

MA. MERCEDES C. GODINO, IN HER CAPACITY AS ADMINISTRATRIX OF THE INTESTATE ESTATE OF THE LATE ENRIQUE L. GODINO, SR. AND NATIVIDAD C. GODINO, PLAINTIFF-APPELLEE, VS. SPS. DON C....

Ponente: BATO, JR., J.

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BATO, JR., J.:

This is an appeal from the Decision[1] dated February 27, 2012 issued by the Regional Trial Court of Muntinlupa City, Branch 204, in Civil Case No. 05-076, the dispositive portion of which reads:

WHEREFORE, premises considered, the REAL ESTATE MORTGAGE executed by NATIVIDAD C. GODINO on 21 July 1998 is declared NULL and VOID. The plaintiff MA. MERCEDES GODINO as administratrix of the Intestate Estate of NATIVIDAD C. GODINO is directed to pay the amount of THREE MILLION (sic) Php3,368,274.40 to defendants MR. DON C. MEJIA and BENIGNA MEJIA with interest thereon at 12% per annum from the date of this Decision until fully paid.

The preliminary injunction issued by the Court on February 26, 2006 is ordered PERMANENT.

No costs and attorney's fees are adjudged as both parties have legitimate causes of action against each other.

SO ORDERED.

The facts are borne out by the records.

On July 21, 1998, the late Natividad C. Godino (hereinafter “Natividad”) executed a Deed of Real Estate Mortgage[2] in favor of defendants-appellants Don C. Mejia and Benigna S. Mejia (hereinafter “Spouses Mejia”) over two real properties located in Alabang, Muntinlupa City (hereinafter “Alabang Properties”), one measuring 357 square meters and the other measuring 346 square meters, and registered in the name of Natividad, “married to Enrique L. Godino, Sr.” under Transfer Certificate of Title (TCT) No. 136909 and TCT No. 136910, respectively. The mortgage was executed as security for a loan in the amount of P3,366,772.60 obtained by Natividad from the spouses Mejia. Natividad was to pay the principal obligation within a period of 6 months, renewable for another 6 months, by agreement of the parties. In case of non-payment, the spouses Mejia were granted the right to extrajudicially foreclose the mortgaged property and sell it on public auction.

The Deed of Real Estate Mortgage was duly annotated by the Register of Deeds on TCT Nos. 136909 and 136910 per Entry No. 12635.

When Natividad died intestate on May 24, 2002, her children instituted Intestate Estate proceedings, during which plaintiff-appellee Ma. Mercedes C. Godino (hereinafter “Ma. Mercedes”) was appointed administratrix. It was also during this time that the children learned about the Real Estate Mortgage executed by Natividad in favor of the spouses Mejia. Believing that the mortgage which was executed in 1998 is void due to lack of consent of the children, the children filed two complaints to annul the real estate mortgage. The first complaint (Civil Case No. 03-101) was dismissed, without prejudice, by the Regional Trial Court of Muntinlupa City, Branch 203, due to a defective certificate of non-forum shopping. Meanwhile, the second complaint (Civil Case No. 03-138) was

dismissed by the Regional Trial Court of Muntinlupa City, Branch 204, also without prejudice, upon the instance of the plaintiffs and without objection from the defendants.

On May 30, 2005, Mercedes, acting as Administratrix of the Intestate Estate of Natividad and Enrique, Sr., filed the Complaint a quo, alleging that their father Enrique, Sr. died on May 12, 1996; that two years later, without the knowledge and consent of the children, Natividad mortgaged the Alabang properties to the spouses Mejia; that, at the time of the mortgage, the properties were not adjudicated to Natividad and was owned in common by Natividad and the children; that Natividad also failed to liquidate the conjugal partnership within six (6) months from the death of Enrique, Sr.; and that the accompanying contract of loan is similarly null and void as it is inexistent and, even if it does exist, the interest is unconscionable, contrary to law, public policy, public order and good morals.

In their Answer,[3] the spouses Mejia alleged that Ma. Mercedes and her co-heirs are guilty of laches because they claimed to have known about the real estate mortgage since November 1999; that Ma. Mercedes and her co-heirs are estopped from questioning the mortgage because in the petition for issuance of letters of administration, Ma. Mercedes stated that the spouses Mejia were creditors of the estate; that Ma. Mercedes and her co-heirs admitted in Civil Case No. 03-138 then pending before the RTC of Muntinlupa City, Branch 204, that Natividad obtained a loan from the spouses Mejia for P3,366,772.60 and, as security thereof, mortgaged the Alabang properties; that Ma. Mercedes and her co-heirs executed in 1996 Deeds of Waiver and Quitclaim over the Alabang properties in favor of their mother Natividad; that Enrique, Sr. also executed a quitclaim and waiver of rights over the Alabang properties in favor of Natividad; that, in 1997, Natividad and the children executed an Extra-Judicial Partition of the estate of Enrique Sr.; that the spouses Mejia relied in good faith upon these documents presented to them when Natividad entered into a contract of mortgage; and that the complaint should be dismissed on the ground of forum shopping.

On motion by Ma. Mercedes, the court a quo issued a Temporary Restraining Order⁴ on September 20, 2005, effective for a period of 20 days, ordering the spouses to desist from conducting the public auction sale of the Alabang properties on September 26, 2005. Later, on February 6, 2006, the court a quo issued an Order⁵ granting the prayer for issuance of writ of preliminary injunction.

During the pre-trial, the parties admitted the following:

- That Natividad Godino died on May 24, 2002;
- That Mercedes Godino was appointed by RTC, Branch 3, Manila in Sp. Proc. Case No. 03-105667 as administratrix of the estate of the deceased Natividad Godino and Enrique Locsin Godino on September 17, 2003;
- That Natividad Godino executed a Real Estate Mortgage dated July 21, 1998 involving two parcels of land covered by TCT No. 136909 and 136910 registered in the name of Natividad Godino married to Enrique Godino, Sr.;
- That Enrique Godino, Sr. died on May 12, 1996;
- That there is another Real Estate Mortgage involving the same property executed by Natividad Godino which is undated in the amount of One Million One Hundred Twelve Thousand Pesos (Php1,112,000.00);
- That the citizenship of Enrique Locsin Godino is Spanish as stated in the title of the property situated in Baguio City;
- That the citizenship of Enrique Godino as stated in the Death Certificate and supplied by Mercedes Godino as

informant is Spaniard;

- That the plaintiff filed two previous cases involving the same properties denominated as Civil Case No. 03-103 in Branch 203 and Civil Case No. 03-138 in Branch 204 but both were dismissed without prejudice.[6]

Similarly, the parties agreed that the issues be limited to the following:

- Whether or not the properties involved in this case are conjugal properties at the time that they were mortgaged by Natividad Godino to the the defendants on July 21, 1998?

- Whether or not Natividad Godino or her heirs had defaulted in the payment of the alleged obligation to the defendant Don Mejia and Benigna Mejia and therefore the properties may be foreclosed?

- Whether or not the consent of the heirs of Enrique Godino, Sr. is necessary to the Real Estate Mortgage executed by Natividad Godino after the death of her husband?

- Whether or not the Real Estate Mortgage was executed for a valuable consideration?

- Whether or not the Real Estate Mortgage is null and void or maybe annulled (sic)?[7]

During the trial, Ma. Mercedes testified and presented Fe Salvador Godino, her sister-in-law, and Angelo C. Macandog, an employee of the Register of Deeds of Muntinlupa City. Their testimonies tended to establish the allegations in the complaint. On the other hand, for the defense, Don Mejia testified and presented Genidina Cruz, his Secretary. Their testimonies tended to show that Natividad was the registered owner of the Alabang properties; that it was her paraphernal property because Enrique, Sr. could not own the property, being a Spanish national; that, before his death, Enrique, Sr. executed a quitclaim and waiver over the Alabang properties in favor of Natividad; and that, after the death of Enrique, Sr., Natividad and the children executed an extra-judicial partition.

In due course, the court a quo rendered the now appealed Decision dated February 27, 2012 which declared the Deed of Real Estate Mortgage dated July 21, 1998 null and void but ordered Ma. Mercedes, as administratrix of the estate of Natividad and Enrique, Sr. to pay the spouses Mejia the sum of P3,366,772.60.

