



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

STA. LUCIA REALTY AND
DEVELOPMENT,
INCORPORATED,

G.R. No. 222897

Petitioner,

-versus-

EDSEL B. LUMAWAG, AFP
RETIREMENT AND
SEPARATION BENEFITS
SYSTEM, and LOURDES
PEARCE

Respondents.

X-----X

AFP RETIREMENT AND
SEPARATION BENEFITS
SYSTEM,

G.R. No. 223241

Petitioner,

Present:

-versus-

EDSEL B. LUMAWAG,
LOURDES PEARCE, and STA.
LUCIA REALTY AND
DEVELOPMENT,
INCOPORATED,

LEONEN, SAJ.,
Chairperson,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO, JR., JJ.

Promulgated:

Respondents.

FEB 22 2023

X-----X

Y

DECISION

LOPEZ, M., J.:

For this Court's resolution are the consolidated Petitions for Review on *Certiorari*,¹ assailing the June 26, 2015 Decision (**2015 Decision**)² and the February 3, 2016 Resolution³ of the Court of Appeals (CA) in **CA-G.R. SP No. 120161**, which affirmed the October 23, 2009 Decision⁴ of the Office of the President (OP) and the May 25, 2006 Decision⁵ of the Housing and Land Use Regulatory Board (HLURB).

Antecedents

In August 1991, the AFP Retirement and Separation Benefits System (AFP Retirement System) sold a 240-square meter land, identified as Lot 20, Block 7, Citadella⁶ Subdivision, Las Piñas City (Lot 20) to Edsel B. Lumawag (Edsel) for PHP 540,000.00 payable in 10 years. After completing his payment, Edsel demanded from AFP Retirement System the execution of the final deed of sale, delivery of title, and turnover of possession of the lot. AFP Retirement System failed to comply with its obligation as seller.

Later, Edsel discovered that Lourdes Pearce (Lourdes), the owner of the adjoining lot, Lot 21, constructed her residential house on a portion of his lot. Unable to introduce improvements on his lot, Edsel sued AFP Retirement System and Lourdes for the delivery of title, transfer of possession, and payment of damages.⁷ Edsel alleged that AFP Retirement System failed to stop Lourdes from building her house on his lot. AFP Retirement System likewise tried to compel him to accept a reduced area of his lot instead of rectifying Lourdes's encroachment upon his property.

On the other hand, AFP Retirement System admitted that it failed to execute a deed of sale in favor of Edsel because of the re-mapping and re-blocking of Lot 20. This was due to the wrongful construction of Lourdes's house which reduced the area of Edsel's property by twenty (20) square meters. AFP Retirement System denied that it coerced Edsel to settle with Lourdes. Upon learning from the developer of Citadella Subdivision, Sta. Lucia Realty and Development, Incorporated (Sta. Lucia Realty), that Lourdes's house encroached upon Edsel's lot, AFP Retirement System immediately informed Edsel about the matter. It also suggested the exchange of lots as a possible amicable resolution of the dispute.⁸

¹ Filed under Rule 45 of the Rules of Court. *Rollo* (G.R. No. 222897), pp. 8–30; and *rollo* (G.R. No. 223241), pp. 13–32.

² *Rollo* (G.R. No. 222897), pp. 279–289. Penned by Associate Justice Leoncia Real-Dimagiba with the concurrence of Associate Justices Ramon R. Garcia and Maria Elisa Sempio-Diy.

³ *Id.* at 298–301.

⁴ *Id.* at 264–267.

⁵ *Id.* at 198–202.

⁶ "Citadella" is also spelled out as "Cittadella" in some parts of the *rollo*.

⁷ *Rollo* (G.R. No. 222897), p. 280.

⁸ *Id.* at 131–132.

For her part, Lourdes alleged that she relied on Sta. Lucia Realty's relocation survey and honestly believed that the lot where she built the house was entirely hers. After she submitted the requirements, her construction plans were cleared and she was issued a construction permit. After learning of the error, Lourdes made several follow-ups with Sta. Lucia Realty to take proper steps to correct the mistake, but to no avail.⁹ Lourdes likewise sent a letter to Edsel but was ignored.

Thereafter, Lourdes filed a third-party complaint against Sta. Lucia Realty, attributing fault to the developer for the wrong location of her newly constructed house. In turn, Sta. Lucia Realty denied any liability stating that it was not privy to AFP Retirement System's contracts of sale with Edsel and Lourdes. There was no negligence on its part as it had no hand in building Lourdes's house. On the contrary, it was Lourdes who failed to exercise caution or due diligence. Despite having an architectural plan and being assisted by an architect and engineer, Lourdes still constructed her house on the wrong lot.¹⁰

HLURB's Decision

On July 5, 2005, the HLURB Arbiter ruled in favor of Edsel. It declared that AFP Retirement System is obliged to execute a deed of sale, cause the transfer of the certificate of title, and deliver possession of Lot 20 to Edsel.¹¹ In addition, the HLURB Arbiter adjudged AFP Retirement System liable to Edsel on account of the reduction of the area of Lot 20. As the seller, AFP Retirement System failed to comply with its obligation to deliver the property as described in their agreement.

