

**INSURANCE SERVICES AND COMMERCIAL TRADERS, INC.
(INSTRADE INC.), PETITIONER, VS. THE COURT OF APPEALS, AND/OR
HONORABLE JUSTICES MANUEL C. HERRERA, JUSTO P. TORRES, JR.,
PACITA ...**

G.R. No. 109305. October 02, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review on appeal are: the Decision[1] of the Court of Appeals dated October 30 1992, and its Resolution,[2] dated February 3, 1993, in CA - G.R. CV No. 15737. The appealed decision affirmed the judgment of the Regional Trial Court of Davao City in Civil Case No. 11299 ordering the annulment of an extra-judicial foreclosure sale of land with damages filed by private respondents against petitioner. The dispositive portion of the trial court's decision dated December 28, 1986, reads:

"WHEREFORE, in view of all the foregoing considerations, judgment is hereby rendered, as follows:

I.

ON THE COMPLAINT:

a)

Declaring, as it is hereby declared, that the Special Power of Attorney (Exh. 'A') is null and void ab initio, and therefore, it follows that the Real Estate Mortgage contract (Exh. 'C') to be a complete nullity. As such the extra-judicial foreclosure proceedings, as well as the public auction sale and the Sheriff's Sale that ensued as conducted by defendant-City Sheriff of Davao and Deed of Sale and the Affidavit of Consolidation executed by Noe C. Elizaga, President of Instrade, Inc. all being inefficacious for lack of legal and factual basis are likewise declared of no legal force and effect, and therefore, the Register of Deeds of Davao City is hereby ordered to reinstate in the names of the plaintiffs herein their Transfer Certificate of Title No. T-37249 which it cancelled on February 2, 1981, to its previous legal efficacy, as if it has never been cancelled at all, and in effect cancelling TCT No. T-80694 which it issued in the name of the defendant/Cross-Claimant INSTRADE, INC.;

b)

Ordering defendants CANTRADE (DAVAO) and/or CESAR A. BUSQUE to pay plaintiffs the sum of P10,000.00 as moral damages, and another P5,000.00 as exemplary damages;

c)

Ordering defendants CANTRADE (DAVAO) and/or CESAR A. BUSQUE to pay plaintiffs the sum of P10,000.00 as and for attorney's fees, and P5,000.00 as reimbursement of expenses in this litigation; and

d)

Ordering defendants CANTRADE (DAVAO) and/or CESAR A. BUSQUE to pay the costs.

II.

ON INSTRADE'S CROSS-CLAIM:

a)

Its Cross-claim against CANTRADE (DAVAO) and/or CESAR A. BUSQUE is hereby allowed and granted, and therefore, Defendants/Cross-Defendants CANTRADE (DAVAO) and/or CESAR A. BUSQUE are, jointly and severally, ordered to pay its debt/obligation to INSTRADE, INC., in the total amount of P72,340.56 plus interests thereon at 12% per annum computed from dates such obligations became due and payable; and

b)

Further ordering Defendants/Cross-Defendants CANTRADE (DAVAO) and/or CESAR A. BUSQUE, jointly and severally, to pay INSTRADE, INC., the sum equivalent to 25% of the total demandable amount, as and in the concept of attorney's fees; and

c)

Finally, ordering said Defendants/Cross-Defendants CANTRADE (DAVAO) and/or CESAR A. BUSQUE, jointly and severally, to pay INSTRADE, INC., the sum of P2,500.00 as and for litigation expenses.

III.

ON THE CROSS-CLAIM AS WELL AS THIRD PARTY COMPLAINT OF DEFENDANT/CROSS-CLAIMANT/THIRD PARTY PLAINTIFF CESAR A. BUSQUE:

For being unmeritorious, said Cross-Claim against INSTRADE, INC., and Third-Party Complaint against Third Party Defendants De Castro is/are disallowed and dismissed outright.

IV.

ON THE COUNTERCLAIMS:

Based on considerations of justice, fairness and equity, the counterclaims set up by INSTRADE, INC., CESAR BUSQUE, and the DE CASTRO spouses as Third Party Defendants is/are dismissed."^[3]

As found by the trial court, the facts are as follows:

Paz Salvaleon and her sister Vivencia Salvaleon, both married, were the owners of a parcel of land located at Ma-ao, Davao City, registered under the Transfer Certificate of Title (TCT) No. T-37249 of the Register of Deeds of Davao City.

The Salvaleons borrowed two thousand (P2,000.00) pesos from spouses Amador and Mila de Castro under the following conditions: (1) They mortgage their parcel of land in favor of the spouses de Castro. (2) They surrender the possession of the title to the latter. And (3) they sign an authorization to obtain a loan from a bank.

Amador sought the advice of Cesar Busque, the General Manager of Cantrade Davao, on how to solicit a mortgage, using the Salvaleons' property as collateral. Busque recommended a "fast loan," where the Salvaleons would sign a prepared special power of attorney. The spouses de Castro refused. Instead, a special power of attorney authorizing Mila to mortgage the property was signed by the Salvaleons. Amador surrendered the said document "already notarized" to Busque. Afterwards, Busque negotiated a real estate mortgage with Insurance Services and Commercial Traders, Inc. (Instrade), using a forged special power of attorney purportedly signed by the Salvaleons, authorizing Busque to use the property as security for Cantrade's indebtedness to Instrade. When

Cantrade failed to fulfill its obligation, Intrade initiated foreclosure proceedings on the property.

Eventually, the Salvaleons learned of the scheduled extra-judicial foreclosure of their property by the City Sheriff. They filed a complaint^[4] for annulment of the foreclosure sale and damages before the Regional Trial Court of Davao City, against Intrade, Cantrade, and Busque. Paz and Vivencia were assisted by their respective husbands, Manuel Garcia and Dalmacio Abad. The suit was temporarily restrained by the trial court's October 25, 1978 Order, which was lifted on October 30, 1978.

The foreclosure sale pushed through and after the expiration of the period for redemption, TCT No. T-80694 was issued in the name of Intrade. The new title bore the annotation, Lis Pendens, under Entry No. 267545, carried over from the cancelled title.

In their complaint, the Salvaleons claimed that the special power of attorney authorizing Busque to mortgage their property to Intrade was a forgery. Allegedly, the real estate mortgage between Cantrade and Intrade and its subsequent foreclosure were null and void. The Salvaleons prayed for the reconveyance of the property in their favor.

On October 13, 1978, Busque admitted in his Answer that Cantrade was indebted to Intrade. Busque's version was that Intrade required a surety bond to cover Cantrade's purchases of automotive parts on credit. Cantrade failed to furnish a surety bond, hence, Intrade agreed to accept a direct real estate mortgage. The plan was for the spouses de Castro to sell the Salvaleons' foreclosed property for thirty thousand (P30,000.00) pesos. Inasmuch as the Salvaleons were anyway willing to sell their property for only an additional ten thousand (P10,000.00) pesos, apart from the extinguishment of a P2,000.00 debt, Busque thought he would as well pay the balance of twenty thousand (P20,000.00) pesos directly to the spouses de Castro. Then in turn, the spouses de Castro and Busque would mortgage the property to Intrade and the final deed of absolute sale would be executed later on. Before the plan materialized, a special power of attorney signed by the Salvaleons authorizing Busque to mortgage the property and its TCT- 37249 were forwarded to Intrade. Cantrade even submitted as optional collateral to Intrade, two other properties owned by a certain Conchita Ambe. Intrade accepted the properties owned by Ambe, but refused to surrender the documents of the Salvaleons' parcel of land.

On January 12, 1979, Busque, to exculpate himself, filed an amended answer, denying he owned Cantrade, and pointing to Antonio J. Palma, Jr., as its proprietor.

On January 22, 1979, Intrade in its Answer alleged good faith, not knowing nor participating in the irregularity. It asserted that it merely relied on the express authority given by the Salvaleons to Cantrade.

On February 5, 1979, Busque moved to join as indispensable party the alleged proprietor of Cantrade, Antonio J. Palma, Jr. The motion was denied for lack of merit on March 1, 1979. However, the motion of Busque for leave to file third party complaint against the spouses de Castro, was given due course.

As third party defendants, the spouses de Castro denied they offered to sell the Salvaleons' property to Busque. They claimed Busque promised to help them secure a loan from JVA Financing Corporation and they entrusted the Salvaleons' title and Mila's authority as mortgagor to Busque. It was only later when Amador de Castro discovered that JVA Financing Corporation was non-existent. When he confronted Busque, the latter admitted that the Salvaleons' title was used as mortgage for a loan from Intrade. Amador repeatedly asked for the proceeds of the loan and Busque assured him that as soon as a certain Mr. Frace arrived, the money would be released. This never happened. When the spouses de Castro threatened to sue, Busque made a ten thousand (P10,000.00) peso deposit and guaranteed the return of the Salvaleons' title. The spouses de Castro asserted they never transacted with Cantrade nor Intrade.

On December 28, 1986, the lower court rendered judgment in favor of the Salvaleons. It ruled that there was no valid transfer of the Salvaleons' property to Instrade. The court annulled the foreclosure proceeding by the City Sheriff, ordered the cancellation of TCT No. 80694 in the name of Instrade, and ordered reinstatement of TCT No. 37249 registered in favor of the previous owners, the Salvaleons.

Instrade appealed to the Court of Appeals. On October 30, 1992, respondent court rendered its decision, affirming the judgment of the trial court. Instrade filed a motion for reconsideration but the same was denied on February 3, 1993.

Hence this petition for review, with petitioner Instrade contending that:

- A PUBLIC DOCUMENT IS ENTITLED TO FULL CREDIT BY A THIRD PARTY.
- A PERSON WHO IS AT FAULT OR GUILTY OF CONTRIBUTORY NEGLIGENCE IS NOT ENTITLED TO JUDICIAL RELIEF.

Essentially the basic issue is: Whether or not the Court of Appeals erred in affirming the decision of the trial court, which nullified a forged notarized special power of attorney purportedly executed by the Salvaleons.

Petitioner claims that the special power of attorney allegedly executed by the Salvaleons authorizing Cantrade and/or Busque as their agent is a public document duly executed by the parties, in accordance with notarial law. Vivencia Salvaleon's testimony that their signatures were forged was belied by the notarial attestation of Atty. Bumanglag. Since the attestation of the notary was not controverted, its regularity is presumed. Furthermore, petitioner stresses that Vivencia offered contradictory evidence. She denied she appeared before the office of Atty. Bumanglag. At the same time, she presented another power of attorney, authorizing Mila as the Salvaleons' representative. This power of attorney was curiously also notarized by Atty. Bumanglag.

The Rules of Court provide for the manner by which a document may be presented as evidence. Section 30 of Rule 132 states:

"Proof of notarial documents. - Every instrument duly acknowledged or proved and certified as provided by law may be presented in evidence without further proof, the certificate of acknowledgment being prima facie evidence of the execution of the instrument or document involved."

A public document executed and attested through the intervention of the notary public enjoys the presumption of regularity. This presumption is rebuttable, only by strong, complete and conclusive proof. The questioned special power of attorney is void ab initio for lack of consent on the part of the Salvaleons who are supposed to be the "principals" of Cantrade.

The records also showed:

First, there were three special powers of attorney notarized by Atty. Bumanglag bearing the same notarial registry, allegedly executed by (1) the Salvaleons, authorizing Mila to mortgage their property; (2) the Salvaleons, empowering Cantrade and/or Busque to mortgage the same property; and (3) Conchita Ambe, allowing Cantrade and/or Antonio Palma, Jr. to mortgage two other parcels of land owned by Ambe.

Second, Busque testified that the Salvaleons were not with him, when he presented the second document for notarization, thus:

"Q.

You are swearing under oath that those documents were signed without the presence, the appearance of the parties other than the witnesses, are you swearing that under oath?

A.

Yes, sir."[5]

We agree with the trial court when it said:

"From all the foregoing assertions which were not only left undisputed, but in fact admitted, there exists very strong and sufficient grounds to believe that the controversial notarized documents were really procured under questionable circumstances, as fraudulent misrepresentations appear perceptibly obvious in obtaining the supposed signatures which were repudiated as forged, and the admittedly irregular manner by which said documents were notarized, would clearly establish the conclusion that the Special Power of Attorney (Exh. 'A') purportedly executed by the plaintiffs suffers from a congenital flaw thus subjecting its validity to serious legal doubt. As such, it is that kind of instrument which plaintiffs has correctly asserted to be null and void ab initio for due lack of consent on the part of the plaintiffs who in the attendant circumstance above-narrated are supposed to be the 'principals' in that Special Power of Attorney (Exh. 'A')."[6]

Conclusions and findings of fact by the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons because the trial court is in a better position to examine real evidence, as well as to observe the demeanor of the witnesses while testifying in the case.[7] The fact that the Court of Appeals adopted the findings of fact of the trial court makes the same binding upon this Court. We find no reason to alter the conclusion of both courts.

Petitioner contends that it was an innocent purchaser for value, and it should be protected as against the registered owners who were negligent. As early as *Juaquin vs. Madrid*,[8] we said that in order that the holder of a certificate for value issued by virtue of the registration of a voluntary instrument may be considered a holder in good faith and for value, the instrument registered should not be forged. When the instrument presented is forged, even if accompanied by the owner's duplicate certificate of title, the registered owner does not lose his title, and neither does the assignee in the forged deed acquire any right or title to the property. An innocent purchaser for value is one who purchases a titled land by virtue of a deed executed by the registered owner himself not by a forged deed.[9] Patently, petitioner is not an innocent purchaser.

Petitioner was given the option to choose a mortgage collateral from among the real estates registered in the names of third parties. It chose the one owned by the Salvaleons, which Cantrade later proposed to replace with Conchita Ambe's properties. Petitioner refused because the offered properties were subject to restrictions under the Public Land Laws. Despite the opportunity to scrutinize the documents, including the powers of attorney of Ambe and the Salvaleons, petitioner did not do so. Given these circumstances, petitioner cannot claim good faith.

The Salvaleons proved that it was not their intention to mortgage the property to petitioner, and it was Cantrade and Busque who forged the special power of attorney. Petitioner made no effort to verify whether the Salvaleons really offered their property as collateral. Where the petitioner acted with undue haste in granting the mortgage loans and did not ascertain the ownership of the lands being mortgaged, as well as the authority of the supposed agent executing the mortgage, it cannot be considered an innocent mortgagee. We held in *Pichay vs. Celestino*, 20 SCRA 314 (1967) that:

"One who purchases real estate with knowledge of a defect or lack of title in his vendor cannot claim that he has acquired title thereto in good faith as against the true owner of the land of an interest therein; and the same rule must be applied to one who has knowledge of facts which should have put him upon such inquiry and investigation as might be necessary to acquaint him with the defects in the title of his vendor. A purchaser can not close his eyes to facts, which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor. His mere refusal to believe that such defect exists, or his willful closing of his eyes to the possibility of the existence of a defect in his vendor's

title, will not make him an innocent purchaser for value, if it afterwards develops that the title was in fact defective and it appears that he had such notice of the defect as would have led to its discovery had he acted with that measure of precaution which may reasonably be required of a prudent man in a like situation."

By putting blinders in its eyes, and by refusing to see the defects in the transaction, petitioner added to the injury of the Salvaleons. As pointed out by the respondent court, Cantrade had bad business dealings with the petitioner. Cantrade attempted to settle its indebtedness with a check that bounced. Cantrade offered a security registered under the names of third persons. When a special power of attorney allegedly signed by the Salvaleons was presented to the petitioner's counsel, the latter approved the same, without investigation as to the true owners who were residing within the same vicinity. As ruled by respondent court, an ordinarily prudent man would have inquired into the authenticity of the title, its location, and the owners. Petitioner's failure to investigate betrays its good faith. We, therefore, find that petitioner cannot be an innocent purchaser.

WHEREFORE, the instant petition is hereby DENIED. The Decision and Resolution of the Court of Appeals in CA G.R. CV No. 15737 are hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Rollo, pp. 6-21.

[2] Id. at 23.

[3] Id. at 88-90.

[4] Id. at 42-48.

[5] TSN, July 27, 1981, p. 244.

[6] Rollo, p. 83.

[7] Chase vs. Buencamino, Sr., 136 SCRA 365, 381 (1985).

[8] 106 Phil. 1060, 1063 (1960).

[9] Ibid.

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