# LILLIAN N. MERCADO, CYNTHIA M. FEKARIS, AND JULIAN MERCADO, JR., REPRESENTED BY THEIR ATTORNEY-IN-FACT, ALFREDO M. PEREZ, PETITIONERS, VS. ALLIED BANKING CORPORATION, RESPONDENT.

*G.R. NO. 171460. July 27, 2007*

Ponente: CHICO-NAZARIO, J.

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**CHICO-NAZARIO, J.:**

Before this Court is a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court, filed by petitioners Lillian N. Mercado, Cynthia M. Fekaris and Julian Mercado, Jr., represented by their Attorney-In-Fact, Alfredo M. Perez, seeking to reverse and set aside the Decision[1] of the Court of Appeals dated 12 October 2005, and its Resolution[2] dated 15 February 2006 in CA-G.R. CV No. 82636. The Court of Appeals, in its assailed Decision and Resolution, reversed the Decision[3] of the Regional Trial Court (RTC) of Quezon City, Branch 220 dated 23 September 2003, declaring the deeds of real estate mortgage constituted on TCT No. RT-18206 (106338) null and void. The dispositive portion of the assailed Court of Appeals Decision thus reads:

> WHEREFORE, the appealed decision is REVERSED and SET ASIDE, and a new judgment is hereby entered dismissing the [petitioners] complaint.[4]

Petitioners are heirs of Perla N. Mercado (Perla). Perla, during her lifetime, owned several pieces of real property situated in different provinces of the Philippines.

Respondent, on the other hand, is a banking institution duly authorized as such under the Philippine laws.

On 28 May 1992, Perla executed a Special Power of Attorney (SPA) in favor of her husband, Julian D. Mercado (Julian) over several pieces of real property registered under her name, authorizing the latter to perform the following acts:

> - To act in my behalf, to sell, alienate, mortgage, lease and deal otherwise over the different parcels of land described hereinafter, to wit:
>
> a) Calapan, Oriental Mindoro Properties covered by Transfer Certificates of Title Nos. T-53618 - 3,522 Square Meters, T-46810 – 3,953 Square Meters, T-53140 – 177 Square Meters, T-21403 – 263 square Meters, T-46807 – 39 Square Meters of the Registry of Deeds of Oriental Mindoro;
>
> b) Susana Heights, Muntinlupa covered by Transfer Certificates of Title Nos. T-108954 – 600 Square Meters and RT-106338 – 805 Square Meters of the Registry of Deeds of Pasig (now Makati);
>
> c) Personal property – 1983 Car with Vehicle Registration No. R-16381; Model 1983; Make – Toyota; Engine No. T- 2464

- To sign for and in my behalf any act of strict dominion or ownership any sale, disposition, mortgage, lease or any other transactions including quit-claims, waiver and relinquishment of rights in and over the parcels of land

situated in General Trias, Cavite, covered by Transfer Certificates of Title Nos. T-112254 and T-112255 of the Registry of Deeds of Cavite, in conjunction with his co-owner and in the person ATTY. AUGUSTO F. DEL ROSARIO;

- To exercise any or all acts of strict dominion or ownership over the above-mentioned properties, rights and interest therein. (Emphasis supplied.)

On the strength of the aforesaid SPA, Julian, on 12 December 1996, obtained a loan from the respondent in the amount of P3,000,000.00, secured by real estate mortgage constituted on TCT No. RT-18206 (106338) which covers a parcel of land with an area of 805 square meters, registered with the Registry of Deeds of Quezon City (subject property).[5]

Still using the subject property as security, Julian obtained an additional loan from the respondent in the sum of P5,000,000.00, evidenced by a Promissory Note[6] he executed on 5 February 1997 as another real estate mortgage (REM).

It appears, however, that there was no property identified in the SPA as TCT No. RT – 18206 (106338) and registered with the Registry of Deeds of Quezon City. What was identified in the SPA instead was the property covered by TCT No. RT-106338 registered with the Registry of Deeds of Pasig.

Subsequently, Julian defaulted on the payment of his loan obligations. Thus, respondent initiated extra-judicial foreclosure proceedings over the subject property which was subsequently sold at public auction wherein the respondent was declared as the highest bidder as shown in the Sheriff's Certificate of Sale dated 15 January 1998.[7]

On 23 March 1999, petitioners initiated with the RTC an action for the annulment of REM constituted over the subject property on the ground that the same was not covered by the SPA and that the said SPA, at the time the loan obligations were contracted, no longer had force and effect since it was previously revoked by Perla on 10 March 1993, as evidenced by the Revocation of SPA signed by the latter.[8]

Petitioners likewise alleged that together with the copy of the Revocation of SPA, Perla, in a Letter dated 23 January 1996, notified the Registry of Deeds of Quezon City that any attempt to mortgage or sell the subject property must be with her full consent documented in the form of an SPA duly authenticated before the Philippine Consulate General in New York. [9]

In the absence of authority to do so, the REM constituted by Julian over the subject property was null and void; thus, petitioners likewise prayed that the subsequent extra-judicial foreclosure proceedings and the auction sale of the subject property be also nullified.

In its Answer with Compulsory Counterclaim,[10] respondent averred that, contrary to petitioner's allegations, the SPA in favor of Julian included the subject property, covered by one of the titles specified in paragraph 1(b) thereof, TCT No. RT-106338 registered with the Registry of Deeds of Pasig (now Makati). The subject property was purportedly registered previously under TCT No. T-106338, and was only subsequently reconstituted as TCT RT-18206 (106338). Moreover, TCT No. T-106338 was actually registered with the Registry of Deeds of Quezon City and not before the Registry of Deeds of Pasig (now Makati). Respondent explained that the discrepancy in the designation of the Registry of Deeds in the SPA was merely an error that must not prevail over the clear intention of Perla to include the subject property in the said SPA. In sum, the property referred to in the SPA Perla executed in favor of Julian as covered by TCT No. 106338 of the Registry of Deeds of Pasig (now Makati) and the subject property in the case at bar, covered by RT – 18206 (106338) of the Registry of Deeds of Quezon City, are one and the same.


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On 23 September 2003, the RTC rendered a Decision declaring the REM constituted over the subject property null and void, for Julian was not authorized by the terms of the SPA to mortgage the same. The court a quo likewise ordered that the foreclosure proceedings and the auction sale conducted pursuant to the void REM, be nullified. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the [herein petitioners] and against the [herein respondent] Bank:
>
> - Declaring the Real Estate Mortgages constituted and registered under Entry Nos. PE-4543/RT-18206 and 2012/RT-18206 annotated on TCT No. RT-18206 (106338) of the Registry of Deeds of Quezon City as NULL and VOID;
>
> - Declaring the Sheriff's Sale and Certificate of Sale under FRE No. 2217 dated January 15, 1998 over the property covered by TCT No. RT-18206 (106338) of the Registry of Deeds of Quezon City as NULL and VOID;
>
> - Ordering the defendant Registry of Deeds of Quezon City to cancel the annotation of Real Estate Mortgages appearing on Entry Nos. PE-4543/RT-18206 and 2012/RT-18206 on TCT No. RT-18206 (106338) of the Registry of Deeds of Quezon City;
>
> - Ordering the [respondent] Bank to deliver/return to the [petitioners] represented by their attorney-in-fact Alfredo M. Perez, the original Owner's Duplicate Copy of TCT No. RT-18206 (106338) free from the encumbrances referred to above; and
>
> - Ordering the [respondent] Bank to pay the [petitioners] the amount of P100,000.00 as for attorney's fees plus cost of the suit.
>
> The other claim for damages and counterclaim are hereby DENIED for lack of merit.[11]

Aggrieved, respondent appealed the adverse Decision before the Court of Appeals.

In a Decision dated 12 October 2005, the Court of Appeals reversed the RTC Decision and upheld the validity of the REM constituted over the subject property on the strength of the SPA. The appellate court declared that Perla intended the subject property to be included in the SPA she executed in favor of Julian, and that her subsequent revocation of the said SPA, not being contained in a public instrument, cannot bind third persons.

The Motion for Reconsideration interposed by the petitioners was denied by the Court of Appeals in its Resolution dated 15 February 2006.

Petitioners are now before us assailing the Decision and Resolution rendered by the Court of Appeals raising several issues, which are summarized as follows:

> - WHETHER OR NOT THERE WAS A VALID MORTGAGE CONSTITUTED OVER SUBJECT PROPERTY.
>
> - WHETHER OR NOT THERE WAS A VALID REVOCATION OF THE SPA.
>
> - WHETHER OR NOT THE RESPONDENT WAS A MORTGAGEE-IN- GOOD FAITH.

For a mortgage to be valid, Article 2085 of the Civil Code enumerates the following essential requisites:

> Art. 2085. The following requisites are essential to the contracts of pledge and mortgage:
>
> (1) That they be constituted to secure the fulfillment of a principal obligation;
>
> (2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged;

> (3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose.
>
> Third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property.

In the case at bar, it was Julian who obtained the loan obligations from respondent which he secured with the mortgage of the subject property. The property mortgaged was owned by his wife, Perla, considered a third party to the loan obligations between Julian and respondent. It was, thus, a situation recognized by the last paragraph of Article 2085 of the Civil Code afore-quoted. However, since it was not Perla who personally mortgaged her own property to secure Julian's loan obligations with respondent, we proceed to determining if she duly authorized Julian to do so on her behalf.

Under Article 1878 of the Civil Code, a special power of attorney is necessary in cases where real rights over immovable property are created or conveyed.[12] In the SPA executed by Perla in favor of Julian on 28 May 1992, the latter was conferred with the authority to "sell, alienate, mortgage, lease and deal otherwise" the different pieces of real and personal property registered in Perla's name. The SPA likewise authorized Julian "[t]o exercise any or all acts of strict dominion or ownership" over the identified properties, and rights and interest therein. The existence and due execution of this SPA by Perla was not denied or challenged by petitioners.

There is no question therefore that Julian was vested with the power to mortgage the pieces of property identified in the SPA. However, as to whether the subject property was among those identified in the SPA, so as to render Julian's mortgage of the same valid, is a question we still must resolve.

Petitioners insist that the subject property was not included in the SPA, considering that it contained an exclusive enumeration of the pieces of property over which Julian had authority, and these include only: (1) TCT No. T-53618, with an area of 3,522 square meters, located at Calapan, Oriental Mindoro, and registered with the Registry of Deeds of Oriental Mindoro; (2) TCT No. T-46810, with an area of 3,953 square meters, located at Calapan, Oriental Mindoro, and registered with the Registry of Deeds of Oriental Mindoro; (3) TCT No. T-53140, with an area of 177 square meters, located at Calapan, Oriental Mindoro, and registered with the Registry of Deeds of Oriental Mindoro; (4) TCT No. T-21403, with an area of 263 square meters, located at Calapan, Oriental Mindoro, and registered with the Registry of Deeds of Oriental Mindoro; (5) TCT No. T- 46807, with an area of 39 square meters, located at Calapan, Oriental Mindoro, and registered with the Registry of Deeds of Oriental Mindoro; (6) TCT No. T-108954, with an area of 690 square meters and located at Susana Heights, Muntinlupa; (7) RT-106338 - 805 Square Meters registered with the Registry of Deeds of Pasig (now Makati); and (8) Personal Property consisting of a 1983 Car with Vehicle Registration No. R-16381, Model - 1983, Make - Toyota, and Engine No. T- 2464. Nowhere is it stated in the SPA that Julian's authority extends to the subject property covered by TCT No. RT – 18206 (106338) registered with the Registry of Deeds of Quezon City. Consequently, the act of Julian of constituting a mortgage over the subject property is unenforceable for having been done without authority.

Respondent, on the other hand, mainly hinges its argument on the declarations made by the Court of Appeals that there was no property covered by TCT No. 106338 registered with the Registry of Deeds of Pasig (now Makati); but there exists a property, the subject property herein, covered by TCT No. RT-18206 (106338) registered with the Registry of Deeds of Quezon City. Further verification would reveal that TCT No. RT-18206 is merely a reconstitution of TCT No. 106338, and the property covered by both certificates of title is actually situated in Quezon City and not Pasig. From the foregoing circumstances, respondent argues that Perla intended to include the subject property in the SPA, and the failure of the instrument to reflect the recent TCT Number or the exact designation of the Registry of Deeds, should not defeat Perla's clear intention.


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After an examination of the literal terms of the SPA, we find that the subject property was not among those enumerated therein. There is no obvious reference to the subject property covered by TCT No. RT-18206 (106338) registered with the Registry of Deeds of Quezon City.

There was also nothing in the language of the SPA from which we could deduce the intention of Perla to include the subject property therein. We cannot attribute such alleged intention to Perla who executed the SPA when the language of the instrument is bare of any indication suggestive of such intention. Contrariwise, to adopt the intent theory advanced by the respondent, in the absence of clear and convincing evidence to that effect, would run afoul of the express tenor of the SPA and thus defeat Perla's true intention.

In cases where the terms of the contract are clear as to leave no room for interpretation, resort to circumstantial evidence to ascertain the true intent of the parties, is not countenanced. As aptly stated in the case of JMA House, Incorporated v. Sta. Monica Industrial and Development Corporation,[13] thus:

> [T]he law is that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall control. When the language of the contract is explicit, leaving no doubt as to the intention of the drafters, the courts may not read into it [in] any other intention that would contradict its main import. The clear terms of the contract should never be the subject matter of interpretation. Neither abstract justice nor the rule on liberal interpretation justifies the creation of a contract for the parties which they did not make themselves or the imposition upon one party to a contract or obligation not assumed simply or merely to avoid seeming hardships. The true meaning must be enforced, as it is to be presumed that the contracting parties know their scope and effects.[14]

Equally relevant is the rule that a power of attorney must be strictly construed and pursued. The instrument will be held to grant only those powers which are specified therein, and the agent may neither go beyond nor deviate from the power of attorney.[15] Where powers and duties are specified and defined in an instrument, all such powers and duties are limited and are confined to those which are specified and defined, and all other powers and duties are excluded.[16] This is but in accord with the disinclination of courts to enlarge the authority granted beyond the powers expressly given and those which incidentally flow or derive therefrom as being usual and reasonably necessary and proper for the performance of such express powers.[17]

Even the commentaries of renowned Civilist Manresa[18] supports a strict and limited construction of the terms of a power of attorney:

> The law, which must look after the interests of all, cannot permit a man to express himself in a vague and general way with reference to the right he confers upon another for the purpose of alienation or hypothecation, whereby he might be despoiled of all he possessed and be brought to ruin, such excessive authority must be set down in the most formal and explicit terms, and when this is not done, the law reasonably presumes that the principal did not mean to confer it.

In this case, we are not convinced that the property covered by TCT No. 106338 registered with the Registry of Deeds of Pasig (now Makati) is the same as the subject property covered by TCT No. RT-18206 (106338) registered with the Registry of Deeds of Quezon City. The records of the case are stripped of supporting proofs to verify the respondent's claim that the two titles cover the same property. It failed to present any certification from the Registries of Deeds concerned to support its assertion. Neither did respondent take the effort of submitting and making part of the records of this case copies of TCTs No. RT-106338 of the Registry of Deeds of Pasig (now Makati) and RT-18206 (106338) of the Registry of Deeds of Quezon City, and closely comparing the technical descriptions of the properties covered by the said TCTs. The bare and sweeping statement of respondent that the properties covered by the two certificates of title are one and the same contains nothing but empty imputation of a fact that could hardly be given any evidentiary weight by this Court.


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Having arrived at the conclusion that Julian was not conferred by Perla with the authority to mortgage the subject property under the terms of the SPA, the real estate mortgages Julian executed over the said property are therefore unenforceable.

Assuming arguendo that the subject property was indeed included in the SPA executed by Perla in favor of Julian, the said SPA was revoked by virtue of a public instrument executed by Perla on 10 March 1993. To address respondent's assertion that the said revocation was unenforceable against it as a third party to the SPA and as one who relied on the same in good faith, we quote with approval the following ruling of the RTC on this matter:

> Moreover, an agency is extinguished, among others, by its revocation (Article 1999, New Civil Code of the Philippines). The principal may revoke the agency at will, and compel the agent to return the document evidencing the agency. Such revocation may be express or implied (Article 1920, supra).
>
> In this case, the revocation of the agency or Special Power of Attorney is expressed and by a public document executed on March 10, 1993.
>
> The Register of Deeds of Quezon City was even notified that any attempt to mortgage or sell the property covered by TCT No. [RT-18206] 106338 located at No. 21 Hillside Drive, Blue Ridge, Quezon City must have the full consent documented in the form of a special power of attorney duly authenticated at the Philippine Consulate General, New York City, N.Y., U.S.A.
>
> The non-annotation of the revocation of the Special Power of Attorney on TCT No. RT-18206 is of no consequence as far as the revocation's existence and legal effect is concerned since actual notice is always superior to constructive notice. The actual notice of the revocation relayed to defendant Registry of Deeds of Quezon City is not denied by either the Registry of Deeds of Quezon City or the defendant Bank. In which case, there appears no reason why Section 52 of the Property Registration Decree (P.D. No. 1529) should not apply to the situation. Said Section 52 of P.D. No. 1529 provides:"Section 52. Constructive notice upon registration. " Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the Office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering. (Pres. Decree No. 1529, Section 53) (emphasis ours)

It thus developed that at the time the first loan transaction with defendant Bank was effected on December 12, 1996, there was on record at the Office of the Register of Deeds of Quezon City that the special power of attorney granted Julian, Sr. by Perla had been revoked. That notice, works as constructive notice to third parties of its being filed, effectively rendering Julian, Sr. without authority to act for and in behalf of Perla as of the date the revocation letter was received by the Register of Deeds of Quezon City on February 7, 1996.[19]

Given that Perla revoked the SPA as early as 10 March 1993, and that she informed the Registry of Deeds of Quezon City of such revocation in a letter dated 23 January 1996 and received by the latter on 7 February 1996, then third parties to the SPA are constructively notified that the same had been revoked and Julian no longer had any authority to mortgage the subject property. Although the revocation may not be annotated on TCT No. RT-18206 (106338), as the RTC pointed out, neither the Registry of Deeds of Quezon City nor respondent denied that Perla's 23 January 1996 letter was received by and filed with the Registry of Deeds of Quezon City. Respondent would have undoubtedly come across said letter if it indeed diligently investigated the subject property and the circumstances surrounding its mortgage.

The final issue to be threshed out by this Court is whether the respondent is a mortgagee-in-good faith. Respondent fervently asserts that it exercised reasonable diligence required of a prudent man in dealing with the subject property.

Elaborating, respondent claims to have carefully verified Julian's authority over the subject property which was validly contained in the SPA. It stresses that the SPA was annotated at the back of the TCT of the subject property. Finally, after conducting an investigation, it found that the property covered by TCT No. 106338, registered with the Registry of Deeds of Pasig (now Makati) referred to in the SPA, and the subject property, covered by TCT No. 18206 (106338) registered with the Registry of Deeds of Quezon City, are one and the same property. From the foregoing, respondent concluded that Julian was indeed authorized to constitute a mortgage over the subject property.

We are unconvinced. The property listed in the real estate mortgages Julian executed in favor of PNB is the one covered by "TCT#RT-18206(106338)." On the other hand, the Special Power of Attorney referred to TCT No. "RT-106338 – 805 Square Meters of the Registry of Deeds of Pasig now Makati." The palpable difference between the TCT numbers referred to in the real estate mortgages and Julian's SPA, coupled with the fact that the said TCTs are registered in the Registries of Deeds of different cities, should have put respondent on guard. Respondent's claim of prudence is debunked by the fact that it had conveniently or otherwise overlooked the inconsistent details appearing on the face of the documents, which it was relying on for its rights as mortgagee, and which significantly affected the identification of the property being mortgaged. In Arrofo v. Quiño,[20] we have elucidated that:

> [Settled is the rule that] a person dealing with registered lands [is not required] to inquire further than what the Torrens title on its face indicates. This rule, however, is not absolute but admits of exceptions. Thus, while its is true, x x x that a person dealing with registered lands need not go beyond the certificate of title, it is likewise a well-settled rule that a purchaser or mortgagee cannot close his eyes to facts which should put a reasonable man on his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor or mortgagor. His mere refusal to face up the fact that such defect exists, or his willful closing of his eyes to the possibility of the existence of a defect in the vendor's or mortgagor's title, will not make him an innocent purchaser for value, if it afterwards develops that the title was in fact defective, and it appears that he had such notice of the defect as would have led to its discovery had he acted with the measure of precaution which may be required of a prudent man in a like situation.

By putting blinders on its eyes, and by refusing to see the patent defect in the scope of Julian's authority, easily discernable from the plain terms of the SPA, respondent cannot now claim to be an innocent mortgagee.

Further, in the case of Abad v. Guimba,[21] we laid down the principle that where the mortgagee does not directly deal with the registered owner of real property, the law requires that a higher degree of prudence be exercised by the mortgagee, thus:

> While [the] one who buys from the registered owner does not need to look behind the certificate of title, one who buys from [the] one who is not [the] registered owner is expected to examine not only the certificate of title but all factual circumstances necessary for [one] to determine if there are any flaws in the title of the transferor, or in [the] capacity to transfer the land. Although the instant case does not involve a sale but only a mortgage, the same rule applies inasmuch as the law itself includes a mortgagee in the term "purchaser."[22]

This principle is applied more strenuously when the mortgagee is a bank or a banking institution. Thus, in the case of Cruz v. Bancom Finance Corporation,[23] we ruled:

> 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. A banking institution is expected to exercise due diligence before entering into a mortgage contract. 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.[24]

Hence, considering that the property being mortgaged by Julian was not his, and there are additional doubts or suspicions as to the real identity of the same, the respondent bank should have proceeded with its transactions with Julian only with utmost caution. As a bank, respondent must subject all its transactions to the most rigid scrutiny, since its business is impressed with public interest and its fiduciary character requires high standards of integrity and performance.[25] Where respondent acted in undue haste in granting the mortgage loans in favor of Julian and disregarding the apparent defects in the latter's authority as agent, it failed to discharge the degree of diligence required of it as a banking corporation.

Thus, even granting for the sake of argument that the subject property and the one identified in the SPA are one and the same, it would not elevate respondent's status to that of an innocent mortgagee. As a banking institution, jurisprudence stringently requires that respondent should take more precautions than an ordinary prudent man should, to ascertain the status and condition of the properties offered as collateral and to verify the scope of the authority of the agents dealing with these. Had respondent acted with the required degree of diligence, it could have acquired knowledge of the letter dated 23 January 1996 sent by Perla to the Registry of Deeds of Quezon City which recorded the same. The failure of the respondent to investigate into the circumstances surrounding the mortgage of the subject property belies its contention of good faith.

On a last note, we find that the real estate mortgages constituted over the subject property are unenforceable and not null and void, as ruled by the RTC. It is best to reiterate that the said mortgage was entered into by Julian on behalf of Perla without the latter's authority and consequently, unenforceable under Article 1403(1) of the Civil Code. Unenforceable contracts are those which cannot be enforced by a proper action in court, unless they are ratified, because either they are entered into without or in excess of authority or they do not comply with the statute of frauds or both of the contracting parties do not possess the required legal capacity.[26] An unenforceable contract may be ratified, expressly or impliedly, by the person in whose behalf it has been executed, before it is revoked by the other contracting party.[27] Without Perla's ratification of the same, the real estate mortgages constituted by Julian over the subject property cannot be enforced by any action in court against Perla and/or her successors in interest.

In sum, we rule that the contracts of real estate mortgage constituted over the subject property covered by TCT No. RT – 18206 (106338) registered with the Registry of Deeds of Quezon City are unenforceable. Consequently, the foreclosure proceedings and the auction sale of the subject property conducted in pursuance of these unenforceable contracts are null and void. This, however, is without prejudice to the right of the respondent to proceed against Julian, in his personal capacity, for the amount of the loans.

WHEREFORE, IN VIEW OF THE FOREGOING, the instant petition is GRANTED. The Decision dated 12 October 2005 and its Resolution dated 15 February 2006 rendered by the Court of Appeals in CA-G.R. CV No. 82636, are hereby REVERSED. The Decision dated 23 September 2003 of the Regional Trial Court of Quezon City, Branch 220, in Civil Case No. Q-99-37145, is hereby REINSTATED and AFFIRMED with modification that the real estate mortgages constituted over TCT No. RT – 18206 (106338) are not null and void but UNENFORCEABLE. No costs.

**SO ORDERED.**

Ynares-Santiago, (Chairperson), Austria-Martinez, and Nachura, JJ., concur.

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[1] Penned by Associate Justice Delilah Vidallon-Magtolis with Associate Justices Josefina Guevara-Salonga and Fernanda Lampas-Peralta, concurring. Rollo, pp. 44-59.


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[2] Id. at 61-64.

[3] Id. at 71-84.

[4] Id. at 59.

[5] Susana Heights, Muntinlupa covered by Transfer Certificates of Title Nos. T-108954 – 690 square meters; and RT-106338 – 805 square meters of the Registry of Deeds of Pasig (now Makati);

[6] Id. at 106-109.

[7] Id. at 73

[8] Id. at 74.

[9] Id. at 74-75.

[10] Id. at 96-103.

[11] Id. at 84.

[12] Paragraph 12 of Article 1878, Civil Code of the Philippines.

[13] G.R. No. 154156, 31 August 2006, 500 SCRA 526.

[14] Id. at 545-546.

[15] Angeles v. Philippine National Railways (PNR), G.R. No. 150128, 31 August 2006, 500 SCRA 444, 453.

[16] Bank of the Philippine Islands v. De Coster, 49 Phil. 574, 589 (1926) as cited in Philippine National Bank v. Sta. Maria, 139 Phil. 781, 786 (1969).

[17] Philippine National Bank v. Sta. Maria, id.

[18] Vol. II, p. 60.

[19] Rollo, pp. 80-81.

[20] G.R. No. 145794, 26 January 2005, 449 SCRA 284.

[21] G.R. No. 157002, 29 July 2005, 465 SCRA 356.

[22] Id. at 368-369.

[23] 429 Phil. 225 (2002).

[24] Id. at 239.

[25] THE GENERAL BANKING LAW OF 2000, Section 2.

[26] Article 1403, Civil Code of the Philippines.

[27] Article 1317, Civil Code of the Philippines.

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