

DIONISIA CADAMPOG, PLAINTIFF-APPELLEE, VS. ALEXANDER PAEZ, DEFENDANT-APPELLEE,

Ponente: LAGURA-YAP, J.

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LAGURA-YAP, J.:

This appeal under Rule 41 of the Rules of Court, as amended, seeks to reverse and set aside the August 22, 2008 Decision[1] of RTC, Branch 16, Cebu City.

THE ANTECEDENT FACTS

On March 28, 2006, plaintiff Dionisia Cadampog filed the verified complaint[2] against Alexander Paez for Nullification of the Special Power of Attorney and Cancellation of the Real Estate Mortgage in CEB-32239.

In her verified complaint, plaintiff Dionisia Cadampog alleged that she is the registered owner of a parcel of land situated in Nasipit, Talamban, Cebu City, more particularly described in OCT No. 1245,[3] and TD No. 01-25366. Plaintiff had been in continuous, peaceful and exclusive possession as owner of the subject lot, where her house is located. Plaintiff requested her daughter Mrs. Rosalinda Pontanar to secure a true copy of her OCT No. 1245 from the Office of the Register of Deeds, Cebu City. To their dismay, they found out that there is an Entry No. 1145633 in the OCT which pertains to a Deed of Real Estate Mortgage dated December 23, 1989 executed in her behalf by defendant Alexander Paez (Paez) as attorney-in-fact, in favor of the defendant Barnacha (Barnacha).

On July 25, 2006, plaintiff's counsel addressed a letter to defendant Barnacha informing her that plaintiff had never executed a Special Power of Attorney (SPA) in favor of Paez to mortgage her land. Plaintiff then requested Barnacha to execute to cancel Entry No. 1145633 and return to her the owner's copy of OCT No. 1245. Barnacha went to the office of Atty. Mario Ortiz where she personally met the plaintiff and the latter's daughter. Barnacha confirmed that Paez had mortgaged plaintiff's land to her on December 23, 1989. She told the plaintiff that she never saw the property and did not exercise her right as mortgagee because she doubted the authenticity of the SPA of Paez. Barnacha said that she gave her copy of the title to her lawyer and instructed the latter to file a complaint for estafa against Paez but the latter can no longer be found in his declared place of residence. Barnacha agreed to execute an affidavit to support plaintiff's Petition for Cancellation of Entry No. 1145633 in OCT No. 1245.

Plaintiff's daughter then prepared an affidavit for Barnacha's signature. However, the latter refused to sign the affidavit containing their previous agreement. Instead, the defendant Barnacha demanded that plaintiff shall reimburse her with the amount of Php30,000 with penalty and interest. The plaintiff was forced to file a case against Paez and Barnacha for Nullification of Special Power of Attorney with Damages.

The defendant Barnacha for her part claims that sometime in December 1989, the defendant Paez came to her to borrow Php 30,000.00. Paez brought with him an SPA allegedly executed by the plaintiff dated October 16, 1989, together with the owner's copy of OCT. 1245, to serve as collateral thereof. Barnacha agreed to the said loan. Paez consequently executed a promissory note and the real estate mortgage.

On December 23, 1990, when the loan became due Barnacha sent her son to look for the plaintiff and Paez so as to demand payment. Paez promised to pay and caused the Deed of Real Estate Mortgage to be notarized.

On June 28, 1990, the Register of Deeds annotated the Deed of Real Estate Mortgage in OCT.1245.

On July 2, 1990, the Special Power of Attorney was also annotated in the OCT. 1245.

On July 27, 2005 or after the lapse of fifteen (15) years from the registration of the real estate mortgage and the SPA on the title, Barnacha received a letter from the plaintiff's counsel. She met with the plaintiff, the latter's daughter and counsel. Barnacha expressed her willingness to cancel Entry No.1145633 upon payment of the loan and reasonable interest. Plaintiff did not settle the loan, which is the reason why she refused to cancel the mortgage. On September 26, 2005, Barnacha demanded payment from plaintiff but the latter refused to pay.

Upon Motion, Paez was declared in default for failure to answer the complaint within the reglementary period. On August 22, 2008, the RTC rendered a Decision declaring the SPA as null and void. The dispositive portion of the decision, reads:

FOR ALL THE FOREGOING CONSIDERATIONS, this court hereby renders judgment in favor of the plaintiff as against defendants Ciriaca Barnacha and Alexander Paez, declaring as NULL and VOID the Special Power of Attorney allegedly executed by plaintiff authorizing defendant Alexander Paez as her attorney-in-fact to mortgage her property covered by OCT No. 1245, in effect renders the Deed of Real Estate Mortgage dated December 23, 1989 as NULL and VOID; Ordering the Register of Deeds of Cebu City to cancel Entry No. 1134533 (sic) in OCT No.1245, and to issue a new Owner's Duplicate Copy of OCT No. 1245, and for said defendants to jointly and severally pay plaintiff the sum of P50,000.00 as moral damages, P40,000.00 as exemplary damages, P30,000.00 as attorney's fees and litigation expenses in the sum of P20,000.00.

Hence, this appeal by Barnacha.

ISSUES

I

THE LOWER COURT ERRED IN DECLARING THE SPECIAL POWER OF ATTORNEY AS NULL AND VOID WHEN ITS EXISTENCE AND DUE EXECUTION WAS PROVEN BY THE EVIDENCE ON RECORD AND WAS EVEN ADMITTED BY THE PLAINTIFF.

II

THE LOWER COURT ERRED IN GIVING DUE COURSE TO THE COMPLAINT AND IN FINDING CAUSE OF ACTION AGAINST THE DEFENDANT WHEN THE PLAINTIFF'S COMPLAINT FAILED TO ATTACH THE SPECIAL POWER OF ATTORNEY, THE ACTIONABLE DOCUMENT SHE CLAIMED TO BE NON-EXISTENT.

III

THE LOWER COURT ERRED IN NULLIFYING THE NOTARIZED DEED OF REAL ESTATE MORTGAGE DATED DECEMBER 23, 1989 WITHOUT ANY FACTUAL OR LEGAL BASIS AND CONTRARY TO THE EVIDENCE ON RECORD.

IV

THE LOWER COURT ERRED IN FINDING DEFENDANT'S JOINTLY AND SEVERALLY LIABLE TO PAY PLAINTIFF MORAL DAMAGES, EXEMPLARY DAMAGES, ATTORNEY'S FEES AND LITIGATION EXPENSES DESPITE THE FACT THAT THE PLAINTIFF DID NOT SUFFER ANY INJURY BECAUSE THE MORTGAGE WAS NOT FORECLOSED.

V

THE LOWER COURT HAS NO JURISDICTION OVER THE ISSUES BECAUSE THE PLAINTIFF FAILED TO IMPLEAD THE REGISTER OF DEEDS WHO IS AN INDISPENSABLE PARTY TO THE CASE.

It is the stand of the defendant-appellant that based on the decision rendered by the court a quo, the latter doubts the existence of the assailed SPA. The jurisprudence cited by the court a quo pertained to cases where the existence of the SPA is disputed. However, the defendant-appellant claims that such is not the point in the case at bar. While the SPA was not presented in court, its existence was sufficiently proven by parole evidence through the testimony of the defendant-appellant, the admission of the plaintiff-appellee, and the registration of the SPA before the Register of Deeds. The plaintiff-appellee has the possession of the SPA. In fact, she admitted the existence and due execution of the SPA when she offered the "Entry No. 1152233" as her Exhibit A-3 (entry pertaining to the special power of attorney).

The court a quo disregarded the significance of the registration by the Register of Deeds of the SPA. The annotation is proof of the existence of the transactions which affected the registered land, the presentation to the registrar of its entry in the registry, and a notice to the whole world of such facts. Documents consisting of entries in the public records made in the performance of a duty by a public officer are prima facie evidence of the facts stated therein. A duly-registered entry found therein is presumed correct, unless the party who contests its accuracy can produce positive evidence establishing otherwise. But no such evidence was presented by the plaintiff, hence, the truth of the entries cannot be disputed. The lower court also failed to consider that it took plaintiff-appellee more than fifteen (15) years from the annotation of the entry in the Register of Deeds to file the complaint. Therefore, she is estopped from annulling the documents by reason of laches, the action having been filed fifteen (15) years after the deeds were registered.

Defendant-appellant cites Section 7, Rule 8 of the Rules of Court.[4] He claims that the obligation to attach the SPA in the complaint lies with the plaintiff-appellee. The latter could have at least requested a certified true copy of the SPA from the Register of Deeds. The plaintiff-appellee deliberately did not produce the SPA because it would prejudice her case. The SPA would clearly show to the court that the plaintiff-appellee authorized the defendant-appellee Alexander Paez to borrow money and to mortgage her property to secure the loan.

The court a quo also erred when it nullified the Deed of Real Estate Mortgage. The lower court ratiocinated that defendant-appellant is a mortgagee in bad faith because she did not verify the identity of the registered owner of the parcel of land covered by OCT No. 1245, which should have been her utmost practical concern. Defendant-appellant however, thinks otherwise. The fact that defendant-appellant registered the Deed of Real Estate Mortgage and the SPA, belies the court's finding of bad faith. Defendant-appellant's reliance in good faith on the certificate of title of the mortgagor in the absence of any sign that arouse suspicion is sufficient and does not oblige her to take further inquiry.

The RTC ratiocinated in its decision that when the plaintiff-appellee (complainant) denied the execution of the Deed of Real Estate Mortgage by defendant-appellee Paez (defendant) on her behalf, the former impliedly denied having executed the SPA. It is therefore incumbent upon defendant-appellant Barnacha to produce the SPA to prove the valid execution of the Deed of Real Estate Mortgage. Defendant-appellant Barnacha's failure to produce the SPA and defendant-appellee Paez's failure to confirm in court, the existence of the SPA, renders the Deed of Real Estate Mortgage, invalid.

The RTC states that defendant-appellant is a mortgagee in bad faith. As mortgagee of real property, defendant-appellant neglected to make the necessary inquiries and closed her eyes to facts which should put her on guard as to the location and value of the property presented as collateral and more so of the identity of the

plaintiff who is the owner of the property under OCT 1245. By merely relying on the SPA without ascertaining the identity of the prospective mortgagor, defendant cannot be ascertained as a mortgagee in good faith. The notarization of the Real Estate Mortgage does not guarantee its validity because it is not the function of the notary public to validate an instrument that was never intended by any party to have any binding legal effect on him. Neither is the notarization of a document conclusive of the nature of the transaction conferred therein, nor is it conclusive of the true agreement of the parties thereto.

THE COURT'S RULING

At the outset We would like to note that the Plaintiff-Appellee's Brief was ordered expunged from the record in the Resolution[5] dated February 1, 2012 for failure of the plaintiff-appellee's counsel to secure a Mandatory Continuing Legal Education (MCLE) Certificate of Compliance or Certificate of Exemption[6].

The threshold issues of this case before Us are: whether a contract of agency exists between the defendant-appellee Alexander Paez and the plaintiff-appellee Dionisia Cadampog and whether the Deed of Real Estate Mortgage attached in OCT. No. 1245 is valid.

By the contract of agency, 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. Thus, the elements of agency are (i) consent, express or implied, of the parties to establish the relationship; (ii) the object is the execution of a juridical act in relation to a third person; (iii) the agent acts as a representative and not for himself; and (iv) the agent acts within the scope of his authority.[7]

The Civil Code defines the Contract of Agency, as follows:

Art. 1868. By the contract of agency a person binds himself to render some service or to do something in representative or on behalf of another, with the consent or authority of the latter.

In the contract of agency, the principal must have an actual intention to appoint or an intention naturally inferable from his words or actions.[8]

In this case, the principal-agent relationship between the plaintiff-appellee Dionisia Cadampog and defendant-appellee Alexander Paez was not duly established by evidence. The records are bereft of any showing that plaintiff-appellee authorized defendant-appellee to represent the former in her behalf. Plaintiff-appellee did not authorize defendant-appellee to borrow money from defendant-appellant Ciriaca Barnacha. Neither was there a ratification, express or implied, that plaintiff-appellee authorized or consented to the said transaction. The third element in the contract of agency which is the consent, express or implied by the parties involved is lacking in this case.

In the case of Vitarich Corporation, vs. Chona Losin[9] the Supreme Court held that the law in civil cases requires that the party who alleges a fact has the burden of proving it. Section 1, Rule 131 of the Rules of Court provides that the burden of proof is the duty of a party to prove the truth of his claim or defense, or any fact in issue by the amount of evidence required by law. In this case, however, the burden of proof is on Losin because she alleges an affirmative defense, namely, payment. Losin failed to discharge that burden.

Applying the abovestated jurisprudence in the case at bar, the plaintiff-appellee denied having executed a special power of attorney in favor of defendant-appellee Alexander Paez. She (defendant-appellee) even alleged that she does not know the defendant-appellee Alexander Paez. However, defendant-appellant Ciriaca Barnacha asserts that there was a special power of attorney executed by plaintiff-appellee in favor of defendant-appellee Alexander Paez. Defendant-appellant however, could not present the SPA because according to her, it got burned during the fire in Carbon Market where she had a stall.

As between the denial of plaintiff-appellee and the affirmative defense of defendant-appellant, the latter has the burden of proof to show the existence of the special power of attorney. Failure of which shall cause a toll in the case of the defendant-appellant and without such proof it is legally impossible for this court to accede that there was an SPA executed by the plaintiff-appellee in favor of the defendant-appellee Alexander Paez.

Moreover, the RTC is correct when it ruled that the defendant-appellant Ciriaca Barnacha is a mortgagee in bad faith. In the case of *Abad v. Guimba*,^[10] the Supreme Court laid down the principle that where the mortgagee does not directly deal with the registered owner of real property, the law requires that a higher degree of prudence be exercised by the mortgagee, thus:

While [the] one who buys from the registered owner does not need to look behind the certificate of title, one who buys from [the] one who is not [the] registered owner is expected to examine not only the certificate of title but all factual circumstances necessary for [one] to determine if there are any flaws in the title of the transferor, or in [the] capacity to transfer the land. Although the instant case does not involve a sale but only a mortgage, the same rule applies inasmuch as the law itself includes a mortgagee in the term "purchaser".

Although, defendant-appellee Alexander Paez presented an SPA, defendant-appellant Ciriaca Barnacha is still a mortgagee in bad faith. She (Ciriaca Barnacha) had not made the necessary inquiries about the true identity of the alleged mortgagor (Dionisia Cadampog). Confirmation from the defendant-appellant's husband that the SPA and the OCT. 1245^[11] are legitimate for the approval of the loan, will not suffice to conclude that the defendant-appellant has exerted effort to ascertain the true identity of the plaintiff-appellee. Per testimony^[12] of the defendant-appellant, the defendant-appellee Alexander Paez was with her (defendant-appellant) son in the cockpit when she was asked by the defendant-appellee if she could lend money to him because allegedly his aunt is in need of money for her medicine. This situation should have put defendant-appellant on her feet and forewarned her if the defendant-appellee was really authorized by plaintiff-appellee to mortgage her property for the sum of money of Php 30,000.00.^[13]

There were also inconsistencies in the testimony of the defendant-appellant. At first, she (defendant-appellant) said that she tried to look for the plaintiff-appellee (Dionisia Cadampog) but to no avail. Later on, defendant-appellant said that she never visited the land because she was not interested with the property.^[14] If we are to analyze the veracity of the statement, given the chance that she tried to look for the plaintiff-appellee, she would have met the latter because the property mortgaged to her is where the plaintiff-appellee is currently residing.^[15]

Defendant-appellant posits the view that an annotation is proof of the existence of the transactions which affected the registered land and is a notice to the whole world of such facts. However, the Supreme Court has also established the rule that registration only operates as a notice of the mortgage to others, but it neither adds to its validity nor convert an invalid mortgage into a valid one between the parties. If the purpose of registration is merely to give notice, the question regarding the effect or invalidity of instrument, are expected to be decided AFTER, not before the registration.^[16] Therefore, the contention of defendant-appellant bears no merit in this case.

