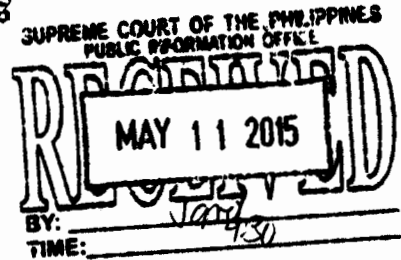




Republic of the Philippines  
Supreme Court  
Manila  
FIRST DIVISION



**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **January 21, 2015** which reads as follows:*

**“G.R. No. 155674 – DEVELOPMENT BANK OF THE PHILIPPINES, Petitioner, v. NATIONAL COLLEGE OF BUSINESS AND ARTS, Respondent.**

Under review is the decision promulgated on June 21, 2002,<sup>1</sup> whereby the Court of Appeals (CA) affirmed the judgment rendered on March 11, 1996 by the Regional Trial Court (RTC), Branch 30, in Manila in favor of the respondent.

**Antecedents**

On September 12, 1969, the Manila Yellow Taxicab Co., Inc. (MYTC) and Monserrat Enterprises Co. (MEC) borrowed the principal sum of ₱5,200,000.00 from the petitioner. In the transaction, MYTC and MEC were represented by Spouses Felipe Monserrat (Felipe) and Natividad Larena and the Spouses Enrique Monserrat, Jr. (Enrique) and Teresa Ayesa.<sup>2</sup> The obligation was secured by the real estate mortgage involving seven parcels of land located on V. Mapa Street, Manila, and covered by Transfer Certificate of Title (TCT) No. 83621 to TCT No. 83627 of the Office of the Register of Deeds of Manila (V. Mapa properties); and four parcels of land situated in Quiapo, Manila, covered by

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<sup>1</sup> *Rollo*, pp. 8-20; penned by Associate Justice Romeo A. Brawner (later Presiding Justice, but retired/deceased), with the concurrence of Associate Justice Jose L. Sabio, Jr. (retired/deceased) and Associate Justice Mario L. Guariña III (retired).

<sup>2</sup> *Id.* at 9.

TCT No. 46138 and TCT No. 51203 of the Office of the Register of Deeds of Manila (Quiapo properties). The Deed of Mortgage was duly registered in the Office of the Register of Deeds of Manila on September 25, 1969.<sup>3</sup> Upon its failure to pay the loan, MYTC agreed to settle its obligations through *dacion en pago* whereby MYTC would convey the mortgaged properties in favor of the petitioner. Felipe wrote subsequently to President Marcos requesting the exclusion of the V. Mapa properties from the arrangement because said properties were not owned by MYTC, but by their mother who was already 80 years old.<sup>4</sup> On January 18, 1981, MYTC and the petitioner executed the *dacion en pago* covering only the Quiapo properties for the extinguishment of the obligation. Despite this, the petitioner did not release the mortgage on the V. Mapa properties.<sup>5</sup>

On May 21, 1982, Felipe and Enrique sold the V. Mapa properties to the respondent. In the transaction, Enrique was represented by his attorney-in-fact.<sup>6</sup>

Felipe and Enrique thereafter failed to secure the release of the titles of the V. Mapa properties. Hence, the respondent instituted this action for specific performance against them, alternatively praying for rescission and damages, in the RTC in Manila (Civil Case No. 83-16617). The respondent amended its complaint to include the petitioner as a defendant, and further caused the annotation of a notice of *lis pendens* on TCT No. 83621 to TCT No. 83627 under Entry No. 4450/T-83621 as to the V. Mapa properties.<sup>7</sup>

On August 19, 1985, the petitioner filed its answer to the amended complaint, averring as special and affirmative defense that when the respondent entered into the Deed of Absolute Sale with the Monserrats, such sale was made specifically subject to the lien in favor of the petitioner; that when the Deed of Absolute Sale was executed on May 21, 1982 the Deed of Cession executed between the petitioner and the Monserrats had already been in existence for almost a year; and that, therefore, the title of the respondent remained subject to the petitioner's lien because the respondent acquired the properties with full knowledge of the lien.<sup>8</sup>

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<sup>3</sup> Id.  
<sup>4</sup> Id.  
<sup>5</sup> Id.  
<sup>6</sup> Id. at 10.  
<sup>7</sup> Id.  
<sup>8</sup> Id.

On December 8, 1986, Enrique filed his answer asserting that he never authorized Felipe to sell the properties in litigation; and that his signature on the special power of attorney had been falsified.<sup>9</sup>

It appears that on January 15, 1973, Filoil (which Petron subsequently purchased) sued MYTC and the Monserrats for collection of a debt (Civil Case No. 89462); that on May 22, 1974, the trial court ruled in favor of Petron,<sup>10</sup> which then filed a motion for execution pending appeal;<sup>11</sup> that the trial court granted the motion of Petron, and the sheriff levied on the personal and real properties of the Monserrats; and that the petitioner interposed a third-party claim stating that the properties were the subject of the first mortgage in its favor, and were not subject to attachment or levy.

As the successor of Filoil, Petron moved to intervene in Civil Case No. 83-16617 on the basis of the Deed of Absolute Sale executed in favor of the respondent being a nullity.<sup>12</sup> After the trial court dismissed the third-party claim of the petitioner, Petron moved to set the public auction of the V. Mapa properties.<sup>13</sup> On April 29, 1985, Petron, being the highest bidder in the public auction, became the purchaser of the one-half interest of Felipe in the V. Mapa properties covered by TCT No. 83621 to TCT No. 83627. Subsequently, for failure of Felipe to exercise the right of redemption, the Final Deed of Sale dated December 5, 1986 was executed in favor of Petron.<sup>14</sup> Thence, the RTC issued a writ of possession in favor of Petron. On July 31, 1992, the CA upheld the issuance of the writ of possession as to the one-half undivided interest of Felipe. Although the respondent filed a petition for review on *certiorari* to assail the CA's decision, the Court ultimately denied the petition for review. The denial became final, and the entry of judgment issued on March 28, 1994.<sup>15</sup>

With Petron having acquired ownership of the V. Mapa properties, the RTC in Makati directed the Office of the Register of Deeds of Manila to cancel TCT No. 83621 to TCT No. 83627 and to issue new transfer certificates of title to Petron. The new TCTs were TCT No. 199394 to TCT No. 199400, inclusive.

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<sup>9</sup> Id. at 11.  
<sup>10</sup> Id. at 87.  
<sup>11</sup> Id. at 88.  
<sup>12</sup> Id. at 13.  
<sup>13</sup> Id. at 12.  
<sup>14</sup> Id.  
<sup>15</sup> Id.

The respondent filed in the CA a petition for *certiorari* and prohibition to annul the writ of possession issued at the instance of Petron. The CA eventually dismissed the petition for *certiorari* and prohibition, and the dismissal was affirmed by the Court.<sup>16</sup>

### Decision of the RTC

After trial in Civil Case No. 83-16617, the RTC ruled in favor of the respondent, to wit:

WHEREFORE, judgment is rendered in favor of plaintiff NCBA and against defendants and intervenor as follows:

1. Declaring plaintiff NCBA the owner in fee simple of the properties in question, now covered by TCT Nos. 199394 to 199400 of the Registry of Deeds of Manila in the name of intervenor Petrophil Corporation (now Petron);
2. Declaring fully extinguished the mortgage of the property in question in favor of defendant Development Bank of the Philippines (DBP);
3. Ordering the Register of Deeds of Manila to cancel Transfer Certificate of Title Nos. 199394 to 199400 of said Registry and/or all transfer certificates of title derived or issued subsequent thereto and to issue, in lieu thereof, new transfer certificates of title in the name of plaintiff NCBA free from the mortgage in favor of defendant Development Bank of the Philippines (DBP);
4. Declaring the owner's duplicate copies of Transfer Certificate of Title Nos. 199394 to 199400 of the Registry of Deeds of Manila and all certificates of title issued subsequent thereto null and void;
5. Ordering defendants Felipe Monserrat, Enrique Monserrat and Development Bank of the Philippines and intervenor and third-party plaintiff Petrophil (now known as Petron) jointly and severally to pay to plaintiff NCBA the amounts of ₱100,000.00 as exemplary damages and ₱150,000.00 as attorney's fees, in addition to the costs of suit.

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<sup>16</sup> Id.

6. Dismissing the defendant's counterclaims and cross-claims, and the intervention and third party complaint of Petrophil (now Petron).

SO ORDERED.<sup>17</sup>

### Decision of the CA

Separate appeals to the CA were brought by the petitioner, Enrique and Petron. The Philippine National Oil Company (PNOC) was allowed by the CA to intervene, based on the Deed of Conveyance executed by Petron in its favor.<sup>18</sup>

Three issues were submitted on appeal, namely: (a) whether or not the signature of Enrique in the Deed of Sale was forged; (b) whether or not the principle of *res judicata* was applicable; (c) whether or not the trial court erred in declaring the respondent the owner of the V. Mapa properties.

On June 21, 2002, the CA affirmed the RTC, holding:

First. On the issue of forgery, Enrique faults the trial court for finding him liable to NCBA for the falsification of Felipe in the Deed of Sale when in fact, Felipe was indicted for estafa and falsification.

We are not persuaded. We agree with the trial court that the Memorandum of Preliminary Investigation filed by Enrique, and even the Information filed against Felipe, do not, standing alone, prove forgery. Forgery cannot be presumed; it must be proved by clear, positive and convincing evidence. Bare assertions are not enough. Those who make the allegation of forgery have the burden of proving it since a mere allegation is not evidence.

Enrique further asserts that it is incumbent upon NCBA to prove in court the execution and authenticity of the signature in the Special Power of Attorney.

His contention is bereft of merit. On the contrary, the burden of proof was upon Enrique to prove forgery. Note that the Special Power of Attorney was a notarized document. As such, it has in its favor the presumption of regularity, and it carries evidentiary weight conferred upon it with respect to its due execution. The records are bereft of any evidence that Enrique made efforts to substantiate his claim of forgery.

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<sup>17</sup> Id. at 103-104.

<sup>18</sup> Id. at 14.

He did not even bother to present a handwriting expert as a witness to support his claim. The presumption of regularity having not been overcome by any evidence to the contrary, the Special Power of Attorney is admissible in evidence without further proof of authenticity and is entitled to full faith and credit upon its face.

Finally on this point, Enrique assails the findings of the trial court, stressing further Felipe's admission of forgery in the Power of Attorney in the latter's counter-affidavit.

Even if we concede that there was an admission, it may be observed that Enrique authorized and ratified the sale to NCBA. In fact, Enrique demanded from Felipe the proceeds from the sale of the V. Mapa properties. Neither did Enrique plead for the nullification of the sale. These circumstances taken together run counter to Enrique's allegation of forgery.

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It is settled that to constitute *res judicata*, the following elements must be present: (1) The previous judgment has become final; (2) the prior judgment was rendered by a court having jurisdiction over the matter and parties; (3) the first judgment was made on the merits; and (4) there was substantial identity of parties, subject matter, and cause of action, as between the prior and subsequent actions.

In this regard, it is worthy to note that the cases in CA-G.R. CV No. 31349 and CA-G.R. CV SP No. 28453 involve the validity of the issuance of a writ of possession. A judgment issuing of a writ of possession is not a judgment on the merits. A writ of possession is generally understood to be an order whereby the sheriff is commanded to place a person in possession of a real or personal property.

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Be that as it may, a perusal of the *dacion en pago* agreement shows that the debt of MYTC to DBP has been fully extinguished. It is settled that a *dacion* in payment may extinguish the obligation only to the extent of the value of the thing delivered, unless there is an agreement to the contrary. Even if the thing is of lesser value than the obligation, if the parties agree that the obligation is totally extinguished, then the obligation is totally obliterated.

In the case at bar, on the assumption that the properties covered by the *dacion en pago* agreement are insufficient to cover the full amount of the debt, DBP nonetheless agreed to fully extinguish the debt as shown in the *dacion en pago* agreement. Prohibition to alienate was neither made a condition thereto nor incorporated therein. Hence, DBP should now cause the cancellation of the mortgage registered in the Register of Deeds.

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It must be emphasized that DBP's right to claim the exemption granted to it under Section 14 of E.O. No. 81 appears to be self-executing. Thus, the exemption from attachment or execution arises from the mere execution of the mortgage in favor of DBP. It is therefore not necessary at this point to determine whether NCBA has the standing to invoke the exemption in favor of DBP.

DBP likewise asserted that it had waived the right to claim the exemption through an execution of a Memorandum of Agreement dated September 22, 1992, wherein DBP "accepts, acknowledges and recognizes the legality and validity of the levy of sale on execution." We agree with the trial court that DBP tried to pre-empt the court's power to adjudicate the issue of ownership. DBP showed inconsistencies in its stand against PETRON. In fact, in its Answer to PETRON's third-party complaint in intervention, DBP alleged as a special and affirmative defense that the levy is inoperative because properties mortgaged to DBP are exempt from attachment and/or levy on execution.

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Finding that the levy on execution by PETRON of the properties previously mortgaged to DBP void, this Court thus concurs with the decision of the Regional Trial Court declaring NCBA the owner in fee simple of the properties in question.

WHEREFORE, the decision of the Regional Trial Court of Manila, Branch 30, in Civil Case No. 83-16617 is hereby *AFFIRMED in toto*.

SO ORDERED.<sup>19</sup>

On October 16, 2002, the CA denied the separate motions for reconsideration.<sup>20</sup>

### Issues

Hence, the petitioner appeals, asserting that the CA erred in affirming the RTC's ruling by applying in favor of the respondent the legal exemption from levy or attachment under its charter of loan securities granted to the petitioner, in spite of the fact that the petitioner had previously waived or renounced the same; and in affirming the holding of the RTC that the petitioner had unjustifiably and whimsically refused to release the mortgage over the V. Mapa properties and to surrender to the respondent the owner's duplicate copies of TCT No. 83621 because the deed of absolute sale mentioned that the sale was subject to the existing mortgage lien in favor of the petitioner.

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<sup>19</sup> Id. at 14-19.

<sup>20</sup> Id. at 23.

The petitioner contends that the respondent had no right to compel the petitioner to release in its favor the mortgages duly constituted over the V. Mapa properties and the corresponding owner's copies of the titles thereof; and that the CA erred when it affirmed the RTC's finding that the petitioner had acted with gross and evident bad faith.

In its comment,<sup>21</sup> the respondent counters that the properties mortgaged to the petitioner were exempt from execution and that the petitioner was estopped from asserting otherwise;<sup>22</sup> that such exemption was self-executing;<sup>23</sup> that the mortgage was extinguished by the *dacion en pago*;<sup>24</sup> that by the ratification of the *dacion en pago*, the petitioner became barred from questioning its validity;<sup>25</sup> that the petitioner arbitrarily and whimsically refused to cause the release of the mortgage;<sup>26</sup> and that the assessment of exemplary damages and attorney's fees against the petitioner was proper.<sup>27</sup>

The petitioner argues in its reply<sup>28</sup> that the legal exemption under its charter from levy or attachment of loan securities was a personal right that only the petitioner could assert;<sup>29</sup> that the respondent was well aware that the petitioner's mortgage constituted on the V. Mapa properties was existing at the time of the execution of the Deed of Absolute Sale;<sup>30</sup> and that there was no fraud or bad faith that could be imputed to it in justly refusing to cancel its existing mortgage over the V. Mapa properties.<sup>31</sup>

### **Ruling of the Court**

The petition for review lacks merit.

To start with, the appeal assails the factual findings of the CA and the RTC. We reiterate that such findings are entitled to great weight and respect, particularly because those by the trial court have been affirmed by the CA, rendering such findings final and conclusive when supported by the evidence on record. A review can be done only upon highly meritorious circumstances, such as: (1) when the findings of the trial court are

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<sup>21</sup> Id. at 128-152.

<sup>22</sup> Id. at 142.

<sup>23</sup> Id. at 143.

<sup>24</sup> Id. at 146.

<sup>25</sup> Id. at 146.

<sup>26</sup> Id. at 147.

<sup>27</sup> Id. at 151.

<sup>28</sup> Id. at 160-168.

<sup>29</sup> Id. at 161.

<sup>30</sup> Id. at 163.

<sup>31</sup> Id. at 165.



grounded entirely on speculation, surmises, or conjectures; (2) when the lower court's inferences are manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion in the appreciation of facts; (4) when the findings of the CA go beyond the issues of the case, or fail to notice certain relevant facts that, if properly considered, will justify a different conclusion; (5) when there is a misappreciation of facts; (6) when the findings of fact are conflicting; and (7) when the findings of fact are conclusions without mention of the specific evidence on which they are based, or are premised on the absence of evidence, or are contradicted by evidence on record.<sup>32</sup> We find none of the exceptions to be present.

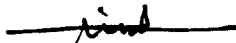
Secondly, *dacion en pago* is carried out, according to *Philippine Lawin Bus Co. v. Court of Appeals*,<sup>33</sup> by the delivery and transmission of ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of the obligation. Upon the transmission of the thing, the obligation is extinguished to the extent of the value of the thing delivered, either as agreed upon by the parties or as may be proved, unless the parties by agreement, express or implied, or by their silence, consider the thing as equivalent to the obligation, in which case the obligation is totally extinguished. Hence, the *dacion en pago* by the Monserrats fully extinguished the loan obligation of MYTC to the petitioner inasmuch as the parties expressly agreed that the obligation would be fully discharged by the delivery and transmission of the Quiapo properties only. Upon the extinguishment of the obligation, the petitioner became legally obliged to release the V. Mapa properties from the mortgage, and to surrender to them their titles (TCT No. 83621 to TCT No. 83627, inclusive)

Lastly, the levy of the Quiapo properties pending appeal by Petron was ineffectual because the levy was void *ab initio*, the V. Mapa properties being then exempt from attachment due to their being mortgaged to the petitioner.

**WHEREFORE**, we **AFFIRM** the decision promulgated on June 21, 2002; and **ORDER** the petitioner to pay the costs of suit.

**SO ORDERED."**

Very truly yours,

  
EDGAR O. ARICHETA  
Division Clerk of Court <sup>m4/s</sup>  
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<sup>32</sup> *Republic v. Mangotara*, G.R. No. 170375, July 7, 2010, 624 SCRA 360, 431.

<sup>33</sup> G.R. No. 130972, January 23, 2002, 374 SCRA 332, 337-338.

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