Meanwhile, the HLURB Arbiter held that Lourdes is a builder in good faith since she immediately communicated with both Edsel and Sta. Lucia regarding the construction error. However, Lourdes is not entirely free of fault because she failed to update her relocation survey and chose to ignore Sta. Lucia Realty's instruction to the lot owners to first consult with their surveyors before any construction works are commenced. Thus, Lourdes is liable to Edsel for damages.

Finally, the HLURB Arbiter declared that Sta. Lucia Realty is liable for damages in favor of Lourdes for its negligence as a subdivision developer. The dispositive portion of the Decision reads as follows:

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered:

1. Ordering respondent [AFP Retirement System] to perform either of the following courses of action, at [Edsel's] option:

⁹ *Id.* at 132-133.

¹⁰ Court of Appeals Decision dated April 10, 2012 in CA-G.R. SP No. 120060, pages 5-6. Penned by Associate Justice Juan Q. Enriquez, Jr. with the concurrence of Associate Justices Apolinario D. Bruselas, Jr. and Manuel M. Barrios.

¹¹ *Rollo* (G.R. No. 222897), pp. 130-140.

(a) Execute the Deed of Absolute Sale and deliver the Transfer Certificate of Title covering Lot 20, Block 7 of Citadella Subdivision in favor [of] [Edsel] without prejudice to the exercise by [Edsel] thereafter of his rights under Article 448 of the Civil Code.

(b) Enter into and execute a Deed of Exchange involving Lots 20 and 21, Block 7 of Citadella Subdivision with respondent Lourdes Pearce; and thereafter to execute a Deed of Absolute Sale and deliver the Transfer Certificate of Title covering Lot 21 in favor of [Edsel].

[Edsel] is hereby ordered to communicate his option to [AFP Retirement System] within thirty (30) days from the receipt of this decision.

2. Ordering [AFP Retirement System] to pay [Edsel] the amount of P100,000.00 as and by way of moral damages; P30,000.00 as and by way of exemplary damages; and P30,000.00 as and by way of attorney's fees and the costs of suit.
3. Ordering [Lourdes] to pay complainant [Edsel] the amount of P30,000.00 as and by way of moral damages; and P10,000.00 as and by way of attorney's fees.
4. Ordering third-party respondent Sta. Lucia Realty Development, Inc. to pay third-party complainant [Lourdes] the amount of P100,000.00 as and by way of moral damages; P30,000.00 as and by way of exemplary damages; P30,000.00 as and by way of attorney's fees and to reimburse [Lourdes] for whatever expenses and liabilities she may actually sustain resulting from the construction of her house on the wrong lot.
5. Ordering [AFP Retirement System] to refund to [Edsel] the excess payment corresponding to the reduction of his lot area reckoned from the time of full payment of the purchase price with interest thereon at 12% per annum until fully refunded.

All other claims and counterclaims are hereby dismissed.

SO ORDERED.¹²

AFP Retirement System, Edsel, Sta. Lucia and Lourdes sought reconsideration but were all denied by the HLURB Arbiter.¹³

AFP Retirement System, Sta. Lucia Realty, and Lourdes then appealed to the HLURB Board of Commissioners, which rendered its May 25, 2006, Decision,¹⁴ dismissing all appeals, and affirming the findings of the HLURB Arbiter. All motions for reconsideration of the parties were also denied.¹⁵

¹² *Id.* at 139–140.

¹³ *Id.* at 141–143.

¹⁴ *Id.* at 198–202. The dispositive portion of the Decision reads:

Wherefore, the instant appeals are dismissed while the decision of the ENCRFO dated July 5, 2005 is affirmed.

So ordered. (Emphasis in the original)

¹⁵ *Id.* at 223–224.

OP's Ruling

Unsatisfied with the denial of their separate appeals, AFP Retirement System, Sta. Lucia Realty, and Lourdes appealed to the OP. On October 23, 2009, the OP affirmed the findings of the HLURB,¹⁶ thus:

WHEREFORE, the Decision dated May 25, 2006 and the Resolution dated October 9, 2006, of the Housing and Land Use Regulatory Board, are hereby **AFFIRMED**.

SO ORDERED.¹⁷ (Emphasis in the original)

Sta. Lucia Realty and AFP Retirement System moved to reconsider, but the OP denied their motion in its Resolution¹⁸ dated June 2, 2011.

CA's Decision (CA-G.R. SP No. 120161)

Before the CA, AFP Retirement System argued that it did not act in evident bad faith or wanton disregard of its contractual obligations. Its failure to execute the deed of sale was justified due to Edsel's demand to indicate that Lot 20 has an area of 240 square meters and that the land is not subject to any lien or encumbrance. This is unreasonable because Sta. Lucia Realty already informed Edsel that the actual area of Lot 20 after re-mapping and actual verification, is only 220 square meters.

On June 26, 2015, the CA affirmed the findings of the HLURB and OP. It ruled that AFP Retirement System is liable for not complying with its obligations to Edsel pursuant to the contract of sale and for failure to protect the rights of Edsel as buyer of Lot 20. The CA, nonetheless, modified the interest rate imposed on the refund of the excess payment, to *wit*:

WHEREFORE, foregoing considered, the herein petition is **DENIED**. The assailed Decision of the Office of the President dated October 23, 2009 and its Resolution dated June 2, 2011 are hereby **AFFIRMED** with **MODIFICATION** that the interest rate imposed on the refund of the excess payment should be at 6% per annum.

SO ORDERED.¹⁹ (Emphasis in the original)

Failing at a reconsideration,²⁰ AFP Retirement System elevated its case to this Court, docketed as **G.R. No. 223241**²¹ to question the CA's finding of its liability for moral and exemplary damages, and attorney's fees to Edsel. AFP Retirement System inveighs that it did not act in evident bad faith or gross negligence in wanton disregard of its contractual obligations. It immediately

¹⁶ *Id.* at 264–267.

¹⁷ *Id.* at 267.

¹⁸ *Id.* at 276–277.

¹⁹ *Id.* at 288.

²⁰ *Id.* at 298–301.

²¹ *Rollo* (G.R. No. 223241), pp. 13–32.

informed Edsel upon learning from Sta. Lucia Realty that Lourdes mistakenly encroached on his lot. Thus, the ones liable for the wrongful construction of Lourdes's house are Sta. Lucia Realty and Lourdes herself. Since Sta. Lucia Realty is the one in charge of the development of the subdivision, including the determination of the actual location of the lots, Lourdes should have first consulted with Sta. Lucia Realty, and secured their clearance or assistance before building her house.

Interestingly, Sta. Lucia Realty also filed a petition, docketed as **G.R. No. 222897**,²² similarly assailing the findings of the CA. Sta. Lucia Realty contends that Lourdes is a builder in bad faith and should be blamed solely for the encroachment on Edsel's lot. Sta. Lucia Realty stresses that Lourdes knew that her relocation survey, secured in 1993, was only valid for 45 days, and yet she did not request for a new one. She also failed to comply with Sta. Lucia Realty's January 18, 1990 Memorandum²³ directing lot owners to verify and consult first with Sta. Lucia Realty's surveying office before any construction is commenced on their respective lots.

In her Common Comment,²⁴ Lourdes avered that the issue in **G.R. No. 223241** covers AFP Retirement System's liability to Edsel and does not affect her. For **G.R. No. 222897**, Lourdes reiterated that she is a builder in good faith, as found by the HLURB, the OP, and the CA. Sta. Lucia Realty approved and issued a construction permit in her favor, after she submitted all the necessary documents, including detailed house plans, blueprints, copies of the location plan, which were signed and sealed by a licensed geodetic engineer, and a certification of a relocation survey.

Edsel likewise filed his Supplement to the Comment of Respondent Lumawag,²⁵ and Comment of Respondent Lumawag,²⁶ reiterating that Lourdes acted in bad faith because she failed to secure a proper relocation survey with Sta. Lucia Realty before proceeding with her construction. He stressed that there was encroachment on his lot although Lourdes was already assisted by her contractors and engineers. Due to Lourdes's mistake, he was deprived of the use and possession of his lot to his great damage and prejudice. Thus, he joined Sta. Lucia Realty in praying that the **2015 Decision in CA-G.R. SP No. 120161** be modified by declaring Lourdes a builder in bad faith and to have all her rights to the building and improvements introduced in Lot 20 be forfeited in his favor.

In addition, Edsel asserted that AFP Retirement System acted in bad faith when it breached its obligations as a seller. Edsel reasoned that instead of protecting his rights as a buyer, AFP Retirement System turned a blind eye to Lourdes's mistake, and just kept quiet. It did not even restrain or restrict Lourdes from continuing with her construction. Edsel further averred that AFP Retirement

²² *Rollo* (G.R. No. 222897), pp. 8–30.

²³ *Id.* at 21–22.

²⁴ *Id.* at 529–546.

²⁵ *Id.* at 556–561.

²⁶ *Id.* at 562–564.

System was patently biased toward Lourdes because it kept pressuring him to settle with Lourdes.

On October 28, 2020, Edsel manifested that the CA had another related Decision dated April 10, 2012 rendered in **CA-G.R. SP No. 120060, (2012 Decision)**²⁷ in which the CA affirmed the findings of the HLURB and OP but deleted Sta. Lucia's liability for moral and exemplary damages.

