



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

FLORANTE VITUG,  
Petitioner,

G.R. No. 201264

Present:

-versus-

CARPIO, *Chairperson*,  
BRION,  
DEL CASTILLO,  
MENDOZA, and  
LEONEN, *JJ.*

EVANGELINE A. ABUDA,  
Respondent.

Promulgated:  
11 JAN 2016

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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 ₱250,000.00 to Vitug and his wife, Narcisa Vitug.<sup>1</sup> 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.<sup>2</sup> 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[.]<sup>3</sup>

On November 17, 1997, the parties executed a "restructured"<sup>4</sup> mortgage contract on the property to secure the amount of ₱600,000.00 representing the original ₱250,000.00 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>

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<sup>1</sup> *Rollo*, p. 27.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 27-28.

<sup>4</sup> *Id.* at 29.

<sup>5</sup> *Id.* at 27. The Regional Trial Court Decision dated December 19, 2008 was penned by Judge Zenaida R. Daguna.

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

<sup>7</sup> *CA rollo*, p. 128.

<sup>8</sup> *Rollo*, p. 28.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

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%

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<sup>11</sup> Id.

<sup>12</sup> Id. at 27.

<sup>13</sup> Id. at 28.

<sup>14</sup> Id. at 29.

<sup>15</sup> Id.

<sup>16</sup> Id. at 26-34. The Decision was penned by Associate Justice Marlene B. Gonzales-Sison and concurred in by Associate Justices Noel G. Tijam and Edwin D. Sorongon of the Special Tenth Division, Court of Appeals Manila.

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 ₱600,000.00 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.

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<sup>17</sup> Id. at 33.

<sup>18</sup> Id. at 29–30.

<sup>19</sup> Id.

<sup>20</sup> Id.

<sup>21</sup> Id. at 30.

<sup>22</sup> Id. at 31.

<sup>23</sup> Id. at 33.

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> Id. at 65.

<sup>27</sup> Id. at 65–66.

<sup>28</sup> Id. at 66.

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

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<sup>29</sup> Id. at 15

<sup>30</sup> Id. at 16.

<sup>31</sup> Id. at 17.

<sup>32</sup> Id.

<sup>33</sup> Id. at 17-18. The Restriction reads: "Entry No. 4519/V-103/T-234246 – R E S T R I C T I O N – that the Vendee shall not sell, encumber, mortgage, lease, sub-let or in any manner, alter or dispose the lot or right therein at any time, in whole or in part without obtaining the written consent of the Vendor. Other restrictions set forth in Doc. No. 287; Page No. 59; Book No. 250; SERIES of 1997 of Notary Public for Quezon City, Liberty S. Perez.

Date of instrument – June 24, 1997

Date of inscription – June 25, 1997 – 11:39 a.m.

EXPEDITO A. JAVIER  
Register of Deeds"

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.<sup>44</sup>

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<sup>34</sup> Id. at 17.  
<sup>35</sup> Id. at 17-18.  
<sup>36</sup> Id. at 18.  
<sup>37</sup> Id. at 17.  
<sup>38</sup> Id. at 91.  
<sup>39</sup> Id.  
<sup>40</sup> Id. at 92.  
<sup>41</sup> Id. at 143.  
<sup>42</sup> Id.  
<sup>43</sup> Id. at 96.  
<sup>44</sup> Id. at 97.



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 of ten (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.<sup>45</sup>

## I

Due process<sup>46</sup> dictates that arguments not raised in the trial court may not be considered by the reviewing court.<sup>47</sup>

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<sup>48</sup> and Pre-trial Brief.<sup>49</sup> 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 provided that the interest be equitably reduced because the interest

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<sup>45</sup> Id. at 97-98.

<sup>46</sup> See *Del Rosario v. Bonga*, 402 Phil. 949 (2001) [Per J. Panganiban, Third Division], citing *Keng Hua v. Court of Appeals*, 349 Phil. 925 (1998) [Per J. Panganiban, Third Division]; *Arcelona v. Court of Appeals*, 345 Phil. 250 (1997) [Per J. Panganiban, Third Division]; *Mendoza v. Court of Appeals*, 340 Phil. 634 (1997) [Per J. Panganiban, Third Division]; *Remman Enterprises, Inc., v. Court of Appeals*, 335 Phil. 1150 (1997) [Per J. Panganiban, Third Division].

1997 RULES OF CIV. PROC., Rule 44, sec. 15. Questions that may be raised on appeal. Whether or not the appellant has filed a motion for new trial in the court below, he may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties.

<sup>47</sup> See *Del Rosario v. Bonga*, 402 Phil. 949 (2001) [Per J. Panganiban, Third Division].

<sup>48</sup> RTC rollo, pp. 15-19.

<sup>49</sup> Id. at 76-79.

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 and lawful ground in order to bar the herein plaintiff from asserting its lawful right under the law.

The contention of the defendant that the subject mortgaged property is their family home is irrelevant as the debt secured by mortgages on the premises before or after the constitution of the family home does not exempt the same from execution (*Rule 106 of the Rules of Court*).<sup>50</sup>

Whether these arguments seasonably raised are valid is, however, a different matter.

## II

All the elements of a valid mortgage contract were present. For a mortgage contract to be valid, the absolute owner of a property must have free disposal of the property.<sup>51</sup> That property must be used to secure the fulfillment of an obligation.<sup>52</sup> Article 2085 of the Civil Code provides:

Art. 2085. The following requisites are essential to contracts of pledge and mortgage:

- (1) That they be constituted to secure the fulfillment of a principal obligation;
- (2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged;
- (3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose.

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<sup>50</sup> Id. at 158.

<sup>51</sup> CIVIL CODE, art. 2085.

<sup>52</sup> CIVIL CODE, art. 2085.

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Petitioner, who held under his name a transfer certificate of title to the property, mortgaged the property to respondent to secure the payment of his loan of ₱600,000.00.

Petitioner claims that he only borrowed ₱250,000.00 and that he was only made to sign another mortgage contract whose terms he did not agree to.

These claims were already found by the trial court and the Court of Appeals to be unsupported by evidence. Petitioner's consent to the mortgage contract dated November 17, 1997 was not vitiated. He voluntarily signed it in the presence of a notary public, his wife, and other witnesses.<sup>53</sup>

Further, the amount of ₱600,000.00 under the November 17, 1997 mortgage contract represented the initial loan of ₱250,000.00 and the subsequent loan amounts, which were found to have been actually released to petitioner. The November 17, 1997 mortgage contract reflected the changes in the parties' obligations after they executed the March 17, 1997 mortgage contract.

This court is not a trier of facts. As a general rule, findings of fact of the lower court and of the Court of Appeals are not reviewable and are binding upon this court<sup>54</sup> unless the circumstances of the case are shown to be covered by the exceptions.<sup>55</sup> Petitioner failed to show any ground for this court to review the trial court's and the Court of Appeals' finding that petitioner mortgaged his property in consideration of a loan amounting to ₱600,000.00.

Petitioner's undisputed title to and ownership of the property is sufficient to give him free disposal of it. As owner of the property, he has the right to enjoy all attributes of ownership including *jus disponendi* or the

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<sup>53</sup> *Rollo*, p. 30.

<sup>54</sup> *See Ramos, Sr. v. Gatchalian Realty, Inc.*, 238 Phil. 689 (1987) [Per J. Gutierrez, Jr., Third Division].

<sup>55</sup> *See Ramos, Sr. v. Gatchalian Realty, Inc.*, 238 Phil. 689 (1987) [Per J. Gutierrez, Jr., Third Division]. *See also Cristobal v. Court of Appeals*, 353 Phil. 318 (1998) [Per J. Bellosillo, First Division] and *Bank of the Philippine Islands v. Sarabia Manor Hotel*, G.R. No. 175844, July 29, 2013, 702 SCRA 432, 444 [Per J. Perlas-Bernabe, Second Division]: "(a) when the findings are grounded entirely on speculations, surmises, or conjectures; (b) when the inference made is manifestly mistaken, absurd, or impossible; (c) when there is a grave abuse of discretion; (d) when the judgment is based on misappreciation of facts; (e) when the findings of fact are conflicting; (f) when in making its findings, the same are contrary to the admissions of both parties; (g) when the findings are contrary to those of the trial court; (h) when the findings are conclusions without citation of specific evidence on which they are based; (i) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (j) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record."

right to encumber, alienate, or dispose his property “without other limitations than those established by law.”<sup>56</sup>

Petitioner’s claim that he lacks free disposal of the property stems from the existence of the restrictions imposed on his title by the National Housing Authority. These restrictions were annotated on his title, thus:

Entry No. 4519/V-013/T-234246 – R E S T R I C T I O N – that the Vendee shall not sell, encumber, mortgage, lease, sub-let or in any manner, alter or dispose the lot or right therein at any time, in whole or in part without obtaining the written consent of the Vendor. Other restrictions set forth in Doc. No. 287; Page No. 59; Book No. 250; SERIES of 1997 of Notary Public for Quezon City, Liberty S. Perez.

Date of instrument – June 24, 1997

Date of inscription – June 25, 1997 – 11:39 a.m.<sup>57</sup>

The National Housing Authority’s restrictions were provisions in a contract it executed with petitioner. This contract bound petitioner to certain conditions before transferring or encumbering the property. Specifically, when the National Housing Authority sold the property to petitioner, petitioner became obligated not to sell, encumber, mortgage, lease, sublease, alter, or dispose the property without the National Housing Authority’s consent.

These restrictions do not divest petitioner of his ownership rights. They are mere burdens or limitations on petitioner’s *jus disponendi*. Thus, petitioner may dispose or encumber his property. However, the disposition or encumbrance of his property is subject to the limitations and to the rights that may accrue to the National Housing Authority. When annotated to the title, these restrictions serve as notice to the whole world that the National Housing Authority has claims over the property, which it may enforce against others.

Contracts entered into in violation of restrictions on a property owner’s rights do not always have the effect of making them void *ab initio*.<sup>58</sup> This has been clarified as early as 1956 in *Municipality of Camiling v. Lopez*.<sup>59</sup>

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<sup>56</sup> CIVIL CODE, art. 428. The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.

The owner has also a right of action against the holder and possessor of the thing in order to recover it. See also *Philippine Banking Corporation v. Lui She*, 129 Phil. 526 (1967) [Per J. Castro, En Banc].

<sup>57</sup> Regional Trial Court Rollo, Exch. “F-1”, p. 123-124.

