

CATALINA PONS CALDERON AS GUARDIAN OF MINORS: ANTONIO P. CALDERON AND MILAGROS P. CALDERON, ET AL., PLAINTIFFS-APPELLANTS, VS. LEONARDO MEDINA, DEFENDANT-APPELLEE.

G. R. No. L-17634. October 29, 1966

Ponente: REGALA, J.

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REGALA, J.:

This is an appeal from the decision of the Court of First Instance of Rizal in Civil Case No. 4654, dismissing appellants' complaint against appellee. The appeal, originally taken to the Court of Appeals, was certified to this Court for review, there being no dispute as to the facts and the issues raised being questions of law.

Appellants filed the complaint to seek the cancellation of a mortgage which they had executed in favor of the appellee. They alleged that in November, 1956, they entered into an agreement with the appellee whereby the latter would finance the construction of an apartment house costing not more than P15,000 on appellants' lot in Manila. To secure the payment of appellee's expenses in building the house, a mortgage on the lot was to be executed in his favor. According to appellants, they executed the mortgage but the appellee failed to carry out his obligation.

For his part, appellee denied the existence of any oral agreement to build a house for the appellants and averred that the mortgage was made to secure the sum of P15,000, which he loaned to appellants, and the further sum of P1,035.86, which he paid to the Luzon Surety Co. to discharge a prior lien on the mortgaged premises.

As special defenses, appellee contended that the supposed oral agreement to build a house was unenforceable; that appellants' action was barred by prior judgment; and that appellants were estopped from questioning the validity of the mortgage after they themselves had asked for its approval by the guardianship court in Special Proceedings No. 647. Appellee filed a counter claim for P1,000 as attorney's fees.

Appellee's special defenses are based on the fact that appellant Catalina Pons Calderon, as guardian of the other appellants, who are her children, had petitioned the guardianship court in Special Proceedings No. 647 for authority to mortgage her ward's property in order to secure a loan with which to build an apartment and thereby make the property productive. In its order of December 15, 1956, the guardianship court granted the authority requested and approved the mortgage. This order is the basis of appellee's defense of res judicata and estoppel.

At the hearing, appellant Catalina Pons Calderon testified but when asked questions tending to prove that appellants never received the amount of P15,000 contrary to the recitals of the mortgage instrument and that appellee had agreed to build an apartment for appellants, appellee's counsel objected on the ground that the deed of mortgage was the best evidence and that appellant was estopped from denying the validity of the mortgage. The trial court sustained the objection, whereupon appellants' counsel made an offer of proof and rested his case. Appellee did not present evidence; instead he asked for the dismissal of the case. The lower court dismissed the

case stating:

"The due execution and genuineness of the deed of mortgage is not in dispute. The only question it appears is the issue of whether or not the guardian received the consideration of P15,000.00 appearing in said deed. But even this question falls into insignificance because of the indubitable fact that said deed of mortgage has been regular. This is admitted by the parties. Consequently, the certificate of the Notary Public who ratified the document in question cannot also be questioned. And said Notary expressly stated that the plaintiffs Catalina Pons Calderon, as guardian of the minors Antonio P. Calderon and Milagros P. Calderon, and Luz Calderon and Elvira P. Calderon, acknowledged to him that the deed in question was their free and voluntary act and deed. Moreover the plaintiffs expressly acknowledged in the same document having received the sum of P15,000.00 in express words 'receipt of which is hereby acknowledged.' The certificate of the Notary has not been questioned. The plaintiffs can not now be heard to complain that they have not received the consideration of the mortgage, and to allow it would be to overthrow the very admissions of regularity, and consequently, the sanctity of the said document. It results that the oral agreement alleged by the plaintiffs cannot be allowed to differ the written agreement appearing in the real estate mortgage by means of testimonial evidence. Finally, the stamp of approval by the guardianship court on the document in question can lend no other meaning than the transaction was for a mortgage and no other, the consideration of which was duly received by the plaintiffs-mortgagors."

Appellants' assignment of error centers on the refusal of the trial court to permit evidence on the supposed failure of appellee to pay the consideration of the mortgage and appellee's alleged undertaking to finance the construction of an apartment on appellants' land. Thus they contend that under the ruling of *Maulini v. Serrano*, 28 Phil. 642 (1914), parol evidence is admissible to show failure of consideration.

On the other hand, appellee argues that the issue is not whether appellants are estopped by the recitals of the mortgage instrument, but whether they are precluded by their conduct in seeking approval by the court of the mortgage deed in which they acknowledged receipt of P15,000. In short, instead of instead of estoppel by deed, the claim is that there is estoppel in pais.[1]

We think the appellee is right. By asking the guardianship court to approve the mortgage, appellants must necessarily be deemed to have represented to the court that the mortgage was what it purported to be and they just not now be heard to say the contrary. It is true that in their motion, appellants merely stated that "Mr. Leonardo Medina [appellee herein] had agreed to advance the loan," but it must be remembered that at the time the motion was prepared the mortgage contract had not yet been executed. Thus the motion appears to have been prepared on December 5, 1956 while the deed of mortgage, in which receipt of P15,000 is expressly acknowledged, on December 8, 1956 and both motion and mortgage were submitted to the court on December 12.

It is true that in *Maulini v. Serrano*, supra, it was held that parol evidence is admissible to prove failure of consideration but even if Catalina Pons Calderon had been allowed to testify and deny receipt of P15,000, her testimony could not prevail over the recitals of the mortgage instrument. That instrument was ratified by the appellants, including Catalina Pons Calderon, before a notary public. As stated in one case, "if the biased and interested testimony of a grantor (witness Catalina Pons Calderon in this case) and the vague and uncertain testimony of his son are deemed sufficient to overcome a public instrument drawn up with all the formalities prescribed by the law then there will have been established a very dangerous doctrine which would throw wide open the doors to fraud." (*El Hogar Filipino v. Olviga*, 60 Phil. 17, 21 [1934]; *MacDonald v. National City Bank*, 99 Phil. 156, 162-163 [1956]) Nor would a mere denial of receipt suffice to contradict what appears in a clear and unequivocal manner in a public instrument. It was incumbent on appellants to prove their claim with "clear, convincing and more than merely preponderant evidence" (*Mendozón v. Philippine Sugar Estates Dev. Co.*, 41 Phil. 475 [1921]), which a mere denial cannot do.

WHEREFORE, the decision appealed from is affirmed, without pronouncement as to costs.

Concepcion, C. J., Dizon, Makalintal, Bengzon, J. P., Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

Reyes, J. B. L., J., concurs in the result.

[1] For a classification of estoppels into (1) estoppel by deed, (2) estoppel by record and (3) estoppel in pais, see *Borlaza v. Ramos*, 89 Phil. 464 (1951).

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