

## SECOND DIVISION

[ G.R. No. 201264, January 11, 2016 ]

**FLORANTE VITUG, PETITIONER, VS. EVANGELINE A. ABUDA,  
RESPONDENT.**

### DECISION

**LEONEN, J.:**

Parties who have validly executed a contract and have availed themselves of its benefits may not, to escape their contractual obligations, invoke irregularities in its execution to seek its invalidation.

This is a Petition for Review on Certiorari under Rule 45 assailing the Court of Appeals' October 26, 2011 Decision and its March 8, 2012 Resolution. The Court of Appeals affirmed the Regional Trial Court's December 19, 2008 Decision upholding the validity of the mortgage contract executed by petitioner Florante Vitug (Vitug) and respondent Evangeline A. Abuda (Abuda).

On March 17, 1997, Abuda loaned P250,000.00 to Vitug and his wife, Narcisa Vitug. [1] As security for the loan, Vitug mortgaged to Abuda his property in Tondo Foreshore along R-10, Block A-50-3, Del Pan to Kagitingan Streets, Tondo, Manila. [2] The property was then subject of a conditional Contract to Sell between the National Housing Authority and Vitug. Pertinent portions of the mortgage deed reads:

That, Mortgagor, is the owner, holder of a Conditional Contract to Sell of the National Housing Authority (NHA) over a piece of property located at the Tondo Foreshore along R-10, Block "A-50-3, Delpan to Kagitingan Streets in the district of Tondo, Manila;

That, with the full consent of wife Narcisa Vitug, hereby mortgage to Evangeline A. Abuda, with full consent of husband Paulino Abuda, said property for TWO HUNDRED FIFTY THOUSAND PESOS ONLY (P250,000.00), in hand paid by Mortgagee and in hand received to full satisfaction by Mortgagor, for SIX MONTHS (6) within which to pay back the full amount plus TEN PERCENT (10%) agreed interest per month counted from the date stated hereon;

That, upon consummation and completion of the sale by the NHA of said property, the title-award thereof, shall be received by the Mortgagee by virtue of a Special Power of Attorney, executed by Mortgagor in her favor, authorizing Mortgagee to expedite, follow-up, cause the release and to received [sic] and take possession of the title award of the said property from the NHA, until the mortgage amount is fully paid for and settled[.]

[3]

On November 17, 1997, the parties executed a "restructured"<sup>[4]</sup> mortgage contract on the property to secure the amount of P600,000.00 representing the original P250,000.00 loan, additional loans,<sup>[5]</sup> and subsequent credit accommodations<sup>[6]</sup> given by Abuda to Vitug with an interest of five (5) percent per month.<sup>[7]</sup> By then, the property was covered by Transfer Certificate of Title No. 234246 under Vitug's name.<sup>[8]</sup>

Spouses Vitug failed to pay their loans despite Abuda's demands.<sup>[9]</sup>

On November 21, 2003, Abuda filed a Complaint for Foreclosure of Property before the Regional Trial Court of Manila.<sup>[10]</sup>

On December 19, 2008, the Regional Trial Court promulgated a Decision in favor of Abuda.<sup>[11]</sup> The dispositive portion of the Decision reads:

**WHEREFORE**, judgment is rendered in favor of the plaintiffs [sic] and against the defendant:

1. Ordering the defendant to pay unto the court and/or to the judgment debtor within the reglementary period of Ninety (90) days the principal sum of P600,000.00 with interest at 5% per month from May 31, 2002 to actual date of payment plus P20,000.00 as and for attorney's fees;
2. Upon default of the defendant to fully pay the aforesaid sums, the subject mortgaged property shall be sold at public auction to pay off the mortgage debt and its accumulated interest plus attorney's fees, expenses and costs; and
3. After the confirmation of the sale, ordering the defendant and all persons claiming rights under her [sic] to immediately vacate the subject premises.

**SO ORDERED.**<sup>[12]</sup>

Vitug appealed the December 19, 2008 Regional Trial Court Decision before the Court of Appeals.<sup>[13]</sup> He contended that the real estate mortgage contract he and Abuda entered into was void on the grounds of fraud and lack of consent under Articles 1318, 1319, and 1332 of the Civil Code.<sup>[14]</sup> He alleged that he was only tricked into signing the mortgage contract, whose terms he did not really understand. Hence, his consent to the mortgage contract was vitiated.<sup>[15]</sup>

On October 26, 2011, the Court of Appeals promulgated a Decision,<sup>[16]</sup> the dispositive portion of which reads:

**WHEREFORE**, the instant appeal is **PARTIALLY GRANTED**. The Decision of the RTC dated December 19, 2008 in Civil Case No. 03-

108470 in favor of the appellee and against the appellant is **AFFIRMED** with the **MODIFICATION** that an interest rate of 1% per month or 12% per annum shall be applied to the principal loan of P600,000.00, computed from the date of judicial demand, *i.e.*, November 21, 2003; and 12% interest per annum on the amount due from the date of the finality of the Decision until fully paid.

**SO ORDERED.**<sup>[17]</sup>

The Court of Appeals found that Vitug failed to pay his obligation within the stipulated six-month period under the March 17, 1997 mortgage contract.<sup>[18]</sup> As a result of this failure, the parties entered into a restructured mortgage contract on November 17, 1997.<sup>[19]</sup> The new mortgage contract was signed before a notary public by Vitug, his wife Narcisa, and witnesses Rolando Vitug, Ferdinand Vitug, and Emily Vitug.<sup>[20]</sup>

The Court of Appeals also found that all the elements of a valid mortgage contract were present in the parties' mortgage contract.<sup>[21]</sup> The mortgage contract was also clear in its terms—that failure to pay the P600,000.00 loan amount, with a 5% interest rate per month from November 17, 1997 to November 17, 1998, shall result in the foreclosure of Vitug's mortgaged property.<sup>[22]</sup> No evidence on record showed that Vitug was defrauded when he entered into the agreement with Abuda.<sup>[23]</sup>

However, the Court of Appeals found that the interest rates imposed on Vitug's loan were "iniquitous, unconscionable[,] and exorbitant."<sup>[24]</sup> It instead ruled that a legal interest of 1% per month or 12% per annum should apply from the judicial demand on November 21, 2003.<sup>[25]</sup>

On November 23, 2011, Vitug moved for the reconsideration of the Court of Appeals' October 26, 2011 Decision.<sup>[26]</sup> He pointed out that not all the requisites of a valid mortgage contract were present since he did not have free disposal of his property when he mortgaged it to Abuda. His transfer certificate of title had an annotation by the National Housing Authority, which restricted his right to dispose or encumber the property.<sup>[27]</sup> The restriction clause provided that the National Housing Authority's consent must first be obtained before he may dispose or encumber his property.<sup>[28]</sup>

Abuda, according to Vitug, failed to get the National Housing Authority's consent before the property was mortgaged to him.

Vitug also argued in his Motion for Reconsideration that the property was exempt from execution because it was constituted as a family home before its mortgage.

In the Resolution promulgated on March 8, 2012,<sup>[29]</sup> the Court of Appeals denied Vitug's Motion for Reconsideration.

Vitug filed this Petition for Review on Certiorari under Rule 45 to assail the Court of Appeals' October 26, 2011 Decision and its March 8, 2012 Resolution.

Vitug raises the following issues:

First, whether petitioner Florante Vitug may raise in this Petition issues regarding the National Housing Authority's alleged lack of consent to the mortgage, as well as the exemption of his property from execution;

Second, whether the restriction clause in petitioner's title rendered invalid the real estate mortgage he and respondent Evangeline Abuda executed; and

Lastly, whether petitioner's property is a family home that is free from execution, forced sale, or attachment under the Family Code.<sup>[30]</sup>

We deny the Petition.

Petitioner argues that not all the requisites of a valid mortgage are present.<sup>[31]</sup> A mortgagor must have free disposal of the mortgaged property.<sup>[32]</sup> The existence of a restriction clause<sup>[33]</sup> in his title means that he does not have free disposal of his property.<sup>[34]</sup> The restriction clause does not allow him to mortgage the property without the National Housing Authority's approval.<sup>[35]</sup> Since the National Housing Authority never gave its consent to the mortgage,<sup>[36]</sup> the mortgage contract between him and respondent is invalid.<sup>[37]</sup>

On the other hand, respondent argues that the only issue in this case should be the validity of the real estate mortgage executed by petitioner in her favor.<sup>[38]</sup> Petitioner raised other issues, such as the alleged lack of written consent by the National Housing Authority (and the property's exemption from execution), only in his Motion for Reconsideration before the Court of Appeals.<sup>[39]</sup>

Respondent also argues that the National Housing Authority issued a Permit to Mortgage the property. This was formally offered in evidence before the Regional Trial Court as Exhibit "E."<sup>[40]</sup> The National Housing Authority even accepted respondent's personal checks to settle petitioner's mortgage obligations to the National Housing Authority.<sup>[41]</sup> The National Housing Authority would have already foreclosed petitioner's property if not for the loan that respondent extended to petitioner.<sup>[42]</sup>

Petitioner counters that the Permit to Mortgage cited by respondent was only valid for 90 days and was subject to the conditions that respondent failed to fulfill. These conditions are:

(1) The Mortgage Contract must provide that:

"In the event of foreclosure, the NHA shall be notified of the date, time and place of the auction sale so that it can participate in the foreclosure sale of the property."

(2) The mortgage contract must be submitted to NHA for verification and final approval[.]<sup>[43]</sup>

Thus, according to petitioner, there was neither written consent nor approval by the National Housing Authority of the mortgage contracts.  
[44]

Petitioner further contends that the alleged lack of NHA consent on the mortgage (and, being a family home, his property's exemption from execution) was raised in his Answer to respondent's complaint for foreclosure filed before the Regional Trial Court, thus:

20. Similarly, defendant has constituted their family home over said mortgage property and should that property be sold, defendant and his family will be left with no place to reside with [sic] within Metro Manila, hence, for humanitarian reason[s], the defendant prayed that he be given ample time within which to settle his obligation with the plaintiff;

21. Lastly, the Memorandum of Encumbrances contained at the back of defendant's title prohibits her from selling, encumbering, mortgaging, leasing, sub-leasing or in any manner altering or disposing the lot or right thereon, in whole or in part within the period often (10) years from the time of issuance of said title without first obtaining the consent of the NHA. As reflected in the title, the same was issued on 25 June 1997 hence, the mortgage executed even prior to the issuance of said title should be declared void.[45]

## I

Due process[46] dictates that arguments not raised in the trial court may not be considered by the reviewing court.[47]

Petitioner may raise in his Petition the issues of lack of the National Housing Authority's consent to the mortgage and his property's alleged exemption from execution.

The records show that petitioner mentioned these issues as early as in his Answer to respondent's Complaint[48] and Pre-trial Brief.[49] The trial court acknowledged these issues, but found that his defenses based on these grounds could not be given credence:

The defendant further stated that he is willing to pay the obligation is unconscionable. Further, the said property constituted their family home. The defendant claimed that Memorandum of Encumbrance prohibits her from selling, encumbering, mortgaging, leasing, subleasing or in any manner altering or disposing the lot or right thereon in whole or in part within ten (10) years from the time of issuance of the said title without obtaining the consent of the NHA.

. . . The court opines that the defendant has failed to raise a legitimate