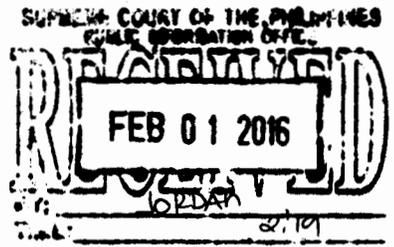




Republic of the Philippines  
**Supreme Court**  
 Manila



**FIRST DIVISION**

**ASB REALTY CORPORATION,**  
 Petitioner,

**G.R. No. 202947**

Present:

- versus -

SERENO, C.J.,  
 LEONARDO-DE CASTRO,  
 BERSAMIN,  
 \*VILLARAMA, JR., and  
 PEREZ, JJ.

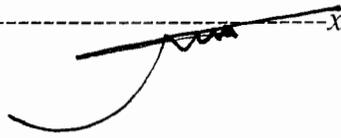
**ORTIGAS & COMPANY LIMITED  
 PARTNERSHIP,**

Promulgated:

Respondent.

DEC 09 2015

x-----x



**DECISION**

**BERSAMIN, J.:**

This appeal seeks the review and reversal of the amended decision promulgated on January 9, 2012,<sup>1</sup> whereby the Court of Appeals (CA) disposed thusly:

**WHEREFORE,** premises considered, judgment is rendered:

1. Granting the appeal of plaintiff-appellant and herein movant Ortigas and Company Limited Partnership, and reversing the Decision of the court *a quo* dated December 14, 2009;
2. Rescinding the June 24, 1994 Deed of Sale between Ortigas and Company Limited Partnership and Amethyst Pearl Corporation in view of the material breached (sic) thereof by AMETHYST;
3. Ordering ASB Realty Corporation, by way of mutual restitution, the RECONVEYANCE to ORTIGAS of the subject property covered by

\* In lieu of Associate Justice Estela M. Perlas-Bernabe, who inhibited due to prior participation in the Court of Appeals, per the raffle of November 4, 2015.

<sup>1</sup> *Rollo*, pp. 35-52; penned by Associate Justice Elihu A. Ybañez, with Associate Justice Remedios A. Salazar-Fernando and Associate Justice Leoncia R. Dimagiba concurring.

TCT No. PT-105797 upon payment by ORTIGAS to ASB of the amount of Two Million Twenty Four Thousand Pesos (PhP 2,024,000.00) plus legal interest at the rate of 6% per annum from the time of the finality of this judgment until the same shall have been fully paid; and

4. Ordering the Register of Deeds of Pasig City to cancel TCT No. PT-105797 and issue a new title over the subject property under the name of ORTIGAS & COMPANY LIMITED PARTNERSHIP.

No pronouncement as to cost.

**SO ORDERED.**<sup>2</sup>

The petitioner also assails the resolution promulgated on July 26, 2012,<sup>3</sup> whereby the CA denied its *Motion for Reconsideration*.

### **Antecedents**

On June 29, 1994, respondent Ortigas & Company Limited Partnership (Ortigas) entered into a *Deed of Sale* with Amethyst Pearl Corporation (Amethyst) involving the parcel of land with an area of 1,012 square meters situated in Barrio Oranbo, Pasig City and registered under Transfer Certificate of Title (TCT) No. 65118 of the Register of Deeds of Rizal<sup>4</sup> for the consideration of ₱2,024,000.00. The *Deed of Sale*<sup>5</sup> contained the following stipulations, among others:

#### **COVENANTS, CONDITIONS AND RESTRICTIONS**

This lot has been segregated by ORTIGAS from its subdivisions to form part of a zonified BUILDING AREA pursuant to its controlled real estate development project and subdivision scheme, and is subject to the following covenants which form part of the consideration of ORTIGAS' sale to VENDEE and its assigns, namely:

X X X X

#### **B. BUILDING WORKS AND ARCHITECTURE:**

1. The building to be constructed on the lot shall be of reinforced concrete, cement hollow blocks and other high-quality materials and shall be of the following height of not more than: fourteen (14) storeys plus one penthouse.

X X X X

#### **L. SUBMISSION OF PLANS:**

---

<sup>2</sup> Id. at 50-51.

<sup>3</sup> Id. at 63-65.

<sup>4</sup> Id. at 126.

<sup>5</sup> Id. at 115-125.

The final plans and specifications of the said building shall be submitted to ORTIGAS for approval not later than six (6) months from date hereof. Should ORTIGAS object to the same, it shall notify and specify to the VENDEE in writing the amendments required to conform with its building restrictions and VENDEE shall submit the amended plans within sixty (60) days from receipt of said notice.

