

**THE PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLEE, VS.
PAZ AGUDELO Y GONZAGA ET AL., DEFENDANTS. PAZ AGUDELO Y
GONZAGA, APPELLANT.**

G.R. No. 39037. October 30, 1933

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The defendant Paz Agudelo y Gonzaga appeals to this court from the judgment rendered by the Court of First Instance of Occidental Negros, the dispositive part of which reads as follows:

"Wherefore, judgment is rendered herein absolving the defendant Mauro A. Garrucho from the complaint and ordering the defendant Paz Agudelo y Gonzaga to pay to the plaintiff the sum of P31,091.55, Philippine currency, together with the interest on the balance of P20,774.73 at 8 per cent per annum or P4.55 daily from July 16, 1929, until fully paid, plus the sum of P1,500 as attorney's fees, and the costs of this suit.

"It is hereby ordered that in case the above sums adjudged in favor of the defendant by virtue of this judgment are not paid to the Philippine National Bank or deposited in the office of the clerk of this court, for delivery to the plaintiff, within three months from the date of this decision, the provincial sheriff of Occidental Negros shall sell at public auction the mortgaged properties described in annex E of the second amended complaint, and apply the proceeds thereof to the payment of the sums in question.

"It is further ordered that in case the proceeds of the mortgaged properties are not sufficient to cover the amount of "this judgment, a writ of execution be issued against any other property belonging to the defendant Paz Agudelo y Gonzaga, not otherwise exempt from execution, to cover the balance resulting therefrom."

In support of her appeal, the appellant assigns six alleged errors as committed by the trial court, which we shall discuss in the course of this decision.

The following pertinent facts, which have been proven without dispute during the trial, are necessary for the decision of the questions raised in the present appeal, to wit:

On November 9, 1920, the, defendant-appellant Paz Agudelo y Gonzaga executed in favor of her nephew, Mauro A. Garrucho, the document Exhibit K conferring upon him a special power of attorney sufficiently broad in scope to enable him to sell, alienate and mortgage in the manner and form he might deem convenient, all her real estate situated in the municipalities of Murcia and Bacolod, Occidental Negros, consisting in lots Nos. 61 and 207 of the cadastral survey of Bacolod, Occidental Negros, together with the improvements thereon.

On December 22, 1920, Amparo A. Garrucho executed the document Exhibit H whereby she conferred upon her brother Mauro A. Garrucho a special power of attorney sufficiently broad in scope to enable him to sell, alienate, mortgage or otherwise encumber, in the manner and form he might deem convenient, all her real estate situated in the municipalities of Murcia and Bago, Occidental Negros.

Nothing in the aforesaid powers of attorney expressly authorized Mauro A. Garrucho to contract any loan nor to

constitute a mortgage on the properties belonging to the respective principals, to secure his obligations.

On December 23, 1920, Mauro A. Garrucho executed in favor of the plaintiff entity, the Philippine National Bank, the document Exhibit G, whereby he constituted a mortgage on lot No. 878 of the cadastral survey of Murcia, Occidental Negros, with all the improvements thereon, described in transfer certificate of title No. 2415 issued in the name of Amparo A. Garrucho, to secure the payment of credits, loans, commercial overdrafts, etc., not exceeding P6,000, together with interest thereon, which he might obtain from the aforesaid plaintiff entity, issuing the corresponding promissory note to that effect.

During certain months of the years 1921 and 1922, Mauro A. Garrucho maintained a personal current account with the plaintiff bank in the form of a commercial credit withdrawable through checks (Exhibits S, 1 and T).

On August 24, 1931, the said Mauro A. Garrucho executed in favor of the plaintiff entity, the Philippine National Bank, the document Exhibit J whereby he constituted a mortgage on lots Nos. 61 and 207 of the cadastral survey of Bacolod, together with the buildings and improvements thereon, described in original certificates of title Nos. 2216 and 1148, respectively, issued in the name of Paz Agudelo y Gonzaga, to secure the payment of credits, loans and commercial overdrafts which the said bank might furnish him to the amount of P16,000, payable on August 24, 1922, executing the corresponding promissory note to that effect.

The mortgage deeds Exhibits G and J as well as the corresponding promissory notes for P6,000 and P16,000, respectively, were executed in Mauro A. Garrucho's own name and signed by him in his personal capacity, authorizing the mortgage creditor, the Philippine National Bank, to take possession of the mortgaged properties, by means of force if necessary, in case he failed to comply with any of the conditions stipulated therein.

On January 4, 1922, the manager of the Iloilo branch of the Philippine National Bank notified Mauro A. Garrucho that his promissory note for P6,000 had fallen due on December 27, 1921, giving him a period of 10 days within which to make payment thereof (Exhibit O).

On May 9, 1922, the said manager notified Mauro A. Garrucho that his commercial credit was closed from that date (Exhibits).

Inasmuch as Mauro A. Garrucho had overdrawn his credit with the plaintiff-appellee, the said manager thereof, in a letter dated June 27, 1922 (Exhibit T), requested him to liquidate his account amounting to P15,148.15, at the same time notifying him that his promissory note for P16,000 giving as, security for the commercial overdraft in question, had fallen due some time since.

On July 15, 1922, Mauro A. Garrucho, executed in favor of the plaintiff entity the deed Exhibit C whereby he constituted a mortgage on lots Nos. 61 and 207 of the cadastral survey of Bacolod, together with the improvements thereon, described in transfer certificates of title Nos. 2216 and 1148, respectively, issued in the name of Paz Agudelo y Gonzaga, and on lot No. 878 of the cadastral survey of Murcia, described in transfer certificate of title No. 2415, issued in the name of Amparo A. Garrucho.

In consideration of the credits, loans, and commercial overdrafts amounting to P21,000 which had been granted him, Mauro A. Garrucho, on the said date of July 15, 1922, executed the promissory note, Exhibit B, for P21,000 as a novation of the former promissory notes for P6,000 and P16,000, respectively.

In view of the aforesaid consolidated mortgage, Exhibit C, the Philippine National Bank, on the said date of July 15, 1922, cancelled the mortgages constituted on lots Nos. 61, 207 and 878 described in Torrens titles Nos. 2216, 1148 and 2415, respectively.

On November 25, 1925, Amparo A. Garrucho sold lot No. 878 described in certificate of title No. 2415, to Paz

Agudelo y Gonzaga (Exhibit M).

On January 15, 1926, in the City of Manila, Paz Agudelo y Gonzaga signed the affidavit, Exhibit N, which reads as follows :

"Know all men by these presents: That I, Paz Agudelo y Gonzaga, single, of age, and resident of the City of Manila, P. I., by these presents do hereby agree and consent to the transfer in my favor of lot No. 878 of the Cadastre of Murcia, Occidental Negros, P. I., by Miss Amparo A. Garrucho, as evidenced by the public instrument dated November 25, 1925, executed before the notary public Mr. Genaro B. Benedicto, and do hereby further agree to the amount of the lien thereon stated in the mortgage deed executed by Miss Amparo A. Garrucho in favor of the Philippine National Bank.

"In testimony whereof, I hereunto affix my signature in the City of Manila, P. I., this 15th day of January, 1926.

"(Sgd.) PAZ AGUDELO Y GONZAGA."

Pursuant to the sale made by Amparo A. Garrucho in favor of Paz Agudelo y Gonzaga, of lot No. 878 of the cadastral survey of Murcia, described in certificate of title No. 2415 issued in the name of said Amparo A. Garrucho, and to the affidavit, Exhibit N, transfer certificate of title No. 5369 was issued in the name of Paz Agudelo y Gonzaga.

Without discussing and passing upon whether or not the powers of attorney issued in favor of Mauro A. Garrucho by his sister, Amparo A. Garrucho, and by his aunt, Paz Agudelo y Gonzaga, respectively, to mortgage their respective real estate, authorized him to obtain loans secured by mortgage on the properties in question, we shall consider the question of whether or not Paz Agudelo y Gonzaga is liable for the payment of the loans obtained by Mauro A. Garrucho from the Philippine National Bank for the security of which he constituted a mortgage on the aforesaid real estate belonging to the defendant-appellant Paz Agudelo y Gonzaga.

Article 1709 of the Civil Code provides the following:

"Art. 1709. By the contract of agency, one person binds himself to render some service, or to do something for the account or at the request of another."

And article 1717 of the same Code provides as follows:

"ART. 1717. When an agent acts in his own name, the principal shall have no right of action against the persons with whom s the agent has contracted, or such persons against the principal.

"In such case, the agent is directly liable to the person with whom he has contracted, as if the transaction were his own. Cases involving things belonging to the principal are excepted.

"The provisions of this article shall be understood to be without prejudice to actions between principal and agent."

Aside from the phrases "attorney in fact of his sister, Amparo A. Garrucho, as evidenced by the power of attorney attached hereto" and "attorney in fact of Paz Agudelo y Gonzaga" written after the name of Mauro A. Garrucho in the mortgage deeds, Exhibits G and J, respectively, there is nothing in the said mortgage deeds to show that Mauro A. Garrucho is attorney in fact of Amparo A. Garrucho and of Paz Agudelo y Gonzaga, and that he obtained the loans mentioned in the aforesaid mortgage deeds and constituted said mortgages as security for the payment of said loans, for the account and at the request of said Amparo A. Garrucho and Paz Agudelo y Gonzaga. The above-quoted phrases which simply described his legal personality, did not mean that Mauro A. Garrucho obtained the said loans and constituted the mortgages in question for the account, and at the request, of

his principals. From the titles as well as from the signatures therein, Mauro A. Garrucho, appears to have acted in his personal capacity. In the aforesaid mortgage deeds, Mauro A. Garrucho, in his capacity as mortgage debtor, appointed the mortgage creditor Philippine National Bank as his attorney in fact so that it might take actual and full possession of the mortgaged properties by means of force in case of violation of any of the conditions stipulated in the respective mortgage contracts. If Mauro A. Garrucho acted in his capacity as mere attorney in fact of Amparo A. Garrucho and of Paz Agudelo y Gonzaga, he could not delegate his power, in view of the legal principle of "delegata potestas delegare non potest" (a delegated power cannot be delegated), inasmuch as there is nothing in the records to show that he has been expressly authorized to do so.

He executed the promissory notes evidencing the aforesaid loans, under his own signature, without authority from his principals and, therefore, were not binding upon the latter (2 Corpus Juris, pp. 630-637, par. 280). Neither is there anything to show that he executed the promissory notes in question for the account, and at the request, of his respective principals (8 Corpus Juris, pp. 157-158).

Furthermore, it is noted that the mortgage deeds, Exhibits C and J, were cancelled by the documents, Exhibits I and L, on July 15, 1922, and in their stead the mortgage deed, Exhibit C, was executed, in which there is absolutely no mention of Mauro A. Garrucho being attorney in fact of anybody, and which shows that he obtained such credit for himself in his personal capacity and secured the payment thereof by mortgage constituted by him in his personal capacity, although on properties belonging to his principal Paz Agudelo y Gonzaga.

Furthermore, the promissory notes executed by Mauro A. Garrucho in favor of the Philippine National Bank, evidencing loans of P6,000 and P16,000 have been novated by the promissory note for P21,000 (Exhibit B) executed by Mauro A. Garrucho, not only without express authority from his principal Paz Agudelo y Gonzaga but also under his own signature.

In the case of National Bank vs. Palma Gil (55 Phil., 639), this court laid down the following doctrine:

"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."

It has been intimated, and the trial judge has so stated. that it was the intention of the parties that Mauro A. Garrucho would execute the promissory note, Exhibit B, and the mortgage deed, Exhibit C, in his capacity as attorney in fact of Paz Agudelo y Gonzaga, and that although the terms of the aforesaid documents appear to be contrary to the intention of the parties, such intention should prevail in accordance with article 1281 of the Civil Code.

Commenting on article 1281 of the Civil Code, Manresa, in his Commentaries to the Civil Code, says the following:

"IV. Intention of the contracting parties: its appreciation.—In order that the intention may prevail, it is necessary that the question of interpretation be raised, either because the words used appear to be contrary thereto, or by the existence of overt acts opposed to such words, in which the intention of the contracting parties is made manifest. Furthermore, in order that it may prevail against the terms of the contract, it must be clear or, in other words, besides the fact that such intention should be proven by admissible evidence, the latter must be of such character as to carry in the mind of the judge an unequivocal conviction. This requisite as to the kind of evidence is laid down in the decision relative to the Mortgage Law of September 30 1891, declaring that article 1281 of the Civil Code gives preference to intention only when it is clear. When the aforesaid circumstance is not present in a document, the only thing left for the register of deeds to do is to suspend the registration thereof, leaving the solution of the problem to the free will of the parties or to the decision of the courts.

"However, the evident intention which prevails against the defective wording thereof is not that of one of the parties, but the general intent, which, being so, is to a certain extent equivalent to mutual consent, inasmuch as it was the result desired and intended by the contracting parties." (8 Manresa, 3d edition, pp. 726 and 727.)

Furthermore, the records do not show that the loan obtained by Mauro A. Garrucho, evidenced by the promissory note, Exhibit B, was for his principal Paz Agudelo y Gonzaga. The special power of attorney, Exhibit K, does not authorize Mauro A. Garrucho to constitute a mortgage on the real estate of his principal to secure his personal obligations. Therefore, in doing so by virtue of the document, Exhibit C, he exceeded the scope of his authority and his principal is not liable for his acts. (2 Corpus Juris, p. 651; article 1714, Civil Code.)

It is further claimed that inasmuch as the properties mortgaged by Mauro A. Garrucho belong to Paz Agudelo y Gonzaga, the latter is responsible for the acts of the former although he acted in his own name, in accordance with the exception contained in article 1717 of the Civil Code. It would be an exception if the agent, acting in his own name in connection with the properties of his principal, does so within the scope of his authority. It is noted that Mauro A. Garrucho was not authorized to execute promissory notes even in the name of his principal Paz Agudelo y Gonzaga, nor to constitute a mortgage on her real properties to secure such promissory notes. The plaintiff Philippine National Bank should know this inasmuch as it is in duty bound to ascertain the extent of the agent's authority before dealing with him. Therefore, Mauro A. Garrucho and not Paz Agudelo y Gonzaga is personally liable for the amount of the promissory note Exhibit B. (2 Corpus Juris, pp. 563-564.)

However, Paz Agudelo y Gonzaga in an affidavit dated January 15, 1926 (Exhibit AA), and in a letter dated January 16, 1926 (Exhibit Z), gave her consent to the lien on lot No. 878 of the cadastre of Murcia, Occidental Negros, described in Torrens title No. 5369, the ownership of which was transferred to her by her niece Amparo A. Garrucho. This acknowledgment, however, does not extend to lots Nos. 207 and 61 of the cadastral survey of Bacolod, described in transfer certificates of title Nos. 1148 and 2216, respectively, inasmuch as, although it is true that a mortgage is indivisible as to the contracting parties and as to their successors in interest (article 1860, Civil Code), it is not so with respect to a third person who did not take part in the constitution thereof either personally or through an agent, inasmuch as he can make the acknowledgment thereof in the form and to the extent he may deem convenient, on the ground that he is not in duty bound to acknowledge the said mortgage. Therefore, the only liability of the defendant-appellant Paz Agudelo y Gonzaga is that which arises from the aforesaid acknowledgment, but only with respect to the lien and not to the principal obligation secured by the mortgage acknowledged by her to have been constituted on said lot No. 878 of the cadastral survey of Murcia, Occidental Negros. Such liability is not direct but a subsidiary one.

Having reached this conclusion, it is unnecessary to pass upon the other questions of law raised by the defendant-appellant in her brief and upon the law cited therein.

In view of the foregoing consideration, we are of the opinion and so hold that when an agent negotiates a loan in his personal capacity and executes a promissory note under his own signature, without express authority from his principal, giving as security therefor real estate belonging to the latter, also in his own name and not in the name and representation of the said principal, the obligation so contracted by him is personal and does not bind his aforesaid principal.

Wherefore, it is hereby held that the liability contracted by the aforesaid defendant-appellant Paz Agudelo y Gonzaga is merely subsidiary to that of Mauro A. Garrucho, limited to lot No. 878 of the cadastral survey of Murcia, Occidental Negros, described in Torrens title No. 2415. However, inasmuch as the principal obligor, Mauro A. Garrucho, has been absolved from the complaint and the plaintiff-appellee has not appealed from the judgment absolving him, the law does not afford any remedy whereby Paz Agudelo y Gonzaga may be required to comply with the said subsidiary obligation in view of the legal maxim that the accessory follows the principal.

Wherefore, the defendant herein should also be absolved from the complaint which is hereby dismissed, with the costs against the appellee. So ordered.

Avanceña, C. J., Malcolm, Hull, and Imperial, JJ., concur.

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