

FIRST DIVISION

[G.R. No. 193804, February 27, 2013]

**SPOUSES NILO RAMOS AND ELIADORA RAMOS, PETITIONERS,
VS. RAUL OBISPO AND FAR EAST BANK AND TRUST COMPANY,
RESPONDENTS.**

D E C I S I O N

VILLARAMA, JR., J.:

Assailed in this petition for review on certiorari under Rule 45 is the Decision^[1] dated January 27, 2010 of the Court of Appeals (CA) in CA-G.R. CV No. 82378 which reversed and set aside the Decision^[2] dated January 29, 2004 of the Regional Trial Court (RTC) of Quezon City, Branch 82 in Civil Case No. Q-99-38988.

The facts follow:

Petitioner Nilo Ramos and respondent Raul Obispo met each other and became best friends while they were working in Saudi Arabia as contract workers. After both had returned to the Philippines, Ramos continued to visit Obispo who has a hardware store. Sometime in August 1996, petitioners executed a Real Estate Mortgage (REM) in favor of respondent Far East Bank and Trust Company (FEBTC)-Fairview Branch, over their property covered by Transfer Certificate of Title (TCT) No. RT-64422 (369370) of the Registry of Deeds of Quezon City. The notarized REM secured credit accommodations extended to Obispo in the amount of P1,159,096.00. On even date, the REM was registered and annotated on the aforesaid title.^[3]

On September 17, 1999, FEBTC received a letter from petitioners informing that Obispo, to whom they entrusted their property to be used as collateral for a P250,000.00 loan in their behalf, had instead secured a loan for P1,159,096.00, and had failed to return their title despite full payment by petitioners of P250,000.00. Petitioners likewise demanded that FEBTC furnish them with documents and papers pertinent to the mortgage failing which they will be constrained to refer the matter to their lawyer for the filing of appropriate legal action against Obispo and FEBTC.^[4]

There being no action taken by FEBTC, petitioners filed on October 12, 1999 a complaint for annulment of real estate mortgage with damages against FEBTC and Obispo. Petitioners alleged that they signed the blank REM form given by Obispo who facilitated the loan with FEBTC, and that they subsequently received the loan proceeds of P250,000.00 which they paid in full through Obispo. With their loan fully settled, they demanded the release of their title but Obispo refused to talk or see them, as he is now hiding from them. Upon verification with the Registry of Deeds of Quezon City, petitioners said they were surprised to learn that their property was in fact mortgaged for P1,159,096.00. Petitioners thus prayed that the REM be declared void and cancelled; that FEBTC be ordered to deliver to them all

documents pertaining to the loan and mortgage of Obispo; and that FEBTC and Obispo be ordered to pay moral damages and attorney's fees.^[5]

In its Answer With Compulsory Counterclaim and Cross-claim, FEBTC averred that petitioners agreed to execute the REM over their property as partial security for the loans obtained by Obispo with a total principal balance of P2,500,000.00. Since the obligation secured by the REM remains unpaid, FEBTC contended that it should not be compelled to release the mortgage on the subject property. FEBTC further asserted that petitioners are guilty of laches and their claim already barred by estoppel. Under its cross-claim, FEBTC prayed that in the event of judgment rendered in favor of petitioners, Obispo should be made liable to answer for all the claims that may be adjudged against it plus all damages it suffered.^[6]

On motion of petitioners, Obispo was declared in default for failure to file any responsive pleading despite due receipt of summons which he personally received.

After trial, the RTC rendered its Decision in favor of the petitioners and against the respondents, as follows:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against defendants Raul J. Obispo and Far East Banking Trust Company (now Bank of the Philippine Islands) as follows:

- a) Declaring the real estate mortgage in favor of defendant Far East Bank & Trust Company (now Bank of Philippine Islands) null and void;
- b) Ordering defendant FEBTC (now BPI) to cancel the encumbrance on Transfer Certificate of Title No. RT-64422 [369370] and release and surrender the Owners Duplicate copy thereof to the herein plaintiffs;
- c) Ordering defendants Obispo and FEBTC (BPI) to pay the plaintiffs jointly and severally the sum of P200,000.00 as and by way of moral damages;
- d) Ordering defendants Obispo and FEBTC (BPI) to pay the plaintiffs, jointly and severally the sum of P50,000.00 as and by way of attorney's fees, and the cost of suit.

The cross-claim set forth by defendant FEBTC (BPI) against its co-defendant Obispo is hereby ordered dismissed for lack of merit.

SO ORDERED.^[7]

FEBTC appealed to the CA which reversed the trial court's decision and dismissed the complaint, holding that petitioners were third-party mortgagors under Article 2085 of the Civil Code and that they failed to present any evidence to prove their allegations. The appellate court thus decreed:

WHEREFORE, the assailed January 29, 2004 Decision of the Regional Trial Court of Quezon City, Branch 82 in Civil Case No. Q-99-38988 is hereby REVERSED and SET ASIDE and a new one is entered DISMISSING the Complaint of plaintiffs-appellees in Civil Case No. Q-99-38988.

SO ORDERED.^[8]

Petitioners filed a motion for reconsideration but it was denied by the CA.

Hence, this petition raising the following errors allegedly committed by the appellate court when:

I

IT SET ASIDE THE DECISION DATED JANUARY 29, 2004 RENDERED BY BRANCH 82 OF THE REGIONAL TRIAL COURT OF QU[E]ZON CITY BY UPHOLDING THE VALIDITY OF THE REAL ESTATE MORTGAGE AND RULING THAT THE PETITIONERS WERE ACCOMMODATION MORTGAGORS OF RESPONDENT RAUL OBISPO DESPITE THE FACT THAT NO CONSENT TO SUCH EFFECT WAS GIVEN BY THEM AND THE PREPARATION THEREOF WAS ATTENDED BY FRAUDULENT ACTS OR MISREPRESENTATIONS;

II

IT DISREGARDED EXISTING LAWS AND CURRENT JURISPRUDENCE IN NOT DECLARING THE RESPONDENT BANK AS NOT A MORTGAGEE IN GOOD FAITH DESPITE THE CONTRARY FINDING OF THE TRIAL COURT; and

III

IT DISREGARDED EXISTING LAWS AND SETTLED JURISPRUDENCE WHEN IT LIKEWISE DELETED IN ITS DISPUTED DECISION THE AWARD OF DAMAGES, ATTORNEY'S FEES AND COST OF SUIT IN FAVOR OF THE PETITIONERS.^[9]

The petition has no merit.

The validity of an accommodation mortgage is allowed under Article 2085 of the Civil Code which provides that "[t]hird persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property." An accommodation mortgagor, ordinarily, is not himself a recipient of the loan, otherwise that would be contrary to his designation as such.^[10]

In this case, petitioners denied having executed an accommodation mortgage and claimed to have executed the REM to secure only their P250,000.00 loan and not the P1,159,096.00 personal indebtedness of Obispo. They claimed it was Obispo who filled up the REM form contrary to their instructions and faulted FEBTC for being negligent in not ascertaining the authority of Obispo and failing to furnish petitioners

with copies of mortgage documents. Obispo initially gave them P100,000.00 and the balance was given a few months later. After supposedly completing payment of the amount of P250,000.00 to Obispo, petitioners discovered that the REM secured a bigger amount. Because of the alleged fraud committed upon them by Obispo who made them sign the REM form in blank, petitioners sought to have the REM annulled and their title over the mortgaged property released by FEBTC. In other words, since their consent to the REM was vitiated, judicial declaration of its nullity is in order. The RTC granted relief to petitioners while the CA found the subject REM as a valid third-party or accommodation mortgage due to petitioners' failure to substantiate their allegations with the requisite quantum of evidence.

We sustain the decision of the CA.

In civil cases, basic is the rule that the party making allegations has the burden of proving them by a preponderance of evidence. Moreover, parties must rely on the strength of their own evidence, not upon the weakness of the defense offered by their opponent. This principle equally holds true, even if the defendant had not been given the opportunity to present evidence because of a default order. The extent of the relief that may be granted can only be as much as has been alleged and proved with preponderant evidence required under Section 1 of Rule 133 of the Revised Rules on Evidence.^[11]

Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto.^[12]

As to fraud, the rule is that he who alleges fraud or mistake affecting a transaction must substantiate his allegation, since it is presumed that a person takes ordinary care of his concerns and that private transactions have been fair and regular.^[13] The Court has stressed time and again that allegations must be proven by **sufficient evidence** because mere allegation is definitely not evidence.^[14] Moreover, fraud is not presumed – it must be proved by clear and convincing evidence.^[15]

In this case, petitioners' testimonial evidence failed to convince that Obispo deceived them as to the debt secured by the REM. Petitioners' factual allegations are not firmly supported by the evidence on record and even inconsistent with ordinary experience and common sense.

While petitioners admitted they knew it was from FEBTC they will secure a loan, it was unbelievable for them to simply accept the P250,000.00 loan proceeds without seeing any document or voucher evidencing release of such amount by the bank containing the details of the transaction such as monthly amortization, interest rate and added charges. It is difficult to believe petitioners' simplistic explanation that they requested documents from Obispo but the latter would not give them any. Such failure of Obispo to produce any receipt or document at all coming from the bank should have, at the first instance, alerted the petitioners that something was amiss in the loan transaction for which they voluntarily executed the REM with their

own property as collateral. Not only that, despite being aware of the absence of any document to ascertain if Obispo indeed filled up the REM contract form in accordance with their instructions, petitioners accepted the supposed loan proceeds in the form of personal checks issued by Obispo who claimed to have an account with FEBTC, instead of checks issued by the bank itself. These alleged checks were not submitted in evidence by the petitioners who could have easily obtained copies or record proving their issuance and encashment.

Another disturbing fact is why, despite having signed the REM contract in their name as mortgagors, petitioners did not go directly to the bank to pay their loan. One is also tempted to ask how petitioners could have possibly arrived at the amount of amortization payments without having seen any document from FEBTC pertaining to their loan account. Such conduct of petitioners in not bothering to appear before the bank or directly dealing with it regarding their outstanding obligation strongly suggests that there was no such loan account in their name and it was really Obispo who was the borrower and petitioners were merely accommodation mortgagors.

But assuming for the moment that petitioners really entrusted to Obispo the remittance of their payments to FEBTC, it is difficult to comprehend that they continued making payments to him despite the latter's not having complied at all with their repeated demands for the corresponding receipt from the bank. These demands for bank documents apparently had gone unheeded by Obispo for about **one year and three months** – the same period before petitioners were able to make full payment.^[16] Such considerably long period that petitioners remained indifferent and took no prompt action against their alleged defrauder, Obispo, truly defies the normal reaction of ordinary individuals giving rise to the inference that it was indeed Obispo who was the borrower/debtor and petitioners were just accommodation mortgagors.

Assuming *arguendo* that the REM was invalid on the ground of vitiated consent and misrepresentation by Obispo, petitioners' unjustified failure to act within a reasonable time after Obispo repeatedly failed to turn over the mortgage documents, constitutes estoppel and waiver to question its defect or invalidity. Corollarily, mortgagors desiring to attack a mortgage as invalid should act with reasonable promptness, and unreasonable delay may amount to ratification.^[17]

As to petitioners' assertion that they have settled their loan obligation by paying P250,000.00 to Obispo, we note that said amount represents only the principal loan. Does this mean petitioners assumed that FEBTC granted their loan free of interest? Or was there any special arrangement with Obispo in consideration of the mortgage for the latter's benefit? Again, why was there no evidence of such check payments allegedly made by petitioners to Obispo, presented in court? This hiatus in petitioners' evidence raises serious doubt on their principal allegation that they never consented to the third-party mortgage approved by FEBTC, leading to the conclusion that there was, in fact, an agreement between Obispo and petitioners to use the latter's property as collateral for the former's credit line with said bank.

It bears stressing that an accommodation mortgagor, ordinarily, is not himself a recipient of the loan, otherwise that would be contrary to his designation as such. We have held that it is not always necessary that the accommodation mortgagor be apprised beforehand of the entire amount of the loan nor should it first be