



Republic of the Philippines  
Supreme Court  
Baguio City

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated April 26, 2022 which reads as follows:*

**“G.R. No. 226886”** (*Desiree Chua, Petitioner vs. Romulo N. Marilao,<sup>1</sup> Salvacion Nueva Marilao, and Mary J. Alzona, Respondents*).

Before the Court is a Petition for Review on *Certiorari*<sup>2</sup> under Rule 45 of the Rules of Court assailing the January 26, 2016 Decision<sup>3</sup> and September 1, 2016 Resolution<sup>4</sup> of the Court of Appeals (*CA*) in CA-G.R. CV No. 99743, which affirmed with modification the September 24, 2012 Decision<sup>5</sup> of the Regional Trial Court of Manila, Branch 19 (*RTC*), in Civil Case No. 07-118222.<sup>6</sup>

*Antecedents*

The present case stemmed from an amended complaint for annulment of deed of sale, real estate mortgage, Transfer Certificate of Title (*TCT*) No. 281189, foreclosure of mortgage, certificate of sale and documents with prayer for the issuance of a temporary restraining order and/or preliminary injunction, filed by respondent Romulo N.

- over – sixteen (16) pages ...

**123-B**

---

\* Part of the Supreme Court Decongestion Program.

<sup>1</sup> Also referred to as “Romulo N. Marilao” in some parts of the *rollo* (see *rollo*, pp. 261 and 263).

<sup>2</sup> *Rollo*, pp. 9-38.

<sup>3</sup> *Id.* at 39-58; penned by Associate Justice Leoncia Real-Dimagiba with Associate Justices Ramon R. Garcia and Jhosep Y. Lopez (now a Member of this Court), concurring.

<sup>4</sup> *Id.* at 59-60.

<sup>5</sup> *Id.* at 101-115; rendered by Pairing Judge Marivic T. Balisi-Umali.

<sup>6</sup> The September 24, 2012 Decision of the *RTC*, Manila, Branch 19 was erroneously docketed as Civil Case No. 09-122347. The complaint and all the pleadings subsequently filed as well as all the orders and issuances of the *RTC*, Manila, Branch 19 bore the same docket number of Civil Case No. 07-118222.

Marilao (*Romulo*) against his mother Salvacion Nueva Marilao (*Salvacion*), his sister Mary J. Alzona (*Mary*; collectively, *respondents*) and herein petitioner Desiree Chua (*Desiree*).<sup>7</sup> Subject of the complaint is a 252.80 square-meter lot located at 1053-1055 Matimyas Street, Sampaloc, Manila, covered by TCT No. 47855<sup>8</sup> (*subject property*) registered under the name of his father, Jorge Marilao (*Jorge*).<sup>9</sup> Erected thereon are a three-door apartment, one (1) mini apartment and four (4) commercial stalls in front of the building.<sup>10</sup>

Jorge died on October 12, 1975.<sup>11</sup> After his death, Romulo and his family continued to reside in one of the apartments of the subject property while he kept custody of TCT No. 47855. Romulo claimed that sometime in 2005, Salvacion, who was then living with Mary in Cubao, took the TCT from him for the purpose of claiming Jorge's veteran's benefits. However, his mother failed to return the TCT to him.<sup>12</sup>

Romulo alleged that on March 31, 2005, Salvacion and Mary, together with a man who claimed to be Jorge, met with Desiree, accompanied by Johnny Sia Hiok Chiong (*Johnny*) from whom Mary could borrow ₱600,000.00. To secure the loan, Mary presented TCT No. 47855 and an unnotarized deed of absolute sale which appeared to have been executed by Jorge, with the conformity of Salvacion, in Mary's favor. Desiree was convinced and agreed to extend the loan to Mary. They immediately had the Deed of Absolute Sale<sup>13</sup> and the deed of real estate mortgage notarized. On April 6, 2005, TCT No. 47855 was cancelled, and TCT No. 267809 was issued under the name of Mary.<sup>14</sup>

After Mary had fully paid the ₱600,000.00 loan, she again borrowed from Desiree the amount of ₱950,000.00. To secure the new loan, Mary executed another Deed of Real Estate Mortgage,<sup>15</sup> on January 19, 2006, on the same property which was then covered by TCT No. 267809.<sup>16</sup>

- over -

**123-B**

---

<sup>7</sup> *Rollo*, pp. 61-68.