Issues

The issues to be resolved are: (1) whether the CA correctly affirmed AFP Retirement System's liabilities for moral and exemplary damages and attorney's fees to Edsel, for its failure to comply with its obligations as a seller (G.R. No. 223241); (2) whether the CA correctly affirmed that Lourdes is a builder in good faith (G.R. Nos. 222897 & 223241); and (3) whether Sta. Lucia Realty should be held liable to Lourdes for moral and exemplary damages, and attorney's fees (G.R. No. 222897).

Ruling

We deny AFP Retirement System's Petition in G.R. No. 223241 and partly grant Sta. Lucia Realty's Petition in G.R. No. 222897.

The seller AFP Retirement System is liable to Edsel for moral and exemplary damages; it failed to comply with its obligation with manifest bad faith.

Under Article 1170 of the Civil Code,²⁸ a delay in the performance of an obligation renders the obligor liable for damages. In this case, the CA aptly observed that, from the moment of the contract's perfection, AFP Retirement System bound itself to preserve the thing subject of the sale in a deliverable state, or at least ensure that it can be delivered upon full payment and demand by the buyer.²⁹

²⁷ Court of Appeals Decision dated April 10, 2012 in CA-G.R. SP No. 120060, pages 11–12, *supra* note 10.

The pertinent portion of the Decision reads:

[I]t is evident that [Lourdes] is a builder in good faith.

As to Sta. Lucia's liabilities, after a review of the evidence and findings of the HLURB and the Office of the President, no convincing proof exists showing that Sta. Lucia was in bad faith. Hence, [Lourdes] is not entitled to the award for moral damages[.]

As regards exemplary damages, We likewise relieve Sta. Lucia of such liability[.]

x x x x

WHEREFORE, premises considered, the Decision dated October 23, 2009 of the Office of the President in O.P. Case No. 06-F-242 is hereby **MODIFIED**, as to Sta. Lucia's liabilities, the award for moral and exemplary damages to respondent Lourdes Pearce is **DELETED**. All other awards are **AFFIRMED**.

SO ORDERED. (Emphasis in the original)

²⁸ ARTICLE 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or **delay**, and those who in any manner contravene the tenor thereof, are **liable for damages**. (Emphasis supplied)

²⁹ CIVIL CODE, Republic Act No. 386, June 18, 1949.

ARTICLE 1163. Every person obliged to give something is also obliged to take care of it with the proper diligence of a good father of a family, unless the law or the stipulation of the parties requires another standard of care.

Here, after Edsel fully paid for Lot 20 in the year 2000, he received nothing of value and was deprived of the right to enjoy the property he purchased due to AFP Retirement System's failure to comply with its obligations. Edsel is entitled to be placed in possession of the lot but was prevented from exercising his rights as owner since the title to the property is still in the name of AFP Retirement System. For failing to timely deliver the object of their contract, AFP Retirement System is correctly adjudged liable to pay Edsel the amounts of PHP 100,000.00 as and by way of moral damages; PHP 30,000.00 as and by way of exemplary damages; and PHP 30,000.00 as and by way of attorney's fees and the costs of suit.

This Court agrees with the CA that AFP Retirement System acted in bad faith. In *Princess Rachel Development Corporation v. Hillview Marketing Corporation*,³⁰ this Court reiterated that "bad faith[, under the law,] 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 [a] known duty through some motive or interest or ill-will that partakes of the nature of fraud."³¹

In finding that AFP Retirement System acted in bad faith, the HLURB, the OP, and the CA considered the following circumstances: (1) AFP Retirement System was informed of Lourdes's wrongful construction before Edsel completed his payment for Lot 20, but it did not bother to inform Edsel about it, nor did it investigate the circumstances of the wrongful construction; (2) knowing the implication of Lourdes's construction on Lot 20, AFP Retirement System still proceeded with the sale and received the full purchase price for the 240-square meter Lot 20 from Edsel; (3) when Edsel confronted AFP Retirement System regarding its failure to deliver the subject lot, it reasoned that it feared exposure to legal complications due to the reduction of Lot 20's area. Simply put, AFP Retirement System failed to comply with its obligation to deliver the property and to protect Edsel's interests as a buyer. Thus, the CA held:

[AFP Retirement System,] in not complying with its part of the contract to sell after a long time after full payment and its failure to protect the interest of the buyer by a positive act of at least arranging a meeting with the parties concerned[, show bad faith and negligence. As alleged by Respondent [Edsel], [AFP Retirement System] instead of protecting [Edsel's] rights by advising [Lourdes] not to proceed with the construction as the lot did not belong to her, just kept quiet.

We quote with favor the position of the HLURB in its Decision dated July 5, 2005, to wit: "*x x x x. as a fully paid buyer which fact is admitted by [AFP Retirement System], [Edsel] is indubitably entitled to the execution of a Deed of Absolute Sale, the transfer of the certificate of title covering Lot 20 in his name, and to be placed in possession of the said lot as early as year 2000. Fearing exposure to legal complications, [AFP Retirement System] failed and refused to perform these obligations because [Lourdes] had constructed her house on complainant's lot. In effect, [AFP Retirement System] is using as justification for the refusal its own failure to protect [Edsel's] interest as*

³⁰ 873 Phil. 105 (2020) [Per J. Reyes, Jr., *En Banc*].

³¹ *Id.* at 204, J. Zalameda's Separate Concurring Opinion.

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buyer of the lot. It should be noted that [Lourdes] commenced construction of her house as early as 1998. The fact that it took [AFP Retirement System] two (2) years to find out and disclose this matter to [Edsel] speaks for itself. It amounts to an inexcusable neglect of its obligations as seller imposed upon it by Article 1163 of the Civil Code[.]”³² (Emphasis supplied)

Consequently, the CA, in CA-G.R. SP No. 120161, correctly affirmed the HLURB and the OP’s conclusions that AFP Retirement System acted with manifest bad faith for its failure to preserve the thing subject of the contract in a deliverable state, and for unjustifiably failing and refusing to perform its obligations to Edsel. The CA properly adjudged AFP Retirement System liable for moral and exemplary damages in favor of Edsel. Article 2201 of the Civil Code is clear that the obligor in bad faith shall be responsible for all damages which may be reasonably attributed to the non-performance of the contractual obligation. In *Development Bank of the Philippines v. Togle*,³³ the Court held that moral damages may be recovered in *culpa contractual* if the defendant is shown to have acted in bad faith or with malice in breach of the contract. Likewise, exemplary damages may be awarded by the courts by way of example or correction for the public good, in addition to moral damages, following Articles 2220,³⁴ 2229,³⁵ and 2234³⁶ of the Civil Code.

Lourdes is a builder in good faith but remains liable to Edsel for damages by reason of contributory negligence.

While the CA declared that Lourdes is a builder in good faith in its **2012 Decision**, this Court still finds her liable to Edsel for damages.

A builder in good faith is one who asserts title to the land on which they build, *i.e.*, that the person is a possessor in the concept of owner, and is unaware of any flaw in the title or mode of acquisition that invalidates it.³⁷ In this case, Lourdes is unaware that she encroached on Edsel’s lot. She believed that the location of her constructed house is still a part of her lot. Yet, she is not entirely free of fault.

Verily, Lourdes failed to update her relocation survey and ignored Sta. Lucia Realty’s instruction to lot owners to first consult with their surveyors

³² *Rollo* (G.R. No. 222897), p. 285.

³³ G.R. No. 224138, October 6, 2021 [Per J. Lazaro-Javier, First Division].

³⁴ ARTICLE 2220. Willful injury to property may be a legal ground for awarding **moral damages** if the court should find that, under the circumstances, such damages are justly due. The same rule applies to **breaches of contract** where the defendant acted fraudulently or **in bad faith**.

³⁵ ARTICLE 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

³⁶ ARTICLE 2234. While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. In case liquidated damages have been agreed upon, although no proof of loss is necessary in order that such liquidated damages may be recovered, nevertheless, before the court may consider the question of granting exemplary in addition to the liquidated damages, the plaintiff must show that he would be entitled to moral, temperate or compensatory damages were it not for the stipulation for liquidated damages.

³⁷ *Princess Rachel Development Corporation v. Hillview Marketing Corporation*, *supra* note 30 at 124.

before any construction work is done on their respective lots. This constitutes negligence on Lourdes' part which contributed to Edsel's damage. Under Article 456³⁸ of the Civil Code in relation to Article 2176,³⁹ a builder in good faith may still be held liable for damages due to negligence. Since Lourdes's negligence is only contributory, the HLURB correctly mitigated the damages awarded to Edsel to PHP 30,000.00. However, this amount is not considered as moral damages. Under Article 2217 of the Civil Code, moral damages can only be recovered if physical suffering, mental anguish, besmirched reputation, wounded feelings, etc. are the proximate result of the respondent's wrongful act or omission. Considering that Lourdes's omission or negligence is merely contributory, the award of PHP 30,000.00 is in the nature of nominal damages described in Articles 2221⁴⁰ and 2222⁴¹ of the Civil Code. In this case, nominal damages is adjudicated so that Edsel's right as a property owner, which has been violated or invaded by Lourdes, may be vindicated or recognized, but not for the purpose of indemnifying Edsel for any loss suffered by him.⁴²

Sta. Lucia's liability was already settled in the 2012 Decision in CA-G.R. SP No. 120060; it may no longer be altered in the 2015 Decision in CA-G.R. SP No. 120161.

The judgment being assailed in these consolidated petitions is the **2015 Decision in CA-G.R. SP No. 120161**. This decision affirmed the HLURB and the OP's findings in their entirety, modifying only the rate of legal interest, from 12% to 6% per annum, imposed on AFP Retirement System's liability to refund Edsel's excess payment.

It bears stressing however, that the **2012 Decision**⁴³ affirmed the findings of the HLURB and the OP, but deleted Sta. Lucia Realty's liability for moral and exemplary damages as there was no proof that Sta. Lucia Realty was in bad faith in dealing with Lourdes. The CA enunciated as follows:

As to Sta. Lucia's liabilities, after a review of the evidence and findings of the HLURB and the Office of the President, no convincing proof exists showing that Sta. Lucia was in bad faith. Hence, Pearce is not entitled to the award of moral damages. It has been held that moral damages are generally not

³⁸ ARTICLE 456. In the cases regulated in the preceding articles, good faith does not necessarily exclude negligence, which gives right to damages under Article 2176.

³⁹ ARTICLE 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

⁴⁰ ARTICLE 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.

⁴¹ ARTICLE 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.

⁴² *Almeda v. Cariño*, 443 Phil. 182, 191 (2003) [Per J. Mendoza, Second Division].

⁴³ *Rollo* (G.R. No. 222897), p. 604-A.

recoverable in *culpa contractual* except when bad faith supervenes and is proven; To the person claiming moral damages rests the *onus* of proving by convincing evidence the existence of bad faith, for good faith is presumed (*Villanueva vs Salvador*, 480 SCRA 39). In order that moral damages may be awarded, there must be pleading and proof of moral suffering, mental anguish, fright and the like (*Trinidad vs Acapulco*, 493 SCRA 179).

As regards exemplary damages, We likewise relieve Sta. Lucia of such liability. Exemplary damages are also allowed only in addition to moral damages such that no exemplary damage can be awarded unless the claimant first establishes his clear right to moral damages. As moral damages are improper in the present case, so is the award of exemplary damages (*Trinidad vs. Acapulco*, 493 SCRA 181).

As to the award of attorney's fees, Article 2208 (2) precisely allows for the recovery of attorney's fees "(w)hen the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest (*Escano vs Ortigas, Jr.* 526 SCRA 26). Pearce was compelled to litigate to protect her interests. Thus, We affirm the award of attorney's fees.

x x x x

WHEREFORE, premises considered, the Decision dated October 23, 2009 of the Office of the President in O.P. Case No. 06-F-242 is hereby **MODIFIED**, as to Sta. Lucia's liabilities, the award for moral and exemplary damages to respondent Lourdes Pearce is **DELETED**. All other awards are **AFFIRMED**.

SO ORDERED.⁴⁴ (Emphasis in the original)

This is where the conflict arises. While the **2012 Decision** already deleted Sta. Lucia Realty's liability for moral and exemplary damages in favor of Lourdes, it was "reinstated" when the CA affirmed the entirety of the HLURB and the OP's Decision in its **2015 Decision** in **CA-G.R. SP No. 120161**.

To recall, the Petition in **CA-G.R. SP No. 120060** was filed by Sta. Lucia Realty against Lourdes, AFP Retirement System, and Edsel. None of the parties sought reconsideration or appealed the Decision. As a result, the **2012 Decision** attained finality.

In Edsel's Supplement to the Comment of Respondent Lumawag⁴⁵ [on the Petition in G.R. No. 222897], he manifested that an Entry of Judgment was already obtained in the **2012 Decision**. However, no copy of the Entry of Judgment was attached to the records of the case.⁴⁶

Concomitantly, the issue regarding the absence of bad faith on the part of Sta. Lucia Realty is now considered settled and beyond the ambit of this Court's power to review, lest we violate the principle of immutability of judgments. Note

⁴⁴ Court of Appeals' Decision dated April 10, 2012 in CA-G.R. SP No. 120060, pages 11-12, *supra* note 10.

⁴⁵ *Rollo* (G.R. No. 222897), pp. 556-561.

⁴⁶ *Id.* at 558.

that a decision that has become final and executory can no longer be amended or corrected by the court except for clerical errors or mistakes. However erroneous it may be, a final judgment cannot be disobeyed, otherwise, litigation would be endless and no questions could be considered settled.⁴⁷

Similarly, the issue of whether Lourdes is a builder in good faith was settled in the **2012 Decision** and can no longer be discussed anew. The CA's finding on this matter already established that:

Petitioner Sta. Lucia alleges that the Office of the President committed grave and irreparable error in rendering the assailed decision and holding it liable for damages against Pearce. Sta. Lucia insists that Pearce was a builder in bad faith.

To prove that Pearce was a builder in bad faith, Sta. Lucia pointed out that Pearce was negligent because she merely relied on the Relocation Survey Report dated April 5, 1993, which was valid for only 45 days. Furthermore, Pearce was negligent in not starting construction immediately or in not building a fence to secure said property within said period. Construction only started in 1998. Sta. Lucia also pointed out the negligence on the part of Pearce in not applying for a new Relocation Survey before construction started.

We disagree.

It is well settled that 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 (*Floreza vs Evangelista*, 96 SCRA 130). Good faith is always presumed, and upon him who alleges bad faith on part of a possessor rests the burden of proof (*Art. 527, New Civil Code*).

In the present case, Pearce believed that the lot where she built the house was Lot 21. She was not aware that the lot delivered to her was not Lot 21, but instead Lot 20. She relied on the Construction Permit No. 10027 issued by Sta. Lucia, that was approved by the examining engineer.⁴⁸

In view of the finality of the **2012 Decision**, this Court is constrained to uphold the findings therein and to affirm the deletion of Sta. Lucia Realty's liability to Lourdes for moral and exemplary damages, as well as the declaration of Lourdes as a builder in good faith.

Nonetheless, We agree with the HLURB that Sta. Lucia Realty remains liable to Lourdes for the construction error. Like Lourdes, even if Sta. Lucia Realty acted in good faith, it cannot be considered faultless on account of its negligence as a subdivision developer. The evidence shows that Lourdes coordinated with Sta. Lucia Realty before the construction of her house. Sta. Lucia Realty approved her construction plans and issued the permit.⁴⁹ Thus, We sustain the HLURB's order adjudging Sta. Lucia Realty liable to reimburse Lourdes. Since HLURB's judgment is inexplicably silent on the basis or extent

⁴⁷ *Nieva v. Manila Banking Corporation*, 209 Phil. 361, 366 (1983) [Per J. Gutierrez, Jr., First Division].

⁴⁸ Court of Appeals' Decision dated April 10, 2012 in CA-G.R. SP No. 120060, pages 9–10, *supra* note 10. <<https://services.ca.judiciary.gov.ph/csisver3-war/faces/pages/ResultInformation.xhtml>> (last accessed on February 3, 2023).

⁴⁹ *Rollo* (G.R. No. 222897), p. 136.

of the reimbursement, this Court rules that Sta. Lucia Realty's liability for reimbursement shall pertain to the expenses or losses that may be incurred by Lourdes that are not covered by the indemnity under Articles 546 and 548,⁵⁰ viz.:

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.

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. (Emphasis supplied)

***The rights of Edsel as landowner,
and Lourdes as builder in good
faith, are governed by Article 448
of the Civil Code.***

Proceeding from the pronouncement that Lourdes is a builder in good faith, Article 448⁵¹ of the Civil Code dictates that the owner of the land, Edsel, shall have the right to appropriate what has been built on his lot, after payment of the necessary and useful expenses spent by Lourdes as provided for in Articles 546 and 548 of the Civil Code. As an alternative, Edsel also has the option to oblige the one who built on the lot, Lourdes, to pay the price of the land. Article 448 of the Civil Code, however, clarifies that the builder in good faith cannot be obliged to purchase the land if its value is considerably more than that of the building. In this scenario, the builder shall pay reasonable rent to the lot owner. The parties shall then agree on the terms of the lease and in case of disagreement, the court shall fix the terms.

Since there is a significant delay in the performance of AFP Retirement System's obligation as seller to turn over the title and possession of Lot 20 in favor of Edsel, and considering further the final declaration of Lourdes as a builder in good faith, it is necessary to clarify the HLURB's disposition, as affirmed by the OP and the CA in the **2015 Decision in CA-G.R. SP No. 120161.**

⁵⁰ CIVIL CODE, Republic Act No. 386, June 18, 1949.

⁵¹ 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.

For the proper application of Article 448, in relation to Articles 546 and 548 of the Civil Code, this Court sees that the HLURB must assess the present fair market value of the subject lot, the expenses incurred in building the house, and the resulting increase of the value of Edsel's lot by reason of the improvement — in order to determine whether the value of the land is considerably more than the value of the house built by Lourdes.

On a final note, the confusion of the parties and the conflicting disposition of the CA could have been avoided if the CA consolidated the cases and arrived at a single decision. At this juncture, We reiterate that the counsels of the parties in these cases are responsible for giving prompt notice to the court of any related cases, as well as to move for their consolidation. This duty proceeds from the lawyers' express undertakings in the certifications against forum shopping that accompany their initiatory pleadings pursuant to Rule 7, Section 5 and related rules in the Rules of Court.⁵²

In *Steel Corporation of the Philippines v. Equitable PCI Bank, Inc.*,⁵³ this Court held:

[W]hen two or more cases involve the same parties and affect closely related subject matters, they must be consolidated and jointly tried, in order to serve the best interests of the parties and to settle expeditiously the issues involved. In other words, consolidation is proper wherever the subject matter involved and [the] relief demanded in the different suits make it expedient for the court to determine all of the issues involved and adjudicate the rights of the parties by hearing the suits together.⁵⁴ (Citation omitted)

Further, in *IBM Daksh Business Process Services Philippines, Inc. v. Ribas*,⁵⁵ the Court clarified that unlike in the trial stage where the consolidation of cases is permissive and a matter of judicial discretion, in the appellate stage, the rigid policy is to consolidate all cases and proceedings resting on the same set of facts, or involving identical claims or interests or parties mandatory.⁵⁶ Thus, consolidation should be made as a matter of course.

