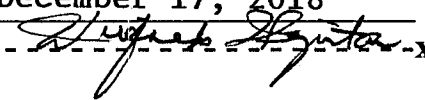


**SPECIAL THIRD DIVISION**

**G.R. No. 215999 - SPS. FELIX A. CHUA and CARMEN L. CHUA, JAMES B. HERRERA, EDUARDO L. ALMENDRAS, MILA NG ROXAS, EUGENE C. LEE, EDICER H. ALMENDRAS, BENEDICT C. LEE, LOURDES C. NG, and LUCENA INDUSTRIAL CORPORATION, LUCENA GRAND CENTRAL TERMINAL, INC., represented by FELIX A. CHUA, petitioners, versus UNITED COCONUT PLANTERS BANK, ASSET POOL A (SPV-AMC), REVERE REALTY AND DEVELOPMENT CORPORATION, JOSE C. GO and the REGISTRAR OF DEEDS OF LUCENA CITY, respondents.**

Promulgated:

December 17, 2018

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**SEPARATE OPINION**

**CAGUIOA, J.:**

I vote to partially grant the Motion for Reconsideration.

**The Salient Facts and Antecedents**

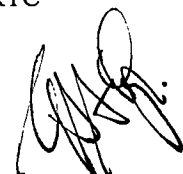
As culled from the records, the salient facts are:

On March 3, 1997, Petitioners — *Spouses Felix A. Chua and Carmen L. Chua, James B. Herrera, Eduardo L. Almendras, Mila Ng Roxas, Eugene C. Lee, Edicer H. Almendras, Benedict C. Lee, Lourdes C. Ng and Lucena Industrial Corporation (LIC), Lucena Grand Central Terminal, Inc. (LGCTI), as represented by Felix Chua* — along with Francisco A. Chua, Adela C. Chua, Green Valley Development Corporation, Doña Industries Corporation and Quezon Mktg. Corp. as represented again by its President, Felix A. Chua (hereinafter collectively referred to as the Owners) entered into a Joint Venture Agreement<sup>1</sup> (JVA) with Gotesco Properties, Inc. (Gotesco), a corporation controlled and represented by respondent Jose Go, for the purpose of developing a 44-hectare property in Ilayang Dupay, Lucena City.<sup>2</sup> This 44-hectare property is comprised of sixty-one (61) parcels of land registered in the names of the Owners.<sup>3</sup> As the developer,

<sup>1</sup> *Rollo* (Vol. 1), pp. 204-214.

<sup>2</sup> See Decision dated August 16, 2017 (SC Decision), *rollo* (Vol. 2), p. 1191; see also Deeds of Trust dated April 30, 1998, *rollo* (Vol. 1), pp. 215-220; Regional Trial Court Decision dated January 6, 2009 (RTC Decision), *rollo* (Vol. 1), p. 612; and Court of Appeals Decision dated March 25, 2014 (CA Decision), *rollo* (Vol. 1), p. 14.

<sup>3</sup> See Joint Venture Agreement dated March 3, 1997 (JVA), *rollo* (Vol. 1), pp. 211-212; see also RTC Decision, *rollo* (Vol. 1), p. 612.



Gotesco undertook to carry out the development work on the property, whereby a portion thereof would be developed as a Business Park and a Residential Subdivision.<sup>4</sup>

Based on the terms of the JVA, the Owners undertook to transfer certain parcels of land to the developer for the purpose of developing a commercial shopping mall complex.<sup>5</sup> Pursuant to this undertaking, petitioners conveyed to Revere Realty and Development Corporation (Revere), another corporation controlled and represented by respondent Jose Go, by way of absolute sale dated November 18, 1997, twelve (12) parcels of land located in Lucena City.<sup>6</sup>

On April 30, 1998, two (2) Deeds of Trust<sup>7</sup> (DoTs) were executed between (a) the petitioners, as the Trustors; and (b) Revere and Gotesco (as represented by Lydia Sevilla and Jose Go, respectively), as Trustees. The first DoT covered twelve (12) parcels of land originally registered under the names of Spouses Felix and Carmen Chua (Spouses Chua) and Adela C. Chua (as Trustors) and which were transferred to Revere.<sup>8</sup> Pursuant to the provisions of the DoT, Revere “acknowledge[d] and confirm[ed]” (a) “[t]he absolute title and ownership of the TRUSTORS over the twelve (12) parcels of land x x x;”<sup>9</sup> and (b) its role as Trustee was to hold the 12 parcels of land “in trust for the sole and exclusive use, benefit, enjoyment of the TRUSTORS.”<sup>10</sup>

The second DoT covered twenty (20) parcels of land registered under the names of several of the petitioners, specifically James Herrera, Mila Ng Roxas, Eugene C. Lee, Edicer H. Almendras, Eduardo L. Almendras, Benedict C. Lee, Lourdes C. Ng and Lucena Industrial Corporation (as represented by Felix A. Chua), who were also the Trustors under the second DoT. Gotesco, as the Trustee, acknowledged “receipt of the x x x certificates of title from the TRUSTORS” and similarly confirmed the absolute ownership of the latter over the properties listed in the second DoT.<sup>11</sup>

Pursuant to both DoTs, the Trustees further undertook not to sell, transfer, convey, lease or mortgage the said parcels of land without the written consent of the petitioners.<sup>12</sup>

However, as observed by the Court of Appeals (CA), it appears that the project under the JVA did not materialize.<sup>13</sup>

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<sup>4</sup> See JVA, *id.* at 205.

<sup>5</sup> See *id.* at 208.

<sup>6</sup> See SC Decision, *rollo* (Vol. 2), p. 1191; see also RTC Decision, *rollo* (Vol. 1), p. 612; CA Decision, *id.* at 14; Petition for Review under Rule 45 dated February 23, 2015, *id.* at 67.

<sup>7</sup> *Rollo* (Vol. 1), pp. 215-220.

<sup>8</sup> *Id.* at 215.

<sup>9</sup> *Id.* at 216.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 219.

<sup>12</sup> *Id.* at 216 and 219.

<sup>13</sup> *Id.* at 14.

In the interim, petitioners Spouses Chua, Spouses Edicer and Evalor Almendras, and Eugene C. Lee executed a Real Estate Mortgage dated June 2, 1997 (1997 REM) in favor of United Coconut Planters Bank (UCPB) involving several parcels of land registered under their names. The 1997 REM served to secure all credit accommodations granted to or which may be obtained thereafter by the said mortgagors and Lucena Grand Central Terminal, Inc. (LGCTI) (of which the mortgagors were corporate officers and stockholders) in the amount of ₱103,000,000.00.<sup>14</sup> It should be emphasized that these lots are separate and distinct from the lots covered by the JVA, the Deeds of Absolute Sale and the DoTs.

In 1998, LGCTI and the Spouses Chua both defaulted in the payment of their respective loans to UCPB.<sup>15</sup> To forestall the impending foreclosure of the 1997 REM, the Spouses Chua and LGCTI, through their counsel,<sup>16</sup> requested for a restructuring of their loans.<sup>17</sup>

On March 21, 2000, petitioners Spouses Chua and LGCTI (as the Borrower) entered into a Memorandum of Agreement<sup>18</sup> (MOA) with UCPB to consolidate their obligations, which was determined at ₱204,597,177.04 as of November 30, 1999.<sup>19</sup> The MOA provides in part:

(A) As of 30 November 1999, the BORROWER has outstanding obligations due in favor of the BANK in the aggregate amount of Two Hundred Four Million Five Hundred Ninety Seven Thousand One Hundred Seventy Seven and 04/100 Pesos (₱204,597,177.04), Philippine currency, inclusive of all interest[s], charges and fees (the "Obligation").

(B) To partially satisfy the Obligation to the extent of ONE HUNDRED THREE MILLION EIGHT HUNDRED NINETY THREE THOUSAND FOUR HUNDRED FIFTY PESOS (₱103,893,450.00), Philippine currency, the BORROWER has agreed that the BANK shall acquire title to the real property enumerated and described in the schedule attached hereto and made an integral part hereof as Annex "A", together with all the improvement thereon, if any (collectively called, the "Property").

(C) The balance of the Obligation, in the total amount of Sixty Eight Million Pesos (₱68,000,000.00), Philippine currency, shall be converted by the BANK to equity interest in LGCTI, with the conformity of the BORROWER.<sup>20</sup>

While there is no reference in the MOA as to the waiver of the penalties and charges, both petitioners and UCPB, in their submissions

<sup>14</sup> See Annex "2" of respondent Asset Pool A (SPV-AMC)'s Motion for Reconsideration dated October 2, 2017 (APA's MR), *rollo* (Vol. 3), pp. 1386-1391.

<sup>15</sup> *Rollo* (Vol. 1), p. 15.

<sup>16</sup> See Annex "2" of APA's MR, *rollo* (Vol. 3), p. 1250; see also United Coconut Planters Bank's Motion for Reconsideration (UCPB's MR), *rollo* (Vol. 3), p. 1572.

<sup>17</sup> *Rollo* (Vol. 1), p. 15.

<sup>18</sup> *Id.* at 225-232.

<sup>19</sup> *Id.* at 225.

<sup>20</sup> *Id.*

before the Court, have noted that there was a waiver of penalties and interest due in the amount of ₱32,703,727.04.<sup>21</sup>

To address the balance of ₱68,000,000.00, petitioners Spouses Chua and LGCTI and respondent UCPB executed another Memorandum of Agreement<sup>22</sup> on the same date (2<sup>nd</sup> MOA), where petitioners Spouses Chua and LGCTI acknowledged their remaining obligation (*i.e.*, the amount of ₱68,000,000.00) and undertook to issue new shares of capital stock in LGCTI with an aggregate par value equivalent to this amount.<sup>23</sup>

On the same date, and precisely to implement the undertaking of the Spouses Chua and LGCTI to transfer and convey the properties listed in the MOA,<sup>24</sup> two Real Estate Mortgages (REMs) were entered into: one between UCPB and the petitioners, specifically Eduardo L. Almendras, Edicer H. Almendras, Benedict C. Lee, Eugene C. Lee, James B. Herrera, Lourdes C. Ng, Mila Ng Roxas and LIC as represented by Felix A. Chua<sup>25</sup> (Petitioners' REM); and another between UCPB and Revere<sup>26</sup> (Revere REM). As indicated in each of the REMs executed, these were supposed to secure credit accommodations in the total aggregate amount of ₱404,597,177.04.<sup>27</sup> Moreover, under their terms, both REMs covered the payment of all loans, overdrafts, credit lines and other credit facilities or accommodations obtained or hereinafter obtained by the mortgagors, LGCTI, Spouses Chua and Jose Go.<sup>28</sup>

It bears to note that the properties enumerated in Annex "A"<sup>29</sup> of the MOA are the very same properties that are covered by both the Petitioners' REM<sup>30</sup> and the Revere REM<sup>31</sup> — as shown by the table below:

MOA (Lot No.)	Petitioners' REM	Revere REM
3853	✓	
3864	✓	
4607	✓	
5	✓	
3833	✓	
3838	✓	

<sup>21</sup> See UCPB's MR, at par. 15.c, p. 7, *rollo* (Vol. 3), p. 1575; and *rollo* (Vol. 1), p. 71. Thus, the total obligation of ₱204,597,177.04 was broken down as follows: ₱103,893,450.00 (partial obligation to be satisfied through conveyance of real properties); ₱68,000,000.00 (balance to be settled through issuance of LGCTI shares to UCPB); and ₱32,703,727.04 (waiver of penalties and charges).

<sup>22</sup> *Rollo* (Vol. 1), pp. 237-244.

<sup>23</sup> *Id.* at 237.

<sup>24</sup> See SC Decision, *rollo* (Vol. 2), pp. 1192 & 1200; APA's MR, par. 13, p. 4, *rollo* (Vol. 3), p. 1252; UCPB's MR, par. 16, p. 7, *rollo* (Vol. 3), p. 1575; and *rollo* (Vol. 1), p. 197.

<sup>25</sup> *Rollo* (Vol. 1), pp. 245-260.

<sup>26</sup> *Id.* at 261-274.

<sup>27</sup> *Id.* at 246 and 261.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 231.

<sup>30</sup> *Id.* at 256-260.

<sup>31</sup> *Id.* at 272 to 274.

3839	✓	
3827	✓	
3842 A	✓	
3835	✓	
3843 A	✓	
3843 C	✓	
3847 A	✓	
3847 B	✓	
3836	✓	
3842 B	✓	
3846	✓	
3841	✓	
3843 B	✓	
7	✓	
3878		✓
3885		✓
3881		✓
3854		✓
3852		✓
3851		✓
3877		✓
3876		✓
3834		✓
3845		✓
3867-C		✓

Subsequently, and in accordance with the MOA's expressed intent that UCPB "shall acquire title to the real property enumerated and described in the schedule attached hereto and made an integral part hereof as Annex 'A', together with all the improvement thereon, if any,"<sup>32</sup> the Petitioners' REM and Revere REM were foreclosed on November 13, 2001 and December 20, 2001, respectively.<sup>33</sup>

In the Apportionment of Bid Price<sup>34</sup> certified by UCPB's Account Officer, the properties from both REMs were sold for a total bid price of ₱227,700,000.00. The properties from Petitioners' REM yielded a bid price of ₱152,606,820.00, while the properties from Revere REM yielded a bid price of ₱75,093,180.00.

<sup>32</sup> Id. at 225.

<sup>33</sup> Id. at 20.

<sup>34</sup> Id. at 277.

On February 14, 2003, UCPB and LGCTI executed a Deed of Assignment<sup>35</sup> whereby LGCTI acknowledged that it had outstanding obligations in the amount of ₱68,000,000.00 and, as means of settling the said obligations, it would issue 680,000 preferred shares of its stocks to UCPB.

On August 18, 2003, UCPB wrote a letter to LGCTI inquiring about the status of the issuance of the shares in favor of UCPB.<sup>36</sup> In the same letter, UCPB noted that should LGCTI continue to refuse to abide by the terms of the MOA, it would “be compelled to exercise alternative means for recovery as provided for under previously executed loan and security documents.”<sup>37</sup>

Instead of issuing the said shares in favor of UCPB, LGCTI (through the Spouses Chua) wrote UCPB on November 11, 2003<sup>38</sup> assailing the (a) acceptance and foreclosure by UCPB of the Revere REM notwithstanding its knowledge that the properties registered under the name of Revere were held in trust for the sole benefit of the petitioners; and (b) malicious and fraudulent application of the foreclosure proceeds of the Petitioners’ REM and Revere REM to the personal and corporate obligation of Jose Go without the knowledge of the petitioners.<sup>39</sup> LGCTI further accused UCPB of conniving with respondent Jose Go to secure the latter’s “clean”/unsecured loans by deliberately (a) undervaluing the petitioners’ properties (with the difference between the actual value and the undervaluation as sufficient to cover Jose Go’s liabilities); and (b) concealing from the petitioners the Apportionment of Bid Price — which contains a breakdown of the application of the proceeds from the extrajudicial foreclosure of the Petitioners’ REM and Revere REM.<sup>40</sup>

Based on the foregoing, LGCTI requested for an accounting of Jose Go’s liabilities that had been secured and/or settled using petitioners’ properties, and for UCPB to (a) submit all the properties subject of the Petitioners’ REM and Revere REM for reappraisal by an independent appraiser; (b) apply only so much of their properties to cover their obligation in the amount to ₱204,597,177.04; and (c) reconvey any properties that are no longer necessary to cover their total obligation.<sup>41</sup> However, UCPB did not heed these requests.

Thus, on February 3, 2004, petitioners filed before the Regional Trial Court (RTC) in Lucena City a complaint<sup>42</sup> against UCPB, Revere, Jose Go and the Registrar of Deeds of Lucena City, for the Annulment of Real Estate

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<sup>35</sup> Id. at 233-236.

<sup>36</sup> Annex “35”, *rollo* (Vol. 3), pp. 1549-1550.

<sup>37</sup> Id. at 1550.

<sup>38</sup> *Rollo* (Vol. 1), pp. 278-283.

<sup>39</sup> Id. at 282.

<sup>40</sup> Id.

<sup>41</sup> Id. at 283.

<sup>42</sup> Id. at 284-302.

Mortgage and Deed of Assignment of Liability, Delivery of Titles, Accounting, Re-Appraisal and Damages. The RTC issued a writ of preliminary injunction at the instance of petitioners.<sup>43</sup>

On October 4, 2004, the RTC declared Jose Go and Revere in default. On February 22, 2005, the RTC denied the motion for reconsideration of Jose Go and Revere and on September 6, 2005 the RTC rendered Partial Judgment against Jose Go and Revere — nullifying the Revere REM.<sup>44</sup>

Subsequently, respondent Asset Pool A (SPV-AMC) (APA) filed a Motion for Partial Substitution of UCPB as defendant alleging that UCPB had assigned to APA all its rights and interests over the (a) remaining ₱68,000,000.00 receivable from the Spouses Chua and LGCTI, and (b) 1997 REM.<sup>45</sup>

The rulings of the lower court and the CA, as summarized in the Decision<sup>46</sup> dated August 16, 2017, are repeated herein:

#### Rulings of the RTC

On September 6, 2005, the RTC, through Judge Virgilio C. Alpajora, rendered a partial judgment against Jose Go and Revere, viz.:

**WHEREFORE**, premises considered, judgment is hereby rendered in favor of plaintiffs and against defendants JOSE C. GO and REVERE REALTY DEVELOPMENT CORPORATION, as follows:

a) Declaring as legal and binding the Deeds of Trust dated April 30, 1998 and holding the properties held in trust for plaintiff by defendants REVERE and GO.

b) Declaring that defendants REVERE and GO are not the owners of the properties covered by the deeds of trust and did not have any authority to constitute a mortgage over them to secure their personal and corporate obligations, for which they should be liable.

c) Nullifying the Deed of Real Estate Mortgage dated March 21, 2000 executed by defendants REVERE and GO in favor of co-defendant UNITED COCONUT PLANTERS BANK.

d) Ordering defendants REVERE and GO to reconvey in favor of the plaintiff the thirty-two (32) real properties listed in the deeds of trust and originally registered in the names of the plaintiffs under the following

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<sup>43</sup> Id. at 21.

<sup>44</sup> Id. at 21-22.

<sup>45</sup> Id. at 23.

<sup>46</sup> *Rollo* (Vol. 3), pp. 1190-1210. Penned by Associate Justice Lucas P. Bersamin and concurred in by Associate Justices Samuel R. Martires, Noel Gimenez Tijam and Alexander G. Gesmundo; Associate Justice Alfredo Benjamin S. Caguioa was on leave.

titles, to wit: TCT Nos. T-40450, 40452, 40453, 64488, 71021, 71022, 71023, 71024, 71025, 71136, 55033, 55287, 58945, 58946, 58947, 58948, 54186, 54187, 54189, 54190, 54191, 55288, 54186, 54187, 54188, 55030, 55031, 50426, 50427, 50428, 50429, and 50430.

e) Ordering defendants REVERE and GO to pay plaintiffs the amount of Php1,000,000.00 and as by way of moral damages, and Php200,000.00 [as] and by way of attorney's fees.

**SO ORDERED.**

On November 9, 2005, the RTC modified the partial judgment upon UCPB's motion for reconsideration, but otherwise affirmed it as against Revere and Jose Go, disposing thusly:

**WHEREFORE**, premises considered, the Partial Judgment dated September 6, 2005 is reconsidered and clarified as to United Coconut Planters Bank, as follows:

a) The contested portion of the Partial Judgment ordering reconveyance is directed at defendants Revere Realty and Development Corp. and Jose Go and not at defendant United Coconut Planters Bank; and

**b) The resolution of the issue of whether or not defendant UCPB is obliged to reconvey the properties listed in the Partial Judgment in favor of the plaintiffs, as well as the other issues between UCPB and the plaintiffs, shall be determined after the parties shall have presented their evidence.**

**SO ORDERED.**

Meanwhile, Asset Pool A moved to be substituted for UCPB as a party-defendant on February 15, 2006 on the basis that UCPB had assigned to it the rights over petitioners' ₱68,000,000.00 obligation. The RTC approved the substitution on March 14, 2006.

On January 6, 2009, the RTC rendered judgment in favor of petitioners, thusly:

**WHEREFORE**, premises considered, judgment is hereby rendered in favor of plaintiffs and against defendants UNITED COCONUT PLANTERS BANK, ASSET POOL A, REGISTRAR OF DEEDS OF LUCENA CITY and *EX-OFFICIO* SHERIFF OF LUCENA CITY, thus:

a) Declaring that the loan obligations of plaintiffs to defendant UNITED COCONUT PLANTERS BANK under the Memorandum of Agreement dated March 21, 2000 [to] have been fully paid;

b) Declaring as legal and binding the Deeds of Trust dated April 30, 1998 and holding the properties listed



therein were merely held-in-trust for plaintiffs by defendants REVERE and JOSE GO and/or corporations owned or associated with him;

c) Nullifying the Deed of Real Estate Mortgage dated March 21, 2000 executed by defendants REVERE and JOSE GO in favor of co-defendant UNITED COCONUT PLANTERS BANK and the Deed of Assignment of Liability dated February 14, 2003 executed by plaintiffs in favor of UNITED COCONUT PLANTERS BANK;

d) Ordering defendant REGISTRAR OF DEEDS of Lucena City to cancel any and all titles derived or transferred from TCT Nos. T-40452 (89339), 40453 (89340), 84488 (89342), 71021 (89330), 71022 (89331), 71023 (89332), 71025 (95580-95581), 71136 (95587-95590), 55033 (89384) and issue new ones returning the ownership and registration of these titles of the plaintiffs. For this purpose, defendant UNITED COCONUT PLANTERS BANK is directed to execute the appropriate Deeds of Reconveyance in favor of the plaintiffs over the eighteen (18) real properties listed in the Real Estate Mortgage dated March 21, 2000 executed by defendants Revere Realty and JOSE GO and originally registered in the names of the plaintiffs.

e) Ordering defendant UNITED COCONUT PLANTERS BANK to return so much of the plaintiffs titles, of their choice, equivalent to Php200,000,000.00 after applying so much of the mortgaged properties, including those presently or formerly in the name of REVERE, to the payment of plaintiffs' consolidated obligation to the bank in the amount of Php204,597,177.04.

f) Declaring the Real Estate Mortgage dated June 02, 1997 as having been extinguished by the Memorandum of Agreement date[d] March 21, 2000, and converting the writ of preliminary injunction issued on March 22, 2004 to a permanent one, forever prohibiting UNITED COCONUT PLANTERS BANK and ASSET POOL A and all persons/entities deriving rights under them from foreclosing on TCT Nos. T-54182, T-54184, T-54185, T-54192, and T-71135. The court hereby orders said defendants, or whoever is in custody of the said certificates of title, to return the same to plaintiffs and to execute the appropriate release of mortgage documents.

g) Finally, ordering defendant UNITED COCONUT PLANTERS BANK, to pay plaintiffs:

(i) The excess of the foreclosure proceeds in the amount of Php23,102,822.96, as actual damages;

(ii) Legal interest on the amount of Php223,102,822.96 at the rate of 6% per

*annum* from February 3, 2004 until finality of judgment. Once the judgment becomes final and executory, the interest of 12% *per annum*, should be imposed, to be computed from the time the judgment becomes final and executory until fully satisfied, as compensatory damages;

(iii) Php1,000,000.00 as moral damages;

(iv) Php100,000.00 as exemplary damages;

(v) Php2,000,000.00 as attorney's fees; and

(vi) costs of suit;

**SO ORDERED.**

The RTC declared the Revere REM as null and void for having been entered into outside the intent of the JVA; and opined that the Revere REM did not even bear any of herein petitioners' signatures. It ruled that the application of the proceeds of the foreclosure sale of petitioners' properties to settle Jose Go's liabilities was improper, invalid and contrary to the intent of the March 21, 2000 MOA, the principal contract of the parties.

The RTC observed that UCPB's claim that it had no knowledge of the trust nature of the properties covered by the deeds of trust, which were also included in the MOA was belied by the letter signed by its First Vice President Enrique L. Gana addressed to Spouses Chua wherein he stated that UCPB had undertaken to obtain from Jose Go the certificates of title necessary for the execution of the mortgages, and that should there be any excess or residual value, the same would be applied to any outstanding obligations that Jose Go would have in favor of UCPB; and that, accordingly, it was an error on the part of UCPB to apply any portion of the proceeds to settle the obligations of Jose Go without first totally extinguishing petitioners' obligations.

**Decision of the CA**

Respondents appealed to the CA.

In the decision promulgated on March 25, 2014, the CA reversed and set aside the judgment of the RTC, disposing instead as follows:

**WHEREFORE**, the assailed January 6, 2009 Decision of the Regional Trial Court of Lucena City, Branch 59, as well as its September 6, 2005 Partial Judgment are **REVERSED and SET ASIDE**. In its stead, judgment is hereby rendered:

a) Declaring the Real Estate Mortgage dated June 2, 1997 as valid and subsisting — accordingly, the writ of preliminary injunction issued on March 22, 2004 by the



Regional Trial Court of Lucena City, Branch 59 is hereby lifted;

b) Declaring as legal and binding the March 21, 2000 Deed of Real Estate Mortgage of defendants REVERE REALTY AND DEVELOPMENT CORPORATION and/or JOSE GO in favor of defendant-appellant UNITED COCONUT PLANTERS BANK;

c) Declaring, pursuant to the parties' March 21, 2000 Deed of Real Estate Mortgage, that the loan obligations of defendant JOSE GO to defendant-appellant UNITED COCONUT PLANTERS BANK have been satisfied up to P123,806,550.00; and

d) Declaring that the loan obligations of plaintiffs-appellees SPOUSE CHUA, ET AL. to defendant-appellant UNITED COCONUT PLANTERS BANK under the first Memorandum of Agreement dated March 21, 2000 have been paid up to P103,893,450.00.

**SO ORDERED.**

The CA made reference to three REMs: the first, executed on June 2, 1997, would secure the Spouses Chua's obligations with UCPB; the second, executed on March 21, 2000, was petitioners' REM in connection with the March 21, 2000 MOA; and the Revere REM, executed also on March 21, 2000. It opined that the first REM remained outstanding and was not extinguished as claimed by petitioners; that the Revere REM was valid based on the application of the *complementary contracts construed together* doctrine whereby the accessory contract must be read in its entirety and together with the principal contract between the parties; that it was the intention of the parties to extend the benefits of the two REMs under the first MOA in favor of Jose Go and/or his group of companies; and that petitioners' obligations with UCPB under the first MOA had not been fully settled."<sup>47</sup> (Emphasis supplied)

Aggrieved by the CA Decision<sup>48</sup> and Resolution<sup>49</sup> promulgated on March 25, 2014 and December 23, 2014, petitioners filed before the Court a Petition for Review<sup>50</sup> under Rule 45 assailing the said CA Decision and Resolution, which reversed and set aside the decision rendered by the RTC and granted the appeal of the respondents UCPB, Revere, Jose Go and the Registrar of Deeds of Lucena.

In a Decision<sup>51</sup> dated August 16, 2017 (Decision), the Court's Third Division held that the CA committed reversible errors and reinstated the ruling of the RTC:

<sup>47</sup> Id. at 1193-1197.

<sup>48</sup> *Rollo* (Vol. 1), pp. 11-51. Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela concurring.

<sup>49</sup> Id. at 52-59.

<sup>50</sup> Id. at 61-105.

<sup>51</sup> SC Decision, supra note 46.

First, the Court declared that the 1997 REM cannot subsist separately from the consolidated obligations of the petitioners as stated in the MOA. Based on the tenor of the correspondences between UCPB, on the one hand, and the Spouses Chua and LGCTI, on the other, the obligations of the latter were already consolidated — and no distinction was made between the loans obtained in 1997 and those made in subsequent years. Moreover, based on the provisions of the MOA, it is evident that the MOA constituted the “entire, complete and exclusive agreement between the parties”<sup>52</sup> consolidating the past and future obligations of the Spouses Chua and LGCTI. The REMs, executed on the same date as the MOA, also indicated that the mortgages would secure the payment of all loans, overdrafts, credit lines and other credit facilities or accommodations obtained or thereafter to be obtained by the mortgagors.

Second, while the Court in the Decision upheld the validity of the MOA and the Petitioners’ REM, it agreed with the RTC’s conclusion and declared the Revere REM null and void. The reason of the Decision was because the properties covered by the Revere REM were covered by the DoTs which specifically acknowledged that (a) the said properties were still owned by petitioners for all intents and purposes, and (b) the consent and approval of the petitioners were necessary to sell, dispose and/or mortgage the properties covered by the DoT. Thus, absent any allegation that the consent/approval of the petitioners was obtained or a showing that petitioners transferred the beneficial ownership over the properties to Revere, Revere did not have the authority to mortgage said properties. Moreover, the Court agreed with the RTC that UCPB cannot feign ignorance of the DoTs as its knowledge is evident when “UCPB’s own Vice President expressly mentioned in writing that UCPB would secure from Jose Go the titles necessary for the execution of the mortgages”<sup>53</sup> — making UCPB a mortgagee in bad faith.

The Decision also declared that it was erroneous for the CA to hold that Revere and/or Jose Go’s obligations “enjoyed a primacy or precedence over the remaining ₱68,000,000.00 obligation of petitioners”<sup>54</sup> for the following reasons: (a) no evidence was presented to prove the precise amount of Jose Go’s loan obligation, (b) the CA’s interpretation where more than half of the balance of the foreclosure proceeds would be applied to Jose Go’s debts “does not find support in their contracts as well as in the course of ordinary human experience,”<sup>55</sup> and (c) this contravened the “agreement that Revere’s or Jose Go’s obligation would be paid only if there were excess in the application of the foreclosure proceeds.”<sup>56</sup> Accordingly, based on the Apportionment of Bid Price executed by UCPB, the foreclosure proceeds amounting to ₱227,700,000.00 should have been applied to the

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<sup>52</sup> Id. at 1201.

<sup>53</sup> Id. at 1203-1204.

<sup>54</sup> Id. at 1204.

<sup>55</sup> Id. at 1206.

<sup>56</sup> Id.

entire obligation of the Spouses Chua and LGCTI (in the amount of ₱204,597,177.04), and only the excess, if any, should have been applied to pay off the obligations of Jose Go.

As the Spouses Chua and LGCTI had no remaining obligation left to settle after the application of the entire foreclosure proceeds to their debt, the Deed of Assignment where the petitioners undertook to transfer LGCTI's shares of stock as payment for their remaining obligation in the amount of ₱68,000,000.00 was null and void. Similarly, as the entire obligation of the Spouses Chua and LGCTI have been extinguished, UCPB could not have validly assigned to APA any right or interest in the ₱68,000,000.00 balance.

Based on the foregoing rulings, the dispositive portion of the Decision provided as follows:

**WHEREFORE**, the Court **GRANTS** the petition for review on *certiorari*; **SETS ASIDE** the decision of the Court of Appeals promulgated on March 25, 2014 in CA-G.R. No. 93644; **REINSTATES** the judgment rendered on January 6, 2009 by the Regional Trial Court, Branch 59, in Lucena City, with the addition of TCT No. 89334, to wit:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiffs and against defendants UNITED COCONUT PLANTERS BANK, ASSET POOL A, REGISTRAR OF DEEDS OF LUCENA CITY and *EX-OFFICIO* SHERIFF OF LUCENA CITY, thus:

a. Declaring that the loan obligations of plaintiffs to defendant UNITED COCONUT PLANTERS BANK under the Memorandum of Agreement dated March 21, 2000 have been fully paid;

b. Declaring as legal and binding the Deeds of Trust dated April 30, 1998 and holding the properties listed therein were merely held-in-trust for plaintiffs by defendants REVERE and JOSE GO and/or corporations owned or associated with him;

c. Nullifying the Deed of Real Estate Mortgage dated March 21, 2000 executed by defendants REVERE and JOSE GO in favor of co-defendant UNITED COCONUT PLANTERS BANK and the Deed of Assignment of Liability dated February 14, 2003 executed by plaintiffs in favor of UNITED COCONUT PLANTERS BANK;

d. Ordering defendant REGISTRAR OF DEEDS of Lucena City to cancel any and all titles derived or transferred from TCT Nos. T-40452 (89339), 40453 (89340), 84488 (89342), 71021 (89330), 71022 (89331), 71023 (89332), 71025 (95580-95581), 71136 (95587-95590), 55033 (89384), 89334 and issue new ones returning the ownership and registration of these titles of



the plaintiffs. For this purpose, defendant UNITED COCONUT PLANTERS BANK is directed to execute the appropriate Deeds of Reconveyance in favor of the plaintiffs over the eighteen (18) real properties listed in the Real Estate Mortgage dated March 21, 2000 executed by defendants Revere Realty and JOSE GO and originally registered in the names of the plaintiffs.

e. Ordering defendant UNITED COCONUT PLANTERS BANK to return so much of the plaintiffs['] titles, of their choice, equivalent to Php200,000,000.00 after applying so much of the mortgaged properties, including those presently or formerly in the name of REVERE, to the payment of plaintiffs' consolidated obligation to the bank in the amount of Php204,597,177.04.

f. Declaring the Real Estate Mortgage dated June 02, 1997 as having been extinguished by the Memorandum of Agreement date March 21, 2000, and converting the writ of preliminary injunction issued on March 22, 2004 to a permanent one, forever prohibiting UNITED COCONUT PLANTERS BANK and ASSET POOL A and all persons/entities deriving rights under them from foreclosing on TCT Nos. T-54182, T-54184, T-54185, T-54192, and T-71135. The court hereby orders said defendants, or whoever is in custody of the said certificates of title, to return the same to plaintiffs and to execute the appropriate release of mortgage documents.

g. Finally, ordering defendant UNITED COCONUT PLANTERS BANK, to pay plaintiffs:

i. The excess of the foreclosure proceeds in the amount of Php23,102,822.96, as actual damages;

ii Legal interest on the amount of Php223,102,822.96 at the rate of 6% *per annum* from February 3, 2004 until finality of judgment. Once the judgment becomes final and executory, the interest of 6% *per annum*, should be imposed, to be computed from the time the judgment becomes final and executory until fully satisfied, as compensatory damages;

iii. Php1,000,000.00 as moral damages;

iv. Php100,000.00 as exemplary damages;

v. Php2,000,000.00 as attorney's fees; and

vi. Costs of suit;

SO ORDERED.



and **DIRECTS** respondents, except the Registrar of Deeds of Lucena City and the *Ex-Officio* Sheriff of Lucena City, to pay the costs of suit.

**SO ORDERED.**<sup>57</sup>

From the foregoing Decision, respondents UCPB, APA, Revere and Jose Go filed their respective motions for reconsideration (MRs).

Respondents Revere and Jose Go, in their MR<sup>58</sup> dated October 2, 2017, merely reiterated the pronouncements of the CA to support the contention that the Revere REM is valid. However, they did not raise any arguments as regards the application of the proceeds of the foreclosure sale.

On the other hand, respondent UCPB, in its MR<sup>59</sup> dated October 4, 2017, raised the following arguments: (a) the obligations of the petitioners under the MOA have not been fully paid because based on the terms of the MOA only the obligation in the amount of ₱103,893,450.00 was settled with the foreclosure; (b) the 1997 REM was not extinguished by the MOA as the annotations on the properties subject of the 1997 REM remain uncanceled; (c) the Revere REM and the Deed of Assignment should not have been declared void as the petitioners (i) consented to mortgage the properties covered by the REM by signing the MOA; and (ii) are estopped from assailing the validity of the Revere REM. Considering the foregoing, UCPB asserts that the Court erred in ordering UCPB to (a) return ₱200,000,00.00 worth of properties to the petitioners, (b) return the excess of the foreclosure proceeds to the petitioners, (c) pay interests on the “return of the properties,” and (d) pay the petitioners moral damages, exemplary damages, attorney’s fees and costs of suit.

For its part, APA raises the following arguments in its MR<sup>60</sup> dated October 2, 2017:

- (a) The petitioners were not misled into signing or executing the MOA, Petitioners’ REM, Revere REM and the Deeds of Absolute Sale. Further, there was never any allegation that Revere was a debtor and as such, there is no factual basis for the Court’s declaration that UCPB is in bad faith;
- (b) Revere REM is valid and the petitioners validly consented and had knowledge that the properties covered by the Revere REM would be conveyed to UCPB through foreclosure based on the language of the MOA;
- (c) There is no provision in the two MOAs, Petitioners’ REM, Revere REM and the Deed of Assignment that the foreclosure

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<sup>57</sup> Id. at 1208-1209.

<sup>58</sup> *Rollo* (Vol. 3), pp. 1234-1248.

<sup>59</sup> Id. at 1569-1607.

<sup>60</sup> Id. at 1249-1378.

proceeds should be applied first to the entire obligation of the petitioners before such can be applied to the debt of Jose Go;

- (d) The 1997 REM has not been extinguished by the execution of the MOAs as these can co-exist in harmony with the other documents;
- (e) The petitioners cannot be considered to have fully paid their obligations to UCPB as the petitioners explicitly acknowledged their remaining balance of ₱68,000,000.00 in the two MOAs and the Deed of Assignment; and
- (f) There is no legal and factual basis for the award of actual damages, interest, moral damages, exemplary damages, attorney's fees and costs of suit against UCPB.

### THE COURT'S RULING

I agree with the Decision that the CA erred in declaring that the 1997 REM still subsisted separately from the consolidated obligations stated in the MOA. As noted in the Decision, to which I fully concur, the MOA superseded the 1997 REM so that the MOA constituted the "entire, complete and exclusive" agreement "between the parties." This, to me, is quite clear and readily apparent from the plain language of the MOA as well as the REMs which were executed at the same time as the MOA precisely to effect the intent of the MOA.

**However,** I disagree with the Decision's conclusion that the Revere REM is null and void — and its consequent effect on the foreclosure of the REMs, as well as the application of the foreclosure proceeds.

At the outset, there appears to be no issue as to the existence of the DoTs and the terms and conditions stated therein. The DoTs categorically stated that Revere acknowledges the "absolute title and ownership of [Spouses Chua]"<sup>61</sup> over the properties, *i.e.*, twelve (12) parcels of land notwithstanding that the titles were registered under Revere's name. Further, the DoTs expressly provided that Revere "acknowledges and obliges itself not to dispose of, sell, transfer, convey, lease or mortgage [the property] without the written consent of the [Spouses Chua]."<sup>62</sup>

Thus, to me, the preliminary question that must be answered is whether or not the consent of the Spouses Chua was secured by Revere when it executed the Revere REM.

The Decision echoed the RTC ruling that the Revere REM is null and void for failure of Revere to secure the express approval and consent of

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<sup>61</sup> *Rollo* (Vol. 1), p. 216.

<sup>62</sup> *Id.*



Spouses Chua, as stated in the DoTs. According to the Decision, which relied on the factual findings by the RTC,<sup>63</sup> “the records are bereft of any allegation that Revere had obtained the approval of [Spouses Chua] or that the latter had acquiesced to the mortgage of the properties in favor of UCPB,”<sup>64</sup> and therefore, the Revere REM is invalid and without effect. To reiterate, I disagree with this finding.

To stress, the following facts are undisputed: (a) the MOA was executed by the petitioners to consolidate all their obligations to UCPB; (b) **the properties listed in the MOA all belong to the petitioners**; and (c) the REMs were executed to implement and give life to the terms and conditions of the MOA.

Further, there is no question — as this is clear from even a cursory perusal of the MOA and the REMs — that the properties enumerated in Annex “A” of the MOA include the parcels of land subject of the Revere REM, as properties to be conveyed and transferred to UCPB to partially secure the obligations of the petitioners.

In this regard, it should be stressed that the Spouses Chua could not have conveyed and transferred to UCPB the parcels of land under the DoTs as they were not in their name. As the titles of these parcels were in the name of, and their owner’s duplicate copies were in the possession of, Revere, then the only way for the Spouses Chua to have conveyed and transferred the parcels of land to UCPB was precisely to cause Revere to execute the Revere REM. In other words, by freely, voluntarily and knowingly entering into the MOA — which, to reiterate, enumerated (in Annex “A”) the properties to be transferred to UCPB, including those in the name of Revere and covered by the Revere REM — the Spouses Chua had already expressly given their consent and approval to Revere to execute the Revere REM and to mortgage the parcels of land under the DoTs in favor of UCPB, precisely as security for the loan obligations of the petitioners as stated in the MOA. That this was the intent is evident not only from the language of the MOA and the inclusion of the Revere properties in the MOA’s Annex “A,” but also especially considering that the Revere REM was, like the Petitioners’ REM, executed on the same day as the MOA. **This compellingly reveals that, to be sure, the two REMs were executed to effect or otherwise implement the obligations of the parties enumerated and fleshed out in the MOA.**

Given the validity of both REMs, as discussed above, the real questions on which this case pivot are these: whether the foreclosure of UCPB and its application of the foreclosure proceeds were legal and proper.

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<sup>63</sup> Id. at 582 and 583.

<sup>64</sup> *Rollo* (Vol. 2), p. 1203.



I submit that the foreclosure of UCPB was valid, but its application of payments was not proper.

First, it is clear from the submissions of both parties and the decisions rendered by both the RTC and the CA that the primordial instrument that must be considered and given weight is the MOA — as it embodies and encapsulates the agreement of the parties. It is equally clear that the only parties to the MOA are UCPB, LGCTI and the Spouses Chua. Likewise, it is also plainly evident from the terms of the MOA that the only “debtors” and/or the borrowers covered by the MOA are LGCTI and the Spouses Chua.

Most importantly, the parties admit that the Petitioners’ REM and the Revere REM were executed **to implement the terms and conditions of the MOA.**<sup>65</sup> As explained earlier, that this is the clear intent of the parties is also evident from the fact that the properties identified in Annex “A” of the MOA (as the properties to be transferred and conveyed to UCPB) are the very same properties mortgaged to UCPB through the execution of both the Petitioners’ REM and the Revere REM — which were the same properties thereafter foreclosed and acquired by UCPB.<sup>66</sup>

Following the “*complementary contracts construed together doctrine*” correctly used by the CA, the terms of both Petitioners’ REM and Revere REM must be read in consonance with the MOA. Pursuant to the MOA, the properties that were conveyed and transferred to UCPB (**as enumerated in Annex “A” of the MOA and as listed in both REMs**) were to be applied against the loan obligations of the Borrowers stated in the MOA — which, again, are only LGCTI and the Spouses Chua. If, as UCPB and APA admit, the REMs were executed to implement the “first mode of payment (conveyance of properties to UCPB)”<sup>67</sup> under the MOA, **then the foreclosure proceeds from the REMs could only be applied pursuant to the terms of the MOA — which is for the payment of the obligations only of LGCTI and Spouses Chua.** There is absolutely nothing in the MOA (*i.e.*, the primordial instrument governing the relationship of the parties thereto) which provides that the enumerated properties to be transferred and conveyed to UCPB would also be used to secure and thereafter answer for the debts of any other third parties. Accordingly, UCPB’s application of the foreclosure proceeds to the debts of a third party (which in this case is Jose Go) is in clear contravention of the MOA and therefore erroneous and without basis.

Both APA and UCPB, however, argue that based on the recitals of the REMs, the petitioners as mortgagors agreed to also cover the loan of Jose Go. This assertion, however, misses and fails to establish two crucial facts

<sup>65</sup> See APA’s MR, par. 13, p. 4, *rollo* (Vol. 3), p. 1252; see also UCPB’s MR, pp. 5-7, *id.* at 1573-1575; *rollo* (Vol. 1), p. 197.

<sup>66</sup> See APA’s MR, pp. 34-38, *id.* at 1282-1286.

<sup>67</sup> See APA’s MR, p. 28, *id.* at 1276.

to justify the action of applying the foreclosure proceeds to Jose Go's debt — (a) the existence and the actual amount of Jose Go's debt; and (b) the default on the part of Jose Go in the payment of his obligations.

It is a basic doctrine in civil law that a mortgage is a mere accessory contract — as such, the principal obligation must exist for the mortgage to subsist.<sup>68</sup> Similarly, it must also be established that at the time of the foreclosure, the debt is already due and demandable and that the debtor is in default in the payment of his obligation.<sup>69</sup>

In this case, the only principal obligation that was admitted, established and proven by competent evidence was that of the Spouses Chua and LGCTI. In fact, the only loan document that was presented by UCPB and APA to establish the indebtedness of the debtors was the MOA — which, again, enumerates only the Spouses Chua and LGCTI as the borrowers.

Apart from the Petitioners' REM and the Revere REM, there is nothing on record that indicates the existence (*i.e.*, Promissory Note) or the exact amount of Jose Go's indebtedness so as to justify the application of more than half of the foreclosure proceeds to extinguish this purported debt. As astutely observed by the RTC, "neither x x x UCPB nor APA presented any evidence to prove the precise amount of Jose Go's loan obligations to the bank x x x [nor] the obligations of any of the corporations owned by him in the majority."<sup>70</sup>

In this regard, it bears noting that the petitioners had repeatedly demanded UCPB to show proof of Jose Go's liabilities and to render an accounting thereof.<sup>71</sup> In response, UCPB refused to present, as it never did, any evidence to prove the existence and amount of Jose Go's indebtedness. Had UCPB produced the loan documents showing Jose Go's indebtedness as demanded by the petitioners, it could have easily proved the existence and amount of Jose Go's indebtedness. That UCPB failed to do so — ***that it refused to do so*** — can only lead to the conclusion that no such debt or loan exists. Verily, the presumption that evidence willfully suppressed would be adverse if produced applies foursquare here.<sup>72</sup>

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<sup>68</sup> See *Spouses Rigor v. Consolidated Orix Leasing and Finance Corporation*, 436 Phil. 243, 251-252 (2002); *PNB v. Dee*, 727 Phil. 473, 482 (2014); *Acme Shoe, Rubber & Plastic Corporation v. CA*, 329 Phil. 531, 538-539 (1996).

<sup>69</sup> See *RCBC v. Buenaventura*, 646 Phil. 673, 679 (2010); *Producers Bank of the Philippines v. Court of Appeals*, 417 Phil. 646, 656-657 (2001); *Orix Metro Leasing and Finance Corp. v. M/V "Pilar-I"*, 615 Phil. 412, 427 (2009); *Development Bank of the Phils. v. Guariña Agricultural & Realty Development Corp.*, 724 Phil. 209, 218-222 (2014); and *Development Bank of the Philippines v. Licuanan*, 545 Phil. 544, 554 (2007).

<sup>70</sup> *Rollo* (Vol. 1), p. 625.

<sup>71</sup> *Id.* at 278-283 and 300.

<sup>72</sup> RULES OF COURT, Rule 131, Sec. 3(e). See *Garcia v. Thio*, 547 Phil. 341, 350 (2007); *People v. Yabut*, 285 Phil. 895, 899 (1992) and *Caltex (Philippines), Inc. v. Court of Appeals*, 287 Phil. 497, 511 (1992).

Based on the foregoing, I agree with and find merit in the petitioners' assertion that "absent proof of unpaid loans of Go x x x there is utterly no basis for applying the proceeds of the foreclosure x x x to the asserted obligations of Go."<sup>73</sup> Accordingly, considering that the only loan that was substantiated by concrete evidence was that of the Spouses Chua and LGCTI, the foreclosure proceeds may only be applied to their debts — and no one else's.

Based on the Apportionment of Bid Price, the total foreclosure proceeds amounted to ₱227,700,000.00. As provided in the MOA, LGCTI and the Spouses Chua had an outstanding obligation in the aggregate amount of ₱204,497,177.04. Notwithstanding that the MOA stipulated that all the properties transferred and conveyed to UCPB would only extinguish Spouses Chua and LGCTI's debt to the extent of ₱103,893,450.00, when the foreclosure sale actually yielded an amount that was more than ₱103,893,450.00, that is, more than sufficient to discharge the debt of LGCTI and Spouses Chua — then such proceeds should have been applied to the entirety of their debt, including already the ₱68,000,000.00 owed and which should have been paid through the issuance of 680,000 shares in LGCTI.

This application (*i.e.*, that extinguishes the entire obligation) finds basis in the very language of the REMs, which provides that the mortgages shall secure all loans of the mortgagors, LGCTI, Spouses Chua and Jose Go.<sup>74</sup> This clearly covers the entire obligation of LGCTI and Spouses Chua as provided in the MOA — which, to repeat once more, is the only obligation that was proven and established before the RTC and the CA. Accordingly, the ₱227,700,000.00 foreclosure proceeds must be applied to the entire outstanding obligation of LGCTI and the Spouses Chua in the amount of ₱204,497,177.04 (inclusive already of the ₱68,000,000.00). Such application would totally extinguish the debt of LGCTI and the Spouses Chua and would yield a balance in their favor of ₱23,102,822.96.

As regards this remaining balance of ₱23,102,822.96, the Court's pronouncement in *Spouses Suico v. PNB*<sup>75</sup> explaining the application of Section 4,<sup>76</sup> Rule 68 is instructive:

x x x The application of the proceeds from the sale of the mortgaged property to the mortgagor's obligation is an act of payment, not payment by *dacion*; hence, it is the mortgagee's duty to return any surplus in the selling price to the mortgagor. Perforce, a mortgagee who exercises the power of sale contained in a mortgage is considered a custodian of the fund and, being bound to apply it properly, is liable to the persons entitled thereto if he fails to do so. And even though the mortgagee is not strictly

<sup>73</sup> *Rollo* (Vol. 1), p. 99.

<sup>74</sup> *Id.* at 246.

<sup>75</sup> 558 Phil. 265 (2007).

<sup>76</sup> SEC. 4. *Disposition of proceeds of sale.* — The amount realized from the foreclosure sale of the mortgaged property shall, after deducting the costs of the sale, be paid to the person foreclosing the mortgage, and when there shall be any balance or residue, after paying off the mortgage debt due, the same shall be paid to junior encumbrancers in the order of their priority, to be ascertained by the court, or if there be no such encumbrancers or there be a balance or residue after payment to them, then to the mortgagor or his duly authorized agent, or to the person entitled to it. (Italics and underscoring supplied.)

considered a trustee in a purely equitable sense, but *as far as concerns the unconsumed balance, the mortgagee is deemed a trustee for the mortgagor or owner of the equity of redemption.*

Thus it has been held that if the mortgagee is retaining more of the proceeds of the sale than he is entitled to, this fact alone will not affect the validity of the sale but simply give the mortgagor a cause of action to recover such surplus.<sup>77</sup> (Italics and underscoring supplied)

Thus, considering that there is a balance left after paying off the entire obligation of LGCTI and Spouses Chua, and considering further that there is no allegation that there are any junior encumbrancers, the balance in the amount of ₱23,102,822.96 must be returned to the owners of the mortgaged properties who, in this case, are the petitioners.

To reiterate, the two REMS were valid and, as admitted by the parties, executed to effect or implement the obligations of the parties as detailed in the MOA. Because the REMS were valid and subsisting, their foreclosure was likewise proper and valid as they were done pursuant to the terms and conditions stated in both the REMs and MOA. And if the foreclosure was validly done by UCPB, then the entire consolidated obligation of the petitioners was extinguished, and the properties foreclosed now rightfully belong to UCPB. Consequently, the Decision's directive for UCPB to "execute the appropriate Deeds of Reconveyance in favor of [the petitioners]" and "return so much of the [the petitioners'] titles x x x after applying so much of the mortgaged properties x x x to the payment of [petitioners'] consolidated obligation to the bank" is without legal basis. That said, UCPB's obligation is, as stated earlier, to return the excess of the foreclosure proceeds to the petitioners.

In its Resolution denying the motions for reconsideration of UCPB, APA, Revere and Jose Go, the *ponencia* maintains the dispositions or *fallo* of the Decision, refusing to consider the above reasoning, and insisting that the Revere REM is null and void, for a number of reasons. I respond to these *ad seriatim*:

*Partial Judgment does not affect UCPB.*

The first reason posited by the *ponencia* is that the Lucena RTC Partial Judgment, which upheld the validity of the DoTs and nullified the Revere REM for failure to secure the approval and consent of the Spouses Chua, had already become final and executory and cannot be disturbed, for the reason that Jose Go and Revere did not file any appeal. However, as earlier narrated, after it had rendered its Partial Judgment on September 6, 2005, the RTC, on November 9, 2005, modified this Partial Judgment by expressly and categorically clarifying as follows:

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<sup>77</sup> *Spouses Suico v. PNB*, supra note 75, at 280.



