

FIRST DIVISION

[G.R. No. 179909, January 25, 2010]

FAR EAST BANK AND TRUST COMPANY (NOW BANK OF THE PHILIPPINE ISLANDS) AND ROLANDO BORJA, DEPUTY SHERIFF, PETITIONERS, VS. SPS. ERNESTO AND LEONOR C. CAYETANO, RESPONDENTS.

D E C I S I O N

VILLARAMA, JR., J.:

This is a petition for review^[1] under Rule 45 of the 1997 Rules of Civil Procedure, as amended, of the December 8, 2006 Decision^[2] of the Court of Appeals in CA-G.R. CV No. 76382 which affirmed the May 24, 2002 Decision^[3] of the Regional Trial Court (RTC) of Naga City, Branch 61 and dismissed petitioner Far East Bank and Trust Company's appeal. The appellate court likewise denied its motion for reconsideration in a Resolution^[4] dated September 6, 2007.

The undisputed facts of the case are summarized as follows:

Respondent Leonor C. Cayetano (Cayetano) executed a special power of attorney in favor of her daughter Teresita C. Tabing (Tabing) authorizing her to contract a loan from petitioner in an amount not more than three hundred thousand pesos (P300,000.00) and to mortgage her two (2) lots located in Barangay Carolina, Naga City with Transfer Certificate of Title Nos. 12304 and 11621.^[5] For the approval of the loan, Cayetano also executed an affidavit of non-tenancy.^[6] Petitioner loaned Tabing one hundred thousand pesos (P100,000.00) secured by two (2) promissory notes and a real estate mortgage over Cayetano's two (2) properties.^[7] The mortgage document was signed by Tabing and her husband as mortgagors in their individual capacities, without stating that Tabing was executing the mortgage contract for and in behalf of the owner (Cayetano).^[8]

Petitioner foreclosed the mortgage for failure of the respondents and the spouses Tabing to pay the loan. A notice of public auction sale, to be conducted on September 18, 1991,^[9] was sent to respondents. The latter's lawyer responded with a letter^[10] to petitioner requesting that the public auction be postponed. Respondents' letter went unheeded and the public auction was held as scheduled wherein the subject properties were sold to petitioner for one hundred sixty thousand pesos (P160,000.00).^[11] Subsequently, petitioner consolidated its title and obtained new titles in its name after the redemption period lapsed without respondents taking any action.

More than five (5) years later, Tabing, on behalf of Cayetano, sent a letter dated September 10, 1996 to petitioner expressing the intent to repurchase the properties

for two hundred fifty thousand pesos (P250,000.00) with proposed terms of payment.^[12] Petitioner refused the offer stating that the minimum asking price for the properties was five hundred thousand pesos (P500,000.00) and it was not amenable to the proposed terms of payment. Petitioner nevertheless gave respondents the chance to buy back the properties by joining a bidding to be set in some future date.^[13] However, respondents filed on December 18, 1996 a complaint for annulment of mortgage and extrajudicial foreclosure of the properties with damages in the RTC of Naga City. Respondents sought nullification of the real estate mortgage and extrajudicial foreclosure sale, as well as the cancellation of petitioner's title over the properties.^[14]

After trial, the RTC rendered judgment in favor of the respondents, holding that the principal (Cayetano) cannot be bound by the real estate mortgage executed by the agent (Tabing) unless it is shown that the same was made and signed in the name of the principal; hence, the mortgage will bind the agent only. The trial court also found that there was no compliance with the requirement of publication of the foreclosure sale in a newspaper of general circulation as provided in Act No. 3135, as amended. Such requisite must be strictly complied with as any slight deviation therefrom will render the sale voidable.^[15]

The Court of Appeals affirmed the RTC's ruling. It held that it must be shown that the real estate mortgage was executed by the agent on-behalf of the principal, otherwise the agent may be deemed to have acted on his own and the mortgage is void. However, the appellate court further declared that the principal loan agreement was not affected, which had become an unsecured credit. The Court of Appeals denied petitioner's motion for reconsideration.^[16]

Hence, the present petition.

The only issue before us is whether or not the principal is bound by the real estate mortgage executed by the authorized agent in her own name without indicating the principal.

The issue is not novel. The RTC and the Court of Appeals are both correct in holding that our decision in *The Philippine Sugar Estates Development Co., Ltd., Inc. v. Poizat, et al.*^[17] (Poizat Case), as reiterated in the case of *Rural Bank of Bombon (Camarines Sur), Inc. v. Court of Appeals*^[18] (Bombon Case), finds application in the instant case. The factual circumstances of said cases are similar to the case at bar, where an authorized agent executed a real estate mortgage on the principal's property in her own name without indicating that she was acting on behalf of the principal.

In the Poizat Case, Gabriela Andrea de Coster (Coster) executed a general power of attorney authorizing her husband, Juan Poizat (Poizat), to obtain a loan and to secure the same with mortgage, pledge or personal securities. Poizat obtained a credit of ten thousand (10,000) Pounds Sterling from petitioner therein, and executed a mortgage upon the real property of his wife. Although the provisions of the real estate mortgage mentioned that it was entered also in Poizat's capacity as attorney-in-fact of Coster, Poizat signed the contract in his own name without any indication that he also signed it as the attorney-in-fact of his wife. For failure to pay

the loan, the petitioner foreclosed on the mortgage but this was opposed by Coster. The Court ruled on the legal force and effect of the real estate mortgage in question, by whom and for whom it was executed, and whether or not it was void as to Coster, in this wise:

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.** [EMPHASIS SUPPLIED]

Thus, while Poizat may have had the authority to borrow money and mortgage the real property of his wife, the law specifies how and in what manner it must be done, and the stubborn fact remains that, as to the transaction in question, that power was never exercised. The mortgage in question was executed by him and him only, and for such reason, it is not binding upon the wife, and as to her, it is null and void.

In *Bombon*, respondent Ederlinda M. Gallardo (Gallardo) authorized Rufino S. Aquino (Aquino) to contract a loan from any bank and secure it with mortgage on her property. Gallardo also delivered her owner's copy of Transfer Certificate of Title to Aquino. Aquino obtained a loan from petitioner bank and executed a deed of real estate mortgage without indicating that he was acting in behalf of Gallardo. At the beginning of the mortgage deed, it was mentioned that the mortgage was executed by Aquino, attorney-in-fact of Gallardo, together with a description of his legal capacity to contract. Gallardo and her husband filed a complaint for annulment of mortgage against the petitioner and Aquino and one (1) of the grounds raised was that the mortgagor in the deed was Aquino instead of Gallardo. The trial court ordered the suspension of the foreclosure of the real estate mortgage until after the decision in the annulment case shall have become final and executory. The dismissal of the complaint for annulment of mortgage was appealed to the Court of Appeals which reversed the trial court and declared the mortgage contract void and unenforceable against Gallardo. Upon elevation to this Court, we held that "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 M. 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."^[19]

In the fairly recent case of *Gozun v. Mercado*,^[20] respondent Mercado denied having authorized his sister-in-law (Lilian) to borrow money from petitioner who gave her "cash advance" of P253,000.00 allegedly for allowances of poll watchers. Petitioner sued respondent to collect on various sums due from the latter including