ACCORDINGLY, the Petition for Review on *Certiorari* in **G.R. No. 223241** filed by AFP Retirement and Separation Benefits System is **DENIED**. The June 26, 2015 Decision and the February 3, 2016 Resolution of the Court of Appeals in **CA-G.R. SP No. 120161** are **AFFIRMED** as follows:

1. ORDERING AFP Retirement and Separation Benefits System to execute the Deed of Absolute Sale and deliver the Transfer Certificate of Title covering the entire Lot 20, Block 7 of Citadella Subdivision, Las Piñas City, Metro Manila in favor of Edsel B. Lumawag, without prejudice to the exercise of his rights under Article 448 of the Civil Code;

⁵² *IBM Daksh Business Process Services Philippines, Inc. v. Ribas*, 836 Phil. 155, 163–164 (2018) [Per J. Tijam, First Division].

⁵³ 649 Phil. 692 (2010) [Per J. Velasco, Jr., First Division].

⁵⁴ *Id.* at 705.

⁵⁵ 836 Phil. 155 (2018) [Per J. Tijam, First Division].

⁵⁶ *Id.* at 163.

2. **ORDERING** AFP Retirement and Separation Benefits System to pay Edsel B. Lumawag the amount of PHP 100,000.00 as and by way of moral damages; PHP 30,000.00 as and by way of exemplary damages; and PHP 30,000.00 as and by way of attorney's fees and the costs of suit.

3. **ORDERING** Lourdes Pearce to pay complainant Edsel B. Lumawag the amount of PHP 30,000.00 as and by way of nominal damages, and PHP 10,000.00 as and by way of attorney's fees;

4. **ORDERING** Sta. Lucia Realty and Development Incorporated to reimburse Lourdes Pearce for the expenses or losses she may incur that are not covered by the indemnity under Articles 546 and 548 of the Civil Code;

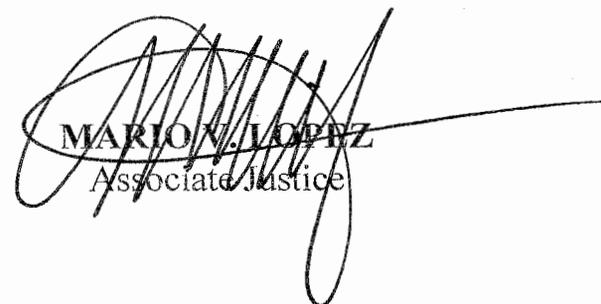
All awards of damages and attorney's fees shall earn legal interest at the rate of 6% per annum from the finality of this Decision until full payment;

5. **ORDERING** Edsel B. Lumawag to exercise and communicate to AFP Retirement and Separation Benefits System, within thirty (30) days, from the receipt of this Decision, his option pursuant to Article 448 of the New Civil Code to either: (a) appropriate what has been built on his lot after payment to Lourdes Pearce of the proper indemnity provided for in Articles 546 and 548 of the Civil Code, or (b) oblige Lourdes Pearce to pay the price of the lot, provided that its value is not considerably more than that of the building.

Relative to the foregoing, the case in **G.R. No. 222897** is **REMANDED** to the Housing and Land Use Regulatory Board (now known as the Department of Human Settlements and Urban Development or DHSUD), for the conduct of appropriate proceedings to assess and to determine the fair price of the subject lots, the incurred expenses, and the value of materials built thereon, for the proper application of Article 448, in relation to Articles 546, and 548 of the Civil Code.

On the other hand, the Petition in **G.R. No. 222897** is **PARTIALLY GRANTED**. Sta. Lucia Realty and Development, Incorporated's liability for moral and exemplary damages to Lourdes Pearce is **DELETED** based on the Court of Appeals' final and executory Decision dated April 10, 2012 in CA-G.R. SP No. 120060.

SO ORDERED.


MARIO N. LOPEZ
Associate Justice

WE CONCUR:



MARVIC M.V.F. LEONEN
Senior Associate Justice
 Chairperson



AMY C. LAZARO-JAVIER
Associate Justice



JHOSEP V. LOPEZ
Associate Justice



ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

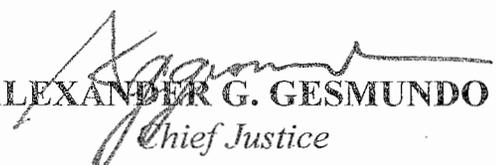
I attest that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.



MARVIC M.V.F. LEONEN
Senior Associate Justice
 Chairperson

CERTIFICATION

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



ALEXANDER G. GESMUNDO
Chief Justice