Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

JOSEPH HARRY WALTER POOLE-BLUNDEN, Petitioner,	**G.R. No. 205838** Present:
-versus-	VELASCO, JR., *J. Chairperson* BERSAMIN LEONEN, MARTIRES, and GESMUNDO,* *JJ.*
UNION BANK OF THE PHILIPPINES, Respondent.	**Promulgated:** November 29, 2017

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DECISION

LEONEN, *J.*:

Banks are required to observe a high degree of diligence in their affairs. This encompasses their dealings concerning properties offered as security for loans. A bank that wrongly advertises the area of a property acquired through foreclosure because it failed to dutifully ascertain the property's specifications is grossly negligent as to practically be in bad faith in offering that property to prospective buyers. Any sale made on this account is voidable for causal fraud. In actions to void such sales, banks cannot hide under the defense that a sale was made on an as-is-where-is basis. As-is-where-is stipulations can only encompass physical features that are readily perceptible by an ordinary person possessing no specialized skills.

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* On leave.

This resolves a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure praying that the assailed November 15, 2012 Decision[2] and February 12, 2013 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 95369 be reversed and set aside and that judgment be rendered annulling or rescinding the Contract to Sell between petitioner Joseph Harry Walter Poole-Blunden (Poole-Blunden) and respondent Union Bank of the Philippines (UnionBank).

The assailed Court of Appeals Decision affirmed the April 20, 2010 Decision of the Regional Trial Court, Branch 65, Makati City which dismissed the Complaint for Rescission of Contract and Damages filed by Poole-Blunden against respondent UnionBank.[4] The assailed Court of Appeals Resolution denied Poole-Blunden's Motion for Reconsideration.[5]

Sometime in March 2001, Poole-Blunden came across an advertisement placed by Union Bank in the Manila Bulletin. The ad was for the public auction of certain properties. One of these properties was a condominium unit, identified as Unit 2-C of T-Tower Condominium (the "Unit"), located at 5040 P. Burgos corner Calderon Streets, Makati City.[6] UnionBank had acquired the property through foreclosure proceedings "after the developer defaulted in the payment of its loan from [UnionBank]."[7]

The Unit was advertised to have an area of 95 square meters. Thinking that it was sufficient and spacious enough for his residential needs, Poole-Blunden decided to register for the sale and bid on the unit.[8]

About a week prior to the auction, Poole-Blunden visited the unit for inspection. He was accompanied by a representative of UnionBank. The unit had an irregular shape; it was neither a square nor a rectangle and included a circular terrace. Poole-Blunden did not doubt the unit's area as advertised. However, he found that the ceiling was in bad condition, that the parquet floor was damaged, and that the unit was in need of other substantial repairs to be habitable.[9]

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1 *Rollo*, pp. 11–43.
2 Id. at 45–53. The Decision was penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Jose C. Reyes, Jr., and Mario V. Lopez of the Ninth Division, Court of Appeals, Manila.
3 Id. at 55–56. The Resolution was penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Jose C. Reyes, Jr., and Mario V. Lopez of the Ninth Division, Court of Appeals, Manila.
4 Id. at 45 and 52.
5 Id. at 56.
6 Id. at 12.
7 Id. at 66, Comment.
8 Id. at 12–13.
9 Id. at 13.

On the day of the auction, Poole-Blunden inspected the Master Title of the project owner to the condominium in the name of Integrated Network (TCT No. 171433) and the Condominium Certificate of Title of UnionBank (CCT No. 36151) to verify once again the details as advertised and the ownership of the unit. Both documents were on display at the auction venue.[10]

Poole-Blunden placed his bid and won the unit for ₱2,650,000.00.[11] On May 7, 2001, Poole-Blunden entered into a Contract to Sell with UnionBank. This Contract stipulated that Poole-Blunden would pay 10% of the purchase price as down payment[12] and that the balance shall be paid over a period of 15 years in equal monthly instalments, with interest of 15% per annum starting July 7, 2001.[13]

Poole-Blunden started occupying the unit in June 2001. By July 20, 2003, he was able to fully pay for the Unit, paying a total amount of ₱3,257,142.49.[14]

In late 2003, Poole-Blunden decided to construct two (2) additional bedrooms in the Unit. Upon examining it, he noticed apparent problems in its dimensions. He took rough measurements of the Unit, which indicated that its floor area was just about 70 square meters, not 95 square meters, as advertised by UnionBank.[15]

