

KAUNLARAN LENDING INVESTORS, INC. AND LELIA CHUA SY, Petitioners, vs. LORETA UY, Respondent.

G.R. No. 154974. February 04, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

From the Court of Appeals' decision reversing that of the trial court which dismissed respondent's complaint, petitioners come to this Court.

Respondent Loreta Uy (Loreta) filed on September 12, 1988 before the Regional Trial Court (RTC) of Dagupan City a complaint,[1] docketed as Civil Case No. D-9136, for annulment of real estate mortgage and related documents plus damages against petitioners Kaunlaran Lending Investors, Inc. (KLII) and Lelia Chua Sy (Lelia), along with Wilfredo Chua (Wilfredo) and Magno Zareno (Magno).

In Loreta's complaint, she alleged as follows:

Sometime in 1987, her son Jose U. Sim (Jose), her nephew Virgilio Sim (Virgilio), and Wilfredo agreed to establish a business of buy and sell of second-hand motor vehicles in which Virgilio would be the manager, Wilfredo would scout for a financier, and Jose would provide the security for any loan.

Through the efforts of Wilfredo, Lelia, then a Branch Manager of the Far East Bank and Trust Co., Inc. (FEBTC) in Dagupan City who was alleged to be the owner of the controlling interest in KLII, agreed to arrange for the grant of a loan. Wilfredo thus asked Jose in whose favor his mother Loreta issued a Special Power of Attorney reading:

That I, LORETA Q. UY, of legal age, Filipino, widow and a resident of Dagupan City, by these presents, do hereby NAME, CONSTITUTE and APPOINT my son JOSE U. SIM, likewise of legal age, Filipino, married and a resident of Dagupan City, to be my true and lawful attorney-in-fact, for me in my name, place and stead, to do the following acts, to wit:

- To obtain a loan from any bank, financial institutions [sic] or person in such amount as may be extended, and to secure the payment thereof by constituting in favor of the creditor a real estate mortgage on the herein-below described parcels of land and all improvements thereon, to wit:

TCT NO. 78622

x x x x

TCT NO. 78623

- To receive the check and/or cash proceeds of the loan; and,

- To sign such documents, papers and other papers [sic] relative thereto.[2] (Underscoring supplied),

to turn over the land titles of two parcels of land located in Quezon City,[3] covered by Transfer Certificates of

Title Nos. 78622 and 78623 in the name of his (Jose's) mother Loreta, to serve as security for the loan.

Jose thus entrusted his mother's land titles and related documents to Wilfredo who in turn delivered them to Lelia. Lelia thereafter sent Jose to Manila, together with a certain Ed and a certain Doc of KLII, to have the lands appraised at the main office of FEBTC.

Wilfredo subsequently brought to Loreta's residence loan forms consisting of a promissory note he had pre-signed as co-maker, a real estate mortgage, and a loan disclosure for Loreta's signature. After Jose examined the forms, Loreta signed them.

Soon Jose and Virgilio went to Manila to canvass prices of second-hand motor vehicles. While the two were in Manila, Magno, then the manager of KLII, brought to Loreta's residence the loan forms she had earlier signed and another set of loan forms, together with a blank Solidbank check drawn from the account of KLII and a check voucher. Magno explained to Loreta, in the presence of her daughter-in-law Arlene A. Sim (Arlene)-wife of Jose, that the new set of loan forms would be sent to Manila and that the proceeds of the loan would be promptly delivered to her residence once she affixes her signature on the said check and voucher.

When Jose returned home and learned about what transpired during his absence, he confronted Magno at the KLII office and was told that the documents bearing on the loan application were already sent to Lelia and that Loreta's signatures on the blank Solidbank check and the check voucher were procured on Lelia's instructions.

Virgilio and Jose later tried to withdraw the loan application and the titles to Loreta's properties but Lelia told them that it was no longer possible.

In a subsequent conference among Lelia, Jose, Virgilio, and Wilfredo, Lelia admitted having applied the loan proceeds amounting to P800,000 to Wilfredo's personal debt to her.

Continuing, Loreta alleged:

A verification from the Register of Deeds of Quezon City[4] revealed that the real estate mortgage in favor of KLII to secure a P800,000 loan was annotated on Loreta's titles. The copy of the document on file at the office of the Register of Deeds bore only Loreta's signature and it was notarized in the absence of Loreta.

Loreta and Jose thus sent telegrams to KLII and to the Register of Deeds of Quezon City requesting the setting aside of the transaction and the denial of registration of the mortgage, respectively, but to no avail.

Concluding that the real estate mortgage, promissory note, Solidbank check and "the other documents related thereto" were absolute nullities due to the absence of consideration and vitiated consent, Loreta prayed for their annulment[5] and for damages.[6]

In a related move, Loreta instituted a criminal complaint for estafa against Lelia, Wilfredo, and Magno, docketed as I.S. No. 88-498 at the Office of the City Fiscal of Dagupan City.[7] An Information for Estafa against the three was subsequently filed before the Dagupan City RTC, which was raffled to Branch 41 thereof and docketed as Criminal Case No. D-9840.[8]

In her Answer with Counterclaim,[9] Lelia denied being the owner of the controlling interest of KLII, claiming that she was only the lessor of the building which housed KLII's office. And she denied knowledge of the P800,000 loan of Loreta from KLII, she claiming that:

The instant complaint is baseless and false, and was maliciously instigated by Jose U. Sim, using his mother as the complainant, purposely to harass and embarrass the herein defendant for having been slighted when the lat[t]er rejected his loan application and his request to intercede in his behalf in influencing the Kaunlaran

Lending Investors to agree in the restructure of his alleged overdue account with it.[10]

Lelia thus prayed for the award of actual, moral and exemplary damages, attorney's fees, litigation expenses, and the costs of the suit.[11]

In his Answer with Compulsory Counterclaim, [12] Wilfredo claimed that his only participation in the transaction was to introduce Jose to Lelia and to sign as co-maker of the loan application. While he admitted that he had already signed the loan documents when they were brought to Loreta's residence for her signature, he claimed that it was Jose, not he, who brought them to Loreta.

In their joint Answer with Counterclaim,[13] KLII and Magno gave the following version:

After the application for loan was approved, Wilfredo and Loreta signed the promissory note and Loreta signed the real estate mortgage in the presence of Magno, Gonzales, Atty. Teofilo Guadiz III (Atty. Guadiz) who notarized the same, and other employees.

Atty. Guadiz and Rolando Tan, president and treasurer of KLII, respectively, thereupon signed and issued Solid Bank Check No. 0232250 for the amount of P800,000 in favor of Loreta who immediately endorsed it to KLII which changed it with cash.

After Wilfredo and Loreta received the cash proceeds of the check, Loreta signed a discount statement and the check as proof of the receipt.

In the meantime, Jose, who had a pending long overdue loan with KLII, requested Magno for a restructuring of his loan account, but Magno informed him that the request could not be granted without Jose paying at least 50% of the principal amount and the interests and penalties in full. It appears that Jose could not comply with the condition; hence, his request was denied.

KLII later filed a petition to extra-judicially foreclose the mortgage executed by Jose.

The three defendants surmised that Loreta filed Civil Case No. D-9136 upon the "malicious instigation"[14] of Jose. They thus counterclaimed for actual, moral and exemplary damages, attorney's fees, litigation expenses, and the costs of the suit.[15]

Magno and KLII corroborated Lelia's denial of being the owner of the controlling interest in the company, she being merely the lessor of the building where KLII holds office.

On joint motion[16] of the prosecution and Loreta, Branch 41 of the Dagupan City RTC, by Order dated March 12, 1991, consolidated Criminal Case No. D-9840 with Civil Case No. D-9136.[17]

By Decision of March 3, 1994, the trial court dismissed the civil case["COLOR: RGB(255, 0, 0);">[18]] in light of the following findings:

- That defendant Lelia Chua Sy is a part owner of Kaunlaran Lending Investors, Inc. is negated by the fact that the KLI[I] Board of Directors, were: Atty. Teofilo Guadiz III, Helen Siquiat, Joseph Lee, Rolando Tan, Adson Chua and Jose Sy. Kaunlaran Lending Investors, Inc. is a lessee of [Lelia Chua Sy's] property. x x x

- That Kaunlaran Lending Investors, Inc. had no money for the loan of P800,000.00 is negated by the fact that on January 28, 1988, KLI[I] financier Salome Cenidoza extended a loan to KLI[I] in the same amount of P800,000.00; and the books of Kaunlaran Lending Investors, Inc. indicated that KLI[I] had P1,700,288.10 cash on hand, as testified by Aurelia Lambino, KLI[I] book keeper. Before January 28, 1988, KLI[I] had granted loans of P1.5 million to Susan Go; P800,000.00 to Maramba; and P300,000.00 to Jose Sim.

- That the check in question was not actually funded; was never encashed to the Solid bank and not a bonafide check; is negated by the fact that said check was encashed with the drawer KLI[I], which is a normal practice[,] and the discount disclosure xxx showing that she received P800,000.00 cash.

The evidence is clear that on January 28, 1988, Loreta Uy and Wilfredo Chua received P800,00.00 cash from Kaunlaran Lending Investors, Inc. What happened to the money after that[,] has not been clarified.

