

BY: YCA
TIME: 3:29

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

**ATTY. LEONARD FLORENT O.
BULATAO,**

Petitioner,

G.R. No. 235020

Present:

PERALTA, C.J., Chairperson,
CAGUIOA,
J. REYES, JR.,
LAZARO-JAVIER, and
LOPEZ, JJ.

- versus -

ZENAIDA C. ESTONACTOC,
Respondent.

Promulgated:

DEC 10 2019

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DECISION

CAGUIOA, J.:

Before the Court is the Appeal under Rule 45 of the Rules of Court filed by petitioner Atty. Leonard Florent O. Bulatao (Atty. Bulatao) assailing the Decision² dated October 19, 2017 (Decision) of the Court of Appeals³ (CA) in CA-G.R. CV No. 105581. The CA Decision partly granted the appeal of respondent Zenaida Estonactoc (Zenaida) resulting in the reversal and setting aside of the Decision⁴ dated May 4, 2015 rendered by the Regional Trial Court, Branch 31, Agoo, La Union (RTC) in Civil Case No. A-2715.

The Facts and Antecedent Proceedings

The CA Decision narrates the factual antecedents as follows:

On June 3, 2008, [Zenaida] executed a Deed of Mortgage of Real Property [(DMRP)] in favor of [Atty. Bulatao] covering a parcel of land located in Pongpong, Sto. Tomas, La Union, with an area of 42,727 square

¹ Rollo, pp. 3-13, excluding Annexes.

² Id. at 15-32. Penned by Associate Justice Henri Jean Paul B. Inting (now a Member of the Court) with Associate Justices Apolinario D. Bruselas, Jr. and Leoncia R. Dimagiba concurring.

³ Twelfth Division.

⁴ Rollo, pp. 33-50. Penned by Executive Judge Romeo M. Atillo, Jr.

meters (subject property), as security for a loan in the amount of P200,000.00.

The [DMRP] contained the following stipulation:

PROVIDED HOWEVER, that if I, shall pay or cause to be paid to the said MORTGAGEE the aforementioned amount of TWO HUNDRED THOUSAND PESOS (Php200,000.00), Philippine currency together with the interest at the rate of five percent (5%) per month, within a period of twelve (12) months or one (1) year or before June 4, 2009, then this MORTGAGE shall thereby be discharged and of no effect. OTHERWISE, it shall remain in full force and effect and shall be enforceable in the manner provided for by law.

When [Zenaida] defaulted in her obligation, [Atty. Bulatao] foreclosed the mortgage and petitioned the court for the sale of the subject property in a public auction. The Notice of Sale on Extra Judicial Foreclosure of Property/ies was issued by the Office of the Clerk of Court of the trial court in Agoo, La Union on July 15, 2011.

By reason of the impending sale of the subject property, [Zenaida] filed [a Complaint for Injunction, Annulment of Deed of Real Estate Mortgage and Damages against Atty. Bulatao, Atty. Diosdado L. Doctolero as Clerk of Court and Ex-Officio Sheriff of the RTC of Agoo, La Union, and Melchor A. Mabutas, as Sheriff of the Office of the Clerk of Court of the same court⁵] seeking to declare the [DMRP] as illegal, inexistent and null and void, and to make the contract unenforceable. She asserted that [Atty. Bulatao], in grave abuse of her rights, took advantage of her financial distress and urgent financial needs by imposing in the [DMRP] an interest of five percent (5%) per month which is excessive, iniquitous, unconscionable, exorbitant and contrary to public policy, rendering the contract null and void. She also alleged that she only received P80,000.00 from [Atty.] Bulatao, contrary to the P200,000.00 contracted loan amount. In addition, she sought the award of moral and exemplary damages, attorney's fees, and litigation expenses.

[Zenaida] likewise raised in the complaint that the agreement is invalid because of the following: (a) it failed to mention that the subject property is registered under Transfer Certificate of Title No. T-6288-part as indicated in the Real Property Field Appraisal and Assessment Sheet and Tax Declaration No. 020-00304; (b) the mortgage is not registered and therefore not annotated in the title of the subject property; (c) it falsely indicated that [Zenaida] is the registered owner of the subject property despite the fact that it is co-owned by [Zenaida] with her late husband, Adolfo T. Estonactoc; and that it has not yet been settled and transferred in favor of their son, Jose Rafael C. Estonactoc; and (d) [Zenaida] did not appear before the notary public who notarized the [DMRP].

x x x x

In response thereto, [Atty. Bulatao] filed an Answer wherein he denied all the allegations made against him by [Zenaida] and contended the following:

⁵ See id. at 33.