<sup>8</sup> TCT No. 47855 is registered under the name of "Jorge Marilao, married to Salvacion Nueva."

<sup>9</sup> *Rollo*, pp. 69-71.

<sup>10</sup> TSN dated October 7, 2010, p. 28; *id.* at 161.

<sup>11</sup> *Rollo*, p. 72.

<sup>12</sup> *Id.* at 40.

<sup>13</sup> *Id.* at 73-74.

<sup>14</sup> *Id.* at 41.

<sup>15</sup> *Id.* at 79-80.

<sup>16</sup> *Id.* at 75-78.

In August 2006, Romulo discovered that TCT No. 47855 had already been cancelled and that a new one (TCT No. 267809) was issued to Mary by virtue of the deed of absolute sale allegedly executed by his father. Consequently, Romulo registered a Notice of Adverse Claim<sup>17</sup> on TCT No. 267809 with the Registry of Deeds in Manila on September 8, 2006.<sup>18</sup>

In the meantime, Mary failed to pay the second loan from Desiree, which resulted in the foreclosure of the subject property. Desiree was the highest bidder at the foreclosure sale.<sup>19</sup>

Before the expiration of the one-year redemption period, Romulo filed a complaint with prayer for temporary restraining order (*TRO*)/writ of preliminary injunction (*WPI*) before the RTC. The RTC granted a 20-day TRO on December 4, 2007, enjoining defendants-appellants of the case to desist from causing the consolidation of TCT No. 267809 in favor of Desiree, and the Registry of Deeds in Manila from registering the said document.<sup>20</sup>

However, Desiree was able to consolidate the title of the property on January 31, 2008.<sup>21</sup> Consequently, TCT No. 267809 was cancelled, and TCT No. 281189,<sup>22</sup> was issued under her name. It was only on April 28, 2008, that the RTC belatedly issued a WPI, which was supposed to enjoin the consolidation of the title of the property in favor of Desiree.<sup>23</sup>

Desiree then applied for a writ of possession over the subject property before the RTC of Manila, Branch 4.<sup>24</sup> The writ of possession and notice to vacate was implemented against Romulo, who was ejected from the subject property.<sup>25</sup>

Romulo filed an amended complaint before the RTC praying for the nullification of the sale between Mary and Desiree for being fraudulent, and for the cancellation of TCT No. 281189. Desiree filed an Answer with Compulsory and/or Permissive Counterclaim (with Opposition to the Prayer of Restraining Order or Preliminary Injunction).<sup>26</sup>

- over -

**123-B**

---

<sup>17</sup> Id. at 81-83.

<sup>18</sup> Id. at 41.

<sup>19</sup> Id. at 42.

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Id. at 84-86.

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

<sup>24</sup> Docketed as LRC CAD Rec. 7680.

<sup>25</sup> *Rollo*, pp. 42-43.

<sup>26</sup> Id. at 87-97.

***Ruling of the RTC***

On September 24, 2012, the RTC issued a decision declaring the mortgage contract between Desiree and Mary as valid with respect to the proportionate share of the latter in the co-owned property. It held that Desiree became a co-owner of the subject property by virtue of the sale through public auction.<sup>27</sup>

The *fallo* of the RTC decision reads as follows:

**PREMISED ON THE FOREGOING**, the Deed of Real Estate Mortgage for the amount of [P]950,000.00 executed on January 19, 2006 by defendant Mary J. Alzona in favor of the defendant Desiree Chua is declared valid insofar only as the aliquot share of defendant Alzona in TCT No. 47855 registered under the name of Jorge Marilao, married to Salvacion Marilao or TCT No. 267809 registered under the name of Mary J. Alzona.

Consequently, the Court declares Desiree Chua owner of the subject property registered in her name under TCT No. 281189 but only insofar as that portion corresponding to the share of defendant Mary J. Alzona on the subject property which the latter and her sibling inherited from Jorge Marilao, their father and of which the plaintiff and the other siblings are co-owners.

Pending the physical partition of the subject property, the [Register] of Deeds of Manila is directed to cancel TCT No. 281189 registered under the name of Desiree Chua and to issue in lieu thereof another certificate of title in the name of the plaintiff and the latter's other siblings and the defendant Desiree Chua, pro-indiviso.

Absent proof presented on plaintiff's claim for damages, the same is **DISMISSED**. The counterclaim and cross-claim of defendant Desiree Chua is likewise **DISMISSED**.

Costs against defendant Mary J. Alzona.

SO ORDERED.<sup>28</sup>

Both being not in conformity with the ruling of the RTC, Romulo and Desiree filed their respective notices of appeal.

- over -

**123-B**

---

<sup>27</sup> Id. at 113-114.

<sup>28</sup> Id. at 114-115.

***Ruling of the CA***

In its assailed January 26, 2016 Decision, the CA affirmed with modification the decision of the RTC. It held that: (a) a co-owner may bring an action to recover a co-owned property without joining all the co-owners as co-plaintiffs if the suit is deemed instituted for the benefit of all;<sup>29</sup> (b) Desiree is not a mortgagee/purchaser in good faith;<sup>30</sup> (c) it is proper to reconvey the property to its original owner, Jorge, and to reinstate TCT No. 47855 upon the cancellation of TCT No. 281189;<sup>31</sup> and (d) while Desiree would be the co-owner of the property insofar as the portion corresponding to the share of Mary, the shares of the respective heirs shall be determined in a case for partition.<sup>32</sup> The dispositive portion of the CA decision states:

**WHEREFORE**, the foregoing considered, the decision dated September 24, 2012 of the Regional Trial Court (RTC) of Manila, Branch 19, in Civil Case No. 07-118222 is **AFFIRMED** with **MODIFICATION**, thus:

1. The Deed of Absolute Sale executed by Jorge Marilao and Mary J. Alzona dated March 31, 2005 is declared as entirely null and void for being fictitious;
2. The Register of Deeds of Manila is hereby directed to cancel Transfer Certificate of Title No. 281189 registered in the name of Desiree Chua, and consequently thereafter, reinstating with the same legal force and effect as if the same was not cancelled, Transfer Certificate of Title No. 47855 registered in the name of Jorge Marilao, married to Salvacion Nueva, the same to be partitioned by the heirs of the said registered owners, or the successors-in-interest of such heirs, in accordance with law; Thereafter, Mary J. Alzona should convey to Desiree Chua her aliquot share in the property covered by TCT No. 47855[;]
3. Plaintiff-appellant's claim for damages is denied, and the counterclaim and cross-claim of defendant Desiree Chua are dismissed.

**SO ORDERED.**<sup>33</sup>

- over -

**123-B**

---

<sup>29</sup> Id. at 48.

<sup>30</sup> Id. at 50-54.

<sup>31</sup> Id. at 55-56.

<sup>32</sup> Id. at 55.

<sup>33</sup> Id. at 57-58.

Desiree moved for reconsideration of the January 26, 2016 Decision, but the same was denied by the CA *via* its September 1, 2016 Resolution.

Dissatisfied, Desiree elevated the case before the Court under Rule 45 of the Rules of Court assailing the CA decision.

### *Issues*

The main issues in this case boil down to: (1) whether Romulo has legal personality to file the complaint; (2) whether Desiree acquired valid title over the subject property as an innocent mortgagee/purchaser in good faith and for value; and (3) whether Desiree is entitled to moral and exemplary damages, attorney's fees, and costs of suit.

### **Ruling of the Court**

The petition is denied for lack of merit.

*Romulo, as co-owner,  
has legal standing to file  
the suit for recovery of  
possession of the subject  
property.*

Desiree insists that the CA erred in ruling that Romulo has legal standing to file a complaint considering that the other co-owners, Salvacion and Mary, did not seek reconveyance of the property.<sup>34</sup>

The Court is not convinced.

It bears emphasis that Jorge and Salvacion were married before the effectivity of the Family Code on August 3, 1988. As such, their property relations is governed by the conjugal partnership under the Civil Code. Upon the death of Jorge in 1975, the conjugal properties were deemed dissolved and were placed under the regime of implied ordinary co-ownership between the surviving spouse, Salvacion, and the other compulsory heirs, including Romulo and Mary, pending liquidation and partition.

- over -

**123-B**

---

<sup>34</sup> Id. at 18.

Pursuant to Article 487 of the Civil Code and relevant jurisprudence, any of the co-owners may bring any kind of action for the recovery of co-owned properties, without the necessity of joining all the other co-owners as co-plaintiffs, because the suit is deemed to be instituted for the benefit of all.<sup>35</sup> The co-owner who initiated the suit is considered the indispensable party. The other co-owners are not even deemed as necessary parties considering that a complete and full relief can be afforded in the suit without their participation.<sup>36</sup> There is a presumption that the suit was filed for the benefit of all co-owners.

In this case, even if Salvacion and Mary took a contrary position to Romulo, there are other heirs or their successors-in-interest<sup>37</sup> who did not consent to the mortgage of the subject property and who would benefit from Romulo's suit. As such, Romulo, as co-owner, can file the action for reconveyance of the subject property which was fraudulently sold to Mary and later on purchased by Desiree through public auction.

*Desiree is not a mortgagee and purchaser in good faith and for value.*

The most crucial issue in this case is whether Desiree acquired a valid title over the subject property.

Here, the nullity of the deed of absolute sale allegedly executed by Jorge in favor of Mary was duly established by the fact that Jorge could not have executed the deed of sale on March 31, 2005, because he died on October 12, 1975.<sup>38</sup> Furthermore, Mary had been found guilty of falsification of public document in relation to the deed of sale purportedly executed by Jorge, as per the certificate of finality issued by the Metropolitan Trial Court on October 19, 2011.<sup>39</sup>

However, despite the patent nullity of the subject deed of absolute sale, Desiree insists that she is an innocent mortgagee or purchaser in good faith and for value; she can, therefore, still acquire a valid title over the contested property.

- over -

**123-B**

---

<sup>35</sup> *Catedrilla v. Sps. Lauron*, 709 Phil. 335, 344 (2013).-

<sup>36</sup> *Wee v. De Castro*, 584 Phil. 669, 686 (2008).

<sup>37</sup> Mary had other siblings: George Marilao (deceased) and Gladys Jabihan (half-sister); TSN dated October 7, 2010, p. 33; *rollo*, p. 166.

<sup>38</sup> *Rollo*, p. 72.

<sup>39</sup> *Id.* at 49.

*Nemo dat quod non habet.* No one can transfer a right to another greater than what he/she himself/herself has.<sup>40</sup> In view of this principle and the finding that the deed of absolute sale was forged, Mary could not have acquired ownership or legal title over the subject property. As such, Mary could not validly pass on a legal title to Desiree since a forged deed cannot be a root of a valid title. As an exception, a forged deed may be a root of a valid title in the hands of an innocent mortgagee/purchaser in good faith and for value.<sup>41</sup>

In *Cavite Development Bank v. Lim*,<sup>42</sup> the Court explained the doctrine of mortgagee in good faith as follows:

There is, however, a situation where, despite the fact that the mortgagor is not the owner of the mortgaged property, his title being fraudulent, the mortgage contract and any foreclosure sale arising therefrom are given effect by reason of public policy. This is the doctrine of “the mortgagee in good faith” based on the rule that all persons dealing with property covered by a Torrens Certificate of Title, as buyers or mortgagees, are not required to go beyond what appears on the face of the title. The public interest in upholding the indefeasibility of a certificate of title, as evidence of the lawful ownership of the land or of any encumbrance thereon, protects a buyer or mortgagee who, in good faith, relied upon what appears on the face of the certificate of title.<sup>43</sup>

For the doctrine of mortgagee in good faith to apply, the following requisites must concur: a) the mortgagor is not the rightful owner of, or does not have valid title to, the property; (b) the mortgagor succeeded in obtaining a Torrens title over the property; (c) the mortgagor succeeded in mortgaging the property to another person; (d) the mortgagee relied on what appears on the title and there exist no facts and circumstances that would compel a reasonably cautious man to inquire into the status of the property; and (e) the mortgage contract was registered.<sup>44</sup>

Thus, the Court concurs with the CA and the RTC that Desiree cannot be deemed as an innocent mortgagee in good faith. Even if the foreclosed mortgage from which Desiree had derived title from pertained to the one executed on January 19, 2006, there were peculiar facts and circumstances surrounding the execution of the first mortgage which should have aroused suspicion on her part and compelled her to look beyond the certificate of title.

- over -

**123-B**

---

<sup>40</sup> *Heirs of Macalalad v. Rural Bank of Pola, Inc.*, 833 Phil. 709, 717 (2018).

<sup>41</sup> *Id.* at 718.

<sup>42</sup> *Cavite Development Bank v. Spouses Lim*, 381 Phil. 355 (2000).

<sup>43</sup> *Id.* at 368.

<sup>44</sup> *Jimenez v. Jimenez, Jr.*, G.R. No. 228011, February 10, 2021.

*First*, Desiree was aware that Mary was not the rightful owner of the subject property and only succeeded in obtaining a Torrens title over the same by virtue of a deed of absolute sale allegedly executed by Jorge. During their first transaction, she failed to exert any effort to establish the identity of the man claiming to be Jorge. Based on Johnny's testimony, while Salvacion and Mary were able to present their IDs, the man claiming to be Jorge failed to produce any evidence of his identity before Desiree and before the notary public when he executed the deed of absolute sale.

*Second*, while Desiree claimed that she, along with Johnny, Salvacion and Mary, went to view the mortgaged property, she failed to verify the possessory rights of the occupants of the apartments and commercial establishments erected on the subject property. This is crucial considering that Mary, the mortgagor, did not reside in the mortgaged property which was being occupied by other persons. Notably also, Romulo was residing in one of the apartments at the time of the transaction. Hence, We concur with the CA that, without such inquiry, Desiree could hardly be considered a mortgagee in good faith.

*Third*, the simultaneous sale by the parents to Mary and the loan transaction are also suspect. As correctly observed by the CA, Jorge was the owner of the subject property at the time of the transaction; hence, he himself could have validly executed the mortgage.<sup>45</sup> Desiree proceeded with the mortgage despite such infirmity.

Even if We declare Desiree as a mortgagee in good faith for relying on the title under Mary's name, still, she cannot be considered a purchaser in good faith. A purchaser in good faith and for value is one who purchases a property without notice that some other person has a right to or interest in such property, and pays a full and fair price for the same at the time of such purchase; or before he/she has notice of the claims or interest of some other person in the said property.<sup>46</sup>

It may be recalled that prior to the foreclosure of the mortgage and the public auction of the subject property, Romulo registered his adverse claim on TCT No. 267809 before the Register of Deeds. Thus, as of September 8, 2006, when Romulo caused the annotation of his adverse claim, Desiree had already been notified of the same.<sup>47</sup> As a

- over -

**123-B**

---

<sup>45</sup> *Rollo*, pp. 51-52.

<sup>46</sup> *Martinez v. Garcia*, 625 Phil. 377, 392 (2010).-

<sup>47</sup> *Rollo*, p. 125.

purchaser in the foreclosure sale, Desiree had been duly notified and warned that another person was claiming an interest on the subject property or a better right than that of the registered owner thereof.<sup>48</sup>

As declared in *Spouses Peralta v. Abalon*,<sup>49</sup> the annotation of the adverse claim by the original owner, or in this case by one of the un-consenting co-owners, broke and tainted the chain of registered titles.<sup>50</sup> By this act, Desiree, as the mortgagee and purchaser in the foreclosure sale, was shown to be in bad faith.

Considering that Desiree is neither a mortgagee nor a purchaser in good faith and for value, she cannot validly source her right to the subject property based on the forged deed of sale.

Nonetheless, even if Desiree cannot acquire a valid title over the whole property, We concur with the CA and the RTC that, under the circumstances, Desiree still has an interest in the property.

*The mortgage and sale  
are valid with respect  
to Mary's abstract  
shares in the co-owned  
property.*

As discussed earlier, Mary and Romulo, together with their siblings and Salvacion, became co-owners of the contested realty by operation of the death of Jorge. Pertinent here is Art. 1078 of the Civil Code, which provides:

Where there are two or more heirs, the whole estate of the decedent is, before its partition, owned in common by such heirs, subject to the payment of debts of the deceased.

On the other hand, the rights of a co-owner of a certain property are clearly specified in Art. 493 of the Civil Code, viz.:

ARTICLE 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it and even substitute another person in its enjoyment, except when personal rights are involved. **But the effect of the alienation or mortgage, with respect to the co owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.**

- over -

123-B

---

<sup>48</sup> *Martinez v. Garcia*, supra note 46 at 391-392.

<sup>49</sup> 737 Phil. 310 (2014).

<sup>50</sup> Id. at 330.

In the absence of an actual partition, either by agreement or judicial decree, a co-owner cannot claim a specific title to or ownership of a specific portion in the property owned in common.<sup>51</sup> Clearly, while Mary, as a co-owner, has the right to alienate or mortgage her undivided share in the subject property, she cannot dispose the property in its entirety or even a specific portion thereof without the consent of all her co-owners.<sup>52</sup>

Nonetheless, the Court has declared in several jurisprudence<sup>53</sup> that in the event a co-owner sells the entire property without the consent of the other co-owners, the entire sale is not considered null and void. The sale shall be valid but only with respect to the undivided share of the co-owner seller of the property owned in common.

In *Bulatao v. Estonactoc*<sup>54</sup> (*Bulatao*), the Court held that the reliance on Art. 493 of the Civil Code, with regard to the validity of the sale of an unpartitioned property by a co-owner without the consent of the other co-owners with respect to the abstract share of the co-owner seller, needs to be reconciled with the case of *Estoque v. Pajimula*<sup>55</sup> (*Estoque*) which has not been overturned. We quote in *Bulatao*:

**While in *Estoque* a specific portion of a co-owned property was sold, that situation is no different from a situation wherein a co-owner has sold the entire co-owned property, i.e., a specific parcel of land of which the seller has only an undivided interest therein, because the rationale for not recognizing the effectivity of the disposition by a co-owner without the consent of the other co-owners over a specific portion equally applies to the disposition of the entire co-owned property, which is more than the undivided interest or share rightfully pertaining to the disposing co-owner.**

***Estoque* characterizes the contract entered into by the disposing co-owner as “ineffective, for lack of power in the vendor to sell the specific portion described in the deed” and makes room for a subsequent ratification of the contract by the other co-owners or validation in case the disposing co-owner subsequently acquires the undivided or *pro-indiviso* interests of the other co-owners. Thus, the subsequent ratification or**

- over -

123-B

<sup>51</sup> *Heirs of Protacio Go, Sr. and Marta Barola v. Servacio*, 672 Phil. 447, 457 (2011).

<sup>52</sup> *Magsano v. Pangasinan Savings and Loan Bank, Inc.*, 797 Phil. 392, 403 (2016).-

<sup>53</sup> See: *Heirs of Caburnay v. Heirs of Sison*, G.R. No. 230934, December 2, 2020; *Rural Bank of Cabadbaran, Inc. v. Melecio-Yap*, 740 Phil. 35 (2014); *Mercado v. Court of Appeals*, 310 Phil. 684 (1995).

<sup>54</sup> G.R. No. 235020, December 10, 2019.

<sup>55</sup> 133 Phil. 55 (1968).

acquisition will validate and make the contract fully effective as of the date the contract was entered into pursuant to Article 1396 of the Civil Code, which provides that “[r]atification cleanses the contract from all its defects from the moment it was constituted” and Article 1434 of the Civil Code, which provides: “[w]hen a person who is not the owner of a thing sells or alienates and delivers it, and later the seller or grantor acquires title thereto, such title passes by operation of law to the buyer or grantee.”

**While Article 493 of the Civil Code may not squarely cover the situations wherein a co-owner, without the consent of the other co-owners, alienate, assign or mortgage:** (1) the entire co-owned property; (2) a specific portion of the co-owned property; (3) an undivided portion less than the part pertaining to the disposing co-owner; and (4) an undivided portion more than the part pertaining to the disposing co-owner, **the principle of estoppel bars the disposing co-owner from disavowing the sale to the full extent of his undivided or *pro-indiviso* share or part in the co-ownership, subject to the outcome of the partition,** which, using the terminology of Article 493, limits the effect of the alienation or mortgage to the portion that may be allotted to him in the division upon termination of the co-ownership. Under Article 1431 of the Civil Code, “[t]hrough estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.”<sup>56</sup> (emphases supplied; citations omitted)

The recent case of *Ulay v. Bustamante*,<sup>57</sup> summarized the applicable principles in the case of *Estoque*:

- (1) the various scenarios of unconsented sale of the property owned in common, *e.g.*, sale of the entire property or sale of a specific identified portion thereof, **all root their ineffectiveness in the lack of consent,** and
- (2) for purposes of upholding the validity of said unconsented sale in a limited extent, **the principle of estoppel must apply to prevent the seller from denying the validity of the sale to the extent of his or her *pro-indiviso* share.**<sup>58</sup> (emphases supplied)

Applying the foregoing, the CA and the RTC properly ruled that the foreclosure sale of the subject property is valid but only to the extent of the undivided shares of Mary who was the mortgagor and seller in the real estate mortgage and the foreclosure sale. By virtue of the public auction, Desiree has been subrogated to the share of Mary

- over -

**123-B**

---

<sup>56</sup> *Bulatao v. Estonactoc*, supra note 54.

<sup>57</sup> G.R. Nos. 231721 & 231722, March 18, 2021.

<sup>58</sup> *Id.*

in the subject property, *pro indiviso*. In effect, Desiree, the transferee-buyer, will only get what Mary, her seller-transferor, would have been entitled to after partition.<sup>59</sup>

Contrary to Desiree's assertion, she is not entitled to the abstract and undivided share of Salvacion for the simple reason that the latter had no participation in the mortgage executed between Desiree and Mary on January 19, 2006, and in the subsequent foreclosure of the subject property.

Based on the records, the estate of Jorge has not been liquidated and partitioned since his death. Notably, Salvacion passed away during the pendency of the proceedings before the RTC.<sup>60</sup> We concur with the CA that instead of issuing a new certificate of title under the names of the compulsory heirs of Jorge and petitioner Desiree (in lieu of Mary), *pro indiviso*, the property should be reconveyed first to its owner in order to determine the respective shares of the compulsory heirs of the conjugal property in a partition proceeding. As such, TCT No. 47855 under the name of Jorge should be reinstated cancelling TCT No. 281189 issued under Desiree's name.

Accordingly, the records of the case should be remanded to the RTC for the determination of the exact extent of the respective rights, interests, shares, and participation of the heirs of the registered owner Jorge, or their successors-in-interest and petitioner Desiree over the subject property and, thereafter, effect a final division, adjudication, and partition in accordance with law.<sup>61</sup>

*Desiree is not entitled  
to damages and other  
costs.*

In her counterclaim and cross-claim, petitioner Desiree prayed for the award of the following: (a) ₱500,000.00 as moral damages; (b) ₱300,000.00 as exemplary damages; (c) ₱300,000.00 as attorney's fees; and, (d) costs of suit.<sup>62</sup>

As provided for under Art. 2217 of the Civil Code, the following requisites must be present for moral damages to be awarded: (1) there must be an injury, whether physical, mental or

- over -

**123-B**

---

<sup>59</sup> Id.

<sup>60</sup> *Rollo*, p. 309.

<sup>61</sup> See *Magsano v. Pangasinan Savings and Loan Bank, Inc.*, supra note 52.

<sup>62</sup> *Rollo*, p. 93.

psychological, clearly sustained by the claimant; (2) there must be a culpable act or omission factually established; (3) the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) the award of damages is predicated on any of the cases stated in Art. 2219.<sup>63</sup>

In this case, while it is true that Mary committed a wrongful act of mortgaging the entire unpartitioned property without the consent of the other co-owners, the proximate cause of the injury sustained by Desiree is caused by her own negligence and lack of prudence. Despite the annotation of the adverse claim at the back of TCT No. 26809 under Mary's name before the foreclosure sale, Desiree still purchased the property and effected the consolidation of the title under her name. Clearly, petitioner Desiree is not entitled to moral damages.

Likewise, the claim for exemplary damages is bereft of merit. Pursuant to Arts. 2229 and 2234 of the Civil Code, exemplary damages may be awarded if a party proves his or her entitlement to moral, temperate, liquidated, or compensatory damages.<sup>64</sup>

As regards the claim for attorney's fees and litigation cost, none of the attendant circumstances in Art. 2208<sup>65</sup> of the Civil Code are present in this case to warrant the award of the same.

In his comment, respondent Romulo also prayed for the award of actual, moral and exemplary damages.<sup>66</sup> Aside from the fact that there are no factual and legal basis to award the same, Romulo could have directly questioned the ruling of the CA by filing his own petition before the Court, which he failed to do.<sup>67</sup>

- over -

**123-B**

<sup>63</sup> *BNL Management Corp. v. Uy*, G.R. No. 210297, April 3, 2019.

<sup>64</sup> *Darines v. Quiñones*, 815 Phil. 345, 354-355 (2017).

<sup>65</sup> 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.

<sup>66</sup> *Rollo*, p. 288.

<sup>67</sup> *Nicolas v. Mariano*, 792 Phil. 54, 69 (2016).

**WHEREFORE**, the petition is **DENIED**. The January 26, 2016 Decision and September 1, 2016 Resolution of the Court of Appeals in CA-G.R. CV No. 99743 are **AFFIRMED with MODIFICATION** in that:

- (1) the Deed of Absolute Sale executed by Jorge Marilao and Mary J. Alzona dated March 31, 2005 is **DECLARED** as entirely **NULL** and **VOID** for being fictitious;
- (2) the Real Estate Mortgage dated January 19, 2006 is **DECLARED VALID** with respect to the aliquot share of Mary J. Alzona in Transfer Certificate of Title No. 47855 registered under the name Jorge Marilao, married to Salvacion Nueva Marilao, or in Transfer Certificate of Title No. 267809 registered under the name of Mary J. Alzona;
- (3) the Register of Deeds of Manila is **DIRECTED** to **CANCEL** the Transfer Certificate of Title No. 281189 in the name of petitioner Desiree Chua and to **REINSTATE** with the same legal force and effect as if the same was not cancelled, Transfer Certificate of Title No. 47855, registered under the name Jorge Marilao, married to Salvacion Nueva Marilao;
- (4) petitioner Desiree Chua is **DECLARED** as co-owner of the subject property with respect to the undivided share of Mary J. Alzona therein, together with the heirs of the registered owner, or the successors-in-interest of such heirs; and,
- (5) the case is **REMANDED** to the Regional Trial Court of Manila, Branch 19 to determine the exact extent of the respective rights, interests, shares, and participation of respondents and the other co-heirs or their successors-in-interest and petitioner Desiree Chua over the subject property and, thereafter, effect a final division, adjudication, and partition in accordance with law.

- over -

**123-B**



Further, the Writ of Possession issued in favor of petitioner Desiree Chua, and all proceedings relative thereto, are **SET ASIDE**, considering that her specific possessory rights to the said property remain undetermined.

Costs against petitioner.

**SO ORDERED.” Gaerlan, J., on official leave.**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court *7/5/21*

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
**123-B**

Atty. Gary S. Rabo  
Counsel for Petitioner  
1148 EDSA Balintawak, 1106 Quezon City

Court of Appeals (x)  
Manila  
(CA-G.R. CV No. 99743)

DEVELOPER'S COUNSEL LAW FIRM  
Counsel for Resp. R. Marilao  
Unit 1409, 14<sup>th</sup> Floor, Cityland Herrera Tower  
98 V.A. Rufino cor. Valero Streets  
Salcedo Village, Bel-Air, 1227 Makati City

Public Information Office (x)  
Library Services (x)  
Supreme Court  
(For uploading pursuant to A.M.  
No. 12-7-1-SC)

Misses Salvacion Nueva Marilao &  
Mary J. Alzona  
Respondents  
No. 41 Annapolis Street, Brgy. E. Rodriguez  
1102 Quezon City

Philippine Judicial Academy (x)  
Supreme Court

The Hon. Presiding Judge  
Regional Trial Court, Branch 19  
1000 Manila  
(Civil Case No. 07-118222)

Judgment Division (x)  
Supreme Court

UR

*NT*

*NT*