

CORAZON A. MATIC, PLAINTIFF-APPELLEES, VS. WILLIAM ONG GENATO, DEFENDANT-APPELLANT,

Ponente: SORONGON, J.

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This is an Appeal[1] from the September 08, 2010 Decision[2] of the Regional Trial Court of Balanga City, Branch 2 in Civil Case No. 7166 entitled "Corazon A. Matic vs. William Ong Genato, et al.". The assailed decision declared, among others, the Memorandum of Agreement (MOA)[3] dated May 8, 1998 as null and void.

In her complaint[4], plaintiff-appellee Corazon Matic (Corazon for short) alleged that sometime in April 1998, Ernesto Bulos (Ernesto) and Teofilo Manandeg (Teofilo) asked her to help them purchase on credit two taxicabs and two buses from defendant-appellant William Ong Genato (Genato for brevity). Acceding to their request, Corazon prepared twenty-four (24) postdated checks at Php94,658.33 each in favor of Genato for the monthly amortization of the said vehicles which she delivered to the latter together with the owner's duplicate copy of Transfer Certificate of Title (TCT) No. T-152088 of her farmland in Bataan. It was agreed by Corazon and Genato that the checks would be deposited and the real estate mortgage on her property would be executed once the vehicles become operational and delivered to Corazon. The two taxicabs delivered were not yet operational that one was returned to Genato. In view thereof, Corazon did not fund her checks and the proposed real estate mortgage was not executed. Unmindful, Genato went on to encash the checks which naturally were all dishonored. As a result, Genato filed a complaint for violation of BP 22 against Corazon with the Quezon City Prosecutor's Office. But the same was later dismissed. Failing in his attempt to have Corazon prosecuted, Genato filed on June 25, 2000 a Petition for Sale with the Office of the Clerk of Court of the Regional Trial Court of Bataan for the foreclosure of her property under Act 3135 on the basis of their MOA dated May 8, 1998. The Ex Officio Provincial Sheriff or the sheriff-in-charge issued a Notice of Sheriff's Sale[5] on July 12, 2000 setting the public auction on August 28, 2000. To thwart the impending public sale on August 25, 2000 Corazon filed a case for Annulment of Agreement, Injunction and Damages (case a quo) also in the RTC of Balanga City. Seeing the urgency of the matter, the trial court issued a Temporary Restraining Order[6] stopping the imminent public auction. Then after due hearing, a preliminary injunction was also issued.[7]

During the hearing, Corazon endeavored to prove[8] that she was the guarantor of Ernesto in the purchase of two taxicabs and two buses. Only one of the taxicabs was delivered to Ernesto while the other one was delivered to Teofilo. When the two buses were not delivered, she told Genato that she was backing out from the said transaction and will no longer fund the checks and had her checking account closed thereafter.

Corazon also claimed that her signature in the MOA was forged. She submitted into evidence a "Questioned Document Report"[9] from the NBI which concluded that "the questioned and the standard/sample signatures 'Corazon A. Matic' were not written by one and the same person. NBI handwriting expert Rhoda Flores testified[10] that the standard signatures submitted for examination and comparison with the questioned signatures were thirty-three (33) samples. Her examination showed that there were significant fundamental differences in the execution, structural forms and designs of letters between the questioned and standard signature

samples of Corazon.

On the other hand, Genato alleged that he came to know Corazon when she visited his office in Kamias Road, Quezon City, along with Ernesto and Teofilo to buy on credit two units of buses and two units of taxicabs. As security therefor, Corazon offered her farm land including 24 postdated checks. Genato told Corazon to execute the MOA which she obligingly acceded as in fact the same was signed at his office. Then Corazon left a copy of the title of her farmland while Genato gave her five (5) copies of the MOA for notarization. After it was notarized Corazon left him his own copy of the MOA. To release the said vehicles, Genato gave her gate pass for the two taxicabs and one bus. The other bus was not released anymore because of the misunderstanding between Corazon and Ernesto.

For his part, Teofilo said that he knows Corazon through Ernesto and that the two wanted to engage in a transport business. He brought them to Genato's office wherein they were told of the terms for the purchase of vehicles on credit. Aside from the checks she issued, Corazon also offered her farmland in Bataan as collateral. In fact, he volunteered to inspect the said lot for Genato. Convinced that the land of Corazon is a good security, he gave a favorable recommendation to Genato. The sale on credit of the vehicles was consummated and the MOA between Corazon and Genato was forthwith executed wherein Ernesto and Teofilo signed therein as witnesses. Corazon got one (1) bus and two (2) taxicabs. The bus turned out to be unserviceable. One of the taxicabs was given to Ernesto while the other unit was given to Teofilo as his commission.

On September 8, 2010, the trial court issued the assailed decision, the dispositive portion thereof reads:

"WHEREFORE, premises considered, judgment is hereby rendered declaring the Memorandum of Agreement (Exhibit B) as null and void and without any binding effect whatsoever, and further making the preliminary injunction issued in this case final and permanent, Defendant William Ong Genato is likewise ordered to pay attorney's fees amounting to Php40,000.00 and litigation expenses in the sum of Php10,000.00.

No pronouncement as to the costs and damages.

SO ORDERED."

Therefrom, Genato interposed this appeal alleging that:

THE COURT A QUO ERRED IN DECLARING THE MEMORANDUM OF AGREEMENT (MOA) NULL AND VOID, AFTER IT HAS EXPRESSED DOUBT THAT THE SIGNATURE OF PLAINTIFF WAS FORGED AND IN THE FACE OF THE EVIDENCE THAT THE SIGNATURE OF THE PLAINTIFF IS GENUINE AND THE SAID MOA WAS DULY EXECUTED.

THE COURT A QUO ERRED IN NOT FINDING THAT THE LOANS EXTENDED IN FAVOR OF THE PLAINTIFF WAS SECURED BY A VALID REAL ESTATE MORTGAGE.

THE COURT A QUO ERRED IN NOT FINDING THE PLAINTIFF'S LOAN/OBLIGATION WAS DUE AND DEMANDABLE AND UNPAID AND SHOULD HAVE ORDERED PLAINTIFF TO PAY THE SAME WITHIN 90 DAYS; OTHERWISE THE PARCEL OF LAND SUBJECT OF THE [MOA] (WHICH WAS IN FACT A VALID REAL ESTATE MORTGAGE) SHOULD BE SOLD AT PUBLIC AUCTION AS IN SEC. 2, RULE 68 OF THE RULES OF COURT.

THE DECISION OF THE COURT A QUO IS AN INCOMPLETE DECISION, A NULLITY. IT DID NOT COMPLETELY DISPOSE THE MATTER OF THE UNPAID LOANS OF PLAINTIFF AND DISPOSE THE MATTER IN ACCORDANCE WITH THE RULES.

To us, the issues to be resolved are as follows: (1) Whether or not the trial court was correct in declaring the MOA as null and void; (2) Granting that the MOA is valid and enforceable, whether or not the subject property can be

extrajudicially foreclosed; and, (3) whether or not the assailed decision has completely disposed of all the issues raised for its resolution.

We discuss the first and second issues jointly.

The complaint filed by Corazon is mainly for the annulment of the MOA on the ground that her signature therein was forged.

However, a reading of the trial court's assailed decision showed that the MOA was declared null and void not on the basis of forgery but because the agreement between Corazon and Genato was never consummated. We agree. Evidence showed that Genato delivered only one bus and two taxicabs. The bus delivered was inserviceable and in fact it was returned to him later. The two taxicabs were given to Ernesto and Teofilo respectively but the unit assigned to the former was also returned after a year because it became inserviceable.

The trial court was correct in saying that the property of Corazon cannot be extrajudicially foreclosed by Genato because there was no validly constituted real estate mortgage in accordance with the Rules of Court (Rule 68 not Rule 70 as cited in the assailed decision). The MOA does not contain a provision giving him a special power to sell the said property thereby precluding him from filing a petition for extrajudicial foreclosure of mortgage. Extrajudicial foreclosure sale of a mortgaged real property is governed by Act No. 3135, as amended by Act No. 4118, otherwise known as "An Act to Regulate the Sale of Property Under Special Powers Inserted In or Annexed to Real-Estate Mortgages." Section 1 thereof clearly states:

Section 1. When a sale is made under a special power inserted in or attached to any real-estate mortgage hereafter made as security for the payment of money or the fulfillment of any other obligation, the provisions of the following sections shall govern as to the manner in which the sale and redemption shall be effected, whether or not provision for the same is made in the power.

In the case of *Paguyo vs. Gatbunton*[11] it was held that extrajudicial foreclosure sales are proper only when so provided under a special power inserted in or attached to the mortgage contract.

Perusing the MOA, it would seem that extrajudicial foreclosure was not made an option. First, there is no special power to sell given to Genato. Second, the terms of the MOA provided for a court action to foreclose. Clause 5 of the MOA pertinently provides:

5). That in the event of none compliance of the above mentioned agreement by the FIRST PARTY-CORAZON MATIC, the SECOND PARTY WILLIAM O. GENATO shall have the right to get back all the subject vehicles indicated above without notice and court action and foreclosed (sic) the collateral Annex 'A' of this Agreement (Title No. T-152088).

We cannot however subscribe with the disposition of the trial court that there was no validly constituted real estate mortgage upon the property because it was not duly recorded in the registry of property. While it is true that it is necessary to have the mortgage contract registered, its validity is not affected insofar as the contracting parties are concerned. In point is Article 2125 of the Civil Code of the Philippines which provides:

Art.2125. In addition to the requisites stated in Article 2085, it is indispensable, in order that a mortgage may be validly constituted, that the document in which it appears be recorded in the Registry of Property. If the instrument is not recorded, the mortgage is nevertheless binding between the parties.

The persons in whose favor the law establishes a mortgage have no other right than to demand the execution and the recording of the document in which the mortgage is formalized.

Case law had always rejected the proposition that non-registration of mortgage is tantamount to a declaration of

invalidity. Indeed, even if the instrument were not recorded, the mortgage is nevertheless binding between the parties.[12] And, as between the parties to the agreement, the mere fact that there is as yet no compliance with the requirement that it be recorded cannot be a bar to foreclosure.

On the issue of forgery, we agree with the trial court that Corazon failed to establish with clear and convincing evidence that her signature as appearing on the MOA was forged. To show the genuineness of a handwriting, Rule 132 Section 22 of the Rules of Court provides that:

Sec. 22. How genuineness of handwriting proved. The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because he has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, or has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge.

In the same vein, Section 49 of Rule 130 of the Revised Rules of Court provides that:

Sec. 49. Opinion of expert witnesses – The opinion of a witness on a matter requiring special knowledge, skill, experience or training which he is shown to possess, may be received in evidence.

Jurisprudence teaches that allegations of forgery, like all other allegations, must be proved by clear, positive, and convincing evidence by the party alleging it.[13] It should not be presumed but must be established by comparing the alleged forged signature with the genuine signatures. Although handwriting experts are often offered as witnesses, they are not indispensable because judges must exercise independent judgment in determining the authenticity or genuineness of the signatures in question. In fine, the foregoing rules provided that opinions of expert witnesses may be admitted into evidence. The presence of "may" suggest that admission of expert evidence is permissive and not directory.

Furthermore, it has been held that expert opinions are not ordinarily conclusive in the sense that they must be accepted as true on the subject of their testimony, but are generally regarded as purely advisory in character; the courts may place whatever weight they choose upon such testimony and may reject it, if they find it is inconsistent with the facts in the case or otherwise unreasonable.[14] The value of the opinion of a handwriting expert depends not upon his mere statements of whether a writing is genuine or false, but upon the assistance he may afford in pointing out distinguishing marks, characteristics and discrepancies in and between genuine and false specimens of writing which would ordinarily escape notice or detection from an unpracticed observer.[15]

In the case under consideration, it was established that all the twenty-four (24) checks which became the basis for the standard signatures of Corazon contain variations because they were written on one occasion. Accordingly, since it is claimed that the MOA was signed during that same occasion, there would naturally be a variation in the signatures appearing thereon. Explaining the difference, Rhoda Flores testified that the variations in the signatures appearing on the 24 checks were just natural. The problem, however, is that the doubt as to the differences it made as against the questioned signatures was not convincingly addressed. Verily, it is not enough for the handwriting expert to just characterize one difference as natural while another difference as a forgery. But, a careful review of the testimony of the handwriting expert showed that she failed to fully explain whether the resemblance of the signature in the questioned document and the standard signatures were just the result of a more or less skillful imitation and not merely a habitual and characteristic resemblance which naturally appears in a genuine writing. She equally failed to address that the differences were due to the operation of a different personality and not merely an expected and inevitable variation found in the genuine writing of the same writer. In other words, her testimony just created more questions such as what distinguishes a natural variation from a variation resulting from an imitation by another person? How are these variations detected? Or that in the presence of the natural

variations, how would the variations as against the questioned document be any different. Revisiting the testimony of said expert witness would best highlight the foregoing ratiocinations, thus:

Direct Examination[16]:

Q: Did you not recognize or notice any differences among the standard or sample signatures?

A: Well, those are not what we call significant differences, these are what we call natural variations because our hands, our fingers, our arms do not constitute an exact reproducing machine, hence variation or natural variation exist between or among repeated specimens of one individual or a product of typewriter Your Honor.

Q: So, in your report as you have stated you are certain that the questioned and standard sample signatures Corazon A. Matic were not written by one and the same person, can you tell us how sure can you be of your conclusion?

A: I am very sure of our findings and conclusion to the point that I would say that we are morally certain and are technically correct of our findings and conclusion.

Cross Examination[17]:

Q: You mean to say that if signatures are written on one and the same occasion there would appear natural variations of the signatures?

A: Yes, sir.

Q: So, there is more reason to conclude that there would be variation not only natural if the same are written in one occasion?

A: That would happen, sir.

x x x x

COURT:

Q: Mrs. Witness, I think that Exhibits E-26 and E-27 the signature appearing on Exhibit E-26 and E-27 the signatures are written by one and the same person?

A: No, your Honor, Exhibits E-26 and E-27 were also written not by one and the same person.

Q: It appears that the letter r written in Exhibit E-27 is different from the letter r which appears on Exhibit E-26.

A: The observation of the Court is correct because it could be ...

Q: What could have been the reason why E-27 appears to be different from E-26, is it the style?

A: Accidentally, maybe, Your Honor.

ATTY. DE DIOS:

Q: So, we could say also that on this questioned document there is an accidental pressure made when the signatures were written?

A: Well, one . . . containing hesitations and other characteristics that were. . .

Q: You made mention earlier that if there is so much applied pressure in the execution of the signature there is a significant difference?

A: Not, necessarily, it depends on the habit (sic) of the supposed writer . . .

Q: You are admitting now that there is also differences on the signature of Corazon Matic as appearing in the specimen submitted for examination.

A: There is a presence of natural variation, sir.

Q: I am not asking you of the natural variation. Are you agreeable with me that there are differences now on

the specimen signatures submitted by Corazon Matic.

A: Superficial differences not natural variation.

Q: The manner r was written on Exhibits E-26 and E-27, the way letter is disconnected on the other one. The other one was written with certainty with letter o?

A: It accidentally happens on the manner of the writer. . .

Q: If you are admitting that there are differences although according to you are not significant or mere variations only why did you not make a notation on those variations that you discovered in the specimen signatures?

A: That is not our procedure. Whether all the standard signatures were written by one and the same person if our ideas. . ."

We therefore sustain the trial court's finding in not giving great weight and credit to the evidence submitted by Corazon to corroborate her claim of forgery.

With the foregoing discussions in set, a partial grant of the appeal is warranted.

WHEREFORE, the Appeal is hereby PARTIALLY GRANTED. Accordingly, the Decision dated September 8, 2010 of the Regional Trial Court of Balanga City, Bataan, Branch 2 is hereby MODIFIED as follows:

1. Declaring the Memorandum of Agreement dated May 8, 1998 VALID and BINDING;
2. Declaring the Real Estate Mortgage constituted upon the Memorandum of Agreement dated May 8, 1998 as VALIDLY CONSTITUTED subject to the provisions of Article 2125 of the Civil Code of the Philippines.
3. DELETING the monetary award adjudged by the trial court against William O. Genato.

The rest of the disposition in the assailed decision is hereby UPHELD.

SO ORDERED.

[*]Gonzales-Sison, (Acting Chairperson), and [**]Ybañez, JJ., concur.

[*] Acting Chairperson per Office Order No. 485-14 -RSF dated November 24, 2014

[**] Acting Senior Member per Office Order No. 485-14 -RSF dated November 24, 2014

[1] Rollo, pages 46-74.

[2] Rollo, pages 77-91.

[3] Exhibit "B"

[4] Record, pages 1a-7.

[5] Record, Exhibit "C", page 13.

[6] Record, Order dated August 25, 2000, pages 14-15.

[7] Record, Order dated November 2, 2005, pages 351-352; Writ of Preliminary Injunction, pages 368-369.

[8] TSN, January 8, 2001, pages 4-5.

[9] Record, Exhibit "D", pages 92-94.

[10] TSN, August 15, 2001, pages 9-15.

[11] A.M. No. P-06-2135, May 25, 2007.

[12] Mobil Oil Philippines, Inc. vs. Diocares, et al., G.R. No. L-26371, September 30, 1969; Filipinas Mable Corporation vs. IAC, G.R. No. L-68010, May 30, 1986.

[13] Lim vs. Equitable PCI Bank (now known as BDO Unibank), G.R. No. 183198, January 15, 2014.

[14] Ceballos vs. Intestate Estate of Mercado, G.R. No. 155856, May 28, 2004.

[15] Tamani et al., vs. Salvador, et al, G.R. No. 171497, April 4, 2011.

[16] TSN, October 15, 2001, pages 14-15.

[17] TSN, February 17, 2003, pages 6-8.

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