portions of land respectively sold to Andrew and Emilio cover or include the subject building.

The CA reiterated that the issue to be resolved was merely the ownership and possession of the subject building and not the land. It was therefore erroneous for the RTC to pass upon ownership of the land and enforce the Deeds of Sale respectively in favor of Andrew and Emilio.

The dispositive portion of the assailed Decision reads:

**WHEREFORE**, premises considered the appeal is **GRANTED**. The assailed (i) Decision dated March 21, 2012 of the Regional Trial Court (RTC) of Baguio City, Branch 6 in Civil Case No. 7141-R and the subsequent (ii) Order dated May 2, 2012, are **REVERSED and SET ASIDE** and a new one is entered in that, Defendant-Appellee Marissa Bacani is hereby ordered:

- 1) To immediately vacate the first storey of the subject building and surrender the possession thereof to Plaintiff-Appellant Rosita Madio;
- 2) To pay the amount of Ten Thousand Pesos (P10,000.00), Philippine Currency, per month to Plaintiff-Appellant Rosita Madio for the use and occupation of the first storey of the subject building from the time of the filing of the complaint until the same is actually vacated;
- 3) To pay attorney's fees in the amount of P30,000.00, Philippine Currency, to Plaintiff-Appellant Rosita Madio.

**SO ORDERED.**<sup>31</sup>

Marissa filed a Motion for Reconsideration,<sup>32</sup> which was denied in the appellate court's May 4, 2015 Resolution.<sup>33</sup>

Thus, Marissa filed the instant Petition for Review on *Certiorari*<sup>34</sup> under Rule 45 of the Rules of Court. Marissa seeks to annul the September 29, 2014 Decision and the May 4, 2015 Order of the CA,<sup>35</sup> and to reinstate the March 21, 2012 RTC Decision.

Marissa maintains that as regards the issue on assignment, the CA correctly held that the building subject matter of the case, or any portion of it, can be traced to the respective Deeds of Sale executed by Marissa's assignors, Andrew and Emilio, with Miguel. Although the said Deeds specifically mention the sale of a portion of land, a cursory reading thereof would reveal that the building which is situated on said land was included in the disposition. According to Marissa, the Deed of Sale between Miguel and Andrew clearly stated that the former agreed to let the latter occupy the portion sold to him, as well as that

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<sup>31</sup> Id. at 72-73

<sup>32</sup> Id. at 139-155.

<sup>33</sup> Id. at 164-167.

<sup>34</sup> Id. at 10-32.

<sup>35</sup> The Court notes that petitioner, in her prayer, erroneously denominated the assailed Decision and Order March 12, 2012, and May 2, 2012, respectively.

portion occupied by then United Electronics Store Side portion pending the release of the title of the land – which to this day, has not yet been released. Thus, as long as the Deed of Sale between Miguel and Andrew, and the subsequent assignment of rights from Andrew to Marissa remain valid, petitioner contends that she cannot be evicted from the premises.<sup>36</sup>

Marissa further argues that she has the right to possess the subject building under the principle of accession. She claims that the Deed of Sale between Emilio and Miguel makes mention not only of an 18.58 sq. m. parcel of land, but also makes mention of its improvements. Petitioner theorizes that if the ruling of the CA is followed, she would find herself in an absurd situation wherein she could not occupy nor enjoy the portion of the land sold, since she would have to literally remove or uproot the building from the lot. She claims that as owner of the lot where the building is situated, she too has the right to exclude any person from its enjoyment.<sup>37</sup>

On the other hand, respondent Rosita maintains that the CA did not err in ruling that she had the better right to own and possess the subject building. Respondent Rosita argues that she was able to prove her title to the building by (1) presenting sufficient testimonial evidence to show that she and her family were in actual, open, continuous and notorious possession of the subject building; (2) Marissa's admission that the subject building had always been occupied by respondent Rosita, and that petitioner Marissa has no tax declaration over the subject building; and (3) documentary evidence showing that the subject building was declared under the name of Miguel for real property tax purposes.<sup>38</sup>

### Issue

The issues to be resolved in the instant case are: (1) whether the CA erred in finding that Rosita was able to prove her title over the building and thus entitled to exclusive possession of the same; and (2) whether the CA erred in directing Marissa to pay attorney's fees in the amount of PHP 30,000.00 in favor of Rosita.

### Our Ruling

We grant Marissa's Petition.

*Accion reivindicatoria* or *accion de reivindicacion* or reivindicatory action is an action for recovery of ownership, the cause of action of which is to recover possession by virtue of the plaintiffs' ownership of the land subject of

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<sup>36</sup> *Rollo*, pp. 22-23.

