

**ANTONIA R. DELA PEÑA AND ALVIN JOHN B. DELA PEÑA,
PETITIONERS, VS. GEMMA REMILYN C. AVILA AND FAR EAST BANK
& TRUST CO., RESPONDENTS.**

G.R. No. 187490. February 08, 2012

Ponente: PEREZ, J.

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PEREZ, J.:

Filed pursuant to Rule 45 of the 1997 Rules of Civil Procedure, this petition for review on certiorari seeks the reversal and setting aside of the Decision[1] dated 31 March 2009 rendered by the then Second Division of the Court of Appeals in CA-G.R. CV No. 90485,[2] the dispositive portion of which states:

WHEREFORE, premises considered, the appeal is GRANTED and the assailed Decision, dated December 18, 2007, of the Regional Trial Court of Marikina City, Branch 272, is hereby REVERSED and SET ASIDE. The Deed of Absolute Sale in favor of Gemma Avila dated November 4, 1997 and the subsequent sale on auction of the subject property to FEBTC (now Bank of the Philippine Islands) on March 15, 1999 are upheld as valid and binding.

SO ORDERED.[3]

The Facts

The suit concerns a 277 square meter parcel of residential land, together with the improvements thereon, situated in Marikina City and previously registered in the name of petitioner Antonia R. Dela Peña (Antonia), "married to Antegono A. Dela Peña" (Antegono) under Transfer Certificate of Title (TCT) No. N-32315 of the Registry of Deeds of Rizal.[4] On 7 May 1996, Antonia obtained from A.C. Aguila & Sons, Co. (Aguila) a loan in the sum of P250,000.00 which, pursuant to the Promissory Note the former executed in favor of the latter, was payable on or before 7 July 1996, with interest pegged at 5% per month.[5] On the very same day, Antonia also executed in favor of Aguila a notarized Deed of Real Estate Mortgage over the property, for the purpose of securing the payment of said loan obligation. The deed provided, in part, that "(t)his contract is for a period of Three (3) months from the date of this instrument".[6]

On 4 November 1997, Antonia executed a notarized Deed of Absolute Sale over the property in favor of respondent Gemma Remilyn C. Avila (Gemma), for the stated consideration of P600,000.00.[7] Utilizing the document, Gemma caused the cancellation of TCT No. N-32315 as well as the issuance of TCT No. 337834 of the Marikina City Registry of Deeds, naming her as the owner of the subject realty.[8] On 26 November 1997, Gemma also constituted a real estate mortgage over said parcel in favor of respondent Far East Bank and Trust Company [now Bank of the Philippine Islands] (FEBTC-BPI), to secure a loan facility with a credit limit of P1,200,000.00.[9] As evidenced by the Promissory Notes she executed from 12 December 1997 to 10 March 1998,[10] Gemma obtained the following loans from Visayas Avenue Branch of the FEBTC-BPI, in the aggregate sum of P1,200,000.00, to wit:

Promissory Note Date Amount Maturity

BDS#970779 12/02/97 P300,000.00 04/30/98

BDS#970790 12/15/97 P100,000.00 04/14/98

BDS#980800 01/16/98 P100,000.00 04/30/98

BDS#980805 02/06/98 P100,000.00 04/30/98

BDS#980817 02/27/98 P150,000.00 04/30/98

BDS#980821 03/10/98 P450,000.00 04/30/98

On 3 March 1998, in the meantime, Antonia filed with the Register of Deeds of Marikina an Affidavit of Adverse Claim to the effect, among others, that she was the true and lawful owner of the property which had been titled in the name of Gemma under TCT No. 32315; and, that the Deed of Absolute Sale Gemma utilized in procuring her title was simulated.[11] As a consequence, Antonia's Affidavit of Adverse Claim was inscribed on TCT No. 337834 as Entry No. 501099 on 10 March 1998.[12] In view of Gemma's failure to pay the principal as well as the accumulated interest and penalties on the loans she obtained, on the other hand, FEBTC-BPI caused the extrajudicial foreclosure of the real estate mortgage constituted over the property. As the highest bidder at the public auction conducted in the premises,[13] FEBTC-BPI later consolidated its ownership over the realty and caused the same to be titled in its name under TCT No. 415392 of the Marikina registry.[14]

