



Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION

LPL GREENHILLS G.R. No. 248743

CONDOMINIUM

CORPORATION, SPOUSES

CLEMARTIN ARBOLEDA

AND MARIA ANGELITA

ARBOLEDA, MARIO

ANTONI SALAZAR and

LAURO S. LEVISTE II,*

Petitioners,

Present:

CAGUIOA, J., *Chairperson,*

INTING,

GAERLAN,

DIMAAMPAO, and

SINGH, JJ.

- versus -

CATHARINA BROUWER,

represented herein by

Attorney-in-Fact MANFRED

DE KONING,

Respondent.

Promulgated:

September 7, 2022

Mis-DCBatt

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DECISION

INTING, J.:

For the Court’s resolution is a Petition for Review on *Certiorari*¹ (Petition) under Rule 45 of the Rules of Court filed by LPL Greenhills Condominium Corporation (LPL), Spouses Clemartin Arboleda and Maria Angelita Arboleda (Sps. Arboleda), Mario Antoni Salazar (Salazar), and Lauro S. Leviste II (Leviste) (collectively, petitioners), seeking the annulment of the Decision² dated March 29, 2019 of the Court of Appeals (CA) in CA-G.R. CV No. 107139. Likewise assailed is

* Referred to as “Lauro S. Leviste III” in some parts of the *rollo* (see *rollo*, pp. 3, 8, 10, 47, 62).

¹ Id. at 12-36.

² Id. at 47-61. Penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Geraldine C. Fiel-Macaraig.

the CA Resolution³ dated August 1, 2019 denying petitioners' Motion for Reconsideration.

The assailed CA Decision affirmed the Decision dated December 8, 2015 of Branch 264, Regional Trial Court (RTC) of Pasig City insofar as it declared void the extra-judicial foreclosure sales of the two condominium units of Catharina Brouwer (respondent), ordered the cancellation of the annotations of Certificates of Sales in the Condominium Certificates of Title (CCTs), and declared respondent to still be the registered owner of the properties in question.⁴

The Antecedents

Respondent is the registered owner of two condominium units (subject units), described as Unit Nos. 16-I and 16-J, at the LPL Greenhills Condominium located in San Juan City. She failed to settle her monthly association dues and other assessments, inclusive of penalties and interests.⁵

On October 23, 2007, LPL issued notices of assessment amounting to ₱181,241.10 per unit to respondent. The notices were also annotated on the respective CCTs of the subject units on November 21, 2007. Nonetheless, respondent still failed to pay her obligation, which amounted to ₱252,983.19 for Unit 16-I and ₱227,168.58 for Unit 16-J as of August 31, 2008.⁶

Consequently, on August 20, 2008, LPL filed separate petitions to sell in extrajudicial foreclosure the subject units pursuant to Section 20⁷ of Republic Act No. (RA) 4726, otherwise known as the Condominium

³ Id. at 62-64. Penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Geraldine C. Fiel-Macaraig.

⁴ A copy of the RTC Decision was not attached to the *rollo*. See id. at 51-52.

⁵ Id. at 48.

⁶ Id. at 48-49.

⁷ SECTION 20. An assessment upon any condominium made in accordance with a duly registered declaration of restrictions shall be an obligation of the owner thereof at the time the assessment is made. The amount of any such assessment plus any other charges thereon, such as interest, costs (including attorney's fees) and penalties, as such may be provided for in the declaration of restrictions, *shall be and become a lien upon the condominium assessed when the management body causes a notice of assessment to be registered with the Register of Deeds of the city or province where such condominium project is located.* x x x

x x x x

Such liens may be enforced in the same manner provided for by law for the judicial or extrajudicial foreclosure of mortgages of real property. Unless otherwise provided for in the declaration of restrictions, the management body shall have power to bid at foreclosure sale. The condominium owner shall have the same right of redemption as in cases of judicial or extrajudicial foreclosure of mortgages. (Emphasis supplied).

Act, and Part II, Section 4(c)(e)(f) of LPL's Master Deed of Restrictions. The required notices of sale were posted for at least 20 days in at least three public places in San Juan City and published in the September 10, 17 and 24, 2008 issues of the *Star Forum Newspaper* for Unit 16-I and *The Manila Times* for Unit 16-J.⁸

Sheriffs Elmer B. David and Bienvenido V. Calindas, Jr., conducted the extrajudicial foreclosure sales at San Juan City Hall,⁹ thus:

<i>Unit</i> ¹⁰	<i>CCT Nos.</i> ¹¹	<i>Successful bidder</i> ¹²	<i>Bid</i> ¹³
Unit 16-I	CCT No. 11113-R	Salazar and Leviste	₱500,000.00
Unit 16-J	CCT No. 11114-R	Sps. Arboleda	₱500,000.00

The corresponding certificates of sale, both dated November 12, 2008, were issued to the buyers and registered with the Registry of Deeds on November 28, 2008.¹⁴

Respondent, through her attorney-in-fact, Manfred De Koning (Manfred), filed a Complaint for declaration of nullity of foreclosure proceedings including certificates of sale, quieting of title, and damages against petitioners. She argued that the extrajudicial foreclosure sales of the subject units were null and void for the following reasons: (1) LPL's Master Deed of Restrictions and By-Laws did not authorize the extrajudicial foreclosure of the units in favor of LPL, as required by Act No. 3135,¹⁵ as amended by Act No. 4118;¹⁶ (2) there was no board resolution from LPL authorizing the extrajudicial foreclosure; and (3) the extrajudicial foreclosure proceedings were void for lack of proper notice.¹⁷

Citing the case of *Chateau de Baie Condominium Corp. v.*

⁸ *Rollo*, p. 49.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 16.

¹³ *Id.* at 17.

¹⁴ *Id.* at 49.

¹⁵ An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages, approved on March 6, 1924.

¹⁶ An Act to Amend Act Numbered Thirty-One Hundred and Thirty-Five, Entitled "An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real-Estate Mortgages," approved on December 7, 1933.

¹⁷ *Rollo*, pp. 49-50.

*Spouses Moreno*¹⁸ (*Chateau de Baie*), petitioners countered that a special authority from the unit owner is not required before a condominium corporation can initiate foreclosure proceedings for unpaid membership dues.¹⁹

In an Order dated May 2, 2012, Branch 264, RTC of Pasig City limited the issue as to whether the extrajudicial foreclosure proceedings and auction sales were valid, considering that no document exists and that the Master Deed of Restrictions contains no provision designating LPL as respondent's attorney-in-fact to extra-judicially foreclose and sell at public auction the subject units.²⁰

On September 30, 2015, the RTC declared that pursuant to the parties' agreement, the case was deemed submitted for decision based on the parties' respective position papers.²¹

The Ruling of the RTC

On December 8, 2015, the RTC rendered a Decision in respondent's favor. The dispositive portion reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of plaintiff Catharina Brouwer:

1. Declaring the two extra-judicial foreclosure sales on October 15, 2008, at the main entrance of the City Hall Building of San Juan City, involving the condominium units covered by CCT No. 11114-R and CCT No. 11113-R, and the corresponding Certificates of Sales, NULL and VOID;
2. Ordering Defendant LPL Greenhills Condominium Corporation, to pay the plaintiff One Hundred Fifty Thousand Pesos (P150,000.00) as Attorney's Fees;
3. Ordering the Register of Deeds in San Juan City to cancel the annotations of Certificates of Sales dated November 28, 2008, particularly Entry No. 72204/C-11113-R and Entry No. 72203/C-11114-R, respectively, in Condominium Certificate of Title Nos. 11113-R and No. 11114-R;
4. Declaring that Catharina Brouwer is still the registered owner of the two condominium units covered by CCT No.

¹⁸ 659 Phil. 353 (2011).

¹⁹ *Rollo*, p. 50.

²⁰ A copy of the RTC Order was not attached to the *rollo*. *Id.* at 51.

²¹ *Id.*

11113-R and CCT No. 11114-R, Registry of Deeds for San Juan City.

SO ORDERED.²²

Petitioners filed an omnibus motion for: (1) reversal and reconsideration; or (2) reversal and remand of the case for trial. However, the RTC denied it in an Order dated May 10, 2016. Thus, they filed a notice of appeal which the RTC approved in an Order dated June 1, 2016.²³

The Ruling of the CA

In the Decision²⁴ dated March 29, 2019, the CA affirmed the RTC with the modification that the award of attorney's fees be deleted, thus:

WHEREFORE, the appeal is PARTLY GRANTED. The decision of the Regional Trial Court of Pasig City (stationed in San Juan City), Branch 264 dated December 8, 2015 in Civil Case No. 72286-SJ is AFFIRMED with the MODIFICATION that the award of attorney's fees is DELETED.

IT IS SO ORDERED.²⁵ (Emphasis omitted)

Although the CA agreed with petitioners that extrajudicial foreclosure sales are not exclusive to mortgages in view of Section 20 of the Condominium Act, the CA agreed with the RTC that LPL must still provide evidence of its special authority to cause the extrajudicial foreclosure of a condominium. It agreed with the RTC ruling that such requirement is lacking in the case.²⁶

Petitioners moved for reconsideration of the above decision, but the CA denied the motion in a Resolution²⁷ dated August 1, 2019.

Hence, the petition.

The Issues

The issues for the Court's resolution are as follows: (1) whether

²² Id. at 51-52.

²³ Id. at 52.

²⁴ Id. at 47-61.

²⁵ Id. at 60.

²⁶ Id. at 56.

²⁷ Id. at 62-64.

the CA erred in ruling that the extrajudicial foreclosure sales are null and void; and (2) whether the CA erred in not finding that respondent's counsel has lost the legal personality to represent respondent.²⁸

Petitioners insist on their argument that under Section 20 of the Condominium Act, a special authority under Section 1 of Act No. 3135 is not necessary to enforce a lien arising from non-payment of condominium dues and other assessments by extrajudicial foreclosure.²⁹ According to petitioners, the *Chateau de Baie* case set forth a new rule that a condominium corporation does not need a special authority from the unit owner in order to initiate a foreclosure proceeding for unpaid dues.³⁰

Petitioners argue that, assuming without conceding that a special authority is necessary, the special authority is present in LPL's Master Deed of Restrictions and By-Laws.³¹ They argue that LPL's By-Laws are completely similar to the By-Laws of the petitioner condominium corporation in the case of *Welbilt Construction Corp. v. Heirs of Cresenciano C. De Castro*³² (*Welbilt*).

Lastly, petitioners contend that upon the death of Manfred, respondent's counsel, that is, Gutierrez, Cortez & Partners, lost its legal personality to represent respondent.³³

The Court's Ruling

The petition is bereft of merit.

Evidence of a condominium corporation's special authority to sell is a pre-condition to the enforcement of its lien for unpaid dues via extrajudicial foreclosure.

Petitioners' reliance on *Chateau de Baie* is erroneous.

A careful reading of *Chateau de Baie* shows that petitioners' contention — that the Condominium Act does not require a special authority or power to sell from the condominium unit owner before a

²⁸ Id. at 20.

²⁹ Id. at 20-23.

³⁰ Id. at 29.

³¹ Id. at 23.

³² 836 Phil. 547 (2018).

³³ *Rollo*, pp. 31-32.

condominium corporation can initiate a foreclosure proceeding — is not the *dictum* of the case, viz.:

We deny the petition for lack of merit. The CA did not err when it did not dismiss the Moreno spouses' complaint despite the full completion of the extrajudicial sale.

