

RAFAEL ALMEDA, EMERLINA ALMEDA-LIRIO, ALODIA ALMEDA-TAN, LETICIA ALMEDA-MAGNO, NORMA ALMEDA-MATIAS AND PUBLIO TIBI, PETITIONERS, VS. HEIRS OF PONCIANO ALMEDA IN SUBSTITUTION OF ...

G.R. No. 194189. September 14, 2017

Ponente: TIJAM, J.

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TIJAM, J.:

This Petition for Review on Certiorari[1] assails the May 25, 2010 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 86953, denying Rafael Almeda (Rafael), Emerlina Almeda-Lirio (Emerlina), Alodia Almeda-Tan (Alodia), Leticia Almeda-Magno (Leticia), Norma Almeda-Matias (Norma) and Publio Tibi's (Publio) (collectively, the petitioners) appeal from the Order[3] dated September 2, 2004 of the Regional Trial Court (RTC) of Tagaytay City, Branch 18, in Civil Case No. TG-1643, which dismissed their Complaint for Nullity of Contracts, Partition of Properties and Reconveyance of Title with Damages, and the CA Resolution[4] dated October 13, 2010 denying petitioners' Motion for Reconsideration.

The Facts

Spouses Venancio Almeda (Venancio) and Leonila Laurel-Almeda (Leonila) were the parents of nine children: Ponciano L. Almeda (Ponciano), Rafael, Emerlina, Alodia, Leticia, Norma, Benjamin Almeda and Severina Almeda-Santos (Severina) and Rosalina Almeda-Tibi (Rosalina), Publio's deceased wife.[5]

On May 19, 1976, a Power of Attorney[6] was executed by Venancio and Leonila, who were then 80 and 81 years old respectively,[7] granting Ponciano, among others, the authority to sell the parcels of land covered by Original Certificate of Title (OCT) Nos. O-197 and O-443 of the Office of the Register of Deeds for Tagaytay City, which Leonila inherited[8] from her parents.

OCT Nos. O-197 and O-443 were registered in the name of "Leonila L. Almeda married to Venancio Almeda." OCT No. O-197[9] embraced four (4) parcels of land with an aggregate area of 95,205 square meters more or less, to wit: Lot 10 (48,512 sq m), Lot 17 (37,931 sq m), Lot 30 (8,047 sq m) and Lot 32 (715 sq m); and OCT No. O-443[10] covered Lot 9 measuring 33,946 sq m, more or less.

Venancio died at the age of 90 on February 27, 1985; Leonila died eight years later on April 3, 1993, aged 97.[11] Within the year of Leonila's death on April 17, 1993,[12] Rafael, Emerlina, Alodia, Leticia and Norma filed a notice of adverse claim with the Register of Deeds of Tagaytay City over their parents' properties.[13]

On October 10, 1996, a Complaint for Nullity of Contracts, Partition of Properties and Reconveyance of Titles with Damages,[14] docketed as Civil Case No. TG-1643, was filed before the RTC of Tagaytay City by the petitioners against Ponciano and his wife Eufemia Perez Almeda (Eufemia) and the Register of Deeds of Tagaytay City, with Severina's surviving spouse, Cesar Santos and children, Rosana, Norman and Ferdinand, as unwilling plaintiffs.[15] Petitioners alleged that the parties were the only heirs of the late spouses Venancio and

Leonila who died without leaving any will and without any legal obligation.[16]

In support of their Complaint, petitioners claimed that Ponciano, taking advantage of his being the eldest child and his close relationship with their parents, caused the simulation and forgery of the following documents:[17]

(1) Deed of Absolute Sale dated June 9, 1976, over Lot 30 under OCT No. O-197, executed by Ponciano as Venancio and Leonila's attorney-in-fact, in favor of Julian Y. Pabiloña, Virginia Go, Gemma Tan Ongking, Arthur C. Chua and Lee Hiong Wee (Pabiloña, et al.), for the price of P160,940.00:[18] and

(2) Deed of Absolute Sale dated October 3, 1978, executed by Venancio and Leonila in favor of Ponciano, over the remaining lots under OCT No. O-197 and Lot 9 under OCT No. O-443, and over Lots 6, 4 and 9-A with a total area 71,520 sq m which then had no technical description, for the total consideration of P704,243.77.[19]

By virtue of the aforesaid Deeds of Absolute Sale, OCT Nos. O-197 and O-443 were cancelled, the former with respect only to Lots 10 and 17. Resultantly, Transfer Certificate of Title (TCT) Nos. T-15125, T-24806, T-24807, T-24808 and T-24809,[20] all of the Registry of Deeds for Tagaytay City, were issued to Ponciano,[21] while TCT No. T-10330 of the same Registry[22] was issued to Julian Y. Pabiloña, Virginia Go, Gemma Tan Ongking, Arthur C. Chua and Lee Hiong Wee.[23]

According to petitioners, their parents did not sign the October 3, 1978 Deed of Absolute Sale (1978 Deed) in favor of Ponciano and their signatures may have been forged. They also averred that their parents did not receive due consideration for the transaction, and if Ponciano succeeded in making them sign said 1978 Deed, they did so without knowledge of its import. Petitioners, however, would not claim rights and interest legally transferred to third parties.[24]

Petitioners further alleged that Ponciano withheld from them the existence of the 1978 Deed in his favor, and when they learned of it and demanded partition, Ponciano merely promised to cause the same at a proper time. When petitioners could no longer wait, they filed their notice of adverse claim with the Register of Deeds.[25]

Petitioners, thus, prayed that the 1978 Deed in favor of Ponciano be declared null and void; that OCT No. O-197 be partitioned among the heirs of Venancio and Leonila; that the derivative titles obtained by Ponciano under his name be reconveyed to petitioners; that the Register of Deeds for Tagaytay City be ordered to cancel said derivative titles and to restore title to the property in the name of Venancio and Leonila; that the unwilling plaintiffs be ordered to share in the expenses of the suit; and that Ponciano and his wife be ordered to pay moral and exemplary damages, attorney's fees and the costs of litigation.[26]

In their Answer,[27] Ponciano and his wife, Eufemia, denied that the 1978 Deed was simulated or forged, asserting its genuineness and execution for valuable consideration from which some of the petitioners, including Rafael, received substantial pecuniary benefits. They asserted that Ponciano no longer participated in the division of the estate of Venancio and Leonila whose assets amounted to millions of pesos. They accused petitioners of not coming to court with clean hands, claiming the latter may have themselves resorted to falsification of documents to transfer said assets in their names and subsequently to other persons. Ponciano and Eufemia also averred that petitioners were guilty of laches.

Ponciano died on October 16, 1997 and was substituted by his wife and children.[28]

Petitioners presented the lone testimony of Emerlina.[29] After Ponciano's heirs/substitutes (private respondents) failed to present their evidence despite several opportunities given them, the RTC considered the case submitted for decision.[30]

In the course of the trial, two other documents figured in the dispute, which petitioners likewise impugned, showing:

(1) an Agreement to Sell[31] dated November 9, 1976 whereby Venancio and Leonila agreed to sell to Ponciano the parcels of land covered by OCT Nos. O-197 and O-443, as well as Lots 6, 4 and 9-A, for the total price of P1 Million with P200,000.00 as down payment and the balance payable in one year without interest; and

(2) a Deed of Sale with Mortgage[32] (Deed with Mortgage) dated November 11, 1977, which expressly superseded the Agreement to Sell dated November 9, 1976, whereby Venancio and Leonila sold to Ponciano the parcels of land covered by OCT Nos. 0-197 and 0-443, as well as Lots 6, 4 and 9-A, for P1 Million, with the payment of the P700,000.00 balance secured by the said properties. This Deed with Mortgage was expressly superseded by the 1978 Deed in favor of Ponciano.

On September 2, 2004, the RTC issued an Order[33] dismissing petitioners' complaint. The dispositive portion of the order reads:

WHEREFORE, premises considered, the same is hereby ordered DISMISSED.

SO ORDERED.[34]

The RTC held that the questioned documents, having been notarized and executed in the presence of two instrumental witnesses, enjoy the presumption of regularity, and petitioners failed to overcome this presumption by clear and convincing evidence. It stressed that petitioners failed to present any proof of simulation or forgery of the subject documents.

In an Order[35] dated November 29, 2005, the RTC denied petitioners' Motion for Reconsideration.

Petitioners brought the case to the CA on appeal which was denied in the assailed Decision[36] dated May 25, 2010, the dispositive portion of which reads:

IN VIEW OF ALL THESE, the Appeal is DENIED. The Order a quo is AFFIRMED.

SO ORDERED.[37]

The CA held that petitioners failed to discharge their burden of proving the purported forgery with clear and convincing evidence. The CA stressed that such evidence was especially needed in this case given that the assailed documents, being notarized, enjoy the presumption of regularity and of due execution and authenticity. The CA noted that petitioners merely relied on Emerlina's testimony that the questioned signatures were forged.[38]

The CA further stressed that mere variance in the genuine and disputed signatures is not proof of forgery.[39] To establish forgery, said the appellate court, presentation of documents bearing the genuine signatures of Venancio and Leonila was required, for comparison with the alleged false signatures.[40] The CA held that petitioners' failure to submit such documents was fatal as it was necessary for petitioners to show not only the material differences between the signatures, but also (1) the extent, kind and significance of the variation; (2) that the variation was due to the operation of a different personality and not merely an expected and inevitable variation found in the genuine writing of the same writer; and (3) that the resemblance was the result of a more or less skillful imitation and not merely a habitual and characteristic resemblance which naturally appears in a genuine writing.[41]

Petitioners' Motion for Reconsideration[42] was subsequently denied in the Resolution[43] dated October 13, 2010.

Dissatisfied with the outcome of its appeal, petitioners filed the instant petition, asserting that the CA's ruling was contrary to the evidence, the law and existing jurisprudence.

The Court's Ruling

The petition lacks merit.

Factual findings of the RTC, as affirmed by the CA, deserve a high degree of respect

Well-entrenched is the rule that the Supreme Court's role in a petition under Rule 45 is limited to reviewing or reversing errors of law allegedly committed by the appellate court.[44] Equally settled is the rule that this Court is not a trier of facts.[45]

In *Spouses Villaceran, et al. v. De Guzman*,[46] the Court held that:

The issue of the genuineness of a deed of sale is essentially a question of fact. It is settled that this Court is not duty-bound to analyze and weigh again the evidence considered in the proceedings below. This is especially true where the trial court's factual findings are adopted and affirmed by the CA as in the present case. Factual findings of the trial court, affirmed by the CA, are final and conclusive and may not be reviewed on appeal.[47]

At any rate, to remove any doubt as to the correctness of the assailed ruling, We have examined the records and, nonetheless, reached the same conclusion.[48]

Notarized documents enjoy the presumption of regularity

A notarized Deed of Absolute Sale has in its favor the presumption of regularity, and it carries the evidentiary weight conferred upon it with respect to its due execution.[49] It is admissible in evidence without further proof of its authenticity and is entitled to full faith and credit upon its face.[50] Thus, a notarial document must be sustained in full force and effect so long as he who impugns it does not present strong, complete and conclusive proof of its falsity or nullity on account of some flaws or defects.[51]

Absent evidence of falsity so clear, strong and convincing, and not merely preponderant, the presumption of regularity must be upheld.[52] The burden of proof to overcome the presumption of due execution of a notarial document lies on the party contesting the same.[53]

Forgery is not presumed

Furthermore, as a rule, forgery cannot be presumed.[54] An allegation of forgery must be proved by clear, positive and convincing evidence, and the burden of proof lies on the party alleging forgery.[55]

Petitioners failed to overcome the presumption of due execution

Since petitioners are assailing the genuineness of the 1978 Deed, they evidently have the burden of making out a clear-cut case that the questioned document is bogus.[56] Both the trial and appellate courts concluded that petitioners failed to discharge this burden. We agree.

The Complaint, at the outset, did not allege in definite terms that Venancio and Leonila's signatures on the 1978 Deed were forged. It stated:

VIII

That [petitioners'] parents did not sign said documents of sale purportedly to transfer rights, titles and interest in favor of defendants, and, in fact their signatures thereon may have been forged, and, that they did not receive due consideration thereof, and, said documents are merely simulated if ever defendant [Ponciano] succeeded in making them [sign] the same without knowledge of the import thereof, likewise, in making them appear as having executed and affixed their signatures on said controversial documents although the transactions were inexistent.[57] (Emphasis ours)

Likewise, Emerlina's testimony, upon which petitioners' case was built, is unclear and uncertain as to the supposed forgery. Emerlina testified that the vendors' signatures appearing on the 1978 Deed did not belong to her parents, Venancio and Leonila.[58] Subsequently, however, she testified that if the latter did affix their signatures, they did not know what they signed.[59] Still further to her testimony, Emerlina declared that she could not say if the signatures indeed belonged to her parents.[60] Eventually, she conceded to having two alternative answers to the question of forgery: first, that Venancio and Leonila did not sign the document, and second, that it is possible that they signed it but without knowing the consequences of their action.[61]

The uncertainty in petitioners' stance, as echoed in Emerlina's testimony, clearly militates against their claim of forgery.

Furthermore, it is undeniable that Emerlina stands to benefit from a judgment annulling the 1978 Deed. Her testimony denying the validity of the sale, having been made by a party who has an interest in the outcome of the case, is not as reliable as written or documentary evidence. Moreover, self-serving statements are inadequate to establish one's claims. Proof must be presented to support the same.[62]

To establish forgery, the extent, kind and significance of the variation in the standard and disputed signatures must be demonstrated; it must be proved that the variation is due to the operation of a different personality and not merely an expected and inevitable variation found in the genuine writing of the same writer; and it should be shown that the resemblance is a result of a more or less skillful imitation and not merely a habitual and characteristic resemblance which naturally appears in a genuine writing.[63] Emerlina's uncorroborated testimony failed to demonstrate, based on the foregoing criteria, that the questioned signatures were forgeries.

Indeed, petitioners failed to present the requisite proof of falsity and forgery of the notarized 1978 Deed to overcome the presumption of regularity and due execution.

Visual comparison of the questioned
and admittedly genuine signatures
reveal prominent similarities

Section 22, Rule 132 of the Rules of Court explicitly authorizes the court, by itself, to make a comparison of the disputed handwriting with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge.[64]

Petitioners assert that the 1976 Power of Attorney[65] executed in favor of Ponciano, which bore the true and genuine signatures of Venancio and Leonila, could have been used as basis for comparison with the questioned signatures to determine their authenticity.[66]

Comparing these two sets of signatures, the Court finds prominent similarities as to indicate the habitual and characteristic writing of Venancio and Leonila. Leonila's signature on the 1978 Deed, in particular, appears almost the same as her signature on the 1976 Power of Attorney. Venancio's signature on the 1978 Deed was not as smooth as his signature on the 1976 Power of Attorney, but the similarities in the angles and slants cannot be

ignored.

To support their claim of forgery, petitioners described the questioned signatures as "wiri-wiri," or containing "wild strokes." [67] The Court, however, does not find such wild strokes in the questioned signatures. Leonila's was nearly as smooth as her signature on the 1976 Power of Attorney. Venancio's signature gives the impression that it had been affixed by a less than steady but determined hand, and though not as fluid as his previous signature, reveals the characteristic imprint of his handwriting. Indeed, the resemblance in the questioned and standard signatures are more prominent or pronounced than the apparent variance which could be attributed to the signatories' old age.

In fine, the apparent dissimilarities in the signatures are overshadowed by the striking similarities and, therefore, fail to overcome the presumption of validity in favor of a notarized document. [68]

Presumption of competence was not adequately refuted

"The law presumes that every person is fully competent to enter into a contract until satisfactory proof to the contrary is presented." [69] The party claiming absence of capacity to contract has the burden of proof and discharging this burden requires that clear and convincing evidence be adduced. [70]

Petitioners have not satisfactorily shown that their parents' mental faculties were impaired as to deprive them of reason or hinder them from freely exercising their own will or from comprehending the provisions of the sale in favor of Ponciano.

Petitioners assert that their parents were "uliyenin" or forgetful, of advanced age and "at times" sickly during the time of the execution of the 1978 Deed in favor of Ponciano. [71]

Mere forgetfulness, however, without evidence that the same has removed from a person the ability to intelligently and firmly protect his property rights, will not by itself incapacitate a person from entering into contracts.

In *Mendezona v. Ozamiz*, [72] the Court affirmed a vendor's capacity to contract despite a doctor's revelation that the former was afflicted with certain infirmities and was, at times, forgetful, holding that:

The revelation of Dr. Faith Go did not also shed light on the mental capacity of Carmen Ozamiz on the relevant day – April 28, 1989 when the Deed of Absolute Sale was executed and notarized. At best, she merely revealed that Carmen Ozamiz was suffering from certain infirmities in her body and at times, she was forgetful, but there was no categorical statement that Carmen Ozamiz succumbed to what respondents suggest as her alleged "second childhood" as early as 1987. The petitioners' rebuttal witness, Dr. William Buot, a doctor of neurology, testified that no conclusion of mental incapacity at the time the said deed was executed can be inferred from Dr. Faith Go's clinical notes nor can such fact be deduced from the mere prescription of a medication for episodic memory loss. [73] (Emphasis ours)

In this case, petitioners' claim that Venancio and Leonila were forgetful and at times sickly was not even supported by medical evidence. It was based solely on Emerlina's testimony, which failed to demonstrate that Venancio and Leonila's mental state had prevented them from freely giving their consent to the 1978 Deed or from understanding the nature and effects of their disposition.

It is settled that a person is not incapacitated to enter into a contract merely because of advanced years or by reason of physical infirmities, unless such age and infirmities impair his mental faculties to the extent that he is unable to properly, intelligently and fairly understand the provisions of said contract, or to protect his property rights. [74]

Petitioners' reliance on the case of *Domingo v. CA*[75] is misplaced. There, the Court declared a deed of sale null and void given that the seller was already of advanced age and senile at the time of its execution, thus:

The un rebutted testimony of Zosima Domingo shows that at the time of the alleged execution of the deed, Paulina was already incapacitated physically and mentally. She narrated that Paulina played with her waste and urinated in bed. Given these circumstances, there is in our view sufficient reason to seriously doubt that she consented to the sale of and the price for her parcels of land. x x x.[76]

No similar circumstances, indicating senility and clear incapacity to contract, have been alleged or proved in the instant case.

"A person is presumed to be of sound mind at any particular time and the condition is presumed to exist, in the absence of proof to the contrary." [77] In this case, petitioners failed to discharge their burden of proving, by clear and convincing evidence, that their parents were mentally incompetent to execute the 1978 Deed in favor of Ponciano.

Undue influence was not proved

"There is undue influence when a person takes improper advantage of his power over the will of another, depriving the latter of a reasonable freedom of choice." [78]

Other than petitioners' general allegation that Ponciano unduly took advantage of his being the eldest child and his close relationship with their parents, no other circumstance or evidence has been presented to show how Ponciano exerted his undue influence or how Venancio and Leonila were thereby deprived of the freedom to exercise sufficient judgment in selling the subject properties to Ponciano.

"[U]ndue influence that vitiated a party's consent must be established by full, clear and convincing evidence, otherwise, the latter's presumed consent to the contract prevails." [79]

Lack or inadequacy of consideration
was not established

While maintaining that the 1978 Deed was a forgery, petitioners also insist that the deed was simulated. The incompatibility of these two contentions does not help petitioners' case. Forgery suggests that no consent was given to the transaction, while simulation indicates a mutual agreement albeit to deceive third persons.

Simulation has been defined as the declaration of a fictitious will, made deliberately by mutual agreement of the parties, in order to produce the appearances of a juridical act which does not exist or is different from that which was really executed, for the purpose of deceiving third persons. Accordingly, simulation exists when: (a) there is an outward declaration of will different from the will of the parties; (b) the false appearance was intended by mutual agreement of the parties; and (c) their purpose is to deceive third persons.[80]

None of the foregoing requisites have been shown to exist in this case.

In claiming that the 1978 Deed was simulated, petitioners assert that there was no consideration and the vouchers supposedly showing Ponciano's payment of P704,243.77 should not be considered as evidence since private respondents failed to offer them, having been deemed to have waived their presentation of evidence. Petitioners likewise argue that the price, in said amount, was unconscionable.[81]

That the vouchers were not offered in evidence will not serve to strengthen petitioners' theory of simulation. The notarized 1978 Deed shows on its face that the properties were sold for the price of P704,243.77. The 1978 Deed also appears to have gone through the procedure of registration, leading to the issuance of TCT in Ponciano's

name.

In *Mendezona*,^[82] the appellate court ruled that the assailed deed of absolute sale was a simulated contract since the petitioners therein, in whose favor the deed was executed, failed to prove that the consideration was actually paid. This Court disagreed with the CA's ruling, holding that:

Contrary to the erroneous conclusions of the appellate court, a simulated contract cannot be inferred from the mere non-production of the checks. It was not the burden of the petitioners to prove so. It is significant to note that the Deed of Absolute Sale dated April 28, 1989 is a notarized document duly acknowledged before a notary public. As such, it has in its favor the presumption of regularity, and it carries the evidentiary weight conferred upon it with respect to its due execution. It is admissible in evidence even without further proof of its authenticity and is entitled to full faith and credit upon its face.

Payment is not merely presumed from the fact that the notarized Deed of Absolute Sale dated April 28, 1989 has gone through the regular procedure as evidenced by the transfer certificates of title issued in petitioners' names by the Register of Deeds. In other words, whosoever alleges the fraud or invalidity of a notarized document has the burden of proving the same by evidence that is clear, convincing, and more than merely preponderant. Therefore, with this well-recognized statutory presumption, the burden fell upon the respondents to prove their allegations attacking the validity and due execution of the said Deed of Absolute Sale. Respondents failed to discharge that burden; hence, the presumption in favor of the said deed stands. But more importantly, that notarized deed shows on its face that the consideration of One Million Forty Thousand Pesos (P1,040,000.00) was acknowledged to have been received by Carmen Ozamiz.

x x x x

Considering that Carmen Ozamiz acknowledged, on the face of the notarized deed, that she received the consideration at One Million Forty Thousand Pesos (P1,040,000.00), the appellate court should not have placed too much emphasis on the checks, the presentation of which is not really necessary. Besides, the burden to prove alleged non-payment of the consideration of the sale was on the respondents, not on the petitioners. Also, between its conclusion based on inconsistent oral testimonies and a duly notarized document that enjoys presumption of regularity, the appellate court should have given more weight to the latter. Spoken words could be notoriously unreliable as against a written document that speaks a uniform language.^[83] (Citations omitted and emphasis ours)

Contending that the price paid by Ponciano for the properties was unconscionably low, petitioners point to the alleged sale of Lot 30, measuring 8,047 sq m, by Pabiloña, et al.^[84] to Cityland, Inc., on September 18, 1992 for P12,070,500.00.^[85]

Petitioners, however, have not demonstrated how the alleged selling price for Lot 30 in 1992 proves that the price paid by Ponciano under the 1978 Deed was unconscionable.

Furthermore, it is beyond dispute that the Deed of Absolute Sale in favor of Ponciano was executed in 1978, or nearly 14 years before the alleged sale of Lot 30 to Cityland, Inc. Given the obvious difference in the time of transaction, the prevailing market conditions, and the size of the properties, petitioners cannot sweepingly conclude that the price paid by Ponciano in 1978 was unconscionable on the basis of the 1992 sale of Lot 30.

In *Ceballos v. Intestate Estate of the Late Mercado*,^[86] the Court had occasion to rule:

Harping on the alleged unconscionably low selling price of the subject land, petitioner points out that it is located in a tourist area and golf haven in Cebu. Notably, she has failed to prove that on February 13, 1982, the date of the sale, the area was already the tourist spot and golf haven that she describes it to be. In 1990, the property might have been worth ten million pesos, as she claimed; however, at the time of the sale, the area was still undeveloped. Hence, her contention that the selling price was unconscionably low lacks sufficient

substantiation.[87] (Citations omitted)

With more reason should the Court, in this case, hold that petitioners failed to substantiate their claim of an unconscionable selling price, considering that they have not shown any evidence of either the condition of the subject properties in 1978 or other factors affecting their valuation, which may possibly indicate the gross inadequacy of the price paid by Ponciano.

Petitioners would have this Court appreciate, as additional indications of simulation of the 1978 Deed, the alleged late registration thereof in 1993 or 15 years after the sale, and the Tax Declarations that were allegedly still in Leonila's name up to the time the Complaint was filed.[88] These contentions, however, do not suffice to constitute the strong, positive and convincing evidence that will overcome the presumption of due execution of a notarized document.

In any event, records show that the 1978 Deed was in fact registered in 1984, during Venancio and Leonila's lifetime. Both OCT No. O-197[89] and OCT No. O-443[90] bear an annotation referring to the 1978 Deed, inscribed on November 12, 1984, and based on such annotation, new transfer certificates of title were issued in lieu of OCT No. O-197 and OCT No. O-443 in Ponciano's name; TCT No. 15125,[91] in particular, appears to have been issued on November 12, 1984. By such registration and by obtaining certificates of title in his name, Ponciano had clearly asserted his ownership over the properties. Thus, that the Tax Declarations were still in Leonila's name cannot be the basis to conclude that the 1978 Deed was a simulation.

A contract or conduct apparently honest and lawful must be treated as such until it is shown to be otherwise by either positive or circumstantial evidence. A duly executed contract enjoys the presumption of validity, and the party assailing its regularity has the burden to prove its simulation. Indeed, it is settled that notarized documents carry the presumption of due execution, lending truth to the statements therein contained and to the authenticity of the signatures thereto affixed.[92] Petitioners have failed to adduce the requisite clear and convincing evidence to overturn this presumption.

Alleged defects in the notarization
were raised only before this Court

Petitioners argue that the parties' Acknowledgment of the 1978 Deed before the Notary Public, Federico Magdangal, whose notarial commission was for Makati City, was done outside the latter's "territorial limits" because the property is in Tanauan, Batangas. Furthermore, while the Acknowledgment was done in Makati City, its printed text expressly states that the parties personally appeared before the Notary Public in Tanauan, Batangas.[93] Petitioners also assert that their parents were residents of Tanauan, Batangas, and given their advanced age, would not have gone to Makati on the same day that the 1978 Deed was executed, to have the same notarized.[94]

Petitioners further assert that while the Acknowledgment indicated that Ponciano exhibited his residence certificate to the Notary Public, it did not reflect any identification document from Venancio and Leonila. They argue that the absence of such document contravened the Notary Public's statement that Venancio and Leonila were known to him.[95]

As private respondents have pointed out, however, these claims were only raised for the first time before this Court.[96]

"It is well-settled that issues not raised in the court a quo cannot be raised for the first time on appeal in the Supreme Court without violating the basic rules of fair play, justice and due process."[97] Due process dictates that when a party who adopts a certain theory upon which the case is tried and decided by the lower court, he

should not be allowed to change his theory on appeal. The reviewing court will not consider a theory of the case which has not been brought to the lower court's attention; a new theory cannot be raised for the first time at such late stage.[98] Thus, We cannot bend backwards to examine the issue belatedly raised by petitioners at this late stage in the proceedings.

Granting the Acknowledgment was defective, the same will merely strip the document of its public character and reduce it to a private instrument.[99] It remains incumbent upon petitioners to prove, by preponderance of evidence, their allegation that the deed of sale was forged even though that document no longer enjoys any significantly weighted presumption as to its validity.[100]

The Court has explained "preponderance of evidence" thus:

"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 worthy of belief than that which is offered in opposition thereto.[101] (Italics ours)

Petitioners have argued that their evidence is of greater weight since private respondents did not at all present any evidence, particularly, to prove the notarization of the 1978 Deed and the genuineness of their parents' signatures thereon.[102]

We are not convinced. Time and again, this Court has ruled that:

In civil cases, it is a basic rule that the party making allegations has the burden of proving them by a preponderance of evidence. The parties must rely on the strength of their own evidence and not upon the weakness of the defense offered by their opponent. This rule holds true especially when the latter has had no opportunity to present evidence because of a default order. Needless to say, the extent of the relief that may be granted can only be so much as has been alleged and proved with preponderant evidence required under Section 1 of Rule 133.[103] (Citations omitted and emphasis ours)

The same principle applies here where private respondents were considered to have waived the presentation of their evidence at trial. "Ei incumbit probatio qui dicit, non qui negat. He who asserts, not he who denies, must prove." [104] "We have consistently applied the ancient rule that if the plaintiff, upon whom rests the burden of proving his cause of action, fails to show in a satisfactory manner facts on which he bases his claim, the defendant is under no obligation to prove his exception or defense." [105]

Thus, petitioners' evidence must stand on its own merit and must be scrutinized for veracity and probative value. It is not rendered conclusive simply because it was not met with evidence from the defense.

Section 1, Rule 133 of the Revised Rules of Court states how preponderance of evidence is determined, viz:

In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which [they] are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number. (Emphasis ours)

Considering all the circumstances of this case and all evidence adduced in support of the complaint, We find that even by the standard of preponderance of evidence, petitioners have failed to establish the alleged simulation or forgery of the 1978 Deed.

As previously explained, petitioners' claim of forgery is built on Emerlina's testimony which we have found to be both uncertain and self-serving. More importantly, a visual comparison of the disputed and admittedly genuine signatures of Venancio and Leonila has led this Court to find striking similarities that negate petitioners' claim of forgery. Petitioners have likewise failed to substantiate their claims that their parents were mentally incapable of executing the 1978 Deed, that Ponciano exerted undue influence on their parents, and that there was no consideration for the sale or that it was unconscionable.

All told, We find that the CA did not err in upholding the RTC's decision to dismiss petitioners' complaint.

WHEREFORE, the petition is DENIED. The Decision dated May 25, 2010 and Resolution dated October 13, 2010 of the Court of Appeals in CA-G.R. CV No. 86953 are AFFIRMED.

SO ORDERED.

Sereno, C.J., (Chairperson), Leonardo-De Castro, Del Castillo, and Jardeleza, JJ., concur.

[1] Rollo, pp. 13-36.

[2] Penned by Associate Justice Michael P. Elbinias, concurred in by Associate Justices Remedios A. Salazar-Fernando and Celia C. Librea-Leagogo; id. at 38-47.

[3] Penned by Assisting Judge Reuben P. De La Cruz; id. at 164-172.

[4] Id. at 49-50.

[5] Id. at 17, 39, 169 and 222-223.

[6] Id. at 75.

[7] Id. at 17 and 166.

[8] Id. at 102, 166 and 257.

[9] Id. at 77-82.

[10] Id. at 83-86.

[11] Id. at 16, 39, 169, and 224.

[12] Id. at 135.

[13] Id. at 167 and 225.

[14] Id. at 40, 119-126, and 164.

[15] Id. at 40.

[16] Id. at 120.

[17] Id. at 121 and 164.

[18] Id. at 87-88.

[19] Id. at 102-106.

[20] Records show that Transfer Certificate of Title (TCT) No. T-15125 was issued over Lots 10 and 17. When

Lot 10 was subsequently subdivided, TCT No. T-15125 was cancelled and TCT Nos. T-24806, T-24807, T-24808 and T-24809 were issued over the subdivided lots. TCT No. T-24806 was cancelled by virtue of a Deed of Absolute Sale dated May 25, 1992 in favor of Cariño & Sons Agri-Development Corp. Records also show that TCT No. 15126 was issued in lieu of OCT No. O-443. Id. at 77-86, 107-114 and 117-118.

[21] Id. at 40 and 169-170.

[22] Records show that TCT No. T-10330 was subsequently cancelled by reason of a 1977 Deed of Sale in favor of Nenita Chua So. TCT No. 12406 was subsequently issued over the same land in the names of Julian Y. Pabiloña, Virginia Go, Gemma Tan Ongking, Arthur C. Chua and Nenita Chua So. TCT No. T-12406 was in turn cancelled by virtue of a 1992 Deed of Absolute Sale in favor of Cityland, Inc. Id. at 89-90 and 115-116.

[23] Id. at 169-170.

[24] Id. at 122.

[25] Id.

[26] Id. at 124-125.

[27] Id. at 156-160.

[28] Elenita P. Cervantes, Susana Almeda-Alcazar, Laurence P. Almeda, Florecita Almeda-Datoc, Romel P. Almeda, Edwin P. Almeda, Wenilda Almeda-Diaz, Marlon P. Almeda, Alan P. Almeda and Carolyn Almeda-Santos. Id. at 226.

[29] Id. at 166.

[30] Id. at 162-163 and 169.

[31] Id. at 91-95.

[32] Id. at 96-101.

[33] Id. at 164-172.

[34] Id. at 172.

[35] Id. at 181.

[36] Id. at 38-47.

[37] Id. at 46.

[38] Id. at 42-43.

[39] *Rivera v. Turiano*, 546 Phil. 495, 498 (2007).

[40] *Jimenez v. Commission on Ecumenical Mission, United Presbyterian Church, USA*, 432 Phil. 895, 909 (2002).

[41] *Rivera v. Turiano*, *supra* note 39, at 502.

[42] *Rollo*, pp. 51-61.

[43] Id. at 49-50.

[44] *Ceballos v. Intestate Estate of the Late Mercado*, 474 Phil. 363, 372 (2004).

- [45] See *Sps. Bernales v. Heirs of Julian Sambaan*, 624 Phil. 88, 97 (2010).
- [46] 682 Phil. 426 (2012).
- [47] *Id.* at 436.
- [48] *Sps. Bernales v. Heirs of Julian Sambaan*, *supra* note 45, at 98.
- [49] *Dr. Yason v. Arciaga*, 490 Phil. 338, 352 (2005), citing *Mendezona v. Ozamiz*, 426 Phil. 888, 903 (2002).
- [50] *Mendezona v. Ozamiz*, *supra* note 49, at 903-904.
- [51] *Dr. Yason v. Arciaga*, *supra* note 49.
- [52] *Pan Pacific Industrial Sales Co, Inc. v. CA*, 517 Phil. 380, 388-389 (2006); *Ladignon v. CA*, 390 Phil. 1161, 1169 (2000).
- [53] *Pan Pacific Industrial Sales Co., Inc. v. CA*, *supra* note at 389.
- [54] *Ladignon v. CA*, *supra* note 52, at 1169.
- [55] *Id.*, *Pan Pacific Industrial Sales Co. Inc. v. CA*, *supra* note 52, at 389.
- [56] *Pan Pacific Industrial Sales Co., Inc. v. CA*, *supra* note at 389.
- [57] *Rollo*, p. 122.
- [58] *Id.* at 43-44.
- [59] *Id.* at 324.
- [60] *Id.* at 325.
- [61] *Id.*
- [62] *Ceballos v. Intestate Estate of the Late Mercado*, *supra* note 44, at 377.
- [63] *Manzano, Jr. v. Garcia*, 677 Phil. 376, 385 (2011), citing *Rivera v. Turiano*, *supra* note 39, at 502, *Ladignon v. CA*, *supra* note 52, at 1171.
- [64] *Manzano, Jr. v. Garcia*, *supra* note 63, at 384, citing *Sps. Estavio v. Dr. Jaranilla*, 462 Phil. 723, 733 (2003) and *Pontaoe, et al. v. Pontaoe, et al.*, 575 Phil. 283, 292 (2008).
- [65] *Rollo*, pp. 75-76.
- [66] *Id.* at 27.
- [67] *Id.* at 25-26.
- [68] *Ceballos v. Intestate Estate of the Late Mercado*, *supra* note 44, at 373.
- [69] *Dr. Yason v. Arciaga*, *supra* note 49, at 346.
- [70] *Id.*
- [71] *Rollo*, pp. 167, 176, 191, 192 and 195.
- [72] *Supra* note 49.
- [73] *Id.* at 906.

- [74] *Dr. Yason v. Arciaga*, supra note 49, at 350-351, *Mendezona v. Ozamiz*, supra note 49, at 906.
- [75] 419 Phil. 651 (2001).
- [76] *Id.* at 664.
- [77] *Mendezona v. Ozamiz*, supra note 49, at 907.
- [78] *Heirs of Sevilla v. Sevilla*, 450 Phil. 598, 611 (2003).
- [79] *Id.* at 612.
- [80] *Mendezona v. Ozamiz*, supra note 49, at 903.
- [81] *Rollo*, p. 32.
- [82] *Supra* note 49.
- [83] *Id.* at 903-905.
- [84] *See* note 22.
- [85] *Rollo*, p. 32.
- [86] *Supra* note 44.
- [87] *Id.* at 376.
- [88] *Rollo*, pp. 31-32 and 177.
- [89] *Id.* at 81.
- [90] *Id.* at 84.
- [91] *Id.* at 117-118.
- [92] *Delfin v. Billones*, 519 Phil. 720, 732 (2006).
- [93] *Rollo*, pp. 29-30.
- [94] *Id.* at 354.
- [95] *Id.* at 30.
- [96] *Id.* at 334.
- [97] *Pua v. CA*, 398 Phil. 1064, 1080 (2000).
- [98] *Kings Properties Corp. v. Galido*, 621 Phil. 126, 144 (2009), citing *Philippine Ports Authority v. City of Iloilo*, 453 Phil. 927, 934 (2003).
- [99] *Adelaida Meneses (deceased) v. Venturozo*, 675 Phil. 641, 652 (2011).
- [100] *Id.*, *Dela Rama, et al. v. Papa, et al.*, 597 Phil. 227, 244 (2009).
- [101] *Rep. of the Phils. v. De Guzman*, 667 Phil. 229, 246 (2011), citing *Encinas v. National Bookstore, Inc.*, 485 Phil. 683, 695 (2004).
- [102] *Rollo*, p. 175.

[103] Otero v. Tan, 692 Phil. 714, 729 (2012), Gajudo v. Traders Royal Bank, 519 Phil. 791, 803 (2006).

[104] Heirs of Sevilla v. Sevilla, *supra* note 78, at 612.

[105] *Id.*

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