SPS. RODRIGO AND MARTINA DELOS SANTOS, PLAINTIFFS-APPELLANTS, VS. BIENVENIDO LIBRES AND JULIE L. PANINGBATAN, DEFENDANTS-APPELLEES.

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BATO, JR., J.:

For Our resolution is this appeal from the Decision dated 3 November 1999 of the Regional Trial Court, Branch 68, of Lingayen, Pangasinan, in Civil Case No. 17416, entitled Sps. Rodrigo delos Santos and Martina Olba vs. Bienvenido Libres and Julie L. Paningbatan, the dispositive portion of which reads:

> "WHEREFORE, in view of the foregoing, judgment is hereby rendered:
>
> 1. Ordering for the dismissal of this instant case against the defendants Bienvenido Libres and Julie Paningbatan with cost against the plaintiffs; and
>
> 2. Ordering the plaintiffs' to pay jointly and severally defendants moral and exemplary damages in the sum of P20,000.00, and P10,000.00, respectively, as well as litigation expenses of P10,000.00.SO ORDERED." [1]

The pertinent facts are as follows:

On August 18, 1995, the appellants filed with the court a quo a Complaint for foreclosure of mortgage against the appellees, alleging that appellee Bienvenido Libres executed, in favor of the appellants, three separate deeds of Real Estate Mortgage to secure the payment of three loans in the total amount of One Hundred Fifty Thousand Pesos (P150,000.00), which amounts were supposedly delivered by the appellants to appellee Julie L. Paningbatan,[2]upon the instructions of appellee Bienvenido Libres.

According to the appellants, the appellees violated the terms of the mortgage when they failed to pay the principal loan and the accrued interests. The appellants prayed for the court a quo to render a judgment ordering the appellees to pay the principal loan plus the stipulated interests, attorney's fees, expenses and costs. Alternatively, in default of such payment, the appellants prayed that the mortgaged property be ordered sold with the proceeds thereof applied to the mortgage debt, accumulated interests, attorney's fees, expenses and costs.[3]

On September 20, 1995, appellees filed their Answer (prepared and signed by appellee Bienvenido Libres) and, except for the qualifications of the parties and the identity of the property involved, appellees denied all the rest of the allegations in the Complaint. Appellees claimed that the documents were falsified and their signatures appearing therein were forged. Moreover, appellee Bienvenido Libres claimed that he never authorized appellee Julie L. Paningbatan to represent him in such "anomalous" transactions. To prove his claim, appellee Bienvenido Libres requested that his signatures in the documents be examined by a handwriting expert of the National Bureau of Investigation.[4] As relief, the appellees prayed that the case be dismissed with cost against the plaintiffs and that they be paid the amount of P20,000.00 as and by way of moral and exemplary damages and litigation expenses.[5]

During the trial on the merits, the appellants presented two notaries public; an officer from the Registry of Deeds of Lingayen, Pangasinan; three barangay officials who presided and witnessed the barangay confrontation

between the appellants and the appellees; and appellant Martina delos Santos herself.

The evidence of the appellants showed that appellees borrowed from the appellants the total amount of One Hundred Fifty Thousand Pesos (P150,000.00) which was delivered in three installments: P25,000.00 on October 23, 1993,[6] P75,000.00 on January 18, 1994,[7] and P50,000.00 on February 10, 1994.[8] As security for the loan, appellee Bienvenido Libres executed three deeds of Real Estate Mortgage, the due execution of which was attested to by the administering notaries public.[9] The deeds were likewise duly registered with the Office of the Register of Deeds of Lingayen, Pangasinan.[10]

In violation of the terms of the Real Estate Mortgage, appellees failed to pay the principal amount and the accrued interests.[11] Formal demand was made but despite receipt thereof, appellees refused to make any payment.[12] Thus, Complaints were filed by the appellants with the barangay against the appellees.[13] Allegedly, during the barangay confrontation, the appellees admitted their indebtedness and promised that they would pay.[14] But no payment was made by the appellees.

For their part, appellees disputed the supposed loan in the amount of P150,000.00.[15] Appellee Bienvenido Libres denied his signature in the Real Estate Mortgage[16] and denied that he appeared before the notaries public to execute any document.[17] Rather, according to appellee Julie Paningbatan, she was the one who transacted with appellant Martina delos Santos,[18] and what she borrowed from the appellants was only P13,000.00.[19] Furthermore, according to appellee Julie Paningbatan, she caused the execution of a different Real Estate Mortgage although similarly dated on October 30, 1993[20] but it was her godfather, a certain Engr. Carlo Mariñas who signed the name of appellee Bienvenido Libres.[21] Also, appellee Julie Paningbatan denied that her father admitted in the barangay confrontation that he owed the appellants the amount of P35,000.00. Instead, she was the one who admitted the indebtedness to Martina delos Santos of more or less P25,000.00 including interest.[22]

To support their defense, appellees presented Adelia C. Demetillo, Senior Document Examiner of the National Bureau of Investigation (NBI), who was qualified as an expert witness. Said witness submitted to the court a quo Questioned Documents Report No. 545-697 dated July 4, 1997.[23] According to said handwriting expert, the signature of appellee Bienvenido Libres in the questioned Real Estate Mortgage appears to be different from said appellee's sample and standard signatures.[24] The same finding was made with respect to the signature of one of the witnesses to the contract, Gloria Libres.

From the evidence and the pleadings, the court a quo rendered a Decision on November 3, 1999, dismissing the Complaint. Appellants received a copy of the Decision on November 10, 1999 and filed their Notice of Appeal on November 11, 1999, within the reglementary period.

In this appeal, appellants assign the following as errors committed by the court a quo:

“I.

THE TRIAL COURT ERRED IN HOLDING THAT DEFENDANT-APPELLANT (SIC), BIENVENIDO LIBRES, DID NOT TRANSACT THE LOAN WITH THE PLAINTIFFS.

II.

THE TRIAL COURT ERRED IN HOLDING THAT THE SIGNATURES OF DEFENDANT, BIENVENIDO LIBRES, IN THE QUESTIONED REAL ESTATE MORTGAGE WERE FORGED.

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III.

THE TRIAL COURT ERRED IN HOLDING THAT PLAINTIFFS-APPELLANTS HAVE NO CAUSE OF ACTION AGAINST THE PLAINTIFFS-APPELLANTS.

IV.

THE TRIAL COURT ERRED IN DISMISSING THE COMPLAINT AGAINST THE PLAINTIFFS-APPELLANTS.

V.

THE TRIAL COURT ERRED IN HOLDING PLAINTIFFS-APPELLANTS LIABLE FOR DAMAGES." [25]

The appeal is meritorious.

The primary issue for resolution is whether or not the court a quo committed a reversible error in dismissing the Complaint.

According to the appellants, the trial court committed serious error in holding that the appellee Bienvenido Libres did not transact with the appellants and in basing its Decision on the denial of defendant appellee and the findings of the NBI handwriting expert.[26]

As correctly observed by the appellants, the court a quo heavily relied on the testimony of the handwriting expert and concluded that appellee Bienvenido Libres could not have executed the Real Estate Mortgages. While, as a general rule, factual findings of trial courts are binding on the appellate courts, there are exceptions. As held by the Honorable Supreme Court in Carolina Industries vs. CMS Stock Brokerage:[27]

> "While the general rule is that findings of fact of the trial court and the Court of Appeals are binding upon this Court, said rule nevertheless admits of certain exceptions. Thus, this Court retains the power to review and rectify findings of fact of said courts (1) when the conclusion is a finding grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; and (5) when the court, in making its findings, went beyond the issues of the case and the same are contrary to the admission of both appellant and appellee. The same rule applies where the lower court manifestly overlooked certain relevant facts not disputed by the parties, which if properly considered, would justify adifferent conclusion." (Emphasis Ours)

The case at bench is an exception to the general rule. After a thorough study of the case, We find the judgment of the trial court not amply supported by the evidence and is based on a misapprehension of facts.

The trial court ignored relevant evidence which if duly considered would alter the Decision. Firstly, the court a quo gave little value if not none at all to the notarized Real Estate Mortgage (Exhibits A, B and G for the plaintiffs), which were also filed with the Register of Deeds of Lingayen, Pangasinan. The evidentiary value of a notarial document cannot be overemphasized. According to the Honorable Supreme Court in Domingo vs. Domingo.[28]

> "The questioned Deed of Absolute Sale in the present case is a notarized document. Being a public document, it is prima facie evidence of the facts therein expressed. It has the presumption of regularity in its favor and to contradict all these, evidence must be clear, convincing, and more than merely preponderant." (Emphasis Ours)

Secondly, the notaries public testified that appellee Bienvenido Libres personally appeared before them to execute the Real Estate Mortgage. The positive testimony of the notaries public should be given more weight than the self-serving denials of the appellees. The notaries public are more credible by reason of their public functions and also because they have no interest in the case, compared to the appellees who would naturally seek a favorable outcome.

Also, the claim of forgery was not sufficiently established by the appellees. They failed to present Gloria Libres and Juancho Libres, the instrumental witnesses in the contract, who could have confirmed whether or not they indeed witnessed the execution of the Real Estate Mortgage. So, the trial court was left only with the the denials by the appellees and the testimony of the NBI handwriting expert.

However, the testimony of the handwriting expert is not clear and convincing. We have studied appellee Bienvenido Libres' signatures on the questioned deeds of Real Estate Mortgage and his standard signatures, and We found nothing irregular in the signatures on the questioned documents. The variations as claimed by the appellees are not radical at all. In fact, the handwriting expert testified on cross examination that variations are expected in a person's signature. Thus:

> "ATTY. SORIANO:
>
> Q My question is as an expert witness, can you say that a person who made that writing can make varied signatures?
>
> A Yes, sir. Natural variations is inevitable in the writing of a person. But there are certain ranges of variations. It is inevitable to observe the fix (sic) writing habit of the writer.
>
> Q You have admitted from your observation of your naked eye that there are different moods (sic) or style of signing like for example one Bienvenido Libres while in 16-B, it is abbreviated to be B.A. Libres, can you do that?
>
> A Yes, sir. A person can write with this own handwriting with some range of changes.[29]

It is well settled that a handwriting expert's opinion is merely persuasive and is not conclusive upon this Court. Thus, according to the Honorable Supreme Court in Jimenez vs. Commission on Ecumenical Mission and Relations:[30]

> "Opinions of handwriting experts, even those from the NBI and the PC, are not binding upon courts. This principle holds true especially when the question involved is mere handwriting similarity or dissimilarity, which can be determined by a visual comparison of specimens of the questioned signatures with those of the currently existing ones.
>
> Handwriting experts are usually helpful in the examination of forged documents because of the technical procedure involved in analyzing them. But resort to these experts is not mandatory or indispensable to the examination or the comparison of handwriting. A finding of forgery does not depend entirely on the testimonies of handwriting experts, because the judge must conduct an independent examination of the questioned signature in order to arrive at a reasonable conclusion as to its authenticity."

Furthermore, in Jimenez (supra), the Honorable Supreme Court, quoting this Court, held that "forgery cannot be presumed; it must be proved by clear and convincing evidence. Those who make the allegation of forgery have the burden of proving it since a mere allegation is not evidence." Unfortunately, the appellees failed to overcome the burden of proof.

Appellees' last line of defense that appellee Julie Paningbatan obtained a smaller loan and that it was a different person who signed appellee Bienvenido Libres' name is misleading. Not only is the claim that it was her godfather

Engr. Carlo Mariñas who signed appellee Bienvenido Libres' name in the deed self-serving and unverifiable, the notary public has also sufficiently explained why there were two deeds of Real Estate Mortgage dated on 30 October 1993 for two different amounts, thus:

> "DIRECT EXAMINATION
> BY ATTY. SORIANO:
>
> Q When you testified here madam witness, you have testified on the Deed of Real Estate Mortgage of October 30, 1993 and January 18, 1994 previously marked as Exhibits A and B, is that correct?
>
> A Yes, sir.
>
> Q When the defendant Julie Libres was presented in Court she claimed what was actually agreed was what was prepared for the Deed of Real Estate Mortgage in the amount of P13,000.00 not P25,000.00 and defendants also presented documents certified by Clerk of Court regarding that amount of mortgage bearing same page number book number for only P13,000.00, what can you say to that?
>
> A Actually on that date in the morning, the parties, mortgagor, mortgagee and two (2) witnesses, Gloria Libres and Juancho Libres came to my office. The parties asked me to prepare Deed of Real Estate Mortgage in the sum of P13,000.00.
>
> Q My question is how about one P25,000.00 that you have testified before that you have prepared in favor of Mr. & Mrs. Martina Olba delos Santos executed by Bienvenido Libres, witnessed by Juancho and Gloria Libres with the same document, number, page number, book number, if that is the Deed of Real Estate Mortgage as alleged by Juancho Libres (should be Julie Libres) in the amount of P13,000.00, what is it about?
>
> A After the issue of the amount of P20,000.00 (should be P13,000.00), few minutes later, they came back.
>
> Q Who came back?
>
> A Mortgagee (should be mortgagor) Bienvenido Libres, mortgagor (should be mortgagee) Mrs. Delos Santos and children of Bienvenido Libres, sir.
>
> Q What is that about why they came back to that Office?
>
> A They asked me to prepare another real estate mortgage in the amount of P25,000.00 to be entered as same document number, page number and book number, sir.[31]

After the foregoing review of the evidence, We are convinced that the loan of P150,000.00 was obtained by the appellees and that appellee Bienvenido Libres executed the subject Real Estate Mortgage. Such liability is even confirmed by appellee Julie Paningbatan's admission of the indebtedness,[32] albeit qualified. The evidence preponderates in favor of the appellants, by reason of which, the appellees should be ordered to pay the appellants what is due the latter.

In view of the absence of stipulation, appellee's obligation shall earn legal interest at the rate of twelve percent (12%) per annum to be counted from the date the Complaint was filed on August 18, 1995, until the obligation is fully paid. Contrary to appellants' allegation in the Complaint, there is nothing in the records to show that the appellants extrajudicially demanded from the appellees the payment of the obligation AND that the appellees received said demand. In Eastern Shipping Lines vs. Court of Appeals,[33] the Supreme Court declared that:

> "1. When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or

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extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code." (Emphasis Ours)

On the other hand, appellants' prayer for attorney's fees cannot be granted. Appellants claim that the appellees agreed in the mortgage contract to pay the appellants the sum of twenty percent (20%) of the total amount due as attorney's fees, expenses and costs[34] is without basis. The Real Estate Mortgage is silent on this point. We must reiterate the settled doctrine that no premium should be placed on the right to litigate, and not every winning party is entitled to an automatic grant of attorney's fees—the party must show that he falls under one of the instances enumerated in Article 2208 of the Civil Code.[35]

WHEREFORE, the appealed Decision is hereby REVERSED and SET ASIDE and a new one entered ordering appellees Bienvenido Libres and Julie Paningbatan to jointly pay the appellants, within ninety (90) days from notice the sum of P150,000.00 together with legal interest at twelve percent (12%) per annum from August 18, 1995 until the obligation is fully paid. In case of non-payment, the mortgaged property shall be sold on public auction in accordance with Rule 68 of the Rules of Court.

SO ORDERED.

Sabio, Jr., and Asuncion-Vicente, JJ., concur.

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[1]Record, pp. 379-380.

[2]Also Julie Libres or Julie Libres Paningbatan in the records.

[3]Record, p. 3.

[4]Record, p. 14.

[5] Record, p. 15.

[6]TSN, May 7, 1997, p. 4.

[7]TSN, May 7, 1994, p. 4, 12-13.

[8]TSN, May 7, 1994, p. 4, 19.

[9] TSN, March 6, 1996, pp. 12-16; TSN, August 26, 1996, pp. 3-5.

[10]TSN, April 4, 1997, p. 3.

[11]TSN, May 7, 1997, p. 24.

[12]Ibid.

[13]TSN, April 17, 1996, p. 3; TSN, June 5, 1996, pp. 5-6.

[14]TSN, April 17, 1996, p. 11; TSN, June 5, 1996, p. 9; TSN, November 6, 1996, p. 5.

[15]TSN, September 3, 1998, p. 7-8.

[16]TSN, September 3, 1998, p. 10.

[17]TSN, September 3, 1998, p. 12-13.

[18]TSN, December 2, 1998, p. 4.

[19]TSN, December 2, 1998, p. 7-8

[20]Exh. 36 (for the Defendants), Record, p. 153.

[21]TSN, December 2, 1998, p. 8-9.

[22]TSN, December 2, 1998, p. 22.

[23]Record, pp. 144-147.

[24]TSN, February 26, 1998, pp. 29-30.

[25]Rollo, pp. 31-32.

[26]Rollo, pp. 32-33.

[27]L-46908, May 17, 1980.

[28]G.R. No. 150897. April 11, 2005.

[29]TSN, February 26, 1998, pp. 44-45.

[30]G.R. No. 140472, June 10, 2002.

[31]TSN, June 17, 1999, pp. 3-4.

[32]TSN, December 2, 1998, pp. 4, 22.

[33]G.R. No. 97412, July 12, 1994.

[34]Par. 8, Complaint, Record, p. 2.

[35]Tan vs. Mandap, 429 SCRA 711, 721 (2004)

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