Poole-Blunden got in touch with an officer of UnionBank to raise the matter, but no action was taken.[16] On July 12, 2004, Poole-Blunden wrote to UnionBank, informing it of the discrepancy. He asked for a rescission of the Contract to Sell, along with a refund of the amounts he had paid, in the event that it was conclusively established that the area of the unit was less than 95 square meters.[17]

In a letter dated December 6, 2004,[18] UnionBank informed Poole-Blunden that after inquiring with the Housing and Land Use Regulatory Board (HLURB), the Homeowners' Association of T-Tower Condominium, and its appraisers, the Unit was confirmed to be 95 square meters, *inclusive of the terrace and the common areas surrounding it.*[19]

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10 Id.
11 Id. at 14.
12 Id. at 46, *citing* the Regional Trial Court Decision.
13 Id. at 14.
14 Id. at 46.
15 Id. at 14–15.
16 Id. at 15.
17 Id.
18 Id. at 47, *citing* the Regional Trial Court Decision.
19 Id. at 15.

Poole-Blunden was not satisfied with UnionBank's response as the condominium's Master Title expressly stated that the "boundary of each unit are the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof."[20] Thus, he hired an independent geodetic engineer, Engr. Gayril P. Tagal (Engr. Tagal) of the Filipinas Dravo Corporation, to survey the Unit and measure its actual floor area. Engr. Tagal issued a certification stating that the total floor area of the Unit was only 74.4 square meters.[21] Poole-Blunden gave UnionBank a copy of Engr. Tagal's certification on July 12, 2005.[22]

In a letter dated February 1, 2006, UnionBank explained:

> [T]he total area of the subject unit based on the ratio allocation maintenance cost submitted by the developer to HLURB is 98 square meters (60 square meters as unit area and 38 square meters as share on open space). On the other hand, the actual area thereof based on the measurements made by its surveyor is 74.18 square meters which was much higher than the unit area of 60 square meters that was approved by HLURB.[23]

Poole-Blunden's dissatisfaction with UnionBank's answer prompted him to file his Complaint for Rescission of Contract and Damages with the Regional Trial Court, Makati City.[24]

On April 20, 2010, the Regional Trial Court dismissed Poole-Blunden's complaint for lack of merit. The dispositive portion of its Decision read:

> WHEREFORE, premises considered, the instant complaint for rescission of contract and damages is hereby DISMISSED for lack of merit. The counterclaim is likewise DENIED.
>
> SO ORDERED.[25]

On appeal, the Court of Appeals affirmed the ruling of the Regional Trial Court.[26] It noted that the sale was made on an "as-is-where-is" basis as indicated in Section 12 of the Contract to Sell.[27] Thus, Poole-Blunden

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20 Id.
21 Id.
22 Id. at 16.
23 Id. at 47.
24 Id. at 17.
25 Id. at 48.
26 Id. at 52.
27 Id. at 32. Section 12 of the Contract to Sell provides:
Section 12. The BUYER recognizes that he is buying the property on an "as-is-where-is" basis including errors in boundaries or description of property, if any etc. and among others, he shall be responsible for the eviction of the occupants on the property, if any, or for the repair of the property, if needed. It shall be understood that the SELLER makes no warranty whatsoever on the authenticity,

supposedly waived any errors in the bounds or description of the unit.[28] The Court of Appeals added that Poole-Blunden failed to show, by clear and convincing evidence that causal fraud can be attributed to UnionBank.[29] It added that the sale was made for a lump-sum amount and that, in accordance with Article 1542, paragraph 1 of the Civil Code,[30] Poole-Blunden could not demand a reduction in the purchase price.[31]

Following the denial of his Motion for Reconsideration, Poole-Blunden filed the present Petition before this Court.[32]

Poole-Blunden charges UnionBank with fraud in failing to disclose to him that the advertised 95 square meters was inclusive of common areas.[33] With the vitiation of his consent as to the object of the sale, he asserts that the Contract to Sell may be voided. He insists that UnionBank is liable for breach of warranty despite the "as-is-where-is" clause in the Contract to Sell.[34] Finally, he assails the Court of Appeals' application of Article 1542 of the Civil Code.[35]

For resolution is the sole issue of whether or not respondent Union Bank of the Philippines committed such a degree of fraud as would entitle petitioner Joseph Harry Walter Poole-Blunden to the voiding of the Contract to Sell the condominium unit identified as Unit 2C, T-Tower Condominium, 5040 P. Burgos corner Calderon Streets, Makati City.

I

No longer in dispute at this juncture is how the Unit's interior area is only 74.4 square meters. While respondent has maintained that the Unit's total area is in keeping with the advertised 95 square meters, it has conceded that these 95 square meters is inclusive of outside spaces and common areas.