In arriving at its Decision, the court a quo ruled that the Alabang properties were conjugal properties of Natividad and Enrique, Sr.; that Enrique, Sr. was both Spanish and Filipino; that the Affidavit of Waiver and Quitclaim allegedly executed by Enrique, Sr. appears to be forged and, even assuming it was genuine, it was tantamount to being a donation during the marriage which is prohibited by law. As for the Deed of Extra-Judicial Partition executed by Natividad and her children, the court a quo was suspicious thereof because the children of Jose Godino, who predeceased Enrique, Sr., were not included. Same goes for Concepcion Godino-Santos, the illegitimate child of Enrique, Sr. Thus, the court a quo held that the Deed of Real Estate Mortgage cannot bind the heirs of Enrique, Sr. as it was executed without their consent.

Nonetheless, the court a quo ruled that Natividad owed the spouses Mejia the sum of P3,366,772.60 as evidenced by the promissory note. Thus, although the accessory contract of Real Estate Mortgage is void, the principal obligation subsists and it should be paid by the estate, with an interest of 12% per annum.

Only the spouses Mejia appealed. They allege that:

- 1) THE LOWER COURT ERRED IN FINDING THAT THE REAL PROPERTIES MORTGAGED BY NATIVIDAD C. GODINO WERE CONJUGAL PROPERTIES AND DECLARED THE REAL ESTATE MORTGAGES ON THEM AS NULL AND VOID AS THE REAL PROPERTIES MORTGAGED WERE

PARAPHERNAL PROPERTIES OF NATIVIDAD C. GODINO AND THE MORTGAGE EXECUTED ON SAID PROPERTIES BY NATIVIDAD C. GODINO WAS A VALID AND LEGAL MORTGAGE;

2) THE LOWER COURT ERRED IN FINDING THAT ENRIQUE L. GODINO, SR. WAS BOTH A SPANISH CITIZEN AND FILIPINO CITIZEN;

3) THE LOWER COURT ERRED IN FINDING THAT THE HEIRS OF ENRIQUE L. GODINO, SR. CANNOT BE BOUND BY THE MORTGAGE AS THE PROPERTY (SIC) MORTGAGED WERE PARAPHERNAL PROPERTIES OF THE MORTGAGOR AND THEY WERE IN ESTOPPEL TO QUESTION THE SAME;

4) THAT THE LOWER COURT ERRED IN FINDING THAT THE AWARD SHOULD BE AGAINST THE ESTATE AND NOT AGAINST THE MORTGAGED PROPERTIES.[8]

Ma. Mercedes opposes the appeal, claiming that the court a quo did not err in declaring null and void the Deed of Real Estate Mortgage dated July 21, 1998. She also claims that even assuming that her father was a Spanish national, who was prohibited to acquire lands in the Philippines, the prohibition ceased when his children, who are Filipinos, succeeded to the property. Thus, their consent was needed to the validity of the mortgage.

The fate of the present appeal will, therefore, depend upon the determination of the ownership of the Alabang properties, whether they are conjugal or paraphernal.

Under Article 153 of the Civil Code (the law in force at the time of the marriage of Natividad and Enrique, Sr., the following are conjugal partnership property:

(1) That which is acquired by onerous title during the marriage at the expense of the common fund, whether the acquisition be for the partnership, or for only one of the spouses;

(2) That which is obtained by the industry, or work, or as salary of the spouses, or of either of them;

(3) The fruits, rents or interests received or due during the marriage, coming from the common property or from the exclusive property of each spouse.

Also, things acquired by occupation, such as fishing and hunting, pertain to the conjugal partnership of gains.[9] Same goes for the improvements, whether for utility or adornment, made on the separate property of the spouses through advancements from the partnership or through the industry of either the husband or the wife,[10] as well as the number of animals exceeding that brought to the marriage exclusively by the husband or the wife.[11]

Meanwhile, according to Article 135 of the Civil Code, all property brought by the wife to the marriage, as well as all property she acquires during the marriage, in accordance with Article 148,[12] is paraphernal. The wife retains the ownership of the paraphernal property.[13]

After a careful and thorough study of the case, this Court rules that the court a quo did not err in declaring the Alabang properties as conjugal.

Under Article 160 of the Civil Code, “[a]ll property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife.” If the property is registered in the name of the wife, with a mere description that she is married, the general rule is that the property is paraphernal, unless it is shown that the property was acquired during the marriage. In *Ruiz vs. Court of Appeals*, [14] the Supreme Court explained that:

We also affirm the ruling of the appellate court that the real property covered by the subject deed of mortgage is paraphernal property. The property subject of the mortgage is registered in the name of "Corazon G. Ruiz, of legal age, married to Rogelio Ruiz, Filipinos." Thus, title is registered in the name of Corazon alone because

the phrase "married to Rogelio Ruiz" is merely descriptive of the civil status of Corazon and should not be construed to mean that her husband is also a registered owner. Furthermore, registration of the property in the name of "Corazon G. Ruiz, of legal age, married to Rogelio Ruiz" is not proof that such property was acquired during the marriage, and thus, is presumed to be conjugal. The property could have been acquired by Corazon while she was still single, and registered only after her marriage to Rogelio Ruiz. Acquisition of title and registration thereof are two different acts. The presumption under Article 116 of the Family Code that properties acquired during the marriage are presumed to be conjugal cannot apply in the instant case. Before such presumption can apply, it must first be established that the property was in fact acquired during the marriage. In other words, proof of acquisition during the marriage is a condition sine qua non for the operation of the presumption in favor of conjugal ownership. No such proof was offered nor presented in the case at bar. Thus, on the basis alone of the certificate of title, it cannot be presumed that said property was acquired during the marriage and that it is conjugal property. Since there is no showing as to when the property in question was acquired, the fact that the title is in the name of the wife alone is determinative of its nature as paraphernal, i.e., belonging exclusively to said spouse. The only import of the title is that Corazon is the owner of said property, the same having been registered in her name alone, and that she is married to Rogelio Ruiz.[15]

In the case at bar, both TCT Nos. 136909 and 136910 state that the properties are registered to "NATIVIDAD C. GODINO, Filipino citizen, of legal age, married to Enrique L. Godino, Sr." If based on the registration alone, the properties can be presumptively considered as paraphernal property. But then, evidence was submitted during the trial as to when the properties were acquired. The two Deeds of Absolute Sale, marked as Exhibits "AA(24)"[16] and "BB(25)",[17] state that the properties were purchased on November 16, 1984, from Achievers Realty and Development Corporation, by

NATIVIDAD C. GODINO, Filipino citizen, of legal age, married to ENRIQUE L. GODINO, SR., and with postal address at x x x.

Natividad and Enrique, Sr. were married (and both were still alive) at the time of the purchase of the Alabang properties. Stated differently, based on the Deeds of Absolute Sale, the Alabang properties were acquired or purchased during the marriage of Natividad and Enrique, Sr. Thus, applying Ruiz vs. Court of Appeals, considering that there is evidence that the Alabang properties were acquired during the marriage, the presumption is that said properties are conjugal. The registration thereof in the name of Natividad, with description that she is "married to Enrique L. Godino, Sr." is not conclusive that they are paraphernal.

The spouses Mejia, however, claim that Enrique, Sr. was a Spanish national who, like other foreigners, are generally prohibited by the Constitution to own land in the Philippines. According to them, the Alabang properties could not be considered conjugal.

The spouses Mejia are mistaken.

First, it has not been indubitably established that Enrique, Sr. was a Spanish national. Although the spouses Mejia presented certain documents indicating that Enrique, Sr. was a Spanish national, Ma. Mercedes was also able to present some documents showing that Enrique, Sr. was a Filipino. To break the impasse, however, the court a quo ruled that Enrique, Sr. was both a Spaniard and a Filipino.

The spouses Mejia takes exception to the court a quo's conclusion, saying that at the time of Enrique, Sr.'s death, the Dual Citizenship Law had not yet been enacted. At any rate, this Court is of the opinion that the nationality of Enrique, Sr. is immaterial to the issues involved in this case. Even assuming that he was a Spanish national, his being a foreigner does not change the fact that the property relation between Natividad and Enrique, Sr. was conjugal partnership of gains or the fact that the Alabang properties are conjugal properties.

Article 80 of the Family Code (which can be given retroactive effect pursuant to Article 256 of the same Code)

provides that:

Art. 80. In the absence of a contrary stipulation in marriage settlement, the property relations of the spouses shall be governed by Philippine laws, regardless of the place of the celebration of the marriage and their residence.

This rule shall not apply:

- (1) Where both spouses are aliens;
- (2) With respect to the extrinsic validity of contracts affecting property not situated in the Philippines and executed in the country where the property is located; and
- (3) With respect to the extrinsic validity of contracts entered into in the Philippines but affecting property situated in a foreign country whose laws require different formalities for its extrinsic validity.

