

**JOSE L. DIZON, PLAINTIFF-APPELLANT, V. MONICA M. PULOS,
ROSALINDA ALBARDA, ATTY. JOHN V. AQUINO AND SHERIFF
LEANDRO R. MADARANG, DEFENDANTS-APPELLEES.**

Ponente: BARZA, J.

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BARZA, J.:

Appellant Jose L. Dizon appeals to this court the judgment of dismissal dated February 15, 2012[1] and the Order denying the motion for reconsideration dated May 2, 2012,[2] rendered by the Regional Trial Court, Branch 75, stationed in Olongapo City.

The antecedents:

Appellant filed an amended complaint[3] for Annulment of Extra-Judicial Foreclosure of Real Estate Mortgage, Damages with Prayer for Issuance of Writ of Preliminary Injunction and TRO against appellees Monica Pulos (Pulos), attorney-in-fact Rosalinda Albarda (Albarda), Atty. John Aquino and Sheriff Leandro Madarang.

After the Answer to the complaint has been filed by Albarda, the attorney-in-fact of Pulos, the case was set for pre-trial conference.

In the pre-trial conference on November 18, 2011, appellees and their counsel failed to appear. Also, as of said date, they have not yet filed their pre-trial brief. As prayed for by appellant, the court a quo granted leave to present his evidence ex-parte before the Branch Clerk of Court.[4]

The basis of the complaint of appellant is the Special Power of Attorney[5] executed by Pulos in favor of her attorney-in-fact, Albarda. The Special Power of Attorney contains:

“I, MONICA M. PULOS, x x x, do hereby these presents, NAME, CONSTITUTE and APPOINT my sister ROSALINDA M. ALBARDA, x x x to be my true and lawful attorney-in-fact for me and in my name, place and stead, to do and perform the foregoing acts, and things, to wit:

1. To apply with any Government agency regarding my lending business at Olongapo City;
2. To manage, and administer my business, sign and approve loan application in my behalf;
3. To accept receipts, checks and cash for the payment of the said loan.

HEREBY GIVING AND GRANTING unto my said attorney-in-fact full power and authority to do and perform the foregoing acts and things which I could have lawfully do if personally present, hereby RATIFYING and CONFIRMING whatever acts and things requisite to be done that my attorney-in-fact shall do in the premises.”

Acting in behalf of her principal, Albarda granted a loan in favor of Virginia Evasco in the amount of P150,000.00, which was secured by a Real Estate Mortgage executed on October 26, 2006.[6] The property subject of the real estate mortgage measures an area of 513 square meters with a residential property thereon with a floor area of 25 square meters, situated at Santol St., Purok 3, New Cabalan, Olongapo City.

Appellant averred that he is the lawful and exclusive owner and possessor of said property having acquired the same from Virginia Evasco by virtue of a Deed of Waiver, Quitclaim, Relinquish and Transfer of Possessory Rights[7] executed on September 3, 2007.

Appellant discovered that said property was the subject of an application for Extra-Judicial Foreclosure of Mortgage[8] filed by Pulos, represented by her attorney-in-fact Albarda, against Virginia Evasco, docketed as EJJ No. 12-0-2009, filed before the Clerk of Court of Olongapo City.

Appellant alleged that a perusal of the Special Power of Attorney which was executed by Pulos in favor of her attorney-in-fact, Albarda, does not allow the latter to institute the application for the extra-judicial foreclosure of mortgage for and in behalf of Pulos. Appellant also alleged that the Real Estate Mortgage dated October 26, 2006, which is the subject of the application of the extra-judicial foreclosure entered into by Albarda, in behalf of Pulos, is null and void as the former has no authority to do so and there was no specific authority empowering Albarda to enter into a real estate mortgage. Appellant further alleged that the said property cannot be a subject of an application for extra-judicial foreclosure of mortgage because this was already transferred to appellant.

Appellant prayed that the Real Estate Mortgage entered into by and between Virginia Evasco and Albarda be declared as null and void and for the court a quo to set aside the application for extra-judicial foreclosure of real estate mortgage. Appellant further prayed for damages and attorney's fees.

In its decision, the court a quo ruled that the execution of the real estate mortgage is within the scope and authority of the Special Power of Attorney. Hence, the court a quo DISMISSED[9] the complaint.

Appellant filed a Motion for Reconsideration[10] but was denied for lack of merit in the Order of the court a quo dated May 2, 2012.

Appellant now assails the decision of the court a quo assigning the following errors:

A.

THE HONORABLE COURT A QUO COMMITTED A REVERSIBLE ERROR OF JUDGMENT WHEN IT DISMISSED THE PRESENT COMPLAINT INSTITUTED BY THE PLAINTIFF-APPELLANT.

B.

THE HONORABLE COURT A QUO COMMITTED A REVERSIBLE ERROR OF JUDGMENT WHEN IT RULED THAT THE SUBJECT SPECIAL POWER OF ATTORNEY EMPOWERED THE DEFENDANT-APPELLEE ROSALINDA ALBARDA TO ENTER INTO A CONTRACT OF MORTGAGE IN BEHALF OF THE DEFENDANT MONICA M. PULOS AND TO FORECLOSE THE SAME.[11]

Appellant essentially argues that the authority granted to Albarda, as the agent of Pulos, only comprises acts of administration. However, the act of entering into a mortgage contract is an act of strict dominion or ownership which the attorney-in-fact is not empowered to do. The special power of attorney does not clearly, expressly and specifically grant and empower Albarda either the authority to enter into a mortgage contract or to foreclose, whether judicially or extra-judicially, hence, the same must be annulled.

For being interrelated, the issues will be discussed jointly.

The court a quo did not err when it dismissed appellant's complaint.

The Special Power of Attorney created a principal-agent relationship between Albarda and Pulos. Our law mandates an agent to act within the scope of his authority as mandated by Art. 1881 of the New Civil Code, which states:

Art. 1881. The agent must act within the scope of his authority. He may do such acts as may be conducive to the accomplishment of the purpose of agency. (emphasis supplied)

To refresh, the powers granted to Albarda by Pulos in the Special Power of Attorney contains, among others: “2. To manage, and administer my business, sign and approve loan application in my behalf”

The special power of attorney executed by Pulos in favor of her attorney-in-fact is sufficient authority for the latter to execute the real estate mortgage notwithstanding the absence of any specific act to do the same. When Albarda approved the loan of Virginia Evasco in the amount of P150,000.00, she can likewise execute a real estate mortgage because the property subject therein was made as security for the said loan. The tenor of the special power of attorney in question is broad enough to include the authority of Albarda to execute a real estate mortgage and to foreclose the same in behalf of Pulos, which is within her power “to manage and administer” the lending business. Certainly, Albarda is deemed to have been performed within the scope of her authority.

The court a quo correctly discussed that:

“Defendant Albarda was issued a Special Power of Attorney to administer the business of the principal (defendant Pulos in this case), and the mortgage is dependently related and material to the lending business of defendant Pulos considering that the mortgage serves as a collateral for the loan. Hence, it is within the scope of the authority of the SPA. By implication therefore, with the issuance of the SPA in favor of defendant Albarda, the latter has all the power to enter into the contract of mortgage with Virginia Evasco in behalf of her principal (defendant Pulos) and to foreclose the same.

With the non-payment of the loan obligation of Virginia Evasco, defendant Albarda has all the right to cause the foreclosure of the mortgaged property to apply the proceeds thereof for the payment of the monetary obligation of Evasco to defendant Pulos”[12]

It is obvious that by the execution of the real estate mortgage and her act of filing the petition for extra-judicial partition, Albarda acted for the benefit of her principal. Moreover, even if granting that Albarda exceeded her authority, there was no showing that Pulos repudiated the acts of the attorney-in-fact. Article 1868 of the Civil Code defines a contract of agency as a contract whereby a person "binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter." It may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority.[13] For a contract of agency to exist, it is essential that the principal consents that the other party, the agent, shall act on its behalf, and the agent consents so as to act. Such as in this case.[14]

Moreover, one who is not a party to a contract, and for whose benefit it was not expressly made, cannot maintain an action on it.[15] Appellant cannot therefore repudiate, much less question, the Special Power of Authority granted by Pulos to Albarda because appellant is not privy thereto. It is a fundamental principle in contract law that a contract binds only the parties to it and their privies and successors.[16]

The well-settled rule is that conclusions and findings of fact by the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons.[17] In this case, no compelling reason was shown by appellant whatsoever for this Court to reverse the findings of the court a quo.

WHEREFORE, the appeal is DENIED. The decision appealed from is hereby AFFIRMED.

SO ORDERED.

Abdulwahid (Chairperson) and Cruz, JJ., concur.

[1] pp. 25-27, rollo.

[2] pp. 28-29, rollo.

[3] pp. 27-31, record.

[4] p. 189, record.

[5] Exh. "D-3", p. 71, record.

[6] Exh. "E", p. 72, record.

[7] Exh. "C", p. 66, record.

[8] Exh. "D", pp. 68-70, record.

[9] p. 27, rollo.

[10] pp. 218-219, record.

[11] pp. 15-16, rollo.

[12] 2[nd] parag., Decision, p. 27, rollo.

[13] Sally Yoshizaki vs. Joy Training Center of Aurora, Inc., G.R. No. 174978, July 31, 2013.

[14] Apex Mining Co. Inc. vs. Southeast Mindanao Gold Mining Corp., G.R. Nos. 152613 & 152628, 152619-20 & 152870-71, June 23, 2006.

[15] Caltex (Philippines), Inc. vs. PNOC Shipping and Transport Corporation, G.R. No. 150711, August 10, 2006.

[16] Victoriano Dela Peña, et al. vs. Spouses Vicente Alonzo, et al., G.R. No.172640, July 3, 2009.

[17] Spouses Patricio Bernales vs. Heirs of Julian Sambaan, G.R. No. 163271, January 15, 2010.

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