PILIPINAS BANK, PETITIONER, VS. GLEE CHEMICAL LABORATORIES, INC., RESPONDENT.

G.R. NO. 148320. June 15, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

This resolves the petition for review on certiorari seeking the reversal of the Decision[1] of the Court of Appeals (CA) promulgated on May 22, 2001, which affirmed the Decision of the Regional Trial Court (RTC) of Makati City, Branch 145.

The antecedent facts are as follows.

Glee Chemical Laboratories, Inc. (respondent) alleged that it applied for a loan with Pilipinas Bank (petitioner) in the amount of P800,000.00, payment of which would be secured, pursuant to a board resolution dated March 5, 1982, by a mortgage of its real property located in San Juan, Metro Manila and covered by Transfer Certificate of Title No. 20610. The Real Estate Mortgage dated March 5, 1982 (Exhibit "A")[2] specifically stated in Paragraph 1 thereof that "[t]he MORTGAGOR (herein respondent) shall not apply the amount obtained from the loans of this date but for the following purpose, viz: Additional working capital for the purchase of fertilizers."

Respondent claims, however, that petitioner never delivered to it the loan proceeds and instead applied the amount to a debt owed by a certain Rustica Tan from petitioner. Petitioner insists that payment of Rustica Tan's debt was secured by the real estate mortgage executed by respondent pursuant to a third-party liability inserted therein. Since a balance of Rustica Tan's debt in the amount of P3,586,772.98 still remained unpaid, petitioner, through its agent Business Assistance Group, Inc., served on respondent a notice of foreclosure and auction sale of respondent's mortgaged lot. Respondent then filed with the RTC a complaint for annulment of contract and damages with preliminary injunction against herein petitioner.

However, respondent also filed a Supplemental Complaint because petitioner was also attempting to foreclose a chattel mortgage over certain chattels owned and possessed by respondent. Apparently, sometime in April of 1982, Rustica Tan executed a document described as an amendment of real estate mortgage with chattel mortgage,[3] as security for an additional loan of P1,200,000.00, thereby mortgaging the aforementioned chattels of respondent. The document did not bear the consent or conformity of respondent to the mortgage as Rustica Tan stated that she owned said chattels.

As prayed for in respondent's original and supplemental complaints, the RTC issued writs of preliminary injunction, enjoining the sale at public auction of the lot as well as the chattels in question.

After trial, the RTC rendered judgment in favor of respondent. The dispositive portion of the Decision[4] dated April 17, 1989 reads as follows:

> WHEREFORE, judgment is hereby rendered declaring the deed of real estate mortgage marked Exhibits A and 2, and the amendment of real estate mortgage with chattel mortgage marked as Annex "C" of the Supplemental

> Complaint, null and void ab initio, and permanently enjoining defendants from proceeding with the foreclosure and sale at public auction of the real property covered by Transfer Certificate of Title No. 20610 of the Registry of Deed of Rizal and of the chattels described in Exhibit C; and ordering defendant Pilipinas Bank to pay plaintiff the sum of FIVE HUNDRED THOUSAND PESOS (P500,000.00), Philippine Currency, as attorney's fees; ONE HUNDRED THOUSAND PESOS (P100,000.00), Philippine Currency, as moral damages; ONE HUNDRED THOUSAND PESOS (P100,000.00), Philippine Currency, as moral damages, ONE HUNDRED THOUSAND PESOS (P100,000.00), Philippine Currency, as exemplary damages; and to pay the costs. The counterclaims of defendants are hereby ordered dismissed for lack of merit.
>
> SO ORDERED.

