Republic of the Philippines
**Supreme Court**
Manila

**THIRD DIVISION**

**BOSTON EQUITY RESOURCES, INC., and WILLIAM HERNANDEZ,**
Petitioners,

- versus -

**EDGARDO D. DEL ROSARIO,**
Respondent.
x----------x
**CHRISTINA G. DEL ROSARIO, PETER DEL ROSARIO, PAUL DEL ROSARIO, in their personal capacity and as representative of the ESTATE OF ROSIE GONZALES DEL ROSARIO,**
Respondents-in-Intervention.

**G.R. No. 193228**

Present:

VELASCO, JR., *J., Chairperson,*
BERSAMIN,
LEONEN,
MARTIRES, and
*GESMUNDO, *JJ.*

Promulgated:

November 27, 2017

x----------x

## DECISION

**BERSAMIN, *J.*:**

The two-bidder rule is not applicable during the public auction of the mortgaged assets foreclosed pursuant to Act No. 3135.[1] But the mortgage itself and the extrajudicial foreclosure thereof should nonetheless be nullified for lack of the written consent to the mortgage of conjugal assets by the spouse of the mortgagor.

---

* On leave.

[1] Entitled *An Act to Regulate the Sale of Property under Special Powers Inserted In or Annexed To Real-Estate Mortgages.*

## The Case

Petitioner Boston Equity Resources, Inc. (Boston Equity), the mortgagee who was also the highest bidder of the assets under mortgage, hereby seeks the review and reversal of the adverse decision promulgated on April 28, 2010,[2] whereby the Court of Appeals (CA) annulled the real estate mortgage (REM), its amendment and the foreclosure proceedings taken pursuant to the REM.

## Antecedents

The assailed decision of the CA recited the following factual and procedural antecedents, *viz.*:

> Plaintiff-appellant Edgardo Del Rosario ... was married to herein plaintiff-intervenor-appellant Rosie Gonzales Del Rosario on March 9, 1968 and their marriage has been blessed with three children, herein plaintiffs-intervenors-appellants, Christina, Peter and Paul, all surnamed Del Rosario.
>
> Defendant-appellee Boston Equity Resources, Inc., ...is a private corporation duly registered and operating under the laws of the Philippines with defendant-appellee William Hernandez as its president.
>
> Defendant Mercedes Gatmaitan is impleaded in her capacity as Ex-Officio Sheriff of the Quezon City Regional Trial Court.
>
> On April 12, 1999, Del Rosario and Boston entered into a Real Estate Mortgage whereby the former, representing himself as single, mortgaged six (6) parcels of land located at 300 Kanlaon St., Sta Mesa Heights, Quezon City to the latter for Seventeen Million Pesos (Php17,000,000.00) at an interest rate of 4 per centum (4%) monthly within a period of six (6) months. Said parcels of land registered under the name of Del Rosario has a total land area of four thousand five hundred thirty three and 60/100 (4,533.60) square meters and are covered by transfer certificates of title numbered as follows: RT-71666 (375141), RT-71665 (375139), RT-71668 (375142), RT-71669 (375140), RT-71667 (375138) and RT-72517 (129992). The fair market value of the said parcels of land is One Hundred Thirteen Million and Three Hundred Forty Five Thousand Pesos (Php113,345,000.00).
>
> However, records indicated that only two certificates of title were attached. On May 3, 1968, the Register of Deeds of Quezon City issued TCT No. RT-72517 (129992) covering Six Hundred Thirty Seven Square Meters and Eighty Square Decimeters (637.8) to Edgardo del Rosario. Likewise, TCT No.RT-71665 (375139) was issued to Edgardo del Rosario on February 3, 1988. This title covered Five Hundred Forty Seven Square Meters and Ninety Square Decimeters (547.9).

---

[2] *Rollo*, pp. 57-74; penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justice Estela M. Perlas-Bernabe (now a Member of this Court) and Associate Justice Mario V. Lopez.

Thereafter, additional loan obligations amounting to Fifteen Million Pesos (Php15,000,000.00) was obtained by Del Rosario. Thus, on September 8, 1999, the Real Estate Mortgage previously executed was amended to include the Fifteen Million Pesos additional loan and adopting therein all the terms and conditions stated in the Real Estate Mortgage.

On various dates, Del Rosario paid a total amount of Three Million One Hundred Seventy Eight Thousand Six Hundred Sixty Seven Pesos (Php3,178,667.00) represented by encashed Checks and Twenty Five Million Pesos (Php25,000,000.00) on December 8, 1999, as evidenced by the Official Receipt No. 14019 in favor of Boston to obtain a release from the Thirty Two Million Pesos (Php32,000,000.00) loan as stated in the Certification issued by Josephine Sha, Finance Manager of Boston.

On December 9, 1999, Boston issued a Cash Voucher to Del Rosario representing the excess payment by the latter of Seven Million Two Hundred Fifty Seven Thousand and Two Hundred Pesos (Php 7,257,200.00) on the Thirty Two Million Peso[s] loan.

On various dates in the year 2000, Del Rosario again obtained several loans totaling Thirty Four Million Four Hundred Thousand Pesos (Php 34,400,000.00) but because Boston made an advanced deduction of interest (Php 11,660,347.00), he was able to receive only Twenty Two Million Seven Hundred Thirty Nine Thousand and Six Hundred Fifty Three Pesos (Php22,739,653.00) from the said loan.

Thereafter, on February 21, 2001, Boston sent a Demand Letter to Del Rosario for the payment of Fifty Two Million and Nine Hundred Thousand Pesos (Php 52,900,000.00), claiming it to be the principal amount Del Rosario owed to the former excluding penalties and other charges. In response to Boston's demand letter, Del Rosario sent a Letter dated March 8, 2001 asking Boston to furnish him an accurate and specific statement of account, so that he can properly settle his obligation as the amount alleged in the demand letter was not accurate since it included the commission of Nelia So.

Instead of heeding Del Rosario's requests for an accurate statement of account, on March 13, 2001, Boston sent another Demand Letter to Del Rosario this time seeking the payment for the amount of Fifty One Million Four Hundred Thousand Pesos (Php 51,400,000.00). Through a Letter dated May 31, 2001, Del Rosario asked for [an] additional time to settle his obligation.

Boston did not grant Del Rosario's request for time to settle his loan but proceeded to foreclose Del Rosario's properties by causing the publication of the Notice of Foreclosure in Maharlika Pilipinas on May 31, June 7 and June 14, 2001.

As a consequence, the Ex-Officio Sheriff of Quezon City sent a Notice of Extra-Judicial Sale of Real Property Under Act 3135 (As Amended) dated May 28, 2001 to Del Rosario saying that the parcels of land shall be sold at a public auction on June 27, 2001 in order to satisfy his Php 52.9 Million debt with Boston. In the said sale, Boston was

> declared the sole bidder for the properties in the amount of Seventy Five Million Pesos (Php 75,000,000.00).[3]

As the offshoot of the foregoing antecedents, Edgardo brought his complaint for the declaration of the nullity of the extrajudicial foreclosure of the REM and the sheriff's sale on May 8, 2002 against Boston Equity in the Regional Trial Court in Quezon City (RTC). The case, docketed as Civil Case No. Q-02-46788, was initially assigned to Branch 78.[4]

On May 14, 2002, the RTC granted Edgardo's prayer for the issuance of the temporary restraining order (TRO), and enjoined Boston Equity from consolidating title and from obtaining a writ of possession respecting the mortgaged properties.[5]

On May 21, 2002, the late Rosie Gonzales Del Rosario (Rosie), the spouse of Edgardo, and their children, namely: Christina, Peter and Paul, all surnamed Del Rosario, filed in the RTC their motion to admit their complaint-in-intervention on the basis that they had a legal interest as the co-owners of the mortgaged properties by reason of the same forming part of the conjugal partnership of gains of Rosie and Edgardo. They joined the prayer of Edgardo for the declaration of the nullity of the promissory notes, the REM and its amendment, and the extrajudicial foreclosure of the REM and the ensuing sheriff's sale.[6]

On August 27, 2007,[7] the RTC dismissed Edgardo's complaint, disposing thusly:

> WHEREFORE, in view of the foregoing, the instant Complaint for Declaration of Nullity of Extrajudicial Foreclosure & Sheriff's Sale is hereby DISMISSED for lack of merit. Accordingly, the Writ of Preliminary Injunction issued on June 19, 2002 is hereby lifted.
>
> SO ORDERED.[8]

Edgardo, Rosie and the Del Rosario children separately appealed to the CA, which ultimately overturned the RTC's ruling through the assailed decision of April 28, 2010, decreeing as follows:

> **WHEREFORE,** premises considered, the instant appeal is hereby **GRANTED**. The Decision of RTC Branch 224 of Quezon City in Civil

---

3 Id. at 58-63.
4 Id.
5 Id. at 63-64.
6 Id. at 64.
7 Id. at 97-104; penned by Judge Tita Marilyn Payoyo-Villordon.
8 Id. at 104.

