

THIRD DIVISION

[G.R. NO. 156249, March 07, 2007]

**MARIANO RIVERA AND JOSE RIVERA, PETITIONERS, VS.
EMERITO AQUINO TURIANO AND REGISTER OF DEEDS OF
PARAÑAQUE CITY, METRO MANILA, RESPONDENTS.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court questioning the Decision^[1] dated September 28, 2001 promulgated by the Court of Appeals (CA) in CA-G.R. CV No. 59070, which reversed the Decision dated February 2, 1997 of the Regional Trial Court (RTC), Branch 258, Parañaque City, docketed as LRC Case No. 94-0053; and the CA Resolution^[2] dated November 21, 2002 which denied the petitioners' Motion for Reconsideration.

This case originated from a Complaint for Cancellation of Encumbrance on Transfer Certificate of Title No. S-5667 with Claim for Damages filed by Mariano Rivera and Jose Rivera (petitioners) against Emerito Aquino Turiano (private respondent).

The facts of the case, as found by the RTC and summarized by the CA, are as follows:

In dispute is a parcel of land situated in San Dionisio, Parañaque City containing an area of one thousand (1000) square meters and covered by TCT No. S-5667. The property is registered in the name of Paz Aquino, [private respondent's] mother. [Petitioner] Mariano Rivera is a businessman engaged in gasoline business.

It appears that a certain Manuel Pelaez obtained a loan from [petitioner] Mariano Rivera in the amount of two hundred forty thousand pesos (P240,000.00) on February 18, 1987 (Exh. "C"). The loan is payable within a period of fifteen days, subject to renewal. As security for the loan, a Deed of Real Estate Mortgage was executed by Manuel Pelaez over the subject property on the strength of a Special Power of Attorney allegedly executed by Paz Aquino on January 29, 1987 (Exh. "D"). The Special Power of Attorney was not inscribed on the title. The owner's duplicate copy was delivered to [petitioner] Mariano Rivera by Manuel Pelaez.

It was only in 1991 that [petitioner] Mariano tried to cause the registration of the Deed of Mortgage before the Register of Deeds of Parañaque [when he] learned that [private respondent] executed an affidavit of loss dated December 28, 1990 (Exh. "1") and annotated^[3] on TCT No. S-5667, attesting to the fact of loss of the owner's duplicate

copy of the said title. The Register of Deeds refused to cause the registration of the Deed of Mortgage in view of the earlier inscription of the affidavit of loss.

Claiming that the affidavit of loss was maliciously and fraudulently executed, [petitioners] instituted the present action.

Upon the other hand, [private respondent] asserted that his mother, Paz Aquino, owned a parcel of land covered by TCT No. S-5667. After her death on August 31, 1990, they searched for the title in order to pay the real estate taxes, but they failed to find it. Hence, he executed an affidavit of loss. It was his mother [who] solely administered her property during her lifetime. In 1986, his mother mortgaged the property through Special Power of Attorney dated January 30, 1986 in favor of Solid Management. It was duly annotated in the title under entry numbers 86-46234 (Exh. "2") and No. 86-54648 (Exh. "2-B"). The second mortgage was executed in favor of Agricultural Feeds whereby his mother executed a Special Power of Attorney in favor of Commercial Bank of Manila in an instrument dated May 2, 1986. It was annotated in the title under entry Numbers 86-46226 (Exh. "2-A") and [no.] 86-54649 (Exh. "2-C").

[Private respondent] claimed that the signature appearing in the Special Power of Attorney purportedly executed by one Paz Aquino in favor of Manuel Pelaez does not belong to his mother because he is familiar with her signature.

The trial court in its Order, dated March 18, 1996, granted the motion of plaintiff-appellee for partial summary judgment. The affidavit of loss which was annotated on the back of the title was declared null and void.

[4]

On February 2, 1997, the RTC rendered its Decision, the dispositive portion of which reads:

WHEREFORE, viewed in the light of the foregoing, the Register of Deeds of Parañaque, Metro Manila is hereby ordered to cancel the annotation appearing under Entry No. 4938^[5] on Transfer Certificate of Title No. S-5667 and that the Real Estate Mortgage with the accompanying Special Power of Attorney entered into by the plaintiffs and Attorney-In-Fact, Manuel Pelaez be registered and annotated at the back of the aforesaid title after payment of its lawful fees.

No pronouncement as to costs.

SO ORDERED.^[6]

The RTC held that the petitioners were able to show that the photocopy of the Special Power of Attorney (Exhibits "D" and "3") amounted to secondary evidence and that the said exhibit was positively identified by no less than Atty. Ramon N. Nalipay, Jr., the one who notarized its duplicate original on January 29, 1987; that as proof thereof he brought along with him a copy of his notarial register for 1987 showing therein the entry under Doc. No. 425, Page No. 86, Book No. 3; that his

testimony was not tainted by any cloud of suspicion; that the petitioners are mortgagees in good faith; that the private respondent merely submitted self-serving and uncorroborated allegations that the Special Power of Attorney executed by Paz Aquino in favor of Manuel Pelaez is a forgery; that while the signatures of Paz Aquino as they appear on the Contract of Lease and Deed of Absolute Sale " documents proffered by private respondent for purposes of comparison " reveal through naked eyes the differences in the signatures, this fact alone, however, is not sufficient to sustain the defense that the signature appearing in the Special Power of Attorney is a forgery; that the mere variance of the signatures cannot be considered as conclusive proof of forgery; that forgery should be proved by clear and convincing evidence and whoever alleges it has the burden of proving the same; that it is necessary to determine whether the variation is due to the operation of a different personality or is only an inevitable variation in the genuine writing of the same writer; and that it is also necessary to decide whether the resemblance is the result of skillful imitation or habitual and characteristic resemblance which naturally appears in genuine writing.

Private respondent appealed to the CA. On September 28, 2001, the CA rendered the herein assailed Decision, the dispositive portion of which reads:

WHEREFORE, the appealed judgment is REVERSED and a new one is entered:

(a) Dismissing the petition.

(b) Declaring null and void the Special Power of Attorney in favor of Manuel Pelaez and the Deed of Mortgage executed by Manuel Pelaez in favor of [petitioners] Mariano and Jose Rivera.

(c) Ordering the Register of Deeds of Parañaque to cancel the annotations appearing on TCT No. S-5667 under Entry numbers 6984 on the Special Power of Attorney executed in favor of Manuel Pelaez and 6985 [sic] or the Deed of Mortgage executed by Manuel Pelaez in favor of [the petitioners].

(d) Ordering [petitioners] to surrender possession of the original owner's duplicate copy of TCT No. S-5667 to [private respondent].

SO ORDERED. ^[7]

The CA held that the differences in the signature of Paz Aquino on the Special Power of Attorney as compared to her signatures on the Contract of Lease (Exhibit "4") and Deed of Absolute Sale (Exhibit "5") are clearly discernible through the naked eye, and, hence, the Special Power of Attorney is a forgery; that it is not necessary for handwriting experts to testify as to the authenticity of the signature because the question of forgery is not a highly technical issue; and, in view of these reasons, the mortgage allegedly executed by Manuel Pelaez in favor of the petitioners is void.

On November 21, 2002, the CA denied petitioners' Motion for Reconsideration.

The petitioners are now before this Court with the following assignment of errors: