

SPOUSES BONIFACIO CO AND LIU HUN KUN, PETITIONERS, VS. COURT OF APPEALS AND SPOUSES RUFINO CO LING AND NGO ENG, RESPONDENTS.*G.R. No. 86597. January 23, 1991*

Ponente: PADILLA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-86597/>**PADILLA, J.:**

These two (2) petitions have their origin in a complaint filed by private respondents, spouses Rufino Co Ling and Ngo Eng, with the Regional Trial Court of Caloocan City against petitioners, spouses Bonifacio Co and Liu Hun Kun and spouses David Lio and Victoria Ong Lio.

The complaint, docketed as Civil Case No. C-8730, prayed for the cancellation of Transfer Certificate of Title No. C-14429 registered in the names of David Lio and Victoria Ong Lio, covering Lot No. 3208 with an area of 5,796 square meters situated in Caloocan City, recovery of real property and damages. The main ground of the said complaint was that the deed of real estate mortgage executed with the Republic Bank, as mortgagee, covering nine (9) parcels of land (including said Lot No. 3208) previously covered by Transfer Certificate of Title No. 1436 of the Registry of Deeds of Caloocan City and co-owned pro indiviso by Rufino Co Ling and his brother Bonifacio Co, was signed in blank by Rufino Co Ling and his wife Ngo Eng and on the assurance by Bonifacio Co that only his (Bonifacio Co's) one half (1/2) share of, or interest in the nine (9) parcels of land would be mortgaged. And yet, the mortgage covered the whole of said nine (9) parcels of land.

In his answer, Bonifacio Co (Co for short) claimed that Rufino Co Ling (Co Ling for short) fully knew of and consented to the mortgage of the nine (9) parcels of land to the Republic Bank to secure the loan of Atlantic Copra Export Corporation with the said bank in the amount of P310,000.00; that the bank foreclosed the mortgage due to Atlantic Copra's failure to pay its obligation which had reached the amount of P2,197,849.87, and in the foreclosure sale that followed, the bank was the highest bidder and purchaser; that Co filed a complaint against the Republic Bank for the annulment of the foreclosure sale; that Co and the bank then entered into a compromise agreement which was made the basis of the decision of the court dated 13 April, 1978, in which the bank agreed to sell to Co Lot No. 3208 at the price of P310,000.00, P62,000.00 of which was paid upon execution of the compromise agreement; that the one-year redemption period expired on 26 April 1978 and Republic Bank consolidated its title to the property and was issued a new certificate of title (TCT No. C-13998) in its name; that Co assigned his right to buy Lot No. 3208 to David Lio with the consent of Republic Bank which sold to David Lio Lot No. 3208 for P310,000.00; that on 9 May 1978, Transfer Certificate of Title No. C-14429 was issued to David Lio, married to Victoria Ong Lio over said Lot No. 3208.

After trial, the complaint was dismissed by the trial court after finding that Co Ling and his wife Ngo Eng did not sign the deed of real estate mortgage in blank but after it had been completely filled up. The main bases for the lower court's conclusion were the testimony and report of Mr. Desiderio Pagui, retired Chief Document Examiner of the National Bureau of Investigation (NBI) Questioned Documents Division, who declared that, based on his

examination of the questioned document, the signatures of Co Ling and Ngo Eng were affixed therein after all the entries in said mortgage contract had been typed.

On appeal, respondent Court of Appeals reversed and set aside the lower court's judgment in a decision promulgated on 17 October 1988. The dispositive part of the now assailed decision of the appellate court reads as follows:

"WHEREFORE, finding the present appeal to be studiously meritorious, the same is hereby granted and the Decision dated June 20, 1986 in Civil Case No. C-8730 entitled "Sps. Rufino Co Ling, et al. vs. Bonifacio Co, et al." is accordingly REVERSED and SET ASIDE.

"Judgment is hereby rendered finding the antecedent complaint upon its stated cause of action to have been established by a clear preponderance of evidence in favor of plaintiffs-appellants and against defendants-appellees, and it is accordingly ordered that -

(a) Transfer Certificate of Title No. C-14429 in the name of David Lio and Victoria Ong Lio covering Lot No. 3208 in Caloocan City, be cancelled forthwith;

(b) Title thereafter issue over said Lot No. 3208 described in T.C.T. No. C-14429 in favor of and in the names of plaintiffs-appellants Rufino Co Ling and Ngo Eng as their lawful participation in the 9-lot property originally covered by T.C.T. No. 1436;

(c) Defendants-appellees Bonifacio Co and Liu Hun Kun, and David Lio and Victoria Ong Lio, jointly and severally pay plaintiffs-appellants the sum of One Hundred Thousand (P100,000.00) Pesos as and for moral damages;

(d) Defendants-appellees above-named, jointly and severally pay plaintiffs-appellants the sum of Thirty Thousand (P30,000.00) Pesos by way of attorney's fees, plus costs and expenses of suit.

