

MANILA SURETY & FIDELITY CO., INC., PLAINTIFF AND APPELLEE, VS. JOSE M. LUNA, DEFENDANT AND APPELLANT.*G.R. No. 14226. February 29, 1960*

Ponente: BAUTISTA ANGELO, J.

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The Manila Surety & Fidelity Co., Inc. brought this action against Jose M. Luna before the Court of First Instance of Manila to recover the sum of P3,506.90, with 12 per cent interest thereon from January 2, 1947, and 15 per cent on the principal amount as attorneys' fees.

Luna answered the complaint disclaiming responsibility for the amount claimed therein but at the same time he impleaded as third party defendants Jose Calderon, Precioso S. Peña and Jose B. Herrera alleging connivance on their part in the commission of the forgery which plaintiff company now wants to pin on him. In due time, the third party defendants answered the complaint of Luna setting up certain specific defenses.

The case having been submitted on a stipulation of facts, the court, on April 26, 1956, rendered decision in favor of plaintiff and against defendant Jose M. Luna, ordering the latter to pay plaintiff the sum of P8,506.90, with 6 per cent interest thereon from January 4, 1947, and the sum of P350.00 as attorneys' fees, plus the costs of action. After Luna had taken the case on appeal to the Court of Appeals, the case was certified to us on the ground that only questions of law are involved.

The facts, as found by the trial court, are:

"From the pleadings and the stipulation of facts submitted by the parties, the following facts appear: Defendant Jose M. Luna was the registered owner of a parcel of land and the improvements thereon, located at No. 410 Peñarubia, Manila, and covered by Transfer Certificate of Title No. 44225 of the Register of Deeds of Manila. The said property was previously mortgaged to El Hogar Filipino but was, sometime in 1946, redeemed by the defendant for the purpose of having the same negotiated. He entrusted the same to Jose Calderon sometime in the middle of 1946 in order that the latter may find and contact someone who would be willing to extend a loan of P5,000 or P6,000 on the guaranty of the property. Somehow, or another, the said title with other documents evidencing ownership of the property came into the hands of another person who went to the Manila Surety and Fidelity Co., Inc., and representing himself to be Jose M. Luna solicited for a credit accommodation of P5,000.00 to P6,000.00. That on September 4, 1946, the surety company agreed to accommodate the credit solicited and accordingly signed a promissory note, as co-maker with the person who represented himself as the defendant, in favor of the Philippine National Bank for the sum of P3,500. This promissory note was taken by that person to the Philippine National Bank and a cashier's check for P3,430.60 was issued by the bank. Said individual, continuing the masquerade, signed the check as payee thereof and withdrew the face value thereof. As security in favor of the surety company, this person also executed an indemnity agreement in favor of said company and delivered the title of the property and the other documents evidencing title under a deed of mortgage. The promissory note in favor of the Philippine National Bank fell due and the surety company sent a letter of notification to Jose M. Luna. This notice was received by the defendant in this case sometime in December, 1946, and he went to the company to inform them that he had not entered

into the transaction mentioned in the letter of notification. When' the promissory note fell due, the surety company had no choice but to pay the Philippine National Bank and then instituted the present action to recover the amount it had paid to the Bank,"

In reaching the conclusion that defendant Luna must bear the loss occasioned by the forgery committed by the person who impersonated him when he approached the officials of the plaintiff company seeking its accommodation for a loan he wanted to obtain from the Philippine National Bank, the trial court made the following observation:

"Defendant Jose M. Luna admits that sometime in the middle part of 1946 he parted with his title to the property and other documents evidencing ownership over the same. He claimed to have delivered them to Jose Calderon whom he had authorized to look for a person who would be willing to give a loan on the property in the sum of P5,000 or P6,000.00. While there is nothing in the records to show that Jose Calderon was the person who represented himself to the plaintiff company as Jose M. Luna, nor to the effect that the person who negotiated with the surety-company was a sub-agent or person connected with Jose Calderon, yet, the act remains that the defendant had clothed a third person with apparent, if not real authority, to negotiate his property for a loan. The rule of equity and which is the rule in our jurisdiction is—As between two innocent persons, one of whom must suffer the consequence of a breach of trust, the one who made it possible by his act of confidence must bear the loss. (*Blondeau vs. Nano*, 61 Phil., 625.) Applying this principle on the case at bar, the Court must necessarily arrive at the conclusion that the defendant must bear the loss."

This ruling is now assigned as error, appellant contending that he cannot be made to answer for the loss because while he entrusted his title and other pertinent papers to one Jose Calderon it was merely for a specific purpose and not to authorize him to make use of them in any transaction to his prejudice. We are inclined to uphold this contention.

To begin with, we are of the opinion that the ruling in the *Blondeau* case cited by the trial court in support of its conclusion that defendant Luna must bear the loss cannot be invoked in the instant case considering that the facts obtaining in both cases are different. The *Blondeau* case refers to the foreclosure of a mortgage on a land belonging to one Jose Vallejo whose signature was forged by one Agustin Nano even if the documents of title were entrusted by Vallejo to Nano which made it possible for the latter to commit the fraud. The property was covered by a Torrens title, and on the strength of that title Angela Blondeau, the creditor, was inveigled into agreeing to grant the loan only to find later that the signature of the owner has been forged. In holding that between the owner and the mortgagee the latter should be protected, this Court said: "When a mortgagee relies upon a Torrens title and loans money in all good faith on the basis of the title standing in the name of the mortgagor, only thereafter to discover one defendant to be an alleged forger and the other defendant to have by his negligence or acquiescence made it possible for the 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." And in explaining the philosophy behind this ruling, the Court made this significant pronouncement: "The Torrens Act permits a forged transfer, when duly entered in the registry, to become the root of a valid title in a bona fide purchaser. The act erects a safeguard against a forged transfer being registered, by the requirement that no transfer shall be registered unless the owner's certificate was produced along with the instrument of transfer. An executed transfer of registered lands placed by the registered owner thereof in the hands of another operates as a representation to a third party that the holder of the transfer is authorized to deal with the lands."

The facts obtaining in the present case are different. While it is true that defendant Luna entrusted to one Jose Calderon his owner's duplicate copy of Transfer Certificate of Title No. 4425 and other pertinent papers in order to enable Calderon to contact the person whom he assured was willing to extend a loan on the guarantee of the property, and availing himself of said documents the impostor approached plaintiff company and represented

himself to be the person mentioned in said documents, the company however limited itself to agreeing to act as a co-signer of a promissory note and as a security therefor it merely made the impostor execute an indemnity agreement in its favor. In other words, the company did not obtain in its favor a mortgage on the land belonging to Luna, but contented itself with obtaining his personal guarantee. Such being the case, the company cannot now shield itself behind the protective fold of the Land Registration Act which protects one who deals in good faith with lands covered by Torrens title by relying on what appears on the title itself. We have here, therefore, a case where plaintiff merely relied on the assurance given by the impostor himself rather than on the intrinsic value of the title itself, or to be more specific, this case resolves itself into a question of identification.

In dealing with the impostor, the company should have taken, the necessary precaution to ascertain his identity, or that he is the real person mentioned in the document, and having failed to do so, it undertook the transaction at its own peril. Such failure is considered more glaring considering that plaintiff is a business enterprise dealing with the public and is assisted by a notary public whose duty is to ascertain the identity of the person who appears before him. It is not without a purpose that the law requires that a party who appears before a notary public should exhibit his certificate of residence to avoid any impersonation, and if this was made possible here, it must be because¹ the notary public failed to act with the diligence required by the circumstances. To plaintiff, therefore, applies fittingly the following admonition of this Court:

"* * * But, where the title was still in the name, of the real owner when the land was mortgaged to the plaintiffs by the impostor, although it was not incumbent upon them to inquire into, the ownership of the property and so beyond what was stated on the face of the certificate of title, it was their duty to ascertain the identity of the man with whom they were dealing, as well as his legal authority to convey. That duty devolves upon all persons buying property of any land, and one who neglects it does so at his peril." (De Lara, et al. vs. Ayroso, 96 Phil., 185, 50 Off. Gaz. No. 10, 4838; Italics supplied.)

Wherefore, the decision appealed from is reversed. The complaint is dismissed, with costs against appellee.

Paras, C.J., Bengzon, Montemayor, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Gutierrez David, JJ., concur.

Barrera, J., concurs in the result.

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