

793 Phil. 861

## FIRST DIVISION

[ G.R. No. 219071. August 24, 2016 ]

**SPOUSES CHARITO M. REYES AND ROBERTO REYES, AND SPOUSES VILMA M. MARAVILLO AND DOMINGO MARAVILLO, JR., PETITIONERS, VS. HEIRS OF BENJAMIN MALANCE,\* NAMELY: ROSALINA M. MALANCE, BERNABE M. MALANCE, BIENVENIDO M. MALANCE, AND DOMINGA \*\* M. MALANCE, REPRESENTED BY BIENVENIDO M. MALANCE, RESPONDENTS.**

## DECISION

### **PERLAS-BERNABE, J.:**

Before the Court is a petition for review on *certiorari*<sup>[1]</sup> assailing the Decision<sup>[2]</sup> dated July 23, 2013 and the Resolution<sup>[3]</sup> dated June 18, 2015 of the Court of Appeals (CA) in CA-G.R. CV No. 95984, which directed petitioners Charito M. Reyes and Vilma M. Maravillo (the Magtalas sisters) to surrender and turn-over the physical possession of the subject land to respondents Heirs of Benjamin Malance, namely: Rosalina M. Malance, Bernabe M. Malance, Bienvenido M. Malance, and Dominga M. Malance, represented by Bienvenido M. Malance (the Malance heirs) upon payment of the amount of P4,320.84.

### **The Facts**

Benjamin Malance (Benjamin) was the owner of a 1.4017-hectare parcel of agricultural land covered by Emancipation Patent No. (EP) 615124<sup>[4]</sup> situated at Dulong Malabon, Pulilan, Bulacan<sup>[5]</sup> (subject land). During his lifetime, Benjamin obtained from the Magtalas sisters, who are distant relatives,<sup>[6]</sup> a loan in the amount of P600,000.00, as evidenced by a *Kasulatan Ng Ukol sa Utang*<sup>[7]</sup> dated June 26, 2006 (*Kasulatan*). Under the *Kasulatan*, the Magtalas sisters shall have the right to the fruits of the subject land for six (6) years or until the loan is fully paid.<sup>[8]</sup>

After Benjamin passed away on September 29, 2006,<sup>[9]</sup> his siblings, the Malance heirs, inspected the subject land and discovered that the Magtalas sisters, their respective

husbands, Roberto Reyes and Domingo Maravilla, Jr. (petitioners), and their father, Fidel G. Magtalas (Fidel),<sup>[10]</sup> were cultivating the same on the basis of the *Kasulatan*.<sup>[11]</sup> Doubting the authenticity of the said *Kasulatan*, the Malance heirs filed a Complaint for Recovery of Possession, Declaration of Nullity of the *Kasulatan* and Damages with Prayer for Writ of Preliminary Injunction and Temporary Restraining Order<sup>[12]</sup> against petitioners, before the Regional Trial Court of Malolos City, Bulacan (RTC), Branch 84, docketed as Civil Case No. 748-M-2006, which the Malance heirs subsequently amended.<sup>[13]</sup> They claimed that: (a) during his lifetime, Benjamin accumulated enough wealth to sustain himself, was unmarried and had no children to support;<sup>[14]</sup> (b) the *Kasulatan* was executed during the time when Benjamin was seriously ill and mentally incapacitated due to his illness and advanced age; and (c) the *Kasulatan* was simulated as the signature of Benjamin appearing thereon was not his signature.<sup>[15]</sup>

In their answer,<sup>[16]</sup> petitioners denied that Benjamin had accumulated enough wealth to sustain himself as his only source of income was his farm, and averred, *inter alia*, that: (a) when Benjamin became sickly in 2000, he leased the subject land to different people who cultivated the same with their (petitioners') help;<sup>[17]</sup> (b) the *Kasulatan* was executed before a notary public at the time when Benjamin was of sound mind, though sickly; (c) they were cultivating the subject land in accordance with the said *Kasulatan*;<sup>[18]</sup> (d) the case involved an agrarian conflict within the jurisdiction of the Department of Agrarian Reform Adjudication Board; and (e) the Malance heirs must pay Benjamin's indebtedness prior to recovery of possession.<sup>[19]</sup>

The complaint was initially dismissed for lack of jurisdiction,<sup>[20]</sup> but was subsequently reinstated<sup>[21]</sup> and re-raffled to Branch 9 of the same RTC.<sup>[22]</sup>

## **The RTC Ruling**

In a Decision<sup>[23]</sup> dated August 31, 2010, the RTC dismissed the complaint for failure of the Malance heirs to substantiate their claim that Benjamin's signature was forged, and upheld the validity of the *Kasulatan* on the ground that it is a notarized document which enjoys the presumption of regularity in its execution. It declared the *Kasulatan* as a contract of antichresis binding upon Benjamin's heirs - the Malance heirs - and conferring on the Magtalas sisters the right to retain the subject land until the debt is paid.<sup>[24]</sup>

Aggrieved, the Malance heirs appealed to the CA.<sup>[25]</sup>

## The CA Ruling

In a Decision<sup>[26]</sup> dated July 23, 2013, the CA upheld the RTC's findings and declared that: (a) the mere allegation of forgery will not suffice to overcome the positive value of the *Kasulatan*, a notarized document which has in its favor the presumption of regularity and is conclusive as to the truthfulness of its contents;<sup>[27]</sup> and (b) the contract between the parties was a contract of antichresis.<sup>[28]</sup> However, it ruled that only the amount of P218,106.84 was actually received by Benjamin as expenses for his medical treatment and the cost of his funeral service/memorial lot,<sup>[29]</sup> while the rest was kept in the custody of the Magtalas sisters' father, Fidel.<sup>[30]</sup> Considering petitioners' evidence that the subject land has an average annual production of 107 cavans of *palay* valued at P600.00/cavan, with half of the income expended for costs, and that they had been cultivating the subject land for 6.66 years, the CA ruled that the outstanding amount of the loan is only P4,320.84.<sup>[31]</sup> Consequently, it directed the Magtalas sisters to surrender and turn-over the physical possession of the subject land to the Malance heirs upon payment by the latter of the outstanding loan.<sup>[32]</sup>

Dissatisfied, petitioners moved for reconsideration,<sup>[33]</sup> contending that: (a) the CA should have imposed interest on Benjamin's loan despite the absence of express stipulation, and applied the fruits from the subject land thereto, and thereafter, to the principal;<sup>[34]</sup> and (b) the available receipts for Benjamin's hospitalization were adduced for the purpose of proving that he had valid reason to obtain a loan for his personal use, and should not have been considered as the only proceeds received by him.<sup>[35]</sup> The same was, however, denied in a Resolution<sup>[36]</sup> dated June 18, 2015; hence, this petition.

## The Issues Before the Court

The essential issues for the Court's resolution are whether or not: (a) the CA committed reversible error in ruling that the amount of P218,106.84, representing the duly receipted expenses for Benjamin's medical treatment and the cost of the funeral service/memorial lot, was the only proceeds received from the P600,000.00 loan obligation; and (b) legal interest is due despite the absence of express stipulation.

## The Court's Ruling

Prefatorily, it should be mentioned that the remedy of appeal by *certiorari* under Rule 45 of the Rules of Court contemplates only questions of law, not of fact. While it is not the function of the Court to re-examine, winnow and weigh anew the respective sets of evidence of the parties,<sup>[37]</sup> there are, however, recognized exceptions,<sup>[38]</sup> among which is when the inference drawn from the facts was manifestly mistaken, as in this case.

Here, the CA upheld the validity of the *Kasulatan* between Benjamin and the Magtalas sisters for failure of the Malance heirs to prove their challenge against its due execution and authenticity, ruling further that being a notarized document, it has in its favor the presumption of regularity and is conclusive as to the truthfulness of its contents.<sup>[39]</sup>

Generally, a notarized document carries the evidentiary weight conferred upon it with respect to its due execution, and documents acknowledged before a notary public have in their favor the presumption of regularity which may only be rebutted by clear and convincing evidence. However, the presumptions that attach to notarized documents can be affirmed only so long as it is beyond dispute that the notarization was regular. **A defective notarization will strip the document of its public character and reduce it to a private document.** Consequently, when there is a defect in the notarization of a document, the clear and convincing evidentiary standard normally attached to a duly-notarized document is dispensed with, and the measure to test the validity of such document is preponderance of evidence.<sup>[40]</sup>

In this case, the Court observes that the *Kasulatan* was irregularly notarized since it did not reflect any competent evidence of Benjamin's identity, such as an identification card (ID) issued by an official agency bearing his photograph and signature, but merely indicated his Community Tax Certificate Number despite the express requirement<sup>[41]</sup> of the 2004 Rules on Notarial Practice.<sup>[42]</sup> Consequently, having failed to sufficiently establish the regularity in the execution of the *Kasulatan*, the presumption accorded by law to notarized documents does not apply and, therefore, the said document should be examined under the parameters of Section 20, Rule 132 of the Rules of Court which provides that "[b]efore any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either: (a) [by] anyone who saw the document executed or written; or (b) [by] evidence of the genuineness of the signature or handwriting of the maker."

The burden falls upon petitioners to prove the authenticity and due execution of the *Kasulatan*,<sup>[43]</sup> which they were, nonetheless, able to discharge. Records show that while the notary public, Atty. Cenon Navarro (Atty. Navarro),<sup>[44]</sup> did not require an ID when he

notarized the *Kasulatan*, when confronted with Benjamin's ID issued by the Office of Senior Citizens Affairs of Pulilan, Bulacan (Senior Citizen ID), he identified the person in the picture as the person who signed the *Kasulatan*, and received money from the Magtalas sisters in his presence.<sup>[45]</sup>

On the other hand, respondent Bienvenido Malance's self-serving and uncorroborated testimony that Benjamin's signature on the *Kasulatan* was forged purportedly because he does not know how to write<sup>[46]</sup> was contradicted by the Malance heirs' own manifestation that Benjamin has a Senior Citizen ID and that the signature affixed thereon is different from his signature appearing on the *Kasulatan*.<sup>[47]</sup> The said ID, however, was not offered in evidence<sup>[48]</sup> as to enable the RTC, the CA, and the Court to make an examination of the signature thereon vis-a-vis that on the *Kasulatan*. It is important to note that a finding of forgery does not depend exclusively on the testimonies of expert witnesses and that judges must use their own judgment, through an independent examination of the questioned signature, in determining the authenticity of the handwriting.<sup>[49]</sup>

Hence, the evidence as to the genuineness of Benjamin's signature, and the consequent due execution and authenticity of the *Kasulatan* preponderate in favor of petitioners, who were likewise able to prove Benjamin's receipt of the amount of P600,000.00 reflected in the *Kasulatan*. Atty. Navarro testified having prepared the *Kasulatan* according to the agreement of the parties,<sup>[50]</sup> and that he witnessed the exchange of money between the parties to the *Kasulatan*.<sup>[51]</sup> As such, it was erroneous for the CA to conclude that the amount of P218,106.84, representing the duly receipted expenses for Benjamin's medical treatment and the cost of the funeral service/memorial lot, was the only proceeds received from the P600,000.00 loan obligation. Notably, the purpose indicated for the Malance heirs' formal offer of the records and receipts of hospitalization, medicines, and burial expenses of Benjamin was merely "to show proof of expenses incurred by x x x Benjamin x x x relative to his sickness and x x x where he spent the loan he obtained"<sup>[52]</sup> from the Magtalas sisters.

The Court, however, concurs with the RTC's finding, as affirmed by the CA, that the *Kasulatan* is a contract of antichresis. Article 2132 of the Civil Code provides:

Art. 2132. By the contract of antichresis the creditor acquires the right to receive the fruits of an immovable of his debtor, with the obligation to apply them to the payment of the interest, if owing, and thereafter to the principal of his credit.

Thus, antichresis involves an express agreement between parties whereby : **(a) the creditor will have possession of the debtor's real property** given as security; **(b) such creditor will apply the fruits of the said property to the interest owed by the debtor, if any, then to the principal amount;**<sup>[53]</sup> **(c) the creditor retains enjoyment of such property until the debtor has totally paid what he owes;**<sup>[54]</sup> and **(d) should the obligation be duly paid, then the contract is automatically extinguished proceeding from the accessory character of the agreement.**<sup>[55]</sup>

Bearing these elements in mind, the evidence on record shows that the parties intended to enter into a contract of antichresis. In the *Kasulatan*, Benjamin declared:

*Na, ako ay tumanggap ng halagang ANIMNARAANG LIBONG PISO (P600,000.00) salaping Pilipino buhat kina CHARITO M. REYES kasal kay Roberto Reyes at VILMA MARAVILLO kasal kay Domingo Maravilla, Jr., pawang mga sapat na gulang, Pilipino at nagsisipanirahan sa Dulong Malabon, Pulilan, Bulacan, bilang UTANG;*

*Na, ako ay nangangakong babayaran ang halagang aking inutang sa nasabing sina CHARITO M. REYES at VILMA MARAVILLO, sa kanilang tagapagmana, makakahalili at paglilipatan sa loob ng anim (6) na taon;*

*Na, upang mapanagutan ang matapat na pagbabayad sa aking pagkakautang ay aking IPINANAGOT ang aking ani ng lupa na matatagpuan sa Dulong Malabon, Pulilan, Bulacan, may sukat na 1 ektarya at kalahati (1 1/2) humigi't kumulang;*

*Na, kung sa loob ng Ianing na panahon na nabanggit ay mabayaran na ang halaga ng aking inutang sa nasabing sina CHARITO M. REYES at VILMA MARAVILLO at sa kanilang mga tagapagmana, makakahalili at paglilipatan, ang kasulatang ito ay kusang mawawalan ng bisa. tibay at lakas, ngunit kung hindi mabayaran ang halaga ng aking inutang ang kasulatang ito ay mananatiling mabisa, matibay at maaaring ipatupad ayon sa umiiral na batas.*<sup>[56]</sup>

As aptly observed by the CA:

The language of the *Kasulatan* leaves no doubt that the [P]600,00.00 was a loan secured by the fruits or *ani* of the landholding beneficially owned by Benjamin.

The document specifically authorizes [the Magtalas sisters] to receive the fruits of the subject landholding with the obligation to apply them as payment to his [P]600,000.00 principal loan for a period of six (6) years. The instrument provides no accessory stipulation as to interest due or owing the creditors, x x x. No mention of interest was ever made by the creditors when they testified in court. This could only be interpreted that the [Magtalas sisters] have no intention whatsoever to charge Benjamin of interest for his loan. We note also that the *Kasulatan* is silent as to the transfer of possession of the subject property. However, [the Magtalas sisters] admitted taking possession of Benjamin's landholding after his death on September 29, 2006 and that they have been cultivating it since then. They rationalize that their action is in accord with their agreement with Benjamin when the latter was still alive. They assure the return of the subject property upon full payment of Benjamin's loan by [the Malance heirs], the successors-in-interest of Benjamin.<sup>[57]</sup>

While the *Kasulatan* did not provide for the transfer of possession of the subject land, the contemporaneous and subsequent acts of the parties show that such possession was intended to be transferred. Atty. Navarro testified that while the *Kasulatan* only shows that the harvest and the fruits shall answer for Benjamin's indebtedness, the parties agreed among themselves that the lenders would be the one to take possession of the subject land in order for them to get the harvest.<sup>[58]</sup> Indeed, such arrangement would be the most reasonable under the premises since at that time, Benjamin's medical condition necessitated hospitalization, hence, his physical inability to cultivate and harvest the fruits thereon.<sup>[59]</sup>

As antichretic creditors, the Magtalas sisters are entitled to retain enjoyment of the subject land until the debt has been totally paid. Article 2136 of the Civil Code reads:

Art. 2136. The debtor cannot reacquire the enjoyment of the immovable without first having totally paid what he owes the creditor.

In the present case, the CA deemed the amount of P600.00 as reasonable cost of a cavan of *palay* from the subject land, which yields an annual harvest of 107 cavans, or a gross income of P64,200.00;<sup>[60]</sup> half of the income is expended for expenses, resulting to an annual net income of P32,100.00.<sup>[61]</sup> This, both parties failed to refute. Thus, from June 2006 up to the date of this Decision, only the amount of P326,351.07 is deemed to have been paid on

Benjamin's loan, leaving an unpaid amount of P273,648.93, computed as follows:

Amount of indebtedness	P600,000
	.00
Less: Amount deemed paid	
Annual net income	P32,100.
	00
From June 2006 to August 2016	<u>x</u> <u>326,351.</u>
	10.1667 <u>07</u>
Outstanding balance	<u>P273,648</u>
	<u>.93</u>

The debt not having been totally paid, petitioners are entitled to retain enjoyment of the subject land. Consequently, the Malance heirs' complaint for recovery of possession, declaration of nullity of the *Kasulatan*, and damages against petitioners must be dismissed.

As a final matter for resolution, the Court likewise dismisses petitioners' counterclaim for the payment of Benjamin's principal debt, including interest, considering that the same was not yet due and demandable at the time the claim therefor was filed. Particularly, petitioners' counterclaim was prematurely filed on January 4, 2007,<sup>[62]</sup> which was well within the six-year payment period under the *Kasulatan*, and hence, should be dismissed. Nonetheless, it should be noted that the dismissal of petitioners' counterclaim is without prejudice to the proper exercise of the Magtalas sisters' rights under Article 2137 of the Civil Code<sup>[63]</sup> now that Benjamin's debt is due and demandable. In the meantime, the Magtalas sisters, as antichretic creditors, are directed to henceforth render an annual accounting<sup>[64]</sup> to the Malance heirs, as represented by Bienvenido Malance, of the annual net yield from the subject land, until such time that they have completely collected the outstanding balance of said debt.

**WHEREFORE**, the Decision dated July 23, 2013 and the Resolution dated June 18, 2015 of the Court of Appeals in CA-G.R. CV No. 95984 are hereby **MODIFIED**: (a) declaring that the unpaid loan balance of Benjamin Malance's (Benjamin) to petitioners Charita M. Reyes and Vilma M. Maravilla (the Magtalas sisters) is P273,648.93 as herein computed; (b) dismissing the counterclaim of petitioners the Magtalas sisters and their respective husbands, Roberto Reyes and Domingo Maravilla, Jr., on the ground of prematurity, without prejudice; and (c) directing the Magtalas sisters, as antichretic creditors, to henceforth render an annual accounting to respondents Heirs of Benjamin Malance, namely: Rosalina M. Malance, Bernabe M. Malance, Bienvenido M. Malance, and Dominga M. Malance, as represented by Bienvenido Malance, of the annual net yield from the subject land, until such time that they



have completely collected the outstanding loan balance of Benjamin's debt.

**SO ORDERED.**

*Sereno, C. J., (Chairperson), Leonardo-De Castro, Bersamin, and Caguioa, JJ., concur.*

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\* "Malanse" in some parts of the records.

\*\* "Domingo" in some parts of the records.

<sup>[1]</sup> *Rollo*, pp. 9-15.

<sup>[2]</sup> *Id.* at 30-54. Penned by Associate Justice Leoncia Real-Dimagiba with Associate Justices Ricardo R. Rosario and Stephen C. Cruz concurring.

<sup>[3]</sup> *Id.* at 21-A.

<sup>[4]</sup> Erroneously referred to as "1.407" hectare agricultural parcel of land covered by EP "3424" in the CA's July 23, 2013 Decision (see *id.* at 30-A).

<sup>[5]</sup> See Certification issued by the Department of Agrarian Reform - Municipal Agrarian Reform Office dated October 9, 2006; records, Vol. I, p. 29. See also Survey Subdivision Plan of Lot 1-11-6741; *id.* at 28.

<sup>[6]</sup> See *rollo*, p. 31.

<sup>[7]</sup> Records, Vol. I, p. 32.

<sup>[8]</sup> *Id.*

<sup>[9]</sup> See Certificate of Death; *id.* at 25.

<sup>[10]</sup> Fidel R. Magtalas, who was included as party-respondent in the complaint, passed away on August 3, 2007 (see Certificate of Death; *id.* at 196).

<sup>[11]</sup> *Rollo*, p. 31.

<sup>[12]</sup> Dated December 1, 2006. Records, Vol. I, pp. 3-8.

<sup>[13]</sup> See Amended Complaint dated December 16, 2006; records, Vol. I, pp. 102-106.

<sup>[14]</sup> Id. at 103

<sup>[15]</sup> Id. at 104.

<sup>[16]</sup> Dated January 3, 2007. Id. at 115-120.

<sup>[17]</sup> Id. at 115.

<sup>[18]</sup> Id. at 116.

<sup>[19]</sup> Id. at 117-118.

<sup>[20]</sup> See Order dated May 15, 2007 issued by Presiding Judge Wilfredo T. Nieves; id. at 172-174.

<sup>[21]</sup> See Order dated October 8, 2007 issued by Presiding Judge Veronica A. Vicente-De Guzman; id. at 206-209.

<sup>[22]</sup> See Notice dated July 17, 2007 issued by Officer-in-Charge Danibell G. Lalisan; id. at 193.

<sup>[23]</sup> *Rollo*, pp. 73-81. Penned by Presiding Judge Veronica A. Vicente-De Guzman.

<sup>[24]</sup> See id. at 79-81.

<sup>[25]</sup> See Notice of Appeal dated October 4, 2010; records, Vol. II, pp. 452-453.

<sup>[26]</sup> *Rollo*, pp. 30-54.

<sup>[27]</sup> Id. at 45-46.

<sup>[28]</sup> Id. at 49.

<sup>[29]</sup> See id. at 50-51. Computed as follows:

Hospitalization/medicines	P 58,106.84
Casket/funeral service	60,000.00
Memorial lot	<u>100,000.00</u>
Total	<u>P218,106.84</u>

<sup>[30]</sup> Id. at 51.

<sup>[31]</sup> See id. at 51-52. Computed as follows:

Loan		P218,106.8
		4
Less: Annual Net Income/Payment		
Annual Gross Income	107 cavans x P600.00	P64,200.00
Expenses	P64,200.00 x 50%	<u>(32,100.00)</u>
		32,100.00
Years of Cultivation		<u>x 6.66</u>
		<u>(213,786.0</u>
		<u>0)</u>
Outstanding Loan		<u>P 4,320.84</u>

[32] See id. at 53-54.

[33] See motion for reconsideration dated August 27, 2013; id. at 55-65.

[34] See id. at 59-60.

[35] See id. at 62-63.

[36] Id. at 21-A.

[37] *Almagro v. Sps. Amaya, Sr.*, 711 Phil. 493, 503 (2013).

[38] Recognized exceptions to the rule are: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellee and the appellant; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. See id. at 503-504; citations omitted.

[39] *Rollo*, pp. 45-46.

<sup>[40]</sup> *Rural Bank of Cabadbaran, Inc. v. Melecio-Yap*, G.R. No. 178451, July 30, 2014, 731 SCRA 244, 255-256.

<sup>[41]</sup> Section 12, Rule II of the 2004 Rules on Notarial Practice, which was in effect at the time of the notarization of the Kasulatan, provides:

Section 12. *Competent Evidence of Identity*. - The phrase “competent evidence of identity” refers to the identification of an individual based on:

- (a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual; or the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and
- (b) who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification.

<sup>[42]</sup> A.M. No. 02-8-13-SC (August 1, 2004).

<sup>[43]</sup> See *Rural Bank of Cabadbaran, Inc. v. Alelecio-Yap*, supra note 40, at 257.

<sup>[44]</sup> See TSN, October 5, 2009, pp. 3-5; records, Vol. II, pp. 282-284.

<sup>[45]</sup> See TSN, October 5, 2009, pp. 28-35; records, Vol. II, pp. 306-313.

<sup>[46]</sup> TSN, October 13, 2008, p. 30; records, Vol. I, p. 283.

<sup>[47]</sup> TSN, October 5, 2009, p. 36; records, Vol. II, p. 314.

<sup>[48]</sup> See *rollo*, p. 45.

<sup>[49]</sup> See *Belgica v. Belgica*, 558 Phil. 67, 75 (2007).

<sup>[50]</sup> See TSN, October 5, 2009, pp. 16-17 and 23-25; records, Vol. II, pp. 295-295-A and 301-303.

<sup>[51]</sup> See TSN, October 5, 2009, pp. 11, 25, and 29-30; records, Vol. II, pp. 290, 303, and 307-308.

<sup>[52]</sup> See Formal Offer of Exhibits dated October 6, 2009; *id.* at 380.

<sup>[53]</sup> *Cotoner-Zacarias v. Revilla*, G.R. No. 190901, November 12, 2014, 740 SCRA 51, 70.

<sup>[54]</sup> See Article 2136 of the Civil Code.

<sup>[55]</sup> *Acme Shoe, Rubber & Plastic Corporation v. CA*, 329 Phil. 531, 539 (1996).

<sup>[56]</sup> Records, Vol. I, p. 32.

<sup>[57]</sup> *Rollo*, pp. 48-49.

<sup>[58]</sup> TSN, October 5, 2009, pp. 14-15; records, Vol. II, pp. 293-294.

<sup>[59]</sup> TSN, October 5, 2009, p. 7; records, Vol. II, p. 286.

<sup>[60]</sup> See *rollo*, pp. 51-52.

<sup>[61]</sup> *Id.* at 52.

<sup>[62]</sup> See answer dated January 3, 2007; records, Vol. I, p. 118.

<sup>[63]</sup> Art. 2137. The creditor does not acquire the ownership of the real estate for non-payment of the debt within the period agreed upon.

Every stipulation to the contrary shall be void. But **the creditor may petition the court for the payment of the debt or the sale of the real property**. In this case, the Rules of Court on the foreclosure of mortgages shall apply. (Emphasis supplied)

<sup>[64]</sup> See *Cosio v. Palileo*, 121 Phil. 959, 972-973 (1965), citing *Macapinlac v. Repide*, 43 Phil. 770, 786-787 (1955).