

**BRENDA S. BERMEJO, REPRESENTED BY HER ATTORNEY-IN-FACT,
FRITZ S. BERMEJO, PLAINTIFF-APPELLEE, VS. L&R
CORPORATION, EX-OFFICIO SHERIFF OF MARIKINA CITY AND THE
REGISTRY OF DEEDS ...**

Ponente: REYES, JR., J.C., J.

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REYES, JR., J.C., J.:

This resolves the appeal filed by defendant-appellant L&R Corporation questioning the February 26, 2013 Decision (Rollo, pp. 46-59) of the Regional Trial Court (RTC) of Marikina City, Branch 193, in Civil Case No. 2004-972 MK, the dispositive portion of which reads as follows:

“WHEREFORE, foregoing premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant L&R Corporation as follows:

a) declaring the Deed of Real Estate Mortgage and Promissory Note both dated January 18, 2002, the Extra Judicial Foreclosure of Mortgage on the property covered by TCT no. 69773 of the Register of Deed of Marikina City as NULL and VOID;

b) ordering the Register of Deeds of Marikina City to cancel Transfer Certificate of Title No. 445364 in the name of defendant L&R Corporation and to re-issue Transfer Certificate of Title No. N-69773 in the name of Fernando V. Bermejo, married to Brenda Bermejo;

c) ordering defendant L&R Corporation to pay plaintiff the amount of Php100,000.00 as moral damages, the amount of Php50,000.00 as attorney's fees and Php2,500.00 per court appearance, and costs of suit.

SO ORDERED” (Rollo, p. 59).

The instant case arose from a Complaint for Declaration of Nullity of Extrajudicial Foreclosure of Mortgage, Mortgage Contract, Promissory Note, Certificate of Sale, Cancellation and Reconveyance of Title with Damages (Records, p. 1-9) filed by plaintiff-appellee Brenda S. Bermejo, as represented by her attorney-in-fact, Fritz Bermejo against defendant-appellant L&R Corporation, the Ex-Officio Sheriff of Marikina City and the Register of Deeds of Marikina City.

The said Complaint alleged that sometime in the first week of March 2002, plaintiff-appellee Brenda S. Bermejo was informed by her son regarding a letter coming from defendant-appellant L&R Corporation requiring her and her husband to replace a Bank Wise Check relative to a loan allegedly contracted by plaintiff-appellee Brenda and her spouse Fernando Bermejo. It appears that on January 18, 2002, said spouses Bermejo allegedly executed and signed a Deed of Real Estate Mortgage (Records, pp. 16-18), Promissory Note (Records, p. 19) with Disclosure Statement and Schedule of Payment of Loan (Records, p. 20) in favor of defendant-appellant L&R Corporation. Plaintiff-appellee Brenda Bermejo made it clear that she has no knowledge of any loan to defendant-appellant L&R Corporation nor have issued any check in favor of Bank Wise. Plaintiff-appellee Brenda Bermejo maintained that since May 24, 1993, she was in Los Angeles, California working as a Clinical Partner at

Cedars-Sinai Medical Center and came home only on June 15, 2004.

Thereafter, plaintiff-appellee Brenda Bermejo (plaintiff-appellee, for brevity) sent a letter (See: Letter dated March 11, 2002, Records, p. 21) requesting for copy of contract and the check but such request did not receive any positive reply from defendant-appellant L&R Corporation. Likewise, in the said request letter, plaintiff-appellee informed defendant-appellant L&R Corporation of the fact of death of her husband, Fernando Bermejo (see: Certificate of Death, Records, p. 13). However, after the death of Fernando Bermejo, series of demand letters were sent to the address of plaintiff-appellee's deceased husband. These letters were relayed to plaintiff-appellee, which prompted her to authorize her brother Edsel S. Silo to communicate with defendant-appellant L&R Corporation. Instead of verifying the claim, Notice of Foreclosure Sale dated August 15, 2002 was sent to plaintiff-appellee's address and the last notice forwarded to her was the Notice of Sheriff Sale dated November 28, 2002.

On June 15, 2004, plaintiff-appellee arrived from the United States of America and having been informed of the effect of the Sheriff Sale, she immediately proceeded to the Register of Deeds of Marikina City and discovered that the title to their conjugal home was already transferred in the name of defendant-appellant L&R Corporation. Upon retrieving all documents pertaining to the alleged loan, plaintiff-appellee was surprise to find out that above her printed name is a signature which she claims is not hers. She was wondering who signed all the said documents since she was all the while in the USA since 1993 and only came back to the Philippines on June 15, 2004. Plaintiff-appellee is sure that all the signatures contained in the loan documents were indeed forged. Plaintiff-appellee also argued that defendant-appellant L&R Corporation did not exercise fair diligence and observe the standard operating procedure in the granting of the loan to her deceased husband. Apart from being negligent, plaintiff-appellee also claimed that defendant-appellant L&R Corporation also acted in bad faith when it foreclosed the subject property because plaintiff-appellee already communicated to it that her husband already died and that her signature in the documents was a forgery. Despite these incidents and information, defendant-appellant L&R Corporation in utter bad faith sent demand letters to the address of the deceased mortgagor and eventually foreclosed the subject property to the damage and prejudice of plaintiff-appellee.

On September 20, 2004, defendant-appellant L&R Corporation filed an Answer with Counterclaim (Records, pp. 41-49) and averred that plaintiff-appellee has no cause of action against it as it is a mortgagee in good faith. Thus, defendant-appellant L&R Corporation is entitled to act in accordance with all the rights of mortgagee in good faith pursuant to Act No. 3135. It stated that sometime in January 2002, spouses Fernando and Brenda Bermejo, representing themselves to be husband and wife applied for Php1,500,000.00 loan with defendant-appellant L&R Corporation, claiming to be the absolute owners of a parcel of land located in Marikina City which they are willing to mortgage to secure the loan. For this purpose, they presented, among other documents, TCT No. N-69773 (Records, pp. 51-52). Defendant-appellant L&R Corporation approved the loan only for the amount of Php700,000.00 for a term of three years and the spouses Bermejos executed the corresponding Promissory Note and Deed of Real Estate Mortgage dated January 18, 2002. Unfortunately, the spouses Bermejos failed to pay the agreed monthly amortization, and when the demands for payment were not heeded, defendant-appellant L&R Corporation was constrained to proceed with the foreclosure sale. At the foreclosure sale, the Sheriff sold the property to defendant-appellant L&R Corporation as the highest bidder as evidenced by the Certificate of Sale dated February 5, 2003 (Records, p. 56). For failure of the spouses-mortgagors to redeem their property despite several communications, defendant-appellant L&R Corporation sought consolidation of its ownership and consequently, a new title, Transfer Certificate of Title No. 445364 (Records, p. 57), was issued in its favor.

After the parties submitted their respective pleadings, trial on the merits ensued with both parties presenting their own witnesses. The testimony of plaintiff-appellee Brenda Bermejo was corroborated by the other witnesses

namely: Fritz Bermejo and Rodalyn Yao. Defendant-appellant L&R Corporation, on the other hand, presented the testimonies of Ma. Elena Santos, Jefferson Pamorca and Juliet Montojo. In view of the repeated absence of the Juliet Montojo, her judicial affidavit was ordered expunged from the records of the case.

After the parties' presentation of evidence, the RTC of Marikina City, Branch 193 issued the now appealed Decision finding for plaintiff-appellee. It sustained plaintiff-appellee's argument of forgery in the signature appearing in the loan documents. Thus, applying Article 1409 of the Civil Code, the RTC found that the Real Estate Mortgage and the Promissory Note both dated January 18, 2002 between the Spouses Bermejo and L&R Corporation is void from the beginning. The signature of plaintiff-appellee Brenda Bermejo being a forgery, therefore it has no force and effect. The dispositive portion of the appealed Decision is reproduced in the early part of this Decision.

Dissatisfied with the foregoing findings, defendant-appellant L&R Corporation filed an appeal with this Court and raised the following errors to have been committed by the RTC, to wit:

A.

FIRST ASSIGNMENT OF ERROR

THE TRIAL COURT GRAVELY ERRED IN RELYING SOLELY ON ARTICLE 1409 (2) OF THE CIVIL CODE WHEN IT DECLARED THAT THE DEED OF REAL ESTATE MORTGAGE AND PROMISSORY NOTE BOTH DATED 18 JANUARY 2002 AND THE EXTRA-JUDICIAL FORECLOSURE OF MORTGAGE ON THE PROPERTY COVERED BY TCT NO. 69773 OF THE REGISTER OF DEEDS OF MARIKINA NULL AND VOID.

B.

SECOND ASSIGNMENT OF ERROR

THE TRIAL COURT GRAVELY ERRED IN DECIDING IN FAVOR OF THE PLAINTIFF-APPELLEE CONSIDERING THAT FORGERY WAS NOT PROPERLY ESTABLISHED.

Plaintiff-appellee's main bone of contention, in order to establish her case, is that her signatures appearing in the Deed of Real Estate Mortgage, Promissory Note and in the Schedule of Payment were all forgery. She insisted that she could not have signed the aforesaid loan documents all dated January 18, 2002 because at that moment of execution, she was in the United States.

True enough and as insisted by defendant-appellant L&R Corporation, forgery, as a rule, cannot be presumed and must be proved by clear, positive and convincing evidence and the burden of proof lies on the party alleging forgery (*Heirs of the late Felix M. Bucton vs. Spouses Go*, G.R. No. 188395, November 20, 2013).

In the case at bar, the RTC sustained the argument of plaintiff-appellee when she stated that it was physically impossible for her to sign the said loan documents considering that she was at the United States when the said documents were executed. To prove that plaintiff-appellee was outside the country, she executed an Affidavit of Appearance duly acknowledged by the Consulate General of the Philippines in the United States (See: Records, pp. 7-8) attesting to the fact that she has never been home (in the Philippines).

It also bears to stress that the best evidence of a forged signature in an instrument is the instrument itself reflecting the alleged forged signature (*Heirs of the late Felix M. Bucton vs. Spouses Go*, G.R. No. 188395, November 20, 2013). The fact of forgery can only be established by a comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized upon to have been forged (*ibid.*). Thus, Our own independent comparison of the documents submitted would reveal an apparent disparity between the

manner by which the signatures were written leading us to conclude that the standard signature and those appearing in the questioned loan documents were not signed by one and the same person. Indeed, there is an evident dissimilarity as to the strokes of the letters used between plaintiff-appellee's purported signature appearing in the said loan documents and her genuine signature as shown in her Affidavit of Appearance (Records, p. 7), in her California Driver's License (Records, p. 11) and her Judicial Affidavit (Records, p. 36) in Court. The disparity between the signatures was even admitted by defendant-appellant L&R Corporation thru its witness which it presented in court (See: TSN, April 12, 2010, p. 15). As the dissimilarity between the false and genuine specimen signatures is visible and evident to the naked eye, resort to the opinion of handwriting experts on the forged documents is no longer necessary. As held by the Supreme Court, a finding of forgery does not depend entirely on the testimonies of government handwriting experts whose opinions do not mandatorily bind the courts (Tanenggee vs. People, G.R. No. 179448, June 26, 2013). Thus:

“Due to the technicality of the procedure involved in the examination of forged documents, the expertise of questioned document examiners is usually helpful. However, resort to questioned document examiners is not mandatory and while probably useful, they are not indispensable in examining or comparing handwriting. A finding of forgery does not depend entirely on the testimony of handwriting experts. Although such testimony may be useful, the judge still exercises independent judgment on the issue of authenticity of the signatures under scrutiny. The judge cannot rely on the mere testimony of the handwriting expert” (Heirs of Severa P. Gregorio vs. Court of Appeals, 300 SCRA 565, 574-575 [1998])

Thus, considering the physical impossibility of the plaintiff-appellee to sign the loan documents (as she was in the United States) and the apparent dissimilarity between the authentic and fake specimen signatures presented in Court, We are inclined to concur with the findings of the RTC that indeed the signatures appearing in the questioned loan documents were indeed forged.

With plaintiff-appellee's signature being a forgery, then she really did not give her consent to the real estate mortgage contract entered into by her deceased spouse. In this case, the execution of the real estate mortgage contract by the deceased Fernando Bermejo over their conjugal property is undoubtedly an act of encumbrance and to be valid and effective, the same must be consented to by the wife, otherwise, it is void and produces no force and effect. By express provision of Article 124 of the Family Code, in the absence of court authority or written consent of the other spouse, any disposition or encumbrance of the conjugal property shall be void. Thus:

“Art. 124. x x x x x x x x

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include the power of disposition or encumbrance which must have the written authority of the court or the written consent of the other spouse. In the absent of such written authority or consent, the disposition or encumbrance shall be void. X x x

The aforequoted provision does not qualify with respect to the share of the spouse who makes the disposition or encumbrance in the same manner that the rule on co-ownership under Article 493 of the Civil Code does. Where the law does not distinguish, courts should not distinguish (Homeowners Savings & Loan Bank vs. Dailo, 453 SCRA 283, 291 [2005]).

Defendant-appellant L&R Corporation however claimed that it is a mortgagee in good faith since it verified that title of the property was under the name of one of the mortgagors (Fernando Bermejo) and that it did a credit investigation of the spouses and even made an ocular inspection of the property to be mortgaged.

As earlier discussed, in the execution of a real estate mortgage over a conjugal property, the signature of the

spouse is essential, and without it, the mortgage contract is void. It is quite clear in this case that there was haste in approving the mortgage loan without ascertaining the identity of the applicants. Defendant-appellant's averment that it exercised prudence in the loan-mortgage transaction is debunked by its own admission that it merely relied on Fernando Bermejo's representations that the person accompanying him is his wife, without ascertaining her identity (See: TSN, April 12, 2010, p. 17). Although defendant-appellant L&R Corporation (through its witness) testified that it is its standard procedure to conduct interviews with loan applicants, the questions hurled, only centered on extracting information such as the source of income, the property to be mortgaged, the residence of the applicant, number of children and terms and conditions of the loan (See: TSN, April 12, 2010, pp. 8-9). It dismally failed to verify the identity of the persons which it is interviewing or his spouse for that matter. It merely required presentation of any Identification Card and whether it is valid or not, it did not matter (See: TSN, April 12, 2010, p. 13). And during trial, it was shown that the ID presented merely bore the nickname of Brenda Bermejo and not her full name with the witness arguing that she merely checked the dorsal portion of the ID (See: TSN, April 12, 2010, pp. 15-16). Defendant-appellant L&R Corporation also claimed that it conducted an ocular inspection of the property to determine if the applicants own the property (See: TSN, January 17, 2011, p. 8). Since it did not bother to meet with the owners or ascertain their true identity, it could be said that such ocular was primarily intended only to appraise the value of the property in order to determine how much loan it would grant but again it did not question and verify the identity of the applicant and his spouse. And as it turned out, the signature of the spouse in the mortgage contract was forged. The failure of respondent to take such precautionary steps such as ascertaining the identity of the mortgagor's spouse, is considered negligence on its part and would thereby preclude the defense of good faith. Consequently, defendant-appellant L&R Corporation must bear the consequences of its negligence.

The next question is whether the conjugal property of the spouse must be made liable to the principal obligation notwithstanding the illegality of the mortgage. Article 161 of the Family Code provides:

“Art. 121. The conjugal partnership shall be liable for:

(1) x x x

(2) x x x

(3) Debts and obligations contracted by either spouse without the consent of the other to the extent that the family may have benefited;”

For the conjugal property to be held liable, there must be a showing that some advantage accrued to the welfare of the family or the spouse. The burden of proof that the debt was contracted for the benefit of the conjugal partnership of gains lies with the creditor-party litigant claiming as such (*Homeowners Savings and Loan Bank vs. Dailo*, 453 SCRA 283, 292 [2005]). In the case at bar, defendant-appellant L&R Corporation merely made a general averment that the said money loaned by Fernando Bermejo will be used for the latter's tuna business. But apart from this bare assertion, no adequate proof was adduced to establish that the proceeds of the loan redounded to the benefit of the family. Consequently, the conjugal partnership cannot be held liable for the payment of the principal obligation.

WHEREFORE, the instant appeal is DENIED. Accordingly, the Decision dated February 26, 2013 of the Regional Trial Court of Marikina City, Branch 193, in Civil Case No. 2004-972 MK, is hereby AFFIRMED.

SO ORDERED.

Lopez, and Inting, JJ., concur.

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