It is the argument of the defendant-appellant that the court a quo erred when it awarded moral damages, exemplary damages and attorney's fees to the plaintiff-appellee. Our opinion dictates otherwise. In the recent case of *Manila Electric Company (MERALCO) vs. Atty. Pablito M. Castillo*,^[17] it held that:

Moral damages are awarded to compensate the claimant for physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury. Jurisprudence has established the following requisites for the award of moral damages: (1) there is an injury whether physical, mental or psychological, which was clearly sustained by the claimant; (2) there is a culpable

act or omission factually established; (3) the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) the award of damages is predicated on any of the cases stated in Article 2219 of the Civil Code. Pertinent to the case at hand, Article 32 of the Civil Code provides for the award of moral damages in cases where the rights of individuals, including the right against deprivation of property without due process of law, are violated

In the case at bar, the plaintiff-appellee was unjustly deprived of her property when it was mortgaged without her knowledge. Because of the said incident, plaintiff-appellee cannot distribute her property to her children and this is tantamount to deprivation of property. As such she (plaintiff-appellee) is entitled to moral damages. Furthermore, it would be unconscionable and unfair on the plaintiff-appellee's part because she was already unduly deprived of her property and yet she still has to pay the loaned amount which she did not incur. The situation warrants the application of the aforequoted jurisprudence in Manila Electric Company (MERALCO).

Plaintiff-appellee is entitled to attorney's fees because she was forced to institute a complaint against the defendant-appellant and defendant-appellee. Had the defendant-appellant agreed to cancel the mortgage upon knowing that defendant-appellee was not authorized to mortgage the property the issue would have been settled. Anyway, the plaintiff-appellant could pursue defendant-appellee Alexander Paez to collect the money she loaned to the latter.

All told, it is clear to Us that the Deed of Real Estate Mortgage[18] constituted upon the property of the plaintiff-appellee under OCT. 1245 should be cancelled because there was no sufficient evidence that an SPA was executed by the plaintiff-appellee in favor of defendant-appellee Alexander Paez, authorizing him to mortgage the property of the former to defendant-appellant Ciriaca Barnacha. We resolve to uphold the lower court's decision.

The requirement of a special power of attorney refers to the nature of the authorization and not to its form – if the special power of attorney is not written, then it must be duly established by evidence.

It is a general rule in the law of agency that, in order to bind the principal by a mortgagee on real property executed by an agent, it must upon its face purport to be made, signed and sealed in the name of the principal, otherwise, it will bind the agent only.

In the absence of a special power of attorney in favor of the corporation's president, no valid mortgage could be executed by him. [19]

Our examination of the records reveals that the RTC made an erroneous reference of the Entry No. of the Deed of Real Estate Mortgage in OCT. No. 1245. The correct entry is Entry No. 145633.[20]

WHEREFORE, the appeal is DENIED. The Decision dated August 22, 2008 of the RTC, Branch 16, Cebu City in Civil Case No. CEB-32239 is hereby AFFIRMED.

SO ORDERED.

Ingles, (Chairperson) and [*]Quijano-Padilla, JJ., concur.

[*] Acting Junior Member per Office Order No. 472-13-ABR dated December 12, 2013.

[1] Rollo, pp. 151-159.

[2] Rollo, pp. 48-54, Annex “E”

[3] Records, p. 7. Annex “A”.

[4] Sec. 7. Action or defense based on document. Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.

[5] Rollo, p. 144, penned by Associate Justice Gabriel T. Ingles.

[6] Bar Matter No. 1922, Resolution of the Court En Banc dated June 3, 2008.

[7] Vitarich Corporation vs. Chona Losin, G.R. No. 181560, November 15, 2010.

[8] Civil Law annotated by Vitug, 2006 Edition, P. 180.

[9] G.R. No. 181560, November 15, 2010.

[10] G.R. No. 157002, 29 July 2005.

[11] Records, p. 7-9, Annex "A".

[12] TSN, January 23, 2008, pp, 217-218.

[13] Records, p.9, Exhibit "A", Annex "A-2".

[14] TSN, p. 216, January 23, 2008.

[15] Records, p. 2, Complaint paragraph 4.

[16] Civil Code of the Philippines, Book of Paras, Fourteenth Edition 2000, p. 1030.

[17] G.R.No. 182976, January 14, 2013 citing the case of Quisumbing v. Manila Electric Company and Manila Electric Company (MERALCO) v. Chua.

[18] Records, pp. 11-12, Annex "C".

[19] Cited in the decision of the court a quo (RTC Branch 16, Cebu City), citing the case of Gozon vs. Mercado 511 SCRA 305 and Yasuma vs. Heirs of Cecilo S. de Villa 499 SCRA 466, respectively.

[20] Records, p. 9, Memorandum of Encumbrance. "A-2".

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