[Zenaida was] guilty of misrepresentation, misdeclaration, false pretenses, and bad faith. The P200,000.00 loan which he extended to [Zenaida] was from the proceeds of the loan which he contracted with FRB Credit and Financial Services. [Zenaida] represented to be the sole owner of the subject property and that the title thereof was lost, destroyed and/or cannot be recovered although the transfer of the title in her name is already being processed. It was [Zenaida] who encouraged him to secure a loan with the FRB Credit and Financial Services in the amount of P200,000.00 and that she even told him that she [was] willing to pay a monthly interest of 20%-30%. [Zenaida] agreed to a 5% monthly interest, with the 2.5% to be paid directly to FRB Credit and Financial Services and the other half as his own profit. [Zenaida] even represented that she could pay the loan in a month or two.

[Atty. Bulatao] denied that the interest is usurious on account of Central Bank Circular No. 905-82, which expressly removed the interest ceilings prescribed under the Usury Law, leaving [the] parties with the liberty to mutually agree on an interest rate. Moreover, he denied that [Zenaida] only received P80,000.00 considering that it was [Zenaida] herself who encashed Allied Bank Check No. 0024551400 in the amount of P200,000.00, which represent[ed] the proceeds of the loan incurred by [Atty. Bulatao] from FRB Credit and Financial Services.

As counterclaim, [Atty. Bulatao] sought the recovery of actual, moral and exemplary damages as well as attorney's fees, and costs of suit.

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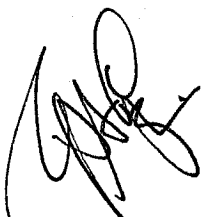
On March 19, 2012, the complaint was amended to include the declaration of nullity of the foreclosure sale of the subject property as a cause of action by reason of the subsequent sale thereof in a public auction and the consequent issuance of a certificate of sale of real property in favor of [Atty. Bulatao] on October 10, 2011.

Trial on the merits of the case ensued whereby both parties presented their respective documentary and testimonial pieces of evidence in support of their claims.

On May 4, 2015, the trial court rendered [its] Decision[, the] dispositive portion of which is cited herein, to wit:

WHEREFORE, premises considered, this Court finds in favor of the defendants and accordingly, DISMISSES the instant complaint against them for utter lack of merit. Moreover, the plaintiff is hereby order[ed] to pay the defendants, to wit:

- (i) Moral damages in the amount of Thirty Thousand Pesos (P30,000.00);
- (ii) Exemplary damages in the amount of Fifteen Thousand Pesos (P15,000.00);
- (iii) Nominal damages in the amount of Five Thousand Pesos (P5,000.00);



(iv) Attorney's fees in the amount of Thirty Thousand Pesos (P30,000.00), plus Two Thousand Five Hundred Pesos (P2,500.00) per court appearance of Attys. Gines and Ulpindo; and

(v) Costs of suit.

SO ORDERED.

The trial court ruled that [Zenaida] is bound by the terms and stipulations in the contract of loan and real estate mortgage which she executed in favor of [Atty. Bulatao]; that the evidence on hand shows that the interest of 5% per month on the loan is not exorbitant considering that the borrower, [Zenaida], appears to be an educated businesswoman, from a well-to-do family as demonstrated by her having a son who studies in a prestigious school (Ateneo), and her late husband being the former town mayor of Sto. Tomas, La Union; that [Zenaida] is in a position to pay not only the principal loan amount but also the stipulated interest; and that [Zenaida] even expressed her capacity to pay interest of even up to 20%, to entice [Atty. Bulatao] to extend the loan to her. Hence, the trial court declared that she is now estopped from claiming otherwise.

Moreover, the trial court declared that [Atty. Bulatao] is an innocent mortgagee for value, who merely relied on the alleged sole ownership of [Zenaida] over the subject property as demonstrated in the tax declaration; and that in fine, the mortgage of the co-owned property by one of the co-owners, [Zenaida] in this case, sans any participation on the part of her son, as co-owner, did not invalidate the mortgage.

The trial court concluded that considering the validity of the loan and real estate mortgage, the subsequent foreclosure of the mortgage on the subject property and the issuance of certificate of sale as a consequence thereof are likewise valid considering that the foreclosure was made by proper authorities, who enjoy the presumption of regularity of performance of their official duties.

Lastly, the trial court granted moral, exemplary and nominal damages, and attorney's fees in favor of defendants.

[Zenaida] moved to reconsider the [trial court's] Decision but the trial court denied it in an Order dated July 13, 2015. On July 30, 2015, [Zenaida] filed a Notice of Appeal which was given due course by the trial court on August 13, 2015.⁶

⁶ Id. at 16-22.

