

**RURAL BANK OF BOMBON (CAMARINES SUR), INC., PETITIONER, VS.
HON. COURT OF APPEALS, EDERLINDA M. GALLARDO, DANIEL
MANZO AND RUFINO S. AQUINO, RESPONDENTS.**

G.R. No. 95703. August 03, 1992

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

This petition for review seeks reversal of the decision dated September 18, 1990 of the Court of Appeals, reversing the decision of the Regional Trial Court of Makati, Branch 150, which dismissed the private respondents' complaint and awarded damages to the petitioner, Rural Bank of Bombon.

On January 12, 1981, Ederlinda M. Gallardo, married to Daniel Manzo, executed a special power of attorney in favor of Rufino S. Aquino authorizing him:

"1. To secure a loan from any bank or lending institution for any amount or otherwise mortgage the property covered by Transfer Certificate of Title No. S-79238 situated at Las Piñas, Rizal, the same being my paraphernal property, and in that connection, to sign, or execute any deed of mortgage and sign other document requisite and necessary in securing said loan and to receive the proceeds thereof in cash or in check and to sign the receipt therefor and thereafter endorse the check representing the proceeds of loan." (p. 10, Rollo.)

Thereupon, Gallardo delivered to Aquino both the special power of attorney and her owner's copy of Transfer Certificate of Title No. S-79238 (19963-A).

On August 26, 1981, a Deed of Real Estate Mortgage was executed by Rufino S. Aquino in favor of the Rural Bank of Bombon (Camarines Sur), Inc. (hereafter, defendant Rural Bank) over the three parcels of land covered by TCT No. S-79238. The deed stated that the property was being given as security for the payment of "certain loans, advances, or other accommodations obtained by the mortgagor from the mortgagee in the total sum of Three Hundred Fifty Thousand Pesos only (P350,000.00), plus interest at the rate of fourteen (14%) per annum x x x" (p. 11, Rollo).

On January 6, 1984, the spouses Ederlinda Gallardo and Daniel Manzo filed an action against Rufino Aquino and the Bank because Aquino allegedly left his residence at San Pascual, Hagonoy, Bulacan, and transferred to an unknown place in Bicol. She discovered that Aquino first resided at Sta. Isabel, Calabanga, Camarines Sur, and then later, at San Vicente, Calabanga, Camarines Sur, and that they (plaintiffs) were allegedly surprised to discover that the property was mortgaged to pay personal loans obtained by Aquino from the Bank solely for personal use and benefit of Aquino; that the mortgagor in the deed was defendant Aquino instead of plaintiff Gallardo whose address up to now is Manuyo, Las Piñas, M. M. per the title (TCT No. S-79238) and in the deed vesting power of attorney to Aquino; that correspondence relative to the mortgage was sent to Aquino's address at "Sta. Isabel, Calabanga, Camarines Sur" instead of Gallardo's postal address at Las Piñas, Metro Manila; and that defendant Aquino, in the real estate mortgage, appointed defendant Rural Bank as attorney in fact, and in case of judicial foreclosure as receiver with corresponding power to sell and that although without any express authority

from Gallardo, defendant Aquino waived Gallardo's rights under Section 12, Rule 39, of the Rules of Court and the proper venue of the foreclosure suit.

On January 23, 1984, the trial court, thru the Honorable Fernando P. Agdamag, temporarily restrained the Rural Bank "from enforcing the real estate mortgage and from foreclosing it either judicially or extrajudicially until further orders from the court" (p.36, Rollo).

Rufino S. Aquino in his answer said that the plaintiff authorized him to mortgage her property to a bank so that he could use the proceeds to liquidate her obligation of P350,000 to him. The obligation to pay the Rural Bank devolved on Gallardo. Of late, however, she asked him to pay the Bank but defendant Aquino set terms and conditions which plaintiff did not agree to. Aquino asked for payment to him of moral damages in the sum of P50,000 and lawyer's fees of P35,000.

The Bank moved to dismiss the complaint and filed counterclaims for litigation expenses, exemplary damages, and attorney's fees. It also filed a crossclaim against Aquino for P350,000 with interest, other bank charges and damages if the mortgage be declared unauthorized.

Meanwhile, on August 30, 1984, the Bank filed a complaint against Ederlinda Gallardo and Rufino Aquino for "Foreclosure of Mortgage" docketed as Civil Case No. 8330 in Branch 141, RTC Makati. On motion of the plaintiff, the foreclosure case and the annulment case (Civil Case No. 6062) were consolidated.

On January 16, 1986, the trial court rendered a summary judgment in Civil Case No. 6062, dismissing the complaint for annulment of mortgage and declaring the Rural Bank entitled to damages the amount of which will be determined in appropriate proceedings. The court lifted the writ of preliminary injunction it previously issued.

On April 23, 1986, the trial court, in Civil Case No. 8330, issued an order suspending the foreclosure proceedings until after the decision in the annulment case (Civil Case No. 6062) shall have become final and executory.

The plaintiff in Civil Case No. 6062 appealed to the Court of Appeals, which on September 18, 1990, reversed the trial court. The dispositive portion of the decision reads:

"UPON ALL THESE, the summary judgment entered by the lower court is hereby REVERSED and in lieu thereof, judgment is hereby RENDERED, declaring the deed of real estate mortgage dated August 26, 1981, executed between Rufino S. Aquino with the marital consent of his wife, Bibiana Aquino with the appellee Rural Bank of Bombon, Camarines Sur, unauthorized, void and unenforceable against plaintiff Ederlinda Gallardo; ordering the reinstatement of the preliminary injunction issued at the onset of the case and at the same time, ordering said injunction made permanent.

"Appellee Rural Bank to pay the costs." (p. 46, Rollo.)

Hence, this petition for review by the Rural Bank of Bombon, Camarines Sur, alleging that the Court of Appeals erred:

1. in declaring that the Deed of Real Estate Mortgage was unauthorized, void, and unenforceable against the private respondent Ederlinda Gallardo; and
2. in not upholding the validity of the Real Estate Mortgage executed by Rufino S. Aquino as attorney-in-fact for Gallardo, in favor of the Rural Bank of Bombon, (Cam. Sur), Inc.

Both assignments of error boil down to the lone issue of the validity of the Deed of Real Estate Mortgage dated August 26, 1981, executed by Rufino S. Aquino, as attorney-in-fact of Ederlinda Gallardo, in favor of the Rural Bank of Bombon (Cam. Sur), Inc.

The Rural Bank contends that the real estate mortgage executed by respondent Aquino is valid because he was expressly authorized by Gallardo to mortgage her property under the special power of attorney she made in his favor which was duly registered and annotated on Gallardo's title. Since the Special Power of Attorney did not specify or indicate that the loan would be for Gallardo's benefit, then it could be for the use and benefit of the attorney-in-fact, Aquino.

However, the Court of Appeals ruled otherwise. It held:

"The Special Power of Attorney above quoted shows the extent of authority given by the plaintiff to defendant Aquino. But defendant Aquino in executing the deed of Real Estate Mortgage in favor of the rural bank over the three parcels of land covered by Gallardo's title named himself as the mortgagor without stating that his signature on the deed was for and in behalf of Ederlinda Gallardo in his capacity as her attorney-in-fact.

"At the beginning of the deed mention was made of attorney-in-fact of Ederlinda H. Gallardo, thus: '(T)his MORTGAGE executed by Rufino S. Aquino attorney in fact of Ederlinda H. Gallardo, of legal age, filipino, married to Bibiana Panganiban with postal address at Sta. Isabel x x x,' but which of itself, was merely descriptive of the person of Defendant Aquino. Defendant Aquino even signed it plainly as mortgagor with the marital consent yet of his wife Bibiana P. Aquino who signed the deed as 'wife of mortgagor.'

"xxx xxx xxx.

"The three (3) promissory notes respectively dated August 31, 1981, September 23, 1981 and October 26, 1981, were each signed by Rufino Aquino on top of a line beneath which is written 'signature of mortgagor' and by Bibiana P. Aquino on top of a line under which is written 'signature of spouse,' without any mention that execution thereof was for and in behalf of the plaintiff as mortgagor. It results, borne out from what were written on the deed, that the amounts were the personal loans of defendant Aquino. As pointed out by the appellant, Aquino's wife has not been appointed co-agent of defendant Aquino and her signature on the deed and on the promissory notes can only mean that the obligation was personally incurred by them and for their own personal account.

"The deed of mortgage stipulated that the amount obtained from the loans shall be used or applied only for 'fishpond (bangus and sugpo production).' As pointed out by the plaintiff, the defendant Rural Bank in its Answer, had not categorically denied the allegation in the complaint that defendant Aquino in the deed of mortgage was the intended user and beneficiary of the loans and not the plaintiff. And the special power of attorney could not be stretched to include the authority to obtain a loan in said defendant Aquino's own benefit." (pp. 40-41, Rollo.)

The decision of the Court of Appeals is correct. This case is governed by the general rule in the law of agency which this Court applied in "Philippine Sugar Estates Development Co. vs. Poizat," 48 Phil. 536, 538:

"It is a general rule in the law of agency that, in order to bind the principal by a mortgage on real property executed by an agent, it must upon its face purport to be made, signed and sealed in the name of the principal, otherwise, it will bind the agent only. It is not enough merely that the agent was in fact authorized to make the mortgage, if he has not acted in the name of the principal. Neither is it ordinarily sufficient that in the mortgage the agent describes himself as acting by virtue of a power of attorney, if in fact the agent has acted in his own name and has set his own hand and seal to the mortgage. This is especially true where the agent himself is a party to the instrument. However clearly the body of the mortgage may show and intend that it shall be the act of the principal, yet, unless in fact it is executed by the agent for and on behalf of his principal and as the act and deed of the principal, it is not valid as to the principal."

In view of this rule, Aquino's act of signing the Deed of Real Estate Mortgage in his name alone as mortgagor, without any indication that he was signing for and in behalf of the property owner, Ederlinda Gallardo, bound himself alone in his personal capacity as a debtor of the petitioner Bank and not as the agent or attorney-in-fact of Gallardo. The Court of Appeals further observed:

"It will also be observed that the deed of mortgage was executed on August 26, 1981 therein clearly stipulating that it was being executed 'as security for the payment of certain loans, advances or other accommodation obtained by the Mortgagor from the Mortgagee in the total sum of Three Hundred Fifty Thousand Pesos only (P350.000.00)' although at the time no such loan or advance had been obtained. The promissory notes were dated August 31, September 23 and October 26, 1981 which were subsequent to the execution of the deed of mortgage. The appellant is correct in claiming that the defendant Rural Bank should not have agreed to extend or constitute the mortgage on the properties of Gallardo who had no existing indebtedness with it at the time.

"Under the facts the defendant Rural Bank appeared to have ignored the representative capacity of Aquino and dealt with him and his wife in their personal capacities. Said appellee Rural Bank also did not conduct an inquiry on whether the subject loans were to benefit the interest of the principal (plaintiff Gallardo) rather than that of the agent although the deed of mortgage was explicit that the loan was for purpose of the bangus and sugpo production of defendant Aquino.

"In effect, with the execution of the mortgage under the circumstances and assuming it to be valid but because the loan taken was to be used exclusively for Aquino's business in the 'bangus' and 'sugpo' production, Gallardo in effect becomes a surety who is made primarily answerable for loans taken by Aquino in his personal capacity in the event Aquino defaults in such payment. Under Art. 1878 of the Civil Code, to obligate the principal as a guarantor or surety, a special power of attorney is required. No such special power of attorney for Gallardo to be a surety of Aquino had been executed." (pp. 42-43, Rollo.)

Petitioner claims that the Deed of Real Estate Mortgage is enforceable against Gallardo since it was executed in accordance with Article 1883 which provides:

"Art. 1883. If an agent acts in his own name, the principal has no right of action against the persons with whom the agent has contracted; neither have such persons against the principal.

"In such case the agent is the one directly bound in favor of the person with whom he has contracted, as if the transaction were his own, except when the contract involves things belonging to the principal."

The above provision of the Civil Code relied upon by the petitioner Bank, is not applicable to the Case at bar. Herein respondent Aquino acted purportedly as an agent of Gallardo, but actually acted in his personal capacity. Involved herein are properties titled in the name of respondent Gallardo against which the Bank proposes to foreclose the mortgage constituted by an agent (Aquino) acting in his personal capacity. Under these circumstances, we hold, as we did in *Philippine Sugar Estates Development Co. vs. Poizat*, supra, that Gallardo's property is not liable on the real estate mortgage:

"There is no principle of law by which a person can become liable on a real mortgage which she never executed either in person or by attorney in fact. It should be noted that this is a mortgage upon real property, the title to which cannot be divested except by sale on execution or the formalities of a will or deed. For such reasons, the law requires that a power of attorney to mortgage or sell real property should be executed with all of the formalities required in a deed. For the same reason that the personal signature of Poizat, standing alone, would not convey the title of his wife in her own real property, such a signature would not bind her as a mortgagor in real property, the title to which was in her name." (p. 548.)

WHEREFORE, finding no reversible error in the decision of the Court of Appeals, we AFFIRM it in toto. Costs against the petitioner.

SO ORDERED.

Cruz, (Chairman), Medialdea, and Bellosillo, JJ., concur.

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