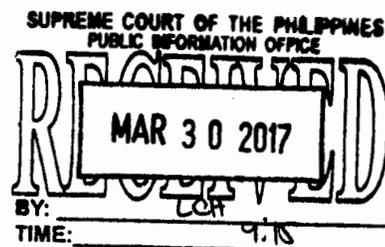




Republic of the Philippines
Supreme Court
 Manila



FIRST DIVISION

**SPOUSES MARCELIAN
 TAPAYAN and ALICE
 TAPAYAN,**
 Petitioners,

G.R. No. 207786

Present:

- versus -

SERENO, C.J., Chairperson,
 LEONARDO-DE CASTRO,
 DEL CASTILLO,
 PERLAS-BERNABE, and
 CAGUIOA, JJ.

PONCEDA M. MARTINEZ,
 Respondent.

Promulgated:

JAN 30 2017

X ----- X

DECISION

CAGUIOA, J.:

This is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court (Petition), seeking the reversal of the Decision dated May 30, 2013² (assailed Decision) rendered by the Court of Appeals, Cagayan de Oro City - Twenty-First Division (CA). The assailed Decision stems from a complaint filed before the Regional Trial Court of Ozamiz City (RTC), by respondent Ponceda Martinez (Respondent) against petitioners, spouses Marcelian and Alice Tapayan (Petitioners), for Specific Performance with Damages.³

The Facts

The parties herein are relatives by affinity. Petitioner Alice Tapayan is the sister of Clark Martinez's (Clark) wife. Clark is Respondent's son.

Respondent is the registered owner of a parcel of land situated along Pingol Street, Ozamiz City, covered by Original Certificate of Title (OCT)

¹ *Rollo*, pp. 10-57.

² *Id.* at 59-72. Penned by Associate Justice Renato C. Francisco, with Associate Justices Romulo V. Borja and Oscar V. Badelles concurring.

³ *Id.* at 15, 60.

No. P-1223 (Pingol Property).⁴ Based on the records, it appears that two (2) mortgages were constituted over this property – the first in favor of Philippine National Bank (PNB Mortgage), and the second in favor of Development Bank of the Philippines (DBP Mortgage). The particulars of these mortgages are summarized as follows:

Mortgage	Parties	Purpose
PNB Mortgage	Respondent as mortgagor and Philippine National Bank, Ozamiz Branch (PNB) as mortgagee	To secure a One Hundred Thousand Peso (₱100,000.00) loan in the name of Respondent ⁵
DBP Mortgage	Respondent as mortgagor and Development Bank of the Philippines, Ozamiz Branch (DBP) as mortgagee	To secure a One Million Peso (₱1,000,000.00) renewable credit line in the name of Petitioners (DBP Loan) ⁶

The records further show that Respondent agreed to constitute the DBP Mortgage upon Clark's request,⁷ and that, in order to release the Pingol Property from the PNB Mortgage, the Petitioners and Respondent agreed to utilize a portion of the proceeds of the DBP Loan to settle the remaining balance of Respondent's PNB Loan, then amounting to Sixty-Five Thousand Three Hundred Twenty Pesos and 55/100 (₱65,320.55).⁸

Subsequently, the parties herein executed a Deed of Undertaking dated August 29, 1998 (Deed of Undertaking) in reference to the DBP Mortgage. The Deed of Undertaking bears the following stipulations, to wit:

1. that the "Second Party [Respondent] has no liability whatsoever insofar as the aforesaid loan contracted by the First Party [Petitioners] concerned;"
2. that "to secure the aforesaid amount, the First Party [Petitioners] shall execute a second mortgage in favor of the Second Party [Respondent] over his House and Lot covered by TCT No. T-10143, situated at Carangan, Ozami[z] City x x x"⁹
3. x x x
4. [t]hat in the event the First Party [Petitioners] could not pay the loan and consequently, the property of the Second Party [Respondent] is foreclosed and is not redeemed by the First Party [Petitioners] with[in] the one (1) year redemption period; or in case the loan shall be paid by the Second Party [Respondent] just to save the property from being foreclosed, the First Party [Petitioners] shall acknowledge as his

⁴ Id. at 59.

⁵ Id. at 32.

⁶ Id. at 12-13, 59-60.

⁷ Id. at 13, 42.

⁸ Id. at 32-33.

⁹ Id. at 60.

indebtedness the amount due to the Development Bank of the Philippines upon foreclosure or the amount paid by the Second Party [Respondent] in paying the loan, but in either case shall be deducted therefrom the amount of P65,320.55 plus interests and fees paid by the First [P]arty [Petitioners] to PNB, Ozamiz City[.]¹⁰ (Emphasis and underscoring omitted)

The DBP Loan was not paid when it fell due.

Proceedings before the RTC

On September 14, 1999, Respondent filed a complaint for Specific Performance with Damages (Complaint) against Petitioners before the RTC.¹¹ The Complaint sought to compel Petitioners to constitute a mortgage over their house and lot situated in Carangan, Ozamiz City covered by Transfer Certificate of Title (TCT) No. T-10143 (Carangan Property), in accordance with the provisions of the Deed of Undertaking.¹²

Respondent averred that Petitioners used the proceeds of the DBP Loan exclusively for their own purposes,¹³ and that since Petitioners failed to pay the DBP Loan, she and her children were constrained to pay DBP the sum of One Million One Hundred Eighty Thousand Two Hundred Pesos and 10/100 (₱1,180,200.10) to save the Pingol Property from foreclosure.¹⁴ Notwithstanding this, Petitioners have neither paid their indebtedness nor executed a mortgage over the Carangan Property to secure the same.¹⁵

The Petitioners denied Respondent's allegations and claimed that the Deed of Undertaking "is a falsity."¹⁶

Petitioners argued that the proceeds of the DBP Loan were primarily used as capital for the construction business that petitioner Marcelian put up with Clark, Mario Delos Reyes, and Richard Sevilla (collectively, Joint Venturers).¹⁷ Petitioners supposedly applied for the DBP Loan in furtherance of the verbal agreement among the Joint Venturers, while Respondent freely agreed to constitute the DBP Mortgage to secure said loan upon Clark's request.¹⁸ Petitioners further emphasized that a portion of the proceeds of the DBP Loan was used to pay off the balance of Respondent's PNB Loan.¹⁹ Moreover, while the DBP Loan was in the nature of a

¹⁰ Id. at 31-32.

¹¹ Id. at 60.

¹² Id. at 60-61.

¹³ Id. at 60.

¹⁴ See id. at 61.

¹⁵ See id.

¹⁶ Id. at 62.

¹⁷ Id. at 12, 62, 67.

¹⁸ See id. at 62.

¹⁹ See id.

renewable credit line, it was not renewed since Respondent refused to give her written consent for this purpose.²⁰

On the procedural aspect, Petitioners argued that Respondent's Complaint was premature and should have been dismissed outright, since she failed to resort to barangay conciliation proceedings before filing her Complaint with the RTC.²¹

To support their allegations, Petitioners presented a Joint Affidavit executed by Mario Delos Reyes and Richard Sevilla, attesting to the formation of the joint venture and the conclusion of the verbal agreement to apply for the DBP Loan in the interest of the Joint Venturers.²²

After trial, the RTC rendered a decision dated September 28, 2009 in favor of Respondent (RTC Decision), the dispositive portion of which reads:

WHEREFORE premises considered, judgment is hereby rendered ordering defendant spouses Atty. Marcelian and Alice Tapayan to execute the second mortgage of (sic) their lot and house covered by Transfer Certificate of Title No. T-10143 located at Carangan, Ozamiz City in favor of plaintiff Mrs. Ponceda Martinez, unless they reimburse the latter of the total amount of P1,180,200.10 paid by her to the Development Bank of the Philippines, Ozamiz Branch for the redemption of the mortgage, and requiring defendants to pay to plaintiff the amount of P20,000.00 for attorney's fees.

SO ORDERED.²³

In so ruling, the RTC noted that the Deed of Undertaking was acknowledged before Atty. Emmanuel V. Chiong, a notary public, and reasoned that since the latter enjoys the presumption of having performed his duties regularly, Petitioners' claim that the Deed of Undertaking was a falsity must be rejected.²⁴ On such basis, the RTC held that the Deed of Undertaking constitutes a valid and binding contract, which Petitioners are bound to respect.²⁵

Proceedings before the CA

Aggrieved, Petitioners elevated the case to the CA. In their appeal, Petitioners prayed that the CA determine (i) whether the RTC validly acquired jurisdiction over the Complaint notwithstanding Respondent's failure to comply with the Revised *Katarungang Pambarangay* Law, (ii) whether Respondent is an accommodation mortgagor, and (iii) whether the

²⁰ Id.

