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Republic of the Philippines
Supreme Court
Manila

EN BANC

JULIE PARCON-SONG,
Petitioner,

G.R. No. 199582

Present:

PERALTA, *Chief Justice*,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
GESMUNDO*,
REYES, J., JR.,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ,
DELOS SANTOS, and
GAERLAN, *JJ.*

-versus-

LILIA B. PARCON, joined by her
husband JOAQUIN A. PARCON,
MAYBANK PHILIPPINES, INC.
(formerly PNB Republic Bank), and
the REGISTER OF DEEDS OF
QUEZON CITY,

Respondents.

Promulgated:
July 7, 2020

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DECISION

LEONEN, *J.*:

This Court resolves a Petition for Review on Certiorari¹ assailing the

* On official leave
: Rollo, pp. 8-36. Filed under Rule 45 of the Rules of Court.

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Decision² and Resolution³ of the Court of Appeals, which affirmed the Regional Trial Court Decision⁴ dismissing Julie Parcon-Song's (Julie) Complaint for annulment of title, reconveyance of transfer certificate of title, annulment of mortgage and foreclosure proceedings, and declaration of family home.⁵

Julie is the daughter of Spouses Joaquin and Lilia Parcon (the Parcon Spouses).⁶ In 1995, the Parcon Spouses obtained two loans from Maybank Philippines, Inc. (Maybank).⁷ As security, they executed a real estate mortgage over a parcel of land covered by Transfer Certificate of Title No. 107064, registered in the name of Lilia Parcon.⁸ The real estate mortgage was annotated on the title.⁹

In 2001, when the Parcon Spouses defaulted on their loans, Maybank foreclosed the mortgage. In the foreclosure proceedings, Maybank emerged as the highest bidder, and thus, was issued a certificate of sale.¹⁰ The certificate of sale was registered with the Register of Deeds.¹¹

On March 4, 2003, Julie filed a Complaint praying that the following be declared void: (1) Transfer Certificate of Title No. 107064; (2) the real estate mortgage dated November 28, 1995 in favor of Maybank; and (3) the foreclosure proceedings. She likewise sought that the property be reconveyed to her as its true and lawful owner. Julie also prayed for a declaration of family home and that Maybank be ordered to pay damages.¹²

Julie asserted that she had purchased the property from PACE Realty Investment, Inc. in August 1983, paying it in full. By way of trust, she used her mother's name to acquire the property.¹³ Thus, in 1994, the title was registered in Lilia Parcon's name.¹⁴

Julie claimed that since then, Lilia Parcon has claimed ownership over the property. She contended that her parents merely ignored her repeated

² Id. at 37-47. The August 7, 2011 Decision was penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Celia C. Librea-Leagogo and Michael P. Elbinias of the Second Division, Court of Appeals, Manila.

³ Id. at 48-49. The November 28, 2011 Resolution was penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Stephen C. Cruz and Elihu A. Ybañez of the Special Former Second Division, Court of Appeals, Manila.

⁴ Id. at 76-89. The Decision was penned by Judge Thelma A. Ponferrada of the Regional Trial Court of Quezon City, Branch 104.

⁵ Id. at 76.

⁶ Id. at 38.

⁷ Id. at 38 and 40.

⁸ Id. at 40.

⁹ Id. at 86.

¹⁰ Id. at 39 and 41.

¹¹ Id. at 41.

¹² Id. at 38-39.

¹³ Id. at 38.

¹⁴ Id. at 39.

demands to reconvey the property. She also alleged that the property was mortgaged in favor of Maybank without her consent.¹⁵

The Parcon Spouses did not file an answer, and thus, were declared in default.¹⁶

For its part, Maybank argued in its Answer that it was a mortgagee in good faith and for value. It alleged that it verified the property with the Register of Deeds of Quezon City, and it found no defect or anything suspicious about the genuineness and execution of the title. By way of counterclaim, it also sought damages and attorney's fees.¹⁷

Initially, the Regional Trial Court dismissed the case after Julie had failed to prosecute. On reconsideration, however, it eventually allowed her to present evidence. Yet, Julie was still unable to continue her direct testimony and conduct cross-examination as her counsels failed to appear. Thus, the trial court deemed her to have waived her right to formally offer her evidence.¹⁸

In the trial proceedings, Julie moved for the judicial admission that Maybank is a foreign corporation, disqualified under the Constitution to own private lands. The Regional Trial Court took judicial notice of Maybank's Articles of Incorporation and General Information Sheet.¹⁹

Eventually, the Regional Trial Court, in its July 14, 2008 Decision,²⁰ dismissed Julie's Complaint. It found that the mortgage was valid and that there was no implied or express trust on the property.²¹ It ruled that since the title was not annotated, Maybank cannot be affected by any interest Julie had over the property.²²

The trial court further found that the foreclosure proceedings were valid, barring Julie from seeking the sale's cancellation.²³ Additionally, it ruled that the evidence showing that Maybank was a Malaysian-owned foreign corporation had no relevance to the validity of the sale.²⁴

The Court of Appeals, in its August 17, 2011 Decision,²⁵ affirmed the Regional Trial Court Decision.

¹⁵ Id. at 39.

¹⁶ Id.

¹⁷ Id. at 40.

¹⁸ Id. at 81-83.

¹⁹ Id. at 87.

²⁰ Id. at 76.

²¹ Id. at 86.

²² Id. at 87.

²³ Id. at 88.

²⁴ Id. at 87.

²⁵ Id. at 37-47.

