

SECOND DIVISION

[G.R. NO. 162864, March 28, 2007]

**SPS. PEBLIA ALFARO AND PROSPEROUS ALFARO, PETITIONERS,
VS. HON. COURT OF APPEALS, SPS. OLEGARIO P. BAGANO AND
CECILIA C. BAGANO RESPONDENTS.**

DECISION

TINGA, J.:

There lies an inherent oxymoron to the term "duplicate originals" as applied to documents. Yet, even as two "duplicate originals" of the same document are not exactly identical, they may be considered as identical for all legal intents and purposes. Indeed, each "duplicate original" may be considered as the best evidence of the transaction embodied therein.

Assailed in this Petition for Review on Certiorari is the Decision^[1] of the Court of Appeals dated 17 November 2003 in CA-G.R. CV No. 72335, as well as the Resolution dated 3 March 2004, denying the motion for reconsideration.

First, the facts on record.

On 15 April 1996, Spouses Olegario and Cecilia Bagano (respondents) filed a complaint against Spouses Peblia and Prosperous Alfaro (petitioners) for Declaration of Nullity of Sale with Damages and Preliminary Injunction before the Regional Trial Court (RTC) of Cebu City. In the complaint, respondents as plaintiffs alleged the following: that they were the previous registered owners of a parcel of land known as Lot No. 1710, located at San Roque, Talisay, Cebu and covered by Transfer Certificate of Title (TCT) No. 78445; that on 22 June 1994, respondents executed a Real Estate Mortgage over the lot in favor of petitioners to secure payment of an obligation in the amount of P180,000.00; that upon payment of the mortgage debt, a Cancellation and Discharge of Mortgage^[2] dated 20 June 1995 was executed; that when respondents demanded the return of their title, petitioners refused, prompting the former to check with the Register of Deeds; that upon verification, respondents learned that their title had already been cancelled and in lieu thereof TCT No. 92783^[3] was

issued in the name of petitioners by virtue of a spurious Deed of Absolute Sale dated 14 June 1995 (Deed of Absolute Sale) purportedly executed by respondents. Thus, respondents sought the nullification of the deed of sale on the ground that their signatures thereon were forged.

In their answer, petitioners as defendants denied the alleged forgery. They insisted that respondents sold Lot No. 1710 to them in consideration of the amount of P534,000.00 sometime in June 1995.

Respondents' evidence tend to establish that they sent a letter-request to Romeo Varona (Varona), a handwriting expert from the Cebu City PNP Crime Laboratory, for the examination of the questioned signatures in the Deed of Absolute Sale. The request was accompanied by a set of documents consisting of the Deed of Conditional Sale dated 23 October 1989 (Exh. "H")^[4] together with documents containing the specimen signatures of respondents, namely: five (5) receipts with corresponding dates (Exhs. "I," "I-1," "I-2," "I-3," "I-4"),^[5] Community Tax Certificate dated 13 January 1995 (Exh. "J"),^[6] Individual Taxpayer's ID (Exh. "K"),^[7] *Partido ng Masang Pilipino* ID (Exh. "L"),^[8] and a copy of the Deed of Sale

(Exh. "B").^[9] After examining Exh. "B" and comparing the signatures thereon purporting to be those of respondents with the specimen signatures on the documents provided by respondents, Varona issued Report No. 006-96^[10] dated 11 January 1996 containing his findings.

On 25 November 1998, respondents presented Varona as an expert witness on their behalf. Varona affirmed the conclusion embodied in his Report that the questioned signatures appearing on Exhibit "B" were forged.

On the same trial date, petitioners manifested their intention to have Varona examine another set of documents which according to them contain the genuine signatures of respondents. Hence, on 12 March 1999, petitioners sent a letter to Varona, requesting him to examine the signatures on the other set of documents, namely: Real Estate Mortgage dated 22 June 1994 (Ex. "2"),^[11] Acknowledgement Receipt for the sum of P216,000.00 dated 14 June 1995 (Ex. "3"),^[12] six (6) deeds of conditional sale (Exhs. "4" to "9"),^[13] China Bank Check No. A-190308 dated 5 August 1994 for P52,000.00 (Exh. "10"),^[14] and Community Tax Certificate (CTC) No. 19886842 dated

8 February 1995 (Exh. "11").^[15] At the continuation of the cross-examination, Varona stated that the signatures on the documents provided him, which purport to be those of respondents, as well as the signatures on another copy of the Deed of Absolute Sale (Exh. "13"), which similarly purport to be those of respondents, were affixed by the same persons.^[16]

According to petitioners' evidence, respondents had initially mortgaged Lot No. 1710 in their favor for P180,000.00 on 22 June 2004, as evidenced by a Real Estate Mortgage.^[17] Two months later, respondents sold a different set of lots, i.e., Lot Nos. 809-C, 809-D, 809-J, 809-K, 809-T and 809-U, by virtue of six (6) deeds of conditional sale in favor of petitioners who paid the sum of P138,000.00 as downpayment. Thereafter, petitioners discovered that the lots subject of the conditional sale were also sold on installment basis to other parties. To placate petitioners, respondents sold to them the lot in question, Lot No. 1710, in consideration of P534,000.00, as evidenced by the Deed of Absolute Sale. Petitioners paid an additional P216,000.00 after being credited the amounts of P180,000.00 representing the debt secured by the Real Estate Mortgage and P138,000.00 representing the aggregate downpayments for the six (6) conditional deeds of sale.^[18]

On 23 April 2001, the RTC rendered a Decision^[19] dismissing the complaint and ordering respondents to pay P50,000.00 as moral damages, P20,000.00 as attorney's fees and P10,000.00 as litigation expenses, plus costs of suit.

On appeal, the Court of Appeals promulgated the assailed Decision,^[20] reversing and setting aside the Decision of the RTC. It declared the Deed of Absolute Sale null and void *ab initio*, reinstated TCT No. 78445 in the name of respondents, and ordered petitioners to pay the amount of P20,000.00 as moral damages and attorney's fee to respondents.

In the present petition, petitioners maintain that the Court of Appeals committed an error in reversing the judgment of the trial court. Issues were raised, concerning the following points, to wit: first, the selective reversal by the appellate court of the RTC's factual findings; second, the selective discussion of the elements of a contract of sale as basis for the invalidation of the Deed of Absolute Sale; third, the ruling that failure to offer in evidence the second questioned report proved fatal to petitioners' cause; fourth, the blanket denial of petitioners' motion for reconsideration; and fifth, the citing of respondent Olegario Bagano's testimony in the Decision despite its having been stricken off the records for his failure to be cross-examined.^[21]

The first three (3) points raised obviously relate to the determinative issue whether or not the questioned signatures of respondents on the Deed of Absolute Sale were forged, thereby rendering the document spurious. Such determination is evidently factual in nature, and the well-entrenched rule is that in the exercise of this Court's power of review, the findings of facts of the Court of Appeals are conclusive and binding on this Court.^[22] However, there are recognized exceptions,^[23] among which is when the factual findings of the trial court and the appellate court are conflicting.^[24] This case falls under the exception. The disagreement between the trial court and the Court of Appeals in the factual conclusion, especially with regard to the alleged forgery of respondents' signatures on the Deed of Absolute Sale, has constrained us to minutely examine the evidence submitted by the parties.

On its face, the Deed of Absolute Sale was notarized; as such, it enjoys the presumption of regularity and carries the evidentiary weight conferred upon it with respect to its due execution.^[25] Absent evidence that is clear, convincing, and more than merely preponderant, the presumption must be upheld.^[26]

In their bid to establish "clear, convincing and more than merely preponderant evidence," respondents presented an expert witness, Varona, who attested that the Deed of Absolute Sale was indeed forged. Was the witness successful in that regard?

Respondents rely on Varona's testimony on direct examination, as well as his findings in the examination of the copy of the Deed of Absolute Sale as Exh. "B." On that basis, they claim forgery. In their effort to refute respondents' allegation, petitioners hinge on the testimony on cross-examination of the same expert and his findings in the examination of another original of the Deed of Absolute Sale, marked as Exh. "13." The two varying findings led the trial court to conclude that Varona had retracted his earlier finding of forgery, thus:

When Mr. Romeo Varona was presented by the defendants to identify and give his expert opinion about the signatures appearing in the documents marked as annexes 1 to 13, he categorically told the Honorable Court that the signatures of Olegario Bagano and Cecilia Bagano appearing in the said documents are genuine, thus belying the claim of the plaintiff that said signatures are forged.

It should be noted[,] however, that in an earlier testimony, Mr. Romeo Varona testified that the deed of sale in question is a forgery, but he later on retracted his earlier testimony after he conducted an examination of the documents sent to him by the defendants.^[27]

The trial court further sustained the validity of the Deed of Absolute Sale by citing the rule that instruments are evidence, even against third persons, of the fact which gave rise to their execution and of the date of the latter.^[28] The trial court also emphasized the character of the questioned deed as a notarial document, which cannot be disproved by mere denial of the alleged signatory, and bears the presumption of regularity.^[29] Moreover, the RTC noted that respondents filed the case in bad faith to appease their buyers and cover up their wrongdoings in subdividing the lot and selling the resulting lots to different parties.^[30]

The Court of Appeals rejected the trial court's conclusion and proceeded from a different premise, *i.e.*, that in the second examination which involves the standard and specimen signatures submitted by petitioners, Varona did not actually receive and examine the original of the Deed of Sale, Exh. "13." It explained, thus:

Records show that the signatures of Spouses Bagano appearing in the Deed of Sale dated June 14, 1995 were forged. Witness Romeo O. Varona, a document examiner of the PNP Crime Laboratory came out with his Questioned Document Report No. 006-96 dated January 11, 1995 which states that after a careful examination of the questioned document submitted by Spouses Bagano, he found out that the signatures of Spouses Bagano appearing in the questioned Deed of Sale dated June 14, 1995 were forged. x x x

x x x x

Likewise, he confirmed on the witness stand on November 25, 1998 that indeed the signatures of Spouses Bagano appearing in the questioned Deed of Absolute Sale are forgeries. However, on cross-examination conducted on February 10, 1999, counsel for Spouses Alfaro manifested that they would submit for examination the subject documents and that she would cross-examine Mr. Varona after the latter's examination of the submitted documents. On February 28, 1999[,] counsel for the Spouses Alfaro, Atty. Montesclaros, submitted other documents for examination, except the Deed of Absolute Sale dated June 14, 1995. On May 19, 1999, during Mr. Varona's cross-examination, he testified that his findings and conclusions, as stated in the Questioned Document Report No. 039-39 dated March 12, 1999, were that the signatures appearing thereon were written by one and same person. On May 28, 1999, Atty. Montesclaros again requested Mr. Varona to examine the Deed of Absolute Sale dated June 14, 1995. On June 16, 1999, Mr. Varona categorically testified that

he had examined the said deed of sale and when asked if he prepared a report on the said examination he answered in the affirmative. But when again asked where that report was, Mr. Varona referred to Questioned Document Report No. 039-39 dated March 12, 1999, which was the same report that he prepared previously on the basis of the first request of Atty. Montesclaros dated February 28, 1999, where it did not include for examination the questioned Deed of Absolute Sale dated June 14, 1995.

Such a testimony cannot be taken as a retraction of his previous testimony. What the lower court failed to realize was that Romeo Varona did not actually receive and examine the original copy of the questioned Deed of Absolute Sale, as testified to by him. x x x

x x x x

Such a statement categorically means that Romeo Varona did not actually receive any copy of the questioned deed of absolute sale during his first examination upon the request of Atty. Montesclaros. This Court observed that during Mr. Varona's cross-examination on June 16, 1999, defendants-appellees' counsel, Atty. Juanita Montesclaros, tried to make it appear that Mr. Varona examined the Deed of Absolute Sale, when in truth and in fact, he did not. x x x

x x x x

It is very clear that Atty. Montesclaros tried to make it appear that the questioned document which was the Deed of Absolute Sale dated June 14, 1995 was indeed examined. However, this was not the case because Mr. Varona's alleged report on the second request for examination still refers to the previous report, Questioned Document Report No. 039-39 dated March 12, 1999, which was the same report that he prepared previously on the basis of the first request of Atty. Montesclaros dated February 28, 1999, wherein it did not include for examination the questioned Deed of Absolute Sale dated June 14, 1995, and which he had already identified on May 19, 1999. This only means that the Deed of Absolute Sale was not received and examined by Mr. Varona and yet his testimony on cross, dated June 16, 1999[,] still referred to the same report. There was[,] therefore no report made on the second request for examination dated May 28, 1999 on the Deed of Absolute Sale dated June 14, 1995 as Mr. Varona merely referred to his previous report as his alleged second report on the Deed of Absolute Sale. Moreover, the date of the second Written Request for examination is May 28, 1999 and the date of the Questioned Document Report No. 039-39 is March 12, 1999, and Mr. Varona's testimony of June 16, 1999 referred to the said report of March 12, 1999 which report was made on the basis of the first written request for examination.^[31]

The disparate conclusions reached by the courts below are such because they originated from different but similarly erroneous basic premises.

When a document in two or more copies is executed at or about the same time, with identical contents, all such copies are equally regarded as originals.^[32] Original does