Even before litigation commenced, in a December 6, 2004 letter,[36] respondent informed petitioner that, following inquiries with the HLURB, the Homeowners' Association of T-Tower Condominium, and its appraisers,

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accuracy, or title over property.

28 *Rollo*, pp. 49–50.

29 Id. at 51.

30 CIVIL CODE, art. 1542 provides:
Article 1542. In the sale of real estate, made for a lump sum and not at the rate of a certain sum for a unit of measure or number, there shall be no increase or decrease of the price, although there be a greater or less area or number than that stated in the contract.

31 *Rollo*, p. 52.

32 Id. at 11–43.

33 Id. at 20 and 27.

34 Id. at 30.

35 Id. at 35–36.

36 Id. at 47, *citing* the Regional Trial Court Decision.

it had confirmed that the Unit's 95 square meters was *inclusive of "the terrace and the common areas surrounding it."*[37]

During trial, respondent's former Assistant Vice President of the Asset and Recovery Group, Atty. Elna N. Cruz (Atty. Cruz), testified on how there would have been documents (such as an appraisal report) relating to inspections made by respondent's personnel at the time the unit was being offered as a collateral to a loan. These would have concerned the unit's area.[38] She affirmed respondent's statements in its December 6, 2004 letter and indicated that, based on an appraisal report, the declared 95 square meters was not exclusive to the Unit's interiors but included common areas:

> Q: So my impression, Madam Witness, is that before you accepted the property as a collateral, Union Bank already knew what was the actual area of the unit?
> A: Yes, sir.
>
> Q: But you do not know what was the actual area as found by your inspector?
> A: It would be 95 square meters as per the record, sir.
>
> Q: That was the actual findings of your inspector, Madam Witness?
> A: Yes, sir.
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> Q: What's your basis for saying that?
> A: The appraisal report, sir.
>
> Q: Do you have now with you that appraisal report showing that the actual area of the unit is indeed 95 square meters?
> A: *We gathered the appraisal report and in the December 06, 2004 letter that we gave Mr. Blunden, we consulted the appraiser of the Bank and we were informed that the area was indeed 95 square meters. <u>But that area was brought about by measuring not just the inside of the unit, sir, but including also the terrace, and the common area.</u>*[39] (Emphasis supplied)

Respondent has not disavowed Atty. Cruz's testimony. In its Comment, it merely asserted that the "[e]xtensive reference to the [transcript of stenographic notes] is unmistakable proof that the litigated issue is one of fact, not of law" and insisted that this Court should not take cognizance of the present Petition.[40]

Respondent's insistence on how common spaces should be included in reckoning the Unit's total area runs afoul of how Republic Act No. 4726, otherwise known as the Condominium Act, reckons what forms part of a condominium unit.

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37 Id. at 15.
38 Id. at 22–23.
39 Id. at 24.
40 Id. at 60.

Section 3(b) of the Condominium Act defines a condominium unit, as follows:

> Section 3. As used in this Act, unless the context otherwise requires:
> . . . .
>
> (b) "Unit" means a part of the condominium project intended for any type of independent use or ownership, including one or more rooms or spaces located in one or more floors (or part or parts of floors) in a building or buildings and such accessories as may be appended thereto.

Section 6(a) of the Condominium Act specifies the reckoning of a condominium unit's bounds. It also specifies that areas of common use "are not part of the unit":

> Section 6. Unless otherwise expressly provided in the enabling or master deed or the declaration of restrictions, the incidents of a condominium grant are as follows:
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> (a) The boundary of the unit granted are the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof. *The following are not part of the unit* bearing walls, columns, floors, roofs, foundations and other common structural elements of the building; lobbies, stairways, hallways, and other *areas of common use*, elevator equipment and shafts, central heating, central refrigeration and central air-conditioning equipment, reservoirs, tanks, pumps and other central services and facilities, pipes, ducts, flues, chutes, conduits, wires and other utility installations, wherever located, except the outlets thereof when located within the unit. (Emphasis supplied.)

Thus, the unit sold to petitioner was deficient in relation to its advertised area. This advertisement having been made by respondent, it is equally settled there was a falsity in the declarations made by respondent prior to, and with the intention of enticing buyers to the sale. What remains in issue is whether or not this falsity amounts to fraud warranting the voiding of the Contract to Sell.

II

For there to be a valid contract, all the three (3) elements of consent, subject matter, and price must be present.[41] Consent wrongfully obtained is defective. The party to a contract whose consent was vitiated is entitled to

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[41] *See Coronel v. Court of Appeals*, 331 Phil. 294 (1996) [Per J. Melo, Third Division]; *Dizon v. Court of Appeals*, 361 Phil. 963 (1999) [Per J. Martinez, First Division]; *Londres v. Court of Appeals*, 442 Phil. 340 (2002) [Per J. Carpio, First Division].

have the contract rescinded. Accordingly, Article 1390 of the Civil Code[42] stipulates that a contract is voidable or annullable even if there is no damage to the contracting parties where "consent is vitiated by mistake, violence, intimidation, undue influence or fraud."

Under Article 1338 of the Civil Code "[t]here is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to." However, not all instances of fraud enable the voiding of contracts. Article 1344 clarifies that in order to make a contract voidable, the fraud "should be serious and should not have been employed by both contracting parties."[43]

Thus, *Tankeh v. Development Bank of the Philippines*[44] explained, "There are two types of fraud contemplated in the performance of contracts: *dolo incidente* or incidental fraud and *dolo causante* or fraud serious enough to render a contract voidable."[45] The fraud required to annul or avoid a contract "must be so material that had it not been present, the defrauded party would not have entered into the contract."[46] The fraud must be "the determining cause of the contract, or must have caused the consent to be given."[47]

Petitioner's contention on how crucial the dimensions and area of the Unit are to his decision to proceed with the purchase is well-taken. The significance of space and dimensions to any buyer of real property is plain to see. This is particularly significant to buyers of condominium units in urban areas, and even more so in central business districts, where the scarcity of space drives vertical construction and propels property values. It would be immensely guileless of this Court to fail to appreciate how the advertised area of the Unit was material or even indispensable to petitioner's consent. As petitioner emphasized, he opted to register for and participate in the auction for the Unit only after determining that its advertised area was spacious enough for his residential needs.[48]

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42 CIVIL CODE, art. 1390 provides:
Article 1390. The following contracts are voidable or annullable, even though there may have been no damage to the contracting parties:
(1) Those where one of the parties is incapable of giving consent to a contract;
(2) Those where the consent is vitiated by mistake, violence, intimidation, undue influence or fraud.
These contracts are binding, unless they are annulled by a proper action in court. They are susceptible of ratification.

43 CIVIL CODE, art. 1344.

44 720 Phil. 641 (2013) [Per J. Leonen, Third Division].

45 Id. at 670.

46 Id. at 671.

47 *Fontana Resort and Country Club, Inc. v. Spouses Tan*, 680 Phil. 395, 412 (2012) [Per J. Leonardo-de Castro, First Division] *citing Rural Bank of Sta. Maria Pangasinan v. Court of Appeals*, 373 Phil. 27 (1999) [Per J. Gonzaga-Reyes, Third Division].

48 *Rollo*, pp. 12–13.

III

The significance of the Unit's area as a determining cause of the Contract to Sell is readily discernible. Falsity on its area is attributable to none but to respondent, which, however, pleads that it should not be considered as having acted fraudulently given that petitioner conceded to a sale on an as-is-where-is basis, thereby waiving "warranties regarding possible errors in boundaries or description of property."[49]

Section 12 of the Contract to Sell spells out the "as-is-where-is" terms of the purchase:

> Section 12. *The BUYER recognizes that he is buying the property on an "as-is-where-is" basis including errors in boundaries or description of property, if any* etc. and among others, he shall be responsible for the eviction of the occupants on the property, if any, or for the repair of the property, if needed. It shall be understood that the SELLER makes no warranty whatsoever on the authenticity, accuracy, or title over property.[50] (Emphasis supplied.)

Reliance on Section 12's as-is-where-is stipulation is misplaced for two (2) reasons. First, a stipulation absolving a seller of liability for hidden defects can only be invoked by a seller who has no knowledge of hidden defects. Respondent here knew that the Unit's area, as reckoned in accordance with the Condominium Act, was not 95 square meters. Second, an as-is-where-is stipulation can only pertain to the readily perceptible physical state of the object of a sale. It cannot encompass matters that require specialized scrutiny, as well as features and traits that are immediately appreciable only by someone with technical competence.

A seller is generally responsible for warranty against hidden defects of the thing sold. As stated in Article 1561 of the New Civil Code:

> Article 1561. The vendor shall be responsible for warranty against the hidden defects which the thing sold may have, should they render it unfit for the use for which it is intended, or should they diminish its fitness for such use to such an extent that, had the vendee been aware thereof, he would not have acquired it or would have given a lower price for it; but said vendor shall not be answerable for patent defects or those which may be visible, or for those which are not visible if the vendee is an expert who, by reason of his trade or profession, should have known.

Article 1566, paragraph 2 states the seller's liability for hidden defects shall be inapplicable if there is a stipulation made to the contrary. However,

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[49] Id. at 66.
[50] Id. at 32.

a mere stipulation does not suffice. To be fully absolved of liability, Article 1566, paragraph 2 also requires a seller to be unaware of the hidden defects in the thing sold.

> Article 1566. The vendor is responsible to the vendee for any hidden faults or defects in the thing sold, even though he was not aware thereof.
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> *This provision shall not apply if the contrary has been stipulated, and the vendor was not aware of the hidden faults or defects in the thing sold.* (Emphasis supplied.)

It is clear from the records that respondent fully knew that the Unit's area, reckoned strictly in accordance with the Condominium Act, did not total 95 square meters. Respondent admits that the only way the Unit's area could have amounted to 95 square meters was if some areas for common use were added to its interior space. It acknowledged knowing this fact through the efforts of its appraisers and even conceded that their findings were documented in their reports.

In *Hian v. Court of Tax Appeals*,[51] this Court construed an as-is-where-is stipulation as pertaining to the "physical condition" of the thing sold and "not to [its] legal situation."[52] As further explained in *National Development Company v. Madrigal Wan Hai Lines Corporation*:[53]

> In *Hian vs. Court of Tax Appeals*, we had the occasion to construe the phrase "as is, where is" basis, thus:
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> > "We cannot accept the contention in the Government's Memorandum of March 31, 1976 that Condition No. 5 in the Notice of Sale to the effect that 'The above-mentioned articles (the tobacco) are offered for sale 'AS IS' and the Bureau of Customs gives no warranty as to their condition' relieves the Bureau of Customs of liability for the storage fees in dispute. As we understand said Condition No. 5, it refers to the physical condition of the tobacco and not to the legal situation in which it was at the time of the sale, as could be implied from the right of inspection to prospective bidders under Condition No. 1[.]" (Emphasis ours)
>
> The phrase "as is, where is" basis pertains solely to the physical condition of the thing sold, not to its legal situation. In the case at bar, the US tax liabilities constitute a potential lien which applies to NSCP's legal situation, not to its physical aspect. Thus, respondent as a buyer, has no obligation to shoulder the same.[54]

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51 196 Phil. 217 (1981) [Per J. Barredo, Second Division].
52 Id. at 231.
53 458 Phil. 1038 (2003) [Per J. Sandoval-Gutierrez, Third Division].
54 Id. at 1054.

A condominium unit's area is a physical attribute. In *Hian*'s contemplation, it appeared that the total area of a condominium unit is a valid object of an as-is-where-is clause. However, while as-is-where-is clauses exclusively apply to the physical attributes of a thing sold, they apply only to physical features that are readily observable. The significance of this Court's pronouncements in *Hian* and *National Development Company* are in clarifying that legal status, which is a technical matter perceptible only by lawyers and regulators, cannot be encompassed by an as-is-where-is stipulation. *Hian* and *National Development Company* are not a sweeping approbation of such stipulations' coverage of every corporeal attribute or tangible trait of objects being sold. Thus, in *Asset Privatization v. T.J. Enterprises*,[55] the as-is-where-is stipulation was understood as one which "merely describes the actual state and location of the machinery and equipment sold,"[56] and nothing else. Features that may be physical but which can only be revealed after examination by persons with technical competence cannot be covered by as-is-where-is stipulations. A buyer cannot be considered to have agreed "to take possession of the things sold 'in the condition where they are found and from the place where they are located'"[57] if the critical defect is one which he or she cannot even readily sense.

In inspecting the Unit prior to the auction sale, petitioner took note of its actual state: "he noticed that the ceilings were down, [that] there was water damage from the leaks coming from the unit above, and [that] the parquet floor was damaged."[58] He also took note of its irregular shape and the circular terrace outside it. These observations represent the full extent of what was readily perceptible to petitioner. The precise measurement of the Unit's area, in contrast, could only be determined by someone with specialized or technical capabilities. While ordinary persons, such as petitioner, may hold such opinions that the Unit looks small, their perception could not be ascertained until after an examination by someone equipped with peculiar skills and training to measure real property. Indeed, petitioner's suspicions were not roused until years after he had occupied the Unit and confirmed until after a certification was issued by a surveyor.

Any waiver of warranties under Section 12 of the Contract to Sell could have only been concerned with the readily apparent subpar condition of the Unit. A person not equipped with technical knowledge and expertise to survey real property could not reasonably be expected to recognize deficiencies in measurement at the first instance especially if that property was of "irregular shape," "neither square nor rectangle," and having a "circular terrace."[59]

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55 605 Phil. 563 (2009) [Per J. Tinga, Second Division].

56 Id. at 570.

57 *Casimiro Development Corporation v. Renato Mateo*, 670 Phil. 311, 329 (2011) [Per J. Bersamin, First Division].

58 *Rollo*, p. 13.

59 Id.

IV

Contrary to the Court of Appeals' assertion, Article 1542 of the Civil Code does not bar the voiding of the Contract to Sell.

Article 1542 of the Civil Code states:

> Article 1542. *In the sale of real estate, made for a lump sum and not at the rate of a certain sum for a unit of measure or number, there shall be no increase or decrease of the price, although there be a greater or less area or number than that stated in the contract.*
>
> The same rule shall be applied when two or more immovables are sold for a single price; but if, besides mentioning the boundaries, which is indispensable in every conveyance of real estate, its area or number should be designated in the contract, the vendor shall be bound to deliver all that is included within said boundaries, even when it exceeds the area or number specified in the contract; and, should he not be able to do so, he shall suffer a reduction in the price, in proportion to what is lacking in the area or number, unless the contract is rescinded because the vendee does not accede to the failure to deliver what has been stipulated. (Emphasis supplied.)

Article 1542 has nothing to do with annulling fraudulently made sales. What it is concerned with is the proportionate reduction of the purchase price in relation to the measurable units of the thing sold. Petitioner does not seek a reduction of the purchase price. He seeks judicial relief to have the entirety of his purchase annulled, his consent having been fraudulently obtained. By filing an action under Article 1390 of the Civil Code, petitioner declared that his consent to the entire subject matter of the contract was vitiated. What suffices as relief is the complete annulment of the sale, not the partial reimbursement upon which Article 1542 is premised.

Likewise, Article 1542 does not contemplate the seller's delivery to the buyer of things other than the agreed object of the sale. While it is true that petitioner did not buy the unit on a per-square-meter basis, it remains that what he bought was a condominium unit. A condominium unit's bounds are reckoned by "the interior surfaces of [its] perimeter walls, floors, ceilings, windows and doors."[60] It excludes common areas. Thus, when petitioner agreed to purchase the Unit at a lump-sum price, he never consented to including common areas as part of his purchase. Article 1542's concern with a ratable reduction of the price delivered by the buyer assumes that the seller correctly delivered, albeit deficiently, the object of the sale.

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[60] Rep. Act No. 4726, sec. 6(a).

In any case, for Article 1542 to operate, "the discrepancy must not be substantial."[61] Article 1542 remains anchored on a sense of what is reasonable. An estimate given as a premise for a sale should be "more or less" the actual area of the thing sold.[62] Here, the area advertised and stipulated in the Contract to Sell was 95 square meters but the actual area of the unit was only 74.4 square meters.[63] By no stretch of the imagination can a 21.68% deficiency be discounted as a mere minor discrepancy.

V

By definition, fraud presupposes bad faith or malicious intent. It transpires when insidious words or machinations are deliberately employed to induce agreement to a contract. Thus, one could conceivably claim that respondent could not be guilty of fraud as it does not appear to have crafted a deceptive strategy directed specifically at petitioner. However, while petitioner was not a specific target, respondent was so callously remiss of its duties as a bank. It was so grossly negligent that its recklessness amounts to a wrongful willingness to engender a situation where any buyer in petitioner's shoes would have been insidiously induced into buying a unit with an actual area so grossly short of its advertised space.

In *Spouses Carbonell v. Metropolitan Bank and Trust Company*,[64] this Court considered gross negligence, in relation to the fiduciary nature of banks:

> Gross negligence connotes want of care in the performance of one's duties; it is a negligence characterized by the want of even slight care, *acting or omitting to act in a situation where there is duty to act*, not inadvertently but wilfully and intentionally, *with a conscious indifference to consequences insofar as other persons may be affected.* It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.
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> In order for gross negligence to exist as to warrant holding the respondent liable therefor, the petitioners must establish that the latter did not exert any effort at all to avoid unpleasant consequences, or that it wilfully and intentionally disregarded the proper protocols or procedure . . . and in selecting and supervising its employees.[65] (Emphasis supplied)

Banks assume a degree of prudence and diligence higher than that of a good father of a family, because their business is imbued with public

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61 *Rudolf Lietz, Inc. v. Court of Appeals*, 514 Phil. 634, 642 (2005) [Per J. Tinga, Second Division].

62 Id.

63 *Rollo*, p. 47, *citing* the findings of the Trial Court.

64 G.R. No. 178467, April 26, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/april2017/178467.pdf> 4–5 [Per J. Bersamin, Third Division].

65 Id. at 4–5 *citing Comsaving Banks (now GSIS Family Bank) v. Capistrano*, 716 Phil. 547 (2013) [Per J. Bersamin, Third Division].

interest[66] and is inherently fiduciary.[67] Thus, banks have the obligation to treat the accounts of its clients "meticulously and with the highest degree of care."[68] With respect to its fiduciary duties, this Court explained:

> The law imposes on banks high standards in view of the fiduciary nature of banking. Section 2 of Republic Act No. 8791 ("RA 8791"), which took effect on 13 June 2000, declares that the State recognizes the "fiduciary nature of banking that requires high standards of integrity and performance." This new provision in the general banking law, introduced in 2000, is a statutory affirmation of Supreme Court decisions, starting with the 1990 case of *Simex International v. Court of Appeals*, holding that "the bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship.
>
> This fiduciary relationship means that the bank's obligation to observe "high standards of integrity and performance" is deemed written into every deposit agreement between a bank and its depositor. The fiduciary nature of banking requires banks to assume a degree of diligence higher than that of a good father of a family. Article 1172 of the Civil Code states that the degree of diligence required of an obligor is that prescribed by law or contract, and absent such stipulation then the diligence of a good father of a family. Section 2 of RA 8791 prescribes the statutory diligence required from banks — that banks must observe "high standards of integrity and performance" in servicing their depositors.[69] (Citations omitted)

The high degree of diligence required of banks equally holds true in their dealing with mortgaged real properties, and subsequently acquired through foreclosure, such as the Unit purchased by petitioner. In the same way that banks are "presumed to be familiar with the rules on land registration," given that they are in the business of extending loans secured by real estate mortgage,[70] banks are also expected to exercise the highest degree of diligence. This is especially true when investigating real properties offered as security, since they are aware that such property may be passed on to an innocent purchaser in the event of foreclosure. Indeed,

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66 *Land Bank of the Philippines v. Belle Corporation*, 768 Phil. 368, 385–386 (2015) [Per J. Peralta, Second Division], *citing Heirs of Gregorio Lopez v. Development Bank of the Philippines,* 747 Phil. 427 (2014) [Per J. Leonen, Second Division]; *Arguelles v. Malarayat Rural Bank, Inc.,* 730 Phil. 226 (2014) [Per J. Villarama, Jr., First Division]; and *PNB v. Corpuz*, 626 Phil. 410, 413 (2010) [Per J. Abad, Second Division]; *Bank of Commerce v. San Pablo*, 550 Phil. 805 (2007) [Per J. Chico-Nazario, Third Division]; *Philippine Commercial International Bank v. Court of Appeals*, 403 Phil. 361 (2001) [Per J. Quisumbing, Second Division]; *Philippine Banking Corporation v. Court of Appeals*, 464 Phil. 614 (2004) [Per J. Carpio, First Division]; *Citibank, N.A. v. Dinopol*, 650 Phil. 188 (2010) [Per J. Mendoza, Second Division]; *Gonzales v. Philippine Commercial and International Bank*, 659 Phil. 244 (2011) [Per J. Velasco, Jr., First Division]; *Comsavings Bank v. Spouses Capistrano*, 716 Phil. 547 (2013) [Per J. Bersamin, First Division].

67 *Consolidated Bank and Trust Corp. v. Court of Appeals*, 457 Phil. 688, 705 (2003) [Per J. Carpio, First Division].

68 *Westmont Bank v. Ong*, 425 Phil. 834, 845 (2002) [Per J. Quisumbing, Second Division].

69 *Consolidated Bank and Trust Corp. v. Court of Appeals*, 457 Phil. 688, 705–706 (2003) [Per J. Carpio, First Division].

70 *Land Bank of the Philippines v. Belle Corporation*, 768 Phil. 368, 385 (2015) [Per J. Peralta, Second Division].

"the ascertainment of the status or condition of a property offered to it as security for a loan must be a standard and indispensable part of a bank's operations":[71]

> When the purchaser or the mortgagee is a bank, the rule on innocent purchasers or mortgagees for value is applied more strictly. Being in the business of extending loans secured by real estate mortgage, banks are presumed to be familiar with the rules on land registration. Since the banking business is impressed with public interest, they are expected to be more cautious, to exercise a higher degree of diligence, care and prudence, than private individuals in their dealings, even those involving registered lands. Banks may not simply rely on the face of the certificate of title. Hence, they cannot assume that, simply because the title offered as security is on its face free of any encumbrances or lien, they are relieved of the responsibility of taking further steps to verify the title and inspect the properties to be mortgaged. As expected, the ascertainment of the status or condition of a property offered to it as security for a loan must be a standard and indispensable part of a bank's operations. It is of judicial notice that the standard practice for banks before approving a loan is to send its representatives to the property offered as collateral to assess its actual condition, verify the genuineness of the title, and investigate who is/are its real owner/s and actual possessors.[72] (Citations omitted)

Credit investigations are standard practice for banks before approving loans and admitting properties offered as security. It entails the assessment of such properties: an appraisal of their value, an examination of their condition, a verification of the authenticity of their title, and an investigation into their real owners and actual possessors.[73] Whether it was unaware of the unit's actual interior area; or, knew of it, but wrongly thought that its area should include common spaces, respondent's predicament demonstrates how it failed to exercise utmost diligence in investigating the Unit offered as security before accepting it. This negligence is so inexcusable; it is tantamount to bad faith.

Even the least effort on respondent's part could have very easily confirmed the Unit's true area. Similarly, the most cursory review of the Condominium Act would have revealed the proper reckoning of a condominium unit's area. Respondent could have exerted these most elementary efforts to protect not only clients and innocent purchasers but, most basically, itself. Respondent's failure to do so indicates how it created

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71 Id. at 386 *citing Philippine Amanah Bank v. Contreras*, 744 Phil. 256 (2014) [Per J. Brion, Second Division].

72 Id. at 385–386.

73 Id. at 386 *citing Alano v. Planter's Development Bank*, 667 Phil. 81, 89–90 (2011) [Per J. Del Castillo, First Division]; *Philippine National Bank v. Corpuz*, 626 Phil. 410, 413 (2010) [Per J. Abad, Second Division]; *Erasusta, Jr. v. Court of Appeals*, 527 Phil. 639, 651 (2006) [Per J. Garcia, Second Division]; and *PNB v. Heirs of Militar*, 504 Phil. 634, 644 (2005) [Per J. Ynares-Santiago, First Division].

a situation that could have led to no other outcome than petitioner being defrauded.

VI

The Regional Trial Court and the Court of Appeals gravely erred in finding that causal fraud is not attendant in this case. Quite the contrary, it is evident that respondent orchestrated a situation rife for defrauding buyers of the advertised unit. Therefore, the assailed Decision and Resolution must be reversed, the Contract to Sell between petitioner and respondent be annulled, and petitioner be refunded all the amounts he paid to respondent in respect of the purchase of the Unit.

Under Article 2232, in relation to Article 2229 of the Civil Code, "[i]n contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner," "by way of example or correction for the public good." By awarding exemplary damages to petitioner, this case shall serve as an example and warning to banks to observe the requisite care and diligence in all of their affairs.

Consistent with Article 2208 of the Civil Code,[74] respondent is equally liable to petitioner for attorney's fees and the costs of litigation.

WHEREFORE, the Petition is **GRANTED**. The assailed November 15, 2012 Decision and February 12, 2013 Resolution of the Court of Appeals in CA-G.R. CV No. 95369 are **REVERSED and SET ASIDE**.

The Contract to Sell entered into by petitioner Joseph Harry Walter Poole-Blunden and respondent Union Bank of the Philippines is declared null and void. Respondent is ordered to pay petitioner the amount of

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[74] CIVIL CODE, art. 2208 provides:
Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
(1) When exemplary damages are awarded;
(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
(3) In criminal cases of malicious prosecution against the plaintiff;
(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
(6) In actions for legal support;
(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
(8) In actions for indemnity under workmen's compensation and employer's liability laws;
(9) In a separate civil action to recover civil liability arising from a crime;
(10) When at least double judicial costs are awarded;
(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

₱3,257,142.49 to refund the amounts petitioner has paid to purchase Unit 2C of T-Tower Condominium located at 5040 P. Burgos corner Calderon Streets, Makati City. This refund shall earn legal interest at twelve percent (12%) per annum from the date of the filing of petitioner's Complaint for Rescission of Contract and Damages up to June 30, 2013; and six percent (6%) per annum, reckoned from July 1, 2013 until fully paid.

Respondent is ordered to pay petitioner ₱100,000.00 as exemplary damages, ₱100,000.00 as attorney's fees, and the costs of litigation.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

On leave
ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

I attest 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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

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 case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

MAR 06 2018