

Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

FABIO CAHAYAG and G. R. No. 168078
CONRADO RIVERA,
 Petitioners,

- versus -

COMMERCIAL CREDIT
CORPORATION, represented by its
 President, **LEONARDO B.**
ALEJANDRO; TERESITA T. QUA,
 assisted by her husband **ALFONSO**
MA. QUA; and the **REGISTER OF**
DEEDS OF LAS PIÑAS, METRO
MANILA, DISTRICT IV,
 Respondents.

X ----- X

DULOS REALTY &
DEVELOPMENT CORPORATION,
 represented by its President,
JUANITO C. DULOS; and
MILAGROS E. ESCALONA, and
ILUMINADA D. BALDOZA,
 Petitioners,

G. R. No. 168357

Present:

SERENO, *CJ*, Chairperson,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 PEREZ, and
 PERLAS-BERNABE, *JJ*.

- versus -

COMMERCIAL CREDIT
CORPORATION, represented by its
 President, **LEONARDO B.**
ALEJANDRO; TERESITA T. QUA,
 assisted by her husband **ALFONSO**
MA. QUA; and the **REGISTER OF**
DEEDS OF LAS PIÑAS, METRO
MANILA, DISTRICT IV,
 Respondents.

Promulgated:

JAN 13 2016

X ----- X

DECISION**SERENO, CJ:**

Before us are consolidated Rule 45 Petitions¹ seeking to nullify the Court of Appeals (CA) Decision dated 2 November 2004² and Resolution dated 10 May 2005³ in CA-G.R. CV No. 47421. The CA Decision reversed and set aside the Decision dated 6 July 1992 issued by the Regional Trial Court (RTC), Branch 65 of Makati.⁴

FACTUAL ANTECEDENTS

Petitioner Dulos Realty was the registered owner of certain residential lots covered by Transfer Certificate of Title (TCT) Nos. S-39767, S-39775, S-28335, S-39778 and S-29776, located at Airmen's Village Subdivision, Pulang Lupa II, Las Pinas, Metro Manila.

On 20 December 1980, Dulos Realty obtained a loan from respondent CCC in the amount of ₱300,000. To secure the loan, the realty executed a Real Estate Mortgage over the subject properties in favor of respondent. The mortgage was duly annotated on the certificates of title on 3 February 1981.⁵

On 29 March 1981, Dulos Realty entered into a Contract to Sell with petitioner Cahayag over the lot covered by TCT No. S-39775.⁶

On 12 August 1981, Dulos Realty entered into another Contract to Sell, this time with petitioner Rivera over the lot covered by TCT No. S-28335.⁷

Dulos Realty defaulted in the payment of the mortgage loan, prompting respondent CCC to initiate extrajudicial foreclosure proceedings. On 17 November 1981, the auction sale was held, with respondent CCC emerging as the highest bidder.⁸

¹ Under Rule 45 of the Rules of Court; *rollo* (G.R. No. 168078), pp. 3-31; (G.R. No. 168357) pp. 11-47.

² Penned by Perlita J. Tria-Tirona, Associate Justice and Chairperson, Fifth Division, and concurred in by Associate Justice and Chairperson Jose C. Reyes, Jr. and Associate Justice Ruben Reyes, *rollo* (G.R. No. 168078), pp. 33-58.

³ *Id.* at 61-62.

⁴ Penned by Judge Salvador S. Abad Santos; records, pp. 492-493.

⁵ *Id.* at 20-23.

⁶ Records, pp. 36-38.

⁷ *CA rollo*, p. 121.

⁸ Records, p. 210.

On 23 November 1981, a Certificate of Sale covering the properties, together with all the buildings and improvements existing thereon, was issued in favor of CCC.⁹ The Certificate of Sale was annotated on the corresponding titles to the properties on 8 March 1982.¹⁰

Thereafter, or on 13 January 1983, Dulos Realty entered into a Contract to Sell with petitioner Escalona over the house and lot covered by TCT No. S-29776.¹¹

On 10 November 1983, an Affidavit of Consolidation in favor of respondent CCC dated 26 August 1983 was annotated on the corresponding titles to the properties.¹² By virtue of the affidavit, TCT Nos. S-39775, S-28335, S-39778 and S-29776 — all in the name of Dulos Realty — were cancelled and TCT Nos. 74531, 74532, 74533 and 74534 were issued in the name of respondent CCC on the same day.¹³

On 10 December 1983, Dulos Realty entered into a Deed of Absolute Sale with petitioner Baldoza over the property covered by TCT No. S-39778, together with the improvements existing thereon.¹⁴

On 21 December 1983, respondent CCC, through a Deed of Absolute Sale, sold to respondent Qua the same subject properties, now covered by TCT Nos. 74531, 74532, 74533 and 74534, which were in the name of respondent CCC. The sale was duly annotated on the corresponding titles to the properties on 5 January 1984.¹⁵

Accordingly, TCT Nos. 74531, 74532, 74533 and 74534 were cancelled; and TCT Nos. 77012, 77013, 77014 and 77015 were issued to respondent Qua on 5 January 1984.¹⁶

Subsequently, respondent Qua filed ejectment suits individually against petitioners Dulos Realty,¹⁷ Cahayag,¹⁸ Escalona,¹⁹ and Rivera²⁰ before the Metropolitan Trial Court (MTC) of Las Piñas, Metro Manila.

⁹ Id. at 210-211.

¹⁰ Id. at 209.

¹¹ Id. at pp. 87-88.

¹² Id. at 209.

¹³ Id. at pp. 214-217.

¹⁴ Id. at 84.

¹⁵ Id. at 213.

¹⁶ Records, pp. 218-220.

¹⁷ Docketed as Civil Case No. 2257.

¹⁸ Civil Case No. 2203

¹⁹ Civil Case No. 2205

²⁰ Civil Case No. 2206

The MTC rendered Decisions in favor of respondent Qua. It ordered Dulos Realty, Escalona, Cahayag, and Rivera to vacate the properties.

On 8 March 1988, the MTC issued a Writ of Execution to enforce its Decision dated 20 October 1986 in Civil Case No. 2257 against Dulos Realty “and all persons claiming right under defendant.”²¹ The subject of the writ of execution was Lot 11 Block II,²² which was the lot sold by Dulos Realty to petitioner Baldoza.

COMPLAINT FOR ANNULMENT OF SHERIFF’S SALE AND OTHER DOCUMENTS

On 5 December 1988, petitioners filed a Complaint against respondents for the “Annulment of Sheriff[’s] Sale and Other Documents with Preliminary Injunction and/or Temporary Restraining Order” before the RTC of Makati City, where it was docketed as Civil Case No. 88-2599.²³

The Complaint²⁴ alleged that petitioners Cahayag, Rivera, Escalona and Baldoza were owners of the properties in question by virtue of Contracts of Sale individually executed in their favor, and that the Real Estate Mortgage between Dulos Realty and defendant-appellant CCC did not include the houses, but merely referred to the lands themselves.²⁵ Thus, the inclusion of the housing units in the Deed of Sale executed by respondent CCC in favor of respondent Qua was allegedly illegal.²⁶

Respondents failed to file an answer within the reglementary period. Subsequently, they were declared in default. They appealed the order of default but their appeal was dismissed on 8 February 1990.²⁷

On 6 July 1992, the RTC rendered a Decision,²⁸ which ruled that the houses were not included in the Real Estate Mortgage; and that the foreclosure of the mortgage over the subject lots, as well as the housing units, was not valid.²⁹ The trial court held that this conclusion was established by the plaintiffs’ evidence, which went unrefuted when defendants were declared in default.³⁰

²¹ Records, p. 112.

²² Id.

²³ Id. at 4.

²⁴ Id.

²⁵ Id. at 9, 11-12.

²⁶ Id.

²⁷ Id. at 492.

²⁸ Supra note 4.

²⁹ Id.

³⁰ Id.

THE CA DECISION

Respondents proceeded to the CA, where they secured a favorable ruling. In its Decision rendered on 2 November 2004,³¹ the appellate court held that the extrajudicial foreclosure was valid, since the Real Estate Mortgage clearly included the buildings and improvements on the lands, subject of the mortgage.

After establishing the inclusion of the housing units in the Real Estate Mortgage, the CA determined the rights of the buyers in the Contracts to Sell/Contract of Sale vis-à-vis those of the mortgagee and its successor-in-interest.

In the cases of petitioners Cahayag, Rivera and Escalona, the CA pointed to lack of evidence establishing full payment of the price. As supporting reason, it stated that even if there were full payment of the purchase price, the mortgagee and the latter's successor-in-interest had a better right over the properties. The CA anchored this conclusion on the fact that the Real Estate Mortgage was annotated at the back of the titles to the subject properties before the execution of the Contracts to Sell. It said that the annotation constituted sufficient notice to third parties that the property was subject to an encumbrance. With the notice, Cahayag, Rivera and Escalona should have redeemed the properties within the one-year redemption period, but they failed to do so. Consequently, the right of respondent CCC over the properties became absolute, and the transfer to respondent Qua was valid.

As regards Baldoza, though the case involved a Contract of Sale, and not a mere Contract to Sell, the CA declared the transaction null and void on the purported ground that Dulos was no longer the owner at the time of the sale.

The CA accordingly reversed and set aside the RTC Decision, dismissed the case for lack of merit, and ordered petitioners to surrender possession of the properties to respondent Qua.

THE RULE 45 PETITIONS

On 30 May 2005, petitioners Cahayag and Rivera filed their Rule 45 Petition with this Court.³² For their part, petitioners Dulos Realty, Baldoza and Escalona filed their Rule 45 Petition on 19 July 2005.³³

³¹ *Supra* note 2.

³² *Rollo* (G.R. No.168078), p. 3.

³³ *Rollo* (G.R. No. 168357), p. 11.

In the Petition under G.R. No. 168357, it is argued, among others, that the Deed of Absolute Sale in favor of petitioner Baldoza was the culmination of a Contract to Sell between her and Dulos Realty. She claims that the Contract to Sell, *marked as Exhibit "L" during the trial*, was executed on 10 January 1979, which preceded the execution of the Deed of Real Estate Mortgage and the registration of the mortgage on 3 February 1981.³⁴ After full payment of the price under the Contract to Sell, Dulos Realty executed the Deed of Absolute Sale. In other words, Baldoza is arguing that she has a better title to the property than respondent Qua since the unregistered contract to sell in her favor was executed before the registration of the mortgage. But the CA ignored Exhibit "L" and merely stated that there was only a Deed of Absolute Sale in favor of Baldoza.

THE ARGUMENTS

The arguments of petitioners, as stated in their respective Memoranda, are summarized as follows:

Coverage of the Mortgage

Initially, petitioners attempt to stave off the effects of the extrajudicial foreclosure by attacking the coverage of the Real Estate Mortgage with respect to its subject-matter.³⁵ They draw attention to the fact that the List of Properties attached to the Deed of Real Estate Mortgage refers merely to the lands themselves and does not include the housing units found thereon.³⁶ Petitioners also contend that doubts should be resolved against the drafter inasmuch as the agreement is a contract of adhesion, having been prepared by the mortgagee.³⁷

As backup argument for the theory that the houses are outside the coverage of the mortgage agreement, petitioners argue that the improvements were not owned by Dulos Realty, the mortgagor, but by its buyers under the Contracts to Sell and Contracts of Sale; hence, those improvements are excluded from the coverage of the real estate mortgage.

Validity of the Mortgage

Petitioners next challenge the validity of the foreclosure sale on the ground that the mortgage executed by the mortgagor (petitioner Dulos

³⁴ Rollo (G.R. No. 168357), pp. 39-40.

³⁵ Rollo (G.R. No. 168357) p.201; Rollo (G.R. No.168078), p. 294.

³⁶ Id.

³⁷ Rollo (G.R. No. 168357) p.204; Rollo (G.R. No.168078), p.297.

Realty) and the mortgagee (respondent CCC) was null and void.³⁸ Petitioners claim that Dulos Realty was no longer the owner of the properties it had mortgaged at the time of the execution of the mortgage contract, as they were sold under existing Contracts to Sell and Deed of Absolute Sale.³⁹

Petitioners Cahayag, Rivera and Escalona lean on the unregistered Contracts to Sell they had individually executed with Dulos Realty as vendor. For his part, petitioner Baldoza points to the Deed of Absolute Sale executed by Dulos Realty in his favor.

Better Right over the Properties

Petitioners claim that respondent CCC cannot claim to be a mortgagee in good faith, since it is a financial institution.⁴⁰ As such, respondent CCC knew that it was dealing with a subdivision developer, which was in the business of selling subdivision lots.⁴¹ *Dela Merced v. GSIS*⁴² which states that the general rule that a mortgagee need not look beyond the title cannot benefit banks and other financial institutions, as a higher due diligence requirement is imposed on them.

They also raise the contention that lack of full payment of the purchase price under the Contracts to Sell on the part of Cahayag, Rivera and Escalona was due to respondent Qua's "harassment and unlawful actuations."⁴³

Petitioners further state that respondent Qua is a mere transferee of respondent CCC and that, like a stream, she cannot rise higher than her source. They also argue that Qua is not an innocent purchaser for value,

³⁸ For purposes of validity of a mortgage, Article 2085 of the New Civil Code requires, among other things, ownership of the subject-matter of the mortgage by the mortgagor. See *Torbela v. Spouses Rosario*, G.R. Nos. 140528 & 140553, 7 December 2011, 661 SCRA 633. Further, Article 2085 of the New Civil Code reads:

Art. 2085. The following requisites are essential to the contracts of pledge and mortgage:

- (1) That they be constituted to secure the fulfillment of a principal obligation;
- (2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged;
- (3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose.

Third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property.

³⁹ *Rollo* (G.R. No. 168078), p.300.

⁴⁰ *Rollo*(G.R. No. 168357), pp. 212-215.

⁴¹ *Rollo* (G.R. No.168078), pp. 21-26.

⁴² 417 Phil. 324 (2001).

⁴³ *Rollo*(G.R. No. 168357), p. 208.

since she is a former investor of respondent CCC and one of its principal stockholders.⁴⁴

No Prior Written HLURB Approval of the Mortgage

Finally, petitioners allege that the mortgage contract in this case was not approved by the HLURB, which violates Section 18 of P.D. 957⁴⁵ and results in the nullity of the mortgage.⁴⁶

Exhibit "L" as Evidence of a Prior Contract to Sell

The matter of CA ignoring Exhibit "L" as evidence of a prior unregistered Contract to Sell was not included in the Memoranda of petitioners.

THE ISSUES

Based on the foregoing facts and arguments raised by petitioners, the threshold issues to be resolved are the following:


1. Whether the real mortgage covers the lands only, as enumerated in the Deed of Real Estate Mortgage or the housing units as well;
2. Whether Dulos Realty was the owner of the properties it had mortgaged at the time of its execution in view of the various Contracts to Sell and Deed of Absolute Sale respectively executed in favor of petitioners Cahayag, Rivera, Escalona and Cahayag;
3. Who, as between petitioners-buyers and respondent Qua, has a better right over the properties?

⁴⁴ *Rollo*(G.R. No. 168078), p. 301.

⁴⁵ Section 18. of the Subdivision and Condominium Buyers' Protective Decree, issued on 12 July 1976, states:

Section 18. *Mortgages.* — **No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority.** Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereto. (Emphasis supplied)

⁴⁶ *Rollo* (G.R. No.168078), pp. 299-301.



4. Whether the Deed of Absolute Sale in favor of Baldoza was not preceded by a Contract to Sell and full payment of the purchase price; and
5. Whether the mortgage is void on the ground that it lacked the prior written approval of the HLURB.

OUR RULING

We deny the Petition for reasons as follows.

1. Attack on the Subject-matter of the Real Estate Mortgage

It is true that the List of Properties attached to the Deed of Real Estate Mortgage refers merely to the lands themselves and does not include the housing units found thereon. A plain reading of the Real Estate Mortgage, however, reveals that it covers the **housing units** as well. We quote the pertinent provision of the agreement:

[T]he MORTGAGOR has transferred and conveyed and, by these presents, do hereby transfer and convey by way of FIRST MORTGAGE unto the MORTGAGEE, its successors and assigns the real properties described in the list appearing at the back of this document and/or in a supplemental document attached hereto as Annex "A" and made an integral part hereof, **together with all the buildings and/or other improvements now existing or which may hereafter be place[d] or constructed thereon**, all of which the MORTGAGOR hereby warrants that he is the absolute owner and exclusive possessor thereof, free from all liens and encumbrances of whatever kind and nature. xxx.⁴⁷ (Emphasis Ours)


Thus, the housing units would fall under the catch-all phrase **"together with all the buildings and/or other improvements now existing or which may hereafter be placed or constructed thereon."**

The *contra proferentem* rule finds no application to this case. The doctrine provides that in the interpretation of documents, ambiguities are to be construed against the drafter.⁴⁸ By its very nature, the precept assumes the existence of an ambiguity in the contract, which is why *contra proferentem* is also called the ambiguity doctrine.⁴⁹ In this case, the Deed of Real Estate Mortgage *clearly* establishes that the improvements found on the real properties listed therein are included as subject-matter of the contract. It covers not only the real properties, but the buildings and improvements thereon as well.

⁴⁷ Records, p. 16.

⁴⁸ *Black's Law Dictionary* 995 (8th ed. 2004).

⁴⁹ *Black's Law Dictionary*, *supra*.



2. Challenge to the Foreclosure Sale with Regard to the Ownership of the Mortgaged Properties

To begin with, the Contracts to Sell and Deed of Absolute Sale could not have posed an impediment at all to the mortgage, given that these contracts had yet to materialize when the mortgage was constituted. **They were all executed *after* the constitution of the Real Estate Mortgage** on 20 December 1980.

As regards Cahayag, the Contract to Sell in his favor was executed on 29 March 1981, more than three months after the execution of the mortgage contract.⁵⁰ This is taken from the Contract to Sell itself, which forms part of the records of this case.⁵¹

At this juncture, we note that the CA, for reasons unknown, specified 29 September 1980,⁵² and not 29 March 1981, as the date of the execution of the Contract to Sell in its Decision. Respondent Qua has raised this point in her Memorandum filed with us. This Court cannot be bound by the factual finding of the CA with regard to the date of the Contract to Sell in favor of Cahayag. The general rule that the Court is bound by the factual findings of the CA must yield in this case, as it falls under one of the exceptions: *when the findings of the CA are contradicted by the evidence on record.*⁵³ In this case, there is nothing in the records to support the CA's conclusion that the Contract to Sell was executed on 29 September 1980. The evidence on record, however, reveals that the correct date is 29 March 1981.

In the case of petitioner Rivera, the corresponding Contract to Sell in his favor was executed only on 12 August 1981, or almost eight months after the perfection of the mortgage contract on 20 December 1980.

The Contract to Sell in favor of Escalona was executed on 13 January 1983, almost two years after the constitution of the mortgage on 20 December 1980.


Lastly, Dulos Realty executed the Deed of Absolute Sale in favor of petitioner Baldoza on 10 December 1983, which was almost three years from the time the mortgage contract was executed on 20 December 1980.

⁵⁰ Supra note 8.

⁵¹ Id.

⁵² CA Decision, p. 2. CA *rollo*, p. 120.

⁵³ *Benito v. People*, G.R. No. 204644, 11 February 2015.



There was neither a contract to sell nor a deed of absolute sale to speak of when the mortgage was executed.

Petitioners equate a contract to sell to a contract of sale, in which the vendor loses ownership over the property upon its delivery.⁵⁴ But a contract to sell, standing alone, does not transfer ownership.⁵⁵ At the point of perfection, the seller under a contract to sell does not even have the obligation to transfer ownership to the buyer.⁵⁶ The obligation arises only when the buyer fulfills the condition: *full payment of the purchase price*.⁵⁷ In other words, the seller retains ownership at the time of the execution of the contract to sell.⁵⁸

There is no evidence to show that any of petitioners Cahayag, Rivera and Escalona were able to effect full payment of the purchase price, which could have at least given rise to the obligation to transfer ownership. Petitioners Cahayag and Rivera even admit that they defaulted on their obligations under their respective Contracts to Sell, although they attribute the default to respondent Qua's "harassment and unlawful actuations."⁵⁹ The statement, though, was a mere allegation that was left unsubstantiated and, as such, could not qualify as proof of anything.⁶⁰

3. Who Has a Better Right over the Properties

Registration of the mortgage bound the buyers under the Contracts to Sell

Registration of the mortgage establishes a real right or lien in favor of the mortgagee, as provided by Articles 1312⁶¹ and 2126⁶² of the Civil

⁵⁴ *Spouses Flancia v. Court of Appeals*, 496 PHIL 693-703 (2005).

⁵⁵ A contract to sell is an agreement stipulating that the seller shall execute a deed of sale only upon or after full payment of the purchase price. It is not a contract of sale. The stipulation to execute a deed of sale upon full payment of the purchase price signifies that the vendor reserves title to the property until full payment. (*Diego v. Diego*, G.R. No. 179965, 20 February 2013, 691 SCRA 361.)

⁵⁶ *Luzon Development Bank v. Enriquez*, 654 Phil. 315 (2011), sheds light on the nature of a contract to sell:

[A] contract to sell is one where the prospective seller reserves the transfer of title to the prospective buyer until the happening of an event, such as full payment of the purchase price. What the seller obliges himself to do is to sell the subject property only when the entire amount of the purchase price has already been delivered to him. "In other words, the full payment of the purchase price partakes of a suspensive condition, the non-fulfillment of which prevents the obligation to sell from arising and thus, **ownership is retained by the prospective seller** without further remedies by the prospective buyer." It does not, by itself, transfer ownership to the buyer. (Emphasis supplied)

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ See Petition dated 28 May 2005, *rollo* (G.R. No.168078), p. 20.

⁶⁰ *Real v. Bello*, 542 Phil. 109-127 (2007).

⁶¹ Article 1312 of the New Civil Code (NCC) states:

Art. 1312. In contracts creating real rights, third persons who come into possession of the object of the contract are bound thereby, subject to the provisions of the Mortgage Law and the Land Registration laws.

Code.⁶³ Corollary to the rule, the lien has been treated as “inseparable from the property inasmuch as it is a right in rem.”⁶⁴ In other words, it binds third persons to the mortgage.

The purpose of registration is to notify persons other than the parties to the contract that a transaction concerning the property was entered into.⁶⁵ Ultimately, registration, because it provides constructive notice to the whole world, makes the certificate of title reliable, such that third persons dealing with registered land need only look at the certificate to determine the status of the property.⁶⁶

In this case, the Real Estate Mortgage over the property was registered on 3 February 1981. On the other hand, the Contracts to Sell were all executed after the registration of the mortgage. The Contract to Sell in favor of petitioner Cahayag was executed on 29 March 1981, or almost two months *after* the registration of the mortgage. The corresponding Contract to Sell in favor of Rivera was executed only on 12 August 1981, roughly six months after the registration of the mortgage contract. Lastly, the Contract to Sell in favor of Escalona was executed on 13 January 1983, or nearly two years *after* the registration of the mortgage on 3 February 1981.

Consequently, petitioners Cahayag, Rivera and Escalona, were bound to the mortgage executed between mortgagor Dulos Realty and mortgagee CCC, by virtue of its registration. Definitely, the buyers each had constructive knowledge of the existence of the mortgage contract when they individually executed the Contracts to Sell.

Dela Merced v. GSIS not applicable

Petitioner invokes the above case. *Dela Merced* involved a clash between an unrecorded contract to sell and a registered mortgage contract. The contract to sell between the mortgagors (Spouses Zulueta) and the buyer (Francisco Dela Merced) was executed **before** the former’s constitution of the mortgage in favor of GSIS. Because the Zuluetas defaulted on their loans, the mortgage was foreclosed; the properties were sold at public auction to GSIS as the highest bidder; and the titles were consolidated after the spouses’ failure to redeem the properties within the one-year redemption period. GSIS later sold the contested lot to Elizabeth D. Manlongat and Ma. Therese D. Manlongat. However, Dela Merced was able to *fully pay*

⁶² Article 2126 of the NCC states:

Art. 2126. The mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted.

⁶³ *Spouses Paderes v. Court of Appeals*, 502 Phil 76 (2005).

⁶⁴ *Garcia v. Villar*, G.R. No. 158891, 27 June 2012, 675 SCRA 92.

⁶⁵ *Gutierrez v. Mendoza-Plaza*, 622 Phil. 844-858 (2009).

⁶⁶ *People v. Reyes*, 256 Phil. 1015-1027 (1989).

the purchase price to Spouses Zulueta, who executed a Deed of Absolute Sale in his favor prior to the foreclosure sale.

This Court stated therein the general rule that the purchaser is not required to go beyond the Torrens title if there is nothing therein to indicate any cloud or vice in the ownership of the property or any encumbrance thereon. The case nonetheless provided an exception to the general rule. The exception arises when the purchaser or mortgagee has *knowledge* of a defect in the vendor's title or lack thereof, or is *aware* of sufficient facts to induce a reasonably prudent person to inquire into the status of the property under litigation. The Court applied the exception, taking into consideration the fact that GSIS, the mortgagee, was a **financing institution**.

But *Dela Merced* is not relevant here. *Dela Merced* involved a Contract to Sell that was executed *prior* to the mortgage, while the Contracts to Sell in this case were all executed *after* the constitution and registration of the mortgage.

In *Dela Merced*, since GSIS had knowledge of the contract to sell, this knowledge was equivalent to the registration of the Contract to Sell. Effectively, this constitutes registration canceled out the subsequent registration of the mortgage. In other words, the buyer under the Contract to Sell became the first to register. Following the *priority in time* rule in civil law, the lot buyer was accorded preference or priority in right in *Dela Merced*.

In this case, the registration of the mortgage, which predated the Contracts to Sell, already bound the buyers to the mortgage. Consequently, the determination of good faith does not come into play.

Dela Merced materially differs from this case on another point. The Contract to Sell in favor of *Dela Merced* was followed **by full payment of the price and execution of the Deed of Absolute Sale**. In this case, the Contract to Sell in favor of each of petitioners Cahayag, Rivera and Escalona, is not coupled with full payment and execution of a deed of absolute sale.

This case also needs to be distinguished from *Luzon Development Bank v. Enriquez*.⁶⁷ In that case, the unregistered Contract to Sell was executed **after** the execution of the mortgage. Instead of resorting to foreclosure, the owner/developer and the bank entered into a *dacion en pago*. The Court declared that the bank was bound by the Contract to Sell despite the non-registration of the contract. It reasoned that the bank

⁶⁷ Supra note 58.

impliedly assumed the risk that some of the units might have been covered by contracts to sell. On the other hand, the Court pronounced the mortgage to be void, as it was without the approval of the Housing and Land Use Regulatory Board (HLURB). The Court consequently ordered the unit buyer in that case to pay the balance to the bank, after which the buyer was obliged to deliver a clean title to the property.

There are points of distinction between the case at bar and *Luzon Development Bank*. First, there is a definite finding in *Luzon Development Bank* that the mortgage was without prior HLURB approval, rendering the mortgage void. In the present case, as will be discussed later, there is no proof from the records on whether the HLURB did or did not approve the mortgage. Second, *Luzon Development Bank* did not even reach the foreclosure stage of the mortgage. This case, however, not only reached the foreclosure stage; it even went past the redemption period, consolidation of the title in the owner, and sale of the property by the highest bidder to a third person.

The first distinction deserves elaboration. The absence of prior written approval of the mortgage by the HLURB rendered it void. This effectively wiped out any discussion on whether registration bound the installment buyer. In fact, *Luzon Development Bank* did not even bother to state whether the mortgage was registered or not. More important, the tables were turned when *Luzon Development Bank* held that the bank was bound to the Contract to Sell in view of the latter's constructive notice of the Contract to Sell. Stated differently, the actually unregistered Contract to Sell became fictionally registered, making it binding on the bank.

In this case, on account of its registration, and the fact that the contracts were entered into after it, the mortgage is valid even as to petitioners.

***No Redemption within One Year from
the Foreclosure Sale***

When it comes to extrajudicial foreclosures, the law⁶⁸ grants mortgagors or their successors-in-interest an opportunity to redeem the property within one year from the date of the sale. The one-year period has been jurisprudentially held to be counted from the registration of the foreclosure sale with the Register of Deeds.⁶⁹ An exception to this rule has been carved out by Congress for juridical mortgagors. Section 47 of the General Banking Law of 2000 shortens the redemption period to within three months after the foreclosure sale or until the registration of the

⁶⁸ Section 6 of Act No. 3135, as amended.

⁶⁹ See also *UCPB v. Lumbo*, G.R. No. 162757, 11 December 2013, 712 SCRA 217.

certificate of sale, whichever comes first.⁷⁰ The General Banking Law of 2000 came into law on 13 June 2000.

If the redemption period expires and the mortgagors or their successors-in-interest fail to redeem the foreclosed property, the title thereto is consolidated in the purchaser.⁷¹ The consolidation confirms the purchaser as the owner of the property; concurrently, the mortgagor—for failure to exercise the right of redemption within the period—loses all interest in the property.⁷²

We now apply the rules to this case.

As the foreclosure sale took place prior to the advent of the General Banking Law of 2000, the applicable redemption period is one year. In this case, because the Certificate of Sale in favor of respondent CCC was registered on 8 March 1982, the redemption period was until 8 March 1983. It lapsed without any right of redemption having been exercised by Dulos Realty. Consequently, the right of respondent CCC, as purchaser of the subject lots, became absolute. As a matter of right, it was entitled to the consolidation of the titles in its name and to the possession of those lots. Further, the right of respondent CCC over the lots was transferred to respondent Qua by virtue of the Deed of Sale executed between them.

Given the foregoing considerations, respondent Qua, who now has title to the properties subject of the various Contracts to Sell, is the lawful owner thereof.

Foreclosure Sale vs. Contract of Sale

When Dulos Realty executed a Deed of Absolute Sale covering the real property registered under TCT No. S-39778 in favor of petitioner Baldoza on 10 December 1983, it was no longer the owner of the property. Titles to the subject properties, including the one sold to Baldoza, had already been consolidated in favor of respondent CCC as early as 10 November 1983. In fact, on the same date, the titles to the subject lots in the name of Dulos Realty had already been cancelled and new ones issued to respondent CCC.

⁷⁰ The second paragraph of Section 47 of the General Banking Law of 2000 reads:

Notwithstanding Act 3135, juridical persons whose property is being sold pursuant to an extrajudicial foreclosure, shall have the right to redeem the property in accordance with this provision until, but not after, the registration of the certificate of foreclosure sale with the applicable Register of Deeds which in no case shall be more than three (3) months after foreclosure, whichever is earlier. Owners of property that has been sold in a foreclosure sale prior to the effectivity of this Act shall retain their redemption rights until their expiration.

⁷¹ *Id.*

⁷² *Id.*

The fact that Dulos Realty was no longer the owner of the real property at the time of the sale led the CA to declare that the Contract of Sale was null and void. On this premise, the appellate court concluded that respondent Qua had a better title to the property over petitioner Baldoza.

We find no error in the conclusion of the CA that respondent Qua has a better right to the property. The problem lies with its reasoning. We therefore take a different route to reach the same conclusion.

Proper place of nemo dat quod non habet in the Law on Sales

Undeniably, there is an established rule under the law on sales that one cannot give what one does not have (*Nemo dat quod non habet*).⁷³ The CA, however, confuses the application of this rule with respect to time. It makes the *nemo dat quod non habet* rule a requirement for the *perfection* of a contract of sale, such that a violation thereof goes into the validity of the sale. But the Latin precept has been jurisprudentially held to apply to a contract of sale at its *consummation* stage, and not at the perfection stage.⁷⁴

*Cavite Development Bank v. Spouses Syrus Lim*⁷⁵ puts *nemo dat quod non habet* in its proper place. Initially, the Court rules out ownership as a requirement for the perfection of a contract of sale. For all that is required is a meeting of the minds upon the object of the contract and the price. The case then proceeds to give examples of the rule. It cites Article 1434 of the Civil Code, which provides that in case the seller does not own the subject matter of the contract at the time of the sale, but later acquires title to the thing sold, ownership shall pass to the buyer. The Court also refers to the rule as the rationale behind Article 1462, which deals with sale of “future goods.”

Cavite Development Bank thereafter turns to Article 1459, which requires ownership by the seller of the thing sold **at the time of delivery or consummation stage of the sale**. The Court explains that if the rule were otherwise, the seller would not be able to comply with the latter’s obligation to transfer ownership to the buyer under a perfected contract of sale. The Court ends the discourse with the conclusion that “[i]t is at the consummation stage where the principle of *nemo dat quod non habet* applies.”⁷⁶

⁷³ *Noel v. Court of Appeals*, 240 SCRA 78 (1995); *Nool v. Court of Appeals*, 342 Phil. 106-124, (1997); *Tangalin v. Court of Appeals*, 422 Phil 358-366 (2001); *Naval v. Court of Appeals*, 518 Phil 271-285 (2006); *Midway Maritime and Technological Foundation v. Castro*, G.R. No. 189061, 6 August 2014, 732 SCRA 192.

⁷⁴ *Cavite Development Bank v. Spouses Lim*, 381 Phil. 355, 365-366 (2000).

⁷⁵ *Id.*

⁷⁶ *Id.*



Case law also provides that the fact that the seller is not the owner of the subject matter of the sale at the time of perfection does not make the sale void.⁷⁷

Hence, the lesson: for title to pass to the buyer, the seller must be the owner of the thing sold at the *consummation* stage or at the time of *delivery* of the item sold. The seller need not be the owner at the perfection stage of the contract, whether it is of a contract to sell or a contract of sale. Ownership is not a requirement for a valid contract of sale; it is a requirement for a valid transfer of ownership.

Consequently, it was not correct for the CA to consider the contract of sale void. The CA erroneously considered lack of ownership on the part of the seller as having an effect on the validity of the sale. The sale was very much valid when the Deed of Absolute Sale between the parties was executed on 10 December 1983, even though title to the property had earlier been consolidated in favor of respondent CCC as early as 10 November 1983. The fact that Dulos Realty was no longer the owner of the property in question at the time of the sale did not affect the validity of the contract.

On the contrary, lack of title goes into the **performance** of a contract of sale. It is therefore crucial to determine in this case if the seller was the owner at the time of delivery of the object of the sale. For this purpose, it should be noted that execution of a public instrument evidencing a sale translates to delivery.⁷⁸ It transfers ownership of the item sold to the buyer.⁷⁹

In this case, the delivery coincided with the perfection of the contract — The Deed of Absolute Sale covering the real property in favor of petitioner Baldoza was executed on 10 December 1983. As already mentioned, Dulos Realty was no longer the owner of the property on that date. Accordingly, it could not have validly transferred ownership of the real property it had sold to petitioner.

Thus, the correct conclusion that should be made is that while there was a valid sale, there was no valid transfer of title to Baldoza, since Dulos Realty was no longer the owner at the time of the execution of the Deed of Absolute Sale.

⁷⁷ *Nool v. Court of Appeals*, 342 Phil. 106-124 (1997).

⁷⁸ Article 1498 of the Civil Code. See also *Velarde v. Court of Appeals* 413 Phil. 360-376.

⁷⁹ *Id.*



No Bad Faith on Qua

The contention that Qua is a stockholder and former member of the Board of Directors of respondent CCC and therefore she is not exactly a stranger to the affairs of CCC is not even relevant.

An innocent purchaser for value is one who “buys the property of another without notice that some other person has a right to or interest in it, and who pays a full and fair price at the time of the purchase or before receiving any notice of another person's claim.”⁸⁰ The concept thus presupposes that there must be an adverse claim or defect in the title to the property to be purchased by the innocent purchaser for value.

Respondent Qua traces her title to respondent CCC, whose acquisition over the property proceeded from a foreclosure sale that was valid. As there is no defect in the title of respondent CCC to speak of in this case, there is no need to go into a discussion of whether Qua is an innocent purchaser for value.

4. Dispute as to the Factual Finding of the CA that the Deed of Absolute Sale in Favor of Baldoza was not Preceded by a Contract to Sell and Full Payment of the Purchase Price

We absolutely discard the argument. We can think of at least four reasons why. *First*, Exhibit “L” was not formally offered in evidence. *Second*, it was not even incorporated into the records. *Third*, the argument is irrelevant. *Fourth*, it was even abandoned in the Memoranda filed by petitioners with us. *Last*, we are not a trier of facts and thus we yield to the finding of the CA.

Exhibit “L” not formally offered

A perusal of the records shows that the Contract to Sell that Baldoza referred to had in fact been marked as Exhibit “L” during her direct examination in court.⁸¹ Even so, Exhibit “L” was never formally offered as evidence. For this reason, we reject her contention. Courts do not consider evidence that has not been formally offered.⁸² This explains why the CA never mentioned the alleged Contract to Sell in favor of Baldoza.

⁸⁰ *Leong v. See*, G.R. No. 194077, 3 December 2014.

⁸¹ Records, p. 537.

⁸² *Heirs of Saves v. Heirs of Saves*, 646 Phil. 536, 544 (2010).

The rationale behind the rule rests on the need for judges to confine their factual findings and ultimately their judgment solely and strictly to the evidence offered by the parties to a suit.⁸³ The rule has a threefold purpose. It allows the trial judge to know the purpose of the evidence presented; affords opposing parties the opportunity to examine the evidence and object to its admissibility when necessary; and facilitates review, given that an appellate court does not have to review documents that have not been subjected to scrutiny by the trial court.⁸⁴

Exhibit "L" not incorporated into the records

The rule, of course, admits an exception. Evidence not formally offered may be admitted and considered by the trial court so long as the following requirements obtain: (1) the evidence is duly *identified* by testimony duly recorded; and (2) the evidence is *incorporated* into the records of the case.

The exception does not apply to the case of Baldoza. While she duly identified the Contract to Sell during her direct examination, which was duly recorded, Exhibit "L" was not incorporated into the records.

Exhibit "L" not relevant

Be that as it may, the contention that a Contract to Sell in favor of Baldoza preceded the sale in her favor is irrelevant. It must be stressed that the sale to Baldoza made by Dulos Realty took place **after the lapse of the redemption period and after consolidation of title** in the name of respondent CCC on 10 November 1983, one month prior to the sale to Baldoza on 10 December 1983. Dulos Realty still would have lost all interest over the property mortgaged.

The fact that Dulos Realty ceased to be the owner of the property and therefore it could no longer effect delivery of the property at the time the Deed of Absolute Sale in favor of Baldoza was executed is the very reason why the case of Baldoza cannot be compared with *Dela Merced*. In the case, the buyer in the Contract to Sell was able to effect full payment of the purchase price and to execute a Deed of Absolute Sale in his favor **before the foreclosure sale**. In this case, the full payment of the purchase price and the execution of a Deed of Absolute Sale in favor of Baldoza was done **after the foreclosure sale**.

⁸³ Id.

⁸⁴ Id.



Issue over Exhibit “L” not included in the Memorandum

Equally important is the fact that petitioners failed to include the issue over Exhibit “L” in any of the Memoranda they filed with us. The omission is fatal. **Issues raised in previous pleadings but not included in the memorandum are deemed waived or abandoned** (A.M. No. 99-2-04-SC). As they are “a summation of the parties' previous pleadings, the memoranda alone may be considered by the Court in deciding or resolving the petition.”⁸⁵ Thus, even as the issue was raised in the Petition, the Court may not consider it in resolving the case on the ground of failure of petitioners to include the issue in the Memorandum. They have either waived or abandoned it.

5. Issue of HLURB’s Non-Approval of the Mortgage

Petitioners allege before the Court that the mortgage contract in this case was not approved by the HLURB. They claim that this violates Section 18 of P.D. 957⁸⁶ and results in the nullity of the mortgage. Respondents have disputed the claim and counter-argue that the allegation of the petitioners is not supported by evidence. Respondents likewise aver that the argument was raised for the first time on appeal.⁸⁷

It is rather too late in the day for petitioners to raise this argument. Parties are not permitted to change their theory of a case at the appellate stage.⁸⁸ Thus, theories and issues not raised at the trial level will not be considered by a reviewing court on the ground that they cannot be raised for the first time on appeal.⁸⁹ Overriding considerations of fair play, justice and due process dictate this recognized rule.⁹⁰ This Court cannot even receive evidence on this matter.

Petitioners’ original theory of the case is the nullity of the mortgage on the grounds previously discussed. If petitioners are allowed to introduce their new theory, respondents would have no more opportunity to rebut the new claim with contrary evidence, as the trial stage has already been terminated. In the interest of fair play and justice, the introduction of the new argument must be barred.⁹¹

⁸⁵ *De Castro v. Liberty Broadcasting Network, Inc.*, G.R. No. 165153, 25 August 2010, 629 SCRA 77, 86.

⁸⁶ The Subdivision and Condominium Buyers' Protective Decree, issued on 12 July 1976.

⁸⁷ *Rollo* (G.R. No. 168357), p. 251.

⁸⁸ *Ramos v. PNB*, G.R. No. 178218, 14 December 2011, 662 SCRA 479.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Maxicare PCIB CIGNA Healthcare v. Contreras*, G.R. No. 194352, 30 January 2013, 689 SCRA 763.

Exceptions Not Applicable

The Court is aware that the foregoing is merely a general rule. Exceptions are written in case law: *first*, an issue of jurisdiction may be raised at any time, even on appeal, for as long as the exercise thereof will not result in a mockery of the demands of fair play;⁹² *second*, in the interest of justice and at the sound discretion of the appellate court, a party may be allowed to change its legal theory on appeal, but only when the factual bases thereof would not require further presentation of evidence by the adverse party for the purpose of addressing the issue raised in the new theory;⁹³ and *last*, which is actually a bogus exception, is when the question falls within the issues raised at the trial court.⁹⁴

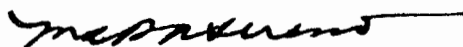
The exceptions do not apply to the instant case. The new argument offered in this case concerns a factual matter — prior approval by the HLURB. This prerequisite is not in any way related to jurisdiction, and so the first exception is not applicable. There is nothing in the record to allow us to make any conclusion with respect to this new allegation.

Neither will the case fall under the second exception. Evidence would be required of the respondents to disprove the new allegation that the mortgage did not have the requisite prior HLURB approval. Besides, to the mind of this court, to allow petitioners to change their theory at this stage of the proceedings will be exceedingly inappropriate.

Petitioners raised the issue only after obtaining an unfavorable judgment from the CA. Undoubtedly, if we allow a change of theory late in the game, so to speak, we will unjustifiably close our eyes to the fundamental right of petitioners to procedural due process. They will lose the opportunity to meet the challenge, because trial has already ended. Ultimately, we will be throwing the Constitutional rulebook out the window.

WHEREFORE, premises considered, the Petitions are **DENIED**, and the Court of Appeals Decision dated 2 November 2004 and Resolution dated 10 May 2005 in CA-G.R. CV No. 47421 are hereby **AFFIRMED**.

SO ORDERED.



MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

⁹² *Ramos v. PNB*, G.R. No. 178218, 14 December 2011, 662 SCRA 479.

⁹³ *Id.*

⁹⁴ *Farolan v. Court of Appeals*, 441 Phil. 377-385 (2002).

WE CONCUR:

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

Jose Portugal Perez
JOSE PORTUGAL PEREZ
Associate Justice

Estela M. Perlas-Bernabe
ESTELA M. PERLAS-BERNABE
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.

Maria Lourdes P. A. Sereno
MARIA LOURDES P. A. SERENO
Chief Justice