

EDILBERTO CRUZ AND SIMPLICIO CRUZ, PETITIONERS, VS. BANCOM FINANCE CORPORATION (NOW UNION BANK OF THE PHILIPPINES), RESPONDENT.

G.R. No. 147788. March 19, 2002

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

An absolutely simulated contract of sale is void ab initio and transfers no ownership right. The purported buyer, not being the owner, cannot validly mortgage the subject property. Consequently, neither does the buyer at the foreclosure sale acquire any title thereto.

Statement of the Case

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, assailing the March 30, 2001 Decision[1] of the Court of Appeals (CA) in CA-GR No. 58346. The decretal portion of the challenged Decision reads as follows:

“WHEREFORE, upon the premises, the assailed Decision is REVERSED and SET ASIDE. A new one is rendered declaring BANCOM’s right to the subject land as a purchaser in good faith and for value, and ordering the cancellation of the Notice of Lis Pendens on TCT No. 248262-Bulacan. Without pronouncement as to costs.”[2]

The Facts

The factual antecedents of the case are summarized by the Court of Appeals thus:

“Brothers Rev. Fr. Edilberto Cruz and Simplicio Cruz, plaintiffs herein, were the registered owners of a 339,335 square meter or 33.9335 hectare parcel of agricultural land together with improvements located in Barangay Pulang Yantoc, Angat, Bulacan covered by TCT No. 19587. Sometime in May 1978, defendant Norma Sulit, after being introduced by Candelaria Sanchez to Fr. Cruz, offered to purchase the land. Plaintiffs’ asking price for the land was P700,000.00, but Norma only had P25,000.00 which Fr. Cruz accepted as earnest money with the agreement that titles would be transferred to Norma upon payment of the balance of P675,000.00. Norma failed to pay the balance and proposed [to] Fr. Cruz to transfer the property to her but the latter refused, obviously because he had no reason to trust Norma. But capitalizing on the close relationship of Candelaria Sanchez with the plaintiffs, Norma succeeded in having the plaintiffs execute a document of sale of the land in favor of Candelaria who would then obtain a bank loan in her name using the plaintiffs’ land as collateral. On the same day, Candelaria executed another Deed of Absolute Sale over the land in favor of Norma. In both documents, it appeared that the consideration for the sale of the land was only P150,000.00. Pursuant to the sale, Norma was able to effect the transfer of the title to the land in her name under TCT No. T-248262.

“Evidence shows that aside from the P150,000.00, Candelaria undertook to pay the plaintiffs the amount of P655,000.00 representing the balance of the actual price of the land. In a Special Agreement dated September

1, 1978, Norma assumed Candelaria's obligation, stipulating to pay the plaintiffs the said amount within six months on pain of fine or penalty in case of non-fulfillment. Unknown to the plaintiffs, Norma managed to obtain a loan from Bancom in the amount of P569,000.00 secured by a mortgage over the land now titled in her name.

"On account of Norma's failure to pay the amount stipulated in the Special Agreement and her subsequent disappearance from her usual address, plaintiffs were prompted to file the herein complaint for the reconveyance of the land.

"Norma filed an Answer on February 11, 1980 but failed to appear in court and was eventually declared in default. On May 20, 1980, Bancom filed a motion for leave to intervene which was granted by the trial court. In its Answer in Intervention, Bancom claimed priority as mortgagee in good faith; and that its contract of mortgage with Norma had been executed before the annotation of plaintiffs' interest in the title.

"Meanwhile in the middle of 1980, Norma defaulted in her payment to the Bank and her mortgage was foreclosed. At the subsequent auction sale, Bancom was declared the highest bidder and was issued the corresponding certificate of sale over the land.

"On January 25, 1996, the trial court rendered the herein assailed Decision in favor of the plaintiffs. It ruled that the contract of sale between plaintiffs and Candelaria was absolutely simulated. Consequently, the second contract of sale, that is, between Candelaria and Norma, produced no legal effect. As for Bancom, the trial court held that the Bank was not a mortgagee in good faith thus it can not claim priority of rights over plaintiffs' property."[3]

Ruling of the Court of Appeals

In reversing the RTC, the CA held that the Deeds of Sale were valid and binding, not simulated. Thus, the Contract of Mortgage between Sulit and respondent was likewise valid.

Petitioners, the CA ruled, intended to be bound by the Contracts of Sale and Mortgage, because they "did not seek to annul the same but instead executed a special agreement to enforce payment of the balance of the price in the amount of P665,000.00."[4]

Furthermore, it upheld respondent as a "mortgagee in good faith;" ergo, it had a preferential right to the land.

Hence, this Petition.[5]

Issues

In their Memorandum, petitioners raise the following issues for this Court's consideration:

I

"Whether or not the Honorable Court of Appeals seriously erred when it held that the petitioners intended to enter into a sale of the property in question and that the declarations of Petitioner Fr. Edilberto Cruz in Court belied the court a quo's finding that the Deeds of Sale in question were absolute simulations.

II

"Whether or not the Honorable Court of Appeals gravely erred when it ruled that respondent bank was a mortgagee in good faith, despite the fact that respondent Bancom was in truth and in fact a mortgagee in bad faith over the subject property.

III

"Whether or not the Honorable Court of Appeals seriously erred when it ruled that the face of the title [to] the

property did not disclose any irregularity that would arouse suspicion by respondent bank as to the condition of the subject land despite the fact that questions and circumstances abound which would render respondent bank not a mortgagee in good faith, and that the case of *Sunshine Finance Investment Corporation vs. Intermediate Appellate Court* applies to the instant case.

IV

“Whether or not the Honorable Court of Appeals gravely erred when it ruled that respondent bank possesses a preferential right over petitioners on the subject land as a mortgagee in good faith.”[6]

The above issues can be summed up into two: (1) the validity of the Deeds of Sale and Mortgage and (2) the good faith of the mortgagee.

This Court’s Ruling

The Petition is meritorious.

First Issue:

Validity of the Sale and the Mortgage

Petitioners claim that the Deed of Sale[7] they executed with Sanchez, as well as the Deed of Sale[8] executed between Sanchez and Sulit, was absolutely simulated; hence, null and void. On the other hand, echoing the appellate court, respondent contends that petitioners intended to be bound by those Deeds, and that the real estate mortgage over the subject property was valid.

As a general rule, when the terms of a contract are clear and unambiguous about the intention of the contracting parties, the literal meaning of its stipulations shall control. But if the words appear to contravene the evident intention of the parties, the latter shall prevail over the former.[9] The real nature of a contract may be determined from the express terms of the agreement, as well as from the contemporaneous and subsequent acts of the parties thereto.[10]

On the other hand, simulation takes place when the parties do not really want the contract they have executed to produce the legal effects expressed by its wordings.[11] Simulation or vices of declaration may be either absolute or relative. Article 1345 of the Civil Code distinguishes an absolute simulation from a relative one while Article 1346 discusses their effects, as follows:

“Art. 1345. Simulation of a contract may be absolute or relative. The former takes place when the parties do not intend to be bound at all; the latter when the parties conceal their true agreement.

“Art. 1346. An absolutely simulated contract is void. A relative simulation, when it does not prejudice a third person and is not intended for any purpose contrary to law, morals, good customs, public order or public policy binds the parties to their agreement.”

In *Rongavilla v. Court of Appeals*,[12] we held that a deed of sale, in which the stated consideration had not in fact been paid, was “a false contract”; that is “void ab initio.” Furthermore, *Ocejo v. Flores*,[13] ruled that “a contract of purchase and sale is null and void and produces no effect whatsoever where it appears that [the] same is without cause or consideration which should have been the motive thereof, or the purchase price which appears thereon as paid but which in fact has never been paid by the purchaser to the vendor.”