M. CONSTRUCTION AND COMPLETION OF BUILDING:

The VENDEE shall finish construction of its building within four (4) years from December 31, 1991.<sup>6</sup>

As a result, the Register of Deeds of Rizal cancelled TCT No. 65118 and issued TCT No. PT-94175 in the name of Amethyst.<sup>7</sup> The conditions contained in the *Deed of Sale* were also annotated on TCT No. PT-94175 as encumbrances.<sup>8</sup>

On December 28, 1996, Amethyst assigned the subject property to its sole stockholder, petitioner ASB Realty Corporation (the petitioner), under a so-called *Deed of Assignment in Liquidation* in consideration of 10,000 shares of the petitioner's outstanding capital stock.<sup>9</sup> Thus, the property was transferred to the petitioner free from any liens or encumbrances except those duly annotated on TCT No. PT-94175.<sup>10</sup> The Register of Deeds of Rizal cancelled TCT No. PT-94175 and issued TCT No. PT-105797 in the name of the petitioner with the same encumbrances annotated on TCT No. PT-94175.<sup>11</sup>

On July 7, 2000, Ortigas filed its complaint for specific performance against the petitioner,<sup>12</sup> which was docketed as Civil Case No. 67978 of the Regional Trial Court (RTC) in Pasig City.<sup>13</sup> Ortigas amended the complaint, and alleged,<sup>14</sup> among others, that:

5. Defendant has violated the terms of the Deed of Absolute Sale (Annex "A") in the following manner:

a. While the lot may be used only "for office and residential purposes", defendant introduced constructions on the property which are commercial in nature, like restaurants, retail stores and the like (see par. A, Deed of Absolute Sale, Annex "A").

---

<sup>6</sup> Id.

<sup>7</sup> Id. at 127-129.

<sup>8</sup> Id.

<sup>9</sup> Id. at 130-131.

<sup>10</sup> Id. at 130.

<sup>11</sup> Id. at 152-154.

<sup>12</sup> Records, pp. 1-6.

<sup>13</sup> Id. at 141, the case was initially raffled to Branch 151 but was later transferred to Branch 153 following the designation of Branch 151 as a special criminal court to handle drug offenses; (records, p. 252), the case was again re-raffled to Branch 268 pursuant to A.M. No. 02-11-17.

<sup>14</sup> *Rollo*, pp. 155-160.

b. The commercial structures constructed by defendant on the property extend up to the boundary lines of the lot in question violating the setbacks established in the contract (see par. B.A., *ibid*).

c. Defendant likewise failed to submit the final plans and specifications of its proposed building not later than six (6) months from June 29, 1994 and to complete construction of the same within four (4) years from December 31, 1991. (see pars. L and M, *ibid*).

d. Being situated in a first-class office building area, it was agreed that no advertisements or any kind of commercial signs shall be allowed on the lot or the improvements therein but this was violated by defendant when it put up commercial signs and advertisements all over the area. (see par. F, *ibid*).

6. Any of the afore-described violations committed by the defendant empower the plaintiff to sue under paragraph “N. Unilateral Cancellation”, plaintiff may have the Deed of Absolute Sale (Annex “A”) cancelled and the property reverted to it by paying the defendant the amount it has paid less the items indicated therein.<sup>15</sup>

For reliefs, Ortigas prayed for the reconveyance of the subject property, or, alternatively, for the demolition of the structures and improvements thereon, plus the payment of penalties, attorney’s fees and costs of suit.<sup>16</sup>

During the pendency of the proceedings in the RTC, the petitioner amended its Articles of Incorporation to change its name to St. Francis Square Realty Corporation.<sup>17</sup>

After trial on the merits, the RTC rendered its decision on December 14, 2009,<sup>18</sup> and dismissed the complaint, pertinently holding as follows:

Ortigas sold the property [to] Amethyst on 29 June 1994. Amethyst was supposed to finish construction on 31 December 1995. Yet, up to the time the property was transferred to ASB on 28 December 1996, Ortigas never initiated any action **against Amethyst** to enforce said provision. Ortigas is therefore guilty of laches or negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. (Tijam v. Sibonghanoy, L-21450, 15 April 1968, 23 SCRA 29).

It is worth mentioning that the restrictions annotated in TCT No. 94175 (in the name of Amethyst Pearl Corporation) and TCT No. PT-105797 (in the name of ASB) repeatedly and consistently refer to the

---

<sup>15</sup> Id. at 157-158.

<sup>16</sup> Id. at 158-159.

<sup>17</sup> Records, p. 281.

<sup>18</sup> CA *Rollo*, pp. 64-71.

VENDEE. The term VENDEE in the said restrictions obviously refer to Amethyst Pearls Corporation considering the fact that the date referred to in Paragraph N thereof (Construction and Completion of Building), which is four (4) years from December 31, 1991, obviously refer to the plaintiff's VENDEE Amethyst Pearl Corporation. Definitely, it cannot refer to the defendant ASB which is not a vendee of the plaintiff. Therefore, all references to VENDEE in the restrictions evidently refer to Amethyst Pearl Corporation, the VENDEE in the sale from the plaintiff. Such explanation is more consistent with logic than the plaintiff's convoluted assertions that the said restrictions apply to the defendant ASB.

Reconveyance of the property to Ortigas necessarily implies rescission of the sale or transfer from Amethyst to ASB **and** from Ortigas to Amethyst. But Amethyst was not made a party to the case. Reconveyance of the property to the original seller (Ortigas) applies only on the sale to the original vendee (Amethyst) and not to subsequent vendees to whom the property was sold (*Ayala Corp. v. Rosa Diana Realty and Dev. Corp.* GR No. 134284, Dec. 1, 2000, 346 SCRA 663).

The non-compliance by the plaintiff with the requisites of its own restrictions further proves that it had no intention whatsoever to enforce or implement the same. If at all, this evinces an afterthought of the plaintiff to belatedly and unjustifiably single out the defendant for alleged non compliance of the said restrictions which are not applicable to it anyway.

WHEREFORE, foregoing premises considered, the present complaint is hereby **dismissed** for lack of basis.

SO ORDERED.<sup>19</sup>

Ortigas appealed to the CA, which initially affirmed the RTC under the decision promulgated on September 6, 2011,<sup>20</sup> ruling thusly:

x x x x ORTIGAS can no longer enforce the said restrictions as against ASB.

The "*Covenants, Conditions and Restrictions*" of ORTIGAS with respect to the property clearly states the following purpose:

"This lot has been segregated by ORTIGAS from its subdivisions to form part of a zonified BUILDING AREA pursuant to its controlled real estate development project and subdivision scheme, x x x"

However, it appears from the circumstances obtaining in this case that ORTIGAS failed to pursue the aforementioned purpose. It never filed a complaint against its vendee, AMETHYST, notwithstanding that it required the latter to complete construction of the building within four (4) years from the execution of the *Deed of Sale*. Neither did it make a demand to enforce the subject restriction. Moreover, while it imposed a

---

<sup>19</sup> Id. at 70-71.

<sup>20</sup> *Rollo*, pp. 53-62; penned by Associate Justice Estela M. Perlas-Bernabe (now a Member of the Court) with Associate Justice Remedios Salazar-Fernando and Associate Justice Elihu A. Ybañez concurring.

restriction on the registration and issuance of title in the name of the vendee under *Paragraph "P"* on "*Registration of Sale*", to wit:

"P. REGISTRATION OF SALE:

The VENDEE hereby agrees that, for the time being, this Deed will not be registered and that its title shall not be issued until the satisfactory construction of the contemplated Office Building and VENDEE's compliance with all conditions therein. xxx"

AMETHYST was nonetheless able to procure the title to the property in its name, and subsequently, assigned the same to ASB.

Besides, records show that there are registered owner-corporations of several properties within the Ortigas area, where the subject property is located, that have likewise failed to comply with the restriction on building construction notwithstanding the fact of its annotation on the titles covering their properties. In fact, the tax declarations covering these properties in the respective names of UNIMART INC., CHAILEASE DEVELOPMENT CO. INC., CANOGA PARK DEVELOPMENT CORPORATION, and MAKATI SUPERMARKET CORPORATION reveal that no improvements or buildings have been erected thereon.

Notwithstanding such blatant non-compliance, however, records are bereft of evidence to prove that ORTIGAS took steps to demand observance of the said restriction from these corporations, or that it opted to institute any case against them in order to enforce its rights as seller. Thus, while ORTIGAS effectively tolerated the non-compliance of these other corporations, it nonetheless proceeded with the filing of the Complaint *a quo* against ASB, seeking the rescission of the original *Deed of Sale* on the ground of non-compliance of the *very same restriction* being violated by other property owners similarly situated.

On the basis of the foregoing acts or omissions of ORTIGAS, and the factual milieu of the present case, it cannot be pretended that it failed to actively pursue the attainment of its objective of having a "controlled real estate development project and subdivision scheme". The Court thus concurs with the ratiocinations of the RTC when it posited that the restrictions imposed by ORTIGAS on ASB have been "rendered obsolete and inexistent" for failure of ORTIGAS to enforce the same *uniformly and indiscriminately* against all non-complying property owners. If the purpose of ORTIGAS for imposing the restrictions was for its "controlled real estate development project and subdivision scheme", then it should have sought compliance from *all property owners* that have violated the restriction on building completion. As things stand, ASB would appear to have been singled out by ORTIGAS, rendering the present action highly suspect and a mere afterthought.

Consequently, while it may be true that ASB was bound by the restrictions annotated on its title, specifically the restriction on building completion, ORTIGAS is now effectively *estopped* from enforcing the same by virtue of its inaction and silence.

X X X X

In this case, ORTIGAS *acquiesced* to the conveyance of the property from AMETHYST to ASB with nary a demand, reservation or complaint for the enforcement of the restriction on building construction. It allowed the four-year period within which to construct a building to lapse before it decided that it *wanted*, after all, to enforce the restriction, which cannot be allowed lest the property rights of the registered owner, ASB, be transgressed. Such a silence or inaction, which in effect led ASB to believe that ORTIGAS no longer sought the enforcement of the restrictions on the contract, therefore *bars* ORTIGAS from enforcing the restriction it imposed on the subject property.

X X X X

**WHEREFORE**, premises considered, the instant appeal is **DENIED**. The assailed *Decision* is hereby **AFFIRMED**.

**SO ORDERED.**<sup>21</sup>

Acting on Ortigas' *Motion for Reconsideration*, however, the CA promulgated its assailed amended decision on January 9, 2012,<sup>22</sup> whereby it reversed the decision promulgated on September 6, 2011. It observed and ruled as follows:

It is not disputed that AMETHYST failed to finish construction within the period stated in the 1994 Deed of Sale. As correctly pointed out by ORTIGAS, in accordance with Article 1144 of the Civil Code, the prescriptive period within which to enforce remedies under the 1994 Deed of sale is ten (10) years from the time the right of action accrues.

ORTIGAS, therefore, had ten (10) years from 31 December 1995 or until 31 December 2005 within which to file suit to enforce the restriction. ***ORTIGAS filed the present complaint on 07 July 2000 well within the prescriptive period for filing the same.***

ASB contends that it could not have complied with the particular restriction to finish construction of the building as the period to finish the same had already lapsed by the time ASB acquired the property by way of a Deed of Assignment in Liquidation between AMETHYST and ASB on 28 December 1996. ***We hold, however, that the mere assignment or transfer of the subject property from AMETHYST to ASB does not serve to defeat the vested right of ORTIGAS to avail of remedies to enforce the subject restriction within the applicable prescriptive period.***

X X X X

As to the argument that the inaction of ORTIGAS with respect to other non-compliant properties in the Ortigas area is tantamount to consenting to such non-compliance, it must be mentioned that it is the sole prerogative and discretion of Ortigas to initiate any action against the violators of the deed restrictions. This Court cannot interfere with the exercise of such prerogative/discretion. Furthermore, We cannot sustain

---

<sup>21</sup> Id. at 59-62.

<sup>22</sup> Supra note 1.

estoppel in doubtful inference. Absent the conclusive proof that its essential elements are present, estoppel must fail. Estoppel, when misapplied, becomes an effective weapon to accomplish an injustice, inasmuch as it shuts a man's mouth from speaking the truth.<sup>23</sup>

By its resolution promulgated on July 26, 2012, the CA denied the petitioner's *Motion for Reconsideration*<sup>24</sup> for being filed out of time.<sup>25</sup>

### Issues

Hence, this appeal in which ASB submits: (1) that its *Motion for Reconsideration* vis-a-vis the CA's amended decision was filed on time; and (2) that the amended decision promulgated on January 9, 2012 by CA be reversed and set aside, and the decision promulgated on September 6, 2011 be reinstated.<sup>26</sup>

The petitioner essentially seeks the resolution of the issue of whether or not Ortigas validly rescinded the *Deed of Sale* due to the failure of Amethyst and its assignee, the petitioner, to fulfil the covenants under the *Deed of Sale*.

### Ruling of the Court

The petition for review is meritorious.

#### 1.

#### **Petitioner's motion for reconsideration vis-a-vis the amended decision of the CA was timely filed**

In denying the petitioner's *Motion for Reconsideration*, the CA concluded as follows:

Per allegation of material dates, the Motion for Reconsideration filed by Balgos Gumara & Jalandoni, co-counsel with Jose, Mendoza & Associates, on January 30, 2012 appears to have been filed on time. However, per registry return attached at the back of p. 212 of the *Rollo*, the Motion for Reconsideration was filed three (3) days late considering that the Amended Decision was received by defendant appellee's counsel of record, Jose, Mendoza & Associates, on January 12, 2012.<sup>27</sup>

---

<sup>23</sup> Id. at 42-47.

<sup>24</sup> Id. at 185-201.

<sup>25</sup> Id. at 64.

<sup>26</sup> Id. at 11.

<sup>27</sup> Id. at 64.

The conclusion of the CA was unwarranted because the petitioner established that its filing of the *Motion for Reconsideration* was timely.

It is basic that the party who asserts a fact or the affirmative of an issue has the burden of proving it.<sup>28</sup> Here, that party was the petitioner. To comply with its burden, it attached to its petition for review on *certiorari*: (1) the affidavit executed by Noel S.R. Rose, Senior Partner of Jose, Mendoza & Associates attesting that he had requested the postmaster of the Mandaluyong City Post Office to certify the date when Jose, Mendoza & Associates had received the copy of the amended decision of the CA;<sup>29</sup> and (2) the certification issued on August 15, 2012 by Postmaster Rufino C. Robles, and Letter Carrier, Jojo Salvador, both of the Mandaluyong Central Post Office, certifying that Registered Letter No. MVC 457 containing the copy of the amended decision had been delivered to and received on January 18, 2012 by Jose, Mendoza & Associates, through Ric Ancheta.<sup>30</sup> It thereby sought to prove that it had received the copy of the amended decision only on January 18, 2012, not January 12, 2012 as stated in the registry return card on record. Thus, it had until February 2, 2012, or 15 days from January 18, 2012, within which to file the same. In contrast, Ortigas relied only on the copy of the registry return to refute the petitioner's assertion.<sup>31</sup> Under the circumstances, the filing on January 30, 2012 of the *Motion for Reconsideration* was timely.

## 2.

### **Ortigas' action for rescission could not prosper**

The petitioner reiterates that although the restrictions and covenants imposed by Ortigas under the *Deed of Sale* with Amethyst, particularly with regard to the construction of the building, were similarly imposed on Ortigas' other buyers and annotated on the latter's respective certificates of title,<sup>32</sup> Ortigas never took to task such other buyers and Amethyst for failing to construct the buildings within the periods contractually imposed.<sup>33</sup> It maintains, therefore, that Ortigas slept on its rights because it did not take any action against Amethyst during the period prescribed in the *Deed of Sale*.<sup>34</sup> It argues that even assuming that it was bound by the terms of the *Deed of Sale*, certain circumstances occurred in the interim that rendered it impossible for the petitioner to comply with the covenants embodied in the *Deed of Sale*, namely: (1) the delay in the petitioner's possession of the property resulted from the complaint for forcible entry it had filed in the Metropolitan Trial Court in Pasig City; (2) at the time the property was

---

<sup>28</sup> *Eureka Personnel & Management Services, Inc. v. Valencia*, G.R. No. 159358, July 15, 2009, 593 SCRA 36, 43.

<sup>29</sup> *Rollo*, pp. 66-67.

<sup>30</sup> *Id.* at 70.

<sup>31</sup> *Id.* at 87 and 183.

<sup>32</sup> *Id.* at 15-16.

<sup>33</sup> *Id.* at 16.

<sup>34</sup> *Id.* at 24.

transferred to the petitioner, the period within which to construct the building had already expired without Ortigas enforcing the obligation against Amethyst; and (3) the petitioner was placed under corporate rehabilitation by the Securities and Exchange Commission (SEC) by virtue of which a stay order was issued on May 4, 2000.<sup>35</sup>

In contrast, Ortigas contends that it had the sole discretion whether or not to commence any action against a party who violated a restriction in the *Deed of Sale*;<sup>36</sup> and that it could not be estopped because the *Deed of Sale* with Amethyst and the deeds of sale with its other buyers contained a uniform provision to the effect that “any inaction, delay or tolerance by OCLP (Ortigas) in respect to violation of any of the covenants and restrictions committed by these buyers shall not bar or estop the institution of an action to enforce them.”<sup>37</sup>

In asserting its right to rescind, Ortigas insists that the petitioner was bound by the covenants of the *Deed of Sale* annotated on TCT No. PT-10597 in the name of the petitioner;<sup>38</sup> and that the petitioner’s privity to the *Deed of Sale* was by virtue of its being the successor-in-interest or assignee of Amethyst.<sup>39</sup>

After evaluating the parties’ arguments and the records of the case, the Court holds that Ortigas could not validly demand the reconveyance of the property, or the demolition of the structures thereon through rescission.

The *Deed of Assignment in Liquidation* executed between Amethyst and the petitioner expressly stated, in part, that:

x x x x [T]he ASSIGNOR hereby assigns, transfers and conveys unto the ASSIGNEE, its successors and assigns, free from any lien or encumbrance except those that are duly annotated on the Transfer Certificate of Title (TCT), one parcel of real property (with improvements), x x x.

x x x x

The ASSIGNEE in turn in consideration of the foregoing assignment of assets to it, hereby surrenders to ASSIGNOR, Amethyst Pearl Corporation, Stock Certificate Nos. (006, 007, 008, 009, 010, 011), covering a total of TEN THOUSAND SHARES (10,000) registered in the name of the ASSIGNEE and its nominees in the books of ASSIGNOR, receipt of which is hereby acknowledged, and in addition hereby releases

---

<sup>35</sup> Id. at 26-27.

<sup>36</sup> Id. at 91-93.

<sup>37</sup> Id. at 99.

<sup>38</sup> Id. at 104-105.

<sup>39</sup> Id. at 106-108.

ASSIGNOR from any and all claims.<sup>40</sup>

The express terms of the *Deed of Assignment in Liquidation, supra*, indicate that Amethyst transferred to the petitioner only the tangible asset consisting of the parcel of land covered by TCT No. PT-94175 registered in the name of Amethyst. By no means did Amethyst assign the rights or duties it had assumed under the *Deed of Sale*. The petitioner thus became vested with the ownership of the parcel of land “free from any lien or encumbrance except those that are duly annotated on the [title]” from the time Amethyst executed the *Deed of Assignment in Liquidation*.

Although the *Deed of Sale* stipulated that:

3. The lot, together with any improvements thereon, or any rights thereto, shall not be transferred, sold or encumbered before the final completion of the building as herein provided unless it is with the prior express written approval of ORTIGAS.<sup>41</sup>

x x x x

The VENDEE hereby agrees that, for the time being, this Deed will not be registered and that its title shall not be issued until the satisfactory construction of the contemplated Office Building and VENDEE’s compliance with all conditions herein. x x x<sup>42</sup>

Ortigas apparently recognized *without any reservation* the issuance of the new certificate of title in the name of Amethyst and the subsequent transfer by assignment from Amethyst to the petitioner that resulted in the issuance of the new certificate of title under the name of the petitioner. As such, Ortigas was estopped from assailing the petitioner’s acquisition and ownership of the property.

The application of estoppel was appropriate. The doctrine of estoppel was based on public policy, fair dealing, good faith and justice, and its purpose was to forbid a party to speak against his own act or omission, representation, or commitment to the injury of another to whom the act, omission, representation, or commitment was directed and who reasonably relied thereon. The doctrine sprang from equitable principles and the equities in the case, and was designed to aid the law in the administration of justice where without its aid injustice would result. Estoppel has been applied by the Court wherever and whenever special circumstances of the case so demanded.<sup>43</sup>

---

<sup>40</sup> Id. at 130.

<sup>41</sup> Id. at 117.

<sup>42</sup> Id. at 123.

<sup>43</sup> *Megan Sugar Corporation v. Regional Trial Court of Iloilo, Branch 68, Dumangas, Iloilo*, G.R. No. 170352, June 1, 2011, 650 SCRA 100, 110.

Yet, the query that persists is whether or not the covenants annotated on TCT No. PT-10597 bound the petitioner to the performance of the obligations assumed by Amethyst under the *Deed of Sale*.

We agree with Ortigas that the annotations on TCT No. PT-10597 bound the petitioner but not to the extent that rendered the petitioner liable for the non-performance of the covenants stipulated in the *Deed of Sale*.

Section 39 of Act No. 496 (*The Land Registration Act*) requires that every person receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value in good faith shall hold the same free of all encumbrances *except those noted on said certificate*. An encumbrance in the context of the provision is “anything that impairs the use or transfer of property; anything which constitutes a burden on the title; a burden or charge upon property; a claim or lien upon property.”<sup>44</sup> It denotes “any right to, or interest in, land which may subsist in another to the diminution of its value, but consistent with the passing of the fee by conveyance.”<sup>45</sup> An annotation, on the other hand, is “a remark, note, case summary, or commentary on some passage of a book, statutory provision, court decision, of the like, intended to illustrate or explain its meaning.”<sup>46</sup> The purpose of the annotation is to charge the purchaser or title holder with notice of such burden and claims.<sup>47</sup> Being aware of the annotation, the purchaser must face the possibility that the title or the real property could be subject to the rights of third parties.<sup>48</sup>

By acquiring the parcel of land with notice of the covenants contained in the *Deed of Sale* between the vendor (Ortigas) and the vendee (Amethyst), the petitioner bound itself to acknowledge and respect the encumbrance. Even so, the petitioner did not step into the shoes of Amethyst as a party in the *Deed of Sale*. Thus, the annotation of the covenants contained in the *Deed of Sale* did not give rise to a liability on the part of the petitioner as the purchaser/successor-in-interest without its express assumption of the duties or obligations subject of the annotation. As stated, the annotation was only the notice to the purchaser/successor-in-interest of the burden, claim or lien subject of the annotation. In that respect, the Court has observed in *Garcia v. Villar*:<sup>49</sup>

---

<sup>44</sup> Moreno, *Philippine Law Dictionary*, Third Edition (1988), p. 316.

<sup>45</sup> *Black's Law Dictionary*, Sixth Edition (1990), p. 527.

<sup>46</sup> *Id.* at 89.

<sup>47</sup> *Domingo v. Roces*, G.R. No. 147468, April 9, 2003, 401 SCRA 197, 202.

<sup>48</sup> *Tan v. Benolirao*, G.R. No. 153820, October 16, 2009, 604 SCRA 36, 51.

<sup>49</sup> G.R. No. 158891, June 27, 2012, 675 SCRA 80, 92-93.

The sale or transfer of the mortgaged property cannot affect or release the mortgage; thus the purchaser or transferee is necessarily bound to acknowledge and respect the encumbrance.

x x x x

x x x However, Villar, in buying the subject property with notice that it was mortgaged, only undertook to pay such mortgage or allow the subject property to be sold upon failure of the mortgage creditor to obtain payment from the principal debtor once the debt matures. Villar did not obligate herself to replace the debtor in the principal obligation, and could not do so in law without the creditors consent. Article 1293 of the Civil Code provides:

**Art. 1293.** Novation which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor. Payment by the new debtor gives him the rights mentioned in articles 1236 and 1237.

Therefore, the obligation to pay the mortgage indebtedness remains with the original debtors Galas and Pingol. x x x

To be clear, contractual obligations, unlike contractual rights or benefits, are generally not assignable. But there are recognized means by which obligations may be transferred, such as by sub-contract and novation. In this case, the substitution of the petitioner in the place of Amethyst did not result in the novation of the *Deed of Sale*. To start with, it does not appear from the records that the consent of Ortigas to the substitution had been obtained despite its essentiality to the novation. Secondly, the petitioner did not expressly assume Amethyst's obligations under the *Deed of Sale*, whether through the *Deed of Assignment in Liquidation* or another document. And, thirdly, the consent of the new obligor (*i.e.*, the petitioner), which was as essential to the novation as that of the obligee (*i.e.*, Ortigas), was not obtained.<sup>50</sup>

Even if we would regard the petitioner as the assignee of Amethyst as far as the *Deed of Sale* was concerned, instead of being the buyer only of the subject property, there would still be no express or implied indication that the petitioner had assumed Amethyst's obligations. In short, the burden to perform the covenants under the *Deed of Sale*, or the liability for the non-performance thereof, remained with Amethyst. As held in an American case:

The mere assignment of a bilateral executory contract may not be interpreted as a promise by the assignee to the assignor to assume the performance of the assignor's duties, so as to have the effect of creating a new liability on the part of the assignee to the other party to the contract assigned. The assignee of the vendee is under no personal engagement to the vendor where there is no privity between them. (*Champion v. Brown*, 6

---

<sup>50</sup> *Martinez v. Cavives*, 25 Phil. 581, 585 (1913).

*Johns. Ch. 398; Anderson v. N. Y. & H. R. R. Co., 132 App. Div. 183, 187, 188; Hugel v. Habel, 132 App. Div. 327, 328.*) The assignee may, however, expressly or impliedly, bind himself to perform the assignor's duties. This he may do by contract with the assignor or with the other party to the contract. It has been held (*Epstein v. Gluckin, 233 N. Y. 490*) that where the assignee of the vendee invokes the aid of a court of equity in an action for specific performance, he impliedly binds himself to perform on his part and subjects himself to the conditions of the judgment appropriate thereto. "He who seeks equity must do equity." The converse of the proposition, that the assignee of the vendee would be bound when the vendor began the action, did not follow from the decision in that case. On the contrary, the question was wholly one of remedy rather than right and it was held that mutuality of remedy is important only so far as its presence is essential to the attainment of the ends of justice. This holding was necessary to sustain the decision. No change was made in the law of contracts nor in the rule for the interpretation of an assignment of a contract.

A judgment requiring the assignee of the vendee to perform at the suit of the vendor would operate as the imposition of a new liability on the assignee which would be an act of oppression and injustice, unless the assignee had, expressly or by implication, entered into a personal and binding contract with the assignor or with the vendor to assume the obligations of the assignor.<sup>51</sup>

Is rescission the proper remedy for Ortigas to recover the subject property from the petitioner?

The *Civil Code* uses rescission in two different contexts, namely: (1) rescission on account of breach of contract under Article 1191; and (2) rescission by reason of lesion or economic prejudice under Article 1381. Cogently explaining the differences between the contexts of rescission in his concurring opinion in *Universal Food Corp. v. Court of Appeals*,<sup>52</sup> the eminent Justice J.B.L. Reyes observed:

x x x The rescission on account of breach of stipulations is not predicated on injury to economic interests of the party plaintiff but on the breach of faith by the defendant, that violates the reciprocity between the parties. It is not a subsidiary action, and Article 1191 may be scanned without disclosing anywhere that the action for rescission thereunder is subordinated to anything; other than the culpable breach of his obligations by the defendant. This rescission is in principal action retaliatory in character, it being unjust that a party be held bound to fulfill his promises when the other violates his, as expressed in the old Latin aphorism: "*Non servanti fidem, non est fides servanda.*" Hence, the reparation of damages for the breach is purely secondary.

On the contrary, in the rescission by reason of *lesion* or economic prejudice, the cause of action is subordinated to the existence of that prejudice, because it is the *raison d'etre* as well as the measure of the right to rescind. Hence, where the defendant makes good the damages caused,

<sup>51</sup> *Langel v. Betz*, 250 N.Y. 159.

<sup>52</sup> L-29155, May 13, 1970, 33 SCRA 1, 22-23 (concurring opinion of Justice J.B.L. Reyes).

the action cannot be maintained or continued, as expressly provided in Articles 1383 and 1384. But the operation of these two articles is limited to the cases of rescission for *lesion* enumerated in Article 1381 of the Civil Code of the Philippines, and does not apply to cases under Article 1191.

Based on the foregoing, Ortigas' complaint was predicated on Article 1191 of the *Civil Code*, which provides:

Article 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with articles 1385 and 1388 and the Mortgage Law.

Rescission under Article 1191 of the *Civil Code* is proper if one of the parties to the contract commits a substantial breach of its provisions. It abrogates the contract from its inception and requires the mutual restitution of the benefits received;<sup>53</sup> hence, it can be carried out only when the party who demands rescission can return whatever he may be obliged to restore.

Considering the foregoing, Ortigas did not have a cause of action against the petitioner for the rescission of the *Deed of Sale*. Under Section 2, Rule 2 of the *Rules of Court*, a cause of action is the act or omission by which a party violates a right of another. The essential elements of a cause of action are: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the defendant not to violate such right; and (3) an act or omission on the part of the defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other relief. It is only upon the occurrence of the last element that the cause of action arises, giving the plaintiff the right to file an action in court for the recovery of damages or other relief.<sup>54</sup>

---

<sup>53</sup> *Supercars Management & Development Corporation v. Flores*, G.R. No. 148173, December 10, 2004, 446 SCRA 34, 43.

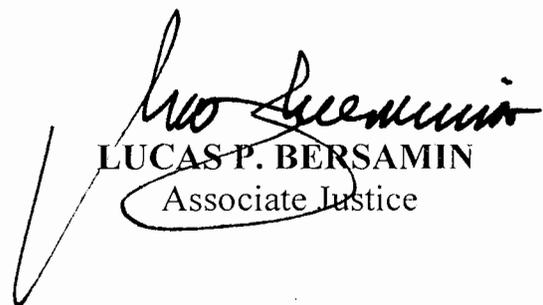
<sup>54</sup> *Fluor Daniel, Inc.-Philippines v. E.B. Villarosa & Partners Co., Ltd.*, G.R. No. 159648, July 27, 2007, 528 SCRA 321, 327.

The second and third elements were absent herein. The petitioner was not privy to the *Deed of Sale* because it was not the party obliged thereon. Not having come under the duty not to violate any covenant in the *Deed of Sale* when it purchased the subject property despite the annotation on the title, its failure to comply with the covenants in the *Deed of Sale* did not constitute a breach of contract that gave rise to Ortigas' right of rescission. It was rather Amethyst that defaulted on the covenants under the *Deed of Sale*; hence, the action to enforce the provisions of the contract or to rescind the contract should be against Amethyst. In other words, rescission could not anymore take place against the petitioner once the subject property legally came into the juridical possession of the petitioner, who was a third party to the *Deed of Sale*.<sup>55</sup>

In view of the outcome, we consider to be superfluous any discussion of the other matters raised in the petition, like the effects of the petitioner's corporate rehabilitation and whether Ortigas was guilty of laches.

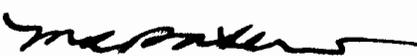
**WHEREFORE**, the Court **GRANTS** the petition for review on *certiorari*; **ANNULS** and **REVERSES** the amended decision promulgated on January 9, 2012 and the resolution promulgated on July 26, 2012 by the Court of Appeals in C.A.-G.R. CV No. 94997; **DISMISSES** Civil Case No. 67978 for lack of cause of action; and **ORDERS** respondent **ORTIGAS & COMPANY LIMITED PARTNERSHIP** to pay the costs of suit.

**SO ORDERED.**



LUCAS P. BERSAMIN  
Associate Justice

**WE CONCUR:**



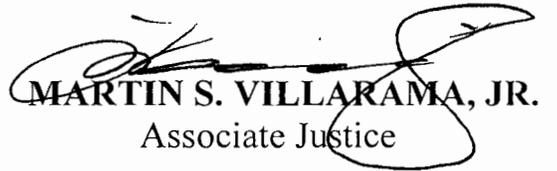
MARIA LOURDES P. A. SERENO  
Chief Justice

<sup>55</sup> Article 1385 of the *Civil Code* relevantly provides:

Article 1385. – x x x

Neither shall rescission take place when the things which are the object of the contract are legally in the possession of third persons who did not act in bad faith. x x x

  
TERESITA J. LEONARDO-DE CASTRO  
Associate Justice

  
MARTIN S. VILLARAMA, JR.  
Associate Justice

  
JOSE PORTUGAL PEREZ  
Associate Justice

**CERTIFICATION**

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

  
MARIA LOURDES P. A. SERENO  
Chief Justice