<sup>37</sup> *Id.* at 25-26.

<sup>38</sup> *Id.* at 104-107.

the dispute.<sup>39</sup> It is a suit to recover possession of a parcel of land as an element of ownership. The judgment in such a case determines the ownership of the property and awards the possession to the lawful owner.<sup>40</sup> In this kind of action, the property must be identified, and the plaintiff must rely on the strength of his or her title and not on the weakness of the defendant's claim.<sup>41</sup>

The instant case involves petitioner's right to possess the first storey of the subject building based on the Deeds of Sale and Deeds of Waiver ultimately executed in her favor. Petitioner Marissa alleges that the CA seriously erred in ruling that respondent Rosita had the better right to own and possess the entire subject building and in ordering Marissa, not only to immediately vacate the premises and surrender possession of the first storey of the building currently occupied by her, but likewise ordering petitioner to pay the amount of PHP 10,000.00 per month to respondent Rosita for the use and occupation of the first storey of the subject building from the time of filing of the complaint.

At the outset, We agree with the RTC and CA when both found that the Deeds of Waiver in favor of petitioner are in fact assignments of rights. The documents executed by Andrew and Emilio, respectively transferred and conveyed the 125 sq. m. and 18.58 sq. m portions of the lot in favor of petitioner.

Case law has established that the rights of an assignee are not any greater than the rights of the assignor, since the assignee is merely substituted in place of the assignor, and that the assignee acquires his or her rights subject to the defenses which the debtor could have set up against the original assignor.<sup>42</sup> Such assignment shall produce effect on third persons when it appears in a public instrument, or the instrument is recorded in the Registry of Property, in case the assignment involves real property.

Records show that the assignments, by virtue of the Deeds of Waiver, were registered with the Registry of Deeds and the office of the City Assessor and annotated on the tax declaration in Miguel's name.<sup>43</sup> Neither did Rosita oppose the authenticity of the Deeds of Waiver. Moreover, the said documents, along with the Deeds of Sale, are public documents.<sup>44</sup> A duly notarized document enjoys the *prima facie* presumption of authenticity and due execution, as well as the full faith and credence attached to a public instrument.<sup>45</sup> Therefore, the respective deeds, as assignments, shall have legal effect upon the parties.

Now, We discuss the matter of ownership and possession of the subject building.

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<sup>39</sup> *Descallar v. Heirs of Guevara*, G.R. No. 243874, October 6, 2021.

<sup>40</sup> *Heirs of Yusingco v. Busilak*, 824 Phil. 454, 461 (2018).

<sup>41</sup> *Heirs of Cullado v. Gutierrez*, G.R. No. 212938, July 30, 2019.

<sup>42</sup> *Sesbreño v. Court of Appeals*, 294 Phil. 445, 468 (1993).

<sup>43</sup> *Rollo*, p. 44.

<sup>44</sup> *Id.* at 46.

<sup>45</sup> *Cabilao v. Tampan*, G.R. No. 209702, March 23, 2022.

It is a well-settled rule that only questions of law may be raised in a petition for *certiorari* under Rule 45 of the Rules of Court, this Court being bound by the findings of fact made by the CA.<sup>46</sup>

However, this rule is not without exceptions. In *Medina v. Mayor Asistio, Jr.*,<sup>47</sup> this Court recognized the following instances as exceptions to the rule: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the CA are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the CA is premised on the supposed absence of evidence and is contradicted by the evidence on record.

In the past, this Court has held that there is a question of fact when the issue presented before this Court is the correctness of the lower courts' appreciation of the evidence presented by the parties.<sup>48</sup> When the findings by the appellate court are contrary to those of the RTC, this Court is called upon to reevaluate such factual findings.<sup>49</sup> The instant petition involves a review of the conflicting conclusions by the RTC and the CA regarding Marissa's right to possess the portion of the subject building based on the Deeds of Sale and Deeds of Waiver. Thus, an examination of the said documents is in order.

Both the RTC and CA found that the respective Deeds of Sale did not include the subject building. Rather, the documents only involved specific portions of the lot wherein the subject building was situated.

A study of the pertinent sections of the first Deed of Sale between Miguel and Andrew reveal that the parties indeed intended to sell only the portion of the subject lot and that the subject building was excluded, thus:

WHEREAS, the vendor is the owner and actual possessor and occupant of that certain parcel of land located at Magsaysay Avenue, Baguio City, Philippines, with an aggregate area of 750 square meters more or less;

WHEREAS, the vendor has erected thereon a building which is now being used as a residential as well as business establishment;

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<sup>46</sup> *Gatan v. Vinarao*, 820 Phil. 257, 265 (2017).

