CHINA BANKING CORPORATION, PETITIONER, VS. MARIA G. LAGON, REPRESENTED BY ARMANDO G. LAGON AND/OR JOSE LAGON, JR., RESPONDENT.

G.R. NO. 160843. July 11, 2006

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review assails the Decision[1] dated August 21, 2003 of the Court of Appeals in CA-G.R. CV No. 60853, which reversed and set aside the Joint Decision[2] dated April 3, 1998 of the Regional Trial Court of Bayombong, Nueva Vizcaya, Branch 27, in Civil Cases Nos. 5158 and 5192, and the Resolution[3] dated November 14, 2003, denying reconsideration.

Representatives of Maria Lagon (the Lagons) in her behalf as the owner of three parcels of land covered by Transfer Certificates of Title (TCT) Nos. T-56875 and T-11593 and Original Certificate of Title (OCT) No. P-1228, filed two complaints docketed as Civil Case No. 5158 and Civil Case No. 5192. Both were filed by the Lagons against Jao Bio Tong, China Banking Corporation (CBC) and the Acting Provincial Sheriff of Nueva Vizcaya. While Civil Case No. 5158 involved lots covered by TCT Nos. T-56875 and T-11593, Civil Case No. 5192 involves only a lot covered by OCT No. P-1228, both put in issue the authenticity of the Special Power of Attorney dated May 13, 1983 purportedly executed by Maria Lagon in favor of Jao and, hence the validity of the mortgage over the lots covered by the said titles executed by Jao on behalf of Maria and in favor of CBC. The Lagons prayed for the declaration of nullity of the special power of attorney allegedly executed by Maria in favor of Jao and the nullity of the real estate mortgage executed by Jao to CBC. They also asked for the issuance of an injunctive writ and damages. Eventually the two cases were heard jointly.

For their part, Jao and CBC insist the signature of Maria in the special power of attorney was authentic. In response, CBC filed a counterclaim for the payment of the loans of Maria and damages. CBC also filed a cross-claim against Jao.

During trial the following facts were established:

Sometime in 1981, Jao asked for credit accommodation from petitioner for P300,000 to be secured by a parcel of land under TCT No. T-30817 in Mariveles Street, Quezon City. The land was in the name of Maria Lagon. Jao represented that he had a special power of attorney, which he used previously to mortgage the same property to Metropolitan Bank and Trust Company (Metrobank). He proposed that the proceeds of the loan be used to pay P83,496.21 to Metrobank. Petitioner paid the Metrobank loan and the mortgage in favor of Metrobank was cancelled.

Subsequently, petitioner granted Jao a loan line of P1,000,000, secured by a mortgage on the lot covered by TCT No. T-30817. He first borrowed P300,000. Under the same loan line, Jao availed of four additional loans, P300,000 on June 22, 1983; P500,000 on June 22, 1983; P50,000 on September 5, 1983; and P50,000 on December 12, 1983. The proceeds of the loan were applied to the obligations of respondent Maria with the Rural

Bank of Ilagan, Inc. and of Jao with the Vizcaya Savings and Loan Association, Inc. The latter was secured by mortgages over the lots covered by TCT Nos. T-56875 and T-11593, both owned by Maria.

On July 28, 1983, the property under TCT No. T-30817 was substituted with three parcels of land covered by TCT Nos. T-56875 and T-11593 and OCT No. P-1228, the herein contested three parcels. Jao presented two special powers of attorney to mortgage the three parcels of land.

The loans of Maria and Jao matured but were unpaid. Thus, petitioner CBC prepared petitions for extra-judicial foreclosure of the mortgaged properties, naming Maria and Jao as defendants. However, no foreclosure took place because the Regional Trial Court of Bayombong, Nueva Vizcaya, Branch 27, upon filing of the Lagons, issued a temporary restraining order preventing the holding of the auction sale.[4]

Meanwhile, Jao died while the cases were still on trial before Branch 27. Respondent Maria Lagon died in 1995.

On April 3, 1998, Branch 27 dismissed the complaints finding that there was sufficient evidence that the signatures were authentic. The trial court ruled as follows:

> WHEREFORE, judgment is hereby rendered in favor of defendants China Banking Corporation (CBC) and Jao Bio Tong ordering:
>
> (1) the dismissal of the complaint against both defendants and the cross-claim of defendant CBC against Jao;
>
> (2) ordering the plaintiff to pay to the defendant CBC the sum of P19,180,331.14 which is the total amount of the plaintiff's obligation under all the Promissory Notes (Exhibits "118-CBC", "119-CBC" and "120-CBC") plus the late payment penalty of 1/10 of 1% of the total amount due and the interest at 26% per annum until all the said obligation is fully paid, or, if the plaintiff can not pay this sum, and the penalty for late payment and the interest, ordering the sale of the lots covered by TCT Nos. T-56875 and 11593 belonging to the plaintiff and the foreclosure of the lot covered by OCT No. P-1228 also belonging to the plaintiff and the proceeds thereof applied to the payment of the above-stated obligation in its totality;
>
> (3) if after the sale of the mortgaged property, there is still a deficiency on the above-stated obligation, ordering the plaintiff to pay such deficiency;
>
> (4) ordering the plaintiff to pay to the defendant bank CBC the sum of P50,000.00 as and for attorney's fees;
>
> (5) ordering the plaintiff to pay to the defendant bank CBC the sum of P42,073.20 as actual damages;
>
> (6) ordering the plaintiff to pay the costs of the suit.
>
> SO ORDERED.[5]

On appeal, the Court of Appeals on August 21, 2003, reversed and set aside the decision of the trial court and declared the special powers of attorney and the real estate mortgages null and void. The Court of Appeals held that Jao and petitioner failed to establish the due execution and authenticity of the special powers of attorney because Jao admitted that these were notarized without the personal appearance of respondent before the notary public. The Court of Appeals gave credence to the testimony of respondent's expert witness, NBI Questioned Document Examiner Bienvenido Albacea over the testimony of petitioner's expert witness, Atty. Desiderio A. Pagui.

Petitioner's motion for reconsideration was denied. In this petition, petitioner raises the following issues:

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I.

THE TESTIMONY OF PRIVATE PRACTISING DOCUMENT EXAMINER, ATTY. DESIDERIO PAGUI, AS AGAINST THAT OF THE NBI QUESTIONED EXAMINER BIENVENIDO ALBACEA, OUGHT TO HAVE BEEN GIVEN SUPERIOR CREDENCE AND GREATER WEIGHT ON APPEAL, BECAUSE:

(a) THE TRIAL COURT IS IN A BETTER POSITION TO EXAMINE THE REAL EVIDENCE, AND OBSERVE THE DEMEANOR OF THE WITNESSES, AND CAN THEREFORE DISCERN IF THEY ARE TELLING THE TRUTH OR NOT.

(b) THE CREDIBILITY OF ATTY. DESIDERIO PAGUI AS AN EXPERT ON QUESTIONED DOCUMENTS WAS NOT EVEN RAISED AS AN ISSUE IN THE APPEAL BRIEF OF RESPONDENT MARIA LAGON.

(c) IN CONTRAST, THE EXAMINATION CONDUCTED BY NBI DOCUMENT EXAMINER ALBACEA-

i. USED STANDARDS THAT WERE NOT ADEQUATE, APPROPRIATE AND CONTEMPORANEOUS;

ii. DID NOT COMPLY WITH THE FOUR (4) REQUIREMENTS TO THE "PROPER CONDITIONS UNDER WHICH SCIENTIFIC HANDWRITING IDENTIFICATION MAY LEAD TO AN ACCURATE FINDING AND UNDER WHICH A HANDWRITING EXPERT MAY BE ABLE TO RENDER AN ACCURATE OPINION.

(d) NBI DOCUMENT EXAMINER ALBACEA WAS IN FACT TECHNICALLY HIRED BY RESPONDENT LAGON THROUGH HER ATTORNEY-IN-FACT, ARMANDO LAGON, BY THE DEFRAYAL OF HIS TRAVELLING, LODGING AND OTHER EXPENSES.

II.

RESPONDENT MARIA LAGON IS ESTOPPED FROM CONTESTING THE VALIDITY OF THE SPECIAL POWER OF ATTORNEY AND THE REAL ESTATE MORTGAGES, BECAUSE:

(a) THROUGH THE PREVIOUS AUTHORITY (SPECIAL POWER OF ATTORNEY) TO DEFENDANT JAO BIO TONG TO DEAL WITH "HER" PROPERTIES, RESPONDENT MARIA LAGON HELD OUT SAID DEFENDANT JAO BIO TONG AS HER DULY AUTHORIZED ATTORNEY-IN-FACT.

(b) THE PROCEEDS OF THE LOANS OBTAINED FROM PETITIONER CBC WERE USED TO PAY OFF THE MORTGAGE OBLIGATIONS OF RESPONDENT MARIA LAGON AND DEFENDANT JAO BIO TONG WITH OTHER BANKING INSTITUTION.[6]

Simply stated, two issues are for resolution now: (1) Are the special powers of attorney (SPAs) of Jao spurious, given the allegation of forgery? (2) Are the real estate mortgages executed by Jao valid? Both depend on the threshold issue of credibility of respondent's expert witness, Bienvenido Albacea vis-á-vis petitioner's expert witness, Desiderio A. Pagui.

Primarily, what petitioner questions is the credibility of Albacea as an expert witness. As petitioner claims, which the trial court sustained, Atty. Pagui's testimony should be given more weight since the trial court was in a better position to examine real and testimonial evidence. Besides, according to petitioner the credibility of Atty. Pagui was never raised as an issue in respondent's appeal brief.

Moreover, according to petitioner, respondent clothed Jao with apparent authority as her agent, hence, she cannot now be permitted to deny the authority of Jao to the prejudice of innocent third parties. In addition, petitioner points out that respondent is estopped from questioning the validity of the mortgages because the loans were used to pay the obligation of Maria Lagon with other banks.

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Respondent's representatives counter that Atty. Pagui was a biased witness because he was hired by petitioner as a practicing private document examiner. Significantly, they point out that respondent Maria was in the United States at the time the SPAs were allegedly signed before the notary public in Nueva Vizcaya. They conclude that the irregularity in the notarization shows that the SPAs were spurious and the respondent's signatures were forgeries.

Respondent's representatives also add that contrary to the claim that Maria benefited from the loan, Maria's estate ended up more heavily burdened since only a small portion of the loan obtained by Jao were applied to Maria's obligations. Therefore, Maria's representatives should not be estopped from questioning the mortgages.

To begin with, the issue of whether the SPAs are authentic is a question of fact, that may be reviewed by this Court only under exceptional circumstances[7] like when, as in this case, the findings of facts of the Court of Appeals are at variance with those of the trial court.[8]

We have held in prior cases that generally, a notarized instrument is admissible in evidence without further proof of its due execution and is conclusive as to the truthfulness of its contents,[9] and has in its favor the presumption of regularity.[10] However, this presumption is not absolute and may be rebutted by clear and convincing evidence.[11]

In his testimony, Jao admitted that the SPAs were not signed in the presence of the notary public, but pre-signed by respondent in the United States. Likewise, respondent neither appeared personally before the notary public nor acknowledged to him that the instrument was her own free and voluntary act and deed, contrary to what appears in the SPAs' acknowledgement. Patently then, the notarization was irregular and could not be given probative value.

As the respondent has repudiated the signatures in the SPAs and it was shown that she did not acknowledge these before the notary public, the burden of proof to show the SPAs' authenticity, genuineness and due execution lay with petitioner. In our view, petitioner failed in this task. The contrasting testimony of the experts on the authenticity of the signatures of Maria could not benefit either side, considering the admission that the notarial requisites had not been adhered to.

Finally, with respect to the credibility of the handwriting expert, courts are not bound to give probative value or evidentiary value to the opinions of handwriting experts, as resort to handwriting experts is not mandatory.[12] The courts may place whatever weight they choose upon such testimonies in accordance with the facts of the case.[13]

In this case, resort to handwriting experts would not benefit either of the parties, considering the conflicting testimonies of the expert witnesses and as earlier mentioned the fact that the notarial requirements had not been met.

We are also not persuaded by petitioner's argument that respondent benefited from the loan. Assuming that indeed part of the loan was used to pay for Maria's own loan, still the incontrovertible fact remains that the SPAs were spurious and the mortgage unauthorized.

Moreover, petitioner could not be considered a mortgagee in good faith. It had knowledge that respondent was in the United States at the time the SPAs were allegedly executed, yet, it did not question their due execution. Though petitioner is not expected to conduct an exhaustive investigation on the history of the mortgagor's title, it cannot be excused from the duty of exercising the due diligence required of a banking institution.[14] Banks are expected to exercise more care and prudence than private individuals in their dealings, even those that involve registered lands, for their business is affected with public interest.[15]

WHEREFORE, the petition is DENIED. The Decision dated August 21, 2003 and the Resolution dated November 14, 2003 of the Court of Appeals in CA-G.R. CV No. 60853 are hereby AFFIRMED.

Costs against petitioner.
SO ORDERED.

Carpio, (Chairman), Carpio-Morales, Tinga, and Velasco, Jr. JJ., concur.

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[1] Rollo, pp. 9-18. Penned by Associate Justice Bernardo P. Abesamis, with Associate Justices Mariano C. Del Castillo, and Arturo D. Brion concurring.

[2] Id. at 160-179.

[3] Id. at 20.

[4] CA rollo, p. 356.

[5] Rollo, p. 179.

[6] Id. at 40-41.

[7] See Pastor v. Philippine National Bank, G.R. No. 141316, November 20, 2003, 416 SCRA 283, 295.

[8] See Serrano v. Court of Appeals, G.R. No. 123896, June 25, 2003, 404 SCRA 639, 649.

[9] Lao v. Villones-Lao, G.R. No. 126777, April 29, 1999, 306 SCRA 387, 396.

[10] Loyola v. Court of Appeals, G.R. No. 115734, February 23, 2000, 326 SCRA 285, 292-293.

[11]Basilio v. Court of Appeals, G.R. No. 125935, November 29, 2000, 346 SCRA 321, 324.

[12]Domingo v. Domingo, G.R. No. 150897, April 11, 2005, 455 SCRA 230, 237.

[13] Ilao-Quianay v. Mapile, G.R. No. 154087, October 25, 2005, 474 SCRA 246, 255.

[14]Cavite Development Bank v. Lim, G.R. No. 131679, February 1, 2000, 324 SCRA 346, 359.

[15] Philippine National Bank v. Heirs of Estanislao Militar and Deogracias Militar, G.R. No. 164801, August 18, 2005, 467 SCRA 377, 388.

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