

**SPS. ANGELITO AND FE RODILLO AND SPS. JAIME AND SALOME
RODILLO, PLAINTIFFS-APPELLANTS IN CIVIL CASE NO. 2007-0304,
SPS. CARMELO LINGAO AND VIOLETA UMALI,
PLAINTIFFS-APPELLANTS I...**

Ponente: CRUZ, R.A. J.

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CRUZ, R.A. J.:

THE CASE

This is an appeal from the Decision[1] dated April 26, 2010 issued by the Regional Trial Court of Lipa City, Branch 13, in Civil Case Nos. 2007-0304 and 0305 for Delivery of Duplicate Copy of Transfer Certificate of Titles with Damages, the dispositive portion of which reads, as follows:

X X X

"WHEREFORE, premises considered, the instant case is hereby DISMISSED for lack of cause of action against the defendant United Coconut Planters Bank.

"Plaintiffs are directed to pay the defendant the amount of One Hundred Thousand Pesos (Php 100,000.00) as and for attorney's fees."

"SO ORDERED."

X X X

THE ANTECEDENTS

The present appeal arose from the consolidated cases filed by the Spouses Angelito and Fe Rodillo and Spouses Jaime and Salome Rodillo docketed as Civil Case No. 2007-0304 and by Spouses Carmelo Lingao and Violeta Umali docketed as Civil Case No. 2007-0305, both against United Coconut Planters Bank (UCPB) for the delivery of Owner's Duplicate Copy of Transfer Certificate of Title (TCT) No. 75529 and TCT Nos. T-111754 and T-111755, respectively, with claim for damages.

The complaints alleged that Spouses Angelito and Fe Rodillo and Spouses Jaime and Salome Rodillo are registered owners of a parcel of land located at Barangay Lodlod, Lipa City and covered by TCT No. 75529 of the Registry of Deeds of Lipa City. Spouses Carmelo Lingao and Violeta Umali are likewise the registered owners of two (2) other parcels of land also located at Barangay Lodlod, Lipa City and embraced by TCT Nos. T-111755 and T-111754 of the Registry of Deeds Lipa City. The owner's duplicate copy of the said titles were handed to Benedicto Umali, a relative, to assist him in his problem but plaintiffs changed their minds and requested for their return. It turns out that the titles were in the possession of UCPB. Upon demand, Benedicto Umali wrote a letter to UCPB requesting for the release of the said owner's duplicate copies but UCPB refused. Ultimately, the plaintiffs prayed that the defendant be ordered to deliver to them the owner's duplicate copies of TCT Nos. 75529,

T-111754 and T-111755 of the Registry of Deeds of Lipa City as well as payment to them of attorney's fees and costs of suit.

In its Answer with Compulsory Counterclaims, Defendant UCPB alleged that plaintiffs delivered the titles to Benedicto Umali as additional collateral for the latter's loan application with UCPB, and in which plaintiffs executed a real estate mortgage in favor of defendant. By virtue of real estate mortgage, it has legal basis to hold on to the subject titles which were submitted to it as additional collateral for the loan obligations of Spouses Benedicto and Zenaida Umali.

The bank alleged that sometime in 1995, the Spouses Benedicto and Zenaida Umali applied for various loans from UCPB to finance their poultry farm business in Batangas in the principal amount of P24,571,984.96. To secure the said loans, Spouses Benedicto and Zenaida Umali executed mortgage agreements over various properties located in Batangas and Baguio City. As additional security, plaintiffs executed a third-party real estate mortgage in favor of defendant over the subject real properties. The Spouses Benedicto and Zenaida Umali violated the terms and conditions of their loan and mortgage agreements resulting to the foreclosure of the mortgage over some of the properties offered by the said spouses. Despite the foreclosure, Spouses Benedicto and Zenaida Umali still owed UCPB the deficiency amount of at least P70,238,187.04 Philippine Currency.