Case No. Q-02-46788 is **REVERSED AND SET ASIDE** and a new one entered declaring the nullity of the subject Real Estate Mortgage and its Amendment, and all the proceedings emanating therefrom.

**SO ORDERED.**[9]

The CA opined that the REM, having involved conjugal properties, had required the written consent of Rosie for its validity; that the REM and its amendment were consequently null and void; that the extrajudicial foreclosure sale was further null and void for failure to comply with the procedure mandated by A.M. No. 99-10-05-0 (*Procedure in Extra-Judicial Foreclosure of Mortgage*) requiring at least two bidders during the public auction; and that Boston Equity could not validly consider Edgardo's loan account to be in default without first giving him a proper accounting.[10]

With the CA denying their motion for reconsideration on August 6, 2010,[11] the petitioners appeal.

## Issues

The petitioners insist on the following errors:

I

THE COURT OF APPEALS ERRED IN RULING THAT THE MORTGAGE EXECUTED BY EDGARDO IS NULL AND VOID BECAUSE OF THE ALLEGED LACK OF CONSENT OF ROSIE, WIFE OF EDGARDO IN THE MORTGAGE CONTRACT AND ITS AMENDMENT.

II

THE COURT OF APPEALS ERRED IN HOLDING THAT THE EXTRAJUDICIAL FORECLOSURE SALE OF THE PROPERTIES MORTGAGED WAS NULL AND VOID FOR ITS FAILURE TO COMPLY WITH A.M. NO. 99-10-05-0 WHICH ALLEGEDLY REQUIRES AT LEAST TWO OR MORE PARTICIPATING BIDDERS IN THE AUCTION SALE.

III

THE COURT OF APPEALS, WITH ALL DUE RESPECT, COMMITTED AN ERROR WHEN IT DECLARED THAT PLAINTIFF-APPELLANT IS ENTITLED TO A "PROPER ACCOUNTING" OF HIS OUTSTANDING OBLIGATION.[12]

---

9 Supra note 1.
10 Id. at 67-73.
11 *Rollo*, pp. 77-79.
12 Id. at 37-38.

## Ruling of the Court

The appeal, albeit meritorious on the non-applicability of the two-bidder rule and the efficacy of the publication of the public auction, should fail on the ground that the REM and its amendment were void for lack of the written consent to the mortgage of Rosie, the spouse.

### I.
### The CA erred in annulling the extrajudicial foreclosure sale for failure to have at least two bidders during the foreclosure sale

That only Boston Equity had participated in the bidding during the foreclosure sale did not constitute a defect that nullified or voided the foreclosure sale considering that the Court had already dispensed with the two-bidder rule for purposes of the foreclosure sale of private properties.[13]

The extrajudicial foreclosure of a mortgage with the special power of attorney to sell the security being inserted in or attached to the deed of mortgage is governed by Act No. 3135, particularly the following provisions:

> Sec. 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and **if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city**.
>
> Sec. 4. The sale shall be made **at public auction, between the hours or nine in the morning and four in the afternoon**; and shall be under the direction of the sheriff of the province, the justice or auxiliary justice of the peace of the municipality in which such sale has to be made, or a notary public of said municipality, who shall be entitled to collect a fee of five pesos each day of actual work performed, in addition to his expenses.
>
> Sec. 5. At any sale, the creditor, trustee, or other persons authorized to act for the creditor, may participate in the bidding and purchase under the same conditions as any other bidder, unless the contrary has been expressly provided in the mortgage or trust deed under which the sale is made.
>
> Sec. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of

---

[13] Id. at 46-51.

> trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.