<sup>47</sup> 269 Phil. 225, 232 (1990). Citations omitted.

<sup>48</sup> *Pascual v. Burgos*, 776 Phil. 167, 183 (2016).

<sup>49</sup> *Cabilao v. Tampan*, *supra*.

WHEREAS, the vendor has offered to sell **a portion of the lot** to the Vendee who is also willing to buy a portion of the said property;

WHEREAS, the vendor and the Vendee have agreed that the portion to be sold, transferred and conveyed to the Vendee be the **side portion** of the said property under the following conditions:

1. That the Vendee is willing to deliver the sum of TWO HUNDRED THOUAND PESOS (P 200,000.00), Philippine currency, by way of down payment for the said property and the vendor hereby accepts the said amount from former;

2. That the unit price per square [meter] of the lot subject matter of this agreement is fixed at P 4,000.00 and the Vendor hereby agrees to be paid the total value of the said property upon the completion of the papers of the **lot subject matter of this agreement**;

3. That the area sold to the Vendee shall not be less than 1.25 square meters, covered by the lot plan which is hereto attached as Annex "A" and made an integral part of this agreement;

4. That during the pendency of the release of the **title to the land**, the vendee shall occupy the portion sold to him as well as that portion of the building which is now known as the portion occupied by the United Electronics and Store side portion of the building bounded by a lot of Atty. Rial covered by Tax Declaration No. 0116 situated at Res. Section H, Baguio City;

5. That upon issuance of the title or award of the **lot subject matter of this agreement**, the vendor shall, without delay, immediately convey unto the Vendee the said lot and for the latter to pay the balance of the consideration then remaining and outstanding;

6. That in the event the **lot** would not be conveyed to the Vendee for any reason whatsoever, the VENDOR shall return whatever amount or amounts he may have obtained from the VENDEE and agrees that the same be considered as LOAN and to pay interest thereon at the rate of 14% per annum plus compensatory damages;

7. That the Vendor shall not disturb the peaceful occupancy of the Vendee of the building during the entire period that the agreement is in force;

8. That the Vendor and the Vendee agree to comply with all the foregoing terms and conditions in good faith.<sup>50</sup>

From the foregoing provisions, it is apparent that the parties consistently referred to only the lot as the subject matter of the sales transaction. It is evident that what was offered to be sold, as well as what was intended to be conveyed and registered under the buyer's name, was the lot separate from the building. In fact, paragraph 4 of the Deed of Sale made a distinction as to the portion sold

<sup>50</sup> Records, pp. 199-200. Emphases supplied.

to the buyer from the portion to be temporarily occupied by the buyer (*i.e.*, United Electronics and Store Side portion). Thus, the explicit specification of the Deed leaves no room for other interpretation.

Meanwhile, a cursory reading of the Deed of Sale between Miguel and Emilio establishes that the subject of the transaction is an 18.58 sq. m. portion of the land, together with its improvements. The pertinent portion reads thus:

NOW THEREFORE, for and in consideration of the agreed purchase price of ONE HUNDRED FORTY THOUSAND (P140,000.00) PESOS, Philippine Currency, the receipt whereof is hereby acknowledged, from the BUYER to the entire satisfaction of the SELLER, the VENDOR does hereby sell, transfer and convey in a manner absolute and irrevocable unto the VENDEE, his heirs and assigns **a portion of the land above described, together with the improvements existing thereon**, with an area of EIGHTEEN SQUARE METERS AND FIFTY EIGHT CENTARES (18.58) located at the western portion of the said lot which is bounded by the lot of Atty. Rial;<sup>51</sup>

It is at this point wherein the RTC's and the CA's findings diverge. The CA held that the Deed of Sale between Miguel and Emilio did not expressly include the subject building since the agreement only pertained to the sale of lot with improvements with an area of 18.58 sq. m.<sup>52</sup> On the other hand, the RTC found that while the Deed of Sale involved the portion of the lot together with its improvements, Marissa did not prove by preponderance of evidence the identity of the improvements mentioned, particularly whether it covered the building in dispute.

We affirm the findings of the RTC.

As correctly observed by the trial court, while petitioner may argue that the Deed of Sale and the subsequent assignment from Emilio included the improvements built on the 18.58 sq. m. portion of the lot, she was not able to prove by preponderance of evidence the identity of the improvements mentioned, particularly whether it covers the building in dispute.<sup>53</sup> Indeed, there was no clear identification or delineation of the 18.58 sq. m. land that is supposed to be located on the western portion of the 575 sq. m. lot owned by Miguel.

This Court has held that the sale of a portion of a lot, without indication of its exact metes and bounds, shows that the same is still undivided and not sufficiently identified.<sup>54</sup> The metes and bounds in the technical description of the title are of utmost importance.<sup>55</sup> It is hornbook doctrine that what defines a

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<sup>51</sup> Id. at 47. Emphasis supplied.

<sup>52</sup> Id. at 71.

<sup>53</sup> Id. at 45.

<sup>54</sup> *Dailisán v. Court of Appeals*, 582 Phil. 346, 356 (2008).

<sup>55</sup> *Spouses Yu v. Ayala Land, Inc.*, G.R. No. 173120, April 10, 2019.

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piece of titled property is not the numerical data indicated as the area of the land, but the boundaries or “metes and bounds” of the property specified in its technical description as enclosing it and showing its limits.<sup>56</sup>

A simple reading of the Deed of Sale between Miguel and Emilio, and the Deed of Waiver by Emilio in favor of Marissa, shows that the documents merely referred to the 18.58 sq. m. portion “located at the western portion of the said lot which is bounded by the lot of Atty. Rial.”<sup>57</sup> Such description is inadequate to identify whether the portion sold actually refers to the portion of the subject building in dispute. As aptly put by the trial court, “[u]ntil surveyed and partitioned, no one knows for sure what portions of the entire lot were transacted upon and whether the ideal portions include the building that the parties are fighting over in this case.”<sup>58</sup> Verily, while petitioner is a *pro-indiviso* co-owner of a portion of the lot, she was not able to establish whether that portion is the same area of the subject building in dispute.

Nevertheless, petitioner was able to prove her right to maintain possession of that portion of the subject building. Based on the Deed of Sale between Miguel and Andrew, and the Deed of Assignment executed by Andrew to petitioner, the latter, as Andrew’s assignee, gets to keep possession of the portion of the subject building then occupied by “United Electronics Store [S]ide portion of the building bounded by a lot of Atty. Rial covered by Tax Declaration No. 0116 situated at Res. Section H, Baguio City.”<sup>59</sup> Petitioner’s right to occupy the said portion subsists during the entire period that the agreement is in force. This is evidenced by the pertinent provisions of the Deed of Sale, thus:

4. That during the pendency of the release of the title to the land, **the vendee shall occupy the portion sold to him as well as that portion of the building which is now known as the portion occupied by the United Electronics and Store side portion of the building bounded by a lot of Atty. Rial covered by Tax Declaration No. 0116 situated at Res. Section H, Baguio City;**

X X X X

7. That the Vendor shall **not disturb the peaceful occupancy of the Vendee of the building during the entire period that the agreement is in force;** x x x<sup>60</sup>

Therefore, as succinctly found by the RTC, even if the building or portion of it was not the subject of the Deed of Sale between Miguel and Andrew, there were concessions made to the latter, and thereafter by assignment to petitioner,

<sup>56</sup> Id.

<sup>57</sup> *Rollo*, pp. 47 and 49.

<sup>58</sup> Id. at 45.

<sup>59</sup> Id. at 199.

<sup>60</sup> Records, pp. 199 and 200. Emphases supplied.

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regarding the subject property.<sup>61</sup> Thus, petitioner's right to possess the portion of the subject building, as the assignee of Andrew and Emilio, remains until that time: (a) when Miguel or his successors-in-interest are ready with the issued title or award, and without delay, can immediately convey the 125 sq. m. lot to Andrew, through his assignee, on which the right to collect the balance of the purchase price rests; *or* (b) when, after Miguel or his successors-in interest decide not to push through with the sale of the subject lot "for any reason whatsoever."<sup>62</sup> Neither of the two conditions have transpired.

Article 1231 of the New Civil Code of the Philippines (NCC) provides that one of the modes for extinguishment of obligations is the fulfillment of a resolutive condition. A resolutive condition extinguishes a transaction that, for a time, existed and discharges the obligations created thereunder.<sup>63</sup>

In this case, petitioner's possession of the portion of the subject building is subject to the two abovementioned alternative resolutive conditions, namely: the issuance by respondent of title or award of the 125 sq. m. portion of the lot to Andrew through his assignee, the petitioner; *or* the decision by the respondent not to push through with the sale of the lot. Considering that none of these conditions have been fulfilled or communicated by respondent, petitioner's right to possess the portion of the subject building remains to be existing and in force.

Respondent Rosita argues that, as found by the CA, the issue to be resolved here is merely the ownership and possession of the subject building and not the land. It was therefore erroneous for the RTC to pass upon ownership of the land and enforce the Deeds of Sale.

Respondent's contentions are misplaced. The CA incorrectly held that the RTC erred in passing upon the ownership of the land and enforcing the Deeds of Sale.

The issue of ownership of the portions of the lot are closely interrelated with that of the subject building. *Nemo dat quod non habet*. One can sell only what one owns or is authorized to sell, and the buyer can acquire no more right than what the seller can transfer legally.<sup>64</sup> Thus, it was imperative for the RTC to review the Deeds of Sale and Deeds of Waiver in order to ascertain whether the sale and subsequent assignment included the subject building and whether petitioner had the right to possess the portions of the same.

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<sup>61</sup> *Rollo*, pp. 44-45.

<sup>62</sup> *Id.* at 45.

<sup>63</sup> *Bacala v. Heirs of Spouses Poliño*, G.R. No. 200608, February 10, 2021.

<sup>64</sup> *Midway Maritime and Technological Foundation v. Castro*, 740 Phil. 560, 570 (2014).

To recall, the instant case is one for *accion reivindicatoria*, which seeks to recover possession by virtue of the ownership of a parcel of land.<sup>65</sup> This is determined by the allegations in the complaint and the character of the reliefs sought, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.<sup>66</sup> Here, the allegations in the complaint confirm that the case involves *accion reivindicatoria*. The CA found that the complaint recited that respondent (then as plaintiff), together with her late husband Miguel, is the owner of and possessor of the subject building since 1965, while a portion of the first storey was leased to Andrew.<sup>67</sup> Respondent claimed that when Andrew vacated the first storey sometime in 2002, petitioner continued the operation of the auto air-conditioning repair shop of the former and occupied the premises without her consent. Respondent further asserted that despite several demands to vacate the first-storey of the building, the same were unheeded.<sup>68</sup>

Verily, as a case for *accion reivindicatoria*, it was necessary to ascertain the ownership of the properties to determine the parties' right to possess the same. Indeed, the judgment in a case of *accion reivindicatoria* determines the ownership of the property and awards the possession of the property to the lawful owner.<sup>69</sup> In this case, while the ownership of the subject building may vary from the lot, it was necessary to determine the ownership of both properties in light of the concessions made in the sale of the portion of the lot, specifically with regard to the possession of a part of the subject building.

From the foregoing, petitioner is entitled to possess the portions of the subject building, as identified by the trial court, until either of the resolatory conditions has been fulfilled.

On the matter of attorney's fees, petitioner argues that the award of PHP 30,000.00<sup>70</sup> in favor of respondent is erroneous because her refusal to surrender possession of the subject building is due to the fact that she too had a valid right and interest worth protecting. Petitioner maintains that her refusal did not stem out of bad faith, but rather sprung from a valid and legal sentiment.

Petitioner's contention is meritorious.

Art. 2208 of the NCC sets the guidelines for courts in awarding attorney's fees to a litigant. Generally, parties may stipulate the recovery of attorney's

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<sup>65</sup> *Spouses Tobias v. Gonzales*, G.R. No. 232176, February 17, 2021.

<sup>66</sup> *Padlan v. Dinglasan*, 707 Phil. 83; 91 (2013).

<sup>67</sup> *Rollo*, p. 65.

<sup>68</sup> *Id.*

<sup>69</sup> *Spouses Tobias v. Gonzales*, *supra*.

<sup>70</sup> Petitioner erroneously stated the award for attorney's fees as Ten Thousand Pesos (Php 10,000.00), instead of Thirty Thousand Pesos (Php 30,000.00) as awarded by the Court of Appeals. *Rollo*, p. 72-73.

fees.<sup>71</sup> In the absence of such stipulation, the said provision enumerates the instances when these fees may be recovered, thus:

Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In *Benedicto v. Villaflora*,<sup>72</sup> this Court ruled that the award of attorney's fees is the exception rather than the general rule, pursuant to the policy that no premium should be placed on the right to litigate. As such, counsel's fees are not awarded every time a party prevails in a suit. We thus held:

In the ordinary sense, attorney's fees represent the reasonable compensation paid to a lawyer by his [or her] client for the legal services he [or she] has rendered to the latter; while in its extraordinary concept, they may be awarded by the court as indemnity for damages to be paid by the losing party to the prevailing party. Attorney's fees as part of damages are awarded only in the instances specified in Article 2208 of the Civil Code. As such, it is necessary for the court to make findings of fact and law that would bring the case within the ambit of these enumerated instances to justify the grant of such award, and in all cases it must be reasonable.<sup>73</sup>

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<sup>71</sup> *Philippine National Construction Corporation v. APAC Marketing Corporation*, 710 Phil. 389, 394 (2013).