"The separate counterclaims embodied in the answers filed by defendants-appellees, are dismissed for lack of merit.

"With costs against defendants-appellees.

"SO ORDERED." [1]

The herein petitioners filed separate motions for reconsideration of the appellate court's decision. Both motions were denied on 12 January 1989.[2] Hence, these separate petitions for review on certiorari.

Since the original case filed before the Regional Trial Court of Caloocan City is common to these two (2) appeals, upon motion of counsel for Bonifacio Co,[3] the two (2) petitions were consolidated and assigned to the Court's Second Division where the case with the lower docket number was assigned.[4]

In G.R. No. 86597, petitioners contend that:

- The respondent Division of the Court of Appeals promulgated its questioned decision in violation of its own revised Internal Rules which became effective on August 18, 1988, thus committing grave abuse of discretion.
- The findings of facts of the respondent Court of Appeals are contrary to those of the trial court, thus requiring a review of said findings.
- The finding or conclusion of the respondent Court of Appeals that the deed of real estate mortgage (Annex 'D') was signed in blank by the private respondents is manifestly absurd, mistaken and impossible.
- The judgment of the respondent Court of Appeals is based on misapprehension of facts and its findings of facts are contradicted by the evidence on record.

- The respondent Court of Appeals unnecessarily interfered (sic) with the observation of the trial court on demeanor of witnesses and disregarded the trial court's finding on credibility of witnesses, thus brushing aside the settled doctrine of this honorable tribunal.
- The respondent Court of Appeals disregarded the rule and established doctrine of this Honorable Tribunal on indispensable parties in an action for rescission and claim for damages.

In G.R. No. 86614, petitioners raise the following issues:

I.

The respondent Court of Appeals brazenly disre-garded the settled doctrine of this Honorable Tribunal to the effect that the vendor in an action for rescission and claim for damages is an indispensable party.

II.

The respondent Court of Appeals utterly disre-garded the clear provision of the Rules of Court and settled principles of law and applicable authorities on indispensable party.

III.

The respondent Court of Appeals erroneously disregarded the findings of facts based on substantial evidence showing that the herein petitioners are buyers in good faith and for value.

The pertinent rule allegedly violated by respondent Court of Appeals is Section 5(b) of Rule 3 of the said Court's Revised Internal Rules (RIRCA) which provides as follows:

"b. All raffled appealed cases, the records of which have been completed and submitted for decision, shall be re-raffled for assignment to a Justice for study and report.

Cases shall be deemed submitted for decision, as follows:

(1) In appeals in civil and criminal cases. -When the respective briefs of the parties shall have been filed or the period for filing of the appellee's brief and reply brief has already expired or where there is a resolution issued to that effect."

According to petitioners Bonifacio Co and Liu Hun Kun, in a Memorandum dated 18 August 1988, issued by the Presiding Justice of the Court of Appeals, Hon. Oscar R. Victoriano, pursuant to Section 12 of B.P. Blg. 129, the Revised Internal Rules of the Court of Appeals became effective on 18 August 1988. Petitioners allege that this case was deemed submitted for decision of the Court of Appeals on 22 August 1988, and in compliance with the above memorandum, the case which had been assigned to Mr. Justice Tensuan should have been re-raffled. They claim that it was not. Instead, on 17 October 1988, the decision was promulgated, with said Mr. Justice Tensuan as ponente, reversing and setting aside the decision of the trial court. This, petitioners conclude is a clear violation of the above stated rule and a grave abuse of discretion. The contention is without merit.

Section 12 of B.P. Blg. 129 reads as follows:

"Section 12. Internal Rules - The Court en banc is authorized to promulgate rules or orders governing the constitution of the divisions and the assignment of Appellate Justices thereto, the distribution of cases, and other matters pertaining to the operations of the court or its divisions. Copies of such rules and orders shall be furnished the Supreme Court, which rules shall be effective fifteen (15) days after receipt thereof, unless directed otherwise by the Supreme Court." (Emphasis supplied.)

While the Court of Appeals has clearly the authority to adopt and promulgate its internal rules, as abovecited, these rules are subject to this Court's approval under its constitutional power of supervision over all courts. As aptly submitted by private respondents:

"ACCORDINGLY, the contention of petitioner Bonifacio Co would be correct because Sec. 12 of B.P. 129 provides that these internal rules shall be effective 15 days after receipt by the Supreme Court. However, this is only true if the Supreme Court does not act on them. Otherwise, the internal rules become effective upon approval by the Supreme Court. There is the proviso "unless directed otherwise by the Supreme Court." In this matter, the Supreme Court acted on the internal rules by disapproving a couple of sections and approving the rest on 20 October 1988. Thus, these internal rules became finally effective on 20 October 1988."

As earlier noted, the Court of Appeals decision in this case was promulgated on 17 October 1988.

The crucial issue, however, in this case is whether or not Co Ling and his wife Ngo Eng signed the deed of real estate mortgage in blank, that is, before the entries in said deed were typed therein. This issue is crucial because, according to Co Ling, he and his wife Ngo Eng had signed the said deed of real estate mortgage on the spaces indicated to them by his brother Co even if said deed was in blank form, i.e. without the typewritten entries, on the strength of Co's assurance that only his (Co's) one-half (1/2) share in the nine (9) parcels of land would be covered by said deed of mortgage.

Evidently, a resolution of the above-mentioned issue would entail a review of factual findings of the Court of Appeals. As a rule, only legal questions are reviewable by this Court in appeals from decisions of the Court of Appeals. However, one of the exceptions to the rule is when there is a conflict in factual findings of the Court of Appeals and the trial court.[5] This is the situation at bar.

Petitioners Co and Liu Hun Kun contend that the deed of real estate mortgage was signed by Co Ling and Ngo Eng after all the data had been entered and typewritten therein. As pointed out by the trial court:

"x x x On the second page or reverse side of the document, the spaces reserved for the 'name and signature of the mortgagor' were crossed out to give way to the many conditions of the contract such that all the parties, including plaintiffs, had to affix their signatures over their typewritten names on the spaces reserved for 'name and signature of witness'. If these signatures of plaintiffs were affixed when the document was in blank or if the signatures were written ahead of the typewritten entries in the document as claimed by plaintiffs, how then could they have anticipated that they had to sign on the spaces reserved for 'name and signatures of witness' which are not the proper spaces on which they have to sign in the document?"[6]

Petitioners also urge that even the notary public, Atty. Remedios C. Balderama, positively testified that the parties appeared before her and signed the real estate mortgage after she typed the dates and numbers of their residence certificates. The foregoing testimony of the notary public was propped by the testimony of petitioners' expert witness, Desiderio Pagui, formerly of the National Bureau of Investigation Questioned Documents Division.

In rejecting the above findings of the trial court, the appellate court declared:

"x x x The acceptance at face value of the Pagui report upon superfluities therein ventured in the light of admitted propensity to dissemble when it suits his ends, in derogation of the clear, unambiguous and straightforward findings of an impartial and unbiased senior document examiner of the National Bureau of Investigation, is a palpably gross and reversible error.

"x x x This court is persuaded that the basis for the conclusion favoring the Pagui report in the 30 June 1986 decision is neither perceptive nor well-reasoned, in the face of the clear findings embodied in the NBI report the competence and impartiality of which has not been challenged, let alone impugned."[7]

Because of its materiality to the factual issue of whether or not private respondents Co Ling and Ngo Eng signed the deed of real estate mortgage without the entries typed therein (in blank) or after said entries had already been typed therein, we quote the following findings and discussion from the appellate court's decision -

"Notwithstanding the objections of defendants-appellants, (sic) the corresponding examination of the said deed

of real estate mortgage and the signatures of plaintiffs-appellants thereon was conducted by the National Bureau of Investigation, through Senior Document Examiner Eliodoro M. Constantino of its Questioned Documents Division. As set forth in the resulting Questioned Documents Report No. 300-884 (Exh. 'P') submitted several weeks later under date of August 31, 1984, the warranted laboratory examination and analysis of the typewritten entries (typewritten carbon-out-lines) and the signatures thereon under magnification and with the aid of a stereoscopic microscope and light processes was conducted. The stated purpose of said examination and analysis, per report and on the strength of a court order, was -

'1.

To determine which was affixed or impressed ahead, the typewritten name ('LIU HUN KUN') on PAGE 1 of the REAL ESTATE MORTGAGE (marked as 'Q-1') or the signature ('Rufino Co Ling').

'2.

To determine which was affixed or impressed ahead, the typewritten entries (typewritten carbon outlines) on PAGE 2 of the REAL ESTATE MORTGAGE (marked as 'Q-2') reading 'SIGNED IN THE PRESENCE OF:', 'RUFINO CO LING', and 'obligation with the Mortgagee is secured by this mortgage' or the signature ('Rufino Co Ling').

"Senior Document Examiner Eliodoro Constantino found, both the Chief of the Questioned Documents Section and the OIC of the Criminalistics Division having concurred therein that the typewritten name of 'LIU HUN KUN' was impressed over the signature of 'Rufino Co Ling' which was written first, that is ahead of said typewritten name on page 1 of the mortgage document, and that the relevant typewritten entries on page 2 of the document disturbed the continuity of the glossy-effect of the signature strokes of Rufino Co Ling, demonstrating that Rufino Co Ling first affixed his signature and that aforesaid relevant typewritten entries 'were impressed after/over the signature.'"

"Defendants-appellees, in seeking to counter the findings arrived at by the National Bureau of Investigation's Criminalistics Division through its Questioned Documents Section, engaged the services of one Desiderio Pagui, a private practitioner in the examination of questioned documents. Using the same procedures, in part with availment of NBI facilities and equipment therefor, Mr. Pagui submitted his examination report purporting physical findings diametrically opposed to the Constantino report. Mr. Pagui concludes -

'In view of the foregoing, the scientific conclusions arrived at, are as follows:

'1. - The typewritten name 'RUFINO CO LING' appearing on pages 1 and 2 (back to back pages) of the questioned deed of Real Estate Mortgage dated February 11, 1963 (supra) and the entries thereof, were typed ahead than the signed signatures. In other words, the typewritten names and the entries were already typed before certain Rufino Co Ling affixed his signatures above or near said typewritten names 'RUFINO CO LING'.

'2. - The typewritten name 'NGO ENG' appearing on pages 1 and 2 (back to back pages) of the questioned deed of Real Estate Mortgage dated February 11, 1963 were typed ahead that of the signed signatures. In other words, the typewritten names were already typed before Ngo Eng affixed her signatures above said typewritten names 'NGO ENG'.

Beyond the foregoing physical conclusions, Mr. Pagui proffered in his report other observations on the placements of signatures on the mortgage deed as circumstances to 'disprove further the allegation that mortgagor spouses Rufino Co Ling and Ngo Eng signed the questioned deed in blank. (ref. Exh. '20').

"Curiously, the trial Judge who penned the decision appealed from seven (7) months after having been transferred to another station and indeed after another judge had been charged with cognizance of all kinds of cases in Branch CXXI, Regional Trial Court, Caloocan City, failed to even make mention - let alone pass upon - the NBI questioned documents examination report (Exh. 'P'). After having himself ordered the conduct of an examination perceived as 'imperative' at the National Bureau of Investigation - hence, an agency with accepted competence and moreover cloaked with the mantle of impartiality and neutrality, the same judge thereafter completely ignored the pertinent NBI report and opted to adopt the observations of private practitioner Desiderio Pagui about the placements of the signatures vis-a-vis the extended entries on the deed of real estate mortgage.

"The primal purpose of the examination was, precisely, in aid of determining whether plaintiffs-appellants affixed their signatures on the mortgage document in blank at places pointed out by defendant-appellee Bonifacio Co, or after the typewritten entries thereon had already been impressed on the back-to-back document. In fine, the factual basis of the conflicting claims of the parties was to have been demonstrated by empirical evidence on the factual issue of whether the extended entries were impressed over the signatures involved, or the other way around. And to arrive at a conclusion in that regard upon aspects sought to (be) clarified by the examination itself, begs the question. It is nothing short of mystifying that beyond disdaining altogether the Eliodoro Constantino report (Exh. 'P'), which has not been shown to have been attended by evil motive or bias and should therefore have been entitled to full weight and credit (*People v. Borbano*, 76 Phil. 702; *People v. Macalindog*, 76 Phil. 719; *People v. Valera*, 90 SCRA 400), the trial Judge opted to subscribe to the Pagui report on the basis of tangential and superfluous 'observations' therein.

"In *Elements of Criminalistics*, a volume commissioned by the Police Commission and co-authored by Lorenzo A. Sunico whose career dates back to the then Division of Investigation under the Department of Justice, was a division chief when the Division of Investigation was expanded into a Bureau in 1947 and retired as Deputy Director for Technical Services in the NBI, and Elliott B. Hensel, who started his career in law enforcement with the County of Ventura, U.S.A. in 1947 until he became Director of the Ventura County Crime Laboratory and is now the Public Safety Advisor in Criminalistics for the Office of Public Safety of the U.S. Agency for International Development, having served as an advisor in criminalistics to the governments of Libya, Ethiopia, Peru and the Philippines, the examination of questioned documents falls into two broad classes, to wit: 1 criminalistics examination and ii handwriting identification (at p. 70, *Elements of Criminalistics*, SUNICO & HENSEL, 1968). The first is akin to other kinds of laboratory work and involves a strictly scientific procedure which can be learned in a short time with the use of ultraviolet lights, special photography, and chemical and microscopic tests, while the second involves handwriting analysis as a more difficult procedure and requires long study and experience and moreover entails 'a sort of intuition which is not easy to reduce to a science.' (at p. 70, *supra*).

"The examination conducted pursuant to the Order dated July 19, 1984 required application of criminalistics examination by the National Bureau of Investigation. Mr. Pagui, the private practitioner in questioned documents retained by defendants-appellees, undertook a like criminalistics examination and sought to buttress a conclusion traversing that of NBI's Mr. E. Constantino upon 'observations' alien to the specie of examination called for.

"The trial Judge subscribed to the Pagui report specifically on the basis of said alien 'observations' which were in fact 'adopted', despite a definitive showing that Mr. Pagui's repute and trustworthiness is less than inspiring.

"There has, indeed, been marked and offered in evidence for plaintiffs-appellants as Exhibit 'U', an affidavit of Mr. Desiderio Pagui admitting his having 'arrived at a definite scientific conclusion' in the conduct of a comparative examination of sets of signatures covered by Questioned Documents Report No. 407-1078 as being spurious or counterfeits, but that he signed and approved a contrary conclusion set forth in said report 'with the

thought then that by so affixing my signature as approving official in said report, I would not antagonize the Director as I have before him a pending application for optional retirement from the government service'.

"The foregoing admission of duplicity for self-serving ends is spread in the records of the case as materially, if not fatally, affective of Mr. Pagui's professionalism and credibility. The trial Judge appears to have turned a blind eye to ineluctable proof of the untrustworthiness of Mr. Pagui as a retained (and presumably paid) expert witness. The acceptance at face value of the Pagui report upon superfluities therein ventured in the light of admitted propensity to dissemble when it suits his ends, in derogation of the clear, unambiguous and straightforward findings of an impartial and unbiased senior document examiner of the National Bureau of Investigation, is a palpably gross and reversible error.

"It has been held that the object of evidence is to establish the truth by the use of perceptive and reasoning faculties (*Baguio Country Club Corp. v. NLRC*, 118 SCRA 564). This Court is persuaded that the basis for the conclusion favoring the Pagui report in the June 20, 1986 decision is neither perceptive nor well-reasoned, in the face of the clear findings embodied in the NBI report the competence and impartiality of which has not even been challenged, let alone impugned.

"In fact, the version of plaintiffs-appellants in the genesis of the deed of real estate mortgage as the bone of contention, is buttressed and fortified by the address assigned and imputed to them therein as being at 567 Rosario Street, Binondo, Manila instead of 561 Hormiga Street, Binondo, Manila, as a badge of fraud in the mechanics devised and used by defendant-appellee Bonifacio Co who has admitted on record that Rufino Co ceased to hold office at 567 Rosario Street as from 1961 or two (2) years before the execution of the mortgage document. This badge of intrinsic fraud found on the face of the document itself which precluded notice to Rufino Co not only of additional availments against all nine (9) lots owned by him in common with Bonifacio Co to the benefit of a corporation controlled by the latter and his wife but also of the foreclosure on said nine (9) lots for failure to settle such loan obligation which had burgeoned to more than two (2) million pesos, could not have been missed in the appreciation of evidence adduced in point." [8]

While the opposing contentions in this case can be debated extensively, one way or the other, we are not prepared to state that the respondent appellate court committed reversible error in relying on the report submitted by the Senior Examiner of the National Bureau of Investigation Questioned Documents Division (concurrent in by the Chief of the Questioned Documents Section and the OIC of the Criminalistics Division, also of the NBI) rather than on the report of Mr. Desiderio Pagui, a documents examiner in private practice, whose services were hired by petitioners Co and Liu Hun Kun.

Both parties agree that by examining the document in question "with the naked eye", conflicting impressions would result. As correctly observed by private respondents, the document itself is ambivalent, neutral. Therefore, it needed an expert to examine the document. Between a report on examination submitted by a private practitioner who was hired by an interested party and whose professional integrity has been placed in doubt, and the objective examination of a government agency "with accepted competence and "cloaked with the mantle of impartiality and neutrality," whose services were required by no less than the trial court itself, we agree with respondent appellate court that the latter's findings are entitled to full weight and credit. It follows that the Court of Appeals' conclusion is not absurd or a mistake, for it was based on a neutral and impartial report which remains unrebutted by petitioners.

In the light of this finding, it results that the mortgage contract is not valid in so far as it purportedly mortgaged Co Ling's one-half (1/2) share of, or interest in the nine (9) parcels of land, for the reason that Co Ling's consent, as far as his said one-half (1/2) share in the property is concerned, was vitiated by fraud inflicted on him by Co.

In *Rural Bank of Caloocan, Inc. vs. Court of Appeals*,^[9] this Court held that:

"(W)e cannot declare the promissory note (Exhibit 2) valid between the bank and Castro and the mortgage contract (Exhibit 6) binding on Castro beyond the amount of P3,000.00, for while the contracts may not be invalidated insofar as they affect the bank and Castro on the ground of fraud because the bank was not a participant thereto, such may however be invalidated on the ground of substantial mistake mutually committed by them as a consequence of the fraud and misrepresentation inflicted by the Valencias. Thus, in the case of *Hill vs. Veloso* (31 Phil. 160), this Court declared that a contract may be annulled on the ground of vitiated consent if deceit by a third person, even without connivance or complicity with one of the contracting parties, resulted in mutual error on the part of the parties to the contract."

Another issue to be resolved is whether or not petitioners David Lio and Victoria Ong Lio were purchasers in good faith of Lot No. 3208. We quote from the findings and discussion in the appellate court's decision.

"And surely, the filing by defendant-appellee Bonifacio Co on his own and to the exclusion of the plaintiffs-appellants of an action to annul the foreclosure upon co-owned property, does not square the pretension of good faith whose entitlement to recourse may not be gainsaid. The perfidy attendant upon the ploy to keep plaintiffs-appellants in the dark about developments regarding the 9-lot property is brought into sinister relief by the compromise agreement entered into by defendant-appellee Bonifacio Co in said action for annulment. The said compromise agreement entitled Bonifacio Co alone - to the exclusion of plaintiffs-appellants - to recovery of approximately one-half (1/2) of the total area of the co-owned 9-lot property, particularly Lot 3208 with an area of 5,796 square meters.

"Defendant-appellee David Lio a nephew of defendant-appellee Liu Hun Kun and an employee of defendant-appellee Bonifacio Co in BONCO Enterprises, joined common cause with said co-defendants-appellees to ensure that plaintiffs--appellants - who admittedly never benefited from loan proceeds obtained against an unauthorized mortgage on his one-half undivided share in the 9-lot property or from additional loan availments against the same security - would be deprived of access to Lot 3208 and entitlement thereto under the compromise agreement unilaterally forged by Bonifacio Co in the action for annulment of foreclosure. This was effected through the expedient of 'assigning' entitlement to said Lot 3208 by Bonifacio Co to David Lio.

"The trial court, as aforestated found that 'the assignment by defendant Co of his right to repurchase Lot No. 3208 from the Republic Bank to defendant David Lio had all the earmarks of good faith'. This Court must disagree.

"The stark fact is that defendant-appellee David Lio is a nephew of Liu Hun Kun and an employee in Bonco Enterprises and thus of defendant-appellee Bonifacio Co. Were it true that defendant-appellee Bonifacio Co had been strapped for cash with which to recover Lot 3208, he could and should have tapped plaintiff-appellant Rufino Co Ling therefor and in that manner afforded the latter as co-owner of the 9-lot property to cut losses from the foreclosure on said nine (9) lots, by recovery of Lot No. 3208. It has not been explained - as explanation is perhaps not possible - why Bonifacio Co chose to continue to deny Rufino Co Ling with the information that the former had succeeded in arrogating to himself sole right to recover Lot 3208 upon which Bonco Enterprises continued to do business. It is undenied that Bonco Enterprises continued undisturbed in its use and possession of Lot 3208. Certainly, David Lio's capacity to acquire said lot in his own right and from his own resources as an employee of Bonco Enterprises has not been shown, beyond mouthings of substantial earnings from businesses (parenthetically, an incongruity and an absurdity in the light of David's continued employment with Bonco Enterprises).

"The claim of defendant-appellee David Lio that he acquired Lot No. 3208 as a sound investment from his own resources is less than inspiring. More worthy of credence is David Lio's having lent himself to the insidious ploy of Bonifacio Co to foreclose Rufino Co Ling's recourse to recover Lot No. 3208 as his one-half

(1/2) undivided share of the 9-lot property co-owned by Rufino and Bonifacio, by figuring in the assignment of right gambit. His commonality of cause with defendant-appellee Bonifacio Co was exhibited in testimony corroborative of concerted effort to establish the signing by plaintiffs-appellants of the mortgage document as already filled up with typewritten entries before the notary public. The purpose of said concerted action is blunted by empirical and physical findings that such was not true."[10]

Again, we are not prepared, after a review of the evidence, to conclude that the Court of Appeals committed a reversible error in its ruling that petitioners David Lio and Victoria Ong Lio were not, under the circumstances, purchasers in good faith of Lot No. 3208.

The last issue to be resolved in these petitions is whether or not the Republic Bank was an indispensable party to the case, and yet, not impleaded by Co Ling.

Petitioners aver that the Republic Bank, which directly sold Lot No. 3208, the property in dispute, to spouses David Lio and Victoria Ong Lio, is an indispensable party.

Invoking the ruling in *Gigante vs. Republic Savings Bank* (26 SCRA 328-329), petitioners argue that since the Republic Bank is the vendor of the property in question and, therefore, interested in upholding the deed of sale it had directly executed in favor of spouses David Lio and Victoria Ong Lio, the said bank should have been impleaded in Co Ling's complaint as a party defendant. This contention is untenable. We find that the *Gigante* case is not applicable to this case.

In the present case, as heretofore discussed, the property in question (belonging to Co Ling) was in effect not mortgaged at all. Therefore, the Bank did not acquire that half of the property which belonged to Co Ling. The bank had no interest at all in the controversy between Co Ling and Co which was the charge of fraud against Co and spouses David Lio and Victoria Ong Lio. Co Ling was not after the bank for relief.

"Impleading Republic Bank as a party defendant, in the first place, is not necessary because the fraudulent transfer of Lot No. 3208 in favor of petitioners David Lio and his wife, has come to pass. But the latter spouses are not faultless because they have conspired with petitioners Bonifacio Co and Liu Hun Kun."[11]

In fine, the Republic Bank had no longer any interest in the property that had to be protected. An indispensable party is one with such an interest in the controversy that a final decree would necessarily affect his rights, such that the courts cannot proceed without his presence.[12]

WHEREFORE, petitions are DENIED. The appealed decision of the Court of Appeals is hereby AFFIRMED. Costs against petitioners.

SO ORDERED.

Melencio-Hererra, (Chairman), Paras, Sarmiento, and Regalado, JJ., concur.

[1] Penned by Associate Justice Ricardo P. Tensuan and concurred in by Associate Justice Venancio D. Aldecoa, Jr. and Associate Justice Luis L. Victor.

[2] Rollo, p. 18, G.R. No. 86614; Rollo, p. 137, G.R. No. 86597

[3] Rollo (G.R. No. 86597), p. 149

[4] Rollo (G.R. No. 86614), p. 143

[5] *Raneses vs. Intermediate Appellate Court, et al.*, G.R. No. 68747, 13 July 1990; *Remalante vs. Tibe*, G.R. No.

59514, 25 February 1988, 158 SCRA 138

[6] pp. 14-15. RTC decision, dated 20 June 1986 in Civil Case No. C-8730

[7] Appealed decision, p. 12

[8] Rollo (G.R. No. 86614), pp. 51-54

[9] G.R. No. 32116, April 21, 1981, 104 SCRA 151

[10] Rollo (G.R. No. 86614), pp. 55-56

[11] Memorandum for Respondents, p. 13

[12] Seno vs. Mangubat, G.R. No. 44339, December 2, 1987, 156 SCRA 113

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