Petitioner then elevated the case to the CA. On May 22, 2001, the CA promulgated the assailed Decision affirming in toto the RTC decision. The CA upheld the factual finding of the RTC that Cheng Yong, respondent's President, was more credible and, thus, gave more credence to his statement that the name Rustica Tan typewritten in the blank space in paragraph 16 of the Deed of Real Estate Mortgage and the typewritten "Third-Party Liability" were not yet appearing on said document when he affixed his signature thereto. The CA concluded thus:

> The main purpose of the loan secured by plaintiff-appellee (herein respondent) was for its own benefit. The unconsented insertion of the name of a third party effectively changed the nature of the instrument. Hence, there was no consent, so to speak, on the part of the plaintiff-appellee when the nature of the contract was altered without its knowledge and approval.[5]

Aggrieved by said decision, petitioner filed the present petition for review on certiorari alleging that the findings and conclusions of the CA, affirming those of the trial court, are not in accord with law and jurisprudence and "grounded on mere speculations, surmises and conjectures as well as inferences that are manifestly mistaken, absurb [sic], impossible or based on misapprehension of facts and/or findings of fact that are premised on absence of evidence and belied by evidence on record."[6]

Petitioner first argues that the stipulation pour autri should have been given effect as the benefits thereof had already been accepted by the third person, Rustica Tan, when she received the proceeds of the loan applied for by respondent. However, at the outset, it should be noted that an acceptance, if any, would take effect only if respondent, through its President, Cheng Yong, indeed intended to insert or include a stipulation pour autri in the Real Estate Mortgage. As held in Bank of the Philippine Islands v. V. Conception e Hijos, Inc., "to constitute a valid stipulation pour autri, it must be the purpose and intent of the stipulating parties to benefit the third person and it is not sufficient that the third person may be incidentally benefited by the stipulation."[7]

In this case, the bone of contention is whether at the time Cheng Yong affixed his signature on the Real Estate Mortgage, the blanks on the document had already been filled up with the stipulation in favor of Rustica Tan. Both Cheng Yong and respondent manager Melecio Hernandez, who signed the document as a witness, testified that such stipulation was not yet typewritten into the blank spaces of the pre-printed, pro-forma document with the heading "Real Estate Mortgage,"[8] at the time they signed it;[9] while Elpidio Guillermo, Senior Loans Clerk of petitioner, testified that he typed in said stipulation on the document on March 4, 1982, a day before he presented the same to Cheng Yong for the latter's signature.[10] Petitioner argues mainly that the CA erred in giving more credence to the testimonies of Cheng Yong and Melecio Hernandez. Petitioner insists that the testimony of its witness, Elpidio Guillermo, is more worthy of belief.

The trial court, affirmed by the CA, found Cheng Yong to be more convincing and believed his testimony that said stipulation was inserted only after he had affixed his signature on the questioned document. Thus, the CA ruled that respondent did not give its consent to the stipulation pour autri, making the same null and void ab initio.

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The well-settled rule, as reiterated by this Court in Child Learning Center, Inc. v. Tagorio,[11] is that:

> Generally, factual findings of the trial court, affirmed by the Court of Appeals, are final and conclusive and may not be reviewed on appeal. The established exceptions are: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the Court of Appeals is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings of fact are conclusions without citation of specific evidence on which they are based; (8) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (9) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record. (Emphasis supplied)

A close scrutiny of the records in this case leads to the conclusion that this case does not fall under any of the above-mentioned exceptions to the general rule.

The success or failure of this petition is rooted on the credibility of the witnesses. It should be borne in mind that the trial court is the best judge of the credibility of witnesses because, as explained in People v. Mendoza:[12]

> [S]ince the trial court has the best opportunity to observe the demeanor of witnesses while on the stand, it can discern whether or not they are telling the truth. The unbending jurisprudence is that its findings on the matter of credibility of witnesses are entitled to the highest degree of respect and will not be disturbed on appeal.[13] (Emphasis supplied)

As to who between petitioner's witness, Elpidio Guillermo, and respondent's witnesses, Cheng Yong and Melecio Hernandez, are telling the truth, both the trial court and the appellate court found in favor of respondent's witnesses. Now, petitioner again fails to present any circumstance, evidence, or argument that could persuade the Court to deviate from the above-quoted doctrine.

There is no merit to petitioner's contention that because the document is notarized and had been registered with the Register of Deeds of Pasig, then there should no longer be any doubt as to its due execution. Note, however, that the presumption that official duty has been regularly performed is not conclusive. As provided under Section 3, Rule 131 of the Revised Rules of Court, such presumption is rebuttable.[14] In this case, the testimony of petitioner's own witness, Elpidio Guillermo, destroyed this presumption by admitting that when the document was notarized, Cheng Yong and Melecio Hernandez did not appear before the notary public. Hence, the notary public did not witness Cheng Yongaffixing his signature on the document.[15] Verily, such notarization is useless since there is no truth whatsoever to the notary public's statement or acknowledgment that the person who executed the document personally appeared before him and the same was his free and voluntary act. Such being the case, the Court must rely on the trial court's observation and conclusions regarding which witnesses are telling the truth.

Considering that there is nothing in the records showing that the findings of fact of both the trial court and the CA regarding the credibility of the parties' witnesses are incorrect, this case does not fall under any of the enumerated exceptions to the general rule that factual findings of the trial court, affirmed by the Court of Appeals, are final and conclusive and may not be reviewed on appeal.

IN VIEW OF THE FOREGOING, the petition is DENIED for utter lack of merit.

Costs against petitioner.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Callejo, Sr., and Chico-Nazario, JJ., concur.

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[1] Penned by Associate Justice Bernardo P. Abesamis (now retired) with Associate Justices Godardo A. Jacinto and Eliezer R. De Los Santos, concurring.[2] Records, pp. 35-40.[3] Exhibit "2", id. at 79-84.[4] CA rollo, pp. 78-81.[5] Rollo, p. 36.[6] Id. at 12.[7] 53 Phil. 806, 817 (1928).[8] Pertinent portions of said document containing the assailed stipulation are reproduced hereunder:

16. It is understood that the Mortgage over the properties herein described shall stand as security for any obligation and or credit accommodation extended to RUSTICA I. TAN and/or MORTGAGOR herein granted [by] or may hereafter be obtained from the MORTGAGEE.

17. If this mortgage cannot be recorded in the corresponding registry of deeds, the obligations herein secured shall immediately become due, payable and defaulted.

LIST OF PROPERTIES MORTGAGED

Transfer Certificate of Title No. 20610

x x x x

THIRD PARTY LIABILITY

NOTWITHSTANDING the terms and conditions of the foregoing mortgage, it is understood that this mortgage shall stand as security for any indebtedness of RUSTICA I. TAN &/or MORTGAGOR in favor of the MORTGAGEE now existing or hereinafter incurred.[9] TSN, July 6, 1984, pp. 10-11; TSN, December 14, 1984, pp. 8-9.[10] TSN, September 19, 1983, p. 12.[11] G.R. No. 150920 November 25, 2005. 476 SCRA 236, 241-242.[12] G.R. No. 142654, November 16, 2001, 369 SCRA 268.[13] Id. at 280.[14] Section 3, Rule 131 of the Revised Rules of Court provides thus:

SEC. 3. Disputable Presumptions. - The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x x

(m) That official duty has been regularly performed.[15] Pertinent portions of the testimony of Elpidio Guillermo, TSN, September 19, 1983, pp. 12-15 are reproduced hereunder: paul

Q:

Now, there appears on this document a third party liability. Will you please tell us who typed this third party liability.

A:

I was the one who typed that third party liability.

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Q:

When did you type this?

A:

On March 4, 1982.

Q:

After typing this Mr. Witness, what did you do, if any?

A:

I went to the office of Glee Chemicals Laboratories, Inc. and requested its president, Cheng Yong to sign the mortgage contract including the witness Mr. Hernandez.

x x x x

Q:

Now, after Mr. Melecio Hernandez and you, signed the real estate mortgage document, what did you do?

A:

I proceeded to the Register of Deeds of Pasig Branch which is at the capitol and Atty. Romeo Perez have notarized the document.

COURT:

(to the witness)

Q:

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A:

Yes, your Honor.

Q:

So when this document was notarized, Cheng Yong and his witnesses were not around?

A:

Yes, your Honor. Because Mr. Cheng Yong and his witness signed the document in the office and after they signed the document, I proceeded to the Notary Public to notarize the mortgage contract and after that I proceeded to the Registry of Deeds of Pasig which is also inside the capitol compound and presented the document for registration.

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