Although the Deed of Sale[14] between petitioners and Sanchez stipulated a consideration of P150,000, there was actually no exchange of money between them. Petitioner Edilberto Cruz narrated how the transaction came about:

“ATTY. CABRERA:

Q

Why did you execute the deed of sale in favor of Candelaria Sanchez since it was Norma Sulit with whom you are transacting?

A

Because Norma Sulit made the promise to Mrs. Candelaria Sanchez that upon acquiring the title from us, they can borrow money from the Bank. So it is a way of acquiring the title from us, sir.

Q.

This deed of sale marked Exhibit 'D' which you just identified, stipulates a consideration of P150,000.00. The question, Father, is - did you receive the P150,000.00?

ATTY. AGRAVANTE

Objection, your Honor, the document is the best evidence.

ATTY. CABRERA

This is an action to annul a certain contract.

COURT

He received the consideration stated in the contract. The witness may answer.

WITNESS

A

Not a single centavo we received from Candelaria Sanchez as if it is nominal, sir.

ATTY. CABRERA

Q

If you did not receive this P150,000.00 stated in this deed of sale that you and your brother executed from Candelaria Sanchez, did you receive the said amount from Norma Sulit or anybody else for that matter?

A

Not a single centavo, sir.”[15]

His claim was corroborated by Sanchez. She likewise said that the Deed of Sale[16] she executed with Sulit, for which she did not receive any consideration was only for the purpose of placing the title to the property in the latter’s name. She testified as follows:

“Q

And so you transferred the property in favor of Norma Sulit?

A

Yes, sir.

Q

I am showing to you this document which has already been marked when the representative of the Register of Deeds produced the pertinent documents before the court as Exhibit “C”, is this that document that you executed transferring the property in the name of Norma Sulit?

A

Yes, sir, this is it.

Q

There is a consideration of P150,000.00 stated in this Exhibit “C”, were you paid by Norma Sulit the amount of P150,000.00 appearing in this Exhibit “C”?

ATTY BUYCO:

The question is leading, Your Honor.

COURT:

Witness may answer.

A

No amount was given, sir. We prepared this document to transfer the title [to] her name only.”[17]

Respondent never offered any evidence to refute the foregoing testimonies.[18] On the contrary, it even admitted that the stipulated consideration of P150,000 in the two Deeds of Sale had never been actually paid by Sanchez to petitioners;[19] neither by Sulit to the former.[20]

Another telling sign of simulation was the complete absence of any attempt on the part of the buyers -- Sanchez and Sulit -- to assert their alleged rights of ownership over the subject property.[21] This fact was confirmed by respondent which, however, tried to justify the non-occupancy of the land by Sanchez and Sulit. Supposedly, because the two failed to pay the purchase price of the land, they could not force petitioners to vacate it.[22]

The records clearly show that the two Deeds of Absolute Sale were executed over the same property on the same date, June 21, 1978. Six days thereafter, on June 27, 1978, it was mortgaged by Sulit to Federal Insurance Company for P500,000. The mortgage was cancelled when she again mortgaged the property to respondent for P569,000 on August 22, 1979. It is also undisputed that petitioners did not receive any portion of the proceeds of the loan.

Clearly, the Deeds of Sale were executed merely to facilitate the use of the property as collateral to secure a loan from a bank.[23] Being merely a subterfuge, these agreements could not have been the source of any consideration for the supposed sales.[24] Indeed, the execution of the two documents on the same day sustains the position of petitioners that the Contracts of Sale were absolutely simulated, and that they received no consideration therefor.[25]

The failure of Sulit to take possession of the property purportedly sold to her was a clear badge of simulation that rendered the whole transaction void and without force and effect, pursuant to Article 1409[26] of the Civil Code.[27] The fact that she was able to secure a Certificate of Title to the subject property in her name did not vest her with ownership over it.[28] A simulated deed of sale has no legal effect; consequently any transfer certificate of title (TCT) issued in consequence thereof should be cancelled.[29] A simulated contract is not a recognized mode of acquiring ownership.[30]

Second Issue:

Good Faith of Mortgagee

Petitioners argue that respondent was not a mortgagee in good faith because, at the time it registered the real estate mortgage over the subject property, their adverse claim and notice of lis pendens had already been annotated on the TCT (on October 30, 1979 and December 10, 1979, respectively). On the other hand, respondent maintains that petitioners were the ones in bad faith, because they already had knowledge of the existence of the mortgage over the property when they caused the annotation of their adverse claim and notice of lis pendens.

As a general rule, every person dealing with registered land may safely rely on the correctness of the certificate of title and is no longer required to look behind the certificate in order to determine the actual owner.[31] To do so would be contrary to the evident purpose of Section 39 of Act 496 which we quote hereunder:

“Sec. 39. Every person receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value in good faith shall hold the same free of all encumbrances except those noted on said certificate, and any of the following encumbrances which may be subsisting, namely:

“First. Liens, claims, or rights arising or existing under the laws or Constitution of the United States or of the Philippine Islands which the statutes of the Philippine Islands cannot require to appear of record in the

Registry.

“Second. Taxes within two years after the same became due and payable.

“Third. Any public highway, way, private way established by law, or any Government irrigation canal or lateral thereof, where the certificate of title does not state that the boundaries of such highway, way, or irrigation canal or lateral thereof, have been determined.

“But if there are easements or other rights appurtenant to a parcel of registered land which for any reason have failed to be registered, such easements or rights shall remain so appurtenant notwithstanding such failure, and shall be held to pass with the land until cut off or extinguished by the registration of the servient estate, or in any other manner.”

This rule is, however, subject to the right of a person deprived of land through fraud to bring an action for reconveyance, provided the rights of innocent purchasers for value and in good faith are not prejudiced. An innocent purchaser for value or any equivalent phrase shall be deemed, under Section 38 of the same Act,[32] to include an innocent lessee, mortgagee or any other encumbrancer for value.[33]

Respondent claims that, being an innocent mortgagee, it should not be required to conduct an exhaustive investigation on the history of the mortgagor's title before it could extend a loan.[34]

Respondent, however, is not an ordinary mortgagee; it is a mortgagee-bank. As such, unlike private individuals, it is expected to exercise greater care and prudence in its dealings, including those involving registered lands.[35] A banking institution is expected to exercise due diligence before entering into a mortgage contract.[36] The ascertainment of the status or condition of a property offered to it as security for a loan must be a standard and indispensable part of its operations.[37]

In *Rural Bank of Compostela v. CA*,[38] we held that a bank that failed to observe due diligence was not a mortgagee in good faith. In the words of the ponencia:

“x x x [T]he rule that persons dealing with registered lands can rely solely on the certificate of title does not apply to banks.

“Banks, indeed, should exercise more care and prudence in dealing even with registered lands, than private individuals, for their business is one affected with public interest, keeping in trust money belonging to their depositors, which they should guard against loss by not committing any act of negligence which amounts to lack of good faith by which they would be denied the protective mantle of the land registration statute, Act [No.] 496, extended only to purchasers for value and in good faith, as well as to mortgagees of the same character and description.” (Citations omitted)

Recently, in *Adriano v. Pangilinan*,[39] we said that the due diligence required of banks extended even to persons regularly engaged in the business of lending money secured by real estate mortgages.

The evidence before us indicates that respondent bank was not a mortgagee in good faith.[40] First, at the time the property was mortgaged to it, it failed to conduct an ocular inspection.[41] Judicial notice is taken of the standard practice for banks before they approve a loan: to send representatives to the premises of the land offered as collateral and to investigate the ownership thereof.[42] As correctly observed by the RTC, respondent, before constituting the mortgage over the subject property, should have taken into consideration the following questions:

“1) Was the price of P150,000.00 for a 33.9 hectare agricultural parcel of land not too cheap even in 1978?

“2) Why did Candelaria Sanchez sell the property at the same price of P150,000.00 to Norma Sulit on the same date, June 21, 1978 when she supposedly acquired it from the plaintiffs?

“3) Being agricultural land, didn’t it occur to the intervenors that there would be tenants to be compensated or who might pose as obstacles to the mortgagee’s exercise of acts of dominion?

“4) In an area as big as that property, [why] did they not verify if there were squatters?

“5) What benefits or prospects thereof could the ultimate owner expect out of the property?

“Verily, the foregoing circumstances should have been looked into, for if either or both companies did, they could have discovered that possession of the land was neither with Candelaria nor with Norma.”[43]

Respondent was clearly wanting in the observance of the necessary precautions to ascertain the flaws in the title of Sulit and to examine the condition of the property she sought to mortgage.[44] It should not have simply relied on the face of the Certificate of Title to the property, as its ancillary function of investing funds required a greater degree of diligence.[45] Considering the substantial loan involved at the time, it should have exercised more caution.[46]

Moreover, the subject property, being situated in Bulacan, could have been easily and conveniently inspected by respondent. A person who deliberately ignores a significant fact that would create suspicion in an otherwise reasonable person is not an innocent purchaser for value.[47]

Second, respondent was already aware that there was an adverse claim and notice of lis pendens annotated on the Certificate of Title when it registered the mortgage on March 14, 1980. Unless duly registered, a mortgage does not affect third parties like herein petitioners, as provided under Section 51 of PD NO. 1529,[48] which we reproduce hereunder:

“SEC. 51. Conveyance and other dealings by registered owner. - An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. He may use such forms of deeds, mortgages, leases or other voluntary instruments [as] are sufficient in law. But no deed, mortgage, lease, or other voluntary instrument except a will, purporting to convey or affect registered land, shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the clerk or register of deeds to make registration.

“The act of registration shall be the operative act to convey and affect the land, and in all cases under this Act the registration shall be made in the office of the register of deeds for the province or city, where the land lies.”

True, registration is not the operative act for a mortgage to be binding between the parties. But to third persons, it is indispensable.[49] In the present case, the adverse claim and the notice of lis pendens were annotated on the title on October 30, 1979 and December 10, 1979, respectively; the real estate mortgage over the subject property was registered by respondent only on March 14, 1980. Settled in this jurisdiction is the doctrine that a prior registration of a lien creates a preference.[50] Even a subsequent registration of the prior mortgage will not diminish this preference, which retroacts to the date of the annotation of the notice of lis pendens and the adverse claim.[51] Thus, respondent’s failure to register the real estate mortgage[52] prior to these annotations, resulted in the mortgage being binding only between it and the mortgagor, Sulit. Petitioners, being third parties to the mortgage, were not bound by it.[53] Contrary to respondent’s claim that petitioners were in bad faith because they already had knowledge of the existence of the mortgage in favor of respondent when they caused the aforesaid annotations, petitioner Edilberto Cruz said that they only knew of this mortgage when respondent intervened in the RTC proceedings.[54]

On the question of who has a preferential right over the property, the long-standing rule, as provided by Article 2085[55] of the Civil Code,[56] is that only the absolute owner of the property can constitute a valid mortgage on it. In case of foreclosure, a sale would result in the transmission only of whatever rights the seller had over of the

thing sold.[57]

In the instant case, the two Deeds of Sale were absolutely simulated; hence, null and void.[58] Thus, they did not convey any rights that could ripen into valid titles.[59] Necessarily, the subsequent real estate mortgage constituted by Sulit in favor of respondent was also null and void, because the former was not the owner thereof. There being no valid real estate mortgage, there could also be no valid foreclosure or valid auction sale, either. At bottom, respondent cannot be considered either as a mortgagee or as a purchaser in good faith. This being so, petitioners would be in the same position as they were before they executed the simulated Deed of Sale in favor of Sanchez. They are still the owners of the property.[60]

WHEREFORE, the Petition is GRANTED and the assailed Decision SET ASIDE. The Decision of the RTC of Bulacan, (Branch 21) dated January 25, 1996 is REINSTATED. No costs.

SO ORDERED.

Melo, (Chairman), Sandoval-Gutierrez, and Carpio, JJ., concur.
Vitug, J., abroad on official business.

[1] Rollo, pp. 105-116. Penned by Justice Portia Aliño-Hormachuelos and concurred in by JJ Fermin A. Martin Jr. (Division chairman) and Mercedes Gozo-Dadole (member).

[2] Assailed CA Decision, p. 11; rollo, p. 115.

[3] Assailed Decision, pp. 3-5; rollo, pp. 107-109.

[4] Assailed Decision, p. 10; rollo, p.114.

[5] The case was deemed submitted for decision on November 22, 2001 upon the Court's receipt of respondent's Memorandum, which was signed by Attys. Marilyn Salamanca Guzman and Raymund Hilarion R. Genilo. Petitioners' Memorandum, filed on November 5, 2001, was signed by Atty. Vicente H. Reyes.

[6] Petitioners' Memorandum, pp. 13-14; rollo, pp. 217-218; original in upper case.

[7] Annex "H"; rollo, pp. 119-120.

[8] Annex "I"; rollo, p. 121.

[9] Art. 1370 of the Civil Code.

[10] Art. 1371 of the Civil Code; Cruz v. CA, 293 SCRA 239 July 27, 1998; Sicad v. CA, 294 SCRA 183, August 13, 1998; People's Aircargo and Warehouse Co., Inc. v. CA, 297 SCRA 170, October 7, 1998.

[11] Cf. Villafior v. CA, 280 SCRA 297, October 9, 1997; Tongoy v. CA, 123 SCRA 99, 118, June 28, 1983; Rodriguez v. Rodriguez, 20 SCRA 908, 914, July 31, 1967.

[12] 294 SCRA 289, 304-305, August 17, 1998, per Quisumbing, J.

[13] 40 Phil 921, March 16, 1920, Torres, J.

[14] Annex "H"; rollo, pp. 119-120.

[15] TSN, December 4, 1984, pp. 9-10.

[16] Annex "I"; rollo, p. 121.

[17] TSN, September 16, 1982, pp. 4-5.

[18] Sunshine Finance and Investment Corp. v IAC, 203 SCRA 210, October 28, 1991.

[19] Respondent's Memorandum, p. 6; rollo, p. 277.

[20] Ibid., p. 5; *ibid.*, p. 276.

[21] Suntay v. CA, 251 SCRA 430, December 19, 1995.

[22] Respondent's memorandum, p. 12; rollo, p. 283.

[23] Velasquez v. CA, 345 SCRA 468, November 22, 2000.

[24] Yu Bun Guan v. Elvira Ong, *supra*.

[25] Velasquez v. Court of Appeals; *supra*, p. 475.

[26] This article provides:

“The following contracts are inexistent and void from the beginning:

“ x x x x x x x x

“(2) Those which are absolutely simulated or fictitious;

“x x x x x x x x.”

[27] Santiago v. CA, 278 SCRA 98, 107, August 21, 1997.

[28] Reyes v. CA, 315 SCRA 626 September 30, 1999.

[29] Yu Bun Guan v. Elvira Ong, *supra*.

[30] Santiago v. CA, *supra*.

[31] Development Bank of the Philippines v. CA, *supra*, p. 288; Heirs of Spouses Benito Gavino and Juana Euste v. CA, 291 SCRA 495, June 29, 1998.

[32] Sec. 38 of Act No. 496, the Land Registration Act, provides:

“If the court after hearing finds that the applicant or adverse claimant has title as stated in his application or adverse claim and proper for registration, a decree of confirmation and registration shall be entered. Every decree of registration shall bind the land, and quiet title thereto, subject only to the exceptions stated in the following section. It shall be conclusive upon and against all persons, including the Insular Government and all the branches thereof, whether mentioned by name in the application, notice, or citation, or included in the general description "To whom it may concern." Such decree shall not be opened by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding in any court for reversing judgments or decrees; subject, however, to the right of any person deprived of land or of any estate or interest therein by decree of registration obtained by fraud to file in the competent Court of First Instance a petition for review within one year after entry of the decree provided no innocent purchaser for value has acquired an interest. Upon the expiration of said term of one year, every decree or certificate of title issued in accordance with this section shall be incontrovertible. If there is any such purchaser, the decree of registration shall not be opened, but shall remain in full force and effect forever, subject only to the right of appeal hereinbefore provided: Provided, however, That no decree or certificate of title issued to persons not parties to the appeal shall be cancelled or annulled. But any person aggrieved by such decree in any case may pursue his remedy by action for damages against the applicant or any other person for fraud in procuring the decree. Whenever the

phrase "innocent purchaser for value" or an equivalent phrase occurs in this Act, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value." (As amended by §3, Act 3621; and §1, Act No. 3630.)

[33] Sunshine Finance and Investment Corp v. IAC, *supra*, p. 216.

[34] Development Bank of the Philippines v. CA, 331 SCRA 267, 289, April 28, 2000.

[35] Cavite Development Bank v. Lim, 324 SCRA 346, February 1, 2000, citing Tomas v. Tomas, 98 SCRA 280, June 25, 1980.

[36] Development Bank of the Philippines v. Court of Appeals, *supra*.

[37] Sunshine Finance and Investment Corp v. IAC, *supra*, p. 216

[38] 271 SCRA 76, 88, April 8, 1997, per Davide Jr., CJ.

[39] GR No. 13747, January 16, 2002.

[40] Development Bank of the Philippines v. CA, *supra*.

[41] Government Service Insurance System v. CA, 287 SCRA 204, March 6, 1998.

[42] Development Bank of the Philippines v. CA, *supra*.

[43] RTC Decision, pp. 5-6; rollo, pp. 100-101, per Judge Cesar M. Solis.

[44] Sunshine Finance and Investment Corp. v. IAC, *supra*.

[45] Government Service Insurance System v. CA, *supra*, p. 211.

[46] *Ibid.*, p. 210.

[47] Development Bank of the Philippines v. CA, *supra*, p. 290.

[48] Property Registration Decree.

[49] "Art. 2125. In addition to the requisites stated in article 2085, it is indispensable in order that a mortgage may be validly constituted, that the document in which it appears be recorded in the Registry of Property. If the instrument is not recorded, the mortgage is nevertheless binding between the parties.

"The persons in whose favor the law establishes a mortgage have no other right than to demand the execution and the recording of the document in which the mortgage is formalized."

[50] Lavides v. Pre, GR No. 127830, October 17, 2001.

[51] *Ibid.*

[52] Annex "L"; rollo, pp. 130-135.

[53] Ramos. v. CA, 302 SCRA 589, February 3, 1999.

[54] See TSN, July 28, 1986, pp. 14-15.

[55] "Art. 2085. The following requisites are essential to the contracts of pledge and mortgage:

"x x x x x x x x

"(2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged;

“x x x x x x x x.”

[56] Lagrosa v. CA, 312 SCRA 298, August 12, 1999.

[57] Art. 1458 Civil Code; Nufable v. Nufable, 309 SCRA 692, July 2, 1999.

[58] Francisco v. Francisco-Alfonso, GR No. 138774, March 8, 2001, per Pardo, J.

[59] Velasquez v. CA, supra.

[60] Government Service Insurance System v. CA, supra, p. 211.

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