

## FIRST DIVISION

[ G.R. No. 149295, September 23, 2003 ]

**PHILIPPINE NATIONAL BANK, PETITIONER, VS. GENEROSO DE JESUS, REPRESENTED BY HIS ATTORNEY-IN-FACT, CHRISTIAN DE JESUS, RESPONDENT.**

### DECISION

**VITUG, J.:**

Petitioner Philippine National Bank disputes the decision handed down by the Court of Appeals promulgated on 23 March 2001 in CA-G.R. CV No. 56001, entitled "Generoso De Jesus, represented by his Attorney-in-Fact, Christian De Jesus, versus Philippine National Bank." The assailed decision has affirmed the judgment rendered by the Regional Trial Court, Branch 44, of Mamburao, Occidental Mindoro, declaring respondent Generoso de Jesus as being the true and lawful owner of the 124-square-meter portion of the land covered by Transfer Certificate of Title (TCT) No. T-17197 and ordering petitioner bank to vacate the premises, to deliver possession thereof to respondent, and to remove the improvement thereon.

It would appear that on 10 June 1995, respondent filed a complaint against petitioner before the Regional Trial Court of Occidental Mindoro for recovery of ownership and possession, with damages, over the questioned property. In his complaint, respondent stated that he had acquired a parcel of land situated in Mamburao, Occidental Mindoro, with an area of 1,144 square meters covered by TCT No. T-17197, and that on 26 March 1993, he had caused a verification survey of the property and discovered that the northern portion of the lot was being encroached upon by a building of petitioner to the extent of 124 square meters. Despite two letters of demand sent by respondent, petitioner failed and refused to vacate the area.

Petitioner, in its answer, asserted that when it acquired the lot and the building sometime in 1981 from then Mayor Bienvenido Ignacio, the encroachment already was in existence and to remedy the situation, Mayor Ignacio offered to sell the area in question (which then also belonged to Ignacio) to petitioner at P100.00 per square meter which offer the latter claimed to have accepted. The sale, however, did not materialize when, without the knowledge and consent of petitioner, Mayor Ignacio later mortgaged the lot to the Development Bank of the Philippines.

The trial court decided the case in favor of respondent declaring him to be the rightful owner of the disputed 124-square-meter portion of the lot and ordering petitioner to surrender possession of the property to respondent and to cause, at its expense, the removal of any improvement thereon.

The Court of Appeals, on appeal, sustained the trial court but it ordered to be deleted the award to respondent of attorney's fees, as well as moral and exemplary

damages, and litigation expenses.

Petitioner went to this Court, *via* a petition for review, after the appellate court had denied the bank's motion for reconsideration, here now contending that -

"1. THE COURT OF APPEALS GRAVELY ERRED IN LAW IN ADJUDGING PNB A BUILDER IN BAD FAITH OVER THE ENCROACHED PROPERTY IN QUESTION;

"2. THE COURT OF APPEALS GRAVELY ERRED IN LAW IN NOT APPLYING IN FAVOR OF PNB THE PROVISION OF ARTICLE 448 OF THE CIVIL CODE AND THE RULING IN TECNOGAS PHILIPPINES MANUFACTURING CORP. VS. COURT OF APPEALS, G.R. No. 108894, February 10, 1997, 268 SCRA 7."<sup>[1]</sup>

The Regional Trial Court and the Court of Appeals have both rejected the idea that petitioner can be considered a builder in good faith. In the context that such term is used in particular reference to Article 448, *et seq.*, of the Civil Code, a builder in good faith is one who, not being the owner of the land, builds on that land believing himself to be its owner and unaware of any defect in his title or mode of acquisition.

The various provisions of the Civil Code, pertinent to the subject, read:

"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 a 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."

"Article 449. He who builds, plants, or sows in bad faith on the land of another, loses what is built, planted or sown without right to indemnity."

"Article 450. The owner of the land on which anything has been built, planted or sown in bad faith may demand the demolition of the work, or that the planting or sowing be removed, in order to replace things in their former condition at the expense of the person who built, planted or sowed; or he may compel the builder or planter to pay the price of the land, and the sower the proper rent."

A builder in good faith can, under the foregoing provisions, compel the landowner to make a choice between appropriating the building by paying the proper indemnity or obliging the builder to pay the price of the land. The choice belongs to the owner of the land, a rule that accords with the principle of accession, *i.e.*, that the accessory follows the principal and not the other way around.<sup>[2]</sup> Even as the option lies with the landowner, the grant to him, nevertheless, is preclusive. He must choose one. He cannot, for instance, compel the owner of the building to instead remove it from