



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated April 28, 2021 which reads as follows:*

**“G.R. No. 200129 (Lasam Savings and Credit Cooperative, Petitioner, v. Spouses Bernard Tan and Lourdes Tan and the Court of Appeals, Respondents).** – Before this Court is a petition for review on *certiorari*<sup>1</sup> assailing the Decision<sup>2</sup> dated 28 September 2011 of the Court of Appeals (CA), in CA-G.R. CV No. 91019, partially reversing the judgment of Branch 8, Regional Trial Court (RTC), Aparri, Cagayan, which, in turn, i) nullified the mortgage in favor of Lasam Savings and Credit Cooperative (petitioner) and the certificate of sheriff’s sale dated 6 June 2006; (ii) ordered the sale of the mortgaged property to satisfy the claim of Spouses Bernard and Lourdes Tan (private respondents); and, (iii) awarded actual damages and attorney’s fees in favor of private respondents.

**Antecedents**

Spouses Vic and Florifes Uy (Spouses Uy) obtained a loan from private respondents in the amount of Php2.3 million, secured by a Real Estate Mortgage<sup>3</sup> dated 8 March 2003 (first mortgage) over a 6,073 square meter-parcel of land located at Brgy. Dacalla Fugu, Camalaniugan, Cagayan, and covered by Original Certificate of Title (OCT) No. 80492 (subject land). Instead of registering the agreement, the first mortgage was annotated in the subject land’s title through an affidavit of an adverse claim on 24 January 2005.<sup>4</sup>

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<sup>1</sup> *Id.* at 7-15.

<sup>2</sup> *Id.* at 75-94; penned by Associate Justice Fernanda Lampas Peralta, and concurred in by Associate Justices Priscilla J. Baltazar-Padilla and Agnes Reyes-Carpio of the Thirteenth Division Court of Appeals, Manila.

<sup>3</sup> *Id.* at 17-19.

<sup>4</sup> *Id.* at 21.

On 11 March 2005, Spouses Uy constituted a second mortgage<sup>5</sup> on the subject land in favor of petitioner for a loan in the amount of one million pesos one hundred thousand pesos (PhP1,100,000.00) (second mortgage). For Spouses Uy's failure to pay the loan, the second mortgage was foreclosed and sold in an auction where petitioner was the only bidder.<sup>6</sup>

Private respondents filed a complaint<sup>7</sup> for declaration of nullity of deed of mortgage and certificate of sale against Spouses Uy and petitioner. They claimed that petitioner's claim was inferior since it was merely a subsequent mortgagee of the subject land. Further, they argued that petitioner was a mortgagee in bad faith because the adverse claim pertaining to the first mortgage was binding against the whole world. They also questioned the validity of the auction considering that there was only one bidder at the time and the property was sold at Aparri, Cagayan and not Camalaniugan where the property was located.<sup>8</sup>

In its answer, petitioner alleged that private respondents had no cause of action against it because the second mortgage, and the consequent foreclosure sale were both valid. It argued that private respondents should have registered the first mortgage as such in the subject land's title, instead of an adverse claim. Since private respondents' mortgage was improperly registered, petitioner contended that the same is only binding against them and Spouses Uy.

During trial, both parties manifested their willingness to submit the case for summary judgment on the ground that the issue to be resolved was purely legal in nature, specifically: 1) whether or not the property was mortgaged twice by Vic Uy, first, with the private respondents and second, with petitioner; 2) which of the two mortgages is valid and binding; and 3) whether or not the adverse claim is binding.<sup>9</sup>

### **Ruling of the RTC**

On 05 May 2008, the RTC<sup>10</sup> rendered a Decision in favor of private respondents, the dispositive portion of which, states:

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<sup>5</sup> *Id.* at 23-26.

<sup>6</sup> *Id.* at 28-29.

<sup>7</sup> *Id.* at 31-34.

<sup>8</sup> *Id.* at 32-35.

<sup>9</sup> *Id.* at 59, 60 and 79.

<sup>10</sup> *Id.* at 37-43, penned by Presiding Judge Conrado F. Manuis.

WHEREFORE, in the light of the foregoing ratiocination, the Court hereby renders judgment:

1. Declaring the mortgage to the defendant Lasam Savings and Credit Cooperative as null and void;
2. Declaring the Certificate of Sheriff's Sale null and void because the sale has not been fairly and regularly conducted;
3. Ordering the Register of Deeds of the province of Cagayan to cancel the annotations of the loan and sale in favor of the defendant cooperative appearing at the back of the title;
4. Ordering the sale of the property to satisfy the claim of plaintiffs in the amount of P2,300,000.00 including legal interest. After the proceeds of the sale shall have satisfied the judgment and other legal fees, the balance of the sale if there be any shall accrue to defendant Lasam Savings and Credit Cooperative;
5. Ordering the defendants to pay the following:
  1. Actual damages in the amount of P20,000.00;
  2. Attorney's fees in the amount of P20,000.00; and
  3. The costs of suit.

SO DECIDED.<sup>11</sup>

Aggrieved, petitioner filed an appeal before the CA.<sup>12</sup>

### **Ruling of the CA**

On 28 September 2011, the CA modified the RTC's Decision in this wise:

**WHEREFORE**, the trial court's Decision dated May 5, 2008 is affirmed, subject to the modification that the portions of the Decision (i) declaring null and void the mortgage in favor of defendant-appellant Lasam and the certificate of sheriff's sale dated June 6, 2006; (ii) ordering the sale of the subject property to satisfy the claim of plaintiffs-appellees; and, (iii) awarding actual damages and attorney's fees in favor of plaintiffs-appellees, are deleted.

**SO ORDERED.**

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<sup>11</sup> *Id.* at 43.

<sup>12</sup> *Id.* at 45-55.

Citing *Diaz-Duarte vs. Ong, et al.*<sup>13</sup> and *Martinez vs. Garcia, et al.*<sup>14</sup>, it agreed with the RTC that the adverse claim pertaining to the first mortgage was more superior than the second mortgage. It ruled that since the first mortgage was annotated first and has not been cancelled in the subject land's title, petitioner had notice that the property was already previously encumbered. Thus, the CA affirmed the RTC's order cancelling the annotation of the second mortgage on the subject land's title.

However, the CA ruled that the RTC erred in nullifying the second mortgage because there is no proof of any cause that can invalidate the contract. It also found that it was incorrect to order the sale of the subject land to satisfy the loan between Spouses Uy and private respondents since there is no allegation or proof of default. Finally, the appellate court deleted the award of actual damages and attorney's fees for lack of basis. Hence this petition arguing that the CA erred in affirming the cancellation of the annotation of the 2<sup>nd</sup> mortgage given its finding that the mortgage is valid.

### Issue

The sole issue raised by petitioner in this case is whether or not the annotation of the second mortgage and sale in favor of petitioner be removed from the certificate of title of the subject mortgage.

### Ruling of the Court

We grant the petition.

At the outset, other than the supposed superior status of the first mortgage, the records are bereft of any cause for cancellation of the annotation of the second mortgage. This Court agrees with petitioner that it was incongruous for the CA to affirm the cancellation of the annotation of the second mortgage despite its finding that the mortgage is valid. Indeed, absent proof to the contrary, Spouses Uy were acting well within their rights, as mortgagors, to take a subsequent mortgage on their property.<sup>15</sup>

Further, it is significant to note that while the parties submitted the issue on the validity of the mortgages on the subject land, private respondents did not elaborate nor present proof establishing any

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<sup>13</sup> G.R. No. 130352, 03 November 1998, 358 Phil. 876 (1998) [Per J. Puno].

<sup>14</sup> G.R. No. 166536, 04 February 2010, 625 Phil. 377 (2010) [Per J. Peralta].

<sup>15</sup> *Spouses Palada v. Solidbank, Corp.*, G.R. No. 172227, 29 June 2011, 668 Phil. 172 (2011) [Per J. Del Castillo].

defect or illegality with regard to the loan or the 2<sup>nd</sup> mortgage in favor of petitioner.

Likewise, it is unclear what transpired after the foreclosure of the 2<sup>nd</sup> mortgage, specifically, whether the proceeds thereof were sufficient to cover the payment of the entire debt. Verily, a mortgage is but an accessory contract, the consideration of which is the same consideration of the principal contract without which it cannot exist as an independent contract.<sup>16</sup> In this case, without proof that the loan has been fully paid, this Court finds no basis to cancel its annotation.<sup>17</sup>

For its part, the CA premised the cancellation of the mortgage executed by Spouses Uy in favor of petitioner because of the prior annotation of the first mortgage. Applying the principle that prior registration of a lien creates a preference, the appellate court deemed it proper to cancel the second mortgage. This Court disagrees.

Private respondents' prior annotation did not have the effect of creating preference because of their improper resort to an adverse claim. As early as *L. P. Leviste & Co., Inc. v. Noblejas*,<sup>18</sup> this Court has explained that voluntary dealings with properties must be registered with the Register of Deeds in order to convey and affect the land. However, by way of exception, as when the owner refuses to surrender the owner's duplicate certificate of title, an adverse claim may be annotated. Indeed, an adverse claim is only proper if there is no other provision in the law for registration of the claimant's alleged right or interest in the property.<sup>19</sup>

In this case, instead of registering the first mortgage as such in the TCT, private respondents filed an affidavit of adverse claim where it was simply stated that the reason for the annotation was because the "owner's copy of the title covering the above-mentioned parcel of land is not in the possession of [private respondent Tan]."<sup>20</sup>

In *Spouses Rodriguez v. Court of Appeals*,<sup>21</sup> this Court found unjustified the annotation of the mortgage as adverse claim simply based on the claim that the title is in the possession of another person. In that case, this Court explained that the parties must show that they

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<sup>16</sup> *Development Bank of the Phils. v. Court of Appeals*, G.R. No. 138703, 30 June 2006, 526 Phil. 525 (2006) [Per J. Azcuna].

<sup>17</sup> See *Bank of Commerce v. Spouses Flores*, G.R. No. 174006, 8 December 2010, 652 Phil. 97 (2010) [Per J. Nachura].

<sup>18</sup> G.R. No. L-28529, 30 April 1979, 178 Phil. 422 (1979) [Per J. Melencio-Herrera].

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

<sup>20</sup> *Rollo*, p. 21.

<sup>21</sup> G.R. No. 142687, 20 July 2006, 528 Phil. 72 [Per J. Puno].

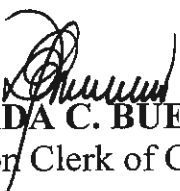
exerted efforts to obtain the title from its possessor for the purpose of registering the voluntary instrument. Otherwise, their interest on the property would not be binding against third parties.

Similarly, private respondents in this case failed to sufficiently explain the non-presentation of the Spouses Uy's certificate of title. It was not shown who was in possession of the owner's duplicate certificate of title, and whether they made efforts to acquire the same for registration of the first mortgage. Thus, their interest on the subject land cannot be considered binding against third parties. It did not operate as an actual encumbrance on the property.<sup>22</sup> On the contrary, since petitioner's mortgage was registered as such on the subject land's title, its lien is binding on Spouses Uy and even against private respondents.

**ACCORDINGLY**, the petition is hereby **GRANTED**. The Decision dated 28 September 2011 of the Court of Appeals (CA) in CA-G.R. CV No. 91019 is **MODIFIED** in that the order to cancel the annotation in favor of petitioner Lasam Savings Cooperative, Inc. is hereby **DELETED**. The complaint of private respondents Spouses Bernard and Lourdes Tan is hereby **DISMISSED**.

**SO ORDERED."**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court *7/6/21*

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
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<sup>22</sup> See *Garbin v. Court of Appeals*, G.R. No. 107653, 05 February 1996, 323 Phil. 228 [Per J. Romero].



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(Civil Case No. II-4491)

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