

FIRST DIVISION

[G.R. No. 211232, April 11, 2018]

**COCA-COLA BOTTLERS PHILS., INC., PETITIONER, V. SPOUSES
EFREN AND LOLITA SORIANO, RESPONDENTS.**

DECISION

TIJAM, J.:

This petition for review on *certiorari*^[1] under Rule 45 of the Rules of Court seeks to reverse and set aside the Decision^[2] dated June 18, 2013 and Resolution^[3] dated February 4, 2014 of the Court of Appeals (CA) in CA G.R. CV No. 97687, affirming the Decision^[4] dated February 9, 2011 of the Regional Trial Court (RTC), Branch 01, Tuguegarao, Cagayan, in Case No. 6821.

The Antecedents

The CA summarized the antecedents as follows:

Plaintiffs-appellees spouses Efren and Lolita Soriano are engaged in the business of selling defendant-appellant Coca-Cola products in Tuguegarao City, Cagayan. Sometime in 1999, defendant-appellant thru Cipriano informed plaintiffs-appellees that the former required security for the continuation of their business. Plaintiffs-appellees were convinced to hand over two (2) certificates of titles over their property and were made to sign a document. Defendant Cipriano assured plaintiffs-appellees that it will be a mere formality and will never be notarized.

Subsequently, plaintiffs-appellees informed defendant-appellant Coca-Cola of their intention to stop selling Coca-Cola products due to their advanced age. Thus, plaintiffs-appellees verbally demanded from defendant-appellant the return of their certificates of titles. However, the titles were not given back to them.

When plaintiffs-appellees were contemplating on filing a petition for the issuance of new titles, they discovered for the first time that their land was mortgaged in favor of defendant-appellant Coca-Cola. Worse, the mortgage land was already foreclosed. Hence, plaintiffs-appellees filed a complaint for annulment of sheriffs foreclosure sale. They alleged that they never signed a mortgaged document and that they were never notified of the foreclosure sale. In addition, plaintiffs-appellees aver that they never had monetary obligations or debts with defendant-appellant. They always paid their product deliveries in cash.

Furthermore, plaintiffs-appellees claimed that they merely signed a document in Tuguegarao. They never signed any document in Ilagan,

Isabela nor did they appear before a certain Atty. Reymundo Ilagan on 06 January 2000 for the notarization of the said mortgage document.

On their part, defendant-appellant alleged that plaintiffs-appellees are indebted to them. Plaintiffs-appellees' admission that they signed the real estate mortgage document in Tuguegarao, Cagayan indicates that the mortgage agreement was duly executed. The failure of the parties to appear before the notary public for the execution of the document does not render the same null and void or unenforceable.^[5]

Ruling of the RTC

On February 9, 2011, the RTC rendered its decision nullifying the real estate mortgage and the foreclosure proceedings. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the court hereby renders judgment in favor of the plaintiffs and against the defendants as follows:

1. Declaring the real estate mortgage (Exhibit "A") to be null and void;
2. Declaring the Sheriff's Certificate of Sale (Exhibit "B") to be null and void;
3. Declaring the claim of the defendants that the land of the plaintiffs had been mortgaged to defendant corporation to be unlawful;
4. Declaring the cloud over the title and interest of the plaintiffs be removed;
5. Ordering the defendants to surrender and deliver TCT No. T-86200 and TCT No. T-84673 to the plaintiffs; and
6. Ordering the defendants in solidum to pay to plaintiffs the sum of P50,000.00 as moral damages and P20,000.00 as attorney's fees.

No pronouncement as to cost.

SO DECIDED.

Aggrieved, petitioner appealed to the CA.

Ruling of the CA

On June 18, 2013, the CA rendered the assailed decision affirming the RTC decision *in toto*. The CA ruled that the Real Estate Mortgage deed (REM deed) failed to comply substantially with the required form. Thus, it made the following findings:

A careful perusal of the mortgage deed has revealed that although the spouses signed the real estate mortgage deed, they never acknowledged the same before the Clerk of Court during the notarization. Likewise, only one witness has signed the document, instead of the required presence of two (2) witnesses as provided by law.

In the acknowledgment portion, only defendant Cipriano and defendant-appellant Coca Cola has appeared and acknowledged the real estate

mortgage deed before the Clerk of Court. Nowhere did the plaintiffs-appellees acknowledge before the Clerk of Court the said deed as their free and voluntary act. Contrary to defendant-appellant's contention, this acknowledgment is not a mere superfluity because it is expressly required by law. Even granting *arguendo* that the document should be considered properly notarized, the aforementioned real estate mortgage deed still fell short of the legal requirements under Section 112 of P.D. 1529.

Therefore, for failure to comply substantially with the required form, We find that plaintiffs-appellees' land cannot be bound by the real estate mortgage. We uphold the court *a quo* in finding both the real estate mortgage constituted over plaintiffs-appellees' property and the subsequent extrajudicial foreclosure invalid.^[6]

Hence, the instant petition before Us. In its Petition and Reply,^[7] petitioner argues that the defect in the notarization of the REM deed does not in any way affect its validity. Section 112 of Presidential Decree No. 1529 (P.D. 1529) only provides for the formal requirements for registrability and not validity. Assuming that the mortgage contract cannot be registrable due to lack of certain requirements, its only effect is that it does not bind third parties but the mortgage remains valid as between the parties.^[8] Finally, petitioner alleges that there was no forgery considering that respondents admitted the due execution of the REM deed in their complaint. On the other hand, respondents, in their Comment^[9], reiterated the findings of the courts *a quo* and asseverated that petitioner failed to show any reversible error in the CA decision.

The Issue

Ultimately, the question posed before Us is the validity of a REM, the deed of which was: (1) admittedly signed by the mortgagors, albeit in a place other than that stated in the document, on the belief that the same would not be notarized; and (2) notarized without authority and compliance with the prescribed form under Section 112 of P.D. 1529. Corollary to the validity of the said mortgage is the validity of the foreclosure sale pursuant to it.

Our Ruling

The petition is impressed with merit.

At the outset, We stress that the registration of a REM deed is not essential to its validity. The law is clear on the requisites for the validity of a mortgage, to *wit*:

Art. 2085. The following requisites are essential to the contracts of pledge and mortgage:

- (1) That they be constituted to secure the fulfillment of a principal obligation;
- (2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged;
- (3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally

authorized for the purpose.

Third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property.

In relation thereto, Article 2125 provides:

Article 2125. In addition to the requisites stated in Article 2085, it is indispensable, in order that a mortgage may be validly constituted, that the document in which it appears be recorded in the Registry of Property.

If the instrument is not recorded, the mortgage is nevertheless binding between the parties. (Emphasis supplied)

Thus, as between the parties to a mortgage, the non-registration of a REM deed is immaterial to its validity. In the case of *Paradigm Development Corporation of the Philippines, v. Bank of the Philippine Islands*,^[10] the mortgagee allegedly represented that it will not register one of the REMs signed by the mortgagor. In upholding the validity of the questioned REM between the said parties, the Court ruled that "with or without the registration of the REMs, as between the parties thereto, the same is valid and [the mortgagor] is bound thereby." The Court, thus, cited its ruling in the case of *Mobil Oil Philippines, Inc., v. Ruth R. Diocares, et al.*^[11] a portion of which reads:

Xxx. The codal provision is clear and explicit. Even if the instrument were not recorded, "the mortgage is nevertheless binding between the parties." The law cannot be any clearer. Effect must be given to it as written. The mortgage subsists; the parties are bound. **As between them, the mere fact that there is as yet no compliance with the requirement that it be recorded cannot be a bar to foreclosure.**

x x x x

Moreover to rule as the lower court did would be to show less than fealty to the purpose that animated the legislators in giving expression to their will that the failure of the instrument to be recorded does not result in the mortgage being any the less "binding between the parties." In the language of the Report of the Code Commission: "In Article [2125] an additional provision is made that if the instrument of mortgage is not recorded, the mortgage, is nevertheless binding between the parties." We are not free to adopt then an interpretation, even assuming that the codal provision lacks the forthrightness and clarity that this particular norm does and therefore requires construction, that would frustrate or nullify such legislative objective.^[12] (Citation omitted; emphasis ours)

Based on the foregoing, the CA, in the case at bar, clearly erred in ruling that the parties in the instant case cannot be bound by the REM deed. In arriving at such ruling, the CA relied on the following pronouncements of this Court in the case of *Spouses Adelina S. Cuyco and Feliciano U Cuyco, v. Spouses Renaoa Cuyco and Filipina Cuyco*:^[13]

In order to constitute a legal mortgage, it must be executed in a public document, besides being recorded. A provision in a private document, although denominating the agreement as one of mortgage, cannot be considered as it is not susceptible of inscription in the property

registry. A mortgage in legal form is not constituted by a private document, even if such mortgage be accompanied with delivery of possession of the mortgage property. **Besides, by express provisions of Section 127 of Act No. 496, a mortgage affecting land, whether registered under said Act or not registered at all, is not deemed to be sufficient in law nor may it be effective to encumber or bind the land unless made substantially in the form therein prescribed.** It is required, among other things, that the document be signed by the mortgagor executing the same, in the presence of two witnesses, and acknowledged as his free act and deed before a notary public. A mortgage constituted by means of a private document obviously does not comply with such legal requirements.^[14] (Citations omitted; emphasis ours)

The aforecited pronouncements by this Court, however, relate to the issue on whether the subject realty of the REM was bound by the additional loans executed between the parties. The validity of the said REM was not put into question in the said case. Thus, in the present case, the CA erred in relying on the said pronouncements.

To reiterate, the law is clear and explicit as to the validity of an unregistered REM between the parties. Indeed, if an unregistered REM is binding between the parties thereto, all the more is a registered REM, such as the REM deed in this case.

Here, although the REM deed was registered and annotated on the back of the title, the petitioner failed to comply with the provisions under Section 112 of P.D. 1529, viz:

x x x x

Deeds, conveyances, encumbrances, discharges, powers of attorney and other voluntary instruments, whether affecting registered or unregistered land, executed in accordance with law **in the form of public instruments** shall be registerable: Provided, that, every such instrument shall be signed by the person or persons executing the same in the presence of at least two witnesses who shall likewise sign thereon, and shall **acknowledged to be the free act and deed of the person or persons executing the same before a notary public or other public officer authorized by law to take acknowledgment.** Where the instrument so acknowledged consists of two or more pages including the page whereon acknowledgment is written, each page of the copy which is to be registered in the office of the Register of Deeds, or if registration is not contemplated, each page of the copy to be kept by the notary public, except the page where the signatures already appear at the foot of the instrument, shall be signed on the left margin thereof by the person or persons executing the instrument and their witnesses, and all the pages sealed with the notarial seal, and this fact as well as the number of pages shall be stated in the acknowledgment. Where the instrument acknowledged relates to a sale, transfer, mortgage or encumbrance of two or more parcels of land, the number thereof shall likewise be set forth in said acknowledgment. (Emphasis ours)