**WHEREFORE**, premises considered, the Partial Judgment dated September 6, 2005 is reconsidered and clarified as to United Coconut Planters Bank, as follows:

a) The contested portion of the Partial Judgment ordering reconveyance is directed at defendants Revere Realty and Development Corp. and Jose Go and not at defendant United Coconut Planters Bank; and

**b) The resolution of the issue of whether or not defendant UCPB is obliged to reconvey the properties listed in the Partial Judgment in favor of the plaintiffs, as well as the other issues between UCPB and the plaintiffs, shall be determined after the parties shall have presented their evidence.**

**SO ORDERED.**<sup>78</sup> (Emphasis supplied)

Clearly, therefore, the specific issue of whether or not defendant UCPB is obliged to reconvey the properties listed in the Partial Judgment in favor of the petitioners, as well as the other issues between UCPB and the petitioners “shall be determined after the parties shall have presented their evidence.” Stated differently, the doctrine of immutability of judgment does not even come into play as far as UCPB is concerned vis-à-vis the failure of Jose Go and Revere to appeal the Partial Judgment of September 6, 2005.

Thus, there is nothing anomalous nor improper in a situation arising where the Revere REM will be considered valid (between UCPB and the petitioners) despite its earlier nullification by the Lucena RTC (which is binding, final and immutable only as to Jose Go and Revere, and only because the latter did not appeal the September 6, 2005 Partial Judgment). To hold otherwise, as what the *ponencia* is doing, is, in turn, to render inutile the November 9, 2005 modification by the RTC.

*The Spouses Chua’s consent and approval to Revere REM established.*

That the petitioners gave their express consent to the Revere REM is characterized by the *ponencia* as a “mere inference” and insists that “there was neither factual basis or express stipulation in the written agreements” to support this inference. With due respect to the *ponente*, the conclusion that the petitioners had indeed given their express consent to the Revere REM is found in the very language of the MOA itself. As stated earlier, the properties enumerated in Annex “A” of the MOA **are the very same properties that are covered by both the Petitioners’ REM and the Revere REM.** Again, for easier reference, the following table is presented anew:

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<sup>78</sup> *Rollo* (Vol. 1), pp. 623-624.



MOA (Lot No.)	Petitioners' REM	Revere REM
3853	✓	
3864	✓	
4607	✓	
5	✓	
3833	✓	
3838	✓	
3839	✓	
3827	✓	
3842 A	✓	
3835	✓	
3843 A	✓	
3843 C	✓	
3847 A	✓	
3847 B	✓	
3836	✓	
3842 B	✓	
3846	✓	
3841	✓	
3843 B	✓	
7	✓	
3878		✓
3885		✓
3881		✓
3854		✓
3852		✓
3851		✓
3877		✓
3876		✓
3834		✓
3845		✓
3867-C		✓

What this means is that all the properties listed in Annex A of the MOA — which includes the Revere REM properties — were conveyed by the Spouses Chua and transferred to UCPB under the MOA. In other words, in executing the MOA, the Spouses Chua were representing to UCPB that the parcels of land in the name and possession of Revere, were being conveyed by the Spouses Chua to UCPB as collateral for their loans. Thus, when the Revere REM was executed on the same date as the MOA, this was precisely in pursuance of the terms of the MOA. This is not, by any means, a “mere inference” but a reasonable conclusion drawn from undisputed facts.

**This compellingly reveals that, to be sure, the two REMs were executed to effect or otherwise implement the obligations of the parties enumerated and fleshed out in the MOA.**

Hence, inasmuch as the factual basis is drawn from the very language of the MOA, and the attached Annex “A”, there is no contravention of the Parol Evidence Rule.

Indeed, the MOA is replete with provisions that show that the Spouses Chua agreed to transfer and convey to the UCPB **all the properties listed in Annex “A”**.

What is more, Section 4(b) of the MOA provides that the parties (*i.e.*, the petitioners) warrant that they “have taken all appropriate and/or necessary corporate and legal action to authorize the execution, delivery and performance of this Agreement x x x and this Agreement constitutes legal, valid and binding obligations of all the parties.”<sup>79</sup> This warranty includes the delivery of all instruments necessary to transfer title over the properties in Annex A – including those covered by the Revere REM.

Thus, the *ponencia*’s insistence that UCPB failed to adduce evidence during the trial to establish the giving of the petitioners’ consent — is absolutely and egregiously wrong because the MOA itself is the evidence of the consent of the Spouses Chua to the Revere REM. To insist that the MOA should have contained explicit language that the Spouses Chua “were giving consent” is to render nugatory the clear and unequivocal language of the MOA itself, which the *ponencia* concedes is valid.

*The extent of the consent.*

That the MOA related only to the obligations of the petitioners is not an argument to nullify the Revere REM. As I had previously stated, the only principal obligation that was admitted, established and proven by competent evidence was that of the Spouses Chua and LGCTI. The only loan document that was presented by UCPB and APA to establish the indebtedness of the debtors was the MOA — which, again, enumerates only the Spouses Chua and LGCTI as the borrowers. To be sure, there is nothing on record that indicates the existence (*i.e.*, Promissory Note) or the exact amount of Jose Go’s indebtedness. Thus, I agree with the *ponencia* that it has not been proven that the petitioners had given “their consent and approval to the Revere REM to securitize the obligations of Go”.<sup>80</sup> However, this does not *ipso facto* mean that the Revere REM is null and void. On the contrary, it is admitted that the Revere REM was meant to securitize the obligations of the petitioners — as so provided in the MOA.

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<sup>79</sup> *Rollo* (Vol. 1), p. 228.

<sup>80</sup> *Ponencia*, p. 17.





*No requirement for Spouses Chua to sign the Revere REM*

The *ponencia* makes much of the fact that the Revere REM was signed only by Jose Go, and that the Spouses Chua did not. This is much ado over nothing really. The Spouses Chua did not sign the Revere REM for the simple reason that the Revere properties were in the name of Revere, and that the Revere REM was executed only by Revere. What is important, however, is that the Spouses Chua had signed the MOA — and it is in the MOA, and the listing of the Revere properties in the MOA — that signified their consent to using the Revere properties (which they beneficially owned under the terms of the DoTs) as security for the petitioners' loans.

As to the fact that the Revere REM “lumped together the obligations of the petitioners and Go”<sup>81</sup> does not furnish any basis for holding that the Revere REM was null and void. As already exhaustively explained, the Revere REM still stood as security for the obligations of the petitioners. The Revere REM did not stand as security for Jose Go's obligations.

*UCPB's awareness of Deed of Trust*

Once more, the *ponencia* harps on UCPB's awareness of the DoTs between the petitioners and Jose Go as a sign of UCPB's bad faith. However, this misses the point. It is precisely because of this awareness of UCPB that petitioners were the true beneficial owners of the Revere properties that gives meaning to the dispositions made by the MOA. That the Spouses Chua were the real beneficial owners of the Revere properties show that they could, as they did, convey and deliver them to UCPB to secure their obligations.

## RECAPITULATION

All told, I believe, and so submit that the evidence establishes the following:

- (1) The MOA was executed by the petitioners to consolidate all their obligations to UCPB;
- (2) The properties listed in Annex “A” of the MOA (which include the parcels of land subject of the Revere REM) all belong to the petitioners;
- (3) All these properties were conveyed and transferred by the MOA to UCPB to partially secure the obligations of the petitioners — which means that the Spouses Chua had, by their signing the MOA, already expressly given their consent and approval to Revere to execute the Revere REM and to mortgage the parcels of land under the DoTs in favor of UCPB,

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<sup>81</sup> Id. at 18.



precisely as security for the loan obligations of the petitioners as stated in the MOA;

(4) The Revere REM was thus executed to implement and give life to the terms and conditions of the MOA;

(5) Since the Revere REM was valid, its foreclosure by UCPB was likewise valid;

(6) The application of the foreclosure proceeds was not proper; the proceeds could be applied only to the debts of the MOA, that is, the debts of LGCTI and the Spouses Chua;

(7) The foreclosure proceeds could not have been applied to the debts of any other party, so that UCPB's application of the foreclosure proceeds to the debts of Jose Go is in clear contravention of the MOA and therefore erroneous and without basis;

(8) Based on the Apportionment of Bid Price, the total foreclosure proceeds amounted to ₱227,700,000.00. As provided in the MOA, LGCTI and the Spouses Chua had an outstanding obligation in the aggregate amount of ₱204,497,177.04. Notwithstanding that the MOA stipulated that all the properties transferred and conveyed to UCPB would only extinguish Spouses Chua and LGCTI's debt to the extent of ₱103,893,450.00, when the foreclosure sale actually yielded an amount that was more than ₱103,893,450.00, that is, more than sufficient to discharge the entirety of the debt of LGCTI and Spouses Chua — then such proceeds should have been applied to the entirety of their debt, including already the ₱68,000,000.00 owed and which should have been paid through the issuance of 680,000 shares in LGCTI.

