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FIRST DIVISION

[G.R. No. L-41093. October 30, 1978]

ROBES-FRANCISCO REALTY & DEVELOPMENT CORPORATION, *petitioner, vs.* **COURT OF FIRST INSTANCE OF RIZAL (BRANCH XXXIV), and LOLITA MILLAN,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; DAMAGES; STIPULATION IN A CONTRACT TO PAY 4% INTEREST IN CASE OF FAILURE TO PERFORM AN OBLIGATION NOT PENAL IN CHARACTER. — A stipulation in a deed of absolute sale that should the vendor fail to issue the transfer certificate of title within six months from date of full payment, the vendor shall refund to the vendee the total amount cannot be considered a penal clause in contemplation of Article 1226 of the New Civil Code as to preclude recovery of damages. For obvious reasons, the clause does not convey any penalty, for even without it, pursuant to Article 2209 of the Civil Code, the vendee would still recover the amount paid by her with legal rate of interest which is even more than the 4% provided for in the clause.

2. ID.; ID.; ID.; NOMINAL DAMAGES, NATURE OF. — Under Articles 2221 and 2222 of the New Civil Code, nominal damages are not intended as indemnification for the loss suffered but for the vindication or recognition of a right violated or invaded. They are recoverable where some injury has been done the amount of which the evidence fails to show, the assessment of damages being left to the discretion of the court. Nominal damages are by their very nature small sums fixed by the court without regard to the extent of the harm done to the injured party. A nominal damage is a substantial claim if based upon the violation of a legal right; in such case the law presumes a damage, although actual or compensatory damages are not proven; in truth, nominal damages are damages in name only, and not in fact and are allowed, not as an equivalent of a wrong inflicted, but simply in recognition of the existence of a technical injury. It cannot co-exist with compensatory or exemplary damages.

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3. ID.; ID.; ID.; ID.; CIRCUMSTANCES IN EACH PARTICULAR CASE DETERMINES AMOUNT OF NOMINAL DAMAGES. — The Circumstances of a particular case determine whether or not the amount assessed as nominal damages is within the scope or intention of Article 2221 of the Civil Code.

4. ID.; ID.; ID.; ID.; BAD FAITH NOT PRESUMED. — Bad faith is not to be presumed. Thus, the fact that the reality corporation failed to convey a transfer certificate of title to the buyer because the subdivision property was mortgaged does not itself show that there was bad faith or fraud; especially where the vendor expected that arrangements were possible from the mortgagee to make partial releases of the subdivision lots from the overall real estate mortgage but the vendor did not simply succeed in that regard.

5. ID.; ID., ID.; ID.; NOT CONSIDERED AS EXEMPLARY DAMAGES. — The amount of ₱20,000 awarded as nominal damages against realty corporation for failure to convey a transfer certificate of title to the buyer who had fully paid the purchase price of the lot is excessive. Nor may such award be considered in the nature of exemplary damages where the failure to convey the transfer certificate of title was not attended by fraud or bad faith, because in breach of a contract exemplary damages are awarded if the guilty party acted in wanton, fraudulent, reckless, oppressive or malevolent manner. Exemplary or corrective damages are imposed by way of example or correction for the public good only if the injured party has shown that he is entitled to recover moral, temperate or compensatory damages.

APPEARANCES OF COUNSEL

Purugganan & Bersamin for petitioner.
Salvador N. Beltran for respondent.

D E C I S I O N

MUÑOZ PALMA, *J.*:

This is a direct appeal on questions of law from a decision of the Court of First Instance of Rizal, Branch XXXIV, presided

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by the Honorable Bernardo P. Pardo, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered commanding the defendant to register the deed of absolute sale it had executed in favor of plaintiff with the Register of Deeds of Caloocan City and secure the corresponding title in the name of plaintiff within ten (10) days after finality of this decision; if, for any reason, this is not possible, defendant is hereby sentenced to pay plaintiff the sum of ₱5,193.63 with interest at 4% per annum from June 22, 1972 until fully paid.

"In either case, defendant is sentenced to pay plaintiff nominal damages in the amount of ₱20,000.00 plus attorney's fee in the amount of ₱5,000.00 and costs.

"SO ORDERED.

"Caloocan City, February 11, 1975."

(*rollo*, p. 21)

Petitioner corporation questions the award for nominal damages of ₱20,000.00 and attorney's fee of ₱5,000.00 which are allegedly excessive and unjustified.

In the Court's resolution of October 20, 1975, We gave due course to the Petition only as regards the portion of the decision awarding nominal damages.[1]

The following incidents are not in dispute:

In May 1962 Robes-Francisco Realty & Development Corporation, now petitioner, agreed to sell to private respondent Lolita Millan for and in consideration of the sum of ₱3,864.00, payable in installments, a parcel of land containing an area of approximately 276 square meters, situated in Barrio Camarin, Caloocan City, known as Lot No. 20, Block No. 11 of its Franville Subdivision.[2]

Millan complied with her obligation under the contract and paid the installments stipulated therein, the final payment having

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[1] *rollo*, p. 33.