The Court of Appeals found that the title to the property was clean, not forged or fake, with no registered liens and encumbrances, and registered in the mortgagor's name, Lilia Parcon.²⁶ Thus, it ruled, Maybank could very well rely on the title as a mortgagee in good faith, and did not need to further investigate.²⁷

The Court of Appeals also ruled that the extrajudicial sale was valid as the applicable law, Act No. 3135, only required that the mortgage be registered. It explained that while a family home is generally exempt from execution, but if it was mortgaged to secure a debt, then it may be subject to execution, forced sale, or attachment.²⁸

Finally, the Court of Appeals found that Maybank, a foreign bank, was still given a license to operate in the Philippines, which satisfied the requirement to protect Philippine equity. It cited Section 8 of Republic Act No. 7721, which accorded foreign banks equal treatment as domestic banks, in ruling that Maybank had the right to acquire the mortgaged property in foreclosure proceedings.²⁹

In its November 28, 2011 Resolution,³⁰ the Court of Appeals denied the Motion for Reconsideration. Thus, Julie filed this Petition.³¹

Petitioner argues that the real estate mortgage is void as she is the property's real owner. She claims that she paid for it with her own money and her parents were only holding the property in trust for her—facts that her parents supposedly did not dispute.³²

Petitioner also claims that respondent Maybank is not a mortgagee in good faith.³³ She posits that had the bank investigated, it would have discovered that she, not her parents, had been in open and adverse possession of the property. Instead, the bank only relied on the title, which she says is a sign of bad faith.³⁴

Petitioner also contends that as a foreign corporation, respondent Maybank is prohibited under Article XII, Section 3 of the 1987 Constitution

²⁶ Id. at 44.

²⁷ Id. at 45.

²⁸ Id. at 46 citing FAMILY CODE, art. 155.

²⁹ Id. at 45.

³⁰ Id. at 48–49.

³¹ Id. at 8–36.

³² Id. at 28.

³³ Id. at 29.

³⁴ Id. at 32.

from owning real property in the Philippines.³⁵ She further questions the bank's mode of entry as a foreign bank in the Philippine banking system, saying it did not comply with Section 2 of Republic Act No. 7721.³⁶ As such, the equal treatment accorded to Philippine banks and foreign banks under Section 8 does not apply.³⁷

In its Comment,³⁸ respondent Maybank asserts that it is a mortgagee in good faith as it had inspected the property. Petitioner allegedly failed to prove that it did not do so.³⁹

Respondent Maybank also claims that it is a foreign bank authorized to operate in the Philippines under Section 2(i) of Republic Act No. 7721.⁴⁰ It further claims that its operations were justified by Section 73 of Republic Act No. 8791.⁴¹ It asserts that it was granted a license by the Monetary Board to operate as a foreign bank, and is thus accorded equal treatment as domestic banks. As such, it can foreclose and acquire mortgaged properties.⁴² It notes that its ownership of the mortgaged property is only temporary, as it is required to dispose of its foreclosed asset within five years after its acquisition.⁴³

Since this case raised the issue of the constitutionality of the property acquisition, it was referred to the Court *En Banc*.⁴⁴ In an August 8, 2017 Resolution, the Court *En Banc* accepted the case and directed the Office of the Solicitor General to comment.⁴⁵

In its Comment,⁴⁶ the Office of the Solicitor General posits that the respondent Maybank's foreclosure of the mortgage and acquisition of the property did not violate the Constitution.⁴⁷

³⁵ Id. at 19 and 22.

³⁶ Id. at 25–26. Republic Act No. 7721 (1994), sec. 2 provides:
SECTION 2. *Modes of Entry*. — The Monetary Board may authorize foreign banks to operate in the Philippine banking system through any of the following modes of entry: (i) by acquiring, purchasing or owning up to sixty percent (60%) of the voting stock of an existing bank; (ii) by investing in up to sixty percent (60%) of the voting stock of a new banking subsidiary incorporated under the laws of the Philippines; or (iii) by establishing branches with full banking authority: Provided, That a foreign bank may avail itself of only one (1) mode of entry: Provided, further, That a foreign bank or a Philippine corporation may own up to a sixty percent (60%) of the voting stock of only one (1) domestic bank or new banking subsidiary.

³⁷ Id. at 27.

³⁸ Id. at 116–117.

³⁹ Id. at 116–117.

⁴⁰ Id. at 106 and 113.

⁴¹ Id. at 106 and 113, Comment.

⁴² Id. at 113–114.

⁴³ Id. at 115–116.

⁴⁴ Id. at 154, Resolution dated August 2, 2017.

⁴⁵ Id. at 156.

⁴⁶ Id. at 167–183.

⁴⁷ Id. at 169, OSG Comment.

It notes that the foreign bank may operate in the Philippines.⁴⁸ It adds that the bank had entered the Philippine banking system by purchasing Philippine National Bank-Republic Bank from the Philippine government,⁴⁹ which meant it has the same functions, privileges, and limitations as all Philippine banks.⁵⁰

The Office of the Solicitor General adds that Republic Act No. 10641 has allowed foreign banks to bid and take part in foreclosure sales of real property mortgaged to them and to possess it within five years.⁵¹

The Office of the Solicitor further notes that the constitutional prohibition on alien ownership of lands does not apply in this case, as respondent Maybank did not become the absolute owner of the property.⁵² Unlike a domestic bank,⁵³ a foreign bank does not acquire the property as an absolute owner, but only as a possessor with a “special right and duty to sell”⁵⁴ the property to a qualified Philippine national within five years. Even if no redemption is made within a year of registration of the certificate of sale, a foreign bank still cannot encumber, transform, or destroy the property it acquired in a foreclosure sale.⁵⁵

The Office of the Solicitor General maintains that the national patrimony remains preserved, because Republic Act Nos. 4882 and 10641 prohibit title transfers to foreign banks and require them to sell the foreclosed property to qualified Philippine nationals.⁵⁶

On June 5, 2018, this Court ordered the Monetary Board of the Bangko Sentral ng Pilipinas (Bangko Sentral) and the Bankers Association of the Philippines (the Bankers Association) to each comment on whether the foreclosure and acquisition of respondent Maybank’s properties, a fully-owned foreign corporation, is allowed under the Constitution.⁵⁷

Bangko Sentral maintains that foreign banks are authorized to foreclose mortgages on real property, but are not allowed to acquire or own real properties.⁵⁸ It explains that engaging in banking business is distinct from owning or acquiring land in the Philippines. The business of foreign banks in

⁴⁸ Id. at 171.

⁴⁹ Id. at 171 citing Republic Act No. 8791 (2000), sec. 73 amending Republic Act No. 7721 (1994), sec. 2.

⁵⁰ Id. at 171 citing Republic Act No. 7721 (1994), sec. 8.

⁵¹ Id. at 172. Under Republic Act No. 4882, foreign entities were allegedly prohibited from taking possession of mortgaged property except upon default and only for the sole purpose of foreclosure. *See also* Republic Act No. 10641 (2013), sec. 9; BSP Circular No. 858, series of 2014; and of the Manual of Regulations for Banks, Subsection X311.4.

⁵² Id. at 175.

⁵³ Id. at 176.

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Id. at 184.

⁵⁸ Id. at 244, BSP Comment.

the Philippines is governed by Republic Act No. 7721, as amended by Republic Act No. 10641, while owning or acquiring land is regulated under the Public Land Act and the 1987 Constitution.⁵⁹

Citing the Senate and House's bicameral conference on the bill that soon became the General Banking Law, Bangko Sentral distinguishes the policy on foreign ownership of land from that of banks. It explains that the prohibition on land ownership is stricter because unlike land, the foreign ownership of a bank is still limited by its engaging of business in Philippine money.⁶⁰ It likewise asserts that the liberalization of entry of foreign banks is not meant to allow foreign ownership of land.⁶¹

Bangko Sentral also states that Republic Act No. 7721, as amended by Republic Act No. 10641, is constitutional. It explains that the law, as affirmed in special laws and rules, only allows foreign banks to foreclose real estate mortgages and possess foreclosed land,⁶² but not to consolidate title over the properties.⁶³

For its part, the Bankers Association maintains that respondent Maybank's foreclosure, bid, certificate of sale, and possession of the property are not void.⁶⁴ It contends that foreign banks are not prohibited from participating in foreclosure proceedings and possessing land, as long as they hold the title within the limits allowed under banking laws.⁶⁵ In any case, it adds, the matter is addressed if the land is subsequently transferred to a Philippine national.⁶⁶

The Bankers Association also points out that since the foreclosure happened before Republic Act No. 10641 was passed, the original Republic Act No. 7721 applies in this case.⁶⁷

On Republic Act No. 7721, the Bankers Association elaborates that the law provides equal treatment to foreign banks and grants them functions and privileges similar to domestic banks, including the right to extrajudicially foreclose a security under a valid loan agreement.⁶⁸

The Bankers Association points out that the loan business component, a core function of banks, will be rendered ineffective if banks are prevented

⁵⁹ Id. at 238–241.

⁶⁰ Id. at 238–240.

⁶¹ Id. at 240.

⁶² Id. at 241.

⁶³ Id. at 241–242 citing Section 3 of Republic Act No. 10574 (1192).

⁶⁴ Id. at 259, BAP Comment.

⁶⁵ Id. at 258.

⁶⁶ Id. at 259.

⁶⁷ Id. at 252.

⁶⁸ Id. at 253–254.

from enforcing their rights as secured creditors. Likewise, to deny foreclosure and acquisition rights to foreign banks will disincentivize their entry, which is contrary to the policy behind Republic Act No. 7721.⁶⁹ It likewise asserts that it will also benefit the economy, particularly small and medium enterprises, if more lending and borrowing is encouraged.⁷⁰ Furthermore, to disallow foreign banks from doing so may let unscrupulous persons to take advantage of this prohibition by borrowing from foreign banks, defaulting, and defeating enforcement proceedings with impunity.⁷¹

The Bankers Association also adds that under Section 6 of Republic Act No. 10641, foreign banks may bid and take part in foreclosure sales of land mortgaged to them and to conditionally possess the property.⁷² Thus, while land ownership is still limited to Philippine nationals, the law is not unduly restrictive on the operations of foreign banks.⁷³

Finally, the Bankers Association contends that the five-year period allowing foreign banks to possess the property is the same period allowed under the General Banking Law for all banks to dispose of foreclosed real properties. It surmises that this general rule is the reason why Republic Act No. 7721 was silent on such power of foreign banks.⁷⁴ In any case, it points out that this power has been made explicit in Republic Act No. 10641.⁷⁵

For this Court's resolution are the following issues:

First, whether or not respondents Joaquin and Lilia Parcon are holding the property in trust for petitioner Julie Parcon-Song;

Second, whether or not respondent Maybank Philippines, Inc. is a mortgagee in good faith;

Third, whether or not respondent Maybank Philippines, Inc. is a foreign bank authorized by the Monetary Board to operate in the Philippine banking system; and

Finally, whether or not respondent Maybank Philippines, Inc.'s foreclosure and acquisition of the properties are authorized under the Constitution despite it being a fully-owned foreign corporation.

⁶⁹ Id. at 254–255.

⁷⁰ Id. at 256.

⁷¹ Id. at 259.

⁷² Id. at 255–256 citing cites the Bangko Sentral's "Frequently Asked Questions" on Amendments to Relevant Provisions of the Manual of Regulations for Banks implementing Republic Act No. 10641.

⁷³ Id. at 257.

⁷⁴ Id. at 258.

⁷⁵ Id. at 259.

I

This Court will no longer rule on the first and third issues.

Both the existence of the trust and respondent Maybank's authority to operate in the Philippines as a foreign bank are questions of fact. These are not proper to raise in a Rule 45 petition, which generally only entertains questions of law.⁷⁶

This Court's jurisdiction is limited to errors of law. It is not our function to examine the evidence all over again. If the lower courts' findings are not shown to be unsupported by evidence or based on a gross misapprehension of facts, their factual conclusions shall be respected.⁷⁷

Here, both lower courts found that respondent Maybank is a foreign bank authorized by the Monetary Board to operate in the Philippine banking system.⁷⁸ The Regional Trial Court further ruled that no trust existed between petitioner and her parents.⁷⁹ The Court of Appeals also noted that the title was clean, registered in the name of Lilia Parcon, and had no annotations of liens, encumbrances, or adverse claims.⁸⁰

There is no evidence that these findings were unsupported or manifestly erroneous. Petitioner contested these findings, yet she did not present any proof to establish her allegations.⁸¹ It is a basic evidentiary rule that "[t]he party who alleges a fact has the burden of proving it."⁸² Bare allegations warrant no merit.⁸³ In *Republic v. Estate of Hans Menzi*.⁸⁴

It is procedurally required for each party in a case to prove his own affirmative allegations by the degree of evidence required by law. In civil cases such as this one, the degree of evidence required of a party in order to support his claim is preponderance of evidence, or that evidence adduced by one party which is more conclusive and credible than that of the other party. It is therefore incumbent upon the plaintiff who is claiming a right to prove his case. Corollarily, the defendant must likewise prove its own allegations to buttress its claim that it is not liable.

⁷⁶ RULES OF COURT, Rule 45, sec. 1.

⁷⁷ *Fangonil-Herrera v. Fangonil*, 558 Phil. 235, 256–257 (2007) [Per J. Chico-Nazario, Third Division] citing *Philippine Airlines, Inc. v. Court of Appeals*, 341 Phil. 624 (1997) [Per J. Regalado, Second Division].

⁷⁸ *Rollo*, pp. 45 and 87.

⁷⁹ *Id.* at 86.

⁸⁰ *Id.* at 44.

⁸¹ *Id.* at 28.

⁸² *Republic v. Estate of Hans Menzi*, 512 Phil. 425, 457 (2005) [Per J. Tinga, En Banc].

⁸³ *Id.*

⁸⁴ 512 Phil. 425 (2005) [Per J. Tinga, En Banc].

The party who alleges a fact has the burden of proving it. The burden of proof may be on the plaintiff or the defendant. It is on the defendant if he alleges an affirmative defense which is not a denial of an essential ingredient in the plaintiff's cause of action, but is one which, if established, will be a good defense – *i.e.*, an “avoidance” of the claim.⁸⁵ (Citations omitted)

Thus, this Court affirms the lower courts' findings as to the absence of the trust and the authority of respondent Maybank to operate as a foreign bank in the Philippines.

II

Likewise, the real estate mortgage is valid.

Under the doctrine of mortgagee in good faith, a mortgage is deemed valid if the mortgagee relied in good faith on what appears on the face of the certificate of title. This is so even if the mortgagor fraudulently acquired the title to the property.⁸⁶ In *Cabuhad v. Court of Appeals*:⁸⁷

However, it is well-settled that even if the procurement of a certificate of title was tainted with fraud and misrepresentation, such defective title may be the source of a completely legal and valid title in the hands of an innocent purchaser for value. . . .

....

Just as an innocent purchaser for value may rely on what appears in the certificate of title, a mortgagee has the right to rely on what appears in the title presented to him, and in the absence of anything to excite suspicion, he is under no obligation to look beyond the certificate and investigate the title of the mortgagor appearing on the face of the said certificate. Furthermore, it is a well-entrenched legal principle that when an innocent mortgagee who relies upon the correctness of a certificate of title consequently acquires rights over the mortgaged property, the courts cannot disregard such rights.⁸⁸ (Citations omitted)

Generally, if the certificate of title indicates nothing that will raise concern, and the mortgagee is unaware of any defect in the title or any other problematic circumstance surrounding the property, the mortgagee is not required to further investigate.⁸⁹

The rationale for this doctrine is the public's interest in sustaining the

⁸⁵ Id. at 456–457.

⁸⁶ See *Claudio v. Spouses Saraza*, 767 Phil. 857 (2015) [Per J. Mendoza, Second Division].

⁸⁷ 418 Phil. 451 (2001) [Per J. Ynares-Santiago, First Division].

⁸⁸ Id. at 456.

⁸⁹ See *Claudio v. Spouses Saraza*, 767 Phil. 857 (2015) [Per J. Mendoza, Second Division].

certificate of title's indefeasibility "as evidence of the lawful ownership of the land or of any encumbrance"⁹⁰ on it. In *Andres v. Philippine National Bank*:⁹¹

The doctrine protecting mortgagees and innocent purchasers in good faith emanates from the social interest embedded in the legal concept granting indefeasibility of titles. The burden of discovery of invalid transactions relating to the property covered by a title appearing regular on its face is shifted from the third party relying on the title to the co-owners or the predecessors of the title holder. Between the third party and the co-owners, it will be the latter that will be more intimately knowledgeable about the status of the property and its history. The costs of discovery of the basis of invalidity, thus, are better borne by them because it would naturally be lower. A reverse presumption will only increase costs for the economy, delay transactions, and, thus, achieve a less optimal welfare level for the entire society.⁹² (Citation omitted)

However, when the mortgagee is a bank, a higher standard is imposed before it is considered a mortgagee in good faith. Banks cannot simply rely on the title alone, but must further investigate the property to ensure the genuineness of the title.⁹³ In *Land Bank of the Philippines v. Belle Corporation*:⁹⁴

When the purchaser or the mortgagee is a bank, the rule on innocent purchasers or mortgagees for value is applied more strictly. Being in the business of extending loans secured by real estate mortgage, banks are presumed to be familiar with the rules on land registration. Since the banking business is impressed with public interest, they are expected to be more cautious, to exercise a higher degree of diligence, care and prudence, than private individuals in their dealings, even those involving registered lands. Banks may not simply rely on the face of the certificate of title. Hence, they cannot assume that, simply because the title offered as security is on its face free of any encumbrances or lien, they are relieved of the responsibility of taking further steps to verify the title and inspect the properties to be mortgaged. As expected, the ascertainment of the status or condition of a property offered to it as security for a loan must be a standard and indispensable part of a bank's operations. It is of judicial notice that the standard practice for banks before approving a loan is to send its representatives to the property offered as collateral to assess its actual condition, verify the genuineness of the title, and investigate who is/are its real owner/s and actual possessors.⁹⁵ (Citations omitted)

Likewise, in *Andres*:

The general rule allows every person dealing with registered land to

⁹⁰ Id. at 867 citing *Cavite Development Bank v. Lim*, 381 Phil. 355 (2000) [Per J. Mendoza, Second Division].

⁹¹ 745 Phil. 459 (2014) [Per J. Leonen, Second Division].

⁹² Id. at 473.

⁹³ *Land Bank of the Phils. v. Belle Corp.*, 768 Phil. 368 (2015) [Per J. Peralta, Third Division].

⁹⁴ 768 Phil. 368 (2015) [Per J. Peralta, Third Division].

⁹⁵ Id. at 385-386.

rely on the face of the title when determining its absolute owner. . . .

....

However, the banking industry belongs to a different category than private individuals. Banks are considered businesses impressed with public interest, requiring “high standards of integrity and performance.” Consequently, banks must exercise greater care, prudence, and due diligence in their property dealings. The standard operating practice for banks when acting on a loan application is “to conduct an ocular inspection of the property offered for mortgage and to verify the genuineness of the title to determine the real owner(s) thereof.”⁹⁶ (Citations omitted)

Thus, a bank is a mortgagee in good faith if it inspected and investigated the property in accordance with the standards imposed on banks.

However, this Court rules that a bank should not necessarily be made liable if it did not investigate or inspect the property. If the circumstances reveal that an investigation would still not yield a discovery of any anomaly, or anything that would arouse suspicion, the bank should not be liable.

Here, both lower courts consistently held that Transfer Certificate of Title No. 107064 was clean. It was registered in the name of respondent Lilia Parcon and bore no annotations evidencing any trust, lien, or encumbrance on the property. The title was not forged or fake. There is likewise no showing that respondent Maybank was aware of any defect or any other conflicting right on the title when the property was mortgaged to it.⁹⁷

There is no factual finding on whether respondent Maybank actually inspected the property. The Court of Appeals simply ruled that the inspection is not necessary and respondent Maybank’s reliance on the clean title was sufficient.⁹⁸ Similarly, the Regional Trial Court found that it cannot be prejudiced by rights over the property not duly annotated in the title.⁹⁹

Regardless, the circumstances show that had respondent Maybank conducted an investigation, it would still not have discovered any issue on the mortgaged property.

Petitioner has the burden to prove that she is in actual possession of the property—a burden she failed to discharge.

By her account, petitioner allegedly purchased the property from PACE

⁹⁶ *Andres v. Philippine National Bank*, 745 Phil. 459, 474–475 (2014) [Per J. Leonen, Second Division].

⁹⁷ *Rollo*, p. 44.

⁹⁸ *Id.*

⁹⁹ *Id.* at 87.

Realty Investment, Inc. using her own money, but used her mother's name to acquire it.¹⁰⁰ Thus, in 1994, the title was registered in respondent Lilia Parcon's name.¹⁰¹ Petitioner admitted that she let her parents and siblings occupy the property and gave them financial support.¹⁰²

Clearly, the ones in actual possession of the property were the Parcon Spouses and petitioner's siblings.¹⁰³ Thus, had respondent Maybank investigated the property, it would still not have found any issue.

Petitioner had had several chances to substantiate her claims. The Regional Trial Court had initially dismissed the case because of her failure to prosecute. When she moved for reconsideration, the trial court reinstated the case and allowed her to present her evidence. Nonetheless, she was unable to continue her direct testimony and did not conduct a cross-examination because her counsels failed to appear. Thus, the trial court deemed her to have waived her right to formally offer her evidence.

Without clear and convincing evidence that petitioner's claims are facts, respondent Maybank remains a mortgagee in good faith. Hence, this Court affirms the lower courts' finding that the mortgage is valid.

III

Petitioner questions the constitutionality of respondent Maybank's foreclosure and acquisition of the mortgaged property, arguing that it violates the prohibition on alien ownership of real property under Article XII, Section 3 of the 1987 Constitution.¹⁰⁴

We decline to rule on the constitutionality of the foreclosure. This case may be resolved on the basis of a statute.

III (A)

Respondent Maybank's acquisition of the property is void. At the time of the foreclosure sale, the governing law provided that foreign banks may not participate in the foreclosure and acquisition of mortgaged properties.

As a foreign bank, respondent Maybank is authorized to operate in the

¹⁰⁰ Id. at 38.

¹⁰¹ Id. at 39.

¹⁰² Id. at 76.

¹⁰³ Id. at 76-77.

¹⁰⁴ Id. at 19 and 22.

Philippine banking system, with the same rights and privileges as Philippine banks.¹⁰⁵ Under Republic Act No. 8791, or the General Banking Law, the entry of foreign banks is governed by Republic Act No. 7721, or the Foreign Bank Liberalization Act.¹⁰⁶

Enacted in 1994,¹⁰⁷ the underlying policy of the Foreign Bank Liberalization Act is to develop a more “stable, competitive, efficient, and dynamic banking and financial system”¹⁰⁸ by encouraging greater foreign participation. It allowed foreign banks to operate in the Philippine banking system through any of the following modes of entry:

(i) by acquiring, purchasing or owning up to sixty percent (60%) of the voting stock of an existing bank; (ii) by investing in up to sixty percent (60%) of the voting stock of a new banking subsidiary incorporated under the laws of the Philippines; or (iii) by establishing branches with full banking authority[.]¹⁰⁹

Under this provision, a foreign bank may own up to 60% of the voting stock of only one domestic bank or new banking subsidiary.¹¹⁰

Nonetheless, the law maintained the State policy to keep the financial system “effectively controlled by Filipinos.”¹¹¹ It mandated the Monetary Board to always ensure that “the control of seventy percent (70%) of the resources or assets of the entire banking system is held by domestic banks which are at least majority-owned by Filipinos[.]”¹¹²

Prior to its amendment in 2014, the Foreign Bank Liberalization Act was silent on whether foreign banks can foreclose mortgages and acquire mortgaged properties.

Generally, for matters not covered by the Foreign Bank Liberalization Act, the provisions of the General Banking Law applied to foreign banks.¹¹³ The General Banking Law allowed banks to foreclose real estate mortgages

¹⁰⁵ Republic Act No. 7721 (1994), secs. 2 and 8; as amended by Republic Act No. 10641 (2013).

¹⁰⁶ Republic Act No. 8791 (2000), sec. 72.

¹⁰⁷ An Act Liberalizing the Entry of Scope of Operations of Foreign Banks in the Philippines and For Other Purposes.

¹⁰⁸ Republic Act No. 7721 (1994), sec. 1.

¹⁰⁹ Republic Act No. 7721 (1994), sec. 2.

¹¹⁰ Republic Act No. 7721 (1994), sec. 2.

¹¹¹ Republic Act No. 7721 (1994), sec. 1.

¹¹² Republic Act No. 7721 (1994), sec. 3.

¹¹³ Republic Act No. 8791 (2000), sec. 77 provides:

SECTION 77. *Laws Applicable.* — In all matters not specifically covered by special provisions applicable only to a foreign bank or its branches and other offices in the Philippines, any foreign bank licensed to do business in the Philippines shall be bound by the provisions of this Act, all other laws, rules and regulations applicable to banks organized under the laws of the Philippines of the same class, except those that provide for the creation, formation, organization or dissolution of corporations or for the fixing of the relations, liabilities, responsibilities, or duties of stockholders, members, directors or officers of corporations to each other or to the corporation.

and to acquire real properties mortgaged to it in good faith. Its Section 52 provides:

SECTION 52. *Acquisition of Real Estate by Way of Satisfaction of Claims.* — Notwithstanding the limitations of the preceding Section, a bank may acquire, hold or convey real property under the following circumstances:

52.1. *Such as shall be mortgaged to it in good faith by way of security for debts;*

.....

Any real property acquired or held under the circumstances enumerated in the above paragraph *shall be disposed of by the bank within a period of five (5) years or as may be prescribed by the Monetary Board: Provided, however, That the bank may, after said period, continue to hold the property for its own use, subject to the limitations of the preceding Section.* (25a) (Emphasis supplied)

However, a more specific rule is found in Republic Act No. 4882, which amended Republic Act No. 133. It states:

SECTION 1. Any provision of law to the contrary notwithstanding, private real property may be mortgaged in favor of any individual, corporation, or association, but the mortgagee or his successor in interest, if disqualified to acquire or hold lands of the public domain in the Philippines, shall not take possession of the mortgaged property during the existence of the mortgage and shall not take possession of mortgaged property except after default and for the sole purpose of foreclosure, receivership, enforcement or other proceedings and in no case for a period of more than five years from actual possession *and shall not bid or take part in any sale of such real property in case of foreclosure: Provided, That said mortgagee or successor in interest may take possession of said property after default in accordance with the prescribed judicial procedures for foreclosure and receivership and in no case exceeding five years from actual possession.*¹¹⁴ (Emphasis supplied)

Thus, a mortgagee who is prohibited from acquiring public lands may possess the property for five years after default and for the purpose of foreclosure. However, it may not bid or take part in any foreclosure sale of the real property.

In 2014, Congress enacted Republic Act No. 10641 to amend the Foreign Bank Liberalization Act. The amendment allowed the full entry of foreign banks in the Philippines,¹¹⁵ though it maintained the State policy to

¹¹⁴ Republic Act No. 4882 (1967), sec. 1, amending Republic Act No. 133 (1947).

¹¹⁵ Section 1 of Republic Act No. 10641 allowed foreign banks to enter the banking system: "(i) by acquiring, purchasing or owning up to one hundred percent (100%) of the voting stock of an existing bank; (ii) by investing in up to one hundred percent (100%) of the voting stock of a new banking

keep the financial system effectively controlled by Filipinos.¹¹⁶ Notably, it gave authorized foreign banks the same functions, privileges, and limitations as domestic banks of the same category. Likewise, any right, privilege, or incentive granted to foreign banks is extended to Philippine banks.¹¹⁷ Thus, a new provision on foreclosure proceedings was added:

SEC. 9. *Participation in Foreclosure Proceedings.* — Foreign banks which are authorized to do banking business in the Philippines through any of the modes of entry under Section 2 hereof shall be allowed to bid and take part in foreclosure sales of real property mortgaged to them, as well as to avail of enforcement and other proceedings, and accordingly take possession of the mortgaged property, for a period not exceeding five (5) years from actual possession: *Provided*, That in no event shall title to the property be transferred to such foreign bank. In case said bank is the winning bidder, it shall, during the said five (5)-year period, transfer its rights to a qualified Philippine national, without prejudice to a borrower's rights under applicable laws. Should the bank fail to transfer such property within the five (5)-year period, it shall be penalized one half (1/2) of one percent (1%) per annum of the price at which the property was foreclosed until it is able to transfer the property to a qualified Philippine national.¹¹⁸

Thus, a foreign bank can now participate in foreclosure sales of real property mortgaged to it, and even possess it. There are limitations, namely: (a) the possession must be limited to five years; (b) the property title shall not be transferred to it; and (c) within the five-year period, it must transfer its rights to a qualified Philippine national. In case a foreign bank fails to transfer the property, it will be liable to pay half of 1% per annum of the foreclosure price until it transfers the property.

Clearly, under Republic Act No. 10641, foreign banks may now foreclose and acquire mortgaged properties.

However, Republic Act No. 10641, which was enacted in 2014, does not apply in this case. Here, the loans were obtained and the real estate mortgage was executed and annotated on the title in 1995.¹¹⁹ The default on the loans, the foreclosure of the mortgage, and the property acquisition took

subsidiary incorporated under the laws of the Philippines; or (iii) by establishing branches with full banking authority”

¹¹⁶ Sections 2 and 3 of Republic Act No. 10641 provide that the financial system will still be effectively controlled by Filipinos by: (i) refining the guidelines before a foreign bank may be allowed to operate; and (ii) mandating that the Monetary Board ensure at all times that the control of 60% of the resources or assets of the entire banking system is held by domestic banks which are at least majority-owned by Filipinos.

¹¹⁷ Republic Act No. 10641 (2014), sec. 5 provides:

SECTION 8. *Equal Treatment.* — Foreign banks authorized to operate under Section 2 of this Act, shall perform the same functions, enjoy the same privileges, and be subject to the same limitations imposed upon a Philippine bank of the same category. . . .

Any right, privilege or incentive granted to foreign banks or their subsidiaries or affiliates under this Act, shall be equally enjoyed by and extended under the same conditions to Philippine banks.

¹¹⁸ Republic Act No. 10641 (2014), sec. 6.

¹¹⁹ *Rollo*, p. 40.

place in 2001.¹²⁰

The law then in place was Republic Act No. 4882. Consequently, respondent Maybank was still a mortgagee disqualified to acquire lands in the Philippines. It may possess the mortgaged property after default and solely for foreclosure, but it cannot bid or take part in any foreclosure sale.

Thus, the sale to respondent Maybank is invalid.

III (B)

Evidently, this case could be resolved without tackling whether a foreign bank's participation in a foreclosure sale of real property is constitutionally allowed. This Court shall follow the dictates of the constitutional policy of avoidance.

Before this Court may determine the constitutionality of a government act, the requisites for judicial review must be satisfied. In *In Re: Save the Supreme Court Judicial Independence and Fiscal Autonomy Movement*:¹²¹

The power of judicial review, like all powers granted by the Constitution, is subject to certain limitations. Petitioner must comply with all the requisites for judicial review before this court may take cognizance of the case. The requisites are:

- (1) there must be an actual case or controversy calling for the exercise of judicial power;
- (2) the person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement;
- (3) the question of constitutionality must be raised at the earliest opportunity; and
- (4) the issue of constitutionality must be the very *lis mota* of the case.¹²² (Citation omitted)

The fourth requisite is relevant here. Courts are obligated to presume that the acts of Congress are valid, unless the contrary is clearly shown. Thus, courts avoid resolving the constitutionality of a law if the case can be ruled on

¹²⁰ Id. at 39 and 41.

¹²¹ 751 Phil. 30 (2015) [Per J. Leonen, En Banc].

¹²² Id. at 36.

other grounds.¹²³ The question of constitutionality will only be passed upon if it is indispensable to the resolution of the case,¹²⁴ but it cannot be raised collaterally.¹²⁵ This Court ruled:

Judicial review of official acts on the ground of unconstitutionality may be sought or availed of through any of the actions cognizable by courts of justice, not necessarily in a suit for declaratory relief. . . . The constitutional issue, however, (a) must be properly raised and presented in the case, and (b) its resolution is necessary to a determination of the case, *i.e.*, the issue of constitutionality must be the very *lis mota* presented.¹²⁶ (Citation omitted)

These principles were further discussed in *Ty v. Trampe*:¹²⁷

Having already definitively disposed of the case through the resolution of the foregoing two issues, we find no more need to pass upon the third. It is axiomatic that the constitutionality of a law, regulation, ordinance or act will not be resolved by courts if the controversy can be, as in this case it has been, settled on other grounds. In the recent case of *Macasiano vs. National Housing Authority*, this Court declared:

“It is a rule firmly entrenched in our jurisprudence that the constitutionality of an act of the legislature will not be determined by the courts unless that question is properly raised and presented in appropriate cases and is necessary to a determination of the case, *i.e.*, the issue of constitutionality must be the very *lis mota* presented. To reiterate, the essential requisites for a successful judicial inquiry into the constitutionality of a law are: (a) the existence of an actual case or controversy involving a conflict of legal rights susceptible of judicial determination, (b) the constitutional question must be raised by a proper party, (c) the constitutional question must be raised at the earliest opportunity, and (d) *the resolution of the constitutional question must be necessary to the decision of the case.*” (Italics supplied)

The aforementioned decision in *Macasiano* merely reiterated the ruling in *Laurel vs. Garcia*, where this Court held:

“The Court does not ordinarily pass upon constitutional questions unless these questions are properly raised in appropriate cases and their resolution is necessary for the determination of the case[.] *The Court will not pass upon a constitutional question although properly presented by the record if the case can be disposed of on some other*

¹²³ *Planters Products, Inc. v. Fertiphil Corp.*, 572 Phil. 270 [Per J. Reyes, R.T., Third Division] citing *Lim v. Pacquing*, 310 Phil. 722 (1995) [Per J. Padilla, En Banc].

¹²⁴ *Tarrosa v. Gabriel C. Singson*, 302 Phil. 588 (1994) [Per J. Quiason, En Banc] citing *Fernandez v. Torres*, 289 Phil. 972 (1992) [Per J. Feliciano, En Banc].

¹²⁵ *Laude v. Ginez-Jabalde*, 773 Phil. 490 (2015) [Per J. Leonen, En Banc].

¹²⁶ *Planters Products, Inc. v. Fertiphil Corporation*, 572 Phil. 270, 291 (2008) [Per J. R. T. Reyes, Third Division].

¹²⁷ 321 Phil. 81 (1995) [Per J. Panganiban, En Banc].

*found such as the application of a statute or general law[.]*¹²⁸
(Emphasis in the original, citations omitted)

In *Spouses Mirasol v. Court of Appeals*,¹²⁹ this Court explained that the presumption of constitutionality is anchored on the doctrine of separation of powers. Courts should not assume that legislative and executive acts were done without thoughtful consideration:

As regards the *second issue*, petitioners contend that P.D. No. 579 and its implementing issuances are void for violating the due process clause and the prohibition against the taking of private property without just compensation. Petitioners now ask this Court to exercise its power of judicial review.

Jurisprudence has laid down the following requisites for the exercise of this power: First, there must be before the Court an actual case calling for the exercise of judicial review. Second, the question before the Court must be ripe for adjudication. Third, the person challenging the validity of the act must have standing to challenge. Fourth, the question of constitutionality must have been raised at the earliest opportunity, and lastly, the issue of constitutionality must be the very *lis mota* of the case.

As a rule, the courts will not resolve the constitutionality of a law, if the controversy can be settled on other grounds. The policy of the courts is to avoid ruling on constitutional questions and to presume that the acts of the political departments are valid, absent a clear and unmistakable showing to the contrary. To doubt is to sustain. This presumption is based on the doctrine of separation of powers. This means that the measure had first been carefully studied by the legislative and executive departments and found to be in accord with the Constitution before it was finally enacted and approved.

The present case was instituted primarily for accounting and specific performance. The Court of Appeals correctly ruled that PNB's obligation to render an accounting is an issue, which can be determined, without having to rule on the constitutionality of P.D. No. 579. In fact there is nothing in P.D. No. 579, which is applicable to PNB's intransigence in refusing to give an accounting. The governing law should be the law on agency, it being undisputed that PNB acted as petitioners' agent. In other words, the requisite that the constitutionality of the law in question be the very *lis mota* of the case is absent. Thus we cannot rule on the constitutionality of P.D. No. 579.¹³⁰ (Citations omitted)

In this case, the applicable law that governed the sale is not Republic Act No. 10641. The foreclosure took place in 2001, prior to the enactment of Republic Act No. 10641 in 2014. Republic Act No. 10641 is not in question; thus, its constitutionality cannot be addressed.

¹²⁸ Id. at 103.

¹²⁹ 403 Phil. 760 (2001) [Per J. Quisumbing, Second Division].

¹³⁰ Id. at 773-774.

Moreover, this case was filed for annulment of title, reconveyance of the transfer certificate of title, annulment of mortgage and foreclosure proceedings, and declaration of family home. All the issues may be resolved without determining the constitutionality of Republic Act No. 10641.


The judicial review requirement that a constitutional issue seasonably raised should be the *lis mota* of the case is rooted in two constitutional principles: first, the principle of deference; and second, the principle of reasonable caution in striking down an act by a co-equal political branch of government.

Article VIII, Section 1 of the Constitution, which specifies that courts may act on any grave abuse of discretion by any government branch or instrumentality, does not license this Court to issue advisory opinions. Apart from an actual case or controversy, this Court must be satisfied that the reliefs prayed for require the resolution of a constitutional issue.

There are exceptions, namely: (a) when a facial review of the statute is allowed, as in cases of actual or clearly imminent violation of the sovereign rights to free expression and its cognate rights; or (b) when there is a clear and convincing showing that a fundamental constitutional right has been actually violated in the application of a statute, which are of transcendental interest. The violation must be so demonstrably and urgently egregious that it outweighs a reasonable policy of deference in such specific instance. The facts constituting that violation must either be uncontested or established on trial. The basis for ruling on the constitutional issue must also be clearly alleged and traversed by the parties. Otherwise, this Court will not take cognizance of the constitutional issue, let alone rule on it.

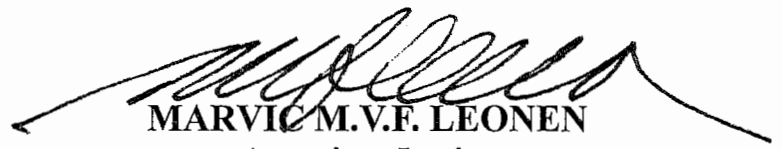
This case is no exception. We decline to resolve the constitutionality of Section 9 of Republic Act No. 10641 as it is not the very *lis mota* of the case. The relief can be granted simply by examining the applicable statute. Besides, there was no constitutional violation so urgently egregious that it should outweigh our reasonable policy of deference to the two other constitutional branches of government.

WHEREFORE, this Court **PARTIALLY GRANTS** the Petition. The August 17, 2011 Decision and November 28, 2011 Resolution of the Court of Appeals in CA-G.R. CV No. 93681 is **MODIFIED**. Transfer Certificate of Title No. 107064 in the name of respondent Lilia Parcon and the real estate mortgage dated November 28, 1995 in favor of respondent Maybank Philippines, Inc. are deemed **VALID**. Petitioner Julie Parcon-Song's prayer to transfer the property to her as its true and lawful owner is **DENIED**. However, the foreclosure sale of the property in favor of respondent Maybank Philippines, Inc. is declared **VOID**, without prejudice to another foreclosure



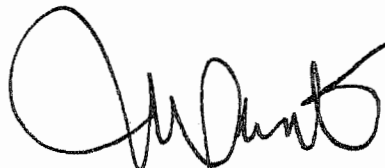
sale under Republic Act No. 10641 if warranted.

SO ORDERED.

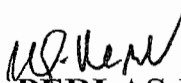


MARVIC M.V.F. LEONEN
Associate Justice

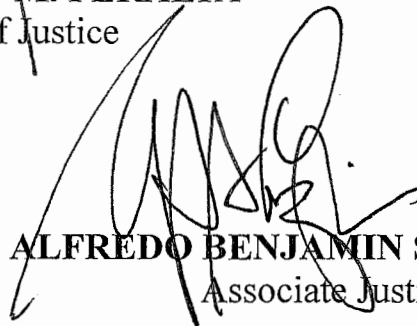
WE CONCUR:



DIOSDADO M. PERALTA
Chief Justice

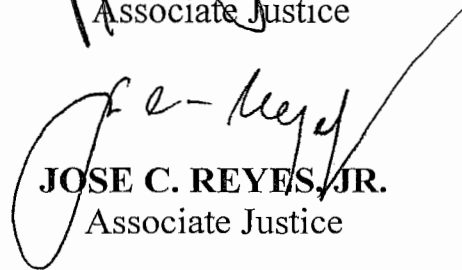


ESTELA M. PERLAS-BERNABE
Associate Justice



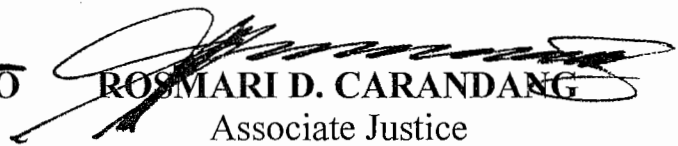
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

On official leave
ALEXANDER G. GESMUNDO
Associate Justice



JOSE C. REYES, JR.
Associate Justice

See concurring Opinion.
Perlas-Bernabe
RAMON PAUL L. HERNANDO
Associate Justice




ROSMARI D. CARANDANG
Associate Justice



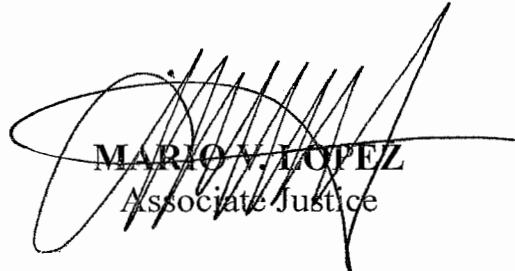
AMY C. LAZARO-JAVIER
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice



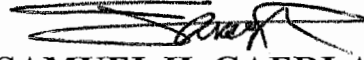
RODIL N. ZALAMEDA
Associate Justice



MARIO V. LOPEZ
Associate Justice



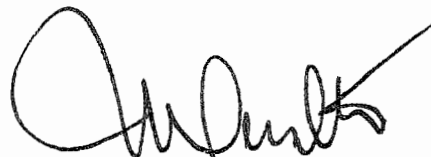
EDGARDO L. DELOS SANTOS
Associate Justice



SAMUEL H. GAERLAN
Associate Justice

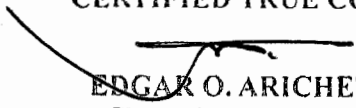
CERTIFICATION

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.



DIOSDADO M. PERALTA
Chief Justice

CERTIFIED TRUE COPY



EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court