

## SECOND DIVISION

[ G.R. No. 183918, January 15, 2014 ]

**FRANCISCO LIM, PETITIONER, VS. EQUITABLE PCI BANK, NOW KNOWN AS THE BANCO DE ORO UNIBANK, INC., \* RESPONDENT.**

### D E C I S I O N

**DEL CASTILLO, J.:**

The basic rule is that he who alleges must prove his case.

This Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court assails the July 30, 2008 Decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 85139.

#### ***Factual Antecedents***

On November 17, 1988, petitioner Francisco Lim (petitioner) executed an Irrevocable Special Power of Attorney<sup>[3]</sup> in favor of his brother, Franco Lim (Franco), authorizing the latter to mortgage his share in the property covered by Transfer Certificate of Title (TCT) No. 57176,<sup>[4]</sup> which they co-owned.<sup>[5]</sup>

On February 9, 1989, Banco De Oro Savings and Mortgage Bank released a loan in the amount of P8.5 million by virtue of the said Irrevocable Special Power of Attorney, which was entered in the Register of Deeds of San Juan, Metro Manila.<sup>[6]</sup>

On December 28, 1992, the loan was fully paid by Franco.<sup>[7]</sup>

On June 14, 1996, petitioner, Franco, and their mother Victoria Yao Lim (Victoria) obtained from respondent Equitable PCI Bank (respondent; formerly Equitable Banking Corporation) a loan in the amount of P30 million in favor of Sun Paper Products, Inc. To secure the loan, petitioner and Franco executed in favor of respondent a Real Estate Mortgage<sup>[8]</sup> over the same property.<sup>[9]</sup> However, when the loan was not paid, respondent foreclosed the mortgaged property.<sup>[10]</sup>

On September 29, 1999, TCT No. 9470<sup>[11]</sup> and Tax Declaration No. 96-31807<sup>[12]</sup> were issued in the name of respondent.<sup>[13]</sup>

Thereafter, a Writ of Possession<sup>[14]</sup> in favor of respondent was issued by the Regional Trial Court (RTC) of Pasig City, Branch 158, in LRC Case No. R-5818.

On January 11, 2001, petitioner filed before the RTC of Pasig a Motion for the Issuance of Temporary Restraining Order (TRO)<sup>[15]</sup> and a Complaint<sup>[16]</sup> for Cancellation of Special Power of Attorney, Mortgage Contract, Certificate of Sale, TCT No. 9470, and Tax Declaration No. 96-31807, with Damages and Issuance of

Preliminary Mandatory Injunction, docketed as Civil Case No. 68214 and raffled to Branch 267, against respondent, Franco, and Victoria. Petitioner alleged that he did not authorize Franco to mortgage the subject property to respondent and that his signatures in the Real Estate Mortgage and the Surety Agreement<sup>[17]</sup> were forged.

On January 19, 2001, the RTC issued an Order<sup>[18]</sup> granting petitioner's Motion for the issuance of a TRO to prevent respondent from enforcing the Writ of Possession. Thus:

WHEREFORE, considering that grave and irreparable injury will result on [petitioner] before the application of injunctive relief can be heard on notice and pursuant to Section 4, Rule 58 of the 1997 Rules of Civil Procedure, as amended, let a Temporary Restraining Order (TRO) be issued upon posting by [petitioner] of a bond executed to the party enjoined ([respondent] Equitable PCI Bank) in the amount of ONE HUNDRED THOUSAND PESOS (P100,000.00) bond to be approved by the Court, to the effect that [petitioner] will pay to such party all damages which [respondent and] defendants may sustain by reason of the TRO if the Court should finally decide that the [petitioner] is not really entitled thereto. Consequently, [respondent and] defendants, their agents, officers, representatives and all persons acting on their behalf, are restrained from further executing the Notice of Compliance and/or Writ of Possession.

SO ORDERED.<sup>[19]</sup>

Respondent, for its part, filed an Answer Cum Motion to Dismiss<sup>[20]</sup> contending that the trial court has no jurisdiction to issue a TRO or a preliminary injunction enjoining the implementation of the Writ of Possession issued by a co-equal court.<sup>[21]</sup> Respondent also argued that it is not privy to the execution of the Irrevocable Special Power of Attorney<sup>[22]</sup> and that since there is no allegation that the foreclosure was defective or void, there is no reason to cancel TCT No. 9470 and Tax Declaration No. 96-31807.<sup>[23]</sup>

On April 19, 2001, the RTC issued an Order<sup>[24]</sup> granting petitioner's application for injunctive relief, to wit:

WHEREFORE, considering that based from testimonial and documentary evidence, there is sufficient reason to believe that grave and irreparable injury will result on [petitioner] before the main case can be heard on notice and pursuant to Section 4, Rule 58 of the 1997 Rules of Civil Procedure, as amended, let a writ of preliminary injunction be issued upon posting by [petitioner] of a bond executed to the party enjoined ([respondent] Equitable PCI Bank) in the amount of THREE MILLION PESOS (Php3,000,000.00) bond to be approved by the Court, to the effect that [petitioner] will pay to such party all damages which [respondent and] defendants may sustain by reason of the said writ if the Court should finally decide that the [petitioner] is not really entitled

thereto. Consequently, [respondent and] defendants, their agents, officers, representatives and all persons acting on their behalf, are restrained from further executing the Notice of Compliance and/or Writ of Possession.

SO ORDERED.<sup>[25]</sup>

Franco and Victoria, however, did not participate in the proceedings.<sup>[26]</sup>

### ***Ruling of the Regional Trial Court***

On April 4, 2005, the RTC rendered a Decision<sup>[27]</sup> in favor of petitioner. It ruled that petitioner was able to prove by preponderance of evidence that he did not participate in the execution of the mortgage contract giving rise to the presumption that his signature was forged.<sup>[28]</sup> The dispositive portion of the Decision reads:

WHEREFORE, IN VIEW OF THE FOREGOING CONSIDERATIONS, judgment is hereby rendered in favor of [petitioner] Francisco Lim and against the [respondent] Equitable PCI Bank, Franco Lim and Victoria Yao Lim.

Accordingly, the Real Estate Mortgage Contract dated 14 June 1996 covered by Transfer Certificate of Title No. 57176; the Certificate of Sale dated 23 December 1997 covering the same title; TCT No. 9470 in the name of [respondent] Bank; and Tax Declaration No. 96-31807 issued in the name of the [respondent] Bank are hereby declared null and void and of no force and effect.

The writ of preliminary injunction which was issued by the Court as per Order dated 19 April 2001 is hereby made permanent.

SO ORDERED.<sup>[29]</sup>

### ***Ruling of the Court of Appeals***

On appeal, the CA reversed the RTC Decision. It ruled that petitioner's mere allegation that his signature in the mortgage contract was forged is not sufficient to overcome the presumption of regularity of the notarized document.<sup>[30]</sup> Thus, the CA disposed of the case in this wise:

WHEREFORE, premises considered, the instant appeal is hereby GRANTED. The assailed Decision of the Regional Trial Court is SET ASIDE. The complaint filed by [petitioner] Francisco Lim against [respondent] Equitable PCI Banking Corporation is DISMISSED for lack of merit.

SO ORDERED.<sup>[31]</sup>

## Issues

Hence, this recourse by petitioner raising the following questions:

Did the [CA] err when it held that no evidence was presented to support Petitioner's claim that his signature was forged[?]

Corollary to the issue above, is the presentation of expert evidence indispensable in order that forgery may be sufficiently proven in this case[?]

Did the [CA] err when it set aside the Decision rendered by the Trial Court on 04 April 2005 and forthwith dismissed the complaint filed by Francisco Lim against Equitable PCI Banking Corporation for lack of merit[?]

Did Respondent Bank exercise the diligence required of it in the subject mortgage transaction; if it did not, did Respondent Bank's failure violate the rights of Petitioner[?]<sup>[32]</sup>

In a nutshell, the issues boil down to whether petitioner was able to prove that his signature was forged.

### ***Petitioner's Arguments***

Petitioner contends that his signature in the mortgage contract was forged as he was not in the Philippines at the time of its execution.<sup>[33]</sup> He posits that the presentation of expert witnesses is not required to prove forgery as the court may make its own determination based on the evidence presented.<sup>[34]</sup> He claims that respondent was negligent in approving the loan and in accepting the subject property as security for the loan.<sup>[35]</sup> He also blames respondent for not conducting a more in-depth inquiry before approving the loan since it was a "take-out" from a mortgage<sup>[36]</sup> constituted in favor of Planters Development Bank.<sup>[37]</sup> Lastly, he insists that respondent should have been alerted by the fact that the mortgage contract was executed without the consent of his wife.<sup>[38]</sup>

### ***Respondent's Arguments***

Respondent, on the other hand, echoes the ruling of the CA that petitioner's mere denial is not enough to prove that his signature was forged.<sup>[39]</sup> Respondent points out that there was, in fact, no attempt on petitioner's part to compare the alleged forged signature with any of his genuine signatures.<sup>[40]</sup> Also, no evidence was presented to show that respondent did not exercise due diligence when it approved the loan and accepted the mortgage.<sup>[41]</sup> More important, petitioner cannot feign ignorance of the execution and existence of the mortgage because he even communicated with respondent to settle the loan and, when the property was foreclosed, to repurchase the same.<sup>[42]</sup> Hence, petitioner is estopped from assailing

the validity of the mortgage contract.<sup>[43]</sup>

### **Our Ruling**

The Petition is bereft of merit.

#### ***Petitioner failed to prove that his signature was forged.***

Allegations of forgery, like all other allegations, must be proved by clear, positive, and convincing evidence by the party alleging it.<sup>[44]</sup> It should not be presumed<sup>[45]</sup> but must be established by comparing the alleged forged signature with the genuine signatures.<sup>[46]</sup> Although handwriting experts are often offered as witnesses, they are not indispensable because judges must exercise independent judgment in determining the authenticity or genuineness of the signatures in question. <sup>[47]</sup>

In this case, the alleged forged signature was not compared with the genuine signatures of petitioner as no sample signatures were submitted. What petitioner submitted was another mortgage contract<sup>[48]</sup> executed in favor of Planters Development Bank, which he claims was also forged by his brother. But except for this, no other evidence was submitted by petitioner to prove his allegation of forgery. His allegation that he was in the US at the time of the execution of the mortgage contract is also not sufficient proof that his signature was forged.

#### ***Petitioner failed to prove negligence on the part of respondent.***

Likewise without merit is petitioner's allegation of negligence on the part of respondent.

Before entering into a mortgage contract, banks are expected to exercise due diligence.<sup>[49]</sup> However, in this case, no evidence was presented to show that respondent did not exercise due diligence or that it was negligent in accepting the mortgage.<sup>[50]</sup> That petitioner was erroneously described as single and a Filipino citizen in the mortgage contract, when in fact he is married and an American citizen, cannot be attributed to respondent considering that the title of the mortgaged property was registered under "FRANCISCO LIM and FRANCO LIM, both Filipino citizens, of legal age, single."

#### ***The nature of the property was never raised as an issue.***

The absence of his wife's signature on the mortgage contract also has no bearing in this case.

We are not unaware that all property of the marriage is presumed to be conjugal, unless it is shown that it is owned exclusively by the husband or the wife;<sup>[51]</sup> that this presumption is not overcome by the fact that the property is registered in the name of the husband or the wife alone;<sup>[52]</sup> and that the consent of both spouses is required before a conjugal property may be mortgaged.<sup>[53]</sup> However, we find it