

## SECOND DIVISION

[ G.R. No. 163744, February 29, 2008 ]

**METROPOLITAN BANK AND TRUST CO., Petitioner, vs.  
NICHOLSON PASCUAL a.k.a. NELSON PASCUAL, Respondent.**

### D E C I S I O N

**VELASCO JR., J.:**

Respondent Nicholson Pascual and Florencia Nevalga were married on January 19, 1985. During the union, Florencia bought from spouses Clarito and Belen Sering a 250-square meter lot with a three-door apartment standing thereon located in Makati City. Subsequently, Transfer Certificate of Title (TCT) No. S-101473/T-510 covering the purchased lot was canceled and, in lieu thereof, TCT No. 156283<sup>[1]</sup> of the Registry of Deeds of Makati City was issued in the name of Florencia, "married to Nelson Pascual" a.k.a. Nicholson Pascual.

In 1994, Florencia filed a suit for the declaration of nullity of marriage under Article 36 of the Family Code, docketed as Civil Case No. Q-95-23533. After trial, the Regional Trial Court (RTC), Branch 94 in Quezon City rendered, on July 31, 1995, a Decision,<sup>[2]</sup> declaring the marriage of Nicholson and Florencia null and void on the ground of psychological incapacity on the part of Nicholson. In the same decision, the RTC, *inter alia*, ordered the dissolution and liquidation of the ex-spouses' conjugal partnership of gains. Subsequent events saw the couple going their separate ways without liquidating their conjugal partnership.

On April 30, 1997, Florencia, together with spouses Norberto and Elvira Oliveros, obtained a PhP 58 million loan from petitioner Metropolitan Bank and Trust Co. (Metrobank). To secure the obligation, Florencia and the spouses Oliveros executed several real estate mortgages (REMs) on their properties, including one involving the lot covered by TCT No. 156283. Among the documents Florencia submitted to procure the loan were a copy of TCT No. 156283, a photocopy of the marriage-nullifying RTC decision, and a document denominated as "Waiver" that Nicholson purportedly executed on April 9, 1995. The waiver, made in favor of Florencia, covered the conjugal properties of the ex-spouses listed therein, but did not incidentally include the lot in question.

Due to the failure of Florencia and the spouses Oliveros to pay their loan obligation when it fell due, Metrobank, on November 29, 1999, initiated foreclosure proceedings under Act No. 3135, as amended, before the Office of the Notary Public of Makati City. Subsequently, Metrobank caused the publication of the notice of sale on three issues of *Remate*.<sup>[3]</sup> At the auction sale on January 21, 2000, Metrobank emerged as the highest bidder.

Getting wind of the foreclosure proceedings, Nicholson filed on June 28, 2000,

before the RTC in Makati City, a Complaint to declare the nullity of the mortgage of the disputed property, docketed as Civil Case No. 00-789 and eventually raffled to Branch 65 of the court. In it, Nicholson alleged that the property, which is still conjugal property, was mortgaged without his consent.

Metrobank, in its *Answer with Counterclaim and Cross-Claim*,<sup>[4]</sup> alleged that the disputed lot, being registered in Florencia's name, was paraphernal. Metrobank also asserted having approved the mortgage in good faith.

Florencia did not file an answer within the reglementary period and, hence, was subsequently declared in default.

### **The RTC Declared the REM Invalid**

After trial on the merits, the RTC rendered, on September 24, 2001, judgment finding for Nicholson. The *fallo* reads:

PREMISES CONSIDERED, the Court renders judgment declaring the real estate mortgage on the property covered by [TCT] No. 156283 of the Registry of Deeds for the City of Makati as well as all proceedings thereon null and void.

The Court further orders defendants [Metrobank and Florencia] jointly and severally to pay plaintiff [Nicholson]:

1. PhP100,000.00 by way of moral damages;
2. PhP75,000.00 by way of attorney's fees; and
3. The costs.

SO ORDERED.<sup>[5]</sup>

Even as it declared the invalidity of the mortgage, the trial court found the said lot to be conjugal, the same having been acquired during the existence of the marriage of Nicholson and Florencia. In so ruling, the RTC invoked Art. 116 of the Family Code, providing that "all property acquired during the marriage, whether the acquisition appears to have been made, contracted or registered in the name of one or both spouses, is presumed to be conjugal unless the contrary is proved." To the trial court, Metrobank had not overcome the presumptive conjugal nature of the lot. And being conjugal, the RTC concluded that the disputed property may not be validly encumbered by Florencia without Nicholson's consent.

The RTC also found the deed of waiver Florencia submitted to Metrobank to be fatally defective. For let alone the fact that Nicholson denied executing the same and that the signature of the notarizing officer was a forgery, the waiver document was allegedly executed on April 9, 1995 or a little over three months before the issuance of the RTC decision declaring the nullity of marriage between Nicholson and Florencia.

The trial court also declared Metrobank as a mortgagee in bad faith on account of negligence, stating the observation that certain data appeared in the supporting contract documents, which, if properly scrutinized, would have put the bank on guard against approving the mortgage. Among the data referred to was the date of execution of the deed of waiver.

The RTC dismissed Metrobank's counterclaim and cross-claim against the ex-spouses.

Metrobank's motion for reconsideration was denied. Undeterred, Metrobank appealed to the Court of Appeals (CA), the appeal docketed as CA-G.R. CV No. 74874.

### **The CA Affirmed with Modification the RTC's Decision**

On January 28, 2004, the CA rendered a Decision affirmatory of that of the RTC, except for the award therein of moral damages and attorney's fees which the CA ordered deleted. The dispositive portion of the CA's Decision reads:

WHEREFORE, premises considered, the appealed decision is hereby AFFIRMED WITH MODIFICATION with respect to the award of moral damages and attorney's fees which is hereby DELETED.

SO ORDERED.<sup>[6]</sup>

Like the RTC earlier held, the CA ruled that Metrobank failed to overthrow the presumption established in Art. 116 of the Family Code. And also decreed as going against Metrobank was Florencia's failure to comply with the prescriptions of the succeeding Art. 124 of the Code on the disposition of conjugal partnership property. Art. 124 states:

Art. 124. The administration and enjoyment of the conjugal partnership property 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 x x x.

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 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.

As to the deletion of the award of moral damages and attorney's fees, the CA, in gist, held that Metrobank did not enter into the mortgage contract out of ill-will or for some fraudulent purpose, moral obliquity, or like dishonest considerations as to justify damages.

Metrobank moved but was denied reconsideration by the CA.

Thus, Metrobank filed this Petition for Review on Certiorari under Rule 45, raising the following issues for consideration:

- a. Whether or not the [CA] erred in declaring subject property as conjugal by applying Article 116 of the Family Code.
- b. Whether or not the [CA] erred in not holding that the declaration of nullity of marriage between the respondent Nicholson Pascual and Florencia Nevalga *ipso facto* dissolved the regime of community of property of the spouses.
- c. Whether or not the [CA] erred in ruling that the petitioner is an innocent purchaser for value.<sup>[7]</sup>

### **Our Ruling**

A modification of the CA's Decision is in order.

### **The Disputed Property is Conjugal**

It is Metrobank's threshold posture that Art. 160 of the Civil Code providing that "[a]ll property of the marriage is presumed to belong to the conjugal partnership, unless it be prove[n] that it pertains exclusively to the husband or to the wife," applies. To Metrobank, Art. 116 of the Family Code could not be of governing application inasmuch as Nicholson and Florencia contracted marriage before the effectivity of the Family Code on August 3, 1988. Citing *Manongsong v. Estimo*,<sup>[8]</sup> Metrobank asserts that the presumption of conjugal ownership under Art. 160 of the Civil Code applies when there is proof that the property was acquired during the marriage. Metrobank adds, however, that for the presumption of conjugal ownership to operate, evidence must be adduced to prove that not only was the property acquired during the marriage but that conjugal funds were used for the acquisition, a burden Nicholson allegedly failed to discharge.

To bolster its thesis on the paraphernal nature of the disputed property, Metrobank cites *Francisco v. Court of Appeals*<sup>[9]</sup> and *Jocson v. Court of Appeals*,<sup>[10]</sup> among other cases, where this Court held that a property registered in the name of a certain person with a description of being married is no proof that the property was acquired during the spouses' marriage.

On the other hand, Nicholson, banking on *De Leon v. Rehabilitation Finance Corporation*<sup>[11]</sup> and *Wong v. IAC*,<sup>[12]</sup> contends that Metrobank failed to overcome the legal presumption that the disputed property is conjugal. He asserts that Metrobank's arguments on the matter of presumption are misleading as only one postulate needs to be shown for the presumption in favor of conjugal ownership to arise, that is, the fact of acquisition during marriage. Nicholson dismisses, as inapplicable, *Francisco* and *Jocson*, noting that they are relevant only when there is no indication as to the exact date of acquisition of the property alleged to be conjugal.

As a final point, Nicholson invites attention to the fact that Metrobank had virtually recognized the conjugal nature of the property in at least three instances. The first was when the bank lumped him with Florencia in Civil Case No. 00-789 as co-mortgagors and when they were referred to as "spouses" in the petition for extrajudicial foreclosure of mortgage. Then came the published notice of foreclosure