

COCA-COLA BOTTLERS PHILS., INC., PETITIONER, V. SPOUSES EFREN AND LOLITA SORIANO, RESPONDENTS.*G.R. No. 211232. April 11, 2018*

Ponente: TIJAM, J.

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This petition for review on certiorari[1] under Rule 45 of the Rules of Court seeks to reverse and set aside the Decision[2] dated June 18, 2013 and Resolution[3] dated February 4, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 97687, affirming the Decision[4] dated February 9, 2011 of the Regional Trial Court (RTC), Branch 01, Tuguegarao, Cagayan, in Case No. 6821.

The Antecedents

The CA summarized the antecedents as follows:

Plaintiffs-appellees spouses Efren and Lolita Soriano are engaged in the business of selling defendant-appellant Coca-Cola products in Tuguegarao City, Cagayan. Sometime in 1999, defendant-appellant thru Cipriano informed plaintiffs-appellees that the former required security for the continuation of their business. Plaintiffs-appellees were convinced to hand over two (2) certificates of titles over their property and were made to sign a document. Defendant Cipriano assured plaintiffs-appellees that it will be a mere formality and will never be notarized.

Subsequently, plaintiffs-appellees informed defendant-appellant Coca-Cola of their intention to stop selling Coca-Cola products due to their advanced age. Thus, plaintiffs-appellees verbally demanded from defendant-appellant the return of their certificates of titles. However, the titles were not given back to them.

When plaintiffs-appellees were contemplating on filing a petition for the issuance of new titles, they discovered for the first time that their land was mortgaged in favor of defendant-appellant Coca-Cola. Worse, the mortgage land was already foreclosed. Hence, plaintiffs-appellees filed a complaint for annulment of sheriffs foreclosure sale. They alleged that they never signed a mortgaged document and that they were never notified of the foreclosure sale. In addition, plaintiffs-appellees aver that they never had monetary obligations or debts with defendant-appellant. They always paid their product deliveries in cash.

Furthermore, plaintiffs-appellees claimed that they merely signed a document in Tuguegarao. They never signed any document in Ilagan, Isabela nor did they appear before a certain Atty. Reymundo Ilagan on 06 January 2000 for the notarization of the said mortgage document.

On their part, defendant-appellant alleged that plaintiffs-appellees are indebted to them. Plaintiffs-appellees' admission that they signed the real estate mortgage document in Tuguegarao, Cagayan indicates that the mortgage agreement was duly executed. The failure of the parties to appear before the notary public for the execution of the document does not render the same null and void or unenforceable.[5]

Ruling of the RTC

On February 9, 2011, the RTC rendered its decision nullifying the real estate mortgage and the foreclosure proceedings. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the court hereby renders judgment in favor of the plaintiffs and against the defendants as follows:

1. Declaring the real estate mortgage (Exhibit "A") to be null and void;
2. Declaring the Sheriff's Certificate of Sale (Exhibit "B") to be null and void;
3. Declaring the claim of the defendants that the land of the plaintiffs had been mortgaged to defendant corporation to be unlawful;
4. Declaring the cloud over the title and interest of the plaintiffs be removed;
5. Ordering the defendants to surrender and deliver TCT No. T-86200 and TCT No. T-84673 to the plaintiffs; and
6. Ordering the defendants in solidum to pay to plaintiffs the sum of P50,000.00 as moral damages and P20,000.00 as attorney's fees.

No pronouncement as to cost.

SO DECIDED.

Aggrieved, petitioner appealed to the CA.

Ruling of the CA

On June 18, 2013, the CA rendered the assailed decision affirming the RTC decision in toto. The CA ruled that the Real Estate Mortgage deed (REM deed) failed to comply substantially with the required form. Thus, it made the following findings:

A careful perusal of the mortgage deed has revealed that although the spouses signed the real estate mortgage deed, they never acknowledged the same before the Clerk of Court during the notarization. Likewise, only one witness has signed the document, instead of the required presence of two (2) witnesses as provided by law.

In the acknowledgment portion, only defendant Cipriano and defendant-appellant Coca Cola has appeared and acknowledged the real estate mortgage deed before the Clerk of Court. Nowhere did the plaintiffs-appellees acknowledge before the Clerk of Court the said deed as their free and voluntary act. Contrary to defendant-appellant's contention, this acknowledgment is not a mere superfluity because it is expressly required by law. Even granting *arguendo* that the document should be considered properly notarized, the aforementioned real estate mortgage deed still fell short of the legal requirements under Section 112 of P.D. 1529.

Therefore, for failure to comply substantially with the required form, We find that plaintiffs-appellees' land cannot be bound by the real estate mortgage. We uphold the court *a quo* in finding both the real estate mortgage constituted over plaintiffs-appellees' property and the subsequent extrajudicial foreclosure invalid.[6]

Hence, the instant petition before Us. In its Petition and Reply,[7] petitioner argues that the defect in the notarization of the REM deed does not in any way affect its validity. Section 112 of Presidential Decree No. 1529 (P.D. 1529) only provides for the formal requirements for registrability and not validity. Assuming that the mortgage contract cannot be registrable due to lack of certain requirements, its only effect is that it does not bind third parties but the mortgage remains valid as between the parties.[8] Finally, petitioner alleges that there was no forgery considering that respondents admitted the due execution of the REM deed in their complaint. On the other

hand, respondents, in their Comment[9], reiterated the findings of the courts a quo and asseverated that petitioner failed to show any reversible error in the CA decision.

The Issue

Ultimately, the question posed before Us is the validity of a REM, the deed of which was: (1) admittedly signed by the mortgagors, albeit in a place other than that stated in the document, on the belief that the same would not be notarized; and (2) notarized without authority and compliance with the prescribed form under Section 112 of P.D. 1529. Corollary to the validity of the said mortgage is the validity of the foreclosure sale pursuant to it.

Our Ruling

The petition is impressed with merit.

At the outset, We stress that the registration of a REM deed is not essential to its validity. The law is clear on the requisites for the validity of a mortgage, to wit:

Art. 2085. The following requisites are essential to the contracts of pledge and mortgage:

- (1) That they be constituted to secure the fulfillment of a principal obligation;
- (2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged;
- (3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose.

Third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property.

In relation thereto, Article 2125 provides:

Article 2125. In addition to the requisites stated in Article 2085, it is indispensable, in order that a mortgage may be validly constituted, that the document in which it appears be recorded in the Registry of Property. If the instrument is not recorded, the mortgage is nevertheless binding between the parties. (Emphasis supplied)

Thus, as between the parties to a mortgage, the non-registration of a REM deed is immaterial to its validity. In the case of *Paradigm Development Corporation of the Philippines, v. Bank of the Philippine Islands*,^[10] the mortgagee allegedly represented that it will not register one of the REMs signed by the mortgagor. In upholding the validity of the questioned REM between the said parties, the Court ruled that "with or without the registration of the REMs, as between the parties thereto, the same is valid and [the mortgagor] is bound thereby." The Court, thus, cited its ruling in the case of *Mobil Oil Philippines, Inc., v. Ruth R. Diocares, et al.*^[11] a portion of which reads:

Xxx. The codal provision is clear and explicit. Even if the instrument were not recorded, "the mortgage is nevertheless binding between the parties." The law cannot be any clearer. Effect must be given to it as written. The mortgage subsists; the parties are bound. As between them, the mere fact that there is as yet no compliance with the requirement that it be recorded cannot be a bar to foreclosure.

x x x x

Moreover to rule as the lower court did would be to show less than fealty to the purpose that animated the legislators in giving expression to their will that the failure of the instrument to be recorded does not result in the mortgage being any the less "binding between the parties." In the language of the Report of the Code Commission: "In Article [2125] an additional provision is made that if the instrument of mortgage is not recorded, the mortgage, is nevertheless binding between the parties." We are not free to adopt then an

interpretation, even assuming that the codal provision lacks the forthrightness and clarity that this particular norm does and therefore requires construction, that would frustrate or nullify such legislative objective.[12] (Citation omitted; emphasis ours)

Based on the foregoing, the CA, in the case at bar, clearly erred in ruling that the parties in the instant case cannot be bound by the REM deed. In arriving at such ruling, the CA relied on the following pronouncements of this Court in the case of *Spouses Adelina S. Cuyco and Feliciano U Cuyco, v. Spouses Renaoa Cuyco and Filipina Cuyco*: [13]

In order to constitute a legal mortgage, it must be executed in a public document, besides being recorded. A provision in a private document, although denominating the agreement as one of mortgage, cannot be considered as it is not susceptible of inscription in the property registry. A mortgage in legal form is not constituted by a private document, even if such mortgage be accompanied with delivery of possession of the mortgage property. Besides, by express provisions of Section 127 of Act No. 496, a mortgage affecting land, whether registered under said Act or not registered at all, is not deemed to be sufficient in law nor may it be effective to encumber or bind the land unless made substantially in the form therein prescribed. It is required, among other things, that the document be signed by the mortgagor executing the same, in the presence of two witnesses, and acknowledged as his free act and deed before a notary public. A mortgage constituted by means of a private document obviously does not comply with such legal requirements.[14] (Citations omitted; emphasis ours)

The aforecited pronouncements by this Court, however, relate to the issue on whether the subject realty of the REM was bound by the additional loans executed between the parties. The validity of the said REM was not put into question in the said case. Thus, in the present case, the CA erred in relying on the said pronouncements.

To reiterate, the law is clear and explicit as to the validity of an unregistered REM between the parties. Indeed, if an unregistered REM is binding between the parties thereto, all the more is a registered REM, such as the REM deed in this case.

Here, although the REM deed was registered and annotated on the back of the title, the petitioner failed to comply with the provisions under Section 112 of P.D. 1529, viz:

x x x x

Deeds, conveyances, encumbrances, discharges, powers of attorney and other voluntary instruments, whether affecting registered or unregistered land, executed in accordance with law in the form of public instruments shall be registerable: Provided, that, every such instrument shall be signed by the person or persons executing the same in the presence of at least two witnesses who shall likewise sign thereon, and shall acknowledged to be the free act and deed of the person or persons executing the same before a notary public or other public officer authorized by law to take acknowledgment. Where the instrument so acknowledged consists of two or more pages including the page whereon acknowledgment is written, each page of the copy which is to be registered in the office of the Register of Deeds, or if registration is not contemplated, each page of the copy to be kept by the notary public, except the page where the signatures already appear at the foot of the instrument, shall be signed on the left margin thereof by the person or persons executing the instrument and their witnesses, and all the pages sealed with the notarial seal, and this fact as well as the number of pages shall be stated in the acknowledgment. Where the instrument acknowledged relates to a sale, transfer, mortgage or encumbrance of two or more parcels of land, the number thereof shall likewise be set forth in said acknowledgment. (Emphasis ours)

Respondents thus argue that the REM agreement is not a public document because it was notarized by a Clerk of Court of the RTC of Ilagan who is not allowed by law to notarize private documents not related to their functions as clerk of court.

We find merit in the said argument.

Jurisprudence is replete with cases declaring that the notarization of documents that have no relation to the performance of official functions of the clerk of courts is now considered to be beyond the scope of their authority as notaries public ex officio.[15]

Nonetheless, the defective notarization of the REM agreement merely strips it of its public character and reduces it to a private document.[16] Although Article 1358 of the New Civil Code requires that the form of a contract transmitting or extinguishing real rights over immovable property should be in a public document, the failure to observe such required form does not render the transaction invalid.[17] The necessity of a public document for the said contracts is only for convenience; it is not essential for its validity or enforceability. Consequently, when there is a defect in the notarization of a document, the clear and convincing evidentiary standard originally attached to a duly-notarized document is dispensed with, and the measure to test the validity of such document is preponderance of evidence.[18]

Thus, in order to determine the validity of the REM in this case, the REM agreement shall be subject to the requirement of proof under Section 20, Rule 132, viz:

Section 20. Proof of private document. - Before any private document offered as authentic is received in evidence its due execution and authenticity must be proved either:

- a) By anyone who saw the document executed or written; or
- b) By evidence of the genuineness of the signature or handwriting of the maker.

Any other private document need only be identified as that which it is claimed to be. (Emphasis supplied)

Moreover, the party invoking the validity of the private document has the burden of proving its due execution and authenticity.[19] Here, the respondents claim that their signature was a forgery because they signed the REM deed in Tuguegarao and not in Isabela, as stated therein. Further, they alleged that they were assured by petitioner that the same will not be notarized and is a mere formality.

Although the burden was on the petitioner to prove the REM deed's due execution and authenticity, respondents' allegations and admissions should be weighed against their favor.

In the case of *Gloria and Teresita Tan Ocampo v. Land Bank of the Philippines Urdaneta, Pangasinan Branch and Ex Officio Provincial Sheriff of Pangasinan*,[20] the mortgagors sought the nullity of the REM on the ground of forgery. The Court ruled that forgery is present when any writing is counterfeited by the signing of another's name with intent to defraud. However, the Court affirmed the CA in finding no reason to discuss forgery in light of the admission by the mortgagor that she had affixed her signature to the subject Deed of REM.[21]

Likewise, in this case, it is undisputed that the respondents signed the REM deed. They merely invoke the nullity of the same on the grounds that it was not signed in the place stated therein and that they were made to believe that it will not be notarized. Thus, in their Amended Complaint[22], respondents alleged:

That defendants through the machinations and manipulations of defendant Reynaldo C. Cipriano as the General Manager, convinced the plaintiffs to give them titles of whatever lands as guaranty for the subsequent deliveries of coca-cola products and there is nothing to worry because the titles shall be returned any time after their accounts are fully settled; as the plaintiffs were in good faith, handed the titles of their lands described in paragraph 4, of this complaint to defendant Reynaldo C. Cipriano (why) who assured plaintiffs that is only a formality, and there is nothing to worry; plaintiffs signed the said document in Tuguegarao City and not in Hagan, Isabela and defendant Reynaldo C. Cipriano assured the plaintiffs that the document will not be

notarized. (Emphasis ours)

Clearly, the respondents did not specifically deny the due execution and genuineness of the REM deed. The early case of *Lamberto Songco, v. George C. Sellner*[23] is instructive on how to deny the genuineness and due execution of an actionable document, to wit:

X x x. This means that the defendant must declare under oath that he did not sign the document or that it is otherwise false or fabricated. Neither does the statement of the answer to the effect that the instrument was procured by fraudulent representation raise any issue as to its genuineness or due execution. On the contrary such a plea is an admission both of the genuineness and due execution thereof, since it seeks to avoid the instrument upon a ground not affecting either. x x x (Emphasis ours)

In light of the foregoing, We find merit in petitioner's argument that the due execution and genuineness of the REM deed was impliedly admitted by the respondents when they admitted signing the same. A perusal of all the pleadings filed by the respondents reveal that their arguments are anchored on the supposed fraud employed by the petitioner that led to their acts of surrendering the titles and signing the REM deed. Thus, respondents essentially seeks the annulment of the REM on the ground of fraud.

Under Article 1344 of the Civil Code, fraud, as a ground for annulment of a contract, should be serious and should not have been employed by both contracting parties. Article 1338 of the same Code further provides that there is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to. In *PDCP*[24], this Court refused to annul the REMs on the ground of fraud consisting of the mortgagee's assurances that the REMs already signed by the mortgagor would not be registered, thus:

In the present case, even if FEBTC represented that it will not register one of the REMs, PDCP cannot disown the REMs it executed after FEBTC reneged on its alleged promise. As earlier stated, with or without the registration of the REMs, as between the parties thereto, the same is valid and PDCP is already bound thereby. The signature of PDCP's President coupled with its act of surrendering the titles to the four properties to FEBTC is proof that no fraud existed in the execution of the contract. Arguably at most, FEBTC's act of registering the mortgage only amounted to *dolo incidente* which is not the kind of fraud that avoids a contract. (Emphasis supplied)

The foregoing factual circumstances in PDCP are attendant in the present case. The respondents herein also signed the REM deed and surrendered the titles of the properties to the petitioner. Thus, We find that a claim of fraud in favor of the respondents does not persuade.

Moreover, in the case of *Ocampo*,[25] the mortgagor maintained that when she signed the questioned REM deed in blank form, she was led to believe by the mortgagee that such would only be used to process her loan application. The Court, likewise, was not persuaded by such claim of fraud, thus:

Unfortunately, *Ocampo* was unable to establish clearly and precisely how the Land Bank committed the alleged fraud. She failed to convince Us that she was deceived, through misrepresentations and/or insidious actions, into signing a blank form for use as security to her previous loan. Quite the contrary, circumstances indicate the weakness of her submissions. The Court of Appeals aptly held that:

Granting, for the sake of argument, that appellant bank did not apprise the appellees of the real nature of the real estate mortgage, such stratagem, deceit or misrepresentations employed by defendant bank are facts constitutive of fraud which is defined in Article 1338 of the Civil Code as that insidious words or machinations of one of the contracting parties, by which the other is induced to enter into a contract which without them, he would not have agreed to. When fraud is employed to obtain the consent of the other party to enter into a contract, the resulting contract is merely a voidable contract, that is a valid and subsisting contract until

annulled or set aside by a competent court. x x x

With the foregoing, We find that the preponderance of evidence tilts in favor of the petitioner. The due execution and genuineness of the REM deed was proven by the admission of the respondents that they signed the same. This is bolstered by the fact that the titles were surrendered to the petitioner. Other than bare allegations, respondents' claim of fraud is not supported by preponderance of evidence. Further, the courts a quo, in declaring the REM deed null and void, erred in ruling that registration and compliance with the prescribed form are essential in the validity of a REM. In fine, We rule that the REM between the parties herein is valid.

As to the issue on the validity of the foreclosure proceedings, We find no cogent reason to nullify the same. Basic is the rule that unless the parties stipulate, personal notice to the mortgagor in extrajudicial foreclosure proceedings is not necessary because Section 3 of Act No. 3135 only requires the posting of the notice of sale in three public places and the publication of that notice in a newspaper of general circulation.[26] Moreover, the same was not put into issue in this case. The foreclosure proceedings were nullified by the courts a quo merely as a consequence of the nullification of the REM deed. Consequently, We find that the foreclosure proceedings are likewise valid.

WHEREFORE, premises considered, the petition is GRANTED. The Decisions of the Regional Trial Court dated February 9, 2011 and the Court of Appeals dated June 18, 2013 are REVERSED and SET ASIDE. The complaint filed by the respondents Spouses Efren and Lolita Soriano is hereby DISMISSED for lack of merit.

SO ORDERED.

Leonardo-De Castro[*] and Peralta,**] JJ., concur.
Serenio, C.J., (Chairperson) and Del Castillo, J., on leave.

[*] Designated as Acting Chairperson pursuant to Special Order No. 2540 dated February 28, 2018.

[**] Designated as additional member, as per Raffle dated February 14, 2018.

[1] Rollo, pp. 3-15.

[2] Penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Amelita G. Tolentino and Ramon R. Garcia; id. at 46-53.

[3] Id. at 71-73.

[4] Penned by Judge Pablo M. Agustin; id. at 40-44.

[5] Id. at 46-47.

[6] Id. at 52.

[7] Id. at 94-100.

[8] Id. at 98-99.

[9] Id. at 74-83.

[10] G.R. No. 191174, June 07, 2017.

[11] 140 Phil. 171 (1969).

[12] Id. at 176-177.

[13] 521 Phil. 796 (2006).

[14] Id. at 810.

[15] Mathaeus v. Medequiso, 780 Phil. 309 (2016); Coquia v. Laforteza, A.C. No. 9364, February 8, 2017.

[16] Rural Bank of Cabadbaran, Inc., v. Melecio-Yap, et al., 740 Phil. 35 (2014).

[17] Bitte, et al., v. Sps. Jonas, 775 Phil. 447, 462-463 (2015).

[18] Castillo v. Security Bank Corporation, et al., 740 Phil. 145, 154 (2014).

[19] Bitte, et al., v. Sps. Jonas, supra at 464.

[20] 609 Phil. 337, 346 (2009).

[21] Id.

[22] Rollo, p. 26.

[23] G.R. No. L-11513, December 4, 1917.

[24] PDCP v. BPI, supra note 10.

[25] Ocampo, et al., v. Land Bank of the Philippines. et al., supra note 20, id. at 350.

[26] PDCP v. BPI, supra note 10.

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