



Republic of the Philippines  
 Supreme Court  
 Manila

CERTIFIED TRUE COPY  
*Wilfredo V. Lapitan*  
 WILFREDO V. LAPITAN  
 Division Clerk of Court  
 Third Division

APR 22 2019

**THIRD DIVISION**

**RUFINA S. JORGE,**  
 Petitioner,

**G.R. No. 232989**

- versus -

**ALBERTO C. MARCELO, JOEL  
 SAN PASCUAL, ROMEO SALEN,  
 CELSO SANTOS, HIGINO  
 DALANGIN, JR., EDUARDO A.  
 GARCIA, JULIUS FRONDA,  
 ROGELIO VERGARA, LARRY P.  
 TORRES, RODEL L. ZAMORA,  
 ALEXANDER F. SUERTE, EDISIO  
 G. CASEBO, FERNANDO ENORME,  
 NOEL ALMAZAN, REGINO CRUZ,  
 RONALD ALLAM, LOLITO DIZON,  
 CECERON S. PENA, JR., RENATO  
 M. ZONIO, ROBERTO F.  
 LAYUSON, CRISTOSI S. ALBOR,  
 ROGER TIBURCIO, and THE  
 NATIONAL LABOR RELATIONS  
 COMMISSION (THIRD DIVISION),**  
 Respondents.

**Present:**

PERALTA, J., Chairperson,  
 LEONEN,  
 REYES, A., JR.,  
 HERNANDO, and  
 CARANDANG,\* JJ.

**Promulgated:**

March 18, 2019

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*Wilfredo V. Lapitan*

**DECISION**

**PERALTA, J.:**

This resolves a Petition for Review on *Certiorari* (with Urgent Prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction) assailing the March 2, 2017<sup>1</sup> and June 23, 2017<sup>2</sup> Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 149666, which affirmed the August 26,

\* Designated Additional Member per Special Order No. 2624 dated November 28, 2018.  
<sup>1</sup> Penned by Associate Justice Marlene B. Gonzales-Sison, with Associate Justices Ramon A. Cruz and Henri Jean Paul B. Inting, concurring; *rollo*, pp. 10-11; CA *rollo*, pp. 98-99.  
<sup>2</sup> *Rollo*, pp. 21-24; CA *rollo*, pp. 139-142.

*W*

2016<sup>3</sup> and November 21, 2016<sup>4</sup> Resolutions of the National Labor Relations Commission (*NLRC*) denying the Petition for Extraordinary Remedies (with Urgent Prayer for TRO and/or WPI) filed by petitioner Rufina S. Jorge (*Rufina*) under Rule XII of the 2011 NLRC Rules of Procedure, as amended (*NLRC Rules*).

The present controversy arose from the cases for illegal dismissal, non-payment of service incentive leave pay and 13<sup>th</sup> month pay, and claims for payment of separation pay, damages and attorney's fees filed against R. Jorgensons Swine Multiplier Corporation and Romeo J. Jorge by private respondents Alberto C. Marcelo, Joel San Pascual, Romeo Salen, Celso Santos, Higino Dalangin, Jr., Eduardo A. Garcia, Julius Fronda, Rogelio Vergara, Larry P. Torres, Rodel L. Zamora, Alexander F. Suerte, Edisio G. Casebo, Fernando Enorme, Noel Almazan, Regino Cruz, Ronald Allam, Lolito Dizon, Ceceron S. Pena, Jr., Renato M. Zonio, Roberto F. Ayuson, Cristosi S. Albor, and Roger Tiburcio. On August 31, 2010, Executive Labor Arbiter Generoso V. Santos (*Labor Arbiter Santos*) rendered a Decision<sup>5</sup> in favor of private respondents, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered, dismissing the complaint for illegal dismissal. However, respondents are jointly and severally ordered to pay the complainants as follows:

1. Their separation pay computed at one month salary or at least one-half month salary for every year of service whichever is higher, a fraction of six months to be considered as one year;
2. Nominal damages of Php50,000.00 for each and every complainant[;] [and]
3. Attorney's fees equivalent to ten percent (10%) of the total monetary award.

The attached computation of the foregoing monetary award is hereby adapted as Annex "A" and made an integral part of this Decision.

SO ORDERED.<sup>6</sup>

Pursuant to the Decision, a Writ of Execution and an Alias Writ of Execution were issued on May 2, 2011 and February 5, 2015, respectively, commanding the sheriff to collect the sum of ₱2,513,820.77 as monetary award and ₱251,382.07 as attorney's fees.<sup>7</sup> Relative thereto, Rufina filed a Third Party Claim on June 29, 2015. She alleged as follows:

x x x x



<sup>3</sup> *Id.* at 104-111; *Id.* at 24-31.

<sup>4</sup> *Id.* at 120-124; *Id.* at 40-44.

<sup>5</sup> *Id.* at 56-67; *Id.* at 45-56.

<sup>6</sup> *Id.* at 67; *Id.* at 56.

<sup>7</sup> *Id.* at 68-71; *Id.* at 57-60.

2. In this case, Claimant is the sole registered owner of a real property covered by Transfer Certificate of Title No. N-45328 issued by the Register of Deeds of Rizal (the "Property"). x x x.

3. During a routine inspection of the title of the Property, Claimant discovered that the Property had been subject to a Notice of Levy on Execution in this case.

4. Claimant is not a party, much less a losing party in this case.

5. On the face of the title alone, it can be seen that the Property is registered solely to Claimant. This fact alone should have alerted the Sheriff to refrain from levying on execution on the said Property.

6. It appears that the Sheriff in this case levied on the Property because the registered owner indicated on the title was described as being "married to Romeo J. Jorge", a losing party in this case.

7. It is well-settled, however, that the phrase "married to" appearing in certificates of title is merely descriptive of the marital status of the person indicated therein [*Heirs of Jugalbot vs. Court of Appeals*, G.R. No. 170346, 12 March 2007]. The clear import is that the Claimant is the sole owner of the property, the same having been registered in her name alone, and the phrase "married to Romeo J. Jorge" was merely descriptive of her civil status. Levy on the Property, therefore, is improper and should be lifted.

8. Upon discovering the said levy, Claimant engaged undersigned counsel to know more about this case. Undersigned counsel thereafter proceeded to this Honorable Office to review the case files.

9. Upon reviewing the case files, undersigned counsel noted that the latest entry on record appears to be an Alias Writ of Execution. **There was no return or report from the Sheriff.** As such, there was no information as to when and where the notice of execution sale was published. Claimant, therefore, could not determine with certainty as to how much time she has to file a Third Party Claim.

10. In fact, there was no notice of execution sale on file. It was only upon verbal discussion with the Sheriff that undersigned counsel learned that he already executed such notice.

11. Upon his request, undersigned counsel was furnished by the Sheriff with a copy of a "Notice of Sale/Levy on Execution of Real Property." Upon examination, however, **the said notice did not indicate when the execution sale is scheduled to take place. The space provided for the date of execution sale was left blank. This is highly irregular considering that the very purpose of a notice of execution sale is precisely to give notice as to when the execution sale is supposed to take place.**

12. It is also noted that in the said notice, spaces provided for the name of the newspaper and the publication dates were also left blank. Claimant, therefore, could not verify which newspaper such notice was published, let alone the dates when such notice was published.

13. Claimant does not have sufficient liquidity to post a cash bond. As such, Claimant endeavored to post a surety bond for her Third Party Claim. She encountered, however, extreme difficulty in complying with the requirements of the bond companies. Without any certainty as to the deadline for her Third Party Claim, Claimant was constrained to file this Third Party Claim without any surety bond in the meantime.

14. The cash deposit of Twenty Thousand Pesos (PhP20,000.00) for the payment of the republication of notice of auction sale has been posted upon the filing of this Third Party Claim, together with the payment of the prevailing filing fee.

### PRAYER

WHEREFORE, premises considered, it is most respectfully prayed that an Order be issued:

1. suspending and cancelling execution proceedings with respect to the Property subject of this Third Party Claim;
2. upholding and recognizing Third Party Claimant's ownership of the Property;
3. lifting and removing the levy on execution over the Property; and
4. releasing the said Property from levy on execution in this case.

Third Party Claimant also prays for such further or other reliefs as may be just and equitable under the circumstances.<sup>8</sup>

In their Comment with Motion to Dismiss,<sup>9</sup> private respondents countered that Rufina failed to strictly observe the requirements of Section 11, Rule XI of the NLRC Rules. According to them, the Third Party Claim was (1) not filed within the mandatory five-day period from the last day of posting or publication of the notice of execution sale; (2) not accompanied by a bond equivalent to the amount of the claim or judgment award; and (3) not accompanied with proof of payment of the corresponding filing fee. They also contended that Rufina's bare assertion that she is the sole owner of the Property would not suffice due to the presumption of conjugal ownership during the existence of a marriage.

On June 16, 2016, Labor Arbiter Santos ordered the dismissal of the Third Party Claim and directed the sheriff to proceed with the auction of the subject property after the republication of notice of auction sale.<sup>10</sup> He opined:

Rufina failed to adduce sufficient evidence to establish that the levied property exclusively belongs to her for this Office to deviate to the pronouncement of the Supreme Court in the case of Dewara vs. Lamela, G.R. No. 179010, April 11, 2015, where it was ruled that all property of the

<sup>8</sup> *Id.* at 72-74; *Id.* at 61-63. (Emphasis in the original)

<sup>9</sup> *Id.* at 82-86; *Id.* at 71-75.

<sup>10</sup> *Id.* at 87-89; *Id.* at 76-78.

marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or wife. That registration in the name of the husband or wife alone does not destroy this presumption xxx Moreover, the presumption of conjugal ownership even when the manner in which the property was acquired does not appear. The use of the conjugal funds is not an essential requirement for the presumption to arise.

The title to the property clearly shows that the same was acquired during the time of marriage, hence, the presumption under the law and the above jurisprudence, that it belongs to the conjugal partnership.<sup>11</sup>

To set aside the Order, Rufina filed before the NLRC a Petition for Extraordinary Remedies<sup>12</sup> (with Urgent Prayer for TRO and/or WPI) under Rule XII of the NLRC Rules, arguing that: (1) the case of *Dewara* is not applicable because there is no evidence on record that the subject property was acquired during her marriage with Romeo Jorge; (2) the burden of proof is on private respondents to show that the subject property was acquired during the marriage; (3) consistent with *Salas, Jr. v. Aguila*,<sup>13</sup> her certificate of title is generally a conclusive evidence of ownership and that the phrase “*married to*” is merely descriptive of her civil status as the registered owner; and (4) the Order would cause injustice if not rectified since (a) she was not a respondent in the labor case; (b) she was not served with summons in the case; (c) she was not given an opportunity to file any pleadings relative thereto; and (d) she was not furnished with a copy of the labor arbiter’s decision and had no opportunity to appeal it.

On August 26, 2016, the NLRC denied the petition for lack of merit. It was ruled that the Third Party Claim was procedurally flawed, thus, warranting its outright dismissal. In violation of Section 14(c), Rule XI of the NLRC Rules, Rufina “merely kept silent and did not address the defect of non-submission of the requisite cash/surety bond until the issuance of the assailed Order dated June 16, 2016.” Rufina moved for reconsideration,<sup>14</sup> but it was denied on November 21, 2016.

Meantime, on November 3, 2016, the subject property covered by TCT No. N-45328, with an area of 2,444 square meters, was sold at public auction in favor of private respondents.<sup>15</sup>

Rufina elevated the case to the CA via petition for *certiorari*.<sup>16</sup> It was dismissed on March 2, 2017 due to procedural defects, to wit:

<sup>11</sup> *Id.* at 88-89; *Id.* at 77-78.

<sup>12</sup> *Id.* at 90-103; *Id.* at 79-92.

<sup>13</sup> 718 Phil. 274, 283 (2013).

<sup>14</sup> *Rollo*, pp. 113-119; *CA rollo*, pp. 32-38.

<sup>15</sup> *Id.* at 149-150; *Id.* at 93-94.

<sup>16</sup> *Id.* at 125-146; *Id.* at 3-22.

1. The complete postal addresses of private respondents are not alleged in violation of Section 3(a), Rule 46 in relation to Rule 65 of the Rules;
2. Jurat of the Verification and Certification of Non-Forum Shopping is defective there being no competent proof of affiant's identity as required under 09-8-13 SC Resolution dated February 19, 2008;
3. The date of issue of Atty. Mark Anthony De Leon's PTR Number is not updated for the current year, in contravention of the Notarial law.<sup>17</sup>

A motion for reconsideration<sup>18</sup> was filed, but it was denied. The June 23, 2017 Resolution disposed:

A perusal of the motion for reconsideration reveals that *whilst* the petitioner has sufficiently explained and/or cured the defects of her petition stated in Numbers 1 and 3, she *failed* to cure and/or sufficiently explained the defect mentioned in Number 2. *Section 2 of the 2004 Rules on Notarial Practice lists the act to which an affirmation or oath refers x x x.*

x x x x

*In here*, petitioner's mere declaration that she is "personally known to the notary public (Atty. Mark Anthony De Leon)" does not exempt her in not presenting a competent evidence of identity as required by the 2004 Rules on Notarial [Practice]. Petitioner did not explain how Atty. De Leon have known her or how she and Atty. De Leon personally knew each other. *Without which*, the declaration alone of petitioner is inconsequential, hence, We **cannot assume** that petitioner was *indeed* personally known to Atty. De Leon.

Besides, contrary to the contention of petitioner, Rule II, Sec. 12 of the *2004 Rules on Notarial Practice* requires a party to the instrument to present competent evidence of identity. x x x.

x x x x

Hence, even if the Notarial Rules do not require the details of the competent evidence of identity to be indicated in the notarized document, the affiant, herein petitioner, is still required to present a competent evidence of her identity. In not attaching or presenting a copy of one of the enumerated identification cards or documents above listed in the subject motion for reconsideration, the **defect** in the oath of petitioner **remains**. Accordingly, notwithstanding that the petitioner has sufficiently explained and/or cured the other defects of her petition in the subject **motion for reconsideration**, We *still* find it to be *insufficient in form* and *dismissible*. Accordingly, We **cannot** reconsider Our assailed Resolution.<sup>19</sup>

<sup>17</sup> *Id.* at 10-11; *Id.* at 98-99.

<sup>18</sup> *Id.* at 12-19; *Id.* at 107-115.

<sup>19</sup> *Id.* at 22-23; *Id.* at 140-141.

In her petition before Us, Rufina counters that Section 12,<sup>20</sup> Rule II of the Notarial Rules only defines competent evidence of identity and does not require that it be presented in all affirmation or oath and *jurat*. Under Sections 2(b)<sup>21</sup> and 6(b),<sup>22</sup> Rule II, affirmation or oath and *jurat* can be done even if there is no competent evidence of identity as long as the signatory is personally known to the notary public. It is also argued that she should not be held responsible for explaining the declaration of personal knowledge because it was a statement of the notary public, not her or her counsel, and that the order to explain as to how the notary public and the signatory of the instrument or document personally knew each other finds no basis under the Notarial Rules. Moreover, Rufina contends that in her case there is nothing in the Notarial Rules which requires the details of competent evidence of identity to be indicated on the notarized document. Even so, the failure to record such details does not automatically mean that the competent evidence of identity was not presented to the notary public as it is possible that it was in fact submitted but the notary public did not make it appear as such. Rufina asserts that the failure to indicate the details of the competent evidence of identity pertains to the notary public; hence, she should not be penalized by way of dismissal of her petition.

We agree.

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<sup>20</sup> SEC. 12. *Competent Evidence of Identity*. – The phrase “competent evidence of identity” refers to the identification of an individual based on:

(a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual, such as but not limited to, passport, driver's license, Professional Regulations Commission ID, National Bureau of Investigation clearance, police clearance, postal ID, voter's ID, *Barangay* certification, Government Service and Insurance System (GSIS) e-card, Social Security System (SSS) card, Philhealth card, senior citizen card, Overseas Workers Welfare Administration (OWWA) ID, OFW ID, seaman's book, alien certificate of registration/immigrant certificate of registration, government office ID, certification from the National Council for the Welfare of Disabled Persons (NCWDP), Department of Social Welfare and Development (DSWD) certification; or

(b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification.

<sup>21</sup> SEC. 2. *Affirmation or Oath*. – The term “Affirmation” or “Oath” refers to an act in which an individual on a single occasion:

(a) appears in person before the notary public;

(b) is personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; and

(c) avows under penalty of law to the whole truth of the contents of the instrument or document.


<sup>22</sup> SEC. 6. *Jurat*. – “Jurat” refers to an act in which an individual on a single occasion:

(a) appears in person before the notary public and presents an instrument or document;

(b) is personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules;

(c) signs the instrument or document in the presence of the notary; and

(d) takes an oath or affirmation before the notary public as to such instrument or document.



The rule that the signatory to an instrument or document must present his/her identification card issued by an official agency, bearing his/her photograph and signature, has exceptions.<sup>23</sup> In *Coca-Cola Bottlers Phils., Inc. v. Dela Cruz, et al.*,<sup>24</sup> the presentation of a Community Tax Certificate (CTC) in lieu of other competent evidence of identity was allowed because a glitch in the evidence of the affiant's identity should not defeat his petition and may be overlooked in the interest of substantial justice, taking into account the merits of the case.

Also, similar to Rufina's case, a notary public may be excused from requiring the presentation of competent evidence of identity if the signatory before him is personally known to him.<sup>25</sup> In *Jandoquile v. Atty. Revilla, Jr.*,<sup>26</sup> it was held:

x x x If the notary public knows the affiants personally, he need not require them to show their valid identification cards. This rule is supported by the definition of a "jurat" under Section 6, Rule II of the 2004 Rules on Notarial Practice. A "jurat" refers to an act in which an individual on a single occasion: (a) appears in person before the notary public and presents an instrument or document; (b) is personally known to the notary public or identified by the notary public through competent evidence of identity; (c) signs the instrument or document in the presence of the notary; and (d) takes an oath or affirmation before the notary public as to such instrument or document. x x x.<sup>27</sup>

In legal hermeneutics, "or" is a disjunctive term that expresses an alternative or gives a choice of one among two or more things.<sup>28</sup> The word signifies disassociation and independence of one thing from another thing in an enumeration.<sup>29</sup> "[The] phrase 'personally known' contemplates the notary public's personal knowledge of the signatory's personal circumstances independent and irrespective of any representations made by the signatory immediately before and/or during the time of the notarization. It entails awareness, understanding, or knowledge of the signatory's identity and circumstances gained through firsthand observation or experience which therefore serve as guarantee of the signatory's identity and thus eliminate the need for the verification process of documentary identification."<sup>30</sup> The *jurat* or affirmation or oath, or acknowledgment must contain a

<sup>23</sup> See *Victoriano v. Dominguez*, G.R. No. 214794, July 23, 2018.

<sup>24</sup> 622 Phil. 886, 899-900 (2009), as cited in *Victoriano v. Dominguez*, G.R. No. 214794, July 23, 2018.

<sup>25</sup> See *Heir of Unite v. Guzman*, A.C. No. 12062, July 2, 2018 (2<sup>nd</sup> Division Resolution).

<sup>26</sup> 708 Phil. 337 (2013).

<sup>27</sup> *Jandoquile v. Atty. Revilla, Jr.*, *supra*, at 341. See also *Victoriano v. Dominguez*, *supra* note 23, and *Reyes v. Glaucoma Research Foundation, Inc., et al.*, 760 Phil. 779, 786 (2015).

<sup>28</sup> See *Reyes v. Glaucoma Research Foundation, Inc., et al.*, *supra*, at 787.

<sup>29</sup> *Reyes v. Glaucoma Research Foundation, Inc., et al.*, *supra* note 27, at 787.

<sup>30</sup> *Heir of Unite v. Guzman*, *supra* note 25.



statement that the affiant is personally known to the notary public; it cannot be assumed.<sup>31</sup>

Here, the notarial certificate of the Verification and Certification Against Forum Shopping that was attached to Rufina's petition for *certiorari* filed before the CA stated that she is personally known to the notary public.<sup>32</sup> The fact that it contained no details of her competent evidence of identity is inconsequential simply because its presentation may be excused or dispensed with. If it is not required for the affiant to show competent evidence of identity in case he/she is personally known to the notary public, with more reason that it is unnecessary to state the details of such competent evidence of identity in the notarial certificate.

The foregoing considered, the CA should have decided the Petition for *Certiorari* based on its merits. It should have determined whether or not the NLRC committed grave abuse of discretion in denying the Petition for Extraordinary Remedies, which assailed the June 16, 2016 Order of Labor Arbiter Santos. A plain reading of the 2011 NLRC Rules of Procedure, as amended, would reveal that the NLRC gravely abused its discretion in dismissing outright the petition due to Rufina's failure to post a cash or surety bond.

When Rufina filed a Third Party Claim on June 29, 2015, Rule XI of the 2011 NLRC Rules of Procedure, as amended by NLRC *En Banc* Resolution No. 11-12 dated November 16, 2012, mandated:

Section 14. *Third Party Claim.* – a) If the property levied is claimed by any person other than the losing party, such person may file a third party claim not later than five (5) days from the last day of posting or publication of the notice of execution sale, otherwise the claim shall be forever barred. Such third party claim must comply with the following requirements:

- (1) An affidavit stating title to property or right to the possession thereof with supporting evidence;
- (2) Posting of a cash or surety bond equivalent to the amount of the claim or judgment award and in accordance with Section 6 of Rule VI;
- (3) In case of real property, posting of a refundable cash deposit of twenty thousand pesos (P20,000) for the payment of republication of notice of auction sale; and
- (4) Payment of prevailing filing fee.

b) Where filed – The third party claim shall be filed with the Commission or Labor Arbiter where the execution proceeding is pending, with proof of service of copies thereof to the Sheriff and the prevailing party.

<sup>31</sup> See *Kilosbayan Foundation, et al., v. Judge Janolo, Jr., et al.*, 640 Phil. 33, 46 (2010), as cited in *William Go Que Construction v. Court of Appeals, et al.*, 785 Phil. 117, 129 (2016).

<sup>32</sup> CA rollo, pp. 21-22.

c) Effect of Filing. – The filing of a third party claim that has complied with the requirements set forth under paragraph (a) of this Section shall automatically suspend the proceedings with respect to the execution of the properties subject of the third party claim.

Upon approval of the bond, the Labor Arbiter shall issue an order releasing the levied property or a part thereof subject of the claim unless the prevailing party posts a counter bond in an amount not less than the value of the levied property.

The Labor Arbiter may require the posting of additional bond upon showing by the other party that the bond is insufficient.

d) Proceedings. – The propriety of the third party claim shall be resolved within ten (10) working days from submission of the claim for resolution. The decision of the Labor Arbiter is not appealable but may be elevated to the Commission and resolved in accordance with Rule XII hereof. Pending resolution thereof, execution shall proceed against all other properties not subject of the third party claim.

Prior to the promulgation of the June 16, 2016 Order of Labor Arbiter Santos, Section 14, Rule XI of the 2011 NLRC Rules was further modified by NLRC *En Banc* Resolution No. 14-15 dated September 16, 2015. It provided:

SECTION 14. *Third Party Claim.* – (a) If the property levied is claimed by any person other than the losing party, such person may file a third party claim not later than five (5) days from the last day of posting or publication of the notice of execution sale, otherwise the claim shall be forever barred. Such third party claim must comply with the following requirements:

- (1) An affidavit stating title to property or right to the possession thereof and the property's fair market value with supporting evidence;
- (2) Payment of prevailing filing fee; and,
- (3) In case the subject matter of the third party claim is a real property, posting of a refundable cash deposit of Twenty Thousand Pesos (P20,000) for the payment of republication of notice of auction sale.

(b) *Where Filed.* – The third party claim shall be filed with the Commission or Labor Arbiter where the execution proceeding is pending, with proof of service of copies thereof to the Sheriff and the prevailing party.

(c) *Effect of filing and posting of bond.* – The filing of a third party claim shall not suspend the execution proceedings with respect to the property subject of the third party claim, unless the third party claimant posts a cash or surety bond equivalent to the value of the levied property or judgment award, whichever is lower, and in accordance with Section 6

of Rule VI.<sup>33</sup> The cash or surety bond shall be in lieu of the property subject of the third party claim.

The cash or surety bond shall be valid and effective from the date of deposit or posting, until the third party claim is finally decided, resolved or terminated. This condition shall be deemed incorporated in the terms and conditions of the surety bond, and shall be binding on the third party claimant and the bonding company.

The Labor Arbiter may require the posting of additional bond upon showing by the other party that the bond is insufficient.

Upon approval of the bond, the Labor Arbiter shall issue an order releasing the levied property or a part thereof subject of the claim.

(d) *Proceedings.* – The propriety of the third party claim shall be resolved within ten (10) working days from submission of the claim for resolution. The decision of the Labor Arbiter is not appealable but may be elevated to the Commission and resolved in accordance with Rule XII hereof.

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<sup>33</sup> Section 6 of Rule VI of the 2011 NLRC Rules, as amended by the NLRC *En Banc* Resolution No. 14-15 states:

Section 6. *Bond.* – In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond equivalent in the amount to the monetary award, exclusive of damages and attorney's fees.

In case of surety bond, the same shall be issued by a reputable bonding company duly accredited by the Commission and shall be accompanied by original or certified true copies of the following:

- (a) a joint declaration under oath by the employer, his/her counsel, and the bonding company, attesting that the bond posted is genuine, and shall be in effect until final disposition of the case;
- (b) an indemnity agreement between the employer-appellant and bonding company;
- (c) proof of security deposit or collateral securing the bond: provided, that a check shall not be considered as an acceptable security; and
- (d) notarized board resolution or secretary's certificate from the bonding company showing its authorized signatories and their specimen signatures.

The Commission through the Chairman may on justifiable grounds blacklist an accredited bonding company.

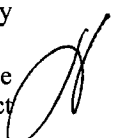
A cash or surety bond shall be valid and effective from the date of deposit or posting, until the case is finally decided, resolved or terminated, or the award satisfied. This condition shall be deemed incorporated in the terms and conditions of the surety bond, and shall be binding on the appellants and the bonding company.

The appellant shall furnish the appellee with a certified true copy of the said surety bond with all the above-mentioned supporting documents. The appellee shall verify the regularity and genuineness thereof and immediately report any irregularity to the Commission.

Upon verification by the Commission that the bond is irregular or not genuine, the Commission shall cause the immediate dismissal of the appeal, and censure the responsible parties and their counsels, or subject them to reasonable fine or penalty, and the bonding company may be blacklisted.

No motion to reduce bond shall be entertained except on meritorious grounds, and only upon the posting of a bond in a reasonable amount in relation to the monetary award.

The mere filing of a motion to reduce bond without complying with the requisites in the preceding paragraphs shall not stop the running of the period to perfect an appeal.



In the event that the resolution of the third party claim is elevated to the Commission, the release of the bond shall be suspended. Pending resolution thereof, execution shall proceed against all other properties not subject of the third party claim.

If the third party claim is denied with finality, the bond shall be made answerable in lieu of the property subject of the third party claim.

The 2015 amendments to the NLRC Rules shall govern Rufina's Third Party Claim because it was yet to be resolved by the labor arbiter at the time. Procedural laws may be given retroactive effect to actions pending and undetermined at the time of their passage, there being no vested rights in rules of procedure.<sup>34</sup> In contrast with the 2012 version, the amended provision does not require the posting of a cash or surety bond when a Third Party Claim is filed. However, posting of a bond is necessary to suspend the execution proceedings. Failure to post a bond merely results in the continuation of the execution proceedings; it does not make the Third Party Claim automatically defective or subject to outright denial/dismissal. The Third Party Claim stands unaffected; it is deemed properly filed and must be resolved on the basis of its substantive merits.

In this case, Rufina pleaded, among others, to "[suspend] x x x execution proceedings with respect to the Property subject of [the] Third Party Claim," but she did not post the required cash or surety bond until Labor Arbiter Santos promulgated his June 16, 2016 Order. As a result, the subject property was sold at public auction in favor of private respondents. Instead of denying outright Rufina's Third Party Claim, what the NLRC should have done was to rule on the merits of her other prayers. Specifically, it should have determined if she is indeed the sole owner of the subject property and, if found to be true, released said property by lifting the levy on execution.

The Court agrees with Rufina's contention that the phrase "*married to Romeo J. Jorge*" written after her name in TCT No. N-45328 is merely descriptive of her civil status as the registered owner.<sup>35</sup> It does not necessarily prove or indicate that the land is a conjugal property of Rufina and Romeo or that they co-own it.<sup>36</sup> It is not a proof that the property was

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<sup>34</sup> *Sumiran v. Spouses Damaso*, 613 Phil. 72, 78-79 (2009) and *NAPOCOR v. Spouses Laohoo, et al.*, 611 Phil. 194, 212 (2009).

<sup>35</sup> See *Uy v. Spouses Lacsamana*, 767 Phil. 501, 517 (2015); *Ventura, Jr. v. Spouse Abuda*, 720 Phil. 575, 583 (2013); *Salas, Jr. v. Aguila*, 718 Phil. 274, 283 (2013); *Dela Peña, et al. v. Avila, et al.*, 681 Phil. 553, 564 (2012); *Agtarap v. Agtarap, et al.*, 666 Phil. 452, 472 (2011); *Heirs of Nicolas Jugalbot v. Court of Appeals*, 547 Phil. 113, 122 (2007); *Metropolitan Bank and Trust Company v. Tan*, 538 Phil. 873, 882 (2006); *Ruiz v. Court of Appeals*, 449 Phil. 419, 431 (2003); *Francisco v. CA*, 359 Phil. 519, 529 (1998); and *Magallon v. Hon. Montejo*, 230 Phil. 366, 377 (1986).

<sup>36</sup> *Ventura, Jr. v. Spouses Abuda, supra*; *Agtarap v. Agtarap, et al., supra*; *Metropolitan Bank and Trust Company v. Tan, supra*, at 881; *Ruiz v. Court of Appeals, supra*; and *Magallon v. Hon. Montejo, supra*.

acquired during the marriage.<sup>37</sup> The only import of the title is that Rufina is the owner of the property, the same having been registered in her name alone, and that she is married to Romeo.<sup>38</sup> Before the presumption of conjugal nature of property can apply, it must first be established that the property was in fact acquired during the marriage. Proof of acquisition during the coverture is a condition *sine qua non* for the operation of the presumption in favor of conjugal partnership.<sup>39</sup> The party who asserts this presumption must first prove said time element.<sup>40</sup> The presumption does not operate when there is no showing as to when the property alleged to be conjugal was acquired.<sup>41</sup> If there is no showing as to when the property in question was acquired, the fact that the title is in the name of the wife alone is determinative of its nature as paraphernal, *i.e.*, belonging exclusively to said spouse.<sup>42</sup> Notably, acquisition of title and registration thereof are two different acts.<sup>43</sup> It is well settled that registration under the Torrens title system does not confer or vest title but merely confirms one already existing.<sup>44</sup>

In the interest of justice and fair play, We remand this case to the NLRC to rule on the unresolved factual issue. Private respondents are given one last opportunity to show *when* the property alleged to be conjugal was acquired. Proof that the subject property was acquired during the marriage of Rufina and Romeo must be presented. There must be evidence from which the actual date of acquisition of the realty can be ascertained. It is not necessary to prove that the subject property was acquired with funds of the partnership.<sup>45</sup>

**WHEREFORE**, the petition is **GRANTED**. The March 2, 2017 and June 23, 2017 Resolutions of the Court of Appeals in CA-G.R. SP No. 149666, which affirmed the August 26, 2016 and November 21, 2016 Resolutions of the National Labor Relations Commission denying the Petition for Extraordinary Remedies (with Urgent Prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction) filed by petitioner Rufina S. Jorge under Rule XII of the 2011 NLRC Rules of Procedure, as amended, are **REVERSED AND SET ASIDE**. The case is **REMANDED** to the NLRC to determine with reasonable dispatch the ownership of the real property covered by Transfer Certificate of Title No. N-45328.

<sup>37</sup> *Heirs of Nicolas Jugalbot v. Court of Appeals*, 547 Phil. 113, 122 (2007); *Metropolitan Bank and Trust Company v. Tan*, *supra* note 35; and *Ruiz v. Court of Appeals*, *supra* note 35.

<sup>38</sup> *Ruiz v. Court of Appeals*, *supra* note 35, at 432.

<sup>39</sup> See *Dela Peña, et al. v. Avila, et al.*, *supra* note 35, at 563; *Metropolitan Bank and Trust Company v. Tan*, *supra* note 35; *Ruiz v. Court of Appeals*, *supra* note 35; and *Francisco v. Court of Appeals*, *supra* note 35.

<sup>40</sup> *Dela Peña, et al. v. Avila, et al.*, *supra* note 35, at 563, citing *Francisco v. Court of Appeals*, *supra* note 35, at 526.

<sup>41</sup> *Id.*

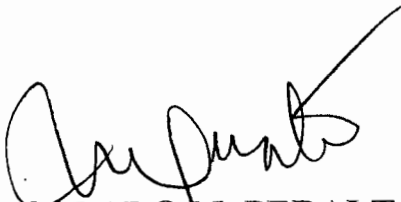
<sup>42</sup> *Id.* at 565, citing *Ruiz v. Court of Appeals*, *supra* note 35, at 431-432.

<sup>43</sup> *Metropolitan Bank and Trust Company v. Tan*, *supra* note 35; *Ruiz v. Court of Appeals*, *supra* note 35; and *Francisco v. Court of Appeals*, *supra* note 35.

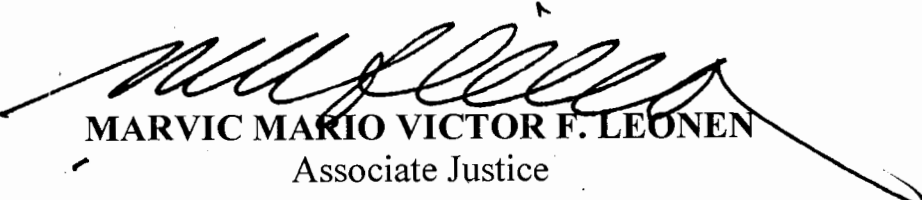
<sup>44</sup> *Ventura, Jr. v. Spouse. Abuda*, *supra* note 35, at 583-584 and *Francisco v. Court of Appeals*, *supra* note 35.


<sup>45</sup> *Dela Peña, et al. v. Avila, et al.*, *supra* note 35, at 563.

**SO ORDERED.**

  
**DIOSDADO M. PERALTA**  
Associate Justice

**WE CONCUR:**

  
**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice

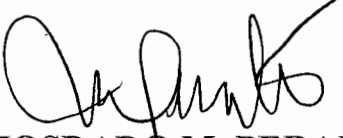
  
**ANDRES B. REYES, JR.**  
Associate Justice

  
**RAMON PAUL L. HERNANDO**  
Associate Justice

  
**ROSMARIE B. CARANDANG**  
Associate Justice

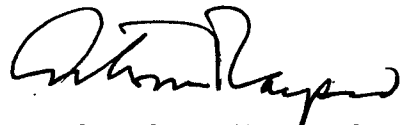
**ATTESTATION**

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.

  
**DIOSDADO M. PERALTA**  
Associate Justice  
Chairperson, Third 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.



**ANTONIO T. CARPIO**  
Acting Chief Justice  
(Per Special Order No. 2644  
dated March 15, 2019).

**CERTIFIED TRUE COPY**



**WILFREDO V. LAPIDAN**  
Division Clerk of Court  
Third Division

APR 22 2019