

ARTURO SARTE FLORES, PETITIONER, VS. SPOUSES ENRICO L. LINDO, JR. AND EDNA C. LINDO, RESPONDENTS.

G.R. No. 183984. April 13, 2011

Ponente: CARPIO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-183984/>

CARPIO, J.:

The Case

Before the Court is a petition for review[1] assailing the 30 May 2008 Decision[2] and the 4 August 2008 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 94003.

The Antecedent Facts

The facts, as gleaned from the Court of Appeals' Decision, are as follows:

On 31 October 1995, Edna Lindo (Edna) obtained a loan from Arturo Flores (petitioner) amounting to P400,000 payable on 1 December 1995 with 3% compounded monthly interest and 3% surcharge in case of late payment. To secure the loan, Edna executed a Deed of Real Estate Mortgage[4] (the Deed) covering a property in the name of Edna and her husband Enrico (Enrico) Lindo, Jr. (collectively, respondents). Edna also signed a Promissory Note[5] and the Deed for herself and for Enrico as his attorney-in-fact.

Edna issued three checks as partial payments for the loan. All checks were dishonored for insufficiency of funds, prompting petitioner to file a Complaint for Foreclosure of Mortgage with Damages against respondents. The case was raffled to the Regional Trial Court of Manila, Branch 33 (RTC, Branch 33) and docketed as Civil Case No. 00-97942.

In its 30 September 2003 Decision,[6] the RTC, Branch 33 ruled that petitioner was not entitled to judicial foreclosure of the mortgage. The RTC, Branch 33 found that the Deed was executed by Edna without the consent and authority of Enrico. The RTC, Branch 33 noted that the Deed was executed on 31 October 1995 while the Special Power of Attorney (SPA) executed by Enrico was only dated 4 November 1995.

The RTC, Branch 33 further ruled that petitioner was not precluded from recovering the loan from Edna as he could file a personal action against her. However, the RTC, Branch 33 ruled that it had no jurisdiction over the personal action which should be filed in the place where the plaintiff or the defendant resides in accordance with Section 2, Rule 4 of the Revised Rules on Civil Procedure.

Petitioner filed a motion for reconsideration. In its Order[7] dated 8 January 2004, the RTC, Branch 33 denied the motion for lack of merit.

On 8 September 2004, petitioner filed a Complaint for Sum of Money with Damages against respondents. It was raffled to Branch 42 (RTC, Branch 42) of the Regional Trial Court of Manila, and docketed as Civil Case No. 04-110858.

Respondents filed their Answer with Affirmative Defenses and Counterclaims where they admitted the loan but stated that it only amounted to P340,000. Respondents further alleged that Enrico was not a party to the loan because it was contracted by Edna without Enrico's signature. Respondents prayed for the dismissal of the case on the grounds of improper venue, res judicata and forum-shopping, invoking the Decision of the RTC, Branch 33. On 7 March 2005, respondents also filed a Motion to Dismiss on the grounds of res judicata and lack of cause of action.

The Decision of the Trial Court

On 22 July 2005, the RTC, Branch 42 issued an Order[8] denying the motion to dismiss. The RTC, Branch 42 ruled that res judicata will not apply to rights, claims or demands which, although growing out of the same subject matter, constitute separate or distinct causes of action and were not put in issue in the former action. Respondents filed a motion for reconsideration. In its Order[9] dated 8 February 2006, the RTC, Branch 42 denied respondents' motion. The RTC, Branch 42 ruled that the RTC, Branch 33 expressly stated that its decision did not mean that petitioner could no longer recover the loan petitioner extended to Edna.

Respondents filed a Petition for Certiorari and Mandamus with Prayer for a Writ of Preliminary Injunction and/or Temporary Restraining Order before the Court of Appeals.

The Decision of the Court of Appeals

In its 30 May 2008 Decision, the Court of Appeals set aside the 22 July 2005 and 8 February 2006 Orders of the RTC, Branch 42 for having been issued with grave abuse of discretion.

The Court of Appeals ruled that while the general rule is that a motion to dismiss is interlocutory and not appealable, the rule admits of exceptions. The Court of Appeals ruled that the RTC, Branch 42 acted with grave abuse of discretion in denying respondents' motion to dismiss.

The Court of Appeals ruled that under Section 3, Rule 2 of the 1997 Rules of Civil Procedure, a party may not institute more than one suit for a single cause of action. If two or more suits are instituted on the basis of the same cause of action, the filing of one on a judgment upon the merits in any one is available ground for the dismissal of the others. The Court of Appeals ruled that on a nonpayment of a note secured by a mortgage, the creditor has a single cause of action against the debtor, that is recovery of the credit with execution of the suit. Thus, the creditor may institute two alternative remedies: either a personal action for the collection of debt or a real action to foreclose the mortgage, but not both. The Court of Appeals ruled that petitioner had only one cause of action against Edna for her failure to pay her obligation and he could not split the single cause of action by filing separately a foreclosure proceeding and a collection case. By filing a petition for foreclosure of the real estate mortgage, the Court of Appeals held that petitioner had already waived his personal action to recover the amount covered by the promissory note.

Petitioner filed a motion for reconsideration. In its 4 August 2008 Resolution, the Court of Appeals denied the motion.

Hence, the petition before this Court.

The Issue

The sole issue in this case is whether the Court of Appeals committed a reversible error in dismissing the complaint for collection of sum of money on the ground of multiplicity of suits.

The Ruling of this Court

The petition has merit.

The rule is that a mortgage-creditor has a single cause of action against a mortgagor-debtor, that is, to recover the debt.[10] The mortgage-creditor has the option of either filing a personal action for collection of sum of money or instituting a real action to foreclose on the mortgage security.[11] An election of the first bars recourse to the second, otherwise there would be multiplicity of suits in which the debtor would be tossed from one venue to another depending on the location of the mortgaged properties and the residence of the parties.[12]

The two remedies are alternative and each remedy is complete by itself.[13] If the mortgagee opts to foreclose the real estate mortgage, he waives the action for the collection of the debt, and vice versa.[14] The Court explained:

x x x in the absence of express statutory provisions, a mortgage creditor may institute against the mortgage debtor either a personal action for debt or a real action to foreclose the mortgage. In other words, he may pursue either of the two remedies, but not both. By such election, his cause of action can by no means be impaired, for each of the two remedies is complete in itself. Thus, an election to bring a personal action will leave open to him all the properties of the debtor for attachment and execution, even including the mortgaged property itself. And, if he waives such personal action and pursues his remedy against the mortgaged property, an unsatisfied judgment thereon would still give him the right to sue for deficiency judgment, in which case, all the properties of the defendant, other than the mortgaged property, are again open to him for the satisfaction of the deficiency. In either case, his remedy is complete, his cause of action undiminished, and any advantages attendant to the pursuit of one or the other remedy are purely accidental and are all under his right of election. On the other hand, a rule that would authorize the plaintiff to bring a personal action against the debtor and simultaneously or successively another action against the mortgaged property, would result not only in multiplicity of suits so offensive to justice (*Soriano v. Enriques*, 24 Phil. 584) and obnoxious to law and equity (*Osorio v. San Agustin*, 25 Phil. 404), but also in subjecting the defendant to the vexation of being sued in the place of his residence or of the residence of the plaintiff, and then again in the place where the property lies.[15]

The Court has ruled that if a creditor is allowed to file his separate complaints simultaneously or successively, one to recover his credit and another to foreclose his mortgage, he will, in effect, be authorized plural redress for a single breach of contract at so much costs to the court and with so much vexation and oppressiveness to the debtor.[16]

In this case, however, there are circumstances that the Court takes into consideration.

Petitioner filed an action for foreclosure of mortgage. The RTC, Branch 33 ruled that petitioner was not entitled to judicial foreclosure because the Deed of Real Estate Mortgage was executed without Enrico's consent. The RTC, Branch 33 stated:

All these circumstances certainly conspired against the plaintiff who has the burden of proving his cause of action. On the other hand, said circumstances tend to support the claim of defendant Edna Lindo that her husband did not consent to the mortgage of their conjugal property and that the loan application was her personal decision.

Accordingly, since the Deed of Real Estate Mortgage was executed by defendant Edna Lindo lacks the consent or authority of her husband Enrico Lindo, the Deed of Real Estate Mortgage is void pursuant to Article 96 of the Family Code.

This does not mean, however, that the plaintiff cannot recover the P400,000 loan plus interest which he extended to defendant Edna Lindo. He can institute a personal action against the defendant for the amount due which should be filed in the place where the plaintiff resides, or where the defendant or any of the principal

defendants resides at the election of the plaintiff in accordance with Section 2, Rule 4 of the Revised Rules on Civil Procedure. This Court has no jurisdiction to try such personal action.[17]

Edna did not deny before the RTC, Branch 33 that she obtained the loan. She claimed, however, that her husband did not give his consent and that he was not aware of the transaction.[18] Hence, the RTC, Branch 33 held that petitioner could still recover the amount due from Edna through a personal action over which it had no jurisdiction.

Edna also filed an action for declaratory relief before the RTC, Branch 93 of San Pedro Laguna (RTC, Branch 93), which ruled:

At issue in this case is the validity of the promissory note and the Real Estate Mortgage executed by Edna Lindo without the consent of her husband.

The real estate mortgage executed by petition Edna Lindo over their conjugal property is undoubtedly an act of strict dominion and must be consented to by her husband to be effective. In the instant case, the real estate mortgage, absent the authority or consent of the husband, is necessarily void. Indeed, the real estate mortgage in this case was executed on October 31, 1995 and the subsequent special power of attorney dated November 4, 1995 cannot be made to retroact to October 31, 1995 to validate the mortgage previously made by petitioner.

The liability of Edna Lindo on the principal contract of the loan however subsists notwithstanding the illegality of the mortgage. Indeed, where a mortgage is not valid, the principal obligation which it guarantees is not thereby rendered null and void. That obligation matures and becomes demandable in accordance with the stipulation pertaining to it. Under the foregoing circumstances, what is lost is merely the right to foreclose the mortgage as a special remedy for satisfying or settling the indebtedness which is the principal obligation. In case of nullity, the mortgage deed remains as evidence or proof of a personal obligation of the debtor and the amount due to the creditor may be enforced in an ordinary action.

In view of the foregoing, judgment is hereby rendered declaring the deed of real estate mortgage as void in the absence of the authority or consent of petitioner's spouse therein. The liability of petitioner on the principal contract of loan however subsists notwithstanding the illegality of the real estate mortgage.[19]

The RTC, Branch 93 also ruled that Edna's liability is not affected by the illegality of the real estate mortgage.

Both the RTC, Branch 33 and the RTC, Branch 93 misapplied the rules.

Article 124 of the Family Code provides:

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

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

Article 124 of the Family Code of which applies to conjugal partnership property, is a reproduction of Article 96 of the Family Code which applies to community property.

Both Article 96 and Article 127 of the Family Code provide that the powers do not include disposition or encumbrance without the written consent of the other spouse. Any disposition or encumbrance without the written consent shall be void. However, both provisions also state that "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 x x x before the offer is withdrawn by either or both offerors."

In this case, the Promissory Note and the Deed of Real Estate Mortgage were executed on 31 October 1995. The Special Power of Attorney was executed on 4 November 1995. The execution of the SPA is the acceptance by the other spouse that perfected the continuing offer as a binding contract between the parties, making the Deed of Real Estate Mortgage a valid contract.

However, as the Court of Appeals noted, petitioner allowed the decisions of the RTC, Branch 33 and the RTC, Branch 93 to become final and executory without asking the courts for an alternative relief. The Court of Appeals stated that petitioner merely relied on the declarations of these courts that he could file a separate personal action and thus failed to observe the rules and settled jurisprudence on multiplicity of suits, closing petitioner's avenue for recovery of the loan.

Nevertheless, petitioner still has a remedy under the law.

In *Chieng v. Santos*,^[20] this Court ruled that a mortgage-creditor may institute against the mortgage-debtor either a personal action for debt or a real action to foreclose the mortgage. The Court ruled that the remedies are alternative and not cumulative and held that the filing of a criminal action for violation of Batas Pambansa Blg. 22 was in effect a collection suit or a suit for the recovery of the mortgage-debt.^[21] In that case, however, this Court *pro hac vice*, ruled that respondents could still be held liable for the balance of the loan, applying the principle that no person may unjustly enrich himself at the expense of another.^[22]

The principle of unjust enrichment is provided under Article 22 of the Civil Code which provides:

Art. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

There is unjust enrichment "when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience."^[23] The principle of unjust enrichment requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at the expense of another.^[24]

The main objective of the principle against unjust enrichment is to prevent one from enriching himself at the expense of another without just cause or consideration.^[25] The principle is applicable in this case considering that Edna admitted obtaining a loan from petitioners, and the same has not been fully paid without just cause. The Deed was declared void erroneously at the instance of Edna, first when she raised it as a defense before the RTC, Branch 33 and second, when she filed an action for declaratory relief before the RTC, Branch 93. Petitioner could not be expected to ask the RTC, Branch 33 for an alternative remedy, as what the Court of Appeals ruled that he should have done, because the RTC, Branch 33 already stated that it had no jurisdiction over any personal action that petitioner might have against Edna.

Considering the circumstances of this case, the principle against unjust enrichment, being a substantive law, should prevail over the procedural rule on multiplicity of suits. The Court of Appeals, in the assailed decision, found that Edna admitted the loan, except that she claimed it only amounted to P340,000. Edna should not be allowed to unjustly enrich herself because of the erroneous decisions of the two trial courts when she questioned

the validity of the Deed. Moreover, Edna still has an opportunity to submit her defenses before the RTC, Branch 42 on her claim as to the amount of her indebtedness.

WHEREFORE, the 30 May 2008 Decision and the 4 August 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 94003 are SET ASIDE. The Regional Trial Court of Manila, Branch 42 is directed to proceed with the trial of Civil Case No. 04-110858.

SO ORDERED.

Nachura, Peralta, Abad, and Mendoza, JJ., concur.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Rollo, pp. 7-16. Penned by Associate Justice Noel G. Tijam with Associate Justices Martin S. Villarama, Jr. (now Supreme Court Justice) and Andres B. Reyes, Jr., concurring.

[3] Id. at 18-20.

[4] Id. at 53-60.

[5] Id. at 52.

[6] Id. at 84-88. Penned by Judge Reynaldo G. Ros.

[7] Id. at 89-90.

[8] Id. at 48-50. Penned by Judge Guillermo G. Purganan.

[9] Id. at 51. Penned by Judge Vedasto R. Marco.

[10] Tanchan v. Allied Banking Corporation, G.R. No. 164510, 25 November 2008, 571 SCRA 512.

[11] Id.

[12] Id.

[13] BPI Family Savings Bank, Inc. v. Vda. De Coscolluela, G.R. No. 167724, 27 June 2006, 493 SCRA 472.

[14] Id.

[15] Id. at 493 citing Bachrach Motor Co., Inc. v. Esteban Icarañgal and Oriental Commercial Co., Inc., 68 Phil. 287 (1939).

[16] Id.

[17] Rollo, pp. 87-88.

[18] Id. at 86.

[19] Id. at 81-82.

[20] G.R. No. 169647, 31 August 2007, 531 SCRA 730.

[21] Id.

[22] Id.

[23] Republic v. Court of Appeals, G.R. No. 160379, 14 August 2009, 596 SCRA 57 citing Benguet Corporation v. Department of Environment and Natural Resources-Mines Adjudication Board, G.R. No. 163101, 13 February 2008, 545 SCRA 196 and Cool Car Philippines, Inc. v. Ushio Realty and Development Corporation, G.R. No. 138088, 23 January 2006, 479 SCRA 404.

[24] Republic v. Court of Appeals, *supra*.

[25] P.C. Javier & Sons, Inc. v. Court of Appeals, 500 Phil. 419 (2005).

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.