Thus, even if Enrique, Sr. was a Spanish national, Philippine law shall govern the property relations of his marriage to Natividad. Under the Civil Code, their marriage was under a property regime of conjugal partnership of gains. Ergo, the Alabang properties are conjugal properties.

Being conjugal properties, any disposition or encumbrance of the Alabang properties required the written consent of both spouses. Article 124 of the Family Code states that:

Art. 124. The administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.

This rule was not introduced for the first time by the Family Code. As early as 1909, in the case of *Gavieres vs. Estate of Pena*,^[18] it was already ruled that “[i]f [the property] had been acquired after marriage, then it would be conjugal property and in either event she would not be permitted to mortgage it, or sell it, etc., without the consent of the husband.” The consent of Enrique, Sr. not having been obtained when the Alabang properties were mortgaged, the mortgage thereof is null and void.

Ironically, while the spouses Mejia insist that Enrique, Sr. could not have owned the Alabang properties because he was allegedly a Spanish national, they claim that Enrique, Sr. had waived or relinquished his rights to said properties before he died. We say that this is contradictory because the essential elements of a valid waiver are “(a) existence of a right; (b) the knowledge of the existence thereof; and, (c) an intention to relinquish such right.”^[19] So, by claiming that Enrique, Sr. had waived his rights to the Alabang properties, the spouses Mejia are conceding that Enrique, Sr. had a right to the Alabang properties.

This inconsistency notwithstanding, the court a quo held that the alleged waiver or quitclaim is void because it is tantamount to being a donation during the marriage.

The Affidavit of Quitclaim and Waiver of Rights^[20] purportedly executed by Enrique, Sr. on January 18, 1996

(about four months before he died) provides:

That I, ENRIQUE L. GODINO, Sr., of legal age, Filipino, married to NATIVIDAD C. GODINO and resident of 400 Alabang Hills, Muntinlupa, Metro Manila, after having been duly sworn to in accordance with law depose and say:

- That I am the registered co-owner of a (sic) certain properties located at Muntinlupa, Rizal which are described as follows:

X X X

- That I do hereby QUITCLAIM, RENOUNCE AND CONVEY the above mentioned properties to my wife NATIVIDAD C. GODINO;

- That I am executing this Affidavit to established (sic) the truth of the above.

IN WITNESS WHEREOF, I have here unto signed this 18[th] day of January 1996 at the City of Manila.

According to the court a quo, the said waiver and quitclaim is void because it was in reality a donation between husband and wife which is prohibited by Article 87 of the Family Code which provides that:

Art. 87. Every donation or grant of gratuitous advantage, direct or indirect, between the spouses during the marriage shall be void, except moderate gifts which the spouses may give each other on the occasion of any family rejoicing. The prohibition shall also apply to persons living together as husband and wife without a valid marriage.

Strictly speaking, however, the waiver or quitclaim executed by Enrique, Sr. is not a donation. A donation has the following elements: (a) the reduction of the patrimony of the donor; (b) the increase in the patrimony of the donee; and, (c) the intent to do an act of liberality or animus donandi.[21] When applied to a donation of an immovable property, the law further requires that the donation be made in a public document and that there should be an acceptance thereof made in the same deed of donation or in a separate public document.[22] In the case at bar, there was no acceptance by Natividad made in the same instrument of the waiver and quitclaim. The absence thereof is fatal because said acceptance goes into the validity of the donation of an immovable property.[23] Hence, assuming the waiver and quitclaim was a donation, it was an inefficacious donation.

At any rate, this Court still rules that the said waiver and quitclaim is void.

In Unicorn Safety Glass vs. Basarte,[24] the Supreme Court explained the standards for determining the validity of a waiver or quitclaim, thus:

If the agreement was voluntarily entered into and represents a reasonable settlement, it is binding on the parties and may not later be disowned simply because of a change of mind. It is only where there is clear proof that the waiver was wrangled from an unsuspecting or gullible person, or the terms of settlement are unconscionable on its face, that the law will step in to annul the questionable transaction. But where it is shown that the person making the waiver did so voluntarily, with full understanding of what he was doing, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking.[25]

We examined the alleged Affidavit of Quitclaim and Waiver of Rights but found no consideration therefor. As the case of Unicorn Safety Glass teaches us, the waiver and quitclaim must be supported by a consideration which is both credible and reasonable.

While, ordinarily, cause or consideration is presumed in a contract,[26] we cannot say the same thing in the case of the Affidavit of Quitclaim and Waiver of Rights allegedly executed by Enrique, Sr. Waivers and quitclaims are generally looked upon with disfavor.[27] With more reason that this Court is skeptical of the waiver and quitclaim in the case at bar because it is made to appear that Enrique, Sr. renounced his rights as a husband and as a conjugal partner without any apparent cause or consideration.

Thus, there being no evidence that it is supported by a valid consideration, this Court declares the Affidavit of Quitclaim and Waiver of Rights,[28] purportedly executed by Enrique, Sr. on January 18, 1996, null and void.

Admittedly, Enrique, Sr. died on May 12, 1996, two years before the real estate mortgage was executed by Natividad. However, his rights to the Alabang properties were transmitted to his children from the moment of his death.[29] Ma. Mercedes and her siblings thus became co-owners of the property through their own right as children of their deceased father.[30] Being co-owners, Natividad or any of the children has no right to make alterations in the thing owned in common, even though benefits for all would result therefrom, without the consent of the others.[31]

Under Article 493 of the Civil Code, 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. However, this general rule in the law on co-ownership does not apply in the case of the conjugal partnership properties because, under Article 130 of the Family Code, before any of the co-owners, including Natividad, can alienate, dispose or encumber any of these properties, the conjugal partnership should first be liquidated, otherwise the same is void, thus:

Art. 130. Upon the termination of the marriage by death, the conjugal partnership property shall be liquidated in the same proceeding for the settlement of the estate of the deceased.

If no judicial settlement proceeding is instituted, the surviving spouse shall liquidate the conjugal partnership property either judicially or extra-judicially within one year from the death of the deceased spouse. If upon the lapse of the one-year period no liquidation is made, any disposition or encumbrance involving the conjugal partnership property of the terminated marriage shall be void.

Should the surviving spouse contract a subsequent marriage without compliance with the foregoing requirements, a mandatory regime of complete separation of property shall govern the property relations of the subsequent marriage.[32]

Emphasis is placed on the portion of the law that states that if no liquidation is made within one year from the death of the deceased spouse, “any disposition or encumbrance involving the conjugal partnership property x x x shall be void.”

The liquidation is necessary because, prior thereto, the right of Natividad to the conjugal partnership properties is merely inchoate, as explained in *Abalos vs. Macatangay, Jr.*,[33] thus:

More significantly, it has been held that prior to the liquidation of the conjugal partnership, the interest of each spouse in the conjugal assets is inchoate, a mere expectancy, which constitutes neither a legal nor an equitable estate, and does not ripen into title until it appears that there are assets in the community as a result of the liquidation and settlement. The interest of each spouse is limited to the net remainder or “remanente liquido” (haber ganancial) resulting from the liquidation of the affairs of the partnership after its dissolution. Thus, the right of the husband or wife to one-half of the conjugal assets does not vest until the dissolution and liquidation of the conjugal partnership, or after dissolution of the marriage, when it is finally determined that, after settlement of conjugal obligations, there are net assets left which can be divided between the spouses or their respective heirs.[34]

In the case at bar, the spouses Mejia presented an undated Final Deed of Extra-Judicial Partition,[35] with a Memorandum of Extra-Judicial Partition[36] dated July 21, 1997 as an attachment. The court a quo, however, did not give these documents serious consideration, explaining that:

The Waiver and Quitclaim and the FINAL Deed of Extra-Judicial Partition allegedly executed by NATIVIDAD and the children of ENRIQUE, SR. pre-deceased husband of FE GODINO with whom JOSE GODINO had children and also entitled to share in ENRIQUE SR.'s estate, are quite suspicious which the court believes were all done by NATIVIDAD in order to transact with MEJIA for the mortgage of her Alabang properties. The illegitimate child of ENRIQUE, SR., a certain CONCEPCION GODINO-SANTOS, was also not included in the partition and waiver of rights which only proves that said documents were all executed to expedite transaction with MEJIA for the mortgage of the Alabang properties by NATIVIDAD. The Court therefore cannot validate these documents since their execution were quite suspicious and did not mean to convey the whole properties of ENRIQUE SR. in favor of NATIVIDAD.[37]

What further militates against the alleged Final Deed of Extra-Judicial Partition is the Certification[38] dated November 9, 2006 issued by the Office of the Clerk of Court of the Regional Trial Court of Manila which states, to the effect, that it has no copy of the Final Deed of Extra-Judicial Partition, thus:

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY that as per Master List of Notaries Public on file in this Office as of this date, Atty. HENRY D. ADASA was duly appointed Notary Public in the City of Manila for the period from January 8, 1997 ending December 31, 1998.

This certifies further that this Office could not issue a Certified True Copy of the document denominated as "FINAL DEED OF EXTRA-JUDICIAL PARTITION" notarized by Atty. Henry D. Adasa on February 9, 1998 and entered in his Notarial Register as Doc. No. 295, Page 59, Book XVII, Series of 1998, considering that as per Docket Book of this Office, the Notarial Report submitted by Atty. Henry D. Adasa for the period from January to December 1998 consists only of Pages 2-101 of Book XV, Series of 1998.

Issued this 9[th] day of November, 2006 in the City of Manila, Philippines upon the request of Mercedes C. Godino of Midland Plaza, Manila for legal purposes.

JENNIFER H. DELA CRUZ-BUENDIA

Clerk of Court & Ex-Officio Sheriff

By:

(SGD) CLEMENTE M. CLEMENTE

Assistant Clerk of Court[39]

As a rule, documents acknowledged before notaries public are public documents which are admissible in evidence without necessity of preliminary proof as to their authenticity and due execution.[40] They enjoy the presumption of regularity, and to overcome the presumption, there must be evidence that is clear, convincing and more than merely preponderant.[41] In the case at bar, however, the Certification of the Office of the Clerk of Court of the Regional Trial Court of Manila sufficiently defeated the presumption of regularity. The official tasked with keeping copies of these public documents certified that no such Final Deed of Extra-Judicial Partition exists in its records. The court a quo, therefore, correctly ignored the alleged Final Deed of Extra-Judicial Partition.

Thus, for the reasons discussed above, the court a quo did not err in declaring that the Deed of Real Estate Mortgage dated July 21, 1998 executed by Natividad is null and void.

As a last note, the court a quo sustained the principal obligation of P3,366,772.60 despite declaring that the Deed of Real Estate Mortgage is without legal effect. In effect, what was struck down was merely the accessory contract, not the principal contract.[42]

In her Appellee's Brief, however, Ma. Mercedes claimed that the mortgage is without consideration. More specifically, Ma. Mercedes alleged that:

53. The above exhibits demonstrate and convincingly show that the amount of P3,366,772.60 secured by the mortgage does not consist of a principal loan or obligation but consists mainly of usurious interests and exorbitant charges, including interests on other loans secured by separate real estate mortgage. Clearly, the mortgage constituted on the subject Properties is VOID for being in violation of Article 2085 of the Civil Code which requires for the validity of a mortgage contract that it be constituted to secure the fulfillment of a principal obligation. Indeed, the mortgage contract derives its vitality from the validity of the principal obligation.[43]

By raising this argument, Ma. Mercedes is, in effect, appealing the court a quo's Decision. But she did not do so in the proper manner and within the time prescribed by the Rules. Thus, her asseveration deserves scant consideration. As held in *Spouses Lagandaon vs. Court of Appeals*:[44]

Parties who have not appealed cannot obtain from the appellate court any affirmative reliefs other than those granted, if any, in the decision of the lower court. Appellees can advance only such arguments as may be necessary to defeat the appellants' claims or to uphold the appealed decision. They can assign errors on appeal if such are required to strengthen the views expressed by the court a quo. Such assigned errors, in turn, may be considered by the appellate court solely to maintain the appealed decision. But appellees cannot ask for modification of the judgment in their favor in order to obtain other affirmative reliefs.

For failing to appeal on time, Ma. Mercedes is bound by the Decision of the court a quo ordering her, as Administratrix of the estate of Natividad and Enrique, Sr., to pay the outstanding obligation in the sum of P3,366,772.60.