<sup>72</sup> 646 Phil. 733 (2010).

<sup>73</sup> *Id.* at 741-742.

Moreover, even when a claimant is compelled to litigate with third persons or to incur expenses to protect his or her rights, attorney's fees still may not be awarded where no sufficient showing of bad faith could be reflected in the party's persistence in a case, other than an erroneous conviction of the righteousness of his or her cause.<sup>74</sup> To this end, the discretion of the court to award attorney's fees under Art. 2208 of the NCC demands factual, legal, and equitable justification, without which the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture.<sup>75</sup>

In this case, the CA erroneously awarded attorney's fees in favor of respondent. Considering that there was no stipulation or agreement between the parties as regards the payment of attorney's fees, Art. 2208 of the NCC would apply. However, the instant case is bereft of any circumstance which would warrant such an award.

Specifically, petitioner's act of refusing to vacate the premises was not done in bad faith. 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.<sup>76</sup> Moreover, bad faith should be established by clear and convincing evidence.<sup>77</sup> In this regard, respondent failed to prove that petitioner maliciously refused to leave the portion of the subject building. On the contrary, petitioner's reason for staying was due to her belief that they were legally entitled to possess the same. Likewise, no findings of bad faith were reached by the CA.

Neither was respondent wrongfully compelled to litigate. To reiterate, even when a claimant is compelled to litigate with third persons or to incur expenses to protect his or her rights, attorney's fees may still not be awarded when there is no showing of bad faith.<sup>78</sup>

Therefore, the CA erred in awarding attorney's fees in favor of respondent.

**WHEREFORE**, the Petition for Review on *Certiorari* is hereby **GRANTED**. The September 29, 2014 Decision and the May 4, 2015 Resolution of the Court of Appeals in CA-G.R. CV No. 98817 are **REVERSED** and **SET ASIDE**. The March 21, 2012 Decision of the Regional Trial Court, Baguio City, Branch 6 in Civil Case No. 7141-R is **REINSTATED**.

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<sup>74</sup> *ABS-CBN Broadcasting v. Court of Appeals*, 361 Phil. 499, 517 (1999).

<sup>75</sup> *Delos Santos v. Papa*, 605 Phil. 460, 473 (2009).

<sup>76</sup> *Spouses Espinoza v. Spouses Mayandoc*, 812 Phil. 95, 103 (2017).

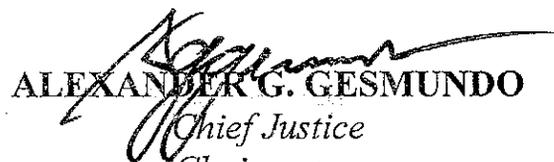
<sup>77</sup> *Id.*

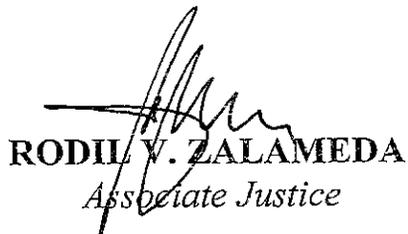
<sup>78</sup> *Spouses Timado v. Rural Bank of San Jose*, 789 Phil. 453, 460 (2016).

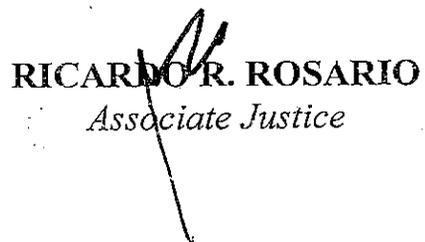
**SO ORDERED.**

  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*

WE CONCUR:

  
**ALEXANDER G. GESMUNDO**  
*Chief Justice*  
*Chairperson*

  
**RODIL V. ZALAMEDA**  
*Associate Justice*

  
**RICARDO R. ROSARIO**  
*Associate Justice*

  
**JOSE MIDAS P. MARQUEZ**  
*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.

  
ALEXANDER G. GESMUNDO  
*Chief Justice*

