

HOMEOWNERS SAVINGS & LOAN BANK, PETITIONER, VS. MIGUELA C. DAILO, RESPONDENT.

G.R. NO. 153802. March 11, 2005

Ponente: TINGA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-153802/>

TINGA, J.:

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court, assailing the Decision[1] of the Court of Appeals in CA-G.R. CV No. 59986 rendered on June 3, 2002, which affirmed with modification the October 18, 1997 Decision[2] of the Regional Trial Court, Branch 29, San Pablo City, Laguna in Civil Case No. SP-4748 (97).

The following factual antecedents are undisputed.

Respondent Miguela C. Dailo and Marcelino Dailo, Jr. were married on August 8, 1967. During their marriage, the spouses purchased a house and lot situated at Barangay San Francisco, San Pablo City from a certain Sandra Dalida. The subject property was declared for tax assessment purposes under Assessment of Real Property No. 94-051-2802. The Deed of Absolute Sale, however, was executed only in favor of the late Marcelino Dailo, Jr. as vendee thereof to the exclusion of his wife.[3]

On December 1, 1993, Marcelino Dailo, Jr. executed a Special Power of Attorney (SPA) in favor of one Lilibeth Gesmundo, authorizing the latter to obtain a loan from petitioner Homeowners Savings and Loan Bank to be secured by the spouses Dailo's house and lot in San Pablo City. Pursuant to the SPA, Gesmundo obtained a loan in the amount of P300,000.00 from petitioner. As security therefor, Gesmundo executed on the same day a Real Estate Mortgage constituted on the subject property in favor of petitioner. The abovementioned transactions, including the execution of the SPA in favor of Gesmundo, took place without the knowledge and consent of respondent.[4]

Upon maturity, the loan remained outstanding. As a result, petitioner instituted extrajudicial foreclosure proceedings on the mortgaged property. After the extrajudicial sale thereof, a Certificate of Sale was issued in favor of petitioner as the highest bidder. After the lapse of one year without the property being redeemed, petitioner, through its vice-president, consolidated the ownership thereof by executing on June 6, 1996 an Affidavit of Consolidation of Ownership and a Deed of Absolute Sale.[5]

In the meantime, Marcelino Dailo, Jr. died on December 20, 1995. In one of her visits to the subject property, respondent learned that petitioner had already employed a certain Roldan Brion to clean its premises and that her car, a Ford sedan, was razed because Brion allowed a boy to play with fire within the premises.

Claiming that she had no knowledge of the mortgage constituted on the subject property, which was conjugal in nature, respondent instituted with the Regional Trial Court, Branch 29, San Pablo City, Civil Case No. SP-2222 (97) for Nullity of Real Estate Mortgage and Certificate of Sale, Affidavit of Consolidation of Ownership, Deed of Sale, Reconveyance with Prayer for Preliminary Injunction and Damages against petitioner. In the latter's

Answer with Counterclaim, petitioner prayed for the dismissal of the complaint on the ground that the property in question was the exclusive property of the late Marcelino Dailo, Jr.

After trial on the merits, the trial court rendered a Decision on October 18, 1997. The dispositive portion thereof reads as follows:

WHEREFORE, the plaintiff having proved by the preponderance of evidence the allegations of the Complaint, the Court finds for the plaintiff and hereby orders:

ON THE FIRST CAUSE OF ACTION:

- The declaration of the following documents as null and void:

(a) The Deed of Real Estate Mortgage dated December 1, 1993 executed before Notary Public Romulo Urrea and his notarial register entered as Doc. No. 212; Page No. 44, Book No. XXI, Series of 1993.

(b) The Certificate of Sale executed by Notary Public Reynaldo Alcantara on April 20, 1995.

(c) The Affidavit of Consolidation of Ownership executed by the defendant

(c) The Affidavit of Consolidation of Ownership executed by the defendant over the residential lot located at Brgy. San Francisco, San Pablo City, covered by ARP No. 95-091-1236 entered as Doc. No. 406; Page No. 83, Book No. III, Series of 1996 of Notary Public Octavio M. Zayas.

(d) The assessment of real property No. 95-051-1236.

- The defendant is ordered to reconvey the property subject of this complaint to the plaintiff.

ON THE SECOND CAUSE OF ACTION

- The defendant to pay the plaintiff the sum of P40,000.00 representing the value of the car which was burned.

ON BOTH CAUSES OF ACTION

- The defendant to pay the plaintiff the sum of P25,000.00 as attorney's fees;

- The defendant to pay plaintiff P25,000.00 as moral damages;

- The defendant to pay the plaintiff the sum of P10,000.00 as exemplary damages;

- To pay the cost of the suit.

The counterclaim is dismissed.

SO ORDERED.[6]

Upon elevation of the case to the Court of Appeals, the appellate court affirmed the trial court's finding that the subject property was conjugal in nature, in the absence of clear and convincing evidence to rebut the presumption that the subject property acquired during the marriage of spouses Dailo belongs to their conjugal partnership.[7] The appellate court declared as void the mortgage on the subject property because it was constituted without the knowledge and consent of respondent, in accordance with Article 124 of the Family Code. Thus, it upheld the trial court's order to reconvey the subject property to respondent.[8] With respect to the damage to respondent's car, the appellate court found petitioner to be liable therefor because it is responsible for the consequences of the acts or omissions of the person it hired to accomplish the assigned task.[9] All told, the appellate court affirmed the trial court's Decision, but deleted the award for damages and attorney's fees for lack of basis.[10]

Hence, this petition, raising the following issues for this Court's consideration:

- WHETHER OR NOT THE MORTGAGE CONSTITUTED BY THE LATE MARCELINO DAILO, JR. ON THE SUBJECT PROPERTY AS CO-OWNER THEREOF IS VALID AS TO HIS UNDIVIDED SHARE.
- WHETHER OR NOT THE CONJUGAL PARTNERSHIP IS LIABLE FOR THE PAYMENT OF THE LOAN OBTAINED BY THE LATE MARCELINO DAILO, JR. THE SAME HAVING REDOUNDED TO THE BENEFIT OF THE FAMILY.[11]

First, petitioner takes issue with the legal provision applicable to the factual milieu of this case. It contends that Article 124 of the Family Code should be construed in relation to Article 493 of the Civil Code, which states:

ART. 493. 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. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.

Article 124 of the Family Code provides in part:

ART. 124. The administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly. . . .

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 the powers of disposition or encumbrance which must have the 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. . . .

Petitioner argues that although Article 124 of the Family Code requires the consent of the other spouse to the mortgage of conjugal properties, the framers of the law could not have intended to curtail the right of a spouse from exercising full ownership over the portion of the conjugal property pertaining to him under the concept of co-ownership.[12] Thus, petitioner would have this Court uphold the validity of the mortgage to the extent of the late Marcelino Dailo, Jr.'s share in the conjugal partnership.

In *Guiang v. Court of Appeals*,[13] it was held that the sale of a conjugal property requires the consent of both the husband and wife.[14] In applying Article 124 of the Family Code, this Court declared that the absence of the consent of one renders the entire sale null and void, including the portion of the conjugal property pertaining to the husband who contracted the sale. The same principle in *Guiang* squarely applies to the instant case. As shall be discussed next, there is no legal basis to construe Article 493 of the Civil Code as an exception to Article 124 of the Family Code.

Respondent and the late Marcelino Dailo, Jr. were married on August 8, 1967. In the absence of a marriage settlement, the system of relative community or conjugal partnership of gains governed the property relations between respondent and her late husband.[15] With the effectivity of the Family Code on August 3, 1988, Chapter 4 on Conjugal Partnership of Gains in the Family Code was made applicable to conjugal partnership of gains already established before its effectivity unless vested rights have already been acquired under the Civil Code or other laws.[16]

The rules on co-ownership do not even apply to the property relations of respondent and the late Marcelino Dailo, Jr. even in a suppletory manner. The regime of conjugal partnership of gains is a special type of partnership, where the husband and wife place in a common fund the proceeds, products, fruits and income from their separate properties and those acquired by either or both spouses through their efforts or by chance.[17] Unlike the absolute community of property wherein the rules on co-ownership apply in a suppletory manner,[18] the conjugal partnership shall be governed by the rules on contract of partnership in all that is not in conflict with what is

expressly determined in the chapter (on conjugal partnership of gains) or by the spouses in their marriage settlements.[19] Thus, the property relations of respondent and her late husband shall be governed, foremost, by Chapter 4 on Conjugal Partnership of Gains of the Family Code and, suppletorily, by the rules on partnership under the Civil Code. In case of conflict, the former prevails because the Civil Code provisions on partnership apply only when the Family Code is silent on the matter.

The basic and established fact is that during his lifetime, without the knowledge and consent of his wife, Marcelino Dailo, Jr. constituted a real estate mortgage on the subject property, which formed part of their conjugal partnership. By express provision of Article 124 of the Family Code, in the absence of (court) authority or written consent of the other spouse, any disposition or encumbrance of the conjugal property shall be void.

The aforequoted provision does not qualify with respect to the share of the spouse who makes the disposition or encumbrance in the same manner that the rule on co-ownership under Article 493 of the Civil Code does. Where the law does not distinguish, courts should not distinguish.[20] Thus, both the trial court and the appellate court are correct in declaring the nullity of the real estate mortgage on the subject property for lack of respondent's consent.

Second, petitioner imposes the liability for the payment of the principal obligation obtained by the late Marcelino Dailo, Jr. on the conjugal partnership to the extent that it redounded to the benefit of the family.[21]

Under Article 121 of the Family Code, "[T]he conjugal partnership shall be liable for: . . . (3) Debts and obligations contracted by either spouse without the consent of the other to the extent that the family may have been benefited;" For the subject property to be held liable, the obligation contracted by the late Marcelino Dailo, Jr. must have redounded to the benefit of the conjugal partnership. There must be the requisite showing then of some advantage which clearly accrued to the welfare of the spouses. Certainly, to make a conjugal partnership respond for a liability that should appertain to the husband alone is to defeat and frustrate the avowed objective of the new Civil Code to show the utmost concern for the solidarity and well-being of the family as a unit.[22]

The burden of proof that the debt was contracted for the benefit of the conjugal partnership of gains lies with the creditor-party litigant claiming as such.[23] *Ei incumbit probatio qui dicit, non qui negat* (he who asserts, not he who denies, must prove).[24] Petitioner's sweeping conclusion that the loan obtained by the late Marcelino Dailo, Jr. to finance the construction of housing units without a doubt redounded to the benefit of his family, without adducing adequate proof, does not persuade this Court. Other than petitioner's bare allegation, there is nothing from the records of the case to compel a finding that, indeed, the loan obtained by the late Marcelino Dailo, Jr. redounded to the benefit of the family. Consequently, the conjugal partnership cannot be held liable for the payment of the principal obligation.

In addition, a perusal of the records of the case reveals that during the trial, petitioner vigorously asserted that the subject property was the exclusive property of the late Marcelino Dailo, Jr. Nowhere in the answer filed with the trial court was it alleged that the proceeds of the loan redounded to the benefit of the family. Even on appeal, petitioner never claimed that the family benefited from the proceeds of the loan. When a party adopts a certain theory in the court below, he will not be permitted to change his theory on appeal, for to permit him to do so would not only be unfair to the other party but it would also be offensive to the basic rules of fair play, justice and due process.[25] A party may change his legal theory on appeal only when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory.[26]

WHEREFORE, the petition is DENIED. Costs against petitioner.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Penned by J. Juan Q. Enriquez and concurred in by JJ. Eugenio S. Labitoria, Chairman, and Teodoro P. Regino; Rollo, p. 34.

[2] Penned by Judge Bienvenido Reyes.

[3] Decision of the Court of Appeals dated June 3, 2002, p. 3; Rollo, p. 36,

[4] Ibid.

[5] Ibid.

[6] As quoted in the Decision of the Court of Appeals, pp. 1-2; Rollo, pp. 34-35.

[7] Decision of the Court of Appeals, p. 5; Rollo, p. 38.

[8] Id. at 6; Rollo, p. 39.

[9] Ibid.

[10] Id. at 7; Rollo, p. 40.

[11] Rollo, p. 24.

[12] Rollo, p. 26.

[13] 353 Phil. 578 (1998).

[14] Id. at 374.

[15] Article 119, The New Civil Code.

[16] Article 105, Family Code.

[17] Article 106, Family Code.

[18] Article 90, Family Code.

[19] Article 108, Family Code.

[20] Recaña, Jr. v. Court of Appeals, G.R. No. 123850, January 5, 2001, 349 SCRA 24, 33 .

[21] Rollo, p. 27.

[22] Ayala Investment & Development Corp. v. Court of Appeals, 349 Phil. 942, 952 (1998), citing Luzon Surety Co., Inc. v. De Garcia, 30 SCRA 111 (1969).

[23] Id. at 954, 286 SCRA 272, 283 (1998).

[24] Castilex Industrial Corporation v. Vasquez, Jr., 378 Phi. 1009 (1999).

[25] Drilon v. Court of Appeals, 336 Phil. 949 (1997).

[26] Heirs of Enrique Zambales v. Court of Appeals, 205 Phil. 789 (1983).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.