# JOSEFA CURBI, PLAINTIFF-APPELLEE, VS. CRESENCIO CURBI AND RAUL CURBI, DEFENDANTS-APPELLANTS.

Ponente: DE GUIA-SALVADOR, R., J.

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**DE GUIA-SALVADOR, R., J.:**

Filed pursuant to Rule 41 of the 1997 Rules of Civil Procedure, the appeal at bench seeks the reversal of the Decision[1] of the Regional Trial Court, Branch 73, Antipolo City (court a quo), in Civil Case No. 06-595, granting the Complaint for Foreclosure of Mortgage filed by herein plaintiff-appellee Josefa Curbi, the dispositive portion of which reads:

> "WHEREFORE, judgment is rendered:
>
> 1. Directing the defendants, within ninety (90) days from finality of this Decision, to deposit with the Clerk of Court of this Court, for payment to Josefa Curbi, the sum of Php551,000.00;
>
> 2. Directing the defendants, upon the deposit on their behalf of the amounts specified in the foregoing paragraph, to execute a deed of reconveyance of the property in question to Josefa Curbi, and the Register of Deeds for Binangonan, Rizal shall cancel Transfer Certificate of Title No. 530632 in the name of Spouses Cresencio Curbi and Norma Curbi and issue new title in the name of Josefa Curbi;
>
> 3. For non-compliance by the defendants of the directive in paragraph (2) of this dispositive portion, let the property be sold in accordance with the Rules of Court for the release of the mortgage debt and the issuance of title to the purchaser.
>
> SO ORDERED."[2]

The Facts

On May 5, 2004, defendant-appellant Cresencio Curbi (Cresencio) executed a Real Estate Mortgage (REM)[3] over a parcel of land with improvements, known as Lot No. 1-A of subdivision plan (LRC) PSD-323672, with an area of one hundred eighty-eight (188) square meters, situated in Barrio Buli, Cainta, Rizal, and covered by Transfer Certificate of Title No. 530632, (TCT No. 530632).[4] The REM was executed to secure the payment of a loan of Five Hundred Fifteen Thousand Pesos (P515,000.00) that Cresencio and his wife Norma obtained from plaintiff-appellee Josefa Curbi (Josefa). The mortgage was duly annotated as Entry No. 4342 at the back of TCT No. 530632 on November 9, 2005.[5]

With Cresencio's failure to pay his loan obligation upon maturity,[6] Josefa was constrained to sent a demand letter[7] dated May 2, 2006, but the demand was unheeded. Hence, on July 21, 2006, Josefa filed a Complaint for Foreclosure of Mortgage[8] before the court a quo against Cresencio, Teresita, Raul, Antonio, Norberto, Victoria, Evelyn and Sonny, all surnamed Curbi.

On August 15, 2006, Cresencio and Raul Curbi (Raul), Cresencio's son,[9] filed an Answer with Compulsory Counterclaim,[10] specifically denying the material averments in the Complaint. Cresencio averred that sometime in 1994, he and his wife Norma[11] entrusted the owner's duplicate copy of TCT No. 530632 to Josefa for

safekeeping and as a security for the loans in the total amount of P41,000.00 that they and their children had obtained from Josefa in 1987 and 1994.[12] As early as June 2005, Cresencio and Raul had tendered payment of their loan obligation to Josefa, but the latter refused to accept the payment and return the said TCT. Cresencio and Raul further claimed that Josefa had executed a simulated Real Estate Mortgage, forged Cresencio's signature thereon, and then had the document notarized,[13] in conspiracy with Cresencio's other children, namely Evelyn, Sonny and Victoria.[14] Cresencio denied having signed the Real Estate Mortgage nor appeared before a notary public to acknowledge the same. In fact, he was only made aware of the purported Real Estate Mortgage when he saw it appended to the Complaint for Foreclosure of Mortgage filed by Josefa. Upon learning of the forgery committed by the latter, Cresencio filed a Complaint for Falsification of Public Documents with the Office of the Provincial Prosecutor of Rizal.[15]

On July 6, 2008,[16] Cresencio passed away and was thereby substituted by his heirs.[17]

The RTC Decision

On November 12, 2012, the court a quo rendered the assailed Decision granting the complaint for foreclosure of mortgage, on the following findings and conclusion:

> xxx xxx xxx
> "The issue in this case is whether or not defendant Cresencio is indebted to plaintiff in the amount of Php515,000.00 which is secured by TCT No. 530632. Corollarily, is the sum of Php515,000.00 as shown in the Real Estate Mortgage, the amount which is really due the plaintiff?
>
> xxx xxx xxx
> In this case, defendants tried to avoid the claim of the plaintiff by contesting the signature of Cresencio on the REM was a forgery. Second, their obligation is only Php41,000.00 which they tendered to the plaintiff but the latter refused.
>
> Noteworthy is the fact that the falsification of public documents filed by Cresencio against plaintiff Josefa, Marilou Curbi, Evelyn Curbi, Sonny Curbi and Victoria C. Macandong involving the REM was dismissed for insufficiency of evidence.
>
> xxx Being a public document, it [Real Estate Mortgage] enjoys the presumption of regularity. It is a prima facie evidence of the truth of the facts stated therein and a conclusive presumption of its existence and due execution. To overcome this presumption, there must be clear and convincing evidence. Absent such evidence, as in this case, the presumption must be upheld. (citations omitted)
>
> All the defendants could offer by way of evidence was his claim that the machine copy of the REM attached to the Complaint was not signed by Cresencio. However, during the trial of this case on June 27, 2008, a clear and more legible copy of the REM (Exh "B-1") bearing the signature of Cresencio was presented and admitted in evidence. xxx"[18]
>
> xxx xxx xxx

The Issue

Aggrieved, Raul filed the appeal at bench[19] seeking the reversal and setting aside of the assailed decision on a sole error ascribed to the court a quo, to wit:

> "THE COURT A QUO ERRED WHEN IT DISREGARDED JURISPRUDENCE ON THE PROOF REQUIRED TO ESTABLISH FORGERY IN ARRIVING AT THE CONCLUSION THAT THE SIGNATURE OF CRESENCIO CURBI ON THE REAL ESTATE MORTGAGE WAS FORGED."[20]

The crux of the matter rests on whether or not the signature of Cresencio in the Real Estate Mortgage was forged.


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Defendant-appellant Raul impugns the authenticity of the Real Estate Mortgage, asserting that Cresencio neither signed the said document nor appeared before the Notary Public to acknowledge the same as his voluntary act. Raul further asserts that the fact of forgery can only be established by a comparison of the alleged forged signature with the authentic and genuine signature, and for this purpose, the best evidence of the forgery is the original document containing the purported forged signature.[21] Raul faults Josefa for failing to submit the original copy of the Real Estate Mortgage and asserts that without it, the court a quo could not have sufficiently and accurately assessed whether Cresencio's signature thereon was genuine or forged.

On the other hand, plaintiff-appellee Josefa counters that despite his assertion to the contrary, it was actually Raul who failed to present the original copy of the REM. Moreover, both the TCT, bearing the annotation of the mortgage, and the Real Estate Mortgage are public documents that enjoy the presumption of authenticity and regularity, and are thus prima facie evidence of the truth of the facts therein stated. Thus, to overcome such presumption of regularity, clear and convincing evidence must be presented by the one contesting it, which Raul failed to do.[22]

The Court's Ruling
Upon a judicious scrutiny of the records, We find the instant appeal bereft of merit.

Rule 132, Section 19 of the Rules of Court states that documents acknowledged before a notary public are regarded as public documents (except for last wills and testaments)[23] that enjoy the presumption of regularity, genuineness and due execution, and are prima facie evidence of the truth of the facts stated therein.[24] Essentially, the notarial seal converts the instrument from private to public that may be presented in evidence without need for proof of its genuineness and due execution.[25] Hence, the burden of proof to overcome the presumption of the due execution of a notarial document lies on the one contesting it.[26] In fact, one who denies the due execution of a deed where his signature appears must show that contrary to the recital in the jurat, he never appeared before the notary public and acknowledged the deed to be his voluntary act.[27]

In the case at bar, the Real Estate Mortgage was notarized before Notary Public Ernesto D. Cenal. Being a notarized document, the Real Estate Mortgage has in its favor the presumption of regularity, genuineness and due execution,[28] not only as to the signature of Cresencio as the mortgagor, but also as to the accuracy of the total amount of indebtedness. Against the said disputable presumption, Raul's bare allegation that he never signed such document nor appeared before the Notary Public deserves no weight and credence.

Then, too, Raul failed to clearly and convincingly prove his claim of forgery. Jurisprudence is replete that any allegation of forgery must be proved by clear, positive, and convincing evidence by the party alleging it.[29] Mere denials are not sufficient.[30] The fact of forgery should not be presumed,[31] but must be established by comparing the alleged forged signature of Cresencio with a genuine one. Raul failed to present any specimen signature of Cresencio which could have been used for comparison with the latter's purported signature in the Real Estate Mortgage. All that Raul presented were uncorroborated and self-serving statements which by law are bereft of credence and probative value. What he submitted is a mere photocopy of the Real Estate Mortgage,[32] which is inadmissible for failing to comply with the Best Evidence Rule.[33] Raul likewise shifted the burden of proving the fact of forgery to Josefa, whom he faulted for failing to present an original copy of the Real Estate Mortgage. It must be emphasized that as the one who alleged forgery, Raul had the burden of proving the same. Contrary to Raul's claims, Josefa actually was able to offer in evidence the original copy of the Real Estate Mortgage, which was marked as Exhibit "B-1" for the plaintiff.

Furthermore, Raul denies that the loan obtained from Josefa amounted to P515,000.00, insisting that Cresencio borrowed the total amount of P41,000.00[34] only in settlement of which he and Cresencio in fact tendered

payment in the sum of P41,000.00, which Josefa however refused to accept.[35]

Being self-serving and unsubstantiated by even a scintilla of competent evidence, Raul's allegations deserve no credence. Notably, it was elicited during Raul's cross-examination that he was not present during the times when his parents (Cresencio and Norma) obtained loans from Josefa.[36] Thus, he did not have personal knowledge of the fact of such loans. Thus his bare assertions are incorrigibly hearsay. As to the alleged tender of payment which Josefa unjustifiably refused to accept, all that he adduced in support thereof is a photocopy of a letter[37] tendering payment of P41,000.00 to Josefa and demanding the return of the Title. Assuming arguendo that Raul and Cresencio had indeed tendered payment which Josefa refused to accept, the least they should have done was to consignate the amount in court in accordance with Articles 1256[38] and 1258[39] of the Civil Code. Their failure to do so renders their story incredible.

In stark contrast, Josefa satisfactorily established the genuineness of Cresencio's signature in the Real Estate Mortgage. Particularly, Evelyn Curbi (Evelyn), Cresencio's daughter and an adverse witness for Josefa testified that sometime in the month of April 2004, her father Cresencio asked her to prepare a list of all the amounts that he (Cresencio) owed Josefa, which document was denominated as the Real Estate Mortgage. The amounts indicated therein were based on those dictated by Cresencio to Evelyn. Evelyn further narrated that after completing the document, she handed it to Cresencio, who signed it.[40] Additionally, Myrna Vita, one of the witnesses to the Real Estate Mortgage, likewise confirmed in open court that she was present when her uncle Cresencio signed the Real Estate Mortgage.[41]

Parenthetically, Rule 132, Section 22 of the Rules of Court describes the manner for proving a person's handwriting, thus,

> "Section 22. How genuineness of handwriting proved. – The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because he has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge." (Emphasis supplied)

Clearly, the genuineness of Cresencio's signature was confirmed by Evelyn and Myrna Vita, who both saw Cresencio sign the Real Estate Mortgage.

Furthermore, the Real Estate Mortgage was inscribed in TCT No. 530632, as Entry No. 4342. Such inscription was an act of the Register of Deeds, which is deemed to have been performed regularly in pursuit of his official duties. It has been held that when a public officer in the performance of his duty makes an entry in the public records, the document of such entry is deemed prima facie evidence of the facts stated therein,[42] unless proven otherwise.

As to the criminal case for falsification of public documents filed by Cresencio against Josefa and her alleged co-conspirators[43] before the Provincial Prosecutor of Rizal, suffice it to stress that the case had been dismissed for insufficiency of evidence.[44]

In fine, We find that the court a quo committed no reversible error in rejecting Raul's unsubstantiated assertion of forgery and denial of having signed the REM before a Notary Public. Although the burden of proof in civil cases is on the party who would be defeated if no evidence is given on either side, i.e., the plaintiff, who must establish his case by a preponderance of evidence,[45] it has been ruled, however, that the correct application of said rule is to the effect that each of the contending parties has the onus of proving his own affirmative allegations.[46] Whether plaintiff or defendant, therefore, the party who asserts the affirmative of an issue has the burden of

presenting at the trial such amount of evidence required by law to obtain a favorable judgment.[47] As the party invoking the defense of forgery and impugning a duly notarized REM, Raul failed to discharge such burden.

However, the court a quo erred in fixing the amount of the mortgage indebtedness at P551,000.00. A perusal of the Complaint for Foreclosure,[48] as well as the Real Estate Mortgage[49] shows that the amount loaned by Josefa to Cresencio is only P515,000.00 and not P551,000.00 as erroneously found by the court a quo.[50] Consequently, a correction thereof is in order.

WHEREFORE, premises considered, the instant appeal is hereby DENIED for lack of merit. Accordingly, the Decision of the court a quo in Civil Case No. 06-595 is hereby AFFIRMED, with the modification ordering the payment of the amount of P515,000.00 instead of P551,000.00.

**SO ORDERED.**

Rosario, and Dimagiba, JJ., concur.

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[1] Records, Folder 1, pp. 129-134.

[2] Id., Folder 1, pp. 133-134.

[3] Id., Folder 2, p. 5.

[4] Id., p. 3.

[5] Id., Folder 1, pp. 1-2.

[6] Id., p. 2.

[7] Id., p. 10.

[8] Id., pp. 1-2. The case was docketed as Civil Case No. 06-595.

[9] The other co-defendants Teresita Curbi, Antonio Curbi, Norberto Curbi, Victoria Curbi, Evelyn Curbi and Sonny Curbi did not file an Answer.

[10] Supra note 1, Folder 1, pp. 16-19.

[11] Prior to Norma's death in 1994.

[12] Supra note 1, Folder 1, pp. 16-17.

[13] Id., pp. 17-18.

[14] Co-defendants who did not file an Answer.

[15] Supra note 1, Folder 1, pp. 17-18.

[16] Id., p. 61.

[17] Id., p. 60.

On April 2, 2010, co-defendants Antonio Curbi, Norberto Curbi, Victoria Curbi, Evelyn Curbi and Sonny Curbi filed a Joint Manifestation clarifying that they are not represented by Atty. Wenceslao Narido, Cresencio and Raul's counsel, and further stating that they did not engage the services of a counsel because they never intended to controvert the Complaint of Josefa, as the debts were truly incurred by their father from the latter. (Records,


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Folder 1, pp. 94-95)

[18] Id., pp. 132-133.

[19] Id., Folder 1, pp. 135-136.

[20] Rollo, p. 14.

[21] Id., pp. 14-15.

[22] Id., pp. 38-41.

[23] Rules of Court, Rule 132, Section 19 Classes of Documents. — For the purpose of their presentation evidence, documents are either public or private.
Public documents are:
(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
(b) Documents acknowledge before a notary public except last wills and testaments; and
(c) Public records, kept in the Philippines, of private documents required by law to the entered therein.
All other writings are private. (20a)" (Emphasis supplied)

[24] Spouses Santos vs. Spouses Lumbao, G.R. No. 169129, March 28, 2007.

[25] Rules of Court, Rule 132, Section 30; Willard B. Riano, Evidence: The Bar Lecture Series, 2009, p. 234.

[26] Spouses Alcazar vs. Arante, G.R. No. 177042, December 10, 2012, citing Ros vs. Philippine National Bank-Laoag Branch, G.R. No. 170166, April 6, 2011,citing Pan Pacific Industrial Sales Co., Inc. vs. CA, G.R. No. 125283, February 10, 2006.

[27] Supra note 24.

[28] Supra note 26.

[29] Lim vs. Equitable PCI Bank, G.R. No. 183918, January 15, 2014, citing Bautista vs. Court of Appeals, 479 Phil. 787, 793 (2004).

[30] Supra note 24.

[31] Supra note 29.

[32] Supra note 1, Folder 2, p. 10.

[33] Rules of Court, Rule 130, Section 3. Original document must be produced; exceptions. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
(d) When the original is a public record in the custody of a public officer or is recorded in a public office.

[34] See TSN dated September 23, 2011, pp. 6-7; 10-11.

The first loan was in 1987, when Raul's mother (Cresencio's wife) and Victoria (Raul's sister and co-defendant in the case) approached Josefa to borrow P16,000.00. The second loan was obtained in 1994, when Raul's mother died. His sisters Evelyn and Victoria approached Josefa to borrow P25,000.00.

[35] Id., pp. 14-17.

[36] See TSN dated February 3, 2009, pp. 3-5.

"Q: In other words, you were not all the time with your father because you were working, is that correct?
A: Yes, sir.
Q: And you were not also always with your mother because you were working, correct?
A: Correct."

[37] Supra note 1, Folder 2, p. 11.

[38] If the creditor to whom tender of payment has been made refuses without just cause to accept it, the debtor shall be released from responsibility by the consignation of the thing or sum due.

Consignation alone shall produce the same effect in the following cases:

(1) When the creditor is absent or unknown, or does not appear at the place of payment;
(2) When is is incapacitated to receive the payment at the time it is due;
(3) When, without just cause, he refuses to give a receipt;
(4) When two or more persons claim the same right to collect;
(5) When the title of the obligation has been lost.

[39]The consignation shall be made by depositing the things due at the disposal of judicial authority, before whom the tender of payment shall be proved, in a proper case, and the announcement of the consignation in other cases.

The consignation having been made, the interested parties shall also be notified thereof.

[40] See TSN dated May 29, 2012, pp. 8-9.

[41] Supra note 37, p. 9.

[42] Rules of Court, Rule 132, Section 23. Public documents as evidence. — Documents consisting of entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.

[43] Marilou Curbi, Evelyn Curbi, Sonny Curbu, Victoria Curbi-Macandgog. (Supra note 1, Folder 2, p. 12).

[44] Resolution of the Office of the Provincial Prosecutor of Rizal in I.S. No. 06-05449, entitled Cresencio Curbi vs. Josefa Curbi, et al., dismissing the case for the falsification of public documents for insufficiency of evidence.

[45] Pacific Banking Corporation Employees Organization vs. Court of Appeals, 288 SCRA 197, 206.

[46] Geraldez vs. Court of Appeals, 230 SCRA 330.

[47] Republic vs. Court of Appeals, 182 SCRA 290, 300-301.

[48] Supra note 1, Folder 1, p. 2.

[49] Id., Folder 2, p. 5.

[50] Id., Folder 1, p. 133.


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