During the pre-trial conference, the parties entered into the following stipulation of facts:[2]

- The plaintiffs are the registered and lawful owners of three parcels of land covered by Transfer Certificate of Title Nos. 75529, T-111755 and T-111754.
- The defendant-bank is in possession of the owners duplicate copies of Transfer Certificate of Title Nos. 75529, T-111755 and T-111754.
- That the Real Estate Mortgage allegedly executed by the plaintiffs is not notarized, not dated, no witnesses and no amount was specified as appearing in the said Real Estate Mortgage.
- The existence of the Real Estate Mortgage.
- The plaintiffs handed the three (3) mentioned titles to Benedicto Umali to help him in his financial problem.
- That spouses Benedicto and Zenaida Umali has various loans.
- Angelito Rodillo is the brother of Zenaida Umali.
- Violeta Umali is the sister of Benedicto Umali.
- Defendant-bank refused to release the three (3) parcels of land to herein plaintiffs.

- Benedicto Umali wrote a letter to defendant bank requesting the release of the subject owner's duplicate copy on March 21, 2000.

The parties also agreed that the issues to be resolved are the following:

- Whether or not the herein plaintiffs are entitled to the delivery of owner's duplicate copies of Transfer Certificate of Title Nos. 75529, T-111754 and T-111755;

- Whether or not the defendant bank is entitled to foreclose the real estate mortgage executed by the plaintiffs in favor of the defendant; and

- Whether the plaintiffs are entitled to damages.

- Carmelo Lingao testified[3] that he is one of the registered owners of the subject land. Sometime in 1999, he delivered the title thereto to one Benedicto Umali on the condition that the latter would only borrow the title and return them after six (6) months. The Spouses Umali asked him to sign some documents which he did. He never appeared nor went to the Office of UCPB, nor transacted with UCPB. When he went to see Benedicto Umali about the titles that he borrowed, the titles were not returned to him, so he filed the present complaint. He only saw the Real Estate Mortgage after he received, through counsel, the Answer of UCPB. He identified the signatures appearing therein to be the signatures of Spouses Jaime and Salome Rodillo above their names; his signature and the signature of his wife above the names Carmelo Lingao and Violeta Umali Lingao, and the signatures of Angelito and Fe Rodillo above the names Angelito and Fe Rodillo.[4] When he was asked by Spouses Benedicto and Zenaida Umali to sign the documents, the contents were not explained to him nor to the other plaintiffs. He did not know that it was a Real Estate Mortgage when he signed the document. Nobody from UCPB came to explain the provisions of the Real Estate Mortgage to them. In filing the cases, he consulted a lawyer and incurred expenses such as acceptance fee in the amount of P40,000.00 and P3,000.00 per appearance.

During cross-examination, he admitted that he is a Commerce graduate and the Assistant Farm Manager of Blue Roze Farm. When he signed the document, he was then the collector in their business. After the titles were not returned to him after the six (6)-month period, he asked the Spouses Umali for their return, to which the Spouses Umali told him that they will arrange something and they will return the titles. He did not receive any letter from UCPB.

Maria Fermina Hidalgo, the Relationship Manager of UCPB testified[5] for the defendant and identified the Consolidated Statement of Account of the Spouses Benedicto and Zenaida Umali[6] signed by Matilde Pascua, an employee of UCPB who was already deceased. She also identified the Domestic Bills Purchase Line Agreement[7] and the Credit Agreement,[8] both signed by Rolando R. Mortel. She also identified the demand letter signed by Atty. Marilyn S. Guzman[9] and the response to the letter of Spouses Benedicto and Zenaida Umali dated April 13, 2000.[10]

Jennifer Mateo, a legal clerk in the UCPB Office of the Corporate Secretary, testified[11] that the bank engaged the services of its counsel for the amount of P100,000.00 and P5,000.00 attorney's fee for every hearing.

