

**LINDA UY LIM PETITIONER, VS. HELEN O. TONG, PHILIP ONG,
PROPMECH CORPRATION REPRESENTED BY ITS MANAGER,
EULOGIO SAREMO, SR., AND ATTY. ELMER D. LASTIMOSA,
EX-OFFICIO PROVINCIAL ...**

G.R. No. 177656. December 10, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

In mid-1994, Linda Uy Lim (petitioner) and her husband Saturnino Lim (Saturnino), also known as "Amay Lim," executed a Special Power of Attorney (SPA)[1] in favor of respondents Philip Ong (Ong) and Helen Tong (Helen), president and treasurer, respectively, of their co-respondent Propmech Corporation (the corporation) where Saturnino worked as sales manager. The SPA authorized Ong and Helen:

- To MORTGAGE or ENCUMBER the properties described hereinbelow in favor of any individual, person or entity for the purpose of obtaining or securing a loan, indebtedness or monetary obligation:

"Transfer Certificate of Title No. T-50103"

A parcel of land x x x

x x x x

of which we are the registered owners as evidenced by TCT No. T-50103 of the Registry of Deeds of General Santos City; and

- To TRANSMIT, APPLY, and REMIT the entire proceeds of the mortgage to PHILIP L. ONG and/or HELEN O. TONG, their heirs, successors or assigns, for the purpose of fully satisfying the outstanding obligations of the principals herein; and

- To MAKE, EXECUTE, SIGN and DELIVER any and all pertinent documents and/or instruments relative to the foregoing authority.[2] (Underscoring supplied)

The property subject of the SPA covered by TCT No. T-50103 was registered on September 21, 1992 in the name of petitioner "Linda U. Lim . . . married to Saturnino Lim." [3] About two years from the execution of the SPA or on May 8, 1996, the property was made the subject of a Real Estate Mortgage executed by Lim's attorney-in-fact Helen in favor of the corporation to secure a "P1,000,000 obligation" which the Lim spouses purportedly obtained from it.[4] The Deed of Real Estate Mortgage contained, among other things, the following provision:

x x x x

- It is the essence of this contract that if the MORTGAGORS shall well and truly pay or cause to be paid their obligation of ONE MILLION PESOS (P1,000,000.00) on or before June 30, 1996, then this Mortgage shall become null and void and of no effect; otherwise, the same shall remain in full force and effect and shall be enforceable in the manner provided by law.[5]

In late 1996, petitioner received a Notification of Foreclosure[6] of the mortgage. She subsequently received a Sheriff's Notice of Public Auction Sale[7] scheduled on January 8, 1997, drawing her to file on January 3, 1997 before the Regional Trial Court (RTC) of General Santos City a Complaint[8] against attorneys-in-fact Helen and Ong, along with the corporation and Ex-Officio Provincial Sheriff Atty. Elmer Lastimosa, for annulment of mortgage, injunction and damages with application for temporary restraining order.

Petitioner claimed that her husband Saturnino, from whom she had in the meantime been separated and had not heard from, obtained her signature on the SPA through fraud by representing to her that the purpose was to secure a loan with which to build a house; that she had never been indebted to, and had not received any amount from the corporation, hence, the Real Estate Mortgage is null and void; and that the property subject of the mortgage which she claims to be her paraphernal property "was actually being sequestered to answer and pay for certain shortages and other liabilities incurred by her husband in the course of [his] employment with the defendant corporation." [9]

The sheriff cancelled/deferred the sale of the property scheduled on January 8, 1996 until further advice from the parties.[10]

In their Answer with Compulsory Counterclaim,[11] respondents Helen, Ong, and the corporation alleged that petitioner co-signed the SPA empowering the first two respondents to mortgage the property for "the purpose of fully satisfying the[ir] outstanding obligation"; and that petitioner received the amount of P405,000 [sic] in 1994 and November 1995 from respondents representing "a portion of the loan . . . for the purpose of building a house."

On February 17, 1997, Branch 22 of the General Santos City RTC ordered the Ex-Officio Provincial Sheriff, his agents, and deputies to cease and desist from proceeding with the public auction[12] of the property.

Evidence for respondents shows as follows:

In 1994, on the request of petitioner and her husband, the corporation granted them a loan of P400,000, evidenced by checks and deposit slips.[13] The corporation later discovered that Saturnino misappropriated corporate funds bringing his total obligation, including the P400,000 loan, to P1,000,000. When confronted about the misappropriated amount, Saturnino and petitioner begged the corporation not to file any case against Saturnino, they promising to pay the obligation within a reasonable period. Ong and Helen agreed. The spouses welched on their promise, however, hence, Helen, as attorney-in-fact, executed the Deed of Real Estate Mortgage and subsequently indorsed it to the sheriff for foreclosure proceedings.

By Decision of October 30, 2001, the trial court declared that the Real Estate Mortgage was legally executed[14] and accordingly dismissed petitioner's complaint. Petitioner's Motion for Reconsideration was denied.[15]

On appeal, the Court of Appeals affirmed[16] the trial court's decision. Her Motion for Reconsideration[17] having been denied,[18] petitioner filed the present Petition for Review on Certiorari,[19] alleging that the Court of Appeals erred in

I

. . . UPHOLDING THE VALIDITY OF THE SPURIOUS SPECIAL POWER OF ATTORNEY AND THE CONSEQUENT REAL ESTATE MORTGAGE IN A MANNER CONTRARY TO LAW AND THE SETTLED PRONOUNCEMENTS OF THIS HONORABLE TRIBUNAL.

II

X X X IN UPHOLDING THE COURT A QUO'S FINDINGS THAT THE PARAPHERNAL PROPERTY OF THE PETITIONER-APPELLANT IS LIABLE TO THE ALLEGED PERSONAL DEBT OF HER ESTRANGED HUSBAND ABSENT ANY PROOF THAT THE SAME REDOUNDED TO THE FAMILY'S

BENEFIT.

III

X X X IN DENYING THE MOTION FOR RECONSIDERATION.[20] (Underscoring supplied)

Fraud is never presumed, and intentional acts to deceive and deprive another of his right or in some manner injure him must be specifically alleged and proved by the plaintiff by clear and convincing evidence.[21]

By petitioner's admission, she read the SPA before signing it.[22] She is a college graduate[23] who had worked as a Regional Operations Clerk of Metrobank.[24] It is inconceivable that she did not understand the contents of what she was signing. In fact, her allegation in her complaint that she agreed to sign the SPA believing that the "intention and purpose behind the same was to secure a loan with which to build the house that [she] had long dreamed of to be erected [on] the lot in question"[25] confirms that she agreed to authorize the attorneys-in-fact to perform the acts therein enumerated including encumbering the property by way of mortgage.

That petitioner and her husband indeed obtained and received the proceeds of a P400,000 loan, respondents were able to prove via testimonial and documentary evidence:

[ATTY. VILLACARLOS] Q: Mr. Witness [EULOGIO SAREMO, JR., FINANCIAL CONSULTANT OF

PROPMECH CORPORATION], aside from the special power of attorney which was executed by the spouses Saturnino Lim and Linda Lim, what other proofs do you have of the indebtedness of Amay Lim with respect to Propmech Corporation and the other defendants?

A:

The spouses once approached me way back in the middle part of 1994 and they were asking from the company some assistance because they would be constructing a house.[26]

x x x x

Q: Do you know how much is the money being borrowed by the spouses?

A: I think it is approximately P400,000.00 to P500,000.00 or thereabouts. That was the agreed amount.

Q: What is your proof as far as this remittance of P400,000.00 to P500,000.00 is concerned?

A:

Several checks[27] were made to the order of Ms. Linda Lim sometime in April, May, June and up to October 1995. Series of checks were presented and delivered to Linda Lim.

x x x x

Q:

I am also showing to you certain deposit slips[28] for a savings account. Can you please tell us what relation have these to the loan of Mr. Amay Lim and Mrs. Linda Lim?

A: These represent various sums deposited in the account of Ms. Linda Lim aside from the checks mentioned.

x x x

x x x x

Q: Mr. Witness, what documents were executed to evidence this particular loan of the plaintiff and her husband?

A: Four documents were prepared.

Q: And can you please tell us what are those documents?

A:

One is a special power of attorney; another is a promissory note; another is the mortgage contract; and another one is the undertaking. We have not put the specific amount because at that time we did not know the exact amount...

Q: Of these four documents you mentioned, did the spouses execute these documents?

A: They apparently signed the special power of attorney only.

x x x x.[29] (Emphasis and underscoring supplied)

At the witness stand, as well as before the Court of Appeals and this Court, petitioner posited a different claim - that she signed the SPA merely as a formality to guarantee her husband's supposed advances in the sum of P400,000, and not intended to authorize respondents to mortgage the property,[30] she having believed her husband's assurance that said advances would be deducted from his salaries and commissions in the course of his employment at the corporation.

A party to a case should decide early on what version he is going to adopt. A change of theory in the later stage of the proceedings is impermissible, not due to the strict application of procedural rules, but because it is contrary to the rules of fair play, justice, and due process.[31] Petitioner's subsequent position thus fails.

Respecting the execution of the Deed of Real Estate Mortgage to secure not only the payment of the P400,000 loan but also Saturnino's alleged personal liability to the corporation, respondents' witness Atty. Reynaldo Cruz Garcia testified:

[ATTY. VILLACARLOS] Q: Mr. Witness, considering that the spouses, as you testified to earlier, were not able

to satisfy their accountability to the company, what action did you take in order to satisfy the accountability of the plaintiff to the defendants?

A:

Actually, we requested the person to whom the special power of attorney was issued to execute a mortgage, and this was also upon the request of the spouses.

Q:

Can you expound on this statement of yours that the execution of a real estate mortgage was upon the request of the spouses?

A:

Few months after they borrowed the money and executed the special power of attorney and delivered the documents to us, we discovered upon my investigation here in General Santos city that Mr. Amay Lim had been defalcating most of the company's collections. So we called them back to Manila, and they begged and cried there for several hours that no case be filed; that all their debts would be paid within a reasonable period of time. Because of their begging, my clients relented and allowed them some time to pay their debt. But they failed to do so, so I advised my client to collect from them.

Q: So a real estate mortgage was executed?

A:

Yes, it was executed because of that.[32] (Emphasis supplied)

x x x x

[ATTY. VENCER] Q: x x x [W]hen was that when the couple requested you to prepare the real estate mortgage?

A:

At various instances, from the moment I investigated Mr. Saturnino Lim and again when Ms. Linda Lim and Mr. Saturnino Lim were summoned for confrontation at the office sometime in December 1995, wherein Saturnino Lim admitted in front of me and several witnesses, including his wife, that he was on drugs and has defalcated some money from the company. Linda Lim cried for hours that time and pleaded for time so that they could pay.

Q: In other words, per your testimony, the couple practically pleaded to you and you said Linda Lim was crying?

A: Yes, sir, and they were willing to give anything at that time.

Q:

Why did you not request Linda Lim and Saturnino Lim to execute the mortgage themselves because they apparently were telling you to please do everything?

A: Because at that time my client, Helen Tong, started to cry and she pitied the couple.

Q: Even then, why did you not prepare the mortgage?

A: I wanted to, but because of humanitarian consideration to the couple, I did not insist at that particular moment.

Q: And when was the time that you insisted?

A:

When they dishonored their promise that they would pay within a very short period of time.

Q: When was that?

A:

January 1996, February 1996. Out of shame they said to just do everything to diminish their obligation.[33] (Emphasis and underscoring supplied)

The Court at once notes that there is neither testimonial nor documentary evidence to show how the amount of P600,000, which was added to the spouses' obligation, representing the amount allegedly defalcated by Saturnino was arrived at. Neither is there any documentary evidence that the said alleged defalcated amount was made known to Saturnino. A photocopy of a November 28, 1995 handwritten letter-Exhibit "21,"[34] purportedly written by Saturnino admitting "the wrongdoings," and a photocopy of a December 6, 1995 typewritten letter-Exhibit "22"-Exhibit "A"[35] attributed to Saturnino wherein he recalls having taken company funds in the amount of "about 100 to 200 thousands," may not be appreciated without violating, among other things, Rule 130, Section 3 of the Rules of Court which reads:

When the subject of an inquiry is the contents of a document, no evidence shall be admissible other than the

original document itself, except in the following cases:

(a)

When the original has been lost or destroyed, or cannot be produced in court without bad faith on the part of the offeror.

(b)

When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c)

When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d)

When the original is a public record in the custody of a public officer or is recorded in a public office.[36]

Respondents' witness Atty. Garcia in fact conceded at the time he took the witness stand that respondents "still do not have the final [amount]"[37] claimed to have been defalcated by Saturnino.

In another vein, at the time the SPA was executed in 1994, there was yet no defalcated amount of Saturnino to speak of. Petitioner and her husband could not, therefore, have considered securing an inexistent or future unspecified liability.

In fine, the Deed of Real Estate Mortgage is valid only insofar as it secured the P400,000 loan extended by the corporation to petitioner and her husband Saturnino for the construction of their house. This leaves it unnecessary to still dwell on petitioner's claim that the encumbered property is paraphernal to free it from her husband's personal liability.

WHEREFORE, the petition is IN PART GRANTED. The April 26, 2006 Decision of the Court of Appeals is AFFIRMED with MODIFICATION. The questioned Deed of Real Estate Mortgage executed by attorney-in-fact respondent Helen O. Tong is declared valid insofar as it secured the P400,000 loan secured by petitioner Linda Uy Lim and her husband Saturnino Lim from respondent corporation, but NULL AND VOID insofar as it is made to secure the P600,000 allegedly representing the personal obligation of Saturnino Lim to respondent corporation.

SO ORDERED.

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

[1] Exhibit "D," folder of exhibits of the plaintiffs, pp. 12-13.

[2] Ibid.

[3] Exhibit "F," id. at 16.

[4] Exhibit "C," id. at 7-11.

[5] Id. at 8.

[6] Exhibit "A," id. at 1-2.

- [7] Exhibit "E," id. at 15.
- [8] Records, pp. 2-8.
- [9] Id. at 3.
- [10] Id. at 17.
- [11] Id. at 25-31.
- [12] Id. at 46.
- [13] Exhibits "4"-"8," folder of exhibits for the defendants, pp. 1-5.
- [14] Records, pp. 230-239.
- [15] Id. at 242-249, 261.
- [16] Decision of April 26, 2006, penned by Justice Normandie B. Pizarro, with the concurrence of Justices Edgardo A. Camello and Ricardo R. Rosario; CA rollo, pp. 142-152.
- [17] Id. at 187-213.
- [18] Id. at 247-248.
- [19] Rollo, pp. 11-50.
- [20] Id. at 17-18.
- [21] Vide Heirs of Salvador Hermosilla v. Remoquillo, G.R. No. 167320, January 30, 2007, 513 SCRA 403, 412 (citations omitted).
- [22] TSN, March 19, 1997, p. 31.
- [23] Id. at 30.
- [24] TSN, April 29, 1997, p. 42.
- [25] Records, p. 3.
- [26] TSN, August 4, 1997, p. 65.
- [27] Exhibits "4"-"6," folder of exhibits for the defendants, pp. 1-3.
- [28] Exhibits "7"-"8," id. at 4-5.
- [29] TSN, February 20, 1998, pp. 138-141.
- [30] TSN, February 28, 1997, p. 27; rollo, p. 24; CA rollo, p. 31.
- [31] Vide Dalisay v. Mauricio, Jr., A.C. No. 5655, January 23, 2006, 479 SCRA 307, 316 (citations omitted).
- [32] TSN, February 20, 1998, pp. 143-144.
- [33] Id. at 160-161.
- [34] Folder of exhibits for the defendants, p. 19.
- [35] Id. at 20.

[36] The original of Exhibits "21" and "22"/"A" were not presented in court. Vide records, p. 143, TSN, August 5, 1997, pp. 120-122.

[37] TSN, February 20, 1998, p. 168.

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