

## THIRD DIVISION

[ G.R. NO. 171460, July 27, 2007 ]

**LILLIAN N. MERCADO, CYNTHIA M. FEKARIS, AND JULIAN MERCADO, JR., REPRESENTED BY THEIR ATTORNEY-IN-FACT, ALFREDO M. PEREZ, PETITIONERS, VS. ALLIED BANKING CORPORATION, RESPONDENT.**

### DECISION

#### CHICO-NAZARIO, J.:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, filed by petitioners Lillian N. Mercado, Cynthia M. Fekaris and Julian Mercado, Jr., represented by their Attorney-In-Fact, Alfredo M. Perez, seeking to reverse and set aside the Decision<sup>[1]</sup> of the Court of Appeals dated 12 October 2005, and its Resolution<sup>[2]</sup> dated 15 February 2006 in CA-G.R. CV No. 82636. The Court of Appeals, in its assailed Decision and Resolution, reversed the Decision<sup>[3]</sup> of the Regional Trial Court (RTC) of Quezon City, Branch 220 dated 23 September 2003, declaring the deeds of real estate mortgage constituted on TCT No. RT-18206 (106338) null and void. The dispositive portion of the assailed Court of Appeals Decision thus reads:

**WHEREFORE**, the appealed decision is REVERSED and SET ASIDE, and a new judgment is hereby entered dismissing the [petitioners] complaint.

<sup>[4]</sup>

Petitioners are heirs of Perla N. Mercado (Perla). Perla, during her lifetime, owned several pieces of real property situated in different provinces of the Philippines.

Respondent, on the other hand, is a banking institution duly authorized as such under the Philippine laws.

On 28 May 1992, Perla executed a Special Power of Attorney (SPA) in favor of her husband, Julian D. Mercado (Julian) over several pieces of real property registered under her name, authorizing the latter to perform the following acts:

1. To act in my behalf, to sell, alienate, mortgage, lease and deal otherwise over the different parcels of land described hereinafter, to wit:
  - a) Calapan, Oriental Mindoro Properties covered by Transfer Certificates of Title Nos. T-53618 - 3,522 Square Meters, T-46810 - 3,953 Square Meters, T-53140 - 177 Square Meters, T-21403 - 263 square Meters, T- 46807 - 39 Square Meters of the Registry of Deeds of Oriental Mindoro;
  - b) Susana Heights, Muntinlupa covered by Transfer

Certificates of Title Nos. T-108954 – 600 Square Meters and **RT-106338 – 805 Square Meters of the Registry of Deeds of Pasig (now Makati)**;

c) Personal property – 1983 Car with Vehicle Registration No. R-16381; Model 1983; Make – Toyota; Engine No. T- 2464

2. To sign for and in my behalf any act of strict dominion or ownership any sale, disposition, mortgage, lease or any other transactions including quit-claims, waiver and relinquishment of rights in and over the parcels of land situated in General Trias, Cavite, covered by Transfer Certificates of Title Nos. T-112254 and T-112255 of the Registry of Deeds of Cavite, in conjunction with his co-owner and in the person ATTY. AUGUSTO F. DEL ROSARIO;
3. To exercise any or all acts of strict dominion or ownership over the above-mentioned properties, rights and interest therein. (Emphasis supplied.)

On the strength of the aforesaid SPA, Julian, on 12 December 1996, obtained a loan from the respondent in the amount of ₱3,000,000.00, secured by real estate mortgage constituted on **TCT No. RT-18206 (106338)** which covers a parcel of land with an area of 805 square meters, registered with the Registry of Deeds of Quezon City (subject property).<sup>[5]</sup>

Still using the subject property as security, Julian obtained an additional loan from the respondent in the sum of ₱5,000,000.00, evidenced by a Promissory Note<sup>[6]</sup> he executed on 5 February 1997 as another real estate mortgage (REM).

It appears, however, that there was no property identified in the SPA as **TCT No. RT – 18206 (106338)** and registered with the **Registry of Deeds of Quezon City**. What was identified in the SPA instead was the property covered by **TCT No. RT-106338** registered with the **Registry of Deeds of Pasig**.

Subsequently, Julian defaulted on the payment of his loan obligations. Thus, respondent initiated extra-judicial foreclosure proceedings over the subject property which was subsequently sold at public auction wherein the respondent was declared as the highest bidder as shown in the Sheriff's Certificate of Sale dated 15 January 1998.<sup>[7]</sup>

On 23 March 1999, petitioners initiated with the RTC an action for the annulment of REM constituted over the subject property on the ground that the same was not covered by the SPA and that the said SPA, at the time the loan obligations were contracted, no longer had force and effect since it was previously revoked by Perla on 10 March 1993, as evidenced by the Revocation of SPA signed by the latter.<sup>[8]</sup>

Petitioners likewise alleged that together with the copy of the Revocation of SPA, Perla, in a Letter dated 23 January 1996, notified the Registry of Deeds of Quezon City that any attempt to mortgage or sell the subject property must be with her full consent documented in the form of an SPA duly authenticated before the Philippine Consulate General in New York. <sup>[9]</sup>

In the absence of authority to do so, the REM constituted by Julian over the subject property was null and void; thus, petitioners likewise prayed that the subsequent extra-judicial foreclosure proceedings and the auction sale of the subject property be also nullified.

In its Answer with Compulsory Counterclaim,<sup>[10]</sup> respondent averred that, contrary to petitioner's allegations, the SPA in favor of Julian included the subject property, covered by one of the titles specified in paragraph 1(b) thereof, **TCT No. RT-106338** registered with the **Registry of Deeds of Pasig (now Makati)**. The subject property was purportedly registered previously under **TCT No. T-106338**, and was only subsequently reconstituted as **TCT RT-18206 (106338)**. Moreover, **TCT No. T-106338** was actually registered with the **Registry of Deeds of Quezon City** and not before the **Registry of Deeds of Pasig (now Makati)**. Respondent explained that the discrepancy in the designation of the Registry of Deeds in the SPA was merely an error that must not prevail over the clear intention of Perla to include the subject property in the said SPA. In sum, the property referred to in the SPA Perla executed in favor of Julian as covered by **TCT No. 106338** of the **Registry of Deeds of Pasig (now Makati)** and the subject property in the case at bar, covered by **RT - 18206 (106338)** of the **Registry of Deeds of Quezon City**, are one and the same.

On 23 September 2003, the RTC rendered a Decision declaring the REM constituted over the subject property null and void, for Julian was not authorized by the terms of the SPA to mortgage the same. The court *a quo* likewise ordered that the foreclosure proceedings and the auction sale conducted pursuant to the void REM, be nullified. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the [herein petitioners] and against the [herein respondent] Bank:

1. Declaring the Real Estate Mortgages constituted and registered under Entry Nos. PE-4543/RT-18206 and 2012/RT-18206 annotated on TCT No. RT-18206 (106338) of the Registry of Deeds of Quezon City as NULL and VOID;
2. Declaring the Sheriff's Sale and Certificate of Sale under FRE No. 2217 dated January 15, 1998 over the property covered by TCT No. RT-18206 (106338) of the Registry of Deeds of Quezon City as NULL and VOID;
3. Ordering the defendant Registry of Deeds of Quezon City to cancel the annotation of Real Estate Mortgages appearing on Entry Nos. PE-4543/RT-18206 and 2012/RT-18206 on TCT No. RT-18206 (106338) of the Registry of Deeds of Quezon City;
4. Ordering the [respondent] Bank to deliver/return to the [petitioners] represented by their attorney-in-fact Alfredo M. Perez, the original Owner's Duplicate Copy of TCT No. RT-18206 (106338) free from the encumbrances referred to above; and

5. Ordering the [respondent] Bank to pay the [petitioners] the amount of ₱100,000.00 as for attorney's fees plus cost of the suit.

The other claim for damages and counterclaim are hereby DENIED for lack of merit.<sup>[11]</sup>

Aggrieved, respondent appealed the adverse Decision before the Court of Appeals.

In a Decision dated 12 October 2005, the Court of Appeals reversed the RTC Decision and upheld the validity of the REM constituted over the subject property on the strength of the SPA. The appellate court declared that Perla intended the subject property to be included in the SPA she executed in favor of Julian, and that her subsequent revocation of the said SPA, not being contained in a public instrument, cannot bind third persons.

The Motion for Reconsideration interposed by the petitioners was denied by the Court of Appeals in its Resolution dated 15 February 2006.

Petitioners are now before us assailing the Decision and Resolution rendered by the Court of Appeals raising several issues, which are summarized as follows:

- I. WHETHER OR NOT THERE WAS A VALID MORTGAGE CONSTITUTED OVER SUBJECT PROPERTY.
- II. WHETHER OR NOT THERE WAS A VALID REVOCATION OF THE SPA.
- III. WHETHER OR NOT THE RESPONDENT WAS A MORTGAGEE-IN-GOOD FAITH.

For a mortgage to be valid, Article 2085 of the Civil Code enumerates the following essential requisites:

Art. 2085. The following requisites are essential to the contracts of pledge and mortgage:

- (1) That they be constituted to secure the fulfillment of a principal obligation;
- (2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged;
- (3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose.

Third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property.

In the case at bar, it was Julian who obtained the loan obligations from respondent which he secured with the mortgage of the subject property. The property mortgaged was owned by his wife, Perla, considered a third party to the loan obligations between Julian and respondent. It was, thus, a situation recognized by the last paragraph of Article 2085 of the Civil Code afore-quoted. However, since it

was not Perla who personally mortgaged her own property to secure Julian's loan obligations with respondent, we proceed to determining if she duly authorized Julian to do so on her behalf.

Under Article 1878 of the Civil Code, a special power of attorney is necessary in cases where real rights over immovable property are created or conveyed.<sup>[12]</sup> In the SPA executed by Perla in favor of Julian on 28 May 1992, the latter was conferred with the authority to "sell, alienate, **mortgage**, lease and deal otherwise" the different pieces of real and personal property registered in Perla's name. The SPA likewise authorized Julian "[t]o exercise any or **all acts of strict dominion or ownership**" over the identified properties, and rights and interest therein. The existence and due execution of this SPA by Perla was not denied or challenged by petitioners.

There is no question therefore that Julian was vested with the power to mortgage the pieces of property identified in the SPA. However, as to whether the subject property was among those identified in the SPA, so as to render Julian's mortgage of the same valid, is a question we still must resolve.

Petitioners insist that the subject property was not included in the SPA, considering that it contained an exclusive enumeration of the pieces of property over which Julian had authority, and these include only: (1) TCT No. T-53618, with an area of 3,522 square meters, located at Calapan, Oriental Mindoro, and registered with the Registry of Deeds of Oriental Mindoro; (2) TCT No. T-46810, with an area of 3,953 square meters, located at Calapan, Oriental Mindoro, and registered with the Registry of Deeds of Oriental Mindoro; (3) TCT No. T-53140, with an area of 177 square meters, located at Calapan, Oriental Mindoro, and registered with the Registry of Deeds of Oriental Mindoro; (4) TCT No. T-21403, with an area of 263 square meters, located at Calapan, Oriental Mindoro, and registered with the Registry of Deeds of Oriental Mindoro; (5) TCT No. T- 46807, with an area of 39 square meters, located at Calapan, Oriental Mindoro, and registered with the Registry of Deeds of Oriental Mindoro; (6) TCT No. T-108954, with an area of 690 square meters and located at Susana Heights, Muntinlupa; (7) **RT-106338** - 805 Square Meters registered with the **Registry of Deeds of Pasig (now Makati)**; and (8) Personal Property consisting of a 1983 Car with Vehicle Registration No. R-16381, Model - 1983, Make - Toyota, and Engine No. T- 2464. Nowhere is it stated in the SPA that Julian's authority extends to the subject property covered by **TCT No. RT – 18206 (106338)** registered with the Registry of Deeds of **Quezon City**. Consequently, the act of Julian of constituting a mortgage over the subject property is unenforceable for having been done without authority.

Respondent, on the other hand, mainly hinges its argument on the declarations made by the Court of Appeals that there was no property covered by **TCT No. 106338** registered with the **Registry of Deeds of Pasig (now Makati)**; but there exists a property, the subject property herein, covered by **TCT No. RT-18206 (106338)** registered with the **Registry of Deeds of Quezon City**. Further verification would reveal that **TCT No. RT-18206** is merely a reconstitution of **TCT No. 106338**, and the property covered by both certificates of title is actually situated in Quezon City and not Pasig. From the foregoing circumstances, respondent argues that Perla intended to include the subject property in the SPA, and the failure of the instrument to reflect the recent TCT Number or the exact designation of the Registry of Deeds, should not defeat Perla's clear intention.