[2] record on appeal, p. 2.

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been made on December 22, 1971. The vendee made a total payment of ₱5,193.63 including interests and expenses for registration of title.[3]

Thereafter, Lolita Millan made repeated demands upon the corporation for the execution of the final deed of sale and the issuance to her of the transfer certificate of title over the lot. On March 2, 1973, the parties executed a deed of absolute sale of the aforementioned parcel of land. The deed of absolute sale contained, among others, this particular provision:

"That the VENDOR further warrants that the transfer certificate of title of the above described parcel of land shall be transferred in the name of the VENDEE within the period of six (6) months from the date of full payment and in case the VENDOR fails to issue said transfer certificate of title, it shall bear the obligation to refund to the VENDEE the total amount already paid for, plus an interest at the rate of 4% per annum." (record on appeal, p. 9).

Notwithstanding the lapse of the above-mentioned stipulated period of six (6) months, the corporation failed to cause the issuance of the corresponding transfer certificate of title over the lot sold to Millan, hence, the latter filed on August 14, 1974 a complaint for specific performance and damages against Robes-Francisco Realty & Development Corporation in the Court of First Instance of Rizal, Branch XXXIV, Caloocan City, docketed therein as Civil Case No. C-3268.[4]

The complaint prayed for judgment (1) ordering the reformation of the deed of absolute sale; (2) ordering the defendant to deliver to plaintiff the certificate of title over the lot free from any lien or encumbrance; or, should this be not possible, to pay plaintiff the value of the lot which should not be less than ₱27,600.00 (allegedly the present estimated value of the lot); and (3) ordering the defendant to pay plaintiff damages, corrective and actual in the sum of ₱15,000.00.[5]

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[3] *ibid.*, p. 3.

[4] *ibid.*, p. 1.

[5] *ibid.*, pp. 6-7.

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The corporation in its answer prayed that the complaint be dismissed alleging that the deed of absolute sale was voluntarily executed between the parties and the interest of the plaintiff was amply protected by the provision in said contract for payment of interest at 4% per annum of the total amount paid, for the delay in the issuance of the title.[6]

At the pretrial conference the parties agreed to submit the case for decision on the pleadings after defendant further made certain admissions of facts not contained in its answer.[7]

Finding that the realty corporation failed to cause the issuance of the corresponding transfer certificate of title because the parcel of land conveyed to Millan was included among other properties of the corporation mortgaged to the GSIS to secure an obligation of ₱10 million and that the owner's duplicate certificate of title of the subdivision was in the possession of the Government Service Insurance System (GSIS), the trial court, on February 11, 1975, rendered judgment the dispositive portion of which is quoted in pages 1 and 2 of this Decision.

We hold that the trial court did not err in awarding nominal damages; however, the circumstances of the case warrant a reduction of the amount of ₱20,000.00 granted to private respondent Millan.

There can be no dispute in this case under the pleadings and the admitted facts that petitioner corporation was guilty of delay, amounting to nonperformance of its obligation, in issuing the transfer certificate of title to vendee Millan who had fully paid up her installments on the lot bought by her. Article 1170 of the Civil Code expressly provides that 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.*

Petitioner contends that the deed of absolute sale executed between the parties stipulates that should the vendor fail to

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[6] *ibid.*, pp. 11-14.

[7] *ibid.*, pp. 15-16.

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issue the transfer certificate of title within six months from the date of full payment, it shall refund to the vendee the total amount paid for with interest at the rate of 4% per annum, hence, the vendee is bound by the terms of the provision and cannot recover more than what is agreed upon. Presumably, petitioner in invoking Article 1226 of the Civil Code which provides that in obligations with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interests in case of noncompliance, if there is no stipulation to the contrary.

The foregoing argument of petitioner is totally devoid of merit. We would agree with petitioner if the clause in question were to be considered as a penal clause. Nevertheless, for very obvious reasons, said clause does not convey any penalty, *for even without it*, pursuant to Article 2209 of the Civil Code, the vendee would be entitled to recover the amount paid by her with *legal rate of interest which is even more than the 4% provided* for in the clause.[7-A]

It is therefore inconceivable that the aforecited provision in the deed of sale is a penal clause which will preclude an award of damages to the vendee Millan. In fact the clause is so worded as to work to the advantage of petitioner corporation.

Unfortunately, the vendee, now private respondent, submitted her case below without presenting evidence on the actual damages suffered by her as a result of the nonperformance of petitioner's obligation under the deed of sale. Nonetheless, the facts show that the right of the vendee to acquire title to the lot bought by her was violated by petitioner and this entitles her at the very least to nominal damages.

The pertinent provisions of our Civil Code follow:

[7-A] "Art. 2209. Civil Code: If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, *the indemnity for damages*, there being no stipulation to the contrary, *shall be the payment of the interest agreed upon*, and in the absence of stipulation, *the legal interest*, which is six per cent per annum." (Italics supplied)

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"Art. 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."

"Art. 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."

Under the foregoing provisions nominal damages are not intended for indemnification of loss suffered but for the vindication or recognition of a right violated or invaded. They are recoverable where some injury has been done the amount of which the evidence fails to show, the assessment of damages being left to the discretion of the court according to the circumstances of the case.[8]

It is true as petitioner claims that under American jurisprudence nominal damages by their very nature are small sums fixed by the court without regard to the extent of the harm done to the injured party.

"It is generally held that a nominal damage is a substantial claim, if based upon the violation of a legal right; in such case, the law presumes a damage, although actual or compensatory damages are not proven; in truth nominal damages are damages in name only and not in fact, and are allowed, not as an equivalent of a wrong inflicted, but simply in recognition of the existence of a technical injury." (*Fouraker v. Kidd Springs Boating and Fishing Club*, 65 S. W. 2d 796-797, citing 17 C.J. 720, and a number of authorities).[9]

In this jurisdiction, in *Vda. de Medina, et al. v. Cresencia, et al.*, 1956, which was an action for damages arising out of a vehicular accident, this Court had occasion to eliminate an award of ₱10,000.00 imposed by way of nominal damages, the Court stating *inter alia* that the amount cannot, in common sense, be deemed "nominal." [10]

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[8] *Ventanilla v. Centeno*, 1961, 1 SCRA 215.

[9] See also *Mathis v. State, Dept. of Roads*, 135 N.W. 2d, 17, 20; *Quillet, et al. v. Johnson, et al.*, 71 N.E. 2d. 488, among others.

[10] 99 Phil. 506, 510, per Justice J.B.L. Reyes.

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In a subsequent case, *viz*: *Northwest Airlines, Inc. v. Nicolas L. Cuenca*, 1965, this Court, however, through then Justice Roberto Concepcion who later became Chief Justice of this Court, *sustained an award of ₱20,000.00 as nominal damages* in favor of respondent Cuenca. The *Court there found special reasons* for considering ₱20,000.00 as "nominal." Cuenca who was the holder of a first class ticket from Manila to Tokyo was rudely compelled by an agent of petitioner Airlines to move to the tourist class notwithstanding its knowledge that Cuenca as Commissioner of Public Highways of the Republic of the Philippines was travelling in his official capacity as a delegate of the country to a conference in Tokyo.[11]

Actually, as explained in the Court's decision in *Northwest Airlines*, there is no conflict between that case and *Medina*, for in the latter, the ₱10,000.00 award for nominal damages was eliminated principally because the aggrieved party had already been awarded ₱6,000.00 as compensatory damages, ₱30,000.00 as moral damages and ₱10,000.00 as exemplary damages, and "nominal damages cannot coexist with compensatory damages," while in the case of Commissioner Cuenca, no such compensatory, moral, or exemplary damages were granted to the latter.[12]

At any rate, the circumstances of a particular case will determine whether or not the amount assessed as nominal damages is within the scope or intent of the law, more particularly, Article 2221 of the Civil Code.

In the situation now before Us, We are of the view that the *amount of ₱20,000.00 is excessive*. The admitted fact that petitioner corporation failed to convey a transfer certificate of title to respondent Millan because the subdivision property was mortgaged to the GSIS does not in itself show that there was bad faith or fraud. Bad faith is not to be presumed. Moreover, there was the expectation of the vendor that arrangements were possible for the GSIS to make partial releases of the

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[11] 14 SCRA 1063, 1066.

[12] *ibid.*, p. 1065.

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subdivision lots from the overall real estate mortgage. It was simply unfortunate that petitioner did not succeed in that regard.

For that reason We cannot agree with respondent Millan that the ₱20,000.00 award may be considered in the nature of *exemplary damages*.

In case of breach of contract, exemplary damages may be awarded if the guilty party acted in wanton, fraudulent, reckless, oppressive or malevolent manner.[13] Furthermore, exemplary or corrective damages are to be imposed by way of example or correction for the public good, only if the injured party has shown that he is entitled to recover moral, temperate or compensatory damages.[14]

Here, respondent Millan did not submit below any evidence to prove that she suffered actual or compensatory damages.

To conclude, We hold that the sum of Ten Thousand Pesos (₱10,000.00) by way of nominal damages is fair and just under the following circumstances, *viz*: respondent Millan bought the lot from petitioner in May, 1962, and paid in full her installments on December 22, 1971, but it was only on March 2, 1973, that a deed of absolute sale was executed in her favor, and notwithstanding the lapse of almost three years since she made her last payment, petitioner still failed to convey the corresponding transfer certificate of title to Millan who accordingly was compelled to file the instant complaint in August of 1974.

PREMISES CONSIDERED, We modify the decision of the trial court and reduce the nominal damages to Ten Thousand Pesos (₱10,000.00). In all other respects the aforesaid decision stands.

Without pronouncement as to costs.

SO ORDERED.

Teehankee (Chairman), Makasiar, Fernandez, and *Guerrero, JJ.*, concur.

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[13] Article 2232, Civil Code; Tolentino, on the Civil Code, 1959 ed., Vol. V, p. 561.

[14] Articles 2229, 2234, Civil Code.