

**SPOUSES ATTY. TOMAS HOFER AND DR. BERNARDITA R. HOFER,
PETITIONERS, VS. NELSON YU, RESPONDENT,***G.R. No. 231452. July 01, 2020*

Ponente: CARANDANG, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-231452/>**CARANDANG, J.:**

This is a Petition for Review on Certiorari[1] assailing the Decision[2] dated October 27, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 03264-MIN, which dismissed the Petition for Annulment of Judgment under Rule 47 of the Rules of Court (Rules) filed by petitioner Spouses Atty. Tomas Hofer (Tomas) and Dr. Bernardita R. Hofer (Bernardita; collectively, petitioners) seeking to nullify the Amended Decision[3] dated February 23, 2004 and Order[4] dated September 17, 2009 of the Regional Trial Court (RTC) of General Santos City, Branch 22 in Civil Case No. 5550. Petitioners likewise assail the Resolution[5] dated February 17, 2017 of the CA denying their motion for reconsideration.

On February 28, 1995, respondent Nelson Yu (Yu) filed a Complaint for Sum of Money and Damages with application for the issuance of preliminary attachment against herein petitioners. The case was docketed as Civil Case No. 5550.[6]

On March 6, 1995, the RTC issued a Writ of Preliminary Attachment. As a result, the following conjugal properties of petitioners were levied, to wit:

- a) A parcel of land (Lot 3 Block 4 of the subdivision plan psd-11-013996) being a portion of Lot 25, P1s 209-D situated in the Barrio of Lagao, General Santos City, containing an area of 185 square meters more or less, and covered by Transfer [C]ertificate of Title No. T-48484;
- b) A parcel of land (Lot 8 Block 1 of subdivision plan psd-11-013996) being a portion of Lot 25, P1s 209-D situated in the Barrio of Lagao, General Santos City, containing an area of 200 square meters more or less, and covered by Transfer Certificate of Title No. T-48447;
- c) A parcel of land (Lot 1 Block 10 of the subdivision plan psd-11-013996) being a portion of Lot 25, P1s 209-D situated in the Barrio of Lagao, General Santos City, containing an area of 298 square meters, and covered by Transfer Certificate of Title No. T-48402;
- d) A parcel of land (Lot 1 Block 6 of the subdivision plan psd-11-013996) being a portion of Lot 25, P1s 209-D situated in the Barrio of Lagao, General Santos City, containing an area of 248 square meters more or less, and covered by Transfer [Certificate of Title No. T-48386;
- e) A parcel of land known as Lot 30, GSS-11-030-D, situated in Tumbler, General Santos City, containing an area of 4076 square meters more or less, and covered by Transfer Certificate of Title No. T-60285.
- f) A parcel of land (lot 24-B Psd-11-009020 being a portion of Lot 24, Gss-11-030-D; Tumbler Group Settlement Survey LRC CAD) situated in the Barrio of Tumbler, General Santos City, containing an area of 5,000 square meters more or less, and covered by Transfer Certificate of Title No. T-19829.[7]

On April 17, 1995, petitioners filed their Answer alleging that respondent had no cause of action against them since they do not have any obligation to him as the subject check issued was without authority.[8]

On August 18, 1995, before the case could be tried on the merits, petitioners and respondent, assisted by their counsels, executed a Compromise Agreement[9] which contained the following stipulations:

1.

That the plaintiff and the defendants admit and agree that the latter's total obligations due to the former (plaintiff) which is the subject matter of this case in the amount of P1,500,000.00, Philippine Currency;

2.

That the property which is the subject of payment is worth P1,600,000.00, Philippine Currency;

3.

That in total payment of said amount, the defendants hereby convey, transfer and cede in favor of plaintiff a parcel of land owned by them and described as follows:

A parcel of land, Lot 102, Cad. Lot No. 12060-PT situated in the Bo. of Kalubihan, Municipality of Talamban, City of Cebu, Island of Visayas, with an area of SEVEN HUNDRED NINETY TWO (792) Square meters, more or less, as under Tax Declaration No. 94GR-02-019-15613 in the name of Spouses Thomas & Bernardita R. Hofer.

x x x x

4.