Granting arguendo, that Loreta Uy did not benefit with the amount of P800,000.00, then where is the money? Since defendant Wilfredo Chua was with Loreta Uy when the latter received the loan proceeds, the disputable presumption is that he appropriated the amount for his own benefit. Thus defraud[ing] Loreta Uy in said amount. But Wilfredo Chua did not testify to refute or dispute the presumption; thus, he can be held [liable] for damages.

x x x x

There is no iota of evidence to show that defendant Lelia Chua Sy ever conspired with defendant Wilfredo Chua, so she cannot be liable for damages.[19] (Emphasis and underscoring supplied)

Thus the trial court disposed:

WHEREFORE, judgment is hereby rendered:

- Dismissing the complaint as against defendants Kaunlaran Lending Investors Inc., Lelia Chua Sy and Magno F. Zareno;
- Declaring the Real Estate Mortgage, Promissory Note and related documents in question valid and legal;
- Ordering the plaintiff to pay to defendant Kaunlaran Lending Investors, Inc. the principal amount of P800,000.00, plus interest at 48% per annum starting March 28, 1988 until fully paid;
- Ordering defendant Wilfredo Chua to pay to plaintiff:
 - the amount of P800,000.00, plus interest at 12% per annum starting March 28, 1988, until fully paid;
 - P100,000.00, as moral damages;
 - P50,000.00, as exemplary damages;
 - P20,000.00, as attorney's fees; and
 - P3,000.00, as litigation expenses.

SO ORDERED.[20] (Underscoring supplied)

Parenthetically, the records of the case before this Court do not show how the trial court decided the criminal case.

All parties, except Magno who died on October 7, 1991,[21] appealed[22] including Lelia. KLII's appeal was only with respect to the non-award to it of damages, litigation expenses, and attorney's fees.

The Court of Appeals, by Decision[23] of April 11, 2002, reversed the trial court's decision, declaring the real estate mortgage and promissory note null and void. Thus it disposed:

WHEREFORE, the appealed decision is REVERSED and SET ASIDE, and another is rendered declaring null and void the promissory note and deed of real estate mortgage in dispute, and ordering the defendants-appellants to pay, jointly and severally, the plaintiff the amount of P100,000.00 for and as

attorney's fees,
inclusive of expenses of litigation. Costs against the appellants.

SO ORDERED.[24] (Underscoring supplied)

Lelia, Wilfredo, and KLII moved for reconsideration[25[]] which was denied,[26] prompting KLII and Lelia to file before this Court the present petition which faults the appellate court to have

- gravely abused its discretion and evidently misappreciated the testimony of Magno Zareno by giving it credence, contrary to the findings of [the trial court] which heard and saw him testify;
- erred in giving more credence to the witnesses for the private respondent, in direct contrast to the findings of [the trial court] which heard the witnesses and observed their demeanor[;]
- erred in awarding attorney's fees of P100,000.00, when the award of moral and exemplary damages are not awarded. Moreover, the reason for the award was not explained in the decision.

In her Comment,[27] Loreta moves for the dismissal of the petition due to defective verification and certificate of non-forum shopping, adding that the petition raises factual issues.

Meanwhile, Loreta died on September 29, 2002[28] and has been substituted by her heirs Jose and her daughter Rosalia Sim Reate.[29]For failure of KLII to present proof that its president, Rolando Tan, was authorized to sign the verification and certificate of non-forum shopping on its behalf, the petition must be denied. Petitioners' argument that

the certification was made by the President, who is given general supervision and control as chief executive officer from which [it] is to be inferred that contracts or acts done by the President in the ordinary course of business are presumed to be duly authorized, unless the contrary appears. In fact the by-laws of the Petitioner KLI[I] xxx gives him that authority.[30]

fails in light of this Court's ruling that

In case of a corporation, it has long been settled that the certificate [of non-forum shopping] must be signed for and on its behalf by a specifically authorized officer or agent who has personal knowledge of the facts required to be disclosed.

x x x x

Consequently, without the needed proof from the board of directors, the certificate would be considered defective. Thus, xxx even the regular officers of a corporation, like the chairman and president, may not even know the details required in a certificate of non-forum shopping; they must therefore be authorized by the board of directors just like any other officer or agent.[31] (*Italics in the original*)

The merits of the petition, however, justify the relaxation of the rule on verification and certificate of non-forum shopping, for from a review of the records Loreta has not proven by preponderance of evidence that she was deceived into signing the documents required for the release of the proceeds of the loan.

In overturning the finding of the trial court, the Court of Appeals credited the testimony of Magno, who testified as a hostile witness for Loreta, that Lelia sent him to Loreta's house to secure her signature on the loan documents in blank, and that Loreta did not receive any proceeds of the loan.[32] The Court of Appeals did not proffer any reason, however, for deviating from the trial court's assessment of Magno's credibility, [33] despite the oft-repeated doctrine that "findings of fact of the trial court carry great weight and are entitled to respect on appeal absent any strong and cogent reason to the contrary, since, it is in a better position to decide the question of credibility of witnesses." [34] Furthermore, Magno's testimony should be received with caution because it

contradicts the earlier statements he had made under oath, such as the Counter-Affidavit[35] and Rejoinder[36] he filed in I.S. No. 88-498 and his verification of the joint Answer with Counterclaim he and KLII filed in Civil Case No. D-9136.[37]

x x x [C]ourts do not generally look with favor on any retraction or recanted testimony, for it could have been secured by considerations other than to tell the truth and would make solemn trials a mockery and place the investigation of the truth at the mercy of unscrupulous witnesses. A recantation does not necessarily cancel an earlier declaration, but like any other testimony the same is subject to the test of credibility and should be received with caution.[38]

x x x The mere fact that a witness says that what he had declared is false and what he now says is true, is not sufficient ground for concluding that the previous testimony is false. No such reasoning has ever crystallized into a rule of credulity. The rule is that a witness may be impeached by a previous contradictory statement (Section 13, Rule 132, Rules of Court): not that a previous testimony is presumed to be false merely because a witness now says that the same is false.[39] (Underscoring supplied)

The Court of Appeals credited too the testimony of Jacobo Malicdem, a bookkeeper of Solidbank against which the P800,000.00 KLII check payable to Loreta was drawn, that KLII did not have the said amount in the bank as of January and February 1988. [40] Gratuitously assuming that to have been the case, it is irrelevant given the factual finding of the trial court that the check was converted to cash by the drawer-KLII itself,[41] which cash was received by Loreta as proven by her signature on the check and on the discount statement acknowledging receipt thereof. [42]

WHEREFORE, the petition is GRANTED. The decision of the Court of Appeals dated April 11, 2002 is SET ASIDE, and the decision of Branch 41 of the Regional Trial Court of Dagupan City in Civil Case No. D-9136 dated March 3, 1994 is REINSTATED.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr. JJ., concur.

[1] Records, pp. 1-7.

[2] Exhibit "H," exhibits folder III, exhibits in exhibits folder III start from Exhibits "N" to "P," then start again from Exhibits "A" to "F."

[3] Exhibits "A" and "B," exhibits folder III.

[4] Records, p. 4.

[5] Id. at 6.

[6] Id. at 6-7.

[7] Id. at 4.

[8] Vide records, p. 181.

[9] Id. at 16-26.

[10] Id. at 23-24.

[11] Id. at 25.

[12] Id. at 47-49.

[13] Rollo, pp. 92-100.

[14] Id. at 98.

[15] Id. at 98-99.

[16] Records, pp. 177-178.

[17] Id. at 196.

[18] The parties agreed on separate decisions for the criminal case and the civil case. Id. at 284.

[19] Id. at 283-284.

[20] Id. at 284-285.

[21] Id. at 212.

[22] Id. at 286-290.

[23] Penned by Court of Appeals Associate Justice Salvador J. Valdez, Jr. with the concurrence of Associate Justices Mercedes Gozo-Dadole and Juan Q. Enriquez, Jr.; CA rollo, pp. 316-346.

[24] Id. at 346.

[25] Id. at 355-359.

[26] Id. at 376.

[27] Rollo, pp. 215-225.

[28] Id. at 259-262.

[29] Id. at 264-270.

[30] Id. at 227-228. Citation omitted.

[31] Metro Drug Distribution, Inc. v. Narciso, G.R. No. 147478, July 17, 2006, 495 SCRA 286, 293.

[32] CA rollo, pp. 338-341.

[33] Vide records, p. 284:

The testimony of Magno Zareno which is a complete turn about from his counter-affidavit in I.S. No. 88-498, dated May 18, 1988, proved only one thing – [t]hat he was not credible[,] and x x x his testimony, not credible by itself; hence, the same cannot be given weight or credence.

[34] People v. Atadero, 435 Phil. 888, 905 (2002).

[35] Exhibit “6,” exhibits folder II, pp. 12-14.

[36] Exhibit “3,” exhibits folder I, pp. 2-3.

[37] Rollo, p. 100.

[38] Francisco v. National Labor Relations Commission, G.R. No. 170087, August 31, 2006, 500 SCRA 690, 701-702.

[39] *People v. Mindac*, G.R. No. 83030, December 14, 1992, 216 SCRA 558, 572.

[40] CA rollo, p. 341.

[41] Records, p. 283. Vide TSN, March 3, 1992, pp. 10-14; TSN, August 13, 1993, p. 6; TSN; October 19, 1993, pp. 7-10.

[42] Exhibit "E," exhibits folder III.

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