

NINTH DIVISION

[CA-G.R. CV. NO. 82086, August 31, 2006]

**TERESA AMONCIO, PLAINTIFF-APPELLEE, VS. MARILYN
INOCANDO AND SHERIFF PAULO M. GATLABAYAN,
DEFENDANTS-APPELLANTS.**

D E C I S I O N

REYES, JR., A. J.:

This is an appeal from the Decision (Records, pp. 231-233) of the Regional Trial Court of Antipolo City, Branch 73, dated 18 July 2003 in Civil Case No. 97-4289 for "Cancellation and/or Annulment of Real Estate Mortgage" decided in favor of plaintiff-appellee, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant. The refuted Real Estate Mortgage dated April 5, 1995 is hereby declared null and void.

Defendant Marilyn Inocando is further ordered to pay to the plaintiff amounts:

- a. P250,000.00 as moral damages;
- b. P200,000.00 as exemplary damages;
- c. P100,000.00 attorney's fees plus P2,000.00 per court appearance and the
- d. Costs of suit.

SO ORDERED." (Records, p. 233)

The case arose out of a Complaint (Records, pp. 1-7) filed by plaintiff-appellee Teresa Amoncio against defendant-appellant Marilyn Inocando and Sheriff Paulo M. Gatlabayan alleging that plaintiff-appellee is the owner of a registered parcel of land with improvements built thereon located at 415 Georgia Street, Vermont Park, Marcos Highway, Antipolo, Rizal (now city), on which she and her family resides. Said property is covered by Transfer Certificate of Title No. 114824 of the Registry of Deeds of Marikina City. She claimed that sometime in December 1996 she received a notice of sheriff's sale informing her that the subject property had been mortgaged to defendant-appellant Marlene Inocando, that the property was to be sold in a public auction. She denied having executed any real estate mortgage over the said property and prayed for the cancellation and/or annulment of the said real estate mortgage.

In the Answer, (Records, pp. 40-61), defendant-appellant insisted that the deed of

real estate mortgage was duly notarized, hence, enjoys the presumption of regularity.

Initially, the Court conducted a hearing regarding the application of the writ of injunction. In the Order dated 12 September 2000 (Records, pp. 189-192), the application for injunction was granted to be effective upon the posting of an injunctive bond amounting to P1 Million Pesos (Records, pp. 189-192). In the same Order the case was set for pre-trial on 12 October 2001.

Neither the counsel nor defendant-appellant appeared for pre-trial, hence, she was declared in default in the Order dated 15 April 2002 (Records, pp. 224). The relevant portion of the Order reads:

"Wherefore, as motion of counsel for plaintiff to declare the defendant as in default is hereby granted and the plaintiff is authorized to present its evidence ex-parte. Upon motion of counsel for plaintiff to have this case heard ex-parte before the Hearing Commissioner, the same is hereby granted. Atty. Gloria Marinduque is hereby designated as Hearing Commissioner to hear this case ex-parte with the instruction to submit a report to this Court within fifteen (15) days after termination of hearing.

SO ORDERED." (Records, p. 224)

And on 18 July 2003, the above-mentioned Decision declaring the mortgaged null and void was rendered.

Defendant-appellant, through counsel, filed a notice of appeal dated 7 August 2003 which was received by the trial court on 15 August 2003 (See: Records, pp. 234-235).

On 18 August 2003, the notice of appeal was granted (Records, p. 239).

On 27 August 2003, the Regional Trial Court received an entry of appearance for defendant-appellant's new counsel dated 19 August 2003 (Records, pp. 240-241). Attached to the entry of appearance, is a motion for reconsideration (Records, pp. 244-250).

In the Order dated 9 October 2003, defendant-appellant's motion for reconsideration was simply noted considering that the notice of appearance had already been acted upon, thus:

"Considering that the notice of appeal filed by defendant Marilyn Inocando had already been acted upon by the court in the order of August 18, 2003, the said defendant's motion for reconsideration filed on August 27, 2003 is simply noted to form part of the record of this case.

Wherefore, the order of August 18, 2003 is hereby reiterated.

SO ORDERED." (Records, p. 266)

Defendant-appellant is now before this Court raising the following as errors:

"I. THE TRIAL COURT ERRED IN DECLARING DEFENDANT-APPELLANT AS IN DEFAULT DESPITE THE FACT THAT SHE WAS NOT INFORMED BY HER FORMER COUNSEL OF THE PRE-TRIAL CONFERENCE OF THE CASE A QUO.

II. THE TRIAL COURT ERRED IN DECLARING THE REAL ESTATE MORTGAGE DATED APRIL 5, 1995 AS NULL AND VOID DESPITE THE FACT THAT THE PRESUMPTION OF REGULARITY THEREOF WAS NOT OVERTURNED BY THE EVIDENCE FOR THE PLAINTIFF-APPELLEE.

III. THE TRIAL COURT ERRED IN LIBERALLY GRANTING DAMAGES TO THE PLAINTIFF-APPELLEE." (Rollo, p. 21)

As to the first assignment of error, defendant-appellant claimed that she should not have been declared in default because her former counsel failed to inform her of the scheduled pre-trial conference.

The Court first notes that defendant-appellant relied on her bare assertion that she was not notified by her counsel. Second, a review of the records of the case would show that on 22 September 2002, the trial court issued an order resetting the case for pre-trial conference to 2 April 2002. On the dorsal side of the said order is attached a registry return card which indicates that defendant-appellant Marilyn Inocando received a copy of the said order on 13 March 2002. The Court, therefore, finds that even if defendant-appellant was not informed by her former counsel, she personally received a copy of the said order and prudence dictates that she should have consulted her counsel as to the import of the notice. She cannot now hide behind her assertion that she is unschooled in the intricacies of the law to justify her absence during the pre-trial.

As to the second assignment of error, defendant-appellant pointed out that the real estate mortgage was a notarized document and, thus, enjoys the presumption of regularity.

Again the Court cannot agree. The presumption of regularity had been overthrown when plaintiff-appellee, during the hearing of 31 January 1997, presented several evidence, which bears her own signature to prove that the real estate mortgage did not bear her signature. The witness testified, that:

"Q: Ms. Witness, you said that the signature over the printed name Teresa Amoncio is not your signature, what is your proof in saying that this is not your signature?

A: I have a specimen of my signature.

PLAINTIFF'S COUNSEL:

Witness presenting several signed credit cards for Robinson Department Store, a cash discount card dated June 1994; whose signature appears on that card?

A: My signature.