However, this Court deems it necessary to modify the interest rate imposed by the court a quo, which is 12% per annum from the date of the decision until fully paid. The applicable rate is now 6% per annum, pursuant to the decision in *Dario Nacar vs. Gallery Frames*,[45] promulgated on August 13, 2013. In that case, the Supreme Court en banc imposed a uniform rate of 6% per annum on obligations, whether consisting in the payment of money (such as a loan or forbearance of money) or those not constituting a loan or forbearance of money, as well as on

the judgment when it becomes final and executory, to wit:

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

- When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

- When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

- When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

Thus, to conform with this latest jurisprudence, the outstanding obligation of P3,366,772.60 should earn interest of six percent (6%) per annum, from finality of judgment until fully paid.

WHEREFORE, in view of the foregoing, the instant appeal is DISMISSED and the Decision dated February 27, 2012 issued by the Regional Trial Court of Muntinlupa City, Branch 204, in Civil Case No. 05-076 is AFFIRMED with MODIFICATION. The plaintiff-appellee Ma. Mercedes C. Godino, as Administratrix of the Intestate Estate of Natividad C. Godino and Enrique Godino, Sr., is directed to pay defendants-appellants spouses Don C. Mejia and Benigna S. Mejia the amount of P3,368,274.40 with interest thereon at the rate of 6% per annum from finality of the Decision until fully paid.

SO ORDERED

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

[*]Gaerlan and Diy, JJ., concur.

[*] Vice J. Zalameda per Office Order No. 242-14-ABR dated May 23, 2014.

- [1] Rollo, pp. 81-106.
- [2] Exhibit “C”; Exhibit “21”; Record, Vol. I, p. 18.
- [3] Record, Vol. I, p. 58.
- [4] Record, Vol. I, p. 221-A.
- [5] Record, Vol. I. p. 294.
- [6] Pre-Trial Order dated June 13, 2006; Record, Vol. I, p. 428.
- [7] Ibid.
- [8] Appellant's Brief, p. 6; Rollo, p. 57.
- [9] Art. 155, Civil Code.
- [10] Art. 158, Civil Code.
- [11] Art. 159, Civil Code.
- [12] Art. 148. The following shall be the exclusive property of each spouse:
- (1) That which is brought to the marriage as his or her own;
 - (2) That which each acquires during the marriage, by lucrative title;
 - (3) That which is acquired by right of redemption or by exchange with other property belonging to only one of the spouses;
 - (4) That which is purchased with exclusive money of the wife or of the husband.
- [13] Art. 136, Civil Code.
- [14] G.R. No. 146942, April 22, 2003.
- [15] Emphasis ours.
- [16] Record, Vol. II, p. 1110.
- [17] Record, Vol. II, p. 1118.
- [18] G.R. No. 4992, April 2, 1909, 13 Phil. 449 (1909).
- [19] Heirs of Reyes vs. Calumpang, G.R. No. 138463, October 30, 2006.
- [20] Exhibit “6”; Record, Vol. I, p. 458.
- [21] Republic vs. Guzman, G.R. No. 132964, February 18, 2000.
- [22] Ibid.
- [23] Art. 749, Civil Code.
- [24] G.R. No. 154689, November 25, 2004, citing Periquet vs. NLRC, G.R. No. 91298, June 22, 1990.
- [25] Emphasis ours.
- [26] Art. 1354, Civil Code.

- [27] Anino vs. NLRC, G.R. No. 123226, May 21, 1998.
- [28] Exhibit “6”; Record, Vol. I, p. 458.
- [29] Art. 777, Civil Code.
- [30] Suarez vs. Court of Appeals, G.R. No. 94918, September 2, 1992.
- [31] Art. 491, Civil Code.
- [32] Emphasis ours.
- [33] G.R. No. 155043, September 30, 2004.
- [34] Emphasis ours.
- [35] Exhibit “7”; Record, Vol. I, p. 460.
- [36] Exhibit “7-A”; Record, Vol. I, p. 463.
- [37] Decision, p. 22; Rollo, p. 102.
- [38] Exhibit “Y”; Record, Vol. II, p. 1074.
- [39] Emphasis ours.
- [40] Cavile vs. Heirs of Cavile, G.R. No. 148365, April 1, 2003.
- [41] Ibid.
- [42] Otherwise, the rule that “the nullity of the principal obligation carries with it the nullity of the accessory obligation” (Menchavez vs. Teves, Jr., G.R. No. 153201, January 26, 2005) would have applied.
- [43] Appellee's Brief, p. 31; Rollo, p. 149.
- [44] G.R. Nos. 102526-31, May 21, 1998.
- [45] G.R. No. 189871.

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