On 18 May 1998, Antonia and her son, petitioner Alvin John B. Dela Peña (Alvin), filed against Gemma the complaint for annulment of deed of sale docketed before Branch 272 of the Regional Trial Court (RTC) of Marikina City as Civil Case No. 98-445-MK. Claiming that the subject realty was conjugal property, the Dela Peñas alleged, among other matters, that the 7 May 1996 Deed of Real Estate Mortgage Antonia executed in favor of Aguila was not consented to by Antegono who had, by then, already died; that despite its intended 1998 maturity date, the due date of the loan secured by the mortgage was shortened by Gemma who, taking advantage of her "proximate relationship" with Aguila, altered the same to 1997; and, that the 4 November 1997 Deed of Absolute Sale in favor of Gemma was executed by Antonia who was misled into believing that the transfer was necessary for the loan the former promised to procure on her behalf from FEBTC-BPI. In addition to the annulment of said Deed of Absolute Sale for being simulated and derogatory of Alvin's successional rights, the Dela Peñas sought the reconveyance of the property as well as the grant of their claims for moral and exemplary damages, attorney's fees and the costs.[15]

Served with summons, Gemma specifically denied the material allegations of the foregoing complaint in her 1 July 1998 answer. Maintaining that the realty was the exclusive property of Antonia who misrepresented that her husband was still alive, Gemma averred that the former failed to pay the P250,000.00 loan she obtained from Aguila on its stipulated 7 July 1996 maturity; that approached to help prevent the extrajudicial foreclosure of the mortgage constituted on the property, she agreed to settle the outstanding obligation to Aguila and to extend Antonia a P50,000.00 loan, with interest pegged at 10% per month; that to pay back the foregoing accommodations, Antonia agreed to the use of the property as collateral for a loan to be obtained by her from FEBTC-BPI, hence, the execution of the impugned Deed of Absolute Sale; and, that conformably with the foregoing agreement, she obtained loans in the total sum of P1,200,000.00 from FEBTC-BPI and applied the proceeds thereof to the sums owed by Antonia. Together with the dismissal of the complaint, Gemma also prayed for the grant of her counterclaims for moral and exemplary damages, attorney's fees, litigation expenses and the costs.[16]

On 25 September 1999, the Dela Peñas filed a supplemental complaint, impleading FEBTC-BPI as additional defendant. Calling attention to Antonia's 3 March 1998 Affidavit of Adverse Claim and the Notice of Lis Pendens they purportedly caused to be annotated on TCT No. 337834 on 10 December 1999, the Dela Peñas alleged that FEBTC-BPI was in bad faith when it purchased the property at public auction on 15 March 1999.[17] In their 12 November 1999 answer, FEBTC-BPI, in turn, asserted that the property was already titled in Gemma's name when she executed the 26 November 1997 real estate mortgage thereon, to secure the payment of the loans she obtained in the sum of P1,200,000.00; and, that not being privy to Antonia's transaction with Gemma and unaware of any adverse claim on the property, it was a mortgagee in good faith, entitled to foreclose the mortgage upon Gemma's failure to pay the loans she obtained. Seeking the dismissal of the complaint and the grant of its counterclaims for damages against the Dela Peñas, FEBTC-BPI alternatively interposed cross-claims against Gemma for the payment of the subject loans, the accumulated interests and penalties thereon as well as such sums for which it may be held liable in the premises.[18]

On 14 April 2000, the RTC issued the order terminating the pre-trial stage and declaring Gemma in default for failure to attend the pre-trial settings and to engage the services of a new lawyer despite due notice and the withdrawal of her counsel of record.[19] In support of their complaint, Antonia[20] and Alvin[21] both took the witness stand and, by way of corroborative evidence, presented the testimony of one Alessandro Almoden[22] who claimed to have referred Antonia to Gemma for the purpose of obtaining a loan. By way of defense evidence, on the other hand, FEBTC-BPI adduced the oral evidence elicited from Eleanor Abellare, its Account Officer who handled Gemma's loans,[23] and Zenaida Torres, the National Bureau of Investigation (NBI) Document Examiner who, after analyzing Antonia's specimen signatures on the 7 May 1996 Deed of Real Estate Mortgage and 4 November 1997 Deed of Absolute Sale,[24] issued NBI Questioned Documents Report No. 482-802 to the effect, among others, that said signatures were written by one and the same person.[25]

On 18 December 2007, the RTC went on to render a Decision finding that the subject property was conjugal in nature and that the 4 November 1997 Deed of Absolute Sale Antonia executed in favor of Gemma was void as a disposition without the liquidation required under Article 130 of the Family Code. Brushing aside FEBTC-BPI's claim of good faith,[26] the RTC disposed of the case in the following wise:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered in favor of the plaintiffs and against the defendants, as follows:

- 1). Declaring the Deed of Absolute dated November 04, 1997 in favor of defendant, [Gemma] as null and void;
- 2). Ordering defendant [FEBTC-BPI] to execute a deed of reconveyance in favor of the [Dela Peñas] involving the subject property now covered by Transfer Certificate of Title No. 415392 in the name of [FEBTC-BPI];
- 3). Ordering [Gemma] to pay the [Dela Peñas] the following:
 - a). the amount of P200,000.00 as moral damages; and
 - b). the amount of P20,000.00 as and for attorney's fees; and
 - c). costs of the suit

On the cross-claim, [Gemma] is hereby ordered to pay [FEBTC-BPI] the amount of P2,029,317.17 as of November 10, 1999, with twelve (12%) percent interest per annum until fully paid.

SO ORDERED.[27]

Aggrieved, FEBTC-BPI perfected the appeal which was docketed before the CA as CA-G.R. CV No. 90485. On 31 March 2009 the CA's Second Division rendered the herein assailed decision, reversing the RTC's appealed decision, upon the following findings and conclusions: (a) the property was paraphernal in nature for failure of the

Dela Peñas to prove that the same was acquired during Antonia's marriage to Antegono; (b) having misled Gemma into believing that the property was exclusively hers, Antonia is barred from seeking the annulment of the 4 November 1997 Deed of Absolute Sale; (c) Antonia's claim that her signature was forged is belied by her admission in the pleadings that she was misled by Gemma into executing said Deed of Absolute Sale and by NBI Questioned Document Report No. 482-802; and, (d) FEBTC-BPI is a mortgagee in good faith and for value since Gemma's 26 November 1997 execution of the real estate mortgage in its favor predated Antonia's 3 March 1998 Affidavit of Adverse Claim and the 10 December 1999 annotation of a Notice of Lis Pendens on TCT No. 337834.[28]

The Issues

The Dela Peñas seek the reversal of the assailed 31 March 2009 CA decision upon the affirmative of following issues, to wit:

- 1) Whether or not the CA erred in reversing the RTC holding the house and lot covered by TCT No. N-32315 conjugal property of the spouses Antegono and Antonia Dela Peña;
- 2) Whether or not the CA erred in reversing the RTC declaring null and void the Deed of Absolute Sale executed by Antonia to (Gemma); and
3. Whether or not the CA erred in reversing the RTC holding (FEBTC-BPI) a mortgagee/purchaser in bad faith.[29]

The Court's Ruling

The petition is bereft of merit.

Pursuant to Article 160 of the Civil Code of the Philippines, all property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife. Although it is not necessary to prove that the property was acquired with funds of the partnership,[30] proof of acquisition during the marriage is an essential condition for the operation of the presumption in favor of the conjugal partnership.[31] In the case of *Francisco vs. Court of Appeals*,[32] this Court categorically ruled as follows:

Article 160 of the New Civil Code provides that "all property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife." However, the party who invokes this presumption must first prove that the property in controversy was acquired during the marriage. Proof of acquisition during the coverture is a condition sine qua non for the operation of the presumption in favor of the conjugal partnership. The party who asserts this presumption must first prove said time element. Needless to say, the presumption refers only to the property acquired during the marriage and does not operate when there is no showing as to when property alleged to be conjugal was acquired. Moreover, this presumption in favor of conjugality is rebuttable, but only with strong, clear and convincing evidence; there must be a strict proof of exclusive ownership of one of the spouses.[33]

As the parties invoking the presumption of conjugality under Article 160 of the Civil Code, the Dela Peñas did not even come close to proving that the subject property was acquired during the marriage between Antonia and Antegono. Beyond Antonia's bare and uncorroborated assertion that the property was purchased when she was already married,[34] the record is bereft of any evidence from which the actual date of acquisition of the realty can be ascertained. When queried about the matter during his cross-examination, even Alvin admitted that his sole basis for saying that the property was owned by his parents was Antonia's unilateral pronouncement to the effect.[35] Considering that the presumption of conjugality does not operate if there is no showing of when the property alleged to be conjugal was acquired,[36] we find that the CA cannot be faulted for ruling that the realty in litigation was Antonia's exclusive property.

Not having established the time of acquisition of the property, the Dela Peñas insist that the registration thereof in the name of "Antonia R. Dela Peña, of legal age, Filipino, married to Antegono A. Dela Peña" should have already sufficiently established its conjugal nature. Confronted with the same issue in the case *Ruiz vs. Court of Appeals*,^[37] this Court ruled, however, that the phrase "married to" is merely descriptive of the civil status of the wife and cannot be interpreted to mean that the husband is also a registered owner. Because it is likewise possible that the property was acquired by the wife while she was still single and registered only after her marriage, neither would registration thereof in said manner constitute proof that the same was acquired during the marriage and, for said reason, to be presumed conjugal in nature. "Since there is no showing as to when the property in question was acquired, the fact that the title is in the name of the wife alone is determinative of its nature as paraphernal, i.e., belonging exclusively to said spouse."^[38]

Viewed in light of the paraphernal nature of the property, the CA correctly ruled that the RTC reversibly erred in nullifying Antonia's 4 November 1997 sale thereof in favor of Gemma, for lack of the liquidation required under Article 130 of the Family Code.^[39] That Antonia treated the realty as her own exclusive property may, in fact, be readily gleaned from her utilization thereof as security for the payment of the P250,000.00 loan she borrowed from Aguila.^[40] Despite Gemma's forfeiture of the right to present evidence on her behalf, her alleged alteration of the 7 May 1996 Deed of Real Estate Mortgage to shorten the maturity of the loan secured thereby was also properly brushed aside by the CA. The double lie inherent in Antonia's assertion that the same deed was altered by Gemma to shorten the maturity of the loan to "1997 instead of 1998" is instantly evident from paragraph 1 of the document which, consistent with 7 July 1996 maturity date provided in the Promissory Note she executed,^[41] specifically stated that "(t)his contract is for a period of Three (3) months from the date of this instrument."^[42]

Antonia's evident lack of credibility also impels us to uphold the CA's rejection of her version of the circumstances surrounding the execution of the 4 November 1997 Deed of Absolute Sale in favor of Gemma. In disavowing authorship of the signature appearing on said deed,^[43] Antonia contradicted the allegation in the Dela Peñas' complaint that she was misled by Gemma into signing the same document.^[44] The rule is well-settled that judicial admissions like those made in the pleadings are binding and cannot be contradicted, absent any showing that the same was made thru palpable mistake.^[45] Alongside that appearing on the Deed of Real Estate Mortgage she admitted executing in favor of Aguila, Antonia's signature on the Deed of Absolute Sale was, moreover, found to have been written by one and the same person in Questioned Document Report No. 482-802 prepared by Zenaida Torres, the NBI Document Examiner to whom said specimen signatures were submitted for analysis.^[46] Parenthetically, this conclusion is borne out by our comparison of the same signatures.

For all of Antonia's denial of her receipt of any consideration for the sale of the property in favor of Gemma,^[47] the evidence on record also lend credence to Gemma's version of the circumstances surrounding the execution of the assailed 4 November 1997 Deed of Absolute Sale. Consistent with Gemma's claim that said deed was executed to facilitate the loans she obtained from FEBTC-BPI which were agreed to be used as payment of the sums she expended to settle the outstanding obligation to Aguila and the P50,000.00 she loaned Antonia,^[48] the latter admitted during her direct examination that she did not pay the loan she obtained from Aguila.^[49] Presented as witness of the Dela Peñas, Alessandro Almoden also admitted that Gemma had extended a loan in the sum of P50,000.00 in favor of Antonia. Notably, Alessandro Almoden's claim that the title to the property had been delivered to Gemma as a consequence of the transaction^[50] is at odds with Antonia's claim that she presented said document to the Registry of Deeds when she verified the status of the property prior to the filing of the complaint from which the instant suit originated.^[51]

With the material contradictions in the Dela Peña's evidence, the CA cannot be faulted for upholding the validity of the impugned 4 November 1997 Deed of Absolute Sale. Having been duly notarized, said deed is a public

document which carries the evidentiary weight conferred upon it with respect to its due execution.[52] Regarded as evidence of the facts therein expressed in a clear, unequivocal manner,[53] public documents enjoy a presumption of regularity which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to falsity.[54] The burden of proof to overcome said presumptions lies with the party contesting the notarial document[55] like the Dela Peñas who, unfortunately, failed to discharge said onus. Absent clear and convincing evidence to contradict the same, we find that the CA correctly pronounced the Deed of Absolute Sale was valid and binding between Antonia and Gemma.

Since foreclosure of the mortgage is but the necessary consequence of non-payment of the mortgage debt,[56] FEBTC-BPI was, likewise, acting well within its rights as mortgagee when it foreclosed the real estate mortgage on the property upon Gemma's failure to pay the loans secured thereby. Executed on 26 November 1997, the mortgage predated Antonia's filing of an Affidavit of Adverse Claim with the Register of Deeds of Marikina on 3 March 1998 and the annotation of a Notice of Lis Pendens on TCT No. 337834 on 10 December 1999. "The mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, to the fulfilment of the obligation for whose security it was constituted." [57] When the principal obligation is not paid when due, the mortgagee consequently has the right to foreclose the mortgage, sell the property, and apply the proceeds of the sale to the satisfaction of the unpaid loan.[58]

Finally, the resolution of this case cannot be affected by the principles that banks like FEBTC-BPI are expected to exercise more care and prudence than private individuals in that their dealings because their business is impressed with public interest[59] and their standard practice is to conduct an ocular inspection of the property offered to be mortgaged and verify the genuineness of the title to determine the real owner or owners thereof, hence, the inapplicability of the general rule that a mortgagee need not look beyond the title does not apply to them.[60] The validity of the Deed of Absolute Sale executed by Antonia in favor of Gemma having been upheld, FEBTC-BPI's supposed failure to ascertain the ownership of the property has been rendered immaterial for the purpose of determining the validity of the mortgage executed in its favor as well as the subsequent extrajudicial foreclosure thereof.

WHEREFORE, premises considered, the petition is DENIED for lack of merit and the assailed CA Decision dated 31 March 2009 is, accordingly, AFFIRMED in toto.

SO ORDERED.

Carpio, (Chairperson), Brion, Sereno, and Reyes, JJ., concur.

[1] Penned by Associate Justice Portia Alino-Hormachuelos and concurred in by Associate Justices Jose Catral Mendoza (now a member of this Court) and Ramon M. Bato, Jr.

[2] CA rollo, CA-G.R. CV No. 90485, CA's 31 March 2009 Decision, pp. 113-131.

[3] Id. at 130-131.

[4] Exhibit "C," TCT No. N-32315, Record, Civil Case No. 98-445-MK, Vol. II, pp. 4-5.

[5] Exhibit "E," Promissory Note, id. at 9.

[6] Exhibit "D," Deed of Real Estate Mortgage, id. at 6-9.

[7] Exhibit "F," Deed of Absolute Sale, id. at 10-11.

[8] Exhibit "G," TCT No. 337834, id. at 12-13.

- [9] Exhibit "7," Real Estate Mortgage, id. at 27-30.
- [10] Exhibits "1" to "13A," FEBTC-BPI Promissory Notes, id. at 15-26.
- [11] Exhibit "H," Affidavit of Adverse Claim, id. at 14.
- [12] Id. at 13.
- [13] Exhibit "9," FEBTC-BPI's Written Bid, id. at 31.
- [14] Exhibit "12," TCT No. 415392, id. at 34.
- [15] Record, Civil Case No. 98-445-MK, Vol. 1, Dela Peña's Complaint, pp. 1-4.
- [16] Gemma's Answer, id. at 28-40.
- [17] Dela Peñas' Supplemental Complaint, id. at 129-134.
- [18] FEBTC's Answer, id. at 148-155.
- [19] Id. at 204.
- [20] TSN, 26 May 2000; TSN, 30 June 2000.
- [21] TSN, 22 September 2000; TSN, 13 October 2000.
- [22] TSN, 12 August 2004.
- [23] TSN, 18 November 2004.
- [24] TSN, 20 July 2006.
- [25] Exhibit "13" and submarkings, Record, Civil Case No. 98-445-MK, Vol. II, pp. 35-36.
- [26] Record, Civil Case No. 98-445-MK, Vol. I, pp. 440-457.
- [27] Id. at 456-457.
- [28] CA rollo, CA-G.R. CV No. 90485, pp. 113-131.
- [29] Rollo, pp. 17-18.
- [30] Tan v. Court of Appeals, G.R. No. 120594, 10 June 1997, 273 SCRA 229, 236.
- [31] Manongsong v. Estimo, 452 Phil. 862, 878 (2003) citing Francisco v. CA, 359 Phil. 519, 526 (1998).
- [32] 359 Phil. 519 (1998).
- [33] Id. at 526.
- [34] TSN, 30 June 2000, p. 5.
- [35] TSN, 13 October 2000, pp. 4; 6.
- [36] Go v. Yamane, G.R. No. 160762, 3 May 2006, 489 SCRA 107, 117.
- [37] 449 Phil. 419, 431 (2003).
- [38] Id. at 431-432.
- [39] Art. 130. Upon the termination of the marriage by death, the conjugal partnership property shall be liquidated

in the same proceeding for the settlement of the estate of the deceased.

If no judicial settlement proceeding is instituted, the surviving spouse shall liquidate the conjugal partnership property either judicially or extra-judicially within one year from the death of the deceased spouse. If upon the lapse of said period no liquidation is made, any disposition or encumbrance involving the conjugal partnership property of the terminated marriage shall be void.

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[40] TSN, 26 May 2000, p. 13

[41] Exhibit "E," supra

[42] Exhibit "D," supra

[43] TSN, 26 May 2000, p. 20

[44] Record, Civil Case No. 98-445-MK, p. 2

[45] *Binarao v. Plus Builders, Inc.*, G.R. No. 154430, 16 June 2006, 491 SCRA 49, 54.

[46] Exhibit "13."

[47] TSN, 26 May 2000, pp. 18-19.

[48] Record, Civil Case No. 98-445-MK, pp. 33-37.

[49] TSN, 26 May 2000, pp. 21-22.

[50] TSN, 12 August 2004, pp. 6-12.

[51] TSN, 26 May 2000, pp. 27-28.

[52] *Pan Pacific Industrial Sales Co., Inc. v. Court of Appeals*, 517 Phil. 380, 388 (2006).

[53] *Sps. Alfarero v. Sps. Sevilla*, 458 Phil. 255, 262 (2003).

[54] *Meneses v. Venturozo*, G.R. No. 172196, 19 October 2011.

[55] *Destreza v. Rinoza-Plazo*, G.R. No. 176863, 30 October 2009, 604 SCRA 775, 785.

[56] *Santiago v. Pioneer Savings and Loan Bank*, 241 Phil. 113, 119 (1988).

[57] Article 2126, Civil Code of the Philippines.

[58] *Talmonite v. Hongkong and Shanghai Banking Corporation, Ltd.*, G.R. No. 166970, 17 August 2011.

[59] *Rural Bank of Siaton (Negros Oriental) v. Macajilos*, G.R. No. 152483, 14 July 2006, 495 SCRA 127, 140.

[60] *Alano v. Planters Development Bank*, G.R. No. 171628, 13 June 2011.

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