Ruling of the CA

The CA in its Decision⁷ dated October 19, 2017 found Zenaida's appeal partly meritorious.⁸

Regarding the real estate mortgage, the CA ruled that Zenaida, being a co-owner of the subject property, could validly convey through sale or mortgage the portion belonging to her and, thus, the real estate mortgage in favor of Atty. Bulatao is not entirely void.⁹

On the interest rate, the CA ruled that the 5% monthly interest imposed upon by Atty. Bulatao in the Deed of Mortgage of Real Property (DMRP) is excessive, unconscionable and exorbitant, which renders the stipulation on interest void for being contrary to morals, if not against the law.¹⁰ After the CA observed, on one hand, that the stipulation on interest being void, it is as if there was no express contract on said interest rate, thus, the interest rate may be reduced as reason and equity demand, and on the other hand, that a legal interest of 12% *per annum* will be added in place of the excessive interest formerly imposed, the CA, then, equitably reduced the stipulated 5% monthly interest to 1% per month or 12% *per annum* reckoned from the execution of the DMRP on June 3, 2008.¹¹

The CA further observed that while the nullity of the stipulation on the usurious interest did not affect the lender's right to recover the principal obligation or the terms of the real estate mortgage, the foreclosure proceedings held on September 8 and 15, 2011 in this case could not be given effect.¹² The CA reasoned that since the debt due is limited to the principal of ₱200,000.00 with 12% *per annum* as legal interest, the previous demand for payment of the amount of ₱540,000.00 reflected on the demand letter dated April 15, 2011 could not be considered as a valid demand for payment, and without a valid demand the obligations is not due.¹³ The foreclosure could not be considered valid because it would result in an inequitable situation wherein Zenaida would have her land foreclosed for failure to pay an over-inflated loan only a small part of which she was obligated to pay, and she was not given an opportunity to settle her debt at the correct amount without the iniquitous interest imposed.¹⁴

As to the award of damages against Zenaida, the CA found no justification for their imposition.¹⁵

The dispositive portion of the CA Decision states:

⁷ Id. at 15-32.

⁸ Id. at 23.

⁹ Id. at 25.

¹⁰ Id. at 26, 27.

¹¹ Id. at 27-28. The date of execution of the DMRP is reflected as June 4, 2008 on pages 27, 29 and 30 of the *rollo*, but on page 16, the date is June 3, 2008. Based on the RTC Decision, Exh. "D", which is the Deed of Mortgage of Real Property, is dated June 3, 2008; *rollo*, p. 36.

¹² Id. at 28.

¹³ Id. at 28-29.

¹⁴ Id. at 29.

¹⁵ Id. at 30.



WHEREFORE, the appeal is PARTLY GRANTED.

The Decision dated May 4, 2015 rendered by Branch 31 of the Regional Trial Court (RTC), Agoo, La Union in Civil Case No. A-2715 is hereby REVERSED and SET ASIDE. Accordingly, a new judgment is RENDERED as follows:

1. The Deed of Mortgage of Real Property dated June 4, 2008 is DECLARED as VOID only with respect to the share of deceased Adolfo T. Estonactoc;
2. The monthly interest as stipulated in the Deed of Mortgage of Real Property is REDUCED to 1% per month or 12% per *annum*; and
3. The Foreclosure Sale and the Certificate of Sale issued in favor of defendant-appellee Leonard Florent O. Bulatao are DECLARED null and void.

SO ORDERED.¹⁶

Dissatisfied, Atty. Bulatao filed the instant Appeal. Zenaida filed her Comment¹⁷ dated May 15, 2018. Atty. Bulatao filed a Reply¹⁸ on March 18, 2019.

The Issue

Whether the CA erred when it set aside and reversed the RTC Decision.

The Court's Ruling

In his appeal, Atty. Bulatao argues that the payment of the 5% monthly interest was voluntarily agreed upon by him and Zenaida and absent fraud committed upon Zenaida, the stipulated interest rate should stand.¹⁹ On the assumption that the 5% monthly interest is invalid, the ruling of the CA reducing it to 1% per month or 12% *per annum* is not just and right.²⁰ Atty. Bulatao takes the position that the 5% per month should be applied to the borrowed amount of ₱200,000.00 for one year (the term of the loan) and thereafter, the 12% yearly interest should apply.²¹ Atty. Bulatao cites *Prisma Construction & Development Corp. v. Menchavez*²² (*Prisma v. Menchavez*) in support of his position because said case is a contract for a specific period.²³

¹⁶ Id. at 30-31.

¹⁷ Id. at 112-114.

¹⁸ Id. at 133-148.

¹⁹ See id. at 8.

²⁰ Id.

²¹ Id. at 9-10.

²² 628 Phil. 495 (2010).

²³ *Rollo*, p. 9.

Regarding the DMRP, Atty. Bulatao argues that since Zenaida is a co-owner to the extent of 3/4 (1/2 portion representing her share in the conjugal property and 1/4 portion as her legitime in the estate of her husband Adolfo Estonactoc) of the subject property and the remaining 1/4 portion being co-owned by her son Jose Rafael Estonactoc, Atty. Bulatao has the right to foreclose Zenaida's 3/4 share.²⁴

For her part, Zenaida seeks the dismissal of Atty. Bulatao's appeal for his failure to comply with formal and procedural requirements of a Rule 45 petition for *certiorari*.²⁵ Assuming that the Court takes cognizance of the appeal, Zenaida argues that the CA did not err in reversing the RTC Decision.²⁶

Despite the formal objections interposed by Zenaida, the Court will proceed to rule on the merits of the Petition. Except as regards the applicable rate of interest and the effect of the DMRP are concerned, the appeal is bereft of merit.

