

PRISCILLA P. ALVAR, PLAINTIFF-APPELLEE, VS. SPOUSES FIRMO ROSARIO AND AGNES ANNABELLE DEAN-ROSARIO, DEFENDANTS-APPELLANTS.

Ponente: LOPEZ, J.

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LOPEZ, J.:

The propriety of foreclosing properties subject of equitable mortgages is the primary issue in this case.

The facts are culled from the records.

On November 28, 1989 and December 7, 1989, Agnes Annabelle Dean-Rosario borrowed a total of P600,000.00 from Priscilla Alvar, secured by real estate mortgages over two parcels of land covered by TCT Nos. 167438 (Lot 1) and 167439 (Lot 2).[1] Agnes and her husband, Firmo Rosario, resided in Lot 1 while a five-door rental apartment was built on Lot 2. The mortgages were discharged on December 10 and 14, 1990.[2]

On March 16, 1992 and July 17, 1992, Agnes executed two Deeds of Absolute Sale, selling the two lots to Alvar's daughter, Evangeline Arceo, for P900,000.00 each.[3] Subsequently, Arceo sold the lots to Alvar, also for P900,000.00 each.[4] On April 27, 1994, Alvar sent a letter to the spouses Rosario, demanding that they vacate Lot 1.[5]

The spouses Rosario did not heed but filed, on May 18, 1994, a Complaint for Declaration of Nullity of Contract of Sale and Mortgage before the Regional Trial Court (RTC) of Makati City. The spouses claimed that Agnes merely intended to renew the mortgages over the two lots, but Alvar deceived her into signing the March 16, 1992 and July 17, 1992 Deeds of Absolute Sale in favor of Arceo.[6]

Alvar countered by filing a Complaint for Recovery of Possession, insisting that she is the absolute owner of the subject lots. According to her, Agnes was in dire need of a huge amount of money and decided to sell the two lots instead of mortgaging them.[7]

The cases were consolidated and after hearing, the RTC rendered a Decision declaring the validity of the March 16, 1992 and July 17, 1992 Deeds of Absolute Sale and ordering the spouses Rosario to vacate Lot 1.[8] The spouses Rosario filed an appeal before the Court of Appeals.[9]

On November 15, 2006, the Court of Appeals (CA) issued a Decision reversing the RTC's ruling, to wit:

Although the transfers from Appellant Agnes to Arceo were identified as absolute sales, the contracts are deemed equitable mortgages pursuant to Article 1602 of the Civil Code[10] xxx.

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Anent their [spouses Rosario's] prayer for the nullification of the Deeds of Absolute Sale and the Mortgage, We resolve to deny the same. Although the subject deeds of sale in favor of Arceo were actually for mortgage, said type of simulation of contracts does not result in the nullification of the deeds but requires the reformation of the instrument, pursuant to Article 1365 of the Civil Code.

Moreover, as Appellants admitted, they mortgaged the 2 lots to Appellee [Alvar] as a security for the payment of their loans. Absent any proof that Appellants had fully paid their loans to Appellee, Appellee may seek the foreclosure of the 2 lots if Appellants failed to pay their loans for P1.8Million, the amounts appearing in the Deeds of Absolute Sale.

WHEREFORE, the Appeal is GRANTED. The assailed Decision, dated April 4, 2003, of the Regional Trial Court of Makati City, Branch 150, in Civil Cases Nos. 94-1797 & 96-135, is hereby REVERSED and SET ASIDE.

A new one is hereby entered ordering the reinstatement of TCT No. 167438 and TCT No. 167439 issued under the name of Appellant Agnes Dean Rosario and ordering the cancellation of TCT No. 188920 and TCT No. 188995 issued under the name of Appellee.

SO ORDERED.[11]

Since none of the parties filed an appeal, the above-quoted Decision became final and executory. Consequently, on October 17, 2007, Alvar sent a letter to Agnes demanding payment of her outstanding obligation amounting to P1.8Million.[12] The letter was ignored.