²¹ Id. at 64.

²² Id. at 38-39.

²³ Id. at 62-63.

²⁴ Id. at 63.

²⁵ Id. at 63-64.

Petitioners may be compelled to constitute a mortgage over the Carangan Property in Respondent's favor.²⁶

On May 30, 2013, the CA rendered the assailed Decision denying the Petitioners' appeal. The dispositive portion of the assailed Decision reads:

WHEREFORE, premises considered, the instant appeal is hereby **DENIED**. The Decision of the RTC dated 28 September 2009 is hereby **AFFIRMED**. Defendants-appellants are ordered to execute the Second Mortgage on their house and lot covered by Transfer Certificate of Title (TCT) No. T-10143 in favor [of] plaintiff-appellee. Costs against appellants.

SO ORDERED.²⁷

Contrary to the Petitioners' claim, the CA found that the requirements of the *Katarungang Pambarangay* Law were complied with, as evidenced by the Certificate to File Action filed by the *Lupon Tagapamayapa* before the RTC on August 16, 2000.²⁸

Moreover, the CA held that the Deed of Undertaking merits consideration, since Petitioners failed to overcome the presumption of regularity ascribed to it as a public document.²⁹ Thus, on the basis of the stipulations in the Deed of Undertaking, the CA concluded that Respondent indeed stood as Petitioners' accommodation mortgagor. Hence, Respondent possesses the right to enforce the Deed of Undertaking and compel Petitioners to comply with its stipulations.³⁰

Petitioners received a copy of the assailed Decision on June 13, 2013.³¹

On June 27, 2013, Petitioners filed a motion praying for an additional period of thirty (30) days within which to file a petition for review on *certiorari* before this Court.³² Thereafter, on July 26, 2013, Petitioners filed this Petition, ascribing multiple errors to the CA.

Respondent filed her Comment to the Petition on May 30, 2014.³³ Petitioners filed their Reply on October 17, 2014.³⁴

On February 26, 2015, the Court received a notice from Respondent's counsel of record, informing the Court of Respondent's death. The notice

²⁶ Id. at 64.

²⁷ Id. at 72.

²⁸ Id. at 65.

²⁹ Id. at 71-72.

³⁰ Id. at 66-67, 69-70.

³¹ Id. at 4.

³² Id. at 4-7.

³³ Id. at 93-98.

³⁴ Id. at 104-110.

identified the Respondent's eight (8) children as her legal representatives, namely: Clark, Jeff Martinez, Rock Martinez, Gary Martinez, Patricia Martinez Olson, Eleanor Martinez Fassnacht, Treccie Martinez Kappes, and Sheila Martinez Sachs.³⁵

Issue

The sole issue for this Court's resolution is whether the CA erred in affirming the RTC Decision directing Petitioners to execute a mortgage over the Carangan Property in favor of Respondent.

The Court's Ruling

As a rule, only questions of law may be raised in petitions filed under Rule 45,³⁶ subject only to recognized exceptions, namely:

(1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) **when the judgment is based on a misapprehension of facts**; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. x x x³⁷ (Emphasis supplied; citations omitted)

The Petition invokes the fourth exception above, and calls on this Court to review the factual findings of the RTC, which were later affirmed by the CA.

In sum, Petitioners pose that the CA erred when it affirmed the following factual findings of the RTC:

1. The Deed of Undertaking presented by Respondent is genuine, and constitutes a valid and binding contract enforceable against Petitioners;
2. Petitioners applied for the DBP Loan for their own interest and sole account;

³⁵ Id. at 113-114.

³⁶ RULES OF COURT, Rule 45, Section 1.

³⁷ *Ambray and Ambray, Jr. v. Tsourous, et al.*, G.R. No. 209264, July 5, 2016, pp. 6-7.

3. Petitioners are bound to reimburse Respondent One Million One Hundred Eighty Thousand Two Hundred Pesos and 10/100 (₱1,180,200.10) representing the amount she and her daughters paid to avert the foreclosure of the DBP Mortgage; and
4. To secure the full amount due Respondent, Petitioners are bound to constitute a mortgage over the Carangan Property, pursuant to the provisions of the Deed of Undertaking.

The Court holds that no misapprehension of facts was committed by both the RTC and the CA so as to justify deviation from their findings, except only as to the RTC's finding regarding the amount that Petitioners are bound to reimburse to Respondent.

Petitioners waived their right to object to the admission of the Deed of Undertaking on the basis of the best evidence rule.

In this Petition, Petitioners assert that the RTC and CA erred in ruling that the plain copy of the Deed of Undertaking was admissible as proof of its contents, in violation of the best evidence rule under Rule 130 of the Rules of Court.

Petitioners' assertion is erroneous.

The best evidence rule requires that the original document be produced whenever its contents are the subject of inquiry,³⁸ except in certain limited cases laid down in Section 3 of Rule 130. However, to set this rule in motion, a proper and timely objection is necessary. The Court's ruling in *Lorenzana v. Lelina*³⁹ is instructive:

The best evidence rule requires that when the subject of inquiry is (sic) the contents of a document, no evidence is admissible other than the original document itself except in the instances mentioned in Section 3, Rule 130 of the Revised Rules of Court. As such, mere photocopies of documents are inadmissible pursuant to the best evidence rule. **Nevertheless, evidence not objected to is deemed admitted and may be validly considered by the court in arriving at its judgment. Courts are not precluded to accept in evidence a mere photocopy of a document when no objection was raised when it was formally offered.**

In order to exclude evidence, the objection to admissibility of evidence must be made at the proper time, and the grounds specified. Objection to evidence must be made at the time it is formally offered. **In case of documentary evidence, offer is made after all the witnesses of the party making the offer have testified, specifying the purpose for**

³⁸ *Country Bankers Insurance Corporation v. Lagman*, 669 Phil. 205, 215 (2011).

³⁹ G.R. No. 187850, August 17, 2016.



which the evidence is being offered. It is only at this time, and not at any other, that objection to the documentary evidence may be made. And when a party failed to interpose a timely objection to evidence at the time they were offered in evidence, such objection shall be considered as waived. This is true even if by its nature the evidence is inadmissible and would have surely been rejected if it had been challenged at the proper time. Moreover, grounds for objection must be specified in any case. **Grounds for objections not raised at the proper time shall be considered waived, even if the evidence was objected to on some other ground. Thus, even on appeal, the appellate court may not consider any other ground of objection, except those that were raised at the proper time.**⁴⁰ (Emphasis and underscoring supplied; citations omitted)

The Court notes that Petitioners failed to object to the admission of the plain copy of the Deed of Undertaking at the time it was formally offered in evidence before the RTC. In fact, in their Reply, Petitioners admit that they only raised this objection for the *first time* before the CA. The relevant portions of said Reply state:

Instead of arguing against the truth of this established fact, the respondent made an implied admission of the truth thereof when she shifted instead to raise the argument that petitioner cannot raise this issue for the first time in this petition. Respondent said:

“I That petitioners have raised issues of facts before this Honorable Court not otherwise raised in the court a quo.”

x x x x

NOTHING CAN BE MORE WRONG!

Petitioner certainly raised the issue covered by Ground I of this Petition in the lower [c]ourt. Unfortunately, with utmost due respect, it inadvertently escaped the attention of the Honorable Court of Appeals. It was only very unfortunate that petitioner failed to give it a superlative emphasis adequate enough so as not to be ignored by the lower court. **It can also be reasonably surmised that the new counsel of respondent may not have perused in detail the appellant’s brief in the Court of Appeals, of which brief brought this issue** under the Issue No

“E.1 THERE WERE CIRCUMSTANTIAL EVIDENCE THAT THE DEED OF UNDERTAKING WAS FALSIFIED.”

For easy reference, **the averments on pages 31 to 33 of the Appellant’s Brief in the Court of Appeals** are hereby pleaded and reiterated as follows:

x x x x

“Aside from the obtaining circumstances earlier discussed herein that the Deed of Undertaking (Exh. “K”) is a falsified document, the records will show that plaintiff

⁴⁰ Id. at 6-7.

caused only a temporary marking of a machine copy of the same, placed as an annex to the Complaint and in a review of the records, defendants could not find that plaintiff caused a substitution of the temporarily marked machine copy with an original thereof, then subsequently marked after being identified by plaintiff witness Ponceda Martinez. x x x

x x x x”

Verily, it is crystal clear that Ground I is not raised for the first time in this petition. **It is admitted, however, that there was no highest emphasis given to the same as it was placed in the last pages of the discussion in the appellant’s brief.** Albeit the inadvertence, it is now given the greatest emphasis and significance by placing it under Ground I of this Petition because petitioners rationally and realistically believe that it goes into the heart of this Petition.⁴¹ (Emphasis and underscoring supplied)

Having failed to timely raise their objection when the Formal Offer of Evidence was filed in the RTC, Petitioners are deemed to have waived the same. Hence, they are precluded from assailing the probative value of the plain copy of the Deed of Undertaking.

