

TOMAS K. CHUA, PETITIONER, VS. WESTMONT BANK, REGISTRAR OF DEEDS OF PARAÑAQUE CITY, REGISTRAR OF DEEDS OF PASAY CITY, NOTARY PUBLIC MANUEL FONACIER, AND JOHN DOES, RESPONDENTS.

G.R. No. 182650. February 27, 2012

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

This Rule 45 petition filed by petitioner Tomas K. Chua seeks to annul and set aside the January 24, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 86882, which affirmed the Decision[2] of the Regional Trial Court (RTC), Branch 257, of Parañaque City in Civil Case No. 99-0190. Also assailed is the appellate court's Resolution[3] dated April 22, 2008, denying petitioner's motion for reconsideration.

The facts follow:

This case stemmed from a petition for cancellation of mortgage[4] filed by petitioner before the RTC of Parañaque City against respondents Westmont Bank, the Registrar of Deeds of Parañaque City, the Registrar of Deeds of Pasay City, Notary Public Manuel S. Fonacier and several John Does.

Petitioner alleged that on October 21, 1996, he pre-signed a Deed of Real Estate Mortgage in favor of Westmont Bank and submitted to it his owner's duplicate copies of Transfer Certificate of Title (TCT) Nos. 87878 and 87876 in anticipation of a grant of a loan to T.C. Builders Suppliers, Inc. When the loan did not materialize because petitioner and Westmont Bank could not agree on the interest rate to be applied, petitioner assumed that Westmont Bank would just cancel the pre-signed blank Deed of Real Estate Mortgage and return the duplicate originals of the titles. But the bank did neither. Instead, it foreclosed the mortgaged properties and bought the properties in the ensuing public auction held on September 10, 1998, for which it was issued a Certificate of Sale. Thus, petitioner prayed that the Real Estate Mortgage and the Certificate of Sale issued by Notary Public Manuel S. Fonacier be declared null and void.

In its Answer,[5] Westmont Bank averred that petitioner applied for a letter of credit to import one set of plywood-making machinery. The bank extended the credit accommodation to petitioner, and accordingly the machinery was shipped and released to petitioner under a Trust Receipt Agreement issued in favor of the bank. Later, when petitioner had difficulty paying for the machinery, he requested for an extension of time to settle his obligations and simultaneously mortgaged TCT Nos. 87878 and 87876 in favor of Westmont Bank. Upon execution of the Deed of Real Estate Mortgage and the delivery of the subject TCTs to Westmont Bank, Westmont Bank agreed to extend the term of the Trust Receipt obligation until November 3, 1997. But despite the extended term, petitioner still failed to settle his obligation. Hence, the mortgaged properties were extrajudicially foreclosed and sold at public auction to Westmont Bank as the highest bidder.

At the trial, petitioner testified that he is the owner of the two parcels of land covered by TCT Nos. 87878 and

87876. He also declared that he is the owner of T.C. Builders Suppliers, Inc.

Sometime in October 1996, he applied for a personal loan with Westmont Bank in the amount of P6,000,000. He was required to sign a blank Deed of Real Estate Mortgage and to submit the owner's duplicate copies of his two titles for evaluation purposes. He averred that he did as he was told although no receipt was given for the titles. Then, sometime in 1997, he came back to the bank to retrieve his titles, thinking that his loan was not going to be approved. Mr. So Leng Ton, a bank officer, however, told him that the titles were kept by the bank in anticipation of the approval of the loan. Later, he found out that the subject properties were foreclosed and sold at public auction and a Certificate of Sale issued to Westmont Bank.[6]

On cross-examination, petitioner claimed that he signed a blank Deed of Real Estate Mortgage when he applied for his personal loan with the bank for T.C. Builders Suppliers, Inc., but he did not read the provisions of the deed before signing it. He also averred that he did not know if his loan application was approved. He added that he did not sign a promissory note or demanded in writing the return of his TCTs. Further, he declared that he did not appear before a notary public on July 10, 1998 to acknowledge the Deed of Real Estate since he was in Malaysia on said date as shown in his passport.[7] Petitioner likewise claimed that sometime in October 1996, he applied for a domestic letter of credit for P4,500,000 in the name of T.C. Builders Suppliers, Inc., but he did not receive any amount from the bank intended for T.C. Builders.[8]

For its part, Westmont Bank presented as witness Mr. Noe Reyes, a bank executive. Reyes testified that on October 23, 1996, T.C. Builders Suppliers, Inc. through petitioner, applied for a Domestic Letter of Credit in the amount of P4,500,000 to purchase plywood-making machinery from Cotabato Timberland Company. The bank approved the application and issued a Domestic Letter of Credit. Accordingly, the machinery was delivered to T.C. Builders and received by petitioner on November 5, 1996. Petitioner thereafter requested that he be allowed to pay his loan in installments as follows: by partial payment of P1,000,000 on or before March 26, 1997, another partial payment of P1,250,000 on or before May 5, 1997, and the remaining balance within 90 days. The request was approved, but petitioner failed to pay his obligation on May 5, 1997.[9]

Reyes further testified that on August 29, 1997, petitioner requested that the penalty of his obligation be reduced from 36% to 9% per annum and that he be allowed to pay the remaining balance of P2,500,000 on September 30, 1997.[10] Said request was approved but no payment was made. Then, on October 30, 1997, petitioner requested that the bank convert his unpaid balance to an 18-month time loan,[11] making assurance that if his company's financial situation improves, he will settle his obligation within 6 months. No payment, however, was made. Finally, on July 17, 1998, petitioner once more requested for the reduction of the interest rate from 36% to 25% per annum and a full waiver of penalties upon full payment of his obligation on July 27, 1998. The bank approved petitioner's final request on the condition that if no payment is made on July 27, 1998, it will initiate foreclosure proceedings over the mortgaged properties.[12] Again, petitioner failed to fulfill his promise.[13]

On January 4, 2006, the RTC of Parañaque City promulgated its decision, dismissing petitioner's complaint as follows:

WHEREFORE, for lack of merit, the complaint of plaintiff is dismissed. The claims for attorney's fees are denied for lack of evidence.

IT IS SO ORDERED.[14]

The RTC ruled that the Deed of Real Estate Mortgage is valid and supported by substantial consideration. It found that the bank required the execution of the Deed of Real Estate Mortgage involving the subject properties to secure the unpaid loan obligation of T.C. Builders Suppliers, Inc., a company owned by petitioner. The trial court also found that the obligation was incurred when T.C. Builders purchased from Cotabato Timberland Company

plywood-making machinery valued at P4,500,000. It was Westmont Bank that paid for the purchase price to Cotabato Timberland Company, and the bank was able to prove that the machinery was delivered to T.C. Builders as evidenced by a receipt signed by petitioner himself.[15]

The trial court also noted that despite petitioner's request for several extensions of time to pay the loan obligation, and approval of the same by the bank, he still reneged on his promise to pay. Thus, it held that the foreclosure sale of the properties mortgaged by petitioner was proper. Moreover, the RTC held that it was not convinced that petitioner indeed signed a blank Deed of Real Estate Mortgage. The RTC found it difficult to believe that petitioner, who appeared to be an experienced businessman, would allow such a questionable practice, unless he fully agreed with it. Assuming that he did sign a blank deed of real estate mortgage, it was made with his full consent and likely for purposes of his convenience. Similarly, the RTC found that the notarization of the document on the date when he was allegedly in Malaysia was also made with his consent and for his convenience.[16]

Unsatisfied, petitioner appealed the RTC Decision to the CA, raising the following issues:

1. Whether the [RTC] committed error of fact in finding that:

(a)

[Petitioner's] claim of having signed a blank deed of real estate mortgage document is "not indubitable" and, even if true, the same was made "with his full consent and approval and could likely be for purposes of his convenience and the bank."

(b)

The subject Deed of Real Estate Mortgage secured the unpaid loan obligation of T.C. Builder's Suppliers, Inc. to Westmont.

2. Whether the [RTC] committed error of law when:

(a) It manifestly disregarded the undisputed evidence presented by [petitioner] showing that the subject Deed was contrived and spurious.

(b) It admitted and gave credence to Westmont's documentary evidence even if the due execution and authenticity was not properly established in accordance with Rule 132, Section 20 of the Rules of Evidence.

(c) It ruled that the notarization of the subject was made with [petitioner's] consent and for his and the bank's convenience.

(d) It did not hold that the subject Deed was, on its face, null and void for lack of Westmont's consent.

(e) It did not rule that the foreclosure sale of the mortgaged properties is valid.

(f) It ruled that [petitioner's] claim for damages have no factual and legal basis.[17] (Emphasis and underscoring in the original.)

On January 24, 2008, the CA rendered the assailed decision, the fallo of which reads:

WHEREFORE, premises considered, the instant appeal is DISMISSED. The assailed Decision of the court a quo STANDS.

SO ORDERED.[18]

The CA held that except for petitioner's self-serving testimony, there is nothing on record to sustain his claim that he signed a blank Deed of Real Estate Mortgage. In fact, the CA found that the deed in question is complete in

form and substance when the parties signed it. The CA did not believe that petitioner, who is apparently of age and in excellent mental faculties, would deposit the titles of his properties with Westmont Bank without being sure of what kind of transaction he was entering into. The appellate court was likewise not convinced by petitioner's claim that the Deed of Real Estate Mortgage was intended to secure his personal loan of P6,000,000 as petitioner himself already admitted in his Petition for Cancellation of Mortgage before the trial court that he signed the deed to secure a loan to be granted to T.C. Builders Suppliers, Inc. Finally, the CA ruled that the fact that the deed was signed on the day he flew to Malaysia does not render the deed spurious as it was possible that he signed the petition before he flew to Malaysia in the afternoon.[19]

Undaunted, petitioner filed a motion for reconsideration of the above CA decision, but his motion was denied in a Resolution dated April 22, 2008. Hence, this appeal raising the following issues:

I.

WHETHER THE HONORABLE COURT OF APPEALS COMMITTED AN ERROR OF LAW WHEN IT HELD THAT THE COURT A QUO WAS CORRECT IN ADMITTING WESTMONT'S DOCUMENTARY EXHIBITS IN EVIDENCE EVEN IF THE AUTHENTICITY AND DUE EXECUTION OF THE SAME HAVE NOT BEEN ESTABLISHED IN ACCORDANCE WITH THE RULES OF EVIDENCE.

II.

WHETHER THE HONORABLE COURT OF APPEALS COMMITTED AN ERROR OF LAW WHEN IT CONCLUDED, BASED MERELY ON SPECULATION AND CONJECTURE, THAT PETITIONER COULD HAVE POSSIBLY SIGNED THE DEED OF REAL ESTATE MORTGAGE BEFORE HE LEFT FOR MALAYSIA ON 10 JULY 1998.

III.

WHETHER THE HONORABLE COURT OF APPEALS COMMITTED AN ERROR OF LAW WHEN IT REFUSED TO HOLD THAT PETITIONER'S TESTIMONY IN OPEN COURT HAD SUPERSEDED THE ALLEGATIONS IN HIS PETITION BEFORE THE COURT A QUO, CONSISTENT WITH THIS HONORABLE COURT'S RULING IN GARDNER V. COURT OF APPEALS.

IV.

THE HONORABLE COURT OF APPEALS ERRED ON A QUESTION OF LAW WHEN IT FAILED TO RECOGNIZE THAT PETITIONER HAS OVERCOME HIS BURDEN OF PROOF AND HAS ESTABLISHED HIS CASE BY A PREPONDERANCE OF EVIDENCE WHICH HAVE NOT BEEN VALIDLY DISPUTED BY WESTMONT; HENCE, PETITIONER IS ENTITLED TO THE RELIEFS HE PRAYED FOR IN THE COURT A QUO.[20]

Essentially, the core issue in this petition is whether the CA erred in affirming the findings of the RTC that the Real Estate Mortgage executed by petitioner and Westmont Bank is valid.

Petitioner argues that the CA erred in holding that the trial court was correct in admitting Westmont Bank's documentary evidence. He asserts that Westmont Bank failed to prove the due execution and authenticity of the documentary evidence it presented by anyone who saw the document executed or written, or by evidence of the genuineness of the signature of the maker.

The petition has no merit.

The RTC, after considering the evidence and the testimonies of the witnesses, found that the Deed of Real Estate Mortgage was executed to secure the unpaid loan obligation of T.C. Builders Suppliers Inc., a company owned by

petitioner. The CA found no error on the part of the trial court's appreciation of evidence before it, even noting that the documentary exhibits were the subject of cross-examinations and were subsequently admitted by the trial court without any objection from petitioner. Moreover, the CA observed that petitioner failed to rebut the authenticity and due execution of the documentary exhibits of Westmont Bank. All petitioner could offer by way of evidence was his unsupported claim that he signed a blank Deed of Real Estate Mortgage. Such claim is insufficient to overcome the Deed of Real Estate Mortgage which is a notarized document.

The court has held that one who denies the due execution of a deed where one's signature appears has the burden of proving that contrary to the recital in the jurat, one never appeared before the notary public and acknowledged the deed to be a voluntary act.[21] We have also held that a notarized instrument is admissible in evidence without further proof of its due execution, is conclusive as to the truthfulness of its contents, and has in its favor the presumption of regularity.[22]

In this case, the Deed of Real Estate Mortgage involving TCT Nos. 87878 and 87876 was notarized and acknowledged before notary public Fina Dela Cuesta-Tantuico.[23] Being a public document, it enjoys the presumption of regularity. It is a prima facie evidence of the truth of the facts stated therein and a conclusive presumption of its existence and due execution. To overcome this presumption, there must be clear and convincing evidence. Absent such evidence, as in this case, the presumption must be upheld.

Petitioner likewise asserts that it was physically impossible for him to execute and acknowledge the Deed of Real Estate Mortgage before notary public Fina Dela Cuesta-Tantuico because on the supposed date of execution and notarization, he was in Malaysia with his wife. However, as correctly pointed out by the CA, it can be gathered from the testimony of petitioner that he left the Philippines in the afternoon of July 10, 1998 and arrived in Malaysia an hour later. The CA noted that petitioner was in the Philippines from morning until early afternoon on said date, which means that he still had time to attend to his business transactions before his flight to Malaysia. Thus, we find no error on the part of the CA in concluding that petitioner could have signed the Deed of Real Estate Mortgage before he left for Malaysia on said date.

We note that these issues raised by petitioner are factual in nature and calls for a review of the evidence already considered in the proceedings below. The evaluation and calibration of the evidence necessarily involves consideration of factual issues—an exercise that is not appropriate for a petition for review on certiorari under Rule 45.

As a general rule, only errors of law are reviewable by the Supreme Court on petitions for review on certiorari.[24] The rule finds more stringent application where the CA upholds the findings of fact of the trial court. In such instance, as in this case, this Court is generally bound to adopt the facts as determined by the lower courts.[25] When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court.[26]

Next, petitioner submits that his statement in the petition for cancellation of mortgage admitting that he signed the Deed of Real Estate Mortgage to secure a loan to be granted to T.C. Builders should be deemed to have been superseded by his testimony in open court that the subject Deed was supposedly intended to secure his personal loan with Westmont Bank. In support of his argument, he cites our ruling in *Gardner v. Court of Appeals*,[27] wherein the court allowed a party's testimony to override admissions made in his Answer.

Petitioner pointed out that in *Gardner*, we held that as a general rule, facts alleged in a party's pleading are deemed admissions of that party and are binding upon it, but this is not an absolute and inflexible rule. An answer is a mere statement of fact which the party filing expects to prove, but it is not evidence.[28] Thus, petitioner asserts that applying the foregoing by analogy, his statements in the petition for cancellation of mortgage had been

repudiated by his subsequent testimony in open court.

The argument is untenable.

In the Gardner case, the witness had repudiated in open court the defenses he had raised in his Answer and that the court found his testimony to be deserving of weight and credence. In said case, both the trial court and the appellate court believed in the witness' credibility. Here, the reverse holds true as both the trial court and CA found petitioner's testimony that he applied for a personal loan to be conflicting and incredible. Therefore, we find that petitioner's reliance on the ruling in Gardner is misplaced.

Finally, in civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto.[29]

In the present case, petitioner failed to overcome the burden of proving his claim by preponderance of evidence that the questioned Deed is null and void. As we mentioned earlier, the CA did not find any error on the part of the trial court's appreciation of evidence, which found the Deed of Real Estate Mortgage to be valid and supported by substantial consideration. The trial court also found that since petitioner failed to pay his obligation despite request for several extensions of time to pay his loan, the foreclosure sale of the properties was therefore valid.

idence even if its authenticity time to pay the loan obligation. will initiate foreclosure proceedings over the mortgaged prope

WHEREFORE, the petition for review on certiorari is DENIED for utter lack of merit. The Decision dated January 24, 2008, as well as the Resolution dated April 22, 2008 of the Court of Appeals in CA-G.R. CV No. 86882 are AFFIRMED.

Costs against petitioner.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Perlas-Bernabe,[*] JJ., concur.

[*] Designated additional member per Special Order No. 1203 dated February 17, 2012.

[1] Rollo, pp. 42-52. Penned by Associate Justice Myrna Dimaranan-Vidal with Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr. concurring.

[2] Id. at 102-109. Penned by Judge Rolando G. How.

[3] Id. at 53.

[4] Records, Vol. I, pp. 2-7.

[5] Id. at 25-29.

[6] TSN, December 10, 2001, pp. 2-19.

[7] Exhibit "F", records, Vol. III, p. 572.

- [8] TSN, December 10, 2001, pp. 22-28.
- [9] TSN, April 23, 2003, pp. 4-5, 18.
- [10] Exhibit 12, records, Vol. III, p. 617.
- [11] Exhibit 13, id. at 618.
- [12] Exhibit 14, id. at 619.
- [13] TSN, April 23, 2003, pp. 18-22.
- [14] Supra note 2, at 109.
- [15] Id. at 107-108.
- [16] Id. at 108-109.
- [17] CA rollo, pp. 50-51.
- [18] Supra note 1, at 52.
- [19] Id. at 48-51.
- [20] Id. at 21-22.
- [21] Santos v. Lumbao, G.R. No. 169129, March 28, 2007, 519 SCRA 408, 426-427.
- [22] China Banking Corporation v. Lagon, G.R. No. 160843, July 11, 2006, 494 SCRA 560, 567.
- [23] Records, Volume I, pp. 12-14.
- [24] Sering v. Court of Appeals, 422 Phil. 467, 471 (2001).
- [25] Ong v. Ong, G.R. No. 153206, October 23, 2006, 505 SCRA 76, 85.
- [26] Ontimare, Jr. v. Elep, G.R. No. 159224, January 20, 2006, 479 SCRA 257, 265; Ramirez v. National Labor Relations Commission, G.R. No. 155150, August 29, 2006, 500 SCRA 104, 106.
- [27] No. L-59952, August 31, 1984, 131 SCRA 585.
- [28] Id. at 600.
- [29] Eulogio v. Apeles, G.R. No. 167884, January 20, 2009, 576 SCRA 561, 571-572.

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