On October 26, 2007, Alvar filed a Complaint for Judicial Foreclosure of Real Estate Mortgage. Alvar alleged that the spouses Rosario must pay their obligation, in the amount of P1.8Million with interest, within a period of not less than 90 days nor more than 120 days from entry of judgment.[13] In default of such payment, the equitable mortgages, as declared in the November 15, 2006 CA Decision, should be foreclosed and the two properties sold at public auction. Alvar also prayed for payment of exemplary damages, attorney's fees and litigation expenses.[14]

The spouses Rosario filed a Motion to Dismiss,[15] which was denied by the RTC in its February 11, 2008 Order.[16] Unsatisfied, the spouses Rosario filed a Petition for Certiorari before the CA, docketed as CA-G.R. SP No. 107484, questioning the denial of their motion to dismiss. In its May 25, 2010 Decision, the CA dismissed the petition for lack of merit.[17] Undeterred, the spouses Rosario filed a Petition for Review before the Supreme Court (SC), but it was denied in a Resolution dated September 5, 2011.[18]

Meanwhile, on May 5, 2009, Alvar filed a Motion to Declare Defendants in Default for their failure to file an answer within the reglementary period. The spouses Rosario moved to expunge Alvar's motion, insisting that the outcome in CA-G.R. SP No. 107484 must be awaited. The RTC granted Alvar's motion and declared the spouses Rosario in default.[19] On January 24, 2011, the RTC admitted Alvar's Formal Offer of Documentary Exhibits and the spouses Rosario's Comment was noted.[20]

On January 25, 2012, the RTC rendered a Decision in favor of Alvar, declaring thus:

On the basis of the testimony of the plaintiff [Alvar] which was duly substantiated by the various documents offered and admitted in evidence, the existence and validity of the obligation sued upon, as well as the liability of the defendants [spouses Rosario] for the payment thereof, have been preponderantly established. Through the uncontroverted testimony of plaintiff Priscilla Alvar, she has shown the total outstanding obligation of the defendants is P1,800,000.00.

This Court's finding is consistent with the ruling of the Court of Appeals in its Decision in CA-G.R. SP No. 107484, xxx:

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WHEREFORE, premises considered, decision is hereby rendered ordering defendants Spouses Firmo S. Rosario and Agnes Annabelle Dean-Rosario to pay the plaintiff Priscilla Alvar, jointly and severally, the

following sums:

1. Php1,800,000.00 as the aggregate amount of defendants' obligation to plaintiff, plus 12% legal interest per annum from the time of demand on October 18, 2007 until the obligation is fully paid;
2. Php62,903.88 as reimbursement for payment of real property taxes due on the subject lots;
3. Php200,000.00 as attorney's fees and litigation expenses in the amount of Php200,000.00.

All the above must be paid within a period of not less than ninety (90) days nor more than one hundred twenty (120) days from the entry of judgment. In default of such payment, the two (2) parcels of land covered by TCT Nos. 167438 and 167439 subject matter of the suit including its improvements shall be sold to realize the mortgage debt and costs, in the manner and under the regulations that govern sales of real estate under execution.

SO ORDERED.[21]

The spouses Rosario filed this appeal,[22] insisting that they are not indebted to Alvar for P1.8Million. First, the November 28, 1989 and December 7, 1989 real estate mortgages have been canceled by virtue of the Discharge of Mortgages signed by Alvar. Second, appellants have allowed the appellee to collect the rentals from the 5-door apartment in Lot 2; hence, the obligation was already paid. Third, there must first be a reformation of the March 16, 1992 and July 17, 1992 Deeds of Absolute Sale, which were declared as equitable mortgages in the November 15, 2006 CA Decision, before a foreclosure may be allowed. Finally, the award of attorney's fees and litigation expenses cannot stand for being excessive and for lack of any legal and factual basis.[23]

The appeal is bereft of merit.

At the outset, We must clarify that while the November 28, 1989 and December 7, 1989 real estate mortgages were indeed discharged,[24] they are not the subject of the instant foreclosure case. The new contracts entered by the parties on March 16, 1992 and July 17, 1992, denominated as Deeds of Absolute Sale, are the subject of the foreclosure case. These contracts were declared to be equitable mortgages in the November 15, 2006 Decision on CA-G.R. CV No. 81350. Thus, for failure to file an appeal, the Decision became final and executory. The doctrine of res judicata comes into play.

Res judicata literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment".[25]The doctrine of res judicata embraces two different concepts: (1) bar by former judgment and (b) conclusiveness of judgment. The second concept – conclusiveness of judgment – states that a fact or question which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or different cause of action, while the judgment remains unreversed by proper authority.[26] Considering that CA-G.R. CV No. 81350 involved the same parties and issues, i.e. the validity of the March 16, 1992 and July 17, 1992 contracts, the pronouncement in the November 15, 2006 Decision that the contracts are equitable mortgages can no longer be attacked and is binding in this case.

