

**OSMUNDO S. CANLAS AND ANGELINA CANLAS, PETITIONER, VS.
COURT OF APPEALS, ASIAN SAVINGS BANK, MAXIMO C. CONTRERAS
AND VICENTE MAÑOSCA, RESPONDENTS.**

G.R. No. 112160. February 28, 2000

Ponente: PURISIMA, J.

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PURISIMA, J.:

At bar is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, seeking to review and set aside the Decision[1] of the Court of Appeals in CA-G.R. CV No. 25242, which reversed the Decision[2] of Branch 59 of the Regional Trial Court of Makati City in Civil Case No. M-028; the dispositive portion of which reads:

"WHEREFORE, the decision appealed from is hereby REVERSED and SET ASIDE and a new one is hereby entered DISMISSING the complaint of the spouses Osmundo and Angelina Canlas. On the counterclaim of defendant Asian Savings Bank, the plaintiffs Canlas spouses are hereby ordered to pay the defendant Asian Savings Bank the amount of P50,000.00 as moral and exemplary damages plus P15,000.00 as and for attorney's fees.

With costs against appellees.

SO ORDERED."[3]

The facts that matter:

Sometime in August, 1982, the petitioner, Osmundo S. Canlas, and private respondent, Vicente Mañosca, decided to venture in business and to raise the capital needed therefor. The former then executed a Special Power of Attorney authorizing the latter to mortgage two parcels of land situated in San Dionisio, (BF Homes) Paranaque, Metro Manila, each lot with semi-concrete residential house existing thereon, and respectively covered by Transfer Certificate of Title No. 54366 in his (Osmundo's) name and Transfer Certificate of Title No. S-78498 in the name of his wife Angelina Canlas.

Subsequently, Osmundo Canlas agreed to sell the said parcels of land to Vicente Manosca, for and in consideration of P850,000.00, P500,000.00 of which payable within one week, and the balance of P350,000.00 to serve as his (Osmundo's) investment in the business. Thus, Osmundo Canlas delivered to Vicente Mañosca the transfer certificates of title of the parcels of land involved. Vicente Mañosca, as his part of the transaction, issued two postdated checks in favor of Osmundo Canlas in the amounts of P40,000.00 and P460,000.00, respectively, but it turned out that the check covering the bigger amount was not sufficiently funded.[4]

On September 3, 1982, Vicente Mañosca was able to mortgage the same parcels of land for P100,000.00 to a certain Attorney Manuel Magno, with the help of impostors who misrepresented themselves as the spouses, Osmundo Canlas and Angelina Canlas.[5]

On September 29, 1982, private respondent Vicente Mañosca was granted a loan by the respondent Asian Savings

Bank (ASB) in the amount of P500,000.00, with the use of subject parcels of land as security, and with the involvement of the same impostors who again introduced themselves as the Canlas spouses.[6] When the loan it extended was not paid, respondent bank extrajudicially foreclosed the mortgaged.

On January 15, 1983, Osmundo Canlas wrote a letter informing the respondent bank that the execution of subject mortgage over the two parcels of land in question was without their (Canlas spouses) authority, and request that steps be taken to annul and/or revoke the questioned mortgage. On January 18, 1983, petitioner Osmundo Canlas also wrote the office of Sheriff Maximo C. Contreras, asking that the auction sale scheduled on February 3, 1983 be cancelled or held in abeyance. But respondents Maximo C. Contreras and Asian Savings Bank refused to heed petitioner Canlas' stance and proceeded with the scheduled auction sale.[7]

Consequently, on February 3, 1983 the herein petitioners instituted the present case for annulment of deed of real estate mortgage with prayer for the issuance of a writ of preliminary injunction; and on May 23, 1983, the trial court issued an Order restraining the respondent sheriff from issuing the corresponding Certificate of Sheriff's Sale.[8]

For failure to file his answer, despite several motions for extension of time for the filing thereof, Vicente Mañosca was declared in default.[9]

On June 1, 1989, the lower court a quo came out with a decision annulling subject deed of mortgage and disposing, thus:

"Premises considered, judgment is hereby rendered as follows:

1. Declaring the deed of real estate mortgage (Exhibit 'L') involving the properties of the plaintiffs as null and void;
2. Declaring the public auction sale conducted by the defendant Sheriff, involving the same properties as illegal and without binding effect;
3. Ordering the defendants, jointly and severally, to pay the plaintiffs the sum of P20,000.00 representing attorney's fees;
4. On defendant ASB's crossclaim: ordering the cross-defendant Vicente Mañosca to pay the defendant ASB the sum of P350,000.00, representing the amount which he received as proceeds of the loan secured by the void mortgage, plus interest at the legal rate, starting February 3, 1983, the date when the original complaint was filed, until the amount is fully paid;
5. With costs against the defendants.

SO ORDERED."[10]

From such Decision below, Asian Savings Bank appealed to the Court of Appeals, which handed down the assailed judgment of reversal, dated September 30, 1983, in CA-G.R. CV No. 25242. Dissatisfied therewith, the petitioners found their way to this Court via the present Petition; theorizing that:

"I

RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT THE MORTGAGE OF THE PROPERTIES SUBJECT OF THIS CASE WAS VALID.

II

RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT PETITIONERS ARE NOT ENTITLED TO RELIEF BECAUSE THEY WERE NEGLIGENT AND THEREFORE MUST BEAR THE

LOSS.

III

RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT RESPONDENT ASB EXERCISED DUE DILIGENCE IN GRANTING THE LOAN APPLICATION OF RESPONDENT.

IV

RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT RESPONDENT ASB DID NOT ACT WITH BAD FAITH IN PROCEEDING WITH THE FORECLOSURE SALE OF THE PROPERTIES.

V

RESPONDENT COURT OF APPEALS ERRED IN AWARDING RESPONDENT ASB MORAL DAMAGES."^[11]

The Petition is impressed with merit.

Article 1173 of the Civil Code, provides:

"Article 1173. The fault or negligence of the obligor consist in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. When negligence shows bad faith, the provisions of articles 1171 and 2201, paragraph 2, shall apply.

If the law or contract does not state the diligence which is to be observed in the performance, that which is expected of a good father of a family shall be required. (1104)"

The degree of diligence required of banks is more than that of a good father of a family;^[12] in keeping with their responsibility to exercise the necessary care and prudence in dealing even on a register or titled property. The business of a bank is affected with public interest, holding in trust the money of the depositors, which bank deposits the bank should guard against loss due to negligence or bad faith, by reason of which the bank would be denied the protective mantle of the land registration law, accorded only to purchases or mortgagees for value and in good faith.^[13]

In the case under consideration, from the evidence on hand it can be gleaned unerringly that respondent bank did not observe the requisite diligence in ascertaining or verifying the real identity of the couple who introduced themselves as the spouses Osmundo Canlas and Angelina Canlas. It is worthy to note that not even a single identification card was exhibited by the said impostors to show their true identity; and yet, the bank acted on their representations simply on the basis of the residence certificates bearing signatures which tended to match the signatures affixed on a previous deed of mortgage to a certain Atty. Magno, covering the same parcels of land in question. Felizado Mangubat, Assistant Vice President of Asian Savings Bank, thus testified inter alia:

"xxx xxx xxx

Q: According to you, the basis for your having recommended for the approval of MANASCO's (sic) loan particularly that one involving the property of plaintiff in this case, the spouses OSMUNDO CANLAS and ANGELINA CANLAS, the basis for such approval was that according to you all the signatures and other things taken into account matches with that of the document previously executed by the spouses CANLAS?

A: That is the only basis for accepting the signature on the mortgage, the basis for the recommendation of the

approval of the loan are the financial statement of MAÑOSCA?

A: Yes, among others the signature and TAX Account Number, Residence Certificate appearing on the previous loan executed by the spouses CANLAS, I am referring to EXHIBIT 5, mortgage to ATTY. MAGNO, those were made the basis.

A: That is just the basis of accepting the signature, because at that time the loan have been approved already on the basis of the financial statement of the client the Bank Statement. Wneh (sic) it was approved we have to base it on the Financial statement of the client, the signatures were accepted only for the purpose of signing the mortgage not for the approval, we don't (sic) approve loans on the signature.

ATTY. CLAROS:

Would you agree that as part of ascertaining the identify of the parties particularly the mortgage, you don't consider also the signature, the Residence Certificate, the particular address of the parties involved.

A:

I think the question defers (sic) from what you asked a while ago.

Q:

Among others?

A:

We have to accept the signature on the basis of the other signatures given to us it being a public instrument.

ATTY. CARLOS:

You mean to say the criteria of ascertaining the identity of the mortgagor does not depend so much on the signature on the residence certificate they have presented.

A:

We have to accept that

xxx xxx xxx

A:

We accepted the signature on the basis of the mortgage in favor of ATTY. MAGNO duly notarized which I have been reiterrting (sic) entitled to full faith considering that it is a public instrument.

ATTY. CARLOS:

What other requirement did you take into account in ascertaining the identification of the parties particularly the mortgagor in this case.

A:

Residence Certificate.

Q:

Is that all, is that the only requirement?

A: We requested for others but they could not produce, and because they presented to us the Residence Certificate which matches on the signature on the Residence Certificate in favor of Atty. Magno."^[14]

Evidently, the efforts exerted by the bank to verify the identity of the couple posing as Osmundo Canlas and Angelina Canlas fell short of the responsibility of the bank to observe more than the diligence of a good father of a family. The negligence of respondent bank was magnified by the fact that the previous deed of mortgage (which was used as the basis for checking the genuineness of the signatures of the suppose Canlas spouses) did not bear the tax account number of the spouses,^[15] as well as the Community Tax Certificate of Angelina Canlas.^[16] But such fact notwithstanding, the bank did not require the impostors to submit additional proof of their true identity.

Under the doctrine of last clear chance, which is applicable here, the respondent bank must suffer the resulting loss. In essence, the doctrine of last clear chance is to the effect that where both parties are negligent but the negligent act of one is appreciably later in point of time than that of the other, or where it is impossible to determine whose fault or negligence brought about the occurrence of the incident, the one who had the last clear opportunity to avoid the impending harm but failed to do so, is chargeable with the consequences arising therefrom. Stated differently, the rule is that the antecedent negligence of a person does not preclude recovery of damages caused by the supervening negligence of the latter, who had the last fair chance to prevent the impending harm by the exercise of due diligence.^[17]

Assuming that Osmundo Canlas was negligent in giving Vicente Mañosca the opportunity to perpetrate the fraud, by entrusting to latter the owner's copy of the transfer certificates of title of subject parcels of land, it cannot be denied that the bank had the last clear chance to prevent the fraud, by the simple expedient of faithfully complying

with the requirements for banks to ascertain the identity of the persons transacting with them.

For not observing the degree of diligence required of banking institutions, whose business is impressed with public interest, respondent Asian Savings Bank has to bear the loss sued upon.

In ruling for respondent bank, the Court of Appeals concluded that the petitioner Osmundo Canlas was a party to the fraudulent scheme of Mañosca and therefore, estopped from impugning the validity of subject deed of mortgage; ratiocinating thus:

"xxx xxx xxx

Thus, armed with the titles and the special power of attorney, Mañosca went to the defendant bank and applied for a loan. And when Mañosca came over to the bank to submit additional documents pertinent to his loan application, Osmundo Canlas was with him, together with a certain Rogelio Viray. At that time, Osmundo Canlas was introduced to the bank personnel as 'Leonardo Rey'.

When he was introduced as 'Leonardo Rey' for the first time Osmundo should have corrected Mañosca right away. But he did not. Instead, he even allowed Mañosca to avail of his (Osmundo's) membership privileges at the Metropolitan Club when Mañosca invited two officers of the defendant bank to a luncheon meeting which Osmundo also attended. And during that meeting, Osmundo did not say who he really is, but even let Mañosca introduced him again as 'Leonardo Rey', which all the more indicates that he connived with Mañosca in deceiving the defendant bank.

Finally after the loan was finally approved, Osmundo accompanied Mañosca to the bank when the loan was released. At that time a manger's check for P200,000.00 was issued in the name of Oscar Motorworks, which Osmundo admits he owns and operates.

Collectively, the foregoing circumstances cannot but conjure to a single conclusion that Osmundo actively participated in the loan application of defendant Asian Savings Bank, which culminated in his receiving a portion of the process thereof."[18]

A meticulous and painstaking scrutiny of the Records on hand, reveals, however, that the findings arrived at by the Court of Appeals are barren of any sustainable basis. For instance, the execution of the deeds of mortgages constituted by Mañosca on subject pieces of property of petitioners were made possible not by the Special Power of Attorney executed by Osmundo Canlas in favor of Mañosca but through the use of impostors who misrepresented themselves as the spouses Angelina Canlas and Osmundo Canlas. It cannot be said therefore, that the petitioners authorized Vicente Mañosca to constitute the mortgage on their parcels of land.

What is more, Osmundo Canlas was introduced as "Leonardo Rey" by Vicente Mañosca, only on the occasion of the luncheon meeting at the Metropolitan Club.[19] Thereat, the failure of Osmundo Canlas to rectify Mañosca's misrepresentations could not be taken as a fraudulent act. As well explained by the former, he just did not want to embarrass Mañosca, so that he waited for the end of the meeting to correct Mañosca.[20]

Then, too, Osmundo Canlas recounted that during the said luncheon meeting, they did not talk about the security or collateral for the loan of Mañosca with ASB.[21] So also, Mrs. Josefina Rojo, who was the Account Officer of Asian Savings Bank when Mañosca applied for subject loan, corroborated the testimony of Osmundo Canlas, she testified:

"xxx xxx xxx

QUESTION:

Now could you please describe out the lunch conference at the Metro Club in Makati?

ANSWER:

Mr. Mangubat, Mr. Mañosca and I did not discuss with respect to the loan application and discuss primarily his business.

xxx xxx xxx

QUESTION:

So, what is the main topic of your discussion during the meeting?

ANSWER:

The main topic was then, about his business although, Mr, Leonardo Rey, who actually turned out as Mr. Canlas, supplier of Mr. Mañosca.

QUESTION:

I see ... other than the business of Mr. Mañosca, were there any other topic discussed?

ANSWER:

YES.

QUESTION:

And what was the topic?

ANSWER:

General Economy then.

xxx xxx xxx"[22]

Verily, Osmundo Canlas was left unaware of the illicit plan of Mañosca, explaining thus why he (Osmundo) did not bother to correct what Mañosca misrepresented and to assert ownership over the two parcels of land in question.

Not only that; while it is true that Osmundo Canlas was with Vicente Mañosca when the latter submitted the documents needed for his loan application, and when the check of P200,000.000 was released, the former did not know that the collateral used by Mañosca for the said loan were their (Canlas spouses') properties. Osmundo happened to be with Mañosca at the time because he wanted to make sure that Mañosca would make good his promise to pay the balance of the purchase price of the said lots out of the proceeds of the loan.[23]

The receipt by Osmundo Canlas of the P200,000.00 check from ASB could not estop him from assailing the validity of the mortgage because the said amount was in payment of the parcels of land he sold to Mañosca.[24]

What is decisively clear on record is that Mañosca managed to keep Osmundo Canlas uninformed of his (Mañosca's) intention to use the parcels of land of the Canlas spouses as security for the loan obtained from Asian Savings Bank. Since Vicente Mañosca showed Osmundo Canlas several certificates of title of lots which, according to Mañosca were the collaterals, Osmundo Canlas was confident that their (Canlases') parcels of land were not involved in the loan transaction with the Asian Savings Bank.[25] Under the attendant facts and circumstances, Osmundo Canlas was undoubtedly negligent, which negligence made them (petitioners) undeserving of an award of Attorney's fees.

Settled is the rule that a contract of mortgage must be constituted only by the absolute owner on the property mortgaged;[26] a mortgage, constituted by an impostor is void.[27] Considering that it was established indubitably that the contract of mortgage sued upon was entered into and signed by impostors who misrepresented themselves as the spouses Osmundo Canlas and Angelina Canlas, the Court is of the ineluctible conclusion and finding that subject contract of mortgage is a complete nullity.

WHEREFORE, the Petition is GRANTED and the Decision of the Court of Appeals, dated September 30, 1993, in CA-G.R. CV No. 25242 SET ASIDE. The Decision of Branch 59 of the Regional Trial Court of Makati City in Civil Case No. M-028 is hereby REINSTATED. No pronouncement as to costs.

SO ORDERED.

Melo, (Chairman), Vitug, and Gonzaga-Reyes, JJ., concur.
Panganiban, J., in the result.

[1] Annex "C", Rollo, pp. 64-73.

[2] Penned by Judge Lucia Violago Isnani.

[3] Decision, Annex "D", Rollo, p. 84.

[4] Id., p. 67-68.

[5] Id., p. 68.

[6] Id., p. 68.

[7] Id., p. 67, Rollo, p. 77.

[8] Decision, Rollo, p. 67; Rollo, pp. 78-79.

[9] Decision, Rollo, p. 65.

[10] Decision, Annex "C", Rollo, p. 73.

[11] Petition, Rollo, pp. 18.

- [12] Philippine Bank of Commerce vs. Court of Appeals, 269 SCRA 695, 708.
- [13] Rural Bank of Sariaya, Inc. vs. Yacon, 175 SCRA 62, p. 68.
- [14] TSN, Direct Examination of Felizardo Mangubat, March 7, 1983; TSN, pp. 57-61.
- [15] Original Records, p. 88; Exhibit "5-A" and "5-B".
- [16] O.R. p. 11; Annex "C".
- [17] Philippine Bank of Commerce vs. Court of Appeals, 269 SCRA 695, p. 708; citing: LBC Air Cargo, Inc. vs. Court of Appeals, 241 SCRA 619, 624; Picart vs. Smith, 37 Phil. 809; Pantranco North Express, Inc. vs. Baesa, 179 SCRA 384; Glan People's Lumber and Hardware vs. Intermediate Appellate Court, 173 SCRA 464.
- [18] Decision, Rollo, pp. 81-82.
- [19] Direct Examination of Felizardo Mangubat, May 7, 1983, TSN, pp. 10, 14 and 17.
- [20] Direct Examination of Osmundo Canlas, May 17, 1983, TSN, p. 40.
- [21] Ibid., p. 41.
- [22] Direct Examination of Josefina Rojo, May 23, 1985, TSN, pp. 37, 42-43.
- [23] Direct Examination of Osmundo Canlas, May 17, 1983, TSN, pp. 30-36.
- [24] Direct Examination of Osmundo Canlas, May 17, 1983, T.S.N. p. 63-65.
- [25] Ibid., p. 51.
- [26] Article 2085 of the Civil Code
- [27] Parqui vs. PNB, 96 Phil. 157 (1954)

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