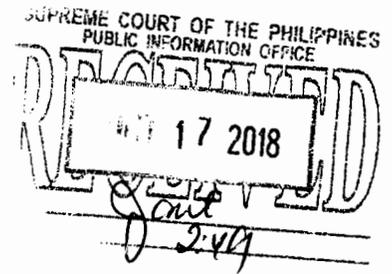




Republic of the Philippines  
**Supreme Court**  
 Manila



**FIRST DIVISION**

**SOFIA TABUADA, NOVEE YAP,  
 MA. LORETA NADAL, and  
 GLADYS EVIDENTE,**  
 Petitioners,

**G.R. No. 196510**

Present:

**LEONARDO-DE CASTRO, C.J.,**  
 Chairperson,

**BERSAMIN,  
 DEL CASTILLO,  
 JARDELEZA, and  
 \*TIJAM, JJ.**

*-versus-*

**ELEANOR TABUADA,  
 JULIETA TRABUCO,  
 LAURETA REDONDO, and  
 SPS. BERNAN CERTEZA &  
 ELEANOR D. CERTEZA,**  
 Respondents.

Promulgated:

**SEP 12 2018**

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**DECISION**

**BERSAMIN, J.:**

Competent proof of a legal relationship is not limited to documentary evidence. Object and testimonial evidence may be admitted for the same purpose. Indeed, the relationship may be established by all the relevant facts and circumstances that constitute a preponderance of evidence.

A person constituting a mortgage should be the owner of the property, or should have the right of free disposal of it, or, in the absence of the right of free disposal, such person should be legally authorized for the purpose. Otherwise, the mortgage is null and void.

**The Case**

This appeal seeks to undo the decision promulgated on September 30, 2009,<sup>1</sup> whereby the Court of Appeals (CA) reversed and set aside the judgment rendered in favor of the petitioners in Civil Case No. 05-2842 on

\* On official leave.

<sup>1</sup> *Rollo*, pp. 47-58; penned by Associate Justice Samuel H. Gaerlan, with Associate Justice Franchito N. Diamante and Associate Justice Edgardo L. Delos Santos concurring.

January 18, 2006 by the Regional Trial Court (RTC), Branch 28, in Iloilo City; and dismissed the complaint in Civil Case No. 05-2842, an action commenced to declare the nullity of a mortgage and damages.<sup>2</sup>

### Antecedents

On January 27, 2005, the petitioners commenced Civil Case No. 05-28420 in the RTC against respondents Spouses Bernan and Eleanor Certeza (Spouses Certeza), Eleanor Tabuada, Julieta Trabuco and Laureta Redondo. The complainant included a prayer for a temporary restraining order (TRO) and for the issuance of the writ of preliminary injunction.<sup>3</sup>

Summons and the copy of the complaint and its annexes, along with the notice of raffle, were served by personal and substituted service on the respondents on January 31, 2005 at their respective stated addresses. According to the returns of service, respondent Eleanor Tabuada personally received the summons and notice of raffle but refused to acknowledge receipt thereof; Redondo received her summons through her husband, Emilio, who also refused to acknowledge receipt thereof; Trabuco was served with summons through her neighbor Grace Miguel, who also did not acknowledge receipt; and the Spouses Certeza received their summons personally and acknowledged receipt thereof.<sup>4</sup>

For failure of the respondents to file their answers within the reglementary period, the petitioners filed a *Motion to Declare Defendants in Default and for Judgment Based on Complaint* on February 28, 2005.<sup>5</sup>

On March 3, 2005, the Spouses Certeza wrote the Presiding Judge of the RTC to manifest that they had been informed by their secretary who had attended in their behalf the February 3, 2005 hearing of the application for the TRO that there was an on-going negotiation for settlement between the petitioners and respondents Eleanor Tabuada, Trabuco and Redondo; and that in view of the pendency of the *Motion to Declare Defendants in Default and for Judgment Based on Complaint*, the Spouses Certeza were thereby merely expressing the intention to file their answer.<sup>6</sup>

On March 21, 2005, Eleanor Tabuada, Trabuco and Redondo submitted their *Motion to Admit Answer* (with their *Answer with Counter-claim and Cross-claim* attached). The petitioners opposed the *Motion to Admit Answer* on March 29, 2005.<sup>7</sup>

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<sup>2</sup> Id. at 73-77, penned by Presiding Judge Loida J. Diestro-Maputol.

<sup>3</sup> Id. at 47-48.

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Id.

On May 11, 2005, the RTC denied the *Motion to Admit Answer*, and declared Eleanor Tabuada, Trabuco and Redondo in default. It likewise declared the Spouses Certeza in default for failure to file their answer.<sup>8</sup>

On June 7, 2005, the respondents submitted their *Motion to Set Aside Order of Default*, which the petitioners opposed on June 14, 2005.<sup>9</sup>

On June 30, 2005, the RTC denied the *Motion to Set Aside Order of Default*,<sup>10</sup> the material portion of the order of denial stating:

Records show that defendants-spouses Certeza were served summons on January 31, 2005. They filed their answer on March 21, 2005 only AFTER plaintiffs have already filed a motion to declare them in default. The belated filing of the answer could not be countenanced by this Court considering that defendants were aware of the pendency of this case as evidenced by the presence of their representative during the hearing on February 3, 2005 on the incident for the issuance of a temporary restraining order.<sup>11</sup>

At the *ex parte* hearing held on September 9, 2005 to receive their evidence, the petitioners presented Sofia Tabuada, who testified that her late husband was Simeon Tabuada, the son of Loreta Tabuada and the brother-in-law of defendant Eleanor Tabuada; that her co-plaintiffs were her daughters; that defendant Julieta Trabuco was the daughter of Eleanor Tabuada while Laureta Redondo was the latter's neighbor; that Loreta Tabuada had died on April 16, 1990 while her husband had died on July 18, 1997; that she received the notice sent by the Spouses Certeza regarding their land, known as Lot 4272-B-2, located at Barangay Tacas, Jaro, Iloilo City that her husband had inherited from his mother, Loreta Tabuada, and where they were residing, informing them that the land had been mortgaged to them (Spouses Certeza); that she immediately inquired from Eleanor Tabuada and Trabuco about the mortgage, and both admitted that they had mortgaged the property to the Spouses Certeza; that she was puzzled to see the signature purportedly of Loreta Tabuada on top of the name Loreta Tabuada printed on the *Mortgage of Real Rights* dated July 1, 1994 and the *Promissory Note* dated July 4, 1994 despite Loreta Tabuada having died on April 16, 1990; that the property under mortgage was the where she and her daughters were residing; that the notice caused her to lose her appetite and sleepless nights, and she suffered hypertension, which entitled her to moral damages of ₱100,000.00; that she engaged her counsel to pursue the case against the defendants, paying counsel ₱40,000.00; and that she further incurred litigation expenses of ₱5,000.00.<sup>12</sup>

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<sup>8</sup> Id.

<sup>9</sup> Id. at 48-49.

<sup>10</sup> Id. at 49.

<sup>11</sup> Id.

<sup>12</sup> Id.

The petitioners offered for admission the following exhibits, namely: (a) the death certificate of Loreta Yulo Tabuada that indicated April 16, 1990 as the date of death; (b) Transfer Certificate of Title (TCT) No. T-82868 of the Register of Deeds of Iloilo City covering Lot No. 4272-B-2 situated in Jaro, Iloilo City and registered in the name of Loreta Tabuada; (c) the *Promissory Note* dated July 4, 1994 for ₱68,000.00 executed by Loreta Tabuada; (d) the *Mortgage of Real Rights* dated July 1, 1994 involving Lot No. 4272-B-2 under TCT No. T-82868 executed by Loreta Tabuada as the mortgagor; (e) the list of payments of the principal obligation subject of the real estate mortgage and the interests; and (f) the demand letter dated August 12, 2004 from the Spouses Certeza addressed to Loreta Tabuada demanding the payment of the total obligation of ₱415, 452.94.<sup>13</sup>

### Judgment of the RTC

On January 18, 2006, the RTC rendered judgment in favor of the petitioners,<sup>14</sup> decreeing thusly:

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs Sofia Tabuada, Novee Yap, Ma. Loreta Nadal, and Gladys Evidente, and against defendants Eleanor Tabuada, Julieta Trabuco, Laureta Redondo and Spouses Bernan and Eleanor Certeza. The Mortgage of Real Rights dated July 1, 1994 and the Promissory Note dated July 4, 1994, are hereby declared null and void. Defendants are further ordered to pay plaintiffs, jointly and severally, the following:

- a. moral damages amounting to Php 50,000.00;
- b. attorney's fees amounting to ₱10,000.00; and
- c. costs of suit.

SO ORDERED.<sup>15</sup>

The RTC declared the *Mortgage of Real Rights* dated July 1, 1994 null and void for not complying with the essential requisites of a real estate mortgage. It opined that based on the complaint and the testimony of Sofia Tabuada “Eleanor Tabuada, who [was] not the absolute owner of Lot No. 4272-B-2, and without having the legal authority to mortgage said property [had] misrepresented herself as the deceased Loreta Tabuada and mortgaged the property without the knowledge of herein plaintiffs, and benefited from said mortgage to the detriment of the rights and interests of plaintiffs.”<sup>16</sup> It ruled that moral damages were proper under Article 309, of the *Civil Code* based on the showing of disrespect to the dead.<sup>17</sup>

<sup>13</sup> Id. at 49-50.

<sup>14</sup> Supra note 2.

<sup>15</sup> *Rollo*, pp.76-77.

<sup>16</sup> Id. at 76.

<sup>17</sup> Id.

The respondents appealed.

### **Decision of the CA**

On September 30, 2009, the CA promulgated its decision,<sup>18</sup> reversing and setting aside the judgment of the RTC, and dismissing Civil Case No. 05-28420 instead,<sup>19</sup> ruling:

**WHEREFORE**, the instant appeal is **GRANTED**. The Decision dated January 18, 2006 of the Regional Trial Court, Branch 28, Iloilo City in Civil Case No. 05-2842 for Declaration of Nullity of Mortgage and Damages with Prayer for Issuance of Preliminary Injunction and Temporary Restraining Order is **REVERSED** and **SET ASIDE**. Accordingly, the complaint docketed as Civil Case No. 05-2842 is hereby **DISMISSED**.

**SO ORDERED.**

The petitioners moved for reconsideration,<sup>20</sup> but the CA denied their motion for reconsideration on March 7, 2011.<sup>21</sup>

### **Issues**

Did the CA seriously err in reversing the RTC considering that there was ample evidence competently establishing the relationship of plaintiff Sofia Tabuada to the late Loreta Tabuada?

In addition, there is need to resolve whether or not the award of moral damages based on disrespect to the dead was legally proper.

### **Ruling of the Court**

We reverse the CA, and reinstate the judgment of the RTC, but we delete the award of moral damages based on disrespect to the dead for being legally improper.

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<sup>18</sup> Id. at 58.

<sup>19</sup> Supra note 1.

<sup>20</sup> Id. at 26-27; penned by Associate Justice Delos Santos, with Associate Justice Agnes Reyes-Carpio and Associate Justice Eduardo B. Peralta, Jr. concurring.

<sup>21</sup> Id. at 29-41.

## 1.

**The legal relationship of Sofia Tabuada with  
deceased Loreta Tabuada was established  
by preponderance of evidence**

The CA found merit in the contention that the petitioners were not able to prove by preponderance of evidence that they were the legal heirs of the late Loreta Tabuada, the registered holder of the title over the mortgaged real property. The CA noted that the death certificate the petitioners presented was not an authenticated copy on security paper issued by the National Statistics Office (now Philippine Statistics Authority); and that the name of the deceased on the death certificate (Loreta Yulo Tabuada) did not match the name of the registered title holder (Loreta H. Tabuada). It pointed out that the “discrepancy is material as it puts in issue the real identity of the Loreta H. Tabuada who the plaintiffs claim is their predecessor-in-interest and the person whose name appears in the death certificate as Loreta Yulo Tabuada. Consequently this inconsistency puts in doubt the plaintiffs-appellees’ ownership over Lot No. 4272-B-2.”<sup>22</sup>

The CA thereby underscored that the petitioners did not prove Sofia Tabuada’s legal relationship with the late Loreta Tabuada because she did not present documentary evidence thereof.<sup>23</sup>

The CA grossly erred.

Under the *Rules of Court*, evidence – as the means of ascertaining in a judicial proceeding the truth respecting a matter of fact<sup>24</sup> – may be object,<sup>25</sup> documentary,<sup>26</sup> and testimonial.<sup>27</sup> It is required that evidence, to be admissible, must be relevant and competent.<sup>28</sup> But the admissibility of evidence should not be confused with its probative value. Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue. Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence.<sup>29</sup>

Although documentary evidence may be preferable as proof of a legal relationship, other evidence of the relationship that are competent and

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<sup>22</sup> Supra note 1, at 50- 57.

<sup>23</sup> Id. at 57.

<sup>24</sup> Section 1, Rule 128 of the *Rules of Court*.

<sup>25</sup> Section 1, Rule 130 of the *Rules of Court*.

<sup>26</sup> Section 2, Rule 130 of the *Rules of Court*.

<sup>27</sup> Section 20, Rule 130 of the *Rules of Court*.

<sup>28</sup> Section 3, Rule 128 of the *Rules of Court*.

<sup>29</sup> *Heirs of Lourdes Saez Sabanpan v. Comorposa*, G.R. No. 152807, August 12, 2003, 408 SCRA 692, 700.

relevant may not be excluded. The preponderance of evidence, the rule that is applicable in civil cases, is also known as the *greater weight* of evidence. There is a preponderance of evidence when the trier of facts is led to find that the existence of the contested fact is more probable than its nonexistence.<sup>30</sup> In short, the rule requires the consideration of all the facts and circumstances of the cases, regardless of whether they are object, documentary, or testimonial.<sup>31</sup>

The mere discrepancy – as perceived by the CA – between the name of the deceased entered in the death certificate (Loreta Yulo Tabuada) and the name of the titleholder (Loreta H. Tabuada) did not necessarily belie or disprove the legal relationship between Sofia Tabuada and the late Loreta Tabuada. To establish filiation, the courts – like the RTC herein – should consider and analyze not only the relevant testimonies of witnesses who are competent but other relevant evidence as well.<sup>32</sup> There was on record herein Sofia Tabuada’s unchallenged declaration of her being the daughter-in-law of the registered titleholder.<sup>33</sup> Also on record was the petitioners’ being in the actual possession of Lot No. 4272-B-2, which they had been using as the site for their family residence.<sup>34</sup> Such established circumstances indicated that the deceased Loreta Yulo Tabuada and titleholder Loreta H. Tabuada could only be one and the same person. Moreover, even the Spouses Certeza were aware that respondents Eleanor Tabuada and Tabuco were the relatives of Sofia Tabuada; and that the respective families of Eleanor Tabuada, Tabuco and Sofia Tabuada actually resided on the same lot.<sup>35</sup> Verily, the facts and circumstances sufficiently and competently affirmed the legal relationship between Sofia Tabuada and the late titleholder Loreta H. Tabuada.

## 2.

### **Real estate mortgage was null and void**

Under Article 2085 of the *Civil Code*, a mortgage, to be valid, must have the following requisites, namely: (a) that it be constituted to secure the fulfillment of a principal obligation; (b) that the mortgagor be the absolute owner of the thing mortgaged; and (c) that the person constituting the mortgage has free disposal of the property, and in the absence of the right of free disposal, that the person be legally authorized for the purpose.<sup>36</sup>

<sup>30</sup> *Far East Bank & Trust Company v. Chante*, G.R. No. 170598, October 9, 2013, 707 SCRA 149, 163.

<sup>31</sup> Section 1, Rule 133 of the *Rules of Court* states that preponderance of evidence in civil cases is determined by considering “all the facts and circumstances of the case, the witnesses’ manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.”

<sup>32</sup> *People v. Sales*, G.R. No. 177218, October 3, 2011, 658 SCRA 367.

<sup>33</sup> *Rollo*, p. 76.

<sup>34</sup> *Id.* at 49.

<sup>35</sup> *Id.* at 114.

<sup>36</sup> *Philippine National Bank v. Reblando*, G.R. No. 194014, September 12, 2012, 680 SCRA 531, 544.

It is uncontested that the late Loreta Tabuada had died in 1990, or four years before the mortgage was constituted; and that Eleanor Tabuada and Trabuco admitted to petitioner Sofia Tabuada that they had mortgaged the property to the Spouses Certezas. Accordingly, the RTC was fully justified in declaring the nullity of the mortgage based on its finding that Eleanor Tabuada had fraudulently represented herself to the Spouses Certeza as the late Loreta Tabuada, the titleholder.<sup>37</sup> That the titleholder had been dead when the mortgage was constituted on the property by Eleanor Tabuada was not even contested by Eleanor Tabuada and Tabuco. In any event, Eleanor Tabuada had not been legally authorized to mortgage the lot to the Spouses Certeza.

### 3.

#### **Respondents Spouses Certeza were not mortgagees in good faith**

The Spouses Certeza contend that they were mortgagees in good faith considering that they had no notice prior to the filing of Civil Case No. 05-28420 that the real owner of the property had died several years before the execution of the mortgage; and that they had believed in good faith in the representations made by Eleanor Tabuada that she had been Loreta Tabuada, the titleholder.<sup>38</sup>

The contentions of the Spouses Certeza lack persuasion.

The Spouses Certeza admitted that the petitioners were the relatives by blood or affinity of their co-defendants Eleanor Tabuada, *et al.*;<sup>39</sup> and that Sofia Tabuada, *et al.* and the petitioners had been living in their respective residences built on the property subject of the mortgage.<sup>40</sup> Such admissions belied the Spouses Certeza's contention of being mortgagees in good faith. At the very least, they should have been prudent and cautious enough as to have inquired about Eleanor Tabuada's assertion of her capacity and authority to mortgage in view of the actual presence of other persons like the petitioners herein on the property. Such prudence and caution were demanded of persons like them who are about to deal with realty; they should not close their eyes to facts that should put a reasonable man on his guard and still claim he acted in good faith.<sup>41</sup> Indeed, the status of a mortgagee in good faith does not apply where the title is still in the name of the rightful owner and the mortgagor is a different person pretending to be the owner. In such a case, the mortgagee is not an innocent mortgagee for value and the registered owner will generally not lose his title.<sup>42</sup>

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<sup>37</sup> *Rollo*, p. 51.

<sup>38</sup> *Id.* at 51.

<sup>39</sup> *Id.* at 114.

<sup>40</sup> *Id.*

<sup>41</sup> *Embrado v. Court of Appeals*, G.R. No. 51457, June 27, 1994, 233 SCRA 335.

<sup>42</sup> *Ereña v. Querrer-Kauffman*, G.R. No. 165853, June 22, 2006, 492 SCRA 298, 320.

## 4.

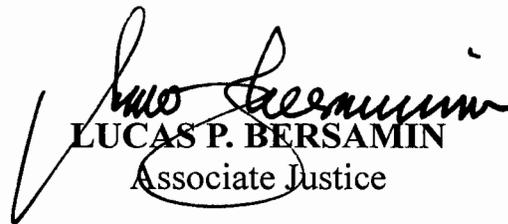
**Award of moral damages reversed because  
action was not an instance of disrespect to the dead**

The RTC awarded moral damages to the petitioners based on disrespect to the dead on the part of Eleanor Tabuada for fraudulently signing and executing the mortgage by impersonating the late Loreta Tabuada.

We hold that the RTC thereby fell into a legal error that the Court should correct. The petitioners cannot recover moral damages from Eleanor Tabuada on the ground of “disrespect to the dead.”<sup>43</sup> The *Civil Code* provision under Article 309<sup>44</sup> on showing “disrespect to the dead” as a ground for the family of the deceased to recover moral and material damages, being under the title of *Funerals*, obviously envisions the commission of the disrespect during the period of mourning over the demise of the deceased or on the occasion of the funeral of the mortal remains of the deceased. Neither was true herein. Hence, the act of Eleanor Tabuada of fraudulently representing the late Loreta Tabuada did not amount to disrespect to the dead as basis for the recovery of moral damages.

**WHEREFORE**, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** and **SETS ASIDE** the decision promulgated on September 30, 2009; **REINSTATES** the judgment rendered on January 18, 2006 by the Regional Trial Court, Branch 28, in Iloilo City in Civil Case No. 05-28420 subject to the deletion of the award of moral damages; and **ORDERS** the respondents to pay the costs of suit.

**SO ORDERED.**

  
LUCAS P. BERSAMIN  
Associate Justice

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<sup>43</sup> Art. 2219. Moral damages may be recovered in the following and analogous cases:

- (1) A criminal offense resulting in physical injuries;
- (2) Quasi-delicts causing physical injuries;
- (3) Seduction, abduction, rape, or other lascivious acts;
- (4) Adultery or concubinage;
- (5) Illegal or arbitrary detention or arrest;
- (6) Illegal search;
- (7) Libel, slander or any other form of defamation;
- (8) Malicious prosecution;
- (9) Acts mentioned in article 309;

- (10) Acts and actions referred to in articles 21, 26, 27, 28, 29, 30, 32, 34, and 35. xxx

<sup>44</sup> Art. 309. Any person who shows disrespect to the dead, or wrongfully interferes with the funeral shall be liable to the family of the deceased for damages, material and moral.

**WE CONCUR:**

*Teresita Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
Chief Justice  
Chairperson

*Mariano C. Del Castillo*  
**MARIANO C. DEL CASTILLO**  
Associate Justice

*Francis H. Jardeleza*  
**FRANCIS H. JARDELEZA**  
Associate Justice

(On Official Leave)  
**NOEL GIMENEZ TIJAM**  
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.

*Teresita Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
Chief Justice