Petitioners failed to rebut the presumption of regularity ascribed to the Deed of Undertaking as a notarized public document.

Notwithstanding the findings of the RTC and CA, Petitioners still assail the genuineness and due execution of the Deed of Undertaking before this Court. Petitioners insist that the Deed of Undertaking is a falsity and should not be given credence.

The Court disagrees.

As correctly held by the RTC and CA, the Deed of Undertaking became a public document by virtue of its acknowledgment before a notary public. Hence, it enjoys the presumption of regularity, which can only be overcome by clear and convincing evidence. Thus, in *Spouses Santos v. Spouses Lumbao*,⁴² this Court upheld the presumption of regularity, finding the bare denial of petitioners therein insufficient to overcome the same:

Furthermore, both “Bilihan ng Lupa” documents dated 17 August 1979 and 9 January 1981 were duly notarized before a notary public. **It is well-settled that a document acknowledged before a notary public is a public document that enjoys the presumption of regularity. It is a *prima facie* evidence of the truth of the facts stated therein and a conclusive**

⁴¹ *Rollo*, pp. 105-107.

⁴² 548 Phil. 332 (2007).

presumption of its existence and due execution. To overcome this presumption, there must be presented evidence that is clear and convincing. Absent such evidence, the presumption must be upheld. In addition, one who denies the due execution of a deed where one's signature appears has the burden of proving that contrary to the recital in the *jurat*, one never appeared before the notary public and acknowledged the deed to be a voluntary act. **Nonetheless, in the present case petitioners' denials without clear and convincing evidence to support their claim of fraud and falsity were not sufficient to overthrow the above-mentioned presumption;** hence, the authenticity, due execution and the truth of the facts stated in the aforesaid "Bilihan ng Lupa" are upheld.⁴³ (Emphasis and underscoring supplied; citations omitted)

While Petitioners vehemently deny participation in the execution of the Deed of Undertaking, they did not present any evidence to support their claim that their signatures thereon were forged. Hence, consistent with the ruling of the RTC and CA, the Court upholds the presumption of regularity ascribed to the Deed of Undertaking.

Petitioners' claim that they are mere accommodation borrowers is not supported by sufficient evidence.

Petitioners claim that they are mere accommodation borrowers who applied for the DBP Loan for and on behalf of the Joint Venturers, in furtherance of the verbal agreement between and among petitioner Marcelian and the Joint Venturers. Thus, Petitioners aver that the liability arising from the non-payment of the DBP Loan should be assumed not by Petitioners Marcelian and Alice, but by Petitioner Marcelian and the rest of the Joint Venturers – Clark, Mario Delos Reyes and Richard Sevilla.⁴⁴

To support this claim, Petitioners rely on the Joint Affidavit executed by two (2) of the alleged Joint Venturers – Mario Delos Reyes and Richard Sevilla,⁴⁵ the pertinent portions of which read:

1. That we entered into a business venture with Atty. Marcelian C. Tapayan and Clark Martinez, engaging in the construction business;
2. That the loan obtained by Atty. Marcelian [T]apayan and Mr. Clark Martinez for P1 Million from DBP, Ozamiz City, was used partly to liquidate the loan of Mrs. Ponceda Martinez for about P65 thousand and the balance was used to finance as additional capital in the construction business[.]⁴⁶

Curiously, however, only Mario Delos Reyes testified before the RTC to affirm the statements in the Joint Affidavit, as Richard Sevilla had allegedly fled to the United States as an undocumented alien.⁴⁷

⁴³ Id. at 349.

⁴⁴ See *rollo*, pp. 36-37.

⁴⁵ Id. at 38-39.

⁴⁶ Id. at 38.

⁴⁷ See *id.* at 15, 29.

Hence, apart from the statements in the Joint Affidavit affirmed solely by the testimony of Mario Delos Reyes, which is in turn corroborated only by petitioner Marcelian's self-serving declarations, the Court finds no other evidence on record to support the existence of the alleged joint venture, and the verbal agreement of the Joint Venturers in respect of the DBP Loan.

In fact, the theory that Petitioners acted as mere accommodation borrowers is belied by their own allegations respecting the payment of fees relating to the DBP Loan, which the Court quotes hereunder:

[P]etitioner Marcelian Tapayan endeavored in good faith to fully pay the interests and fees of the P1 Million loan with the DBP, Ozamiz City. The loan is in the nature of a one-year credit line drawable against 60 to 150-day promissory notes, and is renewable yearly as long as the interests were paid. The first release of the loan was on December 27, 1996 via a promissory note 96/109 for P400,000.00 for 150 days (Exhibit "6") which was extended for another 150 days via an Addendum to Promissory Note (Exh "7"). The second release was on February 4, 1997 via Promissory Note No. 97-010 for P600,000.00 (Exh "8") for a term of 150 days extended for another 150 days via an Addendum to Promissory Note (Exh "9"). **The admitted documentary exhibits of petitioners evidently show that the interests and other fees (doc. stamps) were fully paid by petitioners covering the period from the date of the first loan release on December 27, 1996 and until the date of the extensions and even beyond the one-year term of the credit line as interests were paid up to February 28, 1998 as per Exhibits "10" to "27". Further, petitioners also paid the premium on the insurance coverage of the mortgaged property from May 15, 1997 to May 15, 1998, and in anticipation of the renewal of the credit line, petitioners also paid the insurance premium covering the period from May 15, 1998 to May 15, 1999, as can be gleaned from Exhibits "28" to "31".** The foregoing facts sufficiently indicated that amid the hard times, petitioners were up-to-date in the payments of interests and fees covering the promissory notes and extensions (Exhs. "6" to "9"), which is a basic requirement in the consideration of the renewal of the credit line. In sum, petitioners exercised utmost good faith in complying with the terms and conditions of the credit line.⁴⁸ (Emphasis supplied)

Petitioners' payment of the interest on the DBP Loan, the insurance premiums corresponding to the Pingol Property, and other incidental fees solely on their account,⁴⁹ *without seeking reimbursement from the alleged Joint Venturers*, establishes Petitioners' direct interest in the DBP Loan, and negates the claim that they are mere accommodation borrowers. Since the proceeds of the DBP Loan redounded to Petitioners' benefit, they must bear the liability arising from its non-payment, and comply with the obligations imposed by the Deed of Undertaking executed in connection therewith.

⁴⁸ Id. at 45-46.

⁴⁹ Id.

The amount paid to PNB must be deducted from Petitioners' total liability in accordance with the provisions of the Deed.

Petitioners aver that the RTC's determination respecting the amount due Respondent is erroneous, since it failed to consider the deductions stipulated in the Deed of Undertaking. Hence, Petitioners submit that should the Court order the execution of a mortgage over the Carangan Property, such mortgage should only be made to secure the amount of One Million One Hundred Fourteen Thousand Eight Hundred Seventy-Nine Pesos and 55/100 (₱1,114,879.55),^{49-a} which represents the amount paid by Respondent to DBP to avert the foreclosure of the DBP Mortgage, *net of the deductions stipulated in the Deed of Undertaking.*

The Court agrees.

The RTC Decision directed Petitioners to execute a mortgage in favor of Respondent to secure the amount of One Million One Hundred Eighty Thousand Two Hundred Pesos and 10/100 (₱1,180,200.10), *unless* Petitioners reimburse Respondent said amount in full.

In so ruling, the RTC completely disregarded the fourth paragraph of the Deed of Undertaking, which specifically requires Respondent to deduct all prior payments made in favor of PNB from Petitioners' total liability, thus:

That in the event the First Party could not pay the loan and consequently, the property of the Second Party is foreclosed and is not redeemed by the First Party with[in] the one (1) year redemption period; or in case the loan shall be paid by the Second Party just to save the property from being foreclosed, **the First Party shall acknowledge as his indebtedness the amount due to the Development Bank of the Philippines upon foreclosure or the amount paid by the Second Party in paying the loan, but in either case shall be deducted therefrom the amount of P65,320.55 plus interests and fees paid by the First [P]arty to PNB, Ozamiz City[.]**⁵⁰ (Emphasis supplied)

This oversight was adopted by the CA when it affirmed the RTC Decision *in toto*. The Court now corrects this error.

Respondent anchors her cause of action on the Deed of Undertaking in its entirety. To allow Respondent to selectively invoke the validity and enforceability of the provisions that support her cause, and disregard those that operate against her interests would promote injustice at the expense of Petitioners.

^{49-a} One Million One Hundred Eighty Thousand Two Hundred Pesos and 10/100 (₱1,180,200.10) representing the amount paid by Respondent to DBP, less Sixty-Five Thousand Three Hundred Twenty Pesos and 55/100 (₱65,320.55) representing the amount paid by Petitioners to PNB on Respondent's behalf. (See *rollo*, pp. 31-32.)

⁵⁰ *Rollo*, pp. 31-32.

Notably, Respondent does not deny that a portion of the DBP Loan was in fact utilized to settle part of her PNB Loan. Respondent merely avers that such payment was necessary to clear the title of the Pingol Property, and that the resolution of such issue would be inconsequential to the ultimate disposition of the assailed Decision:

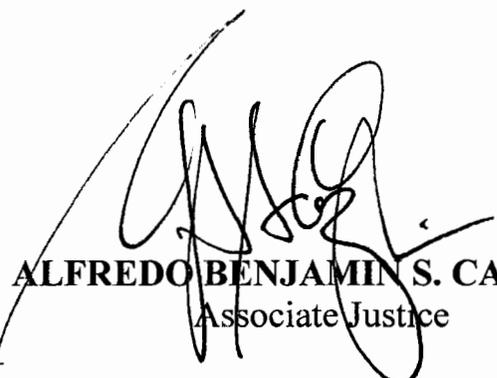
Grounds 2 and 3 relied upon by [P]etitioners raise questions of fact so insubstantial that they do not affect the ultimate disposition of the action that [P]etitioners execute a mortgage on their propert[y] in favor of [R]espondent. It is an admitted fact x x x that [R]espondent obtained a One Million Peso bank loan as capital for [P]etitioners' construction business. If [P]etitioners needed to clear [R]espondent's title of an existing minor lien to be able to use it for their purpose, expenses incurred for the process were par for the course.⁵¹

This argument is specious, as the actual amount Petitioners are bound to reimburse constitutes the very same obligation Respondent seeks to secure through the execution of the mortgage subject of this dispute.

Thus, the Court modifies the assailed Decision, and rules that Sixty-Five Thousand Three Hundred Twenty Pesos and 55/100 (₱65,320.55) should be deducted from Petitioners' total liability, representing the reimbursement to be paid by the latter to PNB.⁵² Consequently, the amount Petitioners should reimburse to Respondent is One Million One Hundred Fourteen Thousand Eight Hundred Seventy-Nine Pesos and 55/100 (₱1,114,879.55).

WHEREFORE, premises considered, the Petition for Review is **GRANTED IN PART**. The Decision dated May 30, 2013 of the Court of Appeals in CA-G.R. CV No. 02081-MIN is hereby **AFFIRMED WITH MODIFICATION**. Petitioners Marcelian and Alice Tapayan are directed to execute a mortgage on their house and lot covered by TCT No. T-10143 located at Carangan, Ozamiz City in favor of Respondent Ponceda Martinez, unless they reimburse the latter the amount of One Million One Hundred Fourteen Thousand Eight Hundred Seventy-Nine Pesos and 55/100 (₱1,114,879.55). Petitioners are likewise directed to pay Respondent attorney's fees in the amount of Twenty Thousand Pesos (₱20,000.00), in accordance with the Decision dated September 28, 2009 rendered by the Regional Trial Court in Civil Case No. OZC-99-38.

SO ORDERED.


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

⁵¹ Id. at 94-95.

⁵² Id. at 33-35.

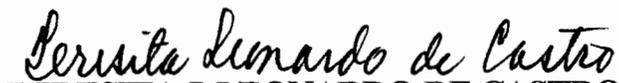
WE CONCUR:



MARIA LOURDES P. A. SERENO

Chief Justice

Chairperson



TERESITA J. LEONARDO-DE CASTRO

Associate Justice



MARIANO C. DEL CASTILLO

Associate Justice



ESTELA M. PERLAS-BERNABE

Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO

Chief Justice

