

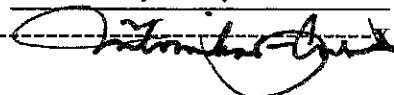
EN BANC

G.R. No. 250636 — MERLINDA PLANA, *petitioner*, versus LOURDES TAN CHUA, and HEIRS OF RAMON CHIANG, *respondents*.

Promulgated:

January 10, 2023

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SEPARATE CONCURRING OPINION

CAGUIOA, J.:

I concur insofar as the *ponencia* rules against the mortgagee Lourdes Tan Chua (Lourdes) — but not for the reasons set out in the *ponencia*.

I submit this Separate Concurring Opinion to stress that, as formulated and articulated during the discussions of the Court *En Banc*, even as a mortgagee is found to have been in good faith, such mortgagee's rights cannot trump the rights of the registered owner of the property who had been defrauded. In other words, the rights of the registered owner take precedence over the rights of a mortgagee in good faith precisely because he or she is the registered owner — and the registered land owner's rights give way to a mortgagee in good faith only when such registered land owner is guilty of any negligence that gave rise to the issue of ownership or possession in the first place.

I submit that this case has given the Court the appropriate opportunity to revisit the prevailing interpretation of the innocent purchaser for value (IPV) principle and its derivatives (*i.e.*, mortgagees, encumbrancers, and other holders in good faith).

I therefore concur in the *ponencia* which now clarifies the rule in determining the issues between a registered owner of the land and one who claims to be an IPV of the same.

As applied to the case at bar, I specifically submit that:

Foremost, under the facts of the case, as viewed by prevailing jurisprudence, Lourdes **cannot be considered** a mortgagee in good faith. As will be detailed herein, the records show that Lourdes failed to comply with the standards which holders must observe to be able to rely on the Torrens certificate covering the lot in dispute. Lourdes did not make any effort to ascertain whether the mortgagor, Ramon Chiang (Ramon), was in actual possession of the mortgaged lot at the time the mortgage in question was constituted. This circumstance is aggravated by the fact that Lourdes could have easily ascertained the validity of Ramon's title as well as his civil status



if only she had chosen to consult her son who, by her own admission, was close to Ramon. Simply put, the circumstances surrounding the execution of the mortgage were replete with signs that should have aroused Lourdes' suspicion and should have impelled her to conduct further inquiry. That Lourdes chose to enter into the mortgage without further investigation precludes her, following **prevailing jurisprudence**, from invoking good faith based on a reliance on Ramon's Torrens certificate.

Second and more significantly, I agree with the point raised during the deliberations that this case does offer the Court a good opportunity to revisit the prevailing interpretation of the IPV principle and its derivatives (*i.e.*, mortgagees, encumbrancers, and other holders in good faith). The current iteration of these principles, which treat a void title as a source of a valid title in the hands of a holder in good faith at *all* times, is diametrically opposed and contrary to the overarching principle which uniquely governs the Philippine Torrens system — that registration neither operates to confirm nor convey ownership and other real rights which do not in fact exist. This overarching principle must apply — *as it does here* — because of the general rule that after the expiration of the one-year period following registration, or the point at which the original registrant's Torrens certificate becomes incontrovertible, the concept of IPV no longer applies. Consequently, after the expiration of the one-year period after registration, *i.e.*, after the Torrens certificate becomes incontrovertible, the IPV rule (which recognizes that a void title can be a source of a valid title in the hands of an innocent holder) arises only from an application of estoppel and equity that prevents the registered owner from asserting his or her rights.

Based on a review of the records, the following are the pertinent facts at hand:

This Petition for Review on *Certiorari* stems from a complaint for reconveyance (Reconveyance Complaint) filed by petitioner Merlinda Plana (Merlinda) against Lourdes and Ramon before Branch 23, Regional Trial Court (RTC) of Iloilo City (Iloilo RTC Br. 23), docketed as Civil Case No. 00-26387.¹

The subject of the Reconveyance Complaint is a specific parcel of land denominated as Lot No. 10031.

Lot No. 10031 was previously registered under Transfer Certificate of Title (TCT) No. T-57961 issued in the name of Nelson Plana (Nelson), Merlinda's first husband. Nelson died in 1971.²

On March 17, 1975, Merlinda married Ramon.³ On December 17, 1975, Ramon made Merlinda sign a Deed of Definite Sale (DDS) under which it was made to appear that Merlinda sold in favor of Ramon five parcels of land

¹ *Rollo*, p. 46.

² *Id.*

³ *Id.* at 29.



which were registered in the name of Nelson. Among these five parcels is Lot No. 10031.

Through said DDS, Ramon caused the issuance of TCT No. T-86916 over Lot 10031 in his name. Consequently, Nelson's TCT No. T-57961 was cancelled.⁴

In 1979, Merlinda and Ramon separated in fact.⁵

Subsequently, Ramon executed two deeds of sale dated August 3, 1979 and August 24, 1979 in favor of one Serafin Modina involving the remaining four parcels of land covered by the DDS.⁶ Serafin Modina later discovered that these four parcels were previously sold to third parties by order of the then Court of First Instance of Iloilo in the proceeding for the settlement of Nelson's estate.⁷ This prompted Serafin Modina to file a complaint for recovery of possession with damages against said third parties.⁸

On January 25, 1996, while Serafin Modina's complaint was pending, Ramon constituted a mortgage (subject mortgage) over Lot 10031 in favor of Lourdes to secure a loan amounting to ₱130,000.00. The subject mortgage was annotated on the back of Ramon's TCT No. T-86916 as Entry No. 656728.⁹

Meanwhile, Serafin Modina's complaint made its way to this Court through a Petition for Review on *Certiorari* titled *Modina v. Court of Appeals*¹⁰ (*Modina*) and docketed as G.R. No. 109355. On October 29, 1999, the Court issued a Decision therein declaring the DDS void and inexistent, primarily for being simulated and lacking in consideration.¹¹ The Court also noted that while the lower courts also found the DDS to be void for violating the prohibition against sales between spouses,¹² the Court treated this ground as a "surplusage" since it was not raised by the parties below.¹³

On August 25, 2000, Merlinda filed the Reconveyance Complaint before Iloilo RTC Br. 23. Therein, Merlinda argued, among others, that Lourdes cannot be deemed a mortgagee in good faith since she was aware that Ramon was not the real owner of Lot No. 10031 at the time the subject mortgage was executed.

⁴ The exact date of issuance of TCT No. T-86916 does not appear in the records.

⁵ *Rollo*, p. 46.

⁶ See *Modina v. Court of Appeals*, 376 Phil. 44, 48 (1999).

⁷ The date of the order rendered by the Court of First Instance of Iloilo and that of the sale made in favor of third parties pursuant thereto neither appear in the discussion in *Modina* nor in the records of the present Petition.

⁸ See *Modina v. Court of Appeals*, supra note 6.

⁹ *Rollo*, p. 47.

¹⁰ *Id.* at 48.

¹¹ See *Modina v. Court of Appeals*, supra note 6.

¹² Based on CIVIL CODE, Art. 1490

¹³ See *Modina v. Court of Appeals*, supra note 6, at 53.

On November 12, 2012, Iloilo RTC Br. 23 issued a Decision, the dispositive portion of which reads:

PREMISES CONSIDERED, Judgment is hereby rendered as follows:

1. The [s]ale of Lot No. 10031 covered by [TCT] No. T-57961 on December 17, 1975 in favor of [Ramon] is hereby declared null and void;
2. The [subject mortgage] of Lot No. 10031 secured by [TCT] No. T-86916 on January 25, 1996, in favor of [Lourdes] is also declared null and void;
3. [TCT] No. T- 86916 issued to [Ramon], pursuant to the [DDS] dated December 17, 1975, which was declared null and void, is hereby ordered cancelled;
4. [TCT] No. T- 57961 in the name of [Nelson] married to [Merlinda] is hereby reinstated and declared to be valid and subsisting;
5. Entry No. 656728-Real Estate Mortgage in favor of [Lourdes], annotated at the back of TCT No. 86916 is hereby ordered cancelled;
6. [Ramon] is hereby ordered to pay his estranged wife [Merlinda] the amount of P100,000 as Moral Damages; P100,000 as Exemplary Damages; and P50,000.00 Attorney's Fees.
7. No Cost as to [Lourdes].

SO ORDERED.¹⁴

Following *Modina*, Iloilo RTC Br. 23 declared the sale of Lot No. 10031 in favor of Ramon null and void.

As well, it found that no fault could be attributed to Lourdes for accepting Lot No. 10031 as security as she merely relied on the face of Ramon's TCT No. T-86916 which indicated him as registered owner thereof. Be that as it may, Iloilo RTC Br. 23 declared the subject mortgage null and void since Ramon "did not have the requisite right of ownership to enter into such agreement."¹⁵ It added that since the subject mortgage is null and void, Lourdes cannot draw any right therefrom.¹⁶

On June 25, 2018, the CA affirmed the Decision of Iloilo RTC Br. 23 with modification. The dispositive portion of the herein assailed CA Decision¹⁷ reads:

¹⁴ *Rollo*, pp. 48-49.

¹⁵ *Id.* at 49.

¹⁶ *Id.*

¹⁷ *Id.* at 45-58. Penned by Associate Justice Geraldine C. Fiel-Macaraig, with the concurrence of Associate Justices Pamela Ann Abella Maxino and Louis P. Acosta.



WHEREFORE, the appeal is **PARTIALLY GRANTED**. The [November 12, 2012] Decision of [Iloilo RTC Br. 23] in Civil Case No. 00-26387 is **AFFIRMED** with **MODIFICATION**, in that the [subject mortgage] in favor of [Lourdes] is ordered to be inscribed in the re-issued [TCT] No. T-57961 in the name of [Nelson] x x x.¹⁸

The CA agreed that the sale of Lot No. 10031 in favor of Ramon is void. Like Iloilo RTC Br. 23, the CA also found that no fault could be attributed to Lourdes for relying on the face of Ramon's TCT No. 86916. **In this connection, the CA ruled that the subject mortgage should be upheld as valid based on the doctrine of mortgagee in good faith.** The CA reasoned, as follows:

In the case at hand, the defense that [Ramon] is not clothed with the right of ownership as the [DDS] is void cannot be raised against [Lourdes] who, as discussed, is a mortgagee in good faith.

This principle is based on the rule that all persons dealing with property covered by a Torrens Certificate of Title, as buyers or mortgagees, are not required to go beyond what appears on the face of the title. This is the same rule that underlies the principle of innocent purchasers for value. The prevailing jurisprudence is that a mortgagee has a right to rely in good faith on the certificate of title of the mortgagor to the property given as security and in the absence of any sign that might arouse suspicion, has no obligation to undertake further investigation. Hence, even if the mortgagor is not the rightful owner of, or does not have a valid title to, the mortgaged property, the mortgagee in good faith is, nonetheless, entitled to protection.¹⁹

Merlinda's subsequent Motion for Reconsideration was denied, prompting her to file the present Petition.

The *ponencia* grants the Petition in part and affirms, with modification, the assailed CA Decision, as follows:

x x x The Decision dated June 25, 2018 and Resolution dated October 16, 2019 of the Court of Appeals in CA-G.R. CEB-CV No. 04831 are **AFFIRMED with MODIFICATION**, thus:

1. TCT No. T-86916 issued in the name of Ramon Chiang is cancelled;
2. The annotation of the Real Estate Mortgage on the back of TCT No. T-86916 under Entry No. 656728 in favor of Lourdes Tan Chua is likewise cancelled;
3. TCT No. T-57961 issued in the name of Nelson Plana married to Merlinda Relano is reinstated;
4. The Estate of Ramon Chiang, through his heirs is ordered to pay Merlinda Plana the following amounts:

¹⁸ Id. at 57-58.

¹⁹ Id. at 56.



- a. ₱100,000.00 as moral damages;
- b. ₱100,000.00 as exemplary damages;
- c. ₱50,000.00 as attorney's fees; and
- d. six percent (6%) interest *per annum* on these amounts from finality of this Decision until fully paid.

Respondent Lourdes Tan Chua and her counsel are ordered within ten (10) non-extendible days from notice to show cause why they should not be cited in contempt of court for their deliberate withholding of material facts as above-mentioned and for delaying the speedy disposition of the present case and nearly bringing the administration of justice to disrepute.