Atty. Bulatao's argument of voluntariness in his and Zenaida's agreement on the 5% monthly interest cannot be sustained. The Court has repudiated this argument in *Sps. Abella v. Sps. Abella*,²⁷ viz.:

Even if it can be shown that the parties have agreed to monthly interest at the rate of 2.5%, this is unconscionable. As emphasized in *Castro v. Tan*,²⁸ the willingness of the parties to enter into a relation involving an unconscionable interest rate is inconsequential to the validity of the stipulated rate:

The imposition of an unconscionable rate of interest on a money debt, even if knowingly and voluntarily assumed, is immoral and unjust. It is tantamount to a repugnant spoliation and an iniquitous deprivation of property, repulsive to the common sense of man. It has no support in law, in principles of justice, or in the human conscience nor is there any reason whatsoever which may justify such imposition as righteous and as one that may be sustained within the sphere of public or private morals.

The imposition of an unconscionable interest rate is void ab initio for being "contrary to morals, and the law."

In determining whether the rate of interest is unconscionable, the mechanical application of pre-established floors would be wanting. The lowest rates that have previously been considered unconscionable need not be an impenetrable minimum. What is more crucial is a consideration of the parties' contexts. Moreover, interest rates must be appreciated in light of the fundamental nature of interest as compensation to the creditor for

²⁴ Id. at 10.

²⁵ Id. at 112-113.

²⁶ Id. at 113.

²⁷ 763 Phil. 372 (2015).

²⁸ 620 Phil. 239 (2009).

money lent to another, which he or she could otherwise have used for his or her own purposes at the time it was lent. It is not the default vehicle for predatory gain. As such, interest need only be reasonable. It ought not be a supine mechanism for the creditor's unjust enrichment at the expense of another.

Petitioners here insist upon the imposition of 2.5% monthly or 30% annual interest. Compounded at this rate, respondents' obligation would have more than doubled—increased to 219.7% of the principal—by the end of the third year after which the loan was contracted if the entire principal remained unpaid. By the end of the ninth year, it would have multiplied more than tenfold (or increased to 1,060.45%). In 2015, this would have multiplied by more than 66 times (or increased by 6,654.17%). Thus, from an initial loan of ₱500,000.00, respondents would be obliged to pay more than ₱33 million. This is grossly unfair, especially since up to the fourth year from when the loan was obtained, respondents had been assiduously delivering payment. This reduces their best efforts to satisfy their obligation into a protracted servicing of a rapacious loan.²⁹ (Underscoring supplied)

In the consolidated cases of *Rivera v. Sps. Chua*³⁰ and *Sps. Chua v. Rivera*,³¹ the Court affirmed the finding of the CA that 5% per month or 60% *per annum* interest rate is highly iniquitous and unreasonable; and since the interest rate agreed upon is void, the rate of interest should be 12% *per annum* (the then prevailing interest rate prescribed by the Central Bank of the Philippines for loans or forbearances of money) from the date of judicial or extrajudicial demand.

Given that the agreement on the 5% monthly interest is void for being unconscionable, the interest rate prescribed by the Bangko Sentral ng Pilipinas (BSP) for loans or forbearances of money, credits or goods will be the surrogate or substitute rate not only for the one-year interest period agreed upon but for the entire period that the loan of Zenaida remains unpaid.

The distinction that Atty. Bulatao makes between “open-ended contracts” or contracts with indefinite period and “term contracts” or contracts for a specific period³² is misguided as the distinction has no legal basis as far as a loan, whether *commodatum* or *mutuum*, is concerned. As provided in Article 1933 of the Civil Code, “[b]y the contract of loan, one of the parties delivers to another, either something not consumable so that the latter may use the same for a certain time and return it, in which case the contract is called a *commodatum*; or money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid, in which case the contract is simply called a loan or *mutuum*.”³³ Thus,

²⁹ *Sps. Abella v. Sps. Abella*, supra note 27, at 387-389.

³⁰ G.R. No. 184458, 750 Phil. 663 (2015).

³¹ G.R. No. 184472, id.

³² *Rollo*, pp. 141-142.

³³ Underscoring supplied.

a period is contemplated in a contract of loan and it cannot be an “open-ended contract” or a contract with an indefinite period.

Atty. Bulatao misreads *Prisma v. Menchavez*. The facts show therein that the parties agreed to the payment of a **specific sum of money** of ₱40,000.00 per month for six months, not a 4% rate of interest, payable within a six-month period;³⁴ and no issue on the excessiveness of the stipulated amount of ₱40,000.00 per month was ever put in issue by the petitioners therein since they only assailed the application of a 4% interest rate to the unpaid amount, since it was not agreed upon.³⁵ As aptly observed by the CA:

We also could not fathom how the case of [*Prisma v. Menchavez*] could apply in this case, as defendant-appellee would want to convince Us, because the afore-mentioned case involves an agreed sum as monthly interest and no rate of interest was stipulated in the promissory note, contrary to the factual antecedents in this case.³⁶

As to the validity of the foreclosure, jurisprudence on the effect of the nullity of the loan’s interest rate on the foreclosure of the mortgage securing the loan abounds. In the consolidated cases of *Vasquez v. Philippine National Bank*³⁷ and *Philippine National Bank v. Vasquez*,³⁸ the Court has reiterated that:

In a situation wherein null and void interest rates are imposed under a contract of loan, the non-payment of the principal loan obligation does not place the debtor in a state of default, considering that under Article 1252 of the Civil Code, if a debt produces interest, payment of the principal shall not be deemed to have been made until the interests have been covered. Necessarily, since the obligation of making interest payments in the instant case is illegal and thus non-demandable, the payment of the principal loan obligation was likewise not yet demandable on the part of PNB. With Vasquez not being in a state of default, the foreclosure of the subject properties should not have proceeded.

In *Heirs of Zoilo Espiritu v. Sps. Landrito*,³⁹ the loan obligation involved, which was secured by a mortgage, was marred by an iniquitous imposition of monetary interest because the creditors omitted to specifically identify the imposable interest rate, just as in the instant case. Because of the failure of the debtors to pay back the loan, the mortgaged property was foreclosed. The debtors failed to redeem the foreclosed property. The Court in that case held that the foreclosure proceedings should not be given effect, viz.:

x x x If the foreclosure proceedings were considered valid, this would result in an inequitable situation wherein

³⁴ *Prisma v. Menchavez*, supra note 22, at 506.

³⁵ Id. at 505.

³⁶ *Rollo*, p. 28.

³⁷ G.R. No. 228355, August 28, 2019.

³⁸ G.R. No. 228397, August 28, 2019.

³⁹ 549 Phil. 180, 193-195 (2007).

the Spouses Landrito will have their land foreclosed for failure to pay an over-inflated loan only a small part of which they were obligated to pay.

x x x x

Since the Spouses Landrito, the debtors in this case, were not given an opportunity to settle their debt, at the correct amount and without the iniquitous interest imposed, no foreclosure proceedings may be instituted. A judgment ordering a foreclosure sale is conditioned upon a finding on the correct amount of the unpaid obligation and the failure of the debtor to pay the said amount. In this case, it has not yet been shown that the Spouses Landrito had already failed to pay the correct amount of the debt and, therefore, a foreclosure sale cannot be conducted in order to answer for the unpaid debt. x x x

x x x x

Similarly, in *Sps. Albos v. Sps. Embisan*,⁴⁰ the extra-judicial foreclosure sale of a mortgaged property, which was foreclosed due to the non-payment of a loan, was invalidated because the interest rates imposed on the loan were found to be null and void due to their unconscionability.

In *Sps. Castro v. Tan*,⁴¹ on the basis of the nullity of the imposed interest rates due to their iniquity, the Court nullified the foreclosure proceedings “since the amount demanded as the outstanding loan was overstated. Consequently, it has not been shown that the respondents have failed to pay the correct amount of their outstanding obligation. x x x”

Also, in *Sps. Andal v. PNB*,⁴² the Court upheld the nullification of the foreclosure sale, affirming the appellate court’s holding that “since the interest rates are null and void, [respondent] bank has no right to foreclose [petitioners-spouses’] properties and any foreclosure thereof is illegal. x x x. Since there was no default yet, it is premature for [respondent] bank to foreclose the properties subject of the real estate mortgage contract.”⁴³

In *Menchavez v. Bermudez*,⁴⁴ Arthur Menchavez and Marlyn Bermudez entered on November 17, 1993 into a loan agreement, covering the amount of ₱500,000.00, and the Promissory Note provided that the loan was to be paid “on or before Dec[ember] 17, 1993 with interest at 5% per month.”⁴⁵ The Court, reiterating *Castro v. Tan*,⁴⁶ tagged the 5% monthly interest rate as “excessive, iniquitous, unconscionable and exorbitant, contrary to morals, and the law.”⁴⁷

⁴⁰ 748 Phil. 907, 919 (2014).

⁴¹ Supra note 28, at 253.

⁴² 722 Phil. 273, 284 (2013).

⁴³ *Vasquez v. Philippine National Bank and Philippine National Bank v. Vasquez*, supra notes 37 and 38, at 17-19.

⁴⁴ 697 Phil. 447 (2012).

⁴⁵ Id. at 449.

⁴⁶ Supra note 28.

