

## SECOND DIVISION

[ G.R. No. 203348, July 06, 2020 ]

**PASTORA GANANCIAL, PETITIONER, VS. BETTY CABUGAO,  
RESPONDENT.**

### DECISION

**HERNANDO, J.:**

This Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court assails the November 29, 2011 Decision<sup>[2]</sup> and the September 4, 2012 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 88212.

#### The Antecedents

Pastora Ganancial (Ganancial) owed Betty Cabugao (Cabugao) the amount of P130,000.00, agreed to be payable within three years. To guarantee her indebtedness, Ganancial entrusted to Cabugao the Transfer Certificate of Title (TCT) No. 168803 and Tax Declaration No. 641, both covering a 397-square-meter parcel of land located in Balangobong, Binalonan, Pangasinan, which Ganancial owns in her name.

The transaction later turned sour and ended in the parties' respective lawsuits against each other before the Regional Trial Court (RTC), Branches 45 and 48 of Urdaneta City, Pangasinan. On October 2, 2001, Cabugao filed a case for foreclosure of real estate mortgage against Ganancial, docketed as Civil Case No. U-7397 with Branch 45. On October 8, 2001, the latter, in turn, filed against the former a complaint for declaration of the deed of mortgage as null and void, with damages docketed as Civil Case No. U-7406 with Branch 48. These cases were eventually ordered consolidated before Branch 45.

Cabugao alleged that on March 4, 1998, Ganancial executed a Deed of Mortgage<sup>[4]</sup> over the subject property as collateral for her loan. Despite the lapse of three years from the date of the mortgage and repeated demands, Ganancial failed and refused to pay the amount she owed Cabugao. A final demand having proved futile, Cabugao sought the judicial foreclosure of the real estate mortgage, plus interest, and the award of attorney's fees and litigation expenses.

For her part, Ganancial assailed the authenticity of the Deed of Mortgage. While she entrusted TCT No. 168803 with Cabugao, Ganancial averred that she never executed the supposed Deed of Mortgage nor appeared for its notarization. Cabugao allegedly required Ganancial and her children to affix their signatures on a blank bond paper, which Cabugao filled out only later. Ganancial learned of the existence of the Deed of Mortgage for the first time during her confrontation with Cabugao before the *barangay* captain regarding her unpaid debt and where Cabugao

threatened to foreclose the subject property. Ganancial thus prayed for the declaration of the Deed of Mortgage as null and void and claimed moral damages, exemplary damages, litigation expenses, and costs of suit.

*Ruling of the Regional Trial Court*

The RTC ruled in favor of Cabugao. It declared that Ganancial's contentions against the authenticity of the notarized Deed of Mortgage were not proven by clear and convincing evidence. It also noted that the names of Ganancial and her children were so well-placed on the Deed of Mortgage for the court to believe that they merely signed a blank bond paper. There being a finding of bad faith, the RTC also held Ganancial liable for moral damages, exemplary damages, attorney's fees, and litigation costs. The May 17, 2006 RTC Joint Decision<sup>[5]</sup> disposed of the consolidated cases in the following tenor:

WHEREFORE, PREMISES CONSIDERED, the Court renders judgment, as follows:

IN CIVIL CASE NO. U-7397:

- 1). The Court orders the sale of the property in the name of the defendant, Pastora Ganancial, covered by Transfer Certificate of Title No. 168803 and Tax Declaration No. 641 and to pay to the plaintiff BETTY [C]ABUGAO the mortgage debt plus legal interest, attorney's fees, litigation expenses, damages and other expenses; and
- 2). The Court orders the defendant PASTORA GANANCIAL to pay the plaintiff Betty Cabugao the sum of P130,000.00 including legal interest from the time the money was taken by the former from the latter; the amount of P50,000.00 as moral damages and P20,000.00 as attorney's fees.

IN CIVIL CASE NO. U-7406:

- 1). The Court orders the DISMISSAL of this case, for lack of merit; and
- 2). Further, orders the plaintiff, Pastora Ganancial[, ] to pay the defendant Betty Cabugao the amount of P50,000.00 as moral damages; P20,000.00 as exemplary damages and P10,000.00 as litigation expenses.

SO ORDERED.<sup>[6]</sup>

Ganancial appealed<sup>[7]</sup> to the CA, stating that the RTC gravely erred in ruling in favor of Cabugao despite the glaring irregularities of the Deed of Mortgage. The dates of the Deed of Mortgage and its notarization were dissimilar, the former having been executed on March 4, 1998 and the latter on January 15, 2001.<sup>[8]</sup> Ganancial pointed out that the Office of the Clerk of Court of the RTC of Urdaneta City certified that the notarial entry under Doc. No. 430, Page No. 87, Book No. LXXXIII, Series of 2001 pertained to a deed of sale of a motor vehicle and not to the Deed of Mortgage.

Ganancial also noted that different typewriters were used in the preparation of the Deed of Mortgage.

### *Ruling of the Court of Appeals*

The CA denied Ganancial's appeal. It concurred with the disposition of the RTC that forgery or falsification cannot be presumed and must be proved with clear, positive, and convincing evidence by the party who alleges the same. The CA found that Ganancial failed in discharging such burden of proof, especially that the deed in issue was a notarized document. The CA also ruled that mere irregularities in the notarization do not affect the genuineness and due execution of the document. Affirming the RTC in its assailed November 29, 2011 Decision, the CA thus held:

**WHEREFORE**, premises considered, the instant Appeal is **DENIED**. Accordingly, the assailed Decision dated 17 May 2006 of the court a quo is hereby **AFFIRMED in toto**.

**SO ORDERED.**<sup>[9]</sup>

After the CA found no compelling reason to reverse itself and denied her Motion for Reconsideration<sup>[10]</sup> in its September 4, 2012 Resolution,<sup>[11]</sup> Ganancial proceeds to this Court.

### **Errors Assigned**

Ganancial raises the following errors for this Court's review:

#### I

WHETHER THE [CA] ERRED IN AFFIRMING THE DECISION OF THE [RTC] FAVORING BETTY CABUGAO DESPITE THE GLARING IRREGULARITY OF THE QUESTIONED DEED OF MORTGAGE.

#### II

WHETHER THE [CA] ERRED IN AFFIRMING THE DECISION OF THE [RTC]'S AWARDING OF MORAL AND EXEMPLARY DAMAGES, LITIGATION EXPENSES AND ATTORNEY'S FEES IN FAVOR OF BETTY CABUGAO WITHOUT CITING THE BASIS THEREOF.<sup>[12]</sup>

### **The Court's Ruling**

The appeal is meritorious in part.

**Mere formal infirmities in the notarization of the instrument will not invalidate the mortgage**

Ganancial reiterates that she and her two sons were made to sign a blank piece of paper as acknowledgment of her indebtedness to Cabugao, and that thereafter, the latter supplied the particulars of the mortgage on the same piece of paper. The following circumstances allegedly attest to the spuriousness of the Deed of Mortgage: the document was supposedly executed and notarized on March 4, 1998, but was entered in a 2001 notarial book by a notary public whose notarial commission ended in 2001; that the entry indicated in the notarial register actually pertained to a deed of sale of a motor vehicle; that different typewriters were used in typing the contents of the Deed of Mortgage and its notarization; and that the acknowledgment was written on the back of the document, despite the considerable space allotted and remaining below the Deed of Mortgage. In fine, Ganancial assails the validity of the mortgage and not merely its notarial irregularities.

We do not find for Ganancial.

The CA was already on-point in citing *Camcam v. Court of Appeals*<sup>[13]</sup> as regards the issue on the notarization of the Deed of Mortgage, which We echo:

[A]n irregular notarization merely reduces the evidentiary value of a document to that of a private document, which requires proof of its due execution and authenticity to be admissible as evidence. The irregular notarization — or, for that matter, the lack of notarization — does not thus necessarily affect the validity of the contract reflected in the document.<sup>[14]</sup> (Citation omitted)

Errors in, or even absence of, notarization on a deed of mortgage will not invalidate an already perfected mortgage agreement. If anything, these would only depreciate the evidentiary value of the said written deed, as the same would be demoted from a public document to a private one.

It bears noting that Ganancial had alleged that fraud invalidated her consent to the mortgage. While she had worded her arguments as an attack on the existence of the mortgage, vitiation of consent by means of fraud is a ground for the *annulment of a voidable* contract, and not for the *nullification* of a *void* contract. Having raised lack of consent on the ground of fraud in her complaint for "declaration of document as null and void plus damages,"<sup>[15]</sup> her case is practically devoid of any factual basis.

Even if the present case is one for annulment of contract, the fraud alleged to have vitiated Ganancial's consent to the mortgage must still be proven by clear and convincing evidence. *Clear and convincing evidence* is less than proof beyond reasonable doubt but greater than preponderance of evidence. The degree of believability upon an imputation of fraud in a civil case is higher than that of an ordinary civil case, the latter generally requiring only a preponderance of evidence to meet the required burden of proof. The burden of proof rests on the party

alleging fraud.<sup>[16]</sup>

Ganancial failed in this regard. Again, the CA succinctly declared so as follows:

In the instant case, the appellant miserably failed to discharge this burden. A careful and judicious examination of the records on hand reveals that the evidence presented by the appellant is too weak to convince Us that the subject document was fabricated or falsified.

Apart from the testimonies of the appellant and her children, which We found to be self-serving, there is nothing on record which bolsters her stance. It must be stressed that the deed in question is a notarized document. Jurisprudential rule dictates that to successfully impugn a notarized document, the party concerned must present a strong, complete and conclusive proof of its falsity, lest the validity thereof must be sustained in full force and effect. Sadly in this case, the appellant failed to support her claim.<sup>[17]</sup> (Citations omitted.)

Even assuming that Ganancial's complaint for the declaration of nullity of the Deed of Mortgage was truly grounded on its nonexistence or absolute simulation, it would still have no basis in fact and in law.

Under Article 1409 of the Civil Code, absolute simulation voids a contract.<sup>[18]</sup> In absolute simulation, there appears a colorable contract but there actually is none, as the parties thereto have never intended to be bound by it. In determining the true nature of a contract, the primary test is the intention of the parties. Such intention is determinable not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties.<sup>[19]</sup>

The totality of the circumstances negates the contention that the Deed of Mortgage was absolutely simulated. Ganancial, having absolute ownership and full disposal of the property in issue, admittedly conveyed TCT No. 168803 to secure her indebtedness to Cabugao in the amount of P130,000.00. Their agreement was reduced into writing as a Deed of Mortgage, and Ganancial's stand that the signatures thereon were manipulated does not convince. As aptly noted by the RTC, the signatures of Ganancial and her children appear exactly above their typewritten names, lending weak support to the claim that they had been made to sign a blank piece of paper that Cabugao later completed as a Deed of Mortgage.<sup>[20]</sup> There is also the undisputed presumption of regularity enjoyed by notarized contracts, and the mere fact that two public documents are covered by the same notarial entry neither identifies with sufficient definiteness which one of them was fake, nor does it determine if any of them was spurious in the first place. It is also a settled fact that the mortgage in issue was properly registered and annotated on TCT No. 168803.

Moreover, contracts, in general, require no form to exist. Article 2085 of the Civil Code specifies the elements of valid contracts of mortgage: