

SECOND DIVISION

[G.R. No. 109803, April 20, 1998]

**PHILIPPINE BANK OF COMMUNICATIONS, PETITIONER, VS. THE
COURT OF APPEALS AND OLYMPIA FERNANDEZ-PUEN,
RESPONDENTS.**

DECISION

PUNO, J.:

The present case arose from a complaint for "Nullification of Real Estate Mortgage"^[1] filed by private respondent Olympia Fernandez-Puen against her estranged husband, Chee Puen, and petitioner Philippine Bank of Communications before the Regional Trial Court of Pasig.

Private respondent is the president and majority stockholder of Global, Inc., a 100% Filipino corporation engaged in selling pharmaceutical products, hospital equipment and supplies. Her husband, Chee Puen, used to be its General Manager. They have been living separately from each other prior to the present controversy. She resides in Timog Avenue, Quezon City, while he lives in Bel-Air Village, Makati.

The records show that on April 25, 1978, Chee Puen, then the general manager of Global, Inc., informed respondent that their company needed a three hundred thousand peso (P300,000.00) loan for its operational expenses. He proposed that her paraphernal lot in Makati be used as collateral.^[2] Respondent hesitated as she was afraid they would not be able to pay the loan. He assured her that the loan would not exceed P300,000.00 and she was asked to sign three (3) sets of blank forms of real estate mortgage (REM) of petitioner bank. He wrote down in pencil the figure 300 under the space provided for the amount to be loaned and indicated with checkmarks the spaces where respondent should sign. Respondent signed the blank mortgage forms due to Chee Puen's representation. Chee Puen had the mortgage document later notarized by Atty. Edilberto Arzadon, using a residence certificate bearing respondent's forged signature.

It appears that Chee Puen then applied for a three million peso (P3,000,000.00) loan from petitioner bank for Global, Inc. To secure the loan, he mortgaged respondent's paraphernal lot in Makati, using the blank real estate mortgage forms signed by her. He also submitted a "Secretary's Certificate of Board Resolution" (marked as Exhibit "H") where he misrepresented himself as president and acting corporate secretary of Global, Inc.^[3]

It is established that petitioner bank did not investigate Chee Puen's authority to mortgage respondent's property. Respondent's signature in her residence certificate was not verified. Neither was the verity of the "Secretary's Certificate of Board Resolution" (Exh. "H") ascertained. The three-million peso (P3,000,000.00) loan was approved without undergoing the usual bank procedure.

Three (3) years later, in February 1981, respondent and Chee Puen had a quarrel because respondent refused to give the cash allegedly needed for Global, Inc. Chee Puen threatened respondent to leave their company. A special meeting of Global's board of directors was called and it passed a resolution replacing Chee Puen as official signatory of its checks.

On February 16, 1981, respondent personally delivered a copy of the board resolution to the Buendia branch of petitioner bank. On the occasion, respondent chanced upon Chee Puen while encashing two (2) checks for Global, Inc. Respondent tore the checks into pieces (Exhibits "E" and "F") as he has been disauthorized to manage the company. When Chee Puen left, the teller informed respondent that Chee Puen had obtained a loan of ₱3,000,000.00 from the bank.

After further investigation, respondent filed this case against Chee Puen and petitioner to nullify the subject mortgage deed. In her complaint, respondent alleged that she did not authorize Chee Puen to mortgage her property to secure the aforesaid P3 M loan. She claimed that her residence certificate used to notarize the mortgage application form was spurious.

At the trial, respondent presented Francisco Cruz, Jr., Supervising Document Examiner of the PC-CIS Crime Laboratory, to prove that she signed the subject mortgage forms in blank. Cruz testified that the subject mortgage contract, consisting of one (1) original and two (2) duplicate original copies, contained respondent's genuine signatures, but the signatures were affixed before the typewritten entries therein were prepared. He disclosed, further, that respondent's alleged signature on the residence certificate presented to notary public Arzadon differed from respondent's specimen signatures. He opined that it was written by another person.

For its part, petitioner bank maintained that respondent and Chee Puen went to its office in April, 1978 to apply for the loan. She accomplished and signed the mortgage contract in its office and, afterwards, had it notarized by Atty. Arzadon in the presence of witnesses.

On May 30, 1986, the trial court rendered judgment in favor of respondent. The relevant portion of its decision^[4] provides:

"Considering that defendant Chee C. Puen has been guilty of bad faith and defendant Philippine Bank of Communications of gross negligence amounting to bad faith (See Soberano vs. Manila Railroad Co., L-19407, November 23, 1966, 18 SCRA 732, 738), which compelled the plaintiff to incur expenses to protect her interest, plaintiff is entitled to an award of attorney's fees and expenses of litigation. (Article 2208, pars. (2) and (5), New Civil Code).

"IN VIEW OF ALL THE FOREGOING, the Court renders judgment in favor of plaintiff and against defendants Philippine Bank of Communications and Chee C. Puen, declaring the real estate mortgage (Exhs. C-3 and 4 - PB Com) null and void; ordering defendant Philippine Bank of Communications to deliver the owner's duplicate copy of TCT No. (97379) S-4748 of the Province of Rizal to the plaintiff; and the Register of Deeds of Rizal (Makati branch) to cancel the subject real estate mortgage in favor of Philippine Bank of Communications upon plaintiff's payment of the prescribed fees.

"The defendants are ordered to pay plaintiff, jointly and severally, the amount of Fifty Thousand Pesos (₱50,000.00), for and as attorney's fees and expenses of litigation.