⁴⁷ *Menchavez v. Bermudez*, supra note 44, at 456.

The invalidity of the 5% per month interest rate does not affect the obligation of Zenaida to repay her loan of ₱200,000.00 from Atty. Bulatao. Based on the recent *en banc* case of *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*,⁴⁸ the applicable interest is the BSP-prescribed rate of 12% *per annum* from the execution of the DMRP on June 3, 2008, wherein the parties agreed to the payment of interest, to June 30, 2013 and at the rate of 6% *per annum* from July 1, 2013 until full payment. Also, taking into account Article 2212 of the Civil Code, which provides that “[i]nterest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point,” the interest due on the principal amount (computed as mentioned above) accruing as of judicial demand (the filing of the counterclaim, in this case) shall separately earn interest at the rate prescribed by the BSP from time of judicial demand up to full payment. Thus, the CA Decision has to be modified in this respect.

For there to be a valid payment, the three characteristics of payment must be present. These are: (1) **integrity** of payment, which is provided for in Article 1233 of the Civil Code: “A debt shall not be understood to have been paid unless the thing or service in which the obligation consists has been completely delivered or rendered, as the case maybe;” (2) **identity** of payment, which is provided for in Article 1244: “The debtor of a thing cannot compel the creditor to receive a different one, although the latter may be of the same value as, or more valuable than that which is due. In obligations to do or not to do, an act or forbearance cannot be substituted by another act or forbearance against the obligee’s will;” and (3) **indivisibility** of payment, which is provided for in Article 1248: “Unless there is an express stipulation to that effect, the creditor cannot be compelled partially to receive the prestations in which the obligation consists. Neither may the debtor be required to make partial payments. However, when the debt is in part liquidated and in part unliquidated, the creditor may demand and the debtor may effect the payment of the former without waiting for the liquidation of the latter.”⁴⁹ Since integrity of payment requires that the thing or service in which the obligation consists has been *completely* delivered or rendered as the case may be, the debtor must comply in its entirety with the prestation and that the creditor is satisfied with the same.⁵⁰

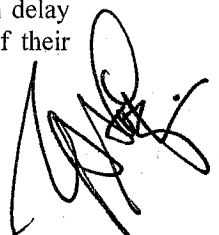
These characteristics of payment should mirror the demand made by the creditor in order for the debtor to incur in delay under Article 1169⁵¹ of the Civil Code. The demand must comply with the integrity, identity and indivisibility characteristics as well. Since the debtor cannot compel the creditor to accept an incomplete delivery or an amount less than what is due, it follows that the creditor cannot compel the debtor to pay more than what

⁴⁸ G.R. No. 225433, August 28, 2019.

⁴⁹ See Eduardo P. Caguioa, COMMENTS AND CASES ON CIVIL LAW, CIVIL CODE OF THE PHILIPPINES, Vol. IV, 1983 Rev. Second Ed., p. 303.

⁵⁰ Id. at 304.

⁵¹ CIVIL CODE, Art. 1169 partly provides: “Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.”



is due. Thus, the characteristics of integrity and identity will be violated if the creditor demands more than what is due.

As correctly observed by the CA:

However, while the terms of the Real Estate Mortgage remain effective, the foreclosure proceedings held on September 8 and 15, 2011, cannot be given effect. In the Notice of Extra-Judicial Sale dated July 15, 2011, and in the Certificate of Sale dated October 10, 2011, the amount designated as mortgage indebtedness amounted to P560,000.00. Likewise, in the demand letter dated April 15, 2011, defendant-appellee demanded from plaintiff-appellant the amount of P540,000.00 for the unpaid loan. Since the debt due is limited to the principal of P200,000.00 with 12% per *annum* as legal interest, the previous demand for payment of the amount of P540,000.00 cannot be considered as a valid demand for payment. For an obligation to become due, there must be a valid demand. Nor can the foreclosure proceedings be considered valid since the total amount of the indebtedness during the foreclosure proceedings was pegged at P560,000.00 which included interest and which this Court now nullifies for being excessive, iniquitous, and exorbitant. If the foreclosure proceedings were considered valid, it would result in an inequitable situation wherein plaintiff-appellant will have her land foreclosed for failure to pay an over-inflated loan only a small part of which she was obligated to pay.⁵²

As to the DMRP, the CA recognized Zenaida as a co-owner of the mortgaged property and as such, she could validly convey through sale or mortgage the portion belonging to her.⁵³ Thus, the CA ruled that “the Real Estate Mortgage in favor of [Atty. Bulatao] is not entirely rendered void as its validity is limited only to the portion belonging to [Zenaida].”⁵⁴

In *Bailon-Casilao v. Court of Appeals*,⁵⁵ the Court observed:

The rights of a co-owner of a certain property are clearly specified in Article 493 of the Civil Code. Thus:

Art. 493. Each co-owner shall have *the full ownership of his part* and of the fruits and benefits pertaining thereto, and he may therefore *alienate, assign or mortgage it* and even substitute another person in its enjoyment, except when personal rights are involved. ***But the effect of the alienation or mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.*** x x x

As early as 1923, this Court has ruled that even if a co-owner sells the whole property as his, the sale will affect only his own share but not those of the other co-owners who did not consent to the sale [*Punsalan v. Boon Liat*, 44 Phil. 320 (1923)]. This is because under the aforementioned

⁵² *Rollo*, pp. 28-29.

⁵³ *Id.* at 25.

⁵⁴ *Id.*

⁵⁵ 243 Phil. 888 (1988).

codal provision, the sale or other disposition affects only his undivided share and the transferee gets only what would correspond to his grantor in the partition of the thing owned in common. [*Ramirez v. Bautista*, 14 Phil. 528 (1909)]. Consequently, by virtue of the sales made by Rosalia and Gaudencio Bailon which are valid with respect to their proportionate shares, and the subsequent transfers which culminated in the sale to private respondent Celestino Afalse, the said Afalse thereby became a co-owner of the disputed parcel of land as correctly held by the lower court since the sales produced the effect of *substituting* the buyers in the enjoyment thereof [*Mainit v. Bandy*, 14 Phil. 730 (1910)].

From the foregoing, it may be deduced that since a co-owner is entitled to sell his undivided share, a sale of the entire property by one co-owner without the consent of the other co-owners is not null and void. However, only the rights of the co-owner-seller are transferred, thereby making the buyer a co-owner of the property.⁵⁶ (Emphasis supplied; italics in the original)

This ruling was reiterated in *Paulmitan v. Court of Appeals*,⁵⁷ where the Court therein ruled that the sale of the property owned in common by one co-owner without the consent of the others did not give to the buyer ownership over the entire land but merely transferred to the buyer the undivided share of the seller, making the buyer the co-owner of the land in question.⁵⁸

The Court's reliance on Article 493 of the Civil Code to justify the validity of the sale of the property owned in common by a co-owner without the consent of the other co-owners insofar as the undivided share of the co-owner seller is concerned has to be reconciled with the ruling of the Court *en banc* through Justice J.B.L. Reyes in the case of *Estoque v. Pajimula*⁵⁹ (*Estoque*) which has not been overturned. In *Estoque*, the Court pronounced:

x x x The deed of sale to Estoque x x x clearly specifies the object sold as the southeastern third portion of Lot 802 of the Rosario Cadastre, with an area of 840 square meters, more or less. Granting that the seller, Crispina Perez Vda. de Aquitania could not have sold this particular portion of the lot owned in common by her and her two brothers, Lorenzo and Ricardo Perez, by no means does it follow that she intended to sell to x x x Estoque her 1/3 undivided interest in the lot aforementioned. There is nothing in the deed of sale to justify such inference. That the seller could have validly sold her one-third undivided interest to [Estoque] is no proof that she did choose to sell the same. *Ab posse ad actu non valet illatio*.⁶⁰

While in *Estoque* a specific portion of a co-owned property was sold, that situation is no different from a situation wherein a co-owner has sold the entire co-owned property, *i.e.*, a specific parcel of land of which the seller has only an undivided interest therein, because the rationale for not

⁵⁶ Id. at 892-893.

⁵⁷ 290 Phil. 376 (1992).

⁵⁸ Id. at 385-386.

⁵⁹ 133 Phil. 55 (1968).

⁶⁰ Id. at 58.

recognizing the effectivity of the disposition by a co-owner without the consent of the other co-owners over a specific portion equally applies to the disposition of the entire co-owned property, which is more than the undivided interest or share rightfully pertaining to the disposing co-owner.⁶¹

Estoque characterizes the contract entered into by the disposing co-owner as “ineffective, for lack of power in the vendor to sell the specific portion described in the deed” and makes room for a subsequent ratification of the contract by the other co-owners or validation in case the disposing co-owner subsequently acquires the undivided or *pro-indiviso* interests of the other co-owners.⁶² Thus, the subsequent ratification or acquisition will validate and make the contract fully effective⁶³ as of the date the contract was entered into pursuant to Article 1396 of the Civil Code, which provides that “[r]atification cleanses the contract from all its defects from the moment it was constituted” and Article 1434 of the Civil Code, which provides: “[w]hen a person who is not the owner of a thing sells or alienates and delivers it, and later the seller or grantor acquires title thereto, such title passes by operation of law to the buyer or grantee.”

While Article 493 of the Civil Code may not squarely cover the situations wherein a co-owner, without the consent of the other co-owners, alienate, assign or mortgage: (1) the entire co-owned property; (2) a specific portion of the co-owned property; (3) an undivided portion less than the part pertaining to the disposing co-owner; and (4) an undivided portion more than the part pertaining to the disposing co-owner, the principle of estoppel bars the disposing co-owner from disavowing the sale to the full extent of his undivided or *pro-indiviso* share or part in the co-ownership, subject to the outcome of the partition, which, using the terminology of Article 493, limits the effect of the alienation or mortgage to the portion that may be allotted to him in the division upon termination of the co-ownership. Under Article 1431 of the Civil Code, “[t]hrough estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.”⁶⁴

Given the foregoing, the CA was correct when it limited the validity of the DMRP only to the portion belonging to Zenaida. Unfortunately, the dispositive portion reflected differently: “The Deed of Mortgage of Real Property dated June 4, 2008 is DECLARED as VOID only with respect to the share of deceased Adolfo T. Estonactoc.”⁶⁵ Accordingly, a modification thereof is warranted to reflect that it is valid only to the share pertaining to Zenaida.

⁶¹ Concurring Opinion of J. Caguioa in *Magsano v. Pangasinan Savings and Loan Bank, Inc.*, 797 Phil. 392, 409 (2016).

⁶² *Id.* at 410.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Rollo*, pp. 30-31.

As to the share of Zenaida, Atty. Bulatao is correct that Zenaida is a co-owner to the extent of 3/4 undivided portion (1/2 portion representing her share in the conjugal property and 1/4 portion as her legitime in the estate of her husband Adolfo Estonactoc) of the subject property, with the remaining 1/4 undivided portion being co-owned by her son Jose Rafael Estonactoc. However, Atty. Bulatao has yet no right to foreclose Zenaida's 3/4 undivided share inasmuch as the foreclosure proceedings that he initiated have been declared void in the present proceedings.

WHEREFORE, the Petition is hereby **PARTLY GRANTED**. Accordingly, the Decision dated October 19, 2017 of the Court of Appeals in CA-G.R. CV No. 105581 is **AFFIRMED** with **MODIFICATION**:

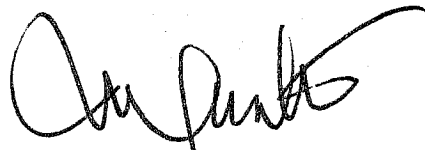
1. The Deed of Mortgage of Real Property dated June 3, 2008 is **DECLARED VALID** only with respect to the share of Zenaida C. Estonactoc;
2. The monthly interest rate stipulated in the Deed of Mortgage of Real Property is **DECLARED VOID**;
3. The Foreclosure Sale and the Certificate of Sale issued in favor of Atty. Leonard Florent O. Bulatao are **DECLARED VOID**;
4. Zenaida C. Estonactoc is **ORDERED** to pay Atty. Leonard Florent O. Bulatao the amount of ₱200,000.00 that the former borrowed from the latter with interest at the rate of 12% *per annum* from June 3, 2008 to June 30, 2013 and at the rate of 6% *per annum* from July 1, 2013 until full payment; and,
5. Interest due on the principal amount of ₱200,000.00 accruing as of judicial demand (*i.e.*, filing of the counterclaim of Atty. Leonard Florent O. Bulatao) shall separately earn legal interest at the rate of 12% *per annum* until June 30, 2013 and at the rate of 6% *per annum* from July 1, 2013 until full payment.

SO ORDERED.

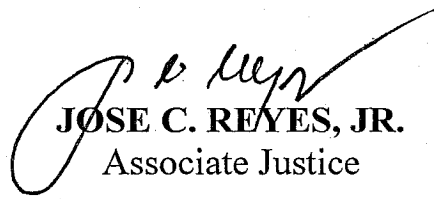


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

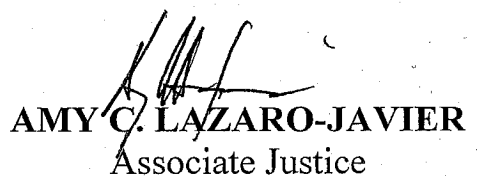
WE CONCUR:



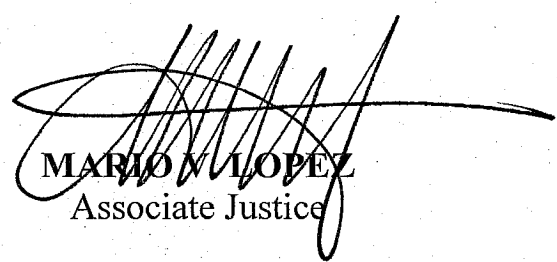
DIOSDADO M. PERALTA
Chief Justice
Chairperson



JOSE C. REYES, JR.
Associate Justice



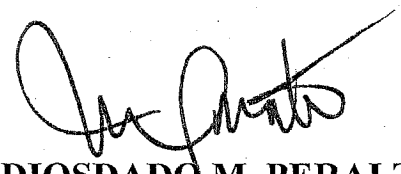
AMY C. LAZARO-JAVIER
Associate Justice



MARIO N. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice

