

## THIRD DIVISION

[ G.R. No. 196118, July 30, 2014 ]

**LEONARDO C. CASTILLO, REPRESENTED BY LENNARD V. CASTILLO, PETITIONER, VS. SECURITY BANK CORPORATION, JRC POULTRY FARMS OR SPOUSES LEON C. CASTILLO, JR., AND TERESITA FLORES-CASTILLO, RESPONDENTS.**

### D E C I S I O N

**PERALTA, J.:**

This is a Petition for Review questioning the Decision<sup>[1]</sup> of the Court of Appeals (CA) dated November 26, 2010, as well as its Resolution<sup>[2]</sup> dated March 17, 2011 in CA-G.R. CV No. 88914. The CA reversed and set aside the Decision<sup>[3]</sup> of the Regional Trial Court (RTC) of San Pablo City, Laguna, Branch 32, dated October 16, 2006 in Civil Case No. SP-5882 (02), and consequently, upheld the validity of the real estate mortgage entered into by respondents spouses Leon C. Castillo, Jr. and Teresita Flores-Castillo, and Security Bank Corporation (SBC).

The facts, as culled from the records, are as follows:

Petitioner Leonardo C. Castillo and respondent Leon C. Castillo, Jr. are siblings. Leon and Teresita Flores-Castillo (*the Spouses Castillo*) were doing business under the name of JRC Poultry Farms. Sometime in 1994, the Spouses Castillo obtained a loan from respondent SBC in the amount of P45,000,000.00. To secure said loan, they executed a real estate mortgage on August 5, 1994 over eleven (11) parcels of land belonging to different members of the Castillo family and which are all located in San Pablo City.<sup>[4]</sup> They also procured a second loan<sup>[5]</sup> amounting to P2,500,000.00, which was covered by a mortgage on a land in Pasay City. Subsequently, the Spouses Castillo failed to settle the loan, prompting SBC to proceed with the foreclosure of the properties. SBC was then adjudged as the winning bidder in the foreclosure sale held on July 29, 1999. Thereafter, they were able to redeem the foreclosed properties, with the exception of the lots covered by Torrens Certificate of Title (TCT) Nos. 28302 and 28297.

On January 30, 2002, Leonardo filed a complaint for the partial annulment of the real estate mortgage. He alleged that he owns the property covered by TCT No. 28297 and that the Spouses Castillo used it as one of the collaterals for a loan without his consent. He contested his supposed Special Power of Attorney (SPA) in Leon's favor, claiming that it is falsified. According to him, the date of issuance of his Community Tax Certificate (CTC) as indicated on the notarization of said SPA is January 11, 1993, when he only secured the same on May 17, 1993. He also assailed the foreclosure of the lots under TCT Nos. 20030 and 10073 which were still registered in the name of their deceased father. Lastly, Leonardo attacked SBC's imposition of penalty and interest on the loans as being arbitrary and unconscionable.

On the other hand, the Spouses Castillo insisted on the validity of Leonardo's SPA. They alleged that they incurred the loan not only for themselves, but also for the other members of the Castillo family who needed money at that time. Upon receipt of the proceeds of the loan, they distributed the same to their family members, as agreed upon. However, when the loan became due, their relatives failed to pay their respective shares such that Leon was forced to use his own money until SBC had to finally foreclose the mortgage over the lots.<sup>[6]</sup>

In a Decision dated October 16, 2006, the RTC of San Pablo City ruled in Leonardo's favor, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff Leonardo C. Castillo and against the defendants SECURITY BANK CORPORATION, and JRC POULTRY FARMS or SPS. LEON C. CASTILLO, JR. and TERESITA FLORES-CASTILLO declaring as null and void the Real Estate Mortgage dated August 5, 1994, the Memorandum of Agreement dated October 28, 1997 and the Certificate of Sale dated August 27, 1999 insofar as plaintiff's property with Transfer Certificate of Title No. T-28297 is concerned. The Security Bank Corporation is likewise ordered to return the ownership of the Transfer Certificate of Title No. T-28297 to plaintiff Leonardo Castillo. Likewise, defendants spouses Leon C. Castillo, Jr. and Teresita Flores-Castillo are hereby ordered to pay plaintiff moral damages in the total amount of P500,000.00 and exemplary damages of P20,000.00. All other claims for damages and attorney's fees are DENIED for insufficiency of evidence.

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

Both parties elevated the case to the CA. On November 26, 2010, the CA denied Leonardo's appeal and granted that of the Spouses Castillo and SBC. It reversed and set aside the RTC Decision, essentially ruling that the August 5, 1994 real estate mortgage is valid. Leonardo filed a Motion for Reconsideration, but the same was denied for lack of merit.

Hence, Leonardo brought the case to the Court and filed the instant Petition for Review. The main issue sought to be resolved here is whether or not the real estate mortgage constituted over the property under TCT No. T-28297 is valid and binding.

The Court finds the petition to be without merit.

As a rule, the jurisdiction of the Court over appealed cases from the CA is limited to the review and revision of errors of law it allegedly committed, as its findings of fact are deemed conclusive. Thus, the Court is not duty-bound to evaluate and weigh the evidence all over again which were already considered in the proceedings below, except when, as in this case, the findings of fact of the CA are contrary to the findings and conclusions of the trial court.<sup>[8]</sup>

The following are the legal requisites for a mortgage to be valid:

- (1) It must be constituted to secure the fulfillment of a principal obligation;
- (2) The mortgagor must be the absolute owner of the thing mortgaged;
- (3) The persons constituting the mortgage must have the free disposal of their property, and in the absence thereof, they should be legally authorized for the purpose.<sup>[9]</sup>

Leonardo asserts that his signature in the SPA authorizing his brother, Leon, to mortgage his property covered by TCT No. T-28297 was falsified. He claims that he was in America at the time of its execution. As proof of the forgery, he focuses on his alleged CTC used for the notarization<sup>[10]</sup> of the SPA on May 5, 1993 and points out that it appears to have been issued on January 11, 1993 when, in fact, he only obtained it on May 17, 1993. But it is a settled rule that allegations of forgery, like all other allegations, must be proved by clear, positive, and convincing evidence by the party alleging it. It should not be presumed, but must be established by comparing the alleged forged signature with the genuine signatures.<sup>[11]</sup> Here, Leonardo simply relied on his self-serving declarations and refused to present further corroborative evidence, saying that the falsified document itself is the best evidence.<sup>[12]</sup> He did not even bother comparing the alleged forged signature on the SPA with samples of his real and actual signature. What he consistently utilized as lone support for his allegation was the supposed discrepancy on the date of issuance of his CTC as reflected on the subject SPA's notarial acknowledgment. On the contrary, in view of the great ease with which CTCs are obtained these days,<sup>[13]</sup> there is reasonable ground to believe that, as the CA correctly observed, the CTC could have been issued with the space for the date left blank and Leonardo merely filled it up to accommodate his assertions. Also, upon careful examination, the handwriting appearing on the space for the date of issuance is different from that on the computation of fees, which in turn was consistent with the rest of the writings on the document.<sup>[14]</sup> He did not likewise attempt to show any evidence that would back up his claim that at the time of the execution of the SPA on May 5, 1993, he was actually in America and therefore could not have possibly appeared and signed the document before the notary.

And even if the Court were to assume, simply for the sake of argument, that Leonardo indeed secured his CTC only on May 17, 1993, this does not automatically render the SPA invalid. The appellate court aptly held that defective notarization will simply strip the document of its public character and reduce it to a private instrument, but nonetheless, binding, provided its validity is established by preponderance of evidence.<sup>[15]</sup> Article 1358 of the Civil Code requires that the form of a contract that transmits or extinguishes real rights over immovable property should be in a public document, yet the failure to observe the proper form does not render the transaction invalid.<sup>[16]</sup> The necessity of a public document for said contracts is only for convenience; it is not essential for validity or enforceability.<sup>[17]</sup> Even a sale of real property, though not contained in a public instrument or formal writing, is nevertheless valid and binding, for even a verbal contract of sale or real estate produces legal effects between the parties.<sup>[18]</sup> Consequently, when there is a defect in the notarization of a document, the clear and convincing evidentiary

standard originally attached to a duly-notarized document is dispensed with, and the measure to test the validity of such document is preponderance of evidence.<sup>[19]</sup>

Here, the preponderance of evidence indubitably tilts in favor of the respondents, still making the SPA binding between the parties even with the aforementioned assumed irregularity. There are several telling circumstances that would clearly demonstrate that Leonardo was aware of the mortgage and he indeed executed the SPA to entrust Leon with the mortgage of his property. Leon had in his possession all the titles covering the eleven (11) properties mortgaged, including that of Leonardo.<sup>[20]</sup> Leonardo and the rest of their relatives could not have just blindly ceded their respective TCTs to Leon.<sup>[21]</sup> It is likewise ridiculous how Leonardo seemed to have been totally oblivious to the status of his property for eight (8) long years, and would only find out about the mortgage and foreclosure from a nephew who himself had consented to the mortgage of his own lot.<sup>[22]</sup> Considering the lapse of time from the alleged forgery on May 5, 1993 and the mortgage on August 5, 1994, to the foreclosure on July 29, 1999, and to the supposed discovery in 2001, it appears that the suit is a mere afterthought or a last-ditch effort on Leonardo's part to extend his hold over his property and to prevent SBC from consolidating ownership over the same. More importantly, Leonardo himself admitted on cross-examination that he granted Leon authority to mortgage, only that, according to him, he thought it was going to be with China Bank, and not SBC.<sup>[23]</sup> But as the CA noted, there is no mention of a certain bank in the subject SPA with which Leon must specifically deal. Leon, therefore, was simply acting within the bounds of the SPA's authority when he mortgaged the lot to SBC.

True, banks and other financing institutions, in entering into mortgage contracts, are expected to exercise due diligence.<sup>[24]</sup> The ascertainment of the status or condition of a property offered to it as security for a loan must be a standard and indispensable part of its operations.<sup>[25]</sup> In this case, however, no evidence was presented to show that SBC was remiss in the exercise of the standard care and prudence required of it or that it was negligent in accepting the mortgage.<sup>[26]</sup> SBC could not likewise be faulted for relying on the presumption of regularity of the notarized SPA when it entered into the subject mortgage agreement.

Finally, the Court finds that the interest and penalty charges imposed by SBC are just, and not excessive or unconscionable.

Section 47 of The General Banking Law of 2000<sup>[27]</sup> thus provides:

**Section 47. Foreclosure of Real Estate Mortgage.** - In the event of foreclosure, whether judicially or extra-judicially, of any mortgage on real estate which is security for any loan or other credit accommodation granted, the mortgagor or debtor whose real property has been sold for the full or partial payment of his obligation shall have the right within one year after the sale of the real estate, **to redeem the property by paying the amount due under the mortgage deed, with interest thereon at the rate specified in the mortgage, and all the costs and expenses incurred by the bank or institution** from the sale and custody of said property less the income derived therefrom. However, the