

**BANCO MAXIMO, INC., PETITIONER, VS. CHRIS ANGELO C. PELAYO,
MARY ANN C. PELAYO-CALISURA, AND CATHERINE C.
PELAYO-SOCO, RESPONDENTS.**

G.R. No. 257251, August 18, 2025

Ponente: ROSARIO, J.

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ROSARIO, J.:

Before the Court is a Petition for Review on Certiorari[1] assailing the Decision[2] and the Resolution[3] of the Court of Appeals (CA), which reversed and set aside the Decision[4] of the Regional Trial Court (RTC). In the assailed ruling, the CA nullified the real estate mortgage and eventual foreclosure of the mortgage by Banco Maximo, Inc. (Banco Maximo) of the property owned by the Pelayo clan on the ground that the property foreclosed is a family home which is exempt from execution under the law.[5]

Antecedent Facts

The records disclose that spouses Edgar and Marlinda Pelayo (spouses Pelayo) got married on December 25, 1976. They have four children, namely: Chris Angelo C. Pelayo, Mary Ann C. Pelayo-Calisura, Catherine C. Pelayo-Soco (collectively, Chris et al.), and Ian C. Pelayo (Ian). The spouses Pelayo raised all their children in their residential house and lot described as Cadastral Lot Nos. 2, 1678, and 1679 of Subdivision No. 2, located at Barangay Nailon, Bogu City, Cebu (subject property).[6]

On January 10, 2004, the patriarch, Edgar, passed away. Four years later, Marlinda and Chris et al. executed an Extrajudicial Declaration of Heirs with Waiver of Rights[7] (EJS) dated March 31, 2008. In the EJS, they waived their interest over the subject property in favor of Ian. As a result, Tax Declaration No. 22703[8] covering the subject property was issued in the name of Ian.[9]

On December 3, 2008, Marlinda, in her capacity as Ian's attorney-in-fact, obtained a loan from Banco Maximo in the amount of PHP 400,000.00. The loan was secured by a real estate mortgage[10] dated December 23, 2008 over the subject property.

Later, however, Ian defaulted in paying the loan, prompting Banco Maximo to extrajudicially foreclose the subject property. At the public auction held on January 24, 2012, Banco Maximo emerged as the highest bidder at a bid amount of PHP 353,666.66, an amount equivalent to the balance on the principal of the loan, excluding the unpaid interest and penalty.[11]

Sometime in October 2012, Chris et al. offered to redeem the subject property from Banco Maximo for PHP 500,000.00. Banco Maximo, however, made a counter-offer of PHP 800,000.00. The negotiations eventually fell through and did not progress any further.[12]

On January 14, 2013, Chris et al. filed a Complaint[13] before the RTC, praying for the declaration of nullity of the real estate mortgage, extrajudicial foreclosure sale, and certificate of sale.[14]

On February 19, 2016, the RTC dismissed the complaint for failure to state a cause of action and noted the

counterclaim filed by Banco Maximo.[15] The trial court held that Chris et al. had no legal standing to file the complaint since they are neither the registered owners of the subject property nor parties to the mortgage.[16]

Moreover, the RTC did not give credence to Chris et al.'s claim that the subject property is a family home that should have been exempt from execution. The RTC thus held:[17]

[T]here is no such family home to be considered in the present action since, by sheer definition of law, the family home must be composed of a (1) residential house and (2) lot where the said house is erected. By admission of [Chris et al.], the lot where the house is constructed exclusively belongs to Ian Pelayo [(Ian)] (who is not [a] party to the case) covered by Tax [Declaration] No. 22703. . . Likewise, on page 14 of the [Transcript of Stenographic Notes] dated March 12, 2013, plaintiff-witness Mary Ann Calisura categorically admitted during the [cross-examination] that the owner of the lot is his brother [Ian].

Considering the lot now belongs to [Ian] (not a party to the case), there is no such family home to speak of since the family home, according to [Article] 156 [of the Family Code], must be part of the properties of the absolute community of property or conjugal partnership. Upon the death of Edgar Pelayo, the father of [Chris et al. and Ian], the conjugal partnership was dissolved. For this reason, his surviving heirs executed an Extra-judicial Declaration of Heirs with Waiver of Rights dated March 31, 2008[,] whereby the surviving wife Marlinda Pelayo and [Chris et al.] absolutely waived all their rights, interests[,] and participation over the subject property in favor of [Ian], another surviving heir of deceased Edgar Pelayo, and who became the exclusive owner thereof.

While [Article] 159 of the Family Code declares that the family home shall continue despite the death of one or both spouses or of the unmarried head of the family for a period of ten years, such grant of extension is subject to the condition that there are still minor beneficiaries. In the case at bar, there is none since [Chris et al.], including [Ian], are all of majority age. In fact, two of the children, plaintiffs Mary Ann and Catherine, are already married.[18]

Dissatisfied with the RTC's ruling, Chris et al. elevated the case before the CA.[19]

In the assailed Decision,[20] the CA partially granted the appeal and reversed and set aside the RTC's ruling. The dispositive portion of the CA Decision reads:

WHEREFORE, the appeal is PARTLY GRANTED. The Decision dated 29 February 2016 of the Regional Trial Court, Branch 61, Bogo City, Cebu in Civil Case No. BOGO-02891 is REVERSED and SET ASIDE, and a new one entered whereby the Complaint is PARTLY GRANTED. Accordingly, the following are declared VOID:

- the Real Estate Mortgage dated 23 December 2008 over the parcel of land covered by Tax Declaration No. 22703;
- the Extrajudicial Foreclosure Sale conducted on 24 January 2012 by defendant-appellee Sheriff Eva G. Ventic of the Regional Trial Court, Branch 61, Bogo City, Cebu, in EJP-0646-BG; and
- the Certificate of Sale dated 20 February 2012 issued in EJP-0646-BG by the Office of the Ex-Officio Provincial Sheriff, Regional Trial Court, Branch 61, Bogo City, Cebu.

Defendant-Appellee Banco Maximo, Inc.'s Counterclaim is DENIED.

Costs against the defendant-appellee Banco Maximo, Inc.

SO ORDERED.[21]

Contrary to the RTC's findings, the CA found that the subject property was a family home, which, under the law,[22] cannot be partitioned within a period of 10 years following the death of one or both of the parents or of

the unmanned head of the family.[23] According to the appellate court, the subject property subsisted as a family home for a period of 10 years from Edgar's death on January 10, 2004, or until January 7, 2014.[24] Thus, the subject property was invalidly partitioned by Marlinda and the surviving children through their EJS on March 31, 2008, or roughly four years after Edgar's death.[25]

As such, the CA concluded that the subsequent mortgage and foreclosure proceedings on the subject property, which stemmed from the supposed invalid partition, were likewise void.[26]

Lastly, the CA ruled that the claim of Chris et al. for an award of moral damages, exemplary damages, attorney's fees, litigation expenses, and costs of suit, are baseless.[27]

Banco Maximo filed a Motion for Reconsideration before the CA, which was denied in a Resolution dated April 22, 2021.[28]

Hence, the instant Petition,[29] where petitioner argued that the CA erred in concluding that the subject property is a family home. According to petitioner, the protection given by law for family homes is based on the premise that there are beneficiaries who are actually residing therein. Here, however, there was no proof on record to show that any of the beneficiaries were still residing in the subject property at the time when the EJS was executed.[30]

In claiming that the EJS is valid and binding, petitioner emphasized that the respondents never denied nor questioned the validity of the said document in the first place, and it was erroneous for the CA to resolve a matter which was not prayed for by the parties. Petitioner also underscored that the respondents voluntarily executed the said EJS. In fact, it was by virtue of the EJS, which petitioner believed was duly executed, that the loan was extended to Ian.[31]

Finally, petitioner claimed that the CA's declaration of the nullity of the EJS, mortgage, and foreclosure would unduly prejudice their rights and that they would ultimately be made to suffer the consequences of the respondents' actions.[32]

In a Resolution dated February 23, 2022,[33] the Court directed the respondents to file their comment to the petition within 10 days from notice. On February 22, 2023, the Court issued another Resolution[34] reiterating the directive for them to comment. However, no comment was filed.[35]

Issue

Whether the CA erred in nullifying the real estate mortgage and extrajudicial foreclosure between Ian and petitioner on the ground that the subject property is a family home which is exempt from execution.

Ruling

The Petition is impressed with merit.

At the outset, the respondents' failure to file their comment, despite the Court's repeated directives, does not bar the Court from resolving the case on the merits. The Court, in the exercise of its judicial power of review, may nonetheless resolve the case based on the pleadings and evidence on record, even in the absence of the respondents' comment to the Petition.

A cursory reading of the Petition reveals that the issues raised are essentially questions of fact. The Rules of Court requires that only questions of law should be raised in Rule 45 petitions, since factual questions are not the proper subject of an appeal by certiorari. It is not this Court's function to analyze or weigh evidence that has already been considered by the lower courts.[36] Among the recognized exceptions in our jurisprudence is when there is a conflict between the findings of the RTC and the CA, as in this case.[37]

Essentially, the RTC found that the subject property ceased to be a family home after Edgar's death and the

execution of the EJS. On the contrary, the CA concluded that the subject property remained a family home, invalidating the EJS and all subsequent transactions.

These divergent views require this Court's intervention.

The law provides that a family home is the dwelling house, constituted jointly by the husband and the wife or by an unmarried head of a family, where they and their family reside. It is deemed constituted from the time it is occupied as a family residence and is generally exempt from execution, forced sale, or attachment.[38]

However, this exemption is not automatic and must be timely and properly asserted. In *Honrado v. Court of Appeals*,[39] the Court emphasized that a claim for exemption must be raised within a reasonable time and in the proper manner, thus:

While it is true that the family home is constituted on a house and lot from the time it is occupied as a family residence and is exempt from execution or forced sale under Article 153 of the Family Code, such claim for exemption should be set up and proved to the Sheriff before the sale of the property at public auction. Failure to do so would estop the party from later claiming the exemption.[40]

This rule was reiterated in *Taruc v. Maximo*,[41] where the Court held that the exemption must be asserted prior to the public auction of the family home. Similarly, in *Spouses Fortaleza v. Spouses Lapitan*,[42] it was clarified that asserting the exemption under Article 153 of the Family Code must be done within a reasonable time, that is, prior to the expiration of the one-year redemption period available to a judgment debtor.[43]

Crucially, the right to claim such exemption is a personal privilege, and may only be invoked by the proper party.

In this case, the respondents had no legal standing to assert that the subject property was a family home exempt from execution. Through their own voluntary act of executing the EJS, they waived all interest in the property in favor of Ian even prior to the execution of the mortgage. The validity of the mortgage and foreclosure proceedings cannot be questioned by parties who had already divested themselves of any legal interest in the property and failed to timely assert any such claim before the auction sale.

The records also show that Marlinda and the respondents initially attempted to redeem the property from petitioner through negotiations, thereby implicitly recognizing the validity of the mortgage and foreclosure. It was only after these negotiations failed and title was consolidated in the petitioner's name that they filed an action before the RTC to annul the mortgage. Notably, the claim that the property was a family home was raised only at this late stage, after foreclosure and transfer of title, suggesting that it was not a genuine or timely defense, but merely an afterthought prompted by the failure of their earlier remedies.

More importantly, to allow the respondents to prevail would be both unjust and inequitable to the petitioner. As the mortgagee bank, the petitioner extended credit in good faith to Ian and his attorney-in-fact, Marlinda, based on the Tax Declaration which showed Ian as the sole registered owner of the subject property. The petitioner had no notice of any adverse claim or encumbrance indicating that the property was being asserted as a family home. Verily, to allow the respondents to retroactively invalidate the mortgage based on a belated and unsupported claim prejudice the rights of an innocent mortgagee. It would also embolden parties to renege on contractual obligations by invoking after-the-fact defenses to defeat validly executed mortgages, thus eroding confidence in secured transactions and impairing the orderly administration of justice.

At any rate, the Court finds that the CA committed reversible error in annulling the mortgage and foreclosure proceedings. The CA also incorrectly declared the EJS, mortgage, and foreclosure void on the premise that the property remained a family home, despite the absence of any specific allegation or prayer seeking to annul the EJS.

In doing so, the CA resolved an issue that was never raised, effectively disregarding the respondents' express waiver of rights in favor of Ian, the sole and registered owner of the property. Well-settled is the rule that "courts of justice have no jurisdiction or power to decide a question not in issue, and that a judgment which goes beyond the pleadings and purports to adjudicate matters on which the parties were not heard is not merely irregular, but extrajudicial and void." [44] Such overreach cannot be countenanced.

Even assuming, for the sake of argument, that the subject property retained its character as a family home despite the execution of the EJS, the validity of the real estate mortgage and the subsequent foreclosure remains unaffected. Article 155 of the Family Code expressly provides that the family home is not exempt from execution for debts secured by mortgages on the premises, whether constituted before or after the family home was established. [45] Accordingly, the property's classification as a family home does not, by itself, invalidate the mortgage or the foreclosure proceedings conducted in accordance with law.

In sum, the Court finds that the family home exemption was neither properly invoked nor available to the respondents, who had already relinquished all interest in the property. The CA erred in annulling the real estate mortgage and foreclosure based on grounds not properly raised, thereby prejudicing the rights of an innocent mortgagee and undermining the sanctity of contractual obligations.

ACCORDINGLY, the Petition for Review on Certiorari is GRANTED. The Decision dated October 14, 2020 and the Resolution dated April 22, 2021 of the Court of Appeals in CA-G.R. CEB CV No. 07144 are REVERSED and SET ASIDE. The Decision dated February 29, 2016 of the Regional Trial Court, Branch 61, Bogo City, Cebu in Civil Case No. Bogo-02891 is REINSTATED.

SO ORDERED."

Gesmundo, C.J. (Chairperson), Hernando, Zalameda, and Marquez, JJ., concur.

[1] Rollo, pp. 5-21.

[2] Id. at 22-35. The October 14, 2020 Decision in CA-G.R. CEB CV. No. 07144 was penned by Associate Justice Gabriel T. Ingles and concurred in by Associate Justices Marilyn B. Lagura-Yap and Lorenza Redulla Bordios of the Eighteenth Division, Court of Appeals, Cebu City.

[3] Id. at 36-37 The April 22, 2021 Resolution in CA-G.R. CEB CV. No. 07144 was penned by Associate Justice Gabriel T. Ingles and concurred in by Associate Justices Emily R. Aliño-Geluz and Lorenza Redulla Bordios of the Special Former Eighteenth Division, Court of Appeals, Cebu City.

[4] Id. at 38-66. The February 29, 2016 Decision in Civil Case No. Bogo-02891 was penned by Executive Presiding Judge Antonio D. Marigomen of Branch 61, Regional Trial Court, Bogo City, Cebu.

[5] FAMILY CODE, art. 155 states:

Article 155. The family home shall be exempt from execution, forced sale or attachment except.

1)

For non-payment of taxes;

2)

For debts incurred prior to the constitution of the family home;

3)

For debts secured by mortgages on the premises before or after such constitution; and

4)

For debts due to laborers, mechanics, architects, builders, materialmen and others who have rendered service or furnished material for the construction of the building.

[6] Id. at 23, 28.

[7] RTC records, pp. 148-149.

[8] Id. at 112.

[9] Rollo, p. 23.

[10] RTC records, pp. 22-25.

[11] Id. at 122.

[12] Rollo, pp. 23-24.

[13] RTC records, pp. 2-15.

[14] Rollo, pp. 24, 38-39.

[15] Id. at 65-66.

[16] Id.

[17] Id. at 62-64.

[18] Id.

[19] Id. at 22.

[20] Id. at 22-35.

[21] Id. at 34.

[22] FAMILY CODE, art. 159 provides that "the family home shall continue despite the death of one or both spouses or of the unmarried head of the family for a period of [10] years or for as long as there is a minor beneficiary, and the heirs cannot partition the same unless the court finds compelling reasons therefor. This rule shall apply regardless of whoever owns the property or constituted the family home."

[23] Rollo, p. 26.

[24] Id. at 30. In computing the 10-year period, the CA applied Article 13 of the Civil Code, which states that years shall be understood to mean 365 days

[25] Id. at 29-30.

[26] Id. at 31-32.

[27] Id. at 32-33.

[28] Id. at 36-37.

[29] Id. at 5-21.

[30] Id. at 10-11, 15.

[31] Id. at 12-15.

[32] Id. at 16-17.

[33] Id. at 70-71.

[34] Id. at 73.

[35] Id.

[36] *Spouses Miano v. Manila Electric Company (Meralco)*, 800 Phil. 118, 122 (2016) [Per J. Leonen, Second Division].

[37] Id. at 123, citing *Medina v. Mayor Asistio, Jr.*, 269 Phil. 225 (1990) [Per J. Bidin, Third Division].

[38] FAMILY CODE, art. 152 and art. 153 provide:

Art. 152. The family home, constituted jointly by the husband and the wife or by an unmarried head of a family, is the dwelling house where they and their family reside, and the land on which it is situated.

Art. 153. The family home is deemed constituted on a house and lot from the time it is occupied as a family residence. From the time of its constitution and so long as any of its beneficiaries actually resides therein, the family home continues to be such and is exempt from execution, forced sale or attachment except as hereinafter provided and to the extent of the value allowed by law.

[39] 512 Phil. 657 (2005) [Per J. Callejo, Sr., Second Division].

[40] Id. at 666.

[41] See *Taruc v. Maximo*, 930 Phil. 401, 409 (2022) [Per J. Kho, Second Division].

[42] 692 Phil. 596, 615 (2012) [Per J. Del Castillo, First Division].

[43] Id. at 615.

[44] *Bernas v. Court of Appeals*, 296-A Phil. 90, 104 (1993) [Per J. Padilla, En Banc].

[45] FAMILY CODE, art. 155 states that the family home shall be exempt from execution, forced sale or attachment except:

- For nonpayment of taxes;
- For debts incurred prior to the constitution of the family home;
- For debts secured by mortgages on the premises before or after such constitution; and
- For debts due to laborers, mechanics, architects, builders, materialmen and others who have rendered service or furnished material for the construction of the building.

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