

**SPOUSES MARINA GASPAR AND VICTORINO RIVERA,
PLAINTIFFS-APPELLEES, VS. SPOUSES BERNABE AND LUISA
SANGGA, NIEVES ESGUERRA, MICHAEL SEPTIMO, PHILIPPINE
NATIONAL BANK, AND THE REGIS...**

Ponente: SADANG, J.

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SADANG, J.:

Before the Court is an appeal from the Decision,[1] dated August 14, 2008, of the Regional Trial Court (RTC) of Guimba, Nueva Ecija, Branch 33, in Civil Case No. 1087-G.

Records show that on November 16, 1999, plaintiffs-appellees spouses Marina Gaspar and Victorino Rivera (hereafter, appellees) filed a Complaint[2] against defendants-appellants spouses Bernabe and Luisa Sangga, Nieves Rivera Esguerra (Esguerra), Michael A. Septimo (Septimo), the Philippine National Bank (PNB), and Register of Deeds of Nueva Ecija, for annulment of real estate mortgage, extra-judicial foreclosure and special power of attorney in the RTC of Guimba, Nueva Ecija. The spouses Sangga, Septimo, and PNB filed their respective answers. For failure to file responsive pleading, Esguerra was declared in default.[3] Subsequently, appellees filed an Amended Complaint[4] to include, as relief, the annulment of the titles issued in the name of PNB. The Amended Complaint was admitted in the Order,[5] dated July 29, 2004.

In their Amended Complaint, appellees alleged that: appellee Marina Gaspar is the registered owner of two (2) parcels of residential land covered by TCT Nos. NT-237996 (N-7056) and NT-237997 (N-7057), situated in Poblacion, Licab, Nueva Ecija; sometime in January 1995, Esguerra, a relative of appellee Victorino Rivera, went to their house to convince them to secure a loan of P50,000.00 from PNB and she offered to help them, claiming that she had connections with the bank's officers; in the latter part of the same month, appellees were instructed to bring the aforesaid titles to the house of Esguerra where they were introduced to Septimo, an alleged high ranking officer of PNB, Guimba Branch; appellees delivered the titles and Septimo made them sign a blank PNB Special Power of Attorney (SPA) form without explaining its contents; a month later, appellees asked about the status of their loan but Esguerra told them that it was disapproved; appellees asked for the return of their titles but Esguerra refused and claimed that she will make sure that the loan will be approved; appellees later discovered that their properties were already subject to extra-judicial foreclosure; upon investigation, they learned it was mortgaged by the appellants spouses Sangga under the SPA that appellees signed as security for a loan from PNB in the amount of P300,000.00; the spouses Sangga are complete strangers to the appellees; on November 19, 1997, the mortgage was extrajudicially-foreclosed and the properties were sold at a public auction to PNB as the highest bidder; and, PNB caused the cancellation of appellee's titles and consolidated its ownership of the lots.

The spouses Sangga filed Amended Answer with Counter-claim and Answer to Cross-claim.[6] They denied the allegations in the Amended Complaint and, by way of affirmative defense, alleged that: sometime in 1995, they were enticed to secure a loan from PNB by Esguerra who told them that she can facilitate the loan through her connections with bank officials and that no collateral is needed because the loan would be minimal; due to Esguerra's representations and because they needed more capital for their small business, they agreed to apply for

a P50,000.00 loan; they went to the PNB-Guimba Branch where they were introduced to Septimo who made them sign blank PNB forms without giving them the opportunity to read their contents; later, they inquired about the status of their loan and Esguerra told them it was disapproved; subsequently, to their surprise, they received notice of a maturing P300,000.00 loan in their name as attorney-in-fact of appellees whom they did not personally know; they confronted Esguerra and she assured them that she will fix the problem[7]; in a notarized Sinumpaang Salaysay[8] (Exh. "2-Sangga") executed before barangay officials on July 30, 1997, Esguerra admitted that she secured a loan from PNB in the name of the spouses Sangga using the properties of appellees as collateral without the knowledge and consent of the Sanggas or the appellees and she promised to pay P500,000.00, representing the loan plus the interest.

PNB and Septimo filed Amended Answer with Compulsory Counterclaim and Cross-claim[9] alleging that: the contents of the SPA were read and explained to the appellees and the signatures thereon are authentic and genuine, hence, the loan contracted by appellee's attorney-in-fact, the spouses Sangga, is legal and authorized; granting, without admitting, that appellees signed the SPA in blank, that does not affect its validity because the appellees knew what they were signing; insofar as they are concerned, the loan transaction was valid and binding and in as much as the loan was not paid, the foreclosure of the mortgage was in order.

Appellees also filed a criminal complaint for estafa against Esguerra, the spouses Sangga, and Septimo in the Office of the Provincial Prosecutor of Nueva Ecija. In a Joint Resolution[10] dated December 12, 1997, the prosecutor found probable cause to charge Esguerra with estafa while Septimo and the spouses Sangga were exonerated.

On August 14, 2008, the RTC rendered the assailed Decision the decretal portion[11] of which reads:

WHEREFORE, the judgment is rendered in favor of plaintiffs and:

1. Declaring the Special Power of Attorney, Real Estate Mortgage, extra-judicial foreclosure, the public auction and the certificate of sale all NULL and VOID;
2. Dismissing the complaint in so far as defendants spouses Sangga are concerned;
3. Ordering the defendant Nieves Rivera Esguerra primarily liable or defendants Michael Septimo and/or Philippine National Bank, Guimba Branch subsidiary liable to pay the plaintiffs the amount of P70,000 for and as attorney's fees, litigation and incidental expenses;
4. Ordering the defendants Nieves Rivera Esguerra and Michael Septimo to pay plaintiffs the amount of P20,000.00 each for moral damages;
5. Ordering the Register of Deeds of Nueva Ecija to cancel the title registered and issued in the name of Philippine National Bank, Guimba Branch after payment of the necessary fees.

SO ORDERED.

PNB and Septimo filed a notice of appeal but it was denied on the ground of late filing. PNB and Septimo filed a Petition for Relief[12] from judgment which the trial court granted in the interest of substantial justice.[13]

In lieu of appellee's brief, appellees filed Manifestation with Motion to Dismiss the Appeal for having been filed out of time and without sufficient docket fees. The motion was dismissed by the Court of Appeals in its July 15, 2011 Resolution.[14] Subsequently, the case was submitted for decision sans appellees' brief in a Resolution[15] dated October 16, 2012.

On September 19, 2013, the appellees filed in this Court a Motion for Issuance of Temporary Restraining Order and Writ of Preliminary Injunction to restrain PNB from disposing of the lots and from demanding of appellees to

vacate them. In a Resolution,[16] dated March 5, 2014, this Court ordered that the motion shall be resolved together with the appeal.

In their Brief,[17] Septimo and PNB raise the following issues:

- Whether or not the deed of real estate mortgage executed by Spouses Bernabe and Luisa Sangga is valid, binding and effective against Spouses Marina Gaspar and Victorino Rivera.
- Whether or not the proceeds of the loan in question was received by the defendants Nieves Rivera Esguerra and Spouses Bernabe and Luisa Sangga and appropriated the same for their own use and benefit.
- Whether or not Nieves Rivers Esguerra, Spouses Bernabe and Luisa Sangga and Michael Septimo are liable to pay moral damages, attorney's fees, litigation expenses and exemplary damages to Spouses Marina and Victorino Gaspar.

Arguments

PNB and Septimo contend that: the real estate mortgage is valid because appellee Marina Gaspar knew and cannot not feign ignorance that her lots were to be used as collateral for a loan; it is contrary to human experience that in spite of her knowledge that the loan was disapproved Marina Gaspar would have allowed that her titles were not returned to her; the spouses Sangga denied having received the proceeds of the loan yet the signatures in the Credit Agreement, Real Estate Mortgage (REM), and Manager's Check in the name of Bernabe Sangga are the same or similar to Bernabe's signature on the carpetta of the case; the RTC gave weight to the Sinumpaang Salaysay of Esguerra even if she did not testify in court and notwithstanding the principle of *res inter alios acta*; during the time that the spouses Sangga and Gaspar were trying to settle the case there was no mention of Septimo and it was only after the meeting with Mayor Villaroman and the execution by Esguerra of her affidavit that Septimo was implicated; and Septimo should not be liable because he merely assisted in the loan application as a loan officer of PNB.

The spouses Sangga contend they had no knowledge of the SPA naming them as the attorney-in-fact of appellees; they were made to sign blank real estate mortgage forms and they did not know that these were for the mortgage of the properties of appellees; they are also victims of Esguerra's and Septimo's scheme to execute spurious documents in order to

illegally mortgage appellees' properties; Esguerra executed an affidavit admitting that she caused the mortgage of appellees' properties without their knowledge, received the proceeds of the loan, and appropriated the proceeds for her own use and benefit.[18]

RULING

The appeal is not meritorious.

Article 2085 of the Civil Code enumerates the essential requisites of a mortgage, viz.: 1) that it be constituted to secure the fulfillment of a principal obligation; 2) that the mortgagor is the absolute owner of the thing mortgaged; 3) that the person constituting the mortgage has the free disposal of his or her property, and in the absence thereof, that he or she is legally authorized for that purpose.

A person who is not the absolute owner of a real property may constitute a mortgage over it provided that he is legally authorized to do so. Such authority must be granted under the auspices of a valid special power of attorney. Article 1878[19] of the Civil Code requires a SPA to allow another person to act as an agent for the purpose of borrowing money or creating or conveying real rights over immovable property. If the SPA is defective or void, the resulting mortgage must be struck down. A forged special power of attorney cannot be the

basis of a valid mortgage contract or of a subsequent foreclosure and consolidation of title.[20] A SPA, as a form of agency, must meet the requisites of a valid contract.[21] There must be a meeting of the minds as to the cause and object of the contract, the constitution of an agency.

In this case, an examination of the Credit Agreement[22] and the REM[23] shows that they were signed by spouses Sangga "for themselves and as AIF (attorney-in-fact) of Spouses Victorina & Marina Gaspar Rivera." However, the evidence shows that although the SPA was not forged, appellees, as the principals, did not consent to the agency. There was no meeting of the minds on the cause or object of the SPA which is the designation of the spouses Sangga as the agents of appellees. The evidence shows that appellees did not even know the spouses Sangga. They vehemently denied personally knowing the spouses Sangga[24] and the latter consistently averred that appellees were strangers to them. The spouses Sangga asserted that they never met the appellees because they lived in the barangay while the appellees resided in the town proper.[25] The first time the two couples met was during the meeting at the house of Licab Mayor Tomas Villaroman where the appellees confronted the Sanggas about the mortgage.[26] These assertions were not controverted by PNB and Septimo by competent evidence. Considering that they did not even know the spouses Sangga, appellees could not have constituted them as their agents. Given the fiduciary nature of agency, the principal must at least know the agent and trust him enough to confer power or authority on him. Clearly, appellees did not consent to the agency. Their subsequent act of immediately filing a criminal action against Esguerra, Septimo, and the spouses Sangga after they discovered that their properties have been foreclosed indicates their lack of consent. Moreover, appellees' allegation that they were made to sign a blank SPA form that did not indicate the name of the attorney-in-fact was admitted by Septimo in his sworn Counter-Affidavit[27] before the prosecutor. Septimo confirmed on the witness stand the veracity of his Counter-Affidavit.[28]

Considering that the SPA was not validly executed for want of consent of appellees, the Credit Agreement and the REM that were executed pursuant thereto, as well as the extra-judicial foreclosure, public auction, and consolidation of titles are void and ineffective.

There is no merit in the contention of Septimo that he is not liable because he merely did his duty as loan officer of PNB. On this point, the RTC ruled: "Moreover, the Court cannot deny the fact of material participation committed by Michael Septimo from the time when the signatures of both spouses were procured, the processing of the loan with the use of spurious SPA and the encashment of the check." This finding must be sustained. The evidence reveals that Septimo acted together with Esguerra and had unity of design with her. Thus, he testified that he did a credit investigation even before appellees could even file a loan application;[29] that he conducted an ocular inspection of the properties without notifying PNB;[30] that by his assessment, appellees did not have any purpose in securing a loan but he still allowed them to apply for one through the spouses Sangga and assumed that the appellees knew the Sanggas only because they were involved in the same line of business;[31] and that Victorino Gaspar was determined to secure a loan that he agreed to execute an SPA in favor of the spouses Sangga and to mortgage their lands and yet, to his (Septimo) knowledge, the proceeds of the loan were to be received and used solely by the spouses Sanggas.[32]

The evidence reveals a calculated scheme perpetrated by Esguerra, with the help of Septimo, to convince appellees to borrow money and to sign blank documents for that purpose. Esguerra's representations became believable to appellees because Septimo, who must have introduced himself as a loan officer of PNB, was present and actively participated in the transactions.

There is no merit in the contention of PNB and Septimo that the Sinumpaang Salaysay of Esguerra should not have been considered by the RTC because Esguerra did not testify in court and in view of the principle of *res inter alios acta*. The rule that the rights of a party cannot be prejudiced by an act, declaration or omission of another

admits of exceptions, one which is admission by a conspirator.[33] Section 30, Rule 130 of the Rules on Evidence provides: "The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration." The "act or declaration" spoken of in the rule applies only to an extrajudicial act or declaration but not to testimony given on the stand at the trial where the defendant has the opportunity to cross-examine the declarant.[34] As discussed above, the testimonies of appellees and Septimo himself shows that Esguerra and Septimo acted together in convincing appellees to sign the documents which were used to deprive them of their properties. In light of such independent proof of the conspiracy between Esquerra and Septimo, the Sinumpaang Salaysay of Esguerra is admissible in evidence against Septimo. The Sinumpaang Salaysay is an "act or declaration" under the Rule because it is an extrajudicial declaration executed before a notary public.

On the matter of issuance of a temporary restraining order and writ of preliminary injunction, appellees allege in their motion that PNB has already sold the properties to third persons. Appellees attached to their motion the letter of PNB informing them of such event. In view thereof, injunctive relief has been rendered moot and academic. It is basic that an injunction would not lie where the acts sought to be enjoined have become *fait accompli* — an accomplished or consummated act.[35]

WHEREFORE, the appeal is DENIED. The Decision dated August 14, 2008 of the Regional Trial Court, Branch 33, Guimba, Nueva Ecija, in Civil Case No. 1087-G is AFFIRMED. Appellees' motion for injunctive reliefs is DENIED on the ground of mootness.

SO ORDERED.

Librea-Leagogo, (Chairperson), and Diamante, JJ., concur.

[1] Records, pp. 486-493.

[2] *Id.* at 1-10.

[3] *Id.* at 94.

[4] *Id.* at 258-263.

[5] *Id.* at 331.

[6] *Id.* at 338-343

[7] *Id.* at 339-341.

[8] *Id.* at 370-371.

(Handwritten) SINUMPAANG SALAYSAY

Na, akong ang nagayos ng "Loan Application" ni. G. at Gng. Bernabe Sangga, naninirahansa Brgy. Bardias, Bagong Sicat, Licab, N.E.

Na, ginamit ko ang Lupang pagmamayari ni G. at Gng. Victorino Rivera at Marina Gaspar na naninirahansa Pob. Sur, Licab, N.E. Bilang "PROTECTA [sic] o COLLATERAL" sa Bangko. (Phil. National Bank, Buimba Branch) na pinasok ko sas Loan Applicationni G. at Gng. Bernabe at at Luisa Sangga na wala silang malay sa ginawang "transaction" sa pagutang sa PNB.

Na, pinakialaman ko ang "Loan Release" at "Encashment of Check" na para sa mag-asawang Bernabe at Luisa

Sangga.

Na, nangangako akong paninindigan at bayaran ang halagang nakuha ko sa PNB na umaabot sa:

P300,000.00 - Original Loan
200,000.00 - Interest and Penalty
P500,000.00
=====

Limang Libong Piso humigit-kumulang.

Bilang patunay, ako ay kusang lobb na lumagda sa ibaba nito ngayong ika-30 ng Hulyo, 1997.

(Lagda)Nieves R. Esguerra
Nagsasaysay

Mga Saksi:

(Lagda)Alberta Iguiwan (Lagda) Alfonso

Punong Barangay Punong Barangay

SINUMPAAN AT NILAGDAAN sa harap ko, ngayong ika-30 ng Hulyo, 1997 dito sa Licab, Nueva Ecija.

(Lagda)ALEJANDRO I. VELASQUEZ
Notary Public

[9] Id. at 327-330.

[10] Id. at 51.

[11] Id. at 304.

[12] Id. at 517-525.

[13] Id. at 555.

[14] Rollo, pp. 90-93.

[15] Id. at 196.

[16] Id. at 249.

[17] Id. at 162.

[18] Id at 115-123.

[19] "Art. 1878. Special powers of attorney are necessary in the following cases:

xxx xxx xxx

(7) To loan or borrow money, unless the latter act be urgent and indispensable for the preservation of the things which are under administration;

xxx xxx xxx

(12) To create or convey real rights over immovable property;

xxx xxx xxx."

[20] Domingo Lao v. Estrella Villones-Lao, et al., G.R. No. 126777, April 29, 1999.

[21] Article 1318. There is no contract unless the following requisites concur:

- (1) Consent of the contracting parties;
- (2) Object certain which is the subject matter of the contract;
- (3) Cause of the obligation which is established.

[22] Record, p. 475.

[23] Id. at 476.

[24] TSN, November 15, 2001, pp. 10-11.

[25] TSN, June 8, 2005, p. 3 and TSN, July 13, 2005, p. 10.

[26] Supra note 24.

[27] Records, p. 473.

[28] TSN, November 19, 2007, p. 8.

[29] TSN, January 3, 2008, p. 7.

[30] Id. at 9-10.

[31] TSN, November 19, 2007, p. 4.

[32] TSN, January 3, 2008, p. 16-17.

[33] Admission by third party. – The rights of a party cannot be prejudiced by an act, declaration, or omission of another, except as herein provided.

1. Source.
2. General rule.
3. Judgment binding only to parties to the action; exception.
4. Exceptions.

[34] Vicente J. Francisco, The Revised Rules of Court of the Philippines, Evidence, Vol. VII, 1997 ed., p. 348.

[35] Niceas M. Belongilot v. Rolando S. Cua, et al., G.R. No. 160933, November 24, 2010, see Aznar Brothers Realty Co. v. Court of Appeals, 384 Phil. 95 (2000).

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