On April 26, 2010, the RTC rendered its Decision declaring that plaintiffs knowingly signed the deeds of mortgage, hence they are bound by the consequences of its execution. Bereft of any showing that the loans secured by the said Real Estate Mortgage have been settled by Spouses Benedicto and Zenaida Umali, defendant

bank had the right to retain and hold the titles of the properties mortgaged.

With respect to the second issue, the RTC found that the said issue should be threshed out in another proceeding since it appears from the records that Spouses Benedicto and Zenaida Umali had previously filed a complaint for Declaration of Nullity of Real Estate Mortgage over the properties covered by the said titles as well as Annulment of Increase in Interest Rates.

Nevertheless, the RTC awarded attorney's fees in the amount of P100,000.00 in favor of defendant, finding that defendant was dragged into this litigation and was constrained to engage the services of a counsel to protect its interest against the unfounded suit.

The motion for reconsideration of the said Decision filed by plaintiffs was denied by the RTC through its Order dated October 5, 2010, prompting plaintiffs to file their Notice of Appeal which was given due course by the RTC.

THE ASSIGNED ERRORS

Plaintiffs now come to Us as appellants, raising the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN DIRECTING PLAINTIFFS TO PAY DEFENDANT THE AMOUNT OF P100,000.00 AS AND FOR ATTORNEY'S FEE.

II

THE TRIAL COURT GRAVELY ERRED WHEN IT APPRECIATED AND GAVE PROBATIVE VALUE TO EXHIBITS "5", "15" "18", "19" AND "20" DESPITE OPPOSITION ON THE GROUND OF HEARSAY.

III

THE TRIAL COURT GRAVELY ERRED IN RULING THAT "BEREFT OF SHOWING THAT THE LOANS SECURED BY THE SAID REAL ESTATE MORTGAGE HAVE BEEN SETTLED BY SPOUSES BENEDICTO AND ZENAIDA UMALI, DEFENDANT BANK HAS THE RIGHT TO RETAIN AND HOLD THE TITLES OF THE PROPERTIES SO MORTGAGED.

IV

THE TRIAL COURT GROSSLY ERRED IN FINDING THE REAL ESTATE MORTGAGE BINDING ON PLAINTIFFS.

V

THE TRIAL COURT GRAVELY ERRED IN DISMISSING THE CASES FOR LACK OF CAUSE OF ACTION AGAINST DEFENDANT.

Succinctly, the heart of the controversy is whether or not the defendant-appellee UCPB has the right to retain in its possession the owner's duplicate titles of TCT Nos. 75529, T-111754 and T-111755 by virtue of the Real Estate Mortgage marked as Exhibit "1".

OUR RULING

To determine whether Defendant-Appellee UCPB has the right to retain in its possession the subject titles, there is a need to examine the validity of the Real Estate Mortgage covering the said titles.

Plaintiff Carmelo Lingao admitted that he and the other plaintiffs voluntarily affixed their signatures in the document which turned out to be a Deed of Real Estate Mortgage. As stipulated during the pre-trial, the Real Estate Mortgage remained undated, unnotarized, with no witnesses, no amount of loan indicated, and no signature of Defendant UCPB to show acceptance of the agreement.

In order to constitute a legal mortgage, the rule is that it must be executed in a public document, besides being recorded. A provision in a private document, although denominating the agreement as one of mortgage, cannot be considered as it is not susceptible of inscription in the property registry. A mortgage in legal form is not constituted by a private document, even if such mortgage be accompanied with delivery of possession of the mortgaged property. Besides, by express provisions of Section 127 of Act No. 496, a mortgage affecting land, whether registered under said Act or not registered at all, is not deemed to be sufficient in law nor may it be effective to encumber or bind the land unless made substantially in the form therein prescribed. It is required, among other things, that the document be signed by the mortgagor executing the same, in the presence of two witnesses, and acknowledged as his free act and deed before a notary public. A mortgage constituted by means of a private document obviously does not comply with such legal requirements.[12]

The doctrine laid down in *Dalion v. Court of Appeals*[13] cited by the RTC in its Decision, and relied upon by defendant-appellee, cannot be applied in this case, not being all fours. In *Dalion*, the subject contract was a contract of sale which is a consensual contract and which no particular form is required for its validity. The doctrine in *Cuyco v. Cuyco*[14] cited above and relied upon by plaintiffs-appellants is more apt since what is involved therein is a real estate mortgage like in this case. To reiterate what was held in that case, a legal mortgage must be in a public document as well as recorded.

True it is that the failure of the instrument to be recorded does not result in the mortgage being any less binding between the parties. This is clear from Article 2125 of the Civil Code. It states that:

x x x

“Article 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.”

x x x

However this would not apply in this case because there was no mortgage contract that was perfected in the first place.

Contracts that are consensual in nature are perfected upon mere meeting of the minds. In other words, the perfection or birth of the contract is the moment the parties come to agree on the terms of the contract.[15] Once there is concurrence between the offer and the acceptance upon the subject matter, consideration, and terms of payment, a contract is produced. The offer must be certain; the acceptance must be absolute and must not qualify the terms of the offer; it must be plain, unequivocal, unconditional, and without variance of any sort from the proposal. When something is desired which is not exactly what is proposed in the offer, such acceptance is not

sufficient to generate consent because any modification or variation from the terms of the offer annuls the offer.[16]

The real estate mortgage offered by defendant-appellee as evidence may not be considered a private document evidencing a contract despite the signatures of the plaintiffs-appellants because it contained no consideration, as apparent from the blank portion therein which should contain the amount of consideration of the mortgage, one of the essential elements of a contract. The signatures of plaintiffs-appellants also do not signify their consent to the real estate mortgage because the terms of the mortgage, in the first place, is not clear.

The essence of a contract of mortgage indebtedness is that a property has been identified or set apart from the mass of the property of the debtor-mortgagor as security for the payment of money or the fulfillment of an obligation to answer the amount of indebtedness, in case of default of payment.[17] In this regard, a mortgage must sufficiently describe the debt sought to be secured, which description must not be such as to mislead or deceive, and an obligation is not secured by a mortgage unless it comes fairly within the terms of the mortgage.[18] A perusal of the Real Estate Mortgage with all its blank portions suggests that plaintiffs-appellants were unaware of what supposed loan of Spouses Umali is to be guaranteed by the mortgage and to what extent.

Since the document is not notarized, the defendant-appellee is required to prove the genuineness and due execution of the purported Real Estate Mortgage. Due execution of a document is meant that the party whose signature it bears signed it voluntarily or that it was signed by another for him and with his authority. Genuineness of the document is meant that at the time the party whose signature it bears signed it was in the words and figures exactly as set out in the pleading of the party relying upon it, and that any formal requisites required by law, such as swearing and acknowledgment, or revenue stamps which it requires, are waived by him.[19]

Defendant-appellee presented no evidence to prove the due execution and genuineness of the document. It did not even make any explanation as to why the Real Estate Mortgage was incomplete and unnotarized. It is highly atypical for a bank regularly giving out loans secured by real estate mortgages to overlook these essential requisites for its protection.

The fact that the plaintiffs-appellants voluntarily gave the titles to Benedicto Umali with the intent to help him in his financial woes does not automatically bind them as mortgagors, especially with only a defective document purported to be a Real Estate Mortgage to prove the existence of such mortgage. The liability of the accommodation mortgagors extends only up to the loan value of their mortgaged property and not to the entire loan itself.[20] How would the liability of the purported accommodation mortgagors be determined if there was no stipulated loan value indicated in the contract in the first place?

It stands to reason that there is no standing real estate mortgage between plaintiffs-appellants and defendant-appellee, hence, the latter does not have any right to hold in its possession the owner's duplicate copies of TCT Nos. 75529, T-111754 and T-111755 of the Registry of Deeds of Lipa City.

Consequently, defendant-appellee is not entitled to attorney's fees. The cases filed by plaintiffs-appellants are not unfounded. More so, they have sufficiently established their cause of action against defendant-appellee. It is well accepted in this jurisdiction that no premium should be placed on the right to litigate and that not every winning party is entitled to an automatic grant of attorney's fees.[21] This same justification also applies to plaintiffs-appellants' entitlement thereto. The power of a court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal, and equitable justification; its basis cannot be left to speculation and conjecture.[22] Not only did plaintiffs-appellants fail to raise their entitlement thereto in their appeal, they also failed to present such justifications for the award of attorney's fees even in the proceedings a quo. There is therefore no reason to grant their prayer for the payment of attorney's fees contained in their respective

complaints.

By reason of the foregoing, a discussion of the other assigned errors are no longer necessary.

WHEREFORE, premises considered, the appeal is GRANTED. The Decision dated April 26, 2010 issued by the Regional Trial Court of Lipa City, Branch 13, in Civil Case Nos. 2007-0304 and 0305 is REVERSED and SET ASIDE and a new one entered ordering Defendant-Appellee UCPB:

1) to deliver to Spouses Carmelo Lingao and Violeta Umali the duplicate copies of TCT Nos. T-111755 and T-111754 of the Registry of Deeds of Lipa City; and

2) to deliver to Spouses Angelito and Fe Rodillo and Spouses Jaime and Salome Rodillo the duplicate copy of TCT No. 75529 of the Registry of Deeds of Lipa City.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Abdulwahid, H.S., Chairperson, and Barza, R. F., JJ., concur.

[1] Rollo, pp. 36-41.

[2] Pre-Trial Order dated October 2, 2008 at Record, pp. 202-203.

[3] On November 20, 2008.

[4] TSN dated November 20, 2008, pp. 14-15.

[5] On February 12, 2009.

[6] Exhibit "5"

[7] Exhibit "15"

[8] Exhibit "18"

[9] Exhibit "19"

[10] Exhibit "20"

[11] On July 30, 2009.

[12] Cuyco v. Cuyco, G.R. No. 168736, April 19, 2006, citing Peña, Registration of Land Titles and Deeds, 1994 Revised Edition, p. 273.

[13] G.R. No. 78903, February 28, 1990.

[14] Supra.

[15] ABS-CBN Broadcasting Corp. v. Court of Appeals, G.R. No. 128690, January 21, 1999, citing Toyota Shaw,

Inc. v. Court of Appeals, 244 SCRA 320, 329 [1995].

[16] Id., citing IV Arturo M. Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines 450 (6th ed., 1996).

[17] China Banking Corp. v. Court of Appeals, G.R. No. 121158, December 5, 1996, citing Fiestan v. Court of Appeals, 185 SCRA 751, 757.

[18] Spouses Viola v. Equitable PCI Bank, G.R. No. 177886, November 27, 2008, citing Philippine Bank of Communications v. Court of Appeals, G.R. No. 118552, February 5, 1996.

[19] Heirs of Del Rosario v. Santos, G.R. No. L-46892, September 30, 1981.

[20] Belo v. PNB, G.R. No. 134330, March 1, 2001.

[21] Spouses Andrada v. Pilhino Sales Corp., G.R. No. 156448, February 23, 2011, citing Tanay Recreation Center and Development Corporation v. Fausto, G.R. No. 140182, April 12, 2005, 455 SCRA 436; Firestone Tire & Rubber Co. of the Phils. v. Ines Chaves & Co., Ltd., G.R. No. L-17106, October 19, 1966, 18 SCRA 356, 358; Heirs of Basilia Justiva v. Gustilo, L-16396, January 31, 1963, 7 SCRA 72.

[21] Morales v. Court of Appeals, supra. citing Scott Consultants & Resource Development Corporation v. Court of Appeals, G.R. No. 112911, March 16, 1995, 242 SCRA 393, 406.

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