

PHILIPPINE BANK OF COMMUNICATIONS, PETITIONER, VS. THE COURT OF APPEALS AND OLYMPIA FERNANDEZ-PUEN, RESPONDENTS.

G.R. No. 109803. April 20, 1998

Ponente: PUNO, J.

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PUNO, J.:

The present case arose from a complaint for "Nullification of Real Estate Mortgage"[1] filed by private respondent Olympia Fernandez-Puen against her estranged husband, Chee Puen, and petitioner Philippine Bank of Communications before the Regional Trial Court of Pasig.

Private respondent is the president and majority stockholder of Global, Inc., a 100% Filipino corporation engaged in selling pharmaceutical products, hospital equipment and supplies. Her husband, Chee Puen, used to be its General Manager. They have been living separately from each other prior to the present controversy. She resides in Timog Avenue, Quezon City, while he lives in Bel-Air Village, Makati.

The records show that on April 25, 1978, Chee Puen, then the general manager of Global, Inc., informed respondent that their company needed a three hundred thousand peso (P300,000.00) loan for its operational expenses. He proposed that her paraphernal lot in Makati be used as collateral.[2] Respondent hesitated as she was afraid they would not be able to pay the loan. He assured her that the loan would not exceed P300,000.00 and she was asked to sign three (3) sets of blank forms of real estate mortgage (REM) of petitioner bank. He wrote down in pencil the figure 300 under the space provided for the amount to be loaned and indicated with checkmarks the spaces where respondent should sign. Respondent signed the blank mortgage forms due to Chee Puen's representation. Chee Puen had the mortgage document later notarized by Atty. Edilberto Arzadon, using a residence certificate bearing respondent's forged signature.

It appears that Chee Puen then applied for a three million peso (P3,000,000.00) loan from petitioner bank for Global, Inc. To secure the loan, he mortgaged respondent's paraphernal lot in Makati, using the blank real estate mortgage forms signed by her. He also submitted a "Secretary's Certificate of Board Resolution" (marked as Exhibit "H") where he misrepresented himself as president and acting corporate secretary of Global, Inc.[3]

It is established that petitioner bank did not investigate Chee Puen's authority to mortgage respondent's property. Respondent's signature in her residence certificate was not verified. Neither was the verity of the "Secretary's Certificate of Board Resolution" (Exh. "H") ascertained. The three-million peso (P3,000,000.00) loan was approved without undergoing the usual bank procedure.

Three (3) years later, in February 1981, respondent and Chee Puen had a quarrel because respondent refused to give the cash allegedly needed for Global, Inc. Chee Puen threatened respondent to leave their company. A special meeting of Global's board of directors was called and it passed a resolution replacing Chee Puen as official signatory of its checks.

On February 16, 1981, respondent personally delivered a copy of the board resolution to the Buendia branch of petitioner bank. On the occasion, respondent chanced upon Chee Puen while encashing two (2) checks for Global, Inc. Respondent tore the checks into pieces (Exhibits "E" and "F") as he has been disauthorized to manage the company. When Chee Puen left, the teller informed respondent that Chee Puen had obtained a loan of P3,000,000.00 from the bank.

After further investigation, respondent filed this case against Chee Puen and petitioner to nullify the subject mortgage deed. In her complaint, respondent alleged that she did not authorize Chee Puen to mortgage her property to secure the aforesaid P3 M loan. She claimed that her residence certificate used to notarize the mortgage application form was spurious.

At the trial, respondent presented Francisco Cruz, Jr., Supervising Document Examiner of the PC-CIS Crime Laboratory, to prove that she signed the subject mortgage forms in blank. Cruz testified that the subject mortgage contract, consisting of one (1) original and two (2) duplicate original copies, contained respondent's genuine signatures, but the signatures were affixed before the typewritten entries therein were prepared. He disclosed, further, that respondent's alleged signature on the residence certificate presented to notary public Arzadon differed from respondent's specimen signatures. He opined that it was written by another person.

For its part, petitioner bank maintained that respondent and Chee Puen went to its office in April, 1978 to apply for the loan. She accomplished and signed the mortgage contract in its office and, afterwards, had it notarized by Atty. Arzadon in the presence of witnesses.

On May 30, 1986, the trial court rendered judgment in favor of respondent. The relevant portion of its decision^[4] provides:

"Considering that defendant Chee C. Puen has been guilty of bad faith and defendant Philippine Bank of Communications of gross negligence amounting to bad faith (See *Soberano vs. Manila Railroad Co.*, L-19407, November 23, 1966, 18 SCRA 732, 738), which compelled the plaintiff to incur expenses to protect her interest, plaintiff is entitled to an award of attorney's fees and expenses of litigation. (Article 2208, pars. (2) and (5), New Civil Code).

"IN VIEW OF ALL THE FOREGOING, the Court renders judgment in favor of plaintiff and against defendants Philippine Bank of Communications and Chee C. Puen, declaring the real estate mortgage (Exhs. C-3 and 4 - PB Com) null and void; ordering defendant Philippine Bank of Communications to deliver the owner's duplicate copy of TCT No. (97379) S-4748 of the Province of Rizal to the plaintiff; and the Register of Deeds of Rizal (Makati branch) to cancel the subject real estate mortgage in favor of Philippine Bank of Communications upon plaintiff's payment of the prescribed fees.

"The defendants are ordered to pay plaintiff, jointly and severally, the amount of Fifty Thousand Pesos (P50,000.00), for and as attorney's fees and expenses of litigation.

"The counterclaims of defendants are dismissed for lack of merit.

"SO ORDERED."

On November 20, 1992, the Court of Appeals^[5] modified the decision of the trial court, thus:

"WHEREFORE, the decision under appeal should be, as it is hereby, affirmed in all its aspects except that the portion of the judgment ordering defendants to pay plaintiff jointly and severally the amount of P50,000.00 for attorney's fees and expenses of litigation should be, as it is hereby, deleted therefrom.

"SO ORDERED."

Hence, this petition where it is contended:

"1. The Honorable Court of Appeals erred in affirming the nullification of the subject real estate mortgage by the lower court.

"2. The Honorable Court of Appeals erred in affirming the ruling of the lower court that the respondent was not estopped/barred from questioning the legality/validity of the real estate mortgage.

"3. The Honorable Court of Appeals erred in affirming the ruling of the lower court that the petitioner is not entitled to its compulsory counterclaim."

We reject the first contention. The private respondent proved that it was not her intent to mortgage her lot to secure a P3 M loan of Global, Inc. Chee Puen misrepresented to her that the loan would be no more than P300,000.00. Due to her trust on Chee Puen, she signed the mortgage application in blank. Chee Puen then applied for a P3 M loan. He had the mortgage application notarized using a forged residence certificate of the respondent. He also submitted to the petitioner bank a "Secretary's Certificate of Board Resolution" where he falsely stated that he was President and Acting Corporate Secretary of Global, Inc.

The testimony of the private respondent is well corroborated by other evidence. Mr. Francisco Cruz, Supervising Document Examiner of the PC-CIS Crime Laboratory found and concluded that "the three (3) questioned handwritten signatures of Olympia Fernandez-Puen appearing in the real estate mortgage document were signed before the typewritten entries were prepared" (Exh. "N", "N-2"). The same official also found that the "questioned signature of Olympia Fernandez-Puen appearing in the Residence Certificate No. 00019600 when compared with her standard signatures were written by two different persons" (Exh. "T", "T-2"). There is no doubt also that Chee Puen was never the President of Global, Inc. and hence the "Secretary's Certificate of Board Resolution" to that effect is false and fraudulent. In light of these established facts, it is futile for petitioner bank to insist that the real estate mortgage contract should not be nullified. Respondent has not consented to collateralize Global, Inc.'s P3 M loan with her paraphernal land.

We also reject petitioner's plea that the equitable principle of estoppel^[6] be applied against the respondent. Article 1431 provides that "through estoppel, an admission or representation is rendered conclusive upon the person making it and cannot be denied or disproved as against the person relying thereon." Implementing this substantive law, section 2 (a) of Rule 131 provides: "Whenever a party has by his own declaration, act or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission be permitted to falsify it." By its incorporation in the Civil Code, estoppel in our jurisdiction has become an equitable defense that is both substantive and remedial. Its successful invocation can therefore bar a right and not merely its equitable enforcement.

Case law tells us that the elements of estoppel are: "first, the actor who usually must have knowledge, notice or suspicion of the true facts, communicates something to another in a misleading way, either by words, conduct or silence; second, the other in fact relies, and relies reasonably or justifiably, upon that communication; third, the other would be harmed materially if the actor is later permitted to assert any claim inconsistent with his earlier conduct; and fourth, the actor knows, expects or foresees that the other would act upon the information given or that a reasonable person in the actor's position would expect or foresee such action."^[7]

The established facts preclude the application of estoppel against the respondent. Respondent did not deliberately or intentionally lead the petitioner bank to believe that she was putting up her paraphernal property to secure a P3 M loan of Global, Inc. It was Chee Puen who made the misrepresentation thus defrauding respondent herself. Furthermore, petitioner's reliance on the mortgage application signed in blank by respondent is not a reasonable

reliance. As a banking institution, petitioner bank was grossly negligent when (a) it took no step to verify whether the respondent was really offering her paraphernal property as collateral; (b) made no credit check on respondent and Global, Inc.; and (c) conducted no investigation on the authenticity of the "Secretary's Certificate of Board Resolution" dated April 27, 1978. The business of a bank is affected with public interest and it should observe a higher standard of diligence when dealing with the public. Neither will it matter that petitioner bank itself was misled by Chee Puen, a third person to the contract. Under Article 1342 of the Civil Code, the misrepresentation of a third person will vitiate consent if it has resulted in substantial mistake and the same is mutual.

We cannot also subscribe to the proposition of petitioner bank that we apply the equitable defense of laches against the respondent. In *Chung Ka Bio v. IAC*,^[8] we held that unlike the statute of limitation, laches does not involve mere lapse or passage of time but is principally an impediment to the assertion or enforcement of a right which has become under the circumstances inequitable or unfair to permit. Its essential elements are: (1) conduct on the part of defendant or one under whom he claims, giving rise to the situation complained of; (2) delay in asserting complainant's right after he had knowledge of the defendant's conduct and after he has an opportunity to sue; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; (4) injury or prejudice to the defendant in the event relief is accorded to the complainant. Unlike estoppel, laches as an equitable defense usually bars only the equitable enforcement of a right but not the right itself. It is an affirmative defense and the burden of proving it rests on the defendant.^[9]

In the case at bar, the evidence does not show the lapse of an unreasonable length of time before the respondent sued to annul the real estate mortgage of her property to the petitioner bank. Respondent discovered the fraud perpetrated by Chee Puen only on February 16, 1981. On this date, respondent went to the Buendia branch of petitioner bank to submit the board resolution of Global, Inc., replacing Chee Puen as check signatory. She saw him still encashing checks of the corporation and they had a confrontation. She was later informed by the bank cashier of the P3 M loan negotiated by Chee Puen. Respondent promptly investigated the unauthorized loan. As soon as the investigation was completed, respondent filed a criminal case for falsification against Chee Puen, a disbarment complaint against Atty. Edilberto Arzadon who notarized the mortgage deed, an administrative complaint in the Central Bank against the petitioner and a complaint for nullification of Real Estate Mortgage in the RTC of Pasig, Metro Manila. These prompt and decisive actions on the part of the respondent do not warrant the assumption that she has abandoned or declined to assert her right to annul the subject real estate mortgage. Her complaint for annulment cannot by any stretch of the imagination be characterized as a stale demand.

IN VIEW WHEREOF, the petition is dismissed. Costs against petitioner.

SO ORDERED.

Regalado, (Chairman), Melo, Mendoza, and Martinez, JJ., concur.

[1] Docketed as Civil Case No. 44070.

[2] The property is covered by TCT No. (97379) S-4748 of the Province of Rizal

[3] Chee Puen also misrepresented in the secretary's certificate that his sons Andrew Puen and Allen Puen were the secretary and vice-president, respectively, of Global, Inc. That time, Andrew was still a minor while Allen was an American citizen and, therefore, they could not validly act as officers of Global, Inc.

[4] Penned by Judge Celso L. Magsino; See Annex "D" of Petition, Rollo, pp. 38-49.

[5] Penned by Associate Justice Lorna S. Lombos-De La Fuente and concurred in by Associate Justices Eduardo

R. Bengzon and Quirino D. Abad-Santos, Jr.; See Rollo, pp. 29-35.

[6] Article 1432, Civil Code.

[7] Dobbs, Law of Remedies, 2nd ed., [1983], p. 65.

[8] 163 SCRA 534 [1988].

[9] Dobbs, op cit., pp. 66-75.

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