As its aforequoted provisions indicate, Act No. 3135 does not require the participation of *at least* two bidders at the public auction. In A.M. No. 99-10-05-0 dated January 30, 2001 (*Re: Procedure in Extra-Judicial Foreclosure of Mortgage*), therefore, the Court, acting on letters containing observations and proposals about the rules of procedure to be undertaken in the extrajudicial foreclosure of mortgages as embodied in Circular A.M. No. 99-10-05-0 (inclusive of the bidding requirements, and the publication of notices), expressly resolved:

> After due deliberation on the points raised by the parties and considering the report of the OCA, the Court resolved as follows:
>
> 1. Paragraph 5 of the Circular A.M. No. 99-10-05-0 provides:
>
> > No auction sale shall be held unless there are at least two (2) participating bidders, otherwise the sale shall be postponed to another date. If on the new date set for the sale there shall not be at least two bidders, the sale shall then proceed. The names of the bidders shall be reported by the sheriff or the notary public who conducted the sale to the Clerk of Court before the issuance of the certificate of sale.
>
> It is contended that this requirement is not found in Act No. 3135 and that it is impractical and burdensome, considering that not all auction sales are commercially attractive to prospective bidders.
>
> **The observation is well taken. Neither Act No. 3135 nor the previous circulars issued by the Court governing extrajudicial foreclosures provide for a similar requirement. The two-bidder rule is provided under P.D. No. 1594 and its implementing rules with respect to contracts for government infrastructure projects because of the public interest involved. Although there is a public interest in the regularity of extrajudicial foreclosure of mortgages, the private interest is predominant. The reason, therefore, for the requirement that there must be at least two bidders is not as exigent as in the case of contracts for government infrastructure projects.**
>
> **On the other hand, the new requirement will necessitate re-publication of the notice of auction sale in case only one bidder appears at the scheduled auction sale. This is not only costly but, more importantly, it would render naught the binding effect of the publication of the originally scheduled sale. Prior publication of the extrajudicial foreclosure sale in a newspaper of general circulation operates as constructive notice to the whole world.** (Bold underscoring supplied for emphasis only)

Conformably with the foregoing, the foreclosure sale of the mortgaged properties at the public auction held on June 27, 2007 could not be invalidated for its non-compliance with the two-bidder rule.

**II.**
**Publication of the notice of the foreclosure sale in Maharlika Pilipinas was not void**

The respondents submit that the publication of the notice of the foreclosure sale in the newspaper Maharlika Pilipinas was ineffectual because Maharlika Pilipinas was not a newspaper of general circulation as required by Section 3 of Act No. 3135, *supra*.[14] In support of their submission, they cite *Metropolitan Bank and Trust Company, Inc. v. Peñafiel,*[15] where the Court held that Maharlika Pilipinas was not a newspaper of general circulation. The petitioners counter that the publication had been made in a newspaper of general circulation in Quezon City.

The submission of the respondents fails to persuade.

The respondents, as the parties alleging the non-compliance with the requisite of publication in the extrajudicial foreclosure of the mortgage pursuant to Act No. 3135, had the burden of proving their allegation. They failed in that regard, for a reading of the ruling in *Metropolitan Bank and Trust Company, Inc. v. Peñafiel* only indicates that Maharlika Pilipinas was not considered a newspaper of general circulation in Mandaluyong City, the place where the public auction of the property in question took place.[16] With the public auction involved herein having been held in Quezon City, and there being no showing by the respondents that Maharlika Pilipinas was not a newspaper of general circulation in Quezon City, the publication undertaken by Boston Equity was presumed as compliant with Section 3 of Act No. 3135.[17]

**III.**
**There was no need for an accounting of Edgardo's obligation before he could be held in default**

The CA concluded that the petitioners had hastily considered Edgardo to have been already in default despite the discrepancy in the amount demandable from him; and that he was entitled to a proper accounting in order to properly inform him of his outstanding obligation.

---

[14] Id. at 146-150.
[15] G.R. No. 173976, February 27, 2009, 580 SCRA 352.
[16] Id. at 360.
[17] *Bank of the Philippine Islands v. Puzon*, G.R. No. 160046, November 27, 2009, 606 SCRA 51, 62-63.

The petitioners disagree with the CA's conclusions, and contend that the discrepancy as to the amount of Edgardo's obligation between the two demand letters given by Boston Equity to him was reconcilable as ruled by the RTC. They dismiss the CA's conclusions as predicated on surmises, conjectures, and suppositions to the effect that he had not really known his total obligations.[18]

The CA's conclusions were legally and factually unwarranted.

The foreclosure of the REM is proper once the debtor has incurred default or delay in performing his obligation. *Mora solvendi*, or debtor's default, is defined as the delay in the fulfillment of an obligation by reason of a cause imputable to the debtor. Three requisites are necessary to support a finding of default – first, the obligation is already demandable and liquidated; second, the debtor delays his performance; and third, the creditor judicially or extrajudicially requires the debtor's performance.[19]

"A debt is liquidated when the amount is known or is determinable by inspection of the terms and conditions of the relevant promissory notes and related documentation."[20] Thus, the failure of Boston Equity to furnish the detailed statement of account to Edgardo did not *ipso facto* result in his obligation being still unliquidated. Indeed, the terms and conditions of his obligation were readily ascertainable and determinable from the REM and its amendment; hence, the petitioners had properly considered him in default upon his having failed to settle his obligation despite their demand. For this reason, any discrepancy in the amounts stated in the demand letters of Boston Equity did not genuinely hinder the legitimate effort to recover on the obligation.

## IV.
## The petitioners could not raise for the first time on appeal the issue of Rosie's consent to the mortgage contract and its amendment

The petitioners are submitting for the first time in this appeal that Rosie had consented to the REM and its amendment by affixing her signature as a witness thereto, as Edgardo's spouse; and that the proceeds of the loan obtained by Edgardo had redounded to the benefit of the family, and thus rendered the mortgaged properties, albeit conjugal in character, liable

---

[18] *Rollo*, pp. 51-53.

[19] *Selegna Management and Development Corp. v. United Coconut Planters Bank*, G.R. No. 165662, May 3, 2006, 489 SCRA 125, 138.

[20] Id. at 141; citing *Pacific Mills, Inc. v. Court of Appeals*, G.R. No. 87182, February 17, 1992, 206 SCRA 317, 329.

for the obligation. They argue that changing the legal theory of one's defense was not altogether prohibited as long as the factual basis of such theory would not require the presentation of evidence that was not yet part of the records of the case.[21]

The respondents posit, however, that the documentary evidence belatedly submitted by the petitioners to prove the supposed consent of Rosie to the REM and its amendment was inadmissible for lack of proper authentication;[22] that the petitioners' insistence that Rosie had known of the REM and its amendment was a factual matter that went beyond the purview of the Court's review in this appeal; that the petitioners thereby changed their theory for the first time in this appeal; and that the REM and its amendment were null and void for lack of the written consent of Rosie as the mortgagor's spouse.[23]

We uphold the respondents' position.

The submission by the petitioners regarding Rosie's having consented to the REM and its amendment by virtue of her signature thereon as an instrumental witness was not among the issues framed and joined by the parties during the trial in the RTC. For the petitioners to make the submission only now is impermissible. Questions raised on appeal must be within the issues the parties framed at the start; hence, issues not raised before the trial court cannot be raised for the first time on appeal. The Court will not deal with and resolve issues not properly raised and ventilated in the lower courts. To allow such new issues on appeal contravenes the basic rule of fair play and justice, and is violative of the adverse party's constitutional right to due process.[24] Verily, points of law, theories, issues, and arguments not brought to the attention of the trial court are barred by estoppels, and cannot be considered by a reviewing court.[25]

The petitioners propose that this case falls within the exception, and urge the Court to allow the change of legal theory on appeal because the factual bases for the new theory would not require the presentation of further evidence by the adverse party as to enable it to properly meet the issue raised under the new theory. They argue that their new theory could be verified from documents already forming part of the records of the case. They cite in support of their urging the ruling in *Homeowners Savings & Loan Bank v. Dailo.*[26]

---

21 *Rollo,* pp. 39-46.
22 Id. at 141-145.
23 Id. at 159-176.
24 *Union Bank of the Philippines v. Regional Agrarian Reform Officer, et al.,* G.R. Nos. 200369 & 203330-31, March 1, 2017.
25 *Garcia v. Sandiganbayan,* G.R. No. 197204, March 26, 2014, 720 SCRA 155, 171.
26 G.R. No. 153802, March 11, 2005, 453 SCRA 283.

The petitioners' proposition is unacceptable.

The application of the exception allowing a change of theory on appeal provided no additional evidence was necessary, has been explained in *Philippine Geothermal, Inc. Employees Union v. Unocal Philippines, Inc. (now known as Chevron Geothermal Philippines Holdings, Inc.)*[27] thusly:

> Respondent's contention that it falls within the exception to the rule likewise does not lie. Respondent cites *Quasha Ancheta Pena and Nolasco Law Office v. LCN Construction Corp.* and claims that it falls within the exception since it did not present any additional evidence on the matter:
>
> > In the interest of justice and within the sound discretion of the appellate court, a party may change his legal theory on appeal, only when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory.
>
> However, this paragraph states that it is the *adverse party* that should no longer be required to present additional evidence to contest the new claim, and not the party presenting the new theory on appeal. Thus, it does not matter that respondent no longer presented additional evidence to support its new claim. The petitioner, as the adverse party, should not have to present further evidence on the matter before the new issue may be considered. x x x

The exception is still not proper. Although the respondents, who are considered the adverse party, could belie the petitioners' claim by merely maintaining their position that Rosie had not consented to the REM and its amendment, the petitioners' new contention would still entail the presentation of additional evidence by the respondents to enable them to properly meet and respond to the new theory. As such, allowing the petitioners to raise the new theory was still not permissible. Moreover, to allow the new theory to be pursued would also necessarily involve the Court in the consideration and ascertainment of factual issues, a task that the Court could not discharge through this mode of appeal that is limited to the consideration and determination of questions of law.

As a consequence, the findings of the CA on the lack of Rosie's written consent to the REM and its amendment stand unrefuted. Such findings warrant the nullification not only of the REM and its amendment, but also of all the proceedings taken to foreclose the REM. Such invalidity applied to the entire mortgage, even to the portion corresponding to the share

---

[27] G.R. No. 190187, September 28, 2016, 804 SCRA 286, 302-303.

of Edgardo in the conjugal estate.[28] Article 124 of the *Family Code* clearly so provides:

> Art. 124. The administration and enjoyment of the conjugal partnership shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.
>
> **In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void.** However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors. (165a)

The petitioners' assertion that the mortgaged properties could be made liable for the obligation contracted solely by Eduardo on the basis that the proceeds of the loan had redounded to the benefit of the family is also unwarranted. The mortgage was but an accessory agreement, and was distinct from the principal contract of loan. What the CA declared void was the REM. Since the REM was an encumbrance on the conjugal properties, the contracting thereof by Edgardo sans the written consent of Rosie rendered only the REM void and legally inexistent.[29] The petitioners could still recover the loan from the conjugal partnership in a proper case for the purpose.[30] Where the mortgage was not valid, the principal obligation that the mortgage guaranteed was not thereby rendered null and void. The liability of the debtor under the principal contract of the loan subsisted despite the illegality of the REM. That obligation matured and became demandable in accordance with the stipulation pertaining to it. What was lost was only the right to foreclose the REM as a special remedy for satisfying or settling the debt that was the principal obligation. In case of its nullity, the mortgage deed remained as evidence or proof of the debtor's personal obligation, and the amount due to the creditor could be enforced in an ordinary action.[31]

---

[28] See *Homeowners Savings & Loan Bank v. Dailo*, supra note 26, at 289-290; citing *Guiang v. Court of Appeals*, G.R. No. 125172, June 26, 1998, 291 SCRA 372.

[29] *Philippine National Bank v. Reyes, Jr.*, G.R. No. 212483, October 5, 2016, 805 SCRA 327, 335.

[30] *Philippine National Bank v. Banatao*, G.R. No. 149221, April 7, 2009, 584 SCRA 95, 108-109.

[31] *Rural Bank of Cabadbaran, Inc. v. Melecio-Yap*, G.R. No. 178451, July 30, 2014, 731 SCRA 244, 259-260; citing *Flores v. Spouses Lindo, Jr.*, G.R. No. 183984, April 13, 2011, 648 SCRA 772, 780.

**WHEREFORE,** the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on April 28, 2010; and **ORDERS** the petitioners to pay the costs of suit.

**SO ORDERED.**

**LUCAS P. BERSAMIN**
Associate Justice

**WE CONCUR:**

**PRESBITERO J. VELASCO, JR.**
Associate Justice

**MARVIC M.V.F. LEONEN**
Associate Justice

**SAMUEL R. MARTIRES**
Associate Justice

(On Leave)
**ALEXANDER D. GESMUNDO**
Associate Justice

**ATTESTATION**

I attest 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.

**PRESBITERO J. VELASCO, JR.**
Associate Justice
Chairperson, Third Division

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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**
Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

FEB 12 2018