That the plaintiff shall pay the defendants the amount of ONE HUNDRED THOUSAND (P100,000.00) PESOS representing excess of the property's valuation over defendants' total obligations;

5.

That the plaintiff hereby agrees that all expenses, capital gains tax, documentary stamp tax and other fees and charges in the transfer and registration of the land in its (sic) shall be borne by him;

6.

That with this Compromise Agreement, the parties have mutually withdrawn whatever claims and counterclaims they may have against the other arising from this case.[10]

In a Decision[11] dated August 22, 1995, the RTC approved the Compromise Agreement and adopted its stipulations. The Decision became final and executory.

On May 29, 2003, after the lapse of almost eight years, respondent Yu and Bernardita executed an Amended Compromise Agreement[12] without the knowledge and participation of Tomas, which stipulated the following:

1. The defendants agree that the plaintiffs shall be relieved from accepting their Talamban Cebu City real property;

2. That in exchange thereof, they agree to hold in trust an amount of ONE MILLION FIVE HUNDRED THOUSAND (P1,500,000.00) PESOS that shall come from the proceeds of the sale of their properties which were levied (pursuant to an order of attachment in this case), and which sale is to become due on or before December 30, 2004, but which is subject to a six months extension, should any such sale fail to materialize; provided, however, no such failure is attributable to the defendants;

3. That the subject properties which are due for sale are as follows:

a) Transfer Certificate of Title No. T-19829

b) Transfer Certificate of Title No. T-60285

c) Transfer Certificate of Title No. T-48484

- d) Transfer Certificate of Title No. T-48425
- e) Transfer Certificate of Title No. T-48447
- f) Transfer Certificate of Title No. T-48421
- g) Transfer Certificate of Title No. T-48386
- h) Transfer Certificate of Title No. T-48402

4. That on or before the day of sale or transfer of the aforementioned properties, the plaintiff agrees to cause the discharge or lifting of the levy on attachment thereon which are more particularly identified in Entries Nos. 193265 and 193268;

5. That pursuant to the aforementioned purposes, the defendants shall from time to time inform and apprise the plaintiff of whatever transaction (affecting the sale or disposition of subject properties), and that in the event of any such transfer, sale or conveyance thereof, that they shall immediately notify the plaintiff of such fact in order for the latter to cause the discharge of the levy on attachment as aforementioned, and thereafter to immediately deliver the amount of One Million Five Hundred Thousand (P1,500,000.00) Pesos which they shall hold in trust for the plaintiff, thru the undersigned counsel, who is hereby empowered to received said amount for the plaintiff.[13]

Acting on the Amended Compromise Agreement, the RTC directed the respective counsels of Yu and petitioners to submit a joint manifestation on whether the parties were duly assisted when the amended agreement was executed.[14]

On October 8, 2003, petitioners' counsel, Atty. Samuel R. Matunog, manifested that he had not received information from his clients as to the nature, substance and details of the Amended Compromise Agreement. Thus, he averred that he cannot state for the record that he has rendered due assistance to petitioners in the execution of the alleged Amended Compromise Agreement.

The parties submitted for the court's approval the terms and conditions of their Amended Compromise Agreement. On February 23, 2004, the RTC rendered an Amended Decision[15] approving the Amended Compromise Agreement stating that:

Finding the foregoing to be not contrary to law, public order, public policy, morals or good customs and in accordance with Article 6 of the New Civil Code, the same is hereby approved as the decision in this case. The decision dated August 22, 1995 is amended accordingly.

SO ORDERED.[16]

Atty. Matunog received a copy of the Amended Decision by registered mail on February 23, 2004.[17]

On August 25, 2005, respondent Yu filed a Motion for Issuance of Writ of Execution.[18] On September 12, 2005, the RTC issued an Order[19] directing the issuance of a writ of execution which was issued two days after. Petitioner's counsel, Atty. Samuel Matunog, received a copy of the said order on September 21, 2005 by registered mail. On October 20, 2005, all the properties subject of the Amended Compromise Agreement were sold at public auction with respondent being the highest bidder. On December 28, 2006, the Sheriffs Certificate of Sale[20] was issued. The Sheriffs Certificate of Sale was registered in the Property Registry on January 4, 2007.

On March 10, 2008, respondent Yu filed several Motions to Direct the Register of Deeds of General Santos City to:

1)

annotate Sheriffs Certificate of Sale on TCT No. T-9336[1] in the name of Victor Joy G. Cabading;

2)

direct the Branch Sheriff to issue Final Certificate of Sale on the Properties Covered by TCT No. Nos. T-19829, T-48421, T-48425, T-48447, T-48484, T-60285 and T-93361;

3)

direct the Defendants and Victor Joy G. Cabading to Surrender the Owner's Duplicate Copies of TCT Nos. T-60285 and T-93361;

4)

direct the Register of Deeds to annotate the Corresponding Sheriffs Certificate of Sale on TCT Nos. T-19829, T-48421, T-48425, T-48447, T-48484, T-60285 in the name of the plaintiffs and T-93361 in the name of Victor Joy G. Cabading;

5)

direct the Register of Deeds of General Santos City to cancel TCT Nos. T-19829, T-48421, T-48425, T-48447, T-48484, T-60285 in the name of the plaintiffs & T-93361 in the name of Victory Joy G. Cabading and in lieu thereof, New Certificates be issued in favor of the plaintiff, herein respondent; and

6)

for issuance of Writ of Possession and Demolition affecting the properties covered by TCT Nos. T-19829, T-48421, T-48425, T-48447, T-48484, T-60285 & T- 93361.[21]

On March 16, 2009, petitioners filed a Comment with Motion to Set Aside the Amended Decision, Writ of Execution, Public Auction Sale and to Declare Void the Corresponding Certificate of Sale.[22] Tomas claimed that he was denied due process and that through deceitful machinations and false representations, his wife was inveigled into signing the Amended Compromise Agreement without any counsel.[23]

Subsequently, the RTC issued an Order[24] dated September 17, 2009 partly granting the Motions of respondent Yu. The RTC ruled in this wise:

WHEREFORE, premises considered, the court hereby grants plaintiffs Motions to Direct the Register of Deeds of General Santos City to Annotate Sheriffs Certificate of Sale on TCT No. T-93361 in the name of Victor Joy G. Cabading, to Direct the Branch Clerk Sheriff to Issue Final Certificate of Sale on the Properties Covered by TCT Nos. T-19829, T-48421, T-48425, T-48447, T-48484, T-60285 & T-93361, to Direct the Defendants and Victor Joy G. Cabading to Surrender the Owner's Duplicate Copies of TCT Nos. (sic) T-60285 & T-93361, to Direct the Register of Deeds to Annotate the Corresponding Sheriffs Certificate of Sale on TCT Nos. T-19829, T- 48421, T-48425, T-48447, T-48484 T-60285 & T-93361, and For Issuance of Writ of Possession and Demolition Affecting the Properties Covered by TCT Nos. T-19829, T-48421, T-48425, T-48447, T-48484, T-60285 & T-93361 except his Motion to Direct the Register of Deeds of General Santos City to Cancel TCT Nos. T-19829, T- 48421, T-48425, T-48447, T-48484, T-60285 in the name of the plaintiffs & T-93361 in the name of Victor Joy G. Cabading and in lieu thereof, New Certificates be issued in Favor of Plaintiff which is premature.[25]