The case before the RTC involved an intra-corporate dispute—the Moreno spouses were asking for an accounting of the association dues and were questioning the manner the petitioner calculated the dues assessed against them. These issues are alien to the first case that was initiated by Salvacion—a third party to the petitioner-Moreno relationship—to stop the extrajudicial sale on the basis of the lack of the requirements for a valid foreclosure sale. Although the extrajudicial sale of the Moreno properties to the petitioner has been fully effected and the Salvacion petition has been dismissed with finality, the completion of the sale does not bar the Moreno spouses from questioning the amount of the unpaid dues that gave rise to the foreclosure and to the subsequent sale of their properties. The propriety and legality of the sale of the condominium unit and the parking spaces questioned by Salvacion are different from the propriety and legality of the unpaid assessment dues that the Moreno spouses are questioning in the present case.

The facts of this case are similar to the facts in *Wack Wack Condominium Corporation, et al. v. Court of Appeals, et al.*, where we held that *the dispute as to the validity of the assessments is purely an intra-corporate matter between Wack Wack Condominium Corporation and its stockholder, Bayot, and is, thus, within the exclusive original jurisdiction of the Securities and Exchange Commission (SEC)*. We ruled in that case that since the extrajudicial sale was authorized by Wack Wack Condominium Corporation's by-laws and was the result of the nonpayment of the assessments, the legality of the foreclosure was necessarily an issue within the exclusive original jurisdiction of the SEC. We added that:

Just because the property has already been sold extrajudicially does not mean that the questioned assessments have now become legal and valid or that they have become immaterial. In fact, the validity of the foreclosure depends on the legality of the assessments and the issue must be determined by the SEC if only to insure that the private respondent was not deprived of her property without having been heard. If there were no valid assessments, then there was no lien on the property, and if there was no lien, what was there to foreclose? Thus, SEC Case No. 2675

has not become moot and academic and the SEC retains its jurisdiction to hear and decide the case despite the extrajudicial sale.

Based on the foregoing, we affirm the decision of the CA's First Division dismissing the petitioner's petition. The way is now clear for the RTC to continue its proceedings on the Moreno case.³⁴ (Citations omitted; emphasis and underscoring in the original)

The Court dismissed the petition in *Chateau de Baie* not because the CA did not err in its ruling in the earlier related case of *Salvacion v. Chateau de Baie Condominium Corporation*,³⁵ but because the petition involved an intra-corporate dispute which should have been filed with the Securities and Exchange Commission.³⁶ Evidently, nowhere in *Chateau de Baie* did the Court abandon the doctrine set forth in *First Marbella Condominium Association, Inc. v. Gatmaytan*³⁷ (*First Marbella*).

In *First Marbella*, the Court ruled that it is mandatory that a petition for extrajudicial foreclosure be supported by evidence that petitioner holds a special authority or power,³⁸ thus:

x x x Under Circular No. 7-2002, implementing Supreme Court Administrative Matter No. 99-10-05-0, it is mandatory that a petition for extrajudicial foreclosure be supported by evidence that petitioner holds a special power or authority to foreclose, thus:

Sec. 1. All applications for extra-judicial foreclosure of mortgage, whether under the direction of the Sheriff or a notary public pursuant to Art. No. 3135, as amended, and Act 1508, as amended, shall be filed with the Executive Judge, through the Clerk of Court, who is also the *Ex-Officio* Sheriff (A.M. No. 99-10-05-0, as amended, March 1, 2001).

Sec. 2. Upon receipt of the application, the Clerk of Court shall:

a. Examine the same to ensure that the special power of attorney authorizing the extra-judicial foreclosure of the real property is either

³⁴ Id. at 360-361.

³⁵ Resolution dated January 24, 2008 in G.R. No. 178549.

³⁶ *Chateau de Baie Condominium Corp. v. Sps. Moreno*, supra note 18, at 360.

³⁷ 579 Phil. 432 (2008).

³⁸ Id. at 442.

inserted into or attached to the deed of real estate mortgage (Act No. 3135, Sec. 1, as amended) x x x.

Without proof of petitioner's special authority to foreclose, the Clerk of Court as Ex-Oficio Sheriff is precluded from acting on the application for extrajudicial foreclosure.

x x x x

Neither does Section 20 of R.A. No. 4726 grant petitioner special authority to foreclose. x x x

x x x x

Clearly, Section 20 merely prescribes the procedure by which petitioner's claim may be treated as a superior lien — *i.e.*, through the annotation thereof on the title of the condominium unit. While the law also grants petitioner the option to enforce said lien through either the judicial or extrajudicial foreclosure sale of the condominium unit, Section 20 does not by itself, *ipso facto*, authorize judicial as extra-judicial foreclosure of the condominium unit. Petitioner may avail itself of either option only in the manner provided for by the governing law and rules. As already pointed out, A.M. No. 99-10-05-0, as implemented under Circular No. 7-2002, requires that petitioner furnish evidence of its special authority to cause the extrajudicial foreclosure of the condominium unit.³⁹ (Citations and emphasis omitted)

In *Welbilt*, one of the cases cited by petitioners, the Court reiterated its pronouncement in *First Marbella* that Section 20 of the Condominium Act does not grant condominium corporations the special authority or power. The provision clearly provides that the rules on extrajudicial foreclosure of mortgage of real property should be followed. Pursuant to Section 1 of Act No. 3135, in relation to Office of the Court Administrator Circular No. 7-2002⁴⁰ and A.M. 99-10-05-0,⁴¹ the petition for extrajudicial foreclosure shall be supported by evidence that the petitioner holds a special power or authority to foreclose.⁴²

³⁹ Id. at 439-442.

⁴⁰ Guidelines for the Enforcement of Supreme Court Resolution of December 14, 1999 in Administrative Matter No. 99-10-05-0 (Re: Procedure in Extra-Judicial Foreclosure of Mortgage), as Amended by the Resolutions dated January 30, 2001 and August 7, 2001, approved on January 22, 2002.

⁴¹ Procedure in Extra-Judicial Foreclosure of Mortgages, approved on December 14, 1999 and amended on January 30, 2001 and August 7, 2001.

⁴² *Welbilt Construction Corp. v. Heirs of Cresenciano C. De Castro*, supra note 33, at 553-554.

Petitioners argue that under Section 20 of The Condominium Act, only the manner of foreclosure of a condominium unit shall be governed by Act No. 3135, and that the documentary requirements set forth therein—such as the special authority or power—do not apply.⁴³

Petitioners are grasping at straws.

To be clear, the special authority requirement in extrajudicial foreclosure proceedings is not an invention of Act No. 3135. This requirement stemmed from the Latin maxim, “*nemo dat quod non habet*.” One cannot give what one does not have.⁴⁴

As the registered owner, only respondent can exercise *jus disponendi*, or the right to dispose or alienate the subject units,⁴⁵ to the exclusion of other persons including LPL, although the latter had a lien over the subject units for unpaid condominium dues and other assessments. Under Article 1878 of the Civil Code, *jus disponendi* over real properties may be exercised by an agent on behalf of the owner provided that the agent possesses a special power of attorney:

ARTICLE 1878. Special powers of attorney are necessary in the following cases:

x x x x

(5) To enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration;

x x x x

(12) To create or convey real rights over immovable property;

x x x x

(15) Any other act of strict dominion.

The “special power” being referred to in Section 1 of Act No. 3135 is a *special power of attorney to sell*. The case of *The Commoner Lending Corp. v. Spouses Villanueva*⁴⁶ is instructive; thus:

⁴³ *Rollo*, p. 21.

⁴⁴ See *Vda. de Toledo v. Toledo*, 462 Phil. 738, 748 (2003).

⁴⁵ See *Philippine Bank of Communications v. Register of Deeds for the Province of Benguet*, G.R. No. 222958, March 11, 2020.

⁴⁶ G.R. No. 235260, August 27, 2020.

x x x [I]n extrajudicial foreclosure of real estate mortgage, a special power to sell the property is required which must be either inserted in or attached to the deed of mortgage. Apropos is Section 1 of Act No. 3135, as amended by Act No. 4118 x x x.

x x x x

The special power or authority to sell finds support in civil law. Foremost, in extrajudicial foreclosure, the sale is made through the sheriff by the mortgagees acting as the agents of mortgagor-owners. Hence, there must be a written authority from the mortgagor-owners in favor of the mortgagees. Otherwise, the sale would be void. Moreover, a special power of attorney is necessary before entering “*into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration.*” Thus, the written authority must be a special power of attorney to sell.⁴⁷ (Citations omitted; emphasis in the original; underscoring supplied)

In an extrajudicial foreclosure of a mortgage over immovable property, a special authority or power to sell in favor of the mortgagor is indispensable; otherwise, the sale would be void.⁴⁸ Without the required authority, LPL cannot initiate extrajudicial foreclosure proceedings under Act No. 3135. It may only enforce its lien through an ordinary collection suit or judicial foreclosure proceedings as provided under Rule 68 of the Rules of Court.⁴⁹

From the foregoing, it is apparent that a special power or authority to sell designating LPL as respondent’s attorney-in-fact or agent is required prior to the conduct of the extra-judicial foreclosure proceedings. The grant of such authority may be inserted as a provision in the condominium’s deed of restrictions or by-laws. However, as found by the RTC, neither LPL’s Master Deed of Restrictions or By-Laws contain any provision to that effect.

Petitioners are barred by laches from raising the factual issue as to whether LPL’s Master Deed of Restrictions and By-Laws contain a special authority.

⁴⁷ Id.

⁴⁸ Id. See also *Sps. Baysa v. Sps. Plantilla*, 763 Phil. 562, 570 (2015).

⁴⁹ See *Sps. Baysa v. Sps. Plantilla*, supra at 569.

Petitioners insist that similar to *Welbilt*,⁵⁰ a special authority or power can be found in LPL's Master Deed of Restrictions and By-Laws. Thus, they argue that LPL has complied with the procedure under Act No. 3135 when it foreclosed the subject units.⁵¹

LPL's Master Deed of Restrictions provides:

"Part 1, Section 7:

"NATURE OF INTEREST OF UNIT OWNERS. (a) Purchaser of a Unit shall acquire upon execution of the Deed of Absolute Sale title to or ownership of such unit, subject to this Master Deed with Declarations of Restrictions, and further the terms and conditions of the instrument conveying the Unit from the DECLARANT to such purchaser or to the terms and condition of any subsequent conveyance under which the purchaser takes title to the unit; provided however that in case of inconsistency, the Master Deed with Declaration of Restrictions shall prevail.

"Part 1, Section 8:

"THE CONDOMINIUM CORPORATION. ... (d) Each member of the Condominium Corporation shall share in the common expense of the Condominium Project, and shall accordingly be assessed therefore, in the same sharing or percentage, corresponding to his appurtenant interest or participation in the Condominium Corporation without prejudice to the right of the latter to charge him for special assessments as provided in paragraph a.4, Section 4 of Part II hereof.

"Part II, Section 4:

"ASSESSMENTS.

(c) The amount of any assessment, the interest due in case of delinquency, the cost of collection (including attorney's fees, if any) and penalties for the delinquency shall constitute a lien on the Units so assessed and the appurtenant interest of the Unit owner in the Condominium Corporation. Such lien shall be constituted and enforced, or to the amount of the assessment otherwise collected, in the manner provided in the By-laws of the Corporation.

(d) In case of foreclosure, the transfer or the conveyance, as well as the redemption, of the delinquent Unit owner's appurtenant membership in the Condominium Corporation. The Corporation shall have the power to bid at the foreclosure sale."⁵² (Emphasis omitted; italics and underscoring in the original)

Meanwhile, part of LPL's By-Laws reads:

⁵⁰ The Court ruled that petitioner condominium corporation possessed a special authority to institute foreclosure proceedings in its Master Deed and By-Laws; hence, the extrajudicial foreclosure proceeding was valid. *Supra* note 33, at 555.

⁵¹ *Rollo*, pp. 24-25.

⁵² *Id.* at 26.

“Section 5:

“DEFAULTS. In the event that a member defaults in the payment of any assessments duly levied in accordance with the Master Deed and Declaration of Restrictions of the condominium project and these By-laws, the Board of Directors may enforce collection thereof by any of the remedies provided by the Condominium Act and other pertinent laws. The Board of Directors can resolve to file an adverse claim or lien or encumbrance with the Registry of Deeds, as it may deem necessary to protect the interest of the corporation against any assessments, interest, surcharges and this will constitute a lien or encumbrance.”⁵³

Records show that petitioners agreed to limit the issue before the RTC to whether a special authority or power is required before a condominium corporation can initiate foreclosure proceedings for unpaid condominium dues and other assessments. Notably, in an Order dated May 2, 2012, the RTC phrased the sole issue in the case as follows:

Whether or not the subject foreclosure proceedings and auctions sales are valid *considering that no documents exists and the Master Deed of Restriction[s] contains no provision that defendant LPL Greenhills Condominium was designated as the Attorney-in-Fact of [respondent] to extra-judicially foreclose and sell at public auction the subject properties.*⁵⁴ (Emphasis supplied)

The Court notes that petitioners chose to anchor their whole defense before the RTC on a single contention—that a special authority or power is not required in extrajudicial proceedings for unpaid condominium dues and other assessments. Moreover, when the RTC issued the above-quoted Order, LPL did not assail the factual findings therein (*i.e.*, that the Master Deed of Restrictions did not contain any provision designating LPL as attorney-in-fact) and even agreed that the case be submitted for decision on September 30, 2015.⁵⁵

From the foregoing, it is apparent that petitioners are already barred by laches⁵⁶ for failure to opportunely assail the RTC’s factual finding as to LPL’s lack of special authority or power to sell the subject units. “Basic consideration of due process impels the rule that points of law, theories, issues, and arguments not brought to the attention of the

⁵³ Id. at 27.

⁵⁴ Id. at 51.

⁵⁵ Id.

⁵⁶ Laches is defined as “the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier.” See *Star Special Corporate Security Management, Inc. v. Commission on Audit*, G.R. No. 225366, September 1, 2020.

trial court will not be and ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal.”⁵⁷

Further, the issue as to whether LPL’s Master Deed and By-Laws contain a special authority or power to sell is a question of fact. It must be emphasized that the Court is not a trier of facts⁵⁸ and that the jurisdiction of the Court in a petition for review on *certiorari* under Rule 45 is limited to questions of law.⁵⁹

Be that as it may, none of the select provisions of LPL’s Master Deed of Restrictions and By-Laws quoted by petitioners in the petition is akin to a special authority or power to sell authorizing LPL as respondent’s attorney-in-fact or agent for purposes of extrajudicial foreclosure proceedings and auction sales. Although a special authority or power to sell under Act No. 3135 need not be expressed in a particular form,⁶⁰ by no stretch of imagination can the Court consider LPL’s incidental powers to convey, sell, or transfer real properties under its Articles of Incorporation⁶¹ as covering real properties which it does not own. Section 5 of LPL’s By-Laws, which states that it may “enforce collection thereof by any of the remedies provided by the Condominium Act and other pertinent laws,”⁶² is likewise not a special authority or power to sell.

Petitioners’ contention that LPL’s By-Laws is completely similar to the By-Laws of the petitioner condominium corporation in *Welbilt* deserves scant consideration. Keeping in mind that what was quoted in *Welbilt* is only a portion of one subsection of the By-Laws in question,⁶³ petitioners’ contention lacks merit.

⁵⁷ *Perez v. Rasaceña*, 797 Phil. 369, 381-382 (2016), citing *Nuñez v. SLTEAS Phoenix Solutions, Inc.*, 632 Phil. 143, 155 (2010).

⁵⁸ *Microsoft Corporation, v. Farajallah*, 742 Phil. 775, 785 (2014).

⁵⁹ Section 1. *Filing of petition with Supreme Court*. — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. *The petition shall raise only questions of law which must be distinctly set forth*. (Emphasis supplied).

⁶⁰ *Tan Chat v. Hodges*, 98 Phil. 928, 930-931 (1956), citing 41 *Corpus Juris*, p. 926:

“While it has been held that a power of sale will not be recognized as contained in a mortgage unless it is given by express grant and in clear and explicit terms, and that there can be no implied power of sale where a mortgage holds by a deed absolute in form, it is generally held that no particular formality is required in the creation of the power of sale. Any words are sufficient which evince an intention that the sale may be made upon default or other contingency.”

⁶¹ *Rollo*, p. 27.

⁶² *Id.*

⁶³ See *Welbilt Construction Corp., v. Heirs of Cresenciano C. De Castro*, *supra* note 33, at 555.

Anent the contention that Manfred's death extinguishes the legal personality of Gutierrez, Cortez & Partners to represent respondent, the Court rules in the negative.

As aptly stated by the CA, it is settled that an attorney-in-fact is not the real party-in-interest.⁶⁵ Section 3, Rule 3 of the Rules of Court provides:

Section 3. Representatives as parties. — Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, *the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest.* A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal. (Emphasis supplied)

Consequently, Manfred's death does not *ipso facto* cause the withdrawal of Gutierrez, Cortez & Partner as respondent's counsel of record. Lastly, the attorney-client relationship is between respondent and Gutierrez, Cortez & Partners. Manfred's death does not sever this attorney-client relationship between respondent and her counsel. Hence, respondent's counsel of record remains to be Gutierrez, Cortez & Partners.⁶⁶

In fine, the CA did not err in ruling that the extrajudicial foreclosure sales of the subject units were null and void for want of special authority or power to sell.

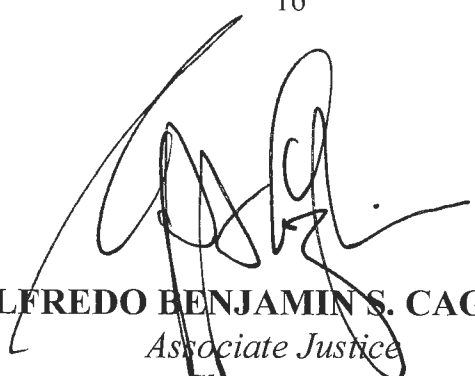
WHEREFORE, the petition is hereby **DENIED**. The Decision dated March 29, 2019 and the Resolution dated August 1, 2019 of the Court of Appeals in CA-G.R. CV No. 107139 are **AFFIRMED**.

SO ORDERED."


HENRI JEAN PAUL B. INTING
Associate Justice

⁶⁵ *Rollo*, p. 58. See also *Guizano v. Veneracion*, 694 Phil. 658, 668 (2012).

WE CONCUR:



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson



SAMUEL H. GAERLAN
Associate Justice



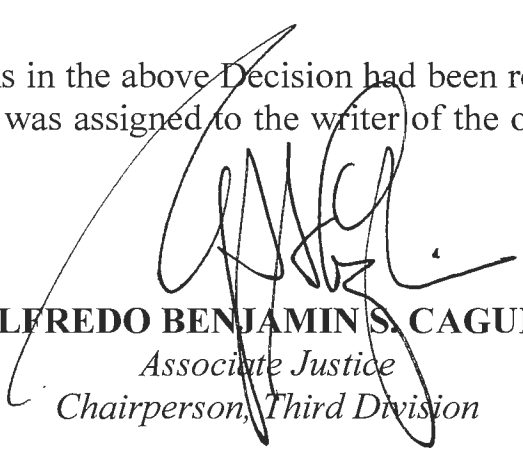
JAPAR B. DIMAAMPAO
Associate Justice



MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

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



ALEXANDER G. GESMUNDO
Chief Justice