



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **January 25, 2023** which reads as follows:*

**“G.R. No. 243165 (Anita Dimas-San Juan, Reynan San Juan, Ryan San Juan, and Annalyn San Juan v. Adoracion Z. Belo and Register of Deeds of Meycauayan, Bulacan).** – This Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 seeks to modify the Decision<sup>2</sup> dated 20 July 2018 of the Court of Appeals (CA) in CA-G.R. CV No. 109419. The CA reversed and set aside the Decision<sup>3</sup> dated 12 May 2017 of Branch 15, Regional Trial Court (RTC), Malolos City, Bulacan in Civil Case No. 219-M-2013.

**Antecedents**

On 13 July 2010, petitioners Anita Dimas-San Juan, Reynan San Juan, Ryan San Juan, and Annalyn San Juan obtained a loan from respondent Adoracion Z. Belo (Belo) in the amount of ₱1,600,000.00. The Promissory Note<sup>4</sup> stated that the sum of ₱1,600,000.00 is payable within six months from 13 July 2010, without need of notice or demand, and with an interest rate of 4.75% per month until full payment of the amount. To secure the loan, petitioners executed in favor of Belo a Deed of Real Estate Mortgage<sup>5</sup> dated 13 July 2010 on their property covered by Transfer Certificate of Title (TCT) No. T-439375 (M).<sup>6</sup>

As payment for the loan, petitioner Anita Dimas-San Juan issued in favor of Belo a postdated check dated 6 March 2011<sup>7</sup> in the amount of ₱1,600,000.00 and two additional postdated checks dated 12 December 2010<sup>8</sup>

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<sup>1</sup> *Rollo*, pp. 9-24.

<sup>2</sup> *Id.* at 132-148; penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Amy C. Lazaro-Javier (now a Member of this Court) and Ma. Luisa Quijano-Padilla.

<sup>3</sup> *Id.* at 68-72; penned by Judge Alexander P. Tamayo.

<sup>4</sup> Promissory Note dated 13 July 2010; *rollo*, pp. 63-64.

<sup>5</sup> *Rollo*, pp. 33-39.

<sup>6</sup> *Id.* at 94-96.

<sup>7</sup> *Id.* at 65.

<sup>8</sup> *Id.* at 66.

and 12 January 2011<sup>9</sup> for ₱76,000.00 each for the monthly interest. However, when the postdated checks were presented for payment in March 2011, all the checks were dishonored for the reason “ACCOUNT CLOSED.” Despite the non-payment of the loan, Belo never initiated foreclosure proceedings over the mortgaged property.

On 11 October 2011, the parties executed a *Dacion En Pago Sale*<sup>10</sup> over the property, which was registered with respondent Register of Deeds of Meycauayan, Bulacan. Consequently, on 15 November 2011, the Register of Deeds cancelled TCT No. T-439375 (M) in the names of petitioners and issued a new title, TCT No. 040-2011019793,<sup>11</sup> in the name of Belo.

Subsequently, Belo sent petitioners a notice to vacate the property and to surrender possession thereof. When petitioners refused to vacate the property, Belo filed on 06 February 2012 a Complaint for Ejectment with Damages against petitioners. The complaint was filed before the Municipal Trial Court (MTC) of Marilao, Bulacan and was docketed as Civil Case No. 1771.

On 10 April 2013, petitioners filed before the RTC of Malolos City a Complaint<sup>12</sup> for “Annulment of Deed of *Dacion En Pago Sale* and TCT No. 2011019793” against respondents Belo and the Register of Deeds, docketed as Civil Case No. 219-M-2013. Petitioners alleged that Belo used the *dacion en pago* sale, dated 11 October 2011, in the ejectment suit she filed against petitioners. However, petitioners insisted that the *dacion en pago* sale is void since they already issued a postdated check in the amount of ₱1,600,000.00 as full payment of the loan in accordance with the Real Estate Mortgage Agreement dated 13 July 2010. Petitioners argued that that under the mortgage agreement, in case of default, mortgagee Belo may foreclose the property but that the *dacion en pago* sale was never intended in the mortgage agreement.

### **Ruling of the RTC**

In its Decision dated 12 May 2017, the RTC dismissed the case, holding that the *dacion en pago* sale was valid. The RTC found that all the elements of a contract of sale by *dacion en pago* are present: (1) the petitioners, collectively referred to as the mortgagor-vendor, consented to the sale by signing the documents; (2) the subject of the sale was particularly described in the agreement and the consideration for the sale was the total amount of the obligation; and (3) Belo, the mortgagee-vendee, accepted such proposal by signing the document. Moreover, the RTC stated that the postdated checks issued in payment of the debt does not void the *dacion en*

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<sup>9</sup> Id. at 67.

<sup>10</sup> Id. at 107-108.

<sup>11</sup> Id. at 42-43.

<sup>12</sup> Id. at 25-29.

*pago* sale since all the agreements entered under the real estate mortgage were deemed abandoned when the parties entered into the contract of sale by *dacion en pago*.

Aggrieved, petitioners appealed to the CA.

### **Ruling of the CA**

The CA set aside the RTC Decision, ruling that the *dacion en pago* sale is tantamount to a *pactum commissorium*, and is therefore void and does not vest ownership of the property to Belo. The CA explained:

A careful reading of the Dacion En Pago Sale dated October 11, 2011 readily shows that it is not a completely separate agreement from the Deed of Real Estate Mortgage dated July 13, 2010. In fact, it made mention of the Deed of Real Estate Mortgage dated July 13, 2010 and attached to it a copy of the same. Moreover, the Dacion En Pago Sale dated October 11, 2011 referred to the plaintiffs-appellants as mortgagor-vendor and to defendant-appellee Adoracion Z. Belo as mortgagee-vendee. This can only mean that the Dacion En Pago Sale dated October 11, 2011 is based on the Deed of Real Estate Mortgage dated July 13, 2010, which is the original agreement between the parties.

Since the original transaction between the parties is a mortgage, the subsequent assignment of ownership of the subject property to defendant-appellee Adoracion Z. Belo without the benefit of foreclosure proceedings, partakes the nature of a *pactum commissorium*, which is prohibited under Article 2088 of the New Civil Code.

*Pactum commissorium* is a stipulation empowering the creditor to appropriate the thing given as security for the fulfillment of the obligation in the event the obligor fails to pay, without further formality, such as foreclosure proceedings, and a public sale. Article 2088 of the New Civil Code provides:

“Art. 2088. The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and void.

The elements of *pactum commissorium* include (i) a property mortgaged by way of security for the payment of the principal obligation, and (ii) a stipulation for automatic appropriation by the creditor of the thing mortgaged in case of non-payment of the principal obligation within the stipulated period.

There is no merit in defendant-appellee Adoracion Z. Belo’s claim that there was no *pactum commissorium* because there was “no stipulation for automatic appropriation of the property by defendant-appellee Belo in the Deed of Real Estate Mortgage x x x in case the plaintiffs-appellants failed to pay their obligation.”

Significantly, in *Spouses Lehner and Ludy Martires vs. Menelia Chua*, the Supreme Court held that even though there was no stipulation in the

mortgage contract for therein petitioners' automatic appropriation of the mortgaged property, the sale of the property without need of foreclosure proceedings violated the rule against pactum commissorium, as it automatically transferred ownership to the creditor. x x x

In the present case, what defendant-appellee Adoracion Z. Belo should have done was to foreclose the mortgage and have the property sold, the proceeds of which should have been used to satisfy plaintiffs-appellants' obligation.<sup>13</sup>

Nevertheless, the CA held that petitioners remain liable to pay their loan of ₱1,600,000.00 to Belo. However, finding the 4.75% monthly interest (or 57% per *annum*) indicated in the Promissory Note dated 13 July 2010 as iniquitous and excessive, the CA reduced the 57% per *annum* interest to 12% per *annum*.

The dispositive portion of the CA Decision dated 20 July 2018 reads:

WHEREFORE, the appealed Decision dated May 12, 2017 is reversed and set aside. Accordingly, judgment is hereby rendered as follows:

- 1) The Dacion en Pago Sale dated October 11, 2011 executed by plaintiffs-appellants in favor of defendant-appellee [respondent] Adoracion Z. Belo is declared null and void;
- 2) TCT No. 040-2011019793 in the name of defendant-appellee [respondent] Adoracion Z. Belo is declared void and cancelled, and defendant-appellee [respondent] Register of Deeds of Meycauayan, Bulacan is ordered to reinstate TCT No. T-439375 (M) in the name of plaintiffs-appellants [petitioners]; and,
- 3) Plaintiffs-appellants [petitioners] are ordered to pay defendant-appellant [respondent] Adoracion Z. Belo the amount of P1,600,000.00, plus interest of 12% per annum until fully paid.

SO ORDERED.<sup>14</sup>

Petitioners and Belo separately moved for reconsideration, which the CA denied in its Resolution dated 18 October 2018.<sup>15</sup> Hence, this petition.

### Issues

Petitioners raise the following issues:

- A. WHETHER OR NOT THE PREVAILING LEGAL INTEREST RATE OF 6% PER ANNUM AS MANDATED BY BSP-MB CIRCULAR NUMBER 799, SERIES OF 2013, IS APPLICABLE IN THIS CASE; AND
- B. WHETHER OR NOT PETITIONERS ARE ENTITLED TO THE CIVIL FRUITS OF THE SUBJECT PROPERTY.<sup>16</sup>

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<sup>13</sup> Id. at 141-143.

<sup>14</sup> Id. at 147.

<sup>15</sup> Id. at 160-161.

<sup>16</sup> Id. at 15.

### Ruling of the Court

The petition is partly meritorious.

The Court notes that aside from petitioners, respondent Belo also appealed the Decision dated 20 July 2018 and the Resolution dated 18 October 2018 of the Court of Appeals in CA-G.R. CV No. 109419.

In G.R. No. 242718 entitled, *Adoracion Z. Belo v. Anita Dimas-San Juan, Reynan San Juan, Ryan San Juan and Annalyn San Juan*, the Court issued a Resolution dated 18 February 2019 which reads as follows:

The Motion for Extension of Time filed by petitioner seeking an additional period of thirty (30) days from the expiration of the reglementary period on November 13, 2018 within which to file the Petition for Review on *Certiorari* is hereby GRANTED.

Considering the allegations, issues, and arguments adduced in the instant Petition for Review on *Certiorari*, the Court resolves to DENY the same for failure to show that the Court of Appeals (CA) in CA-G.R. CV No. 109419 committed any reversible error.

As correctly observed by the CA, circumstances in the case at bench reflect badges of a *pactum commissorium* even without a stipulation for a creditor's automatic appropriation of the mortgaged property. It highlighted the following: the non-foreclosure and the fact that the *dacion en pago* and the mortgage contract being inextricably linked because: a) the *dacion en pago* contract was executed by reason of the same loan extended by petitioner to the respondents and; b) the subject of the *dacion en pago* was the same property used as collateral for the same loan, without any other additional consideration.

In *Sps. Martires v. Chua*, we stated why foreclosure is preferred, viz.:

Considering that the disputed property was mortgaged to secure the payment of [the mortgagor's] obligation, the most logical and practical thing that she could have done, if she is unable to pay her debt, is to wait for it to be foreclosed. She stands to lose less of the value of the subject property if the same is foreclosed, rather than if the title thereto is directly transferred to [the mortgagees]. This is so because in foreclosure, unlike in the present case where ownership of the property was assigned to [the mortgagees], [the mortgagor] can still claim the balance from the proceeds of the foreclosure sale, if there be any. In such a case, she could still recover a portion of the value of the subject property rather than losing it completely by assigning its ownership to [the mortgagees].

Moreover, even granting that the issue of usurious interest was merely raised belatedly on appeal, it is worth emphasizing that an appellate court is clothed with ample authority to pass upon matters not assigned as errors in the appeal if they are necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice or to avoid dispensing



piecemeal justice. Hence, we find proper the reduction *motu proprio* by the appellate court of the stipulated interest rate for being contrary to morals, blatantly iniquitous, exorbitant, and unconscionable.

However, the CA ordered in its dispositive portion that the respondents were to pay Adoracion Z. Belo the principal amount of ₱1,600,000.00, plus interest of 12% *per annum* until fully paid. To this, we find it necessary to modify the legal interest rate imposed pursuant to jurisprudence and Circular No. 799, series of 2013 of the *Bangko Sentral ng Pilipinas* which took effect on July 1, 2013.

Hence, in light of prevailing rules and jurisprudence, we hold that the 12% *per annum* interest on the principal amount reckoned from July 13, 2010, which is the execution of the promissory note, shall be only until June 30, 2013. Beginning July 1, 2013, the legal interest of six percent (6%) *per annum* on the total amount shall be imposed until fully paid.

ACCORDINGLY, the Court hereby resolves to AFFIRM the assailed July 20, 2018 Decision and October 18, 2018 [Resolution] of the Court of Appeals in CA-G.R. CV No. 109419 with MODIFICATION that from July 1, 2013, the legal interest to be paid is 6% *per annum* of the total amount due until the full payment thereof.

SO ORDERED.<sup>17</sup>

As already ruled by this Court in G.R. No. 242718, the CA did not err in declaring void the *dacion en pago* sale dated 11 October 2011, which is indicative of *pactum commissorium* and prohibited under the Civil Code. Moreover, it was proper for the CA to reduce the 4.75% monthly interest (or 57% *per annum*) indicated in the Promissory Note dated 13 July 2010, which is clearly excessive and unconscionable.

In *Megalopolis Properties, Inc. v. D'Nnew Lending Corp.*,<sup>18</sup> (*Megalopolis*) this Court held invalid the 3% monthly interest on the Promissory Note, and in lieu thereof imposed the prevailing rate of legal interest. In this case, the 4.75% monthly interest, or 57% *per annum*, stipulated in the Promissory Note is even higher than the 3% monthly interest rate which was invalidated in the *Megalopolis* case. Thus, it was only proper for the CA to reduce the iniquitous and exorbitant interest imposed in the Promissory Note dated 13 July 2010.

However, as pointed out by this Court in G.R. No. 242718, the 12% legal interest the CA imposed should be modified in view of BSP-MB Circular No. 799, series of 2013, which pegs the interest at 6% *per annum*, effective 01 July 2013. Thus, the Court concurs with petitioners that the amount of ₱1,600,00.00 shall earn legal interest of 12% *per annum* reckoned

<sup>17</sup> Id. at 183-185; *Belo v. Dimas-San Juan*, G.R. No. 242718, 18 February 2019.

<sup>18</sup> G.R. No. 243891, 05 May 2021.

from 13 July 2010 until 30 June 2013, and 6% per *annum* from 01 July 2013 until full payment.<sup>19</sup>

Anent the second issue, petitioners argue that they are entitled to the civil fruits of the property since Belo is a possessor in bad faith because she was aware of the flaw in her title over the property which was acquired through a *dacion en pago* sale.

In her Comment,<sup>20</sup> respondent Belo maintains that she is a possessor in good faith. Belo argues that the RTC even ruled that the *dacion en pago* sale was valid. It was only on 20 July 2018 that the CA reversed the RTC ruling, and declared invalid the *dacion en pago* sale. Belo states that her possession of the property was pursuant to the favorable decision of the MTC in the ejectment case she filed against petitioners, which was affirmed by Branch 81, RTC of Malolos City, Bulacan. Although petitioners appealed the said decision, it is still pending before the CA. Besides, Belo contends that petitioners never raised the issue of her alleged possession in bad faith in their complaint before the RTC and only asserted the said issue in their Motion for Partial Reconsideration before the CA.

The Court agrees with respondent Belo.

Firstly, the general rule is that issues should not be raised for the first time on appeal as this would be offensive to the basic rules of fair play, justice, and due process. Thus, points of law, theories, issues and arguments not adequately brought before the lower court need not be considered by the reviewing court as this would violate the other party's right of due process, and is contrary to the principle of equity and fair play.<sup>21</sup> In *Ines v. Pangadaman*,<sup>22</sup> the Court did not entertain the issue raised for the first time on appeal before the CA, explaining that to allow a party to raise the issue at a later stage would violate the adverse party's right to due process since the latter would be deprived of the opportunity to present further evidence material to the new theory.

Secondly, even if the Court considers the issue belatedly raised by petitioners, there is still no merit in their claim that they are entitled to the civil fruits of the property since Belo cannot be considered a possessor in bad faith. As argued by Belo, she obtained a title over the property by virtue of the *dacion en pago* sale, which was declared valid by the RTC in its Decision dated 12 May 2017, albeit subsequently reversed by the CA. The Court also notes that in the ejectment case filed by Belo against petitioners, the MTC's

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<sup>19</sup> See *Spouses Pen v. Spouses Julian* (G.R. No. 160408, 776 Phil. 50 (2016)), where it was held that the deed of sale was a pactum commissorium, and the Court imposed on the amount due a 12% per *annum* interest until 30 June 2013 and 6% per *annum* from 01 July 2013 until full payment.

<sup>20</sup> *Rollo*, pp. 177-180.

<sup>21</sup> *Spouses Devisfruto v. Greenfell*, G.R. No. 227725, 01 July 2020, citing *Metropolitan Bank & Trust Co. v. G & P Builders, Inc.*, 773 Phil. 289.

<sup>22</sup> G.R. No. 224345 (Resolution), 02 September 2020.

ruling in favor Belo was affirmed by Branch 81, RTC of Malolos City in its Decision<sup>23</sup> dated 07 September 2017. Moreover, in an Order<sup>24</sup> dated 27 June 2017, the RTC (Branch 81) granted Belo's Motion for Execution of Judgment Pending Appeal, and ordered the issuance of a writ of execution to implement the MTC Decision dated 26 October 2016 in the ejectment case. Clearly, Belo's possession of the property was by virtue of the MTC and RTC Decisions and Order, which negates petitioners' claim of possession in bad faith.

**WHEREFORE**, the petition is partly granted. The Decision dated 20 July 2018 and the Resolution dated 18 October 2018 of the Court of Appeals in CA-G.R. CV No. 109419 are **AFFIRMED with MODIFICATION** that the amount of ₱1,600,00.00 due from petitioners shall earn legal interest of 12% per annum reckoned from 13 July 2010 until 30 June 2013, and 6% per *annum* from 01 July 2013 until full payment.

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

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court  
9/2/19

by:

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

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**FEB 14 2023**

PEOPLE'S LAW OFFICE  
Counsel for Petitioners  
Suite 207, Victoria Building, 11<sup>th</sup> Avenue  
1400 Caloocan City

Court of Appeals (x)  
Manila  
(CA-G.R. CV No. 109419)

Atty. Constantine V. Brillantes, Jr.  
Counsel for Respondents  
29-D CDC Street, La Loma  
1114 Quezon City

The Solicitor General  
134 Amorsolo Street, Legaspi Village  
1229 Makati City

<sup>23</sup> *Rollo*, pp. 191-200.

<sup>24</sup> *Id.* at 187-190.

The Hon. Presiding Judge  
Regional Trial Court, Branch 15  
Malolos City, 3000 Bulacan  
(Civil Case No. 219-M-2013)

Register of Deeds  
Meycauayan, 3020 Bulacan

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