Consequently, when the contracts were held as equitable mortgages, they shall be given effect as if they have complied with the formal requirements of a mortgage.[27] A mortgage is a contract entered into to secure the fulfillment of a principal obligation,[28] such as a loan. The mortgage creditor has the right to recover the amount loaned.[29] If the debtor is unable to pay his debt, the mortgage creditor may institute an action to foreclose the mortgage, whether judicially or extrajudicially, whereby the mortgaged property will then be sold at a public

auction and the proceeds will be given to the creditor to the extent necessary to discharge the mortgage loan.[30] Foreclosure is therefore a necessary consequence of non-payment of mortgage indebtedness.[31]

Accordingly, after the contracts were declared as equitable mortgages, Alvar's claim of ownership over Lots 1 and 2 can no longer prosper. But she had the right to demand payment, which she did on October 17, 2007.[32] Alvar sent the spouses Rosario a demand to pay P1.8Million. And when the demand for payment was ignored, Alvar properly filed the complaint for foreclosure of mortgage.

The spouses Rosario, nonetheless, claim that the obligation was already paid, since Alvar has been collecting the rents on the apartments in Lot 2. This claim cannot be given credence.

Jurisprudence is replete with rulings that in civil cases, the party who alleges a fact has the burden of proving it. Burden of proof is the duty of a party to present evidence on the facts in issue necessary to prove the truth of his claim or defense by the amount of evidence required by law.[33] Thus, a party who pleads payment as a defense has the burden of proving that such payment had, in fact, been made. When the plaintiff alleges nonpayment, still, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove nonpayment.[34]

The spouses Rosario failed to discharge the burden of proof. We recall that instead of filing an Answer to the Complaint for Judicial Foreclosure of Real Estate Mortgage, the spouses Rosario filed a Motion to Dismiss.[35] When the motion was denied,[36] they still refused to file their Answer resulting in a declaration of default.[37] Alvar was then allowed to present her evidence ex parte.[38] Consequently, no evidence was submitted by the spouses Rosario to prove their claim. There being no proof of payment of the loan, foreclosure of the real estate mortgage is justified.

The spouses' claim, that there must first be reformation of the March 16, 1992 and July 17, 1992 contracts before Alvar can foreclose, is improper. Reformation is a remedy granted by law by means of which a written instrument is made or construed so as to express or conform to the real intention of the parties when such intention is not expressed in the instrument.[39] The function of reformation is not to make a new contract for the parties but only to make the instrument speak their genuine intention.[40] Considering that the CA, in the November 15, 2006 final and executory Decision, has already established that the parties' intention was to execute an equitable mortgage, a separate action for reformation of instrument is no longer necessary. It would be a redundancy that would waste the parties' and the Court's time and resources.

For the purpose of foreclosure, We agree that the spouses Rosario must pay the P1.8 Million loan and P62,903.88 real estate taxes within a period of not less than 90 days nor more than 120 days from the entry of judgment, and that in default of such payment the property shall be sold at public auction to satisfy the judgment.[41] However, the "12% legal interest per annum"[42] imposed by the trial court is modified to 6% per annum in accordance with BSP-MB Circular No. 799.[43]

Finally, under Article 2208 of the Civil Code, attorney's fees and litigation expenses may be recovered when the defendant's act or omission has compelled the plaintiff to litigate or to incur expenses to protect his interests. Here, despite the finality of the November 15, 2006 Decision in CA-G.R. CV No. 81350 declaring that the March 16, 1992 and July 17, 1992 contracts are equitable mortgages, the spouses Rosario stubbornly refused to acknowledge their obligation, forcing Alvar to litigate. We reduce, however, that the P400,000.00 awarded by the trial court. The amount of P50,000.00 is more appropriate in line with the policy that the award of attorney's fees and litigation expenses must always be reasonable.[44]

WHEREFORE, the January 25, 2012 Decision of the Regional Trial Court of Makati City, Branch 148 is

AFFIRMED with the MODIFICATIONS that: (1) the interest rate imposed shall be 6% per annum; and (2) the attorney's fees and litigation expenses shall be reduced to P50,000.00.

SO ORDERED.

Reyes, Jr., (Chairperson) and Inting, JJ., concur.

[1] Exhibits A and B, Records, pp. 586, 589.

[2] As narrated in the November 15, 2006 Decision of the Court of Appeals in CA-G.R. CV No. 81350, id., p. 623.

[3] Exhibits C and D, id., pp. 592, 594.

[4] Deeds of Absolute Sale dated March 8 and 30, 1994, Exhibits E and F, id., pp. 596, 599. Consequently, Arceo's certificates of titles were canceled and TCT Nos. 188920 and 188995 were issued to Alvar. [Ibid.]

[5] Id., p. 625.

[6] Docketed as Civil Case No. 94-1797. Ibid.

[7] Docketed as Civil Case No.96-135. Id., pp. 625-626.

[8] The dispositive portion of the April 4, 2003 Decision of the Regional Trial Court of Makati, Branch 150, reads:

WHEREFORE, premises considered, Civil Case No. 94-1797 is ordered dismissed for lack of merit. Defendants' counterclaims are also ordered dismissed.

Plaintiff Priscilla Alvar having proven her claim in Civil Case No. 96-135, defendant-spouses Firmo S. Rosario and Agnes Annabelle P. Dean-Rosario are hereby ordered to vacate the house and lot located at No. 2703 Apolinario corner General Capinpin Streets, Bangkal, Makati City, covered by TCT No. 188995 and restore possession thereof to its rightful owner, plaintiff Priscilla Alvar.

SO ORDERED. [Exhibit G, id., p. 621.]

[9] Docketed as CA-G.R. CV No. 81350.

[10] Civil Code, Art. 1602. The contract shall be presumed to be an equitable mortgage, in any of the following cases:

1. When the price of a sale with right to repurchase is unusually inadequate;
2. When the vendor remains in possession as lessee or otherwise;
3. When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;
4. When the purchaser retains for himself a part of the purchase price;
5. When the vendor binds himself to pay the taxes on the thing sold;
6. In any other case where it may be fairly inferred that the real intention of the parties is than the transaction shall secure the payment of a debt or the performance of any other obligation.

In any of the foregoing cases, any money, fruits, or other benefits to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject to the usury law.

[11] Exhibits H, id., pp. 629-637. Annotation added.

[12] Exhibit I, *id.*, p. 642.

[13] Rules of Court, Rule 68. Foreclosure of Real Estate Mortgage.

Section 2. Judgment on foreclosure for payment or sale. — If upon the trial in such action the court shall find the facts set forth in the complaint to be true, it shall ascertain the amount due to the plaintiff upon the mortgage debt or obligation, including interest and other charges as approved by the court, and costs, and shall render judgment for the sum so found due and order that the same be paid to the court or to the judgment obligee within a period of not less than ninety (90) days nor more than one hundred twenty (120) days from the entry of judgment, and that in default of such payment the property shall be sold at public auction to satisfy the judgment.

[14] Records, pp. 6-8.

[15] The Motion to Dismiss and to Punish Plaintiff and Her Counsel in Contempt of Court for Forum Shopping cited the following grounds:

1. The plaintiff Alvar has no legal personality to sue or otherwise is not the real party in interest;
 2. The claim or demand set forth in the plaintiff's complaint has been paid, waived, abandoned or extinguished or had now prescribed.
 3. That there is another action pending between the same parties, subject matter, issues and reliefs sought in Civil Case No. 07-554-RTC-133 Makati City;
 4. The plaintiff's cause is barred by final judgment or by the doctrines of finality of judgment and *res judicata* in CA G.R. CV No. 81350 and by the rules against forum shopping,
 5. That a condition precedent for the filing of the claim has not been complied with.
- Id.*, pp. 63-80.

[16] In denying the motion to dismiss, the RTC reasoned thus:

From all indications, TCT No. 167438 and TCT No. 167439 were reinstated. With such reinstatement, it only follows that all annotations stated therein are likewise revived. With this, the right to mortgage the properties covered by the above stated Transfer Certificate of Title are likewise revived. This only gives the impression that plaintiff, being the party-mortgagee in the two Real Estate Mortgage dated 07 December 1989 and 28 November 1989, is likewise reinstated to her rights from the time the two documents were executed and making her the real party in interest in this case considering that the two Real Estate Mortgages were annotated on the respective Transfer Certificate of Title. Also, considering that the reinstatements were made only in the 01 August 2007 Order, the filing of the instant case comes well within the ten (10) year prescriptive period.

Further, based on the attached Annex "K", a letter dated 17 October 2007 was sent to defendant Agnes Annabelle Dean-Rosario demanding for the payment of defendant's outstanding obligation. Hence, this only shows that plaintiff already complied with the condition precedent for filing the instant action.

As to the allegation that there is another action pending between the same parties, xxx from all indications, the two case[s] are far different from each other, based on the actual parties, issues and reliefs sought by the respective plaintiffs in the mentioned cases.

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Id., pp. 137-139.

[17] CA Decision dated 25 May 2010. The CA ruled as follows:

In this case, no grave abuse of discretion was shown to have been committed by respondent judge in issuing the assailed Orders. It is observed that in CA-G.R. CV No. 81350, petitioners prayed for nullification of the Deeds of Absolute Sale and the Mortgage, which was categorically denied by this Court in its November 15,

2006 Decision. More importantly, there was a pronouncement in said Decision that Alvar may foreclose the mortgages constituted over the two lots if petitioners failed to pay their loans totaling P1.8 Million as appearing in the Deeds of Absolute Sale. If Alvar's liens on the subject lots were already canceled, as petitioners insist, there then would have been no reason for them to ask for the cancellation of the mortgages nor for this Court to declare that private respondent may still seek foreclosure of said mortgages.

The petitioners further claim in their Memorandum that "there are seeming inconsistencies in the body or obiter dictum contained" in the November 15, 2006 Decision which has become final and immutable. But these seeming discrepancies generate confusion, which, precisely, is the reason why the instant action should not be readily dismissed. For one, there is no express ruling in the Decision that the mortgages constituted on the two lots were paid. Contrarily, when it declared twice that Alvar may foreclose the mortgages if petitioners failed to pay their obligation to her, this Court consequently admits, although inferentially, that no payment has been made yet by the mortgagor, hence, this Court's opinion that she can foreclose the mortgages.

Besides, petitioners themselves could not make up their mind when they assert that the demand set forth in Alvar's Complaint has been paid, abandoned or extinguished or had now prescribed. Prescription, as a mode of extinguishing an obligation presupposes that no payment has been made. So with waiver and abandonment. When petitioners invoked said defense, they in effect admit that they have not paid yet their loan obligation that has been secured by the subject mortgage. Especially that as late as their instant petition for certiorari, the petitioners have not proven payment.

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There thus is no forum-shopping here because the instant case is one fore foreclosure of mortgage while CA-G.R. CV No. 81350 primarily dealt with the issue on validity of the Deeds of Absolute Sale as executed by Agnes in favor of Arceo. There evidently is no identity of causes of action, subject matter and issues in the cited two actions.

Regarding petitioners' claim that there is *litis pendentia* here in view of the pending action in Civil Case No. 07-554 filed by them before the RTC of Makati City for Annulment of the Extrajudicial Foreclosure of Mortgage, the same does not likewise convince this Court as admittedly, said case "had already been abandoned even prior to petitioners' filing of the complaint" below.

Moreover, while the petitioners contend that a condition precedent for filing Alvar's claim has not been complied with, they however, did not elucidate on this contention. The petitioners even failed to point out what condition precedent the private respondent failed to comply with.

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Id., pp. 965-976. [Emphasis Ours. The portion emphasized became the basis, and likewise quoted, in the subsequent January 25, 2012 Decision of the RTC.]

N.B. The CA further issued a resolution on June 22, 2011 (1) expunging the spouses Rosario's motion for reconsideration; (2) denying their supplemental motion for reconsideration; and granting the prayer for the issuance of an entry of judgment. [*Id.*, pp. 1611-1617.]

[18] The Supreme Court resolved to "DENY the petition for failure of petitioners to sufficiently show that the Court of Appeals committed any reversible error in the challenged decision and resolution to warrant the exercise of this Court's discretionary appellate jurisdiction." [*Id.*, p. 1811.]

[19] October 14, 2009 Order, *id.*, p. 489.

[20] *Id.*, p. 1586.

[21] *Id.*, pp. 1837-1839.

[22] The spouses Rosario impute the following errors on the trial court:

1. THE TRIAL COURT ERRED IN FINDING THAT DEFENDANTS-APPELLANTS HAVE AN OUTSTANDING OBLIGATION TO THE PLAINTIFF-APPELLEE IN THE TOTAL AMOUNT OF PHP1,800,000.00.
2. THE TRIAL COURT ERRED IN ORDERING THE DEFENDANTS-APPELLANTS TO PAY THE SAID AMOUNT OF PHP1,800,000 TO THE PLAINTIFF-APPELLEE AND IN DEFAULT OF SUCH PAYMENT TO SELL THE TWO (2) PARCELS OF LAND COVERED BY TCT NOS. 167438 AND 167439 INCLUDING ITS IMPROVEMENTS.
3. THE TRIAL COURT ERRED IN AWARDING ATTORNEY'S FEES TO THE PLAINTIFF-APPELLEE AND ORDERING DEFENDANTS-APPELLANTS TO PAY THE LITIGATION EXPENSES. [Brief for Defendants-Appellants, Rollo, pp. 39-40.]

[23] Brief for Defendants-Appellants, id., pp. 45-58.

[24] The mortgages were discharged on December 10 and 14, 1990. Supra at note 2.

[25] Spouses Fernando Torres and Irma Torres v. Amparo Medina, G.R. No. 166730, March 10, 2010 citing Manila Electric Company v. Philippine Consumers Foundation, Inc., 425 Phil. 65, 78, citing 46 Am. Jur. § 514.

[26] Id., citing Heirs of Clemencia Parasac v. Republic of the Philippines, G.R. No. 159910, May 4, 2006, 489 SCRA 498, 517-518.

[27] See Feliza Zubiri v. Lucio Quijano, G.R. No. L-48696, November 28, 1942. See also De Leon, Hector S., Comments and Cases on Sales, Fifth Edition, p. 420.

[28] Cornelio M. Isaguirre v. Felicitas De Lara, G.R. No. 138053, May 31, 2000 citing the Civil Code.

Art. 2085 - The following requisites are essential to the contracts of pledge or mortgage:

- (1) That they be constituted to secure the fulfillment of a principal obligation;
- (2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged;
- (3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose.

Third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property.

[29] See De Leon, Hector S., Comments and Cases on Sales, Fifth Edition, p. 420; citing Arches v. Diaz, 50 SCRA 440 [1973].

[30] Cornelio M. Isaguirre v. Felicitas De Lara, supra.

[31] See Ma.Ana M. Tamonte and Edilberto A. Tamonte v. Hongkong and Shanghai Banking Corporation Ltd., et al., G.R. No. 166970, August 17, 2011 citing Lotto Restaurant Corporation, represented by Suat Kim Go v. BPI Family Savings Bank, Inc, G.R. No. 177260, March 30, 2011, citing Ramos v. Sarao, 491 Phil. 288, 300 (2005).

[32] Exhibit I, Records, p. 642.

[33] Section 1, Rule 131 of the Rule of Court. See also Henry Dela Rama Co. v. Admiral United Savings Bank, G.R. No. 154740, April 16, 2008.

[34] Henry Dela Rama Co. v. Admiral United Savings Bank, G.R. No. 154740, April 16, 2008 citing Bulos, Jr. v. Yasuma, G.R. No. 164159, July 17, 2007, 527 SCRA 727, 739; Alonzo v. San Juan, G.R. No. 137549, February

11, 2005, 451 SCRA 45, 56.

[35] Records, pp. 63-80.

[36] Supra at notes 16, 17 and 18.

[37] October 14, 2009 Order, Records, p. 489.

[38] Rules of Court, Rule 9. Effect of Failure to Plead.

SEC. 3. Default; declaration of. – If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.

SEC. 4. Effect of order of default. – A party in default shall be entitled to notice of subsequent proceedings but not to take part in the trial.

[39] De Leon, Hector S., Comments and Cases on Sales, Fifth Edition, p. 422.

[40] Augusto Cosio and Beatriz de Rama v. Cherie Palileo, G.R. No. L-18452, May 20, 1966, citing Palileo v. Cosio, 97 Phil. 919 (1955).

[41] Supra at note 13.

[42] Records, p. 1839.

[43] As cited and discussed in Dario Nacar v. Gallery Frames and/or Felipe Bordey, Jr., G.R. No. 189871, August 13, 2013.

[44] Article 2208, Civil Code. Hermojina Estores v. Spouses Arturo and Laura Supangan, G.R. No. 175139, April 18, 2012.

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