SO ORDERED.²⁰

In its ruling, the *ponencia* finds Lourdes to be a mortgagee in good faith, as Merlinda “failed to adduce any special compelling reason to depart from this concurrent finding.”²¹

In addition, the *ponencia* holds that all the requisites necessary for the application of the doctrine of mortgagee in good faith concur, namely:

(a) the mortgagor is not the rightful owner of, or does not have valid title to, the property; (b) the mortgagor succeeded in obtaining a Torrens title over the property; (c) the mortgagor succeeded in mortgaging the property to another person; (d) the mortgagee relied on what appears on the title and there exists no facts and circumstances that would compel a reasonably cautious man to inquire into the status of the property; and (e) the mortgage contract was registered.²²

Despite the finding that Lourdes is a “mortgagee in good faith,” the *ponencia* nonetheless orders the cancellation of the subject mortgage for while the Court has previously held that “a void title may be the source of a valid title in the hands of an innocent purchaser [or holder] for value,”²³ such rule cannot apply where “the true owner has not been found negligent or has not committed an act which could have brought the issuance of another title relied upon by the purchaser or mortgager for value.”²⁴ The *ponencia* explains that in such cases, the true innocent owner has a better right over the mortgagee in good faith.²⁵

²⁰ *Ponencia*, pp. 13-14.

²¹ *Id.* at 7.

²² *Id.*, citing *Jimenez v. Jimenez*, G.R. No. 228011, February 10, 2021, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67186>>.

²³ *Id.* at 9, citing *Spouses Bautista v. Spouses Jalandoni*, 722 Phil. 144, 149 (2013), further citing *Tan v. De la Vega*, 519 Phil. 515, 529 (2006) and *Philippine National Bank v. Court of Appeals*, 265 Phil. 703 (1990).

²⁴ *Id.*

²⁵ *Id.*



As stated at the outset, I concur in the disposition of not giving effect to the mortgage. However, I disagree with the ruling insofar as it finds Lourdes to be a mortgagee in good faith.

The lower courts' findings with respect to Lourdes' good faith may be revisited

A preliminary discussion on procedural matters is necessary.

As a rule, the scope of the Court's power of review under Rule 45 of the Rules of Court is limited only to questions of law.²⁶ A question of law arises when there is doubt as to what the law is on a certain set of facts, while there is a question of fact when doubt arises as to the truth or falsity of the alleged facts. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.²⁷

Generally, the existence of good faith or lack of it, being dependent on the facts, also constitutes a question of fact. However, the Court has held that when there is no dispute as to the relevant facts but only as to the legal conclusion which may be drawn from said facts, the question of good faith properly becomes a question of law, thus:

In determining whether respondents are buyers in good faith, it must be pointed out that "the ascertainment of good faith, or lack of it, and the determination of whether due diligence and prudence were exercised or not, are questions of fact" which are beyond the ambit of petitions for review on *certiorari* under Rule 45 of the Rules of Court. However, in *Heirs of Nicolas S. Cabigas v. Limbaco*, the Court, while recognizing that the question of whether a person acted with good faith or bad faith in purchasing and registering real property is a question of fact, also stated that when there is no dispute as to the facts, the question of whether or not the conclusion drawn from these facts is correct is a question of law.²⁸

Here, the following facts are not in dispute: (1) Ramon mortgaged Lot No. 10031 in favor of Lourdes in June 1996;²⁹ (2) at such time, Lot No. 10031 was covered by TCT No. T-86916 issued in Ramon's name;³⁰ (3) Lourdes relied on the face of Ramon's title,³¹ and (4) Lourdes did not take steps to ascertain whether Ramon was in possession of Lot No. 10031 at such time because the latter's title was "clean."³² It would thus appear that the question of whether Lourdes can be deemed to have acted in good faith when she accepted the subject mortgage based on these undisputed facts constitutes a question of law.

²⁶ *Sarmiento v. Dizon*, G.R. No. 235424, February 3, 2021, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67245>>.

²⁷ *Id.*

²⁸ *Heirs of Cudal, Sr. v. Spouses Suguitan, Jr.*, G.R. No. 244405, August 27, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66517>>.

²⁹ *Rollo*, p. 181.

³⁰ *See id.* at 184.

³¹ *Id.*

³² *Id.*



In any event, the Court is nevertheless empowered to review questions of fact in the face of certain established exceptions, to wit:

(1) when the findings are grounded entirely on speculation[s], 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.**³³ (Emphasis supplied)

The 11th exception squarely applies in this case. As will be explained in detail below, reliance on a clean title may only serve as a basis for a claim of good faith when several requisites concur, namely, (i) that the seller is the registered owner of the land; (ii) the registered owner is in possession of the land; and (iii) at the time of the sale, the purchaser of the land was free from any knowledge of any adverse claim or interest of another on the land, and was not aware of any defect on the seller's title over the land, or his or her capacity to convey the same. **Here, the CA overlooked the established facts which show that the second and third requisites do not concur.**

Lourdes is not a mortgagee in good faith

Even under the current iteration of the IPV principle, the records show that Lourdes fails to qualify as a mortgagee in good faith.

While the law is that no valid mortgage can arise unless the mortgagor has a valid title or ownership over the mortgaged property,³⁴ prevailing jurisprudence has carved out an exception — a mortgagee can be deemed to have acquired valid title even if the mortgagor's title on the encumbered property is defective if the mortgagee acted in good faith. **In such exceptional cases, it is clear that the burden of proof to trigger the exception lies with the person claiming it.** As held in *Concorde Condominium, Inc. v. Philippine National Bank*:³⁵

[T]he burden of proving the status of a purchaser/mortgagee in good faith lies upon one who asserts that status. This *onus probandi* cannot be discharged by mere invocation of the legal presumption of good faith.

³³ *Sarmiento v. Dizon*, supra note 26.

³⁴ See CIVIL CODE, Art. 2085, which requires that the mortgagor "be the absolute owner" of the property so mortgaged.

³⁵ 843 Phil. 954, 993 (2018).



Indeed, the status of a buyer/mortgagee in good faith is never presumed but must be proven by the person invoking it.³⁶

As stated, the *ponencia* finds Lourdes to be a mortgagee in good faith based on the concurrence of the requisites set forth in *Jimenez v. Jimenez*,³⁷ to wit:

x x x (a) the mortgagor is not the rightful owner of, or does not have valid title to, the property; (b) the mortgagor succeeded in obtaining a [Torrens certificate] over the property; (c) the mortgagor succeeded in mortgaging the property to another person; (d) the mortgagee relied on what appears on the title and there exists no facts and circumstances that would compel a reasonably cautious man to inquire into the status of the property; and (e) the mortgage contract was registered.³⁸

I submit that requisite (d) above is belied by the records of the case.

Notably, in *Heirs of Cudal, Sr. v. Spouses Suguitan, Jr.*³⁹ (*Heirs of Cudal*), the Court explained the prevailing principles governing proof of good faith with respect to buyers of registered land, thus:

To prove good faith, a buyer of registered and titled land need only show that he [or she] relied on the face of the title to the property. He [or she] need not prove that he [or she] made further inquiry for he [or she] is not obliged to explore beyond the four corners of the title. **Such degree of proof of good faith, however, is sufficient only when the following conditions concur: first, the seller is the registered owner of the land; second, the latter is in possession thereof; and third, at the time of the sale, the buyer was not aware of any claim or interest of some other person in the property, or of any defect or restriction in the title of the seller or in his [or her] capacity to convey title to the property.**

Absent one or two of the foregoing conditions, then the law itself puts the buyer on notice and obliges the latter to exercise a higher degree of diligence by scrutinizing the certificate of title and examining all factual circumstances in order to determine the seller's title and capacity to transfer any interest in the property. Under such circumstance, it is no longer sufficient for said buyer to merely show that he [or she] relied on the face of the title; he [or she] must now also show that he [or she] exercised reasonable precaution by inquiring beyond the title. Failure to exercise such degree of precaution makes him [or her] a buyer in bad faith.⁴⁰ (Emphasis and underscoring supplied)

Clearly, a purchaser's reliance on the Torrens certificate will only be sufficient to prove good faith **upon concurrence of the following requisites:** (i) the seller is the registered owner of the land; (ii) the registered owner is in

³⁶ Id. See also *Ruiz v. Dimailig*, 799 Phil. 273, 282 (2016), where the Court held that:

x x x the burden of proof that one is a mortgagee in good faith and for value lies with the person who claims such status. A mortgagee cannot simply ignore facts that should have put a reasonable person on guard, and thereafter claim that he or she acted in good faith under the belief that the mortgagor's title is not defective.

³⁷ *Jimenez v. Jimenez*, supra note 22.

³⁸ Id.

³⁹ Supra note 28.

⁴⁰ Id.

possession of the land; and (iii) at the time of the sale, the purchaser of the land was free from any knowledge of any adverse claim or interest of another on the land, and was not aware of any defect on the seller's title over the land, or his or her capacity to convey the same. **These requisites represent the standards that holders must observe to be able to rely on the Torrens certificate, and be deemed to have acted in good faith.** Moreover, these requisites also apply to mortgages involving registered land, as the phrase "innocent purchaser for value" is statutorily deemed to include mortgagees or other encumbrancers for value.⁴¹

Applying the foregoing requisites, Lourdes fails to qualify as an innocent mortgagee or a mortgagee in good faith. To begin with, courts will take judicial notice of the record, pleadings, or judgment of a case in another court between the same parties or involving one of the parties, as well as of the record of another case between different parties in the same court.⁴²

Here, as the *ponencia* adds, the records show that before Merlinda filed the Reconveyance Complaint subject of this Petition, Ramon filed on July 13, 1998 a complaint for accounting and damages against Lourdes (Accounting Complaint) also with Branch 39, RTC of Iloilo City (Iloilo RTC Br. 39).⁴³

The *ponencia* finds that the failure of Lourdes and counsel to disclose the pendency of Civil Case No. 25285 betrays a "cavalier attitude"⁴⁴ and, ultimately, a reason to order both Lourdes and her counsel to show cause for why they should not be cited in contempt of court for failure to disclose material facts which are dispositive of her allegations before the Court. While I agree with the *ponencia* that failure to include this material information may be grounds to hold a party in contempt, I wish to note that this Accounting Complaint was raffled to Iloilo RTC Branch 39 and was docketed as Civil Case No. 25285. In turn, the relevant pleadings and documents filed, as well as the significant orders and other issuances of Iloilo RTC Br. 39 in Civil Case No. 25285, have all been annexed to Merlinda's Petition and Reply, and thus form part of the records of this Petition.⁴⁵ As such, the Court is bound to take judicial notice of these annexes culled from the records of Civil Case No. 25285.

More importantly, based on these material pieces of information which Lourdes failed to mention, I find that a holistic appreciation of the relevant records in Civil Case No. 25285, together with the facts attendant in the Reconveyance Complaint subject of this Petition, supports the only conclusion that can be deduced: that Lourdes is **not** a mortgagee in good faith.

⁴¹ See generally Presidential Decree No. 1529, Sec. 32.

⁴² On mandatory judicial notice, see *Republic v. Court of Appeals*, 343 Phil. 428 (1997).

⁴³ *Rollo*, p. 90. The Accounting Complaint was later amended to implead Lourdes' husband Emilio Chua.

⁴⁴ *Ponencia*, p. 13.

⁴⁵ Particularly, Ramon's Complaint and Amended Complaint (*rollo*, pp. 90-93; 102-106); Lourdes' Answer (*rollo*, pp. 113-121); the various orders of the Iloilo RTC Br. 39 in Civil Case No. 25285 (*rollo*, pp. 100-101; 123-134; 137-139; 150); the Partial Compromise Agreement between Ramon and Lourdes (*rollo*, pp. 135-136.); the December 21, 2012 Decision of the CA Nineteenth Division in CA-G.R. CV No. 00920 which granted Lourdes' prayer to remand the case to Iloilo RTC Br. 39 (*rollo*, pp. 141-149); and the transcript of Lourdes' deposition dated January 7, 2021 (*rollo*, pp. 234-273).

A perusal of the Accounting Complaint⁴⁶ reveals the following allegations made by Ramon:

1. He obtained a ₱130,000.00 loan from Lourdes, which was secured by the subject mortgage;
2. As additional security, he was allegedly required to issue a Traders Royal Bank (TRB) check dated December 31, 1997 in the amount of ₱130,000.00 (first TRB check);
3. He later obtained another loan amounting to ₱20,000.00, for which he was required to issue another TRB check dated December 16, 1997 in the amount of ₱20,000.00 (second TRB check);
4. He religiously paid the monthly installment of ₱4,500.00 until December 31, 1997;
5. However, Lourdes allegedly tried to collect interest amounting to 7% *per* month, which he refused to pay for the reason that it was never agreed upon in writing;
6. As of the filing of the Accounting Complaint, he had already paid the amount of ₱65,500.00, leaving a balance of ₱83,500.00;
7. He sent Lourdes a letter dated February 24, 1998 expressing his intention to consign the amount of ₱83,500.00 as payment for his outstanding balance, since Lourdes never followed through with her promise of sending her son Johnny Chua (Johnny) to collect the payment; and
8. On July 8, 1998, he consigned/deposited the aforesaid balance of ₱83,500.00 with Iloilo RTC Br. 39 and later informed Lourdes of such deposit through a letter dated July 8, 1998.⁴⁷

In her Answer,⁴⁸ Lourdes alleged that Ramon actually obtained three different loans from her, specifically: (i) a ₱130,000.00 loan dated June 25, 1996 which was secured by the subject mortgage; (ii) a ₱20,000.00 loan dated January 1, 1997 secured by the first TRB check post-dated December 16, 1997; and (iii) **another** ₱130,000.00 loan dated December 1, 1997 secured by the second TRB check post-dated December 31, 2017.⁴⁹

⁴⁶ Id. at 90-93; 102-106.

⁴⁷ Id. at 90-93.

⁴⁸ Id. at 113-120.

⁴⁹ Id.



According to Lourdes, all three loans were subject to a stipulated monetary interest of 3% *per* month. Lourdes thus argued that the principal loans remained outstanding, as the payments made by Ramon thus far only cover the monthly interest. Hence, as counterclaim, Lourdes prayed for the payment of all three loans plus the 3% monthly interest due. In default thereof, Lourdes prayed for the foreclosure of the subject mortgage.⁵⁰

Ramon and Lourdes later entered into a Partial Compromise Agreement⁵¹ on March 15, 2001 under which Lourdes conditionally accepted the ₱83,500.00 Ramon deposited with Iloilo RTC Br. 39, without prejudice to her right to pursue her counterclaims.

Later still, Ramon's Accounting Complaint was dismissed with prejudice because of his failure to appear at pre-trial despite due notice. In turn, Lourdes was allowed to present evidence in support of her counterclaim *ex-parte*.⁵²

While Lourdes' counterclaim appears to have also been dismissed due to her failure to appear at the hearing scheduled for the *ex-parte* presentation of her evidence,⁵³ Lourdes later filed an appeal to pray for its reinstatement. This appeal was granted, and the counterclaim was thus reinstated and remanded to Iloilo RTC Br. 39 for trial upon order of the CA Nineteenth Division in its Decision⁵⁴ dated December 21, 2012 in CA-G.R. CV No. 00920.⁵⁵

Thus, at present, Lourdes' counterclaim in Civil Case No. 25285 remains pending with Iloilo RTC Br. 39.

Significantly, in Lourdes' deposition in Civil Case No. 25285 taken on January 7, 2021, she stated under oath that she had **no actual knowledge** of the circumstances relating to the loan secured by the subject mortgage, thus:

[Q]: How did you know Ramon Chiang, how well did you know Ramon Chiang yourself?

A: It was Johnny who knew him. I only saw them together and whatever transaction they have I do not know about it because it was Johnny who was with him.

x x x x

[Q]: Now, Madam Witness, I would like to ask you whether this was a business transaction between you and Ramon or between Johnny and Ramon?

⁵⁰ Id. at 119-120.

⁵¹ Id. at 135-136.

⁵² Id. at 137.

⁵³ Id. at 138.

⁵⁴ Id. at 141-149. Penned by Associate Justice Edgardo L. Delos Santos (later appointed as a member of the Court), with the concurrence of Associate Justices Pamela Ann Abella Maxino and Marilyn B. Lagura-Yap.

⁵⁵ Id.



A: **I had no involvement, just the two of them.**

Q: Okay. Next question? So, you just signed this document but it was really between them?

A: **The transaction was between them and I [did] not involve myself in that transaction.**⁵⁶ (Emphasis supplied)

Lourdes' statements coincide with Johnny's testimony in the Reconveyance Complaint subject of this Petition. To quote:

Direct Examination

Q: Have you ever [gone] to the [subject lot]?

A: No sir.

Q: **Do you know if your mother [has] ever been to [the subject lot] at any time whatsoever?**

A: **No, sir.**

x x x x

Cross-Examination

x x x x

Q: **If it were not for you, your mother [would not have agreed] to loan him [money]?**

A: **Yes.**

Q: It was because of you that x x x your mother agreed to lend money to him, is that correct?

A: That is true because there was x x x collateral.

Q: So your mother also accepts [r]eal [e]state [m]ortgage[s] as collateral for loan?

A: My answer a while ago, she [lent] money to Ramon Chiang because of me.

Q: And not because of the collateral?

A: If there was no collateral, we don't accept.

Q: x x x [W]hat do you mean?

A: **Because I was the one who facilitated. I was the one who convinced my mother to lend to him.**

⁵⁶ See id. at 226-227; 265-267.

x x x x

Q: [Merlinda] testified that she is the one occupying the [subject lot] and was staying there even at the time because she reside[s] there. Did you or did you not know of this fact?

A: I did not check[.]

Clarificatory questions by the court:

x x x x

Q: Your mother immediately accepted the transaction to mortgage the title?

A: Yes, Your Honor.

Q: And the document was prepared on that day?

A: One or two days.

Q: Your mother did not bother anymore to inspect the [subject lot]?

A: We did not bother to check the [subject lot] because first, Ramon is a fellow Chinese, and mother learned that he is a relative of Jose Mari Chan and my mother and the mother of Jose [Mari] Chan are good friends.⁵⁷ (Emphasis supplied)

In all, Lourdes' sworn deposition, taken with Johnny's testimony in the Reconveyance Complaint subject of present Petition, confirm that: (i) the execution of the mortgage was facilitated solely by Johnny; (ii) Lourdes merely agreed to extend the loan and accept the subject lot as security precisely because Johnny convinced her to; and (iii) neither Lourdes nor Johnny exerted earnest efforts to ascertain whether Ramon was in possession of the subject lot at the time of the mortgage.

Further perusal of Lourdes' deposition in Civil Case No. 25285 also reveals that Ramon and Johnny were more than remote acquaintances:

[Q]: So, in your Judicial Affidavit, the one that is produce[d] now before us in this proceeding is just the photocopy of x x x the Promissory Note x x x correct?

A: Yes, Sir.

Q: And you cannot find any document and copy that shows the original Promissory Note anymore, is that correct?

A: Yes, it was lost by Johnny because Ramon and my son Johnny were close. The original document was with Johnny.⁵⁸ (Emphasis supplied)

⁵⁷ See id. at 70-73.

⁵⁸ See id. at 258.

Again, this is corroborated by Johnny's testimony in the Reconveyance Complaint:

Q: Is it not a purely business transaction between you and Ramon Chiang, is that correct?

A: It was a business transaction because there was interest.

Q: You said that your business does not accept [r]eal [e]state [m]ortgage as collateral but you said that this is a purely business transaction, what do you mean?

A: **We accept jewelry as collateral but because I know Ramon Chiang, I asked him what will be his collateral and he showed me his title, a clean title and it was already mortgaged to the bank before. He showed to me the title as collateral, just a favor.**

x x x x

Q: **In other words, it was a personal favor from you to introduce Ramon Chiang to your mother?**

A: **Yes, it was a favor.**⁵⁹ (Emphasis and underscoring supplied)

As shown in the foregoing narration, Ramon and Johnny were more than mere acquaintances, sharing more than a "remote social connection,"⁶⁰ and were in fact close friends. Johnny would have thus been aware of Ramon's *real* civil status and the fact of Merlinda and Ramon's marriage. Lourdes, in turn, could have easily confirmed these matters if only she made the standard inquiries. In this regard, I echo the keen observations of the Chief Justice:

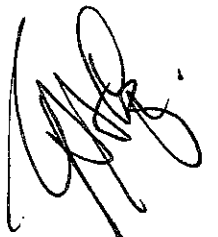
Besides, is there a showing that Lourdes had no knowledge of the previous ownership of the land considering that she and [Nelson] Plana (as well as x x x [Merlinda's] son) are Chinese members of the Lion's Club? This circumstance cannot be lightly brushed aside considering that the membership in associations like the Lion's Club [is] usually founded on securing network or connections in the business community in support of their collective civic works or charitable pursuits. Moreover, Lourdes should have been alarmed under the circumstances as Ramon's status on the face of the subject certificate of title involving the 5th lot is written as "single" instead of married. Even the *ponencia* observed that both [Merlinda] and mortgagor Ramon had only separated in fact; which means that they continued to be married to each other at the time of the mortgage. Since [Lourdes] is not a mere acquaintance of mortgagor Ramon and his family, she cannot claim good faith in not investigating further despite the irregularity of the mortgagor and purported landowner's status.⁶¹

It must also be noted that Lourdes' reliance on the fact that the subject property had already been mortgaged by Ramon with a bank prior to the mortgage does not support her claim of good faith. If anything, such a reliance

⁵⁹ See *rollo*, p. 71.

⁶⁰ *Id.* at 53.

⁶¹ Separate Opinion of Chief Justice Alexander G. Gesmundo, p. 12.



suggests only that apart from Lourdes, the previous bank mortgagee also failed to exercise the due diligence of a mortgagee in good faith, perhaps in even graver measure because it was a financial institution imbued with an extraordinary degree of diligence, as the Court held in the case of *Philippine National Bank v. Corpuz*.⁶²

As a rule, the Court would not expect a mortgagee to conduct an exhaustive investigation of the history of the mortgagor's title before he [or she] extends a loan. But petitioner PNB is not an ordinary mortgagee; it is a bank. Banks are expected to be more cautious than ordinary individuals in dealing with lands, even registered ones, since the business of banks is imbued with public interest. It is of judicial notice that the standard practice for banks before approving a loan is to send a staff to the property offered as collateral and verify the genuineness of the title to determine the real owner or owners.⁶³

In addition, in the case of *Philippine Banking Corp. v. Dy*,⁶⁴ the Court plainly stated, thus:

Primarily, it bears noting that the doctrine of "mortgagee in good faith" is based on the rule that all persons dealing with property covered by a Torrens Certificate of Title are not required to go beyond what appears on the face of the title. This is in deference to the public interest in upholding the indefeasibility of a certificate of title as evidence of lawful ownership of the land or of any encumbrance thereon. In the case of banks and other financial institutions, however, greater care and due diligence are required since they are imbued with public interest, failing which renders the mortgagees in bad faith. Thus, before approving a loan application, it is a standard operating practice for these institutions 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. **The apparent purpose of an ocular inspection is to protect the "true owner" of the property as well as innocent third parties with a right, interest or claim thereon from a usurper who may have acquired a fraudulent certificate of title thereto.**⁶⁵ (Emphasis supplied; citations omitted)

Still, it should also be noted that Lourdes ran a pawnshop through which she lent money in exchange for collateral, and that contrary to the pawnshop's usual practice of requiring jewelry as security, Lourdes made an exception for Ramon and accepted the subject lot as security. Under these circumstances, it was incumbent upon Lourdes to ascertain whether Ramon was in possession of the subject lot, and verify the latter's personal circumstances with Johnny. Instead, she blindly proceeded with the transaction upon the prodding of her son.

Clearly, Lourdes failed to comply with the minimum standards which holders must observe to be able to rely on the Torrens certificate and be deemed to have acted in good faith under prevailing jurisprudence. Again, the records confirm that Lourdes did not ascertain whether Ramon was in

⁶² 626 Phil. 410 (2010).

⁶³ Id. at 412-413.

⁶⁴ 698 Phil. 750 (2012).

⁶⁵ Id. at 757.



possession of Lot 10031 at the time the subject mortgage was executed, and that Lourdes could have easily ascertained the defects in Ramon's title if only she had chosen to verify the relevant facts with her son to whom Ramon was "close." **As explained in *Heirs of Cudal*, these circumstances should have aroused Lourdes' suspicion and impelled her to conduct further inquiry. Failing this, Lourdes is barred from invoking good faith based on mere reliance on the four corners of Ramon's Torrens certificate.**

In other words, it became incumbent upon Lourdes to establish that she entered into the transaction with due diligence and in utmost good faith. **However, the evidence on record confirm exactly the opposite — that Lourdes blindly entered into the transaction and approved the mortgage without knowledge of its incidents.** Thus, Lourdes cannot invoke the principle of mortgagee in good faith even in its prevailing iteration.

***Revisit of the IPV principle:
indefeasibility under the Torrens
system***

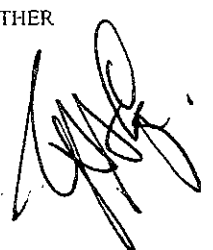
Notably, even as the Iloilo RTC Br. 23, the CA, and the *ponencia* are one in finding that the sale of Lot 10031 in favor of Ramon is absolutely null and void, there remains a disparity in their treatments of the subject mortgage and its effects as against Merlinda and Lourdes. This disparity illustrates the continuing confusion that arises from the prevailing interpretation of the IPV principle and its derivatives.

Hence, even as the records show that Lourdes does not qualify as a mortgagee in good faith under prevailing jurisprudence, I nevertheless submit that it is high time for the Court to recalibrate the IPV principle and its derivatives to properly reflect the intent of Presidential Decree No. 1529⁶⁶ (PD 1529) and reconcile the same with the overarching principle governing the Philippine Torrens system — **that registration neither operates to confirm nor convey ownership and other real rights which do not in fact exist.**

Bearing the aforesaid overarching principle in mind, I propose to restate the rules governing the IPV principle and its derivatives, as follows:

1. Upon expiration of the one-year period after the issuance of a Torrens certificate, the title of the original registrant becomes incontrovertible pursuant to Section 53 of PD 1529. Thus, as a general rule, any Torrens certificate thereafter issued through fraud or misrepresentation shall be null and void, and shall not serve as a source of a valid title in the hands of a holder in good faith.

⁶⁶ AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES, or The Property Registration Decree, dated June 11, 1978.



2. As an **exception**, a subsequent Torrens certificate derived from one procured by fraud may be given effect in the hands of a holder in good faith only in cases where the fraud resulted from the original registrant's own negligence. In such exceptional cases, the original negligent registrant is estopped to question the title of the innocent holder whose rights shall be respected as they ought to be based on the principles of equity.

Stated differently, the rule that a void title serves as a source of a valid title in the hands of an innocent holder should be treated as a narrow exception which may be applied solely on the basis of estoppel and equity. It should neither be treated nor applied as the general rule.

To properly explain the basis for this proposed restatement, it is apt to first discuss the history of the Torrens system and its paramount feature of indefeasibility.

The Torrens system of title registration, pioneered in South Australia in 1858 by Sir Robert Torrens, draws itself as distinct from previous land conveyance and registration systems with its pragmatic simplicity when it identifies as its cornerstone the indefeasibility of a title to "save persons dealing with registered proprietors from the trouble and expense of going behind the register in order to investigate the history of their author's title,"⁶⁷ viz.:

Prior to the implementation of the Torrens system of registration, conveyancing in South Australia, as in other colonies, was mired in the complexities inherent in the English system of conveyancing. This was most obvious in relation to proof of title to land, which "necessitated tracing title back through an unbroken chain of events and documents, perhaps as far as the Crown grant." The previous land registration system, based on the registration of deeds, did little to overcome the difficulties and uncertainties in proof of title because it was the deed, rather than the title, that was registered. Registration therefore provided no assurance of validity, merely providing priority *if valid*. The need to investigate title every time land was conveyed or otherwise dealt with meant that parties had to incur expense in both time and money every time a transaction was entered into. Due to the complexities of such investigation, purchasers also had to abide a certain degree of risk that defects in the vendor's title would not be fully discovered in the investigation. The system of independent titles proposed by Torrens obviated the costs involved in the investigation of title. By overturning the common law rule of *nemo dat quo[d] non habet*, it also significantly reduced the risk to a purchaser of any conveyance which was duly registered under such a system, since the purchaser's title upon registration would be "indefeasible" and free from defects affecting the vendor's title.⁶⁸

The linchpin mechanism of the Torrens system is the paramount role of registration, which distinguishes it from the previous passing of title to land,

⁶⁷ Kelvin Low, *The Nature of Torrens Indefeasibility: Understanding the Limits of Personal Equities*, MELBOURNE UNIVERSITY LAW REVIEW, Vol. 33, 205-234, p. 206.

⁶⁸ Id.



which mainly required proof of ownership. Registration *vis-à-vis* the Torrens system was acutely described as such:

Instruments when executed are merely personal contracts between the parties, upon which action for damages may be raised, but they do not bind the land. The entry on the folium of the Register alone passes the property, creates the charge or lesser estate, discharges, or transfers it.⁶⁹

The Australian Torrens system of registration is thus characterized by the concept of *indefeasibility*, which ascribes permanence to the certificate of title, thus:

X X X The courts recognize this fact and have said with reference to a title based upon the recording act that “it is impossible in the nature of things that there should be a mathematical certainty of a good title.” However, since the establishment of the Torrens System, we find that there can be a certainty as to title. Many statements of courts and text writers are to be found such as the following: “The purpose of this statute is to create a judgment [*in rem*] perpetually conclusive. Other proceedings [*in rem*] may determine the status of a ship or other chattel that is transient; this legislation provides for a decree that shall conclude the title to an interest that is to be as lasting as the land itself.”⁷⁰

Notably, the concept of indefeasibility is viewed in the Australian context as being limited to indefeasibility from *prior* claims, thus:

It seems clear that the indefeasibility intended to be conferred by s 42(1) is only indefeasibility from prior estates and proprietary interests. It is not intended to immunize the registered proprietor from all claims whatsoever, whether or not they may otherwise affect the land. In the words of Lord Wilberforce in *Frazer v Walker*, indefeasibility “does not involve that the registered proprietor is protected against any claim whatsoever[.]”

It is less common to encounter Torrens statutes that refer explicitly to indefeasibility. One such rare statute is the *Real Property Act 1886* (SA). However, like the Victorian Act, indefeasibility is intended to be limited. x x x

x x x x

The reference to [“]encumbrances, liens, estates or interests[”] suggests that the indefeasibility conferred x x x is intended only to protect the registered proprietor from claims based on prior title.⁷¹
(Emphasis supplied)

While slightly nuanced to cover “claims based on prior title,” the concept of indefeasibility appears to be absolute, as it has nonetheless been

⁶⁹ Lynden Griggs, *In Personam, Garcia v NAB and the Torrens System – Are They Reconcilable?* QUEENSLAND UNIVERSITY OF TECHNOLOGY LAW & JUSTICE JOURNAL (2001), p. 78, citing R. Torrens, *A HANDY BOOK ON THE REAL PROPERTY ACT OF SOUTH AUSTRALIA* (1862), p. 8.

⁷⁰ R.G. Patton, *The Torrens System of Land Title Registration*, MINNESOTA LAW REVIEW (1935), p. 534.

⁷¹ Kelvin Low, *The Nature of Torrens Indefeasibility: Understanding the Limits of Personal Equities*, *supra* note 67, at 211.

extended to cover instances where certificates of title were registered based on forged documents:

x x x First, the case of the forged instrument falls squarely within the exclusionary rule prohibiting claims based on prior title. Apart from the statutory exception for fraud, a prior owner would need to assert a claim against the registered proprietor on the basis of their prior title in order to get their land back. Hence, such a claim falls within the category of claims prohibited by the principle of indefeasibility rather than the category of claims permitted by the *inter se* rule. **Although the Torrens system is primarily motivated by the need to reduce costs, difficulty and delay involved in investigating title, the protection of indefeasibility was extended beyond cases where there was a defect in the vendor's title. It was extended to cases where, although the vendor's title was unimpeachable, the transfer itself was defective because the instrument was a forgery or otherwise void. In so extending the principle of indefeasibility, the protection from prior title became complete. Not only is the registered proprietor protected from prior title which afflicted the vendor's title, he or she is likewise protected from the defrauded vendor's own (prior) title.**

x x x

Insofar as the validity of the transaction is impugned, on the basis of fraud or forgery, the principle of indefeasibility extends to protect the registered proprietor from the effects of nullity.⁷² (Emphasis supplied)

It thus appears that in the Australian context, the IPV principle operates as an adjunct of absolute indefeasibility which serves to make the protection from "claims based on prior title" given by the Torrens system "complete."

Despite its noble underpinnings, this absolutist approach is not free from opposition and criticism. **Notably, the carving out of fraudulently registered titles was foreseen early on as a guard against unscrupulous parties who may turn the Torrens system on its head as a tool to legitimize forged titles:**

Lack of jurisdiction and fraud, therefore, are two possible defects that may prevent a Torrens certificate from being conclusive. It is obvious, also, that the aura of indefeasibility which surrounds a Torrens certificate will constantly tempt the unscrupulous to employ the system for turning bad titles into good ones, and the presence of an examiner of titles, whose business it is to prevent such occurrences, has not, and probably will not, in the future, entirely eliminate such a practice. Sooner or later, by some hook or crook, a bad title will be registered, and the decree of registration will, in turn, be attacked by the rightful owner of the land.⁷³

In fact, in a 1935 essay which enumerated the reasons why the titles then registered in the recording system should be transferred to the Torrens

⁷² Id. at 215.

⁷³ Loring M. Staples, *Conclusiveness of a Torrens Certificate of Title*, MINNESOTA LAW REVIEW (1924), pp. 202-203.

system, one cited advantage for the Torrens system is, precisely, the protection against forgery, *viz.*:

2. Elimination of the necessity of ever having to defend one's title because of forgery of one's name to a deed or mortgage. **A forger can accomplish nothing with a forged instrument unless he [or she] also has possession of the owner's duplicate certificate of title.**

x x x x

9. To secure immunity from risk of loss, or impairment of title from the dangers incident to a title based upon the recording system, such as: forged deeds (deed void); deeds recorded which have never been "delivered" (deed void); deed executed pursuant to a forged or undelivered power of attorney or executed after revocation of the power by death or insanity of the maker (deed void); x x x⁷⁴ (Emphasis supplied)

Nevertheless, literature has also been quick to specify the type or degree of fraud capable of impeaching an otherwise indefeasible title, to wit:

It is necessary at this point to define what is meant by the term "fraud." We have seen that jurisdiction for the purpose of registration proceedings can constitutionally be obtained as to unknown residents or known non-residents by publication. Suppose A, who wishes to register his [or her] title, has no actual notice of B, who is a resident and claims an interest in the land, but could have been aware of his [or her] existence by the exercise of reasonable diligence, or was with notice of facts that should have put him [or her] on inquiry that would have disclosed B's interest. x x x **It is apparent that if a duty of diligent inquiry is to be imposed upon the applicant for registration, and if notice by itself, actual or constructive, of outstanding claims can taint him [or her] with fraud, decrees of registration will be subject to constant danger of attack and will be no more conclusive than judgments in actions to quiet title. Needless to say, such a result would clearly be at cross purposes with the obvious intent of the Torrens [s]ystem to have the decree of registration as conclusive as possible, and this intent should have strong weight with the courts.** The Privy Council has settled this question, as far as the British colonies are concerned, in what would appear to be a most logical way, holding that **the fraud necessary to permit impeachment of a registered title must be actual fraud; that is, conduct amounting to actual dishonesty in obtaining registration; not what is called constructive or equitable fraud.** It must be "brought home" to the party whose title it x x x sought to impeach.⁷⁵

Despite opposition, the absolutist approach was deemed "the doctrine of choice"⁷⁶ for the Australian Torrens system. As espoused by Chief Justice Garfield Barwick in *Breskvar v. Wall*,⁷⁷ a case decided by the High Court of Australia, "a registration which results from a void instrument is effective

⁷⁴ R.G. Patton, *The Torrens System of Land Title Registration*, supra note 70, at 533-532.

⁷⁵ Loring M. Staples, *Conclusiveness of a Torrens Certificate of Title*, supra note 73, at 205-206.

⁷⁶ Rouhshi Low and Lynden Griggs, *Immediate indefeasibility—Is it under threat?*, AUSTRALIA PROPERTY LAW JOURNAL (2011), 19(2), p. 223.

⁷⁷ *Breskvar v. Wall*, 126 CLR 376 (1971).

according to the terms of the registration. It matters not what the cause or reason for which the instrument is void.”⁷⁸

The Philippine context

The Torrens system was introduced in the Philippines when the United States instituted Act No. 496, otherwise referred to as the Land Registration Act of 1903 (Act 496). Act 496, which is said to be a verbatim copy of the Massachusetts Land Registration Act of 1898, set out alongside the requirements under the Civil Code several key Torrens system principles, including the concept of indefeasibility of the registered title, the mirror principle, as well as the rule of confirmation of title by registration.⁷⁹

The Cadastral Act (Act No. 2259) was later introduced in 1913 to bolster the systematic registration of title, and in 1978, through PD 1529, the judicial and administrative title registration processes were combined and supplemented by several ancillary provisions.

Did the introduction of the Torrens system in the Philippines result in the wholesale adoption of the absolutist approach? Contrary to prevailing jurisprudence, I respectfully submit that it did not.

To aid the discussion that follows, a brief run-down of relevant concepts is in order.

Ownership is the independent and general right of a person to control a thing particularly in his or her possession, enjoyment, disposition, and recovery, subject to no restrictions except those imposed by the state or private persons, without prejudice to the provisions of the law.⁸⁰ Ownership over real property is acquired and transmitted by the concurrence of a title and a mode of acquisition.

Mode is the specific cause which produces dominion and other real rights. Under the Civil Code,⁸¹ the modes to acquire and transmit ownership and other real rights over property are law, donation,⁸² succession,⁸³ tradition,⁸⁴ and prescription.⁸⁵

⁷⁸ Judgment of Chief Justice Garfield Barwick in *Breskvar v. Wall*, id.

⁷⁹ Daniel Fitzpatrick, Caroline Compton and Joseph Foukona, *Property and the State or 'The Folly of Torrens': A Comparative Perspective*, UNSW LAW JOURNAL, Vol. 42(3), p. 963.

⁸⁰ Paras, E., CIVIL CODE OF THE PHILIPPINES, ANNOTATED (Sixteenth Ed., 2008) Vol. II, p. 81.

⁸¹ CIVIL CODE, Art. 712.

⁸² “Donation is an act of liberality whereby a person disposes gratuitously of a thing or right in favor of another, who accepts it.” See CIVIL CODE, Art. 725.

⁸³ “Succession is a mode of acquisition by virtue of which the property, rights and obligations to the extent of the value of the inheritance, of a person are transmitted through his [or her] death to another or others either by his [or her] will or by operation of law.” See CIVIL CODE, Art. 774.

⁸⁴ As a result of certain contracts such as sale, barter, donation, assignment, or mutuum. See *Acap v. Court of Appeals*, 321 Phil. 381, 390 (1995).

⁸⁵ “By prescription, one acquires ownership and other real rights through the lapse of time in the manner and under the conditions laid down by law.” See CIVIL CODE, Art. 1106.

On the other hand, **title** is the juridical justification for one's claim over real property; it is the right which gives the means to the acquisition or transfer of ownership and other real rights.⁸⁶ The concept of title, insofar as it relates to ownership and other real rights, must be distinguished from a certificate of title.

Under the Philippine Torrens system of registration, a **certificate of title** (referred to as "certificate" or "Torrens certificate" for clarity) serves as evidence of ownership over the particular property described therein. **Thus, ownership should neither be confused nor deemed synonymous with the existence of a Torrens certificate in one's name, because registration under the Torrens system presupposes that ownership over the property had been previously acquired, and merely operates to confirm existing ownership.**⁸⁷

From these basic concepts arise the overarching principle that registration neither operates to confirm nor convey ownership and other real rights which do not in fact exist.⁸⁸ This overarching principle, based on civil law precepts, serves as a distinguishing characteristic of the Philippine Torrens system and operates as a guide in navigating its nuances, particularly with respect to the concept of indefeasibility and the auxiliary IPV principle.

In its current iteration, the IPV principle is understood as follows:

Where innocent third persons, relying on the correctness of the [Torrens certificate] thus issued, acquire rights over the property, the court cannot disregard such rights and order the total cancellation of the [Torrens certificate]. The effect of such an outright cancellation would be to impair public confidence in the [Torrens certificate], for everyone dealing with property registered under the Torrens system would have to inquire in every instance whether the [Torrens certificate] has been regularly or irregularly issued. This is contrary to the evident purpose of the law. Every person dealing with registered land may safely rely on the correctness of the [Torrens certificate] issued therefor and the law will in no way oblige him [or her] to go behind the [Torrens certificate] to determine the condition of the property.⁸⁹

Pursuant to Section 32⁹⁰ of PD 1529, the IPV principle has been extended to innocent mortgagees and other encumbrancers for value. Section 32 provides:

⁸⁶ See *Treyes v. Larlar*, G.R. No. 232579, September 8, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66814>>.

⁸⁷ See *Chavez v. Public Estates Authority*, 433 Phil. 506, 581-582 (2002).

⁸⁸ That original registration under the Torrens system serves merely as a means to confirm ownership is evident from the fact that registrants have been consistently required to assert and prove ownership of the land subject of their application for original registration. Under Act 496, Sec. 19, registrants were required to declare that they are the owners "in fee simple" of the parcel of land subject of their application. Under PD 1529, Sec. 14, only those who have acquired ownership in the manner provided thereunder may lodge ordinary registration proceedings.

⁸⁹ *Cabuhat v. Court of Appeals*, 418 Phil. 451, 456 (2001).

⁹⁰ Section 32 states, in part: "[w]henever the phrase 'innocent purchaser for value' or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value."

Section 32. *Review of decree of registration; Innocent purchaser for value.* — The decree of registration shall not be reopened or revised by reason of absence, minority, or other disability of any person adversely affected thereby, nor by any proceeding in any court for reversing judgments, subject, however, to the right of any person, including the government and the branches thereof, deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by actual fraud, to file in the proper Court of First Instance a petition for reopening and review of the decree of registration not later than one year from and after the date of the entry of such decree of registration, but in no case shall such petition be entertained by the court where an innocent purchaser for value has acquired the land or an interest therein, whose rights may be prejudiced. **Whenever the phrase “innocent purchaser for value” or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value.**

Upon the expiration of said period of one year, the decree of registration and the certificate of title issued shall become incontrovertible. Any person aggrieved by such decree of registration in any case may pursue his [or her] remedy by action for damages against the applicant or any other persons responsible for the fraud. (Emphasis supplied)

Hence, the Court has held:

Just as an innocent purchaser for value may rely on what appears in the [Torrens certificate], a mortgagee has the right to rely on what appears in the [Torrens certificate] presented to him [or her], and in the absence of anything to excite suspicion, he [or she] is under no obligation to look beyond the [Torrens certificate] and investigate the title of the mortgagor appearing on the face of the said [Torrens certificate]. Furthermore, it is a well-entrenched legal principle that when an innocent mortgagee who relies upon the correctness of a [Torrens certificate] consequently acquires rights over the mortgaged property, the courts cannot disregard such rights.⁹¹

As stated at the outset, the IPV principle and its derivatives have been applied to validate Torrens certificates sourced from those obtained through fraud and/or misrepresentation:

x x x [I]t is well-settled that even if the procurement of a [Torrens certificate] was tainted with fraud and misrepresentation, **such defective [Torrens certificate] may be the source of a completely legal and valid title in the hands of an innocent purchaser for value.**⁹² (Emphasis supplied)

The conclusion that a Torrens certificate obtained through fraud may nevertheless be the source of a valid title in the hands of an innocent holder for value appears to be anchored on the second paragraph of Section 53 of PD 1529, which reads:

The production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, shall be conclusive

⁹¹ *Cabuhat v. Court of Appeals*, supra note 89.

⁹² *Id.*

authority from the registered owner to the Register of Deeds to enter a new certificate or to make a memorandum of registration in accordance with such instrument, **and the new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under him [or her], in favor of every purchaser for value and in good faith.** (Emphasis supplied)

It is immediately clear, therefore, that the IPV principle, as currently applied, goes against the overarching principle that registration neither operates to confirm nor convey ownership and other real rights which do not actually exist.

Within the context of this crucial incongruence, can Section 53, paragraph 2 of PD 1529 be reconciled with this overarching principle? I submit that it can. To do so, it is necessary to trace its roots.

Section 53 of PD 1529 was substantially adopted from Section 55 of Act 496. Section 55 reads:

SECTION 55. No new certificate of title shall be entered, no memorandum shall be made upon any certificate of title by the clerk, or by any register of deeds, in pursuance of any deed or other voluntary instrument, unless the owner's duplicate certificate is presented for such indorsement, except in cases expressly provided for in this Act, or upon the order of the court, for cause shown; and whenever such order is made, a memorandum thereof shall be entered upon the new certificate of title and upon the owner's duplicate.

The production of the owner's duplicate certificate whenever any voluntary instrument is presented for registration shall be conclusive authority from the registered owner to the clerk or register of deeds to enter a new certificate or to make a memorandum of registration in accordance with such instrument, **and the new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under him [or her], in favor of every purchaser for value and in good faith:** *Provided, however,* That in all cases of registration procured by fraud the owner may pursue all his [or her] legal and equitable remedies against the parties to such fraud, without prejudice, however, to the rights of any innocent holder for value of a certificate of title: *And provided further,* That after the transcription of the decree of registration on the original application, any subsequent registration under this Act procured by the presentation of a forged duplicate certificate, or of a forged deed or other instrument, shall be null and void. In case of the loss or theft of an owner's duplicate certificate, notice shall be sent by the owner or by someone in his [or her] behalf to the register of deeds of the province in which the land, lies as soon as the loss or theft is discovered. (Emphasis supplied)

In the early case of *Dela Cruz v. Fabie, et al.*,⁹³ (*Fabie*) the Court had the occasion to interpret Section 55 of Act 496.

In *Fabie*, petitioner Marcos Dela Cruz (Marcos) was the administrator of the estate of decedent Gregoria Hernandez (Gregoria). Sometime in 1904,

⁹³ 35 Phil. 144 (1916).

Gregoria was declared by the Court of Land Registration to be the owner of the property subject of the case. During Gregoria's lifetime, her agent, Vedasto Velasquez (Vedasto) obtained a Torrens certificate over the subject property by presenting a forged Deed of Sale purportedly executed by Gregoria in his favor. Vedasto was able to obtain a Torrens certificate as he had been entrusted to keep all documents and muniments of title in relation to the subject property. Subsequently, Gregoria filed an action to declare the forged Deed of Sale null and void. The Court of First Instance (CFI) of Manila ruled in her favor. However, while the CFI case was pending, Vedasto sold the subject property under *pacto de retro* in favor of respondent Ramon Fabie (Ramon). Even before the five-year redemption period under the *pacto de retro* sale expired, Ramon obtained a Torrens certificate by presenting the document evincing the *pacto de retro* sale and Vedasto's Torrens certificate.

Marcos thus filed a case to declare the sale between Vedasto and Ramon void, and to cause the cancellation of the latter's Torrens certificate. The lower court ruled in favor of Marcos. However, the Court reversed on appeal, based on the finding that Ramon was a purchaser in good faith. The Court held:

The inscription of ownership made in the registry in behalf of [Gregoria] had disappeared, having been substituted by the entry in the name of [Vedasto]; and as the registry showed the latter to be the owner of the land, [Ramon] was [able] to arrange with [Vedasto] to purchase it. It having been proven that [Ramon's] ownership was and is perfect and absolute and that he is entitled to possess, as he does possess, the land in question, it is indisputable that [Gregoria] had lost her property[.]⁹⁴ (Emphasis supplied)

The Decision further explains:

According to section 55 of [Act 496], "after the transcription of the decree of registration on the original application, any subsequent registration under this Act procured by the presentation of a forged duplicate certificate, or of a forged deed or other instrument, shall be null and void."

[Query]: x x x Is the inscription x x x made in the name of [Ramon] also null and void? No, if it is shown that [Ramon] was an innocent holder, because the same section of the Act just above cited provides: "That in all cases of registration procured by fraud the owner may pursue all his legal and equitable remedies against the parties to such fraud, without prejudice to the rights of any innocent holder for value of a [Torrens certificate]."⁹⁵

Through *Fabie*, the Court gave Act 496 an interpretation which follows the absolutist approach espoused by its Australian counterpart. In so doing, *Fabie* gave rise to the prevailing doctrine which accords primacy to the rights of innocent holders for value over that of the real registered owner at all times.

⁹⁴ Id. at 151.

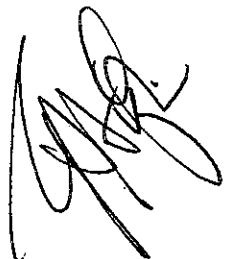
⁹⁵ Id. at 160.

In his Concurring Opinion in *Fabie*, Justice Carson averred that this absolutist approach is consistent with the views of William C. Niblack (Niblack), an eminent authority in the study of the Torrens system. To quote:

I here insert some citations from the comment by William C. Niblack in his *Analysis of the Torrens System of Conveying Land*, on the effect upon that system of forgery (Chapter XI), because they quite clearly develop some of the difficulties confronting us in the disposition of this case, and the reasoning on which the court must rely in its rulings on the various contentions of the parties.

In some acts it is provided that the production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the registrar of titles to enter a new certificate or to make a memorial of registration in accordance with such instrument, and that a new certificate or memorial shall be binding upon the registered owner and upon all claiming under him [or her], in favor of every purchaser for value and in good faith. x x x [I]t seems to be unnecessary [to require the purchaser in good faith to present] any other evidence of the existence and identity of the registered owner than the production of the owner's duplicate certificate, and it seems that he [or she] may rely on the validity of a conveyance from the person producing such certificate. **If this is the right construction of this declaration, it validates the title of an innocent person for value, relying on the production of the certificate, who is registered as the immediate result of a forgery committed by some third person, and, in doing so, it goes one step beyond the general Torrens system, which requires that a registration be made under the last real registered owner, in order to be valid.** x x x The intention of the legislature must be very clear, before a court will hold that a person registered and claiming immediately under a forced instrument will take an indefeasible title by virtue of his [or her] registration, and it may be very doubtful whether, in enacting the provisions just referred to, there was really any intent on the part of the legislature to declare that the production of that duplicate certificate should validate a new certificate, even though it was issued as the result of a forgery. x x x

While the acts of Massachusetts, Hawaii, and the Philippine Islands provide that the production of the owner's duplicate certificate shall be conclusive authority to the registrar to make a new registration, and that a new certificate shall be binding in favor of every purchaser for value and in good faith, there is this qualification: 'After the transcription of the decree of registration on the original application, any subsequent registration which is procured by the presentation of a forged duplicate certificate, or of a forged deed or other instrument, shall be null and void.' **This qualification does not say that any title founded on a forgery shall be null and void, but it merely says that a registration procured by a forged certificate or other**



instrument shall be void, and we may infer that under such a statute the general rule applies, that a registration may be the root of a good title, and that a person registered in good faith and for value under a prior registration procured by forgery, when the last certificate is produced, takes a valid title. Looked at from this point of view, the three acts just mentioned simply declare the general rule where the statute is silent on the subject of forgery, and are in effect the same as the South Australia, California and Ontario statutes.

X X X X

If a Torrens act makes a title founded on a forge[d] instrument null and void, it renders certificates of title clearly defeasible, and tends to take away the confidence of the public in them; and if it makes a forged instrument capable of becoming the root of a new title, it upsets the long cherished and popular tradition that a forged instrument is absolutely void for all purposes. The English theory that a landed proprietor is to be protected as far as possible in his [or her] proprietary rights may be the basis of the deep-seated and general feeling that a person ought not to lose his [or her] land, under any possible circumstances, by means of or as the result of a forgery. One who does not understand the reasons of the general rule, as to the effect of forgery under the Torrens system, may regard it as a compromise between two different policies, but the rule arises logically from certain principles of title registration. A proposed purchaser of land who becomes registered under an imposter, and not under a real registered owner, gets no title to the land, loses the money he [or she] has paid on the proposed purchase, and has no recourse to the indemnity fund. He [or she] has been guilty of negligence contributing to the loss, and his [or her] loss did not arise from operations under the act, because he [or she] dealt with a person who was not registered under the act, at least as to the property in question. Whatever may be the practical merits of the theory, his [or her] case does not detract from the general proposition that one registered under the last registered owner of an estate in land gets the title to the registered estate. Where one in good faith for value is registered as a new owner under a person who is registered with a title, invalid because it was procured by forgery, one of two innocent persons must lose the land — either the owner from whom the transfer was forged, or the registered purchaser from the registered person, whose title was invalid while he [or she] was so registered. In the absence of any constitutional limitations on its powers, it is competent for the legislature to say which one shall have the title, and in establishing a system of title registration, it is proper for it to declare, in favor of the last certificate of title issued under governmental authority, that the new registered owner shall have it, and that the victim of the forgery shall be left to his



[or her] actions against the wrongdoer and against the indemnity fund.⁹⁶ (Emphasis and underscoring supplied)

Niblack thus claims that there are two views on the treatment of fraud and forgery under the Torrens system.

First is the **absolutist approach** which, as discussed, validates a Torrens certificate sourced from a fraudulent registration in the hands of an innocent holder.

Second is the **traditional approach** which protects the real registered owner's title from the effects of fraudulent registration. Niblack's analysis goes further to state that like the Australian Torrens system, the Philippine Torrens system explicitly adopts the absolutist approach through Section 55 of Act 496, which is restated, thus:

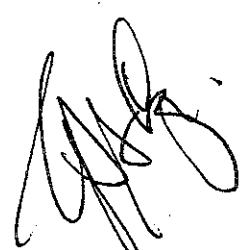
SECTION 55. No new certificate of title shall be entered, no memorandum shall be made upon any certificate of title by the clerk, or by any register of deeds, in pursuance of any deed or other voluntary instrument, unless the owner's duplicate certificate is presented for such indorsement, except in cases expressly provided for in this Act, or upon the order of the court, for cause shown; and whenever such order is made, a memorandum thereof shall be entered upon the new certificate of title and upon the owner's duplicate.

The production of the owner's duplicate certificate whenever any voluntary instrument is presented for registration shall be conclusive authority from the registered owner to the clerk or register of deeds to enter a new certificate or to make a memorandum of registration in accordance with such instrument, and the new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under him [or her], in favor of every purchaser for value and in good faith: *Provided, however,* That in all cases of registration procured by fraud the owner may pursue all his [or her] legal and equitable remedies against the parties to such fraud, without prejudice, however, to the rights of any innocent holder for value of a certificate of title: *And provided further,* That after the transcription of the decree of registration on the original application, any subsequent registration under this Act procured by the presentation of a forged duplicate certificate, or of a forged deed or other instrument, shall be null and void. In case of the loss or theft of an owner's duplicate certificate, notice shall be sent by the owner or by someone in his [or her] behalf to the register of deeds of the province in which the land, lies as soon as the loss or theft is discovered.

In his *Dissent*, Justice Moreland questions Niblack's interpretation. According to Justice Moreland, the language of Section 55 of Act 496 makes Niblack's interpretation "untenable," thus:

The necessary result of Mr. Niblack's discussion is that the proviso under consideration produces no effect whatever except between the owner and the forger.

⁹⁶ Concurring Opinion of Justice Carson in *Dela Cruz v. Fabie, et al.*, supra note 93, at 166-170.



This theory seems to me to be untenable. x x x [T]he proviso taken in conjunction with the enacting clause to which it relates, as a mere matter of language, to an innocent purchaser for value; and the limitation contained in the proviso is precisely a limitation on the rights of the innocent purchaser. It is well recognized that a proviso is a clause engrafted on a preceding enactment for the purpose of restraining or modifying the enacting clause, or of excepting something from its operation which otherwise would have been within it; and that its appropriate office is to restrain or modify the enacting clause and not to enlarge it. Clearly the enacting clause here is "the new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under him [or her], in favor of every purchaser for value and in good faith." Now, the proviso, referring directly to this enacting clause, declares that "any subsequent registration under this Act procured by the presentation of a forged duplicate certificate, or forged deed or other instrument, shall be null and void." To what does the proviso refer? Clearly to the declaration in favor of an innocent purchaser for value and to him [or her] alone. The proviso is meaningless unless that be so. There is no person mentioned in the enacting clause between whom the owner the proviso could possibly establish a relation except the innocent purchaser. The innocent purchaser is alone named in the enacting clause and the effect of the forger's act on him [or her] is alone declared in the proviso. It requires no interpretation or construction to reach this conclusion; and I have gone into it thus far only by way of reply. If the language of statutes were looked at by judges and authors with the same abstraction with which they look at ordinary articles in the newspapers there would be far more application and far less interpretation and construction of statutes. If one should receive a letter from his wife in which she says that yesterday she sent all of the children to school except Virginia, it would take no interpretation or construction of the letter, or involved argument, to determine which child was not sent to school. If a statute says that a registration shall protect an innocent purchaser except when it is obtained by forgery it takes no consideration, or interpretation, or construction, or fine distinctions, or involved argument, to determine when a registration does not protect an innocent purchaser. This is precisely what the proviso before us does. **The statute states that a registration shall be conclusive upon the owner and shall protect an innocent purchaser for value except when that registration is procured by forgery.**⁹⁷ (Emphasis and underscoring supplied)

I submit that Justice Moreland's interpretation is more consistent with the language of Section 55 of Act 496 and the overarching principle of the Philippine Torrens system — that registration neither operates to confirm nor convey ownership and other real rights which do not in fact exist.

To note, Section 55 of Act 496 had been substantially carried over and adopted as Section 53 of PD 1529. Section 53 now states:

Section 53. *Presentation of Owner's Duplicate Upon Entry of New Certificate.* — No voluntary instrument shall be registered by the Register of Deeds, unless the owner's duplicate certificate is presented with such instrument, except in cases expressly provided for in this Decree or upon order of the court, for cause shown.

⁹⁷ Dissenting Opinion of Justice Moreland in *Dela Cruz v. Fabie, et al.*, supra note 93, at 178-179.



The production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the Register of Deeds to enter a new certificate or to make a memorandum of registration in accordance with such instrument, and the new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under him [or her], in favor of every purchaser for value and in good faith.

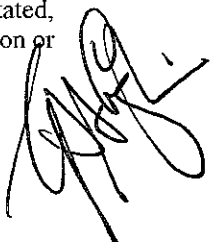
In all cases of registration procured by fraud, the owner may pursue all his [or her] legal and equitable remedies against the parties to such fraud without prejudice, however, to the rights of any innocent holder for value of a certificate of title. After the entry of the decree of registration on the original petition or application, any subsequent registration procured by the presentation of a forged duplicate certificate of title, or a forged deed or other instrument, shall be null and void.

Following Justice Moreland's approach, I submit that Section 53 is more properly interpreted as follows:

1. As a general rule, a *new* Torrens certificate or a memorandum inscribed thereon shall be binding upon the real registered owner and all persons claiming under him or her in favor of every purchaser for value and in good faith. This is the import of Section 53, paragraph (2).
2. As an exception to the general rule, "any subsequent registration⁹⁸ procured by the presentation of a forged duplicate certificate of title, or a forged deed or other instrument, shall be null and void," even as against an innocent holder for value. This is the import of the second sentence of Section 53, paragraph (3).
3. In cases of fraudulent registration, the real registered owner may pursue all his or her legal and equitable remedies against the parties to the fraud, without prejudice to the right of an innocent holder for value to pursue his or her own legal and equitable remedies against the parties to the fraud. This is the import of the first sentence of Section 53, paragraph (3).
4. Nevertheless, the subsequent registration effected through fraud, and all others arising therefrom, shall be null and void. Again, this is the import of the second sentence of Section 53, paragraph (3).

Proceeding from this, it becomes clear that the apparent conflict between the treatment of fraudulent registration under Section 53 of PD

⁹⁸ That is, subsequent to the original certificate of title issued pursuant to a decree of registration. Restated, any subsequent registration is one "after the entry of the decree of registration on the original petition or application."



1529 and the concept of indefeasibility espoused in Section 32 of PD 1529 can be reconciled simply by delineating their respective scopes.

To recall, Section 32 of PD 1529 states:

Section 32. *Review of decree of registration; Innocent purchaser for value.* — The decree of registration shall not be reopened or revised by reason of absence, minority, or other disability of any person adversely affected thereby, nor by any proceeding in any court for reversing judgments, **subject, however, to the right of any person, including the government and the branches thereof, deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by actual fraud, to file in the proper Court of First Instance a petition for reopening and review of the decree of registration not later than one year from and after the date of the entry of such decree of registration, but in no case shall such petition be entertained by the court where an innocent purchaser for value has acquired the land or an interest therein, whose rights may be prejudiced.** Whenever the phrase “innocent purchaser for value” or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value.

Upon the expiration of said period of one year, the decree of registration and the certificate of title issued shall become incontrovertible. Any person aggrieved by such decree of registration in any case may pursue his [or her] remedy by action for damages against the applicant or any other persons responsible for the fraud. (Emphasis and underscoring supplied)

A close reading of Section 32 shows that it refers specifically to the decree of registration, **and applies only to the one-year period following its entry in the Register of Deeds.** Read in this light, Section 32 can be simplified, as follows:

1. The decree of registration shall not be reopened or revised for any reason, *except* actual fraud. Defrauded parties are granted the right to file the proper petition to reopen or revise the decree but only within a period of one year from entry of the decree and the consequent issuance of the Torrens certificate.
2. Nevertheless, a timely filed petition to reopen or revise a decree of registration shall not be granted in favor of the defrauded party *if* an innocent holder for value has acquired the subject property or an interest therein in the interim. In such cases, the rights of an innocent holder for value shall be respected, without prejudice to the right of the defrauded party to pursue all legal and equitable remedies against the parties responsible for the fraud.
3. After the lapse of the one-year period, the decree of registration and the Torrens certificate issued in the name of the original registrant becomes incontrovertible. From then



on, the original registrant is deemed the “real registered owner.”

Accordingly, it is well to emphasize the distinction between the rights extended by PD 1529 in favor of Torrens certificate holders during the one-year period following the issuance of the Torrens certificate *vis-à-vis* the rights extended *after* the expiration of said period.

During the aforesaid one-year period, Section 32 shall apply. The right of the innocent holder for value takes precedence over that of the original registrant in the event of fraud. The reason behind this is clear — during this period, the original registrant’s Torrens certificate remains controvertible and open to dispute by express provision of law. **It is only during this one-year period where the IPV principle may operate to validate a Torrens certificate arising from one procured through fraud or misrepresentation.**

After the lapse of the one-year period, also under express provision of law, the Torrens certificate issued in favor of the original registrant becomes incontrovertible. This means that the ownership of the original registrant is deemed indefeasible pursuant to the decree of registration. **From such point, it would now be Section 53 that shall apply.** The original registrant is deemed the “real registered owner” whose rights take precedence even against innocent holders for value. From such point, the IPV principle ceases to operate. In turn, subsequent registrants are afforded protection through the constructive notice rule⁹⁹ and owner’s duplicate requirement¹⁰⁰ set forth in Sections 52 and 53 of PD 1529. Through these twin safeguards, the purpose of the Torrens system is fulfilled, that is, to “save persons dealing with registered proprietors from the trouble and expense of going behind the register in order to investigate the history of their author’s title.”

To understand the rationale behind these distinctions, one needs to appreciate that in the Philippine context, what is deemed “inconvertible” or “indefeasible” is the Torrens certificate issued on the basis of a valid and existing title, that is, issued pursuant to a judicial decree confirming the existence of a valid title, or issued pursuant to a valid government grant over

⁹⁹ Section 52 states:

Section 52. *Constructive Notice Upon Registration.* — Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument, or entry affecting registered land shall, if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering.

¹⁰⁰ To reiterate, Section 53 states, in part:

No voluntary instrument shall be registered by the Register of Deeds, unless the owner’s duplicate certificate is presented with such instrument, except in cases expressly provided for in this Decree or upon order of the court, for cause shown.

The production of the owner’s duplicate certificate, whenever any voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the Register of Deeds to enter a new certificate or to make a memorandum of registration in accordance with such instrument, and the new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under him, in favor of every purchaser for value and in good faith.



public land. With respect to the latter, the Court's *En Banc* ruling in *Delos Reyes v. Razon, et al.*¹⁰¹ is instructive:

It will be noted that one of the averments of the special defense set up by the answer is that the title upon which plaintiff relies was obtained by deceit, in fraud of the true owner of the land. The case, therefore, squarely presents the issue as to whether such a certificate of title as that upon which plaintiff relies is as incontestable as are those based upon decrees of the Court of Land Registration or of the Court of First Instance rendered in land registration cases.

It is settled conclusively in this jurisdiction that the titles by virtue of final decrees of the Court of Land Registration or of the Courts of First Instance in accordance with the provisions of the Land Registration Act (Act No. 496) are conclusive and binding upon all the world, but the proceedings by which the title to land are determined in the courts under the act are judicial. Process is served by publication upon all persons who have an interest in the land, and they are given an opportunity to appear and oppose the petition for registration if they desire to do so. The action is one *in rem*, and the court acquired jurisdiction over the *res* by the service of its process in the manner prescribed by the statute. x x x

The proceedings by which titles to portions of the public domain are granted to homesteader in accordance with the provisions of the Public Land Act, on the contrary, are purely administrative.

x x x x

The full text of this section of the Land Registration Act is as follows:

SEC. 122. Whenever public lands in the Philippine Islands belonging to the Government of the United States or to the Government of the Philippine Islands are alienated, granted, or conveyed to persons or to public or private corporations the same shall be brought forthwith under the operation of this Act and shall become registered lands. It shall be the duty of the official issuing the instrument of alienation, grant, or conveyance in behalf of the Government to cause such instrument, before its delivery to the grantee, to be filed with register of deeds for the province where the land lies and to be there registered like other deeds and conveyances, whereupon a certificate shall be entered as in other cases of registered land, and an owner's duplicate certificate issued to the grantee. The deed, grant or instrument of conveyance from the Government shall not take effect as conveyance or bind the land, but shall operate only as a contract between the Government and the grantee and as evidence of authority to the clerk or register of deeds to make registration. The act of registration shall be the operative act to convey and affect the lands and in all cases under this Act[,] registration shall be made in the office of the register of deeds for the province where the land lies. After due registration and [issuance] of the certificate and owner's duplicate[,] such land shall be registered land for all purposes under this Act.

¹⁰¹ 38 Phil. 480 (1918).

The trial judge was of the opinion, and so held, that the effect of the registration of the homestead patent and the issuance of a duplicate certificate of title to the patentee was to vest in him an incontestable title to the land, precisely as though his ownership had been determined by the final decree of a competent court under the Land Registration Act, and that the title so issued is absolutely conclusive and indisputable.

We are of the opinion that section 122 of the Land Registration Act is not susceptible of this interpretation.

It will be observed that the section under consideration expressly determines the class of land to which its operation is limited. This is declared to be “public land x x x *belonging* to the Government x x x.”

There is nothing in the section to warrant the conclusion that it was intended to apply to private property erroneously included in a government patent, as to which the Government has no right at all. The statement in the last paragraph of the section that upon the registration of the patent and the issuance of the title “such land shall be registered land for all purposes under this Act” must be read in the light of the antecedent language. The words “*such land*” are evidently used to refer to the only class of land to which the section in terms refers, which is, “public land x x x belonging to the Government x x x” **As to such land the issuance of the certificate vests an absolute title in the homesteader, but as to land which is not public and does not belong to the Government, it can have no such effect.**

This conclusion is strengthened by consideration of the fact that there is no express declaration in section 122 of any intention on the part of the Legislature to give to the act of registration of the patent — a mere ministerial act by an administrative official — the effect of divesting all outstanding titles, or to convert a void patent into a valid title by the mere act of registration.

The incontestable and absolute character of the Torrens titles issued after judicial proceedings under the Land Registration Act is conferred by the language of Sections 38 and 39. Section 38 declares that the “*decree of registration*” entered by the court shall bind the land and “be conclusive upon and against all persons.” Section 39 establishes the incontestable validity of certificates of title issued “*in pursuance of a decree of registration.*” **Nowhere in these sections or elsewhere in Act No. 496 is it declared that similar conclusive validity is to attach to certificates not based upon a “decree of registration.”** Certainly the mere ministerial act of transcribing a homestead patent in a book and issuing a certified copy of the entry is not such a decree.¹⁰² (Emphasis and underscoring supplied; citations omitted)

As later clarified by the Court *En Banc* in *Republic v. Carle*¹⁰³ (*Carle*):

x x x a [Torrens certificate] issued pursuant to a homestead patent partakes of the nature of a [Torrens certificate] issued as a consequence of a judicial proceeding as long as the land disposed of is really a part of the disposable land of the public domain, and becomes indefeasible and

¹⁰² Id. at 482-491.

¹⁰³ 105 Phil. 1227 (1959).

incontrovertible upon the expiration of one year from the date of the issuance thereof.¹⁰⁴

In turn, the incontestable and indefeasible character of a Torrens certificate does not operate when the land covered thereby is not capable of registration.¹⁰⁵ This is precisely why the State's right of reversion over public land incapable of disposition, appropriation or private acquisition does *not* prescribe.¹⁰⁶

The foregoing discussion highlights the key difference between the Australian and Philippine Torrens systems which militates against the continued perpetuation of the absolutist approach in this jurisdiction. The Australian Torrens system accords indefeasibility to all Torrens certificates, as it operates not merely as a system of registration of title, but a system of title by registration. Again, as explained by the High Court of Australia through Chief Justice Garfield Barwick in *Breskvar v. Wall*:

The Torrens system of registered title of which the [Real Property Act] is a form is not a system of registration of title but a system of title by registration. That which the certificate of title describes is not the title which the registered proprietor formerly had, or which but for registration would have had. The title it certifies is not historical or derivative. **It is the title which registration itself has vested in the proprietor.** Consequently, a registration which results from a void instrument is effective according to the terms of the registration. It matters not what the cause or reason for which the instrument is void.¹⁰⁷ (Emphasis supplied)

Clearly, the Australian Torrens system functions in a way that is different from (or more accurately, opposite to) the Philippine Torrens system, which, as stated, merely operates to confirm *existing* ownership following the traditional approach.

As explained, the continued adoption of the absolutist approach in this jurisdiction would directly contradict the overarching principle which uniquely governs the Philippine Torrens system — **that registration neither operates to confirm nor convey ownership and other real rights which do not in fact exist.** If the absence of a valid title renders Torrens certificates arising from the registration of government patents void, it stands to reason that Torrens certificates arising from the registration of forged and/or simulated documents be likewise treated as void.

The early case of *Legarda v. Saleeby*¹⁰⁸ (*Saleeby*) is most instructive with respect to the very rationale of the Torrens system of registration, *viz.*:

¹⁰⁴ Id. at 1231, citing *Lucas v. Durian*, 102 Phil. Unrep. 1157 (1957).

¹⁰⁵ *Melendres v. Catambay, et. al.*, 844 Phil. 56, 72 (2018), citing *Dizon, et. al. v. Rodriguez*, 121 Phil. 681 (1965).

¹⁰⁶ *Martinez v. Court of Appeals*, 155 Phil. 591, 600 (1974), citing *Republic v. Ramona Ruiz, et. al.*, 131 Phil. 870 (1968) and *Republic v. Ramos*, 117 Phil. 45 (1963).

¹⁰⁷ Judgment of Chief Justice Garfield Barwick in *Breskvar v. Wall*, *supra* note 78.

¹⁰⁸ 31 Phil. 590 (1915).

The plaintiffs having secured the registration of their lot, including the wall, were they obliged to constantly be on the alert and to watch all the proceedings in the land court to see that someone else was not having all, or a portion of the same, registered? If that question is to be answered in the affirmative, then the whole scheme and purpose of the torrens system of land registration must fail. **The real purpose of that system is to quiet title to land; to put a stop forever to any question of the legality of the title, except claims which were noted at the time of registration, in the certificate, or which may arise subsequent thereto. That being the purpose of the law, it would seem that once a title is registered the owner may rest secure, without the necessity of waiting in the portals of the court, or sitting in the “[*mirador de su casa*],” to avoid the possibility of losing his [or her] land.** Of course, it cannot be denied that the proceeding for the registration of land under the [T]orrens system is judicial (*Escueta vs. Director of Lands*, 16 Phil. Rep., 482). It is clothed with all the forms of an action and the result is final and binding upon all the world. It is an action *in rem*. (*Escueta vs. Director of Lands (supra)*; *Grey Alba vs. De la Cruz*, 17 Phil. Rep., 49; *Roxas vs. Enriquez*, 29 Phil. Rep., 31; *Tyler vs. Judges*, 175 Mass., 71; *American Land Co. vs. Zeiss*, 219 U. S., 47.)

While the proceeding is judicial, it involves more in its consequences than does an ordinary action. All the world are parties, including the government. After the registration is complete and final and there exists no fraud, there are no innocent third parties who may claim an interest. The rights of all the world are foreclosed by the decree of registration. The government itself assumes the burden of giving notice to all parties. To permit persons who are parties in the registration proceeding (and they are all the world) to again litigate the same questions, and to again cast doubt upon the validity of the registered title, would destroy the very purpose and intent of the law. **The registration, under the [T]orrens system, does not give the owner any better title than he [or she] had. If he [or she] does not already have a perfect title, he [or she] cannot have it registered.** Fee simple titles only may be registered. The certificate of registration accumulates in one document a precise and correct statement of the exact status of the fee held by its owner. **The certificate, in the absence of fraud, is the evidence of title and shows exactly the real interest of its owner. The title once registered, with very few exceptions, should not thereafter be impugned, altered, changed, modified, enlarged, or diminished, except in some direct proceeding permitted by law. Otherwise all security in registered titles would be lost.** A registered title cannot be altered, modified, enlarged, or diminished in a *collateral* proceeding and not even by a direct proceeding, after the lapse of the period prescribed by law.¹⁰⁹ (Emphasis supplied)

Clearly, the rationale in *Saleeby* affirms **that the spirit of the Torrens system is the security of the registered owner in the ownership of his or her land.** This is the legal basis for the application of the maxim. As Justice Johnson emphatically delivered for the Court therein, should a registered owner not feel secured against illegal and fraudulent removal or negation of his or her ownership rights over a registered property, then the very purpose of the Torrens system has failed. In addition, the Court, in *Saleeby*, similarly makes salient that the security that the registered owner finds in the system stands on the safeguard of constructive notice that is effected upon

¹⁰⁹ Id. at 593-594.

registration, which consequently results in the faultless logic that no IPV is possible over an inexistent or void title to a land.

Equitable Remedies

It should be stressed, however, that the recalibration of the IPV principle and its derivatives towards the traditional approach will not stymie or unduly burden dealings with registered land. Far from it, a revisit of the IPV principle will instead fold the transactions concerning land back into a framework that protects the registered owners, preserves the confidence of parties in these transactions, and prevents the facilitation and legitimization of fraudulent schemes of obtaining registered land in the name of expediency and convenience.

The proposed recalibration does not preclude innocent holders from invoking equitable remedies against **negligent** registered owners. Thus, in instances where the owner's duplicate certificate and other documents necessary to transfer title are negligently entrusted by the real registered owner in favor of the defrauder who is thus clothed with apparent authority to cause the entry of a new Torrens certificate, the title of the innocent holder who transacts on the basis thereof shall be entitled to respect based on the principle of equitable estoppel, and the principle that "as between two innocent persons, one of whom must suffer the consequences of a breach of trust, the one who made it possible by his [or her] act of confidence must bear the loss."¹¹⁰

To be sure, the application of the principles of estoppel and equity in this context is not novel.

In *Veloso v. Court of Appeals*,¹¹¹ a certain Francisco Veloso (Francisco) filed an action for annulment and reconveyance of property against one Aglaloma Escario (Aglaloma) claiming to be the real owner of the 177-square-meter lot disputed therein. Francisco argued that his Torrens certificate was fraudulently cancelled in lieu of a new one issued in the name of Aglaloma based on a void Deed of Absolute Sale purportedly executed by his wife as his attorney-in-fact. Francisco argued that he never authorized anybody to sell the disputed lot. In this connection, Francisco claimed that the power of attorney supposedly authorizing his wife to sell the disputed lot had been forged.

The trial court ruled in favor of Aglaloma. The CA affirmed *in toto*, prompting Francisco to elevate the case to the Court. Ruling in favor of Aglaloma, the Court held:

¹¹⁰ See generally *De Lara and De Guzman v. Ayroso*, 95 Phil. 185, 188 (1954), which adopts the this oft-quoted principle of equity from the U.S. Supreme Court case of *Eliason v. Wilborn*, 281 US 457, 461 (1930).

¹¹¹ 329 Phil. 398 (1996).

x x x [T]he trial court did not err in applying equitable estoppel in this case. **The principle of equitable estoppel states that where one or two innocent persons must suffer a loss, he [or she] who by his [or her] conduct made the loss possible must bear it.** From the evidence adduced, it should be the petitioner [registered owner] who should bear the loss. As the court [*a quo*] found:

Besides, the records of this case disclosed that the plaintiff is not entirely free from blame. He admitted that he is the sole person who has access to TCT No. 49138 and other documents appertaining thereto (TSN, May 23, 1989, pp. 7-12). **However, the fact remains that the Certificate of Title, as well as other documents necessary for the transfer of title were in the possession of plaintiff's wife, Irma L. Veloso, consequently leaving no doubt or any suspicion on the part of the defendant as to her authority. Under Section 55 of Act 496, as amended, Irma's possession and production of the Certificate of Title to defendant operated as "conclusive authority" from the plaintiff to the Register of Deeds to enter a new certificate.**¹¹² (Emphasis and underscoring supplied)

The application of equity in this context is anchored on the real registered owner's negligence, as it is the very act of entrusting the owner's duplicate certificate which facilitates the fraud and defeats the safeguards embedded in the Torrens system precisely for said owner's protection.

By design, the Philippine Torrens system is equipped with safeguards to protect the real registered owner and all subsequent parties who deal with registered land. As a mechanism to prevent fraudulent registration, Section 53 provides that "[n]o voluntary instrument shall be registered by the Register of Deeds, unless the owner's duplicate certificate is presented with such instrument, except in cases expressly provided for in [PD 1529] or upon order of the court, for cause shown." It adds that "[t]he production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the Register of Deeds to enter a new certificate or to make a memorandum or registration in accordance with such instrument x x x[.]"

Corollary to this, Section 52 provides for the constructive notice rule, which states that "[e]very conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering."

By requiring the presentation of the owner's duplicate as a condition for registration of voluntary instruments, Section 53 aims to ensure that only those transactions entered into or stemming from the title of the real registered owner are recorded and placed within the scope of the Torrens system, and

¹¹² Id. at 408.

that no transaction which deviates from the title of the real registered owner is given effect. On the other hand, the constructive notice rule in Section 52 operates to place all third parties on notice of all legitimate transactions concerning the registered property.

Thus, in situations where it is the registered owner who commits acts tending to defeat or frustrate these protective mechanisms, then it is he or she (the real registered owner) who must necessarily suffer the loss.

That said, I deem it necessary to reiterate that following the proper interpretation of Sections 32 and 53 of PD 1529 as detailed above, the **general rule** should be that once the title of the original registrant becomes incontrovertible upon the expiration of the one-year period after the issuance of the latter's Torrens certificate, then any Torrens certificate subsequently issued through fraud or misrepresentation shall be null and void, and shall not serve as a source of a valid title even in the hands of a holder in good faith. As an **exception**, a subsequent Torrens certificate derived from one procured by fraud may be given effect in the hands of a holder in good faith but only in cases where the fraud resulted from the original registrant's own negligence. In such **exceptional cases**, the title of the innocent holder shall be respected based on the principles of estoppel and equity. **Again, the oft-quoted rule that a void title serves as a source of a valid title in the hands of an innocent holder should be treated as a narrow exception to the general rule which may be applied solely on the basis of equity.**

The award of actual and temperate damages is unwarranted in the present case

Finally, considering the foregoing discussions, I agree with the *ponencia's* deletion of the award of actual¹¹³ and temperate damages in favor of Lourdes, since her right to these amounts has yet to be established.

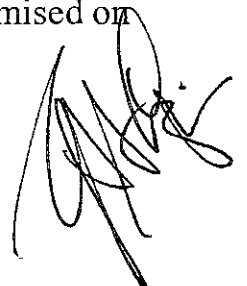
To recall, actual and temperate damages are treated under Articles 2199 and 2224 of the Civil Code:

Article 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him [or her] as he [or she] has duly proved. Such compensation is referred to as actual or compensatory damages.

Article 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty.

To sustain an award for actual damages, proof of pecuniary loss is necessary. On the other hand, an award for temperate damages is premised on

¹¹³ Equivalent to the value of the principal loan secured by the subject mortgage.



an injury for which definite proof of pecuniary loss cannot be offered. As explained by the Code Commission:

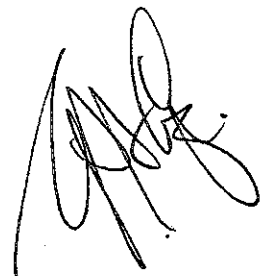
In some States of the American Union, temperate damages are allowed. There are cases where from the nature of the case, definite proof of pecuniary loss cannot be offered, although the court is convinced that there has been such loss. For instance, injury to one's commercial credit or to the goodwill of a business firm is often hard to show with certainty in terms of money. Should damages be denied for that reason? The judge should be empowered to calculate moderate damages in such cases, rather than that the plaintiff should suffer, without redress from the defendant's wrongful act.¹¹⁴

Here, Lourdes' entitlement to actual or temperate damages remains subject to proof in Civil Case No. 25285, which, based on the representations of the parties, remains pending to this day. It bears noting that while Lourdes has been allowed to pursue a counterclaim and present evidence *ex parte*, the grant of her counterclaim is still subject to the presentation of preponderant evidence justifying the same. To my mind, awarding such damages in the present case would effectively grant Lourdes relief without proof of her entitlement thereto. Lourdes' remedy lies with Iloilo RTC BR. 39 where her counterclaim is pending.

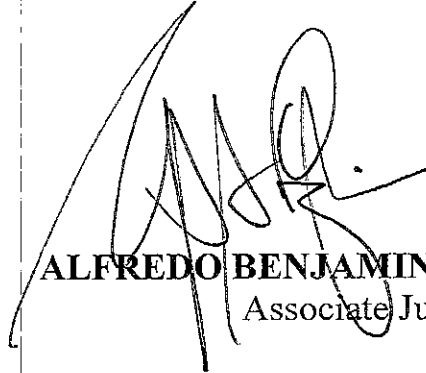
Based on these premises, I **CONCUR** and vote to **PARTLY GRANT** the Petition, **REVERSE** the June 28, 2018 Decision of the Court of Appeals in CA-G.R. CEB-CV No. 04831, and **ENTER** a new Decision, decreeing as follows:

1. TCT No. T-86916 issued in the name of Ramon Chiang is cancelled;
2. The annotation of the Real Estate Mortgage on the back of TCT No. T-86916 under Entry No. 656728 in favor of Lourdes Tan Chua is likewise cancelled;
3. TCT No. T-57961 issued in the name of Nelson Plana married to Merlinda Relano is reinstated;
4. The Estate of Ramon Chiang, through his heirs is ordered to pay Merlinda Plana the following amounts:
 - a. ₱100,000.00 as moral damages;
 - b. ₱100,000.00 as exemplary damages;
 - c. ₱50,000.00 as attorney's fees; and
 - d. Six percent (6%) interest *per annum* on these amounts from finality of this Decision until fully paid.

¹¹⁴ As cited in *Araneta v. Bank of America*, 148-B Phil. 124, 131 (1971).



Respondent Lourdes Tan Chua and her counsel are ordered to show cause within ten (10) non-extendible days from notice to show cause why they should not be cited in contempt of court for their deliberate withholding of material facts as above-mentioned and for delaying the speedy disposition of the present case and nearly bringing the administration of justice to disrepute.

A handwritten signature in black ink, appearing to read 'ALFREDO BENJAMIN S. CAGUIOA', is written over the printed name and title.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice