

METROPOLITAN BANK AND TRUST CO., Petitioner, vs. NICHOLSON PASCUAL a.k.a. NELSON PASCUAL, Respondent.*G.R. No. 163744. February 29, 2008*

Ponente: VELASCO JR., J.

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Respondent Nicholson Pascual and Florencia Nevalga were married on January 19, 1985. During the union, Florencia bought from spouses Clarito and Belen Sering a 250-square meter lot with a three-door apartment standing thereon located in Makati City. Subsequently, Transfer Certificate of Title (TCT) No. S-101473/T-510 covering the purchased lot was canceled and, in lieu thereof, TCT No. 156283[1] of the Registry of Deeds of Makati City was issued in the name of Florencia, “married to Nelson Pascual” a.k.a. Nicholson Pascual.

In 1994, Florencia filed a suit for the declaration of nullity of marriage under Article 36 of the Family Code, docketed as Civil Case No. Q-95-23533. After trial, the Regional Trial Court (RTC), Branch 94 in Quezon City rendered, on July 31, 1995, a Decision,[2] declaring the marriage of Nicholson and Florencia null and void on the ground of psychological incapacity on the part of Nicholson. In the same decision, the RTC, inter alia, ordered the dissolution and liquidation of the ex-spouses’ conjugal partnership of gains. Subsequent events saw the couple going their separate ways without liquidating their conjugal partnership.

On April 30, 1997, Florencia, together with spouses Norberto and Elvira Oliveros, obtained a PhP 58 million loan from petitioner Metropolitan Bank and Trust Co. (Metrobank). To secure the obligation, Florencia and the spouses Oliveros executed several real estate mortgages (REMs) on their properties, including one involving the lot covered by TCT No. 156283. Among the documents Florencia submitted to procure the loan were a copy of TCT No. 156283, a photocopy of the marriage-nullifying RTC decision, and a document denominated as “Waiver” that Nicholson purportedly executed on April 9, 1995. The waiver, made in favor of Florencia, covered the conjugal properties of the ex-spouses listed therein, but did not incidentally include the lot in question.

Due to the failure of Florencia and the spouses Oliveros to pay their loan obligation when it fell due, Metrobank, on November 29, 1999, initiated foreclosure proceedings under Act No. 3135, as amended, before the Office of the Notary Public of Makati City. Subsequently, Metrobank caused the publication of the notice of sale on three issues of Remate.[3] At the auction sale on January 21, 2000, Metrobank emerged as the highest bidder.

Getting wind of the foreclosure proceedings, Nicholson filed on June 28, 2000, before the RTC in Makati City, a Complaint to declare the nullity of the mortgage of the disputed property, docketed as Civil Case No. 00-789 and eventually raffled to Branch 65 of the court. In it, Nicholson alleged that the property, which is still conjugal property, was mortgaged without his consent.

Metrobank, in its Answer with Counterclaim and Cross-Claim,[4] alleged that the disputed lot, being registered in Florencia’s name, was paraphernal. Metrobank also asserted having approved the mortgage in good faith.

Florencia did not file an answer within the reglementary period and, hence, was subsequently declared in default.

The RTC Declared the REM Invalid

After trial on the merits, the RTC rendered, on September 24, 2001, judgment finding for Nicholson. The fallo reads:

PREMISES CONSIDERED, the Court renders judgment declaring the real estate mortgage on the property covered by [TCT] No. 156283 of the Registry of Deeds for the City of Makati as well as all proceedings thereon null and void.

The Court further orders defendants [Metrobank and Florencia] jointly and severally to pay plaintiff [Nicholson]:

- PhP100,000.00 by way of moral damages;
- PhP75,000.00 by way of attorney's fees; and
- The costs.

SO ORDERED.[5]

Even as it declared the invalidity of the mortgage, the trial court found the said lot to be conjugal, the same having been acquired during the existence of the marriage of Nicholson and Florencia. In so ruling, the RTC invoked Art. 116 of the Family Code, providing that "all property acquired during the marriage, whether the acquisition appears to have been made, contracted or registered in the name of one or both spouses, is presumed to be conjugal unless the contrary is proved." To the trial court, Metrobank had not overcome the presumptive conjugal nature of the lot. And being conjugal, the RTC concluded that the disputed property may not be validly encumbered by Florencia without Nicholson's consent.

The RTC also found the deed of waiver Florencia submitted to Metrobank to be fatally defective. For let alone the fact that Nicholson denied executing the same and that the signature of the notarizing officer was a forgery, the waiver document was allegedly executed on April 9, 1995 or a little over three months before the issuance of the RTC decision declaring the nullity of marriage between Nicholson and Florencia.

The trial court also declared Metrobank as a mortgagee in bad faith on account of negligence, stating the observation that certain data appeared in the supporting contract documents, which, if properly scrutinized, would have put the bank on guard against approving the mortgage. Among the data referred to was the date of execution of the deed of waiver.

The RTC dismissed Metrobank's counterclaim and cross-claim against the ex-spouses.

Metrobank's motion for reconsideration was denied. Undeterred, Metrobank appealed to the Court of Appeals (CA), the appeal docketed as CA-G.R. CV No. 74874.

The CA Affirmed with Modification the RTC's Decision

On January 28, 2004, the CA rendered a Decision affirmatory of that of the RTC, except for the award therein of moral damages and attorney's fees which the CA ordered deleted. The dispositive portion of the CA's Decision reads:

WHEREFORE, premises considered, the appealed decision is hereby AFFIRMED WITH MODIFICATION with respect to the award of moral damages and attorney's fees which is hereby DELETED.

SO ORDERED.[6]

Like the RTC earlier held, the CA ruled that Metrobank failed to overthrow the presumption established in Art.

116 of the Family Code. And also decreed as going against Metrobank was Florencia's failure to comply with the prescriptions of the succeeding Art. 124 of the Code on the disposition of conjugal partnership property. Art. 124 states:

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 x x x.

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 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.

As to the deletion of the award of moral damages and attorney's fees, the CA, in gist, held that Metrobank did not enter into the mortgage contract out of ill-will or for some fraudulent purpose, moral obliquity, or like dishonest considerations as to justify damages.

Metrobank moved but was denied reconsideration by the CA.

Thus, Metrobank filed this Petition for Review on Certiorari under Rule 45, raising the following issues for consideration:

- Whether or not the [CA] erred in declaring subject property as conjugal by applying Article 116 of the Family Code.
- Whether or not the [CA] erred in not holding that the declaration of nullity of marriage between the respondent Nicholson Pascual and Florencia Nevalga ipso facto dissolved the regime of community of property of the spouses.
- Whether or not the [CA] erred in ruling that the petitioner is an innocent purchaser for value.[7]

Our Ruling

A modification of the CA's Decision is in order.

The Disputed Property is Conjugal

It is Metrobank's threshold posture that Art. 160 of the Civil Code providing that "[a]ll property of the marriage is presumed to belong to the conjugal partnership, unless it be prove[n] that it pertains exclusively to the husband or to the wife," applies. To Metrobank, Art. 116 of the Family Code could not be of governing application inasmuch as Nicholson and Florencia contracted marriage before the effectivity of the Family Code on August 3, 1988. Citing *Manongsong v. Estimo*,^[8] Metrobank asserts that the presumption of conjugal ownership under Art. 160 of the Civil Code applies when there is proof that the property was acquired during the marriage. Metrobank adds, however, that for the presumption of conjugal ownership to operate, evidence must be adduced to prove that not only was the property acquired during the marriage but that conjugal funds were used for the acquisition, a burden Nicholson allegedly failed to discharge.

To bolster its thesis on the paraphernal nature of the disputed property, Metrobank cites *Francisco v. Court of Appeals*^[9] and *Jocson v. Court of Appeals*,^[10] among other cases, where this Court held that a property registered in the name of a certain person with a description of being married is no proof that the property was

acquired during the spouses' marriage.

On the other hand, Nicholson, banking on *De Leon v. Rehabilitation Finance Corporation*[11] and *Wong v. IAC*,[12] contends that Metrobank failed to overcome the legal presumption that the disputed property is conjugal. He asserts that Metrobank's arguments on the matter of presumption are misleading as only one postulate needs to be shown for the presumption in favor of conjugal ownership to arise, that is, the fact of acquisition during marriage. Nicholson dismisses, as inapplicable, *Francisco and Jocson*, noting that they are relevant only when there is no indication as to the exact date of acquisition of the property alleged to be conjugal.

As a final point, Nicholson invites attention to the fact that Metrobank had virtually recognized the conjugal nature of the property in at least three instances. The first was when the bank lumped him with Florencia in Civil Case No. 00-789 as co-mortgagors and when they were referred to as "spouses" in the petition for extrajudicial foreclosure of mortgage. Then came the published notice of foreclosure sale where Nicholson was again designated as co-mortgagor. And third, in its demand-letter[13] to vacate the disputed lot, Metrobank addressed Nicholson and Florencia as "spouses," albeit the finality of the decree of nullity of marriage between them had long set in.

We find for Nicholson.

First, while Metrobank is correct in saying that Art. 160 of the Civil Code, not Art. 116 of the Family Code, is the applicable legal provision since the property was acquired prior to the enactment of the Family Code, it errs in its theory that, before conjugal ownership could be legally presumed, there must be a showing that the property was acquired during marriage using conjugal funds. Contrary to Metrobank's submission, the Court did not, in *Manongsong*,[14] add the matter of the use of conjugal funds as an essential requirement for the presumption of conjugal ownership to arise. Nicholson is correct in pointing out that only proof of acquisition during the marriage is needed to raise the presumption that the property is conjugal. Indeed, if proof on the use of conjugal is still required as a necessary condition before the presumption can arise, then the legal presumption set forth in the law would veritably be a superfluity. As we stressed in *Castro v. Miat*:

Petitioners also overlook Article 160 of the New Civil Code. It provides that "all property of the marriage is presumed to be conjugal partnership, unless it be prove[n] that it pertains exclusively to the husband or to the wife." This article does not require proof that the property was acquired with funds of the partnership. The presumption applies even when the manner in which the property was acquired does not appear.[15] (Emphasis supplied.)

Second, *Francisco and Jocson* do not reinforce Metrobank's theory. Metrobank would thrust on the Court, invoking the two cases, the argument that the registration of the property in the name of "Florencia Nevalga, married to Nelson Pascual" operates to describe only the marital status of the title holder, but not as proof that the property was acquired during the existence of the marriage.

Metrobank is wrong. As Nicholson aptly points out, if proof obtains on the acquisition of the property during the existence of the marriage, then the presumption of conjugal ownership applies. The correct lesson of *Francisco and Jocson* is that proof of acquisition during the marital coverture is a condition sine qua non for the operation of the presumption in favor of conjugal ownership. When there is no showing as to when the property was acquired by the spouse, the fact that a title is in the name of the spouse is an indication that the property belongs exclusively to said spouse.[16]

The Court, to be sure, has taken stock of Nicholson's arguments regarding Metrobank having implicitly acknowledged, thus being in virtual estoppel to question, the conjugal ownership of the disputed lot, the bank having named the former in the foreclosure proceedings below as either the spouse of Florencia or her

co-mortgagor. It is felt, however, that there is no compelling reason to delve into the matter of estoppel, the same having been raised only for the first time in this petition. Besides, however Nicholson was designated below does not really change, one way or another, the classification of the lot in question.

Termination of Conjugal Property Regime does
not ipso facto End the Nature of Conjugal Ownership

Metrobank next maintains that, contrary to the CA's holding, Art. 129 of the Family Code is inapplicable. Art. 129 in part reads:

Art. 129. Upon the dissolution of the conjugal partnership regime, the following procedure shall apply:

x x x x

(7) The net remainder of the conjugal partnership properties shall constitute the profits, which shall be divided equally between husband and wife, unless a different proportion or division was agreed upon in the marriage settlements or unless there has been a voluntary waiver or forfeiture of such share as provided in this Code.

Apropos the aforequoted provision, Metrobank asserts that the waiver executed by Nicholson, effected as it were before the dissolution of the conjugal property regime, vested on Florencia full ownership of all the properties acquired during the marriage.

Nicholson counters that the mere declaration of nullity of marriage, without more, does not automatically result in a regime of complete separation when it is shown that there was no liquidation of the conjugal assets.

We again find for Nicholson.

While the declared nullity of marriage of Nicholson and Florencia severed their marital bond and dissolved the conjugal partnership, the character of the properties acquired before such declaration continues to subsist as conjugal properties until and after the liquidation and partition of the partnership. This conclusion holds true whether we apply Art. 129 of the Family Code on liquidation of the conjugal partnership's assets and liabilities which is generally prospective in application, or Section 7, Chapter 4, Title IV, Book I (Arts. 179 to 185) of the Civil Code on the subject, Conjugal Partnership of Gains. For, the relevant provisions of both Codes first require the liquidation of the conjugal properties before a regime of separation of property reigns.

In *Dael v. Intermediate Appellate Court*, we ruled that pending its liquidation following its dissolution, the conjugal partnership of gains is converted into an implied ordinary co-ownership among the surviving spouse and the other heirs of the deceased.[17]

In this pre-liquidation scenario, Art. 493 of the Civil Code shall govern the property relationship between the former spouses, where:

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. (Emphasis supplied.)

In the case at bar, Florencia constituted the mortgage on the disputed lot on April 30, 1997, or a little less than two years after the dissolution of the conjugal partnership on July 31, 1995, but before the liquidation of the partnership. Be that as it may, what governed the property relations of the former spouses when the mortgage was given is the aforequoted Art. 493. Under it, Florencia has the right to mortgage or even sell her one-half (1/2) undivided interest in the disputed property even without the consent of Nicholson. However, the rights of

Metrobank, as mortgagee, are limited only to the 1/2 undivided portion that Florencia owned. Accordingly, the mortgage contract insofar as it covered the remaining 1/2 undivided portion of the lot is null and void, Nicholson not having consented to the mortgage of his undivided half.

The conclusion would have, however, been different if Nicholson indeed duly waived his share in the conjugal partnership. But, as found by the courts a quo, the April 9, 1995 deed of waiver allegedly executed by Nicholson three months prior to the dissolution of the marriage and the conjugal partnership of gains on July 31, 1995 bore his forged signature, not to mention that of the notarizing officer. A spurious deed of waiver does not transfer any right at all, albeit it may become the root of a valid title in the hands of an innocent buyer for value.

Upon the foregoing perspective, Metrobank's right, as mortgagee and as the successful bidder at the auction of the lot, is confined only to the 1/2 undivided portion thereof heretofore pertaining in ownership to Florencia. The other undivided half belongs to Nicholson. As owner pro indiviso of a portion of the lot in question, Metrobank may ask for the partition of the lot and its property rights "shall be limited to the portion which may be allotted to [the bank] in the division upon the termination of the co-ownership."^[18] This disposition is in line with the well-established principle that the binding force of a contract must be recognized as far as it is legally possible to do so—quando res non valet ut ago, valeat quantum valere potest.^[19]

In view of our resolution on the validity of the auction of the lot in favor of Metrobank, there is hardly a need to discuss at length whether or not Metrobank was a mortgagee in good faith. Suffice it to state for the nonce that where the mortgagee is a banking institution, the general rule that a purchaser or mortgagee of the land need not look beyond the four corners of the title is inapplicable.^[20] Unlike private individuals, it behooves banks to exercise greater care and due diligence before entering into a mortgage contract. The ascertainment of the status or condition of the property offered as security and the validity of the mortgagor's title must be standard and indispensable part of the bank's operation.^[21] A bank that failed to observe due diligence cannot be accorded the status of a bona fide mortgagee,^[22] as here.

But as found by the CA, however, Metrobank's failure to comply with the due diligence requirement was not the result of a dishonest purpose, some moral obliquity or breach of a known duty for some interest or ill-will that partakes of fraud that would justify damages.

WHEREFORE, the petition is PARTLY GRANTED. The appealed Decision of the CA dated January 28, 2004, upholding with modification the Decision of the RTC, Branch 65 in Makati City, in Civil Case No. 00-789, is AFFIRMED with the MODIFICATION that the REM over the lot covered by TCT No. 156283 of the Registry of Deeds of Makati City is hereby declared valid only insofar as the pro indiviso share of Florencia thereon is concerned.

As modified, the Decision of the RTC shall read:

PREMISES CONSIDERED, the real estate mortgage on the property covered by TCT No. 156283 of the Registry of Deeds of Makati City and all proceedings thereon are NULL and VOID with respect to the undivided 1/2 portion of the disputed property owned by Nicholson, but VALID with respect to the other undivided 1/2 portion belonging to Florencia.

The claims of Nicholson for moral damages and attorney's fees are DENIED for lack of merit.

No pronouncement as to costs.

SO ORDERED.

Carpio (Acting Chairperson), Azcuna, Carpio-Morales, and Tinga, JJ., concur.
Quisumbing, (Chairperson), J., on official leave.

**** Additional member as per Special Order No. 485 dated February 14, 2008.**

[1] Rollo, pp. 111-112.

[2] Id. at 115-116.

[3] Id. at 144, Affidavit of Publication executed by Angeline E. Corro, Vice-President of Advertising of Remate.

[4] Id. at 76-83, dated August 7, 2000.

[5] Id. at 86.

[6] Id. at 53. Penned by Associate Justice Rodrigo V. Cosico and concurred in by Associate Justices Mariano C. Del Castillo and Rosalinda Asuncion-Vicente.

[7] Id. at 194.

[8] G.R. No. 136773, June 25, 2003, 404 SCRA 683.

[9] G.R. No. 102330, November 25, 1998, 299 SCRA 188.

[10] G.R. No. 55322, February 16, 1989, 170 SCRA 333.

[11] No. L-24571, December 18, 1970, 36 SCRA 289.

[12] G.R. No. 70082, August 19, 1991, 200 SCRA 792.

[13] Rollo, p. 145.

[14] Supra note 8.

[15] G.R. No. 143297, February 11, 2003, 397 SCRA 271, 280.

[16] 1 Paras, CIVIL CODE OF THE PHILIPPINES ANNOTATED 551 (15th ed.); citing *Ong v. Court of Appeals*, G.R. No. 63025, November 29, 1991, 204 SCRA 297.

[17] G.R. No. 68873, March 31, 1989, 171 SCRA 524, 532-533.

[18] CIVIL CODE, Art. 493.

[19] When a thing is of no effect as I do it, it shall have effect as far as [or in whatever way] it can; cited in *Aromin v. Floresca*, G.R. No. 160994, July 27, 2006, 496 SCRA 785, 815.

[20] *Uy v. Court of Appeals*, G.R. No. 109197, June 21, 2001, 359 SCRA 262, 270.

[21] *Cruz v. Bancom Finance Corporation*, G.R. No. 147788, March 19, 2002, 379 SCRA 490, 505.

[22] *Rural Bank of Compostela v. Court of Appeals*, G.R. No. 122801, April 8, 1997, 271 SCRA 76, 88-89.

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