<sup>58</sup> See *Municipality of Camiling v. Lopez*, 99 Phil. 187, 189–191 (1956) [Per J. Labrador, En Banc]. See also *Sarmiento v. Salud*, 150-A Phil. 566 (1972) [Per J. J.B.L. Reyes, First Division]; *Flora v. Prado*, 465 Phil. 334 (2004) [Per Ynares-Santiago, J., First Division].

<sup>59</sup> 99 Phil. 187 (1956) [Per J. Labrador, En Banc].

The Municipality of Camiling sought to collect from Diego Z. Lopez payments for the lease of “certain fisheries.” As a defense, Diego Z. Lopez invoked the alleged nullity of the lease contract he entered into with the Municipality of Camiling.

Citing *Municipality of Hagonoy v. Evangelista*,<sup>60</sup> the trial court ruled that the lease contract between the Municipality of Camiling and Diego Z. Lopez was void since it “was not approved by the provincial governor in violation of section 2196 of the Revised Administrative Code.”<sup>61</sup> This court reversed the trial court’s Decision and noted the incorrect interpretation in *Municipality of Hagonoy* of the term “nulos” under Article 4 of the then Civil Code: “*Son nulos los actos ejecutados contra lo dispuesto en la ley, salvo los casos en que la naisma ley ordene su validez.*”<sup>62</sup>

In *Municipality of Camiling*, this court explained that void acts declared in Article 4 of the Old Civil Code<sup>63</sup> refer to those made in violation of the law. Not all those acts are void from the beginning. Void acts may be “those that are *ipso facto* void and those which are merely voidable.”<sup>64</sup>

The lease contract executed by the Municipality of Camiling and Diego Z. Lopez was not treated as *ipso facto* void. Section 2196 of the Administrative Code required the provincial governor’s approval before the municipal council entered into contracts. However, the same provision did not prohibit the municipal council from entering into contracts involving the properties of the municipality.<sup>65</sup> The municipal council’s exercise of power to enter into these contracts might have been limited, but its power was recognized. This court found that aside from the lack of approval, the contract had no badge of illegality that would make it *ipso facto* void. The execution of the contract was not tainted with violation of public order, morality, or public policy. The contract could have been ratified. Hence, this court said that it was “merely voidable at the option of the party who in law is granted the right to invoke its invalidity.”<sup>66</sup>

The same doctrine was repeated in *Sarmiento v. Salud*,<sup>67</sup> which involved a property in Kamuning, Quezon City. The property was sold by

<sup>60</sup> 73 Phil. 586 (1942) [Per J. Bocobo, En Banc].

<sup>61</sup> *Municipality of Camiling v. Lopez*, 99 Phil. 187, 188 (1956) [Per J. Labrador, En Banc].

<sup>62</sup> Id at 189. This provision has been reproduced in our current Civil Code, thus:

Article 5. Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity.

<sup>63</sup> Id.

<sup>64</sup> *Municipality of Camiling v. Lopez*, 99 Phil. 187, 188 (1956) [Per J. Labrador, En Banc].

<sup>65</sup> Id.

<sup>66</sup> Id. at 190.

<sup>67</sup> 150-A Phil. 566 (1972) [Per J. J.B.L. Reyes, Second Division].

Philippine Homesite and Housing Corp. to Spouses Francisco and Marcelina Sarmiento. The transfer certificate of title that covered the property contained an annotation stating that the property was sold on the condition that it could not be resold within 25 years from contract date. Sale could be made within the period only to People's Homesite and Housing Corporation.<sup>68</sup> Spouses Sarmiento later mortgaged the property to Jorge Salud. Because Spouses Sarmiento failed to redeem the property, the sheriff auctioned and sold the property to Jorge Salud, who was issued a certificate of sale.

Spouses Sarmiento sought to prevent the foreclosure of the property by filing an action for annulment of the foreclosure proceedings, sale, and certificate of sale on the ground that the prohibition against sale of the property within 25 years was violated.

This court did not declare the contract void for violating the condition that the property could not be resold within 25 years. Instead, it recognized People's Homesite and Housing Corporation's right to cause the annulment of the contract. Since the condition was made in favor of People's Homesite and Housing Corporation, it was the Corporation, not Spouses Sarmiento, who had a cause of action for annulment.<sup>69</sup> In effect, this court considered the contract between Spouses Sarmiento and Jorge Salud as merely voidable at the option of People's Homesite and Housing Corporation.

Thus, contracts that contain provisions in favor of one party may be void *ab initio* or voidable.<sup>70</sup> Contracts that lack consideration,<sup>71</sup> those that are against public order or public policy,<sup>72</sup> and those that are attended by illegality<sup>73</sup> or immorality<sup>74</sup> are void *ab initio*.

Contracts that only subject a property owner's property rights to conditions or limitations but otherwise contain all the elements of a valid

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<sup>68</sup> Id. at 568.

<sup>69</sup> Id.

<sup>70</sup> See *Municipality of Camiling v. Lopez*, 99 Phil. 187, 189–191 (1956) [Per J. Labrador, En Banc].

<sup>71</sup> CIVIL CODE, art. 1318. There is no contract unless the following requisites concur:

....  
(3) Cause of the obligation which is established.

<sup>72</sup> CIVIL CODE, art. 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

<sup>73</sup> CIVIL CODE, art. 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

<sup>74</sup> CIVIL CODE, art. 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

contract are merely voidable by the person in whose favor the conditions or limitations are made.<sup>75</sup>

The mortgage contract entered into by petitioner and respondent contains all the elements of a valid contract of mortgage. The trial court and the Court of Appeals found no irregularity in its execution. There was no showing that it was attended by fraud, illegality, immorality, force or intimidation, and lack of consideration.

At most, therefore, the restrictions made the contract entered into by the parties voidable<sup>76</sup> by the person in whose favor they were made—in this case, by the National Housing Authority.<sup>77</sup> Petitioner has no actionable right or cause of action based on those restrictions.<sup>78</sup>

Having the right to assail the validity of the mortgage contract based on violation of the restrictions, the National Housing Authority may seek the annulment of the mortgage contract.<sup>79</sup> Without any action from the National Housing Authority, rights and obligations, including the right to foreclose the property in case of non-payment of the secured loan, are still enforceable between the parties that executed the mortgage contract.

The voidable nature of contracts entered into in violation of restrictions or conditions necessarily implies that the person in whose favor the restrictions were made has two (2) options. It may either: (1) waive<sup>80</sup> its rights accruing from such restrictions, in which case, the duly executed subsequent contract remains valid; or (2) assail the subsequent contract based on the breach of restrictions imposed in its favor.

In *Sarmiento*, this court recognized that the right to waive follows from the right to invoke any violation of conditions under the contract. Only the person who has the right to invoke this violation has the cause of action for annulment of contract. The validity or invalidity of the contract on the ground of the violation is dependent on whether that person will invoke this right. Hence, there was effectively a waiver on the part of People's Homesite and Housing Corporation when it did not assail the validity of the mortgage in that case:

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<sup>75</sup> *Municipality of Camiling v. Lopez*, 99 Phil. 187, 189–191 (1956) [Per J. Labrador, Second Division]; *Sarmiento v. Salud*, 150-A Phil. 566 (1972) [Per J. J.B.L. Reyes, Second Division]. *See also San Agustin v. Court of Appeals*, 422 Phil. 686 (2001) [Per J. Quisumbing, Second Division]; *Flora v. Prado*, 465 Phil. 334 (2004) [Per J. Ynares-Santiago, First Division].

<sup>76</sup> *Municipality of Camiling v. Lopez*, 99 Phil. 187, 189–191 (1956) [Per J. Labrador, Second Division].

<sup>77</sup> *Sarmiento v. Salud*, 150-A Phil. 566 (1972) [Per J. J.B.L. Reyes, Second Division].

<sup>78</sup> *See Sarmiento v. Salud*, 150-A Phil. 566 (1972) [Per J. J.B.L. Reyes, Second Division].

<sup>79</sup> *Lalicon and Lalicon v. National Housing Authority*, 669 Phil. 231 (2011) [Per J. Abad, Third Division].

<sup>80</sup> *See Sarmiento v. Salud*, 150-A Phil. 566 (1972) [Per J. J.B.L. Reyes, Second Division].

It follows that on the assumption that the mortgage to appellee Salud and the foreclosure sale violated the condition in the Sarmiento contract, only the PHHC was entitled to invoke the condition aforementioned, and not the Sarmientos. The validity or invalidity of the sheriff's foreclosure sale to appellant Salud thus depended exclusively on the PHHC; the latter could attack the sale as violative of its right of exclusive reacquisition; but it (PHHC) also could waive the condition and treat the sale as good, in which event, the sale can not be assailed [for] breach of the condition aforestated. Since it does not appear anywhere in the record that the PHHC treated the mortgage and foreclosure sale as an infringement of the condition, the validity of the mortgage, with all its consequences, including its foreclosure and sale thereat, can not be an issue between the parties to the present case. In the last analysis, the appellant, as purchaser at the foreclosure sale, should be regarded as the owner of the lot, subject only to the right of PHHC to have his acquisition of the land set aside if it so desires.

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There is no showing that the National Housing Authority assailed the validity of the mortgage contract on the ground of violation of restrictions on petitioner's title. The validity of the mortgage contract based on the restrictions is not an issue between the parties. Petitioner has no cause of action against respondent based on those restrictions. The mortgage contract remains binding upon petitioner and respondent.

In any case, there was at least substantial compliance with the consent requirement given the National Housing Authority's issuance of a Permit to Mortgage. The Permit reads:

25 November 1997

MR. FLORANTE VITUG  
901 Del Pan Street  
Tondo, Manila

PERMIT TO MORTGAGE

Dear Mr. Vitug,

Please be informed that your request dated 20 November 1997 for permission to mortgage Commercial Lot 5, Block 1, Super Block 3, Area I, Tondo Foreshore Estate Management Project covered by TCT No. 234246 is hereby GRANTED subject to the following terms and conditions:

1. The Mortgage Contract must provide that:

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<sup>81</sup> Id. at 568-569.

“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; and
3. This permit shall be good only for a period of ninety (90) days from date of receipt hereof.

Very truly yours,  
(Signed)  
Mariano M. Pineda  
General Manager<sup>82</sup>

Petitioner insists that the Permit cannot be treated as consent by the National Housing Authority because of respondent's failure to comply with its conditions.

However, a reading of the mortgage contract executed by the parties on November 17, 1997 shows otherwise. The November 17, 1997 mortgage contract had references to the above conditions imposed by the National Housing Authority, thus:

It is the essence of this Contract, that if and should the Mortgagor fails to comply and pay the principal obligations hereon within the period of the Contract, *the Mortgage shall be foreclosed according to law and in which case the NHA shall be duly notified of the matter.*

*That this mortgage contract shall be submitted to the NHA for verifixation [sic] and final approval in accordance with NHA permit to mortgage the property.*<sup>83</sup> (Emphasis supplied)

Assuming there was non-compliance with the conditions set forth in the Permit, petitioner cannot blame respondent. The restrictions were part of the contract between the National Housing Authority and petitioner. It was petitioner, not respondent, who had the obligation to notify and obtain the National Housing Authority's consent within the prescribed period before sale or encumbrance of the property.

Petitioner cannot invoke his own mistake to assail the validity of a contract he voluntarily entered into.<sup>84</sup>

<sup>82</sup> RTC *rollo*, p. 122. “Exh E”, November 25, 1997.

<sup>83</sup> *Id.* at 5.

<sup>84</sup> CIVIL CODE, art. 1397. The action for the annulment of contracts may be instituted by all who are thereby obliged principally or subsidiarily. However, persons who are capable cannot allege the

## III

Even if the mortgage contract were illegal or wrongful, neither of the parties may assail the contract's validity as against the other because they were equally at fault.<sup>85</sup> This is the principle of *in pari delicto* (or *in delicto*) as embodied in Articles 1411 and 1412 of the Civil Code:

Art. 1411. When the nullity proceeds from the illegality of the cause or object of the contract, and the act constitutes a criminal offense, both parties being in *in pari delicto*, they shall have no action against each other, and both shall be prosecuted. Moreover, the provisions of the Penal Code relative to the disposal of effects or instruments of a crime shall be applicable to the things or the price of the contract.

This rule shall be applicable when only one of the parties is guilty; but the innocent one may claim what he has given, and shall not be bound to comply with his promise.

Art. 1412. If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed:

(1) When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking;

(2) When only one of the contracting parties is at fault, he cannot recover what he has given by reason of the contract, or ask for the fulfillment of what has been promised him. The other, who is not at fault, may demand the return of what he has given without any obligation to comply his promise.

Under this principle, courts shall not aid parties in their illegal acts.<sup>86</sup> The court shall leave them as they are.<sup>87</sup> It is an equitable principle that bars parties from enforcing their illegal acts, assailing the validity of their acts, or using its invalidity as a defense.<sup>88</sup>

In the 1906 case of *Batarra v. Marcos*,<sup>89</sup> this court declared that a person cannot enforce a promise to marry based on the consideration of "carnal connection." This court ruled that whether or not such consideration

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incapacity of those with whom they contracted; *nor can those who exerted intimidation, violence, or undue influence or employed fraud, or caused mistake base their actions upon these flaws of the contract.*

<sup>85</sup> *Sarmiento v. Salud*, 150-A Phil. 566 (1972) [Per J. J.B.L. Reyes, Second Division]. See also *Toledo v. Hyden*, 652 Phil. 70 (2010) [Per J. Del Castillo, First Division].

<sup>86</sup> *Bough and Bough v. Cantiveros and Hanopol*, 40 Phil. 210 (1919) [Per J. Malcolm, En Banc].

<sup>87</sup> *Pajuyo v. Court of Appeals*, G.R. No. 146364, June 3, 2004, 430 SCRA 492, 514-516 [Per J. Carpio, First Division]; *Top-Weld Manufacturing Inc. v. ECED, S.A., et al.*, 222 Phil. 424 (1985) [Per J. Gutierrez, Jr., First Division].

<sup>88</sup> See *Liguez v. Court of Appeals*, 102 Phil. 577, 581 (1957) [Per J. J.B.L. Reyes, First Division].

<sup>89</sup> 7 Phil. 156 (1906) [Per J. Willard, Second Division].

was a crime, neither of the parties can recover because the acts “were common to both parties.”<sup>90</sup>

In *Bough v. Cantiveros*,<sup>91</sup> this court refused to enforce in favor of the guilty parties a contract of sale that was not only simulated but also executed to defeat any attempt by a husband to recover properties from his wife.

Another case, *Liguez v. Court of Appeals*,<sup>92</sup> involves a party’s claim over a property based on a deed of donation executed in her favor when she was 16 years old. The heirs of the donor assailed the donation on the ground of having an illicit *causa*.

The donor in that case was found to have had sexual relations with the claimant. The donation was done to secure the claimant’s continuous cohabitation with the donor, as well as to gratify the donor’s sexual impulses. At the time of the donation, the donor was married to another woman. The donated property was part of their conjugal property.

This court held that the donation was founded on an illicit *causa*. While this court found the principle of *in pari delicto* inapplicable in that case given the claimant’s minority at the time of donation, it had the occasion to say that the parties were barred “from pleading the illegality of the bargain either as a cause of action or as a defense.”<sup>93</sup> The claimant was declared entitled to the donated property, without prejudice to the share and legitimes of the donor’s forced heirs.

In the later case of *Villegas v. Rural Bank of Tanjay, Inc.*,<sup>94</sup> this court ruled that the petitioners in that case were not entitled to relief because they did not come to court with clean hands.

This court found that they “readily participated in a ploy to circumvent the Rural Banks Act and offered no objection when their original loan of ₱350,000.00 was divided into small separate loans not exceeding ₱50,000.00 each.”<sup>95</sup> They and respondent bank were *in pari delicto*. They could not be given affirmative relief against each other.<sup>96</sup> Hence, Spouses Villegas may not seek the annulment of the loan and mortgage contracts they voluntarily executed with respondent bank on the ground that these contracts were simulated to make it appear that the loans were sugar crop

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<sup>90</sup> Id. at 157–158.

<sup>91</sup> 40 Phil. 210 (1919) [Per J. Malcolm, En Banc].

<sup>92</sup> 102 Phil. 577 (1957) [Per J. J.B.L. Reyes, First Division].

<sup>93</sup> Id.

<sup>94</sup> 606 Phil. 427 (2009) [Per J. Nachura, Third Division].

<sup>95</sup> Id. at 437.

<sup>96</sup> Id.

loans, allowing respondent bank to approve it pursuant to Republic Act No. 720, otherwise known as the Rural Banks Act.

The principle of *in pari delicto* admits exceptions. It does not apply when the result of its application is clearly against statutory law, morals, good customs, and public policy.<sup>97</sup>

In *Philippine Banking Corporation, representing the Estate of Justina Santos v. Lui She*,<sup>98</sup> this court refused to apply the principle of *in pari delicto*. Applying the principle meant that this court had to declare as valid between the parties a 50-year lease contract with option to buy, which was executed by a Filipino and a Chinese citizen. This court ruled that the policy to conserve land in favor of Filipinos would be defeated if the principle of *in pari delicto* was applied instead of setting aside the contracts executed by the parties.<sup>99</sup>

Petitioner in this case did not come to this court with clean hands. He was aware of the restrictions in his title when he executed the loan and mortgage contracts with respondent. He voluntarily executed the contracts with respondent despite this knowledge. He also availed himself of the benefits of the loan and mortgage contract. He cannot now assail the validity of the mortgage contract to escape the obligations incurred because of it.<sup>100</sup>

Petitioner also failed to show that upholding the validity of the mortgage contract would be contrary to law, morals, good customs, and public policy.

Petitioner's contract with the National Housing Authority is not a law prohibiting the transfer or encumbrance of his property. It does not render subsequent transactions involving the property a violation of morals, good customs, and public policy. Violation of its terms does not render subsequent transactions involving the property void *ab initio*.<sup>101</sup> It merely provides the National Housing Authority with a cause of action to annul subsequent transactions involving the property.

#### IV

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<sup>97</sup> See *Pilipinas Hino, Inc. v. Court of Appeals*, 393 Phil. 1 (2000) [Per J. Kapunan, First Division], citing *Mendiola v. Court of Appeals*, 327 Phil. 1156 (1996) [Per J. Hermosisima, Jr., First Division]. See also *Rellosa v. Gaw Chee Hun*, 93 Phil. 827, 831 (1953) [Per J. Bautista Angelo, En Banc].

<sup>98</sup> 129 Phil. 526 (1967) [Per J. Castro, En Banc].

<sup>99</sup> Id.

<sup>100</sup> *Sarmiento v. Salud*, 150-A Phil. 566 (1972) [Per J. J.B.L. Reyes, Second Division].

<sup>101</sup> See also *Del Rosario v. Bonga*, 402 Phil. 949 (2001) [Per J. Panganiban, Third Division].

Petitioner argues that the property should be exempt from forced sale, attachment, and execution, based on Article 155 of the Family Code.<sup>102</sup> Petitioner and his family have been neighbors with respondent since 1992, before the execution of the mortgage contract.<sup>103</sup>

Even though petitioner's property has been constituted as a family home, it is not exempt from execution. Article 155 of the Family Code explicitly provides that debts secured by mortgages are exempted from the rule against execution, forced sale, or attachment of family home:

Art. 155. The family home shall be exempt from execution, forced sale or attachment except:

....

- (3) For debts secured by mortgages on the premises before or after such constitution[.]

Since petitioner's property was voluntarily used by him as security for a loan he obtained from respondent, it may be subject to execution and attachment.

## V

The Court of Appeals correctly found that the interest rates of 5% or 10% per month imposed on petitioner's loan were unconscionable.

Parties are free to stipulate interest rates in their loan contracts in view of the suspension of the implementation of the Usury Law ceiling on interest effective January 1, 1983.<sup>104</sup>

The freedom to stipulate interest rates is granted under the assumption that we have a perfectly competitive market for loans where a borrower has many options from whom to borrow. It assumes that parties are on equal footing during bargaining and that neither of the parties has a relatively

<sup>102</sup> *Rollo*, p. 19.

CIVIL CODE, art. 155. The family home shall be exempt from execution, forced sale or attachment except:

- (1) For non-payment of taxes;
- (2) For debts incurred prior to the constitution of the family home;
- (3) For debts secured by mortgages on the premises before or after such constitution; and
- (4) For debts due to labourers, mechanics, architects, builders, materialmen and others who have rendered service or furnished material for the construction of the building.

<sup>103</sup> *Rollo*, p. 20.

<sup>104</sup> See *Toledo v. Hyden*, 652 Phil. 70 (2010) [Per J. Del Castillo, First Division], citing Central Bank Circular No. 905 s. 1982; *Almeda v. Court of Appeals*, 326 Phil. 309 (1996) [Per J. Kapunan, First Division].

greater bargaining power to command a higher or lower interest rate. It assumes that the parties are equally in control of the interest rate and equally have options to accept or deny the other party's proposals. In other words, the freedom is granted based on the premise that parties arrive at interest rates that they are willing but are not compelled to take either by force of another person or by force of circumstances.<sup>105</sup>

However, the premise is not always true. There are imperfections in the loan market. One party may have more bargaining power than the other. A borrower may be in need of funds more than a lender is in need of lending them. In that case, the lender has more commanding power to set the price of borrowing than the borrower has the freedom to negotiate for a lower interest rate.

Hence, there are instances when the state must step in to correct market imperfections resulting from unequal bargaining positions of the parties.

Article 1306 of the Civil Code limits the freedom to contract to promote public morals, safety, and welfare:<sup>106</sup>

Art. 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

In stipulating interest rates, parties must ensure that the rates are neither iniquitous nor unconscionable. Iniquitous or unconscionable interest rates are illegal and, therefore, void for being against public morals.<sup>107</sup> The lifting of the ceiling on interest rates may not be read as "grant[ing] lenders *carte blanche* [authority] to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets."<sup>108</sup>

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<sup>105</sup> Cf. the definition of fair market value: "that sum of money which a person desirous, but is not compelled to buy, and an owner, willing, but not compelled to sell, would agree on as a price to be given and received for such property." In *Association of Small Landowners v. Secretary of Agrarian Reform*, 256 Phil. 777 (1989) [Per J. Cruz, En Banc], citing *JM Tuazon & Co. v. Land Tenure Administration*, G.R. No. L-21064, February 18, 1970, 31 SCRA 413 [Per J. Fernando, Second Division].

<sup>106</sup> *Bough and Bough v. Cantiveros and Hanopol*, 40 Phil. 210 (1919) [Per J. Malcolm, En Banc].

<sup>107</sup> *Castro v. Tan*, 620 Phil. 239 (2009) [Per J. Del Castillo, Second Division]. See also *Svensden v. People*, 570 Phil. 243 (2008) [Per J. Carpio-Morales, Second Division], citing *Solangon v. Salazar*, 412 Phil. 816, 822 (2001) [Per J. Sandoval-Gutierrez, Third Division]; *Ruiz v. Court of Appeals*, 449 Phil. 419 (2003) [Per J. Puno, Third Division].

<sup>108</sup> *Svensden v. People*, 412 Phil. 816, 822 (2001) [Per J. Sandoval-Gutierrez, Third Division]; *Almeda v. Court of Appeals*, 326 Phil. 309, 319 (1996) [Per J. Kapunan, First Division].

Voluntariness of stipulations on interest rates is not sufficient to make the interest rates valid.<sup>109</sup> In *Castro v. Tan*:<sup>110</sup>

The imposition of an unconscionable rate of interest on a money debt, even if knowingly and voluntarily assumed, is immoral and unjust. It is tantamount to a repugnant spoliation and an iniquitous deprivation of property, repulsive to the common sense of man. It has no support in law, in principles of justice, or in the human conscience nor is there any reason whatsoever which may justify such imposition as righteous and as one that may be sustained within the sphere of public or private morals.<sup>111</sup>

Thus, even if the parties voluntarily agree to an interest rate, courts are given the discretionary power to equitably reduce it if it is later found to be iniquitous or unconscionable.<sup>112</sup> Courts approximate what the prevailing market rate would have been under the circumstances had the parties had equal bargaining power.

An interest rate is not inherently conscionable or unconscionable. Interest rates become unconscionable in light of the context in which they were imposed or applied. In *Medel v. Court of Appeals*,<sup>113</sup> this Court ruled that the stipulated interest of 5.5% or 66% per annum was unconscionable and contrary to morals. It was declared void. This court reduced the interest rate to 1% per month or 12% per annum.<sup>114</sup>

This court also ruled that the interest rates of 3%, 5%, and 10% per month were unconscionable, thus justifying the need to reduce the interest rates to 12% per annum.<sup>115</sup>

On the other hand, despite rulings that interest rates of 3% and 5% per month are unconscionable, this court in *Toledo v. Hyden*<sup>116</sup> found that the interest rate of 6% to 7% per month was *not* unconscionable. This court noted circumstances that differentiated that case from *Medel* and found that the borrower in *Toledo* was not in dire need of money when she obtained a loan; this implied that the interest rates were agreed upon by the parties on

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<sup>109</sup> *Menchavez v. Bermudez*, G.R. No. 185368, October 11, 2012, 684 SCRA 168 [Per J. Velasco, Third Division].

<sup>110</sup> 620 Phil. 239 (2009) [Per J. Del Castillo, Second Division].

<sup>111</sup> *Id.* at 242–243.

<sup>112</sup> *Menchavez v. Bermudez*, G.R. No. 185368, October 11, 2012, 684 SCRA 168, 178–179 [Per J. Velasco, Third Division].

<sup>113</sup> 359 Phil. 820 (1998) [Per J. Pardo, Third Division].

<sup>114</sup> *Id.*

<sup>115</sup> *Ruiz v. Court of Appeals*, 449 Phil. 419 (2003) [Per J. Puno, Third Division]; *Castro v. Tan*, 620 Phil. 239 (2009) [Per J. Del Castillo, Second Division]; *Menchavez v. Bermudez*, G.R. No. 185368, October 11, 2012, 684 SCRA 168 [Per J. Velasco, Third Division]; *Svendsen v. People*, 412 Phil. 816 (2001) [Per J. Sandoval-Gutierrez, Third Division].

<sup>116</sup> 652 Phil. 70 (2010) [Per J. Del Castillo, First Division].

equal footing. This court also found that it was the borrower in *Toledo* who was guilty of inequitable acts:

Noteworthy is the fact that in *Medel*, the defendant-spouses were never able to pay their indebtedness from the very beginning and when their obligations ballooned into a staggering sum, the creditors filed a collection case against them. *In this case, there was no urgency of the need for money on the part of Jocelyn, the debtor, which compelled her to enter into said loan transactions. She used the money from the loans to make advance payments for prospective clients of educational plans offered by her employer. In this way, her sales production would increase, thereby entitling her to 50% rebate on her sales. This is the reason why she did not mind the 6% to 7% monthly interest.* Notably too, a business transaction of this nature between Jocelyn and Marilou continued for more than five years. Jocelyn religiously paid the agreed amount of interest until she ordered for stop payment on some of the checks issued to Marilou. *The checks were in fact sufficiently funded when she ordered the stop payment and then filed a case questioning the imposition of a 6% to 7% interest rate for being allegedly iniquitous or unconscionable and, hence, contrary to morals.*

*It was clearly shown that before Jocelyn availed of said loans, she knew fully well that the same carried with it an interest rate of 6% to 7% per month, yet she did not complain. In fact, when she availed of said loans, an advance interest of 6% to 7% was already deducted from the loan amount, yet she never uttered a word of protest.*

*After years of benefiting from the proceeds of the loans bearing an interest rate of 6% to 7% per month and paying for the same, Jocelyn cannot now go to court to have the said interest rate annulled on the ground that it is excessive, iniquitous, unconscionable, exorbitant, and absolutely revolting to the conscience of man. "This is so because among the maxims of equity are (1) he who seeks equity must do equity, and (2) he who comes into equity must come with clean hands. The latter is a frequently stated maxim which is also expressed in the principle that he who has done inequity shall not have equity. It signifies that a litigant may be denied relief by a court of equity on the ground that his conduct has been inequitable, unfair and dishonest, or fraudulent, or deceitful as to the controversy in issue."*

*We are convinced that Jocelyn did not come to court for equitable relief with equity or with clean hands. It is patently clear from the above summary of the facts that the conduct of Jocelyn can by no means be characterized as nobly fair, just, and reasonable. This Court likewise notes certain acts of Jocelyn before filing the case with the RTC. In September 1998, she requested Marilou not to deposit her checks as she can cover the checks only the following month. On the next month, Jocelyn again requested for another extension of one month. It turned out that she was only sweet-talking Marilou into believing that she had no money at that time. But as testified by Serapio Romarate, an*

*employee of the Bank of Commerce where Jocelyn is one of their clients, there was an available balance of ₱276,203.03 in the latter's account and yet she ordered for the stop payments of the seven checks which can actually be covered by the available funds in said account. She then caught Marilou by surprise when she surreptitiously filed a case for declaration of nullity of the document and for damages.*<sup>117</sup> (Emphases supplied, citations omitted)

Under the circumstances of this case, we find no reason to uphold the stipulated interest rates of 5% to 10% per month on petitioner's loan. Petitioner obtained the loan out of extreme necessity. As pointed out by respondent, the property would have been earlier foreclosed by the National Housing Authority if not for the loan. Moreover, it would be unjust to impose a heavier burden upon petitioner, who would already be losing his and his family's home. Respondent would not be unjustly deprived if the interest rate is reduced. After all, respondent still has the right to foreclose the property. Thus, we affirm the Court of Appeals Decision to reduce the interest rate to 1% per month or 12% per annum.

However, we modify the rates in accordance with the guidelines set forth in *Nacar v. Gallery Frames*.<sup>118</sup>

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest

<sup>117</sup> Id. at 79-81.

<sup>118</sup> G.R. No. 189871, August 13, 2013, 703 SCRA 439 [Per J. Peralta, En Banc].

shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

And, in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein.<sup>119</sup>

Thus, the interest rate for petitioner's loan should be further reduced to 6% per annum from July 1, 2013 until full satisfaction.

**WHEREFORE**, the Petition is **DENIED**. The Court of Appeals Decision dated October 26, 2011 and its Resolution dated March 8, 2012 are **AFFIRMED**. The interest rate for the loan of ₱600,000.00 is further reduced to 6% per annum from July 1, 2013 until fully paid.

**SO ORDERED.**

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

WE CONCUR:

  
**ANTONIO T. CARPIO**  
Associate Justice

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<sup>119</sup> Id. at 457-458.

  
**ARTURO D. BRION**  
Associate Justice

  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**JOSE CATRAL MENDOZA**  
Associate Justice

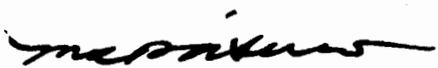
**ATTESTATION**

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.

  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second 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