Aggrieved, on November 11, 2009, petitioners filed a Petition for Annulment of Judgment and Final Order with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction[26] before the CA. Petitioners claimed that the Amended Decision dated February 23, 2004 and Order dated September 17, 2009 were null and void on the ground that the trial court had no jurisdiction to amend the original Decision dated August 22, 1995 which had long become final and executory upon its rendition, it being a judgment on compromise: Petitioners further averred that the Amended Compromise Agreement, which was the basis of the

Amended Decision, was without the authority and consent of petitioner Tomas, hence, it could not bind the conjugal properties of the spouses.[27]

In a Resolution[28] dated November 17, 2009, the CA gave due course to the petition and granted the prayer for a temporary restraining order.

On December 3, 2009, respondent Yu filed his Answer with Affirmative Defense and Compulsory Counterclaim with Ex Parte Motion to Dissolve Temporary Restraining Order/Preliminary Injunction and Opposition thereto.[29] He alleged that the RTC had jurisdiction by estoppel to render the Amended Decision and petitioners' claim was already abandoned and barred by laches.[30]

Pending resolution of the petition, the CA issued a preliminary injunction[31] in favor of petitioners. Respondent, in his Answer, averred that the RTC had jurisdiction by estoppel to render the Amended Decision and that the claims of petitioners were already abandoned and barred by laches. On September 24, 2015, the CA "declared that the petition for relief from judgment is submitted for decision without the memorandum from the parties.[32]

In the herein assailed Decision[33] dated October 27, 2016, the CA dismissed the petition for annulment of judgment for lack of merit. The CA held that an action for annulment of judgment may only be availed of when the following concur: (1) the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner; (2) the ground for annulment are based on either extrinsic fraud, lack of jurisdiction or lack of due process; and (3) the suit is filed within the reglementary period — within four years from discovery of extrinsic fraud and before the action is barred by laches or estoppel if premised on lack of jurisdiction.[34]

The CA ruled that petitioners' petition for annulment of judgment was already barred by laches. An action for annulment of judgment anchored on the trial court's lack of jurisdiction must be filed by the party before laches had set in.[35] The CA held that petitioners have constructive notice of the Amended Decision which was registered and inscribed on one of their titles, T-48386, as Entry No. 520249 on June 9, 2005. The CA ruled that under the doctrine of "constructive notice", the registration of a voluntary or involuntary instrument in the office of the Register of Deeds operates as a notice to the whole world and effectively bind third persons, including the owners of the land.[36]

The CA further noted that the Amended Decision was rendered on February 23, 2004, however, petitioners did not seek any judicial relief to impugn the issuance of the said judgment. It was only after nearly five years or on March 16, 2009 that petitioners filed with the RTC their Comment with Motion to Set Aside the Amended Decision, Writ of Execution and Public Auction Sale, in which case, the CA ruled that laches has set in.[37]

Hence, petitioners filed this petition.

Petitioners contend that the CA erred in holding that their action for annulment of judgment is barred by laches. According to petitioners, laches is not obtaining in the instant case since the Amended Decision was a void judgment for having been issued long after the Compromise Agreement had become final and executory and after the court has lost its jurisdiction over the case. Petitioners assert that the principle of immutability of final judgment is applicable in this case.[38]

Petitioners further claim that the Amended Compromise Agreement was executed without the knowledge and consent of Tomas and the consent of Bernardita was vitiated when respondent Yu's counsel inveigled her into agreeing to change the original Compromise Agreement.[39] Tomas, upon learning about the Amended Compromise Agreement in March 2009 which affected their conjugal property, immediately filed a Comment with Motion to Set Aside the Amended Decision, Writ of Execution, Public Auction Sale and to Declare Void the

Corresponding Certificate of Sale. Hence, petitioners contend that the trial court erred in approving the Amended Compromise Agreement when it had no jurisdiction to amend the original Decision dated August 22, 1995.[40]

