

GUILLERMO ADRIANO, PETITIONER, VS. ROMULO PANGILINAN, RESPONDENT.

G.R. No. 137471. January 16, 2002

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Loss brought about by the concurrent negligence of two persons shall be borne by the one who was in the immediate, primary and overriding position to prevent it. In the present case, the mortgagee -- who is engaged in the business of lending money secured by real estate mortgages -- could have easily avoided the loss by simply exercising due diligence in ascertaining the identity of the impostor who claimed to be the registered owner of the property mortgaged.

The Case

Before us is a Petition for Review under Rule 45 of the Rules of Court, assailing the November 11, 1998 Decision[1] of the Court of Appeals (CA) in CA-GR CV No. 44558. The dispositive portion of the CA Decision reads as follows:

“WHEREFORE, premises considered, the judgment appealed from is hereby REVERSED and SET ASIDE, and another entered dismissing the complaint instituted in the court below. Without costs in this instance.”[2]

Also questioned is the February 5, 1999 CA Resolution[3] denying petitioner’s Motion for Reconsideration.

The CA reversed the Regional Trial Court (RTC) of San Mateo, Rizal (Branch 76) in Civil Case No. 845, which disposed as follows:

“WHEREFORE, premises considered, judgment is hereby rendered declaring the real estate mortgage constituted on the property described in and covered by TCT No. 337942 of the Registry of Deeds for the Province of Rizal, in the name of Guillermo Adriano, to be null and void and of no force and effect, and directing defendant Romulo Pangilinan to reconvey or deliver to herein plaintiff Guillermo Adriano the aforesaid title after causing and effecting a discharge and cancellation of the real estate mortgage annotated on the said title. No pronouncement as to costs.

“Defendant’s counterclaim is dismissed for want of basis.”[4]

The Facts

The undisputed facts of the case are summarized by the Court of Appeals as follows:

“[Petitioner] Guillermo Adriano is the registered owner of a parcel of land with an area of three hundred four (304) square meters, more or less, situated at Col. S. Cruz, Geronimo, Montalban, Rizal and covered by Transfer Certificate of Title No. 337942.

“Sometime on November 23, 1990[, petitioner] entrusted the original owner’s copy of the aforesaid Transfer Certificate of Title to Angelina Salvador, a distant relative, for the purpose of securing a mortgage loan.

“Without the knowledge and consent of [petitioner], Angelina Salvador mortgaged the subject property to the [Respondent] Romulo Pangilinan. After a time, [petitioner] verified the status of his title with the Registry of Deeds of Marikina, Metro Manila, and was surprised to discover that upon the said TCT No. 337942 was already annotated or inscribed a first Real Estate Mortgage purportedly executed by one Guillermo Adriano over the aforesaid parcel of land, together with the improvements thereon, in favor of the [Respondent] Romulo Pangilinan, in consideration of the sum of Sixty Thousand Pesos (P60,000.00). [Petitioner] denied that he ever executed the deed of mortgage, and denounced his signature thereon as a forgery; he also denied having received the consideration of P60,000.00 stated therein.

“[Petitioner] thereafter repeatedly demanded that [respondent] return or reconvey to him his title to the said property and when these demands were ignored or disregarded, he instituted the present suit.

“[Petitioner] likewise filed a criminal case for estafa thru falsification of public document against [Respondent] Romulo Pangilinan, as well as against Angelina Salvador, Romy de Castro and Marilen Macanaya, in connection with the execution of the allegedly falsified deed of real estate mortgage: this was docketed as Criminal Case No. 1533-91 of the Regional Trial Court of San Mateo, Rizal, Branch 76.

“[Respondent] in his defense testified that he [was] a businessman engaged in the buying and selling as well as in the mortgage of real estate properties; that sometime in the first week of December, 1990 Angelina Salvador, together with Marilou Macanaya and a person who introduced himself as Guillermo Adriano, came to his house inquiring on how they could secure a loan over a parcel of land; that he asked them to submit the necessary documents, such as the owner’s duplicate of the transfer certificate of title to the property, the real estate tax declaration, its vicinity location plan, a photograph of the property to be mortgaged, and the owner’s residence certificate; that when he conducted an ocular inspection of the property to be mortgaged, he was there met by a person who had earlier introduced himself as Guillermo Adriano, and the latter gave him all the original copies of the required documents to be submitted; that after he (defendant) had verified from the Registry of Deeds of Marikina that the title to the property to be mortgaged was indeed genuine, he and that person Guillermo Adriano executed the subject real estate mortgage, and then had it notarized and registered with the Registry of Deeds. After that, the alleged owner, Guillermo Adriano, together with Marilou Macanaya and another person signed the promissory note in the amount of Sixty Thousand Pesos (P60,000.00) representing the appraised value of the mortgage property. This done, he (defendant) gave them the aforesaid amount in cash.

“[Respondent] claimed that [petitioner] voluntarily entrusted his title to the subject property to Angelina Salvador for the purpose of securing a loan, thereby creating a principal-agent relationship between the plaintiff and Angelina Salvador for the aforesaid purpose. Thus, according to [respondent], the execution of the real estate mortgage was within the scope of the authority granted to Angelina Salvador; that in any event TCT No. 337942 and the other relevant documents came into his possession in the regular course of business; and that since the said transfer certificate of title has remained with [petitioner], the latter has no cause of action for reconveyance against him.”[5]

In his appeal before the CA,[6] respondent contended that the RTC had erred (1) in holding that petitioner’s signature on the Real Estate Mortgage was a forgery and (2) in setting aside and nullifying the Mortgage.

Ruling of the Court of Appeals

The CA ruled that “when a mortgagee relies upon a Torrens title and lends money in all good faith on the basis of the title standing in the name of the mortgagor, only to discover one defendant to be an alleged forger and the other defendant to have by his negligence or acquiescence made it possible for fraud to transpire, as between two innocent persons, the mortgagee and one of the mortgagors, the latter who made the fraud possible by his act of confidence must bear the loss.”[7]

It further explained that “even conceding for the sake of argument that the appellant’s signature on the Deed of First Real Estate Mortgage was a forgery, and even granting that the appellee did not participate in the execution of the said deed of mortgage, and was not as well aware of the alleged fraud committed by other persons relative to its execution, the undeniable and irrefutable fact remains that the appellee did entrust and did deliver his Transfer Certificate of Title No. 337942 covering the subject property, to a distant relative, one Angelina Salvador, for the avowed purpose of using the said property as a security or collateral for a real estate mortgage debt of loan.”[8]

Hence, this present recourse.[9]

The Issues

In his Memorandum,[10] petitioner raises the following issues for our consideration:

I

“Whether or not consent is an issue in determining who must bear the loss if a mortgage contract is sought to be declared a nullity[;]

and

II

“Whether or not the Motion for Reconsideration filed by the petitioner before the Court of Appeals should have been dismissed[.]”[11]

This Court’s Ruling

The Petition is meritorious.

First Issue:

Effect of Mortgage by Non-Owner

Petitioner contends that because he did not give his consent to the real estate mortgage (his signature having been forged), then the mortgage is void and produces no force and effect.

Article 2085 of the Civil Code enumerates the essential requisites of a mortgage, as follows:

“Art. 2085. The following requisites are essential to the contracts of pledge and mortgage:

“(1) That they be constituted to secure the fulfillment of a principal obligation;

“(2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged;

“(3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for that purpose.

“Third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property. (1857)” (Italics supplied)

In the case at bar, not only was it proven in the trial court that the signature of the mortgagor had been forged, but also that somebody else -- an impostor -- had pretended to be the former when the mortgagee made an ocular inspection of the subject property. On this point, the RTC held as follows:

“The falsity attendant to the subject real estate mortgage is evidenced not only by herein plaintiff’s vehement denial of having entered into that contract with defendant, but also by a comparison between the signature of

the debtor-mortgagor appearing in the said mortgage contract, and plaintiff's signatures appearing in the records of this case. Even to the naked eye, the difference is glaring, and there can be no denying the fact that both signatures were not written or affixed by one and the same person. The falsity is further inferrable from defendant's admission that the plaintiff in this case who appeared in court [was] not the same person who represented himself as the owner of the property (TSN, pp. 7, 11, June 21, 1993 hearing) and who therefore was the one who signed the contract as the debtor-mortgagor." [12]

The CA did not dispute the foregoing finding, but faulted petitioner for entrusting to Angelina Salvador the TCT covering the property. Without his knowledge or consent, however, she caused or abetted an impostor's execution of the real estate mortgage.

"Even conceding for the sake of argument that the appellee's signature on the Deed of First Real Estate Mortgage (Exh. B; Original Record, pp. 56-58) was a forgery, and even granting that the appellee did not participate in the execution of the said deed of mortgage, and was not as well aware of the alleged fraud committed by other persons relative to its execution, the undeniable and irrefutable fact remains that the appellee did entrust and did deliver his Transfer Certificate of Title No. 337942 (Exh. A; Original Record, pp. 53-55) covering the subject property, to a distant relative, one Angelina Salvador, for the avowed purpose of using the said property as a security or collateral for a real estate mortgage debt of loan. x x x" [13]

Be that as it may, it is clear that petitioner – who is undisputedly the property owner -- did not mortgage the property himself. Neither did he authorize Salvador or anyone else to do so.

In *Parqui v. Philippine National Bank*, [14] this Court affirmed the trial court's ruling that a mortgage was invalid if the mortgagor was not the property owner:

"After carefully considering the issue, we reach the conclusion that His Honor's decision was correct. One of the essential requisites of a valid mortgage, under the Civil Code is 'that the thing pledged or mortgaged be owned by the person who pledges or mortgages it' (Art. 1857, par. 2); and there is no question that Roman Oliver who pledged the property to the Philippine National Bank did not own it. The mortgage was consequently void." [15]

Second Issue:

Concurrent Negligence of the Parties

The CA reversed the lower court, because petitioner had been negligent in entrusting and delivering his TCT No. 337942 to his "distant relative" Angelina Salvador, who undertook to find a money lender. Citing *Blondeau v. Nano* [16] and *Philippine National Bank v. CA*, [17] it then applied the "bona fide purchaser for value" principle.

Both cases cited involved individuals who, by their negligence, enabled other persons to cause the cancellation of the original TCT of the disputed property and the issuance of a new one in their favor. Having obtained TCTs in their names, they conveyed the subject property to third persons, who in *Blondeau* was a bona fide purchaser while in *Philippine National Bank* was an innocent mortgagee for value. It should be stressed that in both these cases, the seller and the mortgagor were the registered owners of the subject property; whereas in the present case, the mortgagor was an impostor, not the registered owner.

It must be noted that a Torrens certificate "serves as evidence of an indefeasible title to the property in favor of the person whose name appears therein." [18] Moreover, the Torrens system "does not create or vest title. It only confirms and records title already existing and vested. It does not protect a usurper from the true owner. It cannot be a shield for the commission of fraud. It does not permit one to enrich himself at the expense of another." [19]

Thus, we ask these questions: Was petitioner negligent in entrusting and delivering his TCT to a relative who was supposed to help him find a money lender? And if so, was such negligence sufficient to deprive him of his

property?

To be able to answer these questions and apply the holding in *Philippine National Bank*, it is crucial to determine whether herein respondent was an “innocent mortgagee for value.” After a careful review of the records and pleadings of the case, we hold that he is not, because he failed to observe due diligence in the grant of the loan and in the execution of the real estate mortgage.[20]

Respondent testified that he was engaged in the real estate business, including the grant of loans secured by real property mortgages. Thus, he is expected to ascertain the status and condition of the properties offered to him as collaterals, as well as to verify the identities of the persons he transacts business with. Specifically, he cannot simply rely on a hasty examination of the property offered to him as security and the documents backing them up.[21] He should also verify the identity of the person who claims to be the registered property owner.

Respondent stated in his testimony that he had been engaged in the real estate business for almost seven years.[22] Before the trial court, he testified on how he had approved the loan sought and the property mortgaged:

“Q

Mr. witness, you stated earlier that you are a businessman. Will you please inform the Hon. Court what kind of business you are engaged in?

A

First, as a businessman, I buy and sell real estate properties, sir, and engaged in real estate mortgage, sir.

Q

In relation to your buy and sell business, Mr. witness, how many clients have you had since you started?

A

Since I started in 1985, I have [had] almost 30 to 50 clients, sir.

xxx xxx x x x

Q

Will you inform the Court, Mr. [W]itness, how are you found by your clients?

A

I advertise it in the newspapers, sir.

Q

And what is the frequency of this advertisement in the newspapers?

A

One whole week in every month, sir.

Q

Let us go specifically [to] the real estate mortgage, Mr. [W]itness, which has relation to this case. Will you inform the Court how you go about this business, meaning, if you have any procedure that you follow?

A

As soon as my client go[es] to our house, I usually give them the requirements, sir.

Q

And what are these requirements?

A

I usually require them to submit to me at least a machine copy of the title, the location plan with vicinity, the real estate tax, the tax declaration, the picture of the property and the Res. Cert. of the owner, sir.

Q

And when these documents are given to you, what else do you do, if any?

A

When they present to me the machine copy, I require them to visit the place for the ocular inspection for the appraisal of the property, sir.

Q

What other steps, if any?

A

After that ocular inspection, sir, appraising the property, I usually tell them to come back after one week for verification of the title in the Register of Deeds, sir.

Q

Will you inform the Court how you verif[ied] the title with the Register of Deeds?

A

I got a certified true copy from the Register of Deeds, sir.

Q

Certified true copy of what, Mr. witness?

A

The owner's duplicate title [to] the property, sir.

Q

Will you inform the Court why you asked for these documents?

A

To see to it that the title [was] genuine, sir.

x x x x x x x x

Q

You mentioned Residence Certificate. Why did you ask for a Residence Certificate?

A

To fully identify the alleged owner, sir.

Q

So, when the machine copies of these documents x x x were given to you [as you said], what did you do next, if any?

A

x x x [O]cular inspection, sir, that is my standard procedure. After they gave me all the requirements, we usually go there for the ocular inspection for the appraisal of the property, sir.

Q

So, you went to the house itself?

A

Yes, sir.

Q

Did you go there alone or were you with somebody else?

A

With the[ir] group x x x, sir, the one [which] came to our house. The two of them were Marilou Macanaya and Angelina Salvador.

Q

And when you went to the house, what did you see?

A

I saw a man there x x x who posed as Guillermo Adriano and gave me all the original copies of the requirements, sir.

Q

Did you get to enter the house?

A

As an architect, as soon as I [saw] the house, I already knew what [was] the appraisal, sir, and I knew already the surroundings of the property.

Q

So, you did not need to go inside the house?

A

Inside the house, not anymore, sir, we talked only inside the property.

Q

And this person who gave you the original documents is the owner of the house?

A

I assumed it, sir, [that] he [was] the owner.”[23] (Emphasis supplied)

On cross[-]examination, he made a clarification:

“Q

Mr. Pangilinan, will you state again what business are you engaged [in]?

A

First, as an Architect, I do design and build and as a businessman, I do the buy and sell of real properties and engag[e] in mortgage contract, sir.

Q

Actually, it is in the mortgage business that you practically have the big bulk of your business. Isn't it?

A

Yes, sir.”[24]

It is quite clear from the testimony of respondent that he dismally failed to verify whether the individual executing the mortgage was really the owner of the property.

The ocular inspection respondent conducted was primarily intended to appraise the value of the property in order

to determine how much loan he would grant. He did not verify whether the mortgagor was really the owner of the property sought to be mortgaged. Because of this, he must bear the consequences of his negligence.

In *Uy v. CA*,^[25] the Court through Mr. Justice Jose A. R. Melo made the following significant observations:

“Thus, while it is true, as asserted by petitioners, that a person dealing with registered lands need not go beyond the certificate of title, it is likewise a well-settled rule that a purchaser or mortgagee cannot close his eyes to facts which should put a reasonable man on 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 or mortgagor. His mere refusal to face up to the fact that such defect exists, or his willful closing of his eyes to the possibility of the existence of a defect in the vendor’s or mortgagor’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 the measure of precaution which may be required of a prudent man in a like situation.”^[26]

Indeed, there are circumstances that should put a party on guard and prompt an investigation of the property being mortgaged. Citing *Torres v. CA*,^[27] the Court continued as follows:

“x x x [T]he value of the property, its principal value being its income potential in the form of monthly rentals being located at the corner of Quezon Boulevard and Raon Street, Manila, and the registered title not yielding any information as to the amount of rentals due from the building, much less on who is collecting them, or who is recognized by the tenants as their landlord - it was held that any prospective buyer or mortgagee of such a valuable building and land at the center of Manila, if prudent and in good faith, is normally expected to inquire into all these and related facts and circumstances. For failing to conduct such an investigation, a party would be negligent in protecting his interests and cannot be held as an innocent purchaser for value.”^[28]

We are not impressed by the claim of respondent that he exercised due diligence in ascertaining the identity of the alleged mortgagor when he made an ocular inspection^[29] of the mortgaged property. Respondent’s testimony negated this assertion.

“Q

Now you told me also that you conducted an ocular inspection o[f] the premises. How many times did you do it?

A

Once, sir.

Q

Who were with you when you went there?

A

The same group of them, sir.

Q

How long did you stay in the premises?

A

I think 5 to 10 minutes, sir.

Q

And did you see any people inside the premises where you visited?

A

Yes, sir.

Q

Did you ask these persons?

A

They told me that. . .

Q

Did you ask these persons whom you saw in the premises?

A

No, sir.

Q

And what x x x did you [just] do when you inspected the premises?

xxx xxx x x x

A

When I arrived in the property, that house, the alleged owner told me that the one staying at his house were just renting from him, sir.

xxx xxx x x x

Q

Again, Mr. Pangilinan, my question to you is, what did you do when you arrived in the premises in the course of your ocular inspection?

Atty. Garcia:

Already answered.

Court:

You may answer.

A

When I arrived at that place, I just looked around and as an Architect, I [saw] that I [could] appraise it just [by] one look at it, sir.

Atty. Amado:

Q

And after that, where did you go? Where did you and this group go?

A

Just inside the property, sir. We talked [about] how much [would] be given to them and I told them this [was] only the amount I [could] give them, sir.”[30] (Emphasis supplied)

Since he knew that the property was being leased, respondent should have made inquiries about the rights of the actual possessors. He could have easily verified from the lessees whether the claimed owner was, indeed, their lessor.

Petitioner’s act of entrusting and delivering his TCT and Residence Certificate to Salvador was only for the purpose of helping him find a money lender. Not having executed a power of attorney in her favor, he clearly did not authorize her to be his agent in procuring the mortgage. He only asked her to look for possible money lenders. Article 1878 of the Civil Code provides:

“Art. 1878. Special powers of attorney are necessary in the following cases:

x x x x x x x x

(7) To loan or borrow money, unless the latter act be urgent and indispensable for the preservation of the things which are under administration;

x x x x x x x x

(12) To create or convey real rights over immovable property;

x x x x x x x x.”

As between petitioner and respondent, we hold that the failure of the latter to verify essential facts was the immediate cause of his predicament. If he were an ordinary individual without any expertise or experience in mortgages and real estate dealings, we would probably understand his failure to verify essential facts. However, he has been in the mortgage business for seven years. Thus, assuming that both parties were negligent, the Court opines that respondent should bear the loss. His superior knowledge of the matter should have made him more cautious before releasing the loan and accepting the identity of the mortgagor.[31]

Given the particular circumstances of this case, we believe that the negligence of petitioner is not enough to offset the fault of respondent himself in granting the loan. The former should not be made to suffer for respondent's failure to verify the identity of the mortgagor and the actual status of the subject property before agreeing to the real estate mortgage. While we commiserate with respondent -- who in the end appears to have been the victim of scoundrels -- his own negligence was the primary, immediate and overriding reason that put him in his present predicament.

To summarize, we hold that both law and equity favor petitioner. First, the relevant legal provision, Article 2085 of the Civil Code, requires that the “mortgagor be the absolute owner of the thing x x x mortgaged.” Here, the mortgagor was an impostor who executed the contract without the knowledge and consent of the owner. Second, equity dictates that a loss brought about by the concurrent negligence of two persons shall be borne by one who was in the immediate, primary and overriding position to prevent it. Herein respondent – who, we repeat, is engaged in the business of lending money secured by real estate mortgages – could have easily avoided the loss by simply exercising due diligence in ascertaining the identity of the impostor who claimed to be the owner of the property being mortgaged. Finally, equity merely supplements, not supplants, the law. The former cannot contravene or take the place of the latter.

In any event, respondent is not precluded from availing himself of proper remedies against Angelina Salvador and her cohorts.

WHEREFORE, the Petition is GRANTED and the assailed Decision SET ASIDE. The November 25, 1993 Decision of the RTC of San Mateo, Rizal (Branch 76) is hereby REINSTATED. No costs.

SO ORDERED.

Melo, (Chairman), Vitug, Sandoval-Gutierrez, and Carpio, JJ., concur.

[1] Penned by Justice Renato C. Dacudao and concurred in by Justices Ma. Alicia Austria-Martinez (Division chairman) and Salvador J. Valdez Jr. (member).

[2] Rollo, p. 27.

[3] Rollo, pp. 15-16.

[4] RTC Decision dated November 25, 1993; records, pp. 130-133; penned by Judge Jose C. Reyes Jr.

[5] Rollo, pp. 22-23.

[6] Ibid., p. 3.

[7] Id., p. 26; CA Decision, p. 5.

[8] Id., pp. 24-25; Id., pp. 3-4.

- [9] The case was deemed submitted for decision on June 16, 2000 upon the Court's receipt of respondent's Memorandum, which was signed by Atty. Lourdes Fema A. Galinato-Acu?a of Sebastian Liganor & Galinato. Petitioner's Memorandum, signed by Atty. Editha Arciaga-Santos of Ocampo Santos Loquellano Loveranes and Ribao Law Offices, was received by this Court on May 29, 2000.
- [10] Rollo, pp. 74-84.
- [11] Petitioner's Memorandum, p. 77; original in upper case.
- [12] RTC Decision, p. 3; Rollo, p. 19; records, p. 132.
- [13] CA Decision, pp. 3-4; Rollo, pp. 24-25.
- [14] 96 Phil. 157, November 26, 1954.
- [15] Ibid., p. 160, per Bengzon, J.
- [16] 61 Phil. 625, July 26, 1935.
- [17] 187 SCRA 735, July 24, 1990.
- [18] Noblejas and Noblejas, Registration of Land Titles and Deeds, (1992 rev. ed.), p. 211, citing Ybañez v. IAC, 194 SCRA 743, March 6, 1991, per Fernan, CJ.
- [19] Ibid., p. 47, citing Angeles v. Samia, 66 Phil. 444, November 3, 1938, per Diaz, J.
- [20] Cf: GSIS v. CA, 287 SCRA 204, March 6, 1998.
- [21] See State Investment House, Inc. v. CA, 254 SCRA 368, March 5, 1996, citing Sunshine Finance and Investment Corp. v. IAC, 203 SCRA 210, October 28, 1991.
- [22] TSN, May 31, 1993, p. 3.
- [23] Ibid., pp. 2-7.
- [24] TSN, June 21, 1993, p. 5.
- [25] GR No. 109197, June 21, 2001, citing Crisostomo v. CA, 197 SCRA 833, May 31, 1991, per Paras, J.
- [26] Ibid., pp. 8-9.
- [27] 186 SCRA 672, June 21, 1990, per Medialdea, J.
- [28] Uy v. CA, supra, p. 9, per Melo, J.
- [29] Rollo, pp. 118-119.
- [30] TSN, June 21, 1993, pp. 7-8.
- [31] See Uy v. CA, 246 SCRA 703, July 20, 1995; Tomas v. Tomas, 98 SCRA 280, June 25, 1980; Gatioan v. Gaffud, 27 SCRA 706, March 28, 1969.

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