

TITAN CONSTRUCTION CORPORATION, PETITIONER, VS. MANUEL A. DAVID, SR. AND MARTHA S. DAVID, RESPONDENTS.

G.R. No. 169548. March 15, 2010

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

The review of factual matters is not the province of this Court.[1] The Supreme Court is not a trier of facts, and is not the proper forum for the ventilation and substantiation of factual issues.[2]

This Petition for Review assails the July 20, 2004 Decision[3] of the Court of Appeals (CA) in CA-G.R. CV No. 67090 which affirmed with modification the March 7, 2000 Decision[4] of the Regional Trial Court (RTC) of Quezon City, Branch 80. Also assailed is the August 31, 2005 Resolution[5] of the CA denying the motion for reconsideration.

Factual Antecedents

Manuel A. David, Sr. (Manuel) and Martha S. David (Martha) were married on March 25, 1957. In 1970, the spouses acquired a 602 square meter lot located at White Plains, Quezon City, which was registered in the name of "MARTHA S. DAVID, of legal age, Filipino, married to Manuel A. David" and covered by Transfer Certificate of Title (TCT) No. 156043 issued by the Register of Deeds of Quezon City.[6] In 1976, the spouses separated de facto, and no longer communicated with each other.[7]

Sometime in March 1995, Manuel discovered that Martha had previously sold the property to Titan Construction Corporation (Titan) for P1,500,000.00 through a Deed of Sale[8] dated April 24, 1995, and that TCT No. 156043 had been cancelled and replaced by TCT No. 130129 in the name of Titan.

Thus, on March 13, 1996, Manuel filed a Complaint[9] for Annulment of Contract and Reconveyance against Titan before the RTC of Quezon City. Manuel alleged that the sale executed by Martha in favor of Titan was without his knowledge and consent, and therefore void. He prayed that the Deed of Sale and TCT No. 130129 be invalidated, that the property be reconveyed to the spouses, and that a new title be issued in their names.

In its Answer with Counterclaim,[10] Titan claimed that it was a buyer in good faith and for value because it relied on a Special Power of Attorney (SPA) [11] dated January 4, 1995 signed by Manuel which authorized Martha to dispose of the property on behalf of the spouses. Titan thus prayed for the dismissal of the complaint.

In his unverified Reply,[12] Manuel claimed that the SPA was spurious, and that the signature purporting to be his was a forgery; hence, Martha was wholly without authority to sell the property.

Subsequently, Manuel filed a Motion for Leave to File Amended Complaint[13] which was granted by the trial court. Thus, on October 15, 1996, Manuel filed an Amended Complaint[14] impleading Martha as a co-defendant in the proceedings. However, despite personal service of summons[15] upon Martha, she failed to file an Answer. Thus, she was declared in default.[16] Trial then ensued.

Ruling of the Regional Trial Court

On March 7, 2000, the RTC issued a Decision which (i) invalidated both the Deed of Sale and TCT No. 130129; (ii) ordered Titan to reconvey the property to Martha and Manuel; (iii) directed the Register of Deeds of Quezon City to issue a new title in the names of Manuel and Martha; and (iv) ordered Titan to pay P200,000.00 plus P1,000.00 per appearance as attorney's fees, and P50,000.00 as costs of suit.

The RTC found that:

1)

The property was conjugal in character since it was purchased by Manuel and Martha with conjugal funds during their marriage. The fact that TCT No. 156043 was registered in the name of "MARTHA S. DAVID x x x married to Manuel A. David" did not negate the property's conjugal nature.

2)

The SPA professing to authorize Martha to sell the property on behalf of the spouses was spurious, and did not bear Manuel's genuine signature. This was the subject of expert testimony, which Titan failed to rebut. In addition, despite the fact that the SPA was notarized, the genuineness and due execution of the SPA was placed in doubt since it did not contain Manuel's residence certificate, and was not presented for registration with the Quezon City Register of Deeds, in violation of Section 64 of Presidential Decree No. 1529.[17]

3)

The circumstances surrounding the transaction with Martha should have put Titan on notice of the SPA's dubious veracity. The RTC noted that aside from Martha's failure to register the SPA with the Register of Deeds, it was doubtful that an SPA would have even been necessary, since the SPA itself indicated that Martha and Manuel lived on the same street in Navotas.

The dispositive portion of the trial court's Decision reads:

Wherefore, judgment is hereby rendered:

1.)

Declaring the Deed of Sale dated April 24, 1995 as void ab initio and without force and effect.

2.)

Declaring null and void TCT No. 130129 issued by the Register of Deeds of Quezon City in the name of defendant Titan Construction Corporation.

3.)

Ordering defendant Titan Construction Corporation to reconvey the subject property to plaintiff and his spouse.

4.)

Ordering the Register of Deeds of Quezon City to make and issue a new title in the name of plaintiff Manuel David and his Spouse, Martha David.

5.)

Ordering defendant to pay P200,000.00 plus P1,000.00 per appearance as attorney's fees and P50,000.00 as

costs of suit.

SO ORDERED.[18]

Ruling of the Court of Appeals

In its Decision dated July 20, 2004, the CA affirmed the Decision of the trial court but deleted the award of attorney's fees and the amount of P50,000.00 as costs.

The dispositive portion of the Decision reads:

WHEREFORE, with the MODIFICATION by deleting the award of attorney's fees in favor of plaintiff-appellee Manuel A. David, Sr. and the amount of P50,000.00 as costs, the Decision appealed from is AFFIRMED in all other respects, with costs against defendant-appellant Titan Construction Corporation.[19]

Titan moved for reconsideration but the motion was denied on August 31, 2005.

Hence, this petition.

Issues

Titan raises the following assignment of errors:

- THE COURT OF APPEALS PATENTLY ERRED IN DECLARING THE SUBJECT DEED OF SALE NULL AND VOID AND FAILED TO APPLY TO THIS CASE THE PERTINENT LAW AND JURISPRUDENCE ON THE TORRENS SYSTEM OF LAND REGISTRATION.
- THE COURT OF APPEALS PATENTLY ERRED IN RULING THAT TITAN WAS NOT A BUYER IN GOOD FAITH CONTRARY TO THE STANDARDS APPLIED BY THIS HONORABLE COURT IN CASES INVOLVING SIMILAR FACTS.
- THE COURT OF APPEALS PATENTLY ERRED BY DISCARDING THE NATURE OF A NOTARIZED SPECIAL POWER OF ATTORNEY CONTRARY TO JURISPRUDENCE AND BY GIVING UNDUE WEIGHT TO THE ALLEGED EXPERT TESTIMONY VIS-À-VIS THE CONTESTED SIGNATURES AS THEY APPEAR TO THE NAKED EYE CONTRARY TO JURISPRUDENCE.
- THE COURT OF APPEALS PATENTLY ERRED BY FAILING TO DETECT BADGES OF CONNIVANCE BETWEEN RESPONDENTS.
- THE COURT OF APPEALS PATENTLY ERRED BY NOT RULING THAT ASSUMING THE SPA WAS NULL AND VOID, THE SAME IS IMMATERIAL SINCE THE RESPONDENTS SHOULD BE CONSIDERED ESTOPPED FROM DENYING THAT THE SUBJECT PROPERTY WAS SOLELY THAT OF RESPONDENT MARTHA S. DAVID.
- THE COURT OF APPEALS PATENTLY ERRED BY NOT RULING THAT ASSUMING THE SALE WAS VOID, ON GROUNDS OF EQUITY MARTHA S. DAVID SHOULD REIMBURSE PETITIONER OF HIS PAYMENT WITH LEGAL INTEREST.[20]

Petitioner's Arguments

Titan is claiming that it was a buyer in good faith and for value, that the property was Martha's paraphernal property, that it properly relied on the SPA presented by Martha, and that the RTC erred in giving weight to the alleged expert testimony to the effect that Manuel's signature on the SPA was spurious. Titan also argues, for the first time, that the CA should have ordered Martha to reimburse the purchase price paid by Titan.

Our Ruling

The petition is without merit.

The property is part of the spouses' conjugal partnership.

The Civil Code of the Philippines,[21] the law in force at the time of the celebration of the marriage between Martha and Manuel in 1957, provides:

Article 160. All property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife.

Article 153 of the Civil Code also provides:

Article 153. The following are conjugal partnership property:

(1) That which is acquired by onerous title during the marriage at the expense of the common fund, whether the acquisition be for the partnership, or for only one of the spouses;

x x x x

These provisions were carried over to the Family Code. In particular, Article 117 thereof provides:

Art. 117. The following are conjugal partnership properties:

(1) Those acquired by onerous title during the marriage at the expense of the common fund, whether the acquisition be for the partnership, or for only one of the spouses;

x x x x

Article 116 of the Family Code is even more unequivocal in that "[a]ll property acquired during the marriage, whether the acquisition appears to have been made, contracted or registered in the name of one or both spouses, is presumed to be conjugal unless the contrary is proved."

We are not persuaded by Titan's arguments that the property was Martha's exclusive property because Manuel failed to present before the RTC any proof of his income in 1970, hence he could not have had the financial capacity to contribute to the purchase of the property in 1970; and that Manuel admitted that it was Martha who concluded the original purchase of the property. In consonance with our ruling in *Spouses Castro v. Miat*,[22] Manuel was not required to prove that the property was acquired with funds of the partnership. Rather, the presumption applies even when the manner in which the property was acquired does not appear.[23] Here, we find that Titan failed to overturn the presumption that the property, purchased during the spouses' marriage, was part of the conjugal partnership.

In the absence of Manuel's consent, the Deed of Sale is void.

Since the property was undoubtedly part of the conjugal partnership, the sale to Titan required the consent of both spouses. Article 165 of the Civil Code expressly provides that "the husband is the administrator of the conjugal partnership". Likewise, Article 172 of the Civil Code ordains that "(t)he wife cannot bind the conjugal partnership without the husband's consent, except in cases provided by law".

Similarly, Article 124 of the Family Code requires that any disposition or encumbrance of conjugal property must have the written consent of the other spouse, otherwise, such disposition is void. Thus:

Art. 124. The administration and enjoyment of the conjugal partnership shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.

The Special Power of Attorney
purportedly signed by Manuel
is spurious and void.

The RTC found that the signature of Manuel appearing on the SPA was not his genuine signature.

As to the issue of the validity or invalidity of the subject Special Power of Attorney x x x the Court rules that the same is invalid. As aptly demonstrated by plaintiff's evidence particularly the testimony of expert witness Atty. Desiderio Pagui, which the defense failed to rebut and impeach, the subject Special Power of Attorney does not bear the genuine signature of plaintiff Manuel David thus rendering the same as without legal effect.

Moreover, the genuineness and the due execution of the Special Power of Attorney was placed in more serious doubt as the same does not contain the Residence Certificate of the plaintiff and most importantly, was not presented for registration with the Quezon City Register of Deeds which is a clear violation of Sec. 64 of P.D. No. 1529.

As regards defendant Titan Construction Corporation's assertion that plaintiff's failure to verify his Reply (wherein the validity of the Special Power of Attorney is put into question) is an implied admission of its genuineness and due execution, [this] appears at first blush a logical conclusion. However, the Court could not yield to such an argument considering that a rigid application of the pertinent provisions of the Rules of Court will not be given premium when it would obstruct rather than serve the broader interest of justice.[24]

Titan claims that the RTC gave undue weight to the testimony of Manuel's witness, and that expert testimony on handwriting is not conclusive.

The contention lacks merit. The RTC's ruling was based not only on the testimony of Manuel's expert witness finding that there were significant differences between the standard handwriting of Manuel and the signature found on the SPA, but also on Manuel's categorical denial that he ever signed any document authorizing or ratifying the Deed of Sale to Titan.[25]

We also note that on October 12, 2004, Titan filed before the CA a Manifestation with Motion for Re-Examination of Another Document/ Handwriting Expert[26] alleging that there is "an extreme necessity"[27] for a conduct of another examination of the SPA by a handwriting expert "as it will materially affect and alter the final outcome"[28] of the case. Interestingly, however, Titan filed on January 6, 2005 a Manifestation/Motion to Withdraw Earlier Motion for Re-Examination of PNP Laboratory Expert[29] this time praying that its motion for re-examination be withdrawn. Titan claimed that "after a circumspect evaluation, deemed it wise not to pursue anymore said request (re-examination) as there is a great possibility that the x x x [PNP and the NBI] might come out with two conflicting opinions and conclusions x x x that might cause some confusion to the minds of the Honorable Justices in resolving the issues x x x as well as the waste of material time and resources said motion may result".[30]

In any event, we reiterate the well-entrenched rule that the factual findings of trial courts, when adopted and confirmed by the CA, are binding and conclusive and will generally not be reviewed on appeal.[31] We are

mandated to accord great weight to the findings of the RTC, particularly as regards its assessment of the credibility of witnesses[32] since it is the trial court judge who is in a position to observe and examine the witnesses first hand.[33] Even after a careful and independent scrutiny of the records, we find no cogent reason to depart from the rulings of the courts below.[34]

Furthermore, settled is the rule that only errors of law and not of fact are reviewable by this Court in a petition for review on certiorari under Rule 45 of the Rules of Court. This applies with even greater force here, since the factual findings by the CA are in full agreement with those of the trial court.[35]

Indeed, we cannot help but wonder why Martha was never subpoenaed by Titan as a witness to testify on the character of the property, or the circumstances surrounding the transaction with Titan. Petitioner's claim that she could not be found is belied by the RTC records, which show that she personally received and signed for the summons at her address in Greenhills, San Juan. Titan neither filed a cross claim nor made any adverse allegation against Martha.

On the Failure to Deny the
Genuineness and Due Execution
of the SPA

Titan claimed that because Manuel failed to specifically deny the genuineness and due execution of the SPA in his Reply, he is deemed to have admitted the veracity of said document, in accordance with Rule 8, Sections 7 and 8,[36] of the Rules of Court.

On this point, we fully concur with the findings of the CA that:

It is true that the reply filed by Manuel alleging that the special power of attorney is a forgery was not made under oath. However, the complaint, which was verified by Manuel under oath, alleged that the sale of the subject property executed by his wife, Martha, in favor of Titan was without his knowledge, consent, and approval, express or implied; and that there is nothing on the face of the deed of sale that would show that he gave his consent thereto. In *Toribio v. Bidin*, it was held that where the verified complaint alleged that the plaintiff never sold, transferred or disposed their share in the inheritance left by their mother to others, the defendants were placed on adequate notice that they would be called upon during trial to prove the genuineness or due execution of the disputed deed of sale. While Section 8, Rule 8 is mandatory, it is a discovery procedure and must be reasonably construed to attain its purpose, and in a way as not to effect a denial of substantial justice. The interpretation should be one which assists the parties in obtaining a speedy, inexpensive, and most important, a just determination of the disputed issues.

Moreover, during the pre-trial, Titan requested for stipulation that the special power of attorney was signed by Manuel authorizing his wife to sell the subject property, but Manuel refused to admit the genuineness of said special power of attorney and stated that he is presenting an expert witness to prove that his signature in the special power of attorney is a forgery. However, Titan did not register any objection x x x. Furthermore, Titan did not object to the presentation of Atty. Desiderio Pagui, who testified as an expert witness, on his Report finding that the signature on the special power of attorney was not affixed by Manuel based on his analysis of the questioned and standard signatures of the latter, and even cross-examined said witness. Neither did Titan object to the admission of said Report when it was offered in evidence by Manuel on the ground that he is barred from denying his signature on the special power of attorney. In fact, Titan admitted the existence of said Report and objected only to the purpose for which it was offered. In *Central Surety & Insurance Company v. C.N. Hodges*, it was held that where a party acted in complete disregard of or wholly overlooked Section 8, Rule 8 and did not object to the introduction and admission of evidence questioning the genuineness and due execution of a document, he must be deemed to have waived the benefits of said Rule. Consequently, Titan is deemed to have waived the mantle of protection given [it] by Section 8, Rule 8.[37]

It is true that a notarial document is considered evidence of the facts expressed therein.[38] A notarized document enjoys a prima facie presumption of authenticity and due execution[39] and only clear and convincing evidence will overcome such legal presumption.[40] However, such clear and convincing evidence is present here. While it is true that the SPA was notarized, it is no less true that there were defects in the notarization which mitigate against a finding that the SPA was either genuine or duly executed. Curiously, the details of Manuel's Community Tax Certificate are conspicuously absent, yet Martha's are complete. The absence of Manuel's data supports his claim that he did not execute the same and that his signature thereon is a forgery. Moreover, we have Manuel's positive testimony that he never signed the SPA, in addition to the expert testimony that the signature appearing on the SPA was not Manuel's true signature.

Moreover, there were circumstances which mitigate against a finding that Titan was a buyer in good faith.

First, TCT No. 156043 was registered in the name of "MARTHA S. DAVID, of legal age, Filipino, married to Manuel A. David" but the Deed of Sale failed to include Martha's civil status, and only described the vendor as "MARTHA S. DAVID, of legal age, Filipino citizen, with postal address at 247 Governor Pascual, Navotas, Rizal." And it is quite peculiar that an SPA would have even been necessary, considering that the SPA itself indicated that Martha and Manuel lived on the same street (379 and 247 Governor Pascual Street, respectively).

Second, Titan's witness Valeriano Hernandez, the real estate agent who brokered the sale between Martha and Titan, testified that Jerry Yao (Yao), Titan's Vice President for Operations (and Titan's signatory to the Deed of Sale), specifically inquired why the name of Manuel did not appear on the Deed of Sale.[41] This indicates that Titan was aware that Manuel's consent may be necessary. In addition, Titan purportedly sent their representative to the Register of Deeds of Quezon City to verify TCT No. 156043, so Titan would have been aware that the SPA was never registered before the Register of Deeds.

Third, Valeriano Hernandez also testified that during the first meeting between Martha and Yao, Martha informed Yao that the property was mortgaged to a casino for P500,000.00. Without even seeing the property, the original title, or the SPA, and without securing an acknowledgment receipt from Martha, Titan (through Yao) gave Martha P500,000.00 so she could redeem the property from the casino.[42] These are certainly not actions typical of a prudent buyer.

Titan cannot belatedly claim that the RTC should have ordered Martha to reimburse the purchase price.

Titan argues that the CA erred in not ruling that, even assuming the sale was void, on grounds of equity, Martha should reimburse petitioner its payment with legal interest. We note that this equity argument was raised for the first time before the CA, which disposed of it in this manner:

Anent defendant-appellant's claim that the court a quo and this Court never considered the substantial amount of money paid by it to Martha David as consideration for the sale of the subject property, suffice it to say that said matter is being raised for the first time in the instant motion for reconsideration. If well-recognized jurisprudence precludes raising an issue only for the first time on appeal proper, with more reason should such issue be disallowed or disregarded when initially raised only in a motion for reconsideration of the decision of the appellate court.

Nonetheless, record shows that only defendant-appellant was initially sued by plaintiff-appellee in his complaint for annulment of contract and reconveyance upon the allegation that the sale executed by his wife, Martha David, of their conjugal property in favor of defendant-appellant was without his knowledge and consent and, therefore, null and void. In its answer, defendant-appellant claimed that it bought the property in

good faith and for value from Martha David and prayed for the dismissal of the complaint and the payment of his counterclaim for attorney's fees, moral and exemplary damages. Subsequently, plaintiff-appellee filed a motion for leave to file amended complaint by impleading Martha David as a defendant, attaching the amended complaint thereto, copies of which were furnished defendant-appellant, through counsel. The amended complaint was admitted by the court a quo in an Order dated October 23, 1996. Martha David was declared in default for failure to file an answer. The record does not show [that] a cross-claim was filed by defendant-appellant against Martha David for the return of the amount of PhP1,500,000.00 it paid to the latter as consideration for the sale of the subject property. x x x Thus, to hold Martha David liable to defendant-appellant for the return of the consideration for the sale of the subject property, without any claim therefore being filed against her by the latter, would violate her right to due process. The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of his defense. It is elementary that before a person can be deprived of his property, he should be first informed of the claim against him and the theory on which such claim is premised.[43] (Emphasis supplied)

While it is true that litigation is not a game of technicalities,[44] it is equally true that elementary considerations of due process require that a party be duly apprised of a claim against him before judgment may be rendered. Thus, we cannot, in these proceedings, order the return of the amounts paid by Titan to Martha. However, Titan is not precluded by this Decision from instituting the appropriate action against Martha before the proper court.

WHEREFORE, the petition is DENIED. The July 20, 2004 Decision of the Court of Appeals in CA-G.R. CV No. 67090 which affirmed with modifications the March 7, 2000 Decision of the Regional Trial Court of Quezon City, Branch 80, and its August 31, 2005 Resolution denying the motion for reconsideration, are AFFIRMED, without prejudice to the recovery by petitioner Titan Construction Corporation of the amounts it paid to Martha S. David in the appropriate action before the proper court.

SO ORDERED.

Carpio, (Chairperson), Brion, Abad, and Perez, JJ., concur.

[1] *City of Naga v. Court of Appeals*, 254 Phil. 12, 18 (1989).

[2] *Soriano III v. Yuzon*, G.R. No. L-79520, August 10, 1988, 164 SCRA 227, 240-241.

[3] *Rollo*, pp. 67-78; penned by Associate Justice Marina L. Buzon and concurred in by Associate Justices Mario L. Guariña III and Santiago Javier Ranada.

[4] *Records*, pp. 316-321; penned by Judge Agustin S. Dizon.

[5] *Rollo*, pp. 20-23; penned by Associate Justice Marina L. Buzon and concurred in by Associate Justices Mario L. Guariña III, Monina Arevalo-Zenarosa, and Estela M. Perlas-Bernabe. Associate Justice Santiago Javier Ranada wrote a Separate Opinion, *id.* at 24-28.

[6] *Records*, p. 7; *TSN*, April 3, 1997, pp. 6-7.

[7] *TSN*, April 3, 1997, p. 25.

[8] *Records*, pp. 12-14.

[9] *Id.* at 1-5.

[10] *Id.* at 34-38.

[11] *Id.* at 39-40.

[12] Id. at 42-44.

[13] Id. at 53-55.

[14] Id. at 56-60.

[15] Id. at 64-65.

[16] Id. at 84.

[17] Amending and Codifying The Laws Relative To Registration Of Property And For Other Purposes (1978). Section 64 provides:

Section 64. Power of attorney. Any person may, by power of attorney, convey or otherwise deal with registered land and the same shall be registered with the Register of Deeds of the province or city where the land lies. Any instrument revoking such power of attorney shall be registered in like manner.

[18] Records, p. 321.

[19] Rollo, p. 78.

[20] Id. at 40-41.

[21] Republic Act No. 386, An Act to Ordain and Institute the Civil Code of the Philippines (1949).

[22] 445 Phil. 282 (2003).

[23] Id. at 293.

[24] Records, p. 319.

[25] TSN, April 3, 1997, pp. 12-13.

[26] CA rollo, pp. 151-154.

[27] Id. at 151.

[28] Id.

[29] Id. at 156-157.

[30] Id. at 156.

[31] Abapo-Almario v. Court of Appeals, 383 Phil. 933, 940 (2000).

[32] Ferrer v. People, G.R. No. 143487, February 22, 2006, 483 SCRA 31, 50.

[33] People v. Umali, G.R. No. 84450, February 4, 1991, 193 SCRA 493, 501.

[34] People v. Garchitorena, G.R. No. 184172, May 8, 2009

[35] Blanco v. Quasha, 376 Phil. 480, 491 (1999).

[36] Sec. 7. Action or defense based on document.

Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.

Sec. 8. How to contest such documents.

When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts; but the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused.

[37] Rollo, pp. 13-15.

[38] *Mendiola v. Court of Appeals*, 193 Phil. 326, 335 (1981). Rule 132, Section 30 of the Rules of Court provides:

Section 30. Proof of notarial documents. -- Every instrument duly acknowledged or proved and certified as provided by law, may be presented in evidence without further proof, the certificate of acknowledgment being prima facie evidence of the execution of the instrument or document involved.

[39] *Gutierrez v. Mendoza-Plaza*, G.R. No. 185477, December 4, 2009.

[40] *Domingo v. Robles*, 493 Phil. 916, 921 (2005).

[41] TSN, August 21, 1998, p. 7.

[42] *Id.* at 3-6.

[43] Rollo, pp. 21-22.

[44] In *Sea Power Shipping Enterprises, Inc. v. Court of Appeals*, 412 Phil. 603, 611-612 (2001), we held:

It is true that a litigation is not a game of technicalities and that the rules of procedure should not be strictly enforced at the cost of substantial justice. However, it does not mean that the Rules of Court may be ignored at will and at random to the prejudice of the orderly presentation and assessment of the issues and their just resolution. It must be emphasized that procedural rules should not be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. Like all rules, they are required to be followed except only for the most persuasive of reasons.

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