

## THIRD DIVISION

[ G.R. No. 177598, October 16, 2008 ]

**ROBERT SAN PEDRO, PETITIONER, VS. WILLY ONG AND  
NORMITA CABALLES, RESPONDENTS.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, filed by petitioner Robert San Pedro (San Pedro), seeking to reverse and set aside the Decision<sup>[1]</sup> of the Court of Appeals dated 29 December 2006 and its Resolution<sup>[2]</sup> dated 13 April 2007 in CA-G.R. CV No. 79399. In its assailed Decision, the Court of Appeals reversed the Decision<sup>[3]</sup> dated 21 February 2003 of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 19, in Civil Case No. 515-M-99, declaring, *inter alia*, that the deeds of real estate mortgage constituted on the subject properties are null and void; while, in its assailed Resolution, the appellate court denied San Pedro's Motion for Reconsideration.

The factual and procedural antecedents of this case are as follows:

On 3 April 1996, San Pedro purchased from the spouses Guillermo Narciso and Brigida Santiago (spouses Narciso) two parcels of land (subject properties) covered by Transfer Certificates of Title TCTs No. T-82381 and No. T-82382 of the Registry of Deeds of Bulacan, with areas of about 200 square meters and 150 square meters, respectively. San Pedro bought the subject properties for P35,000.00, as evidenced by Deeds of Sale executed in his favor by the spouses Narciso on 8 April 1996.<sup>[4]</sup>

In order to transfer in his name the TCTs covering the subject properties, and upon the spouses Narciso's recommendation, San Pedro hired the services of Adora Dela Peña (Dela Peña) who is known to be very familiar with the intricacies of real property transfers.<sup>[5]</sup>

After sometime, San Pedro inquired with the Registry of Deeds of Bulacan as to the status of his application for the issuance in his name of new TCTs for the subject properties. He was surprised to find out, however, that the subject properties were still registered in the names of the Narciso spouses and were mortgaged to Willy Ong (Ong).<sup>[6]</sup>

According to the annotation stamped at the back of TCTs No. T-82381 and No. T-82382, the spouses Narciso, on 23 July 1998, executed Special Powers of Attorney (SPAs) authorizing Dela Peña to mortgage the subject properties to Ong. The SPAs were procured by Dela Peña from the spouses Narciso with the help of one Rufino Landayan, a tricycle driver who accompanied Dela Peña to the spouses Narciso's residence. San Pedro found out that it was Normita Caballes (Caballes), Ong's

agent, who caused the registration of the mortgages with the Registry of Deeds of Bulacan and the annotation thereof on the TCTs of the spouses Narciso.<sup>[7]</sup>

In order to free the subject properties from the said encumbrances, San Pedro filed with the RTC on 7 May 1999 a Petition for Nullification of Mortgage with Damages against the spouses Narciso, Dela Peña, Landayan, Ong, and Caballes, docketed as Civil Case No. 515-M-99.

On 14 May 1991, the RTC issued summons to spouses Narciso, Dela Peña, Landayan, Ong, and Caballes, directing them to file their Answers to San Pedro's Petition in Civil Case No. 515-M-99. On the same day, the Sheriff served the summons on all concerned as evidenced by the Sheriff's Return,<sup>[8]</sup> which reads:

#### SERVICE RETURN

THIS IS TO CERTIFY that on 14<sup>th</sup> day of May 1999, the undersigned served a copies (sic) of Summons in connection in (sic) the above-entitled case accompanying (sic) by the Complaints with annexes attached thereto upon defendants, at their given address, to wit:

Spouses                      Brigida- thru their son Jaime Narciso/  
Santiago &                      Received & sign  
Guillermo Narciso

Adora Dela Peña                      - thru her sister-in-law/  
Received but refused to sign

Rufino Landayan                      - thru his son Christopher  
Landayan/received & sign

Normita Caballes &                      - thru Paul Caballes son of  
Willy Ong                      Normita Caballes/received  
& sign

The original copy of Summons is, therefore, respectfully returned DULY SERVED.

While the spouses Narciso, Landayan, Ong, and Caballes separately filed their Answers in accordance with the summons, thereby voluntarily submitting themselves to the jurisdiction of the RTC, Dela Peña failed to do so and she was, thus, declared by the RTC to be in default.

In their Answer,<sup>[9]</sup> the spouses Narciso admitted to selling the subject properties to San Pedro, and denied authorizing the mortgage of the same to Ong. Their signatures on the SPAs were fraudulently secured by Dela Peña who misrepresented to them that such document was necessary to facilitate the transfer of the TCTs of the subject properties to San Pedro. The spouses Narciso denied that they participated in or benefited from the loan obligation obtained by Dela Peña from Ong.

For their part, Caballes and Ong raised in their Joint Answer<sup>[10]</sup> the defense of

mortgagee-in-good-faith. They claimed that they both relied in good faith on the SPAs granting Dela Peña the authority to mortgage the subject properties since there was nothing on the face thereof which would have raised their suspicion as to the authenticity of the document. Ong alleged that the subject properties were used by Dela Peña as collateral for the loan, amounting to P170,000.00, which she obtained from Ong. Since the said loan obligation already became due and demandable, Ong sought the foreclosure of the subject properties. During the auction sale, Ong emerged as the highest bidder but the TCTs of the subject properties were not yet transferred to his name.

Landayan, in his Answer,<sup>[11]</sup> denied any participation in the procurement of the SPAs or in the mortgage of the subject properties, except that he was hired by Dela Peña to bring her to the spouses Narciso's residence at the time the alleged SPAs were fraudulently procured.

After the Pre-Trial Conference, trial on the merits ensued.

During the trial, San Pedro presented Landayan to testify in his favor. According to Landayan, he came to know Dela Peña when the latter hired his tricycle. Landayan took Dela Peña and a woman, whom he identified as Caballes' sister, to the residence of the spouses Narciso to secure Guillermo Narciso's signature on a certain document. While Dela Peña and Caballes' sister were inside the spouses Narciso's house, Caballes was waiting for them outside in a white car. After a few minutes, Dela Peña and Caballes' sister came out, and together with Caballes, they visited and inspected the subject properties; after which, Dela Peña and Caballes' sister proceeded to a restaurant to try and secure Brigida Santiago's signature on the document they carried. After somebody signed the document for Brigida Santiago, Dela Peña asked Landayan to sign the same as witness, to which he obliged.<sup>[12]</sup>

San Pedro himself took the witness stand. He testified that he bought the subject properties from the spouses Narciso for P35,000.00. After the execution of the Deeds of Sale and payment of the purchase price to the spouses Narciso, possession of the subject properties were turned over to him. San Pedro started to build his dream house on the subject properties, spending about P2,000,000.00 thereon, only to find out later on that the subject properties on which his house was built was encumbered by Dela Peña to Ong on the strength of the SPAs executed by the spouses Narciso in Dela Peña's favor. When San Pedro confronted the spouses Narciso about the mortgages, they denied authorizing the same.<sup>[13]</sup>

San Pedro's sister, Luz San Pedro Tominago (Tominago), narrated before the RTC that on 31 March 1991, she filed a complaint against Dela Peña before the Philippine National Police (PNP) Station in Balagtas, Bulacan for the latter's failure to effect the transfer of the TCTs of the subject properties in San Pedro's name, as she was obliged to do. Tominago filed the complaint on behalf of San Pedro, who was working abroad.<sup>[14]</sup>

Finally, a document examiner and handwriting expert from the National Bureau of Investigation (NBI) was also presented as a witness for San Pedro. He confirmed that the signature of Guillermo Narciso on one of the SPAs was forged, while the signatures of his wife Brigida Santiago on both SPAs were spurious.<sup>[15]</sup>

After San Pedro presented his evidence, Ong and Caballes filed a demurrer to evidence, questioning the lack of jurisdiction of the RTC over the person of Dela Peña. Since Dela Peña was an indispensable party in the case, they claimed that no final determination of the same could be arrived at without the said court acquiring jurisdiction over Dela Peña.<sup>[16]</sup>

In an Order dated 24 August 2001, the RTC denied the demurrer to evidence filed by Ong and Caballes. Hence, trial proceeded with the presentation of evidence by the defense.

Ong testified for the defense that Caballes informed him that she knew of two parcels of land in Bulacan that were being offered as collaterals for a loan. When Ong expressed interest in the subject properties, Caballes showed him copies of the SPA executed by the spouses Narciso in favor of Dela Peña. Ong then instructed Caballes to verify with the Registry of Deeds whether the spouses Narciso were the real owners of the subject properties and whether their TCTs were clean. Caballes returned with certified true copies of the TCTs which were in the names of the spouses Narciso and bore no encumbrances. Satisfied with the documents, Ong agreed to release the amount of P170,000.00 as loan, secured by the subject properties. Ong admitted that he was not able to personally talk to Dela Peña or to the spouses Narciso. All negotiations pertaining to the loan and mortgages were transacted through Caballes.<sup>[17]</sup>

Caballes also offered her testimony, in which she stated that she came to know Dela Peña because the latter was looking for someone who can grant her a loan with the subject properties as collateral. Dela Peña was armed with the SPAs from the spouses Narciso authorizing her to mortgage the subject properties. After Caballes examined the documents, she proceeded to the Registry of Deeds of Bulacan to verify the status and ownership of the subject properties. After she found out that the TCTs were in the name of the spouses Narciso and were clean, Caballes went to Ong who released the money for the loan. Dela Peña issued nine post-dated checks to Ong as payment for her loan obligation. All nine checks were dishonored by the drawee bank when presented for payment because Dela Peña's account was already closed. Ong, thus, instituted before the Municipal Trial Court (MTC) of Balagtas, Bulacan, a case against Dela Peña for violation of Batas Pambansa Blg. 22.<sup>[18]</sup>

On 21 February 2003, the RTC rendered a Decision in Civil Case No. 515-M-99, declaring null and void the mortgages constituted over the subject properties in Ong's favor. According to the court *a quo*, Ong and Caballes failed to exercise reasonable degree of diligence before they entered into mortgage contracts with Dela Peña, who was not the registered owner of the properties being mortgaged and was only purportedly authorized by the registered owners thereof. The RTC, thus, ruled:

WHEREFORE, judgment is hereby rendered as follows:

1. Declaring [San Pedro] the legal and rightful owner of the two (2) parcels of land subject of this litigation, covered by TCT No. T-82381 and TCT No. 82382 presently in the name of [the spouses Narciso].

2. Adjudging the sale by [the spouses Narciso] to [San Pedro], legal, valid, subsisting and in all respect enforceable.
3. Resolving to declare the Special Power[s] of Attorney constituted in favor of [Dela Peña] null and void.
4. Declaring the Deeds of Mortgage purportedly executed by [Dela Peña] as Attorney-in-fact of [the spouses Narciso], in favor of [Ong] constituted in [sic] TCT No. T-82381 and TCT No. 82382 void ab initio.
5. Ordering the Registry of Deeds for the Province of Bulacan to cancel the recordings of mortgages in favor of Ong constituted in [sic] TCT No. 82381 and TCT No. 82382 as well as any annotation of foreclosure proceedings if there are any by [Ong].
6. Ordering [Ong] to return to [San Pedro] the owner's duplicate copy of TCT No. 82381 and TCT No. 82382 which are presently in his possession.
7. Ordering [Dela Peña] to pay [Ong] the sum of P245,000.00 plus legal interest from September, 1998 until the whole obligation is fully extinguished.

All other claims, counterclaims and cross claims are ordered denied for lack of merit.<sup>[19]</sup>

Without filing any Motion for Reconsideration before the RTC, Ong and Caballes appealed the adverse RTC Decision to the Court of Appeals, assigning as error the lack of jurisdiction of the RTC over the person of Dela Peña which rendered all the proceedings held before said court fatally defective. Their appeal was docketed as CA-G.R. CV No. 79399.

In a Decision<sup>[20]</sup> dated 29 December 2006, the Court of Appeals granted the appeal of Ong and Caballes, and accordingly reversed the RTC Decision dated 21 February 2003. The appellate court justified its reversal of the ruling of the RTC on its finding that the service of summons on Dela Peña was invalid; thus, the RTC did not acquire jurisdiction over her person. The substituted service of summons employed by the Sheriff was ineffective for failure to comply with the statutory requirements before such mode of service could be resorted to. The Sheriff in the present case used substituted service without even showing that Dela Peña could not be served personally with the summons within reasonable time. Since Dela Peña was an indispensable party to the controversy, without her no final determination of the case can be had. Thus, the dispositive portion of the assailed Court of Appeals Decision reads:

WHEREFORE, all the above premises considered, the Decision, dated February 21, 2003, of the Regional Trial Court of Malolos, Bulacan, Branch 19, is hereby set aside for want of jurisdiction. The instant case is hereby remanded to the court *a quo* for appropriate proceedings. No costs.<sup>[21]</sup>