

**PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLEE, VS.
ESTANISLAO PALMA GIL ET AL., DEFENDANTS AND APPELLANTS.***G. R. No. 33796. February 17, 1931*

Ponente: MALCOLM, J.

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In this case, the Philippine National Bank seeks to recover from Estanislao Palma Gil and Leonila Palma Gil the sum of P26,760, with accumulated interest, and attorney's fees, evidenced by a promissory note dated January 7, 1926, and signed "Estanislao Palma Gil, by: A. Inigo, A. Inigo;" and in its default, to foreclose the mortgages dated February 11, 1919, and signed "Estanislao Palma Gil, Por: A. Iñigo, como apoderado, y, ademas, como marido de la otra deudora hipta., Leonila Palma Gil de Inigo, Deudores Hipotecarios," as well as the mortgage dated April 22, 1921, and signed "A. Iñigo." The Philippine National Bank prosecuted its action successfully in the Court of First Instance of Davao, and it is from this judgment that the defendants have appealed.

The terms of the agreements having been reduced to writing by the parties, the best evidence of what was agreed upon by them are the documents wherein the nature and conditions of the agreements were stipulated. The oral testimony intended to explain the transactions and to vary the terms of the written contracts is highly colored and is deserving of slight consideration. It is preferable to concentrate attention on the pertinent exhibits.

Estanislao Palma Gil is a proprietor who resides in the Province of Davao. He has a daughter named Leonila Palma Gil. She is married to Alejandro Inigo. On February 7, 1916, Estanislao Palma Gil executed a general power of attorney in favor of his son-in-law. Among other things, the power of attorney authorized Inigo "to obtain loans upon the security of real or personal property, with interest and under the terms and conditions which he thinks beneficial,"

As disclosed by certain exhibits, Iñigo for a number of years was able to obtain credit for himself personally from the Philippine National Bank. Also, two mortgages were executed on February 11, 1919, which encumbered properties of the ownership of Estanislao Palma Gil. In these two mortgages Estanislao Palma Gil and Leonila Palma Gil de Inigo were named as mortgagors and the Philippine National Bank as mortgagee. The mortgages recited that the mortgage was executed by "D. Alejandro Inigo, como apoderado de D. Estanislao Palma Gil, segun poder otorgado ante el ex-Juez de Paz de Davao, D. J. Rodriguez Serra, el 7 de febrero de 1916; y Da. Leonila Palma Gil de Inigo, asistida de su marido D. Alejandro Iñigo, siendo unica hija y heredera de la finada Da. Rosa Pizarro y del referido D. Estanislao Palma Gil....." As before indicated, the mortgages were signed "Estanislao Palma Gil, Por: A. Iñigo, como apoderado, y, ademas, como marido de la otra deudora hipta., Leonila Palma Gil de Iñigo, Deudores Hipotecarios." These mortgages were noted as encumbrances affecting the properties described in the certificates of title in the name of Estanislao Palma Gil.

On April 22, 1921, a third mortgage was executed. In this mortgage the mortgagor was given as Alejandro Iñigo and the mortgagee as the Philippine National Bank. No clause similar to that included in the mortgages of February 11, 1919, was included. The mortgaged property, it is admitted, was of the ownership of Estanislao

Palma Gil. As before indicated, this last mortgage was signed "A. Iñigo." This mortgage was not noted on the title of Estanislao Palma Gil.

On January 7, 1926, a renewal promissory note payable thirty days after date, calling for the amount of P26,760, with interest at the rate of 12 per cent per annum from date and with a 10 per cent fee for collection expenses, was taken by the Philippine National Bank. As before indicated, the note was signed "Estanislao Palma Gil, By: A. Iñigo, A. Iñigo." Payments of the interest were made up to the 29th of November, 1926.

With the foregoing facts before us, it is not difficult to determine the obligations of the parties. The promissory note of January 7, 1926, and the two mortgages of February 11, 1919, were executed by A. Iñigo for Estanislao Palma Gil, and as the power of attorney made out by Estanislao Palma Gil in favor of A. Iñigo authorized such business dealings, the principal must fulfill the obligations contracted by the agent within the scope of his authority. But as to the mortgage dated April 22, 1921, an entirely different result must attain. In this instance, the mortgage was executed by Alejandro Iñigo personally, and while the property mortgaged was not the property of Iñigo, there was to be found in the mortgage absolutely no descriptive recitals indicative of the fact that Iñigo was acting in representation of Estanislao Palma Gil. Inasmuch as the mortgagor has no title at all to the property, the mortgage is void.

Leonila Palma Gil has been brought in to the case and judgment has been rendered against her jointly and severally with Estanislao Palma Gil. This is error. She did not sign the promissory note, and while she did sign the two mortgages of February 11, 1919, this seems to have been merely a precautionary measure, for the certificates of title to the property mortgaged stand in the name of Estanislao Palma Gil.

The foregoing pronouncements are in accord with article 1727 of the Civil Code and the series of Poizat cases in which the decisions were written by Justice Johns. (*Bank of the Philippine Islands vs. De Coster* [1925], 47 Phil., 594; *Philippine Sugar Estates Development Co. vs. Poizat* [1925], 48 Phil., 536; *Bank of the Philippine Islands vs. De Coster* [1926], 49 Phil., 574; and *Orden de Dominicos vs. De Coster* [1927], 50 Phil., 115). The last cited case is clearly distinguishable on the facts from the facts at bar, for there it appeared upon the face and in the recitals of the mortgage that the mortgage was intended as a mortgage of the property of the wife, although not formally signed in her name by her attorney-in-fact—circumstances not appearing in connection with the mortgage of April 22, 1921.

A promissory note and two mortgages executed by the agent for and on behalf of his principal, in accordance with a power of attorney executed by the principal in favor of the agent, are valid, and as provided by article 1727 of the Civil Code, the principal must fulfill the obligations contracted by the agent; but a mortgage on real property of the principal not made and signed in the name of the principal, is not valid as to the principal.

Agreeable to the foregoing, the judgment appealed from will be affirmed with certain modifications, by amending it to read as follows:

"Wherefore, let judgment be entered sentencing the defendant Estanislao Palma Gil to pay the plaintiff the sum of P26,760, plus the unpaid interest until January 14, 1929, amounting to P7,684.32, and 12 per cent interest upon the principal debt from January 15, 1929, until fully paid, besides the sum of P2,676 or 10 per cent of the indebtedness, on account of the institution of this action, and to pay the costs.

"If these sums be not paid within three months from the date hereof, let the property subject to the two mortgages of February 11, 1919 be sold, as provided by law." So ordered, without special pronouncement as to costs in this instance.

Avcmcña, C. J., Johnson, Street, Villamor, Ostrand, Johns, Romualdez, and Villa-Real., JJ., concur.

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