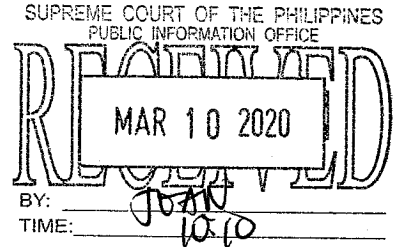




Republic of the Philippines
Supreme Court
Manila



FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **January 6, 2020** which reads as follows:*

“G.R. No. 221171 - Fernando M. San Ramon, Jr., Adelita M. San Ramon and Adele M. San Ramon, represented by their attorney-in-fact Atty. Fernando D. San Ramon, Sr. v. Star Asian Lending, Inc. and its President Ester S. Uy

Assailed in this Petition for Review on *Certiorari*¹ are the Decision² dated January 30, 2015 and Resolution³ dated September 4, 2015 of the Court of Appeals-Cebu City (CA) in CA-G.R. CEB CV No. 04039 which upheld the Real Estate Mortgage (REM) between Star Asian Lending, Inc. and its President Ester S. Uy (respondents) and Natividad Villanueva (Natividad) anent a parcel of land covered by Transfer Certificate of Title (TCT) No. 85682.

The case stemmed from an amended complaint for nullity of deeds of mortgage, cancellation of their annotation, delivery of Owner’s Duplicate Certificate of Title Nos. 85682 and 85679, damages and attorney’s fees filed by Fernando San Ramon,⁴ Adelita M. San Ramon and Adele M. San Ramon (petitioners) against respondents, Juanito Montenegro, spouses Ray and Avalina Vidovic, Raul Almendras, Evangeline (Bebot) Mancao and Lolita Flores.⁵

Involved in the amended complaint are the lots covered by TCT Nos. 85679 and 85682 (subject titles) in the name of Natividad, in

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¹ *Rollo*, pp. 15-37.

² Penned by Associate Justice Renato C. Francisco, with Associate Justices Gabriel T. Ingles and Pamela Ann Abella Maxino, concurring; *id.* at 42-52.

³ *Id.* at 54-58.

⁴ Fernando M. San Ramon, Jr., in some parts of the *Rollo*.

⁵ *Id.* at 44.

which two REMs were constituted to secure the debt allegedly procured by her from spouses Ray and Avalina Vidovic and respondents.⁶

The records reveal that in 1997, petitioners together with their co-plaintiffs, authorized Amado Jacaban (Jacaban) to secure 31 owner's copies of Certificates of Title, 20 of which were registered in the name of Fernando San Ramon; and 11 in the name of Natividad in the Register of Deeds, Cebu City. Of the 31, only 29 titles were released, excluding the subject titles which were retained by Juanito Montenegro (Montenegro) for alleged verification.⁷

As the subject titles were not yet released, Jacaban returned to the office and learned that a REM in favor of respondents was annotated in TCT No. 85682 while none in TCT No. 85679.⁸

To recover the subject titles, Fernando San Ramon (Fernando) requested the release thereof through a letter addressed to Atty. Aliño of the Register of Deeds. He also informed the latter that Montenegro withheld the subject titles, and that one of them was mortgaged to respondents.⁹

Soon thereafter, it was discovered that a REM in favor of spouses Ray and Avelina Vidovic (spouses Vidovic) was likewise constituted on TCT No. 85679.¹⁰

Upon knowing that Fernando would file a case against the persons responsible for the anomalous transaction, Montenegro allegedly pleaded to Fernando not to file any case and he will just pay in installment the indebtedness secured by the REM.¹¹

Unswayed, Fernando and his co-plaintiffs filed the Complaint,¹² praying that the two REMs executed in favor of respondents and spouses Vidovic be declared void.¹³

An amended complaint¹⁴ was filed including Adelita M. San Ramon and Adele M. San Ramon as plaintiffs.

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⁶ Id.

⁷ Id. at 111.

⁸ Id.

⁹ Id. at 111-112.

¹⁰ Id. at 112.

¹¹ Id.

¹² Id. at 69-76.

¹³ Id. at 45.

¹⁴ Id. at 79-86.

In its Answer,¹⁵ Star Asian Lending, Inc. (Star Asian) insisted that it was a mortgagee in good faith of the subject title TCT No. 85682 and that the mortgage was supported by a valuable consideration, among others.

In a Decision¹⁶ dated April 11, 2011, the Regional Trial Court of Cebu City, Branch 57 (RTC) declared void the REM executed in favor of Star Asian and spouses Vidovic. In ruling so, the RTC observed respondents' failure to ascertain the identity of the registered owner of the property covered by TCT No. 85682, and merely relied on the title. As such, Star Asian cannot be considered as mortgagee in good faith. The *fallo* thereof reads:

WHEREFORE, in view of the foregoing, a decision is rendered in favor of the plaintiffs by declaring as follows:

1. as null and void the real estate mortgage in favor of defendants Star Asian Lending, Inc. and the spouses Vidovics;
2. directing the Register of Deeds of Cebu City to cancel the Real Estate Mortgage entered as encumbrance on Transfer Certificate of Title Nos. 85679 and 85682;
3. for the Register of Deeds of Cebu City to cancel, being null and void, Transfer Certificate of Title No. 153499 issued in favor of Star Asian Lending, Inc.;
4. as valid and existing Transfer Certificate of Title Nos. 85679 and 85682 previously issued in the name of Natividad Villanueva.

Defendants are jointly and severally ordered to pay the plaintiffs, the following sums:

1. [P]50,000.00 for moral damages;
2. [P]15,000.00 as attorney's fees;
3. [P]30,000.00 for exemplary damages; [and]
4. [P]10,000.00 as litigation expenses.

SO ORDERED.¹⁷

Aggrieved, respondents filed an appeal asserting that Star Asian is a mortgagee in good faith.

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¹⁵ Id. at 87-89.

¹⁶ Penned by Presiding Judge Enriqueta Loquillano-Belarmino; id. at 111-120.

¹⁷ Id. at 119-120.

In a Decision¹⁸ dated January 30, 2015, the CA reversed and set aside the ruling of the RTC. Finding that Star Asian is a mortgagee in good faith, the CA relied on the presumption of regularity of the notarized REM and failed to give credence to the admission of Lolita Flores and Dina Cana Ceniza in their affidavits that the former posed as Natividad and the latter convinced her to do so. As to the latter, the CA classified the affidavit as hearsay evidence as the affiants were never placed in the witness stand. Thus:

WHEREFORE, premises considered, the Appeal is hereby **GRANTED**. The Decision dated 11 April 2011, rendered by the Regional Trial Court, 7th Judicial Region, Branch 57 of Cebu City (RTC for brevity) in Civil Case No. CEB-24436 insofar as the judgment against appellants Star Asian Lending, Inc. and its President Ester S. Uy is concerned is REVERSED and SET ASIDE.

SO ORDERED.¹⁹ (Emphases and underscoring in the original)

Consequently, petitioners filed a Motion for Reconsideration, which was denied in a Resolution²⁰ dated September 4, 2015.

Hence, this petition.

In essence, petitioners argue that the presumption of regularity as regards the REM should not apply as such instrument was forged.

In their Comment,²¹ respondents counter that petitioners failed to rebut the presumption of regularity of notarized documents as observed by the CA.

In their Reply,²² petitioners reiterate the probative value of Montenegro and Lolita Flores' judicial admission that the latter impersonated Natividad in mortgaging TCT No. 85682; and that Star Asian is not a mortgagee in good faith.

The Issue

Is the REM constituted on TCT No. 85682 valid?

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¹⁸ Supra note 2.

¹⁹ Id. at 51-52.

²⁰ Id. at 54-58.

²¹ Id. at 136-149.

²² Id. at 168-187.

The Court's Ruling

A notarized document enjoys the presumption of regularity and is conclusive as to the truthfulness of its contents.²³ “Through notarization, the public and the courts may rely on the face of the instrument without need of further examining its authenticity and due execution.”²⁴

However, such presumption may be rebutted by any clear and convincing evidence to the contrary.²⁵

In this case, the REM is a notarized document, which has in its favor the presumption of regularity. In disputing the genuineness and due execution of the same, petitioners claim that the instrument was forged; hence, should have no legal effect.

As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence. The burden of proof lies on the party alleging forgery.²⁶

To refute the authenticity and due execution of the REM, petitioners offered in evidence the affidavits of Lolita Flores and Primitivo Ceneza who narrated that Lolita Flores pretended as Natividad in executing the mortgage.

In discrediting such testimonies and discounting their probative value, the CA correctly disposed that the aforementioned affidavits are hearsay for failure of the affiants to take the witness stand.

On this note, we reiterate that an affidavit is a hearsay evidence where its affiant did not take the witness stand in view of the fact that an affidavit is not generally prepared by the affiant himself:

Basic is the rule that, while affidavits may be considered as public documents if they are acknowledged before a notary public, these Affidavits are still classified as hearsay evidence. The reason for this rule is that they are not generally prepared by the affiant, but by another one who uses his or her own language in writing the affiant's statements, parts of which may thus be either omitted or misunderstood by the one writing them. Moreover, the adverse

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²³ See *Spouses Palada v. Solidbank Corporation*, 668 Phil. 172, 179 (2011).

²⁴ *Tortona v. Gregorio*, G.R. No. 202612, January 17, 2018, 851 SCRA 448, 459.

²⁵ *Id.* at 460.

²⁶ *Gatan v. Vinarao*, G.R. No. 205912, October 18, 2017, 842 SCRA 602, 611, citing *Gepulle-Garbo v. Spouses Garabato*, 750 Phil. 846, 855 (2015).

party is deprived of the opportunity to cross-examine the affiants. For this reason, affidavits are generally rejected for being hearsay, unless the affiants themselves are placed on the witness stand to testify thereon.²⁷ (Citation omitted)

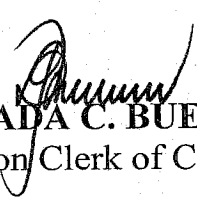
In this case, it is undisputed that the affiants Lolita Flores and Primitivo Cerveza were not able to identify their statements nor were they cross-examined as they did not take the witness stand. Hence, the affiants failed to verify the contents thereof. Aside from such testimonies, there was no evidence considered as clear and convincing which would overcome the presumption of regularity accorded to notarized instruments. Mere allegation of petitioners that the instrument was forged is not sufficient.

As notarization is considered as an act imbued with public interest,²⁸ the presumption of regularity prevails in the absence of clear and convincing evidence to the contrary. To deny notarization the importance attached to it would impair the confidence of the public in the integrity of the notarial system.²⁹

WHEREFORE, premises considered, the instant petition is hereby **DENIED**. Accordingly, the Decision dated January 30, 2015 and the Resolution dated September 4, 2015 of the Court of Appeals-Cebu City in CA-G.R. CEB CV No. 04039 are **AFFIRMED in toto**.

SO ORDERED. Lopez, J., on official leave.

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court
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²⁷ *Republic of the Philippines v. Spouses Gimenez*, 776 Phil. 233, 275 (2016), citing *Republic v. Marcos-Manotoc*, 681 Phil. 380, 404 (2012).

²⁸ *Tortona v. Gregorio*, supra note 23, at 459.

²⁹ See *Atty. Bartolome v. Atty. Basilio*, 771 Phil. 1, 10 (2015).



Atty. Mark Elton C. Garrote
Counsel for Petitioners
Rm. M03, Mezzanine Floor
Aniceta Building, Osmeña Boulevard
Capitol Site, 6000 Cebu City

Court of Appeals
6000 Cebu City
(CA-G.R. CEB CV No. 04039)

ZOSA & QUIJANO LAW OFFICES
Counsel for Respondents
Don Mariano Cui Street, Fuente
Osmeña, 6000 Cebu City

The Hon. Presiding Judge
Regional Trial Court, Branch 57
6000 Cebu City
(Civil Case No. CEB-24436)

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