(9) This application thus extinguishes the entire obligation of the petitioners, and yields a balance in their favor of ₱23,102,822.96, which amount should be returned to the owners of the mortgaged properties who, in this case, are the petitioners;

(10) Consequently, the Decision's directive for UCPB to "execute the appropriate Deeds of Reconveyance in favor of [the petitioners]"<sup>82</sup> and "return so much of the [the petitioners'] titles x x x after applying so much of the mortgaged properties x x x to the payment of [the petitioners'] consolidated obligation to the bank"<sup>83</sup> is without legal basis. UCPB's only obligation is to return the excess of the foreclosure proceeds to the petitioners.

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<sup>82</sup> *Rollo* (Vol. 2), p. 1208.

<sup>83</sup> *Id.*



(11) Anent the interest rate, the excess of the foreclosure proceeds in the amount of ₱23,102,822.96 will earn interest at the rate of 6% per annum from the date of filing of the complaint until finality of judgment, consistent with the Court's pronouncement in *Spouses Suico v. PNB*,<sup>84</sup> as follows:

In *Philippine National Bank v. Court of Appeals*, it was held that:

The rate of 12% interest referred to in Cir. 416 applies only to:

Loan or forbearance of money, or to cases where money is transferred from one person to another and the obligation to return the same or a portion thereof is adjudged. Any other monetary judgment which does not involve or which has nothing to do with loans or forbearance of any, money, goods or credit does not fall within its coverage for such imposition is not within the ambit of the authority granted to the Central Bank. When an obligation not constituting a loan or forbearance of money is breached then an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum in accordance with Art. 2209 of the Civil Code. Indeed, the monetary judgment in favor of private respondent does not involve a loan or forbearance of money, hence the proper imposable rate of interest is six (6%) per cent.

Using the above rule as yardstick, since the responsibility of PNB arises not from a loan or forbearance of money which bears an interest rate of 12%, the proper rate of interest for the amount which PNB must return to the petitioners is only 6%. This interest according to *Eastern Shipping* shall be computed from the time of the filing of the complaint. However, once the judgment becomes final and executory, the "interim period from the finality of judgment awarding a monetary claim and until payment thereof, is deemed to be equivalent to a forbearance of credit." Thus, in accordance with the pronouncement in *Eastern Shipping*, the rate of 12% *per annum* should be imposed, to be computed from the time the judgment becomes final and executory until fully satisfied.<sup>85</sup> (Underscoring supplied)

(12) Once the judgment becomes final and executory, an interest of 6% per annum should be imposed, to be computed from the time of finality of judgment until full payment. This follows *Nacar v. Gallery Frames*<sup>86</sup>:

Recently, however, the Bangko Sentral ng Pilipinas Monetary Board (BSP-MB), in its Resolution No. 796 dated May 16, 2013, approved the amendment of Section 2 of Circular No. 905, Series of 1982 and, accordingly, issued Circular No. 799, Series of 2013, effective July 1, 2013, the pertinent portion of which reads:

<sup>84</sup> Supra note 75.

<sup>85</sup> Id. at 283-284.

<sup>86</sup> 716 Phil. 267 (2013).

The Monetary Board, in its Resolution No. 796 dated 16 May 2013, approved the following revisions governing the rate of interest in the absence of stipulation in loan contracts, thereby amending Section 2 of Circular No. 905, Series of 1982:

**Section 1.** The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) per annum.

**Section 2.** In view of the above, Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions are hereby amended accordingly.

This Circular shall take effect on 1 July 2013.

Thus, from the foregoing, in the absence of an express stipulation as to the rate of interest that would govern the parties, the rate of legal interest for loans or forbearance of any money, goods or credits and the rate allowed in judgments shall no longer be twelve percent (12%) *per annum* — as reflected in the case of *Eastern Shipping Lines* and Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions, before its amendment by BSP-MB Circular No. 799 — but will now be six percent (6%) *per annum* effective July 1, 2013. It should be noted, nonetheless, that the new rate could only be applied prospectively and not retroactively. Consequently, the twelve percent (12%) *per annum* legal interest shall apply only until June 30, 2013. Come July 1, 2013 the new rate of six percent (6%) *per annum* shall be the prevailing rate of interest when applicable.<sup>87</sup>

(13) Lastly, as regards the award of damages, I agree with the RTC's finding on the petitioners' entitlement to damages on the ground of UCPB's fraud and deceit. As summarized by the RTC:

x x x Defendant UCPB committed breach of contract when it foreclosed on all the forty-five (45) properties in the two (2) Real Estate Mortgages dated March 21, 2000 for the total aggregate liability of Php404,596,177.04, despite the fact that the total outstanding obligation of the plaintiffs is only Php204,597,177.04. Despite the overpayment, it represented that the plaintiffs still had a remaining liability of Php68,000,000.00 that was to be converted into equity shares in Lucena Grand Central Terminal. The bank had also sought to foreclose TCT Nos. T-54182, T-54184, T-54185, T-54192, and T-71135, where the Lucena Grand Central Terminal stands, shortly after the filing of this Complaint, and relying on a Loan dated May 19, 1997 which the bank's own witness admits had already been included in the Memorandum of Agreement dated March 21, 2000.<sup>88</sup>

<sup>87</sup> Id. at 279-281.

<sup>88</sup> *Rollo* (Vol. 1), p. 630.

UCPB's deceit and fraud is most evident in its unjustified refusal and failure to present proof of Jose Go's indebtedness despite repeated demands by the petitioners. Moreover, UCPB's unwarranted application of the foreclosure proceeds to the liabilities of Jose Go — which, to reiterate, have not been established — also manifests its bad faith that warrants the award of damages.<sup>89</sup>

**WHEREFORE**, premises considered, the Motion for Reconsideration is **PARTIALLY GRANTED**, and the Court's Decision dated August 16, 2017 is **MODIFIED**, as follows:

- a. Declaring the loan obligations of petitioners to respondent United Coconut Planters Bank under Memorandum of Agreement dated March 21, 2000 to have been fully paid;
- b. Declaring as legal and binding the Deeds of Trust dated April 30, 1998 and holding the properties listed therein were merely held-in-trust for petitioners by respondent Revere and Jose Go and/or corporations owned or associated with him;
- c. Declaring the Deed of Real Estate Mortgage dated March 21, 2000 executed by respondents Revere and Jose Go in favor of co-respondent United Coconut Planters Bank to be valid;
- d. Declaring the Real Estate Mortgage dated June 02, 1997 as having been extinguished by the Memorandum of Agreement dated March 21, 2000, and converting the writ of preliminary injunction issued on March 22, 2004 to a permanent one, forever prohibiting respondent UNITED COCONUT PLANTERS BANK and ASSET POOL A and all persons/entities deriving rights under them from foreclosing on TCT Nos. T-54182, T-54184, T-54185, T-54192, and T-71135;
- e. Directing respondents, or whoever is in custody of the said certificates of title, namely, TCT Nos. T-54182, T-54184, T-54185, T-54192, and T-71135, to return the same to petitioners and to execute the appropriate release of mortgage documents;
- f. Ordering respondent United Coconut Planters Bank to pay petitioners the following:
  - i. The excess of the foreclosure proceeds in the amount of ₱23,102,822.96;

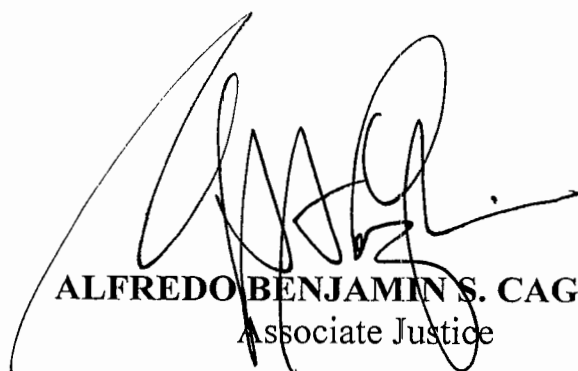
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<sup>89</sup> See *Producers Bank of the Philippines v. Court of Appeals*, supra note 69.



- ii. Legal interest on the amount of ₱223,102,822.96 at the rate of 6% *per annum* from the time of the filing of the complaint on February 3, 2004 until finality of judgment. Once the judgment becomes final and executory, the interest of 6% *per annum* should be imposed, to be computed from the time the judgment became final and executory until fully satisfied;
- iii. ₱1,000,000.00 as moral damages;
- iv. ₱100,000.00 as exemplary damages;
- v. ₱2,000,000.00 as attorney's fees; and
- vi. Costs of suit.

**SO ORDERED.**



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice