

**ROLANDO MARTINEZ, PLAINTIFF-APPELLANT, VS. VIRGINIA CAÑIZA
LOURDES CAÑIZA SALIENTES, ANGEL CAÑIZA, JOSEPHINE C.
GABRIEL, SILVESTRE CAÑIZA, ANTONIO CAÑIZA AND ALL PERSONS
CLAIMIN...**

Ponente: BATO, JR., J.

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BATO, JR., J.:

This is an appeal from the Decision[1] dated October 31, 2012 of the Regional Trial Court, Branch 67 of Binangonan, Rizal entitled "Rolando Martinez, Plaintiff vs. Virginia Cañiza, Lourdes Cañiza Salientes, Angel Cañiza, Josefina C. Gabriel, Silvestre Cañiza, Antonio Cañiza, and all other persons claiming rights and interests over them, Defendants" docketed as SCA No. 11-018.

The factual antecedents:

On November 8, 2011, plaintiff Rolando Martinez [hereafter "plaintiff-appellant"] filed a Complaint[2] for Foreclosure of Mortgage against defendants Lourdes Cañiza Salientes, Virginia Cañiza, Angel Cañiza, Josefina C. Gabriel, Silvestre Cañiza and Antonio Cañiza [hereafter "defendants-appellees"]. Plaintiff-appellant averred in his complaint that on October 28, 2002, defendants-appellees obtained a loan from him in the amount of Php100,000.00 payable in two (2) months or until December 28, 2002. To secure their loan, a deed of Real Estate Mortgage[3] was executed by Lourdes Cañiza Salientes on October 28, 2002 over a parcel of land registered in the names of Lourdes Cañiza Salientes, Virginia Cañiza, Angel Cañiza, Josefina C. Gabriel, Silvestre Cañiza, Antonio Cañiza situated in Angono, Rizal with an area of two hundred forty (240) square meters more or less and covered by Transfer Certificate of Title (TCT) No. 300735. Plaintiff-appellant alleged that defendants-appellees defaulted in the payment of their loan obligation despite demands for payment thereof. Thus, plaintiff-appellant prayed that defendants-appellees be ordered to pay their principal obligation of Php100,000.00 with 12% interest per annum from December, 2002, as well as attorney's fees of Php30,000.00 and for the court to issue a decree of foreclosure over the parcel of land subject of the deed of real estate mortgage.

On April 12, 2012, plaintiff-appellant filed a motion[4] to declare defendants-appellees in default for having failed to file an answer.

On May 16, 2012,[5] the trial court granted the motion and issued an Order[6] dated June 8, 2012 allowing plaintiff-appellant to present evidence ex-parte, viz.:

"At today's hearing, plaintiff appeared with counsel, Atty. Vicente Jaime M. Topacio. There is no appearance on the part of the defendants. However, a Perpetua Enriquez appeared claiming to be representative (sic) of said defendants. Miss Enriquez is not a lawyer, a party nor is armed with the special power of attorney to represent the parties in this case. Accordingly, we cannot take cognizance of her manifestations and motions. Upon motion of plaintiff's counsel, plaintiff is hereby allowed to present evidence ex-parte before the court-appointed commissioner Atty. Nadia S. Diumano, on June 29, 2012 at 2:00 in the afternoon. Let the records, show that plaintiff has pre-marked its exhibits.

SO ORDERED."[7]

On August 24, 2012,[8] for plaintiff-appellant's failure to comply with the court's Order[9] dated July 10, 2012, requiring him to present "Exhibits 'A' and 'B' and to answer clarificatory questions", the case was dismissed. However, upon plaintiff-appellant's motion,[10] the aforementioned Order was reconsidered and the case was reinstated.[11]

During the ex-parte hearing[12], plaintiff-appellant Rolando Martinez testified that defendant-appellee Lourdes Cañiza Salientes [hereafter "Salientes"] incurred a loan from him in the amount of Php100,000.00, payable in two months; that it was secured by a real estate mortgage; and that the said loan was not paid despite demand. In support thereof, plaintiff-appellant presented a copy of the Real Estate Mortgage contract [Exh. "B"]; the original copy of the Transfer of Certificate of Title covering the subject property [Exh. "A"]; and the annotation of the Real Estate Mortgage at the back of the title [Exh. "A-1"].

On October 31, 2012, the trial court, based on the evidence presented by plaintiff-appellant, rendered a summary judgment dismissing the complaint for foreclosure of mortgage for lack of merit. It ruled that the plaintiff-appellant was not entitled to judicial foreclosure because only Salientes, executed and signed the deed of Real Estate Mortgage as mortgagor, thus:

"This is a complaint for judicial foreclosure of mortgage. Lourdes Cañiza Salientes executed a mortgage in favor of plaintiff over a parcel of land at the Aurora Subdivision, Angono, Rizal covered by Transfer Certificate of Title (TCT) No. 300725 registered in her name as well as her co-defendants. When the debt fell due, defendants failed to pay, prompting plaintiff to file this action for foreclosure. Defendants were defaulted and plaintiff presented evidence ex parte. However, this case was originally dismissed because of plaintiff's failure to comply with our Order dated July 10, 2012. The dismissal was reconsidered as plaintiff subsequently complied with our Order. The real estate mortgage (exhibit "B") which plaintiff submitted in compliance with our Order and which was annotated on TCT No. 300725, shows that only Lourdes Cañiza Salientes signed it. The other defendants and the plaintiff did not. Consequently, the instrument is invalid and there is no mortgage to foreclosure. Accordingly, the complaint is DISMISSED for lack of merit.

SO ORDERED."[13]

Plaintiff-appellant is now before us on appeal, seeking the reversal of the trial court's judgment, on the following grounds:

"9.1. The court a quo erred in failing to consider that Defendant-Appellee Lourdes Cañiza Salientes signed not only in her behalf, but also in behalf of the other co-owners of the mortgaged property;

9.2. The court a quo erred in ruling that Plaintiff-Appellant's failure to sign the Real Estate Mortgage was fatal to the said mortgage;

9.3. The court a quo erred in ruling that because of the aforementioned circumstances, the said Real Estate Mortgage was invalid."[14]

Plaintiff-appellant filed his Appellant's Brief[15] on May 14, 2013. No appellees' brief was filed by the defendants- appellees despite receipt of notice to file thereof; thus, they were deemed to have waived the filing of the same.[16]

The issue posed in this appeal is whether or not the lower court committed a reversible error in dismissing plaintiff- appellant's complaint and in declaring the deed of real estate mortgage void for failure of the co-owners of the mortgaged property to sign the mortgage contract.

Plaintiff-appellant claims that the real estate mortgage executed by defendant-appellant Salientes over the

co-owned property was valid. He argues that even though only Salientes signed the mortgage contract, she was allegedly authorized to execute the same because she was "armed with a Special Power of Attorney executed by her co-owners"[17] to mortgage the co-owned property.

The appeal is not impressed with merit.

Under Art. 2085 of the Civil Code, the essential requisites of a contract of mortgage are: (a) that it be constituted to secure the fulfillment of a principal obligation; (b) that the mortgagor be the absolute owner of the thing mortgaged; and (c) that the persons constituting the mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose.

In this case, there can be no question that the subject property covered by TCT No. 300735 subject of the real estate mortgage is registered in the name of the defendants-appellees, namely: Lourdes Cañiza Salientes, Virginia Cañiza, Angel Cañiza, Josefina C. Gabriel, Silvestre Cañiza and Antonio Cañiza. Equally without question is the fact that the mortgage contract was executed and signed only by defendant-appellee Lourdes Cañiza Salientes as mortgagor without the concomitant signature of the mortgagee, herein plaintiff-appellant Rolando Martinez. The pertinent provisions of the Real Estate Mortgage contract provide:

"This REAL ESTATE MORTGAGE, made and executed by and between:

LOURDES CAÑIZA SALIENTES, of legal age, Filipino, widow and a resident of #3888 Guzman St., Dongalo, Parañaque City, hereinafter referred to as the MORTGAGOR: by virtue of Special Power of Attorney executed on August 15, 2002, at Pasig City before Atty. ELOID FAJARDO and register (sic) in his Notarial Registry as per Doc. #203, Page #48, Book XXVII, Series of 2002.

- and -

ROLANDO MARTINEZ, of legal age, Filipino, single and a resident of Lot 5 Lot 9 Grand Heights, Antipolo City, hereinafter referred to as MORTGAGEE;

x x x x x x x x

of which real property the MORTGAGE (sic) are among the registered owner in accordance with the provisions of the Land Registration Act as amended, their ownership thereto being evidenced by the aforesated Transfer Certificate of Title No. 300375, registered in their names as among the owners thereof;

That this real estate mortgage is given [as] security for the payment to the MORTGAGEE of a certain loan granted to the MORTGAGORS by the former on this ____ day of _____ 2002 for the sum of ONE HUNDRED THOUSAND PESOS ONLY (P100,000.00) Philippine Currency, payable in two (2) months by MORTGAGOR, in cash on December 25, 2002, for the whole obligation is fully paid (sic);

x x x x x x x x

IN WITNESS WHEREOF, the parties have hereunto set their hands, this ____ day of OCT 26 2002 at Antipolo City.

(Sgd.) Lourdes Cañiza Salientes

Mortgagor

Mortgagee."[18]

As pointed out in *Heirs of Manlapat vs. Court of Appeals*[19], for a person to validly constitute a valid mortgage on real estate, he must be the absolute owner thereof as required by Article 2085 of the New Civil Code. The mortgagor must be the owner, otherwise the mortgage is void.

Here, it is undisputed that the property subject of the deed of mortgage is owned not only by Salientes but also by the other defendants-appellees, namely: Virginia Cañiza, Angel Cañiza, Josefina C. Gabriel, Silvestre Cañiza and Antonio Cañiza. Thus, in order for Salientes to validly bind the co-owners to the mortgage contract, it is necessary that she be clothed with the proper authority.

Article 1878 of the New Civil Code provides that a special power of attorney is necessary to enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration,[20] or to create or convey real rights over immovable property,[21] or for any other act of strict dominion.[22]

In this case, no documentary evidence was adduced by the plaintiff-appellant before the trial court to prove that defendant-appellee Salientes was authorized, via a Special Power of Attorney, to constitute a mortgage over the co-owned property for and on behalf of the other co-owners. The records are bereft of any SPA evidencing such authority. Plaintiff- appellant merely alleges that "Lourdes Caniza Salientes was armed with a Special Power of Attorney executed by her co-owners, authorizing the former to mortgage the subject property in her (sic) behalf,"[23] without presenting the SPA to support his claim that Salientes was the duly constituted representative of the other named defendants-appellees. The best evidence of the existence of such authority is the SPA itself that should have been presented before the trial court.

Plaintiff-appellant's reliance on the statement in the mortgage contract that "by virtue of Special Power of Attorney executed on August 15, 2002, at Pasig City before Atty. ELOID PAJARDO and register (sic) in his Notarial Registry as per Doc. #203, Page #48, Book XXVII, Series of 2002"[24] written after the name of mortgagor Salientes, as evidencing Salientes' authority to constitute a mortgage over the parcel of land for and on behalf of defendants-appellees Virginia Cañiza, Angel Cañiza, Josefina C. Gabriel, Silvestre Cañiza and Antonio Cañiza, is not enough to prove the existence of such authority. Without the SPA presented and offered as evidence in court, the aforementioned declarations in the mortgage deed alone are insufficient to establish the fact or extent of Salientes' supposed authority. The above-quoted statement can not, in any way, be interpreted to mean that defendant-appellee Salientes obtained the loan and constituted the mortgage in question for and on behalf of the other defendants-appellees. Hence, from the mortgage contract as well as from the signature therein, the undisputed fact remains that Lourdes Cañiza Salientes acted in her personal capacity in securing the loan and constituting the mortgage in favor of plaintiff-appellant.

Based on the foregoing, we find no reversible error on the part of the trial court in dismissing plaintiff-appellant's complaint on the ground that the mortgage contract solely entered into by defendant-appellee Salientes is invalid for lack of authority of the other named defendants-appellees.

WHEREFORE, the appeal is hereby DISMISSED for lack of merit. The assailed Decision dated October 31, 2012 of the Regional Trial Court [Binangonan, Rizal, Branch 67] in SCA No. 11-018, is hereby AFFIRMED.

SO ORDERED.

Zalameda, and Diy, JJ., concur.

[1] Rollo, p. 11.

[2] Rollo, pp. 31-37.

[3] Records, pp. 70-71.

[4] Rollo, pp. 49-50.

- [5] Rollo, p. 53.
- [6] Rollo, p. 55.
- [7] Supra, note 6.
- [8] Rollo, p. 56.
- [9] Rollo, p. 60.
- [10] Rollo, pp. 57-59.
- [11] Rollo, p. 64.
- [12] Records, Transcript of Records dated June 29, 2012, pp. 52-59.
- [13] Rollo, p. 11.
- [14] Rollo, Appellant's Brief, pp. 17-18.
- [15] Rollo, pp. 14-27.
- [16] Rollo, p. 88.
- [17] Rollo, pp. 14-27, 14.
- [18] Records, pp. 70-71; Rollo, pp. 67-68.
- [19] G.R. No. 125585, June 8, 2005 citing Lagrosa vs. Court of Appeals, 371 Phil. 225 (1999); National Bank vs. Palma Gil, 55 Phil. 639 (1930-1931); Contreras vs. China Banking Corporation, 76 Phil. 709 (1946).
- [20] Article 1878(5).
- [21] Article 1878(12).
- [22] Article 1878(15).
- [23] Appellant's Brief, Rollo, pp. 14-27, 14.
- [24] Real Estate Mortgage, Rollo, pp. 67-68, 67.

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