

SECOND DIVISION

[G.R. NO. 153802, March 11, 2005]

**HOMEOWNERS SAVINGS & LOAN BANK, PETITIONER, VS.
MIGUELA C. DAILO, RESPONDENT.**

DECISION

TINGA, J.:

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court, assailing the Decision^[1] of the Court of Appeals in CA-G.R. CV No. 59986 rendered on June 3, 2002, which affirmed with modification the October 18, 1997 Decision^[2] of the Regional Trial Court, Branch 29, San Pablo City, Laguna in Civil Case No. SP-4748 (97).

The following factual antecedents are undisputed.

Respondent Miguela C. Dailo and Marcelino Dailo, Jr. were married on August 8, 1967. During their marriage, the spouses purchased a house and lot situated at Barangay San Francisco, San Pablo City from a certain Sandra Dalida. The subject property was declared for tax assessment purposes under Assessment of Real Property No. 94-051-2802. The Deed of Absolute Sale, however, was executed only in favor of the late Marcelino Dailo, Jr. as vendee thereof to the exclusion of his wife.^[3]

On December 1, 1993, Marcelino Dailo, Jr. executed a Special Power of Attorney (SPA) in favor of one Lilibeth Gesmundo, authorizing the latter to obtain a loan from petitioner Homeowners Savings and Loan Bank to be secured by the spouses Dailo's house and lot in San Pablo City. Pursuant to the SPA, Gesmundo obtained a loan in the amount of P300,000.00 from petitioner. As security therefor, Gesmundo executed on the same day a Real Estate Mortgage constituted on the subject property in favor of petitioner. The abovementioned transactions, including the execution of the SPA in favor of Gesmundo, took place without the knowledge and consent of respondent.^[4]

Upon maturity, the loan remained outstanding. As a result, petitioner instituted extrajudicial foreclosure proceedings on the mortgaged property. After the extrajudicial sale thereof, a Certificate of Sale was issued in favor of petitioner as the highest bidder. After the lapse of one year without the property being redeemed, petitioner, through its vice-president, consolidated the ownership thereof by executing on June 6, 1996 an Affidavit of Consolidation of Ownership and a Deed of Absolute Sale.^[5]

In the meantime, Marcelino Dailo, Jr. died on December 20, 1995. In one of her visits to the subject property, respondent learned that petitioner had already employed a certain Roldan Brion to clean its premises and that her car, a Ford

sedan, was razed because Brion allowed a boy to play with fire within the premises.

Claiming that she had no knowledge of the mortgage constituted on the subject property, which was conjugal in nature, respondent instituted with the Regional Trial Court, Branch 29, San Pablo City, Civil Case No. SP-2222 (97) *for Nullity of Real Estate Mortgage and Certificate of Sale, Affidavit of Consolidation of Ownership, Deed of Sale, Reconveyance with Prayer for Preliminary Injunction and Damages against petitioner. In the latter's Answer with Counterclaim*, petitioner prayed for the dismissal of the complaint on the ground that the property in question was the exclusive property of the late Marcelino Dailo, Jr.

After trial on the merits, the trial court rendered a Decision on October 18, 1997. The dispositive portion thereof reads as follows:

WHEREFORE, the plaintiff having proved by the preponderance of evidence the allegations of the Complaint, the Court finds for the plaintiff and hereby orders:

ON THE FIRST CAUSE OF ACTION:

1. The declaration of the following documents as null and void:

(a) The Deed of Real Estate Mortgage dated December 1, 1993 executed before Notary Public Romulo Urrea and his notarial register entered as Doc. No. 212; Page No. 44, Book No. XXI, Series of 1993.

(b) The Certificate of Sale executed by Notary Public Reynaldo Alcantara on April 20, 1995.

(c) The Affidavit of Consolidation of Ownership executed by the defendant

(c) The Affidavit of Consolidation of Ownership executed by the defendant over the residential lot located at Brgy. San Francisco, San Pablo City, covered by ARP No. 95-091-1236 entered as Doc. No. 406; Page No. 83, Book No. III, Series of 1996 of Notary Public Octavio M. Zayas.

(d) The assessment of real property No. 95-051-1236.

2. The defendant is ordered to reconvey the property subject of this complaint to the plaintiff.

ON THE SECOND CAUSE OF ACTION

1. The defendant to pay the plaintiff the sum of P40,000.00 representing the value of the car which was burned.

ON BOTH CAUSES OF ACTION

1. The defendant to pay the plaintiff the sum of P25,000.00 as attorney's fees;
2. The defendant to pay plaintiff P25,000.00 as moral damages;
3. The defendant to pay the plaintiff the sum of P10,000.00 as exemplary damages;
4. To pay the cost of the suit.

The counterclaim is dismissed.

SO ORDERED.^[6]

Upon elevation of the case to the Court of Appeals, the appellate court affirmed the trial court's finding that the subject property was conjugal in nature, in the absence of clear and convincing evidence to rebut the presumption that the subject property acquired during the marriage of spouses Dailo belongs to their conjugal partnership.

^[7] The appellate court declared as void the mortgage on the subject property because it was constituted without the knowledge and consent of respondent, in accordance with Article 124 of the Family Code. Thus, it upheld the trial court's order to reconvey the subject property to respondent.^[8] With respect to the damage to respondent's car, the appellate court found petitioner to be liable therefor because it is responsible for the consequences of the acts or omissions of the person it hired to accomplish the assigned task.^[9] All told, the appellate court affirmed the trial court's Decision, but deleted the award for damages and attorney's fees for lack of basis.^[10]

Hence, this petition, raising the following issues for this Court's consideration:

1. WHETHER OR NOT THE MORTGAGE CONSTITUTED BY THE LATE MARCELINO DAILO, JR. ON THE SUBJECT PROPERTY AS CO-OWNER THEREOF IS VALID AS TO HIS UNDIVIDED SHARE.
2. WHETHER OR NOT THE CONJUGAL PARTNERSHIP IS LIABLE FOR THE PAYMENT OF THE LOAN OBTAINED BY THE LATE MARCELINO DAILO, JR. THE SAME HAVING REDOUNDED TO THE BENEFIT OF THE FAMILY.^[11]

First, petitioner takes issue with the legal provision applicable to the factual milieu of this case. It contends that Article 124 of the Family Code should be construed in relation to Article 493 of the Civil Code, which states:

ART. 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.

Article 124 of the Family Code provides in part: