

## SECOND DIVISION

[ G.R. No. 216120, March 29, 2017 ]

**PHILIPPINE TRUST COMPANY (ALSO KNOWN AS PHILTRUST BANK), PETITIONER, VS. REDENTOR R. GABINETE, SHANGRILA REALTY CORPORATION AND ELISA T. TAN, RESPONDENTS.**

### D E C I S I O N

**PERALTA, J.:**

This is to resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated February 17, 2015 of petitioner Philippine Trust Company (*a.k.a. Philtrust Bank*) that seeks to reverse and set aside the Decision<sup>[1]</sup> dated March 25, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 96009, which reversed the Decision<sup>[2]</sup> dated April 20, 2010 of the Regional Trial Court, Branch 33, Manila in a case for collection of sum of money filed by petitioner against respondents.

The facts follow.

Petitioner Philtrust, a domestic commercial banking corporation duly organized and existing under Philippine laws, filed a complaint on March 8, 2006 against Shangrila Realty Corporation, a domestic corporation duly organized under Philippine laws, together with Elisa Tan and respondent Redentor Gabinete alleging that petitioner granted Shangrila's application for a renewal of its bills discounting line in the amount of Twenty Million Pesos (P20,000,000.00) as shown by a letter-advice dated May 28, 1997 bearing the conformity of Shangrila's duly-authorized representatives, Tan and respondent Gabinete. The said loan was conditioned on the execution of a Continuing Suretyship Agreement dated August 20, 1997, with Shangrila as borrower and respondent Gabinete and Tan as sureties, primarily to guaranty, jointly and severally, the payment of the loan. The following are the terms of the loan:

- a. The amount of Seven Million Two Hundred Thousand Pesos (P7,200,000.00) evidenced by Promissory Note (PN) No. 7626 dated 20 August 1997 with maturity dated on 30 May 1998 and secured by a Real Estate Mortgage (*REM*) dated 6 July 1995 executed by Defendant Shangrila through its Executive Vice-President and duly authorized representative, Defendant Tan, constituted over the properties covered by Transfer Certificate of Title (TCT) Nos. 220865-ind. And 220866-ind, of the Registry of Deeds for the City of Manila, both registered in the name of Defendant Shangrila. x x x
- b. A clean loan in the amount of Six Million Five Hundred Forty Thousand Pesos (P6,540,000.00) evidenced by PN No. 7627 dated 20 August 1997 with maturity date on 30 May 1998, xxx Annex "F" x x x;
- c. A clean loan in the amount of One Million Two Hundred Thousand Pesos (P1,200,000.00) as evidenced by PN No. 7628 dated 20 August

1997 with maturity date on 30 May 1998, xxx Annex "G" xxx; and

d. A clean loan in the amount of Five Million Pessos (P5,000,000.00) evidenced by PN No. 7581 dated 09 July 1997 with maturity date on 03 September 1.997, xxx Annex "H" x x x;<sup>[3]</sup>

The following are the interest rates for the corresponding promissory notes:

- a. PN No. 7626 - 23% per annum;
- b. PN No. 7627 - 25% per annum;
- c. PN No. 7628 - 25% per annum;
- d. PN No. 7581 - 21% per annum.<sup>[4]</sup>

It is provided in the Continuing Suretyship Agreement that the sureties shall jointly and severally guarantee with the borrower the punctual payment at maturity of any and all instruments, loans, advances, credits and/or other obligations, and any and all indebtedness of every kind, due, or owing to Philtrust, and such interest as may accrue and such expenses as may be incurred by Philtrust.

Upon the maturity of the loan, Shangrila failed to pay Philtrust, rendering the entire principal loan, together with accrued interest and other charges, due and demandable. Philtrust repeatedly demanded for payment, but none of the respondents heeded the said demands.

Thus, Philtrust filed a Petition for Extrajudicial Foreclosure of the real estate mortgage wherein Philtrust was the highest bidder at the public auction with a bid of Six Million Pesos (P6,000,000.00). The breakdown of Shangrila's total obligation of P61,357,447.49, as of the date of the auction, is as follows:

PN	
a. No. -	P22,015,535.90
7626	
PN	
b. No. -	20,159,092.93
7627	
PN	
c. No. -	3,741,835.86
7628	
PN	
d. No. -	<u>15,440,982.80</u>
7581	
	P61,357,447.49 <sup>[5]</sup>

Due to the insufficiency of the proceeds of the foreclosure sale to fully satisfy the obligation of Shangrila, the P6,000,000.00 proceeds of the foreclosure sale was applied to PN No. 7626 leaving a deficiency of P16,015,535.90 as of December 16, 2002, and despite repeated demands, respondents failed to fully settle the deficiency under PN No. 7626 and the clean loans under PN No. 7627, PN No. 7628 and PN No. 7581. As of February 28, 2006, respondent's total outstanding obligation to Philtrust is P50,425,059.20, inclusive of interest. Therefore, Philtrust filed the instant case and engaged the services of a counsel incurring the equivalent of 10% of the total amount due as attorney's fees per stipulation in the promissory notes.

Thereafter, on May 29, 2007, Philtrust filed a Motion to Declare Shangrila, Tan and respondent Gabinete in default on the ground that they failed to file an Answer despite service of summons by publication and, on June 26, 2007, the RTC declared them in default and allowed Philtrust to present its evidence *ex parte*.

The RTC, on January 4, 2008, dismissed the complaint without prejudice due to the failure of Philtrust to present its evidence *ex parte*. Thus, Philtrust filed a motion for reconsideration which was granted in an Order dated February 29, 2008.

To testify on the averments in the complaint, Philtrust presented Rosario Cruz Sy and Atty. Jane Laplana Suarez; and as of March 26, 2008, the total loan obligation of defendants amounted to P64,153,827.02. On April 10, 2008, Philtrust made a formal offer of its evidence.

In the meantime, respondent Gabinete, on April 18, 2005, filed a Motion to Lift Order of Default which was granted in an Order dated June 19, 2008. The same respondent was also allowed to cross-examine the witnesses of Philtrust. In his Answer, respondent Gabinete alleged that he ceased to be connected with Shangrila as of 1995 and as far as he knows, Shangrila never started doing business after it was incorporated in March 1994. He also specifically denied under oath the genuineness and due execution of the confirmation letter dated May 28, 1997. According to him, his signature of conformity is a forgery and he has nothing to do with the loans. He further added that the mortgagor in the real estate mortgage dated July 6, 1995, which secured PN No. 7626 dated August 20, 1997 was Tan and the properties mortgaged do not belong to Shangrila. He also averred that PN No. 7581 dated July 9, 1997 appears to be secured by a third party post-dated check and the silence and omission of Philtrust with regard to the identity of the third party evidences bad faith and disregard for the truth. He also asserted that the loan transactions or promissory notes are void because Tan did not have the authority to incur the loan for Shangrila or execute the loan documents. Gabinete claimed that when he received a demand for payment from Philtrust, he immediately replied and denied any participation in the transaction and informed Philtrust that his signature in the Continuing Surety Agreement had been forged, expressing his willingness and readiness to cooperate with any investigation and he did not receive further notices of demand from Philtrust and has no knowledge of the demands made on his co-respondents. Finally, he argued that his refusal to pay as demanded is justified because he had no participation in the loan transactions.

After the cross-examination and re-direct examination of Philtrust's witness and after respondent Gabinete testified, the latter, on March 3, 2009, filed a motion praying that the court direct the National Bureau of Investigation (NBI) to conduct an analysis of respondent Gabinete's signature appearing in the Continuing Suretyship Agreement which the RTC granted in its Order dated March 11, 2009.

A senior document examiner of the NBI, Efren Flores, testified that he evaluated and made a comparative examination of the submitted specimen and the document containing the questioned signature to determine whether they were written by one and the same person and after a thorough examination, it was found that the questioned signatures and the standard sample signatures were not written by one and the same person.

After respondent Gabinete filed his formal offer of evidence on September 28, 2009, the RTC rendered its Decision on April 20, 2010 in favor of the petitioner with the

following dispositive portion:

WHEREFORE, premises considered, defendants Shangrila Realty Corporation, Elisa Tan and Redentor Gabinete are jointly and severally ordered to pay the following amounts, to wit:

1. Sixty-Four Million One Hundred Fifty-Three Thousand Eight Hundred Twenty-Seven and 02/100 Pesos (P64,153,827.02), representing the total deficiency obligation of the defendants under promissory note 7626 and their total outstanding obligations under the promissory notes 7627, 7628 and 7581 computes as of March 26, 2008, plus penalties and interests until fully paid;
2. Attorney's fees of 10% of the total amount due;
3. Costs of suit.

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

Aggrieved, respondent Gabinete elevated the case to the CA. The CA found merit in the appeal and ruled in favor of respondent Gabinete. The dispositive portion of the CA's Decision dated March 25, 2014, reads as follows:

**WHEREFORE**, premises considered, the Appeal is **GRANTED**. The Decision dated April 20, 2010 issued by the Regional Trial Court, Branch 33, Manila, in Civil Case No. 06-114599 is **AFFIRMED** with **MODIFICATION** that defendant-appellant Redentor Gabinete is held not liable to Philtrust Banking Company (also known as Philtrust Bank) for the loan transactions entered into by defendant Shangrila Realty Corporation, or jointly and severally liable to Philtrust Bank with Elisa Tan under the Continuing Surety Agreement.

**SO ORDERED.**<sup>[7]</sup>

According to the CA, the RTC erred in not giving due weight to the findings of the NBI Document Examiner based on its finding that the sample standard signatures submitted by respondent Gabinete to the NBI comprised only of his full signature and not his shortened signature. It further ruled that despite respondent Gabinete's failure to submit a sample of his shortened signature to the NBI, the RTC was not precluded from making a comparison of his questioned signature in the Continuing Suretyship Agreement to his shortened signature in the Articles of Incorporation and the By-laws of Shangrila. Hence, the CA concluded that there was no dearth of evidence to make an intelligent comparison of respondent Gabinete's shortened signature.

Hence, the present petition with the following grounds:

i.

THE APPELLATE COURT COMMITTED GRAVE AND SERIOUS ERROR IN GIVING CREDENCE TO THE FINDING OF THE NBI DOCUMENT EXAMINER, WHEN IT WAS ESTABLISHED THAT THE NBI DOCUMENT EXAMINER DID NOT COMPLY WITH THE REQUIREMENTS IN SIGNATURE ANALYSIS.

ii.

THE APPELLATE COURT COMMITTED GRAVE AND SERIOUS ERROR IN FINDING THAT THE SIGNATURE OF RESPONDENT GABINETE ON THE CONTINUING SURETYSHIP AGREEMENT IS FORGED.

iii.

THE APPELLATE COURT COMMITTED GRAVE AND SERIOUS ERROR IN DISREGARDING THE PRESUMPTION OF REGULARITY ACCORDED TO THE CONTINUING SURETYSHIP AGREEMENT, AS A DULY NOTARIZED DOCUMENT.

iv.

THE APPELLATE COURT COMMITTED GRAVE AND SERIOUS ERROR IN FAILING TO TAKE INTO ACCOUNT THAT RESPONDENT GABINETE AGREED TO BE SOLIDARILY LIABLE WITH SHANGRILA AND MS. TAN WHEN HE SIGNED THE LETTER-ADVICE DATED MAY 28, 1997 (EXHIBIT "A" FOR THE PETITIONER).<sup>[8]</sup>

Petitioner argues that unlike the assessment and analysis made by the RTC on the testimony and findings of the NBI document examiner, the CA failed to recognize that the examination made by the NBI document examiner on the questioned signature of respondent Gabinete was tainted with serious flaws and irregularities that cast serious doubts on the veracity and accuracy of the signature examination and the result thereof. Petitioner also points out that the CA failed to consider the presumption of regularity accorded to the Continuing Suretyship Agreement as a duly notarized document. It further contends that the CA should have given credence on the testimony of the notary public who categorically stated that respondent Gabinete signed the Continuing Suretyship Agreement in her presence.

This Court, on April 6, 2015,<sup>[9]</sup> denied petitioner's petition for failure to sufficiently show that the CA committed any reversible error in the challenged decision and resolution as to warrant the exercise by this Court of its discretionary appellate jurisdiction. However, this Court, on August 26, 2015,<sup>[10]</sup> granted petitioner's motion for reconsideration and reinstated the present petition.

In its Comment/Opposition<sup>[11]</sup> dated June 24, 2015, respondent Gabinete asserts that the conflicting findings of the trial court and the appellate court does not result to an automatic re-examination and re-evaluation of the evidence in the case. He also insists that the CA did not commit grave and serious error in giving credence to the findings of the NBI document examiner which ruled that the signature of respondent Gabinete in the Continuing Suretyship Agreement was forged. He further asserts that the presumption of regularity of a notarized document is a mere presumption that may be rebutted by evidence.

The petition is meritorious.

The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45.<sup>[12]</sup> This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[, ] or conclusive on the parties and upon this [c]ourt"<sup>[13]</sup> when supported by substantial evidence.<sup>[14]</sup> Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court.<sup>[15]</sup>