

THIRD DIVISION

[G.R. No. 184843, July 30, 2010]

VIRGILIO DYCOCO, HEREIN REPRESENTED BY HIS ATTORNEYS-IN-FACT CRISTINO C. GRAFILO, JOSE C. GRAFILO AND ADOLFO C. GRAFILO, AND CRISTINO C. GRAFILO, JOSE C. GRAFILO AND ADOLFO C. GRAFILO FOR AND IN THEIR OWN BEHALF, PETITIONERS, VS. ADELAIDA ORINA JOINED BY HER HUSBAND GERMAN R. ORINA AS REPRESENTED BY HER ATTORNEY-IN-FACT EVELYN M. SAGALONGOS AND FOR IN THE LATTER'S OWN BEHALF, RESPONDENTS.

D E C I S I O N

CARPIO MORALES, J.:

On petition for review on *certiorari* is the November 29, 2007 Decision of the Court of Appeals^[1] affirming the dismissal of the action for annulment of real estate mortgage and transfer certificate of title with damages.

Virgilio Dycoco (Dycoco) is alleged to have executed on October 9, 1995 a "Real Estate Mortgage with Special Power to Sell Mortgaged Property without Judicial Proceedings" (REM) in favor of respondent Adelaida Orina (Adelaida), covering a parcel of land located in Sta. Cruz, Manila and registered under Transfer Certificate of Title (TCT) No. 105730 in Dycoco's name. The REM was notarized on even date by Notary Public Arwin Juco Sinaguinan.

By Adelaida's claim, Dycoco was indebted to her in the amount of P250,000.00, payable in six months, to bear monthly interest rate of five percent (5%), to secure which Dycoco executed the REM.

For Dycoco's alleged failure to pay his obligation, Adelaida extrajudicially foreclosed the REM and as no redemption was made within the reglementary period, Dycoco's TCT was cancelled and, in its stead, TCT No. 243525 was issued in her name.

Dycoco's attorneys-in-fact-brothers-in-law Cristino, Jose and Adolfo, all surnamed Grafilo, who occupy the property covered by the REM as caretakers/tenants, did not turn-over its possession to Adelaida, hence, she, joined by her husband represented by her attorney-in-fact Evelyn Sagalongos (Evelyn), filed a complaint for ejectment against them before the Metropolitan Trial Court (MeTC) of Manila.

Upon receiving notice of the complaint, Dycoco, represented by his attorneys-in-fact, filed a complaint for annulment of the REM and transfer certificate of title with damages, docketed as Civil Case No. 01100522, against Adelaida and her husband German Orina represented by Evelyn before the Regional Trial Court (RTC) of Manila.

Dycoco's attorneys-in-fact claimed that Dycoco's signature on the REM was forged, to prove which they presented various documents that Dycoco was working in the United States of America as a licensed physician on the alleged date of execution of the REM. They also presented Dycoco's U.S. Passport, personal checks, Special Power of Attorney and Affidavit; and a Certification from the Clerk of Court of RTC Manila that the office does not possess a copy of the REM, Notary Public Sinaguinan having not submitted her notarial report for October 1995.

Herein respondents Adelaida et al., maintaining the due execution of the REM, presented Evelyn who testified on a *photocopy* of the REM.

By Decision of May 23, 2005, Branch 15 of the Manila RTC dismissed Dycoco's complaint, holding that:

Plaintiff, [Dycoco], through the testimony of their (*sic*) lone witness as well as their (*sic*) documentary exhibits tried to show that it was not . . . Dycoco who mortgaged the said property. Cristino Grafilo even testified that their brother Miguel, admitted to having stole (*sic*) the title and have (*sic*) it mortgaged. Plaintiffs (*sic*), however, failed to establish that the mortgagor, (*sic*) defendant Adelaida Orina, knew it was not Virgilio Dycoco who mortgaged the same.^[2] (underscoring supplied)

By the assailed Decision, the Court of Appeals affirmed the trial court's dismissal of Dycoco's complaint, it holding that albeit Dycoco's questioned signature appearing on the REM and the documentary evidence presented by his attorneys-in-fact bear "striking differences," since Dycoco was not presented on the witness stand to establish the genuineness, due execution and contents of the documentary evidence, no probative value can be ascribed thereto.

In not crediting evidentiary weight on Dycoco's U.S. passport showing that he was *not* in the Philippines when the REM was executed, the appellate court held:

. . . [T]he existence, genuineness, due execution and contents of Exhibit "I" have not been properly established. Again, the identification made by plaintiff-appellant Cristino Grafilo (*sic*) will not suffice since he is not privy to its issuance and execution. The plaintiff-appellants (*sic*) should have presented a person competent to testify to establish the genuineness and contents of Exhibit "I" like an officer from the Bureau of Immigration. But the plaintiff-appellants (*sic*) failed to do so. Thus, this court finds the stance of plaintiff-appellants (*sic*) that Virgilio Dycoco was out of the country at the time of the execution of the questioned deed unsupported.

^[3]

The motion for reconsideration of Dycoco's attorneys-in-fact having been denied by Resolution of October 3, 2008, the present petition for review was filed.

A perusal of the REM which is, as stated earlier, a merely *photocopy*, shows the incompleteness of the acknowledgment portion. It reads:

Republic of the Philippines)
City of Manila) S.S.

BEFORE ME, a Notary Public for and in the City of Manila, this 9th day of October 1995, personally came and appeared _____
(sic) with Res. Cert. No. : 12262297 C issued on 27 July 95 at Manila and Tax Account No.: 110-783-724 known to me and to me known to be the same person who executed the foregoing instrument which he acknowledged before me as his free and voluntary act and deed.^[4]

As the above-quoted acknowledgment shows, the name of the person who personally appeared before the notary public is not stated.

Documents acknowledged before a notary public, except last wills and testaments, are public documents.^[5] Since the subject REM was not properly notarized, its public character does not hold.

Since the REM is not a public document, it is subject to the requirement of proof for private documents under Section 20, Rule 132, which provides:

Section 20. Proof of private document. - Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

- (a) By anyone who saw the document executed or written; or
- (b) By evidence of the genuineness of the signature or handwriting of the maker.

Any other private document need only be identified as that which it is claimed to be. (underscoring supplied)

It was thus incumbent upon Adelaida to prove that Dycoco's signature is genuine. As stated earlier, a mere *photocopy* of the REM was presented. It is axiomatic that when the genuineness of signatures on a document is sought to be proved or disproved through comparison of standard signatures with the questioned signature, the original thereof must be presented.^[6] Why respondents did not present the original, they did not explain. Why they did not present Adelaida, who must have been present at the execution of the REM as her purported signature appears thereon, or the notary public, or any of the witnesses, neither did they explain. Sec. 5 of Rule 130 which reads:

SEC. 5. *When original document is unavailable.* -- When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of the unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.