In the Comment[41] filed by respondent Yu, he maintains that the Amended Compromise Agreement was voluntarily and freely executed between him and Bernardita in order to fully resolve all the issues between the parties arising from the implementation of the original Compromise Agreement. Respondent claims that petitioners are in estoppel from questioning the validity of the Amended Compromise Agreement and the Amended Decision, and from questioning the jurisdiction of the RTC in rendering the Amended Decision, because as shown in the records, their counsel received copy of the Amended Decision and petitioners themselves received a copy of the Amended Decision on March 25, 2004 by registered mail and they did not timely question the Amended Compromise Agreement.[42] Also respondent claims that the RTC has jurisdiction to render an Amended Decision based on an Amended Compromise Agreement considering that the original Compromise Agreement has not been fully executed or implemented.[43]

During the pendency of the case, Bernardita died on March 27, 2016.

Issues

The issues to be resolved in this petition are: (1) whether the CA erred in ruling that petitioners' action for annulment of judgment was already barred by laches; and (2) whether there exists any ground to annul the Amended Decision.

Ruling of the Court

The petition is meritorious.

A petition for annulment of judgment is a remedy in equity so exceptional in nature that it may be availed of only when other remedies are wanting, and only if the judgment, final order or final resolution sought to be annulled was rendered by a court lacking jurisdiction or through extrinsic fraud.[44]

Sections 2 and 3 of Rule 47 of the Rules provide for the grounds for annulment of judgment and the period for filing of such action, to wit:

Section 2. Grounds for annulment. — The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.

Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief.

Section 3. Period for filing action. — If based on extrinsic fraud, the action must be filed within four (4) years from its discovery; and if based on lack of jurisdiction, before it is barred by laches or estoppel.

Given the extraordinary nature and the objective of the remedy of annulment of judgment or final order, a petitioner must comply with the statutory requirements as set forth under Rule 47.[45] These are: (1) the remedy is available only when the petitioner can no longer resort to the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies through no fault of the petitioner; (2) the grounds for action of annulment of judgment are limited to either extrinsic fraud or lack of jurisdiction; (3) the action must be filed within four years from the discovery of the extrinsic fraud; and if based on lack of jurisdiction, must be raised before it is barred by laches or estoppel; and (4) the petition must be verified, and should allege with particularity the facts and the law relied upon for annulment, as well as those supporting the petitioner's good and substantial cause of action or defense, as the case may be.[46]

The judgment may be annulled on the ground of extrinsic or collateral fraud. A person who is not a party to the

judgment may sue for its annulment provided he can prove that the same was obtained through fraud or collusion and that he would be adversely affected thereby.[47] The other ground for annulment of judgments or final orders and resolutions is lack of jurisdiction on the part of the court which adjudicated the case. This refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim.[48]

Case law, however, recognizes a third ground — denial of due process of law.[49] Due process requires that those with interest in the thing in litigation be notified and given an opportunity to defend those interests. Courts, as guardians of constitutional rights, cannot be expected to deny a person their due process rights while at the same time be considered acting within their jurisdiction.[50] Where the denial of the fundamental right of due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction.[51] The records would show that Tomas has not participated in the execution of the Amended Compromise Agreement, nor was he notified or his consent given to the said Amended Compromise Agreement. Without Tomas' consent and acquiescence, the amendment or modification of the terms of the parties' judicially approved compromise is not valid. Here, we find that the Amended Decision should be nullified based on an Amended Compromise Agreement that violates petitioner Tomas' right to due process as it was executed without his knowledge, participation and consent.

In denying the petition for annulment of judgment, the CA held that the action is barred by laches. Laches is defined as the failure or neglect for an unreasonable or unexplained length of time to do that which by exercising due diligence, could or should have been done earlier warranting a presumption that he has abandoned his right or declined to assert it.[52] There is no absolute rule as to what constitutes laches or staleness of demand. Each case must be determined according to its particular circumstances.[53] Its application is controlled by equitable considerations. It is the better rule that courts, under the principle of equity, will not be guided or bound strictly by the statute of limitations or the doctrine of laches when to be so, a manifest wrong or injustice would result.[54]

In the present case, contrary to the findings of the CA, We find that laches has not barred petitioners' action for annulment of judgment. There is no evidence to show that Tomas had actual knowledge of the execution of the Amended Compromise Agreement nor had he received a copy of the Amended Decision. He only knew of the aforesaid Amended Compromise Agreement sometime in March 2009, when he learned that their conjugal properties, which were previously attached but were released from attachment upon the execution of the judicially approved Compromise Agreement, were the subject of sale.[55] Upon receiving a copy of the registration of sale, he immediately filed a motion to set aside the Amended Decision, writ of execution, public auction sale and to declare void the corresponding certificate of sale. Then he filed his petition for annulment of judgment on November 11, 2009. His silence and inaction could also not be considered as estoppel since he believed in good faith that their case had already been terminated upon the execution of the first Compromise Agreement which had already been judicially approved by the RTC. Hence, the action to annul the Amended Decision is not barred by laches.

After having ruled that petitioners' action is not barred, We proceed to determine whether there exists a ground to annul the Amended Decision of the trial court. To emphasize, an earlier Decision was already issued on August 22, 1995 which was based on the parties' Compromise Agreement. Pursuant to the provisions of the Compromise Agreement, petitioners convey, transfer and cede in favor of respondent Yu the property known as Talamban property under Tax Declaration No. 94GR-02-019-15613 valued at P1,600,000.00 as payment of their total obligation of P1,500,000.00 to respondent Yu, with the latter obligating himself to pay P100,000.00 to petitioners representing the excess of the value of the subject property over petitioners' obligation. The parties agree to mutually withdraw whatever claims and counterclaims they have against the other arising from the subject case.[56]

The agreement of the parties was in the nature of dacion en pago or dation in payment. It is a mode of extinguishing an existing obligation by the delivery and transmission of ownership of a thing by the debtor to the creditor as an equivalent of the performance of the obligation.[57] Consequently, the execution of the Compromise Agreement effectively extinguished petitioners' monetary obligation to the respondent who is even obligated to return the subject parcel of land, as expressed below:

3. That in total payment of said amount, the defendants hereby convey, transfer and cede in favor of plaintiff a parcel of land owned by them and described as follows:

A parcel of land, Lot 102, Cad. Lot No. 12060-PT situated in the Bo. Of Kalubihan, Municipality of Talamban, City of Cebu, Island of Visayas, with an area of SEVEN HUNDRED NINETY TWO (792) Square meters, more or less, as under Tax Declaration No. 94-GR-02-019-15613 in the name of Spouses Thomas & Bernardita R. Hofer.[58] (Emphasis supplied)

We now proceed to rule on whether a judgment based on a compromise agreement can be amended by another compromise agreement. It is settled that a judgment on compromise is a judgment on the merits.[59] It has the effect of res judicata and is immediately final and executory unless set aside because of falsity or vices of consent.[60] A judicially approved compromise agreement ceases to be a mere contract between the parties, and becomes a judgment of the court, to be enforced through a writ of execution. Thus, even after the judgment has become final, the court retains its jurisdiction to execute and enforce it. There is a difference between the jurisdiction of the court to execute the judgment and its jurisdiction to amend, modify or alter the same. The former continues even after the judgment has become final for the purpose of enforcement of judgment; the latter is terminated when the judgment becomes final.[61] For after the judgment has become final, facts and circumstances may transpire which can render the execution unjust or impossible.

On May 29, 2003, respondent Yu and Bernardita executed an Amended Compromise Agreement modifying the terms of their previous agreement and agreed that respondent shall be relieved from accepting the Talamban Cebu City real property and that in exchange thereof, petitioners shall hold in trust the amount of P1,500,000.00 that shall come from the proceeds of their properties which were levied and previously attached by the court, in effect modifying their previous agreement and converting it into a monetary obligation.[62]

This Court has previously cited several relevant cases which rule that there is no prohibition for the parties to enter into a compromise agreement after a final judgment. In *Magbanua v. Uy*: [63]

Rights may be waived through a compromise agreement, notwithstanding a final judgment that has already settled the rights of the contracting parties. To be binding, the compromise must be shown to have been voluntarily, freely and intelligently executed by the parties, who had full knowledge of the judgment. Furthermore, it must not be contrary to law, morals, good customs and public policy.[64] (Emphasis supplied)

Thus, the parties are not precluded nor prohibited from executing an amended compromise agreement when there has been no execution of the first judicially approved compromise. However, the validity of the agreement is determined by compliance with the requisites and principles of contracts. As provided by the law on contracts, a valid compromise must have the following elements: (1) consent of the parties to the compromise, (2) an object certain that is the subject matter of the compromise, and (3) the cause of the obligation that is established.[65]

To be valid, an amendment to the compromise agreement must be with the concurrence and consent of all the parties involved. In the present case, the Amended Compromise Agreement was executed only between respondent Yu and Bernardita, but without the consent and participation of Tomas. There was no proof to show that Bernardita was authorized by Tomas to enter into the Amended Compromise Agreement in his behalf. Thus, being executed without the authority of Tomas, an indispensable party to the case, the Amended Compromise

Agreement is not a valid compromise and cannot supersede the previously approved Compromise Agreement. Clearly, it was erroneous for the RTC to approve the Amended Compromise Agreement executed in 2005 which was executed without the consent of Tomas and in violation of his right to due process.

It is significant to point out at this juncture that the parties had already agreed that the Talamban, Cebu City property valued at P1,600,000.00 was transferred and ceded to the respondent as payment of petitioners' obligation, with respondent paying petitioners P100,000.00, the excess value of the property over the amount of their obligation. Hence, it is improper to allow the amendment of their judicially approved Compromise Agreement, which would, in effect, subject the previously levied properties to sale without the consent and knowledge of Tomas, one of the indispensable parties to the case.

We now discuss the authority of the wife to execute a contract dealing with conjugal property during the marriage. Under Article 172 of the New Civil Code, the wife cannot bind the conjugal partnership without the husband's consent except in cases provided by law. In the case of *Abalos v. Macatangay, Jr.*,^[66] the Court held that the husband, even if he is statutorily designated as administrator of the conjugal partnership, cannot validly alienate or encumber any real property of the conjugal partnership without the wife's consent. Similarly, the wife cannot dispose of any property belonging to the conjugal partnership without the conformity of the husband. Thus, the trial court erred when it approved the Amended Compromise Agreement which was entered only by Bernardita and respondent, as the same could not bind the conjugal properties of both spouses.^[67]

Even under Article 124 of the Family Code, it is required that any disposition or encumbrance of the conjugal property must have the written consent of the other spouse; otherwise, such disposition is void.^[68] The new law provides that the administration of the conjugal partnership is now a joint undertaking of the husband and the wife. In all instances, the present law specifically requires the written consent of the other spouse or authority of the court for the disposition or encumbrance of the conjugal property, without which the disposition or encumbrance shall be void.

Thus, even on the supposition that the wife Bernardita encumbered her respective share in the property, such encumbrance is still void for the right of the husband or the wife to one-half of the conjugal assets does not vest until liquidation of the conjugal partnership.^[69]

All told, the Amended Compromise Agreement entered into by Bernardita with respondent over the conjugal properties of the spouses was void for having been executed without the participation and consent of Tomas. Therefore, the trial court erred in approving the Amended Compromise Agreement. Accordingly, the CA should have granted the petition for annulment of judgment filed by petitioners.

WHEREFORE, the Petition for Review on Certiorari is hereby GRANTED. Accordingly, the Decision dated October 27, 2016 and the Resolution dated February 17, 2017 of the Court of Appeals in CA-G.R. SP No. 03264-MIN denying the petition for annulment of judgment filed by petitioners Spouses Atty. Tomas Hofer and Dr. Bernardita R. Hofer are REVERSED and SET ASIDE. The Amended Decision dated February 23, 2004 and the Order dated September 17, 2009 of the Regional Trial Court of General Santos City, Branch 22 in Civil Case No. 5550 are ANNULLED and SET ASIDE.

SO ORDERED.

Leonen, Gesmundo, Zalameda and Gaerlan, JJ., concur.

[1]Rollo, pp. 3-16.

[2]Penned by Associate Justice Ruben Reynaldo G. Roxas, with the concurrence of Associate Justices Edgardo T. Lloren and Rafael Antonio M. Santos; id. at 18-34.

[3]Id. at 51-52.

[4]CA rollo, pp. 89-99.

[5]Rollo, pp. 38-42.

[6]Id. at 5.

[7]Id.

[8]Id. at 6.

[9]Id. at 19.

[10]Id.

[11]Id. at 53-54.

[12]Id. at 20-21.

[13]Id. at 52.

[14]Id. at 21.

[15]Supra note 3.

[16]Rollo, p. 52.

[17]Id. at 79.

[18]CA rollo, pp. 274-276.

[19]Id. at 277.

[20]Id. at 497-498.

[21]Id. at 26-35.

[22]Rollo, p. 22

[23]Id. at 9-10.

[24]Id. at 23-24.

[25]Id. at 23.

[26]CA rollo, pp. 2-13.

[27]Id. at 3.

[28]Id. at 37-38.

[29]Id. at 78-86.

[30]Id. at 80.

[31]Id. at 3.

[32]Rollo, p. 27.

[33]Supra note 2.

[34]Rollo, p. 30.

[35]Id.

[36]Id. at 32.

[37]Id. at 32-33.

[38]Id. at 8-9.

[39]Id. at 9.

[40]Id.

[41]Id. at 78-91.

[42]Id. at 78

[43]Id. at 80.

[44]Aquino v. Tangkengco, 793 Phil. 715, 721 (2016), citing Dare Adventure Farm Corporation v Court of Appeals, 695 Phil. 681, 688 (2012). 115

[45]See Pinausukan Seafood House, Roxas Blvd., Inc. v. Far East Bank & Trust Co., 725 Phil. 19, 33-37(2014). .

[46]Id.

[47]Regalado, Remedial Law Compendium, Vol. 1., Eighth Revised Edition, p. 567.

[48]Id. at 569.

[49]Baclaran Marketing Corporation v. Nieva 809 Phil. 92, 102 (2017).

[50]Arrieta v. Arrieta, G.R. No. 234808, November 19, 2018.

[51]Id.

[52]Pangasinan, v. Disonglo-Almazora, 762 Phil. 492, 502-503 (2015).

[53]Insurance of the Philippine Islands Corporation v. Sps. Gregorio, 658 Phil. 36 42 (2011).

[54]Id.

[55]Rollo, p. 9.

[56]Id. at 53-54.

[57]PNB v. Tan Dee, 111 Phil. 473, 485 (2014).

[58]Rollo, p.19.

[59]Gadrinab v. Salamanca, 736 Phil. 279 283 (2014)

[60]Id.

[61]Riano, W.B., Fundamentals of Civil Procedure (2005 ed.), p. 173.

[62]Rollo, pp. 20-21.

[63]497 Phil. 511,515(2005).

[64]Id.

[65]Rollo, pp. 194-195.

[66]482 Phil. 877 (2004).

[67]Id. at 890.

[68]Hapitan v. Sps. Blacer, 778 Phil. 42, 58 (2016).

[69]Abalos v. Macatangay, Jr., supra note 66 at 890-891.

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