

SECOND DIVISION

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

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

D E C I S I O N

PEREZ, J.:

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

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

SO ORDERED.^[3]

The Facts

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

On 4 November 1997, Antonia executed a notarized *Deed of Absolute Sale* over the property in favor of respondent Gemma Remilyn C. Avila (Gemma), for the stated consideration of P600,000.00.^[7] Utilizing the document, Gemma caused the

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

<i>Promissory Note</i>	<i>Date</i>	<i>Amount</i>	<i>Maturity</i>
BDS#970779	12/02/97	P300,000.00	04/30/98
BDS#970790	12/15/97	P100,000.00	04/14/98
BDS#980800	01/16/98	P100,000.00	04/30/98
BDS#980805	02/06/98	P100,000.00	04/30/98
BDS#980817	02/27/98	P150,000.00	04/30/98
BDS#980821	03/10/98	P450,000.00	04/30/98

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

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

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

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

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

On 18 December 2007, the RTC went on to render a Decision finding that the

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

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

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

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

SO ORDERED.^[27]

Aggrieved, FEBTC-BPI perfected the appeal which was docketed before the CA as CA-G.R. CV No. 90485. On 31 March 2009 the CA's Second Division rendered the herein assailed decision, reversing the RTC's appealed decision, upon the following findings and conclusions: (a) the property was paraphernal in nature for failure of the Dela Peñas to prove that the same was acquired during Antonia's marriage to Antegono; (b) having misled Gemma into believing that the property was exclusively hers, Antonia is barred from seeking the annulment of the 4 November 1997 *Deed of Absolute Sale*; (c) Antonia's claim that her signature was forged is belied by her admission in the pleadings that she was misled by Gemma into executing said *Deed of Absolute Sale* and by NBI Questioned Document Report No. 482-802; and, (d) FEBTC-BPI is a mortgagee in good faith and for value since Gemma's 26 November 1997 execution of the real estate mortgage in its favor predated Antonia's 3 March 1998 *Affidavit of Adverse Claim* and the 10 December 1999 annotation of a *Notice of Lis Pendens* on TCT No. 337834.^[28]

The Issues

The Dela Peñas seek the reversal of the assailed 31 March 2009 CA decision upon

the affirmative of following issues, to wit:

1) Whether or not the CA erred in reversing the RTC holding the house and lot covered by TCT No. N-32315 conjugal property of the spouses Antegono and Antonia Dela Peña;

2) Whether or not the CA erred in reversing the RTC declaring null and void the Deed of Absolute Sale executed by Antonia to (Gemma); and

3. Whether or not the CA erred in reversing the RTC holding (FEBTC-BPI) a mortgagee/purchaser in bad faith.^[29]

The Court's Ruling

The petition is bereft of merit.

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

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

As the parties invoking the presumption of conjugality under Article 160 of the *Civil Code*, the Dela Peñas did not even come close to proving that the subject property was acquired during the marriage between Antonia and Antegono. Beyond Antonia's bare and uncorroborated assertion that the property was purchased when she was already married,^[34] the record is bereft of any evidence from which the actual date of acquisition of the realty can be ascertained. When queried about the matter during his cross-examination, even Alvin admitted that his sole basis for saying that the property was owned by his parents was Antonia's unilateral pronouncement to